

Planning Statement

For Nigel Kay Homes Ltd | 26-357

Residential development - Land off Dalzell Street, Moor Row, Egremont, CA24 3JS

Project: 26-357
Site Address: Land off Dalzell Street, Moor Row, Egremont, CA24 3JS
Client: Nigel Kay Homes Ltd
Date: 24 July 2026
Author: Caroline Payne

This report has been prepared for the client by Emery Planning with all reasonable skill, care and diligence. No part of this document may be reproduced without the prior written approval of Emery Planning. Emery Planning Partnership Limited trading as Emery Planning.

Contents

1.	Introduction	1
2.	Context	2
3.	Relevant planning history	4
4.	The application	6
5.	Policy context	9
6.	Five-year housing land supply	13
7.	Planning considerations	16
8.	Site specific considerations	27
9.	Summary	33

Appendices

- EP1.** Appeal decision Audlem Road, Nantwich
- EP2.** Appeal decision Crewe Road, Winterley
- EP3.** Appeal decision Chesterfield Road, Alfreton



1. Introduction

- 1.1 This Planning Statement is submitted in support of an outline application made by Nigel Kay homes Ltd to Cumberland Council for residential development comprising the construction of up to 45 dwellings and associated works at land off Dalzell Street, Moor Row, Egremont. Details of access are submitted for approval at the outline stage. All other matters are reserved.
- 1.2 The site lies immediately to the north of Moor Row, which is defined as a Sustainable Rural Village in the settlement hierarchy. Outline planning permission ref: 4/23/2076/001 was granted in July 2024 for up to 65 dwellings on the land immediately to the south of the application site, with reserved matters consent ref: 4/24/2323/OR1 granted in April 2025. The local planning authority considered the adjacent site to be in a sustainable location for residential development.
- 1.3 The site lies beyond the existing settlement boundary for Moor Row and is currently designated as open countryside.
- 1.4 We set out through this Statement that:
- The proposals would be acceptable in principle having regard to the exception for development outside of settlement boundaries set out in Policy DS2 (1).
 - If the local planning authority considers that there would conflict with DS2 (1) of the development plan in that the site lies within the open countryside adjoining but beyond the settlement boundary of Moor Row, there are other material considerations in this case that attract significant weight in the decision-making process in respect of the flat planning balance.
 - Finally, as of 1st July 2026, the tilted balance is engaged as the policies which are most important for determining the application are out-of-date. The adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits of the proposal. Therefore, in accordance with paragraph 11(d) of the Framework planning permission should be granted.



2. Context

Site location and description

- 2.1 The application site lies immediately to the north of the settlement boundary of Moor Row. It comprises agricultural land and is adjacent to a residential development currently under construction by the applicant pursuant to outline planning permission ref: 4/23/2076/001 and reserved matters consent 4/24/2323/OR1. The site's location is shown on the Google Earth extract below:



Figure 1: Site location

- 2.2 The site extends to approximately 2.9 hectares and comprises grassland that slopes northwards. The River Keekle corridor passes in close proximity to the eastern edge of the site. To the north lies an attenuation basin constructed in connection with the residential development under construction to the south. Chapter 2 of the LVA prepared by Barnes Walker provides a detailed description of the site and considers that the site does not contain any particularly distinctive landscape features apart from a proliferation of juncus grass across the site reflecting the damp nature of the ground.

- 2.3 Moor Row has a population of approximately 1,000 persons. Services within the village include Moor Row Primary School (capacity 120 children), Emmanuel Church and warm hub for pensioners, Working Men's Club, two car repair workshop and playground.
- 2.4 Moor Row and the application site are situated a short distance to the east of Westlakes Science and Technology Park which is identified in Strategic Policy E3 as Copeland's knowledge campus of international significance. The site provides more than 6 hectares of service development land with an additional 9 hectares of land allocated in the local plan to enable its expansion.
- 2.5 National Cycle Route 72 (Hadrian's Cycleway) runs along the southern boundary of the adjacent residential development to the south and provides cycle connections to Egremont and Sellafield to the south and Whitehaven and Workington to the north. National Cycle Route 71 branches off this to the north connecting toward Cleator Moor. An assessment of the accessibility of the site by foot and cycle is set out in Chapter 4 of the Transport Statement prepared by TetraTech.



3. Relevant planning history

3.1 There is no planning history for the application site.

3.2 Relevant planning history for the adjacent site comprises the follows:

- 4/10/2165/001 – Outline application for 37 dwellings – Approved.
- 4/13/2146/0R1 – Reserved matters application for road and plot layout – Approved.
- 4/16/2275/001 – Outline application for residential development – Approved in outline.
- 4/23/2076/001 – outline application for residential development for up to 65 dwellings with details of proposed access – approved 19th July 2024 subject to a section 106 agreement requiring the provision of 10% affordable housing
- App. Ref. 4/24/2335/DOC - Discharge of conditions 5, 6, 8, 19 and 20 of planning application 4/23/2076/001 – Approved 19th February 2025
- App. Ref. 4/24/2336/DOC - Discharge of conditions 9, 10 and 21 of planning application 4/23/2076/001 – Approved 19th February 2025
- App. Ref. 4/24/2337/DOC - Discharge of conditions 11, 12, 13, 14, 15 16, 17, 18 and 22 of planning application 4/23/2076/001 – Approved 19th February 2025
- App. Ref. 4/24/2391/0F1 – Full Planning Application for proposed surface water dry retention basin and associated infrastructure including BNG enhancements relating to residential development pursuant to outline application reference 4/23/2076/001 – Approved 11th April 2025
- 4/24/2323/0R1 – application for reserved matters relating to layout, scale, appearance and landscaping pursuant to outline permission 4/23/2076/001 – Approved 11th April 2025

3.3 The committee report for outline planning application 4/23/2076/001 dated 27th September 2023 made the following comments:

- Part of the site (the former goods yard) lies within the current adopted settlement boundary with the remaining greenfield portion outside the settlement boundary and classified as open countryside. Due to historic challenges and viability issues with developing the former goods yard, the greenfield portion of the site was considered and supported through planning permission 4/16/2275/001. The area covered by this application is proposed to be included within the settlement boundary in the emerging local plan (p. 14).
- Moor Row is classified as a Sustainable Village in the emerging Local Plan indicating it can support a limited amount of growth to maintain communities. Whilst classed as a village Moor Road sits off the main A595 road between Whitehaven and Egremont and is also close



to Cleator Moor and therefore would be attractive to residents wanting to live close to amenities but in a more rural location (Strategic Housing response, p.15)

- Furthermore, the proposed footway and requested contribution is not deemed necessary to make the proposed development acceptable in planning terms, given the sustainable location of the application site and the proposed direct links onto the existing cycleway to the south of the application site connecting to services both in the locality and the wider area (p. 34).

3.4 The committee report for the reserved matters application 4/24/2323/OR1 concluded that:

- The mix of housing proposed would reasonably accord with the SHMA and the development would deliver 6 affordable units in accordance with the Section 106 Agreement.
- The design and layout are considered to be acceptable and the provision of additional landscaping to supplement the existing tree belt which is to be retained as part of the development will help to soften the impact of the development within the landscape and also provide an attractive place to live.
- In overall terms, subject to the planning conditions proposed, the development accords with the provisions of the development plan.



4. The application

- 4.1 The application seeks outline planning permission with access for up to 45 dwellings at land off Dalzell Street, Moor Row, Egremont.

Amount/size

- 4.2 The site is 2.9 hectares in area. The proposed development is for up to 45 dwellings.
- 4.3 Whilst the application is in outline, the mix of housing proposed at the reserved matters stage would suit local market needs and demand. The dwellings would be a mix of 2 to 5 bedroomed homes comparable with the adjacent site.

Use

- 4.4 The proposed use would be residential (C3).

Layout

- 4.5 The detailed site layout would be approved at the reserved matters stage. The application is accompanied by an indicative site plan prepared by Alpha Design (dwg no 26/01/1093-02) and a Landscape and Visual Appraisal (LVA) prepared by Barnes Walker which includes a landscape parameters plan. This shows that the dwellings would be orientated to face public areas for natural surveillance and would be face on or side on to open grassland within the site. They would be arranged within a series of pockets of housing, broken up by open space planted with hedgerows, trees, scrub and wildflower meadows.
- 4.6 The LVA explains that the centrally located public open space would create a corridor for a potential footpath link to run north to south, through the southern residential development, linking to the existing cycleway network.
- 4.7 There would be no built development proposed on the lower banks of the River Keekle. A wide swathe of open space is proposed between the proposed houses to the east and the river corridor, allowing the protection and retention of the existing mature trees to the east of the site.
- 4.8 An extract from the indicative site layout is provided below:





Figure 2: Indicative site layout in the context of Phase 1

Scale

- 4.9 In terms of the scale, the dwellings would be a mix of single and two storey in height with some of the properties incorporating accommodation in the roofspace. Scale would be approved at the reserved matters stage.

Landscaping

- 4.10 Details of landscaping are sought for approval at the reserved matter stage. The LVA explains that the northern boundary would be planting with a native hedgerow with trees to create a soft edge between the built development and the farmland to the north. Sections of the boundary would be planted with native trees to provide partial screening of the proposed housing in views from the north.

Appearance

- 4.11 Although appearance is reserved for later approval, the dwellings would be high quality, family houses which Nigel Kay Homes has provided elsewhere in the former Copeland area and is currently building on the adjacent site.

- 4.12 Materials would reflect the local vernacular and blend with the adjoining residential development to the south. This would include facing brickwork, St. Bees red sandstone and grey concrete roof tiles.

Access and parking

- 4.13 The residential development would be accessed from Dalzell Street, via the new residential development to the south. The main access road would run on a north south alignment and branch eastwards.
- 4.14 Policy CO7: Parking Standards sets out that proposals will be required to provide parking provision in accordance with the Cumbria Development Design Guide.
- 4.15 Appendix 1 of the Design Guide sets out a requirement for 1.5 car parking space for each 1 bed house, 2 spaces for each 2 bedroom house, 2.5 spaces for each 3-4 bedroom house and 3 spaces for 5 bedroom homes. 1 visitor space is required per 5 units and 1 disabled space is required for every 10 grouped spaces.
- 4.16 Off street parking in accordance with the Council's standards would be provided at the reserved matters stage.



5. Policy context

- 5.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 5.2 On 1st April 2023, the former districts of Allerdale, Carlisle and Copeland, became part of Cumberland Council. The Council has started work on a new Local Plan for Cumberland, when adopted, the new Local Plan will replace all the existing Local Plans that were adopted by the former Councils, including the Copeland Local Plan.
- 5.3 The site is shown on the extract from the proposals map below:

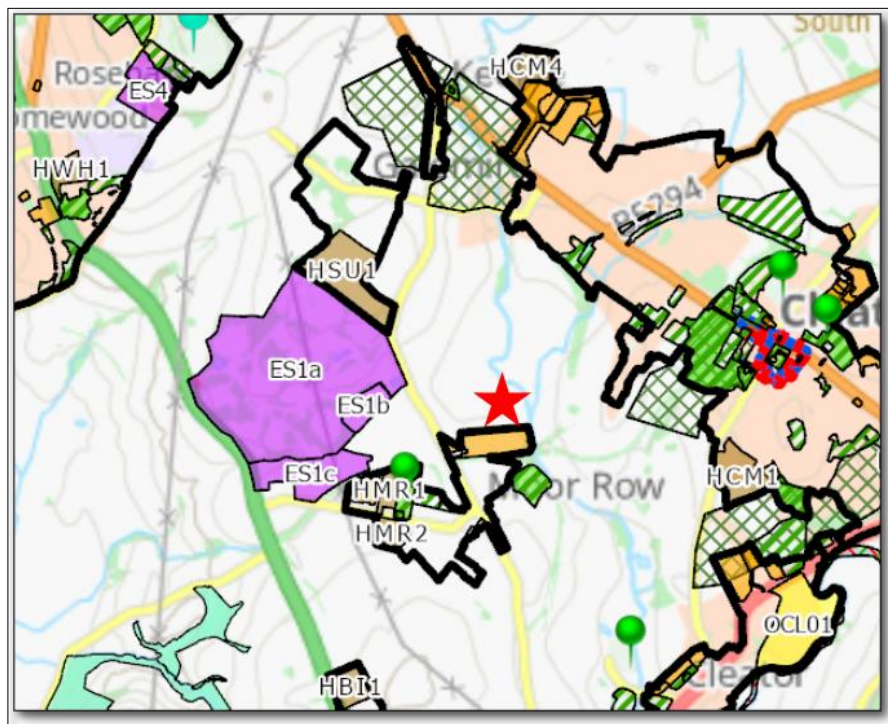


Figure 3: Extract from proposals map

Development plan context

- 5.4 The development plan comprises the Copeland Local Plan 2021-2039 (adopted November 2024). The following policies of the Copeland Local Plan are relevant:
- Strategic Policy DS1: Settlement Hierarchy

- Strategic Policy DS2: Settlement Boundaries
- Strategic Policy DS3: Planning Obligations
- Policy DS4: Design and Development Standards
- Policy DS5: Hard and Soft Landscaping
- Strategic Policy DS6: Reducing Flood Risk
- Policy DS7: Sustainable Drainage
- Policy DS9: Protecting Air Quality
- Strategic Policy H1: Improving the Housing Offer
- Strategic Policy H2: Housing Requirement
- Strategic Policy H3: Housing delivery
- Strategic Policy H4: Distribution of Housing
- Policy H6: New Housing Development
- Policy H7: Housing Density and Mix
- Policy H8: Affordable Housing
- Policy SC1: Health and Wellbeing
- Strategic Policy N1: Conserving and Enhancing Biodiversity and Geodiversity
- Strategic Policy N3: Biodiversity Net Gain
- Strategic Policy N6: Landscape Protection
- Strategic Policy N9: Green Infrastructure
- Strategic Policy N11: Provision for open space in new developments
- Policy N14: Woodlands, Trees and Hedgerows
- Policy CO4: Sustainable Travel
- Policy CO5: Transport Hierarchy
- Policy CO7: Parking Standards and Electric Vehicle Charging Infrastructure

Other material considerations

Local Plan Review

5.5 The Council's timetable for plan preparation was published on 30th June 2026 and is summarised as follows:

- Scoping consultation – September to October 2026.



- Plan content and evidence consultation – August to October 2027.
- Proposed plan consultation – May to July 2028
- Plan submitted for examination – 3rd November 2028
- Examination recommendations published – 30th March 2029
- Timetable for Adoption – 23rd April 2029

5.6 As the new Local Plan for Cumberland is in the very early stages no weight can be given to it.

National planning policy and guidance

National Planning Policy Framework

- 5.7 The Framework was published in March 2012. It was revised in July 2018, February 2019, July 2021, September 2023, December 2023, and most recently on 12th December 2024 (with minor updates on 7th February 2025).
- 5.8 The Framework sets out the Government’s planning policies for England and how these should be applied.
- 5.9 The Framework emphasizes that planning applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. It is a material consideration in decision making and provides a framework for the preparation of development plans (Section 2).
- 5.10 Relevant in in this instance are sections:
- 2 – Achieving sustainable development
 - 5 – Delivering a sufficient supply of homes
 - 8 – Promoting healthy and safe communities
 - 11 – Making efficient use of land
 - 12 – Achieving well-designed places
 - 14 – Meeting the challenge of climate change, flooding and coastal change



National Planning Practice Guidance (the PPG)

5.11 The PPG was originally published in March 2014 and has since been updated.

Written Ministerial Statement (WMS) 30 July 2024

5.12 The Government published a WMS on 30th July 2024 alongside its consultation on changes to the Framework. The WMS has the effect of Government policy and is therefore a material consideration in planning decisions (*Cala Homes (South) Ltd v Secretary of State [2011] EWCA Civ 639*).

5.13 The WMS states: **“There is no time to waste. It is time to get on with building 1.5 million homes”**.

Letter from the Deputy Prime Minister to local authorities: “Playing your part in building the homes we need”

5.14 Following the WMS, the Deputy Prime Minister wrote to local authorities in a letter dated 30th July 2024. The letter outlines a number of changes the government will make to achieve the delivery of additional housing.

Chancellors Statement 8th July 2024

5.15 The Chancellor’s first statement set out how the new Government is going to achieve its manifesto pledge to deliver economic growth. As a statement from the Government this is capable of being a material consideration. The Chancellor stated that *“Growth... is now our national mission”*.

Supplementary Planning Documents / Guidance

5.16 The following are relevant to this application:

- Cumbria Development Design Guide (CDDG)
- Copeland Borough Council Housing Strategy 2018-2023 (CBCHS)
- Copeland Strategic Housing Market Assessment 2021 Update (SHMA)
- Cumberland General Housing Needs Study (February 2025)



6. Five-year housing land supply

- 6.1 Paragraph 61 of the Framework sets out the Government’s objective of “significantly boosting the supply of homes”. It is well established that the delivery of homes, at a time of a national housing crisis, can be given significant weight, even in cases where a Council can demonstrate a five-year housing land supply.
- 6.2 In addition to the publication of the new Framework, which includes a number of new measures to boost significantly the supply of housing (including the re-instatement of the need to maintain a five-year supply at all times, the re-instatement of the 5% buffer and a new standard method for calculating local housing need), the statements from the Government place great focus on the delivery of housing, and addressing the housing crisis is an absolute priority. The Government’s recent statements in relation to housing and planning only increase the weight that needs to be attached to the delivery of housing.
- 6.3 Policy H2 sets out that provision will be made for the delivery of a minimum of 2,628 net additional dwellings over the plan period 2021 – 2039 with an objective to meet at least an annual average net additional dwelling requirement of 146 dwellings per annum and to maintain a rolling five-year supply of housing land. The policy states that the plan identifies a range of attractive allocated housing sites, which when combined with future windfall development, previous completions and extant permissions would allow for a minimum of 3,600 dwellings (200 per annum) over the plan period.
- 6.4 The Council’s 5YHLS position sets out that at 1st April 2025, the Council has a deliverable supply of 900 dwellings, which against the adopted housing requirement and a 5% buffer equates to **5.84 years**.
- 6.5 On the requirement side, the adopted strategic policies in the Local Plan (adopted November 2024) are less than five years old. Therefore, in accordance with with paragraph 78 of the Framework, the 5YHLS should be measured against the adopted housing requirement of 146 dwellings per annum.
- 6.6 The latest Housing Delivery Test (HDT) result (2023) confirms that the 5% buffer applies. However, from 1st July 2026, the 20% buffer applies (irrespective of the latest HDT result) in accordance with paragraph 78c of the Framework. This is because the average annual housing requirement is less than 80% of the local housing need (it is 57%).
- 6.7 The Council’s deliverable supply figure of 900 dwellings equates to 5.14 years and a surplus of just 24 dwellings following the application of the 20% buffer from 1st July 2026. However, we do not consider that all of the claimed supply is deliverable as it is not underpinned by clear evidence demonstrating that housing completions will begin on sites within 5 years. We conclude that 143 dwellings should be removed from the deliverable supply in relation to the following sites:



- Harras Dyke Farm
- Land at Low Road, Whitehaven
- Land at Harras Road, Harras Park
- Land at Summergrove Park, Whitehaven
- Land adjacent to Flosch Meadows, Cleator
- Land at Arlecdon Parks Road, Arlecdon
- Land at Bowthorn Farm, Bowthorn Road
- Low Leys Farm, Lamplugh
- Land to the rear of Ennerdale View, Birks Road
- Land adjacent to Mill Howe, Millfields

6.8 We therefore conclude that the deliverable supply in Copeland at 1st April 2025 is 757 dwellings. This equates to **4.33 years** against the adopted housing requirement plus a 20% buffer, as shown in the following table:

Table 6.1 – Copeland’s 5YHLS at 1st April 2025 (Emery Calculated Supply)

	Requirement	Pre-July 2026 (5% buffer)	From 1 st July 2026 (20% buffer)
A	Annual adopted housing requirement	146	146
B	Five year requirement	730	730
C	Buffer (5% / 20% of B)	37	146
D	Total five year requirement (B + C)	767	876
E	Annual housing requirement (D / 5 years)	153	175
	Supply		
F	Deliverable supply at 1 st April 2025	757	757
G	Years supply (F / E)	4.95	4.33
H	Shortfall against 5YHLS requirement	-10	-119



6.9 Therefore, we conclude that the Council cannot demonstrate a five year supply at 1st April 2025.

6.10 We assess the implications of the lack of a 5 year supply in the following section.



7. Planning considerations

Compliance with the development plan

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 The site is identified on the adopted proposals map as being located adjacent to, but outside the defined settlement of Moor Row and is therefore designated as open countryside.
- 7.3 Strategic Policy DS1: Settlement Hierarchy of the Local Plan states that the Council will support development within the settlements specifically listed. Development must be proportionate in terms of nature and scale to the role and function of the settlement. Moor Row is identified as a Sustainable Rural Village which is identified as offering a limited number of services but could support a limited amount of growth to sustain communities. The policy states that the focus will be to support the retention and small scale growth of existing services and businesses. Small scale housing allocations, windfall and infill development will be supported in principle.
- 7.4 Strategic Policy DS2: Settlement Boundaries states that development within identified settlement boundaries will be supported in principle where it accords with the Development Plan unless other material considerations indicate otherwise.
- 7.5 The policy goes on to state that to ensure the delivery of allocated sites is not prejudiced, development outside the settlement boundaries will only be accepted in the following cases. One exception is where the proposal is for housing and;
- a) the site is well related to and directly adjoins an identified settlement boundary; and
 - b) the site is or can be physically connected to the settlement it adjoins by safe pedestrian routes; and
 - c) the Council is unable to demonstrate a 5-year supply of deliverable housing sites; or
 - there has been previous under-delivery of housing against the requirement for 3 years or more or
 - the proposal is for a specific type of housing supported by Policies H15, H16 or H17.



- 7.6 The site is immediately adjacent to the settlement boundary of Moor Row and the site is physically connected to the settlement by safe pedestrian routes through the housing development to the north. The requirements of criteria a) and b) are met.
- 7.7 With regard to criterion c) we conclude that the council cannot demonstrate a five year supply of housing, however, in addition to this there has been under delivery against the requirement for three years or more since the base date of the plan as shown in the Table below (the policy does not require the under-delivery to be in consecutive years).

Table 7.1 – Housing completions since the base date of the Local Plan

Year	Annual requirement	Completions	Under / over delivery	Cumulative under / over delivery
2021/22	146	144	-2	-2
2022/23	146	142	-4	-6
2023/24	146	133	-13	-19
2024/25	146	173	27	8
Totals	584	592	8	

- 7.8 There would therefore be no conflict with Policy DS2.
- 7.9 In summary, we conclude that the proposal is acceptable in principle.

Planning balance

- 7.10 However, should the council conclude that there is conflict with Policy DS2 criterion c) there are other material considerations in this case that attract significant weight in the decision-making process.

Delivery of market housing

- 7.11 Paragraph 61 of the Framework sets out the Government's objective of "*significantly boosting the supply of homes*". It is well established that the delivery of homes, at a time of a national housing crisis, can be given significant weight, even in cases where a Council can demonstrate a five-year housing land supply.



7.12 There have been a number of appeal decisions where the Secretary of State and Inspectors have given significant weight to the delivery of housing on unallocated sites even though the Council can demonstrate a five-year housing land supply.

7.13 For example, the Secretary of State allowed an appeal for a mixed-use development including up to 189 dwellings at Audlem Road/Broad Lane, Stepeley, Nantwich and Peter De Stapeleigh Way, Nantwich on 15 July 2020 (PINS refs: APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529 attached at Appendix **EP1**). The site was designated as open countryside, and the Secretary of State found that that the proposed development conflicted with the development plan, and furthermore that the Council could demonstrate a five-year housing land supply. However, the appeal was allowed, with the Secretary of State identifying that significant weight should be afforded to the provision of market housing in a sustainable location. Paragraph 28 of the decision letter states:

“For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework¹, and he considers that this benefit should be afforded significant weight.” (my emphasis)

7.14 An appeal was allowed on 1 March 2021 for a scheme of up to 55 dwellings at land off Crewe Road, Winterley, Cheshire East (PINS ref: APP/R0660/W/20/3251104 attached at Appendix **EP2**). In granting planning permission for residential development on an unallocated site designated as open countryside, the Inspector gave significant weight to the provision of market housing in a sustainable location (paragraph 62), despite the Council being able to demonstrate a five-year supply.

7.15 A further example is appeal reference APP/M1005/W/24/3343782 relating to a site at Chesterfield Road, Alfreton, Amber Valley allowed on 9th December 2024 (attached at Appendix **EP3**). The application relates to an outline application for the erection of up to 177 dwellings and associated infrastructure outside the settlement boundary. In the planning balance section, the Inspector concluded as follows:

125. It is undisputed that Amber Valley Borough has more than four years supply of deliverable housing sites, which for the purposes of my decision I take to be around 8.7 years supply. That said, and within the context of the most acute national housing crisis in living memory⁹, four-year supply is a floor not a ceiling. Also, provision of new affordable housing is an important matter in Amber Valley Borough, which has a notable need for affordable housing. This local need for affordable housing is further indicated by the presence of more than 2,000 households on the Council’s Housing

¹ Now paragraph 61



Register, of who more than 1,400 are in overcrowded or unsuitable accommodation, and more than 300 specify Alfreton as their preferred location.

135. The Council has a current lack of a plan-based strategy for the delivery of housing. Within this context, in applying a more restrictive approach to major residential development outside the built framework of settlements, saved LP Policies EN1 and H5 are inconsistent with the Framework.

- 7.16 There is nothing within the above decisions to indicate that the weight to be attributed to the delivery of housing should be anything less than significant, even if the Council can demonstrate a five-year supply. Furthermore, two of these decisions predate the Secretary of State's WMS of 30 July 2024 and the consultation on the revised Framework, which we discuss below. The third decision was issued prior to the publication of the December 2024 Framework but the WMS is given significant weight in the decision.
- 7.17 The Written Ministerial Statement "Building the homes we need", the letter from the Deputy Prime Minister to local authorities entitled "Playing your part in building the homes we need" both dated 30th July 2024 and the Chancellors Statement of 8th July 2024 are all material considerations that weight in support of the grant of planning permission.
- 7.18 The delivery of housing on a site in a sustainable location that is well related to the existing settlement is also a material consideration. The site is well related to Moor Row which is one of the Sustainable Rural Villages and would form Phase 2 of the existing residential development.
- 7.19 The proposals would provide limited growth at a scale and in keeping with the village, having regard to the nearby employment area and would not represent the provision of isolated new homes in the countryside.
- 7.20 Strategic Policy H4: Distribution of Housing sets out that the distribution of housing in the Plan area will be broadly in line with the settlement hierarchy. The proportion of housing directed to the sustainable rural villages is 263 dwellings increasing to 360 dwellings allowing for additional growth.
- 7.21 Strategic Policy H5: Housing Allocations identifies allocations within the sustainable rural villages equating to 297 dwellings. The table below shows the sites, the stated delivery commencement as set out in the Local Plan Trajectory and the current status:



Table 7.2 – Status of allocations in Sustainable Rural Villages

Site Ref:	Site	No. of dwellings	Anticipated commencement of delivery in Local Plan trajectory	Status
HBE1	Croft House Farm, Beckermest	46	2028/29	No applications submitted to date
HBE2	Mill Fields, Beckermest	27	2027/28	No applications submitted to date
HBI1	Springfield Gardens, Bigrigg	65	2025/26	No applications submitted to date
HBI2	Jubilee Gardens, Birigg	35	2026/27	No applications submitted to date
HDH2	Wray Head, Station Road, Brigg	22	2027/28	No applications submitted to date
HDH3	Hill Farm, Holmrook	20	2032/33	No applications submitted to date
HMR1	North of social club, Moor Road	19	2025/26	Reserved matters approved December 2024
HMR2	South of Scalegill Road, Moor Row	41	2026/27	No applications submitted to date
HLO1	Solway Road, Lowca	22	2030/31	No applications submitted to date

7.22 The proposed allocations in the Sustainable Rural Villages do not appear to be delivering as anticipated.

7.23 In addition to this, the Council's 5YHLS position sets out that at 1st April 2025, the Council has a deliverable supply of 900 dwellings, which against the adopted housing requirement and a 5% buffer equates to **5.84 years**. The deliverable supply figure of 900 dwellings equates to **5.14 years** now the 20% buffer applies from 1st July 2026. This is a surplus of just **24 dwellings** and is a material consideration in determining the application.



- 7.24 In summary, in this context the delivery of housing in a suitable location is a material consideration that should be afforded **substantial positive weight** in the decision-making process.

Delivery of affordable housing

- 7.25 Policy H8 requires the provision of 10% affordable housing. This provision would be met on site.
- 7.26 The provision of affordable housing to meet the needs of households in need of an affordable home should be afforded **substantial positive weight** in the planning balance.

Economic benefits

- 7.27 Paragraph 85 of the Framework states:

“Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.”

- 7.28 Notwithstanding the existing clear support in national policy for economic growth, the Government has made delivering a huge upturn in economic growth central to its strategy and has made it clear that it is essential to improving the prosperity of the country and the living standards of working people. In the Chancellor’s first speech of 8th July 2024 she stated that the planning system must be reformed to deliver economic growth.
- 7.29 The Government’s policy is to positively drive economic growth, and to ensure that it reaches all communities, without delay. This underpins the Government’s entire economic strategy. Therefore, this must be a key consideration when determining the weight to attach to the economic benefits in planning decisions, just as the Secretary of State will make it a central consideration when she intervenes in planning applications.
- 7.30 The proposed development would result in a number of economic benefits. During the build period, construction related jobs and indirect jobs would be created. This would benefit local contractors and suppliers. The proposed development would provide homes for the district’s workforce, and once occupied the residents of the proposed scheme would spend money within the district.
- 7.31 Emery Planning is an Associate member of the House Builders Federation (HBF), and it is possible to quantify the estimated economic benefits of the proposed development via the HBF Housing Calculator (as updated in August 2025). 45 dwellings is estimated to support the employment of a total of 156 people



providing 1 apprentice, graduate or training. During occupation of the dwellings, there would be an increase in resident expenditure of approximately £1,274,999 per annum, a significant proportion of which would be spent in local shops, services and amenities with £90,462 in council tax revenue.

- 7.32 In light of national policy and the Government's unequivocal statements in respect of economic growth, the economic benefits of the proposed development should attract **moderate positive weight** in the planning balance.

Provision of new open space

- 7.33 The proposal would deliver new recreational and ecological space as indicated on the indicative layout and landscape layout. This would be readily accessible to both new and existing residents.
- 7.34 The provision of new open space is therefore a clear benefit of the proposed development, and should be afforded **moderate positive weight**.

Ecology and biodiversity

- 7.35 The delivery of a 10% net gain in biodiversity can be secured by condition. Whilst a 10% net gain is now required on all developments by the Environment Act, a net gain in biodiversity is nevertheless a tangible benefit of development which must be attached weight in the planning balance. This benefit should be afforded **moderate positive weight**.

Summary

- 7.36 Whilst we conclude that the proposals are acceptable in principle and would accord with the development plan having regard to the exception set out in Policy DS2, should the local planning authority reach the conclusion that the proposal conflicts with the exception there are other material considerations that attract significant weight in the decision making process. Having regard to the material considerations, there would be very limited, if any, tangible harm which arises as a result of the technical breach of policy. The weight to be attached to the conflict with open countryside policy is limited given the circumstances of this case and this conclusion is consistent with comparable cases elsewhere.

Tilted planning balance

- 7.37 Paragraph 11 of the Framework states that applications should be considered in the context of the presumption in favour of sustainable development. For decision taking this means approving development proposals that accord with an up-to-date development plan without delay; or:



“d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance⁷ provides a strong reason for refusing the development proposed; or
- ii. 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination⁹.”

Footnote 7

- 7.38 The protected assets or assets of particular importance as defined in footnote (7) are listed as SSSI, Green Belt, Local Green Space, National Landscape, National Park, Heritage Coast, irreplaceable habitats or designated heritage assets. There are no protected assets or assets of particular importance within or adjacent to the site.

Footnote 8

- 7.39 Footnote 8 of The Framework clarifies that the most important policies will be considered out-of-date in circumstances where the LPA cannot demonstrate a five-year supply:

“This includes, for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78)”

- 7.40 The Council’s 5YHLS position sets out that at 1st April 2025, the Council has a deliverable supply of 900 dwellings, which against the adopted housing requirement and a 5% buffer equates to **5.84 years**. The deliverable supply figure of 900 dwellings equates to 5.14 years now the 20% buffer applies from 1st July 2026. This is a surplus of just 24 dwellings. As set out above, our five year housing land supply assessment concludes that 143 dwellings should be discounted from the supply which results in a supply of 4.33 years.

- 7.41 In addition to this the development plan policies which are most important for determining the application are out-of-date for the following reasons:

- In the absence of a five-year supply and a plan-based strategy for the delivery of housing, the policies setting the settlement and open countryside boundaries as they relate to the settlement of Moor Row must also be out of date.



- In summary, the current development plan policies which are most important for determining the application are out-of-date. The tilted balance should therefore apply irrespective of the housing land supply position.

Benefits

7.42 Drawing the above evidence set out above together, the benefits of the scheme are as follows:

- There is a national and local housing crisis.
- Nationally it is a government policy imperative to boost the supply of housing, such that the Secretary of State has given significant weight to the delivery of housing even in circumstances where a Council can demonstrate a five-year housing land supply.
- The Government's recent statements in relation to housing and planning only increase the weight that needs to be attached to the delivery of housing.
- The adjacent site has previously been assessed for housing development and been found to be a suitable location.
- In the context of the above, the delivery of new housing in a suitable location on land well related to a Sustainable Rural Village should be afforded **substantial positive weight**.
- The scheme would deliver 10% affordable housing in accordance with policy. **Substantial positive weight** is attached to this benefit.
- The proposals would deliver economic benefits during the construction and operational phase. In light of national policy and the Government's unequivocal statements in respect of economic growth, the economic benefits of the proposed development should attract **moderate positive weight** in the planning balance.
- The provision of open space and green infrastructure on site which can be used by both new and existing residents. **Moderate positive weight** is attached to this benefit.
- The delivery of 10% biodiversity net gain. This benefit should be afforded **moderate positive weight**.

7.43 The delivery of housing on this site would contribute to the achievement of policy objectives in respect of Moor Row, and the achievement of a key part of the spatial strategy. The site adjoins the edge of a Sustainable Rural Village. The scale of development proposed is appropriate to the settlement. It is an entirely logical location to provide new housing in the context of the national housing crisis.

Adverse impacts

Conflict with the development plan

7.44 Other relevant planning considerations are set out in section 8. The only adverse harm would be that the site is situated outside the settlement boundary.



7.45 Whilst there may be considered to be conflict with the development plan in terms of the policies that restrict development of housing on land designated as open countryside beyond the existing settlement boundaries, these policies are out-of-date in accordance with paragraph 11 of the Framework.

7.46 The Courts have made clear that the weight to be afforded to an out-of-date policy in the context of a housing land supply shortfall is a matter for the decision maker on the merits of the particular case, having regard to factors such as the extent of the shortfall, and the prospect of development coming forward soon to make up that shortfall. The Crane Judgment sets out at paragraphs 70 & 71:

“The decision-maker is left to judge, in the particular circumstances of the case before him, how much weight should be given to conflict with a plan whose policies for the supply of housing are out of date. This is not a matter of law; it is a matter of planning judgment.

However, the weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, or could it be, fixed in the case law of the Planning Court. It will vary according to the circumstances, including, for example, the extent to which the policies actually fall short of providing for the required five-year supply, and the prospect of development soon coming forward to make up the shortfall.”

7.47 In this case, the site is well related to the settlement boundary and would be viewed in the context of the existing housing development at Dalzell Street, the weight to be given to conflict with open countryside policy should only be given limited weight in the tilted planning balance.

Footnote 9 considerations

7.48 Paragraph 11(d) of the revised Framework requires particular regard to be had to key policies in the Framework for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Footnote 9 clarifies that the policies referred to are those in paragraphs 66 and 84 of chapter 5; 91 of chapter 7; 110 and 115 of chapter 9; 129 of chapter 11; and 135 and 139 of chapter 12. Addressing these matters in turn:

- i. **Affordable housing (paragraph 66):** The proposal would provide for the LPA’s requested level of affordable housing at the technical details stage
- ii. **Sequential test (paragraph 91):** This is not applicable to the proposed development.
- iii. **Accessibility (paragraphs 84, 110 and 115):** The proposal would not result in isolated homes in the countryside for the purpose of paragraph 84 of the Framework. The site is adjacent to the settlement boundary of Moor Row. It is entirely consistent with paragraphs 110 and 115 of the Framework.
- iv. **Making effective use of land (paragraph 129):** A well-designed scheme can be delivered at the reserved matters stage which makes effective use of land, having regard to the site’s location,



its characteristics and the wider area. The proposal is consistent with paragraph 129 of the Framework.

- v. **Design (paragraphs 135 & 139):** A well designed scheme will be delivered at the reserved matters stage having regard to local design policies and government guidance on design.

Planning balance: conclusion

- 7.49 Taking all of the above into account, the adverse impacts would not significantly and demonstrably outweigh the substantial benefits of the proposal. Therefore, in accordance with paragraph 11(d) of the Framework planning permission should be granted.



8. Site specific considerations

Highways

- 8.1 Policies CO4: Sustainable Travel, CO5: Transport Hierarchy and Policy CO7: Parking Standards and Electric Vehicle Charging Infrastructure of the LP promote active travel.
- 8.2 Details relating to highways and access are provided in the Transport Statement prepared by Tetra Tech. This explains that the proposed development will be accessed from Dalzell Street via the new approved Station Yard access junction and via the internal roads within Station Yard. The proposal considers the accessibility of the site and local road safety. It concludes that the proposed development is acceptable in highways terms and there are no highway reasons which would warrant the refusal of planning permission on highway grounds.

Design

- 8.3 Policy DS4: Design and Development Standards and Policy H6: New Housing Development set out, a series of high-quality design standards for new residential development. Policy H7: Housing Density and Mix requires applicants to set out whether the proposed density would help achieve an appropriate housing mix and help regeneration aims and Policy N11 sets out the requirements for provision of open space in new developments.
- 8.4 As discussed above, the application is made in outline only. Nevertheless, the indicative site layout and landscape parameters plan demonstrates that an acceptable layout can be achieved at the reserved matters stage. The LPA would retain control over the eventual design through the reserved matters.

Landscape and visual impact

- 8.5 Strategic Policy N6: Landscape Protection seeks to protect all landscapes from inappropriate change by ensuring that development conserves and enhances the distinctive characteristics of that particular area in a manner commensurate with their statutory status and value. It is stated that development proposals must be informed by the Council's Landscape Character Assessment, Settlement Landscape Character Assessment the Cumbria Landscape Character Guidance and Toolkit.
- 8.6 The application is accompanied by a LVA prepared by Barnes Walker. This identifies that the site lies within the Cumbria Landscape Type 5d, and as an 'Urban Fringe Landscape Character Type' the area is subject to urban and industrial influences.



8.7 It states that upon completion, the neighbouring development currently under construction to the south of the site will redefine the settlement edge and enforce the prevailing urban fringe landscape character. The development proposals would not result in the introduction of uncharacteristic features and the landscape proposals would be in line with the mitigation potential stated within the LCA assessment. In time, proposed tree planting would filter views of the proposed housing and provide definition between the rural and urban areas.

8.8 The conclusion is as follows:

6.14 This LVA assesses a range of Year 1 landscape effects that vary between **Negligible** and **Minor-Moderate Adverse** and visual effects that vary between **Negligible** and **Moderate Adverse**. Higher levels of adverse visual effects assessed (Moderate Adverse) are localised and limited as they are experienced only by receptors in close proximity to the Site. In most instances, these Year 1 effects are expected to be reduced in the longer term, by the establishment of the proposed landscape works.

6.15 This Landscape and Visual Appraisal has therefore ascertained that the implementation of the application scheme would not result in any significant/unacceptable levels of adverse landscape or visual effect.

8.9 Policy DS5: Hard and Soft Landscaping requires a high-quality landscaping scheme to be submitted with all proposals for development. This will be a matter for consideration at the reserved matters stage.

Ground conditions

8.10 The application is accompanied by a Phase 1 Preliminary Risk Assessment prepared by Geocon. This identifies that the site is located in an area where shallow coal is likely to be present and could have been worked at some point in the past. It recommends that an Intrusive Mining Site Investigation is carried out at the site to establish the presence or otherwise of any former shallow coal seams and subsequent workings beneath the site and that these details are implemented prior to the commencement of development. This approach is consistent with the approach taken to the adjacent housing development.

Ecology and biodiversity

8.11 Policy N3 of the LP requires that all development, with the exception of that listed in the Environment Act to provide a minimum of 10% biodiversity net gain over and above existing site levels, following the application of the mitigation hierarchy set out in Policy N1. This is in addition to any compensatory habitat provided under Policy N1. It is stated net gain should be delivered on site where possible and where on-



site provision is not appropriate, provision must be made elsewhere in accordance with a defined order of preference.

8.12 The application is accompanied by a Preliminary Ecological Appraisal and BNG Report prepared by Whistling Beetle. This concludes that:

- It is not expected that the proposed development will have a detrimental impact upon any statutory designated sites. The Rive Ehen Special Area of Conservation (SAC) is situated approximately 1.5km south-east of the site boundary. The SAC comprises the River Ehen and Site of Special Scientific Interest (SSSI). It is not expected that this residential development will have any negative impact on the SAC or SSSI.
- It is not expected that any non-statutory sites will be negatively impacted.
- Of the limited number of habitats present within the site, it is not expected that the loss of these habitats will have any significant detrimental impact on the overall biodiversity or landscape of the area.
- In order to achieve the 10% uplift, the project will need to find an off-site option either within the clients ownership or through habitat banks.

Flood risk and drainage

8.13 Paragraph 170 of the Framework states that:

“Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at high risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.”

8.14 Paragraph 181 of the Framework states that:

“When determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific flood-risk assessment. Development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that:

- A) within site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location;
- B) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment;
- C) it incorporates sustainable drainage systems unless there is clear evidence that this would be inappropriate;



D) any residual risk can be safely managed; and

E) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.”

8.15 Strategic Policy DS6: Reducing Flood Risk seeks to ensure that flood risk is reduced and mitigated in Copeland. Policy DS7: Sustainable Drainage requires new development to incorporate Sustainable Drainage Systems.

8.16 Based on the data obtained from the Environment Agency map for planning, the site is located in flood zone 1 as shown on the extract below:



Figure 4: Flood risk

8.17 There are very small pockets of the site at medium and high risk of surface water flooding as shown on the extract below:



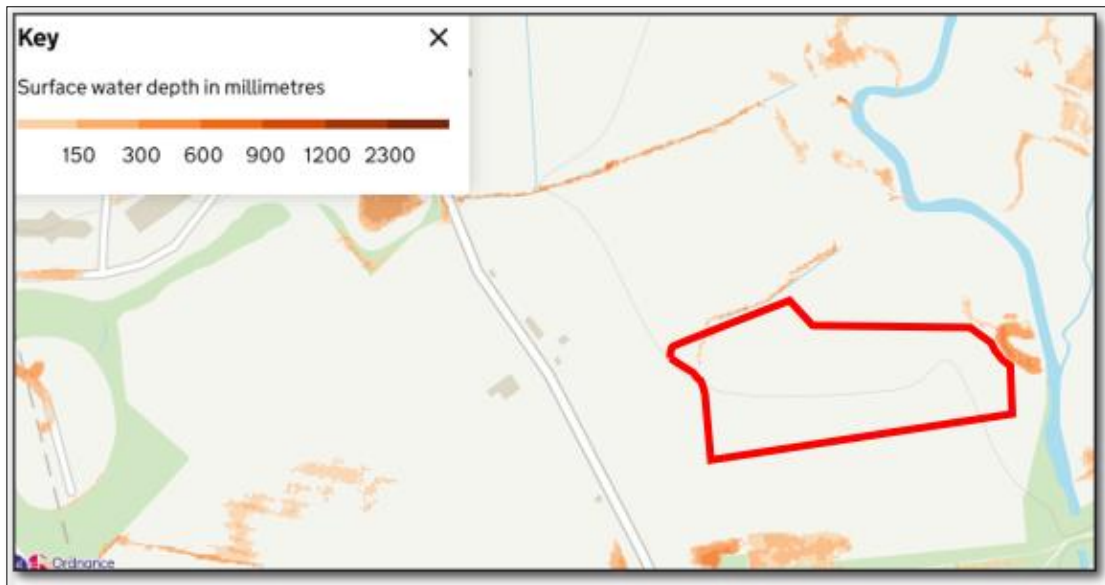


Figure 5: Surface water flood risk (medium)

8.18 The site is over 1 hectare in size therefore in accordance with policies contained within the Framework and PPG, a site specific Flood Risk Assessment (FRA) has been undertaken by Beckwith & Hanlon which provides a comprehensive assessment of potential flood risk on site (including fluvial and surface water) and how this will be managed over the lifetime of the development. This report should be read in conjunction with that statement. The FRA concludes that the most appropriate method for proposed surface water management associated with the residential development is to discharge to an above ground surface water body.

8.19 The proposed development is appropriate and sustainable in flood risk terms.

The sequential assessment

8.20 Paragraph 173 of the Framework advises that:

“A sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding.”

8.21 Guidance on how this test should be applied is set out within Paragraphs 174 and 175 which outline the following steps that should be applied:

“174. Within this context the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the

proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.

175. The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk)."

8.22 In applying the sequential test; guidance in the PPG clarifies that:

"In applying paragraph 175 a proportionate approach should be taken. Where a site-specific flood risk assessment demonstrates clearly that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe from current and future surface water flood risk for the lifetime of the development (therefore addressing the risks identified e.g. by Environment Agency flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied".

(our highlight) **Paragraph: 027 Reference ID: 7-027-20220825** Revision date 17.9.2025

8.23 In this case, the Flood Risk Assessment explains that the onsite surface water flooding would be mitigated through the proposed development with both soft landscaping and positively drained hard standing areas. The inclusion of a controlled, restricted discharge rate and attenuation to accommodate onsite flows, will further mitigate the exiting risk of surface water flooding. The sequential test does not therefore need to be applied.

8.24 Notwithstanding this, the areas of the site at risk from surface water flooding are very small and it would be possible to ensure that any development is outside of these areas at the reserved matters stage. A sequential test should not be required.

Planning obligations

8.25 Strategic Policy DS3: Planning Obligations sets out the infrastructure provision enhancement that will be secured through planning obligations. Subject to meeting the tests of the Community Infrastructure Levy (CIL) regulations, the applicant is willing to enter into a s106 agreement with the Council to provide contributions which are necessary to make the development acceptable in planning terms.



9. Summary

- 9.1 This Planning Statement is submitted in support of an outline application made by Nigel Kay homes Ltd to Copeland Council for residential development comprising the construction of up to 45 dwellings and associated works at land off Dalzell Street, Moor Row, Egremont. Details of access are submitted for approval at the outline stage. All other matters are reserved.
- 9.2 The site lies immediately to the north of Moor Row, which is defined as a Sustainable Rural Village in the settlement hierarchy. Outline planning permission ref: 4/23/2076/001 was granted in July 2024 for up to 65 dwellings on the land immediately to the south of the application site, with reserved matters consent ref: 4/24/2323/OR1 granted in April 2025. The local planning authority considered the adjacent site to be in a sustainable location when assessing the outline application.
- 9.3 Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The proposals would be acceptable in principle having regard to the exception for development outside of settlement boundaries set out in Policy DS2 1).
- 9.4 If the local planning authority considers that there would conflict with DS2 1 of the development plan in that the site lies within the open countryside adjoining but beyond the settlement boundary of Moor Row, there are other material considerations in this case that attract significant weight in the decision-making process in respect of the flat planning balance.
- 9.5 Finally, as of 1st July 2026, the tilted balance should be engaged in accordance with paragraph 11(d) of the Framework. This means 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 as a whole. The proposed development would deliver a range of significant benefits, namely:
- The delivery of new housing in a suitable location on land well related to a Sustainable Rural Village. **Substantial positive weight** is attached to this benefit.
 - Delivery of affordable housing to meet levels of unmet need. **Substantial positive weight** is attached to this benefit.
 - Economic benefits in the form of direct and indirect employment opportunities during construction and throughout the lifetime of the development through increased household spending in the local area. **Moderate positive weight** is attached to this benefit.
 - The provision of open space and green infrastructure on site which can be used by both new and existing residents. **Moderate positive weight** is attached to this benefit.



- The delivery of 10% biodiversity net gain. This benefit should be afforded **moderate positive weight**.

9.6 Against this range of benefits is the loss of a greenfield site, and the associated conflict with open countryside policy. In the context of a tilted or flat planning balance, any limited adverse harm arising from the conflict with open countryside policy would not outweigh the significant benefits that are proposed as part of this proposal. Therefore, the adverse impacts do not significantly and demonstrably outweigh the benefits of the proposed development, and planning permission should be granted.



EP1



Department for
Communities and
Local Government

Patrick Downes
Harris Lamb Limited
75-76 Francis Road
Edgbaston
Birmingham
B16 8SP

Our Ref: APP/R0660/A/13/2197532 and
APP/R0660/A/13/2197529
Your ref: P1007

11 August 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY MULLER PROPERTY GROUP: (A) LAND OFF AUDLEM ROAD/BROAD
LANE, STAPELEY, NANTWICH, CHESHIRE and (B) LAND OFF PETER
DESTAPELEIGH WAY, NANTWICH, CHESHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry between 18 and 21 February 2014 into your client's appeals against:

Appeal A: the refusal by Cheshire East Council ('the Council') to grant outline planning permission for residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1800m² Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700m² GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points; and associated works in accordance with application ref: 12/3747N, dated 28 September 2012; and

Appeal B: the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission for a new highway access road, including footways and cycleway and associated works, in accordance with application Ref: 12/3746N, dated 28 September 2012.

2. The appeals were recovered for the Secretary of State's determination on 5 March 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because they involve proposals for residential development of over 150 units which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. The Secretary of State issued his decision in respect of the above appeals in his letter dated 17 March 2015. That decision letter was the subject of an application to the High

Maria Stasiak, Decision Officer
Planning Casework
Department for Communities and Local Government
3rd floor Fry Building
2 Marsham Street
London, SW1P 4DF

Tel: 0303 444 1624
Email: PCC@communities.gsi.gov.uk

Court and was subsequently quashed by order of the Court dated 3 July 2015. The appeals therefore fall to be redetermined by the Secretary of State.

Inspector's recommendation and summary of the decision

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

Matters arising following the close of the inquiry

5. Following the close of the inquiry, your firm, acting on behalf of the Appellants, sent the two Section 106 Planning Obligations referred to in paragraph 37 below to the Secretary of State on 30 October 2014, and confirmed that these had been sent to the Council on 23 October 2014. The Council subsequently confirmed to the Secretary of State on 3 November 2014 that they were satisfied that the terms of the Undertaking relating to Appeal B resolve the Council's concerns regarding title and content. Furthermore, in addition to correspondence relating to timetable variations, the Secretary of State received correspondence from your firm on behalf of your client, dated 20 October 2014 and 21 November 2014. The former drew the Secretary of State's attention to the outcome of an appeal determined by an Inspector in respect of a proposed housing development at Old Mill Road, Sandbach; and the latter drew his attention to the interim comments of the Cheshire East Council Local Plan Strategy Inspector published on 12 November 2014. As all this correspondence related to public documents, the Secretary of State has not considered it necessary to circulate it to the parties to this case for specific comment. This correspondence is listed at Annex A.
6. Following the quashing of his decision letter, on 17 July 2015 the Secretary of State issued a letter under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeals. These matters were:
 - a) the emerging Cheshire East Local Plan Strategy;
 - b) the current position regarding the 5 year supply of deliverable housing sites in the Council's area;
 - c) the implications, if any, of the judgment in the case of *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government & Mid-Sussex District Council* [2015] EWHC 1173 (Admin); and
 - d) any other material change in circumstances, fact or policy, that may have arisen since his decision of 17 March 2015 was issued and which the parties consider to be material to the Secretary of State's further consideration of the appeals.
7. Alternatively, interested parties could ask for the inquiry to be reopened.
8. On 18 and 24 August 2015, the Secretary of State circulated the responses he had received to his letter of 17 July 2015. On 15 September 2015, he circulated the further representations he had received and informed the parties that he was of the view that

there were no substantive issues that required the inquiry to be re-opened. The responses to the Secretary of State's correspondence of 17 July and 18 and 24 August 2015 are listed at Annex A below.

9. Following the Court of Appeal judgment in the case of *Suffolk District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168, the Secretary of State referred back to parties on 23 March 2016 to seek their views on any implications of this judgment. A response was received from Muller Property on 4 April, which emphasised that where the local planning authority cannot demonstrate a five year supply of deliverable housing sites and where relevant policies for the supply of housing are out of date, there is a clear presumption in favour of a grant of permission in accordance with paragraphs 14 and 49 of the Framework. This response was circulated to parties on 18 April. A response from the Council was received on 25 April, which emphasised that the weight to be given to out of date policies is a matter for the decision-maker in accordance with the considerations at paragraph 47. This was circulated to you on 16 June, and a response was received on 22 June, which stated that the letter from Muller Property of 4 April adequately deals with the issues raised, and commented that there is no prospect of a plan being adopted in the foreseeable future, and that the Council is still unable to demonstrate that it has a deliverable supply of housing. These responses are listed at Annex A below.
10. The Secretary of State also received other representations following the quashing of his 2015 decision, as set out at Annex A below. The Secretary of State has given careful consideration to these representations but, as he does not consider that they raise new issues that would affect his decision or require him to refer back to parties, he has not circulated them.
11. Copies of the representations listed in Annex A are not attached but will be made available on written request to the address at the foot of the first page of this letter.

Policy considerations

12. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan consists of the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (LP), adopted in 2005 to cover the period to 2011. The Secretary of State agrees with the Inspector that the most relevant policies are those referred to at IR3.3-3.4. Notwithstanding that the LP only covers the period to 2011, he does not agree with your client's suggestion in IR6.3 that the development plan is silent or absent, as the relevant policies have been saved and still apply.

Emerging policy

13. The Secretary of State has had regard to the Inspector's remarks on the emerging Cheshire East Local Plan Strategy (CELPS) at IR3.5-3.6. He considers that relevant emerging policies include MP1 (Presumption in favour of sustainable development); PG1 (Overall development strategy); and PG5 (Open countryside). He has also taken account of the representation submitted by the Council on 12 August 2015 which sets out the further steps taken in the development of the CELPS since the close of the

inquiry and which argues that certain emerging policies, specifically those relating to open countryside, should carry more than limited weight. The Secretary of State also observes, following the representation of 12 August 2015 from the Council, that the Examining Inspector published his Further Interim Views on 11 December 2015 and that, on 13 January 2016, the Council published its response to those views including the steps which the Council intends to take prior to a resumption of the Examination hearings to consider amendments to the CELPS and proposed site allocations in September 2016. The Local Plan Strategy – Proposed Changes Version was published for consultation between 4 March and 19 April 2016, and the Council's responses were submitted on 8 July 2016.

14. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State has given careful consideration to the further steps still required prior to resubmission of the CELPS for examination (as set out by the Council on 13 January 2016 in its response to the Inspector's Further Interim Views). He has also given careful consideration to your representation dated 28 August 2015, which states that there are extensive and substantial outstanding objections to both the housing requirement and the distribution of development, and also sets out why you do not agree with the Council that more than limited weight should be attached to the CELPS open countryside policy. Evidence from the Council's consultation portal is that unresolved objections remain. The Secretary of State considers that the overarching aim of Policy PG5 is consistent with the Framework's aim of conserving and enhancing the natural environment, for example at paragraph 17. Overall he attributes little weight to relevant policies in the CELPS at this stage.
15. The Secretary of State has also given careful consideration to the emerging Stapeley and District Neighbourhood Plan, which has been published for consultation. He considers that relevant emerging policies include GS2 (Green spaces), GS3 (Landscape quality, countryside and open views), H1 (Scale of housing development) and H6 (Housing development), and has considered them against paragraph 216 of the Framework and the Planning Guidance (including the amendments made in February 2016 in respect of Neighbourhood Plans). The Secretary of State has taken into account the early stage which the Neighbourhood Plan has reached, and consultation responses on earlier stages of the Neighbourhood Plan process (which he notes show a low level of unresolved objections). With regard to the third limb, the Secretary of State considers that at this stage the relevant policies in the emerging Neighbourhood Plan do not appear to contain obvious inconsistencies with the Framework. Overall, the Secretary of State takes the view that the relevant policies in the emerging Neighbourhood Plan carry little weight.
16. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the associated Planning Guidance, as well as the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

Main issues

17. The Secretary of State agrees with the Inspector that the main considerations in these appeals are those set out at IR12.1-12.2.

Appeal A

Housing land supply

18. The Secretary of State has given careful consideration to the Inspector's remarks at IR12.5-12.15 including his conclusions that a 20%, rather than a 5%, buffer should be favoured in these appeals (IR12.10), that the Council does not currently have a 5 year housing land supply and that the elements of policies NE.2 and RES.5 which serve to limit housing in the countryside should be considered as not up-to-date and so be afforded no weight in this decision (IR12.14).

19. He has also carefully considered the representations submitted following the quashing of his previous decision before reaching conclusions on housing land supply. He observes that the Council's representation of 12 August 2015 states that, against a revised 5 year housing land supply target of 9,000 dwellings (or 1,800 dwellings per year), a 20% buffer to take account of persistent under delivery of housing, plus an allowance for the backlog, the Council is unable to demonstrate a 5 year supply of housing land. The Secretary of State agrees. He has also had regard to your representation of 28 August 2015, which states the view that the Council's objectively assessed need figure of 1,800 dwellings per annum is subject to further objections and may rise further still. Taking into account the analysis at IR12.6-12.15 and the representations cited above, including the latest representations referred to at paragraph 9, the Secretary of State considers that there remains a clear shortfall in housing land supply.

20. The Secretary of State has considered the implications for this case of the Court of appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168. In the light of this case he considers that the Inspector adopted an erroneous approach at IR12.3, 12.4 and 12.14 in ignoring the out-of-date policies and giving policies NE2 and RES5 no weight pursuant to paragraph 49 of the Framework.

21. In the circumstances of this case, the Secretary of State considers that saved LP Policies NE.2 and RES.5 are relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework. Therefore, as the Council cannot demonstrate a five-year supply of deliverable housing sites, these policies should not be considered up-to-date. He considers that these policies attract reduced weight, rather than no weight, and has gone on to consider what weight they carry.

22. He has taken into account the Council's reference back response of 25 April 2016, which states that in the light of the steps the Council is taking to remedy the shortfall in housing supply, including progress on the Local Plan and the fact that large scale housing has been approved in Nantwich, the countryside policies can properly be apportioned weight. He has also taken account of the Council's statement that only 60% of the Borough meaningfully contributes to housing supply because of constraints such as Green Belt and other significant designations which require the Local Plan to formally unlock. He notes that settlement boundaries will be reviewed and defined

through the production of the Site Allocations and Development Policies DPD and neighbourhood plans, and that the Council proposes to consult on an Issues and Options paper later in 2016.

23. The Secretary of State has also taken into account that the overall purpose of these policies is to protect the countryside, which accords with the core principles in paragraph 17 of the Framework to recognise the intrinsic character and beauty of the countryside and to conserve and enhance the natural environment. He considers that they are generally consistent with the Framework.
24. The Secretary of State considers that the policies and the boundaries serve a sound planning purpose; it would be necessary to have boundaries to define the ambit of open countryside and so the justification for boundaries remains. He acknowledges that the settlement boundaries are based upon the existing defined settlement boundary in the Crewe and Nantwich Local Plan 2005, and are not based upon an up-to-date assessment of housing need. The boundaries will therefore need to be reviewed, and some boundaries adjusted to remove some land for development from the open countryside. However, it is likely that not all boundaries will change, and not all countryside will need to be opened up for development. In the light of these considerations and the Council's statement at paragraph 5.23 of their 12 August 2015 representation that 'it is not a place where it would be appropriate for the settlement boundary to flex', he considers that weight should still be given to the boundaries at the present time.
25. Overall, having considered paragraph 215 of the Framework, he considers that these policies and boundaries carry reduced but still significant weight.

Character and appearance of the open countryside

26. The Secretary of State has taken into account that there was no dispute that the Appeal A proposal for new housing in the countryside, outside the settlement boundary for Nantwich, would conflict with saved LP Policies NE.2 and RES.5 (IR12.3). Having also had regard to the representations submitted following the quashing of his previous decision including those submitted by you on 11 and 28 August 2015 and by the Council on 12 August 2015, he is satisfied that this remains the case. For the reasons set out in paragraphs 22-25 above, he gives these policies reduced but still significant weight. He further considers that the Appeal A proposal would conflict with emerging policy PG5 of the CELPS, and emerging policy GS3 of the Stapeley and District Neighbourhood Plan, albeit these emerging policies carry little weight.
27. The Secretary of State has taken into account that the loss of open countryside would harm the environment (IR12.23), and he agrees with the Inspector at IR12.26 that there would be harm to the character and appearance of the countryside. The Secretary of State agrees with the Inspector that there is a need for additional housing in the area which cannot be met by the existing supply of housing land and that greenfield agricultural land will need to be used to meet this requirement (IR12.26).
28. He has also taken into account the Council's statement that 'the appeal site makes a positive contribution to the character of the open countryside and the rural setting of Nantwich ... The protected trees also have a significant and recognised amenity value. The proposed development would adversely change the character of this part of Stapeley and would result in the loss of intrinsic beauty and rural character of the area ... However well landscaped as a housing estate, the proposed development would

utterly transform, and cause a change for the worse to, the site and the area's intrinsic character and beauty as countryside' (paragraphs 5.19-5.22 of the Council's 12 August 2015 representation). Although the Council's concerns about the loss of trees can be avoided (paragraph 35 below), it would not be possible to prevent the harm that would be caused to the character and appearance of the countryside.

29. Overall he considers that the harm to the character and appearance of the open countryside carries considerable weight.

Best and most versatile (BMV) agricultural land

30. The Secretary of State observes that IR2.1 is incorrect in stating that 25% of the Appeal A site is categorised as BMV land of which 6% is Grade 2 and 19% is Grade 3a. The Secretary of State is satisfied that the correct position, as agreed between parties, is that 25% of the aggregated sites (site A and site B) are BMV land. The amount of BMV land on site A is less than 25% and it includes no Grade 2 land. Your representation of 11 August 2015 also stated that 'part of the appeal site is the subject of an extant planning permission for an access road which means that the Grade 2 agricultural land which occurs on the site is already the subject of an extant planning permission'.
31. Having taken into account all the available evidence, the Secretary of State agrees with the Inspector at IR12.16 that there is no dispute that the scheme would result in the loss of agricultural land in the open countryside. Further, he concludes that the scheme would result in the loss of some BMV land, albeit a proportion of that is already subject to an extant planning permission. The Secretary of State observes that LP Policy NE.12 does not permit development on BMV agricultural land unless: the need for the development is supported in the local plan; it can be shown that the development proposed cannot be accommodated on land of lower agricultural quality, derelict or non-agricultural land; or other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land. The Secretary of State considers that Policy NE.12 is largely consistent with paragraph 112 of the Framework, and is consistent with its objectives.
32. The Secretary of State has taken account of the Statement of Common Ground (listed as document 31a at page 2 of the IR) which states 'It is agreed that in order to meet likely housing land supply needs some greenfield sites will have to be utilised'. He has also given careful consideration to the Inspector's remark that the Council has insufficient land for housing without taking greenfield land and that lower grade land is not available and that, consequently, the scheme would not conflict with Policy NE.12 (IR12.16). He notes that the Statement of Common Ground does not state that the greenfield land required must consist of BMV land. He further notes the Appellants' representations that previous appeals have been granted which involve much greater losses of BMV land, that the Council has sought to allocate land for development on BMV land, and that the Council has granted planning permission for many housing sites involving an element of loss of BMV land (IR6.8 and your representation of 11 August 2015). However, he does not consider that decisions relating to other locations are determinative of the approach which should be taken in the circumstances of this case.
33. Overall he considers that the need for the use of BMV land at this location is not supported in the local plan. For the reasons given in paragraph 32 above, he

considers that it has not been demonstrated that the need could not be accommodated on land of lower agricultural quality. He is not satisfied that there are other sustainability considerations to suggest that the proposed use of BMV land is preferable to the use of poorer quality agricultural land. He therefore disagrees with the Inspector and considers that there is conflict with Policy NE.12.

34. Taking into account the evidence on BMV land from the inquiry, the Secretary of State considers that the loss of BMV land that would arise as a result of this scheme would be harmful. As well as bringing the scheme into conflict with LP Policy NE.12, this harm would conflict with paragraph 112 of the Framework. He considers that this harm carries moderate weight.

Landscaping, including trees

35. The Secretary of State has taken account of the Inspector's comments about landscaping including trees at IR12.17-12.19, including his remark that the proposed mitigation would be expected to take 20 years before the trees reached a comparable size to those which would be lost (IR12.17). The Secretary of State agrees with the Inspector (IR12.17) that the proposed access in Appeal A would require the loss of 10 protected trees, in direct conflict with LP Policy NE.5. However, given the Inspector's remark at IR12.19 that a condition could remove the proposed access from any permission for Appeal A, and in view of the Council's indication in its letter to the Secretary of State on 3 November 2014 that it was satisfied that the terms of the Undertaking relating to Appeal B resolve its concerns regarding the legality of constructing the Appeal B access (which could therefore be constructed if the whole scheme were to proceed), the harm would not arise.

Conditions

36. The Secretary of State has had regard to national policy set out at paragraphs 203 and 206 of the Framework, the Planning Guidance, the proposed conditions for Appeal A and B at pages 25-30 of the IR, and the Inspector's comments on them at IR10.1-10.5. He is satisfied that the proposed conditions meet the tests of the Framework and the Planning Guidance. In particular, he agrees with the Inspector at IR10.3 that the proposed access should be excluded from the Appeal A scheme and that this could be achieved by attaching proposed condition 29. The Secretary of State agrees with the Inspector that the loss of trees could be avoided through the use of a condition (IR12.23), and that the objections with regard to highway safety could be overcome by a condition (IR12.24-12.25). However, he does not consider that the imposition of these conditions would overcome his reasons for refusing these appeals.

Obligations

37. The two s106 Unilateral Undertakings (UU) referred to at paragraph 5 above were discussed in draft at the inquiry (IR11.1); and signed and dated versions were subsequently completed on 3 July 2014 in respect of Appeal B and 11 July 2014 in respect of Appeal A. The Secretary of State has carefully considered the s106 UUs, the Inspector's analysis at IR11.1-11.8, national policy set out at paragraphs 203-205 of the Framework, the relevant Planning Guidance, and the CIL Regulations 2010 (as amended). The Secretary of State concludes that the covenants and obligations within the Appeal A s106 UU, save for the Network Rail contribution and the sum for additional mitigation through the CAVAT method, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

38. As to the Network Rail contribution, the Secretary of State agrees with the Inspector that, for the reasons given at IR11.3-11.5, the figure for the Network Rail contribution in the Appeal A UU cannot be considered as fairly and reasonably related in scale and kind to the proposed development, and so would not satisfy the third test in Regulation 122 of the CIL Regulations and paragraph 204 of the Framework. The Secretary of State agrees with the Inspector, for the reasons given at IR11.6, that the contribution relating to mitigation through the CAVAT method cannot be considered as fairly and reasonably related. It is also unnecessary, as the Secretary of State agrees that the access should be excluded from the proposals, in favour of the access in appeal B. Overall, he does not consider that the Appeal A s106 UU overcomes his reasons for refusing the appeal.
39. With regard to the Appeal B Undertaking, the Council has confirmed (in its representation of 3 November 2014) that its concerns regarding title and content have been satisfied. The Secretary of State is satisfied that the proposed mitigation is reasonable and necessary and that it complies with CIL Regulation 122.
40. The Secretary of State observes that the date of the planning obligation and the date of the Inspector's Report both pre-date the commencement of CIL regulation 123 (as amended). The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the s106 UUs overcome his reasons for deciding that the appeal should be dismissed for reasons which are unrelated to the adequacy of the section 106 obligations, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance

41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
42. For the reasons given at paragraphs 20-25 above, the Secretary of State considers that LP policies NE.2 and RES.5 are not up to date and carry reduced but still significant weight. For the reasons given at paragraphs 26-29 and 30-34 above, he considers that harm would arise from the conflict with policies NE.2 and RES.5. He concludes that Appeal A would not be in accordance with the development plan overall and has gone on to consider whether there are material considerations that indicate Appeal A should be determined other than in accordance with the development plan.
43. The Secretary of State considers that the Appeal A proposal would conflict with emerging policy PG5 of the CELPS, and emerging policy GS3 of the Stapeley and District Neighbourhood Plan. Since he gives this conflict only little weight, he does not consider that this is sufficient to justify refusal on prematurity grounds, and this is not determinative of the decision made on this appeal.
44. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. Therefore he has considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.

45. Weighing in favour of the proposals, the Secretary of State agrees that the construction of new housing would create jobs, and support growth, as would new space for employment development (IR12.20) and considers that the economic benefits of the scheme carry moderate weight. Having had regard to the Inspector's remarks at IR12.21-12.22 he considers that the provision of housing and affordable housing carries considerable weight in favour of the proposals and would be in accordance with paragraph 47 of the Framework and the policy objective of boosting significantly the supply of housing. He agrees that a primary school, children's play area and public space including a new village green, would add to the social benefits, and he has taken into account the contributions toward new bus stops and an extensive service linking with the town centre and railway station. He further agrees that the proposed pedestrian/cycle network would provide safe, direct, convenient and interesting routes through the site, and that subject to reserved matters, the proposals have the potential to achieve the good design which is promoted by the Guidance. He considers that these benefits carry moderate weight. He considers that the provision of allotments and green infrastructure carry limited weight in favour of the proposals (IR12.23).
46. Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above.
47. The Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.
48. For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Overall conclusion on Appeal A

49. The Secretary of State has found that Appeal A would conflict with the development plan overall. He has considered whether there are material considerations to justify determining the appeal other than in accordance with the development plan. Having taken into account all material considerations, including the need for and benefits of the provision of housing, he has concluded that overall the material considerations do not indicate that Appeal A should be determined other than in accordance with the development plan.

Appeal B

50. Having carefully considered the Inspector's analysis at IR12.28-12.32, the Secretary of State agrees with the Inspector that Appeal A should not proceed unless the Appeal B scheme were also to be constructed. Conversely, in determining Appeal B, the Secretary of State gives great weight to the fact that the scheme would only be required if Appeal A were to proceed and, in view of his conclusion in paragraphs 41-49 above, there would be no justification for allowing any harm arising from the Appeal B development without granting permission for the development in Appeal A.

Formal decision

51. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendations. He hereby dismisses your client's appeals and refuses planning permission for:

- **Appeal A:** (in outline) residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1800m² Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700m² GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points; and associated works in accordance with application ref: 12/3747N, dated 28 September 2012;

and

- **Appeal B:** a new highway access road, including footways and cycleway and associated works, in accordance with application Ref: 12/3746N, dated 28 September 2012.

Right to challenge the decision

52. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours sincerely

Maria Stasiak

MARIA STASIAK

Authorised by Secretary of State to sign in that behalf

Annex A Representations received

Date	Name	
20/10/14	Harris Lamb	Re Appeal Decision 2212604
30/10/14	Harris Lamb	Unilateral Undertakings
3/11/14	Cheshire East	Unilateral Undertakings
21/11/14	Harris Lamb	Interim views of Cheshire East local plan inspector
20/03/15	Cheshire East	To Inspector re CE local plan
1/07/15	Laura Denny	pre rule 19 objection
11/08/15	Harris Lamb	Rule 19 response – appellant
11/08/15	John Davenport	Rule 19 response
12/08/15	Cheshire East	Rule 19 response – Council
12/08/15	Patrick Cullen	Rule 19 response
12/08/15	Stapeley & district Parish Council	Rule 19 response
13/08/15	Councillors Peter Groves and Andrew Martin	Rule 19 response
28/08/15	Harris Lamb	Rule 19 response – appellant
29/08/15	Patrick Cullen	Rule 19 response
31/08/15	Mark Williams	Rule 19 response
2/09/15	Mark Williams	Rule 19 response (follow up)
9/09/15	Cheshire East	Rule 19 response – Council (nothing to add)
7/08/15	Mike Docker	Post rule 19 objection
9/08/15	Edward Leetham	Post rule 19 objection
10/08/15	R Sutcliffe	Post rule 19 objection
10/08/15	Roger Lancaster	Post rule 19 objection
11/08/15	Susan Pritchard	Post rule 19 objection
12/08/15	Jane Thomasson	Post rule 19 objection
12/08/15	Joyce Vernon,	Post rule 19 objection
12/08/15	K&J Bellamy	Post rule 19 objection
12/08/15	Lynn Wood	Post rule 19 objection
12/08/15	Olga and Albert Pye	Post rule 19 objection
13/08/15	R Greenow	Post rule 19 objection
4/04/16	Muller	Response to ref back 23/03/16
25/04/16	Cheshire East	Response to ref back 23/03/16
22/06/16	Harris Lamb	Response to recirculation of Cheshire East letter of 25/04/16

Report to the Secretary of State for Communities and Local Government

by David Nicholson RIBA IHBC

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

Date: 18 June 2014

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEALS BY MULLER PROPERTY GROUP

Inquiry held on 18-21 February 2014. Site visit held on 21 February 2014

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire CW5
Land off Peter Destapeleigh Way, Nantwich, Cheshire CW5 7

File Refs: APP/R0660/A/13/2197532, APP/R0660/A/13/2197529

Appeal A: APP/R0660/A/13/2197532

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire CW5

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref. 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1800m² Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700m² GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points; and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: APP/R0660/A/13/2197529

Land off Peter Destapeleigh Way, Nantwich, Cheshire CW5 7

- 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 planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref. 12/3746N is dated 28 September 2012.
- The development proposed is new highway access road, including footways and cycleway and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

1. Procedural Matters

- 1.1 The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG)¹ appendix 3. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies².
- 1.2 Two Unilateral Undertakings were submitted under section 106 of the Town and Country Planning Act 1990 (s106). As agreed, signed and dated versions were submitted on 7 March 2014 after the Inquiry closed³. The Council commented on the final versions by letter dated 28 February. I deal with the contents of the Undertakings below.
- 1.3 The Inquiry sat for 4 days. I held an accompanied site visit held on 21 February. Evidence with regard to housing land supply (HLS) was heard as a round table discussion on Thursday 20 February 2014.

¹ Inquiry Document (ID) 31a

² Full wording in the SoCG ID 31a paragraph 1.14

³ ID 42a&b

- 1.4 The appeals were recovered by the Secretary of State on 5 March 2014⁴, after the Inquiry had closed, for his own determination⁵.
- 1.5 The (renamed) submission version of the emerging Cheshire East Local Plan Strategy Submission Version⁶ (emerging LP), dated March 2014, was published during the Inquiry.
- 1.6 Appeal Decision APP/R0660/A/13/2195201 – Land off Sandbach Road North, Alsager⁷ - was quashed by a Consent Order in the High Court⁸. Planning practice guidance (ppg) was published shortly after the Inquiry closed. I subsequently gave the main parties the opportunity to comment on any implications as a result of this Decision being quashed and on the ppg⁹. I have taken these comments into account in reaching my conclusions and recommendations.
- 1.7 There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.

2. The Site and Surroundings¹⁰

- 2.1 The site in Appeal A extends to some 12.43 hectares. It mostly comprises two fields of arable land with some grazing bounded by native hedgerows and trees. 25% of the Appeal A site is categorised as the best and most versatile (BMV) agricultural land of which 6% is Grade 2 and 19% is Grade 3a¹¹. The remainder is Grade 3b or of a lower category. The Council acknowledged¹² that it has insufficient land for housing without taking greenfield land and that therefore lower grade land is not available. A tree preservation order¹³ (TPO) covers a large number of trees, and groups of trees, in the vicinity, including nine Scots Pines and one Beech tree.
- 2.2 Residential redevelopment is underway to the east of the site where planning permission has been granted for 146 dwellings beyond the adjacent former Stapeley Water Garden site. It is bounded to the north by Peter Destapeleigh Way and an ecology mitigation/woodland landscape area associated with a development at Cronkinson Farm. This development includes a parade of 5 shops and a public house, Pear Tree Primary School and a community hall. Audlem Road, to the west of the site, is lined with residential development from different eras and The Globe public house. Audlem Road becomes Broad Lane as it heads south past further ribbon residential development and Stapeley Broad Lane Primary School. There is a secondary school close to the Nantwich end of Audlem Road.
- 2.3 The site is approximately 1km from the nearest railway station and some 1.3km from the town centre. There are a number of bus stops close to the site which are served by the No.73 and No.51 services and provide direct

⁴ Letters on main file

⁵ because they involve proposals for residential development of over 150 units or on a site of over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

⁶ ID 30

⁷ CD D10

⁸ Attached to letter dated 16 April from the appellant, on main file

⁹ Letter dated 13 March to the main parties

¹⁰ See ID 31a: SoCG para 3.1 onwards

¹¹ Ibid, SoCG between the Council and the appellant, paragraph 7

¹² Ibid paragraph 5.1.4

¹³ See Hudson appendix 5

connections to Nantwich bus station and Nantwich railway station, approximately 1km to the north of the site via Audlem Road and Wellington Road. It is common ground that the Appeal A site is well served by a range of services, facilities and public transport opportunities and is accessible to modes of transport other than the private car. The site could therefore provide sustainable development in locational terms, and the Council broadly agreed the accessibility assessment and location of local services and facilities¹⁴.

- 2.4 The site for Appeal B covers approximately 1.71 ha within a single field. It is part of a large field of unmanaged grassland and scrub which adjoins Peter Destapeleigh Way to the north. It contains two ponds and areas set aside for Great Crested Newt (GCN) mitigation for the Cronkinson Farm and Stapeley Water Gardens schemes¹⁵. The site will connect to the fourth arm of the new signalised junction on Peter Destapeleigh Way, which has been constructed.
- 2.5 An area of land, including the site, is subject to a s106 Agreement¹⁶ between the landowners at the time and the Council, following the housing development to the north of Peter Destapeleigh Way, requiring its use for wildlife mitigation and tree planting including areas set aside for GCN mitigation. The extent of the loss of physical land for planting and habitats (under LP policy NE.10) was not agreed.

3. Planning policy

- 3.1 The National Planning Policy Framework (the *Framework*) was published in March 2012. Paragraphs 12-14 and 47-50 of the *Framework*, together with footnotes 11-12, are particularly relevant to HLS. The *Framework*¹⁷ also sets out the position with regard to weight and conformity of existing development plan policies. The ppg confirms that any shortfall in HLS should be made up over the next 5 years¹⁸.
- 3.2 The Regional Strategy for the North West (RS) was revoked in May 2013. The Borough of Crewe and Nantwich Replacement Local Plan¹⁹ (LP) was reviewed to cover the period up to 2011 and adopted in February 2005. Numerous policies were 'saved' by Direction in February 2008²⁰.
- 3.3 Of particular relevance to these appeals, LP Policy NE.2 treats all land outside the defined settlement boundaries as open countryside. Within open countryside, it restricts development other than in exceptional circumstances which do not apply here. In doing so, it seeks to safeguard the countryside for its own sake. Policy RES.5 refers specifically to housing and again restricts new dwellings outside settlement boundaries where it treats all land as open countryside.

¹⁴ ID 31a: SoCG paragraphs 3.6, 5.1.3 and 5.1.5 and appendices 1 and 2

¹⁵ See Natural England representations at CD M3 and CD E1: planning permission P00/0829 granted on 4 January 2001 for the 'Construction of new access road into Stapeley Water Gardens'

¹⁶ ID11, Cullen appendix 2 sections D3 and D4, and CDs E1-3

¹⁷ Ibid paragraph 215

¹⁸ Ref. 3-034-20140306/3-035-20140306 Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. This was previously referred to as the 'Sedgefield' method.

¹⁹ CD A11

²⁰ That is to say their life was extended by the Secretary of State's Direction (Saved Policies) February 2008 see CD A12 and SoCG para 4.5

- 3.4 LP Policy NE.5 deals with all nature conservation and habitats. In seeking to protect, conserve and enhance the natural conservation resource, it only permits development where, amongst other things, natural features such as trees are, wherever possible, integrated into landscaping schemes on development sites. With regard to unavoidable damage to wildlife habitat, the policy allows for compensation through similar provision nearby, but it is silent on mitigation for tree loss. Policy NE.12 does not permit development on the BMV agricultural land unless: the need is supported in the local plan; it can be shown that the need could not be accommodated on land of lower agricultural quality; or other sustainability considerations suggest that it is preferable to the use of poorer quality agricultural land.
- 3.5 Cheshire East Council (the Council) was formed in 2009. The latest version of its planning policy is set out in the emerging LP. Although the consultation period has expired, there are objections to the housing strategy which are yet to be objectively tested and so in general the emerging LP should be given limited weight²¹. Emerging Policy PG1 sets out the overall development strategy for the delivery of at least 27,000 homes between 2010 and 2030, equating to an average net increase of about 1,350 dwellings per annum. However, it then looks at options to gradually increase the number to be delivered from 1,200 to 1,500 per annum.
- 3.6 The evidence base used in preparing the emerging plan comes from the Cheshire East Council Population Projections and Forecasts Background Paper²². This identifies²³ that the medium growth strategy from the Council's Issues and Options Paper is the most appropriate housing requirement. This gives a figure of 1,350 which is repeated in the Council's more recent Housing Background Paper²⁴.
- 3.7 The main parties' summary on HLS is set out in a Position Statement²⁵. The number of housing units delivered within Cheshire East since 1996 has been agreed²⁶. This shows an over provision every year between 1996 and 2007 but an under provision compared with the RS target every year since 2008. These dates coincide with the prolonged economic downturn. The matter of whether or not a policy for the supply of housing should be considered up-to-date has been considered at appeal by a number of Inspectors, including for appeals in Cheshire East²⁷.
- 3.8 Interpretation of some of the paragraphs in the *Framework* with regard to HLS has been clarified by a number of Court cases. The *Hunston*²⁸ Judgment sets out how the objectively assessed needs²⁹ should be identified. In that case, the Appeal Court judges found that the Inspector had been wrong to rely on the out-of-date figures from the obsolete RS when better figures were available. In the *Tetbury*³⁰ case, the Judge found that the Inspector's

²¹ ID 31a: SoCG paragraph 4.6

²² CD A33, September 2013

²³ Ibid paragraphs 3.2-3.9

²⁴ CD A22, November 2013, paragraphs 6.1-6.3

²⁵ ID7

²⁶ Ibid Table 2

²⁷ See list at ID 27 and Mr Wedderburn's proof of evidence paragraph 6.1

²⁸ *Hunston Properties Ltd and Secretary Of State for Communities and Local Government St Albans City and District Council* 2013 EWCA 2678 (Admin) and Court of Appeal [2013] EWCA Civ 1610. CD C1 and CD C2

²⁹ *Framework* paragraph 47

³⁰ CD C6: *Cotswold District Council, Fay and Son Limited, Secretary of State for Communities and Local Government, Hannick Homes and Development Limited* [2013] EWHC 3719 (Admin)

approach, in looking forward and backwards by five years, was reasonable, and that where the local planning authority cannot demonstrate a 5 year HLS, a policy which restricts housing development should be disapplied to the extent that it seeks to restrict the supply of housing.

- 3.9 In the *Alsager* Decision, the Court found that the Inspector had erred in law in concluding that Policies PS4, PS8 and H6 of the Congleton Local Plan were not relevant policies for the supply of housing within the meaning of paragraph 49 of the *Framework* to the extent that they seek to restrict the supply of housing. Although that Decision involved policies from a different LP to these appeals, I note that the latter policies seek to restrict development in the open countryside and so the principles are relevant to interpretation of LP policies NE.2 and RES.5 in this case.

4. The Proposals

- 4.1 The details are confirmed in the SoCG. The concept for Appeal A is set out in the Design and Access Statement (DAS)³¹. Most of the houses would be on the western side of the site³². On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.
- 4.2 The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site³³. The proposed vehicular access would require a new three arm roundabout and visibility splays, within the appeal site, at a bend on Audlem Road/Broad Lane. It would also require the felling of the nine Scots Pine trees and one Beech tree subject to a TPO. Mitigation for this could be secured through conditions and the s106 Undertaking using the Capital Asset Value for Amenity Trees (CAVAT) method³⁴.
- 4.3 Most of the detailed proposals would be submitted as part of the reserved matters applications or are covered by provisions within the s106 Undertakings. I deal with these below.
- 4.4 Appeal B concerns a site access road and ecological mitigation measures within a Local Nature Area of Conservation (LNAC). The proposals differ slightly from an extant permission³⁵, which has been implemented by virtue of the spur for the junction.

5. Other Matters Agreed between the Main Parties

- 5.1 Appeal A is not dependent on permission for Appeal B but the latter could be used as an alternative means of access as well as providing access to

³¹ DAS CD H12, p45 onwards

³² Full details in SoCG ID 31a para 2.2

³³ DAS CD H12, paras 6.39-6.40

³⁴ Mr Shields appendix F

³⁵ Planning application ref. P00/0829

potential development sites to its south, subject to planning permission. The original planning permission for the access in Appeal B is extant and represents a fall back position.

- 5.2 Some green field sites, which include BMV agricultural land, will be required to meet likely HLS needs in the area. The extent of local services is also agreed³⁶. The Council has accepted that there are no technical reasons to resist Appeal A in terms of highway safety, drainage, residential amenity or environmental health matters.

6. The Case for the Muller Property Group

The material points are:

- 6.1 The main issues give rise to the following topics: the status of LP policies RES.5 and NE.2, 5 year housing land supply (HLS), BMV agricultural land, tree loss, and the acceptability of the Appeal B scheme compared with the agreed fall back position.
- 6.2 The development plan boundaries arise solely from saved policies and were drawn to provide sufficient housing land until 2011. The Saving letter expects replacement policies to be put in place promptly. LP Policies RES.5 and NE.2 seek to limit development and so are in tension with the *Framework* which aims to boost HLS. If there is less than a 5 year HLS, paragraph 14 of the *Framework* creates a presumption in favour of granting planning permission. Interpretation of policy is a matter for the Courts³⁷. Without a 5 year HLS, relevant policies should not be considered to be up to date³⁸. Taken with paragraph 49 of the *Framework*, it follows that policies RES.5 and NE.2 should be regarded as out of date insofar as they restrict housing, albeit that they may have relevance to a site in open countryside well beyond settlement limits.
- 6.3 Paragraph 14 of the *Framework* asks if policies are absent, silent or, if relevant, out of date. The LP is silent with regard to where development can take place after 2011. Provision for housing is absent after 2011. The reference to relevant policies should be applied one policy at a time. The presumption in paragraph 14 therefore applies regardless of the 5 year HLS position. On top of this, paragraph 47 aims to boost housing supply.
- 6.4 The 5 year HLS has 2 elements: the target (including shortfall and buffer) and the supply. The target figure must be arrived at as set out in paragraph 47. It should be derived from a Strategic Housing Market Assessment (SHMA). Any reference to the old evidence base in Regional Strategies (RS) must be supplemented by up to date robust local evidence (paragraph 218) and use of this material should be for plan making not decision taking. Using a housing requirement figure derived from a revoked plan, as the Council has done in its Position Statement³⁹, has been criticised by the Courts⁴⁰. Paragraphs 2.1-2.3 of the Position Statement fail to refer to paragraph 159 of the *Framework*. To ignore the most recent evidence from

³⁶ Ibid appendix 2.

³⁷ *Tesco Stores Ltd v Dundee Council (Asda Stores Ltd. and another Intervening)* [2012] UKSC 13

³⁸ CD C6 Cotswolds case [2013] EWHC 3719 (Admin)

³⁹ See ID3, para 1.15

⁴⁰ CD C1 and C2: *Hunston Properties Ltd vs Secretary of State for Communities and Local Government, and St Albans City and District Council* (2013 EWHC 2678 (Admin)) and Court of Appeal (2013 EWCA Civ 1610 (Admin))

household projection is especially unacceptable when those used for the RS are completely out of date.

- 6.5 The emerging LP covers 2010-2030 with an annual average figure of 1,350, some 200 more than the RS. Added to this is a 'backloading' towards the end of the plan period which is at odds with the *Framework* and will doubtless be exposed at the Examination in Public. Even if this were adopted, the 5 year figure (before considering the shortfall and buffer) should be 1,280 not 1,150. *Hunston* confirms that the objectively assessed figures should be used, whether or not these have been tested at an Examination in Public. There is no justification for 'backloading' the target figures towards the end of the plan period. At the very minimum, a figure of 1,350 should be used from which it is clear that there is no 5 year HLS.
- 6.6 Even using the Council's figures, the shortfall is 2,130. This demonstrates a persistent record of under delivery over the last 5 years, found by the Courts to be the appropriate period⁴¹. The ppg confirms that the 'Sedgefield' method should be used. The challenge to the *Tetbury* decision allowed this approach to be tested and confirmed. The Council has failed to deliver even against its target of 1,150 for each of the last 5 years and, with this history, a 20% buffer is appropriate.
- 6.7 The supply figure has been considered at a number of recent appeals⁴². The case of *Wain Homes*⁴³ indicates that: emerging Plan sites subject to objection should be excluded, lead in times should be longer, a second developer on a site is less likely than suggested, developers talk up the prospects of delivery, and windfalls can only be included if the rate can be demonstrated. The Council has consistently overestimated completions⁴⁴, latterly by over 33%. Using the correct target figure gives a supply of 3.1 years.
- 6.8 Only 25% of the site is BMV agricultural land. This should be weighed in the balance, noting that there is a good deal of BMV in the area, that there is an urgent need for housing and recent appeal decisions have allowed much greater losses of BMV agricultural land.
- 6.9 The proposed access in Appeal A would result in the loss of 9 Scots Pines and one Beech tree subject to a TPO. This must similarly be balanced against the scheme but again noting that: there would be significant areas available for replanting which, when mature, could form an impressive public avenue; it is acceptable to take a long view; most of the replanting would be publicly visible; additional compensation is available; and there would be a road traffic benefit. Moreover, policy NE.5 recognises that tree loss can be compensated for in principle and the Council has not argued that there could be a better access. There would also be highway safety advantages to the new access⁴⁵
- 6.10 While a condition ensuring access is only from Appeal B is possible, it is not desirable as the above benefits, including the avenue, would be lost. The great areas of publicly accessible land would clearly compensate for the loss

⁴¹ CD D17 appeal ref. APP/F1610/A/11/2165778 – Highfield Farm, Tetbury

⁴² 3 appeals at ID27

⁴³ CD C7

⁴⁴ ID 4

⁴⁵ Mr Booker's evidence

and so there would be no breach of policy NE.5. In addition, the s106 Undertaking would offer a CAVAT sum for tree planting over and above the extensive landscaping proposed for the site.

- 6.11 With regard to the ppg, this confirms the Sedgefield approach to shortfalls. Although the wording on prematurity in the ppg is slightly different to that referred to at the time the proofs of evidence were written, the thrust of the guidance is similar and the evidence on which to assess prematurity has not altered. It was not raised as an issue by the Secretary of State.

Appeal B

- 6.12 The proposed wildlife and mitigation would be better than the fall back position which has run into difficulties with Counsel's Opinion⁴⁶ that the s106 agreement is no longer enforceable. While this is disputed, there is no doubt that nothing has happened in terms of planting for almost 3 years. The new s106 Undertaking should therefore be seen as a godsend. The 2011 approval could be cancelled and the new details approved without an amendment to the original s106. The new s106 Undertaking should therefore be put into effect. Nevertheless, if thought necessary, this position could be buttressed by the use of a *Grampian* condition.

Conclusions

- 6.13 The Inquiry has seen unusual support for the proposals which would provide housing, growth and affordable housing. The Council has fought a series of appeals to try and avoid releasing land for housing. Both appeals would bring benefits and should be allowed.

7. The Case for the Council

The material points are:

- 7.1 The *Framework* does not, and could not, change the law or the lawful approach to decision making⁴⁷ but is a material consideration⁴⁸. It requires a determination in accordance with the development plan unless material considerations indicate otherwise. The most that paragraph 14 can do is to suggest that the weight given to certain benefits, when gauged against the *Framework* as a whole, may (but not must) outweigh adverse impacts including breaches of the development plan. A deficiency in housing land supply is not a green light to development proposals.
- 7.2 These cases are straightforward. They have become complicated by an unnecessary attempt to lessen the impact of the development plan with an effort to characterise policies which express geographical constraints as subject to temporal limits. All types of policies may be informed by temporal considerations. They can become out of date either because the time has passed or because the activity has ceased, for example, policies to protect a railway that has been ripped up.

⁴⁶ Not before the Inquiry

⁴⁷ As confirmed in paragraph 12: This 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.

⁴⁸ The *Framework* paragraph 13

- 7.3 It cannot be said that a policy is out of date just because, within defined land, only particular development will be allowed. There is nothing in Policy NE.2 to indicate a temporal limit. The same is true of RES.5 which restricts new dwellings to exceptional classes. It makes no sense to say that a policy which limits development from certain areas carries with it a temporal limit so as to be out of date. The characteristic of being out of date is not dependent on a varying set of circumstances so that sometimes the policy is out of date and sometimes it is within. Just because a policy has an inhibitory effect on development doesn't mean that it becomes out of date. The appellant gave no explanation for why, for example, a green belt policy is to be treated differently from these policies.
- 7.4 HLS policies, which are temporal, should not be seen as equivalent to general policies which protect the land from development. The argument is that the policy has become out of date. However, the policies are generally indiscriminate. All development (subject to exceptions) is precluded by Policy NE.2. No one suggests the policies are to be rewritten. If they are out of date they are out of date. This means that they lose their inhibitory effect on development not just on housing development. That cannot be right. On the appellants' approach, a developer could say: I can build houses, therefore the land is not to be regarded as open, therefore I should be able to build retail or light industrial.
- 7.5 The appellants' defective argument is unnecessary. The *Framework* does not change the way applications should be determined. Indeed, it expressly says⁴⁹ that the test remains as in the statutory provisions and can never be as to whether permission should be granted but how weight should be attributed. There is no dispute that an absence of a five year HLS can be a weighty consideration, able to outweigh development plan policies. There is no need to argue that policies subject only to a limitation in place are subject to a limitation in time.
- 7.6 The important point about saving the policies is the fact they were saved. Reliance has been placed on the *Tetbury* judgment⁵⁰. This did not lay down a definitive construction of the *Framework*. It resolved a particular case where the underlying issue was different and was not purporting to bind consideration in other cases⁵¹. The reference relied upon by the Appellant⁵² is within a passage referring to other grounds of challenge which are dealt with in short form. It refers not to a general categorisation of out of date but rather that a policy should be disapplied to a particular and limited extent. This does not mean that the policies are out of date. All they can say is that the policies are not *per se* policies for the supply of land. In fact the point was about weight which was lessened enough to be disapplied.
- 7.7 Accordingly, the argument that the relevant policies are out of date should be dismissed. The argument that *relevant policies*, in its context in paragraph 14 of the *Framework*, means *any* policy is defective. The starting point is the development plan and it is agreed that, on its face, the relevant development plan policies are breached and the policies indicate refusal. It is next necessary to consider HLS.

⁴⁹ In paragraph 14 of the *Framework*

⁵⁰ Of Lewis J: CD C6

⁵¹ Paragraphs 3, 4 and 5 reveal the principal issues

⁵² Paragraph 70 et seq, especially para 72

- 7.8 Until at least 20 January 2014 the starting point was the objective assessment for the RS. The RS figures have been used in a string of appeal decisions⁵³ and result in a target figure of 1,150 dwellings per annum. The reason given is consistent with the *Framework* (paragraph 47) and has not been undermined by events between 21 January 2014 and 21 February 2014, i.e. the untested status of proposed figures remains as such. That untested status was the reason, note the use of the word therefore, for use of the extant tested figures, i.e. those at the time of the Regional Strategy.
- 7.9 The *Framework* was satisfied up to at least 20 January 2014 and there has been no supervening event since, other than publication of the emerging LP. However, it is but part of an uncompleted process where previous rounds of consultation have considered HLS. The relevant report⁵⁴ reveals that all steps precede 20 January 2014, and were known to the appellant, yet it is only between 21 January and now that it has changed position. A background paper of population projections and forecasts⁵⁵, dated September 2013 which superseded a previous paper published in January 2013, has not previously been used to suggest the agreed position as to the latest tested data was deficient.
- 7.10 A number of scenarios are put forward⁵⁶ including those based on growth strategies which involve attracting employment and thereby generating a need for housing. This contingency has neither been examined nor tested. These papers do not constitute an objective assessment of needs but are based on the misconception that present housing need can be based on a prospective decision about economic growth and the release of land for employment purposes. The *Hunston* case described an inspector who discounted DCLG projections because restraints on development departed from the *Framework*⁵⁷. The error was to not use objectively assessed needs. The case takes the Appellant nowhere and it is interesting to note that it is dated 20 November 2013, after the earlier Court of Appeal decision.
- 7.11 Accordingly, the starting annual target figure is 1,150. This is consistent with the Appellant's position up to 20 January 2014. It has been adopted for reasons in previous appeals and in Document 7. This leads to a five year target of 5,750 and a shortfall of 2,165. This leads to a total requirement⁵⁸ of 7,915.
- 7.12 Next is the question of persistent under delivery. The *Framework* indicates⁵⁹ that where there has been a record of persistent under delivery there should be an additional buffer of 20%. The sentence carries its ordinary meaning. The need to identify a supply for a specific number of years does not mean

⁵³ Listed in the Council's closing ID 38 paragraph 11: Appeal refs.: 2189733, land north of Congleton Road: CD D9; 2195201, land off Sandbach Road, North Alsager [since quashed] CD D10; 2141564, Abbey Road, Middlewich Road: CD D7; 218800, Hassall Road, Alsager: CD D19. See also ID 23: from Mr Wedderburn of 6 January 2014; Mr Downes at 5.8: "the database ...remains ...material...for the purposes of calculating the housing requirement...it represents the most recently tested data." He refers to D7, D8, D9 and D10 all being recent decisions which support that view; and the evidence of Mr Wedderburn at 21 January 2014, where he says that the correct target needs to be identified (page 7 of 32) and that (paragraph 7.5, page 8 of 32) given the untested status of the proposed Cheshire East target figures, i.e those coming forward in the local plan, the delivery of housing "should therefore be considered in the context of the targets previously set by the Regional Strategy".

⁵⁴ ID 32 reveals the chronology.

⁵⁵ CD A33

⁵⁶ See pages 7-16

⁵⁷ Paragraphs 12-13 and 32 of the *Framework*

⁵⁸ Using the *Sedgefield* method, see ID 7

⁵⁹ Paragraph 47

that particular number should be used when considering a past record. This would not apply to weather or economic forecasts. The *Framework* is asking for a past record not whether a state of affairs was persisting. It does not specifically ask for a recent record. If a batsman is being considered for a tour to take six months of Australia and India, and the selectors said they would consider his first class record, he would properly be aggrieved if they only considered the preceding six months.

- 7.13 Here there is a record⁶⁰ of delivery of sites for the area and it is not defective. It doesn't show persistent under delivery but that delivery has fluctuated which reflects the effects of the deepest recession since the Great Depression. It follows that a 5% buffer should be used. This produces a figure of 8,311. (If 20% were used the figure would be 9,498).
- 7.14 On the supply side, the request is for specific deliverable sites. It is unlikely that those who drafted the *Framework* envisaged that it would lead to a planning inquiry into a specific site having to trawl over sites questioning whether houses would be built by this or that builder, or whether they would cooperate with each other, or won't operate for less than an unspecified profit margin. The *Framework*⁶¹ enquires whether there are sufficient sites. If there is planning permission the site is presumed deliverable subject to clear contrary evidence. The framework also envisages sites which don't have planning permission as falling within the supply⁶². There is no reason why there should not be big sites, small sites and windfall sites. The question is one of supply in a practical world where people prefer doing things to not doing things and earning money to not earning money.
- 7.15 Accordingly, there is a five year HLS which results in a reduction of 118 dwellings⁶³. This still renders the supply as greater than 5 years on either buffer. In the approach at the end of *Hunston*, the judge made plain that a balancing exercise had to be undertaken. Any decision must reflect on the scale of the shortfall and its context. There is no shortfall, but if it is considered that one exists, the context is of a council striving hard to achieve a five year HLS. This lessens the weight to be given to any deficiency.
- 7.16 The development plan policies suggest refusal and there are clear amenity considerations. It is undesirable to cause the loss of protected trees with amenity value and to undermine the open countryside. The Council considered the additional matters raised after the Inquiry closed⁶⁴ but finds that these do not alter the considerations before the Secretary of State.
- 7.17 Appeal B has special considerations because of the existence of a prior section 106 agreement. This binds the land and cannot be discharged other than through a given, statutory route. Both Appeals should be dismissed.

⁶⁰ Table 2 in the Position Statement ID 7

⁶¹ Paragraph 47

⁶² *Framework* footnotes 11 and 12

⁶³ Following agreement at a recent Inquiry – see ID3a

⁶⁴ Letter dated 28 April 2014 on main file

8. The case for interested parties

The material points are:

- 8.1 Patrick Cullen⁶⁵ represented Protect Stapeley, a group of some 202 local residents objecting to the appeals. Their first objection is to the loss of protected trees, when alternative access points are available. While not approving of any access, if alternatives are available they should be used rather than trees being felled. With regard to Appeal B, the route would be different to the extant permission and would involve land subject to an existing s106 agreement. Importantly, pages D6 and D7.1 to their Appendix 2 are copies of the Council's approval of a drawing submitted in accordance with the agreement. It is the view of Protect Stapeley that these demonstrate that the agreement is still in place and enforceable. Consequently, Appeal B would result in the loss of land designated as mitigation land for Great Crested Newts.
- 8.2 Matthew Theobald⁶⁶ represented the Board of Governors of Stapeley Broad Lane CE Primary School. He presented a short video⁶⁷ of the existing traffic conditions along Broad Lane near the entrance to the school and evidence suggesting that the number of road accidents occurring is greater than reported. There should be no doubt that the governors have legitimate concerns with regard to the safety of children using Broad Lane. The school has obtained planning permission for a small car park and drop off point to help alleviate the current situation. The proposed housing and new access would bring additional traffic movements onto Broad Lane and therefore increase the risk to road users. In the school's view, this would be significant. The scheme also includes proposals for a new primary school. However, the developer would not provide this and the Council does not have the funds. Existing schools are full and so children living in the new development would have to travel unsustainable distances.
- 8.3 Robert Walker⁶⁸ is the agent for Mosaic Estates Ltd., which owns the access land, and was also concerned with the existence or otherwise of a 5 year HLS in Cheshire East. His current clients include Taylor Wimpey, Barratts, Persimmon, David Wilson and Bellway. Mr Walker made representations and contributed to the round table discussion on HLS. He related his increasing frustration with the apparent inability of Cheshire East [Council] to engage with the reality of housing supply and the consequential undersupply and log-jam of appeals. With regard to the Council's Position Statement, he claimed that this simply repeats the mistakes of the past. As well as commenting on specific sites, Mr Walker flagged up the Council's failure to engage properly with the Housing Market Partnership, the use of unrealistic times for lead in periods and s106 agreements, inclusion of unrealistic targets for strategic sites, assumptions that larger sites would be developed by more than one builder, use of unrealistic build rates, and reliance on sites with fundamental problems, including small sites. His evidence cites various examples to illustrate his arguments.

⁶⁵ ID 11

⁶⁶ ID 13

⁶⁷ Dates of recordings, as requested by the appellant, are at ID 25. No point was raised with regard to these.

⁶⁸ ID 14

- 8.4 Keith Nord⁶⁹, a parish councillor, spoke on behalf of Stapeley & District Parish Council. Its key grounds of objection are: traffic congestion, flooding, ecological damage, and the loss of an area of open countryside of value to local residents. The Parish Council commissioned an expert witness, Mr Bob Hindhaugh, to give detailed evidence on highways matters⁷⁰. The Parish Council has been approached by a number of residents looking for assistance with flooding issues as the land is very low lying and there is scant information about how drainage would be achieved.
- 8.5 John Davenport lives very close to the proposed new access. He expressed concern that the new roundabout was seen as a speed calming measure as the speed limit has been lowered to 30mph and there have been no accidents since the road surface was upgraded. Rather the new access might lead to a greater risk of accidents with more noise, pollution and fumes.
- 8.6 Nantwich Town Council⁷¹ sent its Town Clerk, Ian Hope, to represent it. Its objections included the fact that the site is not proposed or favoured as a strategic option, not well related to the urban edge, and in the open countryside. Development would result in an excess number of approved dwellings, when the Council has a 5 year HLS, and Nantwich should not be expected to supply more dwellings to make up for any lack of supply elsewhere. The scheme would cause problems with infrastructure, in particular at the level crossings on the direct routes into the town centre.

9. Written representations⁷²

- 9.1 In his written representations⁷³, Mark Williams argued that LP Policy NE.2 is not out of date or time-expired, that the former district of Crewe and Nantwich has out-performed other districts in what is now Cheshire East and contributed to an over-supply. He claimed that the loss of TPO protected trees would render the scheme unsustainable and submitted a photograph to show that these can be seen from the public bridleway on Deadman's Lane.
- 9.2 Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining roads and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development. One representation suggested that the proposed village green and employment land were no more than gimmicks.

10. Conditions

- 10.1 Discussions were held as to the suitable wording of, and reasons for, any conditions on 25 September, 11 and 16 October with reference to the tests for conditions in the *Framework*. Following these discussions, with only a

⁶⁹ ID 21

⁷⁰ CDs I17 and M7

⁷¹ ID 20

⁷² Red folder

⁷³ ID 12

few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

APPEAL A

- 10.2 As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:

4: residential amenity and sustainability
5&7: flood risk reduction and ecological enhancement, including concerns raised by the Parish Council
6: protection of archaeological remains
8-11: residential amenity
12: sustainability
13-15: highway safety
16&17: sustainability
18-22: protected species mitigation
23-26: reserved matters clarification and implementation
27-28: residential amenity.

- 10.3 For the reasons set out below, the proposed access should be excluded from the scheme. This could be done by attaching condition 29 without contravening the principles in the case of *Wheatcroft*⁷⁴. Given that this matter was aired at the Inquiry, nobody would be prejudiced by its inclusion.

APPEAL B

- 10.4 As well as the standard conditions 1 and 2, conditions 3-6 should be imposed to protect existing trees and other vegetation, and in the interests of visual amenity.
- 10.5 The parties had different proposals for resolving the conundrum of Appeal B, as set out below. For the reasons given there, the requirement that a scheme should be submitted would provide a sufficiently precise and reasonable solution which would also be relevant and enforceable.

11. Planning Obligations

- 11.1 The draft s106 obligations⁷⁵ were discussed at the Inquiry during the same sessions as the conditions. Final signed and dated versions were submitted, as agreed, after the Inquiry closed.

APPEAL A

- 11.2 This Undertaking⁷⁶ would require 30% of the new dwellings to be affordable housing, provide public open space, and contributions towards CAVAT, education, highways and network rail. A condition of the Undertaking⁷⁷ is that, following this report, it requires a finding in the Secretary of State's decision letter that each of the contributions is necessary.

⁷⁴ That the extent of development may be reduced by a condition but not increased

⁷⁵ ID 33a&b

⁷⁶ ID 42a

⁷⁷ Clause 16

- 11.3 The Council produced evidence⁷⁸ of compliance with the Community Infrastructure Levy (CIL) Regulations and the tests in the *Framework*⁷⁹. For the reasons given in the detailed justifications, these were all agreed except for the Network Rail contribution⁸⁰. This was sought to upgrade the existing railway level crossings between the site and Nantwich. The appellant was concerned that there was no proper justification for this, that the likely increase in traffic would be very small, that there was no properly costed scheme, and that Network Rail is a private company⁸¹.
- 11.4 The scheme would result in up to 189 new houses and other uses all of which could be expected to result in additional car journeys between the site and Nantwich and so increase the use of these level crossings. The crossings pose a risk of serious incident. Notwithstanding the appellant's arguments, the scheme, and other proposed housing developments in the area, would therefore increase the risk above that which would be likely to occur either without the additional development or with better level crossings. As a first principle, Network Rail would aim to close these crossings and seek funding from developers for the cost of mitigation, which could include replacement road and foot bridges. It has also referred to the view of the Inspector with regard to railway crossings at another appeal⁸² but the circumstances there were very different.
- 11.5 In the first instance, in November 2012, Network Rail was concerned that it had not been properly notified of the proposals. Following a meeting with the Council, it sent an email in March 2013 in which it sought a contribution of £1,500-£2,000 per dwelling. However, other than the overall figure in this email of around £4m, to upgrade two crossings, there was no justification at the Inquiry to support this sum. Consequently, while the contribution could be argued to be necessary and directly related to the development, in the absence of any details, the figure in the Undertaking cannot be considered as fairly and reasonably related in scale and kind and so does not satisfy the final test in the *Framework*.
- 11.6 The additional mitigation through the CAVAT method would provide a sum of £87,526⁸³. However, the location and details of these extra trees have not been identified and so the contribution cannot be considered as fairly and reasonably related. In any event, if the access were to be excluded from the proposals, in favour of the access in Appeal B, this would be unnecessary.

APPEAL B

- 11.7 The s106 Undertaking for Appeal B was put forward to replace that linked to the extant permission which has not been implemented. There was disagreement as to whether or not the earlier Undertaking could be enforced. As above, Protect Stapeley considers that its documentation proves that it is enforceable. The appellant has received Counsel's Opinion⁸⁴ to the effect that it is not. The new Undertaking could not resolve this difficulty as it could not take away rights under the existing s106 Agreement, and would only relate to a small part of the land covered by the original

⁷⁸ ID 26

⁷⁹ Paragraph 204

⁸⁰ See IDs 37a&c and 43

⁸¹ ID 36

⁸² ID 37b

⁸³ Shields appendix B

⁸⁴ Not before the Inquiry

obligation. After unsuccessful attempts to resolve the problem by agreement during the Inquiry, the Council expanded on this concern, and other reservations, after the Inquiry closed⁸⁵.

- 11.8 There is little doubt that the Council's aims regarding the habitat of protected species have merit and support in law and planning policy. Similarly, the appellant has willingly entered into an Undertaking with the aim of protecting this habitat. Unfortunately, the existence of an earlier Undertaking, binding a wider area of land, which may or may not be enforceable, rather complicates matters. The sensible solution would be to attach a condition of the *Grampian* type, as above, to prevent development until an agreed scheme has been entered into. Moreover, this would be in line with policy in the *Framework*⁸⁶ which sets out a clear preference for conditions over planning obligations.

⁸⁵ By letter dated 28 February 2014, on main file

⁸⁶ Paragraph 203

12. Inspector's Conclusions

I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal site and its surroundings. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

APPEAL A

12.1 The main considerations are the effects of the proposals on:

- (a) the character and appearance of the area with particular regard to the open countryside and LP policies NE.2 and RES.5;
- (b) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the *Framework*;
- (c) the loss of BMV agricultural land, and;
- (d) the loss of trees.

APPEAL B

12.2 The main consideration is the effect of the proposals on the habitat of protected species with particular regard to land allocated for ecological mitigation measures as a LNAC, tree planting and landscaping, and the existence of a 'fallback' position.

Character and appearance

12.3 There was no dispute that the Appeal A proposal for new housing in the countryside, outside the settlement boundary for Nantwich, would conflict with saved LP Policies NE.2 and RES.5. Rather, the disagreement centred on whether or not these policies should be considered current, and so attract any weight, in the light of recent interpretation of paragraph 14 of the *Framework* by the Courts. The parties alternately argued that this meant any relevant policy or all such policies. The important matter is to determine whether or not housing policies are out-of-date by virtue of a lack of HLS. If so, any policies, or parts of policies, which seek to restrain housing development are out-of-date and should be given no weight. Other than for determining their accord, or otherwise, with the development plan as a whole, a forensic analysis of every part of every policy is unnecessary. The issue is whether to give any weight to any part of the plan which seeks to restrain housing development. [3.3, 6.1-6.2, 7.3-7.4]

12.4 Policies RES.5 and NE.2 restrict housing development. Subject to the conclusion drawn with regard to HLS, the appellant is therefore correct to say that these policies should be regarded as out-of-date. It may be right that, if 'open' is interpreted as at a distance from other development rather than just unoccupied by development, they could have some relevance to a proposal on a site in open countryside, well beyond settlement limits. However, that would be of limited relevance to these appeals. Insofar as the housing development in Appeal A is concerned, both policies are out-of-date and should be given no weight. Although the scheme includes other development as well as housing, this would be complementary, in the interests of sustainable development, and nobody has sought to object

separately to the ancillary uses as in conflict with Policy NE.2.
[3.1, 3.9, 6.2, 7.3]

Housing land supply (HLS)

- 12.5 At previous Inquiries in Cheshire East the Council has conceded that it does not have a 5 year HLS and this was the position when proofs of evidence were submitted. However, matters are constantly moving and, by the time the Inquiry opened, the Council was arguing that it did have a 5 year supply. The evidence should therefore be reviewed afresh and the Decision based on the information available at the Inquiry. [3.7]

TARGET FIGURE

- 12.6 The Regional Strategy (RS) has been abolished. Nevertheless, the *Framework* allows figures from the RS evidence base to be used and these are the most recent to have been tested⁸⁷. The RS figures result in a target figure of 1,150 dwellings per annum. It was agreed at the Inquiry that, for the purposes of Appeal A, the emerging LP should be interpreted as requiring a target of 1,350, albeit that the weight to be attributed to this was not agreed. The *Framework* explicitly refers to up-to-date household projections⁸⁸. A more recent evidence base was used for the emerging LP figures but they have not been tested. The Judgment in *Hunston* clarifies that, to arrive at full objectively assessed needs, the most up-to-date figures should be used. The figures from the recent evidence base used for the emerging LP are both reasonably up-to-date and robust; therefore they are to be preferred. [3.6, 6.5, 7.8, 7.11]
- 12.7 The Council has rightly pointed out that the emerging LP puts forward a number of scenarios which include those based on growth strategies. However, most of these would result in substantially higher HLS targets than 1,350. The suggestion in the emerging LP that the trajectory for new housing should be weighted towards the back end of the plan period would defeat the object of a buffer (see below). Although limited weight should be given to the emerging LP as a whole, 1,350 dwellings per annum is a reasonable figure for the purposes of assessing the HLS in Appeal A. A target figure of 1,350 dwellings per annum gives a total of 6,750 over 5 years. There is a current shortfall which was agreed as either 2,165 or 2,197 based on the RS figures (the difference is of little consequence). [6.5-6.6, 7.10-7.11]
- 12.8 As above, the *Framework* also requires a buffer of either 5% or 20%. It is agreed that there was a shortfall between 2008 and 2013 but that the delivery figures were easily exceeded for the earlier years. The test for the amount of buffer in the *Framework* is a *record of persistent under delivery*. Although the phrase could be considered as pejorative, that is not necessarily the case. Rather, the test is to make a factual assessment with the simple aim *to provide a realistic prospect of achieving the planned supply*. There may be many reasons why the target has not been achieved recently. Indeed, the Council merger and the prolonged economic downturn may both be good reasons why there has been a shortfall for over 5 years and so a finding of a prolonged shortfall should not necessarily be taken as a criticism of the Council's efforts to meet its targets.

⁸⁷ *Framework* paragraph 218

⁸⁸ *Ibid* paragraph 159

Nevertheless, as a matter of fact, there has been a shortfall which has persisted for 5 years and persists today. Even though over the last 18 years the target has been met more often than not, following the support for the Inspector's reasoning in the *Tetbury* Judgement, looking back 5 years is a reasonable approach. [3.7, 6.6, 7.13]

- 12.9 The Council's cricketing analogy⁸⁹ is not particularly supportive as one would expect the England selectors to look more closely at recent performance than at a batsman's longer first class record to determine whether or not he was on form. There can be no doubt from the figures that, with regard to the provision of HLS, Cheshire East Council is not currently on good form. [7.12]
- 12.10 For all these reasons, a 20% buffer should be favoured with regard to the HLS target in these appeals. Taken together with the emerging Local Plan target and the existing shortfall, spread over 5 years⁹⁰, the target should be approximately 10,700 dwellings over the next 5 years. In the event that only a 5% buffer was appropriate the figure would be around 9,350 dwellings.

SUPPLY FIGURE

- 12.11 On the supply side, the appellant acknowledged that the Council had a supply of 7,112 dwellings but disputed sites for a further 2,772 dwellings. Following discussions, the agreed difference was narrowed by 118. The evidence on the disputed sites was discussed site by site following a series of tables grouping sites with similar characteristics with regard to whether permissions have been granted, whether allocations are only draft, the length of lead-in times and other factors. However, the appellant and an interested party⁹¹ outlined reasons why some of these might not come forward as hoped. [3.7, 6.7, 7.15]
- 12.12 Sites with permission should generally be considered deliverable unless there are convincing reasons why not⁹², while most of those which are simply draft allocations should be looked at more cautiously unless pre-application discussions are well advanced. Of those where the difference is down to the lead-in times or build rates, there is likely be more enthusiasm for delivering houses rapidly at the moment as the economy improves, and so the Council's figures are broadly acceptable. [3.7, 6.7, 7.14]
- 12.13 Looking at all these sites in the round, there is probably a deficiency of around half the dwellings on the disputed sites, mostly from the optimistic lead-in times for sites with long standing s106 complications or those with only draft allocations which are either contentious or problematic. This adjustment provides a supply figure of barely 8,500 dwellings. [6.7, 7.13]
- 12.14 Even accepting the Council's assessment that it has a supply of 9,884 dwellings⁹³ over the next 5 years, the target of 10,700 would not be met. Moreover, using the estimate that only 8,500 dwellings will come forward within 5 years, and using a 5% buffer, there would still be a shortfall of the difference between 8,500 and 9,350 dwellings. The conclusion for Appeal A

⁸⁹ ID 38 paragraph 16

⁹⁰ Using the agreed 'Sedgefield' method

⁹¹ Mr Walker

⁹² footnote 11 of the *Framework*

⁹³ ID35 Table 1

should be that the Council does not currently have a 5 year HLS. Consequently, the elements of policies NE.2 and RES.5 which serve to limit housing in the countryside should be considered as not up-to-date and so be afforded no weight in this Decision⁹⁴. I acknowledge that the Council is striving hard to adopt a new LP including a 5 year HLS but until this plan comes into operation the HLS deficit should activate paragraph 14 of the *Framework*. [3.9, 6.2, 7.15]

- 12.15 Nevertheless, the absence of a 5 year HLS does not mean that housing development should be permitted anywhere. Rather, the *Framework* sets out a consequential presumption in favour of sustainable development⁹⁵. The question is therefore whether or not the proposals would amount to sustainable development, taking account of the other issues.

BMV agricultural land

- 12.16 There was no dispute that the scheme would result in the loss of agricultural land in the open countryside, but the Council has insufficient land for housing without taking greenfield land and lower grade land is not available. Consequently, the scheme would not conflict with Policy NE.12. Furthermore, the policy reference to 'other sustainability considerations' could be reasonably interpreted as referring to land in close proximity to towns and services. [2.1, 6.8]

Trees

- 12.17 The proposed access in Appeal A would require the loss of 10 protected trees. This loss would be in direct conflict with Policy NE.5. The appellant argued that the proposals would offer extensive mitigation over the next 20 years, including a new avenue of trees, on site planting and additional planting in the area through a CAVAT contribution. I saw that the existing specimens appear neither young nor old but in the prime of their lives. The mitigation would be expected to take 20 years before the trees reached a comparable size to those which would be lost. However, over that same period the existing trees could be reasonably expected to grow and so maintain a gap in size and amenity benefit between the extant trees and any mitigation. [2.1, 4.2, 6.9, 7.16]
- 12.18 Landscaping is a reserved matter. Therefore limited weight should be given to the appellant's argument that excluding the new access would result in the omission of some of the proposed landscaping benefits. The additional mitigation through the CAVAT method has not been identified and so would not satisfy the test in the *Framework* with regard to being directly related. The claimed road traffic advantages at the proposed access were somewhat overstated and disputed by local residents. However, these only need to be considered in the event that the proposed new access is implemented, which it should not be. [2.1, 4.3]
- 12.19 Policy NE.5 acknowledges that tree loss can be compensated for in principle. Although opposed to the scheme in principle, interested parties have argued that there could be 3 better site accesses, including that put forward in Appeal B. As above, following the *Wheatcroft* principles, a condition could remove the proposed access from any permission. In

⁹⁴ *Framework* paragraph 49

⁹⁵ *Ibid* paragraph 14

conclusion on this point, the tree loss would weigh heavily against the proposals, and conflict with Policy NE.5 but, subject to the Decision on Appeal B below, this could be overcome by a condition removing the access from the scheme. Moreover, removing the proposed access would also eliminate the concerns, justified or otherwise, of the Parish Council, school governors and local residents with regard to highway safety at the proposed access. [3.4, 8.1-8.2, 8.4-8.5]

Conclusions on sustainable development

- 12.20 The *Framework* explains that there are three dimensions to sustainable development which require the planning system to perform three different roles, namely economic, social and environmental. There was no dispute that the construction of new housing would create jobs, and support growth, as would new space for employment development. Nantwich is also one of the preferred locations for development in both the existing and emerging local plans. [3.5]
- 12.21 Housing, and affordable housing in particular, would contribute to the social role in the *Framework* and this should be given extra impetus in the light of the Council's lack of a 5 year HLS. A primary school, children's play area, and public open space including a new village green, would add to the social benefits. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station. The site adjoins the edge of Nantwich including the shops and two pubs. For these reasons, the Appeal A site could provide sustainable development in locational terms. [4.1, 5.3]
- 12.22 The proposed pedestrian/cycle network would provide safe, direct, convenient and interesting routes through the site. Although the application is mostly in outline form, the ppg amplifies the emphasis on design in the *Framework*. In particular, it notes that: achieving good design is about creating places or spaces that work well; successful integration is an important design objective; and proposals should promote safe local routes by making places that connect appropriately and are easy to move through⁹⁶. Subject to reserved matters, the proposals have the potential to achieve all these and this weighs in their favour. [4.2, 5.3]
- 12.23 There was little disagreement that the loss of trees, BMV land, and open countryside would harm the environment. However, the former could be avoided through the use of a condition and the unavoidable circumstances in Cheshire East would mean that the latter two would not conflict with up-to-date LP policies. Allotments and green infrastructure (including a new hedgerow) would weigh on the positive side. Notwithstanding objections by interested parties, it is common ground that there are no technical reasons to resist the scheme in terms of highways, drainage, residential amenity or environmental health matters and that suitable mitigation can be provided with regard to ecology. [5.2, 10.3]
- 12.24 As was explained on behalf of the Board of Governors of Stapeley Broad Lane CE Primary School, the new access might make matters worse for highway safety in the vicinity of the school. Regardless of whether or not this concern could amount to a sound reason for refusal by itself,

⁹⁶ Ppg refs. ID 26-001, 26-007, 26-008 and 26-024, all dated 20140306

nonetheless it is a factor to be considered in assessing sustainable development. [8.2]

- 12.25 On the other hand, the perceived additional risk to highway safety and the loss of trees could both be avoided if an alternative access was used. Appeal B would provide one such opportunity. I therefore find that the objections with regard to trees and highway safety could, and should, be overcome by a condition. Subject to such a condition, the proposals would amount to sustainable development as defined by the three dimensions in the *Framework*. [10.3]
- 12.26 For all the above reasons, I conclude that there is a need for additional housing in the area which cannot be met by the existing supply of housing land and that greenfield agricultural land will need to be used to meet this requirement. It follows that the need for housing would outweigh the harm to the character and appearance of the countryside and the loss of some BMV agricultural land. [5.2]
- 12.27 On balance, Appeal A would accord with up-to-date policies in the development plan as a whole and the scheme would comply with the policy presumption in the *Framework* which should be afforded considerable weight.

Appeal B

- 12.28 There was no agreement at the Inquiry as to whether or not the existing s106 Agreement is still enforceable and no appetite on either side to test this in Court. The dispute centred on whether or not a scheme had been submitted to the Council. The letter from the Council to the owners, and associated map, suggest that a scheme was submitted and that the time limit did not prevent its enforcement. On the balance of probabilities, and on the information before the Inquiry, it is likely that the Agreement could be enforced although this would ultimately be a matter for the Courts. [2.5, 6.12, 7.17, 8.1]
- 12.29 The purpose of the proposed access would be as an alternative means of access and also to provide the opportunity for further development to the south, if required and if planning permission were granted. It is common ground that an extant permission (ref. P00/0829) for the access road would allow much of the development to take place. The spur for the fourth arm has been constructed and so the permission has been implemented, is extant and represents a fall-back position. [2.4, 4.4]
- 12.30 The proposed access would result in the loss of some of the GCN mitigation land. However, this could be overcome by the provision of additional land and funding. The appellant has offered an alternative s106 Undertaking. However, the details are not the same as those in the drawing submitted under the existing s106 Agreement creating some conflict between the two. While it should be possible to submit a mechanism which would provide alternative mitigation without compromising the enforceability of the extant s106, no such solution was forthcoming by the end of the Inquiry. [6.12, 7.17]
- 12.31 Consequently, it would be wrong to place any great weight on the likelihood that the new s106 would achieve the necessary mitigation without creating other harms. Moreover, it is not within the power of the appellant, who was

not a signatory to the original s106 and does not own all the land, to carry out the terms of that Agreement.

- 12.32 However, given that it should be possible to resolve this problem, a condition preventing the use of the new access until a suitable scheme (which might or might not include the new s106 and/or a letter from the Council cancelling the existing drawing and approving the new drawing under the extant s106) should have a reasonable prospect of being implemented. As above, the extent of mitigation could therefore be overcome by a *Grampian* condition requiring a scheme for mitigation to be submitted and approved before development commences. In these circumstances, the proposals would not harm protected species, but would accord with LP policies NE.9 and NE.10 and paragraph 118 of the *Framework*, and the appeal should be allowed. [10.5]

Overall conclusions

- 12.33 For the above reasons, Appeal B should be allowed. Consequently, the access proposal in Appeal A could be removed by condition. This would remove the greatest objection to Appeal A such that the balance would fall on the side of the proposals amounting to sustainable development. In the event that the Secretary of State agrees that the Council does not have a 5 year HLS, this consideration would outweigh any conflict with the development plan. It follows that both appeals should be allowed subject to the attached Schedules of conditions.

13. Recommendation

- 13.1 I conclude that both appeals should be allowed and planning permissions granted subject to the attached Schedules of conditions.

David Nicholson

INSPECTOR

Schedules of conditions

APPEAL A

1. Details of appearance, landscaping, layout and scale (hereinafter called “the reserved matters”) shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission (see condition 29) indicates otherwise:
 - Site Location plan reference no. BIR.3790.09D (September 2012)
 - Site Setting (Aerial Photograph) reference no. SP(90)11
 - Indicative Masterplan, reference no. BIR.3790.12 (September 2012)
 - Movement and Topography
 - Landscape Character Plan reference no. SP/90/01
 - Tree Plan Drawing no. NWS/SP/03/12/01
 - Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 (9th November 2011)
 - Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 (9th November 2011)
 - Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 (9th November 2011)
 - Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 (9th November 2011)
4. No development shall commence 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 LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).

- g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
- h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. The Reserved Matters shall make provision for development fronting on to the existing watercourses within the site.
8. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. 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.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties
 - h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

- i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
9. Prior to its installation details of the location, height, design, and luminance of any proposed lighting shall be submitted to and approved in writing by the LPA. The details shall ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
10. No development shall take place until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
11. Prior to the commencement of development:
 - a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
12. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
13. The improvement of junction of Peter Destapeleigh Way/Elwood Way/London Road as shown in SCP/10141/GA04 Rev B (moving the 'stop' line on London Road south towards the junction, provision of an additional lane and island on the London Road south arm and upgrade on kerbside detectors to ensure efficient operation of the pedestrian stage), shall be carried out prior to the first occupation of the development hereby permitted.
14. The improvement of junction of Elwood Way/Newcastle Road as shown in SCP/10141/GA05 Rev A (inclusion of the 80m left turn lane from Newcastle Road with 3.65m wide lanes), shall be carried out prior to the first occupation of the development hereby permitted.

15. The Reserved Matters application shall include details of parking provision for each of the dwellings hereby permitted. No dwelling hereby permitted shall be occupied until the parking and vehicle turning areas for that dwelling have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.
16. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. No part of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
17. 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 LPA. The approved scheme shall be implemented and retained as operational thereafter.
18. No development shall take place except in complete accordance with the submitted protected species mitigation unless varied by a subsequent Natural England licence.
19. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
20. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.
21. No development shall take place until details of the design of the proposed pond including fencing to prevent public access have been submitted to and approved in writing by the LPA. The new pond shall be for nature conservation purposes only and shall be provided prior to the first occupation of the development hereby permitted.
22. No development shall take place until proposals for in perpetuity management of the retained and newly created habitat areas have been

- submitted to and approved in writing by the LPA. The habitat areas shall thereafter be managed in accordance with the approved proposals.
23. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
24. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping for the site indicating inter alia:
- conservation and enhancement of important hedgerows within the site as an integral and structuring part of the Landscape Framework
 - replacement planting for any trees or hedgerows to be removed
 - The number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted
 - a high quality and robust new Landscape Framework, including public open space, new trees, structure planting, hedgerows and other mixed habitats and open spaces
 - an appropriate landscape management and maintenance regime to ensure the successful establishment and continued thriving of the existing and new planting and landscape areas.
25. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme 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 LPA gives written consent to any variation.
26. The Reserved Matters shall include an Arboricultural Impact Assessment in Accordance with BS:5837:2012 which shall include:
- Trees proposed for retention
 - Trees proposed to be removed
 - Trees to be pruned
 - An evaluation of the impact of any proposed tree losses
 - Evaluation of tree constraints
 - A Tree Protection Plan
27. No development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No dwelling hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
28. The Reserved Matters application for each phase of development shall include details of bin storage for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of the properties to which they relate.

29. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. SCP/10141/D03 (September 2012).

APPEAL B

1. The development hereby approved shall commence within three years of the date of this permission.
2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03 (September 2012)
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of any to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme 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 LPA gives written consent to any variation.
5. No development or other operations shall commence on site until a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a TPO currently in force has been submitted to and approved in writing by the LPA. No development or other operations shall take place except in complete accordance with the approved protection scheme, which shall be in place prior to the commencement of work. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the LPA.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
7. No development or other operations shall commence on site unless and until a scheme of mitigation for the habitat of protected species has been submitted to and approved in writing by the LPA. The scheme shall be implemented as approved.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Tim Straker QC	instructed by the solicitor to Cheshire East Council
He called	
Graham Stock BA MA MRTPI AIEMA	Deloitte
Christopher Hudson MSc DipArb MarborA	Cheshire East Council
Ben Haywood (round table session only)	Cheshire East Council

FOR THE APPELLANT:

JEREMY CAHILL QC	instructed by Patrick Downes, Harris Lamb on behalf of Müller Property Group
He called	
Jonathan Berry BA (Hons), Dip LA, AIEMA, CMLI, M.Arbor.A	Tyler Grange
William Booker BSc (Hons)	Singleton Clamp and Partners Ltd.
Patrick Downes BSc (Hons), MRICS	Harris Lamb
James Grundy MCIEEM	Cheshire Ecological Services Ltd.
Malcolm James Reeve BSc, FISoilSci, Csci, MBIAC, MCIWEM	Land Research Associates Ltd.
Stephen J.A. Shields Dip.Arb (RFS), MICFor	Shields Arboricultural Society
Matthew Wedderburn BSc, MA, MRTPI	Müller Property Group

INTERESTED PERSONS:

Patrick Cullen	Representing 'Protect Stapeley'
Matthew Theobald	Representing the Governors of Primary School
Keith Nord	Councillor, Stapeley and District Parish Council
Robert Walker RICS	Local property agent
John Davenport	Local resident
Ian Hope	Town clerk, Nantwich Town Council

INQUIRY DOCUMENTS (ID)

1	Letter of notification of the appeal
2	Appellant's opening
3	Appellant's assessment of the Position Statement by CEC and appellant
4	Housing land supply projections
5	Paul Tucker's closing for Rose cottages appeal inquiry
6	Council's opening
7	Position statement by CEC
8	Technical note from Mr Booker
9	Rose cottages decision
10	List of properties with dates of permissions and completions
11	Protect Stapeley representations (Mr Cullen)
12	Mark Williams representations
13	Theobald representations for Primary School governors
14	Walker's statement
15	Part of CD A12 previously missing
16	Accident statistics
17	Statement with regard drainage and flooding
18	Note on Costs
19	Policy 19 Cotswold District Council
20	Statement by Mr Hope, Nantwich Town Council
21	Statement by Mr Nord, Stapeley and District Parish Council
22	List of suggested conditions
23	Letter from Mr Wedderburn dated 6 January 2014
24	List of sites for less than 10 units
25	Dates of video recording by Mr Theobald
26	Community Infrastructure Levy justification
27	Analysis of relevant previous conditions
28	Extracts from relevant Decisions
29	Decision addressing 'Coleman' re paragraph 215 of the <i>Framework</i>
30	Submission version of the emerging Local Plan, March 2014
31a	Statement of Common Ground
31b	Proposed site visit itinerary
32	Report to the Strategic Planning Board with regard to the emerging Local Plan
33a&b	Draft unilateral undertakings
34	Email from Mr Booker to the appellant
35	Mr Wedderburn's calculations and minor alterations
36	Representations from SCP with regard to the rail crossings
37ab&c	Network rail email; relevant Decision; Queen's Drive reference
38	Council's closing submissions
39	Appellant's draft conditions
40a&b	Council's amendments to Unilateral Undertakings
41	Appellant's closing submissions
42a&b	Unilateral undertakings
43	Original network rail representations
44	Emails with regard to bus stops

CORE DOCUMENTS (CD)

Background (A)

	NATIONAL PLANNING AND MINISTERIAL STATEMENT
A1a	Extract from the National Planning Policy Framework Guidance (Aug 2013)
A1b	Article 31 of The Town and Country Planning (Development Management Procedure) (England) Order 2010
A2	Relevant extracts of 'Laying the Foundations: A Housing Strategy for England' (November 2011)

A3	Housing and Growth Ministerial Statement DCLG (September 2012)
A4	The Planning System, General Principles – ODPM 2005
	Regional Planning Policy and other guidance
A5	Chief Planning Officers Letter: Revocation of Regional Strategies (6 July 2010)
A6	RPG 13: Regional Planning Guidance for the North West (March 2003)
A7	North West of England Plan Regional Spatial Strategy (2008)
A8a	Land Supply Assessment Checks, Communities and Local Government, May 2009
A8b	Strategic Housing Land Availability Assessment Practice Guidance Communities and Local Government, July 2007
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	LOCAL PLAN POLICY AND GUIDANCE
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005)
A12	Secretary of State's Direction (Saved Policies) February 2008
A13-15	-
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A17	Stapeley Parish Plan 2008
A18	Stapeley and District Parish Plan update 2012
A19	Extract of the Draft Nantwich Town Strategy
	EMERGING LOCAL PLAN BACKGROUND DOCUMENTS
A20	Extracts of the Pre-Submission Core Strategy (November 2013)
A21	Extracts of the Core Strategy Sustainability (Integrated) Appraisal (November 2013)
A22	Extracts of Cheshire East Housing Background Paper (November 2013)
A23	Extracts of Cheshire East Preferred Sites Background Overview (November 2013)
A24	Cheshire East Strategic Housing Market Assessment (2013 Update)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4 th December 2013)
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A29	Letter from Emery Planning to the SHLAA update methodology (January 2014)
A30	CEC's press release on the 5 year housing land supply position statement (28 th January 2014)
A31	CEC's 5 year housing land supply position statement with appendices (December 2013)
A32	SHLAA: Housing Market Partnership Workshop minutes (19 th December 2013)
A33	CEC Population Projections and Forecasts Background paper (Sept 2013)
A34	Harris Lamb's Local Plan Representations on behalf of Muller Property Group to the Pre-Submission Document (December 2013)

Technical Papers (B)

B1	Town and Country Planning Tomorrow Series Paper 16: New Estimates of Housing Demand and Need in England 2011 to 2031; by Alan Homes published by Town and Country Planning Association, September 2013
B2	Housing the Next Generation Speeches. 10 January 2013
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B5	Guidance on Transport Assessment (Department for Transport, 2007)
B6	Design Manual for Roads and Bridges, TD9/93 and TD16/07
B7	North West Sustainability Appraisal Checklist for Developments
B8	Building on Success Accelerating Economic Growth in Cheshire and Warrington Business Plan 2013 to 2015 (Cheshire and Warrington LEP, 2013)

B9	Unleashing the Potential of Cheshire and Warrington (July 2011) Cheshire and Warrington LEP Business Plan, 'Building on Success' (2013)
B10	Cheshire & Warrington Sub Regional Housing Study, Barton Willmore, November 2012
B11	Geography of Housing Market Areas: Final Report, Colin Jones, Mike Coombes and Cecilia Wong (Nov, 2010)
B12	Technical Background Paper; Initial Technical work on Housing Provision and Job Growth Figures for the North West, July 2010, 4NW Regional Leaders Board
B13	Ten key principles for owning your housing number – finding your objectively assessed needs: Local Government Association / Planning Advisory Service, July 2013
B14	Extract of Cheshire East Annual Monitoring Reports (2011 – 12)
B15	Extract of Cheshire East Annual Monitoring Reports (2010 – 11)
B16	Extract of Cheshire East Annual Monitoring Reports (2009 – 10)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

High Court Cases (C)

C1	High Court Judgement (5 September 2013), Hunston Properties Ltd vs Secretary of State for Communities and Local Government, and St Albans City and District Council (Neutral Citation Number: 2013 EWHC 2678 (Admin))
C2	Court of Appeal Judgement (12 December 2013), City and District Council of St Albans vs The Queen (on the application of) Hunston Properties Limited, Secretary of State for Communities and Local Government and (Neutral Citation Number: 2013 EWCA Civ 1610 (Admin))
C3	High Court Judgement (18th July 2013) Bloor Homes vs Secretary of State for Communities and Local Government and Stratford on Avon District (Neutral Citation Number: 2013 EWHC 2074 (Admin))
C4	High Court Judgement (20th February 2013) Tewksbury Borough Council vs Secretary of State for Communities and Local Government, Comparo Ltd, Welbeck Strategic Land LLP. Neutral Citation Number 2013 EWHC 286 (Admin)
C5	High Court Judgement (9th May 2013) Anita Colman and Secretary of State for Communities and Local Government and North Devon District Council and RWE N Power Renewable Ltd. Neutral Citation Number 2013 EWHC 1138 (Admin)
C6	High Court Judgement (27th November 2013) Cotswold District Council vs Secretary of State for Communities and Local Government, Fay and Son Limited % Hannick Homes and Development Limited. (Neutral Citation Number: [2013 EWHC 3719 (Admin))
C7	High Court Judgement (25th March 2013), Wain Homes (South West) Holdings Limited vs Secretary of State for Communities and Local Government, and Wiltshire Council (Neutral Citation Number 2013 EWHC 597 (Admin))
C8	High Court Judgment (2nd March 2012), Fox Strategic Land and Property Limited vs Secretary of State for Communities and Local Government and Cheshire East Council (Neutral Citation Number: 2012 EWHC 444 (Admin))
C9	High Court Judgement (October 2011), Richborough Estates vs Secretary of State for Communities and Local Government, and Cheshire East Council (Neutral Citation Number: [2013] EWHC 1022 (Admin))
C10	High Court Judgement (March 2013) Mr and Mrs Dale vs Secretary of State for Communities and Local Government, and Cheshire East Council (Neutral Citation Number: [2013] EWHC 892 (Admin))

Appeal Cases (D)

	MINISTERIAL APPEAL DECISIONS
D1	Planning Inspectorate appeal reference APP/U4230/A/11/2157433: Land at Burgess Farm, Hilton Lane, Worsley, Manchester, M28 3TL (July 2012)
D2	Planning Inspectorate appeal references APP/G1630/A/11/2146206 & APP/G1630/A/11/2148635 – Land at Bishops Cleeve, Gloucestershire (16 July 2012)
D3	Planning Inspectorate appeal reference APP/F1610/A/12/2173305 – Land to the South of Berrells Road and the West of Bath Road, Tetbury, Gloucestershire; Secretary of State Decision (25 March 2013)
D4	Planning Inspectorate appeal reference APP/A0665/A/11/2167430 – Land off Nantwich Road, Tarporley, Cheshire (29 August 2013)
D5	Planning Inspectorate appeal reference APP/J3720/A/11/2163206 – Land south west of Stratford Upon Avon, Warwickshire (24 October 2012)
D6	Planning Inspectorate appeal reference APP/F1610/A/10/2130320 – Todenham Road, Moreton in Marsh, Gloucestershire, GL56 9NL (12 April 2011)
D7	Planning Inspectorate appeal reference APP/R0660/A/10/2141564 – Land off Abbey Road and Middlewich Road, Sandbach, Cheshire Decision (17 October 2013)
	INSPECTOR APPEAL DECISIONS
D8	Planning Inspectorate appeal reference APP/R0660/A/10/2141564 – Abbey Road and Middlewich Road, Sandbach, Cheshire
D9	Planning Inspectorate appeal reference APP/R0660/A/13/2189733 – Land north of Congleton Road, Sandbach, Cheshire, CW11 1DN; Inspectors Decision (18 October 2013)
D10	Planning Inspectorate appeal reference APP/R0660/A/13/2195201 – Land off Sandbach Road North, Alsager, Stoke on Trent, ST7 2EH; Inspectors Decision (18 October 2013)
D11	Planning Inspectorate appeal reference APP/H1840/A/12/2171339: Land between Station Road and Dudley Road, Honeybourne, Worcestershire
D12	Planning Inspectorate appeal reference APP/H1840/A/12/2172588: Land off Station Road, Honeybourne, Worcestershire; (18 September 2012)
D13	Planning Inspectorate appeal references APP/T2405/A/13/2193758 & APP/T2405/A/13/2193761; land east of Springwell Lane, Whetstone, Leicestershire
D14	Planning Inspectorate appeal reference APP/C3430/A/12/2189442 - Land off Elmwood Avenue, Essington
D15	Planning Inspectorate appeal reference APP/D2320/A/12/2172693 – Land to the north and West of Lucas Lane, Whittle le Woods, Chorley
D16	Planning Inspectorate appeal reference APP/R0660/A/11/2158727 – Loachbrook Farm, Sandbach Road, Congleton, Cheshire, CW12 4PE.
D17	Planning Inspectorate appeal reference APP/F1610/A/11/2165778 – Highfield Farm, Tetbury; Secretary of State Decision (13 February 2013)
D18	Planning inspectorate appeal reference APP/P1805/A/11/2152467 - Land at St Godwald's Road, Bromsgrove
D19	Planning inspectorate appeal reference APP/R0660/A/12/2188001 – Land at Hassall Road, Alsager, Cheshire (12 December 2013)
D20	Planning inspectorate appeal reference APP/R0660/A/12/2173294 – Land at Rope Lane, Shavington, Crewe (28 November 2012)
D21	Planning inspectorate appeal reference APP/Z3825/A/12/2183078 - Land East of Daux Avenue, Billingshurst West Sussex (18 April 2013)
D22	Planning inspectorate appeal reference APP/P0119/A/12/2186546 - Land Between Iron Acton Way and North Rd, Engine Common, Yate, South Gloucs, 8 April 2013
D23	Planning inspectorate appeal reference APP/G2435/A13/2192131 - Land south of Moira Road Ashby-de-la-Zouch, 30 May 2013

D24	Planning inspectorate appeal reference APP/H/1033/A/11/2159038 - Land at Manchester Road & Crossings Road, Chapel en-le-Frith, 23 Aug 2012
D25	Planning inspectorate appeal reference APP/T2405/A/11/2164413 - Land to the west of Sapcote Road, Sapcote Leicester, 27 June 2012
D26	Planning inspectorate appeal reference APP/U1105/A/12/2180060 - Land at Butts Road, Ottery St Mary, East Devon, 14 December 2012
D27	Planning inspectorate appeal reference APP/R0660/A/12/2170820 – land at Crewe Road, Crewe, Cheshire, CW2 5AD, 29 January 2014
D28	Planning inspectorate appeal reference APP/R0660/A/12/2188604 & 2188605 – Land off the Moorings, Congleton, Cheshire & land off Goldfinch Close and Kestrel Close, Congleton, Cheshire.

Relevant Applications (E)

E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000
E4	Queens Drive Planning Application Decision Notice (App Ref:12/4654N) & Committee Report
E5	Queens Drive Planning Committee Report (App Ref:12/2440N)
E6	Queens Drive application Heads of Terms
E7	Land south of Hall Drive, Alsager Committee Report (App Ref: 13/4092c) (permitted 9th December 2013)

Landscape Documents (F)

F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3 rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)

G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}
G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013
G9	Extract of Veteran Trees: A Guide to Good Management Chapter 2 published by Natural England (Read 2000)
G10	Cavat Full Method Users Guide

APPEAL A

Appeal A - Application Documents (H1)

H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)

I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)

J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25th May 2012
J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9 th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9 th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9 th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9 th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment

J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)

K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice

APPEAL B

Appeal B - Application Documents (L)

L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement

Consultee Responses (M)

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Appeal B – Affordable Housing

Documents submitted after the initial submission (N)

N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)

O1	1st Planning Officers Report to Planning Committee
O2	2nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19th June 2013 Notes of Planning Application 12/3746N

Additional Documents (Q)

Q1	Planning Inspectorate appeal reference APP/H1840/A/13/2203924 - Land between Leasowes Road and Laurels Road, Offenham, Worcestershire
Q1(2)	Costs application in relation to Appeal Ref: APP/H1840/A/13/2203924 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire
Q3	Planning Inspectorate appeal references APP/G2245/A/13/2195874, APP/G2245/A/13/2195875, APP/G2245/A/13/2197478 & APP/G2245/A/13/2197479 - Land at Broom Hill, Swanley, Kent



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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

EP2



Appeal Decision

Hearing held on 2/3 November 2020

Site visit made on 10 November 2020

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/R0660/W/20/3251104

Land off Crewe Road, Winterley

- 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 Footprint Land and Development Limited against the decision of Cheshire East Council.
 - The application Ref 19/3889N, dated 14 August 2019, was refused by notice dated 30 October 2019.
 - The development proposed is an outline application for the erection of up to 55 dwellings with associated works (access to be considered with all other matters reserved).
-

Procedural matters

1. A draft planning obligation was discussed at the Hearing, and a completed version (17 November 2020) was subsequently submitted. I have taken account of that obligation, and I will return to it below.
2. As agreed at the Hearing, two documents were submitted after the Hearing closed, dealing with the role of Best and Most Versatile Land¹. I have taken these into account.
3. By letter dated 28 January 2021 the Council drew my attention to two recent matters – the latest Housing Delivery Test and an appeal decision at The Heath Vicarage. These matters could obviously not have been discussed at the Hearing and I have had regard to them as material considerations. The appellant was given the opportunity to comment on these documents and I have taken both parties' submissions into account.

Decision

4. The appeal is allowed and planning permission is granted for the erection of up to 55 dwellings with associated works (access to be considered with all other matters reserved) on land off Crewe Road, Winterley in accordance with the terms of the application, Ref 19/3889N, dated 14 August 2019, subject to the conditions set out in the Schedule to this decision.

¹ Documents 3 and 4

Main issues

5. There are three main issues in this case:

- The effect on the settlement pattern of the area in the light of development plan policies
- The effect on the character and appearance of the area
- The consequences of the loss of Grade 2 agricultural land

Reasons

The site and the surrounding area

6. The appeal site is just over 2 hectares in extent, and is a generally flat area of land which was doubtless used for agricultural purposes in the past, but is currently unmanaged and overgrown. There are a number of trees around the site boundaries and one tree (protected by a Tree Preservation Order) within the site.
7. The land is classified as Grade 2 Best and Most Versatile Land (BMV). There are no landscape designations affecting the site.
8. The site is located to the north-east of the settlement of Winterley, which is a village to the north-east of Crewe and to the south of Sandbach.
9. The immediate surroundings of the site are of significance to all the main issues in this case:
 - To the north of the site are paddocks and gardens which relate to properties in Hassall Road.
 - To the east the site abuts a housing development which is under construction (the Duchy Homes development).
 - To the south is a recently constructed housing development (the Bellway Homes development). There is a further housing development under construction (the Seddon development) to the east of the Bellway Homes site.
 - To the west of the site are the rear gardens of established dwellings fronting onto Crewe Road.
10. Overall, the site is therefore abutted (or will soon be) by residential buildings on three sides.
11. These adjacent sites have comparatively extensive planning histories, summarised in the Statement of Common Ground (SOCG) at Section 6.

The appeal scheme

12. The proposal is in outline, with only the point of access (not the internal road layout) submitted for approval at this stage. The access point would be by way of an existing roadway within the Bellway Homes development.
13. Indicative plans have been submitted, suggesting how the site could be developed for the quantum of development proposed.

Development plan context

14. The development plan comprises the Cheshire East Local Plan Strategy (CELPS) (2017) and the saved policies of the Crewe and Nantwich Replacement Local Plan 2011 (2005) (CNLP). The appeal site is outside the settlement boundary and is therefore defined as being within the open countryside in policy terms.
15. The second part of the Cheshire East Local Plan will be the Cheshire East Site Allocations and Development Policies Document ("SADPD") which will contain detailed policies and allocations. The Publication Draft Adopted Policies Map again shows the appeal site as being within the open countryside. However the SADPD is at a comparatively early stage, is the subject of objections and attracts limited weight.
16. In relation to the settlement pattern, CELPS policy PG2 deals with the settlement hierarchy. Winterley is not a defined centre. In areas outside the hierarchy the plan provides that development should be proportionate to the scale and commensurate with the function and character of the settlement and be confined to locations well related to the existing settlement. This approach is reflected in policy SD1 which prioritises growth in certain defined locations – again not including Winterley.
17. Given that the site is in the open countryside in relation to settlement boundaries, CELPS policy PG6 applies. This provides a restrictive approach to development, as none of the stated exceptions apply in this case. (A similar approach is taken in CNLP saved policy RES.5).
18. In relation to the character and appearance of the area, CELPS policy SD2 sets out a number of sustainable development principles. In particular proposals should contribute positively to an area's character and identity, taking account of a number of matters including the relationship to the wider neighbourhood.
19. CELPS policies SD1, SD2 and SE2 deal with the efficient use of land. Amongst other matters these provide that development should safeguard high quality agricultural land. (defined as Grades 1, 2 and 3a).
20. The SOCG (Section 6.2) sets out an extensive list of policies which the parties agree are relevant to the appeal. Many of these relate to matters not in dispute.

The effect on the settlement pattern

21. The overall approach of the development plan is to direct most development to sustainable locations, as set out in the settlement hierarchy. This is particularly referenced in CELPS policy PG6 and CNLP policy RES.5. Winterley is a location where, amongst other matters, growth should be in the interests of sustainable development and the maintenance of local services. There is no suggestion that there is a particular need for the appeal scheme to assist local services.
22. The appellant accepts that the appeal scheme is outside the settlement boundary and is in the defined open countryside, and that therefore the proposal is in conflict with these policies. I agree with that position.
23. There is also an argument advanced by residents and, latterly, by the Council that development should be proportionate to the function and character of the

settlement. Although the precise amount by which Winterly has grown in recent years is not entirely clear, there can be no doubt that it has experienced a significant amount of development over recent years. That said, there is no evidence before me as to the actual harm that this growth has caused or harm that the appeal scheme would cause in combination with other developments. This argument therefore adds very little to my consideration.

24. I will deal below with the appellant's argument that the settlement boundaries are out of date and should be given less weight for that reason, but would note here that I am unconvinced by this argument. The appeal site is outside the adopted settlement boundary and I have considered this appeal on that basis.
25. The debate as to whether these policies have a dual sustainability and character/appearance role is somewhat academic under this heading as the policies clearly apply to the settlement pattern. It is clear to me that the policies do have such a dual role and I will return to them again in the next section of this decision. This dual role has been identified in a number of places, most obviously in the Inspector's report into the Local Plan and in an appeal decision in 2015 at Pool Lane (APP/R0660/A/14/2216767).
26. The development plan should guide decisions about the appropriate location of development, although conflict with this part of the plan is not the end of the matter. Overall, it is clear that the proposal, being outside the boundary of the settlement, conflicts with the adopted spatial strategy, and conflicts with (in particular) CELPS policy PG6 and CNLP policy RES.5. I give this matter considerable weight.

The effect on the character and appearance of the area

27. The parties agree that CELPS policy PG6 and CNLP policy RES.5 are relevant to this issue and are breached by the proposal, as it does not fall into any exceptional category envisaged in the policies. Given that the proposal is for a change from open agricultural land to a housing development, this breach is entirely self-evident. The issue between the parties is the extent and magnitude of the harm.
28. As summarised above, once the various developments surrounding the site are completed, the appeal site will be enclosed by residential development on three sides. The other side – to the north of the site, is occupied by gardens and paddocks related to residential properties.
29. The baseline landscape character is described in the Cheshire Landscape Character Assessment as Landscape Character Type LCT7: Lower Wooded farmland. This area is typified by strong field patterns with well-maintained boundaries, and by fields of varying sizes. However this description dates from 2018, and much has occurred in the immediate vicinity of the site since that time. Although the site retains some elements of the wider area, it makes virtually no contribution to that landscape.
30. The Council's position is that, as the site would change from being undeveloped to being developed, this would be harmful as it would result in an urbanisation of the countryside. However the authority has taken the argument virtually no further and has not assessed the nature or extent of this harm.

31. In contrast the appellant has prepared a comprehensive Landscape and Visual Appraisal, which has not been challenged in any detail, which concludes that there would not be significant effects on the character of the wider landscape. In my view, although the site retains some elements of the wider area, it makes almost no contribution to that landscape because of its location and surroundings. It has essentially become a remnant open area, of no particular benefit, in an otherwise largely urban landscape. For that reason I agree with the appellant's assessment that the landscape effect on the site itself would be moderate to slight-moderate, occasioned by the physical change to the site.
32. Visually, given the established boundary vegetation, the site is well contained. There are virtually no views of the site from the wider undeveloped countryside. The extent of the area from which adverse visual effects would be experienced is limited to individual houses which back, or will back, onto the site. The change to those limited views would not be surprising given the context in which the houses are set – that is to say it would not be unusual for people living in a housing development to have views of another housing development. I conclude that the visual effects can be assessed as slight-moderate, potentially reducing to negligible depending on subsequent landscaping.
33. I can deal briefly with three other matters raised, with varying degrees of emphasis, by the parties.
- I note that, as referenced by the appellant, there was no stand-alone reason for refusal related to landscape matters. However this is not of any particular significance as the single reason for refusal does clearly reference an allegation of adverse effect on the appearance and character of the area.
 - There was a suggestion from the Council that the site was identified as land to be preserved for its particular qualities, including its open character. However there was no evidence as to where any such identification is to be found, and I do not give this suggestion any weight.
 - Finally the Council contended that the proposal would be contrary to the established 'ribbon' grain of the settlement. This suggestion did not form part of the reason for refusal and was not evidenced in any detail. In any event I am not convinced that, given the surrounding developments, there is any such overall characteristic in the vicinity of the site.
34. Overall, the change in land use would be in conflict with the development plan policies referenced above. However the extent of the harm to the character and appearance of the area is significantly reduced by the existing enclosure of the site and its relationship to the surrounding built development.

The loss of Grade 2 agricultural land

35. The appeal site is agreed to be classified as Grade 2 BMV agricultural land for policy purposes. The proposal would clearly result in the loss of BMV land and would therefore be contrary to CELPS policies SD1, SD2 and SE2. There is no dispute between the parties related to this conflict and the appellant has not suggested that there is any strategic need to outweigh the policy approach.

36. The issue in this respect relates to the specifics of the appeal site and its potential usefulness as BMV land.
37. The appeal site is only around 2.1 hectares in extent and is not a particularly significant area. However in itself this would not be a particularly strong argument for the loss of BMV land, as it could be repeated too often to the detriment of the overall supply of this resource.
38. However in this case, allied to the limited size of the land, is the fact that it is severed from any surrounding non-residential use and is physically detached from any wider agricultural holding. I understand that the land was previously accessed from Pool Lane but this access was cut off when the current housing development was constructed. I appreciate that the proposed housing scheme is intended to be accessed through the Bellway development, but there is nothing before me to show if future agricultural access could be provided through the housing development. Although it is not inconceivable that agricultural access could be gained through a modern housing estate, it would be unusual.
39. With this background, and given the use of the surrounding area, there does not appear to be any opportunity to amalgamate the land with any other holding in the area. The Council did not suggest any specific potential in this respect. The evidence of the authority stressed the potential of the land in isolation, accessed through the housing development, for livestock grazing. However the appellant stated that there was no water supply on the land – a point not contested by the authority – and this would clearly reduce its attractiveness. The economics of farming this land on its own are tenuous at best and the need to provide a water supply would reduce any demand still further.
40. I do not consider that the appellant's argument that, surrounded by housing development, grazing land would be inherently unattractive or out of place. However overall the evidence does not demonstrate any real likelihood of a resumption of agricultural use.
41. There was a discussion at the Inquiry, supplemented by evidence after it closed, regarding the proportion of land in Cheshire East which is BMV. The material also addressed the role of BMV land in relation to emerging site allocations. However this is not a matter on which this issue turns, as the focus in this case is on the specifics of this particular site.
42. Overall, whilst the use of this land for housing would result in the loss of an area of BMV land contrary to policy, the balance of the evidence is that the proposal would not materially impact on agricultural production. I accordingly give the harm modest weight.

Other matters

43. Local residents have raised concern about traffic generation and in particular the consequences of the proposal for the junction of Pool Lane and Crewe Road. However I have no technical highways evidence before me to support either the suggestion that the surrounding roads have a capacity problem or that the junction in question would be dangerous as a result of the proposal.
44. In terms of the accessibility of the site, I am conscious that Winterley has limited facilities, but also that there is a bus service along Crewe Road which

gives access to other larger settlements. There is nothing before me to demonstrate that the proposal is in an unsustainable or inaccessible location by modes of transport other than the private car.

45. The Council has drawn my attention to an appeal decision at The Heath Vicarage in Sandbach (APP/R0660/W/3258998). This site is similar to the current appeal site in that it is outside the boundary (of a larger settlement). However each appeal must be considered on its own merits, and I note from that appeal decision that my colleague referred to the contribution which that site made to the rural character of the area, and to the fact that it could be viewed from an adjacent footpath. This distinguishes that appeal from the situation before me.

Conditions and planning obligation

46. A range of conditions was discussed and agreed, without prejudice, between the main parties. I have made minor modifications in the interests of clarity and to comply with guidance.
47. As the proposal is in outline, a range of conditions relating to the submission of approval of details are necessary (Conditions 1-4). In the interests of clarity and to ensure the development is in line with the proposal as submitted, conditions are needed to identify the approved plans, limit the size of the development to that sought, and ensure broad compliance with the submitted site plan (5-7). Details of facing and roofing materials and levels need to be submitted in the interests of the appearance of the development and the surrounding area (8, 9).
48. The landscaping details need to be undertaken within defined periods and to specified standards, and a tree protection scheme approved (19, 20).
49. So as to address flood risk, drainage details need to be submitted for approval (11).
50. In the interests of sustainability a condition is necessary to provide electric vehicle infrastructure (12).
51. To protect the residential amenity of surrounding residents, a Construction Environmental Plan needs to be submitted to the Council for approval, covering a range of potential sources of pollution (13). For the same reason, and in the interests of future occupiers of the development, conditions are needed to investigate and potentially remediate any pollution on the site (14-17).
52. A range of matters need to be conditioned in the interests of biodiversity and species protection (21-25).
53. The proposal is accompanied by a signed and dated s106 Planning Obligation (17 November 2020) which includes a number of provisions. Most importantly the obligation provides for 36% affordable housing, with a split between social rent/affordable and intermediate tenure. The provision exceeds the requirements of CELPS policy SC5.
54. A number of contributions are included in relation to education, healthcare and open space. These all stem from the additional pressure which the development would place on facilities in the area, and are based on transparent

methods of calculating the amounts. The provisions are in line with CELPS policies IN1, IN2, SC3 and CNLP policy RT.3.

55. All the provisions and contributions in the s106 are directly related to the proposed development and are necessary to make the development acceptable in planning terms. Therefore I consider that the Obligation meets the policy in paragraph 56 of the National Planning Policy Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and I have taken it into account.

Planning balance and conclusion

56. I have considered whether the so called 'tilted balance' at paragraph 11d of the National Planning Policy Framework is engaged in this case in relation to housing land delivery and/or regarding settlement boundaries.
57. On the first matter the parties agree that, on an agreed base date of April 2019, there is in excess of a five year deliverable supply of housing. In addition it is agreed that, in terms of the Housing Delivery Test (January 2021), the number of homes delivered in Cheshire East over the past three years has exceeded the number of homes required by the standard method. Although this does not act as a cap on housing delivery, there is agreement that the tilted balance is not engaged on this basis. This conclusion is in line with a recent appeal decision at Audlem Road/Broad Lane, Stapeley, Nantwich.²
58. Secondly the appellant has argued that the tilted balance is engaged as the settlement boundaries are out of date. The settlement boundaries and related policies were clearly found sound at the time of the Inspector's report and the adoption of the CELPS. Although I appreciate that the definition of the boundaries may have pre-dated that plan, this was the opportunity to refresh them. Simply the passage of time is not enough to render the boundaries out of date – a point accepted by the appellant.
59. In the immediate vicinity of the appeal site, it is clear that recent developments are not reflected in the settlement boundaries – I have no knowledge of whether this applies elsewhere in the area. However any such refreshing or updating will properly occur as part of the emerging plan, and whilst I appreciate that there has been a delay in progressing that review, that is the proper forum for the debate. I appreciate that the appellant is not suggesting that I carry out a review of boundaries generally, but the development which has happened on the ground in this part of Winterley falls far short of leading to the conclusion that the settlement boundaries are out of date.
60. In coming to that view I am aware that other decisions to which I have been referred broadly agree that the boundaries are not fully up to date. But this has not generally led to a finding that the boundaries and related policies are out of date, thus triggering the tilted balance.
61. Turning to the planning balance, the main factor weighing against the proposal is the conflict with the adopted spatial strategy, to which I give considerable weight. The harms to the character and appearance of the area and that caused by the loss of BMV land are substantially reduced by the factors discussed above.

² APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

62. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing, above the policy requirement, is also given very significant weight. There are also economic benefits in terms of direct and indirect employment during its construction, followed by expenditure in the local economy, which are given moderate weight. I give the potential provision of open space very little weight at this stage, as the quantum and layout are not before me.
63. Overall, the material considerations taken together outweigh the conflict with the policies of the development plan and justify the grant of permission.
64. For the reasons given above I conclude that the appeal should be allowed.

P. J. G. Ware

Inspector

APPEARANCES

FOR THE APPELLANT:	
Ian Ponter of Counsel	Instructed by Emery Planning
John Coxon BSc (Hons) MPlan MRTPI	Director, Emery Planning
Emma Podmore	Associate Director, DEP Landscape Architecture
Rory McVean CMLI	Director, DEP Landscape Architecture
Alastair Field BA(Hons) PGDip MSc	Director, Reading Agricultural Consultants

FOR THE LOCAL PLANNING AUTHORITY:	
Matthew Henderson of Counsel	Instructed by the Solicitor to Cheshire East Council
Gareth Taylerson Msc MRTPI	Principal Planning Officer
Chris Harvey BSc(Hons) FBIAC	Harvey Hughes Rural Consultants
Nicky Folan	Council's solicitor

INTERESTED PERSONS:	
Councillor Stephen Edgar	Haslington Ward

DOCUMENTS

Document 1	Council's closing comments
Document 2	Appellant's closing comments
Document 3	Report - Role of Best and Most Versatile Land in Cheshire East (2016)
Document 4	Draft site allocations in SADPD involving BMV
Document 5	Completed planning obligation dated 17 November 2020
Document 6	Letter from the Council (28 January 2021) regarding Housing Delivery Test and The Heath Vicarage appeal decision
Document 7	Appeal decision (13 January 2021) (APP/R0660/W/20/3258998) related to The Heath Vicarage, School Lane, Sandbach
Document 8	Letter from the appellant (3 February 2021) regarding Housing Delivery Test and The Heath Vicarage appeal decision

Land off Crewe Road, Winterley

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 takes place, and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall not exceed 55 houses.
- 5) The development hereby permitted shall only be carried out in accordance with the following approved plans:
 - Location Plan (ref: 17061(SU) 099)
 - Site plan (ref: 17061 (SU) 099)
 - Proposed site access arrangements (ref: 1922-F01)
- 6) The details of the reserved matters shall be in broad compliance with the Site Plan 17061 (P1) 100D.
- 7) No development involving the use of any facing and roofing materials 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.
- 8) Details of the existing ground levels, proposed ground levels and the level of proposed floor slabs shall be submitted to and approved by the local planning authority before any development on the site commences. The approved details shall be implemented in full.
- 9) The development permitted by this planning permission shall be carried out in accordance with the approved FRA (3105-FRA- Rev A, prepared by Integra Consulting) dated June 2019.
- 10) No development shall take place until an overall detailed strategy / design limiting the surface water runoff generated by the proposed development and associated management / maintenance plan for the site has been submitted to and approved in writing by the local planning authority. The drainage design must also include information about the design storm period and intensity (1 in 30 and 1 in 100 (+30% allowance for Climate Change)) and any temporary storage facilities.
- 11) Prior to the first occupation of the properties, the developer shall provide Electric Vehicle Infrastructure to the following specification:

- A single Mode 3 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW Fast charging or the best available given the electrical infrastructure.
- Should the infrastructure not be available, written confirmation of such from the electrical supplier shall be submitted to the local planning authority prior to discharge. Where there is insufficient infrastructure, Mode 2 compliant charging may be acceptable.

The infrastructure shall be maintained in an operational condition in perpetuity.

- 12) Prior to the development commencing, a Construction Environmental Management Plan shall be submitted to and agreed by the planning authority. The Plan shall address the environmental impact in respect of air quality and noise on existing residents during the demolition and construction phase. In particular the plan shall show mitigation measures in respect of:

- Noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes.
- BS5228:2009 Code of Practice for Noise and Vibration Control on Construction and Open Sites – Part 1: Noise and Part 2: Vibration.
- Waste Management.
- Dust generation caused by construction activities and proposed mitigation methodology.

There shall be no burning of materials on site during demolition / construction.

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

- 13) No development (other than agreed demolition and site clearance works) shall commence until:

- A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the local planning authority and:
- If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the local planning authority.

The remediation scheme shall be carried out in accordance with the approved Remediation Strategy.

- 14) A Verification Report prepared in accordance with the approved Remediation Strategy shall be submitted to, and approved in writing by, the local planning authority, prior to the occupation of the development.
- 15) Any soil or soil forming materials to be brought to the site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation onto the site. Prior to occupation, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the local planning authority.
- 16) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the local planning authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme agreed in writing by the local planning authority.
- 17) Prior to commencement, a scheme for the landscaping of the site shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme. The scheme shall also include details of replacement hedgerow planting.
- 18) The approved landscaping plan shall be completed in accordance with the following:
 - All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the local planning authority.
 - All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - All new tree planting shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.
 - Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

- 19) Any reserved matters application shall be supported by an Arboricultural Impact Assessment that ensures the design shall take into account both above and below ground constraints), a Tree Protection Scheme and Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations.
- 20) Any reserved matters application shall be supported by an updated badger survey and shall include mitigation proposals. The development shall only be undertaken in accordance with the approved mitigation scheme.
- 21) Trees identified as having high bat roost potential, by the submitted extended phase one plan prepared by REC should be retained unless otherwise agreed in writing by the local planning authority.
- 22) Any future reserved matters application shall be supported by details of the proposed lighting scheme. The lighting scheme should reflect the Bat Conservation Trust Guidance Note 08/18 (Bats and Artificial Lighting in the UK) and should consider both illuminance (lux) and luminance (candelas/m²). It should include dark areas and avoid light spill on bat roost features, bat commuting and foraging habitat (boundary hedgerows, trees, watercourses etc.) aiming for a maximum of 1lux light spill on those features.

The scheme should also include a modelled lux plan, and details of:

- Proposed lighting regime.
 - Number and location of proposed luminaires.
 - Luminaire light distribution type.
 - Lamp type, lamp wattage and spectral distribution.
 - Mounting height, orientation direction and beam angle.
 - Type of control gear.
-
- 23) Any reserved matters application shall be supported by a strategy for the incorporation of features to enhance the biodiversity value of the proposed development, including replacement planting for any unavoidable loss of hedgerows, in accordance with the recommendations set out within the Preliminary Ecological Appraisal dated July 2019 (ref: 1CO103901EC5R1).
 - 24) Prior to the commencement of development an updated barn owl survey is to be undertaken by a suitably experienced person and a report submitted to the local planning authority. If any evidence of barn owl activity is recorded the submitted report shall include mitigation and compensation proposals to address any adverse impacts resulting from the development.

.....End of conditions.....

EP3

Appeal Decision

Inquiry held on 8-11 and 15-18 October 2024

Site visit made on 16 October 2024

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2024

Appeal Ref: APP/M1005/W/24/3343782

Land west of Chesterfield Road, Alferton DE55 7AH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of Amber Valley Borough Council.
 - The application Ref: AVA/2023/0764, dated 3 October 2023, was refused by notice dated 28 March 2024.
 - The development proposed is Outline planning for the erection of up to 177 dwellings including affordable housing, with public open space, landscaping, sustainable drainage system (SuDs) and vehicular access. All matters reserved except for access.
-

Decision

1. The appeal is allowed and outline planning permission is granted for up to 177 dwellings including affordable housing, with public open space, landscaping, sustainable drainage system, (Suds), and vehicular access (all matters reserved for access) at Land north of Land west of Chesterfield Road, Alferton DE55 7AH in accordance with the application Ref: AVA/2023/0764, dated 3 October 2023, and the plans submitted with it, subject to conditions set out in the schedule in attached Annex A.

Preliminary Matters

2. The figure of up to 177 dwellings, as shown in the development description in the banner heading above, was confirmed by the appellant at the Inquiry. This figure is a reduction from the up to 185 dwellings that was applied for. This reduced figure does not fundamentally alter the proposed development, and so I take the appeal proposal to be for this lower number of dwellings.
3. The planning application was submitted in outline with all matters of detail reserved for future consideration, save for the access. I have assessed the proposal on this basis and treated the illustrative drawings as simply helping to inform how the proposal could ultimately be configured.
4. As well as an accompanied site visit on 16 October, I made unaccompanied visits to the area on 3 September and 31 October 2024. My observations on these visits help inform my decision.
5. The appellant has submitted an executed Section 106 Agreement (S106). The main parties agree that the S106 makes satisfactory provision for affordable housing, local infrastructure and services, which I accept. I shall deal with the S106 further, in more detail later in this decision.

6. The Council is preparing an emerging Local Plan in the form of the Amber Valley Local Plan 2022-2040 (the ELP). While the ELP has advanced to submission for examination in Summer 2024, it has yet to be subject to examination hearings, Inspector interim findings, consultation on any main modifications, Inspector's report or adoption. As such, the ELP is a considerable way from being finalised and I attach limited weight to this emerging plan. For the purposes of this decision, I take the saved policies and proposals of the Amber Valley Borough Local Plan Adopted 2006 (LP) to constitute the local development plan.

Main Issues

7. The main issues in this case are:

- Whether the proposal would preserve:
 - (a) The setting of: the Grade II* listed Church of St. Martin and the Alfreton Conservation Area in which it is situated; and the Grade II listed Alfreton Hall; and
 - (b) The heritage significance of the Alfreton Park non-designated heritage asset, in which the aforementioned listed buildings, part of the Conservation Area and the appeal site are located;
- The effect of the proposed development on the character and appearance of the area, with particular reference to landscape and visual effects, and local tree cover;
- Whether the proposed development would adequately provide for biodiversity, with particular regard to the effect on habitats including adjacent Local Wildlife Sites, watercourses, grassland, tree cover, green corridors and habitat margins;
- The effect of the proposal on highway safety, with particular regard to the proposed access; and
- Whether the proposed development's location is suitable, with particular reference to the Borough's sustainability criteria.

Reasons

The site and its context

8. The appeal site is not an allocated housing site in the adopted local development plan. It mainly comprises two agricultural fields, one pasture and one arable, with its wooded southern tip just overlapping into the Alfreton Conservation Area (CA).
9. The site is located in countryside, a short walk to the north-west of the town centre of Alfreton, which is one of the four market towns in Amber Valley. Alfreton's locational credentials are reflected in the description in the draft ELP Settlement Hierarchy Policy SS3 of its good accessibility to strategic transport networks and public transport and it being one of the places in the Borough where the greatest potential exists to maximise accessibility to job

opportunities, shops, services and other facilities, and to create new neighbourhoods with supporting infrastructure.

10. Countryside lies to the south-west, west and north of the appeal site. This countryside includes public rights of way footpaths FP18 and FP19, which converge in a node near a stile at the end of the path along the western side of St. Martin's churchyard. To the east of the appeal site is the A61 Chesterfield Road, and beyond that is existing residential development. To the south of the appeal site lies the churchyard of the Grade II* listed Church of St. Martin, which is within the CA, and some residential development. Further to the south-west is the Grade II listed Alfreton Hall, which is outside the CA. The appeal site and these designated heritage assets, in the form of the listed buildings and part of the CA, are included within the Alfreton Park non-designated heritage asset (NDHA), which covers the parkland area of the former estate of Alfreton Hall.

Solar park comparison

11. In this appeal, there has been a range of comments from various parties about the potential applicability of findings in another appeal decision¹ in 2022. The 2022 decision dismissed an appeal for a proposed photovoltaic solar park and associated infrastructure, on an area of countryside to the west of the housing development that is proposed in the current case. These two appeal cases differ in several ways. The current appeal site is located beyond the solar proposal site. The current appeal proposal is for a housing development and not a solar park. Compared to the site of the dismissed solar scheme, the current appeal proposal would take up much less area of countryside, and would not incorporate a substantial extent of existing local public rights of way network. Also, the current appeal's housing proposal would extend much less further across the rural valley landscape than the solar park would have.
12. These differences limit the equivalence of the dismissed solar park scheme to the current housing appeal proposal. That said, where relevant to the current appeal case, I refer below to a number of points of comparison with the solar park appeal decision.

Heritage assets

13. As the appeal proposal relates to the setting of listed buildings and a Conservation Area, this analysis has had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Church of St. Martin

14. The listed Church of St. Martin is situated off the northern limb of Church Street, towards the north-western end of the Alfreton CA, and within the Alfreton Park NDHA.
15. Judging by its long-standing linkage to Alfreton's old market square crossroads², and the contemporary volume of traffic to and from various buildings including the leisure and health centres, Church Street is and has likely been a well-used route for a long time. Also, the church is only a few

¹ Appeal Ref: APP/M1005/W/22/3299953, Land north west of Hall Farm.

² As shown in various historic maps contained in Appendix 1-Figures of the Council's heritage consultant's Proof of Evidence.

minutes walk from the heart of Alfreton town centre. Given this combination of factors, I consider that the listed church is and has long been in an edge of settlement location, which is not isolated.

16. The church has ashlar stone walls and a mix of leaded, slate and tile roofing. It was reportedly built, and evolved during the medieval period, under the patronage of the lordship of Alfreton manor. Also, the church was restored, altered and extended and in the Victorian period to the design of architect T.C. Hine. Commemoration of parishioners includes inscriptions and tablets to previous lords of the manor and the Morewood family in the church, and a fine eighteenth century stone wall memorial to the Turner family.
17. The listed church also includes a fifteenth century west tower with stepped diagonal buttresses, embattled parapets to each side with crocketed corner pinnacles, and a large three-light Perpendicular window. This tower emphasises the church's promontory position within the Alfreton Park NDHA, towards the top of the rural valley side landscape that rolls out to the north-west of Alfreton. This helps articulate the church's historically prominent role as a spiritual, community facility in the area.
18. The church's architectural elements also include a porch with ogee headed niche with statue, hoodmoulds with carved head stops, and nineteenth century north aisle and south chancel bay. Its windows display tracery of variously Perpendicular, cusped, geometric and flowing styles. A scene from D.H. Lawrence's novel *Sons and Lovers* alludes to the church's architectural allure and sense of place, citing, among other things its windows, and evocation of 'the strange fascination of shadowy religious places'. Also, the Church of St. Martin has group value with the listed chest tomb and sundial in its churchyard, and Alfreton Hall and its associated former stableblock, dovecote and lodge listed buildings.
19. Consequently, the listed Church of St Martin embodies evidential, historical, and communal values. The above contributes to both the special architectural and historic interest of this listed building, and the significance of the Alfreton CA in which it is located.
20. Having regard to the above, the special interest of the Church of St. Martin listed building, insofar as is relevant to this appeal proposal, is primarily associated with the legibility of a) its evolved medieval to nineteenth century church architecture, and b) its prominent historic position and role in local community life, as a place of worship.
21. Within its setting, the listed church building is revealed as follows. Travelling from Alfreton town centre, it draws the eye looking from Church Street down its northern limb, and from the churchyard and the footpath to the west. There is a noticeable stillness within the churchyard, which derives in part from its commemorative architectural function and character, with its gravestones and other memorials that include the Palmer-Morewood family mausoleum.
22. The low height of the churchyard's northern perimeter wall, and the historic mapping indicate that views from the churchyard to the countryside to the north were likely more open in the past than the present. That said, the churchyard's sense of stillness also comes from its visual containment by the combination of the church building, boundary walling, and established perimeter trees which illustrate a later phase of ornamented parkland tree

planting. The presence and growth of these perimeter tree groups has further been encouraged over the last half century by the protection of tree preservation order (TPO)³. The resultant tranquillity of the churchyard, within which the listed church building is more closely viewed, provides some contrast with the 'hustle and bustle' of the nearby town centre.

23. Looking from the northern part of the former estate's parkland area, in which the appeal site is located, St. Martin's Church and churchyard are largely screened by the substantial mass of established perimeter and churchyard trees, which includes some evergreen foliage.
24. Whether or not the alignment of the route of public right of way FP19 evolved from a 'desire line' up and down the valley side, or was specifically designed with a terminating vista of the church tower in mind is open to question. In any case, the top of the church tower can be seen in its promontory position, from various viewpoints, including coming up the valley side along the south-eastern stretch of FP19, between the southern end of Pond Wood and the junction with FP18. The sound of the church clock's quarter-hour bell further announces the listed church's presence within its setting.
25. Regarding whether or not there is a historically important designed view towards the Church of St. Martin from the Chesterfield Road across Alfreton Brook and the appeal site, I find as follows. A central line of trees stretching approximately north to south up the field to the north of the appeal site comes and goes in various mapping between the 1830s and 1930s. On the Ordnance Survey map of 1880⁴, which appears particularly comprehensive in its illustration of tree cover, or subsequent maps, such a central tree line is not depicted on the field north of the appeal site. Also, on the 1880 map a couple of lines of trees run obliquely across the aforementioned theoretical central line.
26. Moreover, on both the 1880 map and the post-opencast-restoration Sale Particulars map of 1965⁵, trees are clearly depicted on the north bank of the brook in the vicinity the north-eastern corner of the northern field. Also, given the dynamic nature of such a brookside location, with waterside trees typically susceptible to cycles of growth and decline, and watercourse bank stability unpredictable, this location does not stand out as an obvious place to easily consistently control tree cover, for vista design purposes. Furthermore, as I saw on my visits, even with the current gap in tree cover at this location, there is a strong safety and linear directional draw for road users travelling southwards downhill towards the valley-bottom dip on the Chesterfield Road, to keep their eyes on the road, and not focus on more oblique views beyond to the appeal site and the ridgeline to the south of it.
27. Together these evidential indicators militate against the likelihood of an enduring tree line having been designed and deployed to direct views from Chesterfield Road, north across Alfreton Brook and the appeal site towards the church tower. Thus, I am not satisfied that there is an important historic designed view on this alignment.

³ Derbyshire County Council Tree Protection Order No.64.

⁴ Appendix 1-Figure 22 of the Council's heritage consultant's Proof of Evidence.

⁵ Appendix 1-Figure 33 of the Council's heritage consultant's Proof of Evidence.

28. That said, given the identified promontory position of the church, the openness, and relative lack of development in the northern part of the former estate's parkland area contributes to the rural character of this part of the listed church's setting. This contributes to opportunities to appreciate the presence of the church, through the visual conduit of its tower top, in its promontory position towards the top of the valleyside landscape. Thus, the south-eastern and northern approaches to the listed Church of St. Martin contribute positively as part of its setting, to appreciation of the significance of this designated heritage asset.
29. The appeal proposal would insert new residential development into an area of countryside to the north of the churchyard. Judging by its illustrative layout⁶ this would, among other things, have the following impacts. It would reduce the openness and verdancy of much of two fields, towards the upper end of the approximately north-facing valley slope, atop which the listed church sits. Also, some of the undulating topography of the appeal site would likely change to more terraced landform. Thus, the buildings and outdoor spaces of the development would have an urbanising impact on the immediate surroundings of St. Martin's churchyard, and reduce the countryside character of the northern part of the setting of the listed church.
30. Together, the above would result in the proposed development distracting from some views of the top of the listed church's tower that appear above and, in winter through, tree cover in the vicinity. This would be most noticeable at various points travelling up the southern-eastern part of public right of way FP19, approaching the church yard from the north-west. While not of such magnitude as to overwhelm important views of the church, this would distract from appreciation of part of the church's historic architecture in its distinctive promontory position. In turn, this would distract from the architectural articulation of the listed church's historic prominence in local community life.
31. That said, the proposed development's impact on the setting of the listed church would be moderated by the following factors. The church would remain in a promontory position at the top of the valleyside, and this would be noticeable in various dynamic views, moving around its setting. Also, the church would remain very close to countryside to the north-west, including the junction of public rights of way FP18 and FP19. Moreover, the large majority of the existing countryside that is a short walk to the north and north-west of Alfreton town centre would continue to be rural in character. This would be readily noticeable travelling towards and away from the listed church, on FP18 and FP19.
32. Furthermore, judging by the illustrative layout, I anticipate that there would be an approximately 100m wide distance between the Church of St. Martin building and dwellings on the proposed development. Also, given the TPO protection, I expect that much of the substantial mass of established tree cover in the vicinity of the churchyard, including that within the aforementioned buffer zone, would continue to endure.
33. Given this combination of factors, the northern edge of the churchyard would continue to be enclosed by existing substantial tree cover, and the church would continue to perceptibly have an edge of settlement presence.

⁶ Drawing 10588-FPCR-XX-XX-DR-L-0004 issue P10 Development Framework.

34. Also, there would, at most, be limited intervisibility between the church/churchyard and the proposed development. The substantial mass of tree cover along the edges of the churchyard, and in the woodland stretching south-east from the intersection of FP18 and FP19, would continue to draw the eye. Together, this tree cover would form part of the foreground and backdrop to the upper part of the proposed residential development. Combined with scope for new structural planting within the development, this would go some way to visually soften the appearance of the development, both in the daytime and at night, and increasingly so over time as trees and other vegetation grow.
35. Together these factors would help moderate the cumulative urbanising impact of the proposed development on the character of the immediate surroundings of St. Martin's churchyard.
36. Regarding noise from the proposed development, this would be experienced in the context of the churchyard's immediate environs to the south already being close to a) Alfreton town centre, b) business and residential property and associated noise on Church Street and c) regular traffic movements on Church Street to and from nearby busy leisure and health centres. Also, as I observed on my visits, in countryside in and to the north and west of the churchyard's environs, background traffic noise from the direction of the A61 and/or A38 roads is noticeable at various times of the day. Thus, part of the appeal site's existing context is that appreciation of the church's significance, and the distinctive stillness of its churchyard is noticeable even with the combined background noise from nearby town centre, business, residential and vehicular activity.
37. Also, while it would generate some noise from, for example, vehicle movements and residents' use of garden and other outdoor spaces, I see no reason to expect that the proposed residential development would be especially noisy. And the anticipated buffer zone separation gap between the nearest new housing and the Church of St. Martin would help moderate transmission of additional noise from one to the other.
38. Therefore, while the proposed residential development would increase noise in the vicinity of the churchyard, I anticipate that it would integrate with the locality's established noise conditions, sufficiently for the stillness and tranquillity of the church and churchyard to remain clearly perceptible. Thus, the proposed development would not materially distract acoustically from appreciation of a) the listed church's historic architecture, and b) its prominent historic position and role in local community life, as a place of worship.
39. Taking the above together, I find as follows. Much of the setting and special interest of the listed Church of St. Martin would endure. However, that said the proposed development would distract from some views of the upper part of listed church's tower, from various viewpoints within the countryside area to the north and west. This would distract, to a limited degree from appreciation of a) the listed church's distinctive presence in its promontory position, and b) articulation of the listed church's historic prominence in local community life, as a place of worship.

Alfreton Conservation Area

40. The Alfreton Conservation Area (CA) covers an area of Alfreton that stretches north-west from the Old Market Square and town centre crossroads to the

churchyard of the listed Church of St. Martin. Church Street runs as a spine through the CA. While listed buildings associated with Alfreton Hall, and the site of the former home farm for the earlier pre-listing incarnation of Alfreton Hall are included within the CA, the listed hall itself is not. Other listed buildings, that are in the south-eastern part of the CA, which is outside the Alfreton Park NDHA, include a variety of barn, hotel and church buildings, a war memorial and milestone. Given the above, I consider that the heritage significance of the Alfreton CA, insofar as it relates to this appeal, is primarily associated with its range of historic architecture and townscape, reflecting its evolution from the medieval period to the early twentieth century.

41. The CA's setting provides opportunities to appreciate some of its historic architecture and townscape. This includes various views in the vicinity of the Old Market Square and crossroads, approaching on the A61 Chesterfield Road and High Street. Also, within the countryside to the north, the CA's setting includes approaches from various parts of the identified public rights of way in the locality. These provide opportunities to appreciate the presence of the listed Church of St. Martin. Thus, these various approaches to the CA contribute positively as part of its setting, to appreciation of its heritage significance.
42. In terms of impact, judging by the illustrative layout, the very small proportion of the CA at its north-western tip which sits within the appeal site, would remain part of the tree belt that adjoins the churchyard's northern edge. As the fabric and function of this small part of the CA would not materially change, the appeal proposal would not adversely impact its character or appearance. Thus, under the first main issue, the focus in relation to the CA is the effect on its setting, which I turn to now.
43. Given the separation of much of the CA's area from the appeal site, opportunity for appreciation of the CA's historic architecture and townscape in various views in the vicinity of the Old Market Square and crossroads, approaching on the A61 Chesterfield Road and High Street, would endure. However, as identified earlier, the appeal development would distract, to a limited degree from appreciation of the distinctive promontory presence and historic prominence in local community life, as a place of worship, of the Grade II* listed Church of St. Martin, which is located in the north-western end of the CA.
44. Thus, while much of the setting and significance of the Alfreton CA would endure, the identified distraction from the special interest of the listed Church of St. Martin, as a result of the proposed development, would distract, to a very limited degree, from the CA's range of historic architecture and townscape.

Alfreton Hall

45. The two-storey Alfreton Hall listed building is situated towards the end of the southern limb of the 'wishbone' split of Church Street. Dating from the Victorian period, the listed Hall building is an extension that was attached to a much larger Georgian country house which was demolished, reportedly due to subsidence, in the 1960s after purchase by Alfreton Urban District Council.
46. The main body of the listed, remaining Alfreton Hall building has ashlar stone walls. A red brick rear wing extends towards southern limb of Church Street. It has hipped slate roofing. Its historic architectural detailing includes rusticated

full height pilasters, balustrade with square piers and vase shaped balusters, a loggia with triglyphed frieze and semicircular arches supported by Tuscan columns to its ornate main elevation, which faces south. These elements contribute to the architectural charisma of this listed building, in particular its ornate southern elevation.

47. The southern elevation of the Alfreton Hall listed building also includes a datestone from 1898, inscribed with Palmer-Morewood family initials. And the building includes high-status reception rooms and bedrooms, and domestic ancillary accommodation in the service ranges. These elements help illustrate the historic functionality of the Alfreton Hall listed building, and its association with Palmer-Morewood family.
48. This family association with the period from the late Victorian construction of the remaining, listed Alfreton Hall building helps link back to earlier Morewood family lineage, and occupation of a manor then hall at Alfreton from the seventeenth century. Together with the Alfreton Hall listed building's original extension 'raison d'être', this helps point back to the occupation of the existing and earlier hall buildings and related estate land by Derbyshire gentry from the seventeenth to the twentieth centuries. Also, Alfreton Hall has group value with the associated church, and former stableblock, dovecote and lodge listed buildings in its vicinity.
49. Consequently, Alfreton Hall listed building embodies evidential, historical, aesthetic and communal values. The above contributes to the architectural and historic interest of this listed building. Having regard to the above, the special interest of the Alfreton Hall listed building, insofar as is relevant to this appeal proposal, is primarily associated with the legibility of a) its Victorian country house architecture, and b) its family, architectural and functional associations with former occupation of a historic hall and its estate parkland in this locality by Derbyshire gentry, over the centuries.
50. Within the listed hall's setting, a substantial cluster of modern municipal-style development has evolved in recent decades along the southern limb of Church Steet, on the approach from Alfreton town centre. This cluster includes a group of large, colourful flat-roofed modern health and leisure centre buildings that catch the eye, located within the immediate environs to the west of the listed Hall building. Travelling on past the listed Victorian hall, towards the countryside to the north in which the appeal site is located, the Polygon Centre further manifests evolved modern development character in the vicinity of the listed hall.
51. Within this context, after a period around the late twentieth century as an education centre in a public parkland setting, which for a time included a lido, Alfreton Hall listed building has more recently been used as a wedding and conference venue, and hotel. The combination of existing modern facilities in the vicinity of the listed hall building has also resulted in a substantial amount of associated surface car parking.
52. As I saw on my visits, the aforementioned combination of modern built elements, together with a substantial mass of established tree and shrub growth within the hall's evolved environs, result in the listed Alfreton Hall reading 'on the ground' as follows. In sequences of views moving between Alfreton town centre and the environs of the hall, it appears as a visually contained 'island' of Victorian country house architecture. Judging by archive

photographs, drawings and plans, this is much reduced from the long since gone landmark that was the hall's larger, earlier incarnation.

53. Within its evolved environs, the existing 'island' of Victorian country house architecture is noticeable at close quarters, particularly in its ornate southern facade, while its connection with its wider former estate's parkland is less easily perceptible. Unlike the nearby listed church, the Alfreton Hall listed building is not included within Alfreton CA.
54. The more distant section of the journey towards the listed hall, through and from countryside that adjoins the northern edge of Alfreton, includes the following. Relatively open countryside, with locally distinctive historic parkland elements such as plantation woodlands and gaps between them, prevails. Also, there are remains of the ha-ha and estate railing, albeit these are not easily noticeable from much of the public routes in the locality. Together these elements contribute to the sense of historic estate parkland landscape, that is likely to be perceptible to residents and visitors, particularly those who are knowledgeable about the history of the area, including through reading local history interpretation signage.
55. The above factors, together with the stretch of journey past the listed Church of St. Martin and its churchyard, and the combination of associated listed lodge, stableblock and dovecote help form a sequence of historic estate elements that resonates with the significance of the listed Hall.
56. For the above combination of reasons, I find that the more immediate part of the listed Alfreton Hall's setting makes a modest contribution to appreciation of this designated heritage asset's significance. Also, the wider part of its setting, including the kinetic experience of countryside to the north and north-west, and the listed church and its churchyard, combine with the associated group of listed buildings to make a further positive contribution to appreciation of the listed Hall's heritage significance.
57. At its nearest point, the site of the proposed housing development is around 120m north-east of the Alfreton Hall listed building. Given this separation, together with the visual draw of aforementioned modern built elements, and substantial mass of established tree and shrub growth in the vicinity of the Hall, the appeal proposal would not distract from appreciation of the Victorian country house architecture of the Alfreton Hall listed building.
58. However, the proposed development would urbanise the appeal site, and likely reduce the visual autonomy of Pond Wood Plantation. These changes would be visible in dynamic views moving north from Alfreton Hall, and approaching it from this direction. By so reducing the rural character of part of the area of countryside, a short walk to the north and north-west of Alfreton town centre, the appeal proposal would result in the following. Among some local residents, and visitors, who are knowledgeable about the history of the area, it would likely distract from appreciation of this listed building's associations with former occupation by Derbyshire gentry of a historic hall at Alfreton and its estate parkland.

Alfreton Park

59. Alfreton Park covers the parkland area of the former estate of Alfreton Hall. Informed by the parkland's inclusion in the Derbyshire Historic Environment

Record (HER), the solar park appeal decision considered Alfreton Park to be a non-designated heritage asset (NDHA), which I accept. Alfreton Park's HER entry indicates that its function over time has included an area of deer park from around the medieval to Georgian periods, and an area of ornamental garden in Stuart and Victorian periods.

60. As I saw on my visits, Alfreton Park comprises the following mix of character areas. An evolved parkland feel mainly characterises its southern part. Here, an area of scattered trees within a large grassed area, set within a swirling sylvan frame, stretches out mainly to the south of the Alfreton Hall listed building. Much of this area, which is more recognizably illustrative of a formal historic parkland, functions as public park, in which some modern municipal facilities are set.
61. Also, as established earlier, the part of Alfreton Park NDHA near its convergence with the stretch of Church Street leading from the town centre has a more mixed, developed character. Within these environs in the NDHA, Alfreton Hall listed building appears as an 'island' of Victorian country house architecture that is noticeable at close quarters. The listed hall's connection with the wider former estate's parkland, including the nearby ha-ha are less easily perceptible. That said, the listed hall derives part of its heritage significance from its associations with former occupation by Derbyshire gentry of hall and estate in this locality.
62. While the listed Church of St. Martin and its tranquil churchyard are largely screened from countryside to the north by the established mass of perimeter and churchyard trees, the top of this church's tower in its promontory position can be seen from various viewpoints in Alfreton Park. This remaining visibility contributes to appreciation of the church's architecture and prominent historic position as a place of worship. Also, the church and hall listed buildings have group value with various associated listed buildings, within the NDHA. And, the part of Alfreton CA that is within the NDHA illustrates a range of historic architecture and townscape from the medieval period to the early twentieth century.
63. Countryside characterises the NDHA's larger, northern part. Travelling from Alfreton town centre, the earlier identified node where the stile near St. Martin's church and the public rights of way FP18 and FP19 converge, is the emergence point into this countryside. Here and at various subsequent viewpoints along FP18 and F19, the following elements draw the eye. Views of the combined mass of Wren Wood and Pond Plantation woodlands snake gently across the valleyside within spacious grass field foregrounds. And, in various long distance views north and north-west, hills rise above tree canopy tops beyond these plantations.
64. The historic mapping shows blocks of woodland plantations, including Pond Wood and Wren Wood, to be recurring elements over a number of centuries. Pond Wood may well have been a designed 'wilderness' element in the NDHA's landscape, in the Georgian period. This woodland now exhibits a parkland plantation mix of yew and oak, with rhododendron understorey. Thus, together these plantation woodlands, and the gaps and views revealed between and above them, are among enduring distinctive characteristics of the former estate's parkland area. Also, perimeter tree planting, for example alongside the

Chesterfield Road corridor, is a characteristic of the NDHA that recurs over time, including in various historic maps.

65. Contrastingly, while a scattered pattern of trees which stretched south-west from FP19 across the valley side was a distinctive characteristic of part of the NDHA in the late nineteenth and early twentieth centuries, such a pattern was not reintroduced to this part of the NDHA after opencast mining in the 1950s. This further illustrates the evolution of the NDHA.
66. The route of FP19 is believed to date from medieval times, linking Alfreton and Shirland, via the site of a former mill that was located alongside Alfreton Brook. In the early 1900s, DH Lawrence depicted characters walking between Alfreton and Wingfield in his novel *Sons and Lovers*. This depiction further points to, among other things, the longstanding rural character, and attraction for walking of the countryside beyond Alfreton, which includes Alfreton Park NDHA.
67. Thus, the northern part of the NDHA is characterised by its combination of gently rolling valley side with views out to countryside beyond, relative openness and absence of development, plantation woodlands and gaps/views between them, tree belts, hedgerows and long-established walking routes. Remains of the ha-ha and stretches of estate railing survive as less prominent pointers to the Alfreton Park's past. The fields, plantation woodlands and longstanding routes through the northern part of Alfreton Park together help illustrate Alfreton Park's history of use for farming, hunting, walking, riding and birdwatching. This reflects both association with previous occupation of the former estate's parkland by Derbyshire gentry, and what the Council's landscape consultant described at the inquiry as subsequent 'democratisation' of this type of landscape for recreational use in more modern times.
68. As reflected above, I agree with much of the baseline characterisation of Alfreton Park NDHA that was in the solar park appeal decision. Also, informed by what I have seen on my site visits, and read and heard in the current appeal case, I make the following supplementary observations about the NDHA's baseline character.
69. The remains of the ha-ha and estate fencing, together with the likely evolved desire line nature of FP19 along the old rural route via the former brookside mill, and the hunting and timber-producing plantations articulate the following. A design identity has come together over time through a combination of elements that have evolved, to make up the distinctive and attractive rural landscape in the northern part of the NDHA. This includes various distinctive short and middle distance views, framed between plantation woodlands. These provide a sense of 'conceal and reveal' of the historic rural landscape of the northern part of the NDHA, which is particularly pleasing walking uphill and downhill on FP19, in the vicinity of the south-western tip of Pond Wood. From here, a satisfying combination of plantations and hedgelines with handsome hedgerow oaks unfolds across the gently undulating landscape.
70. Also, in this part of the NDHA, on the modest ascent past this south-western tip of Pond Wood, and on past the appeal site, a sense of anticipation can be experienced approaching the Church of St. Martin's promontory point. Also, a simpler but still satisfying sense of expectation of revealing of the landscape can be found in the dynamic sequence of views walking along the flatter stretch, along FP19 towards the gap between Highfield and Beech's Plantations.

71. Thus, some cohesive historic design is perceptible in the northern, countryside part of the Alfreton Park NDHA, particularly for those with knowledge of its history. That said, while the solar park appeal decision referred to 'designed vistas' as being one of the distinctive characteristics of the Alfreton Park NDHA, it did not specifically identify any designed vistas across the current appeal site or in its immediate vicinity. Also, for reasons established earlier, I consider that there is not a historically important designed view from the A61 Chesterfield Road, north across Alfreton Brook and the appeal site towards the church tower.
72. Nor am I satisfied that gaps in tree planting on the eastern perimeter of the appeal site, adjacent to the Chesterfield Road, indicate historically important designed views across the NDHA. This is because of the following factors. While a couple of such gaps exist on various historic maps, they provide westerly and south-westerly views into the NDHA that are approximately at right angles or oblique to the main safety and directional draw for road users travelling uphill or downhill on the Chesterfield Road. Thus, these gaps do not appear as likely locations for important viewpoints into the Alfreton Park NDHA to have been designed alongside the Chesterfield Road. Neither is substantive evidence presented of such aesthetic design intent at these locations, before the construction of the turnpike road in the eighteenth century.
73. Drawing the above strands together, I find that Alfreton Park embodies evidential, historical, aesthetic and communal values. This contributes to the heritage significance of this NDHA. Given the above, I consider that the heritage significance of the Alfreton Park NDHA, insofar as it relates to this appeal, is primarily associated with the legibility of its evolution as a historic estate park from the medieval period to the twentieth century, through a combination of a) the historic architecture and role of its listed buildings, b) its historic landscape character, and c) its association with former occupation by Derbyshire gentry. Given this combination of local and county interest, I consider the Alfreton Park NDHA to be of local to regional significance. Based on my above analysis, this differs from the regional significance finding in the solar park appeal decision.
74. The appeal site is located mostly within the north-eastern quarter of the NDHA, and mainly comprises two fields on the approximately north-facing slope of the valley side. As identified earlier in this decision, various urbanising impacts of the proposed modern residential development on the appeal site and its environs, would occur within Alfreton Park. This would, to a limited degree, distract from appreciation of the distinctive promontory presence and historic prominence of the Grade II* listed Church of St. Martin. Also, it would distract, to a very limited degree, from Alfreton CA's range of historic architecture and townscape. And it would distract from some longer distance panoramic views to the north and north-west, from the appeal site and its vicinity.
75. Also, the proposed new junction off the Chesterfield Road and widened access opening within the roadside tree belt would further draw some attention to the change of character of the appeal site and its host part of the NDHA.
76. Furthermore, by reducing a) the rural character of part of the area of countryside that is a short walk to the north and north-west of Alfreton town centre, and b) the visual autonomy of Pond Wood Plantation, the appeal development would erode the historic landscape character and cohesiveness of

Alfreton Park. In the above ways, the proposal would likely distract from association of this NDHA with former occupation by Derbyshire gentry of the historic hall and estate parkland, among residents and visitors who are knowledgeable about the history of the area.

77. That said, the following combination of factors would help moderate the impact on the heritage significance of Alfreton Park. The majority of this NDHA would not be developed by the appeal proposal. Unlike in the appeal decision finding for the much more extensive solar park proposal, the current appeal proposal would not 'erase' a large proportion of the open part of the NDHA. Also, the northern part of the NDHA's distinctive combination of rolling valleyside landform, plantation woodlands and gaps between them, tree belts and hedgelines would continue to draw the eye in a range of views within and into the NDHA. And these elements would help screen parts of the development from some viewpoints in the locality. Furthermore, given its separation by intervening built form, topography and vegetation, the appeal development would have a neutral effect on the NDHA's southern part, in heritage terms.
78. Given the established presence of the substantial mass of tree cover in the vicinity of the northern perimeter of St. Martin's churchyard, and the long-standing protection and recognition of their amenity value by TPO, I anticipate that this is likely to remain, and continue to have a substantial screening effect between the churchyard and NDHA beyond.
79. Also, as established earlier, the stillness and tranquillity of the church and churchyard would remain clearly perceptible. And, within the evolved context of a largely undeveloped area of countryside near a busy market town, in the northern part of Alfreton Park, where I observed on several site visits that background highways noise is noticeable at various times of day, I expect that the scale of residential development proposed would not acoustically distract from appreciation of the NDHA's historic character. Furthermore, the area's extensive public rights of way network of recreational routes, including FP18 and FP19 would endure.
80. As indicated by the appellant's arboricultural evidence⁷, the appeal proposal would provide opportunity for the fresh vigour of new, replacement tree planting of greater quantity than existing, in the vicinity of the proposed site access. Thus, the eastern perimeter of the appeal site alongside the Chesterfield Road would continue to have a predominantly sylvan character.
81. The change from agricultural fields to residential development on the appeal site would erode the historic landscape character of Alfreton Park. In creating a more complex palette of landscape elements within the countryside part of this NDHA, the envisaged soft landscape/ecological buffer strip free from buildings along much of the perimeter of the appeal site, could potentially perceptibly contribute to this erosion of historic landscape character.
82. However, that said, landscaping and layout are among matters to be finalised at a later Reserved Matters application stage. I anticipate that the more detailed landscape/ecological design stage that is yet to come would provide opportunity for a holistic design team approach to strike a careful balance between the objectives of softening the appearance of the development, ecological enhancement and minimising distraction from the NDHA's distinctive

⁷ As per FPCR Proof of Evidence: Arboricultural Matters, Section 5.0 Replacement Tree Planting.

characteristics, including the listed church's tower and Pond Wood. The suggested planning conditions for a Landscape and Biodiversity Enhancement and Management Plan, with its express aim of combining both ecology and landscape disciplines, and a Landscape Environmental Management Plan would help achieve this holistic design balance.

83. Given the above, I anticipate that even with the proposed appeal development, Alfreton Park, including its northern part, would retain much of its attraction for local people and visitors, as a place in which to, among other things, appreciate its historic architecture, landscape and townscape character, and its association with former occupation of hall and estate by Derbyshire gentry. Together, the identified moderating factors would limit the degree and extent of adverse impact on the heritage significance of the Alfreton Park NDHA. Therefore, I find that the appeal proposal would result in moderate harm to the heritage significance of the Alfreton Park NHDA.

Summary of harm to heritage assets

84. For the above reasons, I find that the proposed development would impact on the designated heritage assets under the first main issue in this case, as follows. It would impact negatively on the setting and significance of the Grade II* listed Church of St. Martin Church to a limited degree. It would impact negatively on the setting of the Grade II listed Alfreton Hall to a limited degree. And it would impact negatively on the setting of the Alfreton Conservation Area (CA) to a very limited degree.
85. In reaching these findings, and my findings under the second main issue, I have taken into account, among other things, the current appeal proposal's greater permanence and proximity to the listed church, compared to the solar park appeal proposal.
86. Given the above described relationship of the proposed development proposal to them, I find that the harm to the Church of St. Martin listed building, the Alfreton Hall listed building and the Alfreton CA would be at the lower end of the scale of less than substantial in this instance.
87. In conclusion, the proposed development would not preserve the setting of the Grade II* listed Church of St. Martin, Alfreton Conservation Area and the Grade II listed Alfreton Hall. As such, the proposal would conflict with Policies EN24 and EN27 of the Amber Valley Borough Local Plan (Adopted 12 April 2006) (the LP), which together seek to ensure that development helps preserve listed buildings and their settings, and preserve or enhance conservation areas.
88. I shall return to this matter of harm to designated heritage assets, to weigh it against public benefits of the proposal as required by Framework paragraph 208, later in this decision.
89. Regarding the non-designated heritage asset in this case, the appeal proposal would result in moderate harm to the heritage significance of the Alfreton Park NHDA. This would conflict with LP Policy EN24.

Character and appearance

90. The appeal site is located within farmland that is part of the Coalfield Estatelands Landscape Character Type (LCT). This LCT is summarised in The Landscape Character of Derbyshire (2014) study as a heavily industrialised and

urbanised landscape with gently undulating landform, in which pasture, parkland and woodland contrast with built-up elements. Topographically, the site generally falls from south to north on the mid to higher southern slopes of the Alfreton Brook valley.

91. Within this context, characteristics identified in my analysis of Alfreton Park under the first main issue, earlier in this decision contribute to the distinctive character of the area of countryside to the north and north-west of Alfreton, in which the appeal site is located. Within this area, distinctiveness and perceptual qualities derive from elements that include the area's gently rolling valleyside with views out to countryside beyond, the relative openness and absence of development, plantation woodlands with gaps/views between them, tree belts, hedgerows, and long-established walking routes. Also, cultural heritage interest and/or recreational value are articulated by elements including the open fields, wooded plantations and longstanding routes through the northern part of Alfreton Park, and the association with previous occupation of the former estate's parkland by Derbyshire gentry, and subsequent 'democratisation' of this type of landscape for recreational use.
92. Various of these elements are noticeable from viewpoints travelling through the landscape. These include the emergence point around the stile near the north-western corner of the churchyard of the Church of St. Martin, and various points walking through the countryside in the vicinity of the appeal site, on public rights of way FP18 and FP19.
93. There is some variation in landscape condition on and in the vicinity of the appeal site. Nevertheless, given the above combination of factors, I consider the countryside area north and north-west of Alfreton, of which the appeal site is part, to be a valued landscape, the protection and enhancement of which is thus sought under paragraph 180a) of the Framework.
94. As identified under the first main issue, the proposed modern residential development would result in various urbanising impacts on the appeal site and its surroundings. These would be perceptible in the landscape from various viewpoints within Alfreton Park and beyond. Also, the resultant lower end of the scale of less than substantial harm to the setting of the listed church and hall, and CA, and moderate harm to the heritage significance of Alfreton Park would have landscape dimensions in terms of distracting from Alfreton Park's historic landscape character.
95. That said, the following combination of factors would help moderate the proposed development's impact on the area's landscape character. The vast majority of the countryside area north and north-west of Alfreton would remain undeveloped, under the terms of the appeal proposal. Also, the substantial mass of TPO-protected tree cover in the vicinity of the northern perimeter of St. Martin's churchyard is likely to provide a visually softening backdrop to the development, in various views from the north and north-west.
96. Within this context, locally distinctive characteristics of rolling valleyside landform with scenic views beyond, plantation woodlands and gaps between them, tree belts and hedgelines would continue to draw the eye in many views within the area. And they would help screen and/or visually soften parts of the proposed development, from some viewpoints in the locality. Furthermore, limitation of dwelling heights to no more than two storeys high, to be secured by planning condition, would help moderate the development's built mass.

97. Also, within the context of this area of countryside near a busy market town, where background highways noise is noticeable at various times of day, the scale of residential development proposed would likely not acoustically distract from appreciation of the local landscape. Furthermore, the area's extensive public rights of way network of recreational routes, including FP18 and FP19 would endure.
98. Thus, even with the proposed development in place, opportunities to enjoy various satisfying landscape experiences would likely endure. These include a) the combination of wooded plantations and hedgelines with handsome hedgerow oaks, unfolding across the gently undulating landscape, viewed from west of Pond Wood, b) the sense of expectation in the dynamic sequence of views walking towards the gap between Highfield and Beech's Plantations, surrounded by attractively ochre-tinged valleyside grassland, and c) the remaining visual connection of long distance hillside views to the north and north-west.
99. Thus, traveling much of the length of this public rights of way network, for example away from the proposed development and/or where plantations intervene in views, would likely still be enjoyed. And, while landscaping and layout would be among matters to be finalised at Reserved Matters stage, the illustrative layout indicates the possibility of a substantially wide soft landscape buffer strip, free from buildings alongside FP19.
100. Given the above combination of factors, I expect that recreational use of the landscape by local residents and visitors to the area would not materially reduce as a result of the appeal development. Regarding some local people's fears that the appeal proposal would 'open the floodgates' to greater erosion of countryside character beyond the appeal site, each case is to be determined its own merits, and no such substantive wider development proposal or concept is before me. Also, the appeal proposal provides opportunity for new tree planting of greater quantity than existing. And, the eastern perimeter of the appeal site alongside the Chesterfield Road would continue to have a predominantly sylvan character.
101. Therefore, I conclude that the proposed development would result in moderate harm to the character and appearance of the area. As such, it would conflict with saved LP Policies LS1 criterion c), LS3 criteria a) and b), and EN7 which together seek to ensure that, among other things development complements local character and distinctiveness. Also, it would conflict with saved LP Policies EN8 and EN9, which together seek to ensure that development safeguards significant landscape features, or mitigates for harm to them.

Biodiversity

102. Given the improved grassland monoculture of much of the appeal site, it mainly has relatively low existing nature conservation value. In the light of the comments of the Council's ecological advisor, the Derbyshire Wildlife Trust, on the development proposal, the appellant has, since the refusal of the planning application, undertaken some further protected species surveys and biodiversity net gain assessment work. The Technical Note: Additional Ecological Information (FPCR), BNG Technical Note (FPCR) and Statutory Metric Calculation Tool provide further information on these matters.

103. Also, the appellant has provided an updated illustrative layout which indicates that, among other things, an ecological buffer zone located between housing on the appeal site, and the adjacent Pond Wood Local Wildlife Site. This buffer is to be secured by planning condition. Furthermore, there would be opportunity at subsequent detailed design stage, including in finalisation of a) habitat types and planting configuration, and b) exact location of dwellings and public open space facilities, to strike a careful balance between ecological enhancement and identified heritage and character and appearance considerations.
104. In the light of the ecological and biodiversity evidence presented to the Inquiry, the Council considers that the appeal development can provide in excess of 10% biodiversity net gain for habitats and hedgerows. Subject to planning conditions covering wildlife, habitats, construction management and lighting, the Council considers that this third reason for refusal concerning biodiversity and ecology has been resolved. For the above reasons, I agree on these points.
105. Therefore, I conclude that the proposal would adequately provide for biodiversity. As such, it would not conflict with the biodiversity elements of paragraphs 180(a), 180(d), 186(a) and 186(d) of the Framework, which together seek to ensure that development conserves and enhances biodiversity.

Highway safety and access

106. The proposed access to the appeal development would be off a stretch of the A61 Chesterfield Road which is on the approach to Alfreton town centre's Market Place crossroads. In the light of the comments of the Local Highway Authority (LHA) on the development proposal, the appellant has, since the refusal of the planning application, undertaken further traffic and road safety assessment/survey work, and amendment of the junction design. The appellant's transport and highways consultant's Response Notes RN02, RN03 and RN04 with Stage 1 Road Safety Audit, the Statement of Common of Ground on Highway Matters, and updated Proposed Site Access Plan drawing 2995-09 Rev.G provide further information on these matters.
107. Informed by additional traffic survey work in spring 2024, it is now demonstrated⁸ that a suitable junction design for access to and from the proposed residential development can be achieved with or without a speed limit change in its vicinity on the A61.
108. The new signal-controlled junction for the proposed development would add a right turn lane on the southbound side of the A61 Chesterfield Road. Both this right turn lane, the ahead southbound ahead lane at the junction, and the northbound approach would include Advanced Cycle Stop lines, thus providing safe space for cyclists at the junction. Also, a new stretch of footway would link the proposed development's access to existing footway on the west side of the A61. Furthermore, a pedestrian crossing with refuge island would be provided from near the new junction to the eastern side of the A61. And a new pedestrian and cycle link between this side of the A61 and Hardy Street, secured by the Section 106 Agreement, would further provide for access

⁸ As set out on page 2 of the highways Response Note RN04 by the appellant's transport and highways consultant Eddisons.

between the proposed residential development and Alfreton town centre, by non-car active travel modes, including walking and cycling.

109. Furthermore, a planning condition with flexibility to, if necessary, further update the junction design before commencement of development, provides a further layer of reassurance as to the robustness of its final design detail.
110. Thus, realistic opportunities for 'active travel' by non-car modes would be safely provided for and promoted, to cater for the likely popularity among future residents of the proposed development of walking and/or cycling into nearby Alfreton town centre, with its range of facilities that include a variety of onward public transport connections to destinations including Mansfield, Chesterfield and Derby. This would complement the provision for vehicular access to and from the proposed development.
111. Also at the Inquiry, the LHA confirmed their view that the highways assessments clearly indicate that the increase to existing traffic flows in the locality, resulting from the proposed development of up to 177 new homes would be quite modest and have minimal impact on the local highway network.
112. In the light of the highways and transport evidence presented to the Inquiry, the LHA have confirmed their view that the appellant's 'very comprehensive response' has resolved highways matters, enabling them to remove their objection to the proposed development, which the Council accept. I find no reason to disagree with the highway witnesses' expert view that a) the appeal proposal would not have an unacceptable impact on highway safety, nor would it result in severe residual cumulative impacts on the road network, thus according with paragraph 115 of the Framework, and b) the proposed development would provide safe and suitable access, thus according with paragraph 114 of the Framework.
113. Therefore, I conclude that the appeal proposal would provide safe and suitable access, and would not harm highway safety. As such, it would accord with saved LP policy TP1 which seeks to ensure that there is satisfactory access between development and the transport network, and that development can be satisfactorily accommodated on the transport network. Thus, I accept that this fourth reason for refusal has been resolved.

Whether a suitable location

114. The proposed residential development would be particularly sustainably located in terms of its close proximity and short walking and cycling distance to the centre of the market town of Alfreton. This would provide access both to shops and facilities in the town centre, and regular bus and/or train connections to a substantial range of onward destinations both within Amber Valley Borough, and further on to, for example, Nottingham, Derby, Sheffield, Manchester and Liverpool. In these respects, the appeal proposal would be well-related to Alfreton's existing pattern of development, minimise the need for its residents to travel between home, work and other activities, and would provide opportunities for journeys other than by car. In these ways, the proposed development would accord with criteria a) and c) of saved LP Policy LS1.
115. That said, the proposed development would not be on previously developed land, thus conflicting with criterion b) of saved LP Policy LS1. Also, as identified

under the first and second main issues, the proposal would result in some harm to the local environment, and so would conflict with criterion d) of saved LP Policy LS1. Also, the proposal would not meet the dwellings extensions/replacement or rural necessity exceptions criteria for development outside the built framework of settlements, in saved LP Policy H5. Nor would it meet the rural necessity and improvement criteria of saved LP Policy EN1, for development outside the built framework of settlements.

116. In conclusion, the proposed development's location is partly suitable and partly unsuitable, with particular reference to the Borough's sustainability criteria, as assessed against the above development plan policies. I shall return to the weight I attach to these suitability findings later in this decision,

Other Matters

117. Some local residents have expressed other concerns about the proposed development that go beyond the reasons for refusal, which I address as follows. The Flood Risk and Outline Surface Water Drainage Statement prepared by the appellant's flood risk and drainage consultant indicates the following. With its drainage strategy including detention basins to accommodate climate change-related rainfall, the development would reduce surface water run-off from the appeal site. While this would not eliminate existing flooding issues in the area, given the water runoff entering the wider Alfreton Brook catchment from land other than the appeal site, the proposed development would reduce surface water run-off from the appeal site, and so provide a betterment compared to existing conditions.
118. Also, the Lead Local Flood Authority has not objected to the proposed development, subject to detailed design and an associated management and maintenance plan of the surface waste drainage for the site, which are to be secured by planning conditions. On this basis, the proposal is acceptable in relation to flood risk.
119. Regarding traffic noise, within the context of the quite modest scale of increase in traffic flows arising from the proposed development, as established earlier under the fourth main issue, I anticipate that the proposal would not likely result in significant noise effects on existing residents in the locality. Therefore, a planning condition for further noise assessment, as suggested by the Council, is not necessary.
120. Regarding some local residents' concerns about the additional residents at the proposed development putting future strain on local health, education and other services, the Section 106 Agreement summarised below secures among other things, adequate financial contributions for local healthcare, education, sports and library facilities.

Section 106 Agreement

121. The S106 secures up to 53 affordable housing units. It secures contributions towards local medical practices, improving local sports facilities and stock at Alfreton Library. Also, the S106 secures provision of on-site public open space including a multi-use games area and play area, and a sustainable urban drainage system for the development. It secures contributions towards infant, junior and secondary education, and special educational needs and disabilities provision. Also, it secures a new pedestrian link between Hardy Street and the

A61, and contributions towards travel plan monitoring and potential local speed limit provision. Together, this Section 106 obligation accords with saved LP Policies H10, H12, LC1, LC2, LC12, LS5 and TP1. In combination, these policies require necessary infrastructure provision, affordable housing and access to the transport network.

122. I have considered the S106 against the requirements in Regulation 122 of the CIL Regulations and paragraph 57 of the Framework. I consider that all the measures as detailed in the S106 are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore, I find that the submitted S106 complies with the CIL Regulations and the Framework, and I have taken it into account in coming to my conclusions in this appeal.

Conditions

123. The below conditions suggested by the Council have been considered against the tests of the Framework and advice provided by Planning Practice Guidance. They have been found to be reasonable and necessary in the circumstances of this case. I have made modest drafting changes for clarity. Conditions relating to the submission and implementation of reserved matters and associated time limits, and approved plans, are necessary to provide certainty. Conditions relating to levels, landscaping, building height and tree protection are required to safeguard the character and appearance of the area. A condition is attached to safeguard archaeological assets. Condition relating to mining and land contamination are attached to safeguard public health and safety. Also, conditions regarding water management and drainage are necessary to ensure sustainable water management.
124. I attach conditions relating to bin storage, junction details, construction traffic management), site access details, highway survey and remediation) to safeguard highway safety. Conditions regarding wildlife, habitats, construction management and lighting are required to safeguard biodiversity. A condition regarding a travel plan is required in the interests of sustainable transport. A condition relating to noise mitigation is necessary to safeguard residents' living conditions on the development.

Planning Balance and Conclusion

125. It is undisputed that Amber Valley Borough has more than four years supply of deliverable housing sites, which for the purposes of my decision I take to be around 8.7 years supply. That said, and within the context of the most acute national housing crisis in living memory⁹, four-year supply is a floor not a ceiling. Also, provision of new affordable housing is an important matter in Amber Valley Borough, which has a notable need for affordable housing. This local need for affordable housing is further indicated by the presence of more than 2,000 households on the Council's Housing Register, of who more than 1,400 are in overcrowded or unsuitable accommodation, and more than 300 specify Alfreton as their preferred location.
126. Within this context, the proposed development would contribute up to 177 dwellings to local housing supply, providing new homes conveniently close to Alfreton town centre for up to around 400 people. This would include up to 124

⁹ As identified in the Building the homes we need Written Ministerial Statement (WMS) made on 30 July 2024.

market homes. Also, it would include up to 53 affordable homes which would provide a mix of first homes, rented and intermediate housing. These affordable homes would contribute to meeting the area's notable affordable housing need. Also, the proposed housing would help tackle the acute national housing crisis aspects, identified in the WMS, of home ownership being out of reach for too many, the shortage of houses driving high rents, and too many people being without access to a safe and secure home.

127. Also, the Council and appellant agree that the appeal site is in a sustainable location for new development in terms of its accessibility to Alfreton town centre and associated amenities. The proposed development would be situated a short walk, cycle or drive to Alfreton town centre and regular bus and train connections to a substantial range of onward destinations both within Amber Valley Borough and further on to, for example, Nottingham, Derby, Sheffield, Manchester and Liverpool. Moreover, the development's socio-economic benefits to the area during and after construction would include patronage of local facilities, businesses and services in the town, which would contribute towards sustaining them.
128. Thus, in these ways the appeal proposal would be particularly well located in terms of proximity and accessibility to a) the town centre of Alfreton market town, which would benefit from such new development to help sustain and rejuvenate it, and b) onward connections to destinations that together would provide a range of potential employment, business and lifestyle opportunities to future residents of the proposed development.
129. Also, the development's walkability appeal includes good access to the attractive historic landscape on its doorstep via the local public rights of way network, for residents of Alfreton living on the development in the future. And, the new pedestrian and cycle link between the eastern side of the A61 Chesterfield Road and Hardy Street, secured by the Section 106 Agreement, would enhance access for some existing residents in the northern part of Alfreton by non-car active travel modes including walking and cycling, to the northern part of Alfreton Park. Together, the above factors would provide socio-economic and health and wellbeing benefits to the local area.
130. Furthermore, the proposed development would achieve in excess of 10% biodiversity net gain, and provide additional tree planting with associated environmental benefits. Additional public open space provision, including a local equipped play area and a multi-use game area would result in the locality. And the proposal would reduce surface water run-off from the appeal site, with associated flood risk reduction benefit. The above together amounts to a substantial and significant combination of public benefits.
131. The less than substantial harm to the setting and heritage significance of the Grade II* listed Church of St. Martin, Alfreton Conservation Area and the Grade II listed Alfreton Hall, as identified under the first main issue, is of considerable importance and weight. Nevertheless, given the lower end of the scale of the less than substantial harm to these designated heritage assets, and the substantial and significant combination of public benefits of the appeal scheme, I find that the public benefits of the proposal outweigh the less than substantial harm to the significance of these designated heritage assets. Thus, there would be clear and convincing justification for this harm.

132. Having regard to the moderate harm to the Alfreton Park NDHA, and its local to regional significance, the harm to its significance is of moderate weight.
133. The totality of harm to the significance of heritage assets carries considerable weight. The harm to the character and appearance of the area is of moderate weight. And the partial unsuitability of location of the proposed development is of limited weight. The resultant conflict with the development plan as a whole carries moderate weight.
134. Having regard to the main issues, I take the following development plan policies to be those most important for determining this application. These are saved LP Policies EN1 Countryside, EN7 Landscape Character, EN8 and EN9 Landscape Features, EN24 Listed Buildings, EN27 Conservation Areas, H5 Housing Outside Settlements, LS1 Sustainable Development Location, LS3 Design and TP1 Transport.
135. The Council has a current lack of a plan-based strategy for the delivery of housing¹⁰. Within this context, in applying a more restrictive approach to major residential development outside the built framework of settlements, saved LP Policies EN1 and H5 are inconsistent with the Framework.
136. Given my earlier finding that the public benefits of the proposal outweigh the less than substantial harm to the significance of the designated heritage assets in this case, policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the proposed development.
137. Given the above, Framework paragraph 11d)ii is engaged, which tells us 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.
138. The totality of adverse impacts on the significance of heritage assets is of considerable weight. The adverse impact in the character and appearance of the area carries moderate weight. And the adverse impact in terms of partial unsuitability of location is of limited weight. This combination of adverse impacts would not significantly and demonstrably outweigh the substantial and significant combination of public benefits of the appeal scheme, when assessed against the policies in the Framework taken as a whole.
139. As such, the proposal benefits from the presumption in favour of sustainable development. I find that this consideration is of sufficient weight to indicate that planning permission should be granted, notwithstanding the conflict with the development plan. I therefore conclude that the appeal succeeds.

William Cooper

INSPECTOR

¹⁰ As set out in paragraph 55 of the Council's Closing Submissions.

ANNEX A: SCHEDULE OF CONDITIONS

- 1) Reserved matters for the development shall be submitted before the expiration of three years from the date of this permission and the development shall be begun before the expiration of five years from the date of this approval.
- 2) No development shall commence until details of appearance, landscaping, layout and scale of the development (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority. The development shall be carried out as approved.
- 3) The development shall be carried out in accordance with the approved drawings listed below: 10588-FPCR-XX-XX-DR-L-0008 issue P01 Location Plan; 2995-F09 Rev G Proposed Site Access Plan.
- 4) Existing and proposed land levels and finished floor levels up to and including the boundary shall be submitted as part of each of the reserved matters.
- 5) a) No development shall take place until a Written Scheme of Investigation for archaeological work has been submitted to and approved by the local planning authority in writing, and until any pre-start element of the approved scheme has been completed to the written satisfaction of the local planning authority.

The scheme shall include an assessment of significance and research questions, and:

- i) The programme and methodology of site investigation and recording;
- ii) The programme for post-investigation assessment;
- iii) Provision to be made for analysis of the site investigation and recording.
- iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
- v) Provision to be made for archive deposition of the analysis and records of the site investigation; and
- vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

b) No development shall take place other than in accordance with the archaeological Written Scheme of Investigation approved under condition 5a).

c) The development shall not be occupied until the site investigation and post-investigation assessment has been completed in accordance with the programme set out in the archaeological Written Scheme of Investigation approved under condition 5a), and the provision to be made for analysis, publication and dissemination of results and archive deposition has been secured.

- 6) Prior to the submission of any reserved matters application seeking approval of layout, a scheme of intrusive investigations shall be carried out on site to establish the risks posed to the development by past coal mining activity, including that posed by past opencast extraction and shallow

mining. These works shall be carried out in accordance with authoritative UK guidance.

- 7) Any reserved matters application seeking approval of layout, shall be accompanied by: the findings of the intrusive site investigations (required by condition 6 above), and a proposed layout plan which identifies the alignment of any buried highwalls present within the site and defines appropriate 'no build' zones over these features.
- 8) Prior to commencement of development, any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, shall be implemented in full in order to ensure that the site is made safe and stable for the proposed development. These works shall be carried out in accordance with authoritative UK guidance.
- 9) Prior to the first occupation of the development, a verification report for the approved development carried out by a suitably qualified independent engineer shall be submitted to the local planning authority for approval in writing. This document shall confirm the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.
- 10)
 - a) No development shall commence until:
 - i) The approved development site has been subjected to a detailed investigation to determine the extent, scale and nature of any contamination and an assessment of the potential risks (the 'Assessment') has been carried out;
 - ii) A report providing the details of the site investigation and the Assessment been submitted and approved in writing by the local planning authority; and
 - iii) A Remediation Method Statement (the 'RMS') to address any remediation required by the Assessment including a plan for how the remediation methods will be verified, has been submitted to and approved in writing by the local planning authority.
 - b) The development shall be undertaken in strict compliance with the requirements contained within the approved RMS. Any proposed revisions to the RMS must be submitted and approved in writing by the Local Planning Authority prior to any changes in remediation methods.
 - c) If during development works, any contamination is encountered which was not previously identified and is derived from a different source and/or of a different type to those already identified, then no further works shall take place until a revised RMS is submitted to and approved in writing by the local planning authority and the works shall then be carried out in accordance with the revised RMS.
 - d) If during development work, site contamination is found in areas previously expected to be uncontaminated, then the remediation of those areas shall be carried out in accordance with the approved RMS.

- e) No building shall be occupied unless and until a Verification Report in accordance with the RMS has been submitted to and approved in writing by the local planning authority.
 - f) All investigations, assessments and reports must be carried out by a suitably qualified competent person and in accordance with the Environment Agency publication Land contamination: risk management (LCRM).
- 11) No development shall take place until a detailed design and associated management and maintenance plan of the surface water drainage for the site, in accordance with the principles outlined within:
- i) Enzygo Environmental Consultants. (2023). NPPF: Flood Risk Assessment. Ref: SHF.1132.281.HY.R.001.A (Including any subsequent amendments or updates to those documents as approved by the Flood Risk Management Team)
 - ii) And DEFRA's Non-statutory technical standards for sustainable drainage systems (March 2015)
- have been submitted to and approved in writing by the local planning authority. The development shall be carried out in strict accordance with the approved details.
- 12) Prior to commencement of the development, the applicant shall submit for approval to the local planning authority details indicating how additional surface water run-off from the site will be avoided during the construction phase. The applicant may be required to provide collection, balancing and/or settlement systems for these flows. The approved system shall be operating to the satisfaction of the local planning authority, before the commencement of any works which would lead to increased surface water run-off from site during the construction phase.
- 13) Prior to the first occupation of the development, a verification report carried out by a suitably qualified independent drainage engineer must be submitted to and approved by the local planning authority. This must demonstrate that the drainage system has been constructed as per the agreed scheme (or detail any minor variations), provide the details of any management company, and state the national grid reference of any key drainage elements (surface water attenuation devices/areas, flow restriction devices and outfalls).
- 14) Details to be submitted as part of reserved matters shall include arrangements for the storage of bins and collection of waste. The development shall be carried out in accordance with the agreed details and the facilities retained for the designated purposes at all times thereafter.
- 15) Prior to the commencement of development, including preparatory site clearance, a detailed badger survey for any recently excavated badger setts on the site or within 30 metres of the site boundary shall be undertaken, which then shall be submitted and approved in writing by the local planning authority. The results and any appropriate mitigation/licensing requirements shall be submitted to the local planning

authority Such approved measures must be implemented in full and adhered to throughout the construction works.

- 16) Prior to the commencement of development, there shall have been submitted to and agreed in writing by the local planning authority a plan showing details for habitat creation within a minimum 15m buffer to Pond Wood Local Wildlife Site. The habitat creation scheme shall be implemented as approved.
- 17) No development shall take place (including demolition, ground works, vegetation clearance and movement of plant, machinery and materials) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
- i) Risk assessment of potentially damaging construction activities;
 - ii) Identification of "biodiversity protection zones";
 - iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts on species and habitats during construction;
 - iv) Details of offset gullies, or suitable alternative, and drop kerbs in the road network to safeguard amphibians;
 - v) The location and timing of sensitive works to avoid harm to biodiversity features;
 - vi) The times during construction when specialist ecologists need to be present on site to oversee works;
 - vii) Responsible persons and lines of communication;
 - viii) The role and responsibilities on site of an ecological clerk of works (ECOW) or similarly competent person.
 - ix) Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 18) Prior to the installation of lighting fixtures, there shall have been submitted to and approved in writing by the local planning authority a detailed lighting strategy, to safeguard bats and other nocturnal wildlife and to minimise any light pollution on the countryside to the west and north of the development. This shall provide details of the chosen luminaires, their locations and any mitigating features such as dimmers, PIR sensors and timers. Dependent on the scale of proposed lighting, a lux contour plan may be required to demonstrate acceptable levels of lightspill to any sensitive ecological zones/features. Guidelines can be found in Guidance Note 08/23 - Bats and Artificial Lighting at Night (BCT and ILP, 2023). Such measures as approved shall be implemented in full.
- 19) Prior to the commencement of the development, there shall have been submitted to and approved in writing by the local planning authority a Landscape and Biodiversity Enhancement and Management Plan (LBEMP). The aim of the LBEMP is to provide details for the creation, enhancement and management of habitats and species on the site post development and should clearly demonstrate a measurable net gain for biodiversity. The plan should also show the positions, specifications and number of features

intended for notable protected species. The LBEMP should combine both the ecology and landscape disciplines and shall be suitable to provide to the management body responsible for the site. The plan shall include the following details:

The position and specification of:

- i) Universal nest boxes at ratio of 1:1, in line with British Standard 42021:2022;
 - ii) Integrated bat boxes in 10% of dwellings;
 - iii) 15 external bat boxes;
 - iv) Insect bricks in 30% dwellings and / or towers in public open space; and
 - v) Fencing gaps 130 mm x 130 mm to maintain connectivity for hedgehogs in all gardens.
-
- a) Description and location of features to be retained, created, enhanced and managed.
 - b) Details of the 15m minimum habitat buffer to Pond Wood Local Wildlife Site.
 - c) Habitat management aims and objectives.
 - d) Appropriate management methods and practices to achieve aims and objectives.
 - e) Prescriptions for management actions.
 - f) A work schedule, including a 30-year work plan capable of being rolled forward in perpetuity).
 - g) Details of the body or organization responsible for implementation of the plan.
 - h) A monitoring schedule to assess the success of the habitat creation and enhancement measures at intervals of 1, 2, 3, 4, 5, 10, 15, 20, 25 and 30 years.
 - i) Monitoring reports to be sent to the local, planning authority at each of the above intervals.
 - j) A set of remedial measures to be applied if conservation aims and objectives of the plan are not being met.
 - k) Detailed specifications for open water habitats to provide biodiversity benefits.

Requirement for a statement of compliance upon completion of planting and enhancement works. The LBEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan and its details shall be implemented as approved.

- 20) a) A Landscape Environmental Management Plan (LEMP) to be submitted as part of any reserved matters submission shall include a detailed landscape scheme for the structural planting, street planting, areas of proposed public realm, the LEAP and the MUGA. Structural planting/general landscaping shall have regard to the advised planting palettes of Landscape Character Type, Coalfield Estatelands, with an allowance for exotic/ornamental trees characteristic of the non designated heritage asset Alfreton Park. The LEMP shall include but not be limited to the following:

- i) measures to gap up the hedgerows and to re-establish hedgerow trees within the development site, where evidence survives specifically within the north hedgerow and central hedgerow/green corridor;
- ii) re-establish/enhance the historic woodland belt beside the A61 within the development site. This to include the repair/reinstatement of historic park rail and, the replanting of mixed hedgerows along the west edge of the woodland belt while respecting historic views experienced from the A61 towards the church.
- iii) At the south-west corner of the appeal site within Alfreton Conservation Area, all beech and oak trees in poor health and dead shall be replaced with a mix of beech and oak in the same location.
- iv) Any replanting ratio for the loss of existing trees shall be provided at a ratio of one new tree for each tree lost, of suitable stature and using native broadleaf species and shrub species according to the Landscape Character Type or appropriate to the historic character of Alfreton Park. This could be accommodated within the proposed on-site planting in the areas of public open space or beside the main roads of paths.

b) Following the approval of reserved matters the planting shall be carried out in accordance with the approved details.

c) Any plants or trees in the planting scheme that are removed, die or become seriously damaged or diseased within a period of 5 years from the date of planting shall be replaced with others of similar size and species in the next planting season, unless the local planning authority gives written consent to any variation.

- 21) Any reserved matters submission shall be supported by the submission of an Arboricultural Report in the format of BS5837:2012 'Trees in relation to design, demolition and construction - Recommendations'. This shall include an up-to-date Arboricultural Impact Assessment, tree protection plans and appropriate method statements (as per section 5 & 6 of BS5837:2012). As a minimum the Arboricultural Report shall include but not be limited to:
- i) A survey of all trees which are likely to be impacted upon by the proposed development, with details and categorisation results provided in an appropriate schedule (as per BS5837:2012 sections 4.4-4.6);
 - ii) Trees clearly identified as either retained or removed (including trees on land adjacent to the site with canopies or RPAs which extend onto the site);
 - iii) Clear specifications for all proposed management works to retained trees;
 - iv) A realistic assessment of the probable impacts between the trees and development (as per BS5837:2012 section 5.3.4);
 - v) Root protection areas (RPA) and construction exclusion zones;
 - vi) Exclusion zone protective barriers, giving precise locations and specification;
 - vii) The position of all new underground services in relation to RPAs;
 - viii) Detailed specification and installation method statement for any proposed new structure, hardstanding, underground service or works access into RPAs;
 - ix) Method statements for all other construction operations which impact on trees;
 - x) Positions and specification (following BS8545:2014 'Trees: from nursery

to independence in the landscape - Recommendations' as appropriate) for all new tree planting;
xi) Reinstatement and ground preparation for new tree planting and areas of soft landscaping.

- 22) Notwithstanding the details submitted, the development hereby permitted shall not commence until drawings of the signal-controlled junction on the A61 Chesterfield Road/Site Access and associated connections have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until such works have been completed in accordance with the approved details.
- 23) The development hereby permitted shall not be occupied until a Travel Plan ('the Plan') submitted to and approved in writing by the local planning authority that promotes sustainable forms of access to the development site. The Plan shall thereafter be implemented and updated where necessary.
- 24) Prior to commencement of the development hereby permitted details of a Construction Management Plan ('the CMP') shall be submitted to and approved in writing by the local planning authority. Thereafter the approved CMP shall be adhered to throughout the demolition/construction works. The CMP shall include but not be restricted to:
- i) Parking of vehicle of site operatives and visitors, including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction;
 - ii) Advisory routes for construction traffic;
 - iii) Any temporary access to the site;
 - iv) Locations for loading/unloading and storage of plant, waste and construction materials;
 - v) Method of preventing mud and dust being carried onto the highway;
 - vi) Arrangements for turning vehicles;
 - vii) Arrangements to receive abnormal loads or unusually large vehicles;
 - viii) Highway Condition survey;
 - ix) Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
- 25) All construction activities shall comply with the following:
- Operating hours: No works, or deliveries to and from the site, shall occur other than between 08:00 and 18:00 hours on weekdays and between 08:00 and 13:00 hours on Saturdays. No works shall take place on Sundays or bank holidays. Any essential extension to these hours, other than for emergency works, shall be agreed with the Local Planning Authority before work commences. Activities that do not create noise and disturbance to residents may still take place outside these hours.
 - Noise and vibration: All activities shall comply with the guidance in British Standard BS 5228-1:2009+A1:2014 'Code of practice for noise and vibration control on construction and open sites - Part 1: Noise' (Section 8 and Annex B) and Part 2: Vibration' (Section 8);

A health and safety risk management system shall be designed and implemented to eliminate or minimise reversing and the use of high-pitched reversing alarms;

No piling, blasting, dynamic compaction or use of vibrating rollers shall occur on the site before notifying the Borough Council's Pollution Control Team.

- Dust/Particulate emissions: No visible dust/particulate matter shall be emitted beyond the site boundary. At such times as the prevention of nuisance is not possible, dust/particulate generating activities shall temporarily cease until such time as dust suppression measures become effective.

Site roads shall be hard-surfaced and regularly cleaned, at least once daily. Any mechanical road sweepers shall use an adequate filtration system and water supply to minimise the emission of dust/mud off-site - under no circumstances shall a sweeper be operated dry, without an adequate water supply. A drive-through bath/wash shall be provided, on a suitable area of hardstanding, to clean the wheels of all vehicles before leaving the site;

- Waste: No unwanted materials shall be disposed of on site by burning.
- Lighting/Security cameras: Any temporary site lighting shall be positioned on site to minimise light trespass and glare. Temporary site lighting operating between 22:00 and 07:00 hours the following day shall be agreed with the local planning authority. No site security cameras shall operate an audible warning alarm.

26) All noise-sensitive dwellings/plots on the site shall be protected from road traffic noise in accordance with the advice in the 'Noise Impact Assessment' (GM12334_001_v1.1, Wardell Armstrong, September 2023), or any subsequent agreed amendments to it, such that the following noise levels are not exceeded:

- 55dB LAeq,16hour (free field) in outdoor living areas between 07:00 and 23:00 hours;
- 35dB LAeq,16hour inside living rooms and bedrooms between 07:00 and 23:00 hours;
- 40dB LAeq,16hour inside dining rooms/areas between 07:00 and 23:00 hours;
- 30dB LAeq,8hour, and 45dB LAmx,fast more than 10 times a night, inside bedrooms between 23:00 and 07:00 hours; and

Development shall not begin until the individual noise-sensitive dwellings/plots have been identified and details of the site layout, internal layout of the dwellings and noise mitigation measures necessary to comply with the above have been submitted to, and approved in writing by the local planning authority. The development shall be carried out and maintained in accordance with the approved details, and the noise mitigation works completed under the supervision of an acoustic engineer. In dwellings where windows must be closed to achieve the above levels, adequate acoustically treated ventilation and cooling must be provided.

Should proposals for the site design alter from that on which agreed noise mitigation measures are based, a further audit of the noise assessment and proposed mitigation measures shall be submitted to, and approved in writing by the local planning authority before the proposed amendments are implemented.

A further acoustic report verifying compliance with the above shall be submitted to, and approved in writing by the local planning authority before the occupation of any of the acoustically treated dwellings/plots.

The developer shall notify prospective occupants of the dwellings of the standard of sound insulation installed and, where necessary, of the need to keep windows closed and use the alternative ventilation provided to obtain its full benefit.

- 27) Notwithstanding the submitted information, the building height of any dwellings shall not exceed two storeys.

ANNEX B: CORE DOCUMENTS REFERENCED IN THIS DECISION

CD 1.1	Drawing 10588-FPCR-XX-XX-DR-L-0008 Location Plan
CD 7.3	The Landscape Character of Derbyshire (2014) study - Extracts
CD 8.7	Appendix 1 Figures of the Council's heritage consultant's Proof of Evidence
CD 10.1	Appeal Decision Ref: APP/M1005/W/22/3299953 Land north west of Hall Farm
CD 12.4	Building the homes we need Written Ministerial Statement made on 30 July 2024
CD 13.3	Drawing 10588-FPCR-XX-XX-DR-L-0004 issue P10 Development Framework
CD 13.6	Technical Note: Additional Ecological Information (July 2024)
CD 13.8	Transport and highways Response Note RN04 (Eddisons)
CD 13.10	BNG Technical Note (September 2024)
CD 13.11	The Statutory Metric Calculation Tool (05.09.24)
CD 13.12	Transport and highways Response Note RN02 (Eddisons)
CD 13.13	Transport and highways Response Note RN04 (Eddisons)
CD 14.6	Statement of Common of Ground on Highway Matters
GDL-4-P	Proof of Evidence: Arboricultural Matters (FPCR) Closing Submissions on behalf of the Local Planning Authority

ANNEX C: DOCUMENTS SUBMITTED AT THE INQUIRY

1. Opening Statement on behalf of the Appellant
2. Opening Statement on behalf of the Local Planning Authority
3. Statement of Richard Marsden
4. Closing Statement on behalf of the Appellant
5. Closing Submissions on behalf of the Local Planning Authority

ANNEX D: DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Planning Obligation by Deed of Agreement, dated 31 October 2024, received 31 October 2024.

ANNEX E: APPEARANCES

FOR THE APPELLANT

Richard Kimblin of King's Counsel

He called

Kathryn Fitzgerald <i>MRTPI</i>	Planning Director, Gladman Developments Ltd
Kurt Goodman <i>MCIEEM</i>	Director, FPCR Environment and Design Ltd
Timothy Jackson <i>CMLI</i>	Senior Director FPCR Environment and Design Ltd
Helen Kirk <i>MArborA MICFor</i>	Director, FPCR Environment and Design Ltd
Gail Stoten <i>FSA MCIfA</i>	Heritage Executive Director Pegasus Planning Group
Matthew Travis <i>CEnv CSci</i>	Managing Director, Enzygo Ltd
<i>MCIWEM C.WEM</i>	
Phil Wooliscroft	Eddisons

FOR THE LOCAL PLANNING AUTHORITY (AVBC)

Ned Westaway of Counsel

He called

Nigel Atkinson <i>CMILT MCIHT</i>	Assistant Director, Regulatory Services - Economy and Regeneration - Place, Derbyshire County Council
Deborah Evans <i>CMLI IHBC</i>	Director, DE Landscape & Heritage Ltd
Kieron Huston <i>CIEEM</i>	Head of Biodiversity Planning, Derbyshire Wildlife Trust
Melanie Morris <i>IHBC MRTPI</i>	Mel Morris Conservation
Amanda Olley <i>MRTPI</i>	Managing Director, Summit Planning Associates Ltd
Rodney Whiteman	Countryside Project Officer (Woodlands), Derbyshire County Council

INTERESTED PARTIES

Karen Bradley	Local resident
Kate Jones	Local resident
Richard Marsden	Save Our Countryside Action Group and Alfreton and District Footpaths Society
Peter Milner	Alfreton Town Council
Caz Moon	Local resident
Ryan Morgan	CPRE Derbyshire
Clare Price-Dowd	Local resident
Liz Scott	Local resident
Jamie Selby	Save Alfreton Countryside
Colin Wilkins	Local resident

