



Department for
Communities and
Local Government

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Gladman Developments Limited
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Our Ref: APP/R0660/W/15/3136524

20 September 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPLICATION BY GLADMAN DEVELOPMENTS LTD
CHURCH LANE, WISTASTON, CREWE, CHESHIRE
APPLICATION REF: 14/3024N**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Susan Heywood BSc(Hons) MCD MRTPI, who held a hearing for 2 days on 4 & 5 February 2016 into your appeal against the failure of Cheshire East Council ('the Council') to determine your outline application for the development of up to 300 dwellings, site access, public open space, landscaping and associated infrastructure, in accordance with application ref 14/3024N, dated 18 June 2014.
2. On 20 November 2015, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for residential development of over 150 units on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

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

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Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The Secretary of State is satisfied that the Environmental Statement complies with the above Regulations (IR3) and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. A previous appeal against the Council's refusal of planning permission for the same development on this site was also recovered for determination by the Secretary of State in May 2014 (IR6).

Matters arising after the close of the inquiry

7. The Secretary of State is in receipt of post inquiry representations from you, the appellants, dated 10 February 2016 and 23 March 2016, which were received too late to be considered by the Inspector. The Council were made aware of your intention to submit the information contained in the representation dated 10 February 2016, regarding foul drainage, on 8 February 2016. With regard to your letter dated 23 March 2016, the Secretary of State wrote to the main interested parties on 27 April 2016, inviting them to comment on the implications of the letter and documents. These representations were then circulated for comment on 19 May 2016. Further responses that were received were circulated on 26 May 2016. The representations are listed at Annex A.
8. The Secretary of State has carefully considered and taken into account all the representations he has received since the close of the inquiry. Copies are not attached to this letter, but can be provided on written request to the address shown at the foot of the first page of this letter.

Policy Considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case, the development plan consists of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (the Local Plan), adopted in 2005, with a saving direction in 2008. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR11-14.
11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Emerging plan

12. The emerging plan comprises the emerging Cheshire East Local Plan (CELP). Paragraph 216 of the Framework states that decision makers may give weight to

relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. As the CELP is still at an early stage and is subject to change, the Secretary of State agrees with the parties that limited weight can be attributed to the emerging CELP (IR17).

Main issues

13. The Secretary of State agrees with the Inspector that the main issues are those set out at IR107 and are the same as those listed by the previous Inspector (IR107).

Policy Considerations

14. For the reasons given at IR109-110, the Secretary of State agrees with the Inspector's conclusion at IR110, that policy NE.2 and policy RES.5 are relevant policies for the supply of housing, and in the absence of a 5 year supply of deliverable housing sites, the policies are out of date in terms of Framework paragraph 49.

15. The Inspector considers that policy NE.4 does not become out of date in terms of paragraph 49 of the Framework (IR111). However, in light of the recent Richborough judgement which gives a wide meaning to 'relevant policies for the supply of housing' and extends the meaning to include policies whose effect is to influence the supply of housing land by restricting the location where new housing may be developed, the Secretary of State disagrees with the Inspector's conclusion on policy NE.4. The Secretary of State considers that policy NE.4 is a relevant policy for the supply of housing and is therefore out of date.

16. The Secretary of State agrees with the parties that policy NE.12 is not a policy for the supply of housing (IR25) and should therefore apply. However, he acknowledges that policy NE.12 is more restrictive than the Framework, but agrees with the Inspector's conclusions, that in so far as it seeks to protect areas of higher quality agricultural land, its aims are the same as those in the Framework and the policy should therefore attract a moderate amount of weight having regard to paragraph 215 of the Framework (IR112).

The character and appearance of the countryside and its role in separating settlements

17. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR114-116. He agrees that there are aspects of the site's location that diminish the contribution it makes to the role of separating the communities of Wistaston and Nantwich (IR115). The Secretary of State notes the previous Inspector's comments, that "...the part of the gap filled by the development lies between two parts of Wistaston, which are otherwise a contiguous urban area, and not the separate settlements referred to in the explanatory text" (IR116).

18. In terms of the effect on the visual character of the landscape, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR117-120. He agrees that there is limited visibility of the site from other parts of the Green Gap (IR117), but that the development would have a significant effect on views presently available from the land surrounding the site, and within and approaching the footpaths crossing it (IR118). He agrees that although there would be a change of character, the evidence falls short of demonstrating that the land has such visual landscape quality in its own right as to

make its loss unacceptable on this ground (IR118) and he agrees that any impact on the landscape would be limited to the site and its immediate environs (IR120). The Secretary of State notes that a large part of the Green Gap would remain and would remain accessible (IR118).

19. The Secretary of State agrees with the Inspector's conclusion on the Neighbourhood Plan, that it is at a stage where it attracts very limited weight (IR119). Whilst the Secretary of State acknowledges that the land is valued by the local community, he agrees with the Inspector that the proposal would not conflict to any great extent with that aspect of the Framework which seeks to recognise the intrinsic character and beauty of the countryside nor those aims reflected in policy NE.2 (IR119).
20. The Secretary of State agrees with the Inspector's summary at IR121, that the proposal would cause a degree of erosion of the physical gap between built up areas and would adversely affect the visual character of the landscape to a limited extent. It would therefore be contrary to policy NE.4.

The supply of Agricultural Land

21. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR122. He agrees that, although the loss of BMV land would be contrary to Local Plan policy NE.12, there is no case made that the loss would be significant in terms of the overall supply of agricultural land in the area.

Other matters

22. The Secretary of State agrees with the Inspector's assessments and conclusions on the impact of the development on local infrastructure, road safety, flood risk, ecology and on existing residents during the construction process (IR123-125).
23. With regards to the benefits of the proposal, the Secretary of State agrees with the Inspector that in the absence of a demonstrable 5 year supply of housing, the main benefit of the proposal is the provision of up to 210 market and 90 affordable houses (IR126). He agrees that there are also the associated economic advantages (IR126).

The previous decision and the implications of the proposed alterations to the CELP

24. The Secretary of State notes that the Council is no longer promoting a new Green Belt and agrees that the new Green Gap policy has limited weight. He therefore agrees with the parties that the previous balancing exercise must be revisited in light of these changes (IR131).

Planning conditions

25. The Secretary of State has given consideration to the Inspector's analysis at IR88-93, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. Furthermore, the Secretary of State agrees with the Inspector that a foul drainage condition is not required (IR92).

Planning obligations

26. Having had regard to the Inspector's analysis at IR94-101, the planning obligation dated 5 February 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given at IR97-100 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, directly related to the development, and are fairly and reasonably related in scale and kind to the development.
27. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the appeal. It has been confirmed that the pooling restrictions imposed by Regulation 123 of the CIL Regulations would not be exceeded (IR101). For these reasons, the Secretary of State concludes that the obligations are compliant with Regulations 123(3), as amended.

Planning Balance

28. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies NE.2, RES.5, NE.4 and NE.12 of the development plan. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
29. The provisions of the Framework are material considerations, and in light of paragraph 49, the Secretary of State considers that policy NE.2 and RES.5 are out-of-date. Unlike the Inspector, he considers that policy NE.4 is also a relevant policy for the supply of housing and is therefore out-of-date. The Secretary of State attributes limited weight to these policies. With regard to Policy NE.12, the Secretary of State considers that it attracts a moderate amount of weight having regard to the degree of conflict of the policy with the Framework.
30. The Secretary of State acknowledges that the development would result in the loss of part of the Green Gap, but considers that the location of the site diminishes the extent of that contribution. He also acknowledges that those around the site would experience a significant change of character, but is satisfied that the lack of intervisibility diminishes the role that the site plays in the landscape quality of the Green Gap as a whole. Whilst there would be conflict with policy NE.4 due to the erosion of the Green Gap and harm to the character of the landscape, it would carry limited weight. Although the Secretary of State considers the loss of BMV agricultural land a detrimental aspect of the proposal, he is of the view that 10.4ha would not amount to a significant loss in the context of the overall supply of BMV land in the area. He is satisfied that the conflict with policy NE.12 attracts limited weight.
31. The Secretary of State considers that in the absence of a demonstrable 5 year supply, the provision of up to 210 market and 90 affordable houses, weighs significantly in favour of the scheme and would help to achieve the economic and social roles of sustainability. He considers the environmental harm due to the erosion of the Green Gap and the economic harm due to the loss of BMV land would be of limited weight.

Overall, the Secretary of State is satisfied that the proposal amounts to a sustainable form of development.

32. The Secretary of State is satisfied that there is a significant change in the planning circumstances in this case, compared to the previous decision, in that the Council is no longer proposing a new Green Belt and so there is no longer a reason to dismiss the appeal due to prematurity.
33. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole. Overall, the Secretary of State considers that the adverse impacts of the proposal, in terms of the erosion of the Green Gap, harm to the character of the landscape and the loss of BMV land, would not significantly and demonstrably outweigh the benefits which would result from the provision of new housing and affordable housing to boost supply as required by the Framework.
34. The Secretary of State therefore concludes that the appeal be allowed and planning permission be granted, subject to the conditions.

Formal decision

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your appeal and grants outline planning permission for the development of up to 300 dwellings, site access, public open space, landscaping and associated infrastructure, in accordance with application ref 14/3024N, dated 18 June 2014, subject to the conditions set out at Annex B of this letter.
36. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
37. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

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

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Richborough Estates

Annex A

Representations received in response to Secretary of State's letter of 27 April 2016

Correspondent	Date of correspondence
David Lucas	28 April 2016
Jonathan White	30 April 2016
John Leah	1 May 2016
Brian Moore	5 May 2016
Hugh Emerson	5 May 2016
Wistaston Parish Council – A L Cross	10 May 2016
Edward Timpson MP	11 May 2016
Graeme Horrocks	12 May 2016
Les Lawson	13 May 2016
Jeanette Horrocks	14 May 2016
Judy Lawson	14 May 2016
Wistaston Neighbourhood Plan Steering Group – Graham Roberts	14 May 2016
Hands of Wistaston Residents Group – Graeme Worrall	16 May 2016

Further representations received in response to recirculation letter of 19 May 2016

Correspondent	Date of correspondence
Wistaston Parish Council – A L Cross	20 May 2016
Gladman Developments Limited	26 May 2016

Annex B

Conditions

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The drawings to which this permission relates are the Site Location Plan 5481-L-005 and the Site Access General Arrangement Plan No 03651-F01C.
5. The application(s) for approval of reserved matters shall be substantially in accordance with the Development Framework plan issued as part of the Design and Access Statement (May 2014), page 39 and the Landscape Proposals 5481-L-07 Rev B. Building height and scale shall be substantially in accordance with the principles of the Design and Access Statement (May 2014, Ref 5481).
6. No development shall take place until a plan showing the phasing of development has been submitted to and approved in writing by the local planning authority, and the use of the term 'phase' in these conditions refers to the phases of development shown on the approved phasing plan. Thereafter, development shall be carried out in accordance with the approved phasing plan.
7. No phase of development shall commence until details of existing ground levels, proposed ground levels, and levels of proposed ground floor slabs in that phase have been submitted to and approved in writing by the local planning authority. Development of that phase shall proceed in accordance with the approved scheme of levels. There shall be no alteration of existing ground levels within the 1 in 100 flood outline.
8. No development shall take place until a scheme of surface water drainage works has been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the Planning Practice Guidance, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any

public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. No dwelling in any phase of development shall be occupied until the surface water drainage works applying to that phase have been completed in accordance with the approved scheme.

9. No development shall take place until a 'Phase II' contaminated land investigation has been carried out (in accordance with the procedures set out in the British Standard 10175 (2011) Investigation of Potentially Contaminated Sites – Code of Practice) and the results submitted to and approved in writing by the local planning authority and, if the Phase II investigations indicate that remediation is necessary, then a Remediation Statement has been submitted to and approved in writing by the local planning authority, and the remediation carried out in accordance with the approved Remediation Statement. If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any of the development hereby approved.
10. No phase of development shall commence until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period of that phase. The Statement shall provide for: i) the hours of construction work and deliveries, ii) the parking of vehicles of site operatives and visitors, iii) loading and unloading of plant and materials, iv) storage of plant and materials used in constructing the development, v) wheel washing facilities, vi) details of a responsible person to be contacted in the event of complaint, vii) Mitigation measures in respect of noise and disturbance of the occupants/users of adjoining property including piling techniques, vibration and noise limits, monitoring methodology, screening, detailed specification of plant and equipment to be used, and proposed routes for construction traffic, viii) waste management, with no burning on site, ix) a scheme to minimise dust emissions, including details of all dust suppression measures and methods to monitor emissions of dust arising from the development.
11. The application(s) for reserved matters shall include an undeveloped buffer zone alongside and including the ponds, wetlands and Wistaston Brook, substantially in accordance with the scheme shown on drawing 5481-L-07 Rev B. No development shall take place until a timetable for the implementation of any works within the buffer zone and details of how the buffer zone will be protected during the course of development and managed and maintained thereafter, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the buffer zone has been established in accordance with the approved scheme, and the management and maintenance shall thereafter be carried out in accordance with the approved details.
12. No phase of development shall be carried out until an updated Ecological Mitigation Strategy in relation to the land occupied by that phase, prepared in accordance with the recommendations of the Environmental Statement submitted with the planning application, has been submitted to

and approved in writing by the local planning authority. Development of the phase shall proceed in accordance with the approved Ecological Mitigation Strategy.

13. No phase of development shall commence until detailed proposals for the incorporation of bird boxes into that phase suitable for use by breeding birds has been submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved details and retained thereafter.
14. No development of any phase shall take place until a detailed Arboricultural Method Statement in respect of that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include i) details of the retention and protection of trees, shrubs and hedgerows on or adjacent to the site, ii) implementation, supervision and monitoring of the scheme of protection, iii) a detailed treework specification and details of its implementation, supervision and monitoring, iv) implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage, parking, and deposit of spoil or liquids, and v) the timing of arboricultural works in relation to the approved phase of development. The development shall proceed in accordance with the approved Arboricultural Method Statement and the scheme of protection shall be retained throughout the period of construction of the phase.
15. No development shall take place until details of the highway works in accordance with the scheme shown on drawing No 03651-F01C have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out before first occupation of any part of the development hereby permitted.
16. No development shall commence until a scheme of pedestrian and cycle provision and signage has been submitted to and approved in writing by the local planning authority. The scheme shall include shared routes for pedestrians and cyclists through the site substantially in accordance with the plan No 5481-L-06A and a timetable for implementation. The approved scheme of pedestrian and cycle provision and signage shall be carried out in accordance with the approved timetable.
17. No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the Framework or any future guidance that replaces it. The scheme shall include: i) the numbers, type and location on the site of the affordable housing provision which shall consist of not less than 30% of the dwellings; ii) the tenure shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be distributed ('pepper potted') across the site and across each phase of development; iii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing, with no more than 80% of the open market dwellings in any individual phase being occupied before the affordable housing is completed and available for occupation in that phase; iv) the

arrangements for the transfer of the affordable housing to a Registered Provider or for the management of any affordable housing if no Registered Provider is involved; v) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing including arrangements where appropriate for the subsidy to be recycled for alternative affordable housing provision; vi) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such a occupancy criteria shall be enforced; vii) the affordable homes to be built to the standards by the HCA at the time of development.

18. No construction works in any phase shall take place between 1 March and 31 August in any year until a detailed survey of nesting birds has been submitted to the local planning authority, and a 4m exclusion zone established around any nest found. No development of that phase shall take place within the exclusion zone until a report confirming the completion of nesting has been submitted to and approved in writing by the local planning authority.
19. No phase of development shall be occupied until a Travel Plan for that phase has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include a timetable for implementation and provision for monitoring and review. No part of that phase shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved scheme of monitoring and review as long as any part of the phase of development is occupied.
20. No dwelling shall be occupied until electric vehicle charging infrastructure to serve that dwelling has been installed in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority, and thereafter the infrastructure shall be retained in operational condition.

Report to the Secretary of State for Communities and Local Government

by Susan Heywood BSc(Hons) MCD MRTPI

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

Date: 29 March 2016

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEAL BY

GLADMAN DEVELOPMENTS LTD

Richborough Estates

Hearing held on 4 & 5 February 2016

Church Lane, Wistaston, Crewe, Cheshire

File Ref: APP/R0660/W/15/3136524

File Ref: APP/R0660/W/15/3136524
Church Lane, Wistaston, Crewe, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Gladman Developments Ltd against Cheshire East Council.
- The application Ref 14/3024N is dated 18 June 2014.
- The development proposed is a residential development of up to 300 dwellings, site access, public open space, landscaping and associated infrastructure.

Summary of Recommendation: That the appeal be allowed, and planning permission granted subject to the conditions set out in the annex to this report.

Procedural Matters

1. The hearing took place on 4 and 5 February 2016. An unaccompanied site visit took place on 3 February and an accompanied visit on 5 February 2016.
2. The application was submitted in outline, with all matters reserved except access. It was accompanied by a site location plan (CD 1.06) and a site access drawing (CD 1.08). The following illustrative plans are also included: a parameters plan showing footpaths and landscape proposals (CD 1.07), a landscape plan (CD 1.17) and a development framework (CD 1.13, page 39). The submission included a range of reports and supporting documents which are included at CD1.
3. The appellants submitted an Environmental Statement in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (CD 1.02-1.04) and the Inspectorate's review of the Statement is contained at Document 13. The environmental implications of the development are considered within this appeal report.
4. A Unilateral Undertaking, in accordance with Section 106 of the Town and Country Planning Act 1990, is enclosed at Document 12. It includes obligations for the provision and maintenance of open space on the site, and contributions towards highways infrastructure and education.
5. The appeal was recovered for determination by the Secretary of State because it involves proposals for residential development of over 150 units and on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.
6. A previous appeal against the Council's refusal of planning permission for the same development on this site was also recovered for determination by the Secretary of State. The inquiry into that appeal was held in August 2014. The Inspector's report is at CD4 and the Secretary of State's decision is at CD5. In order to ensure consistency between this report and that of the previous Inspector, and to assist the Secretary of State, this report adopts the same structure as the previous report at CD4 wherever possible. Where matters have not altered since the previous appeal, and where there is no dispute between the parties, I have utilised much the same wording as the previous Inspector.
7. This appeal relates to the failure of the Council to determine a duplicate application submitted alongside the application which was the subject of the

previous appeal. The Council considered this proposal at the Strategic Planning Board on 21 October 2015 and resolved that they would have refused the application.

The Site and Surroundings

8. The appeal site is agricultural pasture land on the northern side of residential development in Church Lane, Wistaston, a suburb of Crewe. It has a site area of 13.88ha, and is a single, undivided, field. Wistaston Brook runs along the north eastern boundary, adjacent to 'Joey the Swan' public park, beyond which is residential development in the vicinity of Wistaston Green. The south western portion of the site abuts school playing fields and a bowling green and tennis club, whilst to the west and north is open countryside. There are few trees on the main part of the site, which has a gently domed profile before falling to the line of the stream, but the western boundary has a dense tree and hedge line, and there is mature vegetation alongside the Wistaston Brook. The northern part of the site is largely open, being separated from the adjoining countryside by a wire fence, and the southern boundary is bordered by the rear gardens of the houses in Church Lane. The extent of the appeal site is shown on the plan at CD1.06 and there are photographs of the site and its surroundings in the Council's appendices (Document 4, Appendix B, Figs 05, 06 1-7, 07 1-5 and Document 5, Appendix 2), and in the appellants' Landscape and Visual Impact Assessment (CD 1.17).
9. The open countryside to the north and west of the site falls within the National Character Area 61, the Shropshire, Cheshire and Staffordshire Plain (CD 1.17, page 11), described as gently rolling, with strong field patterns. In this respect, the site is unusual in being a relatively large, open area, whereas the adjoining fields are generally small and irregularly shaped, enclosed by hedges and trees. The wider setting is apparent from the map extract at CD 1.17, Fig 1 and from the aerial photograph at CD 04, Fig 2. The area is well served by public footpaths, two of which (FP1 and FP2) cross the appeal site, linking the countryside to the north with Church Lane.

Planning Policy

The Adopted Local Plan

10. The Borough of Crewe and Nantwich Replacement Local Plan 2011 (Document 1) (the Local Plan) was adopted in 2005, with a saving direction in 2008. The policies with most relevance to this appeal are NE.2, RES.5, NE.4 and NE.12.
11. NE.2 states that all land outside the settlement boundary will be treated as open countryside, within which only certain specified uses appropriate to a rural area will be allowed. The appeal site is not within the Local Plan settlement boundary, and the residential proposal would not fall within the permitted uses.
12. RES.5 is closely associated with NE.2. It states that housing in the open countryside will be restricted to that which falls within specified criteria. The development would not fall within these criteria.
13. The site lies in the Wistaston/Nantwich Green Gap, as defined in Policy NE.4 and shown on the Local Plan proposals map (extract at Document 5, Appendix 7 and GDL21). Approval will not be given for development which would erode the physical gaps between built up areas, or adversely affect the visual character of

the landscape. Exceptions will be allowed only where it can be demonstrated that there are no suitable alternative locations available.

14. Policy NE.12 resists the loss of the Best and Most Versatile (BMV) agricultural land unless the need for the development is supported in the Local Plan, or it can be shown that the use cannot be accommodated on land of a lower agricultural value, or there are other sustainability considerations favouring the use of the land. The majority of the appeal site is BMV land (Document 2, Statement of Common Ground (SCG) page 22, table 1).

The Emerging Local Plan

15. The Council undertook a 6 week period of consultation on the emerging Cheshire East Local Plan (CELP), Local Plan Strategy Submission Version, ending in April 2014. The CELP was submitted to the Secretary of State for examination in May 2014. The examination was suspended in December 2014 for a period of 6 months to enable the Council to undertake additional work. The Examining Inspector's Interim Views and the Council's response, setting out the timetable for future progress of the Examination, are at CD A4 and CD A5. In summary, the Council expect to publish a revised submission version of the CELP in March 2016. This will be subject to a period of consultation before the Examination Hearings resume in September 2016.
16. The previous Inspector's report (CD4), at paragraph 14, set out the Council's intention, at that stage, to introduce a new area of Green Belt to maintain the gap between Crewe and Nantwich (submission version policy PG3). The appeal site was within the area of search for this new Green Belt.
17. Since the Secretary of State's previous decision (CD5), and following concerns expressed by the Examining Inspector, the Council has re-assessed the proposed Green Belt (*Green Belt Update – Critical Friend Advice*, Document 7, GDL4). In its Committee Report dated 21 July 2015 (Document 7, GDL5), the Council acknowledged the findings of the *Green Belt Update* that the exceptional circumstances required by the National Planning Policy Framework (the Framework or NPPF) to justify a new Green Belt did not exist. The Council therefore now proposes the deletion of policy PG3 and its replacement, in the revised submission version of the CELP, with a new policy relating to the maintenance of Strategic Green Gaps, policy PG4a (Document 7, GDL6). The SCG (Document 2) sets out the parties' agreement that limited weight can be given to the policies in the emerging CELP.

National Planning Policy

18. The Framework and Planning Policy Guidance (the Guidance), are also relevant material considerations in this appeal.

The Proposals

19. It is intended to create a new road entrance from Church Lane, at the eastern end of the site, to serve an estate road system. The illustrative plans (CDs 1.07, 1.13, 1.17) indicate that the existing footpaths FP1 and FP2 would be retained, with the introduction of further footpaths, including on the western perimeter of the site. The north eastern portion of the land, between Footpath FP2 and Wistaston brook, would be retained as an open area, and there would be a landscaped buffer zone around the northern and western edges, separating the

development from the countryside on these sides. A landscaped strip on either side of footpath FP1 is indicated. It is envisaged that the site would accommodate up to 300 units, from 2 to 5 bedrooms, at a maximum of 'two and a half' storeys. 30% of the dwellings would be affordable homes.

The Council's Putative Reason for Refusal

20. The Council's putative reason for refusal is set out at Document 3, page 5. It relates to the loss of open countryside and the erosion of the Green Gap. It refers to the moderate landscape impact of the proposal and the loss of BMV agricultural land. The putative reason states that the adverse impacts would significantly and demonstrably outweigh the benefits of the scheme notwithstanding the shortfall in housing land supply. The development is therefore contrary to policies NE.2, NE.4 and NE.12 and guidance in the Framework.

Other Agreed Facts

21. An updated position on housing land supply is agreed between the Council and appellants and is set out in Document 18. In summary, the Council's latest full objective assessment of need (FOAN) is that 36,000 new dwellings, or 1,800 dwellings per year, will be required over the period 2010-2030. This has increased from the previous appeal when the Council made its case on the basis that the FOAN was 1,180 dwellings per year. The parties agree that the Council cannot demonstrate a 5 year supply of deliverable land to meet the updated need. They also agree that there is likely to be a substantial shortfall in supply, although the specific numbers are not currently available.
22. The SCG is at Document 2. It is agreed that, since the Council is no longer proposing a new Green Belt in the south of the Borough, and the new Green Gap policy (PG4a) in the emerging CELP should be accorded limited weight, there is no prematurity objection to the proposal. The Council does not suggest that I should depart from the factual findings of the Secretary of State in the earlier appeal. There are no material changes to the appeal site or application.
23. It is agreed that the Framework and Guidance provide the latest national policy guidance. As the agreed position is that there is no 5 year housing land supply, it is agreed that policies relating to the supply of housing are not considered up-to-date. It is agreed that policy NE.2 is a policy for the supply of housing. The previous Inspector and the Secretary of State concluded that NE.2 was not up-to-date by virtue of paragraph 49 of the Framework. This is the appellants' approach in this appeal. The Council however, considers that the countryside protection purpose in policy NE.2 is consistent with the Framework and should be accorded weight. It is agreed that policy RES.5 is a policy for the supply of housing and is not up-to-date by virtue of paragraph 49 of the Framework.
24. It is agreed that at the current time policy NE.4 is not a policy for the supply of housing. This matter has been recently considered in the Court of Appeal¹ and, at the time of the Hearing, the judgement was awaited. The parties expressed the wish to submit further comments to the Secretary of State in the event that this judgement is handed down before the Secretary of State issues his decision.

¹ Cheshire East Borough Council v SSCLG & Richborough Estates Partnerships LLP [2015] EWHC 410 (Admin) (LPA11)

25. It is agreed that policy NE.12 is not a policy for the supply of housing. The previous Inspector and the Secretary of State considered the policy to be up-to-date (CD4, paragraph 122; CD5, paragraph 15). Since then, an Inspector in an appeal elsewhere in Wistaston² concluded that the policy is not fully in accordance with the Framework and should be given weight only insofar as it complies. The Council considers this to be a fair approach. The appellants note that the policy is more restrictive than the Framework but they adopt the position of the previous Inspector and the Secretary of State for the purposes of this appeal.
26. It is further agreed that the site is sustainably located, meeting the desired distances for 11 of 15 amenities when assessed against the North West Development Agency toolkit, and failing the toolkit in only two cases. The provision of 30% of the dwellings as affordable housing is an agreed benefit of the proposal as is increasing the supply of market housing.
27. The highway proposals meet the guidance in 'Manual for Streets' and the impact of the development on the road system would be mitigated by the intended obligations. It is also agreed that it would be possible to provide adequate distances from existing properties to maintain residential amenity. Air quality impacts can be mitigated by measures in the Unilateral Undertaking. The impacts on trees and hedgerows would be acceptable and an appropriate design could be achieved. The impacts on ecology would be acceptable subject to suitable conditions and the provision of open space would exceed minimum requirements. There would be no unacceptable impact on archaeological deposits and the development would not create an undue flood risk.

The Cases of the Parties

28. The principal points of the main parties' cases, and their respective positions about the legal framework on which the appeal should be determined, are set out in their closing statements, which are summarised below and may be viewed at Documents 21, 22 and 23. An outline of third party representations follows, with the text of two of the oral submissions to the Hearing at Documents 19 and 20.

The Case for the Council

29. The site is in the countryside, within the Green Gap between the built up areas of Wistaston and Nantwich, and by virtue of extant Local Plan policies NE.2, read together with RES.5, and NE.4, the land is protected from development. Also, the site comprises BMV agricultural land and both NE.12 and the Framework paragraph 112 militate against losing such land to development.
30. In accordance with 38(6) of the Planning and Compulsory Purchase Act 2004, the conflict with development plan policy requires the appeal to be dismissed unless material considerations indicate otherwise.
31. There are two primary material considerations in this regard: (i) the earlier appeal decision of the Secretary of State dated 26 February 2015 and (ii) that the Council acknowledges it cannot demonstrate the 5 year supply of deliverable housing sites that is required by the Framework paragraph 47.

² APP/R0660/A/14/2228115, paragraph 75c (LPA15)

32. It is common ground that there have been no material changes to the site or the surrounding area since the previous appeal. Therefore, whilst matters of weight in the planning balance fall to be considered again, there is no basis for the Council to seek to challenge any of the Secretary of State's findings of fact. It is also common ground that the most significant material change in circumstances since the Secretary of State's decision is that the Council no longer promotes a policy in the emerging CELP that sought to include the site within the Green Belt. It is therefore common ground that the Secretary of State's reasons relating to prematurity in the light of the then draft Green Belt policy no longer apply.
33. The dispute between the parties therefore is whether the conflict with NE.4, the erosion of the Green Gap, the degree of landscape harm and the loss of BMV agricultural land, justify refusal of planning permission or do material considerations indicate otherwise?
34. The Secretary of State clearly identified harm in relation to the Green Gap, landscape harm and loss of BMV agricultural land and consequent conflict with the development plan. It is the Council's case that those adverse impacts and conflicts with policy remain and justify refusal of the appeal scheme. With this in mind, the remaining main issue in this appeal is whether material considerations, and in particular that the Council cannot demonstrate a 5 year housing land supply, indicate that the appeal should be allowed, despite the breach of the development plan.
35. When it comes to considering whether material considerations indicate otherwise as was held by the Supreme Court in *Tesco Stores Ltd v Dundee City Council*³: "Where it is concluded that the proposal is not in accordance with the development plan, *it is necessary to understand the nature and extent of the departure from the plan which the grant of consent would involve in order to consider on a proper basis whether such a departure is justified by other material considerations.*"⁴
36. With regards to the nature of the breach, NE.2 and RES.5 are "in principle" policies. Building up to 300 dwellings here would constitute a significant breach of, and inconsistency with, the development plan. Policy NE.4 requires a determination as to whether the development would result in the erosion of the physical gaps between built up areas, or adversely affect the visual character of the landscape. The proposed scheme conflicts with policy NE.4, constituting a further significant breach of, and inconsistency with, the development plan.
37. Finally, in terms of the statutory duty under s.38(6), what is required is not a simple weighing process of pluses and minuses. The issue becomes whether "*other material considerations were strong enough to outweigh the statutory presumption in favour of the plan – considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given it....*"⁵.

³ [2012] UKSC 13

⁴ Lord Reed at [22].

⁵ See *Bloor Homes East Midlands v SSCLG & Hinkley & Bosworth BC* [2014] EWHC 754 (Admin) at [57] (emphasis added).

38. Turning to what material considerations might indicate otherwise: the Council cannot demonstrate a 5 year housing land supply. The appellants contend that the presumption in favour of sustainable development in the Framework (paragraph 14) applies, by virtue of which the appeal should be allowed “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.”
39. However, the presumption in paragraph 14 *potentially* applies where the development plan is absent or silent. Neither are relevant here as the Local Plan policies (NE.2, RES.5 and NE.4), as saved policies, are present and they are not silent on the subject of whether the proposals should be permitted or refused.
40. The only other occasion upon which paragraph 14 *potentially* applies is where “relevant policies are out-of-date”. In terms of consistency in principle with the Framework, policy NE.2 is consistent with the 5th core planning principle in paragraph 17 of the Framework “recognising the intrinsic character and beauty of the countryside”⁶. The Green Gap policy NE.4 is also consistent with the Framework⁷. The March 2015 Ministerial letter⁸ makes it clear that it is consistent with the Framework to seek to protect the countryside from being built upon.
41. So far then on this basis the Framework paragraph 14 presumption does not apply. However, as the Council cannot demonstrate that it has a 5 year housing land supply, then the Framework paragraph 49 states that: “*Relevant policies for the supply of housing should not be considered up-to-date...*” which would mean that in the case of any such policies, the Framework paragraph 14 presumption would apply.
42. On the established High Court case law⁹ in relation to the countryside policy (NE.2) the Council accepts that its geographical extent (and thus its effect) can be characterised, post *Barwood*, as such a policy. Therefore, in the absence of being able to demonstrate a sufficient housing land supply, it would *seem* that its application would be moderated by the presumption in the Framework paragraph 14.
43. It is clear from the line of relevant authorities, and several recent appeal decisions where the Green Gap policy has been in issue that NE.4 is not a policy for the supply of housing, but a policy designed to protect specific areas or features; specified physical gaps between settlements and the visual character of the landscape in those areas. NE.4 therefore should not be characterised as “out of date”.¹⁰

⁶ Rope Lane II appeal decision [GDL 7]

⁷ The *Richborough* Judgment [LPA 11a] and Wistaston Green Road decision (dated 22 October 2015) “Policy NE4 is not out of date and carries full development plan weight.” [Paragraph 75(c) - GDL 19]

⁸ 27th March 2015 [LPA 4].

⁹ See *South Northamptonshire Council v SSCLG & Barwood Land & Estates Ltd* [2014] EWHC 573 (Admin) at [38–47].

¹⁰ See *Barwood* [47]; *William Davis v SSCLG & NW Leicestershire DC* [2013] EWHC 3058 (Admin); *Cheshire East v SSCLG & Richborough Estates* [2013] EWHC 3058 [LPA 11a] at 63; The 1st Church Lane Wistaston Appeal at Secretary of State DL 12 [LPA 3/ CD 5], Rope Lane II [GDL 7]; Wistaston Green Road 62-75 [GDL 19].

44. But, as was held by the High Court (Lang J) in *Davis*,¹¹ the presumption in the Framework paragraph 14 *"only applies to a scheme that has been found to be sustainable. It would be contrary to the fundamental principles of [the] Framework if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development."*
45. The subsequent decision of the High Court in *Dartford*¹² agrees with this – Patterson J held that the question whether a development is sustainable is not one which has to be answered at the outset in some form of sequential approach, but it must be answered somewhere along the line. To quote Patterson J (with emphasis added) – *"I agree with Lang J in her conclusion that it would be contrary to the fundamental principles of the Framework if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development."*
46. At paragraphs 73-79 of *Wenman*¹³, Lang J expressly applied *Davis*, *Dartford* and *Bloor* in finding that *"... the Inspector was entitled to make a free-standing assessment of the sustainability of the proposed development, in the exercise of his planning judgment, at an appropriate stage in his reasoning process."*
47. Accordingly, to the extent that the Framework paragraph 14 presumption would seem to apply so as to moderate the application of Local Plan policy NE.2, in circumstances where there is not a 5 year housing land supply, this would not happen if it is concluded that the proposed development is not sustainable.
48. Therefore, the absence of a 5 year housing land supply does not mean that housing development should be permitted anywhere, but only where it amounts to sustainable development taking account of other issues. The Council considers that whether the development is, or is not, sustainable is to be assessed in a balanced manner, by applying the definition in the Framework 6 & 7 and explained in the Framework 18–219 (in other words, without pre-disposing the weighing scales in a favourable way towards the development).¹⁴ It is the Council's case that building up to 300 dwellings in the countryside on the appeal site, and taking BMV agricultural land, is unsustainable and the benefits of providing market and affordable housing do not make it otherwise.
49. The evidence on behalf of the Council explains that the Green Gap is an area of countryside that separates the built up areas of Wistaston and Nantwich, and maintains the definition and separation of the existing communities, preventing settlements merging and protecting the visual character of the landscape in the Gap. The Green Gap policy has been a key local plan policy for many years. The 2003 Local Plan Inspector¹⁵ (at 14.2.2-14.2.5) concluded that *"it would be too easy to allow those edges to be nibbled away, eroding the extent of the gaps and through a cumulative process eventually negating their purpose"*. It is

¹¹ *Davis* at [37].

¹² *Dartford BC v SSCLG & Landhold Capital* [2014] EWHC 2636 (Admin) see paragraphs 54-55.

¹³ *Wenman v SSCLG & Waverley Borough Council* [2015] EWHC 925 (Admin).

¹⁴ It is acknowledged that the Inspectors in Kents Green [GDL 8] and Bunbury [LPA 6] did not accept the Council's submissions on this point and reached the conclusion that there is no need for a separate assessment of sustainability. The Council has appealed the Kents Green decision (to be heard in the High Court in March 2016).

¹⁵ Document 5, Appendix 9

acknowledged that the Inspector went on to state that there was no benefit in a detailed analysis of the boundary unless there was a specific identified need to do so, e.g. if it was not possible to meet the then Structure Plan housing provision. However, the fact that further land for housing is now required does not detract from the purpose and importance of the policy, which seeks to protect areas of countryside under the most intense pressure for development (see 14.2.7, Document 5, appendix 9).

50. The appeal proposals would erode the Gap and cause landscape harm, contrary to NE.4. In terms of the impact on the countryside, the Framework does not only protect designated special landscapes. It recognises the intrinsic character and beauty of *all* countryside. The reference to "the countryside" does not mean only the particularly beautiful. The fact that this land is close to the built up area if anything makes it more important, for those who live in the area, as is clear from the representations. For the reasons set out above, the proposed development therefore would also be contrary to policy NE.2 and the Framework.
51. The Council acknowledges that settlement boundaries will need to be reviewed in the context of the emerging Local Plan and the housing land supply position, but that is a job for the Examination of the Plan and not a s.78 appeal. What is clear is that the justification for maintaining the definition and separation of settlements – the purpose of NE.4 – remains, even in the absence of a 5 year housing land supply.
52. Paragraph 12-13 of the Secretary of State's decision on the previous appeal states: "*The Secretary of State therefore takes the view that policy NE4 is outwith the terms of paragraph 49 of the Framework and he gives it significant weight in relation to the importance of avoiding erosion of the physical gaps between built-up areas and avoiding adverse impacts on the visual character of the landscape.... the Secretary of State agrees with the Inspector that the specific purposes of policy NE4 include maintaining separate named settlements (IR106), and he considers that this implies that the protection of the defined "Green Gap" areas around them should be regarded as a long term objective.*" (emphasis added).
53. At paragraph 19, the Secretary of State concluded: "*the harm due to the erosion of the Green Gap separating Wistaston and Nantwich is contrary to the development plan. This weighs heavily against the proposals. This along with the lesser degree of landscape harm and the loss of BMV agricultural land add further moderate weight against the proposal. In addition,...*" (emphasis added). The Secretary of State then addressed the Green Belt/prematurity point that has now fallen away.
54. Finally, at paragraph 20, the Secretary of State concluded: "*the Secretary of State considers that the adverse impacts of the appeal proposal especially in terms of the conflict with policy NE4 and the permanent loss of this Green Gap in advance of the conclusion of the CELP would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole*" (emphasis added).
55. To summarise, the conflict with NE.4 and the permanent loss of Green Gap remain, despite the Green Belt/prematurity point falling away. The site makes a positive contribution to the character of the Green Gap and the open countryside which forms the rural setting of Wistaston. Building up to 300 dwellings on this

land would result in an inappropriate form of development in the countryside which would cause material harm to the landscape and rural character of the area, contrary to policies NE.2 and NE.4 of the Local Plan and the Framework.

56. LPA14 (Document 4) illustrates the point made in the Council's Hearing Statement that there are numerous sites outside the Green Gap and no shortage of developer interest throughout the Borough. The appeal scheme therefore seeks to develop a Green Gap site (subject to a Framework compliant, up to date, policy) which would erode the Gap and cause landscape harm without even attempting to satisfy the exception set out in the policy.
57. It is acknowledged that the provision of market and affordable housing would be significant benefits of the scheme, but it would come at the price of the permanent loss of countryside (comprising BMV agricultural land, contrary to NE.12 and the Framework paragraph 112). The proposal would be an inappropriate form of development in the open countryside that would cause material harm to and the erosion of the Green Gap. Therefore, the development does not constitute sustainable development within the meaning of the Framework.
58. If, contrary to the Council's case, it is concluded that the presumption in the Framework paragraph 14 applies, then the Council argues that the adverse impacts here would significantly and demonstrably outweigh the benefits, such that the presumption to grant permission would be displaced.
59. However, the Council's primary case is that applying the law to the circumstances of this appeal, the presumption in the Framework paragraph 14 does not apply, and the issues are quite simply whether the removal of the Green Belt/prematurity reason and the acknowledged shortfall in housing land supply are sufficiently weighty as material considerations to indicate that the appeal should be allowed, despite the material breach of the Local Plan (policies NE.2, RES.5, NE.4 and NE.12) and the statutory *priority* given to deciding cases in accordance with the development plan. The Council's case is that they are not.

The Case for the Appellants

60. This appeal relates to a duplicate application for a proposal that was dismissed by the Secretary of State in February 2015, contrary to the recommendation of his Inspector. The basis of the Secretary of State's rejection of the appeal was 'prematurity' pending the consideration of the proposed Green Belt in the emerging CELP. Since the Secretary of State's decision, the Council is no longer promoting a new proposed Green Belt in the south of the Borough and it is common ground that the new draft Green Gap Policy (PG4a) within the emerging Local Plan should be accorded limited weight and that there is no prematurity objection. The appellants also set out the other matters agreed between the parties which have been set out above and are not repeated here.
61. The Council have, for both the purposes of the extant and emerging Local Plan, classified Wistaston as part of the principal town of Crewe. In the Council's emerging CELP, Crewe is identified as the most sustainable settlement to accommodate the highest proportion of future housing needs.
62. The Statutory Development Plan for the purposes of Section 38(6) of the Planning and Compulsory Purchase Act 2004 is the Crewe and Nantwich

Replacement Local Plan 2011 (adopted 2005). The appellants accept that the appeal site's location adjacent to but outside the settlement boundary of Crewe necessarily means that it is considered by the Development Plan to be within Open Countryside. As a consequence it is contrary to Policy NE.2 of the Local Plan and, insofar as a significant proportion of the site comprises BMV agricultural land, it is contrary to Policy NE.12 of the Local Plan.

63. The conflict with the Development Plan is not determinative in this case. This is because little weight should be given to these policies because:

- Housing applications should be considered in the context of the presumption in favour of sustainable development;
- The Council is unable to demonstrate a 5 year supply of housing land as required by the Framework;
- As a consequence, relevant policies for the supply of land cannot therefore be considered up-to-date.

64. It is considered that the following are the main issues in respect of the appeal:

- Whether the use of BMV agricultural land for the development justifies the refusal of the application;
- Whether the development would erode the Green Gap between Crewe and Nantwich;
- Whether the proposals represent an unacceptable landscape and visual impact.

BMV Agricultural Land

65. It is accepted that the development proposals involve the use of BMV agricultural land. There is a clear decision to the effect that Policy NE.12 is not consistent with the Framework as it is a prohibition and therefore little weight should be afforded to it¹⁶. Nevertheless the analysis of the previous Inspector / Secretary of State concluded the policy relevant and consistent with the Framework. The appellants adopt that position for this appeal consistent with the approach throughout. Therefore, it is accepted that the loss of BMV is a matter that weighs against the scheme. It is the appellants' case that such loss should carry only limited weight. This is because the Council accepts the use of BMV in order to meet its identified housing need. If development is to take place at the identified sustainable locations utilisation of BMV agricultural land will be required.

Green Gap

66. The site lies in the allocated Green Gap, the purpose of which is to separate Wistaston and Nantwich. Policy NE.4 states that approval will not be given for the construction of new buildings that would result in the erosion of the physical gaps between built-up areas. The appellants do not consider that there is conflict with the underlying objectives of the policy. The physical location of the site is such that the Green Gap is not eroded.

¹⁶ GDL 19 Inspector King paragraph 41

67. The previous Inspector / Secretary of State considered that Policy NE.4 was not a policy for the supply of housing land. The issue is being litigated in the Court of Appeal but the position adopted by the previous Inspector and the Secretary of State to treat the policy as outside the ambit of paragraph 49 meant that it was given statutory weight and applied.

Erosion of the physical gap between built up areas

68. The Green Gap covers an extensive area of the landscape. The site has a limited contribution to the gap as a whole as set out by the previous Inspector (paragraph 124) and Secretary of State (paragraph 13). The development would effectively be tucked into the settlement pattern of Wistaston. There would be no perceived reduction in the gap. The Council's landscape witness states that: "*the physical distance between Wistaston and Nantwich would not be reduced by this development as existing parts of Wistaston lie closer to Nantwich*" (Document 4, paragraph 4.7). The principal function of the gap "*is to maintain the definition and separation of existing communities*" (policy NE.4). This would be unaffected by the development: see plan GDL16.

69. The previous Inspector addressed the erosion point and concluded a judgment should be made on the level of harm and the degree to which development would interfere with the intentions of the policy.

Landscape and Visual Impact

70. Another component of Policy NE.4 relates to whether the construction of new buildings would adversely affect the visual character of the landscape. The appeal site is not within or close to any landscape character quality designation. It is not unusual or special and is an open greenfield, albeit unremarkable, site. The development proposal would affect only a limited number of sensitive receptors. It is not a valued landscape in the terms of the Framework.

71. The previous Inspector set out his assessment on landscape matters in his conclusions at 110-115 and 124-125. He concluded that the site plays a limited role in the Green Gap. It is visually well-contained and not of "*special landscape quality*", any effects on the landscape would be limited in their extent and that landscape proposals would be capable of mitigating effects. The previous Inspector made the following points:

- The site is not "*especially visible from Nantwich or other parts of the gap*" (paragraph 108);
- "*there is limited visibility of the site from other parts of the Green Gap*" (paragraph 110);
- "*the lack of intervisibility diminishes the role that the site plays in the landscape quality of the Green Gap as a whole*" (paragraph 125);
- "*any impact on the landscape would be limited to the site and its immediate environs*" (paragraph 110);
- the Council's case "*falls short of proving that the land has such visual landscape quality in its own right as to make its loss unacceptable on this ground*" (paragraph 113);

- *"There would remain accessibility to the countryside through the existing footpaths, albeit at a greater distance than at present"* (paragraph 113);
 - *"any proposal to develop within the gap should be assessed on its own merits, and that some parts of the gap make a greater contribution to the separation than others. In this instance, for the reasons set out above, the location of the site diminishes the extent of that contribution"* (paragraph 124);
 - *"It is certainly the case that those living around the site or using the local facilities and footpaths would experience a significant change of character. However, this does not imply that the site has special landscape quality"* (paragraph 125);
72. In summary, he concluded that there would be limited harm to the purposes of the Green Gap in this location. A point the Secretary of State acknowledged without disagreeing with the Inspector's analysis¹⁷.
73. The Secretary of State concluded that there would not be conflict with the landscape element of Policy NE.4: *"the evidence ... falls short of proving that the appeal site has such visual landscape quality in its own right as to make its loss unacceptable on the grounds of that aspect of policy NE.4"*¹⁸. The Secretary of State refers¹⁹ to the *"lesser degree of landscape harm"* in the consideration of the planning balance. It is the case that there is no separate landscape case beyond that contained within Policy NE.4.
74. There is no basis to distinguish the current appeal application from the previous appeal. A primary reason for the Secretary of State rejecting the recommendation made to him is no longer capable of being sustained. The previous determination on issues of fact, interpretation of policy and judgment on landscape, BMV agricultural land and the planning balance should be consistent. The classic statement of the law on consistency in planning decision-making is the well-known passage in Mann L.J.'s judgment in *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P. & C.R. 137 (at p.145):
- "... It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."*

¹⁷ DL 13

¹⁸ DL 10

¹⁹ DL 19

Sustainability

75. The Council has said that consideration of sustainability is a two stage process. The first exercise determines whether the development is sustainable and only if found so does the weighted presumption come to be applied. There is nothing in Government policy or relevant judgments to support this. On the contrary, the Framework requires that all development should be considered having regard to paragraph 14 and only one overall balancing exercise is required to determine whether the development is sustainable.
76. The concept of what sustainability means has been the subject of a number of cases before the High Court. A number of commentators considered that the case of *Davis* propounded a sequential test in the application of paragraph 14 of the Framework. In the challenge to an Inspector's decision in the case of *Dartford*, Paterson J rejected the approach as 'formulaic'.
77. There is no proper distinction between the observations by Paterson J and those by Lang J in the recent case of *Wenman*. In particular, reference is made to paragraph 74. Lang J stated:
- "In my view, it is clear that the presumption in paragraph 14 of the NPPF can only apply in favour of development which is "sustainable", as defined in paragraphs 6 and 7, and explained in the policies in paragraphs 18 to 219".*
78. It is the appellants' submission that there is no distinction between the approach set out in *Dartford* compared to that more recently expressed in *Wenman*. Both require an assessment to be made by the decision maker of whether the proposal represents sustainable development. There is no justification for suggesting that a two stage approach is required and *Dartford* expressly rejected such a sequential approach characterising it as 'formulaic'.

Planning Balance and Benefits

79. Paragraph 14 of the Framework is engaged in this case. In assessing whether the harm of the appeal scheme "significantly and demonstrably outweighs the benefits" it is necessary to identify the benefits. The benefits of the scheme include benefits across all three aspects of sustainability. Economically, it would generate £33.8m construction expenditure, 104 full-time equivalent construction jobs on average per year over a 6 year build period. It would also increase household spending, including £2.68m per year in Crewe and Nantwich, supporting 31 jobs in Cheshire East. It would result in a New Homes Bonus of £2.81m and an increase in economically active residents of the new development.
80. In respect of the social aspect of sustainability, there is an urgent need for both market and affordable housing in the borough. The scheme will create up to an additional 210 market dwellings with substantial delivery in the next 5 years. This is consistent with the national policy exhortation to "boost significantly" the supply of housing. It will also create up to 90 affordable dwellings.
81. This is an especially weighty consideration because the affordability need pre-exists the development and market housing is a vehicle for delivery. In addition there is a substantial need that is progressively worsening for affordable accommodation within the borough. Consistent with other Secretary of State and

Inspector decisions, significant weight should be given to the benefit of the delivery of a full complement of affordable housing at this site.

Conclusions

82. The previous Inspector reached the view that prematurity (paragraph 116) was not an issue that he factored into his positive recommendation to the Secretary of State. His view on the final planning balance (paragraph 127) states: *"The proposed supply of market and affordable housing is a significant positive aspect of the scheme, which would help to achieve the economic and social roles of sustainability. The development would result in some level of environmental harm arising out of erosion of the Green Gap, and economic harm by loss of BMV land. However, the extent of that harm would be limited, and not of determining importance. Taken as a whole, the proposal amounts to the sustainable form of development sought by the NPPF, and, in terms of the main considerations in this appeal, the benefit of meeting the need for housing land in the district outweighs any harm to the character and appearance of the countryside and its role in separating settlements, and to the supply of agricultural land"*. This view was reached on the facts as matters now stand.
83. The appellants invite the Inspector to conclude and recommend to the Secretary of State:
- Whilst the development does not comply with the provisions of the Statutory Development Plan, the Local Plan policies are out-of-date and should be afforded very little weight;
 - There is a significant shortfall in the supply of market and affordable housing;
 - The loss of BMV does not warrant the refusal of planning permission;
 - The impact on landscape character and visual amenity is acceptable and would not "significantly and demonstrably outweigh the benefits of the proposal".

The Case for the Third Parties

Oral Representations at the Hearing

84. The following parties spoke against the appeal: Ward Councillors Wetherill and Simon, Parish Councillor Bond, Mr Roberts on behalf of the Neighbourhood Plan Steering Group, Mr Millington on behalf of the Hands Off Wistaston Action Group, a number of local residents also raised points during the Hearing. The summary below identifies the principal points made. The full text of the Hands Off Wistaston Action Group and the Neighbourhood Plan Steering Group's concerns is contained at Documents 19 and 20.
85. In addition to the matters raised by the Council, the contributors emphasised the role of the appeal site to the separate identity and life of Wistaston; both physically, by maintaining the separation from other urban areas, and its role in the health and welfare of the local community by providing space for walking and recreation and by maintaining a connection with the countryside. It was pointed out that a Neighbourhood Plan is in the process of being prepared, although this has not yet reached the stage of referendum. The emerging Plan will identify

areas appropriate for housing which will not include the appeal site. Contributors noted that other open land in the area had been progressively lost to urban sprawl, so that this field represented one of the last green spaces remaining. There would be a permanent loss of views of a high quality landscape, including from the adjoining 'Joey the Swan' park, with harm to bio-diversity and local wildlife. The development would lead to the loss of fertile land. Overall, the land is highly valued by the residents of Wistaston, as is shown by the extent of objections to the planning application. Nothing has changed since the previous appeal was dismissed.

86. A number of parties drew attention to the potential loss of road safety arising out of additional traffic generated by the new housing, noting, amongst other matters, that the entrance would be very close to the dangerous and congested road narrowing over the bridges in Church Lane. Concern was also expressed that local infrastructure, including schools and the combined drainage system, would be unable to cope with the additional demand. There have been a large number of housing developments permitted in the locality, and more proposed, which combine to harm the environment and the quality of life for residents. Concern was also raised regarding the construction impacts over a prolonged period of time.

Written Representations

87. In addition to the points set out above, the representations included the following concerns. The individual responses to the Planning Inspectorate can be seen in Document 24 and to those to the Council are included in the Questionnaire documents. There are a large number of houses already on the market in the area; brownfield sites should be used first; this proposal would set a precedent for similar development; construction would cause noise and dust disturbance of residents and highway danger; traffic congestion; there would be an increased risk of pollution of Wistaston Brook; the development would lead to the loss of trees; there is a flooding risk; overlooking due to the height of the land and loss of outlook; impact on schools, doctors and transport; air and noise pollution; loss of character and footpaths.

Conditions and Obligation

Conditions

88. The draft conditions to apply if the appeal is allowed are included at Document 16. They are based on the conditions suggested by the previous Inspector in his report at Annex 3. Although the Council suggested an alternative list, which included alternative wording for a number of conditions, it was agreed at the Hearing that, for the majority of conditions, there is no reason to depart from the previous Inspector's wording. Document 16 sets out the conditions suggested by the Council in the previous appeal, the previous Inspector's conditions and the conditions suggested by the Council in this appeal.
89. The conditions have been assessed in relation to the advice contained in the Guidance and the discussion at the Hearing. A proposed revised list is at Annex 3 of this report. A small number of conditions require minor alterations to the wording from those recommended in the previous Inspector's report. This is mainly to update plan numbers but also, in the case of condition 11 in the list at Annex 3, to reflect concerns expressed by the appellants regarding the potential

for misinterpretation of the wording. The numbering below refers to the conditions on the list attached to this report.

90. The permitted drawings are specified for the avoidance of doubt and in the interests of proper planning (4), and the reserved matters application should be in general conformity with the schematic drawings and details included with the application (5), which arose out of prior discussions with the Council, and which are intended to mitigate any harm arising out of the impact of the development on its surroundings. It is likely that a site of this size would be developed in phases, and therefore a phasing plan is needed (6) for the proper implementation of reserved matters applications. Details of ground levels (7) and surface water drainage (8) are necessary to avoid the risk of flooding, and a 'Phase II' contaminated land assessment (9) is recommended in the appellants' ground investigation report. A construction method statement (10) is required to minimise any harmful effects on surrounding occupiers during development.
91. It is necessary to maintain an undeveloped buffer zone for the benefit of the appearance of the area and for ecological interests (11), and to carry out an updated ecological mitigation strategy (12), along with the introduction of bird nesting facilities (13), and limitations on construction during the bird breeding season (18), to mitigate the effects of the development on wildlife. In addition to the landscape reserved matter, an arboricultural method statement (14) will be needed to ensure the protection and enhancement of vegetation to be retained. Whilst access is not a reserved matter, the scheme drawing requires further design details (15) to ensure a satisfactory junction serving the estate. The provision of affordable housing (17) is required by Local Plan policy RES7. A Travel Plan (19), a scheme of footpaths and cycle routes (16), and electric charging infrastructure (20) are necessary for a sustainable form of development, to reduce impacts on air quality and to maximise opportunities for alternative means of transport.
92. A number of the Council's suggested conditions have not been included. The following numbering refers to those suggested conditions in the table at Document 16 under the heading "New list of conditions proposed by Council for the current appeal"²⁰. Draft conditions 6 and 7 (page 3) are replaced by a requirement to investigate the feasibility of a SUDs scheme, as referred to in the Planning Practice Guidance. Interested parties expressed concern regarding the state of the existing combined sewer system stating that at times it discharges effluent into the river. However, United Utilities raise no objection to the proposals on the grounds of the inadequacy of the existing drainage system (CD2.10). The appellants indicate that it would be possible to make the new connection at a point downstream of the existing problematic parts of the system, but they were unable to point to evidence to demonstrate that this has been assessed. Planning Practice Guidance states that conditions which require compliance with other regulatory regimes will not meet the test of necessity. The appellants also cite the Supreme Court Judgement in *Barratt Homes v Dwr Cymru Cyfyngedig (Welsh Water)*²¹. Having regard to these factors, and in line with the previous decision by the Secretary of State, no condition relating to foul drainage is recommended (8, page 3). However, should the Secretary of State

²⁰ note that the numbering in that document is not consecutive and some condition numbers are duplicated

²¹ [2009] UKSC 13

conclude that a condition would be justified in the circumstances condition (21) is suggested. The above judgement would not preclude the imposition of such a condition.

93. There is no need for a separate condition requiring an updated protected species survey (16, page 8) as an updated ecological strategy would be required by condition 12 at Annex 3. The distribution of open space (16, page 10) may be sought at the reserved matters stage. Management of the open space (17, page 10) and the off-site highways works (21, page 11) form part of the Section 106 Undertaking. The appellants' report at document GDL 1.13 indicates that the site has very limited archaeological potential and there are not substantial grounds to show the need for a condition requiring a further survey (20, page 11). At the Hearing the Council accepted this.

Obligation

94. The signed version of the Unilateral Undertaking, made in accordance with Section 106 of the Town and Country Planning Act 1990, is enclosed at Document 12. It refers to the provision and maintenance of open space, including playground equipment, and specifies the following infrastructure contributions: improvement of the A530 corridor (£300,000); improvement of the Peacock roundabout junction of the A534 and A51 (£605,000); provision of bus shelters in the vicinity of the site (£25,000); traffic management measures (£20,000). It also provides for the provision of contributions towards primary and secondary education and Special Education Needs (SEN).
95. Document 11 contains the Council's justification for the obligations. The need for open space is set out in Local Plan Policy RT.3. Policy BE.5 makes provision for contributions towards the infrastructure made necessary by the development, and the Council also refer to a range of transport policies (TRAN.1, 3, 4, 5 and 6), the Cheshire East Infrastructure Plan (Doc 11, appendix 4), the Local Plan Strategy Infrastructure Delivery Plan (Doc 11, appendix 5), and the Local Transport Plan 2011-26 (Doc 11, appendix 11).
96. It is necessary to be satisfied that the obligations comply with the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010. Clause 3.2 of the Undertaking indicates that its provisions will only have effect if found in this appeal to meet the tests in Regulation 122.
97. In this respect, the open space allocation within the site is proportionate to the size of the estate, and is intended to address the Local Plan requirements. The new housing would create an additional demand for public transport and put greater pressure on the local road system, so that there are reasonable grounds to conclude that the bus shelter and traffic management contributions are necessary, directly related to it, and fairly and reasonably related in scale and kind with the development.
98. Similarly, the appellants' Transport Assessment (CD1.25) shows that the development would result in an increase in congestion at the A530/Wistaston Green Road junction in the A530 corridor of sufficient degree to create a need for a contribution towards highway improvements. The need for a contribution for improvement of the Peacock roundabout is set out in Document 11. The Council state that their modelling shows that the roundabout is already at or close to

traffic capacity and the development will increase existing queuing and delay significantly. The appellants have not disputed this.

99. Turning to the requested education contributions, the Council's justification is set out at Section 2 of Document 11. Paragraph 5 of Schedule 2 of the Undertaking sets out the requirement for contributions towards primary and secondary education and SEN. Document 11 indicates that the sums, based on 300 dwellings, would be around £173,540 towards primary education, £179,769 for secondary education and £182,000 for SEN. The appellants expressed concern that the SEN contribution may not meet the tests in CIL Regulation 122. The Undertaking provides for an increase in the sums payable for primary and secondary education if the SEN contribution is found not to meet these tests.
100. The development would create additional demand for primary, secondary and SEN places which would increase pressure on existing schools. Consequently the contributions are necessary to make the development acceptable. New accommodation would be met by a financial contribution, calculated relative to the new population, as expansions to one of a number of specified schools. The appellants expressed concern that the multiplier used to calculate the level of contribution for SEN provision (£50,000) is based on the cost of construction of a number of recent SEN schools, none of which were in the local area. The evidence states that the figure is an average cost based on Department for Education figures and depends on the facilities provided at the school. There is nothing to suggest that the figure should be significantly different in this local authority. It is therefore reasonable, on the evidence provided, to conclude that the contributions would be fairly and reasonably related in scale and kind to the development. Should the Secretary of State consider otherwise in relation to the SEN contribution, the relevant sections of the Undertaking would not apply.
101. It has been confirmed that the pooling restrictions imposed by Regulation 123 of the CIL Regulations would not be exceeded. Overall, there are adequate grounds to consider that the obligations in the Undertaking are necessary, directly related to the development, and fairly and reasonably related in scale and kind with it. Consequently the Undertaking meets the tests in CIL Regulation 122 and may be taken into account in assessing the appeal.

Inspector's Assessment

102. The numbers in square brackets [] refer to other paragraphs in this document.

Sustainability [38-48, 75-78]

103. It is established in the cases of *Davis*, *Dartford* and *Wenman* that there is a need to determine, at some point, whether the proposal is a sustainable form of development. It is the Council's view that this must be done before the presumption in favour of sustainable development at paragraph 14 the Framework can be applied. However, there does not seem to be anything in Government policy or in relevant judgements to substantiate this view.
104. Paragraph 197 of the Framework states that "*in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development*". This applies to all development proposals. Paragraph 14 sets out what this means for decision-taking. Under this heading, the second bullet point sets out the consequences of a development plan being

absent, silent or having relevant policies which are out-of-date. The consequence is that permission should be granted unless, in accordance with the following paragraph, “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”. This paragraph requires an assessment to be made of the adverse impacts, the benefits and whether the former would significantly and demonstrably outweigh the latter. The Framework taken as a whole comprises paragraphs 1-219. The Government’s view of what sustainable development means in practice is set out in paragraphs 18-219 (paragraph 6 of the Framework).

105. The assessment of whether the proposal would be sustainable development therefore requires a consideration of the same issues as those which need to be considered in order to establish whether the adverse impacts significantly and demonstrably outweigh the benefits, ie assessing the proposal in light of the policies in the Framework as a whole, which would include paragraphs 18-219. Only one overall balancing exercise is therefore required to determine whether development is sustainable development to which the presumption should apply. To adopt a two-stage approach would be an overly complicated interpretation of the Framework which, it should be remembered, was introduced as part of the Government’s drive to simplify the planning process.
106. This interpretation would accord with the *Dartford* judgement which rejected such a sequential approach as advocated by the Council as ‘formulaic’. It is also in line with *Wenman* which, whilst stating that the presumption in paragraph 14 of the Framework can only apply in favour of development which is “sustainable”, does not rule out the approach recommended above.

The Main Considerations

107. At the Hearing the parties agreed that the main issue set out by the previous Inspector at paragraph 86 of the decision at CD4 was also the main issue for this appeal. This is the effect of the development on the character and appearance of the countryside and its role in separating settlements, and on the supply of agricultural land, in relation to the need for housing land in the borough.

Policy Considerations [10-17]

108. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that the determination of the appeal must be made in accordance with the development plan unless material considerations indicate otherwise. [30, 37, 62]
109. In this case, the relevant policies are NE.2, RES.5, NE.4 and NE.12. The starting point therefore is that the determination of the appeal must be in accordance with these policies. However, the Framework is a material consideration and it sets out the weight to be given to development plan policies in certain specified circumstances. In accordance with paragraph 49 of the Framework relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. In addition, paragraph 215 states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

110. In the previous appeal, the Secretary of State concluded that Local Plan policy NE.2 is a relevant policy for the supply of housing. There is no reason to depart from this view in this appeal. In the agreed absence of a 5 year supply of deliverable housing sites in this case therefore, the policy is out of date in terms of the Framework paragraph 49. The situation is the same for RES.5 and the parties are in agreement with this point. [23, 29, 36, 40, 42]
111. Policy NE.4 was considered by the previous Inspector to have a specific purpose, to separate named settlements, and it does not wholly exclude development in the countryside. It was concluded that the policy does not become out of date in terms of the Framework paragraph 49, neither is it inconsistent with the principles on which the Framework is based. The Secretary of State (paragraph 12) having regard to the *Richborough Estates* judgement, gave the policy "*significant weight in relation to the importance of avoiding erosion of the physical gaps between built-up areas and avoiding adverse impacts on the visual character of the landscape*". The *Richborough Estates* case has been recently considered in the Court of Appeal and the judgement is awaited. At the time of writing this report there is nothing which would justify a departure from the Secretary of State's previous conclusion in this appeal. [24, 29, 36, 43, 52, 66, 67]
112. The previous Inspector noted that Policy NE.12 is more restrictive than the Framework but took the view that the policy was not one for the supply of housing in terms of the Framework paragraph 49 and that the policy should therefore apply. The Secretary of State did not disagree. However, a subsequent appeal decision noted a degree of conflict between the policy and the Framework paragraph 112. The policy states that development on BMV agricultural land "will not be permitted" unless a number of criteria can be met. Paragraph 112 of the Framework is set in less absolute terms. Nevertheless, in so far as the policy seeks to protect areas of higher quality agricultural land, its aims are the same as those in the Framework and the policy should therefore attract a moderate amount of weight having regard to paragraph 215 of the Framework. [25, 65]

The character and appearance of the countryside and its role in separating settlements. [49-56, 66-74, 85-87]

113. The Council does not suggest that the recommendation in this report should depart from the conclusions of the previous Inspector and Secretary of State in the consideration of this issue. For the sake of consistency I have adopted much the same wording as the previous Inspector where appropriate, having undertaken an assessment of the evidence before me in this Hearing and carried out site visits. [32]
114. The previous Inspector noted that the development would be contrary to Policy NE.4 if it resulted in the erosion of the physical separation of built up areas, or had an adverse effect on the visual character of the landscape. The Council accepts that, in accordance with the *Tesco* judgement, it is necessary to establish the level of harm which would arise from contravention of the policy. The degree to which the erosion would interfere with the intentions of policy NE.4 is also a consideration. In common with the previous Inspector, I note that the purpose of the gap is described in the accompanying text as maintaining the definition and separation of existing communities, with the long term objective of

preventing Crewe, Willaston, Wistaston, Nantwich, Haslington and Shavington from merging into one another. [13, 35, 36]

115. The site falls within the area described as the Wistaston/Nantwich gap. I agree with the previous Inspector that in its role of separating these two communities there are aspects of the location that diminish its contribution. In his words, the site *"lies in an eastward extension of the gap, away from Nantwich, from which it is approximately 2.2 km distant, where other parts of the gap are significantly narrower, and the orientation of the site is more towards the countryside in the north west than the developed area of Nantwich further south"*.
116. The previous Inspector also noted that *"the reference to the Wistaston/Nantwich gap in the policy may be intended for identification only, and its function not limited to the separation of those settlements alone. However, the part of the gap filled by the development lies between two parts of Wistaston, which are otherwise a contiguous urban area, and not the separate settlements referred to in the explanatory text"*.
117. Turning to the second criterion in Policy NE.4, I agree with the previous Inspector that because of the relatively flat terrain, and the large number of hedges and trees surrounding the field system, there is limited visibility of the site from other parts of the Green Gap. The main impact of any development would therefore be on the surrounding residents and users of the school, sporting facilities, park and footpaths. He concluded that *"those most affected by the loss of the field would include walkers on the footpaths which cross it, the residents of adjoining property, the users of 'Joey the Swan' park on the north eastern boundary, and the staff and pupils of the neighbouring primary school"*. From the site visit and representations made at the hearing and in writing, it is clear that this is also the case in this appeal.
118. It remains the case that the westward movement of the outer boundary of the urban area would have a significant effect on views presently available from the land surrounding the site, and within and approaching the footpaths crossing it. Whilst enhancement planting would help to mitigate the effect over time, there would, nonetheless, be a change of character. However, I agree with the conclusion of the previous Inspector that the evidence falls short of demonstrating that the land has such visual landscape quality in its own right as to make its loss unacceptable on this ground. Nor does it demonstrate that the sensitivity of the users, and the adversity of the effect, would be so great as to prevent residents and visitors to the area from achieving normally acceptable levels of amenity. A large part of the Green Gap would remain and there would remain accessibility to the countryside through the existing footpaths, albeit at a greater distance than at present.
119. It is clear that the land is viewed as a recreational resource, and as a form of public open space, with the formation of informal footpaths across and around it. However, there is no indication that this is a permitted use of the land, nor that it is designated as Local Green Space in any Local or Neighbourhood Plan, as referred to in paragraphs 76 to 77 of the Framework. Whilst a Neighbourhood Plan is in the process of being prepared, it is currently at a stage where it attracts very limited weight in the decision-making process and no documents relating to the Neighbourhood Plan have been submitted. Whilst the land is clearly valued

by the local community, this would apply to many similar situations where farmland adjoins an urban area. The site undoubtedly contributes to the openness of the Green Gap, but it does not have a particular landscape value in terms of the Framework paragraph 109, and the existing park provides alternative recreational opportunities in the area. Consequently, the proposal would not conflict to any great extent with that aspect of the Framework which seeks to recognise the intrinsic character and beauty of the countryside nor those aims reflected in policy NE.2.

120. In common with the previous Inspector I note the reference in Policy NE.4 to the need to avoid adversely affecting the visual character of the landscape is in the context of the objective to avoid the agglomeration of settlements. It is not unreasonable, therefore, to assess the impact of the development in this light, and to establish the effect that it would have on the Green Gap as a whole in carrying out this role. In this respect, the land is not especially visible from the remainder of the Green Gap, and would not become so unless the buildings exceeded the scale set out in the Design and Access Statement (GDL1.13). Any impact on the landscape would be limited to the site and its immediate environs.
121. In summary, the proposal would cause a degree of erosion of the physical gap between built up areas and would adversely affect the visual character of the landscape to a limited extent. As such, it would be contrary to policy NE.4.

The supply of Agricultural Land

122. 78% of the site falls into the category of BMV land and there is no case made that the proposal would meet the exceptions allowed under this policy. The appellants accept that the proposal would result in the loss of BMV land and that this would be contrary to Local Plan policy NE.12. There is no case made that the loss would be significant in terms of the overall supply of agricultural land in the area however. Nevertheless, the conflict with Local Plan policy and the economic and other benefits of BMV land must be taken into account in assessing the impact of the development. [14, 34, 57, 64, 65]

Other matters

123. Amongst the other matters raised is a concern about the impact of the development on local infrastructure. However, there is no substantial evidence that facilities and services would not be capable of meeting the increased demand, and the appellants' Unilateral Undertaking makes provision for mitigating the effect of additional traffic on the wider road system. With respect to the immediate impact on road safety, the proposal includes a new road junction, designed to comply with the standards in Manual for Streets and, whilst it would be close to the river bridge, there is no objection by the Highways Authority to a junction in this location, nor any technical evidence to contest this decision. In terms of the potential for flooding, the majority of the site lies in Flood Zone 1, of lowest risk, and the Flood Risk Assessment makes provision for the restriction of flows into Wistaston Brook. A sustainable drainage scheme may be sought by planning condition. [27, 85, 86, 88-93, 94-101]
124. The appellants' ecology appraisal (CD1.14) did not find direct evidence of bats, badgers or reptiles within the site, but there would be a need for a precautionary approach to the development, and the planting scheme on the outer boundaries, along with retention of the existing ponds and watercourse, would provide

opportunities for habitat and foraging areas. Surveys of 2012 and 2013 indicated a low population of Great Crested Newts in the wider area, and a mitigation strategy is recommended. There is no indication that a European Protected Species Licence would not be obtainable. Overall, there is no reason to conclude that there would be ecological grounds to prevent the development of the site. [91]

125. Whilst the development would take a number of years to build out, this is no different to many housing developments of this size. Conditions are suggested to minimise the impacts on existing residents during the construction process. [86, 90]

126. Turning to the benefits of the proposal, in the absence of a demonstrable 5 year supply, the provision of up to 210 market and 90 affordable houses would help to satisfy a need for market and affordable housing. This would be the main benefit of the proposal, but there would be the associated economic advantages for the construction industry and from the demand for local goods and services in the longer term. [57, 79, 80, 81]

The previous decision and the implications of the proposed alterations to the CELP

127. The Secretary of State at paragraphs 12-14 (CD5) accepted the previous Inspector's reasoning, also adopted in this appeal, that aspects of the location of the site diminish its contribution to the purpose of the Green Gap of separating Wistaston and Nantwich. He also concluded that the evidence does not prove that the appeal site has such visual landscape quality in its own right as to make its loss unacceptable on that aspect of policy NE.4. The parties do not suggest that there is any reason for a different conclusion on these matters in the current appeal. [32-34, 73]

128. Nevertheless, the previous Secretary of State decision (paragraph 13, CD5) states *"the release of any area designated under policy NE4 would need to take account of the aims of the emerging CELP proposals for an enlarged Green Belt to maintain and carry forward the policy of separation embodied in the Green Gap policy. Therefore....the Secretary of State takes the view that allowing this appeal in advance of the resolution of the Green Belt issue through the CELP would be unsustainable to the extent that it could undermine the plan-making process by pre-empting decisions which ought to be taken in that context in order to ensure that the most appropriate sites are released for housing"*. At paragraph 15 it is further stated that *"given that the site is within the area of search for designation as Green Belt in the CELP The Secretary of State disagrees with the Inspector with regard to his assessment of the prematurity of development on this land prior to the results of the examination and further work relating to the CELP Green Belt Proposals. He takes the view that allowing this appeal in advance of the resolution of the Green Belt issue through the emerging CELP would undermine the plan-making process"*. [32, 52-54, 82]

129. At paragraph 19, the Secretary of State set out the planning balance. In summary: [53]

- The harm due to the erosion of the Green Gap is contrary to the development plan and this weighed heavily against the proposal;

- The lesser degree of landscape harm and the loss of BMV agricultural land added further moderate weight against the proposal;
- He took the view that “until such time as the Green Gap/Green Belt issue is resolved through the CELP process, it would be premature to undermine that process by releasing this site for housing”.
- It was accepted that the benefits of the provision of new homes, including affordable housing, in the context of a lack of a 5 year supply of housing attracted significant weight in favour of the proposal.

130. In the overall conclusions, it is stated that the adverse impacts of the proposal *“especially in terms of the conflict with policy NE4 and the permanent loss of this Green Gap in advance of the conclusion of the CELP would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole”*. [82]

131. The Council is no longer promoting a new Green Belt in the south of the Borough and the new Green Gap policy has limited weight. It is common ground between the parties that this balancing exercise must now be revisited in the light of the change in circumstances regarding the emerging CELP and the Council’s decision not to proceed with a new Green Belt.

Planning Balance

132. The development would be contrary to Local Plan Policies NE.2, RES.5, NE.4 and NE.12, and determination of the appeal should be in accordance with those policies unless material considerations indicate otherwise. In this respect, the provisions of the Framework are a material consideration, and, for the reasons set out above, policies NE.2 and RES.5 are considered to be out-of-date to the extent that their geographic coverage would preclude development outside settlements. Policy NE.12 attracts a moderate amount of weight having regard to the degree of conflict with the Framework. However, NE.4 remains as an up-to-date policy, and the question arises whether the potential benefits of the proposal would justify proceeding in conflict with it.

133. It is part of the core planning principles in the Framework to allocate sufficient land to provide the homes that are needed, and there is no indication that the currently adopted Local Plan is capable of satisfying that objective. It is notable that the housing need has increased since the previous appeal and the Council is still unable to demonstrate a 5 year supply of housing some 18 months after the previous inquiry was held. In the absence of a demonstrable 5 year supply, the provision of up to 210 market and 90 affordable houses would help to satisfy a need for market and affordable housing. [21]

134. Set against this is the loss of part of the Green Gap, which has been established for the specific purpose of separating settlements in order to retain their identity, and which relies on the maintenance of an adequate distance. As set out by the Local Plan Inspector in 2003, it would be too easy for the edges to be nibbled away and, through a cumulative process of erosion, negate its purpose. However, it is also the case that any proposal to develop within the gap should be assessed on its own merits, and that some parts of the gap make a greater contribution to the separation than others. In this instance, for the

reasons set out above, the location of the site diminishes the extent of that contribution. [49]

135. As in the previous appeal, it is undoubtedly the case that those living around the site or using the local facilities and footpaths would experience a significant change of character. However, this does not imply that the site has special landscape quality, nor that the detailed planting proposals would not be capable of mitigating the long term effect of that change. The lack of intervisibility diminishes the role that the site plays in the landscape quality of the Green Gap as a whole.
136. The loss of BMV agricultural land is a detrimental feature of the scheme, but there is no indication that 10.4ha would amount to the significant loss referred to in the Framework paragraph 112, in the context of the overall supply of BMV land in the area.
137. The proposed supply of market and affordable housing is a significant positive aspect of the scheme, which would help to achieve the economic and social roles of sustainability. The development would result in some level of environmental harm arising out of erosion of the Green Gap, and economic harm by loss of BMV land. However, as in the previous appeal, the extent of that harm would be limited, and not of determining importance. Taken as a whole, the proposal amounts to the sustainable form of development sought by the Framework.
138. In the previous appeal the Secretary of State found that *"the harm due to the erosion of the Green Gap...is contrary to the development plan. This weighs heavily against the proposals"*. The *"lesser degree"* of landscape harm and the loss of BMV agricultural land were found to add further moderate weight against the proposal (paragraph 19).
139. It is still the case that the proposal would cause a degree of environmental harm due to the erosion of the Green Gap and harm to the character of the landscape. The proposal would therefore conflict with policy NE.4. However, the same factors as considered in the previous appeal, and set out above, would limit this harm. The economic harm due to the loss of BMV agricultural land, and the consequent conflict with policy NE.12, adds further weight against the proposal but this is not considered to be a significant aspect in the context of BMV land as a whole in the borough.
140. On the other hand, the Framework sets out the need to *"boost significantly the supply of housing"* (paragraph 47). The benefit of the provision of housing, including affordable housing, in an area which does not have a 5 year supply of housing attracts significant weight in favour of the proposal.
141. The Secretary of State's previous decision stated, in the overall conclusion, *"the adverse impact in terms of the conflict with policy NE.4 and the permanent loss of the Green Gap in advance of the conclusion of the CELP would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole"*. The Council is no longer proposing a new Green Belt in the south of the borough and consequently, this aspect of the reason for the Secretary of State's dismissal of the previous appeal has fallen away. There is therefore no longer a reason to dismiss the appeal due to prematurity in advance of the CELP. This is a significant change in the planning circumstances in this case.

142. Whilst the proposal would be contrary to the development plan, material considerations, in the form of the benefits from the provision of housing and paragraphs 47, 49 and 14 of the Framework, indicate that the proposal could be allowed. Furthermore, having regard to the Framework paragraph 14, the adverse impacts of the proposal, in terms of the conflict with policy NE.4 and the loss of agricultural land, would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Recommendation

143. I recommend that the appeal be allowed and planning permission be granted subject to the conditions in Annex 3 of this report.

Susan Heywood

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

John Barrett	Counsel
Brett Coles	Landscape and visual impact evidence
Kevin Waters	Planning evidence

FOR THE LOCAL PLANNING AUTHORITY:

Graham Keen	Counsel
Mr Evans	Principal Planning Officer
Mr Ryder	Landscape and visual impact evidence

INTERESTED PERSONS:

The following persons principally took part in the discussion. Individual comments were also made by other interested parties attending the Hearing.

M Simon	Wistaston Ward Councillor
J Wetherill	Ward Councillor
G Roberts	Wistaston Parish Council Neighbourhood Plan Steering Group
J Bond	Wistaston Parish Council
D Millington	Hands Off Wistaston Action Group

Richborough Estates

DOCUMENTS

- 1 Relevant Local Plan policies
- 2 Statement of Common Ground between Council and appellants
- 3 Council's Hearing Statement on planning matters
- 4 Appendices to Council's Statement
- 5 Hearing Statement from Ryder Landscape Consultants on behalf of Council
- 6 Appellants' Hearing Statement
- 7 Appellants' Statement Appendices
- 8 Appellants' Statement addressing additional matters
- 9 Appellants' additional appendices GDL17 to GDL24
- 10 Appellants' additional appendix GDL25
- 11 Council's CIL compliance statement and appendices
- 12 Certified copy of signed S106 undertaking
- 13 Planning Inspectorate's EIA Part 3 Environmental Statement Adequacy Check
- 14 Appearances on behalf of appellants
- 15 List of key drawings
- 16 Conditions document
- 17 CELP Non Preferred Sites Justification Paper
- 18 Agreed position on 5 year housing land supply
- 19 Hands Off Wistaston Action Group statement
- 20 Statement of Graham Roberts for Wistaston Neighbourhood Plan Steering Group
- 21 Closing summary on behalf of Council
- 22 Submissions on the consideration of sustainability on behalf of appellants
- 23 Closing summary on behalf of appellants
- 24 Folder of interested party letters to The Planning Inspectorate

Richborough Estates

ANNEX 3 CONDITIONS

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The drawings to which this permission relates are the Site Location Plan 5481-L-005 and the Site Access General Arrangement Plan No 03651-F01C.
5. The application(s) for approval of reserved matters shall be substantially in accordance with the Development Framework plan issued as part of the Design and Access Statement (May 2014), page 39 and the Landscape Proposals 5481-L-07 Rev B. Building height and scale shall be substantially in accordance with the principles of the Design and Access Statement (May 2014, Ref 5481).
6. No development shall take place until a plan showing the phasing of development has been submitted to and approved in writing by the local planning authority, and the use of the term 'phase' in these conditions refers to the phases of development shown on the approved phasing plan. Thereafter, development shall be carried out in accordance with the approved phasing plan.
7. No phase of development shall commence until details of existing ground levels, proposed ground levels, and levels of proposed ground floor slabs in that phase have been submitted to and approved in writing by the local planning authority. Development of that phase shall proceed in accordance with the approved scheme of levels. There shall be no alteration of existing ground levels within the 1 in 100 flood outline.
8. No development shall take place until a scheme of surface water drainage works has been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in the Planning Practice Guidance, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. No dwelling in any phase of development shall be occupied until the surface water drainage works

applying to that phase have been completed in accordance with the approved scheme.

9. No development shall take place until a 'Phase II' contaminated land investigation has been carried out (in accordance with the procedures set out in the British Standard 10175 (2011) Investigation of Potentially Contaminated Sites – Code of Practice) and the results submitted to and approved in writing by the local planning authority and, if the Phase II investigations indicate that remediation is necessary, then a Remediation Statement has been submitted to and approved in writing by the local planning authority, and the remediation carried out in accordance with the approved Remediation Statement. If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any of the development hereby approved.
10. No phase of development shall commence until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period of that phase. The Statement shall provide for: i) the hours of construction work and deliveries, ii) the parking of vehicles of site operatives and visitors, iii) loading and unloading of plant and materials, iv) storage of plant and materials used in constructing the development, v) wheel washing facilities, vi) details of a responsible person to be contacted in the event of complaint, vii) Mitigation measures in respect of noise and disturbance of the occupants/users of adjoining property including piling techniques, vibration and noise limits, monitoring methodology, screening, detailed specification of plant and equipment to be used, and proposed routes for construction traffic, viii) waste management, with no burning on site, ix) a scheme to minimise dust emissions, including details of all dust suppression measures and methods to monitor emissions of dust arising from the development.
11. The application(s) for reserved matters shall include an undeveloped buffer zone alongside and including the ponds, wetlands and Wistaston Brook, substantially in accordance with the scheme shown on drawing 5481-L-07 Rev B. No development shall take place until a timetable for the implementation of any works within the buffer zone and details of how the buffer zone will be protected during the course of development and managed and maintained thereafter, have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the buffer zone has been established in accordance with the approved scheme, and the management and maintenance shall thereafter be carried out in accordance with the approved details.
12. No phase of development shall be carried out until an updated Ecological Mitigation Strategy in relation to the land occupied by that phase, prepared in accordance with the recommendations of the Environmental Statement submitted with the planning application, has been submitted to and approved in writing by the local planning authority. Development of the phase shall proceed in accordance with the approved Ecological Mitigation Strategy.
13. No phase of development shall commence until detailed proposals for the incorporation of bird boxes into that phase suitable for use by breeding birds

has been submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved details and retained thereafter.

14. No development of any phase shall take place until a detailed Arboricultural Method Statement in respect of that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include i) details of the retention and protection of trees, shrubs and hedgerows on or adjacent to the site, ii) implementation, supervision and monitoring of the scheme of protection, iii) a detailed treework specification and details of its implementation, supervision and monitoring, iv) implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage, parking, and deposit of spoil or liquids, and iv) the timing of arboricultural works in relation to the approved phase of development. The development shall proceed in accordance with the approved Arboricultural Method Statement and the scheme of protection shall be retained throughout the period of construction of the phase.
15. No development shall take place until details of the highway works in accordance with the scheme shown on drawing No 03651-F01C have been submitted to and approved in writing by the local planning authority. The approved works shall be carried out before first occupation of any part of the development hereby permitted.
16. No development shall commence until a scheme of pedestrian and cycle provision and signage has been submitted to and approved in writing by the local planning authority. The scheme shall include shared routes for pedestrians and cyclists through the site substantially in accordance with the plan No 5481-L-06A and a timetable for implementation. The approved scheme of pedestrian and cycle provision and signage shall be carried out in accordance with the approved timetable.
17. No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2 of the Framework or any future guidance that replaces it. The scheme shall include: i) the numbers, type and location on the site of the affordable housing provision which shall consist of not less than 30% of the dwellings; ii) the tenure shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be distributed ('pepper potted') across the site and across each phase of development; iii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing, with no more than 80% of the open market dwellings in any individual phase being occupied before the affordable housing is completed and available for occupation in that phase; iv) the arrangements for the transfer of the affordable housing to a Registered Provider or for the management of any affordable housing if no Registered Provider is involved; v) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing including arrangements where appropriate for the subsidy to be recycled for alternative affordable housing provision; vi) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing

and the means by which such a occupancy criteria shall be enforced; vii) the affordable homes to be built to the standards by the HCA at the time of development.

18. No construction works in any phase shall take place between 1 March and 31 August in any year until a detailed survey of nesting birds has been submitted to the local planning authority, and a 4m exclusion zone established around any nest found. No development of that phase shall take place within the exclusion zone until a report confirming the completion of nesting has been submitted to and approved in writing by the local planning authority.
19. No phase of development shall be occupied until a Travel Plan for that phase has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include a timetable for implementation and provision for monitoring and review. No part of that phase shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved scheme of monitoring and review as long as any part of the phase of development is occupied.
20. No dwelling shall be occupied until electric vehicle charging infrastructure to serve that dwelling has been installed in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority, and thereafter the infrastructure shall be retained in operational condition.

Foul drainage condition should Secretary of State consider it necessary

21. No phase of the development shall be commenced until a scheme for the disposal of foul water for that phase has been submitted to and approved in writing by the local planning authority. No part of that phase shall be occupied until the approved scheme has been implemented for that phase.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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