



# Planning Statement

Outline planning application for a residential  
development comprising six dwellings with associated  
works – Land at Manchester Road, Tunstead Milton, SK23  
7ES

for Mr & Mrs Bevan



Project : 14-148  
Site address : Land at Manchester  
Road, Tunstead Milton  
Client : Mr & Mrs Bevan  
  
Date : June 2015  
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## 1. Introduction

- 1.1 This statement supports our client's outline planning application for a residential development comprising up to 6 dwellings on land at Manchester Road, Tunstead Milton (access to be considered and all other matters reserved).
- 1.2 There is a significant shortfall across the Borough of new housing and there is an identified need for the Council to release sustainable greenfield sites for new residential development. Our client's site is available, suitable and deliverable within the short-term and would help to address the Borough's substantial housing needs. Furthermore, the relevant saved policies of the adopted High Peak Local Plan relating to housing land supply are considered to be out-of-date.
- 1.3 The proposed development should therefore be determined in accordance with paragraph 14 of the NPPF and the presumption in favour of sustainable development.
- 1.4 We have not identified any adverse impacts that would significantly and demonstrably outweigh the significant benefits associated with the proposal. The development would relate well to the character, appearance and linear built form of this established settlement and the site is locationally sustainable for new residential development. It would also contribute to social sustainability in terms of providing more choice of housing within Tunstead Milton and adding support to local services.
- 1.5 This statement demonstrates that the proposed development represents sustainable development for the purposes of the NPPF and that there is a presumption in favour of granting planning permission accordingly.

## 2. The application

- 2.1 Outline planning permission is sought for a residential development comprising the erection of up to six family-sized houses on land at Manchester Road, Tunstead Milton (access to be considered with all other matters reserved).
- 2.2 Indicative plans have been submitted showing that the application site could comfortably accommodate six dwellings with generously sized gardens and parking for at least two cars to be parked clear of the highway within each plot. The indicative plans show that the proposed

new houses would front onto Manchester Road and would integrate well with the existing built form along this established linear settlement.

- 2.3 The proposed new houses would be built to a Code Level 5 of the Code for Sustainable Homes, exceeding mandatory requirements, and it is proposed that two of the proposed new houses would comprise live/work units.
- 2.4 The existing frontage of the application site, together with the land leading to the bus stop beyond Tom Lane to the east, comprises a narrow grass verge with no pedestrian access for local residents to safely and conveniently access public rights of way and public transport provision. The proposed development would provide a new dedicated footway along the entire frontage up to the existing bus stop.
- 2.5 The new footway would not only secure the sustainability credentials of the proposed development in terms of access for future residents, it would also significantly benefit local residents and would facilitate tourism with visitors able to safely and conveniently alight a bus and access Combs Reservoir and the wider public right of way network.
- 2.6 The development also incorporates a substantially sized area of open space to the rear of the development. This area would be accessible to all and would comprise a shared community space to the significant benefit of local residents.
- 2.7 The proposed development would result in the removal of four trees along the A6 frontage, although this has been agreed with officers through our pre-application submission. The removal of these trees is necessary in order to facilitate the provision of a new dedicated footway. There would also be the removal of one tree within the centre of the site on the basis of its poor health and condition.
- 2.8 More detailed information on the overall design concept and the Code for Sustainable Homes is provided within the Design and Access Statement prepared by High Peak Architects.

### 3. Context

#### Site location and description

- 3.1 The application site is located to the edge of Tunstead Milton, which is an established settlement located between the principal market towns of Chapel-en-le-Frith and Whaley Bridge. The built-up area of Tunstead Milton, which is predominantly residential in character, fronts the A6 Manchester Road in a linear fashion.
- 3.2 The site is gently sloping and comprises grazing land. It is bound immediately by Tom Lane to the east with the reservoir embankment beyond, Higher Birches and the manufacturing plant known as Morten's Yard to the west, Manchester Road and residential properties to the north and open land to the south. It is bound by built development on three sides and could reasonably be described as an infill plot.
- 3.3 There are public rights of way either side of the application site and these footpaths provide attractive linkages to Combs Reservoir and the public rights of way network beyond, providing access to Combs village and Chapel-en-le-Frith train station.
- 3.4 Tunstead Milton benefits from excellent public transport provision with regular and direct bus services along the A6 providing access to key destinations such as Buxton, Manchester Airport, New Mills, Stockport, Whaley Bridge and Chapel-en-le-Frith. The first bus service is at 03:45 and the last bus service is at 21:50.
- 3.5 There are a number of services within easy and convenient walking distance such as the Hanging Gate public house, Combs Reservoir with its range of outdoor recreational opportunities and the employment premises known as Morten's Yard. The village of Combs and Chapel-en-le-Frith rail station can be reached via the public right of way network and regular and direct bus services along the A6 provide access to the range of services within Chapel-en-le-Frith and Whaley Bridge (e.g. schools, shops, train stations) and key destinations beyond. A footway also extends all the way from the site along the A6 to Chapel-en-le-Frith.

#### Pre-application submission

- 3.6 We submitted a pre-application enquiry to the local planning authority on behalf of our client in July last year and received a written response the following December.

- 3.7 In terms of the principle of development, the response advises that any planning application needs to demonstrate the sustainability credentials of the development with reference to the emerging Chapel-en-le-Frith Neighbourhood Plan.
- 3.8 With regard to site-specific issues, the officer's response raises no objection to the removal of trees along the development frontage and draws attention to the need for a flood risk assessment, detailed highways plans and advises that consideration should be paid to the character and appearance of the area.
- 3.9 We have sought to address all of the officer's comments through this planning application submission. A copy of the pre-application response is provided at **EP1**.
- 3.10 Ongoing discussions have been held with the highways officers of Derbyshire County Council and their comments have been fully incorporated into the final access design of the proposed scheme.

## 4. Policy context

### National planning policy and guidance

#### National Planning Policy Framework

- 4.1 At the heart of the NPPF, there is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.
- 4.2 Paragraph 6 of the NPPF states that *"The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system"*.
- 4.3 Paragraph 7 states that *"There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:*

*An economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;*

*A social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of the present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being;*

*An environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."*

- 4.4 Paragraph 14 states that for decision-taking the presumption in favour of sustainable development means:



- 1) *"approving development proposals that accord with the development plan without delay; and*
- 2) *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:*
  - *any adverse impact of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole; or*
  - *specific policies in the NPPF indicate development should be restricted."*

- 4.5 Paragraph 47 of the NPPF requires local planning authorities to identify a supply of deliverable sites sufficient to provide five years of housing against their housing requirement.
- 4.6 Paragraph 49 of the NPPF states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year housing land supply.
- 4.7 Paragraph 101 relates to flood risk and states that development in areas of flood risk should be subject to a sequential assessment to determine whether development can be steered to an area of lower risk.
- 4.8 Paragraph 216 of the NPPF states that decision-takers may give weight to relevant policies in emerging plans according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency with relevant policies in the NPPF.

#### National Planning Practice Guidance (NPPG)

- 4.9 The PPG was published in its final form on 6<sup>th</sup> March 2014. The relevant sections of the NPPG are discussed within the planning considerations section below.

#### Development plan context

- 4.10 The development plan for the site comprises the saved policies of the High Peak Local Plan (adopted March 2005). Where local plan policies are out-of-date, the provisions of the NPPF take precedence.

4.11 The adopted local plan proposals map shows that the application site is located within the open countryside, although it lies immediately adjacent to the established built-up boundaries of Tunstead Milton.

4.12 The following saved policies of the adopted local plan are relevant to the consideration of this planning application:

- H1: Principles of Housing Provision.
- H11: Layout and Design of Residential Development.
- OC1: Countryside Development.
- OC8: Sites of Conservation Importance.
- OC10: Trees and Woodland.
- GD2: Built-up Area Boundaries.
- GD4: Character, form and design.
- GD5: Amenity.
- GD6: Landscaping.
- GD7: Crime prevention.
- TR1: Transport implications of new development.
- TR5: Access, Parking and Design.

4.13 These policies will be discussed in more detail within the planning considerations section of this statement.

### Other material considerations

#### Draft Chapel-en-le-Frith Neighbourhood Plan

4.14 The Parish Council prepared a draft neighbourhood plan last year and submitted it for examination in January 2015. The draft plan relates to the parish boundaries and it incorporates the settlement of Tunstead Milton.

4.15 The appointed independent examiner delivered her Examiner's Report, which found the the draft plan to be broadly consistent with the 'Basic Conditions', subject to a number of modifications including the deletion of Draft Policies H2, H4, H5, H8, H9 and C1.

4.16 The role of the examination is not to interrogate strategic planning issues, such as the overall housing requirement. Matters relating to housing need are presently being discussed through the examination in public for the emerging Borough local plan. These strategic matters, including the overall housing requirement for Chapel-en-le-Frith are yet to be resolved.

- 4.17 Draft Policy H3 indicates that there will be a presumption in favour of approving small windfall housing sites (less than six dwellings). Paragraph 57 of the Examiner's Report clearly states that this policy does not preclude larger and otherwise sustainable windfall sites from being acceptable:

*"This policy only relates to small housing sites in accordance with the title of the policy. Therefore, in my opinion, it does not preclude otherwise sustainable development from going ahead on larger sites. Such larger sites would have to be considered on their individual merits in accordance with national and development plan policy."*

- 4.18 Draft Policy C2 identifies a number of local green spaces on which development should not be allowed, except in special circumstances. One of the designated areas of local green space incorporates the application site, and significant areas of land beyond and is referred to as 'Land at Combs Reservoir'.
- 4.19 High Peak Borough Council and the Peak District National Park have resolved to approve the emerging neighbourhood plan, subject to the Examiner's modifications, and it is anticipated that a referendum will be held in July 2015.

Emerging development plan

- 4.20 The council submitted the submission version of the local plan in the summer of 2014 and examination hearings subsequently followed in January and February 2015. The Examination in Public (EIP) has been the subject of significant and unresolved objection, particularly with respect to housing matters. The Local Plan Inspector's findings are yet to be released.
- 4.21 The council has yet to resolve the objectively assessed housing need (OAN) for the Borough further to updated household projections and recent caselaw (e.g. Satnam vs. Warrington BC). There will be further consultation held on the full OAN later this year and the EIP remains open.
- 4.22 Given the ongoing significant uncertainty with regard to the content of the emerging local plan, it attracts little weight in the decision-making process in accordance with paragraph 215 of the NPPF.

Five-year housing land supply

- 4.23 The council continues to acknowledge that it cannot demonstrate a deliverable five-year supply of housing land and there is a need to release additional sustainable greenfield sites for residential development. For example, the Committee Report published April 2015 for planning application HPK/2015/0058, relating to an application for residential development in Chapel-en-le-Frith states the following:

*"Whether using the OAN (based on the 2011 population projections) or the constrained figure promoted by the Council at the Local Plan examination, the Council cannot demonstrate a 5 year supply of housing, the latest position being within the region of between 3.4 - 4 years."*

- 4.24 Paragraph 49 of the NPPF is therefore engaged and the relevant housing policies should be considered out-of-date.

Woodcock Holdings Judgement

- 4.25 This judgement, concerning Woodcock Holdings Ltd vs. Secretary of State for CLG and Mid-Sussex District Council, was handed down 1<sup>st</sup> May 2015 and is appended at **EP2** of this statement. It relates to a challenge against the decision of the Secretary of State to dismiss an appeal, against the recommendation of the Planning Inspector, for a residential development comprising 120 dwellings at Sayers Common, Mid-Sussex.
- 4.26 The decision of the Secretary of State to dismiss the appeal was made in the context of the council not being able to demonstrate a five-year supply of deliverable housing land across the Borough and the parish council progressing a draft neighbourhood development plan.
- 4.27 The claimant's challenge was successful with Mr Justice Holgate's judgement making a number of significant and important points with relevance to emerging neighbourhood plans. The judgement establishes the following:
- any conflict with a neighbourhood plan should be properly weighed in the planning balance in accordance with S38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 14 of the NPPF;
  - the absence of an objective assessment of housing needs at the district level cannot justify increasing the weight to be given to a draft neighbourhood plan;

- the provisions of paragraph 49 of the NPPF applies to neighbourhood plans;
- paragraphs 14 and 49 of the NPPF apply to the housing supply policies within a draft development plan;
- prematurity to a neighbourhood plan needs to be considered properly in accordance with the NPPF para 216 and the PPG.

4.28 The judgement confirms that the provisions of paragraphs 14 and 49 of the NPPF, and the presumption in favour of sustainable development, apply to emerging development plan and neighbourhood plan policies as well as adopted, or 'made', policies.

High Peak Strategic Housing Market Assessment (SHMA) 2014 (NLP)

- 4.29 The SHMA concluded that there is a significant need for family-sized accommodation across the Borough in order to help address identified need as well as policy aspirations for mixed and well-balanced communities.
- 4.30 This SHMA also established the very significant affordable housing need across the Borough with an identified need of 878 affordable houses annually (gross) across High Peak.
- 4.31 The recent judgement relating to Satnam Millennium Ltd and Warrington Borough Council (February 2015), establishes that identified need for affordable housing should be considered as an integral element of the full objectively assessed housing need (OAN), and not a discreet element of housing viewed in isolation.
- 4.32 The implications of the Satnam judgement for High Peak is that the overall OAN is likely to be much greater than the council had previously anticipated given the serious shortfall of affordable housing across the Borough.

## 5. Planning considerations

### Principle of development

- 5.1 The proposed development would result in the release of a greenfield site beyond the established settlement boundaries that were set through the adopted High Peak Local Plan (2005). The proposal would thereby be contrary to Policies OC1, H1 and GD2 of the adopted local plan.
- 5.2 However, it has been established through a number of recent approvals and appeals that the saved policies of the adopted local plan relating to housing land supply are time-expired. The established settlement boundaries are predicated upon historic housing need and there is a need for these boundaries to 'flex' in order to meet unmet housing needs.
- 5.3 Further to the above, the council cannot demonstrate a five-year housing land supply and paragraph 49 of the NPPF is therefore engaged.
- 5.4 The proposed development should therefore be determined in accordance with paragraph 14 of the NPPF, which states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development (our emphasis).
- 5.5 The potential impacts of the proposed development are discussed below.

### Highways and accessibility

- 5.6 The submitted plans demonstrate that the proposed development would not undermine the local road network or highways safety. The proposed access points would provide sufficient visibility along the A6 Manchester Road frontage such that drivers and pedestrians are able to safely and conveniently access the houses.
- 5.7 The final scheme has incorporated all of the comments made by the Derbyshire County Council Highways Department through pre-application discussions.
- 5.8 Space for a minimum of three parked cars would be provided within each housing plot with sufficient maneuvering space within the application site for vehicles and to enter and egress in forward gear.

- 5.9 Tunstead Milton is an established settlement with a range of services within an easy and convenient walking distance. There are public rights of way either side of the application site with attractive linkages across the wider footpath network. Future residents would benefit from the excellent bus services along the A6 with direct and regular routes to the principal market towns of Whaley Bridge and Chapel-en-le-Frith, and key destinations beyond.
- 5.10 Further information on accessibility is provided within the Design and Access Statement, submitted by High Peak Architects, and at Section 2 of this statement. However, in summary the site is accessible by a number of different modes of transport.

### Flood risk

- 5.11 The Environment Agency (EA) website indicates that the application site falls within Flood Zone 2 and 3 and is therefore at risk of flooding.
- 5.12 A Flood Risk Assessment (FRA) has been prepared by Peter Mason Associates and submitted with this planning application. The FRA highlights a number of limitations with regard to the reliability of the EA mapping system in this instance, for example the canal feeder being shown in the wrong place.
- 5.13 The FRA demonstrates that all levels within the application site are above the 1 in 1,000 year flood level and it should therefore be considered that the site is Flood Zone and not at risk of flooding.
- 5.14 It also shows that in the rare event of the Combs Reservoir overflowing, any excess water would not affect the application site and would instead flow towards Randall Carr Brook Valley to the south. Furthermore, any flooding from the river system to the other side of the A6 would be intercepted by the road.
- 5.15 The proposed development would not increase the risk of flooding, which is presently low, and is consistent with the provisions of the NPPF.

### Sequential Assessment: Flood Risk

- 5.16 We do not consider it necessary to carry out a sequential assessment of the proposed development given that the FRA demonstrates that the application site is not at risk of flooding

(i.e. Flood Zone 1). The National Planning Practice Guidance (NPPG) states that a sequential test is not necessary in such instances (ref: 7-033-20140306).

- 5.17 In any case, the NPPG advocates a pragmatic approach when local planning authorities apply the sequential test. For example, it states that where there are large areas in Flood Zones 2 and 3 and development is needed in those areas to sustain the existing community, sites outside them are unlikely to provide reasonable alternatives (ref: 7-033-20140306).
- 5.18 The submitted FRA demonstrates that the site is not at higher risk of flooding than any other site within the settlement. The proposed development would steer housing towards the area of lowest probability of flooding and is consistent with the provisions of paragraph 101 of the NPPF.
- 5.19 The sequential test is therefore satisfied and the exception test need not be applied.

### Rural housing

- 5.20 Paragraph 55 of the NPPF states the following:

*"To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances"*

- 5.21 The application site cannot be considered as being isolated for the purposes of paragraph 55 given its location within the village of Tunstead Milton. It would relate well to the existing linear form of built development along Manchester Road.
- 5.22 Paragraph 28 of the NPPF states that planning policies should take a positive approach to sustainable new development in order to support economic growth in rural areas with plans promoting the retention and development of local services and community facilities in villages.
- 5.23 The NPPG (Reference ID: 50-001-20140306) advises that it is important to recognise the particular issues facing rural areas in terms of housing supply and affordability and the role of housing in supporting the broader sustainability of villages and smaller settlements. Rural housing is essential to ensure viable use of local services and facilities.



- 5.24 The release of this site for residential development would support the existing services and facilities in Tunstead Milton (the employment area, the bus service and the nearby Hanging Gate Public House) as well as those in neighbouring settlements. The preservation of existing services and facilities is precisely the reason set out in the PPG as to why new rural housing is required. The application proposal is therefore considered to be entirely in accordance with this section of the PPG.
- 5.25 In relation to paragraph 55 of the NPPF, new housing in Tunstead Milton would also support the existing services and facilities in nearby towns, including Whaley Bridge and Chapel-en-leFrith. The proposals are therefore fully in accordance with paragraph 55 of the NPPF.

### Ecology and trees

- 5.26 Ecology Reports, carried out by Arc Ecology, have been submitted with the planning application. No evidence of any protected species (e.g. bats, great crested newts, badgers) has been found on the site and there is no subsequent requirement for additional surveys to be carried out.
- 5.27 With regard to trees, an Arboricultural Assessment has been prepared by Cheshire Woodlands and submitted with this planning application. Four trees would need to be removed to facilitate the provision of a new footway and new vehicular access along the frontage and the principle of this has been agreed with officers through the pre-application submission. One tree within the centre of the site would need to be removed, although it is of poor health and condition.
- 5.28 None of the trees to be removed would relate to a Category A (high quality) specimen.
- 5.29 The local planning authority could secure appropriate replacement tree planting, and necessary mitigation measures during the construction phase (e.g. protective fencing), at the reserved matters stage.
- 5.30 The proposed development would have an acceptable on ecology and trees and Policies OC8 and OC10 of the adopted local plan.

### Energy efficiency

- 5.31 The proposed new houses would be built to a Code Level 5 of the Code for Sustainable Homes, exceeding mandatory requirements.

- 5.32 The proposed level of sustainability should be seen within the context of the Ministerial Statement (March 2015), which firmly signals the government's view that planning policies relating to the Code for Sustainable Homes should not over-burden developers. Planning policies relating to the Code should not exceed mandatory building regulations standards. This statement was made within the context of the forthcoming Deregulation Bill 2015.
- 5.33 It remains rare for developments to achieve the level of sustainability proposed (Code 5) and this should attract significant weight in the decision-making process as the proposal is a highly sustainable form of development.

### Residential amenity

- 5.34 The indicative plans submitted would provide generously sized gardens and internal amenity space for the enjoyment of future residents. Future occupiers would also be able to easily access the public open space at the rear and the wider network of public rights of way within the area.
- 5.35 In terms of existing residential properties within the area, the proposed development would not introduce any new habitable windows facing towards Higher Birches and the new houses would be generously distanced from those properties opposite the application site.
- 5.36 The proposed development would have an acceptable impact on residential amenity and is compliant with Policy GD5 of the local plan.

### Design and Landscape

- 5.37 The NPPF is clear that 'protection' is a term to be applied to landscape designations and local planning authorities should not seek to protect the open countryside 'for its own sake'. The application site is not the subject of any landscape designations.
- 5.38 The application site fronts onto the A6 Manchester Road and is bound by residential properties and manufacturing plant to the west and residential properties to the north. The site is bound to the east by Tom Lane with the physical barrier of the Combs Reservoir embankment beyond.
- 5.39 The proposed development would sit comfortably within the density and character of the existing housing within the village and it would integrate well with the linear built form which

defines Tunstead Milton. It would not extend further into the open countryside than the adjacent housing.

- 5.40 In terms of long-distance views, including those from the Peak District National Park, the proposed development would be seen within the context of the existing linear built form and it would not appear as an incongruous addition. The vast majority of the existing trees within the site would be retained and these trees provide screening.
- 5.41 Furthermore, the proposed residential development would be enclosed with new hedgerow planting and with new tree planting to the new area of public open space. These measures would further ensure that the scheme integrates well with the surrounding area with a soft buffer to the open countryside to the south.
- 5.42 The submitted Design and Access Statement, prepared by High Peak Architects, provides more information on the overall design concept and it is intended that the proposed houses would be finished in natural stone to match the vernacular of the surrounding built form.
- 5.43 The proposed development would integrate well with the surrounding built form and landscape and would not materially harm the character of the open countryside. It is acceptable with respect to Policy GD6 and Policy H11 of the adopted local plan.

#### Affordable housing

- 5.44 The proposed development would help to address the identified and significant shortfall in family housing across the Borough and this attracts significant weight in the decision-making process. It would help to address affordability issues for family-sized housing.
- 5.45 We would be happy to discuss affordable housing provision with officers during the course of the planning application in light of changes in national planning guidance with respect to planning obligations (Reference ID: 23b-012-20150326 of the NPPG).

#### Draft Neighbourhood Plan

- 5.46 The Woodcock judgement, referred to earlier in this statement and appended at **EP2**, established that the provisions of paragraphs 14 and 49 of the NPPF apply to emerging local plan and neighbourhood plan policies as well as adopted ones. The judgement also states that

the weight to be afforded to a draft neighbourhood cannot be increased in the absence of an established objectively assessed housing need across the Borough.

- 5.47 Any conflict with the emerging neighbourhood plan should be properly weighed in the 'planning balance' in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 14 of the NPPF.
- 5.48 The weight to be afforded to the emerging neighbourhood plan should reflect the absence of a five year housing land supply and the fact that the plan has not yet been 'made' with a referendum anticipated later this year.
- 5.49 Notwithstanding the above, we do not consider that the proposed development conflicts with the provisions of the draft neighbourhood plan. It is consistent with the windfall policy at Draft Policy H3, which should be seen within the context of paragraph 57 of the Examiner's Report.
- 5.50 The proposed development would result in the loss of a modest strip of land for housing within the local green space designation. However, there are very special circumstances to justify the proposed development on the basis of the following:
- there is an identified and immediate need for the provision of new housing, especially family housing, across the Borough in order to address unmet housing need;
  - the proposal would not result in the severance, or undermining, of the open space with only the frontage onto Manchester Road being developed for housing;
  - an extensive area of land would be secured as public open space through this development and it would be accessible to all local residents as a shared community space;
  - additional tree and hedgerow planting within the area of open space would be carried out through the proposed development; and
  - the proposed development would result in the provision of a new dedicated, safe footway along the entire development frontage and leading beyond Tom Lane to the bus stop, to the significant benefit of local residents and visitors to the area.
- 5.51 The proposed development is therefore fully consistent with the provisions of Draft Policy C2.

### Sustainable development

- 5.52 At the outset, it is important to recognise that locational sustainability is only one element of a number of factors to be considered within the concept of sustainable development. This is set out in paragraph seven of the NPPF and endorsed by the Secretary of State in relation to his decision regarding land off Nantwich Road, Tarporley (PINS ref: APP/A0665/A/11/2167430) attached at **EP3**. Of particular relevance are paragraphs 24 and 25 of the SoS' decision letter. These paragraphs discuss paragraphs 177 to 200 of the Inspector's report, which found that sustainability is a "multi-faceted concept". The Inspector also considered the sustainability of any proposal to be "its position within a spectrum to which numerous factors contribute".
- 5.53 The decision at Tarporley makes reference to the appeal decision in relation to 270 dwellings and a doctor's surgery on land off Henthorn Road, Clitheroe (PINS ref: APP/T2350/A/11/2161186) attached at **EP4**. The Inspector in that case concluded that:

*"accessibility is but one element of a sustainable development; it is not synonymous with it. Thus, a proposal can be a sustainable one even if it suffers from limitations in terms of its accessibility by walking, cycling or public transport." (paragraph 27) and*

*"There are many other components of sustainability other than accessibility. The concept includes such matters as meeting housing needs in general and affordable housing in particular; ensuring community cohesion; economic development; ensuring adequate provision of local health facilities and providing access for recreation in the countryside. Many of these aspects of the proposed development are uncontested by the Council and are consistent with the concept of sustainability." (paragraph 28)*

- 5.54 A planning appeal decision relating to 25 houses in Brereton Heath, Cheshire East for Bloor Homes is also relevant (PINS ref: APP/R0660/A/13/2192192), attached at **EP5**. Emery Planning were the agents for the Appellants in that case. As per the decisions at Tarporley and Clitheroe, the Inspector found that a proposal can be a sustainable one even if it suffers from limitations in terms of accessibility. The Inspector also formed a number of conclusions in relation to sustainable development in rural areas, which are relevant here. Please refer to paragraphs 25 to 40 of the appeal decision in particular.
- 5.55 The Taylor Review (July 2008) found that in rural areas, it is particularly important that a narrow "tick box view" of sustainability is far too simplistic. Paragraph 78 states:

*"So many smaller rural settlements without certain services are written off as inherently 'unsustainable', in which case no new housing or economic development may be allowed at all. There is a widespread assumption that because smaller rural communities may have little or no services, shops or public transport of their own they are fundamentally unsustainable and therefore not suitable for development on the grounds of an implied greater need to commute and travel by car to access services and employment... Increasingly decision making in rural areas is determined solely by reference to limiting car based travel".*

5.56 Paragraph 80 continues by stating:

*"This narrow view of sustainability is far too simplistic – and wrong. Indeed, it starts from the wrong premise, because it asks the wrong question. If people in rural areas can't live near where they work because it is unaffordable, or can't work near where they live because employment is increasingly directed to towns, restricting development has the effect of making communities even less sustainable environmentally, let alone socially and economically sustainable. Since we are not going to bulldoze our villages and start again, and people are going to continue to live in them, the key emphasis of the planning system (at all levels) needs to move away from asking "is this settlement sustainable?", to "will this development enhance or decrease the sustainability of this community – balancing social, economic and environmental concerns".*

5.57 The findings of the Taylor Review consequently appear to have informed the NPPF, particularly in relation to paragraph 55 and the section in the recently published PPG as set out above.

5.58 Notwithstanding the above, we have fully addressed accessibility through this statement and demonstrate that the site is locationally sustainable.

5.59 As indicated above, the NPPF provides for a presumption in favour of sustainable development and this is the golden thread running through decision-making. Paragraph seven notes that sustainable development has three dimensions, namely the economic, social and environmental.

5.60 With regard to the economic role, the proposed development would result in both direct and indirect benefits that include construction jobs and additional household spending within the wider economy (e.g. on household goods and services). There will also be a New Homes Bonus and council tax receipts associated with the proposed residential development.

5.61 Turning to the social role, the proposed development would result in the following benefits that attract significant weight in the decision-making process:

- the proposed development would add much-needed quantity and quality to the local housing market;
- the proposed development would secure a substantially sized area of public open space consistent with the aspirations of the draft neighbourhood plan and be accessible to all members of the public, comprising a shared community space;
- the provision of a safe and dedicated footway along the Manchester Road frontage encompassing the development site and land beyond Tom Lane to the bus stop, providing safe and convenient access to the significant benefit of the local community and visitors to the area; and
- the proposed development would help to safeguard the existing local services within Tunstead Milton and would help to sustain the viability and vitality of this established local community.

5.62 With regard to the environmental role, we have not identified any harm in terms of the potential impact of the proposed development. The Council has accepted in other cases that the settlement boundaries are out-of-date, and that greenfield sites beyond the existing settlement boundaries are needed to meet future housing needs. Therefore the loss of a small parcel adjacent to the settlement, fronting onto Manchester Road, does not comprise a significant adverse impact.

5.63 Furthermore, significant weight should be afforded to the new houses being built to a Code Level 5 of the Code for Sustainable Homes. This level of energy efficiency goes above and beyond mandatory requirements and it remains rare for developments to achieve this level of sustainability. The proposed development also includes new tree and hedgerow planting.

5.64 We firmly consider that the proposed development would comprise sustainable development for the purposes of the NPPF.

## 6. Summary and conclusions

- 6.1 The Council cannot identify a five-year supply of deliverable housing land and paragraph 49 of the NPPF is therefore engaged. Furthermore, the adopted local plan policies relating to housing land supply are considered to be time-expired.
- 6.2 The relevant housing policies of the adopted local plan should therefore be considered out-of-date. Furthermore, recent caselaw establishes that draft and emerging neighbourhood plan policies should also be considered out-of-date in such instances.
- 6.3 The proposed development should be determined in accordance with the provisions of paragraph 14 of the NPPF and the presumption in favour of sustainable development.
- 6.4 The proposal would help to address a significant housing shortfall across the Borough through the provision of high quality and family-sized open housing. It would also provide a number of other benefits that include:
- the proposed development would secure a substantially sized area of public open space that is accessible to all members of the public, comprising a shared community space;
  - the provision of a safe and dedicated footway along the A6 Manchester Road frontage, encompassing the development site and land beyond Tom Lane to the bus stop, and providing safe and convenient access to the significant benefit of the local community and visitors to the area; and
  - the proposed development would help to safeguard the existing local services within Tunstead Milton and would help to sustain the viability and vitality of this established local community.
- 6.5 The proposed development would relate well to the character and appearance of the area and the existing built form along this established linear settlement. It would not materially harm the character and appearance of the open countryside.
- 6.6 The site would benefit from excellent public transport provision with regular bus services to Chapel-en-le-Frith and Whaley Bridge, which are located a short distance away, and key destinations such as Buxton and Manchester Airport beyond. There are a number of services



within walking distance of the application site and a range of opportunities within the immediate area for sport and recreation.

- 6.7 We demonstrate through this statement that the proposed development comprises sustainable development for the purposes of the NPPF. We have not identified any adverse harm that would demonstrably and significantly outweigh the benefits associated with the proposal, and planning permission should therefore be granted in accordance with the NPPF.

## 7. Appendices

EP1 – Officer's pre-application response December 2014.

EP2 - Woodcock Holdings Ltd vs. Secretary of State for CLG and Mid-Sussex District Council.

EP3 – Appeal decision APP/A0665/A/11/2167430 at Nantwich Road, Tarporley.

EP4 – Appeal decision APP/T2350/A/11/2161186 at Henthorn Road, Clitheroe.

EP5 – Appeal decision APP/R0660/A/13/2192192 at Brereton Heath, Cheshire.

EP1

I refer to your pre-application submissions concerning the development of the field south of Manchester Road and west of Tom Lane, Tunstead Milton, Derbyshire. I apologise again for the delay and for any inconvenience that it has caused. This has been due to a combination of circumstances that have led to increased workloads over recent months.

In respect of this enquiry, I confirm that I have visited the site, researched its planning history and reviewed the policies and constraints that apply to the site and the proposed development and would comment as follows.

### **1. Site Description.**

The site is an open green field within the open countryside remote from the nearest built-up area boundary, as defined in the adopted High Peak Saved Local Plan Policies. It is directly opposite a row of dwelling houses and there is a dwelling and a haulage yard further to the west (an allocated employment area). The site frontage is marked by a hedgeline and a row of trees and there is a detached agricultural building located to the rear of the trees within the western part of the field. The site is also bounded by a row of trees along the Tom Lane frontage. Access to the site is gained via a field access onto Manchester Road. The site is reasonably flat with a gradual gradient running south towards the Randall Carr Brook. It is currently used as grazing land.

### **2. Development Proposal.**

The indicative plans show a proposed development comprising a row of eight detached dwelling houses set back from the highway edge laid out within relatively uniform-sized plots fronting onto Manchester Road, with a mix of single and shared accesses. The frontage hedge will be punctuated by these access points and a number of trees will be removed in order to facilitate the development.

### **3. Planning History**

The site appears to have no previous planning history in terms of planning applications either submitted and approved. An enforcement notice was served in respect of an unauthorised prefabricated building erected on the site and associated hard standing in 2005.

### **4. Planning Policies.**

The Development Plan constitutes the High Peak Local Plan Saved Policies 2008. The following policies are relevant to varying degrees (these will be examined further in this response):

- GD2 Built-up Area Boundary
- GD4 Character, Form and Design
- GD5 Amenity
- GD6 Landscaping
- GD7 Crime Prevention
- BC1 External Materials

- H1 Principle of Housing Provision
- H5 Housing within the Built-up Areas
- H9 Affordable Housing
- H11 Layout and Design of Residential Development
- H12 Public Local Open Space
- TR1 Transport Implications of New Development
- TR5 Access, Parking and Design

Emerging High Peak Local Plan:

- S1 Sustainable Development Principles
- S1a Presumption in Favour of Sustainable Development
- S2 Settlement Hierarchy
- S6 Central Sub-Area Strategy
- EQ2 Landscape Character
- EQ3 Countryside and Green Belt Development
- EQ4 Biodiversity
- EQ5 Design and Place Making
- EQ8 Trees, Woodland and Hedgerows
- EQ10 Flood Risk Management
- H1 Location of Housing Development
- H4 New Housing Development
- H5 Affordable Housing
- CF6 Accessibility and Transport

## **5. National Planning Policy Framework.**

In March 2012, the National Planning Policy Framework replaced all previous PPGs and PPSs and confirmed the Coalition Government's commitment to a presumption in favour of sustainable growth and development. In terms of decision making, this means approving developments that accord with the development plan 'without delay' and, where the development plan contains either no relevant policies or where those policies are out of date, granting planning permission 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 or specific policies in this Framework indicate development should be restricted'.

The Framework defines sustainable development using the standard United Nations General Assembly definition, namely 'as meeting the needs of the present without compromising the ability of future generations to meet their own needs'. The purpose of the planning system is to contribute to the achievement of sustainable development and the Framework identifies three mutually dependent dimensions to this, which should be sought jointly and simultaneously through the planning system, namely: economic, social and environmental benefits.

In terms of implementation, paragraph 215 of the Framework provides advice regarding the weight to be attached to Local Plan policies where the local plan was adopted prior to the Planning and Compulsory Purchase Act 2004. This is the case

with the High Peak Local Plan and the relevant policies should be given due weight according to their degree of consistency with the Framework. The closer the policies in the Local Plan are to those in the Framework, the greater weight may be given. Policies contained in the Local Plan in respect of new development within the open countryside are considered to be largely consistent with the Framework (with a few exceptions), and so remain relevant to consideration of this proposal. The new draft High Peak Local Plan has been submitted to the Secretary of State and is now awaiting a date for its Examination in Public. As it is not yet adopted and has still to be tested in public, the weight it carries in the decision-making process is therefore limited.

## **6. Key Planning Issues and Constraints.**

The following key issues and constraints are identified and will affect the development of this site:

1. Principle of the development
2. Landscape and visual amenity
3. Trees - tree report
4. Traffic and transport
5. Flood Risk and drainage
6. Impact of the proposed development on the amenities of local residents
7. Ecology and biodiversity
8. Affordable Housing and other contributions
9. Archaeology and built heritage

### **Principle of the development**

As mentioned above; the closer the policies in the Local Plan are to those in the Framework, the greater weight may be given. Therefore, considering the principle against the adopted Local Plan as the starting point, policy GD2 and policy H5 support sustainable development within the defined settlement boundaries for the Borough on previously developed land where, provided other material policies and planning considerations are satisfied, new development will usually be supported. The NPPF contains reference in paragraph 17 to a preference to redevelop previously developed land and in paragraph 55 it states new development in the countryside should be located where it will enhance or maintain the vitality of rural communities. The example given is where there are groups of smaller settlements, development in one village may support services in a village nearby. New isolated homes in the countryside should be avoided.

The proposed site is a green field site located outside of but close to the edge of a defined built-up area boundary in the current Local Plan. Policy OC1 would preclude new residential development in the countryside and H1 seeks to direct new residential development to previously developed sites within defined settlements. The Council is currently unable to demonstrate a five year strategic housing land supply and it could be argued that these policies are out of date. Whilst this may be the case, the NPPF must be considered as a whole and not just in terms of policies

that might support a development proposal if taken in isolation. Therefore, you will have to demonstrate how this site will comply with the NPPF where it clearly seeks to direct new development to sites that fit with the concept of sustainable development. You mention that it will help to sustain services in local villages but the larger settlements of Chapel en le Frith and Whalet Bridge already fulfil that role. How will this site make a substantial additional contribution is one fundamental question that needs addressing by you as part of a future planning application.

The emerging Local Plan contains a Settlement Hierarchy policy (S2). This policy seeks to focus new development within settlements that score well in terms of sustainability criteria and a clear settlement hierarchy is set out in the policy. Tunstead Milton is specifically referred to in this policy as a 'small village'. The explanatory text explains that the smaller villages "generally have a poor range of services and facilities and it is often necessary for residents to travel outside the village for most of their daily needs. Development on a large scale would be unsustainable in these villages, as it will generate a disproportionate number of additional journeys outside the village and may undermine the spatial strategy. However, it is recognised that there is a need to meet local needs in these settlements for housing and other economic or community purposes. These settlements will also be defined by a settlement boundary within which limited development of an appropriate nature will be allowed."

The emerging Local Plan also contains a Central Sub-Area Strategy (policy S6), which covers the area of the proposed development site. This has a clear focus on directing new residential development to sustainable sites located primarily within Chapel en le Frith, New Mills and Whaley Bridge, as well as some of the larger villages. A new Neighbourhood Plan for Chapel en le Frith will be the main delivery vehicle for new development. Although the new Local Plan has yet to be tested, these particular policies are deemed to carry moderate weight and are a material consideration. It would appear that a development of this proposed scale and location would not fit in with this policy approach and you are likely to have a challenge to demonstrate that the principle of new development is compatible with the Framework and the emerging Local Plan.

The site was recently promoted for residential development through the SHLAA process and was rejected by the Council on grounds of flood risk. The site falls within flood Zone 2, which is at a high risk of flooding. I appreciate that you have been liaising with the Environment Agency over this fact but at present, the site remains in a zone subject to high flood risk which will count against its development for residential purposes.

### **Landscape and visual amenity**

The site is within open countryside, albeit close to the EMP4 employment site to the west and residential development to the north across Manchester Road. The field is undeveloped and appears as part of the wider rural area surrounding the village. It is rural in character. At present, we are considering the principle of development on this site, rather than matters of detail when Policies GD4, GD6 and BC1 will be important considerations. Therefore, it will be essential for you to demonstrate how the development of this land would not undermine its rural character. The Council has

an adopted Landscape Character SPD which is a material planning consideration. The landscape designation covering the site is categorised as Settled Valley Pastures. This document will eventually be replaced by a Landscape Impact Assessment as part of the emerging Local Plan. New development will be expected to take account of the development principles set out in this document in respect of layouts, design, materials, hard and soft landscaping and so forth

## **Trees**

The site itself contains a number of trees, principally along the road frontages and part of a row of trees running through part of the site in a south westerly direction at the rear. It appears that this row of trees will not be affected by the proposals. There will be some tree loss along the frontage to make way for the access points. The proposed tree protection measures are noted. the Tree Report is more concerned with trees that are not included within the site (T1-13 and T15 - 20). The report does not reach any conclusions on any of these trees, stating that they should either be retained or removed. The Report excludes the trees along the Manchester Road frontage that will have to be removed in order to make provision for new access points, which appears to be an error and needs to be addressed. The Council's Tree Officer has confirmed that pre-application discussions were carried out in the recent past. The proposed removal of a number of frontage trees to make way for the new accesses is acceptable, subject to appropriate replacement planting within the site.

## **Traffic and Transport**

The site will be accessed from Manchester Road via five access points serving the eight dwellings, with a retained access into the retained pasture land to the south of the site. Highways have confirmed that they have had previous engagement with you concerning the traffic impact of the proposals. Each access point will require 2.4m x 103m visibility splays, although this 'Y' distance could be reduced to not less than 82m, because the speed limit along this stretch of road is 40mph. The shared driveways are acceptable. I understand that Nick Knowles from the County Council Highways Service has informed you in a series of emails last summer of the potential need for a traffic speed survey if certain minimum access 'X' and 'Y' distances are unable to be met. If you are minded to include access arrangements as part of a future outline planning application, he will require detailed designs of the access, off-street parking and manoeuvring areas and visibility splays.

The public right of way (PROW) that runs along the western edge of the site would appear to be unaffected by the proposals.

## **Flood Risk**

The entire site, apart from a small area around the northern entrance, falls within Flood Zone 2. Even more significantly, the majority of the site, apart from a small area east of the mill building and the northern entrance, lies within Flood Zone 3, which is the worst affected rating. New residential development should not be permitted within Flood Zone 3 (check guidance). Any future planning application will have to include a comprehensive Flood Risk Assessment.



## **Affordable Housing Provision**

The current local plan policy H9 states that the local planning authority will negotiate the provision of affordable housing for local needs in respect of new housing development on sites of 0.17ha or more or developments of 5 dwellings or more in settlements of less than 3,000 population such as Tunstead Milton. The recommendation is to provide at least 30% of the dwellings as affordable, as defined in Annex 2 of the NPPF. There is a need locally and this requirement will have to be factored into your proposals because the site area exceeds the 0.17ha and 5 number dwellings thresholds. The preference is to provide the affordable housing on the site, rather than accept an off-site contribution.

## **Biodiversity and Ecological Interests**

The development has potential to affect protected species and their habitats. These have been investigated and assessed and the content of the Ecology Report is noted. The uncertainty surrounding nesting birds and potential loss of habitat is something that will require further investigation as part of a future planning application. Therefore, any future planning application needs to be accompanied by a comprehensive updated survey and report by a specialist ecologist focussing on these points and which proposes an appropriate mitigation strategy where any protected species are affected. Derbyshire Wildlife Trust is considering the proposals and I should receive a response in the near future. Once I do I will forward their comments to you for consideration.

## **Other Amenity Issues**

The impact of the development upon local residential amenity needs careful consideration. This will also apply to future residents on the site and their relationship with any future business uses.

The design of the buildings will need care to ensure that they are in keeping with their surroundings. No details of designs have been provided so I am unable to comment. In general, a Design and Access Statement and Planning Statement will be required explaining how any designs and layout that you devise have been informed by the setting of the development.

As matters stand, it appears to me that further work is necessary to overcome the constraints set out in this response before a scheme for residential development on this site could be considered favourably. At the very least, you need to justify the principle of the proposals in relation to the planning policies set out above, address the affordable housing requirements, demonstrate that flood risk can be overcome, design the accesses so that they comply with minimum standards. Just these three issues alone would be enough to resist the development.

The comments expressed in this response are the professional opinion of an officer based upon the information and facts available at this time and do not represent the considered views of the local planning authority on the proposals. Much will depend on the outcome of publicity and further consideration of the proposals in light of the

comments expressed and whether or not the issues raised are addressed in a future planning application. The Council will not, therefore, be held responsible for any loss incurred by anyone relying upon the advice contained in this response.

I hope that you will find this information helpful. I apologise again for the delay in responding to you.

Yours sincerely.

Mark Lynch MRTPI  
Consultant Town Planner

EP2

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 01/05/2015

**Before:**

**MR JUSTICE HOLGATE**

**Between:**

**WOODCOCK HOLDINGS LIMITED**

**Claimant**

**- and -**

**SECRETARY OF STATE FOR COMMUNITIES  
AND LOCAL GOVERNMENT**

**First  
Defendant**

**MID-SUSSEX DISTRICT COUNCIL**

**Second  
Defendant**

**Christopher Boyle Q.C.** (instructed by **Russell-Cooke LLP**) for the **Claimant**  
**Richard Honey** (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing dates: 25th and 26th February

**Judgment**

**Mr. Justice Holgate:**

**Introduction**

1. The Claimant, Woodcock Holdings Limited, challenges under section 288 of the Town and Country Planning Act 1990 (‘TCPA 1990’) the decision of the First Defendant, the Secretary of State for Communities and Local Government, dated 4 September 2014 to dismiss its appeal against the refusal by the Second Defendant, Mid-Sussex District Council (‘the Council’), of outline planning permission for 120 dwellings, community facility/office space, care home and retail units, at Kingsland Laines, Reeds Lane/London Road, Sayers Common, West Sussex.
2. The Claimant’s appeal was heard by an Inspector at a planning inquiry between 8 and 11 October 2013. Originally, the Inspector was going to determine the matter. However, by a letter to the parties from the Planning Inspectorate (‘PINS’) dated 1 November 2013, the Secretary of State directed that he would decide the appeal himself because it ‘involves proposals which raised important or novel issues of

development control, and/or legal difficulties. The letter did not explain what those issues or *legal* difficulties might be.

3. The Inspector produced a report to the Secretary of State dated 6 January 2014 in which she firmly recommended that the appeal be allowed and planning permission granted subject to conditions. However, although in his decision letter<sup>1</sup> the Secretary of State agreed with the Inspector's assessment of the merits of the proposal, he dismissed the appeal because the proposal conflicted with, and was premature in relation to, the emerging Hurstpierpoint and Sayers Common 2031 Neighbourhood Plan (the Neighbourhood Plan) prepared by Hurstpierpoint and Sayers Common Parish Council (the Parish Council).
4. The appeal site comprises 5.85 hectares of land on the north-western edge of Sayers Common. The southern part of the site contains a large detached house, Kingston Laines and its associated gardens and outbuildings, including stables. The remainder of the site comprises open fields used as paddocks and pasture (IR 2.2). The south western corner of the site abuts existing properties and a recreation ground. To the east, the site abuts residential properties and their gardens. To the west lies a wet woodland area and to the north open land rising in shallow terraces towards a former priory, now occupied by a specialist education centre (IR 2.3).

#### **The issues at the public inquiry into the appeal**

5. The Council refused the application on five grounds covering (1) the effect of the scheme on the setting of a Grade II listed building (a pair of semi-detached cottages known as Aymers and Sayers), (2) surface water drainage and flooding, (3) the sustainability of the location, (4) the impact of the proposal on highways and (5) the effect of the proposal upon local infrastructure, services and facilities.
6. By the time the inquiry opened, the Council had withdrawn reasons for refusal (3) to (5), including the objection to the sustainability of the location for housing (IR 1.5). The highway objection had been overcome as a result of additional survey work. The contributions from the development contained in a section 106 agreement removed the Council's concerns over the sustainability of the location and effects upon local infrastructure and services (footnote 5 at IR 1.5). That agreement secured the contributions sought by the Council and West Sussex County Council in relation to matters such as education facilities, libraries, children's play space, formal and informal sports facilities and community buildings. The contribution towards community buildings was to be used towards extending and improving the village hall or replacement facilities. The section 106 agreement also required 30% of the residential units to be provided as affordable housing according to a mix of tenure agreed with the Council (IR 11.9 to 11.13). The Inspector concluded that the contributions and obligations secured by the agreement complied with Regulation 122

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<sup>1</sup> I will follow the convention of using the prefixes IR and DL to refer to paragraphs in the Inspector's report and the Defendant's decision letter respectively.

of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) (IR 11.16). The Defendant accepted that conclusion (DL 18).

7. Accordingly, at the start of the inquiry the Council was relying upon only the first two of its reasons for refusal, the listed building and drainage/flooding issues. It was represented by Counsel and called two experts on these subjects. However, following cross-examination, the Council confirmed that it was no longer pursuing its opposition in relation to either matter and no longer opposed the grant of planning permission (IR 1.5).
8. Consequently, opposition to the scheme at the inquiry was led by the Parish Council, supported by a number of local residents. The Parish Council's case was set out in section 7 of the Inspector's report. In summary, its main objections concerned effect upon the setting of the listed building, the non-sustainability of the location owing to the inadequate range of services in the village and nearby, and adverse effect upon the character of the settlement. The Parish Council also relied upon its draft Neighbourhood Plan (IR 4.13, 8.27 and 9.1).
9. The Inspector's summary of the Statement of Common Ground agreed between the Claimant and the District Council (IR 5.1) included the following important points which supported the appeal:
  - (i) The Council is unable to demonstrate a five year supply of housing land, the agreed supply lying between 1.82 and 2.35 years;
  - (ii) There is a demonstrable housing need within the Parish;
  - (iii) The site can be drained satisfactorily and will not be at risk of flooding or increase the risk of flooding elsewhere;
  - (iv) "The site is in a sustainable location for housing, with good access to a range of local facilities and services". The section 106 agreement had addressed the Council's concern;
  - (v) "Although the development would encroach into countryside on the edge of the village, the site is well contained and there would be no unacceptable landscape or visual impacts";
  - (vi) "The proposed residential density of 25 dwellings per hectare is appropriate, given the surrounding pattern of development";
  - (vii) "Taking account of the proposed community and retail facilities proposed, the level of development is appropriate in the context of the village of Sayers Common";
  - (viii) Subject to the planning obligation, the appeal scheme would deliver all necessary infrastructure.
10. In paragraph 4.15 of the Statement of Common Ground it was also agreed that:-

"It is common ground that only limited weight can be attributed to [the draft Neighbourhood Plan], as it has not been examined or subject to referendum

(likely to be Autumn 2013), and it maybe subject to considerable change. Consequently, at this time the appeal proposal must be assessed against the Development Plan and relevant material planning considerations, including the Council's lack of a five year housing land supply of deliverable housing sites.

In IR 12.46 the Inspector concluded that, applying the principles in paragraph 216 of the National Planning Policy Framework, 'relatively limited weight can be given to the [draft Neighbourhood Plan], since its adoption process still has quite a way to go, and it could be that its policies change along the way' (see also IR 4.13 to like effect).

### **The procedure followed between the inquiry and the decision letter**

11. In view of the Council's withdrawal of its objections to the proposal and its substantial agreement with the merits of the scheme, the Defendant's letter of 1 November 2013 recovering the determination of the appeal from the Inspector, came as a surprise to the Claimant. The planning consultant acting for the Claimant, Mr. Tim Rodway, sent an email to PINS asking why the Defendant had recovered the appeal for his own determination.
12. The reply from PINS dated 19 November 2013 merely stated that 'the important and novel issue of development control is the interaction of the appeal with the emerging neighbourhood plan for Hurstpierpoint which is at a relatively advanced stage.' On 22 November 2013 PINS announced that the Defendant would issue his decision letter by 8 April 2014.
13. On 22 November 2013 Mr. Rodway sent a further email stating that the proposal had not been refused on prematurity grounds and the main parties to the appeal had agreed that the principle of housing on the appeal site was acceptable, taking into account the lack of a 5 year housing land supply within Mid-Sussex District. He added that because the two site-specific objections had been resolved, the Council was no longer resisting the appeal.
14. On 6 March 2014 the Secretary of State published for the first time national Planning Practice Guidance ('PPG') to supplement the National Planning Policy Framework ('NPPF') which had been published on 27 March 2012. The PPG gave guidance on the subject of prematurity in relation to emerging development plans, including neighbourhood plans
15. It appears that in a letter to the parties dated 20 January 2014 (which is not before the Court) the Secretary of State announced that he would not determine the Claimant's appeal yet because he had decided to consider it alongside two other matters, a recovered appeal at Little Park Farm and Highfield Drive, Hurstpierpoint and a called-in planning application at College Lane, Hurstpierpoint. On 17 March 2014 the Secretary of State gave the Appellant, the Council, and the Parish Council an opportunity to make written representations on the effect of the new PPG on the Claimant's appeal.
16. Between 27 March and 7 April 2014 there followed an exchange of written representations by planning consultants acting on behalf of the Claimant and the Parish Council.

17. Eventually on 4 September 2014 the Secretary of State issued his decision on the Claimant's appeal together with his decisions on the two other matters he had considered in tandem. All three cases were the subject of reports from the same Inspector and decision letters prepared by the same officer. The Secretary of State accepted the Inspector's recommendation to reject the proposal for 81 houses on the site at College Lane, Hurstpierpoint, not only because of unacceptable impact on a Local Gap designated in the Mid Sussex Local Plan and consequent lack of sustainability (DL 21), but also prematurity in relation to the draft Neighbourhood Plan. On the proposal for 157 houses at Little Park Farm and Highfield Drive, Hurstpierpoint, the Defendant decided to grant permission, relying upon the allocation of those sites in the draft Neighbourhood Plan and also stating that the development was sustainable (DL 18, 21 and 23).

### **Planning Policies**

#### *National Planning Policy Framework*

18. In order to "boost significantly the supply of housing" local planning authorities are required by paragraph 47 of the NPPF to "identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements with an additional buffer of 5%...to ensure choice and competition in the market for land."
19. Paragraph 49 provides:-
- "Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."
20. The presumption in favour of sustainable development is contained in paragraph 14:-
- "At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking.
- For **plan-making** this means that:
- local planning authorities should positively seek opportunities to meet the development needs of their area;
  - Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, 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; or

6– specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

approving development proposals that accord with the development plan without delay; and

where the development plan is absent, silent or relevant policies are out of date, granting permission unless:

6 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; or

6 specific policies in this Framework indicate development should be restricted.ö

21. So where a local planning authority cannot demonstrate a five year supply of housing land, policies öfor the supply of housingö are treated as being out of date, so that the presumption in favour of sustainable development in paragraph 14 is engaged. Mr. Honey for the Secretary of State accepted that the trigger in paragraph 49 applies just as much to öhousing supply policiesö in a neighbourhood plan which has been ömadeö (i.e. formally adopted) as to other types of statutory development plan. In my judgment that must be correct.

22. In this context paragraph 12 of the NPPF should be noted:-

öThis National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.ö

23. Paragraph 17 of the NPPF sets out twelve öcore land-use planning principlesö, the first of which requires that planning should:-

öbe genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiencyö

The third core principle requires planning to:-

proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities

24. Mr. Honey emphasised those parts of the NPPF which attach importance to neighbourhood plans and planning (e.g. paragraphs 183 to 185). Paragraph 198 provides that “where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted”. However, the Secretary of State accepts through Mr. Honey, that paragraph 198 neither (a) gives enhanced status to neighbourhood plans as compared with other statutory development plans, nor (b) modifies the application of section 38(6) of the Planning and Compulsory Purchase Act 2004 (the 2004 Act). Moreover, housing supply policies in neighbourhood plans are not exempted from the effect of paragraph 49 and the presumption in paragraph 14 of the NPPF (see paragraph 21 above).

25. Paragraph 216 of the NPPF deals with the weight which may be given to an emerging plan:-

“From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).”

#### *Planning Practice Guidance*

26. The PPG contains guidance on the circumstances in which it may be justifiable to refuse planning permission on the grounds of prematurity:-

“Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development – arguments

that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.ö

27. The PPG addresses the question öCan a Neighbourhood Plan come forward before an up-to-date Local Plan is in place?ö as follows:-

öNeighbourhood plans, when brought into force, become part of the development plan for the neighbourhood area. They can be developed before or at the same time as the local planning authority is producing its Local Plan.

A draft neighbourhood plan or Order must be in general conformity with the strategic policies of the development plan in force if it is to meet the basic condition. A draft Neighbourhood Plan or Order is not tested against the policies in an emerging Local Plan although the reasoning and evidence informing the Local Plan process may be relevant to the consideration of the basic conditions against which a neighbourhood plan is tested.

Where a neighbourhood plan is brought forward before an up-to-date Local Plan is in place the qualifying body and the local planning authority should discuss and aim to agree the relationship between policies in:

- the emerging neighbourhood plan

- the emerging Local Plan
- the adopted development plan

with appropriate regard to national policy and guidance.ö

28. The PPG also addresses the question öWhat weight can be given to an emerging neighbourhood plan when determining planning applicationsö:-

öPlanning applications are decided in accordance with the development plan, unless material considerations indicate otherwise. An emerging neighbourhood plan may be a material consideration. Paragraph 216 of the National Planning Policy Framework sets out the weight that may be given to relevant policies in emerging plans in decision taking. Factors to consider include the stage of preparation of the plan and the extent to which there are unresolved objections to relevant policies. Whilst a referendum ensures that the community has the final say on whether the neighbourhood plan comes into force, decision makers should respect evidence of local support prior to the referendum when seeking to apply weight to an emerging neighbourhood plan. The consultation statement submitted with the draft neighbourhood plan should reveal the quality and effectiveness of the consultation that has informed the plan proposals. And all representations on the proposals should have been submitted to the local planning authorityö's publicity period. It is for the decision maker in each case to determine what is a material consideration and what weight to give to it.ö

*Ministerial Statement on Neighbourhood Planning published on 10 July 2014*

29. DL 7 mentioned the Ministerial Statement on Neighbourhood Planning. Having referred to the Governmentö's clear policy intention when introducing neighbourhood planningí .to provide a powerful set of tools for local people to ensure that they get the right types of development for their communityö, the Statement explained that the Secretary of State öis therefore keen to give particular scrutiny to planning appeals in, or close to, neighbourhood plan areas to enable him to consider the extent to which the Governmentö's intentions are being achieved on the groundö. To that end, the Statement amended the Secretary of Stateö's criteria for considering the recovery of decisions on planning appeals, so as to include proposals for more than 10 dwellings in areas where a neighbourhood plan has either been submitted to the local planning authority or ömadeö (i.e. formally approved).
30. Mr. Honey did not suggest that the Ministerial Statement should be treated as representing a change in policy. It does not purport to alter the NPPF. Indeed, it reflects the language of the NPPF (e.g. paragraph 184). Plainly, the Statement merely sets out the policy background as part of the explanation for making a *procedural* change, namely to the criteria for recovery of decisions.

*Mid-Sussex Local Plan*

31. At the time of both the inquiry and the decision letter the statutory development plan comprised the 'saved policies' of the Mid-Sussex Local Plan adopted in May 2004. The plan covered a period ending in 2006. The appeal site was located within a 'Countryside Area of Development Restraint' to which policy C1 applied. The policy resists new development, subject to certain exceptions, in order to protect the countryside for its own sake. However, given the significant shortfall in the five year land supply, the Inspector concluded that policies for the supply of housing land in the local plan, including policy C1, had to be treated as out of date (IR 12.2). The Secretary of State agreed with that conclusion (DL8).
32. A policy which has the effect of restricting development in the countryside, including housing development, is a 'housing supply policy' to which paragraph 49 of the NPPF may apply (see e.g. *Cotswold D.C. v Secretary of State* [2013] EWHC 3719 (Admin) para 72; *South Northamptonshire Council v Secretary of State* [2014] EWHC 573 (Admin) para 47; *Hopkins Homes Ltd v Secretary of State* [2015] EWHC 132 (Admin) para 38). As Ouseley J held in the *South Northamptonshire* case, policies which restrain development in certain areas are the 'obvious counterparts' to policies designed to provide for an appropriate distribution and location of development elsewhere within the plan area.

*Draft Mid-Sussex District Plan*

33. On 24 July 2013 the Council submitted the Draft Mid-Sussex District (running up to 2031) for examination by an Inspector appointed by the Secretary of State. However, on 2 December 2013 the examining Inspector issued a letter criticising the evidence base for the draft plan and recommended the plan's withdrawal because it was likely to be found 'unsound'. The Council formally withdrew the plan on 27 May 2014.

*Hurstpierpoint and Sayers Common 2031 Neighbourhood Plan*

34. At the time of the inquiry into the Claimant's appeal, a draft of the Neighbourhood Plan had been published by the Council for consultation ending on 20 May 2013. Subsequently, in March 2014 the 'submission' version of the plan was submitted to the local planning authorities for 'examination' and further public consultation took place in April. The Examiner did not consider it necessary to hold a hearing into the draft plan. His report was issued on 23 September 2014 and therefore could not be taken into account by the Secretary of State in his decision letter of 4 September 2014. The District Council accepted the Examiner's recommendations and a statutory referendum was held on 12 February 2015. As a result the District Council formally 'made' the Neighbourhood Plan, at which point it became part of the statutory development plan. Thus, the outcome of the examination process was unknown when the decision on the appeal was made.
35. A copy of the submission draft of the neighbourhood plan was provided to the Secretary of State during the representations made in the spring of 2014. The plan's 'vision statement' and objectives placed emphasis upon 'keeping the village feel and sense of place' (page 4). Basing themselves upon a study undertaken by the District Council in October 2011, the Parish Council's plan estimated that within the parish

between 140 and 395 new houses would need to be built, and opted for a target on the higher end of this range (page 12).

36. Paragraph 5.3 of the submission draft plan (2014) referred to an appraisal of 25 housing sites carried out for the Parish Council. As a result, policy H3 of the plan proposed four specific sites in Hurstpierpoint for 252 houses in total. The 2014 draft acknowledged that planning permission had already been granted for 95 houses on two of those sites at Chalkers Lane, even though the 2013 draft of the neighbourhood plan had proposed only 65 houses on those sites. The draft allocations for Hurstpierpoint also included 17 houses at Highfield Drive and 140 houses at Little Park (see paragraph 17 above). Neither when the Secretary of State granted permission on 4 September 2014 for the Highfield Drive/Little Park sites, nor when the Chalkers Lane sites were permitted, does it appear that prematurity in relation to the neighbourhood plan process was of any concern. By the time the Examiner came to issue his report to the District Council on 23 September 2014, the draft allocations for 252 dwellings in Hurstpierpoint were all a *fait accompli* because they had all been granted planning permission. In particular, the Defendant granted permission for 157 dwellings, or about 62% of the Hurstpierpoint total, in a decision issued on the same day as his dismissal of the Claimant's appeal for 120 units at Sayers Common on the grounds of prematurity, notwithstanding that there had been objections to the allocation of the Hurstfieldpoint sites (see paragraph 45(ii) below).
37. For Sayers Common paragraph 5.3 of the 2014 draft plan stated 'no sites identified but allow for 30 to 40' (this was also reflected in draft policy H 4).
38. Accordingly, the 2014 draft plan provided a total of between 282 and 292 houses for the parish during the period to 2031. As Mr. Boyle QC for the Claimant pointed out, if 120 houses were to be provided in Sayers Common, rather than 30 or 40, the total number of new dwellings within the parish would amount to 372, still below the upper estimate in the draft plan that up to 395 new dwellings would be needed for the parish.
39. Policy H1 sets out criteria for the location of housing development in Hurstpierpoint. Policy H2 did likewise for Sayers Common by providing that new housing development 'will be permitted in areas which: (a) positively enhance the existing settlement pattern of the village and (b) can enhance the flood and drainage management in the village'. Policy 3 allocated housing sites in Hurstfieldpoint.
40. Policy H4 of the submission draft of the neighbourhood plan dealt with housing provision in Sayers Common as follows:-

'New housing at Sayers Common will be permitted once the existing drainage infrastructure issues have been resolved to remove the incidence of localised flooding. Within the Plan period the village will accommodate 30 to 40 new homes. A review and appraisal of deliverable housing sites will be undertaken at an early stage in the Plan period.'

Thus, the 2014 draft of the Neighbourhood Plan recognised that the policy for Sayers Common would need to be reviewed in the relatively near future even if the plan were to be formally approved.

41. Mr. Honey drew attention to pages 13 - 14 and paragraphs 5.2 and 5.4 of the draft submission version of the neighbourhood plan explaining the rationale for the Parish Council's approach to the scale and distribution of housing in the parish. In particular, it was stated that any new development in Sayers Common would have to take into account constraints affecting local services, such as schools, shops, healthcare and transport connections. Development in the village was also said to be constrained by the inadequate capacity of the wastewater and surface water drainage system and the need for highway improvements.
42. Virtually all of the land outside the current built up area of Sayers Common lies within areas to which either policy C1 or C3 of the draft neighbourhood plan applies. Policy C3 protects defined local gaps. The Claimant's site was subject not to Policy C3 but to Policy C1 which provides:-
- Development, including formal sports and recreation areas, will be permitted in the countryside, defined as the areas outside the built-up boundaries on the Policies Maps, where:
- It is necessary for the purposes of agriculture, or some other use which has to be located in the countryside;
  - It maintains or where possible enhances the quality of the rural and landscape character of the Parish area;
  - It is supported by a specific policy reference elsewhere in this Plan.
43. Mr. Honey accepted that if paragraph 49 of the NPPF is interpreted as applying to draft as well as adopted development plans, policy C1 of the neighbourhood plan should have been treated in the decision as a "housing supply policy", along with policies H1 to H4.
44. The scale and distribution of housing in the draft neighbourhood plan was the subject of objections, which were summarised in the "Consultation Statement" on the 2013 draft of the neighbourhood plan. The Parish Council sent that document to the Secretary of State as part of its post-inquiry representations. The 2013 draft plan had proposed a distribution of housing within the parish broadly similar to that contained in the 2014 draft. Policy H1 set a housing target of 230 to 255 new homes for the parish overall, with most of the allocations being proposed at Hurstpierpoint and only 30 to 40 dwellings at Sayers Common without identifying any allocations (policy H7).
45. In summary, the objections to the draft neighbourhood plan included the following points:-
- (i) The Claimant contended that the housing figure for the parish should be "revised upwards sharply to ensure that it covers a 20 year period". It explained why constraints to development in Sayers Common would be resolved by the Claimant's appeal proposal and therefore did not justify the proposed cap on development. There was an identified housing need within the parish (at the time of the appeal 45 households on the District Council's

housing register with connections to Sayers Common and 214 households for Hurstpierpoint). Sayers Common could accept up to 120 houses;

- (ii) Thakeham Homes contended that the neighbourhood plan should not be based upon the figures produced by the District Council to which there was a large level of objection. The future housing need figures in the neighbourhood plan were flawed and did not take account of projected household growth. A study produced by consultants indicated a minimum requirement of 700 dwellings for the parish. Objections were made to the proposed allocations at Hurstpierpoint, namely Chalkers Lane, Highfield Drive and Little Park;
  - (iii) Rydon Homes submitted that the plan's proposed allocation of new housing should be considered a minimum figure and there should be flexibility to accommodate extensions shown to be sustainable.
46. In relation to Sayers Common, the Parish Council responded in paragraph 8.58 of the Consultation Statement that policy H4 of the submission draft of the neighbourhood plan reflected the same housing numbers as in policy H7 of the 2013 draft, but sites had not been identified owing to infrastructure issues in the village, notably drainage and surface water flooding. Paragraph 8.59 referred to the need to address sustainability issues for the village.
47. In response to the Secretary of State's invitation of 17 March 2014, the Claimant and the Parish Council made representations on the draft neighbourhood plan and the weight to be attached to it in the light of the PPG. In its representations the Claimant submitted (in summary):-
- (i) When determining the weight to be given to the neighbourhood plan it was relevant for the Secretary of State to consider not only the stage reached by the plan but also the extent to which there were unresolved objections and conflict with policies of the NPPF. Accordingly, the Claimant contended that no weight should be given to the draft plans;
  - (ii) In the absence of an up-to-date strategic housing policy for the District Council's area, the neighbourhood plan has no adopted housing policy to conform with. The Claimant relied upon the recommendation of the Examiner in another neighbourhood plan within Mid-Sussex (Slaugham), namely that in the absence of strategic housing policies it would be useful for the parish to make an objective assessment of their housing needs. Hurstpierpoint and Sayers Common Parish Council had not made any such assessment;
  - (iii) The proposal in policy H4 of the neighbourhood plan to provide a maximum of only 30 to 40 new homes in Sayers Common conflicted with the flexibility required by the NPPF, especially in the absence of an objective assessment of housing needs (relying upon the Examiner's Report on the Slaugham plan);
  - (iv) In the absence of strategic housing numbers or an objective assessment of housing need for the parish, the draft plan should not determine the number of new homes for the parish overall and new housing in Sayers Common should



not be capped at 30 ó 40 dwellings (following the approach taken on the Ascot, Sunninghill and Sunningdale Neighbourhood Plan);

- (v) The Claimant's objections to the neighbourhood plan had explained that the appeal proposal would overcome the infrastructure constraints for Sayers Common and that there was no justification for the cap.

48. In its representations to the Secretary of State the Parish Council submitted (in summary):-

- (i) The draft neighbourhood plan should carry 'significant weight' 'having regard to the advanced progress of the Neighbourhood Plan'. The Consultation Statement showed there to be general support for the plan and 'very few areas of objection';
- (ii) The proposal to provide 282-292 new homes within the parish between 2011 to 2031 represented a significant contribution to sustainable development, both in real terms and relative to the size of the parish;
- (iii) Delivery would best be achieved by the identification of sites primarily in and around Hurstpierpoint and 'a non-site specific allocation of some 30 ó 40 dwellings in Sayers Common'. This would strike the appropriate balance for sustainable development;
- (iv) The appeal proposal conflicted with policies C1, H1 and H4 of the draft neighbourhood plan because it proposed substantially more than the 30 or 40 dwellings laid down in the draft plan for Sayers Common in order to protect the environmental character and feel of the village. This conflict significantly weighed against the proposal.

49. It is apparent from paragraphs 47 and 48 above that there was a head-on conflict between the Parish Council and the Claimant (and other developers) as to the approach which the plan should take to the distribution of development at Hurstpierpoint and in particular at Sayers Common. As to the latter, there was an issue as to whether the proposed allocation of 30 ó 40 dwellings should be regarded as a cap, which if substantially exceeded would result in harm to the character of the village. It is therefore plain that the significance of the outstanding objections to the draft plan was a substantial issue before the Secretary of State in the appeal.

### **Inspector's Report and the decision letter on the planning appeal**

50. The Inspector's conclusions may be summarised as follows:-

- (i) The main consideration in the appeal was whether the proposal constituted sustainable development for the purposes of the NPPF (IR 12.3);
- (ii) The appeal site is for the most part visually enclosed (IR 12.4). The effect on the landscape character would be moderate/minor, which would be acceptable in planning terms (IR 12.5);
- (iii) The proposed density of 25 dwellings per hectare is appropriate, given the surrounding pattern of development. The care/nursing home and community

hall buildings, although larger structures, need not undermine the established character and appearance of the area, subject to control of the detailed design (IR 12.6);

- (iv) Any impact on character and appearance of the area in general would be more than compensated for by the proposed new planting (IR 12.7);
- (v) The proposed development would not undermine the significance of the listed building (IR 12.16). The proposal would not affect any historic component of the setting of the listed building. Any harm to the listed building would be less than substantial (IR 12.18);
- (vi) The proposed land drainage system would be effective to overcome flooding and drainage problems at the site and would be likely to help address flooding problems experienced on adjoining sites (IR 12.25);
- (vii) The proposed access arrangements and effects on highway safety would be acceptable (IR 12.27 to 12.29);
- (viii) Residents of Sayers Common have access to a reasonable range of services and facilities. It would be appropriate to permit further development at the village, there being a range of services and facilities to support an increased population and also because the development would have the potential to help maintain the viability of those services and facilities (IR 12.41). The District Council's Rural Issues Background Paper (2009) identified Sayers Common as being suitable for 30 - 100 dwellings over the plan period, with the potential to accommodate development closer to the higher figure. The 2009 Paper also stated that future development could generate sufficient demand for a local shop to become viable and thus to create a more distinct centre allowing the village to become more self-sufficient (IR 12.42).
- (ix) The locational characteristics of the site are acceptable as regards accessibility to local services and facilities. The site would contribute economic growth in the area by providing much needed market and affordable housing against the background of the shortfall in the five year land supply. The proposal accords with the objectives in the NPPF of securing economic growth and boosting the supply of housing (IR13.1). The scheme would not have a significant adverse effect on the character and appearance of the area and could be adequately drained, without increasing flood risk elsewhere (IR 13.2). The less than substantial harm to the listed building is clearly outweighed by the timely public benefit of providing much needed housing (IR 13.3).
- (x) As to paragraph 216 of the NPPF, only "relatively limited weight" could be given to the draft neighbourhood plan, given that there was some way to go before adoption and policies could change (IR 12.46);
- (xi) The scheme would represent a sustainable form of development in economic, social and environment terms. There was a compelling case for releasing the site for the proposed development (IR 13.4).

51. In my judgment each of the matters of common ground between the Council and the Claimant summarised in IR 5.1 and set out in paragraph 9 above, were obviously important to the determination of the appeal. It follows that although the Secretary of State was not obliged in his decision to follow all or any of those points, nevertheless if he was going to disagree materially with any such matter, he would have been obliged to say so and explain why he took a different view. But the Secretary of State did not do that. Instead, in his decision letter the Secretary of State expressly endorsed points (i) to (ix) from the Inspector's Report summarised in paragraph 50 above (DL8 to DL13). In DL 8 to 13 and 19 the Secretary of State explicitly agreed with IR 12.2 to 12.42 and 13.2 to 13.3 (the reference in DL 10 to IR 13.2 must have been intended to read IR 13.3 given the text which follows). It is clear from the references given above and from the opening text of DL 19 that the Secretary of State agreed with the thrust of IR 13.1
52. Thus it is plain beyond argument that the Secretary of State agreed with the entirety of the Inspector's reasoning as to why the location for the development proposed is sustainable in all relevant respects, and not merely in terms of accessibility (DL 9, 13, 18 and 19). The sole reason given for the Secretary of State's disagreement with his Inspector's recommendation to grant planning permission was that the proposal conflicted with the emerging neighbourhood plan and was premature in relation to that plan. The whole of the Secretary of State's reasoning on this aspect, including his reaction, if any, to the representations responding to his letter to the parties dated 17 March 2014, is contained in DL 14 to 16 and DL 19, which read as follows:-

ö14. The Secretary of State has given careful consideration to the Inspector's description of the relationship between the NP and the appeal proposal at IR12.44-12.46, including policy H7 of the emerging NP which indicated that new housing at Sayers Common will only be permitted once the existing drainage infrastructure issues have been resolved and that the village might accommodate 30-40 new homes (IR12.44).

15. The Secretary of State has also taken account of the fact that, since the Inspector wrote her Report, substantial progress has been made in respect of the emerging NP, which has now been submitted to the Council for examination. Therefore, although the NP has yet to complete its assessment by an independent examiner and, if approved, be put to public referendum, the terms of the Framework and the guidance mean that it can now be given more weight than when the Inspector was considering it (IR 12.46)

16. Although the Inspector goes on to point out that the NP will need to be in conformity with the development plan and should not promote less development than is required to meet the housing needs of the area, the Secretary of State considers it appropriate (as stated in the Written Ministerial Statement of 10 July 2014 ó referred to in paragraph 7 above) to give local people an opportunity to ensure they get the right types of development needs. The Secretary of State has therefore given significant weight to the fact that the emerging NP has

identified housing allocations elsewhere within the NP area and that the Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall NP proposals. In the light of these, he considers it appropriate, as things currently stand, to tip the planning balance in favour of the emerging NP proposals, while accepting that these may need to be revisited in due course.

í .

19. Overall, while the Secretary of State agrees with the Inspector that the appeal site is acceptable in terms of its locational characteristics and economic growth and, in principle, in boosting significantly the supply of housing, he also gives significant weight to the stage reached by the emerging NP which does not identify the site for this purpose. Therefore, while he appreciates that the remaining stages through which the NP has to pass may show that more land needs to be allocated, he considers that it would be inappropriate to prejudge that at this stage.ö

53. Reading the decision letter as a whole, the Secretary of State's reasoning was as follows:-

- (i) Taking into account the section 106 obligation, the appeal proposed the development of 120 houses in a sustainable location with good access to a range of local facilities and services. The obligation would deliver all necessary infrastructure and overcome any drainage issues;
- (ii) The proposed encroachment into the countryside was acceptable. Any impact on the character and appearance of the area would be more than compensated for by the proposed new planting;
- (iii) The proposed development density of 25 dwellings per hectare was appropriate to the pattern of the existing surrounding development. The level of development proposed was appropriate in the context of Sayers Common;
- (iv) The proposal accorded with two principal thrusts of the NPPF, boosting significantly housing supply and securing economic growth;
- (v) But given the stage it had reached, significant weight should be given to the draft neighbourhood plan and its identification of housing allocations elsewhere within the parish and to the fact that "the [District] Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall [Neighbourhood Plan] proposals". "In the light of *these*, he considers it appropriate, as things currently stand, to *tip the planning balance in favour of the emerging [Neighbourhood Plan] proposals*, whilst accepting that these may need to be revisited in due course" (emphasis added). Significant weight should be given to the fact that the plan did not identify the appeal site for housing, whilst appreciating "that the remaining stages through which the [Neighbourhood Plan] has to pass may show that

more land needs to be allocated. That was a matter which should not be prejudged in the determination of the appeal.

### **Relevant Legal Principles**

#### *Development Plans*

54. Section 70(2) of the 1990 Act provides that when dealing with a planning application a planning authority must have regard to those provisions of the development plan which are relevant to that application along with any other material considerations. By section 38(6) of the 2004 Act such a determination must be made in accordance with the [development] plan unless material considerations indicate otherwise.
55. Section 38(3) of the 2004 Act provides that the development plan comprises the development plan documents (taken as a whole) which have been adopted or approved in relation to that area and the neighbourhood development plans which have been made in relation to that area. The development plan documents comprise the local planning authority's local development documents setting out its policies for the development and use of land in its area and specified as development plan documents in its local development scheme (sections 15, 17 and 37(1) to (3)).

#### *Neighbourhood Plans*

56. Sections 38A to 38C of the 2004 Act provide for the making and content of neighbourhood plans. Sections 38A(3) and 38C(5) and Schedule 4B (of the 1990 Act as modified) govern the process by which such plans are prepared and ultimately brought into force. The Examiner must consider whether the basic conditions in paragraph 8(2) of schedule 4B are met (paragraph 8(1)). In that regard he or she must be satisfied (inter alia) that it is appropriate to make the plan having regard to national policies, and that the plan contributes to the achievement of sustainable development and is in general conformity with the strategic policies of the development plan. Paragraph 8(6) of schedule 4B prevents the Examiner from considering any matters falling outside paragraph 8(1) (apart from compatibility with Convention rights).
57. Thus, in contrast to the Examination of a development plan document, the remit of an Examiner dealing with a neighbourhood plan does not include the requirement to consider whether that plan is sound (cf. section 20(5)(b) of the 2004 Act). So the requirements of soundness contained in paragraph 182 of the NPPF do not apply to a neighbourhood plan. Accordingly, there is no need to consider whether a neighbourhood plan is based upon a strategy prepared to meet objectively assessed development and infrastructure requirements, or whether it represents the most appropriate strategy considered against reasonable alternatives and is based upon proportionate evidence (see also paragraph 055 of the Planning Practice Guidance).
58. The Planning Practice Guidance (in the version dated 6 March 2014) adds that a neighbourhood plan must not constrain the delivery of important national policy objectives (paragraph 069). Presumably that would include the twelve core principles set out in paragraph 17 of the NPPF in so far as they are relevant to a particular plan (see paragraph 23 above).

59. The purpose and scope of the neighbourhood plan process was considered by Supperstone J in BDW Trading Limited v Cheshire West and Cheshire Borough Council [2014] EWHC 1470 (Admin). His judgment was handed down on 9 May 2014, well before the decision letter in the present case.
60. In BDW the Claimant challenged the examination of a draft neighbourhood plan which contained a policy limiting the size of new housing sites within or adjacent to a particular settlement to 30 homes. The criticisms included a failure to consider whether constraint policies in the draft plan were compatible with the NPPF (in particular paragraph 47), a failure to address the absence of up-to-date strategic housing policies in a local plan, and a failure to consider whether there was a proper evidential basis to support the draft policy (see paragraphs 78 to 80 of the judgment). The challenge failed.
61. Supperstone J decided that the criticisms failed to appreciate the limited role of the examination of a neighbourhood plan, namely, to consider whether the 'basic conditions had been met'. He held that the Examiner had been entitled to conclude that the draft plan had regard to the NPPF because the need to plan positively for growth was acknowledged and the relevant policy did *not place a limit on the total amount* of housing to be built (paragraphs 33 and 81 of judgment).
62. In addition the Judge held:-
  - (i) The basic condition in paragraph 8(2)(e) only requires the Examiner to consider whether the draft neighbourhood plan *as a whole* is in general conformity with the adopted development plan *as a whole*. Whether there is a tension between one policy of the neighbourhood plan and one element of the local plan is *not* a matter for the Examiner to determine (paragraph 82);
  - (ii) The Examiner was not obliged to consider the wider ramifications of the draft policy upon the delivery of housing. The limited role of an Examiner to have regard to national policy when considering a draft policy applicable to a small geographical area should not be confused with the more investigative scrutiny required by the 2004 Act in order for an Inspector examining a draft local plan to determine whether such a plan is 'sound' (see sections 20(7) to (7C) and 23 of the 2004 Act) (paragraph 83 of the judgment);
  - (iii) Whereas under paragraph 182 of the NPPF a local plan needs to be 'consistent with national policy', an Examiner of a neighbourhood plan has a *discretion* to determine whether it is *appropriate* that the plan should proceed *having regard to* national policy (paragraph 84);
  - (iv) The Examiner of a neighbourhood plan does not consider whether that plan is 'justified' in the sense used in paragraph 182 of the NPPF. In other words, the Examiner does not have to consider whether a draft policy is supported by a 'proportionate evidence base' (paragraph 85).

To some extent the principles set out above are reflected in the Secretary of State's PPG. It is to be assumed that those principles were well-known to him when he reached his decision in the present case on 4 September 2014 (see e.g. Bloor Homes

East Midlands Ltd v Secretary of State for Communities and Local Government [2014] EWCH 754 (Admin) at paragraph 19(6)).

63. In Gladman Developments Ltd v Aylesbury Vale District Council [2014] EWHC 4323 (Admin) the Claimant challenged a decision to make a neighbourhood plan essentially on the grounds that it was *legally* impermissible for a neighbourhood plan to include policies for the allocation of housing sites and the delineation of settlement boundaries at a time when the local planning authority had not adopted a local plan containing strategic housing policies to meet the objectively assessed housing needs of the district. The challenge failed. Lewis J held:-
- (i) Paragraph 8(2)(e) of schedule 4B to the 1990 Act only requires general conformity with the strategic policies of the development if such policies exist. Where they do not, paragraph 8(2)(e) is not engaged, but that does not mean that a neighbourhood plan cannot be prepared and formally made (paragraphs 58 to 59 and 65 of the judgment);
  - (ii) If a local planning authority finds that housing needs in its area are not being met, it should review its development plan documents. Once adopted such policies prevail over any earlier neighbourhood plan inconsistent therewith (section 38(6) of the 2004 Act) (paragraph 66);
  - (iii) If a neighbourhood plan (or certain of its policies) becomes out of date, that may be a material consideration justifying departure from that plan and granting planning permission for development in breach of those policies (paragraph 67);
  - (iv) Although a neighbourhood plan may include policies on the location and use of land for housing (or other development) and may address local needs in its area, such policies should not be treated as 'strategic policies' contained in a development plan document. The body responsible for a neighbourhood plan does not have the function of preparing strategic policies to meet the assessed development needs across a local plan area (paragraphs 73 to 78).
64. The judgment in Gladman was handed down on 18 December 2014. On 5 February 2015 Sullivan LJ granted leave to appeal on the basis that, even if the grounds of appeal did not have a real prospect of success, the proper interpretation of legislation and national policy governing the relationship between neighbourhood plans and development plan documents should be considered by the Court of Appeal as a matter of considerable public importance. Gladman was to have been heard together with an appeal from Larkfleet Homes Limited v Rutland County Council [2014] EWHC 4095 (Admin). But a consent order has been filed withdrawing the appeal in Gladman. In Larkfleet Collins J rejected a contention that the legislation on its true construction does not permit neighbourhood plans to make site allocations. This contention has not been advanced in the present case, but if the Court of Appeal were to accept it, then it would reinforce the conclusions to which I have come under grounds 1 and 2 below.

*The Court's powers to quash*

65. Section 288 of the 1990 Act provides as follows:-

õ(1) If any person ó

(a)í í .

(b) is aggrieved by any action on the part of the Secretary of State to which this section applies and wishes to question the validity of that action on the grounds ó

(i) that the action is not within the powers of this Act, or

(ii) that any of the relevant requirements have not been complied with in relation to that action,

He may make an application to the High Court under this section.

(2), (3), (4) í ..

(5) On any application under this section the High Court ó

(a) í ..;

(b) if satisfied that the order or action in question is not within the powers of this Act, or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it, may quash that order or action.ö

66. The general principles by reference to which a Court may quash a decision of an Inspector or the Secretary of State are well-established. I gratefully adopt the summary given by Lindblom J at paragraph 19 of his judgment in Bloor Homes East Midlands Ltd (supra).

67. Mr. Honey adds that an adverse inference that a decision-maker misunderstood the materiality of a matter or failed to have regard to it, should only be drawn in relation to something which is a main issue and where all other known facts and circumstances appear to point overwhelmingly to a different conclusion (South Bucks District Council v Porter (No. 2) [2004] 1 WLR 1953 para 34).

68. Mr Boyle QC's oral submissions began with ground 4.

#### **Ground 4**

69. The Claimant challenges DL 16 and 19 in which the Defendant attached significant weight to the fact that the appeal site had not been identified for housing purposes in the draft neighbourhood plan which instead had 'identified allocations elsewhere' (i.e. at Hurstpierpoint). Mr Boyle QC submitted that the Defendant failed to identify the nature and extent of any conflict with the plan properly interpreted. He said that the nature of any such conflict should be made sufficiently clear, partly so as to enable a fair-minded reader to see whether the policy in question had been properly understood. Because the decision turned upon the plan, Mr Boyle relied upon Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 at paragraphs 17-22. The



interpretation of planning policy is matter of law and therefore a matter to be decided by the courts. He also relied upon Lord Reed's statement at paragraph 22:-

“Where it is concluded that the proposal is not in accordance with the development plan, it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations.”

Although that statement was directed to conflict with a statutory development plan, there is no logical reason why the same approach should not also apply where conflict with a draft plan is relied upon as a “material consideration”.

70. Mr Boyle QC submitted that the decision letter simply focussed on the fact that the appeal site had not been identified or allocated in the draft plan for housing. But, whereas the draft plan had identified four specific sites in Hurstpierpoint, it had expressly refrained from identifying any sites at all in Sayers Common, but simply stated that 30-40 homes should be provided there (see e.g. paragraph 5.3 and Policy H4). Accordingly, he said that a proposal for say 30 houses (for example a smaller scheme on the appeal site itself) could not be in conflict with the draft plan on the grounds that the site had not been *identified* in that document. In the absence of any other conflict with the draft plan, a proposal for 30 houses which overcame the drainage and infrastructure issues would accord with the plan. Accordingly, it was submitted that the Defendant's reliance upon the non-identification of the appeal site in the draft plan involved a misinterpretation of the plan's policies.
71. Mr Boyle QC added that although it might have been said that the proposal conflicted with draft policy H4 because the *scale* of the appeal scheme for 120 houses was far in excess of the 30-40 dwellings proposed for Sayers Common as a whole, the Secretary of State did not expressly rely upon that point in his decision letter. Had he done so, the Secretary of State would have needed to weigh that conflict against his own clear conclusions that the appeal site was a sustainable location for housing, the infrastructure constraints affecting Sayers Common would be overcome by the appeal proposal, and the density and scale of the housing proposed was acceptable for Sayers Common (see paragraphs 51 to 53 above). If the neighbourhood plan had already been formally approved, the absence of any harm, including harm arising from conflict with policy H4, could result in planning permission being granted. The same approach would apply where a neighbourhood plan is in draft, subject to any separate, and properly justifiable, prematurity objection. In the present case the decision letter made no attempt to weigh the positive findings in support of the proposal against any complaint that its scale exceeded the 30-40 dwellings in draft policy H4.
72. Mr. Honey responded firstly that the Secretary of State's decision letter did not dismiss the appeal because of any conflict with the draft plan. Instead, he said that the sole reason for refusal had been the prematurity of the proposal in relation to that plan. The issue of “prematurity” is the subject of a separate challenge under ground 2.
73. I agree with Mr. Boyle QC that the Secretary of State dismissed the Claimant's appeal because of a combination of conflict with the policies of the emerging Neighbourhood

Plan and prematurity in relation to the examination of that plan. The appeal was not dismissed simply because of prematurity. Although the second sentence of DL19 relied upon prematurity to dismiss the appeal, it is plain that DL16 and the first sentence of DL19 also rejected the proposal because it had not been identified in the draft plan for release, in other words, because of a conflict with the draft neighbourhood plan.

74. Moreover, there is a second aspect of DL16 which makes it plain that the Secretary of State did not treat prematurity as the *sole* reason for dismissing the appeal. He decided that it was appropriate to tip the planning balance in favour of the emerging neighbourhood plan proposals in the light of these [considerations]. The matters to which he was referring included not only the identification of housing allocations elsewhere (i.e. at Hurstpierpoint) but also the [District] Council has yet to complete an up-to-date objectively assessed housing needs analysis against which to measure the overall neighbourhood plan proposals. It could not be suggested, and Mr. Honey did not attempt to do so, that this second factor had anything to do with a prematurity objection. Instead, it was a matter relied upon by the Secretary of State, like the non-identification of the appeal site, in order to give greater weight to his conclusion that the appeal proposals conflicted with the emerging neighbourhood plan.
75. It should also be remembered that the Secretary of State chose to determine the Claimant's appeal alongside two other proposals. The Little Park Farm/Highfield Drive proposals were approved by the Secretary of State in part because the two sites had been allocated in the draft neighbourhood plan, a matter to which he attached significant weight (see DL 17 and 18). The Defendant did not raise prematurity as an issue in those appeals. However, the Secretary of State dismissed the Claimant's appeal not only because of prematurity but also because the site had not been identified in the draft plan, a matter to which he gave significant weight once again. Therefore, an important distinction between the two decisions was that the appeal site had not been identified in the draft plan for release as a housing site whereas the other sites had, i.e. it was in conflict with that plan.
76. Secondly, Mr. Honey put forward an alternative argument in order to avoid the Claimant's submission that the Defendant had misinterpreted the draft plan (the non-identification of the appeal site point see paragraph 70 above). He submitted that it should be inferred that the Secretary of State treated the *scale* of the Claimant's proposal as conflicting with the *distribution* of housing proposed in the draft neighbourhood plan, or the spatial strategy of the draft plan. In part he relied by analogy upon paragraphs 36, 44, 46 to 48, 51 and 53 of the judgment of Lindblom J in Crane v Secretary of State for Communities and Local Government [2015] EWHC 425 (Admin). In that case it was held, on a proper construction of the policies, that the Secretary of State had been entitled to conclude that a proposal for housing on an *unallocated* site was in conflict with an *approved* neighbourhood plan which contained *comprehensive site allocations* sufficient to meet the requirement set for that area in an adopted district-wide core strategy. Mr Honey submitted that the same approach should be adopted in the present case to the interpretation of the draft plan and thus to the decision letter.
77. The poor quality of the reasoning in the decision letter on this aspect, in contrast to the clear reasoning of the decision letter in Crane, is most regrettable, particularly in a case where the Defendant was differing from his Inspector on a critical issue to do

with planning policies, rather than, for example, aesthetic judgment. Nevertheless, I accept Mr Honeyø's second submission.

78. At first sight it would appear from DL 16 and DL 19 that the Secretary of State only had in mind the non-identification of the appeal site in the draft plan. But the statement in DL 19 that the examination of the draft plan might show that more land needs to be 'allocated' indicates that what the Secretary of State in fact had in mind was the possibility that the scale of the housing proposed for Sayers Common might be increased. In addition, I explain below when dealing with ground 1 that the Defendant treated draft policy H4 as imposing a cap which would be breached by the appeal proposal. For these reasons I accept that, reading the decision letter as a whole and in the context of the materials before him, the Secretary of State decided that the proposal conflicted with the draft policy for Sayers Common, because the 120 houses proposed substantially exceeded the 30 - 40 dwellings identified in draft policy H4. The references to the non-identification of the appeal site in the draft plan were simply a clumsy way of expressing this point.
79. Although I accept that the approach taken in Crane to the construction of policy is analogous, it is also necessary to bear in mind for the remaining issues in this challenge, that there are some important differences between the two cases. In Crane the Secretary of State gave an explicit and detailed explanation as to why the proposal was in clear conflict with the *comprehensive* spatial strategy of the neighbourhood plan (see e.g. paragraphs 5, 7 - 8, 11, 13, 29 and 34 of the judgment). First, the neighbourhood plan contained allocations and not housing numbers without allocations. Second, those allocations met substantially more than the housing needs identified by the adopted core strategy for the area of the neighbourhood plan. Third, the documentation for the examination of the plan had explained why allocations to meet the requirements of the Core Strategy had been located on certain sites and others had been rejected. Mr. Crane's site had been considered to be remote from the village centre (paragraphs 33 and 34 of judgment). In the present case the draft neighbourhood plan did not propose any allocations at Sayers Common or discuss the relative merits of sites. It merely proposed, in the absence of a core strategy or even an up to date and objective assessment of housing needs, to cap the number of new dwellings for the village as a whole at 30 - 40.
80. Accordingly, I must reject Mr Boyle's first submission as summarised in paragraph 70 above. The Defendant did not misinterpret the draft plan by failing to appreciate that it contained no allocations of sites at Sayers Common. However, Mr. Honeyø's second submission (paragraph 76 above) does not overcome the flaw in the decision letter already identified in paragraph 71 of this judgment. The Secretary of State was obliged to weigh the conflict with the strategy in the draft plan, by virtue of the *scale* of the appeal proposal, against his positive findings that the proposal would give rise to no harm as regards *scale*, its effect on the character of the village, infrastructure requirements or other harm. The decision letter failed to carry out that exercise.
81. Moreover, the Defendant's decision is legally flawed in other respects. As referred to in paragraph 74 above, the Secretary of State decided to 'tip the balance in favour of' the draft proposals in the neighbourhood plan as part of his reasoning for dismissing the appeal, because the District Council had yet to complete an up-to-date objectively assessed analysis of housing needs against which to measure those draft proposals. Although it had been held that a body preparing a neighbourhood plan does not have

the function of preparing strategic policies to meet assessed housing needs across a local plan area and need not be concerned with wider issues for the delivery of housing (paragraphs 62 and 63 above), it cannot follow that the absence of any objective assessment of housing needs at the district level could justify *increasing* the weight to be given to a draft neighbourhood plan. The lack of such an assessment was plainly irrelevant for that purpose. I do not intend any criticism of Mr. Honey when I say that he was unable to proffer any explanation for the Secretary of State's reliance in DL16 upon this factor.

82. The legal errors in the decision do not end there. In the Claimant's post-inquiry representations to the Secretary of State it was submitted that in the absence of any objective assessment of housing need, whether for the district or for the parish, the neighbourhood plan should not attempt to fix an overall quantum of new homes for the parish or Sayers Common, following the conclusions in the Examiner's Report into the Ascot, Sunninghill and Sunningdale Neighbourhood Plan. It was said, therefore, that the amount of new housing in Sayers Common should not be capped at 30-40 dwellings (see paragraph 47(iv) above). That was a substantial point which the Secretary of State was obliged to deal with in the decision letter.
83. The Secretary of State's reliance in DL16 upon the lack of an objective assessment of housing need in order to *increase* the weight given to the draft plan only serves to demonstrate that he failed to take into account (let alone give reasons in relation to) the argument that there should not be any such cap. The Secretary of State's submission that he treated the appeal proposal as conflicting with the distribution of housing in policies H3 and H4 of the draft plan reinforces this point. Plainly, the Secretary of State failed to give any consideration to the merits of the Claimant's proposal in the light of all of his conclusions in favour of granting permission, but on the basis that the cap in policy H4 was liable to be removed.
84. For these reasons, ground 4 succeeds and the decision must be quashed, in summary, for each of the following separate reasons. First, the Defendant treated the proposal as being in conflict with the *scale* of housing proposed in the draft plan for Sayers Common, but he failed to weigh that conclusion against his findings that the scale and density of the proposal are acceptable for the village, the location is sustainable and the proposal would overcome any infrastructure constraints. Second, and in any event, the Secretary of State decided to *increase* the weight given to the policies in the draft plan because of an immaterial consideration, namely the lack of any up-to-date objective assessment of housing needs against which to measure the proposals in that plan. Third, the Secretary of State failed to take into account, alternatively to give any reasons in relation to, the Claimant's case that the weight to be attached to policy H4 of the draft plan should be reduced because it imposed a cap on housing at Sayers Common despite the absence of an up-to-date objective assessment of housing needs.
85. Mr. Honey accepted very fairly that if the Court should conclude that either grounds 3 or 4 are made out, it would be inappropriate to ask for the Court's discretion to be exercised against the quashing of the decision.

### **Ground 3**

86. It is common ground that policies C1 and H1 to H4 of the neighbourhood plan represent 'housing supply policies' for the purposes of paragraph 49 of the NPPF (see

paragraphs 32 and 43 above). Accordingly, there is no dispute that if at the date when that plan formally became part of the statutory development plan (19 March 2015) a 5 year supply of housing land could not be shown, (a) those policies would then be treated as out of date and (b) the presumption in paragraph 14 of the NPPF would apply to a decision at that stage whether to grant planning permission.

87. In Crane Lindblom J held (paragraph 71) that in such a situation the NPPF does not prescribe the weight to be given to out of date policies. As he pointed out, in many cases the weight may be greatly reduced, but this will vary according to the circumstances. It must follow, of course, that where paragraph 49 of the NPPF applies, the decision-maker is also obliged to decide how much weight should be given to the housing supply policies of a plan (or plans) by assessing the reasons why those policies are to be treated as out of date and any other relevant circumstances.
88. In the present case it is accepted by the Secretary of State that in his decision he did not apply paragraph 49 of the NPPF to the policies of the draft neighbourhood plan and therefore the weighting exercise to which I have just referred was not carried out. Accordingly, the issue between the parties is whether, as the Claimant maintains, paragraph 49 can apply to an emerging development plan or whether, as the Defendant maintains, it only applies to a plan forming part of the statutory development plan. The Claimant submits that this issue is important in the present case because in DL16 and DL19 the Secretary of State decided to attach significant weight to the housing supply policies in the draft neighbourhood plan simply because of the stage reached in the process leading to formal approval of those policies and *without* also weighing the considerations set out in paragraph 71 of Crane (see paragraph 87 above).
89. Mr. Honey rightly emphasised the need to read the NPPF as a whole (see Crane paragraph 73). That must apply to the proper understanding of paragraphs 14 and 49. It should also be emphasised that the issue between the parties in this case applies not only to draft neighbourhood plans but also to draft local plans.
90. Paragraph 49 appears in the section of the NPPF (paragraphs 47 to 55) devoted to delivering a wide choice of high quality homes. The overall objective of paragraph 47 is to boost significantly the supply of housing. The first requirement is for local planning authorities to use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in this Framework. The second requirement, to identify and update annually a 5 year supply of deliverable housing land, is set out in paragraph 18 of this judgment. The third requirement is that the authorities should identify a supply of specific, developable sites or broad locations for growth, for years 6 - 10 and, where possible, for years 11 - 15. Fourthly, local planning authorities must illustrate the expected rate of housing delivery (both for market and affordable housing) through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing detailing how they will maintain delivery of a five-year supply of housing land to meet their housing target. Thus, it is plain that national policy attaches considerable importance to local planning authorities being able to identify a 5 year supply of housing land to meet properly assessed housing needs *on an ongoing basis*.

91. The requirement that a local planning authority should be able to identify a 5 year supply of housing land pre-dates the NPPF. It was previously contained in paragraph 71 of PPS3 (dated June 2011). It is helpful to compare PPS3 and the NPPF.
92. In St Albans City and District Council v Hunston Properties [2013] EWCA Civ 1610 and Solihull Metropolitan Borough Council v Gallagher Estates Limited [2014] EWCA Civ 1610 the Court of Appeal decided how the approach to the provision of housing in the NPPF compares to the former PPS3 (see e.g. Gallagher at paragraphs 14 to 16):-
- (i) Whereas PPS3 required a housing strategy to be formulated by carrying out a balancing exercise of all material considerations (including need, demand and other policy matters), the NPPF requires authorities making local plans to focus on the 'full objectively assessed need for housing' and to meet that need unless, and only to the extent that, other policy factors in the NPPF dictate otherwise;
  - (ii) Thus according to paragraph 14 of the NPPF, Local Plans must meet objectively assessed housing needs (with sufficient flexibility to adapt to rapid change) 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' or 'specific policies in this Framework indicate development should be restricted';
  - (iii) The NPPF contains 'a greater policy emphasis on housing provision', by laying down an approach which requires the making of a local plan to begin with full objectively assessed housing needs and only then to determine whether other NPPF policies require that less housing should be provided than needed;
  - (iv) The increased emphasis in the NPPF upon the provision of housing can properly be described as a 'radical change'.

Similarly, paragraph 9 of the NPPF states that the pursuit of sustainable development involves not only seeking positive improvements in the quality of the environment and in people's quality of life, but also 'widening the choice of high quality homes'. The first and third core principles in paragraph 17 of the NPPF (quoted in paragraph 23 above) are also significant in this context.

93. In Tewkesbury Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 286 (Admin) Males J compared the policies in PPS3 and the NPPF requiring a 5 year supply of housing land (see paragraphs 16 to 21). Paragraph 71 of PPS3 provided that where a local planning authority could not demonstrate an up-to-date 5 year supply of deliverable housing sites, planning applications for housing should be considered 'favourably' having regard to policies in the PPS including the need to ensure that developments reflect 'the need and demand for housing in, and the spatial vision for, the area'. The Judge concluded that:-

“both before and after the issue of the NPPF, the need to ensure a five year supply of housing land was of significant importance.”

He pointed out that whereas the PPS had required “favourable consideration” to be given to housing proposals (subject to the policies of PPS3), the NPPF created a “rebuttable presumption in favour of the grant of planning permission”. That distinction is consistent with the view of the Court of Appeal in Gallagher that the increased emphasis in the NPPF upon the provision of housing represents a “radical change” from PPS3. It is also consistent with the explicitly stated need “to boost significantly the supply of housing”. At the same time, I agree with the observation of Males J that however important the absence of a 5 years supply of housing may be in the circumstances of a particular case, the NPPF does not provide that that factor must be treated as conclusive by itself (paragraph 21 of Tewkesbury).

94. It is plain that paragraph 71 of PPS3 did not restrict the requirement to give “favourable consideration” to a housing proposal (for example on an unallocated site) to cases where the relevant planning policies were solely contained in a statutory development plan. Nor did it treat that “favourable consideration” as offsetting only policy objections contained in a statutory, as opposed to an emerging, development plan.
95. In my judgment it would be inappropriate to treat paragraph 49 as restricting the circumstances in which national policy lends additional support to a housing proposal because of the lack of a 5 year supply of land, to cases where the “relevant policies for the supply of housing” are contained in statutory, but not draft, development plans. Such a change in national policy regarding the importance of maintaining a 5 year supply of housing land would require explicit language to that effect (see by analogy Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2015] PTSR 274 paragraph 16). I am reinforced in that view by the “radical change” introduced by the NPPF which gives greater, not less, emphasis to meeting housing needs.
96. Paragraph 49 of the NPPF simply refers to “relevant policies for the supply of housing” without restricting that expression to policies in a statutory development plan.
97. But Mr. Honey relied upon the first sentence of paragraph 49 which states:-

“Housing applications should be considered in the context of the presumption in favour of sustainable development.”

He submits that that is a reference back to paragraph 14 of the NPPF and that because references in paragraph 14 to the “development plan” are concerned solely with documents forming part of the statutory development plan, and not with draft plans, paragraph 49 must be read down in the same way.

98. I agree with Mr. Honey that references in paragraph 14, and generally in the NPPF, to “the development plan” relate to adopted or formally approved plans not draft plans (see also the definition of “development plan” in the Glossary at Annex 2 to the

NPPF). Nothing in this judgment affects that general point. However, that is insufficient to deal with the proper construction of paragraph 49.

99. The NPPF should not be construed as if it were a statute or a contract, any more than a development plan, and regard should be had to both the context and object of the policy being interpreted (Tesco Stores v Dundee City Council [2012] PTSR 983 paragraphs 19, 21 and 25 - 27). Thus, it may be relevant, and sometimes necessary, to adopt a purposive construction of the policy in question.
100. In my judgment, the starting point should be paragraph 49 rather than paragraph 14. Paragraph 14 is of general application for the determination of planning applications in the context of section 70(2) of the 1990 Act and section 38(6) of the 2004 Act. We are dealing instead with a specific group of policies, which have the objective of boosting significantly the supply of housing and requiring local planning authorities to identify on a continuing basis a 5 year supply of housing land to meet properly assessed housing needs. In particular, we are concerned with a policy, paragraph 49, which deals with the consequences of an authority's failure to meet that obligation.
101. As I have said, the first key phrase in paragraph 49, 'relevant policies for the supply of housing', is not limited to relevant policies in the statutory development plan. The language is capable of referring to policies in a draft development plan. It is also capable of referring to policies in a statutory development plan which *as a matter of fact* is up to date because that plan has only recently been adopted. Thus, the second key phrase, 'should not be considered up-to-date', operates as a deeming provision which treats the relevant policies as being out of date so as to engage 'the presumption in favour of sustainable development' (the third key phrase in paragraph 49). Plainly, the object is to increase the likelihood of planning permission being granted for a housing proposal where a 5 year supply does not exist, by applying a 'presumption in favour of sustainable development', subject to taking into account all other material considerations in a particular case, whether they tell in favour of or against the grant of planning permission, or are neutral.
102. Paragraph 6 of the NPPF states that 'the purpose of the planning system is to contribute to the achievement of sustainable development' and that paragraphs 18 to 219 of the NPPF, taken as a whole, define what is meant by 'sustainable development'. Paragraph 9 specifically identifies 'widening the choice of high quality homes' (dealt with in paragraphs 47 to 55 of the NPPF) as one aspect of the 'pursuit of sustainable development' (see paragraph 92 above). Therefore what is to be encouraged as 'sustainable development' is not assessed solely against policies in statutory development plans. The concept is much broader.
103. Paragraph 14 explains what the presumption in favour of sustainable development means for 'decision-taking'. The first bullet point requires development in accordance with the statutory development plan to be approved without delay. The second bullet point creates a presumption in favour of granting permission in three situations. The first is where there is no statutory development plan. The second is where there is such a plan, but it is silent on the matter in question. The third is where 'relevant policies are out-of-date'. It is arguable that that phrase is not restricted to policies in a statutory development plan, but even if the contrary view is taken, it does not follow that Mr Honey's reading of paragraph 49 is correct. First, paragraph 14 is simply a broad statement of general application. Second, it does not deal specifically



with a situation where there is a shortage of housing land. Third, the phrase in paragraph 14 ‘relevant policies *are* out-of-date’ without more, simply refers to policies which are *actually out of date*. Fourth, paragraph 49 operates as a deeming provision so as to require housing supply policies to be *treated* as ‘out-of date’ even if that would not otherwise be the case under paragraph 14. Fifth, it follows that paragraph 49 can only be read as *extending the ambit* of paragraph 14. It has the effect of extending the scope of the presumption in favour of development set out in paragraph 14, (a) so as to apply to draft as well as adopted development plan policies, but (b) only where a 5 year supply of housing land does not exist and (c) solely in relation to ‘housing supply policies’.

104. Once the correct interaction between paragraphs 14 and 49 is appreciated, in a case where a 5 year supply of housing land does not exist, it does no violence to the language of paragraph 14 to treat the presumption in favour of sustainable development as weighing against housing supply policies, including those which restrain development, whether they are contained in statutory or draft development plans.
105. As Lindblom J pointed out in Crane (paragraph 71), where paragraph 49 and the presumption in paragraph 14 apply, the NPPF does not stipulate how much weight should be given to ‘out of date’ policies. That is a matter to be assessed by the decision-maker in the light of the reasons for the shortfall and other relevant circumstances, including, for example, any interim measures being taken by the local planning authority to release land for housing in order to address the shortfall (see paragraph 87 above).
106. The construction for which the Claimant has contended is sensible. First, it promotes, rather than undermines, the positive objectives of paragraphs 47 to 49 of the NPPF. Second, paragraph 49 is a deeming mechanism which simply uses the label ‘out of date’ to engage the presumption in favour of granting permission contained in paragraph 14. Third, even on the Secretary of State’s case, paragraph 49 would operate to treat the housing supply policies in a *statutory* development plan as being ‘out of date’ even if the document had been formally approved only shortly beforehand and could not otherwise be regarded as ‘out of date’. That could happen where the rate of take up of housing land during the period immediately before and after adoption was much higher than had been assumed in the policies for the overall duration of the plan. It would make no sense to treat the ‘presumption in favour’ as a factor weighing against, for example, a general countryside protection policy contained in a statutory development plan but not the same policy contained in a draft plan, *a fortiori* where the latter would otherwise attract considerable weight because it is close to being adopted. The same analysis applies to policies identifying the numbers and locations of housing to be provided.
107. Mr. Honey submitted that the construction of paragraph 49 which I have accepted ‘would mean that no emerging development plan document [e.g. a local plan] which sought to address a shortfall in housing land supply could ever be taken into account as a weighty material consideration and applied whilst it was emerging, because until the point of adoption the authority could not demonstrate a five year supply of deliverable housing sites’. He added that ‘it must be possible to take into account the housing allocations in an emerging development plan document which is at an advanced stage of preparation before that plan is adopted’. In the light of the decision

in Crane, that concern is wholly unjustified. Paragraphs 14 and 49 of the NPPF do not prevent any regard being had to policies which are *deemed* to be out of date because of the lack of a 5 year supply of housing land. Nor does the NPPF specify how much weight should be given to such policies.

108. The NPPF does not lay down a monolithic approach to that issue, whether in relation to an adopted or a draft local plan. Instead, the issue is to be assessed according to the relevant circumstances of the case, including the reasons for the shortfall and steps being taken to address that issue, in addition to applying the presumption in favour of granting permission and considering the matters specified in paragraph 14 of the NPPF (see Crane paragraphs 71 to 75).
109. In many cases a neighbourhood plan will be prepared after housing requirements have been assessed and strategic policies formulated in an adopted local plan. In that situation, the policies in a neighbourhood plan must be in general conformity with the strategic policies of that local plan (see paragraph 56 above). Paragraph 184 of the NPPF adds that a neighbourhood plan should reflect, and should plan, positively to support the strategic policies in a local plan. Neighbourhood plans should not promote less development than set out in the local plan or undermine its strategic policies.
110. Where a neighbourhood plan is being prepared so as to be in general conformity with the relevant parts of a local plan, but a 5 year supply of housing land does not exist, paragraph 49 applies to both the housing supply policies in both the adopted local plan and the draft neighbourhood plan, so that when a planning application for housing comes to be determined (a) the presumption in paragraph 14 will apply (subject to assessing the matters specified which may tell against the grant of planning permission) and (b) the weight to be attached to housing supply policies in each of the plans will need to be assessed and taken into account as explained in Crane.
111. The same principles apply in a situation where a local plan has not yet been adopted, a 5 year supply of housing land for the district cannot be shown, but a draft neighbourhood plan seeks to lead as Mr. Honey put it, in order to make provision for housing needs in a much smaller plan area. Mr. Honey complains that on the construction of paragraph 49 I have upheld, such a *draft* neighbourhood plan would always be treated as out of date unless and until the 5 year land supply issue for the whole district is resolved. But this concern is also, with respect, misconceived (see paragraphs 107 to 108 above).
112. A further problem with Mr. Honey's complaint is that it would also arise where a neighbourhood plan has been recently approved, in advance of any local plan, but nevertheless has to be treated as out of date because of the lack of a district-wide 5 year supply of housing land and the application of paragraphs 14 and 49 of the NPPF (see the common ground recorded at paragraph 86 above). The discontinuity between the geographical coverage of a neighbourhood plan and the requirement of a 5 year supply for the whole of a local plan area is inherent in paragraphs 14 and 49 of the NPPF, even on the construction for which the Secretary of State contends. It therefore provides no support whatsoever for his argument that paragraph 49 does not apply to *draft* development plans, including a neighbourhood plan. Instead, the outcome of applying paragraphs 14 and 49 of the NPPF where either a draft or approved neighbourhood plan precedes a local plan, will depend upon the outcome of

the assessment described in paragraph 105 above in the particular circumstances of each case.

113. By contrast the Secretary of State's construction of paragraph 49 of the NPPF would cause that policy to operate in an arbitrary way for which no justification has been offered. In a case where a district-wide 5 year supply of housing land does not exist, paragraphs 14 and 49 of the NPPF would apply to the housing supply policies in a neighbourhood plan from the very moment when it becomes part of a statutory development plan, but not a few months beforehand or even a week beforehand.
114. For all these reasons, I conclude that paragraphs 14 and 49 do apply to the housing supply policies in a draft development plan, including a draft neighbourhood plan, and therefore should have been applied in the present case when assessing the weight to be attached to those policies in the Neighbourhood Plan and to any conflict with such policies. The Defendant accepts that that was not done in the decision letter and so I uphold ground 3 as a separate reason for quashing the decision.
115. Even if a contrary view were to be taken, so that paragraph 49 does not apply to housing supply policies in an emerging plan, logically it would nevertheless be necessary for the decision-maker to assess how much weight should be given to those policies, and that must involve taking into account the lack of housing land and the clear policy imperative in paragraphs 47 to 49 that a sufficient supply of land should be identifiable at all times. In other words the exercise which Crane requires to be carried out where paragraph 49 does apply (see paragraphs 87, 105 and 108 above), would still need to be undertaken for housing supply policies contained in a draft plan. In the present case it is accepted by the Secretary of State that when he decided how much weight to give to the draft neighbourhood plan he did not carry out that exercise (see paragraphs 87 to 88 above) and so the decision must be quashed in any event.

## **Ground 2**

116. The Claimant submits that the Secretary of State failed to take into account and apply his own policy on prematurity contained in the PPG (see paragraph 26 above). In particular it is submitted that:-
  - (i) The Defendant failed to indicate how the grant of permission would predetermine decisions about the scale, location or phasing of new development that were central to the draft Neighbourhood Plan;
  - (ii) The Defendant failed to identify any adverse impacts from granting permission or to consider whether it was clear that such impacts significantly and demonstrably outweighed the benefits of the proposal.
117. Mr. Honey submitted that in DL15 the Secretary of State had regard to the NPPF and the PPG on the issue of prematurity. But it is important to note that DL15 simply referred to the weight which to be given to the draft plan by virtue of the *stage* it had reached in the examination process. In my judgment that is only one of the considerations in the PPG when dealing with prematurity, namely prematurity is seldom justified as a ground of refusal in the case of a draft neighbourhood plan before the end of the local authority publicity period (see paragraph 26 above).

Whether a draft plan has reached a sufficiently advanced stage is simply treated by the PPG as an entry point for considering prematurity as a possible reason for refusal. That factor does not exhaust in all cases the factors which the PPG requires to be assessed. Plainly, therefore, DL15 did not address the key parts of the PPG upon which ground 2 relies.

118. Under grounds 3 and 4 I have already considered the way in which DL16 dealt with the weight to be given to the draft Neighbourhood Plan. I merely add that DL16 did not address (a) the predetermination of issues central to the plan or (b) how any such predetermination would amount to an adverse impact clearly outweighing the benefits of the proposal.
119. Although Mr. Honey argued that prematurity was the sole reason why the Secretary of State disagreed with the Inspector's recommendation to grant planning permission, the only explicit reference to that subject is to be found in DL19. Having stated that the appeal site had not been allocated in the draft neighbourhood plan, the decision letter continued:-

Therefore, while he appreciates that the remaining stages through which the Neighbourhood Plan has to pass may show that more land needs to be allocated, he considers that it would be inappropriate to prejudge that at this stage.

120. Mr. Honey submitted that from the circumstances known to the parties it was obvious how allowing the appeal would prejudice the taking of a decision on a matter central to the examination of the draft plan. He said that the draft plan proposed 282 - 292 new dwellings for the parish as a whole, of which 85% would be distributed to Hurstpierpoint and only 15% to Sayers Common and so allowing the appeal would predetermine (a) whether the total housing allocation should be increased to 372 units and (b) whether the total allocation for Sayers Common should be increased from 30 - 40 units to 120 units. However, as explained in paragraph 36 above, the allocations of sites in Hurstpierpoint were already a *fait accompli* by the time of the examination into the neighbourhood plan.
121. Mr. Boyle QC responded that the Secretary of State's submissions demonstrated that he had not in fact had regard to key aspects of the policy in the PPG on prematurity. In particular he did not address the requirement to identify how granting permission would be prejudicial to the outcome of central issues affecting the draft plan, so as to amount to an adverse impact significantly and demonstrably outweighing the benefits already accepted by the Secretary of State. I agree with Mr. Boyle.
122. In my judgment it was wholly unsatisfactory for the Secretary of State to disagree with the Inspector's carefully reasoned recommendation that the appeal should be allowed by putting forward such sparse reasoning on prematurity as appears in DL 19. He simply stated that it was inappropriate to prejudge whether more land should be allocated in Sayers Common. That did not give effect to the criteria in the PPG. Furthermore, when *all* the relevant circumstances are borne in mind, it is plain that the Secretary of State did not take into account and apply his policy on the circumstances in which prematurity may justify a refusal of planning permission.

123. As Mr. Honey explained, the spatial strategy of the draft plan was based upon firstly the objective of retaining the 'village feel' of Sayers Common and secondly the infrastructure constraints affecting the village (see paragraph 35 above). The Secretary of State's decision letter did *not* suggest that *those issues* should be left to the examination of the draft plan. Instead, in determining the Claimant's planning appeal, he reached his own conclusions on those matters, in agreement with the Inspector's views. Thus, the Secretary of State agreed with the Claimant (and thereby disagreed with the Parish Council) that the scale and density of the proposal was appropriate for the village, there would be no adverse effect on the character of the area and any infrastructure constraints would be overcome by the appeal proposal (paragraphs 50 to 54 above). The Secretary of State in substance rejected the Parish Council's representation that development of 120 houses in Sayers Common, exceeding the draft proposal for 30 - 40 dwellings, would cause harm to the character of the village (cf. paragraphs 48 to 49 above). The effect of the Secretary of State's clear conclusions on the merits of the proposal was to negate the rationale for draft policy H4.
124. Furthermore, when the Secretary of State issued his decision on 4 September 2014, the examination of the draft plan had yet to be concluded. If it were correct to assume that the examination would consider the merits of releasing the appeal site for housing, he ought to have appreciated that his own clear conclusions on the acceptability of the appeal proposal in terms of its effect on the village and the overcoming of infrastructure constraints would be highly material considerations, applying the well-known 'consistency principle' in North Wiltshire District Council v Secretary of State (1993) 65 P&CR 137 and other related authorities. Under the neighbourhood plan system which he created, and also on the material before him, the Secretary of State had no reason to think that the examination of the draft plan would not be concluded in the near future. Unsurprisingly, the Secretary of State did not suggest in his decision letter that the appeal should be dismissed on prematurity grounds so that his conclusions as to why the development of the site for 120 houses was appropriate for Sayers Common, could be revisited so soon in the examination of the draft plan, and with any realistic prospect of different conclusions being reached by the Examiner.
125. A proper understanding of the decision letter cannot be divorced from the realities facing the Secretary of State, in particular the basis for draft policy H4 in the neighbourhood plan and the Secretary of State's own views upon the very same matters. When those points are brought back into focus, it becomes clear that the Secretary of State did not apply himself to the key tests in the PPG on prematurity as to whether particular issues should be determined in the examination of a neighbourhood plan rather than in the decision on a planning appeal. The relevant issues were determined by the Secretary of State in the planning appeal in any event. The suggestion of prematurity in DL 19 was devoid of any content.
126. There is a further difficulty with Mr. Honey's numerical argument (paragraph 120 above). True enough policy H4 identified only 30-40 dwellings as being appropriate for Sayers Common, whereas the appeal proposal was for 120 dwellings. But, the Secretary of State should have appreciated from the BDW case (as well as from the Claimant's post-inquiry representations) that policy H4 would not satisfy the requirement in the 'basic condition' to have regard to the NPPF, and in particular the

need for flexibility and to plan positively for growth, unless it was amended so as to remove the cap limiting new housing in the village to 30 - 40 dwellings (see paragraphs 47 and 61 above).

127. This point has all the more force in the present case because of the absence of an up-to-date objective assessment of housing need. The Secretary of State referred in DL16 to the lack of any such analysis against which to measure the proposals in the draft neighbourhood plan. But as I have already held, the Defendant erred in law by relying upon that matter as a factor *lending support* to those draft policies (paragraph 81 above) and by failing instead to deal with the Claimant's contention that any cap should be removed for the very same reason (paragraphs 47 and 83 above).<sup>2</sup>
128. For all these reasons I uphold ground 2 as a separate basis for quashing the decision letter. Applying the test in Simplex G.E. (Holdings) Limited v Secretary of State for the Environment (1987) 57 P & CR 306, I do not accept that the Secretary of State's decision would necessarily have been the same if the error under ground 2 had not been made. First, conflict with the draft neighbourhood plan was identified in the decision letter as a reason for refusal of permission. The appeal was dismissed for that reason in combination with prematurity. Second, prematurity formed a substantial part of the reasoning for dismissal of the appeal and, on the material before the Secretary of State, I can see no basis upon which the Court could infer that the appeal would necessarily have been dismissed on that ground if the decision had not been flawed by the errors identified above.
129. The reasons I have already given are sufficient to vitiate the Defendant's decision to dismiss the appeal by reference to prematurity. But the arguments in this case have revealed a troubling failure by the Defendant to appreciate the limited scope of the examination of a neighbourhood plan and the implications this undoubtedly has for reliance upon prematurity in relation to that process as a reason for refusing planning permission. The conclusions I set out below reflect the decisions of the High Court in BDW and Gladman.
130. As I have mentioned, the judgment in BDW was given well before the Defendant's decision on the present appeal. The decision in Gladman was handed down on 18 December 2014, but the principles set out by Lewis J in his judgment were based directly upon the statutory scheme for neighbourhood planning promoted by the Secretary of State.
131. Although a neighbourhood plan must be in general conformity with the strategic policies of the local plan and should not provide for less development than is promoted by the local plan (paragraph 184 of the NPPF), these principles do not apply where a neighbourhood plan is progressed in advance of the adoption of any local plan. The absence of a local plan does not preclude the preparation and formal

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<sup>2</sup> Although not strictly relevant to the legal soundness of the Defendant's decision letter, the Examiner subsequently reported that in order to accord with the NPPF, H4 would have to be amended by removing the cap on the number of units to be built in Sayers Common and the plan was formally approved with that amendment.

approval of a neighbourhood plan. The body responsible for a neighbourhood plan does not have the function of preparing strategic policies to meet assessed housing needs (paragraph 63 above).

132. Apart from any issues as to compatibility with convention rights, the examination of a draft neighbourhood plan may only consider whether the 'basic conditions' are met (paragraph 56 above). The basic conditions do not include the issue of whether the plan is 'sound' in the sense in which that term is used when dealing with development plan documents (sections 20 (5)(b) of the 2004 Act and paragraph 182 of the NPPF). Therefore, where a neighbourhood plan precedes a local plan, the effect of paragraph 8 of Schedule 4B of the 1990 Act is that the examination of a neighbourhood plan cannot consider whether it is based upon a strategy to meet objectively assessed housing needs. Nor can the examination consider whether the proposed strategy is the most appropriate or justified by a proportionate evidence base (paragraphs 57, 62 and 63 above).
133. The Secretary of State's PPG also explains how the examination of a neighbourhood plan is very different from that of a local plan. The Examiner is limited to testing whether the neighbourhood plan meets the 'basic conditions' and 'is not testing the soundness of a neighbourhood plan or examining *other material considerations*' (paragraph 055 with emphasis added). Although the Examiner has a discretion as to whether to conduct the examination by way of a public hearing, paragraphs 056 of the PPG 'expects' that the examination will proceed by considering written representations and not a hearing. The statutory scheme for the preparation of neighbourhood plans has been designed so as to make the evidential and procedural requirements, and the intensity of independent examination, less onerous for the promoting body than in the case of a local plan.
134. As in Veolia ES (UK) Ltd v Secretary of State for Communities and Local Government [2015] EWHC 91 (Admin) at paragraph 49,

'I respectfully agree with the approach taken by Frances Patterson QC (as she then was) in paragraph 64 of the judgment in Truro City Council v Cornwall City Council [2013] EWHC 2525 (Admin):

'It is quite impossible to divorce the issue of prematurity from the local plan process: after all, the impugned decision is premature to what? The essence of a successful claim of prematurity is that the development proposed predetermines and pre-empts a decision which ought to be taken in the Development Plan process by reason of its scale, location and/or nature or that there is a real risk that it might do so.'

The suggestion that an issue ought to be determined in the examination of a draft neighbourhood plan rather than in a planning appeal assumes that that issue will fall within the remit of that examination. If that assumption is incorrect, then prematurity does not arise.

135. In the present case the Secretary of State did not give any consideration to that essential question. In DL16 he noted that the District Council had not carried out an

up to date objective assessment of housing need against which to test the proposals in the draft neighbourhood plan. There was no evidence before the Secretary of State as to when that work would be done. There was no suggestion that it would be carried out by the District Council before the examination of the neighbourhood plan. There is no requirement for such an assessment to be in place before a neighbourhood plan may be prepared and approved. Where no such assessment exists, there is no requirement for the body preparing the neighbourhood plan to undertake that work and its absence does not go to the issue of whether the statutory 'basic conditions' have been met. Moreover, the examination does not consider whether the policies of a plan are 'justified' by a proportionate evidence base (the 'soundness' test). However, in DL19 the Secretary of State assumed that the remaining stages of the neighbourhood plan 'may show that more land needs to be allocated'. But given the absence of any proper need assessment by the District Council and the limited statutory ambit of the process for the preparation and examination of a neighbourhood plan, the Secretary of State has made an assumption which was essential to the dismissal of the appeal but which was not based upon any evidential or legal justification. For these additional reasons under ground 2 the Secretary of State's decision must be quashed.

136. The approach subsequently taken in the Examiner's report issued on 23 September 2014 was consistent with the limitations upon the process for preparing and examining neighbourhood plans. In summary the Examiner concluded:-

- (i) The plan had *taken into account* 'consultation' on housing matters, demographic changes and household formation rates and allowed for economic growth generated by demands outside the plan area. The plan 'recognises that, in order to meet future demands, housing numbers are likely to be at the higher end of an identified range of towards 395 new homes' (page 23);
- (ii) Whilst seeking to safeguard the area's 'village feel', 'nowhere in the Neighbourhood Plan is there an absolute limit or a maximum cap on the number of houses to be built over the plan period', i.e. for the plan area as a whole (page 23);
- (iii) The plan recognises the inevitability of greenfield release for the delivery of housing (page 23);
- (iv) The plan's 'proactive approach' in 'facilitating a sustainable level of growth within the Parish' [but, I interpolate, without any specific conclusion in relation to Sayers Common] had been criticised for providing too much development, but on the other hand it had been supported in the majority of representations (page 24);
- (v) As to representations on 'the subject of housing numbers and the absence of up to date strategic policy in this regard', 'it is firmly established within national policy that a neighbourhood plan can be made whether or not district-wide housing policies are up to date' (page 24).
- (vi) As to representations that policy H3 should allow further sites to be promoted and provide greater flexibility, the Examiner responded that the policy 'simply



provides for specific allocations, *rather than precludes all other development from taking place* (page 26 with emphasis added);

- (vii) However, the Examiner recommended that in order to accord with the requirements in the NPPF to promote sustainable growth combined with a flexible approach, the “maximum number” in H4 of 30 - 40 homes for Sayers Common should be removed and replaced with the words “it is anticipated that the village will accommodate around 30 - 40 dwellings during the plan period” (page 26).
137. The Secretary of State did not suggest in his submissions to the Court that the Examiner’s Report had dealt inadequately with the objections made to the draft plan. Instead, the level of scrutiny of the plan in response to these objections, which scrutiny might be described as somewhat superficial, apparently accords with the statutory scheme and policies governing neighbourhood planning. What is not to be found in the Examiner’s Report is any finding as to whether more housing land needed to be allocated in Sayers Common, and in any event whether 120 houses could be accommodated there without any detriment. If, however, upon reflection it is thought by the Secretary of State that issues of this kind ought to be dealt with in the examination of a neighbourhood plan *to the level of scrutiny that could properly found a prematurity objection in a planning appeal* (see paragraph 134 above), then consideration needs to be given to amending the NPPF and PPG (and possibly the legislation) so as to extend the ambit of the process for preparing and examining neighbourhood plans.

### **Ground 1**

138. The Claimant submits that the Secretary of State failed to take into account and apply his own policy in relation to the weight to be given to an emerging plan contained in paragraph 216 of the NPPF. The reasoning in the decision letter on the weight to be given to the draft neighbourhood plan only applied the first criterion in paragraph 216, namely the stage which the plan had reached in the process leading towards its final approval (see paragraph 25 above). The decision letter did not deal with the second and third criteria of that policy, namely the extent to which there are unresolved objections to relevant policies in the draft plan (and the significance of those objections) and the degree of consistency of the policies with the NPPF. It is submitted that the Secretary of State failed to have regard to the second and third criteria, alternatively, if he did, he failed to give any reasons in relation thereto.
139. The Claimant also submits that the second and third criteria were particularly pertinent in the present case because (a) the draft neighbourhood plan was proceeding in advance of an up to date local plan to establish objectively assessed housing needs and strategic housing policies and (b) the draft plan had yet to be examined. This is to be contrasted with, for example, a situation where the report into the examination of a draft plan has been published and it may then be possible to attach significant weight to a draft policy simply because of the very advanced stage which the plan has reached.
140. The Secretary of State submitted that it was not necessary for a decision-maker to recite and apply each of the three criteria in paragraph 216 of the NPPF because they were simply factors to be taken into account in judging the weight to be attached to a

draft plan rather than free-standing tests. The three criteria were not ‘principal important controversial issues’ in their own right attracting an obligation to give reasons. It was also submitted that it could not be inferred from the absence in the decision letter of any finding under the second and third criteria that they had not been taken into account, citing the speech of Lord Lloyd of Berwick in Bolton MDC v Secretary of State for the Environment (1995) 71 P & CR 309, 314 - 5.

141. In my judgment, the policy in paragraph 216 of the NPPF should be read as a whole. It is not a policy which simply makes the trite point that decision-makers may give weight to relevant policies in emerging plans. Rather it is a policy that they may do so ‘according to’ the three criteria or factors which follow. The policy clearly stipulates that the three criteria are relevant in each case. Of course, when dealing with a particular planning proposal it may be the case that the relevant policies in a draft plan have not attracted any objections and so it would not be necessary to consider the second criterion *beyond that initial stage*. But plainly the second criterion is material in each case in order to ascertain whether a relevant draft policy has attracted any objections and if so, their nature, before going on to make an assessment of the significance of any such objections.
142. When applying paragraph 216, an Inspector or the Secretary of State determining a planning appeal is largely dependant upon the information provided by the parties on the application of the three criteria. By contrast, where a decision is being taken by a local planning authority which is also responsible for the draft plan in question, that authority is unlikely to be dependant upon others to provide the information needed to apply the three criteria. It has ready access to that information itself.
143. In my judgment it is plain that in this case substantial information was placed before the Secretary of State which resulted in the application of the second and third criteria becoming ‘principal important controversial issues’ for the Secretary of State to grapple with and determine (see paragraphs 45, 47 and 48 above). For example, the Parish Council submitted to the Defendant that the appeal should be dismissed because it proposed substantially more than the 30 - 40 houses and therefore conflicted with policies C1, H1 and H4 of the draft plan. But the Claimant submitted that H4 was in conflict with the NPPF because it imposed a cap on the scale of new housing in Sayers Common and did not provide the ‘flexibility’ required by national policy.
144. It follows that if the Secretary of State had applied the second and third criteria in paragraph 216 of the NPPF, he was obliged to give reasons explaining how he had done so and resolved important planning issues raised by the parties. He did not give any such reasoning in the decision letter. That is a sufficient basis upon which to uphold ground 1.
145. However, in my judgment the legal error goes further. The decision letter reveals that the Secretary of State did not apply the second and third criteria at all. In DL19 he stated that the issue of whether more land needed to be ‘allocated’ at Sayers Common should not be ‘prejudged’, but should instead be left to the examination of the draft plan. The clear implication was that the Defendant considered that the appeal site should not be released for housing development unless and until the figures setting the cap for Sayers Common in policy H4 are increased. Thus, the Secretary of State did not assess *whether* the inclusion of *any* cap in draft policy H4 accorded with the

NPPF, nor the strength of the objections made to the plan, particularly that policy, (taking into account paragraphs 33 and 81 of BDW and Reports into the Examination of Neighbourhood Plans cited by the Claimant). The criticism in paragraph 83 above also applies under ground 1.

146. Mr. Honey submitted that even if the second and third criteria in paragraph 216 of the NPPF had been addressed, the decision on the weight to be given to the draft plan would have remained unchanged and the decision would necessarily have been the same, at least in that respect. I am quite unable to accept that submission. For the reasons I have given it cannot be inferred that if, for example, the Secretary of State had addressed the objections to the cap, he would necessarily have attached the same weight to the draft plan, in particular H4. Indeed, if he had given little weight to the cap, he might well have treated his acceptance of the strong merits of the proposal as decisive.

### **Conclusion**

147. For all the reasons given above, I uphold each of grounds 1, 2, 3 and 4 as freestanding reasons for quashing the decision dated 4 September 2014.

EP3



Department for  
Communities and  
Local Government

Mr M Twigg  
Fox Strategic Land & Property Ltd  
Gladman House  
Alexandria Way  
Congleton  
Cheshire  
CW12 1LB

Our Ref: APP/A0665/A/11/2167430  
Your Ref:

29 August 2013

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78  
APPEAL BY FOX STRATEGIC LAND AND PROPERTY  
LAND OFF NANTWICH ROAD, TARPORLEY, CHESHIRE  
(APPLICATION REF: 11/04261/OUT)**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Keith Manning BSc(Hons) BTP MRTPI who held a public local inquiry on 22-25 May 2012 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Cheshire West and Chester Council to give notice within the prescribed period of a decision on an outline planning application for up to 100 dwellings, site access, highway, landscaping, open space and associated works at land off Nantwich Road, Tarporley, Cheshire (application ref: 11/04261/OUT).
2. On 21 August 2012, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990. The appeal was recovered because it involves proposals giving rise to substantial regional or national controversy and which raise important or novel issues of development control and/or legal difficulties.

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

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

## **Procedural Matters**

4. Applications for an award of costs were made by the appellant against the Council, and by the Council against the appellant. These applications are the subject of a separate decision letter.

## **Matters arising after the close of the inquiry**

5. A number of representations about the proposal were received following the close of the inquiry. The Secretary of State has carefully considered these representations, but as they did not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. The correspondence is listed at Annex A to this letter and copies will be provided on written application to the address at the bottom of the first page to this letter or to [PCC@communities.gsi.gov.uk](mailto:PCC@communities.gsi.gov.uk).
6. Following the close of the inquiry, on 24 April 2013 the Regional Strategy for the North West (Revocation) Order 2013 was laid before Parliament and it subsequently came into force on 20 May 2013. This Order revoked the Regional Strategy (RS) which had formed part of the development plan in this case. The Secretary of State wrote to parties on 3 May 2013 to offer them the opportunity to submit representations on whether the revocation of the RS affected their case on this appeal. On 5 and 19 June 2013 the Secretary of State circulated the responses to his letter of 13 May, inviting comments on those representations before he proceeded to a final decision. Annex A includes a schedule of representations received in response to the Secretary of State's letters of 3 May, 5 and 19 June. Copies of the representations are not attached to this letter but will be provided on application to the address at the bottom of the first page of this letter or to [PCC@communities.gsi.gov.uk](mailto:PCC@communities.gsi.gov.uk).
7. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance is currently in test mode and for public comment, he has attributed it limited weight.

## **Policy considerations**

8. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan comprises the saved policies of the Vale Royal Local Plan First Review Alteration adopted in July 2006 (LP). In the light of the revocation of the RS referred to at paragraph 6 above, the Secretary of State has not had regard to policies in the RS or to the Inspector's remarks about the extent to which the scheme complies with it. The Secretary of State considers that the development plan policies most relevant to the proposals are those summarised by the Inspector at IR22-29.
10. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework (The Framework) published in March 2012; The Planning System: General Principles; Circular 11/95: The Use of Conditions

in Planning Permission; the Community Infrastructure Levy (CIL) Regulations 2010 as amended; and An Introduction to Neighbourhood Planning. He has also taken account of adopted Supplementary Planning Guidance in the form of the Village Design Statement for Tarporley; Supplementary Planning Documents including SPD1 Affordable Housing, SPD2 Managing Housing Land Supply and SPD3 Developer Contributions (IR31).

## **Main issues**

11. The Secretary of State considers that the main issues in this case are those identified by the Inspector at IR10.

### Accordance with development plan

12. As set out at paragraph 9 above, the development plan now comprises the saved policies of the LP. Relevant policies are those summarised by the Inspector at IR22-29. The Secretary of State has given very careful consideration to the Inspector's comments on relevant LP policy at IR151 – 155.
13. The Secretary of State has had regard to the Inspector's analysis and conclusion at IR152 that the proposed development would conflict with the intentions of the LP regarding the location of new housing development. In common with the Inspector, the Secretary of State agrees that a conflict does arise in this respect. However, he also agrees with the Inspector's conclusion (at IR258) that it is plain that the settlement boundaries associated with the LP housing land supply policies in the former Vale Royal area and elsewhere in Cheshire West and Chester are in urgent need of comprehensive review and that, if adequate levels of development are to be catered for, now and in the future, the planned release of greenfield land appears inevitable (IR258). The Secretary of State's agreement with this conclusion weighs heavily against this conflict.
14. The Secretary of State shares the Inspector's view that the scheme conflicts with LP policy RE1 (IR153) concerning agricultural land. With regard to the Inspector's final remark at IR153, that (as set out by the Inspector at IR191 – 196) the particular development proposed would conflict with the environmental quality intentions of the development plan, the Secretary of State has concluded (at paragraph 24 below) that the potential harm could be avoided with the imposition of condition 3. Given this, he is satisfied that no material conflict with LP policy BE1 would arise. The Secretary of State concurs with the Inspector that the scheme would meet the LP's general aspiration that 30% housing on new residential sites should be affordable (IR154). With regard to the Inspector's view that the proposed development would not accord with the intentions of the development plan taken as a whole (IR154), the Secretary of State has set out his own conclusion on this matter at paragraph 37 below.
15. Having had regard to the Inspector's reasoning in respect of LP policy H5 and SPD2, the Secretary of State shares his view that, in the context of the acknowledged lack of a five year land supply, policy H5 lends no development plan support to any particular proposal (IR155). However, he also agrees with the Inspector that the lack of supply lends considerable weight to the appellant's contention that the housing supply policies of the LP are for all practical purposes out of date (IR155).

### Accordance with relevant national policy

16. The Secretary of State sees no reason to disagree with the Inspector's remarks at IR156 – 157. He shares the Inspector's view that it is clear that important aspects of the development plan are substantially out of date and in need of urgent replacement (IR157). The Secretary of State agrees with the Inspector that the scheme would involve the loss of best and most versatile agricultural land in a rural area where the development plan aims to pursue a coherent strategy of directing housing development towards allocated sites within and on the edge of Northwich and within Winsford, whilst allowing for more local needs elsewhere, including Tarporley (IR158). However, the Secretary of State does not share the Inspector's concern at IR158 about whether the number of houses envisaged could, in principle, be accommodated in the site without serious harm to the character and appearance of the area and nor does he agree with the Inspector's view at IR160 that the appeal proposal runs counter to the Framework's intentions regarding environmental quality. The Secretary of State's view that potential harm in this respect could be avoided through the imposition of condition 3 is set out at paragraph 24 below.
17. In common with the Inspector, the Secretary of State considers that the proposed development engages different objectives of the Framework (IR158) and that this decision turns on the balance to be struck between a number of its aims (IR161). However, given his conclusion on housing land supply at paragraph 22 below and his view that housing supply policies are out of date, he considers that paragraph 14 of the Framework is highly relevant to this case. The Secretary of State notes the Inspector's remark at IR159 that the Framework does not state that all the adopted settlement boundaries in the development plan, even though formulated in the context of housing policy, are necessarily out of date. However, in this particular case the Secretary of State has agreed with the Inspector (at paragraph 13 above) that the settlement boundaries associated with the LP's housing land supply policies are in urgent need of comprehensive review.

### The emerging development plan

18. Having had regard to the Inspector's remarks at IR162 - 165 and to the comments submitted since his letter of 3 May 2013, including your letters of 15 May, 10 and 24 June, Tarporley Parish Council's representation of 11 June, the Council's representations of 31 May and 21 June, and Mr George's emails of 31 July, 8 and 21 August 2013, the Secretary of State considers that the Council's emerging Core Strategy is still at an early stage and that it merits little weight. The Secretary of State has also considered the Inspector's comments about neighbourhood planning in Tarporley at IR166 – 167, your letters of 15 May and 10 June 2013, Mr J H Blackford's representation submitted by email on 2 June 2013 and the Parish Council's representations dated 1, 2 and 11 June. The Secretary of State concludes that, in the absence of a Neighbourhood Plan for Tarporley in either final or draft form, he is unable to give weight to the early stages of the Neighbourhood Planning process in Tarporley.

### The need for the proposed development

19. The Secretary of State has considered the Inspector's comments at IR168 – 176 and IR261 - 262. He has taken account of the fact that it was common ground between the Council and the appellant that the housing land supply was in serious deficit



(IR168) and he observes that the Council's position at the inquiry was that it had only a 2.3 year supply of housing land (IR87). He agrees with the Inspector that little weight accords to the Parish Council's contention that the basic calculation of housing land supply should be approached some other way (IR170). He has had regard to the Inspector's comment at IR261 that he was presented with no cogent evidence at the inquiry to suggest that any reduction of the deficit in deliverable sites would be anything more than marginal.

20. The Secretary of State has given careful consideration to the comments submitted since his letter of 3 May. He observes that the Council, in its email dated 21 June, states that the most recent objectively assessed evidence of housing need available to the Council is that which underpinned the target set out in the now revoked RS and that the latest Housing Land Monitor adopted by the Council demonstrates that it currently has 2.6 years housing land supply. Your letter of 15 May pointed to the RS as the most recent tested housing requirement against which to judge the supply. Whilst the RS is no longer part of the development plan, the Secretary of State agrees with the Council that the underpinning evidence to the RS remains relevant and he agrees with you that an annual requirement of 1,317 is appropriate when considering whether or not a 5 year supply of specific deliverable sites exists. The Secretary of State concludes that the Council cannot show even a 3 year supply of sites. Having also taken account of the Framework's requirement for an additional buffer, the Secretary of State considers that there is a significant shortfall in housing land in Cheshire West and Chester.
21. Having had regard to the inspector's remarks at IR174, like him, the Secretary of State sees no reason to doubt that the circa 100 houses proposed would rapidly feed into the necessary overall housing land supply for the Council's area of jurisdiction (IR174) and that the scheme would contribute in a small but significant way to the satisfaction of overall identified housing need at the present time (IR176). The Secretary of State has taken account of representations submitted following his letter of 3 May 2013 which have pointed to the fact that a planning application for the site at Brook Farm School has now been submitted, but he does not consider this negates the Inspector's analysis at IR175. In common with the Inspector he sees no reason to conclude that the development of the appeal site would necessarily inhibit the prospective development of the former Brook Farm School (IR175).
22. In conclusion on this matter, the Secretary of State considers that the significant shortfall of housing land in Cheshire West and Chester is a matter which carries significant weight in his consideration of this appeal.
23. In respect of the affordable housing element of the appeal scheme, in common with the Inspector (IR170), the Secretary of State considers that the delivery of affordable housing (30% of the units in this case) is also a significant benefit and he too attaches significant weight to it.

#### Sustainability

24. The Secretary of State has taken account of the fact that the Council ranks Tarporley as amongst the more sustainable settlements within its area (IR177) and he has gone on to consider the Inspector's detailed analysis of the scheme's sustainability (IR177 – 200). He has had regard to the Inspector's views that economic considerations must attract substantial weight in favour of the proposal (IR182). He considers that the

economic effect of additional population in contributing towards a prosperous rural economy is a factor weighing in the appeal's favour although, like the Inspector (IR183), he accords this matter relatively limited weight. For the reasons set out by the Inspector (IR184 – 188), the Secretary of State shares his doubts about how far the development would in reality promote sustainable transport choices and that this matter weighs against the proposal in the absence of a clearer indication of the appropriate scale of additional development in this part of the Council's area (IR187). Like the Inspector, the Secretary of State is satisfied that the appeal proposal would accord with the Framework's intentions in respect of delivering a wide choice of high quality homes (IR190). He has considered the Inspector's analysis in respect of design (IR191 – 197) and he is satisfied that, with the imposition of condition 3, the potential harm identified by the Inspector could be avoided and that this matter does not weigh against the scheme. With regard to the issue of playing fields, the Secretary of State agrees with the Inspector that the scheme would cause no harm to the Framework's intentions in respect of healthy communities (IR198). He sees no reason to disagree with the Inspector's conclusions that the biodiversity value of the site would be positively enhanced relative to its function as agricultural land, in so doing he acknowledges, in common with the Inspector, that the loss of Best and Most Versatile (BMV) agricultural land would be harmful in land resource terms (IR199).

25. However, in conclusion on this issue, the Secretary of State agrees with the Inspector that, leaving aside the strategic spatial issues yet to be resolved through the development plan, the scheme may be placed on the positive end of the sustainability spectrum (IR200).

*Material considerations relevant to the planning balance*

26. With regard to the Inspector's comments at IR201, the Secretary of State has made it clear (at paragraph 13 above) that he shares the Inspector's view that the proposed development would conflict with the intentions of the LP in a number of ways. However, the Secretary of State agrees with the Inspector's comments at IR202 including the fact that the Council is unable to demonstrate a five year supply of deliverable housing sites and he has concluded (at paragraph 22 above) that there is a significant shortfall of housing land in Cheshire West and Chester. He is satisfied that, subject to the imposition of condition 3, the Inspector's concerns about environmental quality can be satisfactorily addressed. He also concurs with the Inspector's view that the proposed signalisation of the Nantwich Road/A49 junction would influence traffic in a positive fashion (IR203). The Secretary of State shares the Inspector's view that there are no "technical" impediments to the development of the appeal site that cannot be addressed by planning condition (IR203) and, as set out at paragraph 24 above, he is satisfied that the strong reservations to which the Inspector again refers at IR206 could be satisfactorily addressed by condition. He sees no reason to disagree with the Inspector's remarks at IR207 – 210. As to the Inspector's remarks at IR211, the Secretary of State's view on the scheme's sustainability is set out at paragraphs 24 and 25 above.
27. The Secretary of State has had regard to the Inspector's comments at IR212 – 222, including the fact that Tarporley Parish Council has been notably vigorous in proactive community-led planning and has been granted Front Runner status (IR213). He sees no reason to disagree with the Inspector's views that localism is a material

consideration in this case and that there is no reason to doubt the seriousness of the Parish Council's intent with regard to neighbourhood planning (IR217 and IR222).

28. The Secretary of State has had close regard to the Inspector's comments (IR223 – 224) about the Parish Council's case at the inquiry; the Inspector's view that allowing this appeal would be damaging to Tarporley's neighbourhood planning process; and the Inspector's remark that this matter carries substantial weight. He also notes that the Inspector considers that the appeal proposal is relatively small but locally very significant (IR224). However, whilst the Secretary of State acknowledges the Parish Council's commitment to developing a Neighbourhood Plan, at the current time no emerging Tarporley Neighbourhood Plan has been published to which the Secretary of State can consider attaching weight. In these circumstances, the Secretary of State accords relatively limited weight to this matter.
29. The Secretary of State has taken account of the Inspector's remarks at IR225 – 234 and at IR268. For the reasons given by the Inspector, the Secretary of State shares his views that there is an element of prematurity here which does weigh against the proposal (IR231) and that precedent is a material factor to be weighed in the balance (IR234). He agrees with the Inspector, however, that the issues of prematurity and precedent could not be decisive in themselves (IR268) and he has attributed limited weight to them.

### **Potential Conditions and the Planning Obligation**

30. The Secretary of State has considered the proposed conditions in the Annex to the IR, the Inspector's assessment of these at IR235 - 249, and the policy tests set out in Circular 11/95. He is satisfied that the conditions recommended by the Inspector would be reasonable and necessary and would comply with the provisions of Circular 11/95. Having had regard to the Inspector's remarks at IR238 and IR275, he is satisfied that it is not necessary for him to consult parties prior to setting condition 3.
31. The Secretary of State has also had regard to the planning obligation described by the Inspector at IR8 and the Inspector's reasoning and conclusions on the Unilateral Undertaking (UU) as set out at IR250-251. For the reasons given by the Inspector at IR251, he too considers that provisions relating to the Health Centre car park do not satisfy the requirements of Regulation 122(2) of the CIL regulations and he gives no weight to them. Like the Inspector (IR250), he is satisfied that the other elements in the UU do satisfy the requirements of the Regulations' and he accords weight to them.

### **Planning Balance**

32. The Secretary of State has given careful consideration to the Inspector's comments at IR252 - 262.
33. The Secretary of State has found (at paragraph 13 above) that the appeal development would conflict with the intentions of the development plan regarding the location of new housing development but, in the light of his conclusion that settlement boundaries are in urgent need of comprehensive review, he has given reduced weight to this conflict. He has also found that the scheme would conflict with LP policy RE1 (paragraph 14 above).

34. As set out at paragraph 22 above, the Secretary of State has attributed significant weight to the significant shortfall of housing land in Cheshire West and Chester. The Secretary of State has also attributed significant weight to the affordable housing offered by the appeal scheme (paragraph 23 above). Having had regard to the Inspector's comments at IR262 and bearing in mind his own remarks at paragraph 24 above, the Secretary of State also shares his view that the economic imperative to stimulate house building carries further significant weight in favour of the appeal. In common with the Inspector (IR262), he also attributes significant weight to the other benefits for the locality acknowledged by the Council.
35. Turning to the Inspector's analysis at IR263 – 267, the Secretary of State has set out his views on sustainability issues at paragraph 24 above and he has concluded (at paragraph 25 above) that, leaving aside the strategic spatial issues yet to be resolved through the development plan, the scheme may be placed on the positive end of the sustainability spectrum. The Secretary of State shares the Inspector's view that it is a core principle of the Framework that planning should be genuinely plan-led, empowering people (within the context of up-to-date and practical frameworks that they themselves influence through, inter alia, neighbourhood plans) to shape their surroundings and that it follows that such process is, of itself, a facet of sustainability (IR266). He also agrees that in a case such as this there is an inescapable tension between the need for housing development to be plan-led at local level and the broader needs to promptly deliver sufficient new homes (IR266).
36. The Secretary of State shares the Inspector's view (IR268) that arguments concerning prematurity and precedent are not decisive in this case and, as set out at paragraph 29 above, he has attributed limited weight to them. The Secretary of State has gone on to consider the Inspector's arguments at IR269 – 274. He acknowledges Tarporley's status as a Front Runner in the neighbourhood planning initiative (IR270) and he has taken account of the Inspector's entirely positive remarks about the Parish Council, including its commitment to seize the opportunity now presented to the community through the provision of the Localism Act and the policies of the Framework (IR271). He has also given very careful consideration to the representations put forward by Tarporley Parish Council and by Mr Blackford in their representations following his letter of 3 May. The Secretary of State has also given very careful consideration to the Inspector's remarks at IR272 - 274. He considers that a decision to allow this appeal is likely to be demotivating for the Parish Council and, whilst he does not agree with the Inspector that this matter should carry substantial weight at this stage of Tarporley's Neighbourhood Planning process, he has weighed this consideration against the appeal proposal to a limited degree.

## **Overall Conclusions**

37. Whilst the Secretary of State has given careful consideration to the Inspector's overall conclusions at IR275 – 291, he does not agree with that analysis. The Secretary of State has found conflict with the development plan in respect of policies relating to agricultural land and with the plan's intentions regarding the location of new housing development. However, he has also concluded that Cheshire West and Chester cannot demonstrate a five year supply of deliverable housing land. In these circumstances he considers that housing land supply policies are out-of-date and paragraph 14 of the Framework is therefore engaged. Whilst he has found some drawbacks to the scheme, he has found that it would bring a number of significant

benefits, some of which carry significant weight. In conclusion the Secretary of State is satisfied that no adverse impacts would arise from the development which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. He further concludes that the scheme's benefits are sufficient to outweigh the conflict that he has identified with the development plan.

### **Formal Decision**

38. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendations and hereby allows your client's appeal and grants outline planning permission for up to 100 dwellings, site access, highway, landscaping, open space and associated works (ref: 11/04261/OUT) dated 2 September 2011, subject to the conditions listed at Annex B of this letter.
39. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
40. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

41. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
42. A copy of this letter has been sent to Cheshire West and Chester Council. A notification letter or e-mail has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Christine Symes**  
**Authorised by Secretary of State to sign in that behalf**

## ANNEX A: POST INQUIRY CORRESPONDENCE

Name / Organisation	Date
Angela Needham	Undated
R Bainbridge	Undated
Denise Pritchard	Undated
Alan & Elaine Wright	Undated
Mr & Mrs B Gale	Undated
David Griffith	22 August 2012
Frank Allan	28 August 2012
Pam and John Rees	29 August 2012
Charles Higgle	29 August 2012
E F F Davis	8 September 2012
Laura Baker	9 September 2012
Robert Ziman	9 September 2012
Bernard McQueen	10 September 2012
Joan & Trevor Langley	10 September 2012
Harry L Barker	10 September 2012
Dr S Gilman	10 September 2012
Mr & Mrs A Brander	10 September 2012
Mrs Anne Hammond	11 September 2012
Alan Armstrong	11 September 2012
Peter Tavernor	12 September 2012
Martin Stone	12 September 2012
Dave Wake	13 September 2012
Mr Terrence William Grace and Mrs Brenda Grace	14 September 2012
Mr D Butters	18 September 2012
Mr K Thompson	19 September 2012
Mr J B Porter	19 September 2012
Shaun T Joyce	20 September 2012
Mrs D Grundy	21 September 2012
Mrs D Joyce	21 September 2012
Mrs G Clough	21 September 2012
Arthur E Bristow	21 September 2012
Rachel Cordingley	22 September 2012
Mr J MacDonald, Tarporley Parish Council	25 September 2012
Rosemary Williams	25 September 2012
Mrs Vera D S Biggins	27 September 2012
Elisabeth Stewart	28 September 2012
Robert J Allen	29 September 2012
Mrs Mary Allen	29 September 2012
Mr & Mrs M Walton	2 October 2012
P Greenway	5 October 2012
Kevin Hyatt	10 October 2012

Mrs J Lovelock	10 October 2012
Mrs L George	11 October 2012
Richard Bass	30 October 2012
Dr R A Brierley & Mrs V J Brierley	25 November 2012
Mr C Armstrong	28 December 2012
Mrs J Lovelock	31 January 2013
Daniel Dickinson, Cheshire West & Chester Council	5 March 2013
Martyn Twigg, FLP	18 April 2013
<i>Responses to the Secretary of State's letters of 3 May, and 5 and 9 June 2013.</i>	
Martyn Twigg, FLP	15 May 2013
Jeremy S Mills	22 May 2013
Cllr Mike Jones, Leader Cheshire West & Chester Council (to Stephen O'Brien MP)	28 May 2013
Stephen O'Brien MP	29 May 2013 (incl. Cllr Mike Jones letter of 28 May)
Angela J Needham	29 May 2013
Michael George	30 May 2013
Brian Leonard, Cheshire West & Chester Council	31 May 2013
Elisabeth Stewart	31 May 2013
Mr J Macdonald, Tarporley Parish Council	1 June 2013
Mr J Macdonald, Tarporley Parish Council	2 June 2013
James Blackford	2 June 2013
Daniel Dickinson, Cheshire West & Chester Council	12 June 2013
Martyn Twigg, FLP	10 June 2013
Mr J Macdonald, Tarporley Parish Council	11 June 2013
Michael George	12 June 2013
Daniel Dickinson, Cheshire West & Chester Council	21 June 2013
Martyn Twigg, FLP	24 June 2013
Jeremy S Mills	25 June 2013
Michael George	25 June 2013
Mr J Macdonald, Tarporley Parish Council	25 June 2013

<i>Later representations (not sent in response to the Secretary of State's letters)</i>	
Martyn Twigg, FLP	1 July 2013
Michael George	14 July 2013
Martyn Twigg, FLP	19 July 2013
Michael George	31 July 2013
Michael George	8 August 2013
Michael George	21 August 2013



## **ANNEX B: CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) Prior to or concurrently with the first scheme of details to be submitted pursuant to condition 1) above a detailed scheme for the proposed contouring of the site (based on one metre intervals) relating topography to varying densities of dwellings proposed in defined sub-areas of the site shall be submitted to the local planning authority for approval in writing. The reserved matters shall be consistent with the approved scheme, which shall be implemented as approved.
- 4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 4712-P-01 RevA; Proposed Access Arrangements 0054\_01 RevA.
- 6) No development shall take place until a detailed scheme of phasing for the construction of the dwellings and associated highways and public areas has been submitted to and approved in writing by the local planning authority. The scheme shall include a schedule identifying the order of commencement and completion of these key elements within each phase of construction. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until a detailed scheme for the provision and future management and maintenance of foul and surface water drainage incorporating sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The drainage scheme shall be implemented, managed and maintained in accordance with the approved details.
- 8) No development shall take place until a detailed scheme for the creation and management, and protection during construction, of a buffer zone (of no less than 5 metres in width when measured from the bank top) along the Wettenhall Brook has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No site clearance, preparatory work or development shall take place until a scheme detailing any trees, shrubs or hedgerows to be retained or re-located and a scheme for their protection during construction or re-location, as the case may be, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 10) The landscaping works approved pursuant to condition 1) above shall include the numbers, size, locations and species of trees, shrubs and hedgerows to be planted or re-located. The works shall be carried out in accordance with a programme to be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and if within a period of five years from the date of the planting or re-location of any tree or shrub or hedgerow that tree or shrub or any plant forming part of the hedgerow in question, or any replacement thereof, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another of the same species and size as that originally planted or re-located shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 11) No dwelling shall be occupied until a long term (25 year) landscape and habitat management and maintenance scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and arrangements.
- 12) The landscaping works approved pursuant to condition 1) above shall include full details of all hard surfaces including new pedestrian links and the work shall be carried out in accordance with the approved details and with a programme of implementation to be submitted to and approved by the local planning authority in writing.
- 13) No development shall take place until details of the bat boxes recommended in the submitted ecological appraisal have been submitted to and approved in writing by the local planning authority and these shall be installed in accordance with the approved details in accordance with a timetable to be submitted to and approved in writing by the local planning authority.
- 14) The development shall not commence until the submitted badger survey has been updated and a detailed method statement to minimise the risk of harm to badgers entering the site during construction has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the measures in the approved method statement
- 15) There shall be no clearance of trees, shrubs and hedgerows between 1<sup>st</sup> March and 31<sup>st</sup> August and the landscaping details to be approved pursuant to condition 1) above shall include details of the design, quantity and location of nest boxes to be installed. These shall be installed in accordance with the approved details in accordance with a timetable to be submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until full details of the phasing of the construction of the development hereby approved, including temporary highway and pedestrian routings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved phasing details.
- 17) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) construction access arrangements and routing of construction vehicles

- ii) site compound and the parking of vehicles of site operatives and visitors
  - iii) loading and unloading of plant and materials
  - iv) storage of plant and materials used in constructing the development
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction
  - vii) hours of working
  - viii) phasing of construction, including temporary highway and pedestrian routings
- 18) No phase of house construction shall commence until a detailed scheme of noise insulation and attenuation for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 19) No phase of house construction shall commence until a detailed scheme of external lighting for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 20) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future replacement thereof. The scheme shall include:
- i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
  - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no Registered Social Landlord involved);
  - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
  - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
- 21) No phase of house construction shall commence until a detailed scheme for the provision of play space and the management thereof has been submitted to and approved in writing by the local planning authority in respect of that phase. The scheme shall be implemented in accordance with the approved details prior to the first occupation of any dwelling within that phase and the play space shall not thereafter be used for any purpose other than a public play area.
- 22) No development shall take place until full details of existing site levels and proposed finished floor (slab) and garden levels, together with maximum ridge heights, in relation to finished site levels, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 23) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 24) No development shall take place until details of any substations or other utility structures have been submitted to and approved in writing by the local planning authority. The structures shall be implemented in accordance with the approved details.
- 25) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of all means of enclosure and boundary treatment to be erected. The means of enclosure and boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 26) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings 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.
- 27) No dwellings shall be occupied until the parking areas intended to serve them have been drained and surfaced in accordance with details to be submitted to and approved in writing by the local planning authority, and those areas shall not thereafter be used for any purpose other than the parking of vehicles.
- 28) Notwithstanding the approval of the access drawing 0054\_01 RevA, no development shall take place until further and full details and specifications of the vehicular and pedestrian access works, including bus stop improvements and a footway link to Spring Hill, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved details.
- 29) Within one month of the new access works becoming operational the existing agricultural access from Nantwich Road shall be permanently closed and the boundary treatment, verge and footway made good in accordance with details to be submitted to and approved in writing by the local planning authority.
- 30) No development shall take place until full details and specifications of the proposed signalisation works at the junction of Nantwich Road with the A49 have been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the signalisation works have been implemented in accordance with the approved details.



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

by Keith Manning BSc (Hons) BTP MRTPI

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

Date: 1 November 2012

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**TOWN AND COUNTRY PLANNING ACT 1990**

**CHESHIRE WEST & CHESTER COUNCIL**

**APPEAL BY**

**FOX STRATEGIC LAND AND PROPERTY LTD**

Inquiry opened on 22 May 2012

Land off Nantwich Road, Tarporley, Cheshire

File Ref: APP/A0665/A/11/2167430

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**File Ref: APP/A0665/A/11/2167430**

**Land off Nantwich Road, Tarporley, Cheshire**

- 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 Fox Strategic Land and Property Ltd against Cheshire West & Chester Council.
- The application Ref 11/04261/OUT is dated 2 September 2011.
- The development proposed is residential development of up to 100 dwellings, site access, highway, landscaping, open space and associated works.

**Summary of Recommendation: That the appeal is dismissed and planning permission refused.**

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**Applications for Costs**

1. At the Inquiry an application for costs was made by Fox Strategic Land and Property Ltd against Cheshire West & Chester Council. An application for Costs was also made by Cheshire West & Chester Council against Fox Strategic Land and Property Ltd. These applications are the subject of a separate report.

**Procedural Matters**

2. The inquiry sat for four days, from 22-25 May 2012, and I visited the site and various other locations in and around Tarporley on 25 May.
3. Subsequent to the Inquiry, Steven O'Brien MP wrote to the Secretary of State to request that he recover the appeal for his own determination. On 21 August 2012 the Secretary of State informed the parties that he intended to do so, the reason being that the appeal involves proposals giving rise to substantial regional or national controversy and which raise important or novel issues of development control, and/or legal difficulties. Consequently, I have prepared a report and recommendation for his consideration.
4. The appeal was lodged on the basis of non-determination by the Council. The Council subsequently resolved that it would have approved the application. However, a second application (Ref 12/00477/OUT) was lodged which, bearing in mind the agreement of the appellant company to provide traffic lights at the junction of Nantwich Road with the A49 as part of the off-site measures now associated with the proposed scheme at issue, may in practical terms be considered identical. In respect of this application, the Council ultimately took a different view, following the publication of the National Planning Policy Framework ('the Framework') on 27 March 2012, and refused it, for reasons specific to the intentions of the Framework, citing paragraphs 11, 17, 69 and 112 therein.
5. Be that as it may, the Council's formal position at the Inquiry was one of support for the scheme under consideration.
6. The Parish Council, on the other hand, having been granted 'Rule 6 status', appeared at the Inquiry in opposition to the proposed development. Parish Council core documents are identified by the letters **TPC** and are listed as the final section of the Core Documents list.

7. The application subject to appeal is in outline. All matters except access are reserved.
8. A unilateral undertaking, dated 22 May 2012, was submitted at the Inquiry. This simply provides for details of the design, location and future maintenance of the landscaped open space proposed to structure the layout of the development, together with the general amenity areas within it, to be approved by the Council; and for financial contributions to the improvement or provision of playing pitches within Tarporley and to improvements to the car park at Tarporley Health Centre.
9. An Updated Statement of Common Ground ('the SoCG') was agreed, in its final form, between the Council and the appellant company on 1 May 2012. This includes, at Appendix 3, the relevant committee minute (168) detailing the Council's reasons for its stance on the proposal. For convenience, I have designated this **CD19**, taking advantage of a blank left in the Core Documents list.

### **The Main Issues**

10. On opening the Inquiry, I identified what I considered to be the main issues, with the agreement of the parties, as follows:
  - i) Whether the proposed development would accord with the intentions of the development plan;
  - ii) Whether the proposed development would accord with the intentions of relevant national policy;
  - iii) The relationship of the proposed development to the intentions of the emerging development plan, to the extent these may be known, and the extent to which these should be taken into account;
  - iv) Whether the proposed development is necessary at the present time and in this location in the context of the Council's overall supply of housing land;
  - v) Whether the proposed development may be considered sustainable;
  - vi) Whether there are material considerations, including site specific and area specific matters, which might potentially tip the balance of planning advantage one way or the other.
11. These issues, including the last of them, provide a suitable framework within which to consider the matters identified by the Secretary of State in recovering the appeal; and I have organised my report on that basis.

### **The Site and Surroundings**

12. Tarporley is a small mid-Cheshire town or large village of considerable environmental quality and historical interest. It is essentially linear in form and at its heart lies the High Street, characterised primarily by attractive Georgian buildings containing a good variety of shops and services. The Village Design Statement (**CD25**), initiated by the Parish Council, and subsequently adopted by the former Vale Royal Borough Council as Supplementary Planning Guidance, describes its historical development and illustrates, in plan form at page 15, how the large conservation area at its heart includes important open spaces, primarily

the fields close into the High Street on the western side and the rolling parkland landscape to the north east. There are attractive views out from the town to the south west towards Beeston Castle and the Peckforton Hills. In more recent times, incremental expansion through the addition of housing estates has occurred, particularly but not exclusively towards the south east in the direction of Rhuddall Heath. The plan also reproduces the 'Local Plan Policy Boundary'<sup>1</sup> (LPPB) defined in the adopted Vale Royal Borough Local Plan.

13. In recent years the settlement has been by-passed at a little distance to the west by the A49, partly in cutting, which swings back to the south east to cross Wettenhall Brook immediately before the junction with Nantwich Road near the southern extremity of the appeal site. This is a large single field bounded by the by-pass, a short section of the brook, Nantwich Road, housing on Spring Hill and Ardens Meadow and the approach to the A49 overbridge carrying Birch Heath Road. The convex form of the land, which renders it conspicuous in the southern approach to the settlement along Nantwich Road and to some extent in the wider landscape, derives from the fact that it traverses the relatively elevated spur of land forming a gentle ridge aligned broadly north east to south west which necessitates the cutting to accommodate the by-pass at this point. It also gives rise to the hard edge to the settlement identified on the plan in the Village Design Statement previously referred to, as houses on Spring Hill stand on the skyline across the ridge.
14. The northern end of the appeal site is crossed by a public footpath which continues between Ardens Meadow and Spring Hill, behind the Tarporley Business Centre linking to Nantwich Road which then runs into High Street. The footpath, which continues west into the open countryside beyond the by-pass is disrupted by the road, but provision is made to negotiate its embankments, albeit great care must necessarily be exercised in crossing the road itself. At the southern end of the appeal site the A49 is a little elevated above the low-lying land associated with the brook and an underpass is incorporated in its structure to allow the passage of livestock and farm machinery, thereby creating a functional link between the appeal site and the remainder of the farm holding of which it forms part. In land quality terms, detailed survey (**CD1.15**) has established it to be predominantly Grade 2 with some pockets of Sub-grade 3a, placing it entirely within the 'best and most versatile' (BMV) category.
15. Save for the wooded corner of land between the A49, Nantwich Road and Wettenhall Brook immediately beyond its southern extremity, the appeal site occupies the whole of the Nantwich Road frontage leading into the settlement from the south, as far as the houses at Spring Hill and a ribbon of dwellings on the east side of Nantwich Road, behind and to the south of which lies Tarporley High School and its extensive playing fields. The latter are identified in the Village Design Statement as important open space and are within the LPPB. West of Nantwich Road, the appeal site is distinctly elevated behind its boundary hedge along much of the frontage, albeit the southern extremity near the brook is low-lying.

## Planning Policy

16. Relevant policy at national level is now embodied in the Framework, but the starting point is of course the development plan.

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<sup>1</sup> Referred to in the local plan as the 'defined policy boundary' or the 'settlement policy boundary'



17. This currently includes the policies of the Regional Spatial Strategy (RSS), within which the former Vale Royal Borough is placed within the Liverpool City Region, a limited number of policies saved from the Cheshire Structure Plan (2005) which were not replaced by the RSS and the saved policies of the Vale Royal Local Plan First Review Alteration ('the local plan') adopted in July 2006. The relevance and applicability of certain policies has been to some extent confused and obscured by the subsequent reorganisation of local government in Cheshire but the principles embodied in relevant policy carry through, tempered now by the degree to which these remain consistent with the Framework, bearing in mind paragraphs 214 and 215 and the fact that neither the saved policies of the structure plan nor those of the local plan have been adopted pursuant to the provisions of the Planning and Compulsory Purchase Act 2004, but rather the Town and Country Planning Act 1990.
18. As far as the RSS is concerned, a number of policies are referred to by the appellant as supportive of the proposed development: DP2 seeks to promote sustainable communities; DP4 seeks to make the best use of existing resources and infrastructure; DP5 seeks to direct development to accessible places, thereby reducing the need to travel, especially by car; DP7 seeks to promote environmental quality; DP9 seeks to reduce emissions and adapt to climate change; RDF2 promotes the concept of key service centres and seeks to direct development in rural areas to such centres; L1 seeks adequate provision for all in terms of health, sport, recreation, culture and education; L2 promotes understanding of housing markets by local planning authorities in order that they may effectively plan for housing needs, specifically by undertaking Strategic Housing Market Assessments; L4 requires local planning authorities to monitor and manage the availability of housing land to achieve the specified provision in their areas. The combined requirement (net of clearance replacement) for what is now Cheshire West and Chester amounts to 23,700 dwellings over the period 2003 – 2021 (RSS Table 7.1) which translates into an annual average requirement for additional dwellings in the Council's area of 1,317. An indicative target of providing at least 80% of the housing requirement through the use of brownfield land and buildings is set. In the former Vale Royal area, which includes Tarporley, the aim is to facilitate sufficient housing development to support key local regeneration priorities, particularly in Northwich town centre, and to address affordable housing needs, albeit the broader context for the western part of Cheshire described in the RSS recognises the links between the economy of Chester, the regeneration of Ellesmere Port and North East Wales and the Liverpool City Region; L5 promotes affordable housing through a range of delivery mechanisms including on-site provision amidst market housing; and LCR1 promotes, amongst other things, sustainable growth and development opportunities in the former Vale Royal area.
19. I am conscious that, whilst the policies of the RSS were prepared under the terms of the Planning and Compulsory Purchase Act 2004 and may therefore be given full weight, the Localism Act 2011 provides for its intended abolition at a date yet to be determined. However, to the extent that these broad policies are relevant to the proposed development at issue, I find no inconsistency with the intentions of the Framework in any event, albeit that the effective use of land through the reuse of brownfield land is expressed as a core principle rather than a numerical target in the context of housing land supply. (Paragraph 111 of the Framework allows for the setting of locally appropriate targets.) Sustainable development to meet identified needs in appropriate places is the common

theme. Notwithstanding the intended abolition of the RSS in due course its current weight as part of the development plan is not materially diminished.

20. While no saved structure plan policies have been cited as of particular relevance and the reorganisation of local government in Cheshire has brought the former Vale Royal Council area together with those for Chester and Ellesmere Port and Neston, the local plan policies remain current for the area in which Tarporley is situated pending replacement in due course by the adoption of a new local plan in the form of a Core Strategy and other development plan documents to be prepared by the Cheshire West & Chester Council together with, potentially, a neighbourhood plan to be prepared under the powers introduced by the Localism Act 2011.
21. The effectiveness of certain of the current local plan policies is diminished by the lack of synchronisation now evident between the period covered by the local plan (2002 - 2016) and that of the RSS, which runs from 2003 to 2021, a factor of particular relevance to housing land supply. Nevertheless, as part of the development plan for the area, it remains the essential starting point in the determination of planning applications such as this.
22. Local plan policy GS5 concerns the open countryside. Its first intention is to protect its character and appearance. It defines open countryside in this part of the former Vale Royal Borough outside the North Cheshire Green Belt as all those areas outside settlement policy boundaries. Its intention is to restrict all new buildings outside those boundaries other than those provided for by other local plan policies. Such an intention does not seem to me to be inconsistent with the Framework's core planning principle, amongst others, that the intrinsic character and beauty of the countryside should be recognised. The explanation to the policy notes, amongst other points, that... *"the Settlement Policy Boundaries show the extent of the area in which the range of developments appropriate in a particular locality may be permitted within the aims of the Plan."*
23. Local plan policy GS2 aims to concentrate development in or on the edge of Northwich and in Winsford, a geographical area which it defines as including the larger villages of Anderton, Barnton, Cuddington, Davenham, Hartford, Lostock Gralam, Lower Marston, Lower Wincham, Moulton, Rudheath, Higher Wincham and Weaverham. There are three other villages classified as "larger", namely Tarporley, Frodsham and Helsby and the policy states that these are also suitable for further development. The explanation to the policy notes that the policy aims to support the strategic aim of concentrating development in or on the edge of the County's towns and its wording lends support to a distinction between Northwich and its satellite settlements, Winsford and the three larger villages including Tarporley that stand away from their dominating influence.
24. Paragraphs 2.35 – 2.42 of the local plan's explanatory text illuminate the policy approach to the towns and larger villages and paragraph 2.41 explains that... *"Outside the Northwich area, the expansion of Frodsham and the villages of Helsby and Weaverham are constrained by Green Belt policies and in the case of Tarporley by other rural restraint policies."* The paragraphs 2.17 - 2.25 address future development and 2.18 explains the strategy in the following terms... *"...the majority of future development should continue to be concentrated in or on the edge of Northwich or in Winsford. In these towns where existing levels of investment in facilities are high, there is scope to use derelict and underused land and premises and there are opportunities to travel other than by using the private motor car."* Paragraph 2.22 explains that... *"Because the Borough's*

*housing requirement can be met to 2016 very predominantly through three major land allocations within or on the edge of Northwich and within Winsford, new housing development within Frodsham, Helsby and Tarporley will be strictly controlled."*

25. Local plan policy H2 supports the strategic approach described above in allocating sites for housing within or on the edge of Northwich and in Winsford, which are classified as 'Tier 1 locations' and point (i) in the explanation to the policy defines the 'edge of Northwich' as land *"within the defined policy boundaries of Hartford, Lostock Gralam, Lower Marston, Higher Wincham, Lower Wincham, Rudheath, Anderton, Barnton, Davenham, Moulton, Cuddington and Weaverham"*.
26. Local Plan policy H4 sets out the housing development hierarchy and places Tarporley, specifically within its defined policy boundary, in 'Tier 2' along with Frodsham and Helsby. Only Tier 1 locations support specific allocations but the full range of other categories (B-G) including conversions and subdivisions and affordable housing, including on rural exception sites, are anticipated in Tier 2 locations.
27. Local plan policy H5 provides for the release of 'windfall' sites where there is acknowledged to be a shortfall in housing land availability against policy requirements and in terms of a five year supply. It further provides for the managed release of windfall sites in accordance with criteria set out in a Supplementary Planning Document, *SPD2 Managing Housing Land Supply*.
28. Local plan policy H14 aspires to the provision of 30% affordable housing on allocated sites and on windfall sites of sufficient size within the settlement policy boundaries of Tier 1 and Tier 2 locations.
29. In addition to directing development, including housing development, in a strategic and spatial fashion within the former Vale Royal Borough Council area, the local plan contains policies concerned to protect resources and environmental quality. Policies of this nature considered relevant by the Council include: NE4, which is concerned with threatened and priority habitats; NE5, which concerns endangered species; NE7, which aims to protect and enhance landscape features; NE8, which concerns the provision and enhancement of landscape in new development; BE1, which aims to safeguard and improve environmental quality; BE14 concerning sites of local archaeological importance; RT3, which concerns recreation and open space in new developments; and policies RE1 and RE2 concerning agricultural land. The former contains criteria which direct development away from the best and most versatile land and minimise the loss of such land where it is unavoidable, with a preference for utilising Sub-grade 3a ahead of Grade 2.
30. Insofar as the local plan policies seek to interpret the principles of sustainable development in the circumstances of the former Vale Royal Borough Council area, they are not generally inconsistent with the intentions of the Framework, albeit the effect of the housing land supply situation, specifically, on the manner in which the policies should be applied and the relative weight to be accorded to policies which may pull in opposing directions, is a matter of contention.
31. The policies of the local plan are supplemented by a number of publications in the form of Supplementary Planning Guidance (SPG) and Supplementary Planning Documents (SPD). Aside from the *Village Design Statement* for Tarporley, which is adopted SPG, those of most potential relevance in this case include SPD1

## **Planning History**

32. There is no relevant planning history associated with the appeal site.

## **The Proposals**

33. The proposed development of perhaps as many as 100 houses (30% affordable intermingled with open market housing) would, according to the 'illustrative masterplan' essentially consist of a single estate served by an access approximately halfway along the Nantwich road frontage, around the point at which traffic speed is currently restricted to 30 mph. The existing boundary hedge, which is of some ecological value, would be transplanted to a point further back into the site to accommodate the necessary sight lines. The principal attenuation area for surface water drainage would be on the low-lying land near the brook, whereas the proposed estate roads would distribute two storey housing with gardens across the higher ground including the ridge running south west from the existing edge of the built-up area at Spring Hill. The estate would be bisected by an open space, narrowing to the south west. It was explained that the rationale of this in landscape design terms would be to retain views of Beeston Castle. This is a theme picked up in terms of the orientation of two short streets towards the northern end of the site. The layout of the roads and housing plots would be complemented by open space with footways/cycletracks and structural and peripheral heavy planting. At this stage the proposed layout is, however, primarily conceptual.
34. To the extent that the illustrative material at Figure 22 of the Design and Access Statement (**CD1.5**) indicates the highest part of the site being slightly lowered, the potential difficulties posed by the convex landform and prominence of the site appear to have been recognised by the appellant company. However, while I was told that a reduction of perhaps as much as two metres is anticipated at the crest of the ridge, no proposed contouring on a comprehensive basis has been undertaken and I have no evidence of any calculation being done as to the destination of excavated material within the site if redistributed, or the degree to which such material might have to be removed from the site altogether.

## **Agreed Matters**

35. The updated and final Statement of Common Ground (**CD19**) was prepared jointly by the Council and, of itself, is primarily factual, the salient points being as follows: -
36. The application was supported by documents agreed with the Council now contained in **CD1**.
37. The application was lodged on 2 September 2011 and the appeal on the grounds of non-determination was lodged on 19 December 2011.
38. An officer's report was subsequently considered by the Planning Committee on 21 February 2012 to establish the position the Council would have reached had it been able to determine the application. The report's recommendation of 'approval' was accepted by the Council and the report represents the agreed position between the Council and the appellant. It was supplemented by a 'late information' update report. The main and update reports are respectively at Appendices 1 and 2 to the Statement of Common Ground.

39. The minutes of the Planning Committee of 21 February 2012 and an appeal decision concerning a site at Cuddington (near Northwich) are respectively included as appendices 3 and 4 to the Statement of Common Ground.
40. The minutes include confirmation that the Council's Spatial Planning Department had withdrawn its objection in the light of the Cuddington decision. This was issued on 20 February 2012.
41. The Council and the appellant intend that conditions and the content of a planning obligation should be agreed between them.

### **The Cuddington Decision and its implications**

42. Much was made by all the parties of the appeal decision at Cuddington (APP/A0665/A/11/2159006 – 20 February 2012) which was evidently influential in the Council's decision, as minuted, to support the proposed development in this instance. The Parish Council argued that this, amongst associated factors, was used by officers to exert pressure on committee members to follow their recommendation to support the proposal. I was exhorted to watch video coverage of the proceedings but I have read the relevant transcript (**CD4**) and considered that such an action would not be helpful or a good use of Inquiry time. Moreover, the manner in which the officers of the Council present matters to its elected members is not a matter for me. Nor is it a matter for me as to why the Council's Spatial Planning Department evidently changed its view in the light of the Cuddington decision. My obligation is to consider the proposed development on its merits in the light of relevant development plan policy and other material considerations, and make a recommendation accordingly.
43. In any event, having studied the Inspector's reasoning very carefully, I do not consider his decision to be in any sense a template for the recommendation I am obliged to make. There are of course common factors concerning development plan policy, land availability and so forth, but there are also fundamental and important differences in the site, policy and settlement circumstances. The Inspector in that case described the site as "*strangely enclosed*" which is plainly not the case at Tarporley. Although not acted upon, an Inspector's recommendation in relation to the local plan had been to the effect that the site should be included within the LPPB. Cuddington is a settlement with very different defining characteristics, described by the Inspector in the following terms: "*Cuddington is an extensive settlement of estates with some 2000 dwellings arranged around a variety of closes and cul-de-sacs. Even before the explosion of building in the late 1950s and 1960s, the straggle of dwellings between Cuddington, the cottages and an inn around the railway station and the church, chapel and lodges at Sandiway, had merged.....*" Moreover, the settlement was considered to effectively require consideration in the broader context of Northwich in both physical and policy terms.
44. Although the opposition of the Parish Council is recorded at paragraph 15, there is no evidence in the Cuddington decision that there is any strong tradition of local, parish level, initiative in settlement planning, again a factor which distinguishes the case from this appeal, which concerns a freestanding and relatively self-contained settlement which, notwithstanding some examples of rapid expansion through the addition of essentially suburban estates, nevertheless displays a strong local identity and historic heritage and a vigorous sense of community. That much is very evident from all that I heard at the Inquiry and from the adopted Village Design Statement. Moreover, the Cuddington decision was made prior to the publication of the Framework, the

final content and emphasis of which is now clear. Amongst other things, it is evident that its intentions in respect of the empowerment of local people, complementary to those of the Localism Act 2011, are now firm. The planning policy and guidance applicable at national level at the time of the Cuddington decision has been comprehensively superseded.

45. Bearing in mind such differences, I see no reason why any decision in respect of the Tarporley proposals should be unduly influenced by the Cuddington decision. It would be wrong in principle to assume that should necessarily be the case and contrary to the established principle that planning decisions should be made on their merits having appropriate regard to the provisions of the development plan and other material considerations.
46. In addition, it is clear from my reading of the development plan, as previously summarised, that Cuddington occupies a different position in the spatial vision for sustainable development in the former Vale Royal Borough Council area articulated in the local plan, at the edge of Northwich.
47. For these reasons, I consider the reasoning within and the outcome of the Cuddington appeal to be of limited relevance to my recommendation in this case. Although material, these are by no means decisive considerations that should in any sense pre-determine the application subject to this appeal, which stands to be determined on its own merits in the light of the development plan and other material considerations

### **The Case for the Appellant**

*The salient material points are:*

48. The application subject to appeal on the grounds of non-determination is supported by the Council. That support was recommended by the relevant officer subject to appropriate conditions and a planning obligation. The Council maintains that position in the light of the publication of the Framework. While the Framework (para. 17) promotes a plan-led system it is also based on the premise that plans should be kept up-to-date and is concerned to drive the delivery of sustainable housing development.
49. There is no objection from any statutory consultee.
50. The statutory development plan comprises the RSS and the saved policies of the Vale Royal Local Plan. The former Vale Royal area is now subsumed within the Cheshire West & Chester area. The successor Council for this wider area is two years away from achieving a core strategy. There is no draft allocations DPD. There is no question of prematurity on the basis of the document *The Planning System: General Principles* and the Cuddington Inspector's approach. It follows that there can be no question of prematurity in respect of the neighbourhood plan because the neighbourhood plan is less advanced than the core strategy to which it must conform. It is impossible to sustain a prematurity objection in respect of the neighbourhood plan. There is no evidence that the community will fail to progress that as a result of it being de-motivated if the appeal were to be allowed.
51. The Council now responsible and the appellant are in agreement that there is, as at 30 March 2011, a 2.3 year supply of housing land for its amalgamated area of jurisdiction. This is when calculated against the RSS requirement set to continue under the emerging core strategy. In terms of dwelling numbers, the

consequential shortfall against the required 5 year supply equates to around 4,500 units.

52. SPD2 (**CD10**) has demonstrably failed as a mechanism to address the shortfall through windfall site release. The trigger is a 5% shortfall and yet the authority is faced with a 50% shortfall.
53. The paragraph 47 principle of the Framework would effectively shrink the supply in the approved housing land monitor (**CD15**) from 2.3 to 1.9 years and from 2.9 to 2.5 years in the case of the more recent (2011-2012) draft (**TPC14**). There is no reason to suggest that the 20% buffer requirement should be suspended owing to the age of the RSS or for any mechanical reason of subsuming it within the shortfall already amassed, as suggested by the Parish Council.
54. There has been persistent under-provision in both the former Vale Royal area and subsequently within Cheshire West and Chester. The Framework (para. 47) therefore demands an additional 20% on top of the five year supply, effectively reducing the relevant supply to only 1.9 years.
55. There is no evidence to gainsay the Council's confirmation through its latest approved and draft housing monitors (2010-2011 and 2011-2012 respectively) that there is an absence of five years' supply of deliverable housing sites. The attempts of the Parish Council and others to cast doubt on that are not supported by evidence. Moreover, there is no evidence that the RSS requirement to be deployed for the purposes of the emerging core strategy is likely to change.
56. The shortfall identified by the appellant and by the Council is chronic and the policies relevant to the issue are out of date. In such circumstances, the policy direction of the Framework is unequivocal. The presumption in favour applies. There is no case for its suspension pending the production of a core strategy, housing allocations development plan document and neighbourhood plan. Applying the principle in paragraph 49 of the Framework, the presumption in favour of development is engaged unless its adverse impacts significantly and demonstrably outweigh its benefits (Framework para. 14).
57. There is no case to suspend the presumption whilst the Council re-assesses its housing land supply. Nor is there any case to suspend it because of current economic difficulties; the reverse is true.
58. The Parish council cannot demonstrate a 5 year supply of deliverable sites. The Council's own figures and the recent conclusions of an Inspector (re: Cuddington) demonstrate that there is no such supply. No other appeal decisions cast any doubt on those conclusions.
59. The Framework does not allow time for land supply to be 'sorted out'. Its requirements take immediate effect and there is no support therein for a suspension of the presumption in favour of development pending the production of development plan documents or neighbourhood plans.
60. In principle, development of the site for residential purposes is wholly acceptable. There would be no serious harm to visual amenity, highway safety or capacity, ecology, drainage or any wider interest of sustainability. The site represents a logical extension of Tarporley with strong defensible barriers between it and the countryside beyond, notably the A49.
61. The settlement of Tarporley is recognised as a sustainable location by the Council (Tier 2 in the local plan for the purposes of policy H4) and one of 9 Key service

Centres identified in the emerging Core Strategy. It is properly identified as such. It has the services and facilities of a market town, justifying its high ranking in the Council's own hierarchy analysis.

62. The appellant's consultation with the community produced both opposition and support for the scheme proposed. There has been a well orchestrated campaign of opposition since but simple weight of numbers is not in itself sufficient (as per paragraph B21 of the Costs Circular 03/2009). It matters not whether there is one or a thousand objection letters. The key point is whether or not there is planning harm.
63. There is no evidence from the Parish Council of harm to landscape, harm to sustainability, or harm to traffic. The scheme would be well connected to the village centre for pedestrians and would not exacerbate problems of capacity for legal parking in the village centre. The highway authority is satisfied and supportive. The site would be at least as sustainable as Brook Farm.
64. The site is one of the few areas around the village not identified as important open space and is not within the Area of Special County Value. Lack of landscape harm is confirmed by Council officers and the scheme takes care to afford views to Beeston Castle.
65. Not only is there an absence of harm, but the proposal would bring benefits, notably the prompt delivery of good quality housing of which 30% would be affordable in an area in need of such provision, generous open space within the development, a contribution to address the additional demand for playing fields off-site and traffic benefits.
66. There is a pressing need for affordable housing (1,000 units per year borough wide of which 23 per year are in respect of Tarporley) and the uncertainty associated with the Parish Council's preferred sites includes uncertainty of funding for the affordable elements in those locations. These are not alternatives to the appeal site in terms of the need for affordable housing.
67. There would be an improvement in highways terms. Signalisation of the Nantwich Road/A49 junction will reduce through village traffic because right turners onto the latter road are presently discouraged by the prevailing conditions.
68. Accessible open space will be provided within the development and the net gain in planting will enhance biodiversity.
69. Off-site playing pitches would be provided for through the planning obligation.
70. The economic benefits would include construction activity, local expenditure, and receipt of new homes bonus.
71. All in all, the benefits have been described by Council officers as a highly compelling package and there is no identification of significant harm let alone harm that would outweigh the benefits.
72. The Brook Farm site preferred by the Parish Council is of limited relevance, notwithstanding its partially brownfield condition. There is no sequential requirement in the Framework to take brownfield land first; it may not get consent; it partially involves the use of open space identified as important in the Village Design Statement; it is less accessible to central facilities; the affordable element would be separate from the main housing area; there is no evidence that



the appeal scheme would prejudice its delivery and in any event both schemes taken together would simply contribute towards addressing a shortfall in supply that would remain.

73. Local opposition is motivated in part at least by the simple fact that the appeal site is outside the development boundary and concerns regarding precedent should carry little weight. There is no evidence that allowing the appeal would create a precedent harmful to the ability to resist development on other sites around Tarporley, many of which have particular constraints such as conservation area status or identified importance as open space. There is no reason, applying the principles of national policy advice in *The Planning System: General Principles* to consider the application premature relative to the forthcoming neighbourhood plan promoted by the Parish Council. There is not even a draft of this.
74. **In summary**, having regard to the questions posed by the Inspector in opening the Inquiry, the position is as follows:
- The relevant policies of the development plan concerning housing land supply are, according to the Framework, out-of-date. No other extant development plan policy seeks to prohibit development of the appeal site.
  - There is a chronic shortage of housing land and the proposed scheme would boost supply for both market and affordable housing. There is no sequential requirement that places brownfield before greenfield sites and no prohibition of the use of the best and most versatile land. The Council has no choice other than to release greenfield sites beyond settlement boundaries if housing needs are to be met, now and through the development plan in due course. Sites that are sustainably located and where harm does not demonstrably outweigh benefits should be released without delay.
  - The latest iteration of the emerging development plan is the August 2011 report on a preferred development option for the core strategy. This confirms Tarporley as a key service centre and maintains the RSS housing requirement. There is therefore no conflict with emerging policy and there cannot be conflict with draft allocations development plan documents and the draft neighbourhood plan as these do not exist.
  - The scheme is very necessary in the light of the unmet housing supply requirements and there is no evidence that these are likely to change. The appeal site is sustainably located; it causes no harm in terms of conventional development control criteria; and it delivers benefits. It is the sort of scheme that the Framework envisages for immediate release to address housing land shortage. This provides no support for delay pending an up to date local plan including a neighbourhood plan. If the view is taken that 'localism' means that much needed sustainable development has to wait one, two or even three years, then the Government's pro-growth agenda is effectively finished.
  - There are no site-specific matters that might tip the balance. Tipping the balance in this case means that harm should demonstrably and significantly outweigh benefits. There is no cogent evidence of harm to support such a finding.
  - All things considered, the appeal should succeed.

## The Case for Cheshire West & Chester Council

*The salient material points are:*

75. The determination of planning applications is governed by statutory provisions which require that they be determined in accordance with the development plan unless material considerations indicate otherwise.
76. Different policies may pull in different directions and individual development proposals will have varying degrees of accordance with the range of relevant policies but material considerations are part and parcel of the balancing exercise that addresses conflicts with policy, the relative weight to be accorded to policies in conflict with one another and with other relevant guidance or policy, any resultant planning harm and any planning benefits arising.
77. That balancing exercise was first undertaken in this case by an experienced senior planning officer of the Council, who prepared the main report to the planning committee of 21 February 2012 along with the late information report. His assessment, having undertaken the balancing exercise and taken into account all representations received, was that planning permission should be granted.
78. The committee debated the matter and took into account the Cuddington decision which simply served to reinforce the recommendation already contained in the officer's report, which the committee resolved to follow. That resolution forms the basis of the Council's position at this inquiry which is that, had it been in a position to do so, it would have granted permission.
79. The Council's position is straightforward and logical, notwithstanding appearances to the contrary.
80. The decision of 21 February 2012 to support the application was taken in the context of policy current at that time (i.e. the local plan and the relevant planning policy guidance notes and statements.)
81. The second and, for all practical purposes, identical application (Ref 12/00477/OUT) was determined by the Council on 1 May 2012.<sup>2</sup> The determination was therefore after 27 March 2012 when the Framework came into effect. The Framework cancelled the vast majority of the existing national policy and guidance and altered the emphasis or weight to be given to certain aspects of the local plan. However, by the time the second application was determined, the evidence regarding the first application subject to this appeal had already been exchanged, making clear the Council's support as per the resolution of 21 February 2012.
82. As it turned out, the Council refused the second application, the planning committee having taken the view that it did conflict with the local plan and four separate paragraphs of the Framework, namely 11, 17, 69 and 112.
83. It then opted to maintain its stance in respect of the first application in accordance with its previous resolution and submitted evidence, leaving entirely any defence of its stance on the second application to an appeal of that decision in the event that one should be lodged. It declined the alternative option of ignoring its decision and evidence on the first application, so as to run a defence

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<sup>2</sup> Date of Planning Committee – the decision notice (Doc 3) is dated 4 May 2012

of its refusal of the second application which has not in fact been appealed and is not before this inquiry.

84. It regarded this alternative course to be an impractical option and the first option of maintaining its support for the application to be the only proper position to adopt in the circumstances. The appellant would no doubt have had something to say had it opted to oppose the application subject to appeal.
85. It is recognised that the Inspector (but now, by implication, the Secretary of State himself) must draw conclusions on the appropriate course in the light of policy as it now stands. It is therefore inevitable that he should ask the Council's planning witness for his view on the effect of the new policy context and, whilst that view is to the effect that the position should not change, that is in fact a view which differs from that of the Council. However, his role is to present the view of the Council on the first application (the subject of the appeal), which accords with his own view that, for the reasons set out in his report, it should be supported; and not to present the Council's different view of the second application.
86. In respect of the first application, the Council's view remains that it should be supported.

87. **In summary**, the position is as follows:

- The Framework is not considered to significantly alter the position. It is pro-growth and favours sustainable development.
- The Council has only a 2.3 year supply of housing land.
- The proposed development would deliver needed affordable and market housing.
- There are no insurmountable site-specific objections.
- Considerable weight should be given to the Cuddington decision.
- Although the proposal would involve the loss of open countryside the package of benefits is compelling.
- Although the proposal represents a departure from the local plan, the material considerations presented by the applicant outweigh that conflict and the principle of the development is therefore considered acceptable.
- Prematurity is not referred to in the Framework and, applying the principles set out in *The Planning System: General Principles*, the development is not regarded as premature.

### **The Case for the Parish Council**

*The salient material points are:*

88. The Parish Council and the community of Tarporley have a very strong conviction that the application, if allowed on appeal, will do serious damage to the community and the wider Borough.
89. The process has been permeated by fear of litigation (i.e. the prospect of costs awards), a factor which inflicts real damage on local democracy.

90. Too much weight has been accorded to the Cuddington decision. The site and circumstances are fundamentally different. Cuddington is a Tier 1 location where 75% of development should be focussed. The Inspector regarded the site as inherently suitable for housing as it had previously been included within the settlement boundary. There were no other brownfield opportunities that would deliver more benefits.
91. On the one hand we are told that each decision should be taken on its merits and on the other that the Cuddington decision has a decisive influence on this case, thereby demonstrating that precedent is an important consideration. Schemes have been allowed at Farndon, Tarvin and Cuddington, but it is only now that this and similar schemes can be tested against the Framework. Allowing this appeal will create a harmful precedent.
92. There are serious doubts about the housing land supply figures and the Council should have provided a specialist witness on that matter, given the import of paragraph 49 of the Framework which threatens to breach the provisions of the local plan.
93. The target and mechanism used to calculate the five year housing land supply are both seriously flawed. The target is derived from the RSS which is soon to be abolished and dates from a time when market conditions were much more buoyant. The Council is in the process of creating an interim housing target and revisiting the method of calculating supply to align it with that in the Framework and other Councils. There is no allowance for windfall developments when in the last 12 month period 86% of the sites delivered were windfalls. There is no allowance for small sites under 0.4 ha. The numbers allocated from the Strategic Housing Land Availability Assessment represent just 73 houses from over 30,000 and an exercise is currently underway to complete a fundamental review of the SHLAA sites.
94. Paragraph 214 of the Framework allows Councils a 12 month period of grace to bring their plans up-to-date during which full weight should be given to the current local plan, especially in view of the doubts regarding land supply.
95. The proposed development is elevated relative to nearby roads and buildings and this would result in an unusually dominant block of housing that would restrict views from the village that form a key component of the distinctive nature of Tarporley as identified in the Village Design Statement and SPD5 *Landscape Character (TPC3)* and in addition it would harm the intrinsic value of the countryside.
96. There is no development plan policy support for the proposal. There is a direct and serious tension with the development plan which should lead to refusal.
97. The proposal is in breach of the Development plan – policies DP4, DP7, RDF1 and L5 of the RSS and policies GS1, GS5, BE1 and H4 of the local plan, with policies NE4, NE11 and NE12 of the same plan also being breached to some extent. It also contravenes SPD2 which gives precedence to brownfield sites and it is a Tier 4 site which excludes it from consideration as a windfall. In terms of the relevant criteria it compares unfavourably with the Brook Farm site.
98. With the potential exception of the breach in respect of housing land supply the local plan remains up-to-date. Leaving aside the technical arguments regarding housing land supply, the more central and fundamental point of the Parish Council's case is the serious adverse effect of granting permission on this site.

99. The Localism Act 2011 and the Framework (bullet points 1, 2 and 3 at para. 17) lend weight to the Parish Council's arguments in this respect. Tarporley residents as represented by the Parish Council are in favour of plan-led development and are not "NIMBY"s. They are aware of paragraph 14 of the Framework but consider that in this case the appellant has not put the adverse impacts of the proposed development into the scales. The Parish Council is convinced that the best way forward to achieve the measured accelerated growth and development of rural community such as Tarporley is for the community, with all its local knowledge, to be at the centre of the process.
100. It is acknowledged that this could cause a bottleneck owing to the need to wait for the core strategy and neighbourhood plan to be formulated but in this case there is potential for growth and development in the interim through the development of sites such as Brook Farm and the land east of Brook Road<sup>3</sup>.
101. Rural exception sites at present provide a method by which growth and development can occur beyond the settlement boundary without departing from the local plan and once the new plans are in place Neighbourhood Development Orders will allow both market and affordable housing to be delivered.
102. The Framework is pro-growth but also pro-localism, as was made very clear in Parliament by the Planning Minister.<sup>4</sup> He emphasised the desire to transfer power to communities and his intention that part of the purpose of the reforms is to move away from a situation in which decisions taken locally are overturned by the Planning Inspectorate, to whom it has been made clear that the Framework is a localist document. The Framework makes it clear, it has been emphasised, that the local plan is the keystone of the planning system.
103. Of particular relevance in this case are paragraphs 10, 11, 12, 14, 16, 17, 24, 25, 30, 51, 54, 66, 69, 109, 111, 112, 113, 150, 155, 158, 210, 211 and 214. Paragraph 48 brings windfall sites into the equation and this would alter the picture in Cheshire West & Chester, hence the ongoing review being conducted by the Council.
104. The proposal is in conflict with paragraphs 11, 17, 69 and 112 of the Framework, as the Council has concluded in relation to the duplicate application. The Parish Council would also cite paragraphs 109, 111 and 113.
105. The House of Commons recently debated<sup>5</sup> the Framework and the Planning Minister Greg Clark emphasised the intention to devolve power to local communities. Tarporley has grasped the opportunities presented by the Localism Act and is vigorously developing its neighbourhood plan through its Front Runner status.
106. In the meantime, although the community opposes this development at Nantwich Road, it supports a comparably sized development at Brook Farm, largely within the settlement boundary.
107. The Brook Farm site is extremely deliverable in the short term. A public consultation has been completed which shows a majority in support and the existing buildings on the site are shortly to be cleared. The land is flat and not elevated and needs no alteration to its height. It is currently being marketed.

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<sup>3</sup> Agent's particulars detailing these sites are in Doc 4

<sup>4</sup> Hansard Extracts for 24 & 26 April 2012 are at **TPC2**

<sup>5</sup> *ibid*.

108. Allowing this appeal against the views of the community will send a clear signal to Tarporley residents and other rural communities in Cheshire West & Chester that their views don't count. This would lead to significant and demonstrably irreparable harm to the very process that the Planning Minister is looking to promote through the Framework. This would significantly outweigh any benefits that the scheme would bring.
109. Such benefits could in any event be delivered through the Brook Farm scheme, which in addition will also deliver sports facilities for the village and achieve the Minister's objective of engaging and empowering local people in the planning process.
110. If this appeal is approved, the entire population of the Borough will be disengaged from the neighbourhood planning process in one fell swoop, as the majority of the rural settlements are experiencing the same issues facing Tarporley with this application.
111. Thus the Government's focus on localism is supported and the community recognises that it needs all its growth to address serious imbalance in the housing stock caused by 30 years of inappropriate development. There are schemes such as at Utkinton and Brook Road where affordable housing is anticipated and supported in advance of the neighbourhood plan. The Rural Housing Strategy estimates that Tarporley ward needs 23 affordable dwellings per annum, equating to a 20% expansion of the village over 15 years for affordable housing alone. Applying the appellant's 30% proportion of affordable dwellings would require a 67% growth in housing to meet those needs.
112. There are currently 35 homes being constructed in the village unopposed by the Parish Council and with Brook Farm 86 homes would be delivered, representing a 10% increase in the housing stock over 2- 3 years and far outstripping any proposed target for the rural areas currently mooted by the Council.
113. On the other side of the balance it is acknowledged that 30% affordable housing provision is a benefit, dependent upon such provision being genuinely affordable to local people. The new homes bonus would be a benefit to the Council and 100 homes would contribute to its overall requirement but (in effect) 20 dwellings per annum over 5 years locally would use up the Tarporley contribution to that in a way that doesn't efficiently address the needs of the community, thereby lessening the benefit.
114. **In summary** the position is as follows:

The adverse impacts of allowing the proposed development are its substantial cumulative consequences, namely;

- The de-motivation of this community and others engaged in the process encouraged by the Framework and the Localism Act 2011.
- The strong precedent that it would set, as the site is fairly typical of sites around the village and the nine key service centres that have been identified by the Council.
- The implication that whole rafts of plan-led policies are overruled by the breach caused by the Council's questionable failure to demonstrate a 5 year housing land supply.

- The diminution of the concept of plan-led development and consequent serious harm to local democracy.
115. As a matter of judgement the adverse effects of this particular development outweigh the benefits and it should therefore be refused.
116. Whatever the outcome, the Parish Council suggests the following: -
- A nationally prescribed methodology for calculating housing supply
  - Clarification of the Framework paragraph 47 (bullet point 2) regarding the 20% buffer over supply
  - Quotas for vulnerable communities (in line with the relevant local plan) so that shortfall elsewhere doesn't swamp them
  - Local planning authorities to be required to deliver planning permissions at or above the revised annual rate
  - More time for local communities to address at planning committees on major decisions
  - Expert witnesses to have to be made available at an Inspector's discretion

### **The Cases for Interested Parties**

*The salient material points are:*

#### **Councillor Eveleigh Moore Dutton (in Doc 12)**

117. Having regard to the questions posed by the Inspector in opening the inquiry the following points are made:
118. The development would be contrary to the local plan, which aims to concentrate development within and on the edge of Northwich and within Winsford. Policy GS5 categorically protects countryside outside settlement boundaries.
119. The Framework embraces the statutory primacy of the development plan and paragraph 17 emphasises as a core planning principle that planning should be genuinely plan-led, empowering local people to shape their surroundings, while paragraph 69 says that local planning authorities should facilitate neighbourhood planning.
120. The (superseded) PPS3 prioritised the use of previously developed land. The Framework's core planning principles include encouraging the use of previously developed land. The appeal site is agricultural land and the Framework at paragraph 112 discourages the use of the best and most versatile land.
121. The emerging development plan is a framework within which more locally based documents including neighbourhood plans are to be prepared. Tarporley has been selected as a Front Runner and will receive grant aid to progress such a plan. The (neighbourhood planning) project has motivated positive involvement by many people in shaping the future of Tarporley's neighbourhood plan. This builds on previous village design work and rapid progress is anticipated. The aim is to use Tarporley's experience in developing the plan to help other communities.

122. There is a real risk to this critical element of local democracy and the Localism Act. People will lose faith in local democracy and localism, with far reaching and widely publicised effects.
123. The proposal would have been rejected outright but for the apparent undersupply of housing land.
124. However, the figures appear anomalous as they are as reported declining over three years even though more and more permissions were being granted. There are thousands of new applications in the pipeline and new applications are granted every month.
125. The 2010/11 figures showed that of more than 30,000 potential sites in the SHLAA, only 88 were included in the housing land supply figure. More than this 88 will surely be granted permission in the next five years. The fact that this site was not put forward in the SHLAA tells us that in all probability there are many more sites not recorded. Moreover, there are many more sites classified as small (less than 0.4 ha) that have been excluded from the SHLAA and we know that these small sites are historically more likely to be delivered in a relatively short timescale. The figures are plainly flawed to the extent that there is a large error. Table 4.4 of the SHLAA shows an oversupply over 15 years, the great anomaly appearing to be the quantum leap between the number of units expected to be delivered in the first five years and the second five years and yet there is already clear evidence that sites are coming forward now that were allocated to the second five year period. This is surely a case of over cautious phasing that is steadily rectifying itself.
126. The Council needs to take a serious look at the 30,000 sites identified in the SHLAA but this cannot be done in a matter of days and will be examined rigorously and carefully over the period to the end of July. The application is premature relative to this process.
127. The Framework and the presumption in favour of sustainable development will make a big difference to the way the SHLAA sites are viewed and the housing land supply calculations. It also introduces an explicit commitment to localism and the empowerment of local communities in development planning.
128. There is no evidence that windfall sites are limited to sites already allocated. This would be contradictory and windfall sites are likely to come forward at rates historically demonstrated, around 50% of all approved applications.
129. The RSS and its targets are about to be abolished and should therefore carry less weight. More realistic new targets must soon be deployed. There is no presumption that the underperformance of previous years will be carried forward even if more ambitious targets are set.
130. Finally, allowing the appeal would risk undermining local democracy and would be insulting to residents willing to accept the challenge set by the Framework and the Localism Act by working in a positive and constructive fashion to shape their local community.

### **Mr A Needham**

131. Although the CPRE has not formally objected to this scheme, it is taking an interest in it as the general principles are relevant locally, regionally and nationally. There is significant variation between councils and realistic targets should be set. Because of the backlog, the RSS targets get annually higher. This



is something we are looking at nationally and a matter which will attract media attention.

132. It was observed at the Committee meeting that the members clearly voted to reject it but the remarkable intervention by officers, of unprecedented strength, caused the Committee to alter its decision. It was a breach of process based on the impact of the previous day's appeal decision at Cuddington. This was misconceived because the Cuddington situation is quite different. The site had been previously designated but suspended because of the (then) moratorium on additional housing development. There was no real local objection.
133. Tarporley is a special case because there is a strong local view and the original decision of the Planning Committee should be supported. Councillor Eveleigh Moore Dutton's views on land availability are supported. The supply is likely to be much higher.

#### **Parish Councillor D Press**

134. Although a parish councillor and on the steering group for the Neighbourhood Plan the views presented are purely individual as the Parish Council has presented its case formally.
135. The community is enthusiastic about the Neighbourhood Plan, for which a project plan or programme has been prepared. There is no draft as yet but the aspiration is to adopt in around 18 months. The positive contribution that it will make to the future of Tarporley is eagerly anticipated. But allowing this appeal will completely de-motivate those who would progress it and the effect would be wider, spreading to other communities who might otherwise take up the opportunity that the Government has created. There will be real harm to local democracy and in this case this has been compounded by the events at the Planning Committee whose members were in effect prevented from making the decision they wanted to.
136. The officer's report on this application was balanced. It was not without equivocation. The Spatial Planning Team is recorded as having objected and the Parish Council as a consultee objected.
137. The appeal site is neatly bounded by physical features but this is uncharacteristic of Tarporley, which has a ragged fringe. It looks neat on the plan but is out of character and the proposed housing involved needs to be scaled down to something that is appropriate to the village.
138. There are lots of reasons to be sceptical about it. These include the views of the local school which has an interest in more pupils even though there is pressure on the available places and there have been instances of pupils being turned away. The parking survey in the centre was only on two days in January and not representative. The Doctor's surgery is under pressure with long waiting times for appointments.
139. Not only would there be practical problems, but to allow the appeal would be to fly in the face of community planning intentions and would be widely demoralising and would lead to a free-for-all.

#### **Mrs R Capper**

140. The need for some growth in Tarporley is accepted but the rural southern approach to the village would be sacrificed to make up the housing shortfall,

removing the buffer of agricultural land with the deeper countryside. If this is filled with housing this would harm the character of the village. It appears that the housing land supply has to override all other considerations including the wishes of the local community.

## **Written Representations**

*The appeal notification letter has prompted a number of written representations, the salient points of which are as follows: -*

### **Steven O'Brien MP**

141. The scale of opposition to this proposal, which is opportunistic, inappropriate and a step too far, is significant. The Council has refused the duplicate and the application raises serious public interest issues as regards emerging law and practice and the scale of multiple de-synchronised applications in the absence of a strategic context. The serious concern of local people is evidenced by the extensive correspondence it has generated.

### **Tarporley Parish Council**

142. Essentially the Parish Council's letter anticipates the case it put formally to the inquiry as reported above. With regard to the Cuddington appeal decision it makes the additional point that, although the spectre of extensive unplanned development beyond settlement boundaries was not considered to be a serious threat in that case, Tarporley is currently the focus of interest by a considerable number of prospective developers who have approached the Parish Council.

### **Local residents**

143. The agricultural tenant who currently farms the appeal site confirms that his operation could absorb the loss of land in the longer term as the land could be compensated for by taking up land from adjacent farming neighbours anticipated to retire. The extra population would benefit the business by increasing the local market for farm produce.
144. Other local residents responding to the appeal in writing are overwhelmingly opposed to the development, in principle and in practice, for a wide range of reasons, including, in summary form, the following :
- Conflict with development plan and Village Design Statement
  - Loss of important views to Beeston Castle
  - Visual impact of building across elevated ridge and compromise to rural approach to village
  - Ability to achieve appropriate layout constrained by avoidance of lowest part of site for drainage reasons and need to mitigate noise from A49
  - Loss of countryside and best and most versatile agricultural land
  - Increased pressure on schools, surgery and drainage systems
  - Lack of local employment and increased commuting by car, especially as there is no railway station
  - Traffic impact, including parking in village centre

- Overly rapid expansion of village – smaller increments of development over time are to be preferred
- Brownfield sites within the village such as Brook Farm should be prioritised in this context over greenfield sites such as the appeal site
- Council unduly influenced by Cuddington decision
- Contrary to Government encouragement of neighbourhood planning and planned empowerment of local people

## Representations at application stage

145. These are detailed in the Statement of Common Ground which appends the planning officer's report. Amongst other things, this records the lack of objection from statutory consultees external to the Council and specialist departments within it, save for the Spatial Planning Team, which subsequently altered its position in the light of the Cuddington decision. The highway department's contentment with the proposals, subject to conditions, was confirmed in the late information report included in the Statement of Common Ground, as was the play development officer's satisfaction that adequate open space provision could be made within and off the site through a combination of direct provision and financial contributions.
146. The report records that over 1000 individual letters of objection (albeit mostly with standard wording) were received by the Council together with a petition with over 600 signatures. There is some concern that certain of the letters were sent without the knowledge of the putative authors, leading to requests for withdrawal, and that some were from places remote from Tarporley. Be that as it may, having reviewed all the letters made available to me and the petition, I am satisfied that, taking into account the limitations of the approach adopted, it nevertheless fairly reflects a substantial groundswell of opposition within the community to the proposed development. Standard letters are a convenient means for residents to ally themselves with such feeling and in this case the standard basis for objection that... *"the development does not comply with the local plan nor planning policy, is outside of the designated development boundary for Tarporley and is land designated as open countryside"* reflects the expectation, embodied in statute, that planning applications should be determined in accordance with the development plan (albeit this must be tempered by the principle that material considerations may indicate otherwise.) Therefore, I do not consider that the weight to be accorded to such letters should be lessened simply on account of the fact that they are not individually composed. There is clearly a widespread expectation of adherence to the adopted planning framework for the village.
147. An alternative form of standard letter makes this point in reference to the Village Design Statement and Parish Plan and refers also to material concerns including prioritisation of brownfield over greenfield sites, traffic and parking, principles of localism, scale and pace of village development, impact on infrastructure and services, lack of local employment/increased commuting by car, setting of the village and loss of views out and loss of best and most versatile land. The petition, on the other hand, which has been organised under the auspices of the "Tarporley Greenfield Awareness Project" simply records objection in principle, citing no particular reason.

148. Numerous individually drafted letters and added comments were also received at the time of the application, largely based around these concerns and those submitted in response to the appeal itself, as recorded above.

### **Inspector's Conclusions**

*References are made, where appropriate, to other parts of the report by indicating the relevant paragraph number thus [0].*

#### ***Issue i) Accordance with development plan***

149. The Council's Spatial Planning Team responded to internal consultation on the application on 6 February 2012 and amongst other comments pointed out that there is... *"no development plan policy support for this site for residential development, either in the adopted Local Plan or the Regional Spatial Strategy for the North West. There is a direct and serious tension with the development plan."* The appellant, on the other hand, asserts that the RSS, at least, is supportive of the development. [18]
150. As is frequently the case, there are elements of the RSS [18,19] that can be construed as supportive, notably the drive to deliver adequate housing supply (L4) including an appropriate affordable element (L5) and the direction of development in rural areas towards key service centres (RDF2), and elements that pull in the opposite direction, including the indication that at least 80% of housing provision in the former Vale Royal should be on previously-developed land or in re-used buildings (L4 and DP4). Perhaps more significantly, policy DP4, which directs development to *"locations with opportunities to build upon existing infrastructure and community activities, services and facilities"*<sup>6</sup> also sequentially prioritises the use of buildings and previously-developed land within settlements over infill within settlements and other land which is well located in relation to existing housing, jobs and services. The appeal site is neither previously-developed nor within a settlement (if that spatial concept is defined by reference to formally recognised boundaries in the development plan.) To the extent that the RSS can be deployed to locate individual developments, I consider the balance of strategic policy intention to be against the appeal site rather than in its favour, but that conclusion must be tempered by reference to the strategic need to provide new dwellings in the region.
151. The adopted local plan [17] is more spatially precise but was adopted in the context of the former RPG13 Regional Planning Guidance for the North West, which was characterised by a strategy of urban concentration including within the key town of Northwich in the case of the former Vale Royal area. The current RSS, whilst still concerned to focus development sustainably in accessible settlements, has nevertheless increased the housing requirement for the former Vale Royal Borough Council area to 500 dwellings per annum over the period 2003 – 2021 as opposed to the 350 per annum over the period 2002 – 2016 provided for by the local plan, albeit the figure is part of the aggregate requirement for the three areas (Chester, Ellesmere Port and Neston and Vale Royal) now brought together to make up Cheshire West & Chester, for which a Core Strategy is currently in preparation but as yet is only at an early stage.
152. Be that as it may, the local plan currently represents the most explicitly geographical expression of development plan intentions [22-30] for that part of

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<sup>6</sup> Evidence of Mr Twigg, paragraph 4.2.14

the Council's area falling within the former Vale Royal and its strategic policy GS2 [23] aims to concentrate new development within Northwich and Winsford and the specified larger villages associated with them. Frodsham, Helsby and Tarporley are also identified as larger villages suitable for further development. Housing development, specifically, is the subject of policy H2 [25], which provides for specific allocations at Northwich and Winsford, and policy H4 [26], which identifies defined settlements as 'Tier 1 locations' and categorises Frodsham, Helsby and Tarporley as 'Tier 2' locations. Importantly, the Tier 2 locations are defined by reference to their defined policy boundaries, within which there are no allocations but within which specified categories of housing, including affordable housing may be permitted. The policy pre-supposes that the allocated sites in the Tier 1 allocations are sufficient to meet the lion's share of the identified need for new open market housing in the Vale Royal area over the period 2003-2016. Land outside the settlement policy boundaries falls within the open countryside within which policy GS5 [22] is intended to prevent new building unless specifically provided for by other local plan policies (for example rural exception sites of the type anticipated by policy H16). The appeal site falls outside the policy boundary for Tarporley and the proposed development is not provided for by other local plan policies. I am in no doubt that the proposed development would conflict with the intentions of the local plan regarding the location of new housing development.

153. Neither am I in any doubt that the proposed development would conflict with the intention of local plan policy RE1 [29] that development of the best and most versatile agricultural land should be avoided and where unavoidable directed towards Sub-grade 3a. This policy does allow for exceptions but I note that the explanation to the policy anticipates the consideration of alternative options of the type amenable to public consultation through the local planning process. Although the agricultural land assessment submitted gives some more generalised indication that land around Tarporley is likely to be BMV, based on published survey maps, detailed local planning and survey provides the opportunity in my experience to ascertain, with precision on a field by field basis, the actual classification of land under consideration for development, as has been the case with the appeal site itself. There is no real substitute for that quality of information. For reasons that I explain in relation to Issue v) regarding sustainability, I also find that the particular development proposed would conflict with the environmental quality intentions of the development plan [191-196].
154. While I am conscious that there are individual development plan policy intentions that the proposed development would accord with (notably the general aspiration of local plan policy H14 that 30% of housing on new residential sites should be affordable, albeit not its precise terms which generally constrain housing development to allocated sites and land within settlement boundaries) it is evident to me that the proposed development would not accord with the intentions of the development plan taken as a whole. Not only does it counter the priority to be accorded to previously developed land embedded in the RSS, but the use of high quality agricultural land in the countryside in a location which is not, by virtue of being outside the policy boundary of the settlement, a Tier 2 location for housing, would also run counter to the intentions of the local plan. In my view it is inaccurate to assert<sup>7</sup> that policy GS2 includes Tarporley within a category of a settlement where development is to be concentrated at locations which include its edge. While this may well be true of Northwich, where the edge

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<sup>7</sup> Evidence of Mr Twigg, paragraph 4.3.8

is defined by reference to named larger villages, the separate naming of Helsby, Frodsham and Tarporley in this context simply suggests that they are considered suitable for unspecified further development within the defined policy boundaries. Amongst other things, the policy is designed to further the strategic aim of concentrating development in or on the edge of the Cheshire towns (including Northwich) and to safeguard the rural areas and villages from a scale of development inappropriate to the location. That much is clear from the explanation of the policy [24]. Tier 2 locations for housing under the terms of policy H4, which is also concerned to govern the scale of new housing development at specified locations, categorically do not include land beyond the policy boundaries.

155. That said, it is necessary also to consider the effect of local plan policy H5 [27] which addresses the matter of 'windfall' sites in circumstances where a five year housing (land) supply cannot be demonstrated. The associated SPD2 (CD10) has failed to deliver such sites in the manner intended and it has been largely discredited as a mechanism, notably in the context of the Cuddington appeal [42-47.] The Inspector in that case concluded that it must be an inappropriate basis for determining either the suitability or the sustainability of the site at issue in that case. While I therefore accord very limited weight to SPD2, I note that the intention of policy H5 itself is that the release of windfall sites should nevertheless be managed to support the overall strategy of the local plan. I do not therefore consider that the acknowledged lack of a five year land supply implies through policy H5 that any particular proposal, including this one, accords with the development plan. It is clear from paragraph 6.1 of SPD2 that the policy was born of a concern that housing land supply difficulties could lead to a harmful lack of restraint in the managed release of housing sites. It does, however, lend considerable weight to the appellant's contention that the housing supply policies of the local plan are for all practical purposes out of date [56,74].

### ***Issue ii) Accordance with relevant national policy***

156. Relevant national policy is primarily contained within the Framework. The objects of the Framework, in seeking to promote development that is sustainable, are manifold and must be carefully weighed in any particular case. Alongside the conservation of resources, protection of environmental quality and the empowerment of local people to shape their surroundings, it also promotes, amongst other things, adequate land supply for housing and other forms of development in the context of 12 core planning principles. Explicitly (paragraph 212), the policies in the Framework are material considerations to be considered alongside the development plan. It aims (paragraph 209) to both strengthen local decision making and reinforce the importance of up-to-date plans.
157. The appeal in this case brings a range of such considerations to the fore. It is clear that important aspects of the development plan are substantially out of date and in need of urgent replacement, (a matter to which I return below). But, as the Framework effectively emphasises, the development plan is the statutory point of reference for any planning decision, a principle both mirrored and complemented by the presumption in favour of sustainable development articulated in the Framework at paragraph 14. Unless material considerations indicate otherwise (Framework: footnote 10) this requires prompt approval of development proposals that do accord with the development plan. Where the development plan is absent, silent or relevant policies are out-of-date the framework provides (again, unless material considerations indicate otherwise – footnote 10 to the Framework) 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 taken as a whole; or specific policies in the Framework indicate development should be restricted (examples of which are given in footnote 9 to the Framework.)

158. The proposed development subject to appeal engages different objects of the Framework. It would involve the loss of best and most versatile land [14] in a rural area in circumstances where the development plan, although out-of-date in respect of the delivery of an appropriate quantum of housing land, nevertheless aims locally to pursue a coherent strategy of directing housing development towards allocated sites within and on the edge of Northwich and within Winsford, whilst allowing for more local needs in the rural areas and a small number of settlements including Tarporley [23-26]. The release of a substantial site in the countryside outside the defined policy boundary for Tarporley would not be genuinely plan-led in the context of local and neighbourhood plans that set out a positive vision for the area as local people shape their surroundings, but rather a market-led response to current failure to bring forward sufficient deliverable housing sites across the Cheshire West and Chester Council area as it is now constituted. Moreover, I am not satisfied that, in principle, it has been demonstrated that the number of houses envisaged could, in principle, be accommodated on the site without serious harm to the character and appearance of the area. (This is a matter to which I return in detail below) [191-197].
159. Therefore, not only does the proposed development create serious tension with the development plan as the Council's Spatial Planning Team originally (and in my view correctly) observed, but it also creates serious tension with some fundamental intentions of the Framework itself. While paragraph 49 of the latter makes it very clear that..... *"relevant policies for the supply of housing policies should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites"*... (a situation which potentially engages 'the presumption in favour of sustainable development' at the heart of the Framework) I find no support within it for the contention that all the adopted settlement boundaries in the existing development plan, even though formulated in the context of housing policy, are necessarily out of date. They must take account of the specific attributes of settlements and adjacent land and, logically there is also an interaction, across the whole of the plan area, between settlement boundaries and housing land supply, as the overall capacity of settlements to accommodate the necessary quantum of development is a basic consideration. In essence, the boundaries of individual settlements reflect the particular circumstances of those settlements and the strategy of the plan to apportion development appropriately to particular locations. Such choices, fundamentally, are intended to be plan-led. It is entirely conceivable that major revision to one settlement boundary to accommodate apportioned land supply could be matched by the choice to maintain another as previously established. Equally, a strategy could ultimately be adopted which distributes development more evenly, but the likely outcome of such strategic choices and associated boundary review is unknown at present. Nevertheless, decisions on individual applications must necessarily be made prior to the formulation of a comprehensively up-dated local planning framework.
160. However, as I have previously indicated, Paragraph 14 of the Framework imposes a test for decision making that is more complex than simply overriding the adopted plan in circumstances where certain of its relevant policies are out-of-date. The imposition of a major development outside the settlement boundary

of Tarporley would potentially have the adverse impact not only of utilising the best and most versatile agricultural land, contrary to Framework intentions to conserve that where possible, but also of running counter to its intentions regarding environmental quality, whilst challenging those regarding local empowerment in respect of plan-led place-shaping that are embedded in the first of its core principles. While the re-use of previously developed land is encouraged, it seems to me unlikely that development needs in the immediate future could all be satisfied from that source. Choices as to which other land should also be developed must necessarily be made, ideally but not invariably through the development plan process.

161. In terms of the Framework, therefore, the decision turns on the balance to be struck between a number of important aims, as discussed in my planning balance and overall conclusion, prior to my recommendation.

***Issue iii) The emerging development plan***

162. The Council's Core Strategy is at an early stage and may be accorded little weight at present, not least because the consultation on the range of options indicates a variety of approaches to the scale of growth sought and the possible strategies for accommodating it. This is yet to be resolved through the preferred option and independent examination processes and may or may not give rise to additional housing in settlements such as Tarporley on a scale that would effectively require the established settlement boundaries, or any equivalent replacement thereof, to be substantially altered to accommodate it.

163. While the appellant maintains [63] that there are elements of the emerging core strategy which favour the proposed development at issue, for example through the identification of Tarporley as a potential Key Service Centre within the rural area, this effectively second-guesses the scale of expansion that might be apportioned to Tarporley specifically and which might ultimately require a review of the settlement policy boundary, bearing in mind that its current 'Tier 2' status is confined to locations within that boundary. Policy RDF2 [18] of the RSS does no more than promote the concept of Key Service Centres in rural areas, adding that development concentrated within them... *"should be of a scale and nature appropriate to fulfil the needs of local communities for housing, employment and services, and to enhance the quality of rural life."*

164. Given the uncertainties associated with the emerging core strategy, and the need to carefully consider the needs of the settlement in that context, it would be inappropriate to place undue emphasis on any perceived "direction of travel" of nascent local policy at this juncture. Whereas the Inspector in the Cuddington case [42-47] was able to confidently conclude (at paragraph 30 of his decision) that the scheme before him... *"would appear to generally accord with extant and emerging policies"* (my emphasis), neither such circumstance applies in this case.

165. All in all, and taking account also of the growing evidence base which will underpin the core strategy, it appears that Cheshire West & Chester has crucial strategic choices yet to make regarding the ultimate levels of growth to be accommodated and, importantly, the distribution of such growth throughout its area [159]. It follows that little weight should be placed on any particular strategic option relevant to Tarporley, whether mooted in the context of the Core Strategy [61] or in the context of other strategies such as that for Rural Housing.

166. Equally, there is little that, at this juncture, may be accorded significant weight at the neighbourhood level as a component of the emerging development



plan. **TPC4** *Tomorrows Tarporley*, the Parish Plan produced by local residents and published in 2008 in response to the November 2000 Rural White Paper, although complementary to The Village Design Statement, lacks the statutory force of the neighbourhood plans now provided for in the Localism Act 2011. Moreover, unlike the intended neighbourhood plan, it did not have the potential for reviewing the settlement policy boundary as may be necessary and identifying the location of new development. That would have been beyond its remit.

167. The neighbourhood planning opportunity now presented, on the other hand, shows every indication of being taken up [105] as a progression from the established tradition of active community involvement in influencing the future development of the village towards more fully-fledged self-determination. 'Front Runner' status has been confirmed in this context (**Doc 7**) and at the time of the Inquiry a detailed Draft Programme (**Doc 9**), albeit indicative, had been prepared with a view to Independent Examination of the neighbourhood plan in September 2013. Although ambitious in timescale and doubtless susceptible to a degree of slippage as most such exercises are prone to be, this is a clear earnest of intent to seriously address the matter in the context of and broadly in parallel with the emerging local plan for Cheshire West & Chester and the relevant statutory framework.

#### ***Issue iv) The need for the proposed development***

168. At the time of the Inquiry, it was common ground between the Council and the appellant that the housing land supply was in serious deficit. This was demonstrably the case at the Cuddington inquiry and the Council proffered no evidence to cause me to form an alternative view.
169. Neither the Parish Council nor any other third party were able to put forward cogent evidence to contrary effect, notwithstanding that a limited number of approvals referred to, including that at Cuddington, would now feed into the supply equation [92,93, 124-126]. I understand that the methodology of its composition across the Cheshire West and Chester area to be under urgent review<sup>8</sup>, possibly to address, amongst other things, the effect of including through the Strategic Housing Land Availability Assessment (SHLAA) process a small sites contribution not previously accounted for, but it is too early to ascertain whether or not that would be a significant factor. The Parish Council argued that the combination of recession and ongoing failure to deliver housing at the required annual rate created, in effect, a "Catch-22" whereby the situation becomes progressively worse and more and more land would need to be released outside the framework of locally adopted policy to rectify it, no matter that sometimes difficult brownfield allocated sites, to which priority should rightly be accorded, would be the preferred location for much of the housing requirement.
170. However, housing land supply policy is in principle designed to ensure that identified needs are met locally and not simply deferred indefinitely in response to, amongst other things, the vagaries of the market. Catch-up, in response to under-performance is a necessary adjustment over time. So, while I understand the difficulty (and the perceived threat of uncontrolled land release outside settlement boundaries) that the Parish Council alludes to, I accord little weight to the contention that the basic calculation of housing land supply should be approached in some other way. Moreover, the delivery of affordable housing (30% of the units in this case), although not wholly dependent on predominantly

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<sup>8</sup> **TPC 9, 10 & 11** Reports and Minutes – *Developing 5 Year Housing Supply in Cheshire West and Chester*

open market schemes such as the proposed development at issue, is a significant benefit associated with that of meeting housing needs more generally and one that I attach significant weight to.

171. The lack of a demonstrably deliverable 5 year supply of housing land is agreed between the appellant and the Council [35] as set out in Appendix 1 (Committee report on 11/04261/OUT) to the SoCG and confirmed in the Cuddington appeal decision [41-47].
172. The appellant maintains that the housing land shortage in Cheshire West & Chester is amongst the most severe in the country, describing the situation as “chronic” and therefore susceptible to being exacerbated by the 20% buffer that the Framework introduces in situations where there is a persistent record of under delivery [53-56]. From the tone and content of the recent Council reports referred to above, and the resolutions made, it is evident that the Council is keenly aware of the difficulty and the potential consequences. Moreover, the peculiar difficulties that have been associated with the recession in this context have only served to aggravate what appears to be a markedly poor performance in terms of housing delivery. Paragraph 3.5 of the Council’s Housing Land Monitor (Interim Report) 2011-2012<sup>9</sup> puts it as follows: *“The level of completions in the past few years has reduced because of market conditions, ironically at a time when the housing target for the Borough (no longer applied as a maximum target) has been increased substantially through the revised RSS published in 2008.”*
173. It seems to me that a policy shift from restraint to a more growth oriented strategy through the replacement of the Regional Planning Guidance RPG13 by the current RSS and the exigencies of local government reorganisation have combined to place the Council in the position of having to now robustly and urgently address its housing land supply. The scope for doing so in advance of comprehensively replacing the current local development plan (effectively a collection of inherited local plans for its constituent parts) with a coherent local plan for its entire area complemented as appropriate by neighbourhood plans is clearly limited.
174. Nevertheless, it is imperative that progress in this direction is both rapid and decisive. The Cuddington decision highlighted the inadequacies of the current supply and of the mechanism (set out in SPD2) by which the Council has previously sought to address the situation in respect of windfalls, along with the dearth of development on allocated brownfield sites. The Inspector’s paragraphs 18 to 21 describe the situation very clearly and that is not a site-specific matter peculiar to that appeal, but rather a general conclusion applicable to the whole of Cheshire West & Chester. But, in the meantime, decisions on specific housing proposals, including appeal decisions, must continue to be taken. In this case, I have no reason to doubt that the circa 100 houses proposed (30% of which would be affordable) would rapidly feed into the necessary overall housing land supply for the Council’s area of jurisdiction. There is no evidence to suggest that the land would not be sold on to appropriate housing developers and a permission subsequently implemented, notwithstanding current economic difficulties.
175. The Parish Council not only recognises the attractiveness of Tarporley to developers but also the need for additional development and in context of the

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<sup>9</sup> TPC 14

latter consideration prefers the Brook Farm School site [107]. However, I have no evidence to demonstrate that the development of the appeal site would necessarily inhibit the prospective development of the former Brook Farm School (a site that is centred on previously-developed land within the settlement boundary, albeit with the possibility of an exception for an affordable element just beyond). This is a site for which marketing particulars had been prepared by the Council at the time of the Inquiry<sup>10</sup> and which was shortly to be cleared. The development package anticipated would involve transfer of land to the Parish Council for use as sports pitches. Having visited the site (amongst others in the village and at nearby Utkinton) at the Parish Council's request, I have no reason to doubt its suitability for residential development. Whether or not it would be developed concurrently with the appeal site, if both were to be allowed, would depend largely on market circumstances at the time and the identity of the acquiring developer or land holding company as the case may be.

176. Both sites would contribute in a small but significant way to the satisfaction of overall identified housing need at the present time (i.e. a five year deliverable supply with 20% buffer). The ultimate question for the Secretary of State is not whether the sites would compete but rather whether the appeal proposal should, on its own merits, be allowed. That question goes beyond simply whether further housing is needed in Tarporley specifically at the present time (a need that the Parish Council accepts in principle, including the need for affordable provision) to encompass the factors considered above and subsequently. While it is acknowledged by the Parish Council that some additional housing is needed in Tarporley [111-113], I consider the potential consequences of satisfying such need on the appeal site, specifically, to be the decisive factor in this appeal.

### ***Issue v) Sustainability***

177. The Council ranks Tarporley as amongst the more sustainable settlements within its area so far as existing services are concerned [61], perhaps reflecting its character and relative isolation as a large village with an extensive rural hinterland, standing apart from the main Cheshire towns. The draft Settlement Hierarchy Report (**CD27**) which was published for consultation in 2009 includes a preliminary assessment of settlements according to the range of services currently present. It explains at paragraph 4.3 that the next stage in the development of the settlement hierarchy is *"to look at the accessibility of each settlement in terms of access to public transport, access to other centres from each settlement and existing constraints for development"*. Tarporley's ranking as 6th in the table at Appendix 3 to the document does no more than reflect local service provision and, important though such considerations are, I would hesitate to place undue weight on that one factor in assessing the overall sustainability of the village as a location for future development of significant scale.
178. Tarporley lacks a railway station but the conurbations of Merseyside and Greater Manchester and the towns in between associated with the Mersey Valley are relatively accessible by car; and commuting by that mode would be relatively straightforward for those prepared to contemplate the relevant journey on a regular basis. The No 84 bus, as explained in the evidence of Mr Wooliscroft, provides a regular service to the Cheshire towns of Crewe and Nantwich, and the city of Chester. Within Tarporley, the appeal site is within comfortable walking distance of the village centre and its range of services, albeit that the linear

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<sup>10</sup> Document 4

nature of this may discourage some, as would be the case with both existing development on the outer fringes of the settlement and other potential development sites towards its northern, eastern and southern extremities. In this respect the site does compare well with the Brook Farm School site, as the evidence of Mr Wooliscroft demonstrates. However, the size of the settlement places most of it within a reasonable distance of at least part of the centre in any event.

179. Sustainability is of course a multi-faceted concept and in this case the Council's committee report of 17 April 2012 (**CD21**) on the duplicate application includes at Appendix B (CD **21.3**) the appellant's Sustainability Matrix for the appeal site. Under the 'Sustainability Outcome' column the existence of a tick in each and every box indicates a high degree of accordance with relevant criteria, albeit this is not a systematically comparative weighting exercise in the manner sometimes deployed for development planning purposes. (As exemplified by the Council's exercise, described above [177], to rank the level of services in different settlements.) It is nevertheless a useful checklist which draws on, amongst other things, the most authoritative policy statement concerning sustainable development nationally, the recently published Framework.
180. The Ministerial foreword to the Framework defines what is meant by sustainable development in the context of the statutory planning system, including positive aspirations for growth and economic development, and indicates that the Framework itself sets out clearly what could make a proposed plan or development unsustainable. However, I consider it to be a far more subtle and complex judgement in any particular case than a simple checklist. In evaluating how sustainable the proposed development is, I take the Framework and its intentions as a whole, as they are expressed under the heading "Achieving Sustainable Development" and encompassing amongst all else the Core Planning Principles set out at paragraph 17.
181. Beyond those principles and the presumption in favour of sustainable development, it seems to me that the most relevant sections of the Framework in this particular case are 1, 3, 4, 6, 7, 8 and 11 and I consider that the proposed development measures up against those as follows.
182. *Economic considerations* (Section 1) are clearly very important indeed, not least because of the current difficulties faced by the country as a whole and the local stimulus that the development of an undeniably attractive and marketable site such as the appeal site would deliver in that context. It is a consideration that must attract substantial weight but it is no part of the Framework's intention, as I read it, that economic considerations should necessarily prevail over all other considerations. As a matter of logic that would be self-defeating in a document that aims to guide the planning balance that sustainable development necessitates.
183. *A prosperous rural economy* (Section 3) is dependent amongst other things on the vitality of and range of services within settlements such as Tarporley. While additional housing in Tarporley on the scale proposed would doubtless help to underpin existing and new enterprises in the village, I have no evidence that there is any current lack of demand or customer base to support a good range of services in this attractive rural settlement. The weight to be accorded to the economic effect of additional population per se is therefore relatively limited.
184. *The promotion of sustainable transport* (Section 4) is a cornerstone of land use planning policy as expressed in the Framework and reflected in its core

planning principles which aim, amongst other things, to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable. There is no reason to consider that the appeal site's location would discourage walking or cycling within the locality and bus services, albeit limited, are available to certain urban areas as previously detailed [178]. Although land within the LPPB or defined policy boundary is considered to be a Tier 2 location for the purposes of established local plan policy, and Tarporley has been mooted (CD18.2) as being within the 'market town and key service centres' category for the purposes of the emerging core strategy, it appears that the Council's progress on that has not yet crystallised the scale of growth to be accommodated in the Borough as a whole, let alone its individual settlements. The Council's aspirations for growth in *Unleashing the Potential* (CD 16) may prove influential as far as the former is concerned and the Preferred Development Option Report (CD18.2) indicates total housing provision for the rural area as between 4,935 and 5,745 new dwellings over 15 years, dependent on whether or not the RSS backlog is to be accommodated. Pages 64 and 65 of the document conclude with the comment that... *"It is the intention that this figure will be apportioned out between the Market Towns and Key Service Centres (Neston and Parkgate, Helsby, Frodsham, Tarvin, Kelsall, Tattenhall, Farndon, Tarporley and Malpas) with the remainder of the rural settlements being allowed a limited level of development."*

185. At page 20 the same document explains... *"whilst the Core Strategy has identified five spatial areas it is recognised that these areas do not necessarily reflect the relationships between settlements and their rural hinterlands in terms of housing market, local economies or travel to work patterns etc. The function and role of places in the wider context will be taken into account, for example whether employment land in one area can meet the needs of another area. In the rural area (my emphasis) the allocation of sites will take account of a settlement's relationship to other major employment centres/areas. Where compatible with other strategic policies, including Green Belt policies, small-scale allocations can be made in market towns and to extend existing employment areas."* It seems to me the essence of strategic spatial planning to look at the distribution of employment and housing in that way and, furthermore, to consider it in relation to public transport networks and investment programmes, certainly if, as intended, patterns of growth are to be managed to make the fullest possible use of public transport.
186. Therefore, while I consider it reasonable to assume continued growth at Tarporley, it seems to me that the scale and pace of such growth relative to other settlements, the location of employment and the availability of public transport is an important matter yet to be properly addressed through the development plan process. Especially bearing in mind the obvious attractions of the village to relatively footloose car-borne commuters, its comparative remoteness from major centres of employment and its lack of a rail connection to any such centre, I consider a degree of caution is necessary in that particular context regarding the sustainability credentials of the proposed development taken together with other possibilities, both known and unknown, for future housing development. Too large an influx unrelated to local needs and readily accessible employment could unduly encourage car-borne commuting to essentially urban locations of varying degrees of remoteness.
187. For these reasons, while I acknowledge the connectivity of the appeal site within the village itself [63], I remain sceptical as to how far the proposed

development would in reality promote sustainable transport choices and thereby contribute to the achievement of that particular facet of sustainability. Notwithstanding that 30% of the housing would be affordable and likely to contribute to more local needs in that regard, such doubts weigh against the proposed development in the absence of a clearer indication of the appropriate scale of additional development in this part of the Council's area.

188. Paragraph 10 of the Framework emphasises that plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas; and in Tarporley's case it seems to me that owing to its freestanding position, its nature and its distance from major employment centres, the appropriate scale and pace of growth is intimately bound up with considerations such as those I have outlined above.
189. *Delivering a wide choice of high quality homes* (Section 6) is a fundamental aim of the planning system and its success in achieving that aim is, by any standards, a key measure of its contribution to national well-being, including economic prosperity. I am in no doubt as to the importance placed on that in the context of the Framework's intentions to promote sustainable development and sustainable patterns of development. The proposed development would deliver a variety of homes, around 30 of which would be affordable, on a single site that, within the context of Tarporley itself, may be considered a sustainable and well connected location.
190. The homes proposed would be sustainably constructed in accordance with rising aspirations and standards and I have no doubt that they would be quickly delivered and thereby contribute to reducing the significant deficit in supply that Cheshire West & Chester and the communities within its area must urgently address. Insofar as addressing such needs is part of the sustainable development equation, the proposed development would accord with the relevant intentions of the Framework in that regard.
191. *Good design* (Section 7) is also a matter of great importance and a component of sustainable development. This application is in outline and all matters except access are reserved. While much was made by the appellants of the virtues of the illustrative layout proposed in responding to the circumstances of the site, the appeal is primarily concerned with the principle of developing the site. Although the illustrative material including the development framework and illustrative masterplan are useful aids to assessing the potential of the site to accommodate the quantity of houses anticipated, as is the Design and Access Statement, a detailed design of the scheme was not before me.
192. Nevertheless, there is sufficient information regarding the appellant's intentions to give me cause for serious concern as to the approach proposed to be adopted. While I am conscious that the appellant's landscape designer has sought to maintain opportunities to view the Cheshire sandstone ridge, and Beeston Castle in particular, and that the Council's landscape officer is content with the approach, I am also conscious that local residents and to a limited extent the Parish Council have drawn attention to potential damage to the character and appearance of the rural southern approach to the village as a consequence of the topography of the site [144, 95]. Having taken the views of all parties into account and having considered this matter with the benefit of my visit to the site, the village and its surrounds, I have strong reservations about its capacity, in principle, to accommodate the number of dwellings proposed, in the

form of a single and relatively uniform estate, without unacceptably harming the character and appearance of the area.

193. In plan form, as has been pointed out by a third party [137], the site looks deceptively logical as an extension to the village, neatly contained by the A49 which now by-passes it, but the world is experienced in three dimensions. The site forms a prominent feature on the rural approach to the village from the south along Nantwich Road, elevated land rising above the hedgerow, initially, and then towards the distinct ridge that is acknowledged (by the Village Design Statement) to be marred by the line of houses across the skyline at Spring Hill, which create a harsh edge to the village in the wider scene. The convex land form [13] dominates the hedgerow boundary with Nantwich Road and rises towards the skyline beyond between Spring Hill and the cutting for the A49.
194. Much of the proposed housing would be on the most elevated parts of the site (an inevitable characteristic, given the number and type of houses envisaged) that the appellant responds to by proposing to lower the highest part of the site. While this could simply involve a redistribution of the excavated earth, it is hard to envisage the scope within the site to comfortably accommodate it and no specific cut and fill volume calculations have been undertaken, it transpired in response to my question on the point. It may be that considerable quantities of earth would ultimately have to be removed from the site to lower the base on which development is envisaged, albeit graded upwards towards the properties on Spring Hill and the existing top of the cutting for the A49, which would then tend in part to be an embankment bounding the south-west margin of the developed area.
195. This seems to me to be an inherently clumsy approach to this uncomfortable relationship of the proposed development to the underlying topography and as such is not characteristic of Tarporley as a whole, which, in general, appears to have grown in a fairly organic fashion in response to the underlying landform. While I do not consider that the landform of the appeal site necessarily rules out some development, I am sceptical as to the ability of the scheme as conceived to effectively soften the hard edge to the village identified in the Village Design Statement in the manner claimed. It seems to me that the result of what is proposed would be a swathe of housing on the lowered but nevertheless elevated ground that would be unduly conspicuous and overbearing in the general prospect on the southern approach to the village unless it were to be inordinately heavily screened in the longer term along the Nantwich Road boundary and within the body of the developed area (albeit less conspicuous from the countryside to the south and to the west of the A49, owing to existing features and greater scope for screening along the margins of the by-pass.) I acknowledge that the appellant has sought to address views out to Beeston Castle [64] but, notwithstanding recognition of such views in the Village Design Statement, the particular emphasis on that element of the site's context is misconceived in my view, when the dominant prospect would be the more immediate and routinely experienced prospect of the site itself, at the edge of and southern approach to the village, as proposed to be developed with housing.
196. In short, achieving a satisfactory design and layout for the site as viewed on approach to the village along Nantwich Road would be a major challenge, certainly so far as development on the scale proposed is concerned; and I am not persuaded that the approach currently proposed, albeit without firm commitment, would satisfactorily meet it as the appellant contends. Insofar as achieving good design and the promotion of environmental quality is a

component of sustainability, this shortcoming weighs heavily against the proposed development in principle. Alternative approaches to the scale and disposition of development within the site could no doubt be explored but I am constrained to consider what is clearly intended. Consequently, I do not accord weight to the claimed benefit of softening the hard edge to the village that has been identified at Spring Hill in the Village Design Statement. It seems to me that to replace that hard edge with a prospect of development across the ridge (notwithstanding that this would be lowered) in the manner indicated is fraught with aesthetic disadvantages, effectively making the situation worse rather than better. I consider development on the scale proposed, while making efficient use of the site, would, as a consequence, permanently harm the character and appearance of the southern approach to the village along Nantwich Road. Although this immediate area is not subject to any specific designations, such considerations are weighty nonetheless, being integral to the development plan (RSS policy DP7 and local plan policy BE1) and embedded, moreover, in the core principles of the Framework.

197. However, the layout proposed is conceptual at this outline stage and I consider that my reservations could be overcome by the imposition of a condition designed to ensure that, by varying density across the site so as to sensitively address the existing and potentially adjusted topographic variation as perceived primarily from Nantwich Road (but also land to the east), the design and its capacity to develop varied landscaping integral to the most prominent housing, notably in larger gardens, whilst complementing such low density housing with more compact forms of housing development, would facilitate a more organic and pleasing impression at the southern entrance to the village. Over time, I consider that, if well executed at detailed design stage in line with such an approach, the proposed development could settle harmoniously into the locally distinctive character of Tarporley consistent with its most attractive areas. This would be more sustainable and hence acceptable. While such an approach should address the concerns of those who perceive the proposed development to be simply another housing estate on a sensitive and prominent site, I consider it to be a necessary safeguard in any event.
198. *Healthy Communities* (Section 8) are a manifestation of sustainable development and, insofar as the proposed development provides for mitigation of its impact on playing field provision through the planning obligation, there is no harm to the intentions of the Framework in that respect. The community expectation of involvement in planning decisions and, in particular, neighbourhood planning as described in paragraph 69 of the Framework, is a less tangible consideration in the assessment of sustainability but I am in no doubt that in this case it is a very relevant consideration nonetheless, for reasons which I address in due course.
199. *Conserving and enhancing the natural environment* (Section 11) is a further aspect of sustainability relevant in this case, the evidence being to the effect that with translocation of the valuable hedgerow between the site and Nantwich Road as part of the landscaping scheme that would require approval, and the careful choice of species and management of planted areas, the biodiversity value of the site would be positively enhanced relative to its function as agricultural land. Although biodiversity value is dynamic in nature there is no evidence of significant harm in terms of the site's current value, whereas loss of best and most versatile land would be harmful in land resource terms.



200. *In conclusion*, although development of the appeal site would have some significant benefits according to the tenets of the Framework, the picture is mixed with, by the same token, some significant disadvantages also. I am therefore unable to conclude that its development would be wholly advantageous from a sustainability viewpoint. The factors which support the contention that it is sustainable (and hence a presumption in its favour) are, in my estimation, by no means as universally strong as the appellant suggests, albeit I recognise that the sustainability of any proposal is its position within a spectrum to which numerous factors contribute. With such considerations in mind I have read the appeal decision at Clitheroe referred to by the appellant.<sup>11</sup> However, that seems simply to support my view that sustainability is a multi-faceted concept. The specifics of the decision are of limited relevance to this case and Tarporley which, apart from anything else, is a village in rural mid-Cheshire and not the main urban settlement of the Borough, a factor which was clearly influential in the Inspector's reasoning in that case. The proposed development in this case, when critically reviewed against the intentions of the Framework as a whole, has, for the reasons given above, some significant disadvantages in sustainability terms. However, leaving aside the strategic spatial issues yet to be resolved through the development plan and bearing in mind the scope for attaching planning conditions, it may, broadly speaking, be placed in the positive end of the sustainability spectrum, albeit the loss of BMV land remains a negative factor.

***Issue vi) Material considerations relevant to the planning balance***

201. Notwithstanding that the definition of defined policy boundaries in the local plan is predicated on sufficient land being allocated or available within them, I have concluded that the proposed development does give rise to serious tensions with the development plan as it currently exists, as originally concluded by the Council's Spatial Planning Team, and as I have additionally concluded in respect of environmental quality [196]. It would be at odds with the broad intentions of the development plan in many ways, as I have previously detailed [149-154]. It cannot be said to generally accord with extant policy. I note, moreover, that the Council acknowledges that the proposed development would be a departure from the development plan [87].

202. On the other hand, on the basis of its own analysis, the circumstances facing the Council are such that it cannot demonstrate a five year supply of deliverable housing sites. It is reviewing the matter urgently, including the criteria for inclusion such as the historic contribution of windfalls and small sites. However, at the time of the Inquiry, there was no cogent evidence to suggest that the supply was in fact improved or improving to the point where there is any reasonable prospect of the deficit being eliminated or even substantially reduced [168-176].

203. There are no 'technical' impediments to the development of the appeal site that cannot be addressed by planning condition. That fact is reflected in the lack of objection from any statutory consultee [49]. Moreover, in my estimation, the proposed signalisation of the Nantwich Road/A49 junction, by enabling periods of controlled priority for right turning traffic out of Nantwich Road, would influence traffic in a positive fashion. Drivers from the southern part of the village would be less inclined to access the A49 at the roundabout the north of the village via High Street and Rode Street.

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<sup>11</sup> Appendix 1 to evidence of Mr Twigg (Ref APP/T2350/A/11/2161186)

204. Being to the south of the village, the site is not within the Area of Special County Value for Landscape. It is not identified in the Village Design Statement as an area of Important Open Space.
205. Nevertheless, the site is part of the rural surrounds to the village outside its defined policy boundary or LPPB and undoubtedly, owing to its position, topography and prominence, influential in its contribution to the rural ambience of the main southern approach to the village and its overall setting.
206. Bearing those factors in mind, and notwithstanding the views of the Council's landscape officer and the appellant's landscape witness, I have, giving due regard to the local context and character of the area, strong reservations about the visual impact of developing the site in the manner that has been indicated, for the reasons I have previously given, albeit I consider the matter could be addressed by condition [192-197].
207. The site is self-evidently greenfield, and is BMV land, albeit in an area where land of that quality is indicated to be characteristic.
208. The site has no planning history and has never been drafted for inclusion within any allocation or the settlement boundary. Unlike other sites within and around Tarporley, the site has not previously been mooted as a development possibility in the SHLAA, but I have no doubt as to its availability, developability or attractiveness to the market. It is, on the face of it, eminently deliverable [174].
209. Broadly speaking, it is at least as convenient for the village centre as many parts of the village already developed for housing. Leaving aside the wider question of Tarporley's role in accommodating housing relative to employment opportunity, the site is adequately accessible to services and facilities locally [177, 178].
210. It would deliver up to 30 affordable homes in an area where such homes are demonstrably necessary and recognised to be so by the Parish Council [113].
211. On a number of measures of sustainability set out in the Framework, the proposed development has advantages. It also has disadvantages in this context, as I have identified. It is certainly not wholly unsustainable therefore, but it also has serious shortcomings in sustainability terms [200].
212. The local community, as represented by the Parish Council, is in favour of further development in Tarporley, including to address the need for affordable dwellings. This is evidenced by its support for the prospective but as yet uncommitted Brook Farm site, and developments that have previously been allowed [106,112].
213. The Parish Council has been notably vigorous in pro-active community-led planning, as evidenced by the Village Design Statement and Parish Plan. It is now keen to pursue the statutory opportunity to prepare a neighbourhood plan and has been granted Front Runner status in the context of the Government's initiative in that respect [105].
214. In response to my question, the Parish Council's representative conceded that it was not inconceivable that the site could ultimately be brought forward in some form through the neighbourhood planning process.

215. The questions remain therefore: Why is there such vigorous opposition to the proposed development? What is the basis for that opposition? How material are the Parish Council's particular concerns and, ultimately, should they, along with other concerns voiced by local residents be decisive in this instance?

216. Leaving aside concerns around housing land supply, about which the conclusions I have previously drawn are clear, the main thrust of the Parish Council's case, as I understand it, and as it relates to the issue of material considerations, may be organised for consideration under the headings of 'Localism' and *Precedent and Prematurity*.

### *Localism*

217. The term 'Localism' is not a planning term in the sense of being statutorily defined as such. Nor does it feature in the glossary to the Framework. However, I am in no doubt whatsoever that the concept is a material consideration.

218. First of all the Localism Act 2011 provides for neighbourhood plans as part of the statutory development plan.

219. Secondly, the first of the 'Core Planning Principles' set out in paragraph 17 of the Framework is that planning should... *"be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency."* The meaning and intention of that principle is very clear to me. The words may be taken to mean exactly what they say.

220. Moreover, the DCLG document *An introduction to neighbourhood planning* (**Doc 6**) advises, under the heading 'Why does it matter', as follows...

*"The planning system helps to decide what gets built, where and when. It is essential for supporting economic growth, improving people's quality of life, and protecting the natural environment.*

*In theory, planning has always supposed to give local communities a say in decisions that affect them. But in practice, communities have often found it hard to have a meaningful say. The Government wants to put power back in the hands of local residents, business, councils and civic leaders.*

*Neighbourhood planning is optional, not compulsory. No-one has to do it if they don't want to. But we think that lots of people will want to take the opportunity to influence the future of the place where they live or work."*

221. The advice in the document goes on to say that... *"In areas with a parish or town council, the parish or town council will take the lead on neighbourhood planning. They have long experience of working with and representing local communities."* In the case of Tarporley this is demonstrably the case, as is evidenced by the preparation of the Village Design Statement, subsequently adopted by the local planning authority as Supplementary Planning Guidance. The document is also explicit regarding the scope of neighbourhood plans. It says... *"once a neighbourhood plan is in force, it carries real legal weight"* and it explains that... *"If the local planning authority says that an area needs to grow, then communities cannot use neighbourhood planning to block the building of*

*new homes and businesses. They can, however, use neighbourhood planning to influence the type, design, location and mix of new development”.*

222. The Parish Council has clearly opted to take the opportunity presented by neighbourhood planning and has been granted resources to assist in that endeavour through Front Runner status. I have no doubt as to its seriousness of intent. Insofar as neighbourhood planning, as portrayed above by the relevant documents, is without doubt a statutory manifestation of ‘Localism’, the relationship of the proposed development to the concept is plainly material. Neighbourhood planning features centrally within the Framework.
223. In that context the Parish Council has presented a case [88-116] which includes the proposition that to allow an appeal which represents a large scale development outside the confines of the established LPPB, reflected in the Village Design Statement, overriding the expressed opposition of a great many village residents, would effectively render the neighbourhood planning process pointless, contrary to the ‘Localist’ intentions of the relevant legislation and the Framework. It would take a major decision about the future location of development affecting the village out of the purview of the neighbourhood planning process. The community would have no ‘ownership’ of its planned future if that it is pre-empted by the decision and others that could follow. Moreover, the damage that would be inflicted on the neighbourhood planning process in its infancy would be widespread, it is said, with repercussions far beyond Tarporley. Local communities who might otherwise wish to take control of their own planned futures would be comprehensively de-motivated.
224. I have no specific evidence of the wider ramifications predicted by the Parish Council (albeit I can well appreciate the logic.) However, from all that I have heard and seen of the Tarporley situation, I am in little doubt as to the damage that would be visited upon its neighbourhood planning process. In the light of the foregoing advice, and the intentions of the Framework, I consider this to be a material consideration that merits substantial weight. The Secretary of State has recovered [3] a relatively small (but locally very significant) proposal for housing development because it involves proposals giving rise to substantial regional or national controversy and which raise important or novel issues of development control, and/or legal difficulties. The Parish Council has put the very direct proposition as previously summarised [114] to me that the harm it considers it would cause, should, as a matter of judgement, when considered against the benefits, lead to its rejection [115]. I am therefore obliged to confront that matter equally directly so as to enable the Secretary of State to form his own judgement on a fully informed basis. The matter, having been put in that particular way by the Parish Council cannot be avoided. I return to it in my ultimate conclusions [275 -292].

#### *Prematurity and Precedent*

225. Prematurity and precedent are similarly concepts that essentially concern matters of process rather than substance, but process is inescapably important in planning because it must resolve competing and conflicting views on the use and development of land, with very real consequences for individuals, communities, businesses and the environment, as is clearly recognised by the document *An introduction to neighbourhood planning* referred to above [219,220].
226. The Framework is silent on the matter of prematurity but *The Planning System: General Principles* is not. The principles, as opposed to hard and fast rules, are set out in paragraphs 17 – 19. Consistent with the Cuddington

Inspector, I take the view that the number of houses involved, by comparison with those that have to be accommodated now and in future through the core strategy for Cheshire West and Cheshire as a whole, is neither unduly significant nor pre-emptive. However, the circumstances of this appeal site at Tarporley are, for reasons I have previously explained, very different from those prevailing at the Cuddington site where the scheme appeared to... *"generally accord with extant and emerging policies, at least as currently mooted"*.

227. Although Tarporley may experience some planned expansion in future, there is nothing published to suggest that this site would necessarily be considered appropriate for development in that context, whether through the core strategy, the neighbourhood plan or any other document. Refusal on the grounds of prematurity will not usually be justified, other than in the circumstances set out in paragraph 17 of the *General Principles* document. Where it is not, significantly, applications should, according to paragraph 18, continue to be considered in the light of current policies, which, at the local level (but for the difficulties over housing land supply) in this case clearly militate against its release.
228. While a single site of circa 100 houses is relatively insignificant in the face of the requirement for the Council's area as a whole [18], for a freestanding rural village the size of Tarporley it would represent a major single increment of growth which would expand the boundaries of the settlement in a substantial way. It would certainly pre-empt any consideration that the neighbourhood plan might give to that matter, regardless of other choices that could be made and detailed survey information, for example, concerning the agricultural quality of other greenfield sites that might be considered as potential candidates for development.
229. The appellant maintains [50] that it is "impossible" to sustain a prematurity objection in respect of the neighbourhood plan. However, in view of these factors, and the advice of paragraph 17 of the *General Principles* document, which recognises that both the cumulative and single effects of proposed development could prejudice a development plan document by predetermining decisions about the scale, location or phasing of new development, I am, for the following reasons, not persuaded of such impossibility.
230. First, *General Principles* was published in 2005 and, whilst it remains current, it has to be recognised that the new element in the development plan that the neighbourhood plan represents had not been facilitated by legislation. Secondly, it is logically the nature of neighbourhood plans that their level of focus is intensely local, and therefore proposals that are relatively insignificant in the bigger picture are immensely significant in their effect at the neighbourhood scale to local people opting to prepare one. The document says that a proposal for development which has an impact on only a small area would rarely come into this category, but it is logical that in terms of the scope of the prospective neighbourhood plan for Tarporley alone, the scale of development that might reasonably be considered significant for prematurity purposes relative to the Development Plan Document in question must be reduced by the fact that it is only concerned with the neighbourhood.
231. The fact that there was at the time of the Inquiry, no draft of a neighbourhood plan for Tarporley that could address the cumulative and single effects of any proposed development does lead me to the conclusion that prematurity alone could, according to the tenets of the *General Principles*

document, not outweigh the need for the development. Nevertheless, the document, self-evidently, sets out general principles rather than prescriptive rules and these must therefore be applied with discrimination to particular circumstances. In my view, for the above reasons, there is an element of prematurity that does weigh against the proposal given the scale of the development, its location relative to the current limits of the village and the firm intention that a neighbourhood plan is to be prepared as the Council's core strategy progresses. This conclusion is given added force, in my view, by the fact that neighbourhood plans are such a recent phenomenon in a statutory sense, and hence even plans in the Front Runner category may not have had an opportunity to reach a significant stage such as proposals for consultation.

232. Precedent is a concept frequently canvassed by parties to application and appeal proceedings and, while it is true to say that consistency as between decision makers is self-evidently important, it is also true to say that the circumstances of individual applications and appeals are rarely identical, as I have noted locally in respect of the Cuddington decision. That said, the Cuddington decision was taken against a policy background that was different in any event, the Framework not having been crystallised as definitive national policy at the time. The Parish Council's argument [114] is that, in the context of current policy favouring neighbourhood planning and local self-determination against the background of more broadly based local plans, allowing this appeal would simply encourage other developers to effectively ignore the wishes of local communities as expressed through the development plan, by promoting greenfield sites outside settlement boundaries ahead of plan formulation, praying in aid inadequate land supply, thereby undermining other important planning objectives and discouraging the very process that the Government wishes to stimulate, i.e. responsible involvement by local people in the planning and sustainable development of their own communities.
233. I agree that, oft repeated, the unplanned release of greenfield sites could result in substantive planning harm in the sense of, for example, the excessive use of productive and in particular best and most versatile agricultural land to the detriment of, for example, the regeneration of brownfield sites. The Cuddington Inspector expressed some doubt as to the likelihood of significant unplanned development in the countryside, partly on the basis of current market conditions and partly on the basis of the greenfield sites identified in the SHLAA being constrained in the short term, and I have no doubt that the worst dangers of a 'free-for-all' are limited by current market circumstances. On the other hand, there will be many unidentified greenfield sites that have previously held little 'hope value' simply because a firm planning framework has been in place, notwithstanding that many of the rural settlements and their environs in the Cheshire West & Chester area could reasonably be expected to be highly attractive to house builders and commuters. By their very nature, the aspirations of landowners in such circumstances are not generally evident at present. As the economy and the housing market improve, as they eventually must, however, I do foresee that attention could well be deflected from existing and (importantly) forthcoming land allocations if it is perceived that permission would be readily granted in the countryside outside plan-defined settlements.
234. Therefore, while the matter of precedent should not be exaggerated, especially as the Framework provides many safeguards through the overall requirement for sustainability, I am less inclined, in the circumstances of rural Cheshire, to discount the dangers inherent in it than my colleague was in

determining the Cuddington appeal. It is also a material factor to be weighed in the balance.

## **Potential Conditions and the Planning Obligation**

### *Potential Conditions*

235. Without prejudice to my overall conclusion and recommendation as set out below and the Secretary of State's ultimate decision it is necessary to first consider the matter of potential planning conditions and these were discussed with the parties at the inquiry on that basis, having regard to the advice of Circular 11/95 *The Use of Conditions in Planning Permissions*. Should the Secretary of State be minded to allow the appeal and grant planning permission, I would recommend, in the light of the following paragraphs, that the conditions set out in the Annex to my report be imposed.
236. The appellant and the Council jointly prepared a revised schedule (Doc 15) of suggested conditions (SC) to inform that discussion.
237. As the application is in outline with all matters reserved except access, the standard approach to the submission of reserved matters within the usual timescale would be necessary, together with reference to such plans as are relevant at this stage, namely the location plan and the design of the access. Being outside the application site the necessary signalisation of the Nantwich Road A49 junction would have to be addressed by a negatively worded or 'Grampian' condition restricting occupation of the dwellings until such time as it had been implemented. The SC34 as drafted to require implementation of the signalisation scheme prior to the occupation of the dwellings is, in part, positively worded and would need to be imposed in an amended form as the works are outside the site.
238. A particular difficulty stems from the detailed case that was put in respect of the layout and design of the site when in fact there is no formal commitment to that in the application itself, the layout being illustrative. The Design and Access Statement creates a vision of how it is currently intended to proceed, but ultimately a much greater degree of flexibility in addressing the reserved matters, especially in view of the topography I have described and my serious reservations in that context regarding the scale and disposition of the development currently intended, would be necessary. I do not therefore consider that it would be appropriate to tie outline permission to, for example, the principles embodied in the Design and Access Statement as expressed through the development framework and illustrative masterplan drawings. The need to develop the site, which is visually exposed and at the main southern gateway to the village, with appropriate sensitivity, would remain paramount. Moreover, notwithstanding the need for flexibility and the avoidance of undue prescription, I consider, for reasons previously addressed at [192-197], a condition is necessary to secure the overall principle of relating housing density appropriately to the topography. I have suggested the precise terms of such a condition in the Annex at 3) and the Secretary of State may consider it necessary to consult the parties on the suggestion as it was not discussed at the inquiry [275].
239. The scale of the development would necessitate the SC35 regarding phasing. SC6 regarding drainage would be necessary in principle but in practice a much simpler form of condition simply requiring a scheme of sustainable drainage to be approved by the Council would be preferable. The condition as drafted is unnecessarily prescriptive at this stage and would inhibit the

development, potentially, of optimum solutions at detailed design stage. Moreover, SC31 partially duplicates this condition and the SCs would be better combined in one straightforward condition.

240. SC7 to protect the ecology of Wettenhall Brook would be necessary, as would an appropriate form of condition to protect retained trees along the lines of SC8. Supplementary to the standard form of approving landscaping as a reserved matter, full details of hard surfaces and planting with provision for replacement would be necessary as is standard practice (SC9 and SC10). It was agreed that the requirement to replace planted trees and shrubs would more appropriately endure for five years rather than four. A habitat and landscape management plan along the lines of SC28 would also be necessary to ensure the anticipated benefits were maintained in an agreed manner over time, complementary to the undertaking given to take financial responsibility for a period to be agreed with the Council. The timing of the necessary approvals would need to correlate and logically this should correspond with the undertaking not to commence development until the details have been resolved.
241. SC12 would require details of bat boxes to enhance biodiversity in accordance with relevant policy intentions and, if such enhancement is considered to be part of a balance of advantage, would be necessary; as would the proposed updating survey to ascertain whether special precautions would be needed to avoid harm to badgers during construction, together with the implementation of the special measures that might have to be taken. (SC13 and 14). SC15 is to avoid clearance of vegetation during the nesting season and would be necessary to protect biodiversity.
242. The scale of the proposed development would require a construction method statement of the type proposed in SC16 in order to protect the amenity of the area and nearby properties during construction and it was agreed that this would also need to address the routing of construction vehicles to avoid the High Street. Such a condition should also incorporate the substance of SC5 regarding the phasing of construction works. SC18 and SC19, which respectively address the mitigation of noise from the A49 and the potential for light pollution, would also be necessary. However, all that would be required for present purposes is a requirement that schemes be approved by the local planning authority.
243. SC20 would require a scheme for the provision of affordable housing to be approved prior to the commencement of the development. Affordable housing is presented as a persuasive benefit and it would be necessary to secure its inclusion in the scheme. It is more usual to address the matter through a planning obligation but the use of a condition is a perfectly good means to that end. Similarly, the necessary provision for children's play can be secured by condition as suggested in SC21.
244. The topography of the site would exert a major influence on the appearance of the proposed development and its visual impact on the village and its surroundings, as well as the manner in which individual dwellings relate to their immediate environs and neighbouring dwellings and their occupiers. SC23 concerning levels would be of critical importance to these considerations and would appropriately be expanded in scope to encompass maximum ridge heights, thereby addressing the substance of discussions at the Inquiry as to the control of the heights of the houses. I consider this to be preferable to controlling the number of storeys, as it allows for more flexibility in house design, whilst



safeguarding the important matter of overall appearance in relation to the topography.

245. The appellant does not consider the provision of public art (SC24) to be necessary to safeguard the openness and visual amenity of the countryside or the protection of visual amenity as suggested by the Council and I agree that such a condition would be unnecessary and unjustified. To the extent that these concerns can be addressed if the development takes place, the design and layout of the development should do so.
246. A condition requiring Code level 3 houses (SC25) in the interests of sustainability may reasonably be imposed if that reflects the developer's intention ahead of any Building Regulations requirements and there is no dispute in this case between the appellant and the Council. SC26 regarding utilities infrastructure seems to me to be a necessary means of ensuring that this is designed into the development at the outset. Similarly the detailed execution of enclosure and boundary treatment within the site would be important to the character and appearance of the proposed development and would need to be controlled in the manner suggested.
247. SC29 is a standard form of condition requiring the approval of building materials to be informed by the provision of samples and this would be necessary as would a condition (SC30) requiring the provision and retention of parking spaces within the proposed development.
248. SC32 concerning access details is partly catered for by the inclusion of access for determination at this stage but the additional off-site elements and detail, together with implementation at the right time, need to be secured through a Grampian condition and closure of the existing field gate and consequential reinstatements would necessarily be secured through the SC33.
249. The refinement of the list of suggested conditions by the appellant and the Council has resulted in SC11, SC 17 and SC22, as originally drafted, being combined with others. I do not consider any additional conditions would be necessary. The upper limit on the number of houses is integral to the terms in which the application was lodged and there would be no need to duplicate that.

### *Planning Obligation*

250. The unilateral undertaking submitted essentially contains three elements. I am satisfied that the commitment to finance the establishment and ongoing maintenance for an adequate period of the structural landscaping and amenity areas proposed, appropriately correlated with phased occupation of the dwellings, is necessary and proportionate and that the same be said of the contribution for playing pitches off-site to mitigate the impact of the extra demand in accordance with the Council's relevant formulae, explained under Agenda Item 12 in Appendix 2 to the SoCG. Weight may be accorded to these first two elements of Schedule 2 to the undertaking.
251. However, I am not satisfied that the proposed contribution to the improvements to the capacity of the Health Centre car park would be a necessary means of mitigating impact. Although the centre is relatively remote from the appeal site and would doubtless be visited primarily by car by new residents, there is no evidence that the capacity of the centre to deliver increased services or simultaneous appointments (thereby requiring more associated parking space) would be increased in response to the additional population specific to the appeal

site. I understand that extra car parking at the Health Centre has not been asked for by the Council's highways department and that the suggestion arose out of the appellant's community consultation exercise. It seems to me that the relationship between the scheme subject to appeal and the car parking required at the centre is tenuous and the suggestion somewhat opportunistic, notwithstanding that the appellant has for the time being agreed to it. It would not, in my view satisfy the requirements of Regulation 122(2) of the CIL regulations as defined. No weight should be accorded to this third element of Schedule 2 to the undertaking. The undertaking is drafted (Clause 4.2) such that, if the Secretary of State concurs with my view on this matter, I anticipate the obligation to make the 'Car Park Contribution' would be nullified in any event.

## **Summary, Planning Balance, Overall Conclusions and Recommendation**

### *Summary*

252. The appeal concerns the principle of developing the Nantwich Road site and, while I have taken all other matters raised into consideration, my recommendation turns on the main issues and material considerations I have identified above and the matters associated with them. It is not for me to comment on the specific suggestions [116] for planning practice proffered by the Parish Council.
253. The positions of the main protagonists, the appellant and the Parish Council, are as follows: The appellant essentially argues that the proposal represents sustainable development, the housing land supply is in chronic deficit, the relevant settlement policies in the local plan are therefore out of date and the presumption in favour of sustainable development is thus engaged, requiring that planning permission be granted, not least to aid economic recovery. The argument has an attractive simplicity. The Parish Council, on the other hand, essentially argues that, in the light of the weight of local opposition and the potential damage to the Government's intention, under the broad heading of 'Localism', that development should be genuinely plan-led by local people empowered to shape their surroundings, the appeal should be dismissed. This, in my view, is a more complex and subtle proposition. Stripped to its essentials, however, the dispute embodies an apparent tension between two important principles of the Framework which, on this occasion, have been portrayed by the protagonists as pulling in diametrically opposing directions. Both principles are highly material but must be considered in the light of and tempered by all other relevant factors. The question to be resolved therefore, bearing in mind the specific circumstances of the appeal site and the settlement of Tarporley, is the extent to which they influence the overall balance of planning advantage.
254. Those specific circumstances are, to my mind, of crucial importance, not least as I am conscious of the fact that decisions such as the one that must be made here are widely scrutinised by those who would promote development and by those who would resist it. But it seems to me that it is the very essence of 'Localism' that a 'one size fits all' approach is not appropriate, the general principles of the Framework notwithstanding. Therefore the decision should be taken on its own specific merits within the context of the Framework without necessarily constraining decisions elsewhere.
255. The Council essentially took a passive role in the proceedings, simply adhering to the line that it had resolved to support the application, even though it had subsequently refused an identical application in the light of changed policy circumstances, i.e. the publication of the Framework. It is not for me to consider

the merits of that refusal or the terms in which it was cast but, given that the application is effectively identical to the one subject to this appeal and the world had clearly, in the Council's view, moved on since its resolution of 21 February 2012, its position displays a certain lack of logic that inevitably diminishes the weight that may be accorded to it. Its formal position is one of support for the current proposal and cannot therefore be discounted. However, while I acknowledge the Council's acceptance of its officer's recommendation, I am obliged to form my own view on the specific merits of the submitted proposal and to take account of the arguments that were put by the Parish Council and others to the Inquiry which necessarily involves a range and balance of considerations that differs, notwithstanding my recognition of the force of the Council's case in respect of its housing land supply.

256. There are powerful arguments on both sides of the principal dispute between the appellant and the Parish Council and in the representations of local residents concerning conflict with development plan intentions concerning environmental quality and resource conservation, themes that are also central to the Framework. My ultimate recommendation is therefore on the relative balance of material planning harm and advantage. I arrive at that balance as follows: -

#### *Planning Balance*

257. The starting point is of course the development plan, to which due weight may for the time being be accorded, for the reasons I have given. Taking into account both its strategic elements as represented by the RSS, and the more spatially precise strategy and relevant development control criteria embodied in the local plan, I have concluded that there would be serious tensions and conflicts with its intentions if the appeal were to succeed, notably that the proposed development would be in the countryside outside the defined policy boundary or LPPB and not in the area intended to accommodate growth as a priority, that it would utilise best and most versatile land without fully informed consideration of opportunities that may exist for developing lower quality land, and that it would, in my estimation, unacceptably harm the character and appearance of the area if implemented in the manner currently intended, albeit I consider that imposing a suitable condition would provide adequate safeguards.
258. However (largely because, it seems to me, of the difficulties associated with certain allocated brownfield sites in the main urban areas and the march of events associated with the merging of the former councils and the significant uplift in house-building targets imposed initially through the replacement of the former RPG13 with the current RSS, albeit now used by the Council), it is plain that settlement boundaries associated with the local plan housing land supply policies in the former Vale Royal area and elsewhere in Cheshire West & Chester are in urgent need of comprehensive review. If adequate levels of development are to be catered for, now and in the future, the planned release of greenfield land appears inevitable.
259. How much and in what locations is yet to be resolved through the Council's core strategy or local plan which, if it is to promote and cater for housing development that is truly sustainable, must resolve the strategic issue of its spatial distribution relative to transport infrastructure and employment. Despite some inferences drawn from early work on the available options, there were no pointers of sufficient clarity and provenance at the time of the Inquiry to suggest what level of expansion would be appropriate for Tarporley, albeit a working assumption endorsed by the Parish Council is that some growth will be both

necessary and desirable. The scale and pace of that growth, however, is yet to be resolved through the development plan, which in Tarporley's case will include a neighbourhood plan, the Parish Council having been accorded Front Runner status in that respect.

260. There is a heavy onus on the Council and the local communities of Cheshire West and Chester, certainly those who, like Tarporley, have opted to take up the opportunity and challenge of neighbourhood planning, to resolve those strategic issues and local reviews and allocations as a matter of urgency, albeit a realistic view must be taken in the light of the considerably changed planning and administrative circumstances following the amalgamation of council areas and the increased housing requirements now in force (and the Tarporley Parish Council is ultimately constrained in finalising its neighbourhood plan by the pace set by the Council in respect of its core strategy.)
261. That onus is especially heavy in the light of the demonstrably poor performance of the Council in maintaining a five year supply of deliverable sites as previously required by national policy and now required by the Framework. The Council does not dispute the land shortage described by the appellant as "chronic" and although the Parish Council and others sought to cast doubt on the seriousness of the situation by querying, amongst other things, the methodology of calculating and the composition of the housing land supply, notably by reference to the contribution of small sites and windfalls, I was presented with no cogent evidence at the Inquiry to suggest that any reduction of the deficit in deliverable sites by such means would be anything more than marginal.
262. I appreciate that this is a somewhat technical area for participants, and the Council is set to urgently and comprehensively review the situation, but the fact remains that, at the time of the Inquiry, the Council and the appellant were at one in concluding that the deficit was large, as previously detailed. That is a matter which must carry significant weight in this appeal, as in any other. The economic imperative to stimulate house building and the demonstrable need, accepted in principle by the Parish Council, for affordable housing, are also matters of significant weight, as is the full range of benefits for the locality acknowledged by the Council [65-71]. Taken together, these elements merit substantial weight.
263. Invoking paragraph 49 of the Framework, the appellant rightly maintains that the housing land supply deficit is a powerful material consideration that potentially engages the presumption in favour of sustainable development.
264. While the appellant's case has been put on the basis that the proposed development is wholly sustainable, sustainability is a multi-faceted concept and a matter of degree. There are facets of sustainability (notably agricultural land considerations) that are on the negative side of the equation, but also others, notably the potential for biodiversity enhancement and potentially beneficial local traffic routing outcomes, that I would put on the positive side. There is also the broader sustainability question of the degree to which Tarporley should be expanded through general purpose, open market housing development that has yet to be answered through the development plan process, especially in view of its lack of a railway station and potential attraction to commuters.
265. Ideally, such strategic considerations should be resolved in the forward planning context, but planning is about delivering practical solutions in the present as well as preparing for the future. That is implicit in paragraph 14 of the Framework. Unless material considerations indicate otherwise, this requires,

where relevant development plan policies are out-of-date, as they are here in respect of housing land distribution and allocation, that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

266. Bearing that in mind, it is nevertheless a core principle of the Framework underpinning decision-taking that planning should be genuinely plan-led, empowering people (within the context of up-to-date and practical frameworks that they themselves may influence through, inter alia, neighbourhood plans) to shape their surroundings. Being a core principle of the Framework, it follows that such process is of itself a facet of sustainability, and without doubt a powerful material consideration in its own right. In a case such as this there is an inescapable tension, therefore, between the need for housing development to be plan-led at local level, including specific neighbourhoods, and broader strategic and national needs to promptly deliver sufficient new homes.
267. In many situations, circumstances may be such that those national and strategic needs for housing development can prevail without undue harm. In this case, however, I consider there are powerful arguments to the contrary.
268. Arguments concerning prematurity and precedent have been put by the Parish Council to which I accord some limited credence, for the reasons I have given. But my view on those matters is tempered by the specifics of the relevant guidance (albeit subject to the considerations I have raised in respect of the new phenomenon of neighbourhood planning, specifically) in the case of the former concept and by the fact that virtually every situation is different in the case of the latter. In themselves, they could not therefore be decisive in this case.
269. The more substantial harm in respect of process that has to my mind been clearly demonstrated by the Parish Council is the harm to legitimate expectations of local self-determination in the development of neighbourhood planning frameworks. The terms in which the Framework is cast, including the core planning principles embodied within it, make it very clear that such expectations, albeit complemented by responsibilities, are of fundamental importance.
270. Whilst the point could doubtless be made in many situations where local people oppose development, it seems to me, from the evidence put forward and all that I have heard and seen, to have a particular resonance in the circumstances of Tarporley, which is, deservedly in my view, a Front Runner in the neighbourhood planning initiative.
271. I could not fail to have been impressed by the passionate commitment of the Parish Council to seize the opportunity now presented to the community through the provisions of the Localism Act and the policies of the Framework. Nor could I fail to be impressed by its tradition of constructive parish-level community planning, albeit within the competence at that time permitted. I have no reason to doubt that the Parish Council has both the ability and the determination to shoulder the more onerous, and very real, responsibilities now implicit in statutory neighbourhood planning. While there may be individuals who might wish to oppose the further development of Tarporley, or of particular sites, as a matter of principle, the elected Parish Council and, through it, the community taken as a whole, quite clearly has no interest in freezing the village as it exists at present, but rather wishes to take the opportunity to guide its development in the manner it considers to be right for local people.

272. Allowing this appeal would, without doubt, be seen as a forceful body blow to that aspiration. The appellant argues that there is no reason why the neighbourhood planning process could not continue with the proposed development taken as a given. That may or may not be so, but I am in little doubt, given the scale of the proposal in the Tarporley context and its pre-emptive nature as regards the location of additional development, that any such continuation would be perceived as a hollow exercise, with little real influence on the local environment. It was made abundantly clear to me that the enthusiastic aspiration of the community to pursue the opportunity to prepare what it would consider to be a meaningful neighbourhood plan, would, in effect, be crushed [99,105,108,110,114,121,130,135,139].

273. Against that background and Tarporley's established traditions in community planning, it was put to me that the implications of allowing the appeal for neighbourhood planning in the Cheshire West & Chester area, and beyond, would be severe, leading to widespread de-motivation and cynicism amongst communities otherwise enthusiastic to pursue the opportunities it presents. Whilst, in my experience, local communities can respond very positively to plans and proposals of which they have some 'ownership', I have no specific evidence as to the severity of the wider negative effects claimed by the Parish Council in the event that this appeal were to be allowed.

274. However, I have no hesitation in concluding, on the basis of all that I have seen and heard that, as far as Tarporley itself is concerned, the impact on the neighbourhood planning process, which is seen in national policy terms as desirable but is not compulsory, would be severe. The de-motivation would in my estimation run very deep and the process and concept, certainly in the immediate locality, would be severely damaged. That, in view of current legislation and associated policy as expressed in the Framework, it seems to me, is a material consideration and one which I consider should be accorded substantial weight commensurate with the clear intentions nationally that neighbourhood planning, where opted for, should be integral to the statutory development planning process. The Front Runner status that has been accorded to the process as it relates to Tarporley can only support that proposition.

#### *Overall conclusions*

275. Bearing in mind that it is the principle of the proposed development that is at issue in this case, I have considered, having due regard to the advice of Circular 11/95 *The Use of Conditions in Planning Permissions*, how potential harm to the character and appearance of the area could be addressed by imposing a condition to ensure a satisfactory layout more sensitive to the topography, such as might be prepared in the context of a brief to be approved as a precursor to reserved matters approvals. I have concluded that would be possible in respect of variable density [197, 238] to facilitate a more appropriate response to the topography and commend such a condition to the Secretary of State, should he be minded to allow the appeal. This conclusion stems from visiting the site and the area at the end of the inquiry and hence such a condition was not discussed with the parties. It may be considered necessary to consult them further on the specific point, albeit the principle of up to 100 houses would not be compromised.

276. The loss of BMV land reduces the sustainability credentials of the proposed development but, on the basis of the information that is available, the possibility must be acknowledged that the proven grades of other greenfield sites to be considered if Tarporley is to grow further, for example through investigations

carried out for the purposes of the neighbourhood plan, could well turn out to be of equally good quality. Without such specific investigation there is no way of telling. There is also the question, yet to be resolved, of the scale of expansion that would be appropriate to Tarporley in strategic planning for sustainability.

277. The Framework aims to strengthen local decision making but it remains a general principle of the planning system that local opposition or support for a proposal is not in itself a ground for refusing planning permission unless it is founded on valid planning reasons.<sup>12</sup> While the weight of local opposition in this case is substantial and some is unreasoned, it seems to me that much is also conventionally rooted in matters of substance invoking conflicts with policy intentions such as those concerning land quality and the effect of the proposed development on the character and appearance of the area, as well as on matters more concerned with process such as conflict with aspirations that local people should shape their surroundings through a neighbourhood plan.
278. *The Planning System; General Principles* points out, at paragraph 11, that material planning considerations must be genuine planning considerations, must relate to the use of land in the public interest and must fairly and reasonably relate to the application concerned. Paragraph 11 is to the effect that the Government's statements of planning policy are material considerations and the Framework, explicitly, is such. Many of the concerns raised by the local community, including its aspirations to address the opportunity to plan its own neighbourhood embodied in the Localism Act 2011 and, inter alia, the first core planning principle of the Framework are within the parameters that define materiality and may therefore be accorded weight according to their merits.
279. In terms of the presumption in favour of sustainable development, the 'conventional' land use planning considerations, when the ability to impose conditions is taken into account (and leaving aside the more strategic question of how sustainable or otherwise it might be to provide for larger scale growth at Tarporley through the Council's Core Strategy), place the proposed development broadly within the sustainable end of the spectrum, sufficiently so in the light of the housing land shortage and the out-of-date condition of the development plan policies in that respect to engage 'the presumption in favour', notwithstanding the conflicts with the development plan I have identified. However, it is noteworthy that the Framework, through footnote 10, expressly provides for the operation of the presumption to be overridden even in such circumstances if material considerations indicate otherwise.
280. The important, material, but arguably novel matter of the community's aspiration to prepare a meaningful neighbourhood plan and the substantial regional or national controversy that the proposal gives rise to, and the specific terms of the Parish Council's proposition that as a matter of judgement the adverse effects of the proposed development outweigh its benefits all oblige me to clearly inform the Secretary of State of my assessment of the matter, which is as follows.
281. The community's aspiration to prepare a meaningful neighbourhood plan is undoubtedly a material consideration to be accorded substantial weight. Moreover, it is one that fairly and reasonably relates to the appeal site in question owing to its significance to that prospective activity.

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<sup>12</sup> The Planning System General Principles – paragraph 27

282. It is very clear to me, from all that I have seen and heard, that the impact of allowing this appeal, locally at least, on those policy intentions in respect of encouraging neighbourhood planning that are central to the Framework, would be intensely damaging.
283. The proviso that the local planning framework should be an up-to-date and practical context for decision-making is clearly very important, but statutory neighbourhood planning is in its infancy and the Tarporley Parish Council can only work within the core strategy context it is given in seeking to expedite its plan, which at present is insufficiently clear to guide it as to whether the appeal site and other significant Greenfield sites outside the current LPPB must all be developed or whether hard choices between such sites have to be made. The Parish Council clearly recognises that it might ultimately be driven to the conclusion that the site must be released to accommodate the growth of the village.
284. The clear purpose of neighbourhood planning is to facilitate growth that produces locally endorsed change for the better in both the built and natural environment, i.e. sustainable development. It must not be used to block such growth. Responsibly conducted, planning activity at this level has the potential, in my experience, through a community's sense of ownership and involvement, to facilitate development that is accepted as both necessary and desirable. If neighbourhood planning is widely successful the force of the appellant's proposition that rejection of this appeal on the grounds of deferring to this community's desire to engage in neighbourhood planning in a meaningful way would harm prospects for growth [74] would be abated.
285. Over time, if successful, it should lead to many such situations as a matter of routine, consistent with the intentions of the relevant legislation and the Framework, thereby accommodating needs and smoothing the progress of necessary growth. Substantial harm to that objective arising from this particular proposal would, in my view, be an adverse impact of granting permission for it.
286. This appeal proposal is for around 100 houses that would contribute, now, in a relatively small but locally significant way to reducing the acknowledged housing land shortfall evident in Cheshire West and Chester and bring a range of associated benefits [65-70].
287. However, on the evidence before me, I am persuaded that the aspiration of the community of Tarporley to participate meaningfully in neighbourhood planning would be severely damaged, if not altogether crushed [272], if this particular appeal were to be allowed.
288. The wider ramifications of that outcome predicted by the Parish Council, by their very nature, cannot be proven in an evidential fashion. But the logic of such predictions is in my view both inescapable and compelling, bearing in mind Tarporley's clear enthusiasm to avail itself of the neighbourhood planning opportunity and its Front Runner status in that context.
289. Since the Inquiry I have thought long and hard, alongside all other matters raised, about the merits, simple force and rationale of the appellant's case [253] and the complexities, subtleties and merits of the Parish Council's case [ibid.]. The latter is ultimately presented simply and unavoidably as a matter of judgement – in essence that the immediate gain and attendant benefits in terms of permitting 100 houses to be delivered on the ground now, on the appeal site, would be outweighed by its adverse effects [115].



290. Whether or not the appeal should be allowed is ultimately a question for the Secretary of State. However, in all the circumstances I have described, I am ultimately driven to the conclusion by the evidence before me and the power of the Parish Council's proposition concerning this undetermined application at the time of the Inquiry that, notwithstanding that the proposed development may, with qualifications and subject to the imposition of conditions [200], be considered broadly sustainable, the adverse impacts of allowing it, when assessed against the Framework as a whole, would significantly and demonstrably outweigh the benefits, bearing in mind the materiality of the community's aspiration to prepare a meaningful neighbourhood plan [281] and my conclusions regarding the consequential harm in that respect [282,285, 287,288]. The wider potential ramifications of the harmful impact on that aspiration remain, in any event, a powerful material consideration.

291. All in all, the material considerations relevant to this specific proposal that I have identified, in my assessment, tip the balance of planning advantage, at this juncture, against it, notwithstanding that relevant policies concerning housing land in the development plan are out-of-date and that specific and significant benefits would be delivered by it.

#### *Recommendation*

292. I therefore conclude and recommend that the appeal should be dismissed and that planning permission should be refused.

293. In the event that the Secretary of State disagrees, I have set out in the attached annex conditions that should be attached to any grant of planning permission.

*Keith Manning*

Inspector

**Annex: Schedule of recommended conditions should the Secretary of State be minded to allow the appeal and grant outline planning permission .**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) *Prior to or concurrently with the first scheme of details to be submitted pursuant to condition 1) above a detailed scheme for the proposed contouring of the site (based on one metre intervals) relating topography to varying densities of dwellings proposed in defined sub-areas of the site shall be submitted to the local planning authority for approval in writing. The reserved matters shall be consistent with the approved scheme, which shall be implemented as approved.*<sup>13</sup>
- 4) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 4712-P-01 RevA; Proposed Access Arrangements 0054\_01 RevA.
- 6) No development shall take place until a detailed scheme of phasing for the construction of the dwellings and associated highways and public areas has been submitted to and approved in writing by the local planning authority. The scheme shall include a schedule identifying the order of commencement and completion of these key elements within each phase of construction. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until a detailed scheme for the provision and future management and maintenance of foul and surface water drainage incorporating sustainable drainage principles has been submitted to and approved in writing by the local planning authority. The drainage scheme shall be implemented, managed and maintained in accordance with the approved details.
- 8) No development shall take place until a detailed scheme for the creation and management, and protection during construction, of a buffer zone (of no less than 5 metres in width when measured from the bank top) along the Wettenhall Brook has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No site clearance, preparatory work or development shall take place until a scheme detailing any trees, shrubs or hedgerows to be retained or re-located and a scheme for their protection during construction or re-location, as the case may be, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) The landscaping works approved pursuant to condition 1) above shall include the numbers, size, locations and species of trees, shrubs and hedgerows to be planted or re-located. The works shall be carried out in accordance with a

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<sup>13</sup> Note: This condition has not been discussed with the parties, for the reason indicated in the report [275].

programme to be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and if within a period of five years from the date of the planting or re-location of any tree or shrub or hedgerow that tree or shrub or any plant forming part of the hedgerow in question, or any replacement thereof, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another of the same species and size as that originally planted or re-located shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

- 11) No dwelling shall be occupied until a long term (25 year) landscape and habitat management and maintenance scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and arrangements.
- 12) The landscaping works approved pursuant to condition 1) above shall include full details of all hard surfaces including new pedestrian links and the work shall be carried out in accordance with the approved details and with a programme of implementation to be submitted to and approved by the local planning authority in writing.
- 13) No development shall take place until details of the bat boxes recommended in the submitted ecological appraisal have been submitted to and approved in writing by the local planning authority and these shall be installed in accordance with the approved details in accordance with a timetable to be submitted to and approved in writing by the local planning authority.
- 14) The development shall not commence until the submitted badger survey has been updated and a detailed method statement to minimise the risk of harm to badgers entering the site during construction has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the measures in the approved method statement
- 15) There shall be no clearance of trees, shrubs and hedgerows between 1<sup>st</sup> March and 31<sup>st</sup> August and the landscaping details to be approved pursuant to condition 1) above shall include details of the design, quantity and location of nest boxes to be installed. These shall be installed in accordance with the approved details in accordance with a timetable to be submitted to and approved in writing by the local planning authority.
- 16) No development shall take place until full details of the phasing of the construction of the development hereby approved, including temporary highway and pedestrian routings have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved phasing details.
- 17) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) construction access arrangements and routing of construction vehicles
  - ii) site compound and the parking of vehicles of site operatives and visitors
  - iii) loading and unloading of plant and materials
  - iv) storage of plant and materials used in constructing the development
  - v) wheel washing facilities
  - vi) measures to control the emission of dust and dirt during construction

- vii) hours of working
  - viii) phasing of construction, including temporary highway and pedestrian routings
- 18) No phase of house construction shall commence until a detailed scheme of noise insulation and attenuation for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 19) No phase of house construction shall commence until a detailed scheme of external lighting for that phase has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 20) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the National Planning Policy Framework or any future replacement thereof. The scheme shall include:
    - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 30% of housing units;
    - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
    - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if no Registered Social Landlord involved);
    - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
    - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
  - 21) No phase of house construction shall commence until a detailed scheme for the provision of play space and the management thereof has been submitted to and approved in writing by the local planning authority in respect of that phase. The scheme shall be implemented in accordance with the approved details prior to the first occupation of any dwelling within that phase and the play space shall not thereafter be used for any purpose other than a public play area.
  - 22) No development shall take place until full details of existing site levels and proposed finished floor (slab) and garden levels, together with maximum ridge heights, in relation to finished site levels, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 23) The dwellings shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
  - 24) No development shall take place until details of any substations or other utility structures have been submitted to and approved in writing by the local planning authority. The structures shall be implemented in accordance with the approved details.
  - 25) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the

positions, design, materials and type of all means of enclosure and boundary treatment to be erected. The means of enclosure and boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.

- 26) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings 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.
- 27) No dwellings shall be occupied until the parking areas intended to serve them have been drained and surfaced in accordance with details to be submitted to and approved in writing by the local planning authority, and those areas shall not thereafter be used for any purpose other than the parking of vehicles.
- 28) Notwithstanding the approval of the access drawing 0054\_01 RevA, no development shall take place until further and full details and specifications of the vehicular and pedestrian access works, including bus stop improvements and a footway link to Spring Hill, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved details.
- 29) Within one month of the new access works becoming operational the existing agricultural access from Nantwich Road shall be permanently closed and the boundary treatment, verge and footway made good in accordance with details to be submitted to and approved in writing by the local planning authority.
- 30) No development shall take place until full details and specifications of the proposed signalisation works at the junction of Nantwich Road with the A49 have been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the signalisation works have been implemented in accordance with the approved details.

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## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr D Dickinson	Senior Solicitor
He called	
Mr B Leonard MRTPI	Senior Planning Officer

### FOR THE APPELLANT:

Mr I Ponter	Of Counsel
He called	
Mr P Wooliscroft MSc HNC MCITL	Croft Transport Solutions
Mr P Rech BA BPhil LD CMLI	FPCR
Mr G Venning MA (Cantab)	Levvel Ltd
Mr M Twigg BSC MRTPI	Fox Strategic Land and Property Ltd

### FOR TARPORLEY PARISH COUNCIL:

Parish Councillor J Blackford	Local resident and parish councillor
Mr M George	Local resident

### INTERESTED PERSONS:

Councillor Eveleigh Moore Dutton	Ward Councillor
Mr A Needham	Local resident
Parish Councillor D Press	Local resident and parish councillor
Mrs R Capper	Local resident

## DOCUMENTS

- 1 Council's notification letter and list of those notified
- 2 Appellant's opening submissions
- 3 Decision notice in respect of application 12/00477/OUT
- 4 Marketing particulars for Brook Farm School site
- 5 Email exchange (Paul Andrew / Mike Heming) 17/05/12 @ 13:38 and 14:24 re: Land at Rose Farm Shop, Utkinton
- 6 *An introduction to neighbourhood planning* DCLG and text from Planning Portal dated 24/05/2012 re Neighbourhood Planning
- 7 Email with attachment from DCLG 05/03/12 @ 16:19 confirming Front Runner status of Tarporley Parish Council
- 8 Minutes of Extraordinary Meeting of the Tarporley Parish Council 11/04/12
- 9 Tarporley Neighbourhood Plan Draft Indicative Programme (Rev 2)
- 10 Flipchart sheets (7) used by Parish Council in questioning appellant
- 11 Email exchange John Acres to Julie Shanahan 30/04/12 @ 11:19 Julie Shanahan to John Acres 30/04/12 @ 12:04 Re: Interpretation of NPPF
- 12 *Answering the Inspector's Questions* Statement of Councillor Eveleigh Moore Dutton
- 13 Cheshire West and Chester: Report to Local Development Framework Panel 26/03/12
- 14 Correspondence bundle: Letter to Steven O'Brien MP from Sir Michael Pitt 24/05/12 with originating and attached letters.

- 15 List of suggested planning conditions
- 16 Council's Closing statement
- 17 Closing statement of Tarporley Parish Council
- 18 Appellant's closing submissions
- 19 Appellant's costs application against Council
- 20 Council's response and costs application against appellant

## CORE DOCUMENTS LIST

CD1 Application Documents		
1.1	Application Covering Letter, Application Form and Certificates	
1.2	Application Boundary Rev A	
1.3	Development Framework Plan	
1.4	Illustrative Master Plan Rev E	
1.5	Design and Access Statement	
1.6	Landscape & Visual Assessment	
1.7	Transport Assessment and Travel Plan	
1.8	Ecological Assessment	
1.9	Arboricultural Assessment	
1.10	Phase 1 Site Investigation	
1.11	Flood Risk Assessment	
1.12	Air Quality Assessment	
1.13	Noise Assessment	
1.14	Archaeology Report	
1.15	Agricultural and Land Quality Report	
1.16	Utilities & Infrastructure Report	
1.17	Renewable Energy Statement	
1.18	Draft S106 Agreement	
1.19	Statement of Community Involvement	
1.2	Housing Land Supply	
1.21	Affordable Housing Statement	
1.22	Planning Statement	
CD2 Correspondence with Local Planning Authority		CD2 pages
2.1	21 June 2011 – Letter – FLP to Head of Planning re: Screening Opinion request.	1-5
2.2	12 July 2011 - E-mail - FLP to Iwan Hughes re: Pre App Meeting.	6-7
2.3	30 August 2011 - E-mail - FLP to Iwan Hughes re: consultation held and Screening Request.	8-9
2.4	16 September 2011 - Letter - CW&C to FLP re: Validation of Application.	10-11
2.5	7 October 2011 - E-mail - Brian Leonard to Martyn Twigg re: Application and any technical issues.	12-13
2.6	7 October 2011 - E-mail - Martin Twigg to Brian Leonard re: number of objections and access to the site.	15-15

2.7	18 October 2011 - E-mail Peter Dutton to Martyn Twigg re: formulating Policy comments.	16-19
2.8	19 October 2011 - Letter - FLP to Brian Leonard re: Issues raised by Third Party reps.	20-25
2.9	04 November 2011 - E-mail Martyn Twigg to Brian Leonard re: progress of the application	26-27
2.10	9 November 2011 - Letter - FLP to Brian Leonard re: how 'Tarporley is defined.'	28-30
2.11	10 November 2011- E-mail Brian Leonard to Martyn Twigg re: consultee comments and Highways initial concerns.	31-33
2.12	10 November 2011- E-mail Martyn Twigg to Brian Leonard re: addressing Highways concerns.	34-36
2.13	10 November 2011 - E-mail Martyn Twigg to Brian Leonard re: addressing Michael George's (public) comments on several points.	37-38
2.14	10 November 2011 - Martyn Twigg to Brian Leonard re: false objection letter from Mr Rudd.	39
2.15	16 November 2011 - 16 November 2011 - Brian Leonard to Martyn Twigg re: awaiting Spatial Planning comments.	40-41
2.16	16 November 2011 - E-mail Phil Bamford to Martyn Twigg re: awaiting Spatial Planning comments.	42-43
2.17	24 November 2011 - E-mail Brian Leonard to Martyn Twigg re: awaiting Education response and next planning committee dates.	44-45
2.18	02 December 2011 - E-mail Martyn Twigg to Brian Leonard re: sorting out highways comments.	46-47
2.19	19 December 2011 - E-mail Martyn Twigg to Brian Leonard re: appeal for non-determination.	48
2.20	20 December 2011- E-mail Martyn Twigg to Brian Leonard re: submission of duplicate planning application to run parallel with the appeal.	49
2.21	21 December 2011 - E-mail Brian Leonard to Martyn Twigg re: application at planning committee and potential appeal.	50

<b>CD3 Continuation Correspondence with LPA</b>		CD3 pages
3.1	19 October 2011 - Letter Brian Leonard re:	1-6
3.2	09 November 2011 - Letter Brian Leonard re:	7-10
3.3	10 February 2012 - Letter J Owens re:	11-14
3.4	27 February 2012 - e-mail Brian Leonard re:	15-16
3.5	23 March 2012 - letter J Owens re:	17-20
3.6	26 March 2012 - e-mail F Edwards re:	21-22
3.7	28 March 2012 - e-mail Brian Leonard re:	23-24
3.8	28 March 2012 - e-mail F Edwards re:	25-26
3.9	29 March 2012 - e-mail Brian Leonard re:	27-28
3.10	30 March 2012 - e-mail Brian Leonard re:	29-32
3.11	12 April 2012 - e-mail Brian Leonard re:	33-36
3.12	16 April 2012 - e-mail Brian Leonard re:	37-46
3.13	19 April 2012 - Letter S Robinson re:	47-50



<b>CD4 Transcript of Planning Committee 21 February 2012</b>	<b>1-24</b>
<b>CD5 Consultation Responses</b>	<b>1-43</b>
<b>CD6 Extracts North West England RSS (2008)</b>	<b>1-78</b>
<b>CD7 Vale Royal Local Plan First Review Alteration (Extracts)</b>	<b>1-86</b>
<b>CD8 Local Plan Saving Direction</b>	<b>1-9</b>
<b>CD9 SPD1 Affordable Housing</b>	<b>1-32</b>
<b>CD10 SPD2 Managing Housing Land Supply</b>	<b>1-23</b>
<b>CD11 SPD3 Developer Contributions</b>	<b>1-146</b>
<b>CD12 SHMA (2010)</b>	<b>1-81</b>
<b>CD13 Economic Viability of Affordable Housing Requirements (2009)</b>	<b>1-37</b>
<b>CD14 Extracts SHLAA (2010-2011)</b>	<b>1-132</b>
<b>CD15 HLM Report 2012</b>	<b>1-14</b>
<b>CD16 Unleashing the Potential (2010)</b>	<b>1-21</b>
<b>CD17 Core Strategy <i>Issues &amp; Options</i> November 2009</b>	<b>1-126</b>
<b>CD18 LDF Advisory Panel</b>	
18.1 August 2011 LDF Advisory Panel Covering Report	1-8
18.2 August 2011 LDF Advisory Panel Preferred Development Option A Report	9-56
18.3 Minutes of LDF Advisory Panel August 2011	57-64
<b>CD19 Updated Statement of Common Ground (Final – 1<sup>st</sup> May 2012)</b>	
<b>CD20 Committee Report 20th March 2012 (duplicate application)</b>	
20.1 Committee Report 20th March 2012	1-32
20.2 Minutes of 20th March 2012 Planning Committee	33-42
20.3 Transcript of Planning Committee Meeting 20th March 2012	43-59
<b>CD21 Committee Report 17th April 2012 (duplicate application)</b>	
21.1 Committee Report 17th April 2012	1-4
21.2 Appendix A to 17th April 2012 Committee Report	5-36
21.3 Appendix B to 17th April 2012 Committee Report	37-40
21.4 Late Information Report	41-44
21.5 Minutes of 17th April 2012 Planning Committee	45-52
21.6 Transcript of Planning Committee Meeting 17th April 2012	53-66
<b>CD22 LDF Advisory Panel Five Year Land Supply Report March 2012</b>	<b>1-6</b>
<b>CD23 Tarvin Committee Report (11-05906-OUT) 8th March 2012</b>	<b>1-24</b>
<b>CD24 Farndon Committee Report (11-05899-OUT) 20th March 2012</b>	<b>1-19</b>
<b>CD25 Village Design Statement</b>	<b>1-16</b>
<b>CD26 Committee Report 1st May 2012 (duplicate application)</b>	
26.1 Committee Report 1st May 2012	1-6
26.2 Appendix A to Committee Report 1st May 2012	7-38
26.3 Appendix B to Committee Report 1st May 2012	39-41
26.4 Transcript of Planning Committee Meeting 1st May 2012	42-65
<b>CD27 Draft Settlement Hierarchy Report - October 2009</b>	<b>1-19</b>
<b>CORE DOCUMENTS ADDED BY PARISH COUNCIL</b>	

TPC1	The Government's response to the Communities and Local Government Select committee report: NPPF	<i>All</i>
TPC2	House of Commons Debate re the NPPF (May 2012) (Extract)	<i>1-9</i>
TPC3	SPD5 Landscape Character (Extracts) <i>Pages 1-14 and section 3b</i>	
TPC4	The Tarporley Parish Plan (Extracts)	<i>1-15</i>
TPC5	HLM 2009 Table 2.2 and Table 4.3	
TPC6	HLM 2010 page 7 and page 15	
TPC7	HLM 2011 Tables 2.1, 2.2 and 4.1	
TPC8	CWaC Rural Housing Strategy and Action Plan - March 2011	<i>Fig. 7</i>
TPC9	Developing 5 year land supply report (Executive Committee 09/05/12)	<i>All</i>
TPC10	Developing 5 year land supply report Annex A (Executive Committee 09/05/12)	<i>All</i>
TPC11	Developing 5 year land supply report (Executive Committee 09/05/12) Extracts from Minutes	
TPC12	Notes on Rural Housing Strategy (JB)	<i>All</i>
TPC13	Recommendations to the Parish Council (JB)	<i>All</i>
TPC14	Housing Land Monitor (Interim Report) 2011-2012	<i>All</i>
TPC15	Interim proposal – A revised model for the development of a Rural Community	<i>All</i>



## Department for Communities and Local Government

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

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

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

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

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

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

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

#### **SECTION 2: AWARDS OF COSTS**

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

#### **SECTION 3: INSPECTION OF DOCUMENTS**

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

EP4



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# Appeal Decision

Inquiry held on 13-16 March 2012

Site visit made on 16 March 2012

**by Harold Stephens BA MPhil DipTP MRTPI FRSA**

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

**Decision date: 26 March 2012**

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**Appeal Ref: APP/T2350/A/11/2161186**

**Land off Henthorn Road, Clitheroe BB7 2QF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Ribble Valley Borough Council.
  - The application Ref 3/2010/0719, dated 16 August 2010, was refused by notice dated 19 September 2011.
  - The proposed development is for up to 270 residential dwellings, a doctor's surgery, landscape, open space, highways and associated works.
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## Decision

1. The appeal is allowed and planning permission is granted for an outline application for up to 270 residential dwellings, a doctor's surgery, landscape, open space, highways and associated works on land off Henthorn Road, Clitheroe BB7 2QF in accordance with the terms of the application, Ref 3/2010/0719, dated 16 August 2010, subject to the conditions set out in the attached Schedule.

## Preliminary matters

2. The appeal site comprises about 15.70 hectares and is located on the south-western side of Clitheroe. The appeal site lies to the northwest of Henthorn Road. The rear gardens of properties fronting Fairfield Drive abut the north-eastern boundary. Directly to the north are kennels and a cattery and playing fields; to the west are Clitheroe Caravan and Camping Club and the Ribble Way long distance footpath alongside the river and to the south Siddows Hall and agricultural land.
3. The eastern boundary of the site to Henthorn Road dog-legs around the rear of Henthorn Farmhouse (a Grade II listed building), the White House and other properties fronting Henthorn Road. The site is in agricultural use. It lies outside and immediately adjacent to the existing settlement boundary of Clitheroe that is identified within the Ribble Valley Districtwide Local Plan (RVDWLP). The site is roughly 'L' shaped. Its topography varies rising gently away from Henthorn Road with the western field descending towards the River Ribble. The existing field pattern is created by a number of hedgerows interspersed with some mature trees and drainage ditches.
4. The appeal proposal is for outline planning permission with all matters reserved for later consideration, save for that of vehicular access. The plans on which the application is to be determined are set out in the Appellant's

document list.<sup>1</sup> Detailed drawings include a Location Plan (Drg No: 2010-001-100) and a Proposed Access Plan (Drg No: 1222/03 revision C). Other drawings include a Development Framework Plan (Drg No: 4370-P-01 revision G); an Illustrative Masterplan (Drg No: 4370-P-02 revision I); and an Illustrative Pedestrian/Cycle Link (Drg No: 1222/18).

5. Plans were also submitted in connection with Off-Site Highway Works - Henthorn Road Pedestrian Crossing Scheme (Drg No: 1222/19) and Indicative Henthorn Road 20ph 'Sign Only' Scheme (Drg No 1222/21). The provision of the off site works would be dealt with by means of a S278 Agreement with the County Council as Highway Authority. Finally, there are two indicative plans included within the S106 Planning Obligation. These are: Indicative Woone Lane One-Way Scheme Drg No: 1222/20 and Indicative Woone Lane Scheme (Drg No: 1222/23 revision B).
6. The application was supported by various reports including a Planning Statement, a Statement of Community Involvement, a Design and Access Statement (DAS), a Draft Section 106 Agreement, a Transport Assessment, a Travel Plan, an Air Quality Assessment, an Ecological Appraisal, a Phase 1 Site Investigation Report, a Soil Resources and Agricultural Use and Quality of Land Report, a Flood Risk Assessment, a Landscape and Visual Appraisal, an Archaeological Desk Based Assessment, a Utilities Appraisal Report and a Renewable Energy and Sustainable Resources Strategy and Building for Life Evaluation.
7. At the Inquiry the Appellant submitted a Unilateral Undertaking (UU)<sup>2</sup> pursuant to Section 106 of the Town and Country Planning Act 1990 relating to the appeal development which would take effect should planning permission be granted. Amongst other matters the UU provides arrangements for 81 of the proposed dwellings on the site to be delivered as affordable units and for contributions to be made towards a temporary additional bus stop on Henthorn Road; education provision; a cycle rack; a PCT facility; public consultation and advertising in respect of Woone Lane RTRO; and a Travel Plan. I have had regard to the provisions of the UU in the consideration of the appeal. I shall return to the UU later in the decision.
8. Three Statements of Common Ground (SoCG) were prepared and agreed. The Planning SoCG<sup>3</sup> and the Highways SoCG<sup>4</sup> were both agreed between the Appellant and RVBC. The Education SoCG<sup>5</sup> was agreed between the Appellant and Lancashire County Council (LCC).

## **Main Issues**

9. I consider the main issues in this appeal are:
  - (i) whether, in the light of the development plan, national guidance and other material considerations, the appeal proposal would be a sustainable form of development; and
  - (ii) whether the traffic generated by the appeal proposal would lead to unacceptable highway conditions particularly on Woone Lane.

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<sup>1</sup> APP9

<sup>2</sup> APP10

<sup>3</sup> INQ3

<sup>4</sup> INQ4

<sup>5</sup> INQ5

## **Reasons**

### ***The proposal***

10. The proposed development would comprise up to 270 dwellings on about 8.27 hectares of the overall site. With regard to the mix of dwellings, this has not been fixed at this stage but the DAS<sup>6</sup> submitted in support of the application, proposes a mix of dwellings from 2 to 5 bedroom units, comprising a range of house types with predominantly semi-detached properties and also some terrace/linked mews cottages which would offer a mix of market housing from first time homes to larger family houses.
11. Layout is a reserved matter for consideration at a later stage. However, an illustrative layout<sup>7</sup> has been provided which indicates the principle of the urban structure (i.e. the framework and the layout of the streets and routes) and the urban grain (i.e. the location, arrangement and design of the development blocks, plot arrangement and the green infrastructure). The plan provides an approximate location of buildings within the residential zone and how the built form could relate to the streets and public realm. It shows vehicular access to the site via a realignment of Henthorn Road with this one primary access point looping around the core of the site.<sup>8</sup>
12. The central loop has been designed to provide a strong sense of place with landmark (2.5 storeys) buildings located at key junctions and arrival points. The DAS refers to the indicative layout as a distorted grid which would allow for some block and building variation to create visual relief and variety within the street network. The approach to site layout means that there would be a range of block densities from 30 to 40 dwellings per hectare (dph). The average net density across the site would be 32.6 dph. The scale of the development would vary around the site. In general the lower density areas would be two storeys in height (up to 9m) with some focal buildings of 2.5 storeys (up to 10m) fronting a traditional street layout.
13. The proposal includes some 81 affordable housing units which would be accommodated in small clusters and evenly distributed around the site. Integral to the scheme is a strong green framework of structural landscape and habitat areas. A new informal rural edge community park is proposed at the site's western edge, two local equipped areas of play, strengthened landscape planting at the site boundaries and a green corridor running north/south through the central core of the site with ecological enhancement including a reinstated watercourse. The proposal would provide cycle and pedestrian links to the Ribble Way long distance footpath. All green infrastructure, community parkland and equipped children's play space would be maintained by a management company. A doctor's surgery is included within the net development area.

### ***The planning policy background***

14. It is agreed that the statutory development plan for the area comprises the North West of England Regional Spatial Strategy to 2021 (RSS) (2008) and the saved policies of the Ribble Valley Districtwide Local Plan (RVDLP) (1998).

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<sup>6</sup> CD2.1 - 4370/DAS Revision C

<sup>7</sup> CD2.2 - 4370-P-02 Revision I

<sup>8</sup> APP2 - 1222/03 Revision C

15. There is broad agreement between the parties with regard to the RSS policies that are relevant in this case.<sup>9</sup> Furthermore, with regard to the generality of the provisions of these policies it is agreed that no conflict arises in respect of the appeal proposals save for the specific elements of Policies DP1, DP4 and DP9 referred to in paragraph 4.2.1 of document INQ3. The location of the proposal would accord with the regional and sub regional spatial framework objective of locating development within the Central Lancashire City Region in accordance with Policy CLCR1, Policy CLCR2, Policy RDF1 and Policy RDF2 (Key Service Centres). It would also be in accordance with the sequential approach set out in Policy DP4. The delivery of market and affordable housing would accord with Policy L4 which indicates that RVBC should deliver a total housing provision 2003-2021 (net of clearance replacement) of 2,900 dwellings. This equates to an annual average rate of housing provision (net of clearance replacement) of 161 dwellings. The proposals have been developed in accordance with the key tests set out within Policies DP1-DP9. Whilst the Government has stated its intention to abolish the RSS, formal revocation has not yet occurred, regard must therefore be given to the RSS policies in the context of this appeal.
16. There is broad agreement between the parties that the proposal does not conflict with many of the adopted policies contained within the RVDWLP.<sup>10</sup> I am aware that the site lies outside the defined settlement boundary as defined by RVDWLP Policy G2 and the Proposals Map. It is also agreed that as the proposed development does not constitute a small scale development, infill replacement dwelling or development wholly for affordable housing, the proposed development would be contrary to Policies G2, G5, H2, and H20 of the RVDWLP as it would not meet the exceptions for housing development outside defined settlement limits. However, it is a fact that the RVDWLP was prepared during the 1990s and adopted in 1998. Although still part of the statutory development plan it has become somewhat outdated in that it has been overtaken by more recent planning policy guidance including PPS3.
17. The existing development plan will be replaced in due course by the new Local Development Framework (LDF) for Ribble Valley. The Core Strategy will shape development in Ribble Valley over the next 15-20 years. A Draft Core Strategy (Regulation 25 Report) was made available for public consultation in August 2010.<sup>11</sup> This identified 3 potential Development Strategy Options with notional percentage apportionment of the likely distribution of housing to be required at each spatial location. Clitheroe, which would be designated a 'Key Service Centre' in the Core Strategy, is identified in all 3 options with targeted growth levels ranging from 22% to 45%. This equates to a range of 657 to 1344 dwellings at Clitheroe.
18. The Core Strategy 'Generation of alternative Development Strategy options' set out a further 5 potential Development Strategy Options.<sup>12</sup> This allowed for a total of 8 possible options from which to choose a 'preferred option'. Details of these various options are set out in INQ3. The Council has also prepared a Core Strategy 'Topic Paper' in respect of its emerging 'Preferred Option' which was approved in December 2011.<sup>13</sup> The draft 'Preferred

<sup>9</sup> INQ3 paragraph 4.2.1

<sup>10</sup> INQ3 paragraph 4.3.1

<sup>11</sup> CD20

<sup>12</sup> CD23

<sup>13</sup> CD26



Option' has selected to focus growth in the 3 main settlements (Clitheroe, Longridge, and Whalley) and in particular for Clitheroe a strategic allocation at Standen Hall (1040 units). The Core Strategy Topic Paper shows that the Council's preferred option for its Development Strategy would, after the strategic allocation at Clitheroe, leave a residual requirement for 75 dwellings to allocate based on the preferred distribution and present housing requirement (RSS Policy L4).

19. The Council has recently reviewed and agreed its strategic housing requirement for the Core Strategy 2008-2028. The key evidence underpinning this process is provided in a report produced by Nathaniel Lichfield and Partners (NLP). Having set out a wide range of scenarios, the NLP report reaches a judgment that a Borough target of 190-220 dwellings per annum would represent the most appropriate target range of housing development over the 20 year period. The Council resolved in February 2012 that the Core Strategy housing requirement should be set at the middle of the range advised by NLP namely 4,000 dwellings during the plan period (200 dwellings per annum).<sup>14</sup>
20. Taking all of the above matters into account I consider that the appropriate housing requirement figure to be used in determining this appeal should be not less than 200 dwellings per annum. This is the figure which the Council has adopted in its most recent report. I accept that there is certainly credible and robust evidence to suggest that figure should be much higher and closer to the 330 to 350 dwellings per year advocated in the uncontested evidence of Mr Nichol. However, the outlook for the UK economy is somewhat uncertain and a cautious approach should be taken pending completion of the Council's Core Strategy. As the Core Strategy is still at an early stage I consider that limited weight can be given to it.
21. I note that the Council's Strategic Housing Market Assessment (SHMA) 2008 identifies a clear need for affordable housing across all areas of the Borough. Furthermore, it is clear from this assessment that to meet the housing need the Council would need to deliver some 264 new affordable dwellings per annum across the Borough as a whole - a level of housing in excess of existing RSS housing targets.<sup>15</sup> Therefore there is a considerable unmet requirement for affordable housing in Ribble Valley. The Council has adopted an Affordable Housing Memorandum of Understanding in July 2009<sup>16</sup> and this is treated by RVBC as a material consideration when determining planning applications. On qualifying sites the Council will seek 30% affordable units on site. The mix and type of affordable housing units to be delivered on the appeal site is set out in the UU. It is agreed that the provision of 81 new affordable homes (30% of the total), would accord with Council policy and make a significant and useful contribution towards addressing the need.
22. The Strategic Housing Land Availability Assessment (SHLAA)<sup>17</sup> 2009 demonstrates that the appeal site was considered to be suitable, available and deliverable. Having met the requisite tests it was deemed by the Council to be deliverable within the 0-5 year category. This assessment was

<sup>14</sup> LPA5 and LPA6

<sup>15</sup> CD14 page 80 and Mr Venning's proof of evidence page 10

<sup>16</sup> CD18

<sup>17</sup> CD15 and CD16 Site 33 page 47

endorsed by the Council in 2008 and there has been no change in circumstances on or around the appeal site since the SHLAA was published.

23. The Council accepts in INQ3<sup>18</sup> that it is unable to demonstrate an up-to-date 5 year supply of housing land. There is a "claimed 3.3 years supply" which reflects the fact that the Appellant has not carried out an assessment of the Council's land supply on the basis that it is below the Government's minimum 5 year requirement.<sup>19</sup> Furthermore, it is agreed that there are no more allocated sites left so the Council is reliant upon windfall sites to meet its housing supply. I note that PPS3 paragraph 71 is explicit in that where the LPA cannot demonstrate an up-to-date 5 year supply of deliverable sites then favourable consideration should be given to a proposal for housing having regard to the policies in PPS3, including the considerations in paragraph 69. The Council has agreed that as there is not a 5 year supply of housing, and therefore there is an in principle policy imperative to release more sites for housing now to redress that need.
24. In addition to PPS3, I have taken into account national policy including that contained in PPS1, PPS5, PPS9, PPG13, PPG17, PPS22 and PPS25 together with the Government's objective to secure economic growth both in 'The Plan for Growth' Ministerial Statement<sup>20</sup> and the consultation draft of the National Planning Policy Framework (NPPF) (July 2011).

### ***The first issue – sustainability***

25. Following negotiations between the Appellant and LCC, it is agreed that various improvements in accessibility by public transport and non car modes would be carried out as part of the proposed development. A package of pedestrian improvement measures would be provided including the provision of Toucan measures at Whalley Road; the provision of a zebra crossing on Henthorn Road; local pedestrian infrastructure improvements in order to maximise access between the appeal site and the town centre; a pedestrian /cycle link between the appeal site and Caravan Road;<sup>21</sup> and Woone Lane traffic management scheme. The Appellant has also agreed to fully fund for 5 years of operation a bus service based on the current C1 service, extended to serve the development with access via Henthorn Road. All of the farebox revenues would be placed in a fund to be ring-fenced for the purposes of continued funding of the bus service beyond 5 years. Cycle parking would be provided at the development play area and funds would be provided for cycle parking in the town centre. Each location would accommodate 4 cycles.
26. For the Council it is argued that the appeal site is located at the extreme south west of the urban area, just under 2km from the town centre. Moreover, it is claimed that the site is isolated from the primary route network, is distant from basic facilities such as a local convenience store, and a considerable distance from the nearest primary school, bus stop and cycle route. In the Council's view the access arrangements would create a development that fails to make any attempt to integrate with the adjoining residential area and indeed would turn its back on that development. It is stated that basic facilities are all beyond desirable and acceptable walking

<sup>18</sup> INQ3 paragraph 7.11

<sup>19</sup> The 3.3 years supply would diminish to around 2.6 years if the requirement is calculated on a 200 dwellings per annum basis

<sup>20</sup> Written Ministerial Statement – Right Honourable Greg Clark MP dated 23 March 2011- Planning for Growth

<sup>21</sup> AHA Drg No 1222/18 in Dr Ashley's Appendix 7

distances as indicated in the IHT<sup>22</sup> Guidelines and beyond the “preferred maxima” for all but the school, employment areas and some pubs. In the Council’s view, the appeal proposal does not meet an acceptable standard of sustainability. The Council’s views on the accessibility and sustainability of the site are supported by local residents and interested parties.

27. At the Inquiry it was agreed that accessibility is but one element of a sustainable development; it is not synonymous with it. Thus, a proposal can be a sustainable one even if it suffers from limitations in terms of its accessibility by walking, cycling or public transport. The appeal site would be an extension to the existing settlement of Clitheroe, which is the main settlement in the Borough and in a location where growth would be expected to be directed. The Council accepts that in land use terms the site could be appropriately developed for housing purposes but the present proposal is not sufficiently accessible although it could be made sufficiently accessible. In my view, the development of site immediately adjacent to the built up area of Clitheroe would in principle be ‘sustainable’ because that is where the predominance of services and facilities are to be found. That is in part because such a location would reduce reliance upon the private car.
28. There are many other components of sustainability other than accessibility. The concept includes such matters as meeting housing needs in general and affordable housing in particular; ensuring community cohesion; economic development; ensuring adequate provision of local health facilities and providing access for recreation in the countryside. Many of these aspects of the proposed development are uncontested by the Council and are consistent with the concept of sustainability. These matters need to be considered as part of the overall assessment of whether the appeal proposal comprises a sustainable development. Having considered these other components none of the witnesses contended that accessibility issues were an overriding consideration in this case. Moreover, the appeal scheme needs to be judged on its merits. That is to say, it may be that one could point to aspects of a scheme which might be improved upon. However, if the proposal is acceptable in land use terms then it should not be refused on the grounds that a better form of development might be identified.
29. I appreciate that from an early stage the Appellant agreed that the overall accessibility of the site could be improved and should be improved. I am aware that the scheme then changed in two important ways; firstly, it was agreed that the site required a pedestrian/cycle link to the Caravan Road and then onward to Edisford Road and secondly, the public transport improvements were agreed. Thereafter the position of LCC changed from objection on the grounds of accessibility to an agreement that the appeal scheme proposed the minimum that was necessary. Importantly at no stage from that initial point was it suggested that it would be necessary to create an additional route through to the east via Fairfield Close.
30. Although such a route may be desirable to give more connectivity and more direct access to Clitheroe Edisford Primary School, I consider that such an access is unnecessary as it would make little more than a marginal difference in accessibility terms. An access from the appeal site via Fairfield Close for pedestrians and cyclists would do no more than provide for an alternative way of getting to Henthorn Road and not a direct north east route

<sup>22</sup> The Institute of Highways and Transportation

through to the town centre. In coming to this view I have considered whether a planning condition would be appropriate but this would fail the test of need in Circular 11/95 and would result in the unwarranted burdening of the appeal scheme with a 'ransom' situation to no good purpose.

31. In terms of the site's accessibility there is no disagreement between the parties that the whole of the Clitheroe urban area is within the 5 km cycle isochrone.<sup>23</sup> The appeal proposals for cycling promote integration and increased connectivity between the appeal site and the surrounding area. I recognise that the local topography in the town centre has in parts undulating/hilly characteristics. However, this is common to residents wherever they live in Clitheroe. As such I consider in the matter of topography there is no more or less deterrent to cycling for residents of the appeal site than is typical for existing residential areas. Mr Butterworth may wish to create a network of cycleways. However, the view of LCC is plainly that the rather more limited improvements which are proposed do sufficient to make cycling a realistic alternative to the use of the private car.
32. Furthermore, it is part of the appeal proposals that the existing public transport facilities would be enhanced by the introduction of a new 'quality' bus stop within the appeal site and the rerouting of the existing service C1 to call at this new bus stop. This would be in accordance with the aims and objectives of current national and local policies. A residential Travel Plan is also proposed to raise awareness. The enhanced bus service would mean that the journey time to the town centre and the railway station is very short. Whilst there have been criticisms of some elements of the bus service, such as how much longer beyond the 5 year period would hypothecated fares fund the service, the reality is that bus accessibility would be good.
33. The Council's main concern relates to pedestrian accessibility. To that end reliance is placed upon the IHT walk distance guidance. The IHT guidance does not provide a definitive view of distances, but does suggest a preferred maximum distance of 2,000m for commuting or school trips. In my view a degree of realism must be applied. Most journeys of less than a mile are undertaken on foot which would take a future resident close to the town centre. The appeal proposals plainly are such that pedestrians have a realistic choice of alternative modes of travel including the private car. It is a fact that some of the facilities lie beyond 800m, but from the walk isochrones and local amenities plan<sup>24</sup> it is clear to me that there are a range of facilities within an easy walk of the appeal site. In particular the northern access, linking to the Caravan Road and then to Edisford Road, would take a future resident to the Leisure Centre, the primary school and the local convenience store (Spar).
34. The Council contends that the northern access would not be well used because it would not be lit. For the hours of daylight it would provide a clear and easy route, and during the hours of darkness the actual unlit portion of the route would be about 40 metres. In my view the lighting of the whole of the northern route is necessary in the interests of public safety and to aid accessibility. However, this is a matter which could be covered by a planning condition and dealt with at the reserved matters stage. The Council also

<sup>23</sup> CD1.13 Figure 5

<sup>24</sup> Dr Ashley's Appendix 3 Figure CAA/3

expressed concern about how attractive such a route would be during the construction stage but again this a detailed matter which could be covered by a planning condition and dealt with at the reserved matters stage.

35. Taking all of these matters into account I consider that the appeal site is located adjacent to the principal urban area of the Borough which is a settlement to which substantial growth is directed by RSS and the emerging LDF Core Strategy. From the evidence that is before me no better sites have been identified. Moreover, the Council could not identify any further measures which would improve the accessibility of the site save for the link to the east which I consider is unnecessary. The site is sufficiently accessible with the measures proposed by the Appellant. The proposal would not conflict with national policy, the aforementioned RSS policies or Policy T1 of the RVDWLP. Overall I conclude on the first issue that the appeal proposal would comprise a sustainable form of development.

### ***The second issue – highways***

36. The Council's reason for refusal No 1 (RFR1) indicates that the proposal would have a detrimental impact on the traffic infrastructure of Clitheroe and key traffic junctions of Henthorn Road, Woone Lane, Eshton Terrace and the railway crossing which would lead to the proposal being contrary to the principles of sustainable development. In my view there is a lack of clarity when linking the claimed detrimental impact on traffic infrastructure to the issue of sustainable development. However, from the evidence given at the Inquiry the Council's concerns would seem to come down to two junctions, neither of which gives rise to any concerns on the part of the highway authority LCC. Moreover, it is no part of the Council's case to allege that there is a highway safety concern as opposed to a highway capacity issue.
37. Both main parties provided extensive factual data to the Inquiry. I am aware that a considerable amount of time has been spent by both Mr Davis and Dr Ashley considering trip rates and whether or not the 85%ile ought to have been used rather than the average. The Council claims that the TRICS 85%ile figures adopted by Mr Davis are a better guide to future trip generation by the appeal development. Dr Ashley has produced the 85%ile outputs, as well as the average outputs of her Transport Assessment (TA) and Mr Davis's work. She has also compared that with the actual generation from the housing which lies adjacent to the appeal site. The out-turn of that exercise<sup>25</sup> is that the average generations and the actual generation (outbound am peak) are all very similar indeed, with the 85%ile being significantly higher. Even when a sensitivity analysis<sup>26</sup> was carried out by Dr Ashley the answer demonstrated the robustness of the TA figures.
38. Both main parties agree that it actually makes very little difference at all. Although the Council originally placed great emphasis upon the RFC<sup>27</sup> being in excess of the 'practical threshold capacity' of 0.85 it is clear from the TRL guidance<sup>28</sup> that there are a number of reasons why one should not rely on just one single RFC value. In my view the more important criteria for judging

<sup>25</sup> Dr Ashley's Rebuttal Appendices R6

<sup>26</sup> CD9 DfT Guidance on Transport Assessment paragraph 4.63

<sup>27</sup> Ratio of flow to capacity

<sup>28</sup> APP6

the success of a design, from the point of view of congestion, is to evaluate the acceptability of the situation in terms of delay and queuing of vehicles.

39. The Council and others contend an unacceptable traffic situation would be created in Woone Lane as demonstrated by Mr Davis' drawings TRN-10685/002 (2016) and TRN-10686/004 (2021) and by Dr Ashley's Tables CAA/R8, R9 and R10. It is said that with a queue of 5 cars or more Woone Lane would be blocked to westbound traffic if the LCC preferred shuttle arrangements for Woone Lane are to be adopted. The Council maintains that Tables R8 and R9 demonstrate that whichever trip generation figures are used the development would cause queues greater than 5 vehicles in the peak hour in 2016 and 2021. It is also claimed that Table CAA/R10 advises that in 2021 using Dr Ashley's average trip rates this blockage would occur continuously between 0830 and 0845 hours and for part of the immediately preceding and immediately following quarters i.e. for about 20 minutes of the peak hour every day the traffic would back up along Woone Lane.
40. As I perceive it, at worst using the 85%ile figures and comparing those to the base, even at 2021 the effect of the proposal is to add little more than a minute in the average delay to a driver who arrives at the Woone Lane Roundabout or the junction of Thorn Lane and Henthorn Road in the peak of the peak hour. The Council accepts that that was not of itself a robust basis to withhold consent.
41. The Council and interested persons consider the appeal proposal would cause unacceptable traffic congestion or 'gridlock' for southbound traffic travelling on Woone Lane North in the peak of the peak hour. I disagree for several reasons. Firstly, I note that this relates to a small number of vehicles (19 in the peak hour) who wish to undertake this manoeuvre, and who plainly have an alternative of passing further south and using Greenacres Lane. Secondly, far from being worsened, the effect of the proposal would actually improve the flow of two way traffic along Woone Lane for much of the day by creating raised tables to enable the passage of 2 way traffic. Thirdly, the aim of the highway authority LCC is to secure one way flow along Woone Lane North. This proposal would facilitate that – which although a RTRO<sup>29</sup> cannot be guaranteed would provide a complete solution to the feared gridlock.
42. Fourthly, the 'gridlock' presupposes that parking takes place on both sides of the road at that part of the peak hour. Whilst that may be so at the present time, it does not mean that parking will always frustrate oncoming vehicles. Fifthly, 'gridlock' is far too strong a word for what is in effect the vagaries of normal urban 'give and take'. The existence of raised tables would enable a southbound vehicle to make progress. Sixthly, what is also clear is that the queuing diminishes to a level below the 5 vehicle point of difficulty very quickly. It follows that RFR1 turns upon delays of seconds in an urban environment and a limited issue for a handful of cars if they chose to travel south down Woone Lane, when obvious alternatives are available. In my view that is not a proper basis for dismissal of an appeal. It is for that reason that whilst the UU offers the funding of the RTRO, I am firmly of the view that it is unnecessary and not material. I discuss this matter further in the context of the UU at paragraphs 48-49 below.

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<sup>29</sup> Road Traffic Regulation Order

43. The Council, Mr Butterworth and others are concerned about the operation of traffic at other key traffic junctions including Henthorn Road/Bawdlands, Henthorn Road/Thorn Street and Eshton Terrace and the railway crossing. From the evidence that is before me, including the video evidence, it is clear that the appeal proposal would have no material traffic impact on the operation of the key traffic junctions of Henthorn Road/Bawdlands or the Henthorn Road/Thorn Street junctions. This is the position agreed by LCC. Similarly, on the basis of the Appellant's survey work including the video evidence, the appeal proposal would have no material impact on Eshton Terrace and the railway crossing. I have not identified any material detrimental impacts of the appeal proposal elsewhere in Clitheroe. In short, there is clear objective evidence before me that the traffic concerns raised by the Council and other interested persons are not warranted, for all that there may be a genuinely held perception on the part of some. I conclude on the second issue that traffic generated by the appeal proposal would not lead to unacceptable highway conditions particularly on Woone Lane.

### **Planning Obligation**

44. At the Inquiry the Appellant submitted a Unilateral Undertaking (UU)<sup>30</sup> pursuant to Section 106 of the Town and Country Planning Act 1990 relating to the appeal development which would take effect should planning permission be granted. The UU binds the owner to covenants with both the Borough Council and the County Council. The covenants with the Borough Council include arrangements for: 81 of the proposed dwellings on the site to be delivered as affordable units; the provision of open space; the provision of on site play areas; the provision of a community park and cycle/pedestrian access route and a contribution of £156,250 towards the costs of constructing the PCT facility.
45. The owner covenants with the County Council to provide public transport improvements including a bus service; a quality bus stop within the development and a contribution of £250 towards the costs of a temporary additional bus stop on Henthorn Road. The owner further covenants with the County Council to contribute £1,500 towards the costs of LCC in respect of public consultation on the Woone Lane RTRO or if the one-way system is not favoured by the local community to procure the alternative Woone Lane Traffic Management scheme; to pay a contribution of £1,000 towards the cost of providing a cycle rack to accommodate 4 bicycles in Clitheroe town centre; to pay a contribution of £18,000 towards monitoring the Travel Plan; and to pay an education contribution of £1,400,611.50 towards the provision of additional primary and secondary school places.
46. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation providing for such a contribution must be: 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. These matters reflect the themes of the five tests of a planning obligation within Circular 05/2005 – *Planning Obligations*.

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<sup>30</sup> APP10

47. In my view the provisions of the UU in relation to the covenants with the Borough Council are appropriate and form an acceptable basis for the granting of planning permission. The affordable housing provisions comply with the Council's affordable housing policies. There is a clear and pressing need for affordable housing across all areas of the Borough. The other provisions of the UU are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. I consider that all of the provisions of the UU in relation to the covenants with the Borough Council meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and the tests of Circular 05/2005.
48. With regard to the provisions of the UU in relation to the covenants with the County Council, I consider that all of these, save for the contribution of £1,500 towards the costs of public consultation and advertising in respect of Woone Lane RTRO, are appropriate and form an acceptable basis for granting planning permission. The need to deliver highway improvement measures on Woone Lane does not arise as a consequence of the highway impact from the appeal proposals. LCC has confirmed that Woone Lane Traffic Management scheme (Drg No 1222/23/B) is acceptable and provides acceptable mitigation for the proposed development. It remains available for LCC to ultimately implement the alternative Woone Lane RTRO scheme (Drg No 1222/20), if the required one-way working is secured. In my view, the Woone Lane improvement scheme outlined in either Drg No 1222/20 or in Drg No 1222/23/B is not necessary because the appeal proposal does not have a material traffic impact, in terms of the volume of traffic generated on Woone Lane. It follows that I have not taken it into account.
49. The other provisions of the UU in relation to the covenants with the County Council are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. With the exception of the Woone Lane RTRO contribution I consider that all of the other provisions of the UU in relation to the County Council meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and the tests of Circular 05/2005. With the exception of the Woone Lane RTRO contribution, I accord the UU significant weight.

### **Other matters**

50. I have taken into account all other matters raised. The Appellant referred to a substantial number of benefits which it was argued should be taken as positive elements in support of the scheme. Firstly, I agree with the Appellant that the Community Park would add to the attraction of the area and would continue the opening up of recreational land adjacent to the River Ribble to all residents of Clitheroe, as well as providing excellent amenity space to the future residents of the appeal site. Secondly, I accept that the proposed doctor's surgery is an obvious benefit of the scheme which has been wrongly downplayed by the Council's witnesses and ought to be afforded substantial weight because it meets an identified need in the town.
51. Thirdly, from the evidence that is before me, there is a backlog of over 1,000 households in need of affordable housing, the majority of whom are in



Clitheroe. There has been a substantial underperformance of affordable housing as against targets and the projected supply means that the deficit in provision will only increase. Moreover, I am aware that there is no 5 year housing land supply available from which the Council could extract affordable housing provision from the private sector. Therefore, in my view, the need for additional provision becomes acute. In terms of sustainable development, the provision of the affordable units as part of a mixed development is an essential part of creating mixed communities. The provision of 81 affordable units is a matter which weighs strongly in favour of the proposed development.

52. Fourthly, in terms of the issue of housing need, national policy is clear. The Council cannot demonstrate an up-to-date 5-year supply of deliverable sites and therefore the provisions of paragraph 71 of PPS3 are engaged and favourable consideration should be given to a proposal for housing having regard to the policies in PPS3, including the considerations in paragraph 69. Having considered the policies in PPS3 including the matters specified in paragraph 69, I consider the appeal proposal would not undermine the Council's spatial vision or its wider policy objectives. Allowing this proposal for 270 dwellings would greatly assist in meeting the immediate housing needs of the Borough. This is a further matter which weighs strongly in favour of the proposed development.
53. The Council and other interested parties raised the question of the impact of the grant of permission at this location in pre-empting the LDF consultation process. Bearing in mind the advice in paragraphs 17 – 19 of The Planning System: General Principles I consider that the Core Strategy is still at a relatively early stage in considering the spatial location and quantum of development for the Borough. The Core Strategy has not reached the submission stage for examination at an Inquiry when more certainty exists, particularly when no objections are raised. Accordingly, the appeal proposal cannot be considered to predetermine the scale of development or choice of spatial locations available to the Council as a much greater quantum of growth may be required. In my view prematurity should not be given any decisive weight in respect of the appeal proposals.
54. I have taken into account the views of local residents and other interested parties in reaching this decision. I have considered the written representations submitted on behalf of the Trustees of the Standen Estate including the reports on planning policy, highway matters and design. I am aware that representations have been raised in relation to the principle of the development and also site specific matters such as the loss of agricultural land, the loss of countryside, concerns about flooding, wildlife, noise, the density of the development, capacity of local schools, local facilities, residential amenity and traffic issues. I have also taken into account other appeal decisions drawn to my attention. Suffice it to say that each decision must be considered on its own merits and in accordance with the provisions of the development plan and any other material considerations. None of these matters is sufficient to justify withholding planning permission.
55. I am aware of the concerns of Mr Butterworth in relation to the effect of the proposal on the Grade II listed Henthorn Farmhouse. I consider that the

setting of the listed building is now fairly limited to the property boundaries in which it sits (all three attached properties making up the single listed building) and the street frontage immediately in front of the building. The farm building is now determinedly domestic in character and aside from the blocked carriage entry has little reference to its earlier agricultural past; there appears to be little to suggest that the land to the rear of the building is directly associated with it. Development of the appeal site to the rear of the building would change the context of the listed building, further enclosing it within the developed area of Clitheroe. However, as it is no longer readable as an agricultural building, having been fully converted into three domestic properties and having no redundant farm buildings associated with it, the setting of the building has shifted to a more domestic scale of the garden surroundings and the street frontages. Overall I consider that the development to the rear of the building would not cause harm to the setting of the building, particularly if planting occurs along the site boundary as shown on the illustrative Master Plan. I consider that the proposal would preserve the setting of this listed building.

## Conclusions

56. I conclude that the proposal would be in overall accordance with policies in the development plan and Government guidance and that the appeal should be allowed.

## Conditions

57. The Council submitted a schedule of suggested conditions<sup>31</sup> which were discussed at the Inquiry. I have considered these conditions in the light of the advice in Circular 11/95. Condition 1 refers to a 5 year time limit for the submission of reserved matters which I consider is reasonable and necessary given the nature and size of the proposal. Condition 2 is necessary because the application was made for outline permission. Condition 3 is necessary to encourage renewable energy and to comply with Policy G1 of the Local Plan. Condition 4 relating to surface water drainage is necessary to prevent the increased risk of flooding. Condition 5 is necessary to protect, restore and enhance the existing and/or proposed ponds on the site. Condition 6 is necessary to ensure that the detailed site investigation and remediation strategy will not cause pollution of ground and surface waters.
58. Condition 7 is necessary to prevent noise intrusion and to protect residential amenity. Condition 8 is necessary to ensure that the development is carried out in substantial accordance with the approved plans. Condition 9 is necessary to ensure a satisfactory development of the site in a phased manner. Condition 10 is necessary to ensure that satisfactory access is provided to the site. Conditions 11 and 12 are necessary in the interests of highway and pedestrian safety and to comply with Policies G1 and T1 of the RVDWLP. Condition 13 is necessary to ensure and safeguard the recording of any archaeological deposits. Conditions 14-22 are necessary in the interests of protecting nature and conservation issues in accordance with Policies G1, ENV7, ENV9, ENV10 and ENV13 of the RVDWLP. Condition 23 in relation to

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<sup>31</sup> LPA10

the Travel Plan is necessary to minimise the use of private cars in the interests of a sustainable development.

59. Condition 24 in relation to a Construction Method Statement is necessary in the interests of protecting residential amenity. Condition 25 is necessary to encourage an energy efficient development. Condition 26 relates to the submission of a Masterplan and Design Code for the whole site and is necessary to ensure a satisfactory development in the interests of visual amenity. Condition 27 is necessary to ensure that the final details of the pedestrian/cycle link to Edisford Road are acceptable and implemented. Discussions took place at the Inquiry about the need for details of 'lighting' to be included in the wording. I consider that word 'lighting' should be included in this condition in the interests of public safety and accessibility. Condition 28 relates to the provision of a bus stop within the site. I consider this condition is necessary to aid accessibility and to comply with Policies G1 and T1 of the RVDWLP. I consider that Condition 29 is unnecessary for the reasons set out at paragraph 30 above.

*Harold Stephens*

INSPECTOR

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Stephen Sauvain QC

Instructed by Diane Rice, Head of  
Legal and Democratic Services  
for Ribble Valley Borough Council

He called:

Gareth Davis BSc (Hons) MSc CMILT MCIHT

Divisional Director, Waterman  
Boreham Ltd

Richard Purser BA (Hons), BPI MRTPI

Associate Partner, DPP LLP

### **FOR THE APPELLANT**

Paul G Tucker QC

Instructed by Tim Dean, Planning  
and Development Manager  
Gladman Developments Ltd

He called:

Dr Carol Ashley BSc MSc PhD FIHT MCILT MAE

Director of Ashley Helme  
Associates

George Venning MA (Cantab)

Principal Consultant at Levvel Ltd

Phil Rech BA (Hons) BPhil LD CMLI

Director FPCR Environmental  
Design Ltd

Tim Dean MA Dip TPS MRTPI

Planning and Development  
Manager Gladman Developments  
Ltd

### **INTERESTED PERSONS**

Maureen Fenton

Local resident

David Butterworth

Coordinator of Henthorn Housing  
Action Group

Ron Loebell

Local resident

**INQUIRY DOCUMENTS**

INQ1	Inquiry Notification Letter
INQ2	Letters received in response to the Notice of the Inquiry
INQ3	Planning Statement of Common Ground
INQ4	Highways Statement of Common Ground
INQ5	Education Statement of Common Ground

**CORE DOCUMENTS LIST**

<b>CD1</b>	<b>Application Documents</b>
1.1	06 September 2011 – Letter – RVBC to Gladman – Re: Agreement to extension of time to determine Planning Application 28 July 2011 – Letter – Gladman to RVBC – Re: Extension of time limit to determine Planning Application
1.2	Amended application covering letter, application form and certificates (06.12.10)
1.3	20 August 2010 – Letter – RVBC to Gladman – Re: Application registration
1.4	Application covering letter, application form and certificates (16.08.10)
1.5	Location Plan – 2010-001-100
1.6	Topographical Survey – 2010-001-101, 2010-001-102
1.7	Development Framework – 4370-P-01 Revision F
1.8	Illustrative Master Plan – 4370-P-02 Revision E Green Infrastructure Plan – 4370-P-03 Revision B Indicative Cross Sections A-C – 4370-P-04 Open Space Plan 1: Community Park – 4370-P-05 Revision A Open Space Plan 2: Play Area – 4370-P-06 Revision A Open Space Plan 3: Valley – 4370-P-08 Revision A
1.9	Planning Statement – August 2010
1.10	Report of Community Involvement – August 2010
1.11	Draft S106 Agreement
1.12	Design and Access Statement – 4370/DAS Revision A
1.13	Transport Assessment – 1222/3/B/TA
1.14	Travel Plan – 1222/4/A/TP
1.15	Air Quality Assessment – 1222/5
1.16	Ecological Appraisal – July 2010
1.17	Tree Assessment Report – July 2010
1.18	Phase 1 Site Investigation – KB450-03/AES/HB/GP
1.19	Soil Resources and Agricultural Use & Quality
1.20	Flood Risk Assessment – August 2010
1.21	Landscape and Visual Assessment – August 2010
1.22	Archaeological Desk Based Assessment – June 2010
1.23	Utilities Appraisal Report – V1

1.24	Renewable Energy & Sustainability Resources Strategy, Building for Life Evaluation – July 2010
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<b>CD2</b>	<b>Post Application Submission Updated Documentation</b>
2.1	Development Framework Plan – 4370-P-01 Revision G
2.2	Illustrative Masterplan – 4370-P-02 Revision I
2.3	Design and Access Statement – 4370/DAS Revision C
2.4	Ecological Appraisal – Revision B, November 2010
2.5	Landscape and Visual Review, August 2011

<b>CD3</b>	<b>Correspondence with Local Planning Authority</b>
	<b><i>Relevant Planning Correspondence</i></b>
3.1	19 September 2011 – Application decision notice
3.2	15 September 2011 – Committee report update
3.3	15 September 2011 – Report – RVBC to Gladman – Supplementary questions re: Woone Lane proposals
3.4	08 September 2011 – Email – Gladman to RVBC – Clarification on East Lancashire Primary Care Trust, Procurement of Doctor's surgery
3.5	08 September 2011 – Report – RVBC to Gladman – Response to committee's questions raised at 14 July 2011 committee meeting
3.6	31 August 2011 – Email – RVBC to Gladman – Wording of condition 12 within the amended committee report
3.7	31 August 2011 – Email – RVBC to Gladman – Offsite highways works
3.8	09 August 2011 – Email – RVBC to Gladman – Acknowledgement of letter dated 19 July 2011
3.9	14 July 2011 – Application committee report
3.10	29 July 2011 – Letter – Gladman to RVBC – Re: Extension of time letter to determine planning application
3.11	25 July 2011 – Letter – Gladman to RVBC – Re: Reference to Clayton-le-Woods appeal decision
3.12	25 July 2011 – Report – Gladman to RVBC – Response to Ministerial Statement on 'Planning for Growth'
3.13	19 July 2011 – Letter – Gladman to RVBC – Re: Conduct of members – Planning committee 14 July 2011
3.14	13 July 2011 – Email – Gladman to RVBC – Re: Distribution of matrix of key material planning considerations
3.15	08 June 2011 – Email – RVBC to Gladman – Re: cycle linkage
3.16	11 May 2011 – Email – Gladman to RVBC – Re: 14 day additional consultation exercise in respect of Woone Lane
3.17	11 May 2011 – Email – Gladman to RVBC – Re: Confirmation of additional information to be submitted by AHA in respect of Woone Lane
3.18	22 March 2011 – Email – Gladman to RVBC – Re: Response from Lancashire County Council regarding education triggers
3.19	04 March 2011 – Letter – Gladman to RVBC – Re: Response to objection by Standen Estates
3.20	03 March 2011 – Letter – FPCR to RVBC – Re: Response to objection by Standen Estates
3.21	02 March 2011 – Letter – AHA to LCC Highways – Re: Response to objection

	by Standen Estates
3.22	20 December 2011 – Email – Gladman to RVBC – Response to RVBC in relation to questions about development scale, phasing and public open space
3.23	09 December 2010 – Email – Gladman to RVBC – Re: Meeting between LCC Highways and AHA
3.24	01 November 2010 – Letter – Gladman to RVBC – Re: Request for meeting to discuss application progress
3.25	16 August 2010 – Letter – RVBC to Gladman – Re: Response to pre application enquiry
3.26	20 July 2010 – Letter – RVBC to Gladman – Re: Response to request for screening opinion
3.27	07 July 2010 – Letter – Gladman to RVBC – Re: Request for screening opinion
	<b>Highways Correspondence</b>
3.28	14 July 2011 – Letter – Gladman to RVBC – Re: Additional information in relation to rail movements at barrier controlled level crossing on Eshton Terrace
3.29	10 May 2011 – Report – LCC Highways to RVBC – Re: Consultation response to planning application
3.30	04 May 2011 – Email – AHA to LCC Highways – Re: Woone Lane traffic management scheme
3.31	27 April 2011 – Email – AHA to LCC Highways – Re: Request for additional information in relation to Woone Lane scheme
3.32	14 April 2011 – Email – AHA to LCC Highways – Re: Amendments to Woone Lane scheme following meeting with LCC Highways
3.33	16 March 2011 – Email – AHA to LCC Highways – Re: Request for additional information in relation to Woone Lane scheme
3.34	04 March 2011 – Letter – LCC Highways to AHA – Re: Consultation response to planning application
3.35	04 March 2011 – Letter – LCC Highways to RVBC – Re: Consultation response to planning application
3.36	02 March 2011 – Letter – AHA to LCC Highways – Re: Response to objection by Standen Estates
3.37	17 December 2010 – Letter – AHA to LCC Highways – Re: Response to meeting of 08 December 2010 265-282
3.38	30 November 201 – Email – RVBC to Gladman – Re: Details of meeting between RVBC and LCC Highways
	<b>Ecology Correspondence</b>
3.39	26 November 2010 – Report – LCC to RVBC – Re: Consultation response to planning application
3.40	11 November 2010 – Email – FPCR to LCC – Re: Submission of amended ecological report (Revision B)
3.41	03 November 2010 – Email – LCC to FPCR – Re: Request for additional information in relation to ecological report
	<b>Affordable Housing Correspondence</b>
3.42	15 August 2011 – Email and Report – Levvel to RVBC – Re: Report on

	feasibility of delivering affordable housing
3.43	25 May 2011 – Report– Levvel to RVBC – Re: The Housing Corporation economic appraisal tool
3.44	25 May 2011 – Report– Levvel to RVBC – Re: The Housing Corporation economic appraisal tool
3.45	25 May 2011 – Report– Levvel to RVBC – Re: The Housing Corporation economic appraisal tool
3.46	23 May 2011 – Email – Gladman to RVBC – Re: Arrangement for delivery of Housing Corporation economic appraisals
3.47	09 May 2011 – Email and Report – Gladman to RVBC – Re: Submission of independent report by Levvel relating to delivery of affordable housing
3.48	03 May 2011 – Email – Gladman to RVBC – Re: Response to Rachael Stott’s memorandum of 06 April 2011
3.49	14 April 2011 – Email – Gladman to RVBC – Re: Commission of report by Levvel
3.50	14 April 2011 – Email – Gladman to RVBC – Re: Scoping of Levvel report and corporate capability statement
3.51	06 April 2011 – Memorandum – RVBC Affordable Housing to RVBC Case Officer – Consultation response to planning application
	<b><i>Masterplan Correspondence</i></b>
3.52	08 February 2011 – Letter – Gladman to RVBC – Re: Amendments to masterplan (Revision H)
3.53	30 November 2010 – Email – Gladman to RVBC – Re: Amendments to masterplan (Revision G) and Development Framework Plan (Revision G)
3.54	11 November 2010 – Email – RVBC to Gladman – Re: Request for additional information following internal meeting
	<b><i>Lancashire County Council Contributions Correspondence</i></b>
3.55	08 December 2010 – Email – Gladman to RVBC – Re: Response to LCC contributions request
3.56	20 September 2010 – Letter – LCC to RVBC – Re: Request for contributions in respect of planning application
	<b><i>PCT/Doctors Surgery Correspondence</i></b>
3.57	25 May 2011 – Email – Gladman to RVBC – Re: Confirmation that East Lancashire PCT are agreeable to obligations within Section 106
3.58	15 March 2011 – Email – RVBC to Gladman – Re: Confirmation that East Lancashire PCT are agreeable to the inclusion of provision of doctors facility within scheme
3.59	25 February 2011 – Letter – East Lancs PCT to Gladman – Acceptance to inclusion of doctors facility within scheme
3.60	15 December 2010 – Email – RVBC to Gladman – Re: Confirmation of additional consultation period following amendment to description of development
3.61	13 December 2010 – Email – Gladman to RVBC – Re: Request for confirmation to consultation period following amendment to description of development



	<b><i>Air Quality Correspondence</i></b>
3.62	19 May 2011 – Email – RVBC to Gladman – Re: Consultation response to planning application
3.63	09 May 2011 – Letter – PBA to Gladman – Re: Independent review of information submitted by AHA to RVBC in support of planning application
3.64	11 May 2011 – Email – RVBC to Gladman – Re: Response to scoping of additional works in support of application (09 May 2011)
3.65	27 April 2011 – Letter – AHA to RVBC – Re: Additional information in support of planning application
3.66	10 December 2010 – Letter – AHA to RVBC – Re: Information in support of application
	<b><i>LDF Core Strategy (Housing Target)</i></b>
3.67	18 June 2010 – Report – RVBC – Re: Minutes of Planning and Development Committee 17 June 2010
3.68	17 June 2010 – Report – RVBC – Re: Report to Planning and Development Committee
<b>CD4</b>	IHT Guidelines for Planning for Public Transport in Developments 03/99
<b>CD5</b>	IHT Guidelines for Providing for Journeys on Foot 2000
<b>CD6</b>	DTLR By Design, Better Places to Live 2001
<b>CD7</b>	DfT Transport Statistics Bulletin, National Travel Survey 2006
<b>CD8</b>	DfT Manual for Streets 2007
<b>CD9</b>	DfT Guidance on Transport Assessment 03/07
<b>CD10</b>	CLG SHLAA Practice Guide 07/07
<b>CD11</b>	GONW North West Regional Spatial Strategy 09/08
<b>CD12</b>	RVBC Ribble Valley Economic Review 10/08
<b>CD13</b>	RVBC Settlement Hierarchy 12/08
<b>CD14</b>	RVBC Strategic Housing Market Assessment Report 12/08
<b>CD15</b>	RVBC Strategic Housing Land Availability Assessment Report 04/09
<b>CD16</b>	RVBC Strategic Housing Land Availability Assessment Maps (Clitheroe) 04/09
<b>CD17</b>	LCC Creating Civilised Streets 02/10
<b>CD18</b>	RVBC Affordable Housing Memorandum of Understanding 06/10
<b>CD19</b>	RVBC Committee Report and Minutes, RSS Figures Retained 06/10
<b>CD20</b>	RVBC Core Strategy Consultation Reg25 - 08/10
<b>CD21</b>	DfT Manual for Streets 2 - 09/10
<b>CD22</b>	RVBC Annual Monitoring Report 12/10
<b>CD23</b>	RVBC Core Strategy, Generation of Alternative Development Strategy Options 06/11
<b>CD24</b>	NLP Ribble Valley Housing Requirements 07/11
<b>CD25</b>	DfT Design Manual for Roads and Bridges, Volume 6, Section 2
<b>CD26</b>	RVBC Core Strategy Topic Paper 11/11
<b>CD27</b>	PINS Appeal Decision, Riddings Lane, Whalley 09/11

<b>CD28</b>	RVBC Defining a Local Housing Requirement, Summary 11/11
<b>CD29</b>	RVBC Housing Land Availability, Committee Report 11/11
<b>CD30</b>	Gladman Footpath/Cycle Link Planning Application 12/11

### **ADDITIONAL INQUIRY DOCUMENTS LIST SUBMITTED ON BEHALF OF APPELLANT**

Opening submissions on behalf of Appellant	APP1
Ashley Helme Associates - Proposed Access Arrangements 1222/03 Revision C	APP2
FPCR – Summary of Proof	APP3
Environment Agency – Withdrawal of objection – 12 March 2012	APP4
Ashley Helme Associates – Information to be given to Inquiry: As agreed with Gareth Davis	APP5
Training and Support – TRL Software	APP6
Circular 11/95 – Use of negative conditions	APP7
Clitheroe local times – Bus times	APP8
Drawings to be referenced within planning conditions	APP9
Unilateral Undertaking Pursuant to Section 106	APP10
CgMs – Assessment of Henthorn Farm Listed Building	APP11
Closing submissions on behalf of appellant	APP12

### **ADDITIONAL INQUIRY DOCUMENTS LIST SUBMITTED ON BEHALF OF RIBBLE VALLEY BOROUGH COUNCIL**

Summary Proof of Gareth Davis	LPA1.1
Proof of Evidence of Gareth Davis	LPA1.2
Drawings included in Gareth Davis Proof	LPA1.3
Figures included in Gareth Davis Proof	LPA1.4
Appendices of Gareth Davis	LPA1.5
Rebuttal of Gareth Davis with Appendices and dwgs	LPA1.6
Summary Proof of Evidence of Richard Purser	LPA2.1
Proof of Evidence of Richard Purser	LPA2.2
Appendices consolidated of Richard Purser	LPA2.3
Opening submission by Stephen Sauvain QC	LPA3.1
Closing submission by Stephen Sauvain QC	LPA3.2
Email communication between Gareth Davis and Martin Nugent (LCC Highways)	LPA4
Committee report 2 Feb 2012 Core Strategy Housing Requirement	LPA5
Minutes of special Planning & Development Committee – housing requirements	LPA6
Instructions from RVBC re appointment of consultants and response by Gareth Davis and Richard Purser	LPA7
Memorandum from David Watson to Martin Nugent LCC Highways 8 October 2010	LPA8
Bus Route Plan	LPA9
Revised conditions list	LPA10

### **INTERESTED PERSONS' DOCUMENT LIST**

IP/1	Statement from Maureen Fenton
IP/2	Statement from David Butterworth
IP/3	Statement from Ron Loebell

## **SCHEDULE OF CONDITIONS**

- 1) Application for approval of reserved matters must be made not later than the expiration of 5 years beginning with the date of this permission and the development must be begun not later than whichever is the latter of the following dates:
  - (a) the expiration of 5 years from the date of this permission; or
  - (b) the expiration of 2 years from final approval of the reserved matters, or in the case of approval of different dates, the final approval of the last such matter to be approved.
- 2) No development shall begin on any phase of development (as approved under condition 9) until detailed plans indicating the design and external appearance of the buildings, landscape and boundary treatment, parking and manoeuvring arrangements of vehicles, including a contoured site plan showing existing features, the proposed slab floor level and road level (called the reserved matters) for that phase of development has been submitted to and approved in writing by the Local Planning Authority. The development of each phase shall be implemented in accordance with the approved details.
- 3) No development shall begin until a scheme identifying how a minimum of 10% of the energy requirements generated by the development will be achieved by renewable energy production methods has been submitted to and approved in writing by the Local Planning Authority. The scheme shall then be provided in accordance with the approved details prior to occupation of the development and thereafter retained.
- 4) No development shall begin until a scheme for surface water drainage and attenuation for the site, based on sustainable drainage principles and assessment of the hydrological and hydro geological context of the development has been submitted to and approved in writing by the Local Planning Authority. Details of the maintenance and management of the scheme after completion shall be included. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- 5) No development shall begin until details of any works that will alter the existing ponds on site or details of any new ponds adjacent to them have been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the approved details before development is completed.
- 6) Development shall not commence on any phase approved under condition 9) of this permission until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be

carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

- 7) Any application for the approval of reserved matters that includes development of residential properties adjoining the shared northern site boundary with the kennels/cattery shall include specific measures for the provision of a suitable noise barrier along the shared boundary. The measures so submitted and approved in writing by the Local Planning Authority shall be implemented in accordance with the approved measures prior to the commencement of residential development in that phase.
- 8) The submission of reserved matters in respect of layout, scale, appearance and landscaping and implementation of development shall be carried out in substantial accordance with the Development Framework Plan 4370-P-01 Rev-G, Design and Access Statement 4370/DAS Rev-C and the Illustrative Masterplan 4370-P-02-Rev-I.
- 9) The reserved matters application(s) shall include details of phasing of development across the whole development site. The phasing scheme shall include the following matters:
  - (a) a plan demarcating the development phases;
  - (b) details of the number of development plots for both market and affordable housing units; and
  - (c) a programme of delivery of development phases.

All reserved matters applications and consequent development shall be made in accordance with the approved phasing scheme or any subsequent submitted and approved amendments to the scheme.

- 10) The new estate road/access between the site and Henthorn Road shall be constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level before any residential development takes place within the site.
- 11) No development shall begin until a scheme for the programming, implementation and construction of the site access and the off-site highway works of highway improvements has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.

The off-site highways works and improvements shall include:

- (a) Toucan crossing on Whalley Road, close to Turner Street
- (b) Zebra crossing on Henthorn Road, north east of Siddows Avenue

(c) Pedestrian improvements in the form of dropped kerbs, improved surfacing materials and pedestrian route signage between the site and Clitheroe town centre (as illustrated on approved plans 1222/19 Henthorn Road Pedestrian Crossing Scheme and 1222/21 Indicative Henthorn Road 20MPH 'Sign Only' Scheme')

(d) Cycle stands (for 4 cycles) within Clitheroe town centre

The works shall thereafter be carried out in accordance with the approved scheme.

- 12) No development shall begin until a scheme for the construction of the pedestrian/cycle links through the site between Henthorn Road and the caravan track including a bollard or similar barrier arrangements on the link at its junction with the caravan track has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The scheme so approved shall be implemented in accordance with the approved phasing details submitted under condition 9) prior to the first occupation of the 10<sup>th</sup> dwelling unit on the site.
- 13) No development shall take place on any phase of development (as approved under condition 9) until a programme of archaeological work has been completed for that phase in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.
- 14) No site clearance, site preparation or development work shall take place within 7m of the river edge unless an otters (*Lutra lutra*) survey for the presence of otters has been carried out. The survey, together with proposals for mitigation/compensation (if required) shall be submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. Any necessary and approved measures for the protection of otters shall thereafter be implemented in full.
- 15) No site clearance, site preparation or development work shall take place within 7m of the river edge unless a water vole (*Arvicola terrestris*) survey has been carried out in advance. The report of the survey (together with a scheme for mitigation/compensation, if required) shall be submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. Any necessary and approved measures for the protection of water voles shall thereafter be implemented in full.
- 16) No development shall take place for any works affecting a watercourse before a survey for whiteclawed crayfish (*Austropotamobius pallipes*) has been undertaken. The report of the survey (together with proposals for mitigation/compensation, if required) shall be submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. Any necessary and approved measures for the protection of white-clawed crayfish shall thereafter be implemented in full.
- 17) No development shall take place until a repeat survey for the presence of badgers has been undertaken. The report of the survey (together with

proposals for mitigation/compensation, if required) shall be submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. Any necessary and approved measures for the protection of badgers shall thereafter be implemented in full.

- 18) Tree felling, vegetation clearance works, or other works that may affect nesting birds shall be avoided between March and July inclusive. In the event that works are required to be carried out during the nesting period a comprehensive risk assessment in order to establish the absence/presence of nesting birds shall be undertaken. The report of the assessment (together with proposals for mitigation/compensation, if required) shall be submitted to and approved in writing by the Local Planning Authority prior to any works taking place. Works shall be carried out in accordance with any necessary and approved measures.
- 19) All trees and hedgerows (and the Biological Heritage Site) being retained in or adjacent to the application site shall be protected during construction, in accordance with existing guidelines (e.g. BS5837: 2005 Trees in relation to construction - Recommendations).
- 20) No site clearance, site preparation or development shall take place until a habitat creation/enhancement and management plan and programme has been submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. The plan shall include (but not be limited to) further details of measures for: the maintenance and enhancement of retained hedgerows, compensation for hedgerow losses; retention and enhancement of species rich/neutral grassland (and measures for mitigation/compensation, if retention in situ is not possible); enhancement of the stream and associated habitat; native scrub and tree planting; maintenance and enhancement of part of the River Ribble BHS. The approved management plan shall be implemented in full in accordance with the approved programme.
- 21) No development shall begin until a detailed method statement for the removal or treatment and control of Himalayan Balsam (*Impatiens Glandulifera*) on site has been submitted to and approved in writing by the Local Planning Authority. The method statement shall include details of proposed working methods to be adopted to prevent the spread of the species during any operation such as mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root/stem of any invasive plant covered under the Wildlife and Countryside Act 1981. Development shall proceed in accordance with the approved method statement.
- 22) No development shall begin on any phase of development (as approved under condition 9) until details of a lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall included details to demonstrate how artificial illumination of important wildlife habitats (the River Ribble and its banks, trees with bat roost potential, hedgerows used by foraging and commuting bats) is minimised. The approved lighting scheme shall be implemented in accordance with the approved details.

- 23) Prior to occupation of the 1st dwelling a Travel Plan based on the Framework Travel Plan (FTP) to improve accessibility of the site by sustainable modes for residential uses and PCT facility shall be submitted to and approved in writing by the Local Planning Authority in consultation with Lancashire County Council Highways Travel Plan team.

The Travel Plan should include the following matters:

- Appointment of a named Travel Plan Co-ordinator.
- Travel survey.
- Details of cycling, pedestrian and public transport links to the site.
- Details of secure covered cycle parking.
- Targets for a reduction in private car journeys.
- Action plan of measures to be introduced.
- Details of arrangements for periodic monitoring and review of the Travel Plan.

The approved Travel Plan shall be implemented, monitored and reviewed (including undertaking any necessary remedial or mitigation measures identified in any such review) in accordance with the approved Travel Plan for a period of time not less than 5 years following completion of the final phase of development (as per the approved phasing scheme under condition 9).

- 24) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors
  - (ii) loading and unloading of plant and materials
  - (iii) storage of plant and materials used in constructing the development
  - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - (v) wheel washing facilities
  - (vi) measures to control the emission of dust and dirt during construction
  - (vii) a scheme for recycling/disposing of waste resulting from construction works
- 25) The dwellings shall achieve a minimum Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 26) No development shall begin until both a Masterplan and Design Code for the whole of the site has been submitted to and approved in writing by the Local Planning Authority. The Masterplan and Design Code shall both substantially accord with the Design and Access Statement 4370/DAS Rev-C submitted with the application. The Design Code will address the following matters:
- Architectural and sustainable construction principles
  - Character areas



- Lifetime homes standards
- Street types and street materials
- Development block types and principles
- Pedestrian and cycle links to adjoining land
- Boundary treatments
- Building types and uses
- Building heights
- Building materials
- Sustainable drainage system
- Public open spaces

Any application for reserved matters for any phase of development (as approved by condition 9) shall be made in accordance with the approved Masterplan and Design Code.

- 27) No development shall begin until a scheme for the provision of a pedestrian/cycle link between the site boundary with the caravan park track and Edisford Road (including details of lighting, surface treatment and signage) has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The scheme so approved shall be implemented in accordance with the phasing details submitted under condition 9 prior to first occupation of the 1<sup>st</sup> dwelling on the site.
- 28) The reserved matters application(s) shall include details of the provision of a bus stop to the Lancashire County Council Bus Stop Quality Standard within the site in accordance with such details as have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The bus stop shall be implemented in accordance with the approved details and be capable of being brought into use by a public bus service operator prior to occupation of the 51<sup>st</sup> dwelling on the site.

EP5

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## Appeal Decision

Inquiry held on 15-18 October 2013; 16, 17 January 2014

Site visit made on 16 January 2014

**by Christina Downes BSc DipTP MRTPI**

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

**Decision date: 12 February 2014**

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**Appeal Ref: APP/R0660/A/13/2192192**

**Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath, Cheshire CW12 4SP**

- 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 Bloor Homes, J Wilson, S Owen, Stracy & Son against the decision of Cheshire East Council.
  - The application Ref 12/3807C, dated 3 October 2012, was refused by notice dated 13 December 2012.
  - The development proposed is residential development of 25 dwellings, including 7 affordable units, together with the creation of a new access.
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### Decision

1. The appeal is allowed and planning permission is granted for residential development of 25 dwellings, including 7 affordable units, together with the creation of a new access on land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath in accordance with the terms of the application, Ref 12/3807C, dated 3 October 2012, subject to the conditions in the attached Schedule.

### Preliminary Matters

2. The appeal was originally to proceed by written representations. The reason for refusal related solely to sustainability but identified no specific conflict with development plan policy. However following the publication of the *Strategic Housing Land Availability Assessment* (SHLAA) in 2013 the Planning Committee decided to contest the appeal on the basis that it could demonstrate a housing land supply in excess of 5 years. At this point the Appellant's request that the appeal should be dealt with by means of a public Inquiry was agreed by the Planning Inspectorate.
3. As previously advised to the parties, the Inquiry was closed in writing on 4 February 2014 to allow some further written representations from the main parties on housing issues and also a revision to the Planning Obligation by Unilateral Undertaking. The Council pointed out that an updated assessment of housing land supply had been placed on the agenda for the Strategic Planning Board to consider on 5 February 2014. It made clear however that this was a factual update and that it did not seek to change its position as agreed in the Statements of Common Ground and its closing submissions to the Inquiry. I note that the Appellant would have sought to have the Inquiry re-opened had the Council decided otherwise.

## Reasons

### ***Planning policy context and overview***

4. The development plan for the area comprises the *Congleton Borough Local Plan First Review* (CLP), which was adopted in January 2005. This related to the former local planning authority which, along with two others, was merged into the new unitary authority of Cheshire East in 2009. Saved Policy PS3 in the CLP sets out the settlement hierarchy. Brereton Heath is a hamlet of 131 dwellings within a rural area outside the Green Belt. There is no dispute that it falls within the category of "Settlements in the Open Countryside and Green Belt". These comprise the smaller villages that are washed over by a countryside or Green Belt designation. The supporting text indicates that these settlements have a very limited range, or no, facilities or services and that only very strictly controlled infill would be appropriate. The bulk of new development is to be concentrated within the Settlement Zone Lines of the higher order "Towns".
5. Saved Policy PS6 identifies Brereton Heath as one of the smaller settlements identified by an "Infill Boundary Line" (IBL). Within this zone, limited development in accordance with saved Policy H6 will be allowed provided it is in character in terms of use, intensity, scale and appearance. Most of the appeal site is within the IBL, although the rear part is outside of it. Saved Policy PS8 concerns development in the countryside. As well as reiterating the circumstances relating to an IBL, it restricts development in other places to a number of purposes, none of which apply to the appeal scheme.
6. The Framework does not change the primacy of the development plan. The CLP covered the period until 2011 but that does not necessarily mean that all of its policies are out-of-date. This will depend on their consistency with the Framework, as is made clear by Paragraph 215 of that document. There is no dispute that the policies relating to housing numbers in the CLP are now time-expired in view of the 2011 end-date of the plan period. However there was no agreement about whether other relevant policies, including those relating to the IBL, also fall within this category.
7. An IBL has a different function to a settlement boundary in that it allows for a limited amount of new development, but within the context of a countryside location. The IBLs have been drawn up with the rural setting in mind and also recognise that the settlements in question have few facilities. It is appreciated that a proportion of the Borough's housing requirement will meet needs within the rural areas. In the *Cheshire East Pre-submission Core Strategy* (the emerging CS) there is a settlement hierarchy of Principal Towns, Key Service Centres, Local Service Centres and Other Settlements and Rural Areas. In the previous iteration of the emerging Local Plan there was another tier of settlements called "Sustainable Villages" where it was considered that some development would be appropriate to help sustain local services. Brereton Heath was one such village but this category has been removed from the hierarchy in the emerging CS. It is noted that the Appellant has submitted representations objecting to this change. It is understood that the matter of Settlement Zone Lines will be considered in a later development plan document but that IBLs may well remain unchanged.
8. The main function of the IBLs is to protect the rural areas from unwarranted levels of development. Paragraph 55 in the Framework seeks to promote

sustainable development by locating housing where it will enhance or maintain the vitality of rural communities. It gives as an example development in one village supporting the services in another. The Appellant suggested that the current IBLs allow very limited scope for further development but offered no convincing evidence about their remaining capacity. It cannot therefore be concluded that the IBL policy would prevent sufficient housing coming forward to sustain the vitality of the communities concerned. It is not the case that new housing has not been built in Brereton Heath. There have been recent developments at Broomfields and Shackerley Place and there is an extant planning permission for 6 dwellings on the appeal site.

9. IBLs are not a tool that primarily relates to housing supply. Countryside protection is a clear objective in the Framework and saved Policies H6 and PS6 have an important function in this regard. They are not therefore considered to be out-of-date or otherwise contrary to the Framework in this case. Even if they were, it was agreed at the Inquiry that 5 of the houses would stand on land that is outside the IBL. There is no dispute that this element of the scheme would not comply with the countryside protection provisions of saved Policy PS8.
10. The emerging CS is still at a relatively early stage in the adoption process and has not yet been submitted for examination. Whatever the fate of the Sustainable Villages or the settlement hierarchy, the emerging CS and its policies can be afforded very limited weight at this stage. The Council is rightly not relying on any prematurity argument in this appeal.

***Issue One: Whether the proposal is necessary to meet the requirements of the Borough for market and affordable housing.***

*Housing land supply*

11. Paragraph 47 of the Framework indicates that in order to boost significantly the supply of housing, local planning authorities should ensure that they meet their full and objectively assessed needs for market and affordable homes. Both the Council and the Appellant relied on numerous appeal decisions to support their evidence. However on the issue of housing land supply in Cheshire East one of the most recent and therefore up-to-date is the decision by the Secretary of State that relates to land off Abbey Road and Middlewich Road, Sandbach<sup>1</sup>. This appeal has a long history but the relevant point for these purposes is that it was concluded that the Council could not demonstrate a 5 year housing land supply on the basis of its updated 2013 SHLAA. There have been several other appeal decisions subsequently, which reached a similar conclusion. As a consequence the Council chose not to contest the appeal on the basis of housing land supply at the Inquiry and most of its evidence in respect of this matter was withdrawn. In the supplementary statement of common ground, agreed in January 2014, the Council confirmed that for the purposes of this appeal it could not demonstrate a five year supply.
12. There was no agreement about the extent of the shortfall. This largely arose from different conclusions by the parties about the deliverability of sites and the buffer that should be applied, taking account of Paragraph 47 of the

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<sup>1</sup> Appeal relating to the erection of up to 280 dwellings on land off Abbey Road and Middlewich Road Sandbach dated 17 October 2013 (APP/R0660/A/10/2141564).

Framework. It is the Appellant's view that there would be a 3.31 supply of housing land on the basis of a 20% buffer. The Council has included a range of figures based on two recent appeal decisions. From the information available I find it very difficult to understand how these have been deduced from the Hassall Road, Alsager<sup>2</sup> decision. The Inspector in that case referred to a 30% contingency on the supply side but in any event he did not reach a firm conclusion on the extent of the shortfall. In the circumstances I am not convinced that these figures are reliable. The Sandbach Road North, Alsager<sup>3</sup> decision is more easily discernable because my colleague concluded that on the basis of a 20% buffer the supply would be about 4-4.2 years. The Council recalculated on the basis of a 5% buffer, which it maintains is preferable, and came to a figure of between 4.53 and 4.86 years.

13. I have considered all of the evidence on the buffer, including that submitted after the Inquiry closed. However, on reflection it seems unnecessary for me to reach a conclusion on whether or not there has been "persistent" under delivery. This is because the Council proposes to take a "middle ground" position of both sets of figures, which would result in a 4.48 year supply. Even on this basis, which is considerably more favourable than the Appellant's assessment, there would be a shortfall of over 500 homes. To my mind this is not only significant but also gives cause for serious concern. Although new housing is being built in the rural areas, including at Brereton Heath, this does not justify an argument that the appeal scheme is not needed. The housing land supply deficit is a Borough-wide problem and should not be considered on anything other than a Borough-wide basis.

#### *Affordable housing*

14. There is no dispute that the Borough as a whole has a serious mismatch between the need for affordable housing and its supply. This in part reflects the high cost of housing relative to income when compared with other local authorities in the region and the North West generally. The most up-to-date evidence base is provided by the 2013 *Strategic Housing Market Assessment Update* (2013 SHMA). This indicates that in total there is a net annual requirement for 1,401 affordable dwellings. Looking at the local level, the appeal site is at the boundary of Congleton Rural Area and Sandbach Rural Area. The 2013 SHMA indicates an annual need for 11 affordable units in the former and 12 in the latter. This has increased since the 2010 SHMA when the figures were 10 and 1 respectively. Further information is provided by the *Rural Housing Needs Survey 2013*. This shows that in Brereton Parish there were at least 12 people who expressed a need for affordable housing within the next 5 years. However the survey indicated that this should be treated as a minimum because, amongst other things, the response rate was less than 40% and so would not have captured the full extent of the need. This takes account of the new residential developments in the village, apart from at Shackerley Place, where 3 affordable units have been provided.

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<sup>2</sup> Appeal relating to the erection of 30 dwellings on land at Hassall Road, Alsager, dated 12 December 2013 (APP/R0660/A/12/2188001).

<sup>3</sup> Appeal relating to the erection of 155 dwellings on land off Sandbach Road North, Alsager, dated 18 October 2013 (APP/R0660/A/13/2195201).

15. A rural exception site at Dunkirk Farm, which is just outside Holmes Chapel, was granted planning permission on appeal for 18 affordable homes. Whilst the site is actually within Brereton Parish the Inspector concluded that it would best meet the needs of Holmes Chapel. He recognised that there were other developments being carried out within that settlement but did not consider that they would be likely to satisfy the need. I was told that another site providing affordable homes in Holmes Chapel is now coming on stream. However the evidence suggests that the Dunkirk Farm development would still be required to help satisfy affordable housing need in Holmes Chapel.
16. Saved Policy H13 in the CLP indicates that the Council will negotiate an appropriate element of affordable housing on sites comprising 25 or more dwelling units. No specific percentage is included but in this case the Appellants are offering 30%, which would amount to 7 affordable units. The *Cheshire East Rural Housing Guide* (2012) indicates that affordable housing needs are particularly acute in smaller rural settlements of less than 3,000 residents. Whilst it is acknowledged that market housing is not the only way of meeting such needs, there is no doubt that it makes an important contribution. Furthermore as viability is a matter to be taken into account, it is prudent to ensure a buoyant supply of market housing.
17. The Planning Obligation establishes that the subsidised dwellings would comprise two and three bedroom units with a mix of tenure. The 2013 SHMA indicates that there is a requirement for these types of unit within Sandbach Rural and Congleton Rural and the Council is satisfied that they would meet local needs. The proposal is supported by the Plus Dane Housing Group which works with the Council to deliver affordable housing in Cheshire East. It is difficult to support the argument of objectors that affordable housing should not be provided in rural areas because such occupiers would be reliant on motor transport. I will consider issues of accessibility shortly but there is no reason to believe that those living in affordable homes do not have access to a car. There is clearly a local need and a considerable requirement in the Borough as a whole. I am not aware of any rural exception site in Brereton Heath that would provide an alternative. In the circumstances, the affordable housing provision from this scheme would be a considerable benefit and would comply with Paragraph 54 of the Framework.

### *Conclusion*

18. Paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development. Furthermore, in the absence of a five year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to-date. In such circumstances Paragraph 14 of the Framework indicates 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 of the Framework as a whole. It is relevant to note at this point that the Framework does not suggest that the weight to be given to a shortfall should be tempered by its size. Nor does it say that weight should be reduced for a scheme that does not eliminate the backlog.

### ***Issue Two: The effect on the character of the rural settlement***

19. Brereton Heath is a small rural settlement on the south-western side of the A54, between the larger settlements of Holmes Chapel and Congleton.

Although there is a linear pattern of frontage housing along this section of the A54 and the adjoining Brereton Heath Lane, more recent development has taken place in the form of small residential estates served by a number of culs-de-sac. The settlement sits within a countryside setting although it is relevant to note that unlike many other parts of Cheshire East it is not within the Green Belt nor affected by any other landscape or ecological designation.

20. Saved Policy PS6 refers to "limited development" within the IBLs. The supporting text to saved Policy H6 indicates that "limited" means the building of a single or small group of dwellings. Looking at this in a straightforward way it is difficult to conclude that the development of 20 dwellings within the IBL would be "limited". In this respect the appeal scheme would not comply with saved Policies PS6 or H6. In any event the 5 dwellings outside the IBL would conflict with saved Policy PS8.
21. Saved Policy PS6 seeks to ensure that development in the IBL is appropriate to local character in terms of use, intensity, scale and appearance. The extant planning permission also includes the rear part of the appeal site outside the IBL. Although the houses would be along the site frontage there would be detached garages behind. The reserved matters layout shows these would be sited inside the IBL but it also shows the access road beyond it and running close to the rear site boundary. Whilst the reserved matters have not yet been approved, it seems likely that the implementation of this scheme would result in the whole site having a domesticated appearance and its existing rural character would largely be lost.
22. The approved layout, due to its depth, would not be typical of either the other frontage development along the A54 or the cul de sac developments of Shackerley Place and Broomfields. It is relevant to note that the rear of the appeal site is level with the rear of the Broomfields estate which was, I understand, an existing housing commitment when the IBL was drawn up. Furthermore, my site visit confirmed that the IBL is not defined by any natural feature as it crosses the appeal site.
23. There has been no criticism by the Council of the appearance of the development or the design of the dwellings. These would be very similar to the adjoining housing which has also been built by the same developer. It is the case that the lower density of the approved scheme would provide a transition between the mainly linear pattern of frontage housing to the north-west and the higher density housing at depth around the junction of the A54 and Brereton Heath Lane. The density of the appeal scheme would be similar to that of Shackerley Place but higher than that of Broomfields. One of the reasons for this difference is that the adjacent development did not include any affordable homes. There is now a continual development at depth between the Brereton Heath Lane junction and the southern boundary of the appeal site. In the circumstances it is not considered that the scale and intensity of the appeal scheme would be harmful to the character of Brereton Heath as it now exists.
24. In conclusion the appeal proposal would be contrary to the relevant saved policies in the CLP. The part within the IBL would not comprise limited development and would therefore conflict with saved Policies H6 and PS6. The part outside the IBL would not comprise any of the types of development deemed acceptable in a countryside location and would thus conflict with Policy PS8. On the other hand the actual impact arising from this policy conflict



would be largely benign. Bearing in mind the extant permission and the other housing to the south, the appeal scheme would not have a significant adverse impact on the rural character of Brereton Heath or its countryside setting.

***Issue Three: Whether the proposal would comprise a sustainable form of development.***

*Introduction*

25. The spatial strategy in the CLP is based on accommodating the development needs of the Borough in a sustainable way. There was a considerable amount of debate about whether the measures set out in Paragraph 2.31 of the CLP accord with the approach to sustainability promulgated by the Framework. It was contended by the Appellant that the Council had adopted a narrow, one dimensional "tick-box" approach, which concentrated on locational factors rather than considering the three interrelated dimensions of sustainability set out in Paragraph 7 of the Framework. The important point to make, as referenced in a number of appeal decisions, is that locational sustainability is one element of a number of factors to be considered. The Secretary of State endorsed the view of the Inspector in the Tarporley appeal decision<sup>4</sup> that the sustainability credentials of a development will fall somewhere along a spectrum once the benefits and disadvantages of the various factors have been considered.
26. Whilst it is not a policy document, the 2008 review of the rural economy and affordable housing: *Living Working Countryside* (the Taylor Review) is an important piece of work commissioned by the Government to consider the issues faced by rural communities and how they may be addressed. Lord Taylor was concerned about villages that are protected from development and become exclusive communities where homes become increasingly unaffordable. He felt that too often a narrow tick-box approach to sustainable development was taken and villages were assessed by how they are now rather than how they could be. That seems to me to sit squarely with Paragraph 55 of the Framework, which seeks to promote sustainable development in rural areas by locating housing where it will enhance or maintain the vitality of rural communities.
27. Returning to the CLP, which pre-dated the Taylor Review, there is recognition in Paragraph 2.30 that economic and social factors as well as environmental factors are important facets of sustainable development. Nevertheless, the settlement hierarchy has been drawn up partly on the basis of settlement character but also in terms of locational factors and the need to minimise the need to travel and support existing services and facilities. The range of such facilities seems to have been key to identifying where further development would be allowed. This approach seems to me to encourage a tick-box exercise when looking at the issue of whether a development proposal is sustainable or not. Although the Council contended that it had not approached the issue in this way its consideration of the appeal scheme relied heavily on an assessment of accessibility and whether new occupiers would be able to reach facilities by modes of travel other than the car. I consider this matter below

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<sup>4</sup> Appeal relating to the erection of up to 100 dwellings on land off Nantwich Road, Tarporley dated 29 August 2013 (APP/A0665/A/11/2167430).

but I agree with the Inspector in the Clitheroe appeal<sup>5</sup> that a proposal can be a sustainable one even if it suffers from limitations in terms of accessibility.

28. I turn now to consider the sustainability credentials of the appeal scheme, starting with the issue of accessibility before considering the other factors that contribute to the overall assessment.

#### *Locational sustainability*

29. Both local and national planning policy encourages sustainable travel choices by modes other than the private car. Apart from a bus stop and a post box Brereton Heath has no other facilities. It is however located on the A54, which is the main road running between Holmes Chapel and Congleton. These larger settlements are about 4 km and 3.5 km away respectively and contain higher order services, including shops, employment and leisure facilities. They also both have a railway station. Brereton Green is the other village in the Parish and is about 4 km away. It has a primary school, church, scout hut and public house. There are also a number of job opportunities locally. The Somerford Equestrian Centre is opposite the junction of the A54 and Brereton Heath Lane. This is an equine facility of regional importance and has recently been granted planning permission for a new veterinary centre. This is likely to provide additional employment above the existing 30 or so that work there at present. The Somerford Business Court is about 1.9 km away towards Congleton and includes nine office-based businesses employing an estimated 54 people.
30. From the evidence I was given and from my own observations it seems unlikely that many new residents would travel on foot unless they were posting a letter, going to the bus stop or visiting the equestrian centre. This is because the A54 is a busy main road carrying heavy traffic. The section that passes through Brereton Heath has a 50 mph speed limit but the footway that runs along the northern side of the road is only about one metre wide. I do not consider that it would provide an attractive option for pedestrians to venture any distance from the new development. Many of the local representations mentioned this and that it was especially disadvantageous for those with disabilities, young children and those with prams and pushchairs. Whilst I understand that the Highway Authority has no in-principle objection to a reduction in the speed limit, the appeal proposal makes no provision for carrying this forward.
31. I also heard evidence about the unsuitability of the A54 for all but the most intrepid cyclists. It seems unlikely that many would make regular daily trips in this way to Congleton or Holmes Chapel although these places and Brereton Green are also accessible by the quieter country lanes. These comprise part of the South East Cheshire Cycle Network and provide an alternative, if more indirect, route. It seems to me that cycling is a possibility for some people but that it is most likely to be a recreational pursuit rather than a means of undertaking essential journeys.
32. There is a regular hourly bus service that runs along the A54 between Congleton and Holmes Chapel and stops close to the site. There was some debate at the Inquiry about whether it could be used for journeys to work. The bus operator has recently introduced a pre-0900 hour service and is supportive of the appeal scheme. No doubt this reflects the potential for additional

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<sup>5</sup> Appeal relating to the erection of 270 dwellings and a doctor's surgery on land off Henthorn Road, Clitheroe (APP/T2350/A/11/2161186).

- customers to make use of the facility. The bus journey into Holmes Chapel and Congleton takes 9-11 minutes. For those working in these two places it is feasible to undertake the journey to work by bus. For those working further afield and taking the train to Manchester or Crewe, the bus would arrive too late to allow arrival at work at a reasonable time. In addition, the bus to Congleton stops in the town centre and a further trip is required to reach the station on the other side of the town. Nevertheless it is quite possible to undertake the short journey to either station by car or perhaps bike, subject to my comments above. Both stations have parking facilities and even if a short car trip were needed the majority of the journey would be made by public transport. This type of modal split is not unusual for many commuters.
33. The bus would also offer the opportunity for some to undertake shopping or leisure trips although it is appreciated that these would have to be carefully planned to take account of the timetable, especially as on Saturdays the service is less frequent and on Sundays it is non-existent. The proposal would include provision for a new section of footway on the existing verge that runs up to the bus stop and a new bus shelter. These improvements would make for an easier walking route and better waiting experience for bus passengers travelling in the Holmes Chapel direction. The scheme would therefore offer some enhancement to accessibility that would not only benefit new occupiers but existing residents as well. There is a separate school bus service which runs through Brereton Heath and takes children to the primary school in Brereton Green on a request basis. The bus therefore seems to me to offer a realistic option for some journeys.
  34. Nevertheless it is inevitable that many trips would be undertaken by car as happens in most rural areas. However in this case many such trips for leisure, employment, shopping, medical services and education have the potential to be relatively short. A survey of the existing population undertaken by the Parish Council confirmed that the majority use the car for most journeys. Its results should though be treated with some caution in view of the response rate of only 44%. The survey does not seem to have asked questions about car sharing or linked trips, both of which can reduce the overall mileage travelled. It is interesting to note that use of the school bus was a relatively popular choice for respondents. A few also used the bus and train for work journeys. It also should not be forgotten that more people are now working from home at least for part of the week, which reduces the number of employment related journeys. Shopping trips are also curtailed by the popularity of internet purchasing and most major supermarkets offer a delivery service. The evidence also suggests that the locality is well served by home deliveries from smaller enterprises of various kinds.
  35. *The Cheshire East Rural Housing Guide 2012* refers to a series of maps which allow a comparison between the 15 rural areas in the Borough in terms of various facilities and services. Of course this provides a broad brush assessment but it does give an opportunity for a comparison between one area and another within the rural context. Whilst Sandbach Rural and Congleton Rural do not score highly in all respects they are within the top 5 for transport services and community facilities. For Brereton Heath this would reflect the bus service, proximity to rail stations and good main road connections to local towns within a relatively short distance.

36. The appeal scheme would include open space and a children's play area with equipment within the south-eastern corner of the site. Whilst it was said that Brereton Heath includes a high proportion of older residents, this facility would make the development an attractive choice for incomers with young families. There is no other similar facility in Brereton Heath. Those existing residents with young children or those with grandchildren would also benefit from having a convenient facility such as this, especially as the scheme would result in a continuous footway from Brereton Heath Lane to the site entrance.
37. The Council referred to three appeal decisions relating to development in Brereton Heath and the comments of the respective Inspectors about available facilities and sustainability. However these decisions were made in 2005 and 2006 well before the publication of the Framework. They tended to address sustainability in terms of accessibility and, in any event the Council subsequently granted permission for housing on two of the three sites. It is interesting to note that in a recent proposal for 10 new dwellings on land adjoining Lyndale and 2 Somerford View, the Council concluded that the location would not be an unsustainable one. Although planning permission was refused it was for reasons of character and not sustainability.

*The three dimensions of sustainability*

38. The Framework identifies the three interdependent dimensions to sustainable development – economic, social and environmental. The appeal proposal would be deliverable in the short term and in this regard the Appellant would be willing to accept a shorter timescale for implementation. Whilst the scheme would not eliminate the Council's housing land supply deficit it would make an important contribution to reducing it. Furthermore, there is an immediate and pressing need for affordable housing in this Borough as well as in the locality and the 7 affordable homes that would ensue would provide an important benefit in this respect. The Council considers that the size and tenure would relate satisfactorily to local requirements.
39. There is no evidence that the scheme would result in other than a high quality, energy efficient built environment and provide a place where people would want to live. Brereton Heath has few local facilities itself. However within the Parish, Brereton Green is a larger village with a primary school, church, public house and scout hut. There is no evidence that these facilities are under threat of closure. However the fact that the school has the capacity to accommodate the children from the appeal development demonstrates that additional families would support the facility and help sustain it. Similarly it is not an unreasonable proposition that new residents would help maintain the vitality of the other facilities in Brereton Green including the church, public house and scouts. The new open space and children's play area would meet the needs of occupiers of the development and also provide a benefit for existing residents. I have already considered in detail the matter of accessibility and found that for a rural area the site scores reasonably well in terms of locational sustainability. Indeed the new footpath and bus shelter would convey a wider benefit to existing residents.
40. There would undoubtedly be advantages to growth and the economy during the construction phase. Furthermore those living in the new houses would spend a proportion of their income locally in places such as Holmes Chapel and Congleton. There would be some conflict with development plan policy relating

to the IBL and development in the countryside. However in this case there would be very limited environmental harm to the character of Brereton Green itself or its rural setting. My overall conclusion on sustainability is set out in the final section after considering other matters, conditions and the Planning Obligation.

**Other Matters:**

Highway safety

41. The new access would be onto the A54. This is a busy main road carrying traffic that includes heavy goods vehicles. It is noted that occupiers of Rose Cottages opposite the appeal site have mentioned difficulties in getting in and out of their driveways. The equestrian centre is said to cause problems with slow moving vehicles holding up traffic, especially on event days. There is also mention of accidents along this stretch of road. Whilst I do not underestimate the strength of these objections, the new access would be built to a standard that would ensure good levels of visibility in both directions.
42. The Highway Authority is responsible for ensuring that the local road network operates efficiently and safely. It has raised no objections to the proposal either on safety grounds or in terms of the capacity of the A54 to accommodate the additional traffic that would be generated by the appeal development. This is a matter of some weight and I do not consider there is sufficient evidence to support an objection on road safety grounds.

Localism

43. Brereton Parish Council is in the process of preparing a Neighbourhood Development Plan, although this is currently at an early stage and no policy document has yet been produced for submission. A survey was undertaken which included questions about local residents' views on the need for more housing over the next 15 years. Of the responses received, the majority felt that less than 50 houses would be required. This would average less than 4 per year which was considered to be in keeping with the rural character of the Parish. However the plan is at an early stage at present and no policy document has yet been produced for submission. It can therefore have little weight as a material consideration in this appeal.

**Planning conditions**

44. Planning conditions were discussed at the Inquiry. Where appropriate I have made changes to the wording in accordance with Circular 11/95: *The Use of Conditions in Planning Permissions*. As the proposal is seeking to meet the short term housing needs of the Borough it was agreed to be appropriate to reduce the implementation period. The Appellant was confident that the timescale put forward was reasonable and would be achievable.
45. In order to ensure a satisfactory appearance, details of materials and landscaping are necessary. For a similar reason and also to protect the privacy of existing residents as well as new occupiers, boundary treatments should be agreed. There was no objection to the scheme from the Jodrell Bank Observatory, subject to a condition requiring screening to be provided to direct any radio emissions generated within the houses away from the telescopes. This is clearly necessary to ensure the proper functioning of this facility.

46. Construction works can cause disturbance and inconvenience to nearby residents. In order to reduce this as far as possible it is reasonable to require a Construction Method Statement to be submitted, which includes such matters as hours of work, provision for parking and delivery, measures to control dust and dirt and the like. This should also include matters such as wheel washing in view of the nature of the site but it was confirmed that piling would be unlikely. The means of foul and surface water drainage have not been made clear at this stage so a condition relating to these matters is reasonable in order to ensure a satisfactory solution. The submitted plans show that a new footway would be provided along the site frontage. Details, including lighting, are required in order to ensure a satisfactory facility and this should be provided before the development is occupied in order to benefit new residents. In addition, the Appellant is constructing a footpath and bus shelter outside the site boundary. These are required to enhance accessibility and make bus travel more attractive as a potential modal choice. Again the facilities should be available by the time the development is occupied.
47. The access road itself is shown on the submitted plans but in order to ensure that it allows a safe egress onto the A54 it is necessary that adequate visibility splays are provided and retained. The submitted plans show the internal road system in adequate detail. It is intended for the roads to be adopted and it seems unnecessary to require specifications about carriageway drainage, internal street lighting and road signing at this stage. The parking and turning areas within the site should be provided prior to occupation and kept available for that purpose in order to provide a safe and attractive environment within the development and discourage kerbside parking.
48. The Council has suggested a requirement that 10% of the energy supply should be from renewable or low carbon energy sources. There was a policy in the Regional Strategy to this effect. Although this has now been revoked, the evidence base still exists. There is no specific policy requirement in the CLP but draft Policy SE 9 in the emerging CS includes such a provision, albeit that it is subject to representations. Paragraph 96 of the Framework advises a policy-led approach and Paragraph 97 encourages a positive strategy to promote such energy provision. The Appellant is willing to agree to the condition and does not raise viability as an issue. I am aware that in the Hassall Road, Alsager appeal decision a similar requirement was imposed and that in another relating to Congleton Road, Sandbach<sup>6</sup> there was an alternative condition regarding energy use. The requirement would result in an energy efficient solution which would contribute towards the sustainability credentials of the scheme. On balance I consider that there is sufficient justification to support the condition.
49. The ecological assessments make recommendations relating to protected species and nesting birds. Several conditions have been proposed to address this matter but it seems to me that a single one which requires compliance with the submitted ecological information would suffice. There is no evidence of contamination on this greenfield site and a condition relating to this matter is thus not needed. It is however necessary to specify the approved plans, for the avoidance of doubt and in the interests of proper planning.

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<sup>6</sup> Appeal relating to the erection of 160 dwellings on land north of Congleton Road, Sandbach, dated 18 October 2013 (APP/R0660/A/13/2189733).

### ***Planning Obligation***

50. The Planning Obligation by Unilateral Undertaking includes provisions for affordable housing and open space. In addition there is a contribution of £20,000 for off-site works comprising a footpath and an enhanced bus stop. Whilst the benefits are obvious I have various concerns about the contribution itself and, as a result, the Appellant company has decided to undertake the work itself. A Deed of Variation has been submitted accordingly.
51. The number, size and mix of the affordable houses have been agreed by the Council to reflect the local housing need. The Planning Obligation sets out the means of delivery, which would be linked to the provision of the market homes. There are also criteria for the occupation of the affordable homes, with priority given to those with a local connection. I have already considered the policy background and I am therefore able to conclude that the obligation meets the statutory requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and can be taken into account.
52. The open space is in the south-eastern corner of the site and includes a children's play area. The Policy background is provided by saved Policies GR1, GR3 and GR22 in the CLP and supplementary planning guidance. The Planning Obligation includes arrangements for provision and future maintenance through a Management Company. This will include all owners of the new dwellings and their successors in title. I have already concluded that the facility will provide necessary recreational facilities for new occupiers. I am therefore satisfied that the obligation meets the statutory requirements of Regulation 122 of the CIL Regulations and can be taken into account.

### ***Overall conclusions and planning balance***

53. The Framework states that housing proposals should be considered in the context of the presumption in favour of sustainable development. Paragraph 14 sets out what this means when policies relating to the supply of housing are out-of-date, as is the case here. I have considered the three dimensions of sustainability and concluded that the proposal would not comply with policies relating to development in the countryside or the IBL and that there would also be undoubted reliance on the private car for many journeys. However, for the reasons given, these adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. Of particular importance is the provision of market and affordable homes, which would help address housing need and the reduction of the land supply deficit.
54. I have considered all other matters raised, including the local petition objecting to the scheme. However I have found nothing to alter my conclusion that this would be sustainable development and that the appeal should succeed.

*Christina Downes*

INSPECTOR

## **APPEARANCES**

### ***FOR THE LOCAL PLANNING AUTHORITY:***

Mr R Humphreys	Of Queen's Counsel, instructed by the Borough Solicitor, Cheshire East Council
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*He called:*

Mr B Haywood BA(Hons) MA MBA MRTPI MCMi	Principal Planning Officer with Cheshire East Council
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### ***FOR THE APPELLANT:***

Mr C Young	Of Counsel, instructed by Mrs A Freeman, Emery Planning Partnership
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*He called:*

Mrs A Freeman BA(Hons) MRTPI	Director of Emery Planning Partnership
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### ***FOR THE BRERETON PARISH COUNCIL:***

Mr A Lindsay	Parish Councillor and local resident
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### ***INTERESTED PERSONS:***

Mr P Minshull	On behalf of the Congleton Sustainability Group
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Mr A Strang	Chair of the Brereton Parish Community Interest Group and local resident
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## **DOCUMENTS**

- |       |   |
|-------|---|
| 1     | Plan showing the Parish boundary  |
| 2     | Housing requirement and supply table showing agreements and differences between the Council and Appellant |
| 3     | Erratum sheet of Mr Pycroft   |
| 4a/4b | Extract from the North West RS – Policy DP 9 and the appended accessibility criteria                      |
| 5     | Site plan of the approved layout for 6 dwellings on the appeal site                                       |
| 6     | Written statement by Mr Strang on behalf of the Brereton Parish Community Interest Group                  |
| 7a/7b | Map and plan of the site at Dunkirk Farm, London Road, Holmes   |



Chapel

8a-8d	Council's appeal statement, Inspector's appeal decision, Committee Report and Inspector's costs decision relating to the erection of 18 affordable dwellings on land at Dunkirk Farm, Holmes Chapel
9	<i>Cheshire East Rural Housing Guide 2012</i> (Core Document 13) - Maps showing Strategic Housing Market Assessment Areas, housing and community needs in the rural areas of Cheshire East
10	Pre-application layout plan for the appeal site
11	Unilateral Undertaking relating to the Dunkirk Farm development
12	Table showing planning applications in Brereton Heath and objections from the parish Council and Mr Lindsay
13	Committee Report relating to residential development at Lyndale, Holmes Chapel Road, Brereton Heath
14	Table showing site densities of the appeal site and Shackerley Place site
15	Table showing affordable housing completions
16	Notes for the NW Sustainability Checklist for Developments
17	Planning Statement in support of an earlier proposal for 6 dwellings on the appeal site (Nov 2010)
18	Extracts from the Inset Maps to the Local Plan Proposals Map showing the various settlement boundaries
19	Secretary of State appeal decision and Inspector's Report relating to land off Abbey Road and Middlewich Road, Sandbach
20a/20b	Brereton Primary School Homepage and Newsletter (4/10/13)
21	Homepage of the Bear's Head, Brereton pub and restaurant
22	Plan showing layout of land west of High street, Irchester
23	Table of Housing supply sites no longer in dispute between the Council and Appellant
24	Appeal decision relating to land north of Congleton Road, Sandbach (18/10/13)
25	Appeal decision relating to land off Sandbach Road North, Alsager, Stoke-on-Trent (18 October 2013)
26a/26b	Planning Obligation by Unilateral Undertaking and Deed of Variation

- 27 Letter from Emery Planning Partnership concerning the resumption of the Inquiry (19/11/13)
- 28 Skeleton and costs application by the Appellant against the Council (subsequently withdrawn) and letter from Bloor Homes (24/12/13) and Council's response (3/1/14)
- 29 Supplementary statement by Mr Fisher (13 January 2014)
- 30 Supplementary Statement of Common Ground
- 31 Supplementary information on affordable housing submitted by Mr Lindsay
- 32 Pre-submission Core Strategy (November 2013)
- 33 E-mail from Mr Haywood to Mrs Freeman concerning the affordable housing on the approved scheme for 6 dwellings (15 January 2014)
- 34 E-mail from Mr Haywood to Mrs Freeman concerning the speed limit along the section of A54 running through Brereton Heath (15 January 2014)
- 35 Letter attached to the Saving Direction on policies in the Congleton Borough Local Plan (25 January 2008)
- 36 Housing land supply table
- 37 Information regarding the housing supply position in the rural areas including the "Sustainable Villages" (submitted by Mr Young from data derived from the Council)
- 38 Committee Report relating to an application for housing development on land off Crewe Road, Alsager
- 39 List of relevant policies in the pre-submission Core Strategy agreed between the Council and Appellant
- 40 Agreed wording for a Grampian style condition relating to the footpath and bus shelter
- 41 Representations on the pre-submission Core Strategy by the Appellant
- 42 Plan showing the area intended for the new footpath
- 43a-43d Correspondence from the Appellant and Council regarding housing land supply received after the close of the Inquiry

## **PLANS**

- A/1-A/26 Application Plans

## **SCHEDULE OF PLANNING CONDITIONS**

- 1) The development hereby permitted shall begin not later than one year from the date of this decision.
- 2) No development shall take place until details or samples of the materials to be used in the construction of the external surfaces of the buildings 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 or samples.
- 3) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping, including a timetable for implementation. Details shall include indications of all existing hedgerows on the land, and any to be retained, together with measures for their protection during the course of development.
- 4) The hard and soft landscaping shall be carried out in accordance with the approved details and timetable. 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 similar size and species, unless the local planning authority gives written approval to any variation.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected and a timetable for implementation. The boundary treatment shall be carried out in accordance with the approved details and timetable.
- 6) No development shall take place until there have been submitted to and approved in writing by the local planning authority details of the anti-radio interference shielding materials to be incorporated into the buildings hereby permitted. Development shall be carried out in accordance with the approved details and the shielding shall be retained in position once installed for the lifetime of the development.
- 7) No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
  - a) The hours of construction work and deliveries;
  - b) the parking of vehicles of site operatives and visitors;
  - c) loading and unloading of plant and materials;
  - d) storage of plant and materials used in constructing the development;
  - e) wheel washing facilities;
  - f) measures to control the emission of dust and dirt during construction.
- 8) No development shall take place until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved drainage scheme has been carried out.

- 9) No development shall take place until details of the footway and street lighting to be provided along the site frontage have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved footway and lighting details have been carried out.
- 10) No development shall take place until details of the visibility splays at the site access have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the visibility splays shall not be obstructed by anything in excess of 0.9 metres.
- 11) No dwelling shall be occupied until the parking and turning areas have been constructed in accordance with the details shown on the approved plans. These areas shall be kept available for the parking and turning of vehicles and not used for any other purpose.
- 12) No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and retained as operational thereafter, unless otherwise agreed in writing by the local planning authority.
- 13) The development shall be carried out in accordance with the ecological mitigation measures in the Ecological Assessment by TEP (April 2012) and the Great Crested Newt Mitigation Proposals by TEP (April 2012).
- 14) Prior to the first occupation of the development hereby permitted, a footpath connecting the existing footpath along the frontage of Shackerley Place and the existing footpath to the north-west side of the junction of Brereton Heath Lane and Holmes Chapel Road (A54), and a clear sided bus shelter, shall be provided on the land edged red on the Footpath Plan 1-HCR-S\_FP\_01 where the Footpath Plan 1-HCR-S\_FP\_01 is the same as Plan D (as defined in the Planning Obligation).
- 15) The development hereby permitted shall be carried out in accordance with the following approved plans: ROSE COTTAGES\_01A; ROSE COTTAGES\_02; 248-APP1; 2B4P-PL01; 2B4P-PL02; 3B5P-PL01; 3B5P-PL02; 4255s-PL01; 4255s-PL02; 4258s-PL01; 4258s-PL02; 4259-PL01; 4259-PL02; 4260s-PL01; 4260s-PL02; 4280-PL01; 4280-PL02; 4285-PL01; 4285-PL02; 5250-PL01; 5250-PL02; 5526-PL-01; 5526-PL02; 5530-PI01; 5530-PL02; G-PL01.

*End of conditions*