



Appeal Decision

Inquiry held on 17, 18, 19 20 May 2016

Site visit made on 20 May 2016

by C Sproule BSc MSc MSc MRTPI MIEnvSc CEnv

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

Decision date: 19 August 2016

Appeal Ref: APP/P2365/W/15/3132594

Land to east of Prescott Road, Aughton, Ormskirk, Lancashire L39

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission.
 - The appeal is made by Wainhomes Developments Limited against the decision of West Lancashire Borough Council.
 - The application Ref 2015/0335/HYB, dated 30 March 2015, was refused by notice dated 30 June 2015.
 - The development proposed is a hybrid application – full planning application for the erection of 50 dwellings and associated works, and outline application including details of access for development of up to 100 dwellings plus 295m² of D1 uses.
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Decision

1. The appeal is allowed and planning permission is granted for a hybrid application - full planning application for the erection of 50 dwellings and associated works, and outline application including details of access for development of up to 100 dwellings plus 295m² of D1 uses at land to east of Prescott Road, Aughton, Ormskirk, Lancashire L39 in accordance with the terms of the application, Ref 2015/0335/HYB, dated 30 March 2015, subject to the conditions in the attached schedule.

Preliminary Matters

2. For the purposes of the inquiry the appeal was conjoined with appeal ref: APP/P2365/W/15/3132596 for land off Parrs Lane, Aughton L39. Although evidence was heard on a joint basis, each appeal has been considered on its own merits.
3. This decision notice is for an appeal concerning a hybrid application for full and outline planning permission. All matters are reserved in the outline component of the application, except for the access, which is for determination at this stage.

Main Issues

4. The decision notice recites five reasons for refusal. Section 6 of the Statement of Common Ground notes that Statements of Common Ground (SoCGs) are to be prepared to address the possible effects of the proposed developments on nature conservation matters, highway safety and drainage. In March 2016, SoCGs were produced to address these matters.

5. Based on the Council's remaining reasons for refusal and the substantive issues between the Council and appellant as set out in section 6 of the Statement of Common Ground, along with the context provided by paragraph 49 of the National Planning Policy Framework ('the Framework'), the main issues are considered to be: (a) whether the proposed development would accord with development plan and national planning policies regarding the provision of land for housing; (b) the effect of the development proposed on the availability of best and most versatile agricultural ('BMV') land; and, (c) whether the proposal could be considered as a sustainable form of development.

Reasons

Housing

Policy

6. Paragraph 47 of the Framework seeks to boost significantly the supply of housing, with paragraph 49 stating that *'...Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'*
7. Paragraph 85 of the Framework notes that when defining boundaries of Green Belt, amongst other things, local planning authorities should: where necessary, identify in their plans areas of 'safeguarded land' between the urban area and the Green Belt, in order to meet longer term development needs stretching well beyond the plan period; make clear that the safeguarded land is not allocated for development at the present time - planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development; and, satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period.
8. West Lancashire Local Plan 2012-2027 (LP) was adopted in October 2013 following an Examination within the context of the Framework. LP Policy SP1 provides *A Sustainable Development Framework for West Lancashire* which includes a Settlement Hierarchy. Within the hierarchy Ormskirk with Aughton, and Burscough, are the 'Key Service Centres' in the tier below the 'Regional Town' of Skelmersdale with Up Holland.
9. LP Policy RS6 provides *A "Plan B" for Housing Delivery in the Local Plan*. It states that Plan B sites will only be considered for release for housing development if one of three triggers is met. The first and second triggers relate to housing delivered after years five and ten of the Plan period (2012-2027) respectively. The third trigger is *The housing target increasing as a result of new evidence*.
10. The LP proposals map allocates the appeal site as one of the *Safeguarded Land Plan B Sites*, and the safeguarded land is listed in LP Policy GN2 as Plan B site *"...i. Land at Parris Lane, Aughton (400 dwellings)...'*. In combination, the development the subject of this and the conjoined appeal would provide up to 400 dwellings.
11. The appellant draws attention to the LP Examining Inspector's comments regarding Plan B and its relationship with paragraphs 49 and 14 of the

Framework. Paragraph 140 of the LP Examination report states that *"...The provisions of Plan B would be supplemented by the mechanism contained in paragraphs 49 and 14 of the National Planning Policy Framework to address any failure to maintain a five-year housing land supply. In this context, five-yearly reviews of housing delivery under Plan B would be sufficiently frequent to maintain the overall supply, while allowing for peaks and troughs in the trend of provision. Setting the trigger-point at 80% of the required level of supply is also appropriate, providing robust justification, in the form of a demonstrated significant shortfall in provision over time, for the release of Green Belt land under Plan B which would otherwise be safeguarded for development after 2027...."*

12. Framework paragraph 49 is referred to above and paragraph 14 of the national policy sets out the presumption in favour of sustainable development. Plan B is integral to the policy framework within the adopted development plan for this area and is specifically addressed by the *Sustainable Development Framework* within LP Policy SP1.
13. LP Policy GN2 is unambiguous that safeguarded land *"...is within the settlement boundaries, but will be protected from development and planning permission will be refused for development proposals which would prejudice the development of this land in the future..."*¹ As safeguarded land, the appeal site is outside the Green Belt and very special circumstances would not need to be demonstrated. Even so, Policy GN2 confirms that: sites allocated for Plan B will be safeguarded from development for the needs of Plan B should it be required; and if Plan B is not required, the land will be safeguarded from development until 2027 for development needs beyond 2027.² Accordingly, the purpose of Policy GN2 is to safeguard the appeal site from development, while providing a means for its release if Plan B is triggered.
14. There is nothing in the LP to suggest that the listing of safeguarded sites in Policy GN2 is a ranking for their release, which is reflected in the supporting text to LP Policy RS6 and explicitly dealt with in the LP Examining Inspector's report.³ In relation to LP Policy RS6 and its 'Plan B', the supporting text in LP paragraph 7.68 states *"...If it is anticipated a year before any trigger point that is reached (i.e. at the end of years 4 and 9 of the Plan) that housing delivery is at risk of triggering the Plan B, the Council will commence a review of the level and nature of any undersupply compared to housing requirements..."*. This confirms that it would be the Council who would commence a review to determine which Plan B sites would be the most suitable for release at that time.

The first trigger for "Plan B"

15. The first trigger within LP Policy RS6 states that *"...If less than 80% of the pro rata housing target has been delivered after 5 years of the Plan period, then the Council will release land from that safeguarded from development for "Plan B" to enable development to an equivalent amount to the shortfall in housing delivery..."*.

¹ Paragraph 5.15 of the supporting text to Policy GN2 notes that the sites are protected from development until *absolutely required*, and the associated tests are within the policy wording.

² As recognised in paragraph 142 of the LP Examination Inspector's report

³ LP paragraph 7.68 and paragraph 141 of CD5

16. The appellant's completions data excludes units in Use Class 'C2' and, in so doing, highlights that: Government household projections are understood not to include a component for C2 accommodation;⁴ and, the LP Examination Inspector did not have the Planning Practice Guidance (PPG) before him as it was first issued on 6 March 2014.
17. PPG states that "...Older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2). Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan...".⁵
18. There is nothing to suggest that the final sentence in this extract of the PPG is doing anything other than dealing with the two preceding sentences. If its focus were to be the heading of the paragraph and the first sentence, it would have been expected to be the second sentence, but it is not.
19. PPG issued in April 2016 provides specific advice in relation to the consideration of *Housing for older people* in assessing housing need.⁶ Amongst other things, the guidance notes that "...Local authorities should therefore identify particular types of general housing as part of their assessment...".
20. LP Policy RS1(e) encourages the provision of accommodation specifically designed for the elderly, with requirements set out in LP Policy RS2, and the LP evidence base will have considered older people in Use Class C3 accommodation. Even so, in oral evidence to the inquiry the Council confirmed that C2 needs were not counted into the housing requirement side of the LP for subsequent 'C2' completions to be set against it. As a consequence, C2 completions should not be included when considering the first Plan B trigger in LP Policy RS6.
21. Excluding 'C2' completions, during the period 2012-2016 the Borough has delivered 956 homes against the total requirement for the period of 1,208.⁷ That would be below the 80% threshold for the first trigger, but the five year period for the first trigger will only be reached in April 2017.
22. While LP paragraph 7.68 looks forward, the first trigger in LP Policy RS6 is clearly backward looking after the five year period, and any release of safeguarded land would be in 2017 following actions by the Council.
23. The LP Examination Inspector specifically concluded that the five year review mechanism would be sufficiently frequent to maintain the overall supply,⁸ and in these cases, the first trigger point has yet to be reached.
24. During cross-examination the appellant accepted that the appeal proposal conflicts with LP Policies GN2 and RS6, but highlighted a clear need for market and affordable housing, due to failures in housing delivery.⁹

⁴ That PPG Reference ID: 2a-015-20140306 confirms household projections to *provide the starting point estimate of overall housing need*

⁵ Reference ID: 3-037-20150320

⁶ Reference ID: 2a-021-20160401 (ID23)

⁷ That is an annual requirement of 302 dwellings per annum, but the initial trajectory 2012-2015 is below this rate

⁸ Paragraph 140 of CD5

⁹ The background to this is set out in paragraph 4 (and paragraphs 6-10) of the Council's closing submissions, and is addressed by paragraphs 1.4 and 3.1 and section 5 of the appellant's closing submissions

25. Housing delivery under the LP has not met the LP requirement in total and in three of the last four years, although actual delivery has compared more favourably against the LP Examination Inspector's trajectory.¹⁰ In Footnote 1 to the housing trajectory table annexed to the LP Examination Inspector's report, the Inspector assumes that the shortfall in delivery during 2012-2013 of 51 units¹¹ would be made up during the first five years.
26. Delivery was higher than expected during 2013-2014 with 310 units, significantly above the trajectory of 262. Completions were also above the trajectory for 2014-2015, with 239 delivered against the expected 222. Even so, the housing trajectory steps up significantly during 2015-2016 with 451 expected completions, whereas only 268 units were delivered. The LP Examination Inspector anticipated that in the first five year period 90% of the LP requirement would be delivered. At present after the first four years, it is 79.1%.¹²
27. Attention is drawn to matters that have prevented allocated sites coming forward at their expected rates, with the potential shortfall against the LP trajectory noted to be substantial and getting larger.¹³
28. However, looking forward to what the delivery rate is likely to be when the first trigger is reached during 2017, the appellant's evidence indicates 286 completions during 2016-2017. When this is added to the 956 completions agreed for the first 4 years, it results in a delivery of 1,242 units against the 1,510 requirement which is 82%. Ensuring 80% delivery during the first five years requires 252 units to be completed during 2016-2017.
29. Views differ on the need for a review to commence within the context of LP paragraph 7.68. Although the Council considers it highly unlikely that the first LP Policy RS6 trigger would be met, there must be a risk of it being met even if the Council does not anticipate it. The review set out within LP paragraph 7.68 would facilitate, rather than trigger, Plan B. The triggers are set out within LP Policy RS6.
- The second trigger for "Plan B"
30. Given that the period of the LP began in 2012, the second trigger is not relevant to this appeal.¹⁴
- The third trigger for "Plan B"
31. The third trigger in LP Policy RS6 states that *'...If, at any point during the 15 year period of the Plan, the Council chooses to increase its housing target to reflect the emergence of new evidence that updates the existing evidence behind the housing target and which would undermine the existing target, then an appropriate amount of land will be released from that safeguarded from development for "Plan B" to make up the extra land supply required to meet the new housing target for the remainder of the Plan period....'*

¹⁰ Detailed at paragraph 3.9 of the appellant's closing submissions

¹¹ 139 actual completions against 190 predicted

¹² Paragraphs 17(v) and 3.10 of the closing submissions for the Council and appellant respectively

¹³ Paragraph 3.15 of the appellant's closing submissions

¹⁴ Confirmed by both main parties during cross-examination and recorded in paragraph 19 of the Council's closing submissions

32. The appellant considers that the low rate of affordable housing delivery in the Council's area, along with the adoption of its *Housing Strategy 2014 to 2019*, is new evidence that should lead the Council to intervene and set a new housing target. Taking into account demolitions, the first three years of affordable housing delivery under the LP has provided 24 net units in the Borough, with nine of these units in Ormskirk with Aughton. The appellant highlights that most housing allocations are failing to deliver the levels of affordable housing sought by LP policy.¹⁵
33. Both main parties referred to the LP monitoring target for affordable housing in Appendix B of the LP, which is for 20% of all annual housing completions to be affordable. ID27 confirms that 68 affordable dwelling completions were expected during 2015-2016, with the Council estimating a total of 295 and the appellant up to 225 affordable unit completions 2012-2017.
34. The Council highlights that the 2009 Strategic Housing Market Assessment, the 2010 Housing Need and Demand Study and the 2011 Census were all before the LP Examination Inspector. However, the appellant also refers to the Council's *Housing Strategy 2014 to 2019*,¹⁶ which has taken into account a range of strategies and plans, including the LP. Section 2.0 of the Housing Strategy notes that it "...is intended to be an over-arching document that establishes priorities for action, both by the local authority and, where appropriate, by other service providers and stakeholders and sets out a clear action plan...". A Key Delivery Action of the Housing Strategy is to develop 500 new affordable homes, with *Objective 1* noting this will be done by "...using planning policy requirements..." and referring to LP Policy RS2. The Housing Strategy does not refer to LP Policy RS6 or Plan B.
35. An increase in the LP housing target would meet the third trigger of LP Policy RS6, but the policy is clear that it would be the Council that decides to increase the housing target (just as the last paragraph of LP Policy SP1 confirms that the Council may choose to enact all or part of the Plan B by releasing safeguarded land for development).
36. The challenges for affordable homes provision in the Borough, and Ormskirk with Aughton in particular, are apparent, but there is not significant new evidence that undermines the LP requirement in relation to the third trigger in LP Policy RS6.¹⁷ LP paragraph 7.21 notes there to be *an acute need for more affordable homes* in the Borough and the LP was found to be sound with a housing target that would not meet the full affordable housing needs.
37. In any event, whatever the situation is in relation to matters the appellant considers to be *new evidence*, the Council has not decided to increase its housing target and therefore, the third trigger has not fired.

Policy conclusion

38. The appellant has accepted that the appeal proposal conflicts with LP Policies GN2 and RS6 and for the reasons above, no matters would cause me to take a different view.

¹⁵ LP Policy RS2 sets out the requirements for affordable and specialist housing, which include (other than in Skelmersdale) developments of 8-9, 10-14, and 15 units and above in Key Service Centres, Key Sustainable Villages and Rural Sustainable Villages providing a minimum 25%, 30% and 35% of the units as affordable dwellings respectively.

¹⁶ Appendix 17 to Mr Harris' Proof of Evidence

¹⁷ Paragraph 23(8) of the Council's closing submissions

5 year housing land supply ('5yr HLS')

39. The Council's most recent Annual Monitoring Report indicated 6.1 years housing land supply at 31 March 2015.¹⁸
40. The main parties agree on: a base date of 1 April 2015 for the consideration of 5yr HLS; the use of the Sedgefield approach for dealing with any backlog; and, the application of the Framework paragraph 47 buffer to both the basic requirement and any backlog.
41. The LP requirement is 302 dwellings per annum (dpa) 2012-2017 and then 335 dpa for the remainder of the Plan period. Accordingly, the requirement for the 5yr period beginning on 1 April 2015 is 1,609 dwellings.

Use Class 'C2'

42. For the reasons set out above,¹⁹ dwellings in Use Class 'C2' should not be included when determining the Borough's 5yr HLS under the current LP.

Application of a 'buffer'

43. Framework paragraph 47 states that an additional buffer of 5% (moved forward from later in the Plan period) should be added to the supply of deliverable sites to ensure choice and competition; and the buffer should be increased to 20% where there has been a record of persistent under delivery of housing. The Council prepared its case on the basis of a 5% buffer, but it became apparent just before the exchange of proofs of evidence that the appellant considered a 20% buffer should be applied.²⁰
44. Paragraph 135 of the LP Examination report found a 5% buffer to be appropriate in the Borough.²¹ It found there to have been housing provision in excess of policy requirements until the economic downturn in 2007-2008, and while this subsequently affected delivery, a 5% buffer was nonetheless appropriate.
45. In the LP trajectory of 139, 262, 222, 451, 470 dwellings for the years 2012-2017 respectively, the delivery (excluding C2 units) has been 139, 310, 269 and 268 dwellings for the years 2012-2016 respectively.
46. The LP Inspector was aware of the delivery of 139 units in 2012-2013. Completions during 2013-2014 were in excess of the requirement and significantly above the trajectory. The subsequent two years were below the requirement and an upturn in delivery of the scale envisaged by the LP Inspector for 2015-2016 did not occur. However, only in 2015-2016 has the Council failed to deliver housing either at or in excess of the trajectory annexed to the LP Examination report.
47. Given the findings of the LP Examination Inspector in relation to the appropriateness of the 5% buffer, the reasons given for it and the consideration of the trajectory in his report to arrive at those conclusions,²² at this stage it would not be appropriate to conclude the failure to realise the

¹⁸ CD12

¹⁹ Under 'The first trigger for "Plan B"'

²⁰ As highlighted in paragraph 40 of the Council's closing submissions

²¹ CD5

²² For example, those in paragraph 137 of CD5

uplift in 2015-2016 results in a record of persistent under delivery of housing. Accordingly, a 5% buffer is still applicable in the Borough.

Deliverability of supply

48. Footnote 11 of the Framework states that “...*To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans...*”.
49. The appellant highlights that whether or not a site is deliverable within the context of Footnote 11 of the Framework, and therefore included within the supply, is a different matter to the likely rate of delivery from it. Even so, the second sentence of Footnote 11 is unambiguous that for a site with planning permission to be excluded from the five year HLS there needs to be *clear evidence* to indicate that it will not be implemented in five years.
50. PPG also addresses deliverability. In relation to planning permission, it is clear that “...*Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years...*”.²³ Approval of reserved matters is not required for a site to be considered deliverable, and the main parties are agreed that Footnote 11 applies to Local Development Orders (LDOs) as these grant planning permission.²⁴
51. In addition, the Council has highlighted that case law supports the view that a resolution to grant planning permission or inclusion in a development plan can provide evidence of deliverability.²⁵ Also, HLS does not require certainty that housing sites will be developed in the five year period, as a *loose end* does not necessarily provide the *clear evidence* that a site with planning permission would not be deliverable.²⁶
52. Agreement was reached in regard to 7 of the 17 sites in the appendices to Mr Harris’ *Housing Land Supply* proof of evidence. The positions in relation to the sites are as follows:
53. **Site 1 - Skelmersdale town centre** – While the appellant considers that the only dwellings to be delivered are the 48 units with planning permission at Firbeck, the Council also include 75 units at Findon and Delph Clough to provide the 117 units included in the Council’s 2015 Annual Monitoring Report (AMR). Findon and Delph Clough are the subject of LDOs that have conditions that require implementation within five years. Both sites are under the control

²³ Reference ID: 3-031-20140306

²⁴ Paragraph 44 of the Council’s and paragraph 4.1.4 of the appellant’s closing submissions

²⁵ With reference to PPG Ref: ID: 3-031-20140306 and for example, paragraphs 16, 20, 25 and 29 of *St Modwen Developments Limited and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* [2016] EWHC 968 (Admin)

²⁶ With reference to PPG Ref: ID: 3-031-20140306 and for example, paragraph 51 of and submissions to *St Modwen Developments Limited and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* [2016] EWHC 968 (Admin) as referred to in paragraph 47 of the Council’s closing submissions

of the Homes and Communities Agency (HCA). There is no developer to bring the sites forward, but the inquiry heard that in the absence of interest, the HCA would be expected to directly develop the sites. In that context the appellant's '0' delivery for Findon and Delph Clough appears to be too pessimistic and the delivery in the five year HLS would be **117 units**.

54. **Site 2 – Yew Tree Farm** –The Council's position reflected the 2015 AMR with 90 units in the five year HLS, which the Council considered to be conservative given that a letter from Fitton Estates suggests up to 150 units.²⁷ The Council also notes that high rates of delivery were expected at sites with multiple developers elsewhere in the locality. The appellant's position is 50 units within the five year HLS period. A resolution to grant planning permission for 580 dwellings was approved 14 January 2016, subject to planning obligation(s) being entered into. Although the Fitton Estates' letter expects to achieve sales of 120 to 150 units by 2020, this would appear optimistic given previous delivery expectations for the site and matters that remain to be resolved. These matters include completion of a contract with the named developer, site acquisition, determination of reserved matters and addressing any pre-commencement conditions or approvals. Given the nature and scale of the development and the matters that remain to be resolved, I find the Council's position overly optimistic. Accordingly **50 units** are added to the supply.
55. **Site 3 - Grove Farm:** There are no matters that cause me to take a different view to the **76 units** agreed by the main parties to the appeal.
56. **Site 4 - Firswood Farm:** The 2015 AMR is 75 units, but the Council's position at the inquiry increased to 94 units. The appellant's position is 25 units highlighting the absence of a formal consortium or equalisation agreement and possible presence of shallow mine workings. The Fitton Estates' letter refers to matters discussed in a meeting with the Council and developer, that pre-planning work has been carried out and terms have been agreed with the developer for the first phase.²⁸ Confirmation of these matters had yet to be received from the developer, but there is no doubt regarding the nature of the meeting and the matters discussed. The 94 units are to be built on land with its own access, open space and a single owner. These matters indicate it to be appropriate to add the **94 units** to the five year HLS.
57. **Site 5 - Whalleys, Skelmersdale:** The 2015 AMR includes this site at 140 units, but the Council's position has reduced to 120 units, while the appellant's position is 63. The site is allocated for 520 units during the Plan period and there is an extant outline planning permission for 630 units. This is an HCA site with a (unidentified) developer for the first phase that has a design and other matters progressed with the aim of being on-site in 2017. While the proposed delivery rate is questioned, the HCA estimates 110 units by 2020 and is in the best position to understand the factors likely to influence that. Accordingly, the Council's position is accepted as the more likely outcome adding **120 units** to the HLS.
58. **Site 6 - Chequer Lane:** Although the 2015 AMR included 128 units for this site the Council has reduced this to 112 at inquiry, with the appellant's position 72. It is agreed that 66 units will be delivered on one of the two ownerships, but the HCA land has no planning permission resulting in the difference

²⁷ ID13

²⁸ ID13

- between the parties. A Gantt chart shows a developer on-site 1 month after planning permission is obtained, even though pre-commencement conditions and other agreements would have to be addressed, which appears to be very unrealistic. Accordingly, it is the appellant's position that is the likely outcome, which adds **72 units** to the HLS.
59. **Site 7 - Fine Janes Farm:** There are no matters that cause me to take a different view to the **59 units** agreed by the main parties to the appeal.
60. **Site 8 - New Cut Lane Halsall:** There are no matters that cause me to take a different view to the **50 units** agreed by the main parties to the appeal.
61. **Site 9 - Greaves Hall Hospital:** There are no matters that cause me to take a different view to the **60 units** agreed by the main parties to the appeal.
62. **Site 10 - East Quarry, Appley Bridge:** The 2015 AMR had 40 units on this site, which includes a number of floating homes. The Council's position is the 16 homes that would be built on the land immediately around the quarry, while the appellant sees no potential for inclusion within the five year HLS. The site is technically challenging, but it has planning permission and the evidence suggests that the scheme could come forward with 16 units by 2020. As such, the **16 units** are added to the HLS.
63. **Site 11 - Alltys Brickworks:** The Council and appellant consider the site to contribute 85 and 50 units to the five year HLS respectively. It is allocated in the LP and has outline planning permission. A reserved matters application has been made and a major house builder is involved that has provided an estimated delivery rate. There is a gassing landfill on the site, but not in the area intended for house building. Additional information was provided on the final sitting day of the inquiry regarding the environmental context of the site,²⁹ and the main parties to the appeal provided their comments on it.³⁰ The Council has confirmed that: the reports provide the baseline information for an application to discharge condition 34 of the outline planning permission; and, ecological considerations had already been accounted for within the timescales given for the development. There remain ground conditions to be addressed, but it has not been shown that environmental matters would be likely to prevent the site delivering **85 units** by 2020 and this is added to the HLS.
64. **Site 12 - Westec House:** This is a SHLAA site that does not have planning permission. However, it is the site of Council Offices that have now been demolished. It has a resolution to grant planning permission that awaits planning obligation(s) being entered into. Given the nature of the site, its ownership and location within Ormskirk, along with the factors described above, the Council is not excessively optimistic or unrealistic about the site's deliverability. The site would be likely to provide the **20 units** attributed to it and these are added to the HLS.
65. **Site 13 - Digmaor Sports Centre:** The Council and appellant's positions are for 50 and 0 units respectively. The appellant questions the achievability of the site due to its unsuccessful marketing with Findon and Delph Clough (Site 1). The site: has a LDO for 100 dwellings; is Council/ HCA owned; ground conditions are understood to be acceptable; has attracted interest in soft marketing and was to be marketed in summer 2016. Views differ on the

²⁹ ID16 and ID17

³⁰ ID29 and ID30

attractiveness of this site to the market, but the Council's view that 50 units are likely to be achieved by 2020 appears realistic and to reflect the circumstances of the site. Accordingly, **50 units** are added to the HLS.

66. **Site 14 – Abbey Lane:** The Council expects 86 dwellings from this site, which has planning permission granted in March 2014. It is a former landfill for inert wastes and lime sludge that had previous interest from developers, but no schemes taken forward. The land owner's planning consultants have confirmed the owner's intentions for the site and that a sale process is underway with an expected completion and development towards the end of the year. While the appellant questions the viability of the site, noting areas where significant levels ground gas have been observed and the possible presence of contaminants, insufficient information has been provided to put matters into context and demonstrate that there is *clear evidence* that the site is not deliverable. Therefore, **86 units** are added to the HLS.
67. **Site 15 – Sluice Lane/New Road:** The Council and appellant's positions are 48 and 0 units respectively. The site has outline planning permission for up to 51 dwellings, with a reserved matters application in February 2016. A local developer is on-board and both main parties consider it to be a good market location. The developer has confirmed its drainage solution for the site is acceptable to the relevant regulator and utilities provider. However, the appellant has raised a 'loose end' regarding both the area for required ecological works and the drainage outfall being outside the application area. While the drainage solution may be acceptable, it has not been demonstrated that it and the required ecological works can be implemented.³¹ This 'loose end' would appear to be very important to the delivery of the site. Therefore, **0 units** are added to the HLS.
68. **Site 16 – Land at Stiles Lane:** The main parties agree that this site should be removed from the 5yr HLS. No matters would cause me to take a different view and therefore **0 units** are added to the five year HLS.
69. **Site 17 – Land east of the Close:** The main parties have confirmed that this site for C2 housing. For the reasons set out above **0 units** should be added to the five year HLS.
70. In addition to these sites, it is not disputed that **188 units** should be added to the five year HLS to address pending planning applications.³² There are also **374 units** on uncontested sites that are added to the five year HLS.
71. The Council has set out its position in regard to windfalls and noted the LP Examination Inspector found the windfall allowance to be "*...realistic and supported by compelling evidence...*".³³ It would appear to avoid any double counting in arriving at 96 units, the basis for which has been adequately explained. Accordingly, **96 units** are added to the HLS.
72. A HLS SoCG was produced following closure of the inquiry and informs the following:

- i. Agreed base date = 1st April 2015

³¹ Including consideration of ID14

³² Paragraphs 68-70 of the Council's closing submissions

³³ Paragraph 136 of CD5 and paragraph 71 of the Council's closing submissions

ii.	Five year period	= 1 st April 2015 to 31 st March 2020
iii.	Housing requirement	= 1,609 units for the five year period
iv.	Shortfall less 'C2'	= 218 units at 1 st April 2015
v.	Apply 5% buffer	= 1,609 + 218 = 1,827 + 5% = 1,918 ³⁴
vi.	Requirement	= 1,918 units for the five year period
vii.	Annualised requirement	= 1,918 / 5 = 383.6
viii.	Deliverable supply	= 1,613 units
ix.	Housing land supply	= 1,613 / 383.6 = 4.2 years

73. Framework paragraphs 49 and 14 are engaged due to the lack of a 5yr HLS.

74. Framework paragraph 14 states that "...where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted...". Restrictive specific policies in the Framework include those in relation to Green Belt, but the appeal site has been taken out of the Green Belt.

Best and Most Versatile Land

75. LP Policy EN2(4) is not permissive of development on BMV land except where absolutely necessary to deliver development allocated within the local plan, strategic infrastructure, or development associated with the agricultural use of the land.

76. Paragraph 112 of the Framework states that "...Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality...".

77. Documentation appended to the Environmental Statement (ES) includes a single agricultural land classification (ALC) report by ADAS in 1995 for land that includes the appeal site. In 1995, the 24.9ha area reported on had BMV land, with other areas classed as non-agricultural, agricultural buildings, woodland, open water and urban, with 2.3ha not surveyed.

78. The hybrid proposal for the appeal site comprises a full application of 2.46ha and 3.12ha of outline application. Together with the 11.4ha site the subject of the conjoined appeal, this would result in a combined area of 17.06ha. Work carried out for the ES concurred with the conclusions of the 1995 assessment, with the appeal sites noted to contain 12.6ha of BMV.

79. ES Figure 12.1 shows the area of BMV in the locality, and it is extensive.³⁵ Developing the appeal site would cause a loss of BMV land of sufficient scale to

³⁴ Confirmed by paragraph 4.2 of ID31

³⁵ With paragraph 2.14 of the appellant's closing submissions noting the majority of the Borough outside settlements to be BMV land

be locally significant and this weighs against the proposed development. Other safeguarded sites in the Borough have land that is classified as 'urban' or of a lower agricultural quality.³⁶ Consequently, it has not been shown that the proposed loss of BMV is absolutely necessary and the proposal conflicts with LP Policy EN2(4).

Sustainable development

80. Paragraph 7 of the Framework confirms there to be three dimensions to sustainable development, namely economic, social and environmental, and describes matters that are relevant to each.

Environmental dimension

81. The appeal site is predominantly agricultural land that abuts existing residential areas in Ormskirk with Aughton, in an area that also includes characteristically open, rural Green Belt countryside.
82. The detailed element of the appeal scheme would be sympathetic to the existing established and varied residential character of the settlement, and to the buildings within the countryside around it. Similarly, the scale and density of development proposed for the outline element would be appropriate, given the nature of the predominantly residential development next to the appeal site and the context of proposed planning conditions. However, extending the settlement in the manner proposed would cause a loss of countryside that has an open rural character.
83. The Council's report on the application notes that: LP Policy GN3(4) requires, amongst other things, development proposals to maintain or enhance the distinctive character and visual quality of any Landscape Character Area in which they are located; and as the overall landscape impact of the proposal was considered acceptable it was not the subject of a reason for refusal. However, the proposal would cause a loss of countryside, the intrinsic character and beauty of which the Framework seeks to be taken into account and the loss weighs considerably against the appeal scheme.

Minerals Safeguarding

84. The LP proposals map indicates much of the appeal site to be within a Mineral Safeguarding Area. Paragraph 143 of the Framework states that in preparing Local Plans, local planning authorities should, amongst other things, "...define Minerals Safeguarding Areas and adopt appropriate policies in order that known locations of specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be worked...". Framework paragraph 144 notes that when applications are determined, great weight should be given to the benefits of mineral extraction.
85. The Borough Council's report on the proposal notes the application to have been supported by a Minerals Resource Assessment that concluded the county to have a surplus of sand and gravel, and given the characteristics of the surrounding land use and uncertainty regarding the mineral resource on the appeal site, extraction from it would be commercially unviable and environmentally unacceptable. The Council's report note that prior extraction

³⁶ As highlighted in paragraph 91 of the Council's closing submissions

of mineral would not be required and indeed, the mineral planning authority has not objected to the proposal. Therefore, in this case, the sterilisation of mineral reserves attracts considerably less than significant weight against the proposal.

Ecological matters

86. Application stage advice from Natural England noted that the proposal would be unlikely to affect any statutorily protected sites or landscapes. Consultation responses from Merseyside Environmental Advisory Unit (MEAS) highlighted the need for additional the bat survey work prior to determination of the proposal.
87. In addressing priority species and habitats, LP Policy EN2 is clear that, where there is a reason to suspect that there may be a priority species, or their habitat, on or close to a proposed development site, planning applications should be accompanied by a survey assessing the presence of such species and, where appropriate, making provision for their needs.
88. Framework paragraph 118 indicates that "*...When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles...*" which include that planning permission should be refused if significant harm from the development cannot be mitigated, or as a last resort, compensated for.
89. The SoCGs between the appellant and the local planning authority on ecological matters confirm that: (in common with statutorily protected sites and landscapes) no locally designated site is likely to be significantly affected by the proposals; the additional bat survey work was carried out and reported in July 2015; and subject to the imposition of certain planning conditions, MEAS no longer raised objections to the scheme nor suggests that Habitats Regulation Assessments are required for the site. Therefore, on the basis of the additional information provided, in November 2015 the Borough Council confirmed that it would no longer contest the third reason for refusal.
90. Evidence indicates that proposed mitigation measures (for matters such as noxious and invasive species, nesting birds, reptiles, lighting and landscape and habitat management) would ensure that no unacceptable ecological impacts occur from the development proposed. Accordingly, the appeal proposal complies with LP Policy EN2 and paragraph 118 of the Framework.

Drainage and Flood Risk

91. In seeking to ensure that development does not result in unacceptable flood risk, LP Policy GN3(3) requires development to, amongst other things, demonstrate that sustainable drainage systems have been explored alongside opportunities to remove surface water from existing sewers. In this regard, LP Policy IF3(2)(ii) seeks to protect and create sustainable places for communities to enjoy by mitigating any negative impacts to the quality of the existing infrastructure as a result of new development.
92. SoCGs in regard to drainage and flood risk have been produced that confirm the main parties to the appeal have reached agreement on all matters regarding drainage and associated possible planning conditions.

93. The site lies within Flood Zone 1, and the appeal scheme is for (predominantly) residential development over 1 ha in area.³⁷ It is apparent that with the suggested planning conditions, the proposal would reduce runoff rates, provide sustainable attenuation and reduce the transport off-site of sediment and other materials to better existing green field conditions.³⁸ Accordingly, the proposal has considered existing drainage conditions and explored sustainable drainage systems. It would be expected to result in an acceptable flood risk to protect and create sustainable places for communities to enjoy. In this regard, the scheme complies with LP Policies GN3(3) and IF3(2)(ii).

Social dimension

94. The appeal scheme would provide up to 150 additional dwellings that would contribute to the local community and support services within Ormskirk with Aughton.

95. Representations were clear regarding the need for affordable houses in the locality.³⁹ Both the affordable and market homes delivered through the appeal proposal would be of direct benefit to people who wish to live in the locality, and there is no reason to doubt that the proposal would be delivered.

96. The provision of housing and affordable units (and D1 uses) would yield social benefits that meet Framework objectives and attract significant weight in favour of the appeal scheme.

Highway safety

97. The Council's fourth reason for refusal refers to LP Policy GN3(2), which addresses *Accessibility and Transport*. Amongst other things, Policy GN3(2) expects development proposals to incorporate suitable and safe access, and to provide safe, convenient and attractive pedestrian and cycle access.

98. Local residents have expressed clear concerns regarding the existing highway conditions in the locality and these were observed during unaccompanied and accompanied site visits. These site visits enabled traffic levels to be seen during peak periods, including when children were arriving at Town Green School and some people would have been commuting to work.

99. The appeal site is on a route with commuter and other traffic, and the locality becomes very busy as people park their vehicles and walk to the school. The appeal scheme would add to this.

100. Access is a matter to be determined at this stage. Vehicular access to the proposed development would be provided from Prescott Road.

101. The SoCG between the appellant and Lancashire County Council as Highways Authority set out the matters that are now agreed between these two parties. These matters include the existing and proposed traffic flows and their distribution, highway capacity and possible safety impacts, and the availability of alternative modes of transport to the car. It is agreed within the SoCG that there are no resulting highway capacity or safety concerns subject to the provision of identified works; and, that the appeal site would be sustainable in relation to transport.

³⁷ For which Footnote 20 of the Framework is relevant

³⁸ As summarised in section 2 of the Drainage and Flood Risk SoCGs

³⁹ And as summarised section 5 of the appellant's closing submissions

102. The identified works include: the construction of the proposed accesses; the provision and improvement of footways and cycleways; and, improvements to public transport infrastructure such as increased frequency and later evening running of the No.5 circular bus service.
103. Town Green, Aughton Park and Ormskirk railway stations would provide occupiers of the proposed development with regular train services to Liverpool and Preston. These train services run from early morning to late evening. An hourly bus service links Town Green/Aughton Park with Ormskirk six days per week.
104. The centre of the appeal site is approximately 850m from Town Green and Aughton Park railway stations. Formal bus stops are much closer than this. Where transport options are over 800m from housing, the distance could be a disincentive to some pedestrians. Nevertheless, with the identified works described above the availability, frequency and proximity of bus and train services, and the semi-rural and residential character of the walking routes to them, would be expected to encourage occupiers of the appeal site to use alternatives to the private car.
105. The proposed access was visited during the accompanied site visit and this indicated that, along with the evidence in this case, it could provide suitable visibility splays for the road conditions proposed and could operate safely.
106. Matters above lead the Council to conclude that the appeal site is reasonably sustainable, but not as sustainable as the sites allocated for housing (and listed in LP Policy RS1 rather than as safeguarded land in LP Policy GN2) within the LP.⁴⁰ Nevertheless, LP Policy GN2 and its supporting text are clear that safeguarded land is being protected for possible future development, and the Council accepted that the appeal site had been assessed and identified as acceptable in principle for residential development.⁴¹
107. Accordingly, the evidence indicates that the appeal scheme: would be in a sustainable location; would have an acceptable impact on the highway network and road safety; and would comply with LP Policy GN3(2). Framework paragraph 32 is clear that *'...Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe...'* and no such impacts have been identified in this case.

Economic dimension

108. The development would result in economic benefit through the economic activity associated with construction and occupation. In accordance with Framework paragraph 19 (and 28), economic growth through the provision of construction jobs and the sale of construction materials, and expenditure during occupation of the houses, attracts significant weight in favour of the appeal scheme.

Planning Obligations

109. The tests of a planning obligation are contained within CIL Regulation 122 and are reflected in paragraph 204 of the Framework. These tests are that

⁴⁰ Paragraph 94 of the Council's closing submissions and paragraph 2.9 of the appellant's closing submissions with the background to the allocation of the appeal sites also in Section 2. LP Policy GN2 confirms that the LP Policy SP3 allocation at Yew Tree Farm includes safeguarded land that is not marked on the proposals map.

⁴¹ Section 2, including paragraphs 2.5 and 2.6, of the appellant's closing submissions

planning obligations should only be sought where they would be: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.

110. Executed planning obligations by unilateral undertaking and agreement have been provided.⁴² They make provision for: bus subsidy, a travel plan contribution, secondary education contribution; and, open space, affordable and specialist housing, respectively. The evidence in this case demonstrates that the planning obligations meet the CIL Regulation 122 and Framework paragraph 204 tests, and there is no reason to consider that CIL Regulation 123 is breached. By ensuring that the appeal proposal would be a sustainable form of development, these benefits of the scheme attract significant weight in favour of it.

Conditions

111. The following conditions will be imposed.
112. In the interests of the character and appearance of the locality: conditions are imposed to address reserved matters and commencement; materials, boundary walls, fencing and site levels. These include matters that are integral to the design of the development and therefore need to be determined prior to commencement.
113. Conditions are imposed which require the development to be carried out in accordance with the submitted plans and phasing. This is important as the submitted plans and drawings define the scope and extent of the development proposed. Details of phasing will, necessarily, be required prior to development commencing.
114. Highway safety and local living conditions are protected by conditions requiring the provision of, and adherence to, a Construction Method Statement. To be effective the Construction Method Statements need to be in place prior to works commencing. In the interests of highway safety conditions are imposed to address the construction of site accesses, routes for pedestrians and cyclists, car parking and vehicle manoeuvring areas, and the retention of visibility splays.
115. In the interests of providing a sustainable form of development, conditions shall be imposed to address the implementation of the Framework Travel Plan.
116. To provide suitable living conditions in relation to noise, a condition is imposed requiring the provision of details regarding the D1 use. As these include matters that may be integral to its design and construction, the details will be required prior to development commencing.
117. To protect biodiversity and the character and appearance of the locality conditions are imposed in relation to external lighting, ecological mitigation, landscaping, tree felling and the provision of landscape and habitat and construction environment management plans.
118. In the interests of protecting the natural environment, and future users of the appeal site and land elsewhere, conditions are imposed in regard to surface

⁴² ID20 and ID28

and foul water drainage. As they are integral to the construction of the development, these will include prior commencement conditions.

Conclusions

119. The site lies outside the Green Belt. In the absence of a 5yr HLS, relevant LP policies for the supply of housing are out-of-date and the presumption in favour of sustainable development applies in this case. The land forms part of a designation that indicates the suitability of the site in principle for housing development, and this includes the *reasonable sustainability* of the location in relation to its proximity to shops, services, job opportunities and transport infrastructure. However, the potential loss of open countryside and BMV land weigh against the scheme.
120. In accordance with paragraph 85 of the Framework the Plan B sites, which include the appeal site, have been taken out of the Green Belt and allocated for release at an appropriate time, or to be retained for development needs beyond 2027. These sites are safeguarded to provide a means of addressing failures in LP housing delivery.
121. The appeal site is controlled by an established and active house-builder and there is no reason to doubt its deliverability. The scheme would provide much needed affordable housing in the locality and would appear as a natural extension to a Key Service Centre settlement which is next to the top of the settlement hierarchy provided by LP Policy SP1. There are no technical matters in relation to the scheme, such as highways, drainage and ecology that would suggest planning permission should be withheld.
122. LP Policies GN2 and RS6 are clearly relevant policies for the supply of housing that, within the context of the provisions in paragraph 49 of the Framework, are 'out-of-date' due to the absence of a five year HLS. The Council refers to the *Richborough Estates*⁴³ case regarding the effect of policies being out-of-date within the context of Framework paragraphs 14 and 49. In particular, attention is drawn to paragraph 47 of the judgement which states "...There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date....".
123. The scale of the shortfall in five year HLS is not so great to suggest that these policies should be given little or no weight, but at 4.2 years (rather than 'barely three years' as the appellant believes) the shortfall in five year HLS is nonetheless significant.
124. In an area tightly constrained by Green Belt, LP Policies GN2 and RS6 have a specific purpose for land that has been taken out of the Green Belt and safeguarded within a group of sites for release for housing when required. There is no LP policy trigger for Plan B based on a lack of a five year HLS, but

⁴³ *Suffolk Coastal District Council vs Hopkins Homes Limited, Secretary of State for Communities and Local Government and Richborough Estates Partnership LLP vs Cheshire East Borough Council, Secretary of State for Communities and Local Government* [2016] EWCA Civ 168

the LP Examination Inspector was unambiguous that Plan B triggers would be *supplemented* by the presumption in favour of sustainable development as described within paragraphs 49 and 14 of the Framework. Presently, a clear need for market and affordable housing has been demonstrated.

125. The LP is a recently adopted development plan and Plan B seeks to ensure that the most appropriate sites come forward to meet shortfalls in housing delivery. However, even if the triggers for Plan B are not met, any unmet housing needs remain to be considered within the context of the 'supplemental' provisions for the presumption in favour of sustainable development.
126. The appeal scheme conflicts with LP Policies GN2 and RS6 and to this policy conflict is added the adverse impacts of the proposal through loss of open countryside and BMV land. Set against this are the significant benefits from the proposed scheme that are described above and include the provision of market and affordable housing.
127. The presumption in favour of sustainable development, as expressed in paragraphs 14 and 49 of the Framework, is not irrefutable. However, in this case I have found the proposal to represent sustainable development. It is clear that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the appeal scheme when assessed against the development plan, and Framework planning policies, taken as a whole.
128. Consideration has been given to all matters raised in this case. For the reasons above, the appeal scheme conflicts with LP Policies GN2, RS6 and EN2(4). However, the scheme would be a form of sustainable development that complies with LP Policies EN2, GN3(3), IF3(2)(ii) and GN3(2), and Framework paragraphs that include 32 and 118. Therefore, the appeal should be allowed.

Clive Sproule

INSPECTOR

Schedule of Conditions

For the part of the development hereby allowed in outline

Time

1. No development for which outline planning permission has hereby been granted shall be started within any phase until full details of the appearance, landscaping, layout and scale (hereinafter called the "reserved matters") in respect of that phase have been submitted to and approved in writing by the Local Planning Authority. All development shall be carried out in accordance with the "Reserved Matters" details approved.
2. Application for approval of reserved matters for Phase 1 shall be made not later than the expiration of 18 months beginning with the date of this permission and not later than 5 years for subsequent phases. The development must be begun not later than the expiration of two years from the final approval of reserved matters, or in the case of approval on different dates, the final approval of the last such reserved matter to be approved.

Phasing

3. Full details of the phasing of the construction of the development hereby approved including, but not limited to, a site layout plan identifying the proposed number of dwellings in each phase, the provision of internal roads, footpaths/cycleways and public open space for each phase shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The development shall be carried out in accordance with the phasing details approved under this condition unless otherwise agreed in writing by the local planning authority.

Plans

4. The development hereby approved shall be carried out in substantial accordance with the Indicative Parameters Plan Drawing Number 14 - 130 PP01-Rev D received by the LPA on 30th March 2015 and the Proposed Site Layout Plan Drawing Number SK01 received by the LPA on 14th April 2015.
5. The details submitted in accordance with Condition 1 above shall include details of existing and proposed levels across the site or phase and finished ground floor levels of all buildings. The development shall be carried out in accordance with the approved details.

Noise

6. No part of the D1 building shall be constructed until full details of the hours of opening, potential deliveries or waste collections from the site and any associated plant or machinery on the premises have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented as such thereafter.

Lighting

7. Prior to the occupation of any building within a phase a scheme detailing the proposed external lighting to be installed within that phase shall be submitted to and approved in writing by the local planning authority. External lighting shall be installed in accordance with the approved scheme and retained thereafter.

Highways and Transport

8. No development shall take place until a scheme for the construction of all site access and the off-site works of highway improvement has been submitted to, and approved in writing by the Local Planning Authority. The site access and off-site highway works shall be completed before the development is occupied. Before occupation of the 51st dwelling a bus stop to Quality Bus Standards (QBS) is to be delivered as part of the scheme. The bus stop location is shown in plan SCP/15001/SK01 in Appendix 3 of the Wainhomes/LCC Highways Statement of Common Ground (SoCG) and described in paragraph 4.15 of the SOCG.
9. No phase of development, hereby approved, shall commence until the details (widths and surfacing materials) of the routes for pedestrians and cyclists through the site and up to the site boundary (as shown in plan SCP/15001/F11) applicable to that phase are submitted and agreed with the LPA.
10. The Framework Travel Plan as agreed must be implemented in full in accordance with the timetable within it unless otherwise agreed in writing with the Local Planning Authority. All elements shall continue to be implemented at all times thereafter for as long as any part of the development is occupied or used/for a minimum of at least 5 years.
11. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) a management plan to control the emission of dust and dirt during construction identifying suitable mitigation measures;
 - g) a scheme for recycling/disposing of waste resulting from construction work (there shall be no burning on site);

- h) a Management Plan to identify potential ground and water contaminants; details for their storage and how water courses will be protected against spillage incidents and pollution during the course of construction;
 - i) a scheme to control noise during the construction phase; and
 - j) the routing of construction vehicles and deliveries to site.
12. Car parking and vehicle turning areas within each phase (as set out in the phasing programme) shall be surfaced or paved in porous materials in accordance with a scheme to be approved by the Local Planning Authority and the car parking spaces and manoeuvring areas marked out in accordance with the approved plan, before the use of the dwellings and other buildings/uses hereby permitted become operative.

Drainage and Flood Risk

13. This site must be drained on a totally separate system with only the foul drainage emanating from the site being allowed to communicate with the public sewerage system. For the avoidance of doubt, surface water must drain separate from the foul and no surface water will be permitted to discharge directly into existing public sewerage systems.
14. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (FRA 288 RR 2.0, 20th March 2015 and FRA 288 – Consultation Comments Response, 2.0, 10th June 2015) and the mitigation measures detailed within the FRA. The mitigation measures shall be fully implemented in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority in consultation with the lead local flood authority.
15. No development shall commence within any phase until details of the design, based on sustainable drainage principles, and implementation of an appropriate surface water sustainable drainage scheme applicable to that phase have been submitted to and approved in writing by the local planning authority. Those details shall include, as a minimum:
- a) Information about the design storm period and intensity (1 in 30 & 1 in 100 year +30% allowance for climate change), allowance for urban creep, discharge rates and volumes (both pre and post development), temporary storage facilities, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of floor levels in AOD;
 - b) The scheme should demonstrate that the surface water run-off must not exceed the pre-development greenfield runoff in line with Defra's Non-Statutory Technical Standards for Sustainable Drainage Systems.

The scheme shall subsequently be implemented in accordance with the approved details before the development is completed;

- c) Construction phase management plan detailing how surface water and pollution prevention will be managed during each construction phase as applicable;
 - d) Flood water exceedance routes, both on and off site;
 - e) A timetable for implementation, including phasing, to demonstrate that a comprehensive strategy for the whole site can be delivered that will ensure phasing does not jeopardise the overall scheme or preclude further development;
 - f) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates;
 - g) Details of water quality controls, where applicable;
 - h) All SuDS open water retaining features within the development area must be designed in accordance with Defra's Non-Statutory Technical Standard for Sustainable Drainage Systems and the requirements of the SuDS design manual to ensure the prevention of potential accidents.
16. The scheme shall be implemented in accordance with the approved timetables agreed under parts (c) and (e) in the previous condition. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.
17. No development shall commence within any phase until details of an appropriate management and maintenance plan applicable to that phase for the sustainable drainage system for the lifetime of the development which, as a minimum, shall include:
- a) the arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company;
 - b) arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
 - i. on-going inspections relating to performance and asset condition assessments
 - ii. operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime;
 - c) means of access for maintenance and easements where applicable.

Ecology and Landscape

18. The ecological mitigation (Table 7.18 (Wainhomes)) contained within Appendix 7F-1, Bat Surveys, Wainhomes Site, TEP, July 2015, Ref:4939.010-2, Version 2; of the Chapter 7, Ecology: Bat Annex, Environmental Statement, Volume 2 : Main Text, Land off Prescott Road and Parr's Lane, Aughton, Emery Planning, Date – Unknown, Ref: EIA-V2-8743-HL shall be implemented in full.
19. No construction shall take place within any phase until a landscaping scheme applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall show the location, branch spread, and species of all existing trees and hedges; the location, species and number of all proposed trees, shrubs and hedges; and the location of all existing and proposed grassed and hard surfaced areas, details of seed and plant specifications, seeding rates, planting densities, establishment methods, aftercare, design of culverts to facilitate wildlife connectivity, swales and embankments. Trees and shrubs planted shall comply with BS.3936 (Specification of Nursery Stock) and shall be planted in accordance with BS.4428 (General Landscaped Operations). The landscaping scheme shall also set out a timetable for implementation. The approved scheme shall be carried out in full accordance with the approved details. All planting shall be maintained and dead or dying material shall be replaced for a period of seven years from the agreed date of planting.
20. No construction shall take place within any phase until a Landscape and Habitat Management Plan (L&HMP) applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The L&HMP shall include the following elements:
 - a) Details and extent of new and existing wetland habitats i.e. SuDS systems, swales etc incorporating the onsite pond and how these will be constructed;
 - b) Details of treatment of site boundaries and/or buffers around waterbodies and woodland edge;
 - c) Details of management responsibilities, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens);
 - d) Management prescriptions detailed within section 7.192 of the EIA;
 - e) Details of bat and bird box provision;
 - f) Details of provision of hedgehog gaps (13x13cm) within garden fences to allow hedgehog movement between gardens;
 - g) The retention and management of the mature woodland and ponds;
 - h) The retention of most of the mature trees;
 - i) The translocation of bluebell;

- j) The provision of wetland habitat including creation of a new pond;
- k) The provision of wildflower grassland;
- l) The planting of new, native hedgerow; and
- m) Mitigation and landscape planting should also include small seed bearing species which encourage red squirrels and discourage grey squirrels.

The agreed landscape and habitats management plan shall be implemented in full, in accordance with timescales indicated in the approved scheme.

21. No construction shall take place within any phase until a construction environment management plan (CEMP) applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be implemented in full. The plan shall provide for:
- a) Details of measures to mitigate impacts on biodiversity including a timetable of mitigation works relative to site investigation, site preparation and site clearance;
 - b) Appropriate updated surveys to be carried out for features of biodiversity value to inform mitigation proposals, including for schedule 9 plants (see below) and any required to ensure the baseline data remains up to date (in accordance with EIA para 7.188);
 - c) To inform the Noxious & Non-Native Species Management Plan, survey for the specified species in schedule 9 of the Wildlife and Countryside Act 1981 (as amended) shall also be undertaken and measures to prevent the spread of any such species shall be implemented if necessary;
 - d) A Method Statement detailing measures to be taken during construction to protect the health of the existing trees;
 - e) Construction vehicle routing to the site, vehicle parking, site compounds, storage of plant and materials used in constructing the development; a scheme for recycling/disposing of waste resulting from the construction works and measures to control dust, lighting and noise during construction.
22. Tree felling, vegetation clearance works, demolition work or other works that may affect nesting birds shall not be undertaken between the months of March to August inclusive unless the absence of nesting birds has been confirmed by further surveys or inspections. Such surveys shall be carried out by a suitably qualified and experienced ecologist. If nesting birds (or dependent young) are found to be present, works shall be delayed until such time as nesting is complete and young have fledged.

For the part of the development hereby allowed in full

Time

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.

Plans

2. The development hereby approved shall be carried out in accordance with details shown on the following plans:-

Drawing Number SK01 Rev C – Proposed site layout - received by the Local Planning Authority on 14th April 2015;
Drawing Number 4.344/P/B/L10/300 Rev # – Whitemoor - received by the Local Planning Authority on 30th March 2015;
Drawing Number 4.341/P/B/L10/300 Rev # – Shakespear - received by the Local Planning Authority on 30th March 2015;
Drawing Number 4.309/P/B/L10/300 Rev B – Oxford - received by the Local Planning Authority on 30th March 2015;
Drawing Number 4.343/P/B/L10/300 Rev # – Eaton - received by the Local Planning Authority on 30th March 2015;
Drawing Number 2.214/P/B/L10/300 Rev # – Churchill - received by the Local Planning Authority on 30th March 2015;
Drawing Number 5.340/P/B/L10/300 Rev C – Cavendish - received by the Local Planning Authority on 30th March 2015;
Drawing Number 3.217/P(EG)/B/L10/300 Rev A – Baird - received by the Local Planning Authority on 30th March 2015;
Drawing Number 1.345(4)/P/B/L10 – Chinley apartments - received by the Local Planning Authority on 14th April 2015;
Drawing Number G/R35LH/P/B/L10 Rev A – Elgar Lifetime - received by the Local Planning Authority on 14th April 2015;
Drawing Number Turner Semi/P/B/L Rev # – Turner semi - received by the Local Planning Authority on 14th April 2015;
Drawing Number PGL/5.0/3/B/P Rev # - Double garage - received by the Local Planning Authority on 30th March 2015

Materials/Levels

3. No construction of any dwelling shall take place until details of all materials including walling, roof, garaging and surface treatments have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. No construction of any dwelling shall take place until details of boundary walls/fences have been submitted to and approved in writing by the local planning authority. Such walls/fences shall be erected as an integral part of the development.
5. No development shall take place until full details of the finished levels of all parts of the site, including the floor levels of all buildings, have been

submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Lighting

6. Prior to the occupation of any building hereby approved a scheme providing full details of all external lighting sources shall be submitted to and approved in writing by the Local Planning Authority. External lighting shall be installed in accordance with the approved scheme and retained thereafter.

Highways

7. No construction shall take place until a scheme for the construction of the site access and the off-site works of highway improvement has been submitted to, and approved in writing by the Local Planning Authority. The site access and off-site highway works shall be completed before the development is occupied. The works to be covered by this include:
 - a) Site Access onto Prescott Road as shown in Layout Plan SCP/15001/F11 (agreed in principle and included in the Statement of Common Ground – Appendix 1). The scheme includes for footway improvement to be delivered along the site frontage on Prescott Road.
 - b) A dropped kerb crossing south of Norris House Drive as shown in Layout Plan SCP/15001/F11.
8. There shall not at any time in connection with the development hereby permitted be planted hedges, trees or shrubs within the visibility splays required to maintain safe operation for all users as shown in Drawing SCP/15001/F01 received by the LPA on 14th April 2015 and measuring 2.4 x 51m to the north of the site access and 2.4 x 54m to the south of the site access.
9. The Framework Travel Plan as agreed must be implemented in full in accordance with the timetable within it unless otherwise agreed in writing with the Local Planning Authority. All elements shall continue to be implemented at all times thereafter for as long as any part of the development is occupied or used/for a minimum of at least 5 years.
10. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing, by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

- e) wheel washing facilities;
 - f) a management plan to control the emission of dust and dirt during construction identifying suitable mitigation measures;
 - g) a scheme for recycling/disposing of waste resulting from construction work (there shall be no burning on site);
 - h) a Management Plan to identify potential ground and water contaminants; details for their storage and how water courses will be protected against spillage incidents and pollution during the course of construction;
 - i) a scheme to control noise during the construction phase; and
 - j) the routing of construction vehicles and deliveries to site.
11. Car parking and vehicle turning areas shall be surfaced or paved in porous materials in accordance with a scheme to be approved by the Local Planning Authority and the car parking spaces and manoeuvring areas marked out in accordance with the approved plan, before the use of the dwellings hereby permitted are occupied.

Drainage and Flood Risk

12. This site must be drained on a totally separate system with only the foul drainage emanating from the site being allowed to communicate with the public sewerage system. For the avoidance of doubt, surface water must drain separate from the foul and no surface water will be permitted to discharge directly into existing public sewerage systems.
13. The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (FRA 288 RR 2.0, 20th March 2015 and FRA 288 – Consultation Comments Response, 2.0, 10th June 2015) and the mitigation measures detailed within the FRA. The mitigation measures shall be fully implemented in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority in consultation with the lead local flood authority.
14. No development shall commence within any phase until details of the design, based on sustainable drainage principles, and implementation of an appropriate surface water sustainable drainage scheme applicable to that phase have been submitted to and approved in writing by the local planning authority. Those details shall include, as a minimum:
- a) Information about the design storm period and intensity (1 in 30 & 1 in 100 year +30% allowance for climate change), allowance for urban creep, discharge rates and volumes (both pre and post development), temporary storage facilities, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater

- and/or surface waters, including watercourses, and details of floor levels in AOD;
- b) The scheme should demonstrate that the surface water run-off must not exceed the pre-development greenfield runoff in line with Defra's Non-Statutory Technical Standards for Sustainable Drainage Systems. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed;
 - c) Construction phase management plan detailing how surface water and pollution prevention will be managed during each construction phase as applicable;
 - d) Flood water exceedance routes, both on and off site;
 - e) A timetable for implementation, including phasing, to demonstrate that a comprehensive strategy for the whole site can be delivered that will ensure phasing does not jeopardise the overall scheme or preclude further development;
 - f) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates;
 - g) Details of water quality controls, where applicable;
 - h) All SuDS open water retaining features within the development area must be designed in accordance with Defra's Non-Statutory Technical Standard for Sustainable Drainage Systems and the requirements of the SuDS design manual to ensure the prevention of potential accidents.
15. The scheme shall be implemented in accordance with the approved timetables agreed under parts (c) and (e) in the previous condition. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.
16. No development shall commence within any phase until details of an appropriate management and maintenance plan applicable to that phase for the sustainable drainage system for the lifetime of the development which, as a minimum, shall include:
- a) the arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company;
 - b) arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
 - i. on-going inspections relating to performance and asset condition assessments

- ii. operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime;
- c) means of access for maintenance and easements where applicable.

Ecology and Landscape

- 17. The ecological mitigation (Table 7.18 (Wainhomes)) contained within Appendix 7F-1, Bat Surveys, Wainhomes Site, TEP, July 2015, Ref:4939.010-2, Version 2; of the Chapter 7, Ecology: Bat Annex, Environmental Statement, Volume 2 : Main Text, Land off Prescott Road and Parr's Lane, Aughton, Emery Planning, Date – Unknown, Ref: EIA-V2-8743-HL shall be implemented in full.
- 18. No construction shall take place within any phase until a Landscape and Habitat Management Plan (L&HMP) applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The L&HMP shall include the following elements:
 - a) Details and extent of new and existing wetland habitats i.e. SuDS systems, swales etc incorporating the onsite pond and how these will be constructed;
 - b) Details of treatment of site boundaries and/or buffers around waterbodies and woodland edge;
 - c) Details of management responsibilities, including long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens);
 - d) Management prescriptions detailed within section 7.192 of the EIA;
 - e) Details of bat and bird box provision;
 - f) Details of provision of hedgehog gaps (13x13cm) within garden fences to allow hedgehog movement between gardens;
 - g) The retention and management of the mature woodland and ponds;
 - h) The retention of most of the mature trees;
 - i) The translocation of bluebell;
 - j) The provision of wetland habitat including creation of a new pond;
 - k) The provision of wildflower grassland;
 - l) The planting of new, native hedgerow; and
 - m) Mitigation and landscape planting should also include small seed bearing species which encourage red squirrels and discourage grey squirrels.

The agreed landscape and habitats management plan shall be implemented in full, in accordance with timescales indicated in the approved scheme.

19. No construction shall take place within any phase until a construction environment management plan (CEMP) applicable to that phase has been submitted to and approved in writing by the Local Planning Authority. The approved plan shall be implemented in full. The plan shall provide for:
- a) Details of measures to mitigate impacts on biodiversity including a timetable of mitigation works relative to site investigation, site preparation and site clearance;
 - b) Appropriate updated surveys to be carried out for features of biodiversity value to inform mitigation proposals, including for schedule 9 plants (see below) and any required to ensure the baseline data remains up to date (in accordance with EIA para 7.188);
 - c) To inform the Noxious & Non-Native Species Management Plan, survey for the specified species in schedule 9 of the Wildlife and Countryside Act 1981 (as amended) shall also be undertaken and measures to prevent the spread of any such species shall be implemented if necessary;
 - d) A Method Statement detailing measures to be taken during construction to protect the health of the existing trees;
 - e) Construction vehicle routing to the site, vehicle parking, site compounds, storage of plant and materials used in constructing the development; a scheme for recycling/disposing of waste resulting from the construction works and measures to control dust, lighting and noise during construction.
20. No construction on any dwelling shall take place until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall show the location, branch spread, and species of all existing trees and hedges; the location, species and number of all proposed trees, shrubs and hedges; and the location of all existing and proposed grassed and hard surfaced areas. Trees and shrubs planted shall comply with BS. 3936 (Specification of Nursery Stock) and shall be planted in accordance with BS. 4428 (General Landscape Operations). Within a period of 9 months from the date when any part of the development is brought into use the approved landscaping scheme shall be carried out. All planting shall be maintained and dead or dying material shall be replaced for a period of seven years from the agreed date of planting.
21. Tree felling, vegetation clearance works, demolition work or other works that may affect nesting birds will be avoided between March and August inclusive, unless the absence of nesting birds has been confirmed by further surveys or inspections submitted to and agreed in writing with the Local Planning Authority.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

James Maurici

Queens Counsel,
instructed by the Borough Solicitor

He called
Peter Richards

Strategic Planning and Implementation Manager,
West Lancashire Borough Council

FOR THE APPELLANT:

Paul Tucker

Queens Counsel,
Instructed by Stephen Harris

He called
David Roberts
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Stephen Harris
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Director, SCP

Director, Emery Planning partnership

INTERESTED PERSONS:

Councillor O'Toole

County Councillor and Ward Councillor with the
Borough Council

Irene Roberts

Clerk to Aughton Parish Council

Colin Atkinson

Aughton Residents Group (ARG 2012)

Ian Forbes

Local resident

Richborough Estates

INQUIRY DOCUMENTS (ID)

The conjoined inquiry had a single document library with IDs that may be relevant to either or both appeals

- 1 Opening submissions on behalf of the appellant
- 2 Opening statement on behalf of the Council
- 3 *Borough Council of Kings Lynn and West Norfolk vs Secretary of State for Communities and Local Government and Elm Park Holdings Ltd [2015]* EWHC 2464 (Admin)
- 4 A statement by Aughton Residents Group (2012) (ARG 2012)
- 5 Appellant's witness - David Roberts - Qualifications and Experience
- 6 A statement on behalf of Aughton Parish Council by Irene Roberts
- 7 A housing land supply table with details regarding 13 sites
- 8 A Statement of Common Ground on highway and transportation issues between Redrow Homes (Lancashire) and Lancashire County Council
- 9 A hand written note from the Council on affordable housing completions 2012-2015 and anticipated by 31 March 2017
- 10 Extracts from a Liverpool press website, dated 18 May 2016, reporting a Redrow proposal for a site in Allerton - provided by ARG 2012
- 11 An unexecuted planning obligation in relation to the Redrow proposal
- 12 An e-mail, dated 11 May 2016 at 15:12hrs, regarding New Cut Lane, Halsall
- 13 An undated letter with an accompanying e-mail, dated 09 May 2016 at 16:41hrs, from Fitton Estates regarding Yew Tree Farm, Crompton and Firwood Road, Halliwell
- 14 Development Management Advice, dated 27 April 2016, from Merseyside Environmental Advisory Service to the Council regarding additional information for the approval of reserved matters for land at the junction of Sluice Lane, New Road, Rufford
- 15 Initial Housing Completions Data - 2015/16 from the Council
- 16 Phase 1 Environmental Audit for Alty's Brickworks, Hesketh Bank, dated July 2014
- 17 Phase 2 Supplementary Ground Investigation for Alty's Brickworks, Hesketh Bank, dated July 2014
- 18 A housing land supply table with details regarding 13 sites
- 19 A table showing the main parties estimates of housing delivery on 17 sites 2015/2020 - replaces page 6 of the SoCG
- 20 An executed planning obligation by unilateral undertaking, dated 20 May 2016, in regard to Appeal A

- 21 An executed planning obligation by unilateral undertaking, dated 19 May 2016, in regard to Appeal B
- 22 Closing submissions on behalf of the Council
- 23 Planning Practice Guidance paragraph 021, reference ID: 2a-021-20160401
- 24 An addendum to the closing submissions on behalf of the appellant in relation to 5 yr housing land supply
- 25 A list of abbreviations used in the closing submissions on behalf of the appellant
- 26 Closing submissions on behalf of the appellant
- 27 Affordable Housing Completions Anticipated by 31 March 2017

Documents received after the final sitting day of the inquiry

- 28 An executed planning obligation by agreement, dated 25 May 2016, in regard to Appeal A
- 29 Comments from Appellant A in relation to ID16 and ID17
- 30 Comments from the Council in relation to ID16 and ID17
- 31 SoCG on Housing land Supply, dated 27 May 2016
- 32 E-mail correspondence, with dates in November 2015 and March 2016, between the Council , County Council and the appellant's highway consultant regarding public transport funding
- 33 CPT Cost Index summary of results: change in bus and coach industry costs for the 12 months to 30 June 2015
- 34 Secretary of State Decision Letter and report for appeal ref: APP/A0665/A/11/2167430
- 35 Secretary of State Decision Letter and report for appeal ref: APP/L3815/A/14/2223343