



Department for
Communities and
Local Government

Our Ref: APP/R0660/W/15/3128707

Fox Strategy Land & Property Ltd
Gladman Developments Ltd
Gladman House
Alexandria Way
CONGLETON
Cheshire
CW12 1LB

31 October 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPLICATION MADE BY FOX STRATEGIC LAND & PROPERTY
LAND OFF ABBEY ROAD, SANDBACH, CHESHIRE
APPLICATION REFERENCE: 14/1189C**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs Zoe Hill BA (Hons) Dip Bldg Cons(RICS) MRTPI IHBC, who held a public local inquiry on 19 and 20 April 2016 into your client's appeal against the decision of Cheshire East Council ("the Council") to refuse planning permission for your client's application for planning permission for residential development of up to 190 dwellings including (30%) affordable housing, highway and associated works, public open space and green infrastructure at land off Abbey Road, Sandbach, Cheshire in accordance with application number 14/1189C, dated 27 February 2014.
2. On 15 April 2016, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the proposal involves a residential development of over 10 units in an area where a neighbourhood plan has been made.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to allow the appeal and to grant planning permission subject to conditions. A copy of the Inspector's report

(IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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. Having taken account of the Inspector's comments at IR5-6, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Procedural matters

6. The Secretary of State notes at IR3 that it was agreed between the Council and the appellant that the description of the development be amended to 165 dwellings and that consultation was undertaken on that basis. As all interested parties were aware of that change, the Secretary of State is satisfied that no interests have been prejudiced by it.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the saved policies of the Congleton Borough Local Plan First Review (CBLP) 2005 and the policies of the Sandbach Neighbourhood Plan (SNP) made on 12 April 2016. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR14-16.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

11. The emerging plan comprises the Cheshire East Local Plan Strategy (CELPS). The Secretary of State agrees with the Inspector and the parties (IR19) that the emerging policies of most relevance to this case are Policies PG5 (open countryside) and SE2 (efficient use of land).
12. 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. Having regard to IR18, the Secretary of State agrees with the Inspector at IR165 that CELPS cannot be afforded significant weight. He agrees with the Inspector

however that Policy PG5, and Policy SE2 are consistent with the objectives of the Framework (IR165).

Main issues

13. The Secretary of State agrees with the Inspector that the main issues are those set out at IR157.

The Planning Policy Position

14. The Secretary of State agrees with the Inspector that the appeal site is situated outside the Settlement Zone Line for Sandbach as defined by Policy PS4 of the CBLP and that, as a result, the proposed scheme for residential development of up to 165 dwellings conflicts with policies PS8 and H6 of the CBLP (IR159). He also agrees with the Inspector that policies PC1, PC3 and H1 of the SNP are of greatest significance in this case (IR160).

15. However, as the Inspector states at IR161, the Council does not have a five year housing land supply. Therefore, for the reasons given at IR161-162, the Secretary of State agrees with the Inspector that CBLP policies PS8 and H8 and the SNP are out of date in terms of policies relating to housing land supply. Nevertheless, for the reasons given at IR163-165, the Secretary of State also agrees with the Inspector at IR166 that it is important to consider a number of matters in arriving at a conclusion as to whether or not the development is a sustainable one; and that it is the balance of these that decides whether a proposal should be determined other than in accordance with the development plan.

Housing Land Supply

16. For the reasons given at IR167-170, the Secretary of State agrees with the Inspector's conclusion at IR171 that, whilst the Council may be able to demonstrate that Sandbach is likely to provide the level of housing to 2030 currently allocated to it in CELPS, this does not remove Sandbach from its part in providing for more dwellings in the light of the current severe shortage in housing land supply for the Council's area as a whole.

Character and Appearance

17. Having regard to the Inspector's arguments at IR172-173, the Secretary of State agrees with her that, whilst agricultural land would be lost, there would be limited change to the wider character of the surrounding area. Furthermore, for the reasons given at IR174-175, he also agrees that, on balance, the proposed housing scheme would not have an unacceptable impact upon the character of the area, albeit that open countryside would be lost; and that the housing proposed would reflect the character and appearance of its neighbouring development.

Strategic Gap

18. Having carefully considered the Inspector's analysis at IR176-184, the Secretary of State agrees with her that developing the western part of the site would have a limited impact on the strategic gap, and that providing the eastern part of the site as part of a community park would have a positive impact upon the strategic gap and would not conflict with policy objectives.

Best and Most Versatile Agricultural Land

19. For the reasons given at IR185, the Secretary of State agrees with the Inspector that the loss of best and most versatile land, whilst being a negative in the planning balance, is not a matter of significant weight having regard to the other factors which she cites.

Other Matters

Highways

20. For the reasons given at IR186-187, the Secretary of State agrees with the Inspector at IR188 that there is no substantiated evidence that leads to the conclusion that the highways impact of the scheme would be unacceptable.

Living Conditions

21. The Secretary of State agrees with the Inspector at IR189-190 that the type of change to the living conditions of those already residing in the area resulting from implementing the scheme would not be sufficient reason for withholding planning permission.

Trees and Ecology

22. For the reasons given at IR191-196, the Secretary of State agrees with the Inspector that, in terms of trees, hedgerows and other ecological matters, the conditions proposed would result in an acceptable scheme which would not conflict with SNP Policy PC4.

Listed Building

23. The Secretary of State agrees with the Inspector (IR197) that, based on the greater separation distance and the intervening planting which were introduced as part of the application process, the scheme as it now stands would not harm the setting of the Grade II listed Abbeyfields building (or the non-designated asset that is its garden) so as to materially detract from its special architectural and historic interest; and that it is therefore neutral in the planning balance.

Other Issues

24. Having carefully considered the other issues at IR198-201, the Secretary of State agrees with the conclusions reached by the Inspector.

Conditions and Obligations

25. The Secretary of State has given consideration to the Inspector's analysis at IR151, 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 and has therefore incorporated them in his decision as set out at Annex A to this letter.

26. Having had regard to the Inspector's analysis at IR152-155, the s.106 Unilateral Undertaking, 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 at IR156 that the obligations comply with Regulations 122 and 123 of the CIL Regulations and the tests at paragraph 204 of the Framework. He is satisfied that they

are necessary to make the development acceptable in planning terms, directly related to the development, are fairly and reasonably related in scale and kind to the development and do not result in any issue with regard to other projects or pooling of s.106 monies.

Planning balance and overall conclusion

27. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies PS8 and H6 of the CBLP and policies PC1, PC3 and H1 of the SNP and is not in accordance with the development plan as a whole. He has therefore 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.
28. Given that the 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 proposal represents sustainable development and whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
29. In terms of economic benefits, the Secretary of State agrees with the Inspector at IR204 that there would be gains in housing delivery, including affordable housing, and in the value of the construction works and subsequent housing to the local economy. He agrees that the housing would be sustainably located and so would make economic sense in terms of reducing the need to travel. The Secretary of State agrees with the Inspector that those benefits significantly outweigh the disbenefit, in economic terms, of losing the site from agricultural use.
30. The Secretary of State agrees with the Inspector at IR205 that, in terms of the social role, the proposed dwellings would provide much needed homes, including affordable homes, and would widen the choice of quality homes. He also agrees with the Inspector that there would be benefits for existing residents as a result of access to the community park and its ability to link with an existing community park area and potentially with recreational facilities. The Secretary of State has taken account of the important role of neighbourhood planning as identified in the Framework and by the Inspector at IR206-207. Like the Inspector, he acknowledges the role which the community have played in preparing the SNP and that it is a matter of circumstance that that plan already contains policies which are out-of-date as a result of the housing situation of the authority. He also agrees with the Inspector that the SNP has played an important role in the consideration of this appeal including assisting in making it clear how important it is that the eastern portion of the appeal site remains undeveloped. Overall, therefore, the Secretary of State agrees with the Inspector that the balance of social benefits weighs in favour of the appeal proposal.
31. Turning to the environmental role, for the reasons given at IR209 the Secretary of State agrees that only marginal harm would arise to the character of the area and this would be offset by the benefits of the community park. He agrees with the Inspector's conclusion that the effect of the environmental gains and harms would be neutral in the planning balance.
32. Overall, therefore, the Secretary of State concludes that the appeal scheme represents sustainable development and that the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.

Public Sector Equality Duty

33. In accordance with section 149 of the Equality Act 2010, due regard has been given to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Secretary of State has considered the protected characteristics of religion or belief, race, sex and disability. In this regard, and in coming to his decision, the Secretary of State acknowledges that the appeal scheme will have some positive impact on protected persons arising from the provision of affordable housing.

Formal decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for residential development of up to 165 dwellings including affordable housing, highway and associated works, public open space and green infrastructure, in accordance with application number 14/1189C, dated 27 February 2014, subject to the conditions at Annex A to this letter.

35. 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.

36. 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

37. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

38. A copy of this letter has been sent to Cheshire East Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Jean Nowak
Authorised by Secretary of State to sign in that behalf

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. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans unless any other condition attached to this permission indicates otherwise: Drawing No. 4333-L-01 Location Plan; Drawing No. 1224/34 Rev B Access Plan, and shall be broadly in accordance with the Framework Plan (Drawing No. 433-L-102 Rev G) and the Design and Access Statement.
- 4) 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. Thereafter, development shall be carried out in accordance with the approved phasing plan.
- 5) No dwelling on any phase of the development shall be occupied until the access for the proposed phase of development, as shown on Drawing No. 1224/34 Rev B, has been constructed in accordance with construction details that have been agreed in writing by the local planning authority.
- 6) The development shall not begin until, on each phase, 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 set out in the Glossary to the National Planning Policy Framework. 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 'pepper-potted' across the site
 - iii) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing shall be such that no more than 80% of the opening market housing shall be occupied before the affordable housing is completed and available for occupation provided that there shall be a high level of pepper-potting of the affordable units
 - 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 subsidy is 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 criteria shall be enforced
 - vii) The affordable homes shall be built to the standards adopted by Homes and Community Agency at the time of development.
- 7) No development hereby permitted shall commence until such a time as a scheme to limit the surface water run-off generated by the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development hereby permitted.
- 8) 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 after occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved scheme of monitoring and review as long as any part of the phase of development is occupied.
- 9) Prior to the commencement of development on any phase, details of Electric Vehicle Charging Points to be provided within the development and a timetable for implementation shall be submitted to the local planning authority for approval in writing. The approved scheme shall be implemented in accordance with the approved timetable.
- 10) No phase of development shall commence until an Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the construction phase. In particular the plan shall include:
- i) the hours of construction works 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 any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
 - vii) details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
 - viii) mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - ix) waste management – there shall be no burning of materials on site; and,
 - x) measures to control the emission of dust and dirt during construction and methods to monitor emissions of dust arising from the development.

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

- 11) Prior to the development commencing:
 - i) a Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority;
 - ii) if the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to and approved in writing by the local planning authority. The remediation scheme in the approved Remediation Statement shall be carried out as approved;
 - iii) if remediation is required a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validations works shall be submitted to and approved in writing by the local planning authority prior to the first use of occupation of any part of the development hereby approved.
- 12) No phase of development shall commence until a Habitat and Landscape Management Plan, including the long-term design objectives, management responsibilities and maintenance schedules for not less than 15 years for all areas of habitat and landscaping other than those within the curtilages of individual dwellings, shall be submitted to and approved in writing by the local planning authority, and the design, management objectives and maintenance of the landscaped areas shall thereafter be in accordance with the approved Habitat and Landscape Management Plan.
- 13) No development of any phase of development 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 tree work 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 shall be retained throughout the period of the construction phase.
- 14) No construction works in any phase of development 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 4 metre 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.
- 15) 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 thereafter be retained.

- 16) No phase of development shall commence until an updated survey for the presence of any Badger at the site has been carried out, submitted to and approved in writing by the local planning authority. The survey shall be carried out by a suitably qualified person and approved in writing by the local planning authority. If any evidence of Badger is found, then the report shall include measures for their protection during development and for the retention of existing or provision of alternative Badger Sett including a timetable for doing so should it be necessary. The approved measures shall be implemented in strict accordance with the approved details and timetable.
- 17) The reserved matters application(s) shall include the precise details of a scheme in respect of pond construction and habitat creation. The scheme shall include:
 - i) details of the design of one pond to be constructed within the community park including sections and landscaping;
 - ii) precise details of proposals to enhance opportunities for bio-diversity on the site (including native tree planting and species rich grassland);
 - iii) a timetable for implementation of the agreed measures.The approved scheme shall then be fully implemented in strict accordance with the approved details, timetable and strategy.

Richborough Estates

Report to the Secretary of State for Communities and Local Government

by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC

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

Date: 21 July 2016

Town and Country Planning Act 1990

Appeal by Fox Strategic Land & Property Ltd

Against the decision of

Cheshire East Council

Richborough Estates

Inquiry opened on 19 April 2016

Land off Abbey Road, Sandbach, Cheshire CW11

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Abbreviations

AoS	Areas of Separation
CBLP	Congleton Borough Local Plan First Review (2005)
CELPS	Cheshire East Local Plan Strategy
CPRE	Campaign to Protect Rural England
dph	dwellings per hectare
EIA	Environmental Impact Assessment
ES	Environmental Statement
ha	hectares
The Framework (also referred to when quoted as NPPF)	National Planning Policy Framework
PPG7	Planning Policy Guidance Note 7: The Countryside – Environmental Quality and Economic and Social Development (PPG7).
OAN	Objectively Assessed Need
The Council	Cheshire East Council
The practice guidance	The National Planning Practice Guidance
SNP	Sandbach Neighbourhood Development Plan
SoS	Secretary of State
SZL	Settlement Zone Line

Richborough Estates

File Ref: APP/R0660/W/15/3128707

Land off Abbey Road, Sandbach, Cheshire CW11

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Fox Strategic Land & Property Ltd against the decision of Cheshire East Council.
- The application Ref: 14/1189C, dated 27 February 2014, was refused by notice dated 3 June 2015.
- The development proposed is residential development of up to 190 dwellings including 'affordable housing', highway and associated works, public open space and green infrastructure.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

Inquiry Dates

1. The Inquiry sat on 19 and 20 April 2016 with the site visit taking place on the afternoon of the 20 April.

Determination

2. The Secretary of State (SoS) on 15 April 2016 directed that, in exercise of powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act, the appeal should be determined by him because the proposal involves a residential development of over 10 units in an area where a neighbourhood plan has been made.

Change to the Description of Development

3. The application as originally submitted sought permission for up to 190 dwellings. It was agreed between the Council and appellant (then applicant) that the description be amended to 165 dwellings and consultation was undertaken on that basis. As interested parties were aware of that change and no prejudice would arise as a result of considering the smaller scheme the appeal was conducted on the basis of that revision.

Changes to the Reasons for Refusal

4. Prior to the Inquiry, but after the application was determined by Cheshire East Council (the Council), the Sandbach Neighbourhood Plan (SNP) became part of the Development Plan following a referendum. As a consequence the Council "revised its reasons for refusal" on 24 February 2016. There is no formal provision for the Council to take such an approach. However, I have had regard to the "revised" reasons which the Council has offered by way of updated evidence and note that all parties were aware of that updated position.

EIA

5. The development required an Environmental Impact Assessment (EIA). An Environmental Statement (ES)¹ was submitted with the planning application

¹ CD 1.3-1.4

including a Non-Technical Summary². Addendum reports were added to the ES³ in respect of the Cultural Heritage, Air Quality and Traffic and Transport chapters following a request for further information by the Council on 18 February 2015 (made under Regulation 22 of the Town and Country Planning (Environmental Impact Assessment) Regulations).

6. The main parties agree that the ES meets the requirements of the Town and Country Planning (EIA) Regulations 2011 and I have no reason to disagree.

S.106 Unilateral Undertaking

7. A s.106 Unilateral Undertaking was signed on 20 April 2016 for consideration with the appeal proposals. It provides for Open Space to be agreed and provided so that on any phase its open space element is provided before 50% of the residential units are occupied. This includes provision for the larger open space and Neighbourhood Equipped Area for Play facilities (eight fixed play items including one multi-unit for 4-10 year olds) the latter to be inspected by the Royal Society for the Prevention of Accidents. It also sets out management plan and management company requirements.
8. In terms of contributions it provides for an A533/A534 Corridor Contribution (Highways) to be paid prior to the occupation of more than 25 residential units. That sum amounts to £137,211 (index linked). Before the 17th residential unit is occupied 33% of the secondary education contribution will be paid, with another 33% to be paid prior to occupation of the 66th residential unit with the remainder paid prior to the occupation of the 115th unit. The total amounts to £408,567.25 and would be index linked. The Unilateral Undertaking sets out factors which will be considered in respect of the education commuted sum. These include secondary education local factors, provision factors and the secondary education purpose for the money.
9. A sum towards improvement of the Wheelock Rail Trail is also provided for amounting to £25,000. This is to be paid before the occupation of any residential unit on the site.

The Site and Surroundings

10. The appeal site is 9.36ha in size and is located to the west of Sandbach town centre. The site is currently in agricultural use. There are a number of hedgerows and trees to the site boundaries. The western site edge is defined by existing residential properties along Abbey Road. To the north there is a site with planning permission for housing on which construction has started. Abbeyfields House, a grade II listed building is situated to the east of the appeal site, but is largely screened from it by established planting. To the south the site adjoins the grounds of Sandbach United football club and a small industrial estate.
11. There are no public rights of way within or adjacent to the site boundaries. Access would be taken from Abbey Road, in a gap between existing dwellings.

² CD 1.2

³ CD 2.2

Planning Policy

12. The Development Plan, for the purposes of s.38(6) of the Planning and Compulsory Purchase Act 2004 consists of the saved policies of the Congleton Borough Local Plan First Review (CBLP) 2005 and the policies of the Sandbach Neighbourhood Development Plan (SNP) made on 12 April 2016 following a referendum on 24 March 2016.
13. The CBLP was adopted in January 2005 and covered the period to 2011.
14. The main parties agree that the following CBLP policies are relevant to the appeal proposal: PS3, PS4, PS8, GR1, GR2, GR3, GR4, GR5, GR9, GR14, GR16, GR17, GR18, NR1, NR3, NR4, NR5, H2, H6 and H13.
15. It is also agreed by the main parties that the appeal scheme conflicts with Policies PS8 and H6 of the CBLP. Both are policies related to the supply of housing and are not up-to-date for the purposes of paragraph 49 of the National Planning Policy Framework (the Framework).
16. The main parties agree that the following SNP policies are relevant to the appeal proposal: PC1, PC2, PC3, PC4, PC5, HC1, H1, H2, H3, H4, CW2 and CW3.
17. It is also agreed that Policies PC1, PC3 and H1 are policies relevant to the supply of housing and are not up-to-date for the purposes of this appeal.
18. The Cheshire East Local Plan Strategy (CELPS) was submitted for independent examination on 20 May 2014, with examination Hearings commencing in September 2014. The examination was suspended in December 2014 to enable additional evidence base work to take place. The examination resumed in August 2015, with two further weeks of Hearings in October 2015. The Inspector published Further Interim Views in December 2015 (CD 14). Proposed changes to the Local Plan Strategy were consulted upon, in a consultation ending on 19 April 2016. The examination Hearings are programmed to resume in September 2016.
19. The main parties agree that Policies PG5 (open countryside) and SE2 (efficient use of land) are relevant to this appeal.

Planning History

20. The adjacent housing site to the north was allowed by the SoS on 17 October 2013 (Ref: APP/R0660/A/10/2141564).
21. The planning history for the site itself consists of two planning applications. One for residential development was refused in 1989. The other for residential development with a golf course was refused in 1991.

The Appeal Proposals

22. The appeal proposals seek outline planning permission with all matters other than access reserved for subsequent approval. The proposed scheme would comprise up to 165 dwellings, of which 30% would be affordable homes. It would include highway and associated works. There would also be formal and informal public open space, green infrastructure and landscaping.

23. Vehicular access to the site is proposed from Abbey Road via a new priority controlled T junction. The appeal scheme would be integrated with the scheme under construction to the north. Thus, there would be access between that site and the appeal, so that each would have access to Abbey Road and Middlewich Road.
24. The indicative scheme shows 5.65ha of residential development on the wider site, with a density of 29dph.
25. The plans which are for consideration in this appeal are: the Location Plan (4333-L-101), the Development Framework Plan (4333-L-102revG) and, the Access Drawing (1224/34 Rev B).

The “Revised Reasons for Refusal”

26. The “revised reasons for refusal” are:

“ 1. The Local Planning Authority considers that having regard to cumulative impact of developments in Sandbach that the proposed development would be contrary to Policy PC1, PC3 and H1 contained within the Sandbach Neighbourhood Plan and that the development when taken cumulatively with other developments in Sandbach would prejudice the local plan making process. As a result the development would be contrary to the guidance contained at Paragraph 216 of the NPPF and guidance contained within the NPPG.

2. Whilst it is acknowledged that there is a presumption in favour of sustainable development in the planning balance, it is considered that the development is unsustainable because of the conflict with the Sandbach Neighbourhood Plan and because of the unacceptable environmental and economic impact of the scheme in terms of the loss of best and most versatile agricultural land and open countryside. These factors significantly and demonstrably outweigh the social benefits in terms of its contribution to boosting housing land supply, including the contribution to affordable housing. As such the proposal is contrary to Policies PS8 and H6 of the adopted Congleton Borough Local Plan First Review 2005 and Policies PG 5 and SE 2 of the Cheshire East Local Plan Strategy – Submission Version and the provisions of the NPPF.”

27. These “revised reasons for refusal” vary from the original refusal in respect of the first reason only. The reasons for refusal referred to prematurity in terms of the SNP which at that stage had not been made. Unlike the reason for refusal the “revised reason for refusal” refers to the made SNP and to cumulative impacts of development. The Council did not pursue the issue of prematurity and the appellant did not object to the revised wording.

Other Agreed Facts

Consistency with the Framework

28. It is agreed that the site is located outside of the Settlement Zone Line (SZL) for Sandbach as defined by Policy PS4 of the adopted Local Plan.
29. It is agreed that under paragraph 49 of the Framework, policies relating to the supply of housing are not considered up-to-date where a five year housing land supply cannot be demonstrated. It is agreed that Policies PS4, PS8 and H6 relate to the supply of housing.

Five Year Housing Land Supply

30. It is accepted that the Council cannot demonstrate a five year housing land supply and therefore paragraph 14 of the Framework is engaged.

Sustainable Development

31. It is agreed that the appeal proposals represent sustainable development. Paragraph 7 of the Framework states that "*There are three dimensions to sustainable development: economic, social, and environmental*". Paragraph 8 of the Framework states that the sustainability "*roles should not be undertaken in isolation, because they are mutually dependent. ... Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.*"
32. The construction and provision of new dwellings and the associated increase in population would contribute positively towards the local economy. The development would also support job creation in the construction phase. The proposals would deliver up to 165 new dwellings (including affordable dwellings) which would be beneficial to the Council's continuing requirement to have a 5 year land supply, and thereby deliver social gains.
33. It is also agreed that the proposals include the provision of new publicly-accessible open space, giving rise to environmental gains.
34. Sandbach is a sustainable location to accommodate some of the Borough's future housing growth. A number of services are within walking distance of the site including:
- Bus Stop (Abbey Road)
 - Sandbach High School / Sixth Form College / Leisure Centre / Swimming Pool
 - Elworth Church of England School
 - Co-op Convenience Shop
 - Sandbach Town Centre
 - Sandbach Town Hall
 - Rookery Tavern Public House
 - Place of Worship
35. Sandbach benefits from bus services to Crewe, Alsager, Macclesfield, Middlewich, Northwich, Winsford, Nantwich, Holmes Chapel, Congleton and Stoke on Trent. Sandbach has its own railway station approximately 1300m from the appeal site. The station offers at least hourly services in each direction, between Crewe and Manchester, Monday to Saturday.
36. The provision of an extension to the community park provided in the already approved development to the north is a significant social benefit of the scheme that should be weighed in the planning balance.

Affordable Housing

37. It is agreed that 30% of the total dwellings on site would be affordable, subject to an effective s.106 Obligation. This is compliant with the policy requirement for such provision, and represents a material benefit of the scheme which should be considered appropriately in the planning balance.

Public Open Space

38. The appeal proposals provide for a total of 3.63ha of public open space including habitat creation and, subject to an effective s.106 Obligation, the proposals are acceptable in respect of open space provision.

Education

39. A contribution towards education would be paid if necessary.

Air Quality and Noise

40. The parties agree that, as demonstrated by the Environmental Statement, there are no significant impacts arising from the proposal in respect of air quality or noise, and suitable conditions could be imposed.

Contaminated Land

41. The appellant submitted a contaminated land report in support of the application. This was considered by the Council's Environmental Health Officer who raised no objection subject to the imposition of a planning condition.

Public Rights of Way

42. It is agreed that contributions towards improvements to the Public Right of Way network could be secured by way of a s.106 Obligation and would represent a significant benefit of the scheme.

Highways

43. It is agreed that there are no significant impacts arising from the proposal in respect of highways, and suitable conditions could be imposed. It is agreed that the Strategic Highways Manager raised no objections to the proposals subject to a financial contribution towards road improvements required in association with the proposed development. The proposals are not in conflict with Policy GR9.

Trees and Hedgerows and Landscaping

44. It is agreed that the proposed design layout has limited tree loss. Full boundary treatment and landscaping details including species, sizes and densities of planting with an emphasis on native species would be assessed and agreed at reserved matters stage. It is also agreed that, other than the access point, there would be no hedgerow loss on this site. Therefore the impact upon the hedgerows is agreed to be acceptable.
45. It is agreed that the Council's Landscape Officer broadly agrees with the Landscape and Visual Impact Assessment submitted with the application and there are no unacceptable impacts as a consequence of the scheme in landscape and visual impact terms.

Design, Layout and Residential Amenity

46. The design of the units and the site would be determined at reserved matters stage. The approach suggested within the Design and Access Statement addendum, submitted with the Environmental Statement (CD 2.2), which responds to the advice of the Council's Principal Conservation and Design Officer,

is acceptable in defining the separation of the built development from Abbeyfields (a grade II listed building).

47. The surrounding residential properties are mainly to the west of the site and as the appeal is for outline permission, adequate separation distances could be provided at the reserved matters stage.
48. Materials would be controlled by planning condition.
49. The layout of the site would be assessed at reserved matters stage. The Framework Plan and Design and Access Statement demonstrate that up to 165 units could be accommodated at the site at a net density of 29 dwellings per hectare.

Ecology

50. It is agreed that no unacceptable impacts have been identified in terms of reptiles, bats, other protected species and breeding birds. It is agreed that the use of standard conditions would mitigate any impact.

Flood Risk and Drainage

51. It is agreed that the site is located within Flood Zone 1. In line with the submitted FRA, the site is outside the flood envelope for all sources of flooding and the development is suitable in this location. No objections were raised by the EA or the Council's Flood Risk Manager and the site can be appropriately drained.

Archaeology

52. An Archaeological Assessment was submitted with the application. It is agreed that no further archaeological work is required on the appeal site.

Agricultural Land Quality

53. Policy NR8 of the Congleton Borough Local Plan was not saved. It is agreed that the site includes a mixture of grade 2 and grade 3 land. Both parties agree that this loss is acceptable to deliver the housing needed in Sandbach and in Cheshire East so only limited weight can be applied to this in the planning balance.

Economic Sustainability

54. The proposed development would help maintain a flexible and responsive supply of land for housing. It would also bring direct and indirect economic benefits to Sandbach including additional trade for local shops and businesses, jobs in construction and economic benefits to the construction industry supply chain.

The Case for Fox Strategic Land & Property Ltd – the appellants

Introductory Matters

55. This appeal proposes planning permission for up to 165 dwellings on a site which it is agreed is suitably accessible to facilities and services⁴, which does not give rise to any technical reason to withhold planning permission and where there is a

⁴ CD 4.12 Highways pages 41 & 43 the site is sustainable and well served

- substantial deficit in the minimum provision of 5 years supply of deliverable housing land. Since it is also agreed that the presumption in favour of sustainable development is engaged then the focus of the Inquiry and appellant's case has been upon the extent to which land use harm can be identified which gives rise to significant and demonstrable harm. The Framework paragraph 198 point that 'where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be allowed' does not displace the Framework paragraph 14 test.
56. The starting point is that there has been a long standing need for additional housing in Cheshire East. Not only has there been years of under-delivery to result in the concession that there is not a 5 year housing land supply, but now that it has promoted an Objectively Assessed Need (OAN) that has received a modicum of support from the Inspector it is clear that there is a huge backlog in the delivery of housing. Thus, since the start of the plan period there has been an under-delivery of 5089 dwellings which equates to a backlog of almost 3 years at a requirement of 1800. Whilst the Council suggested it is agreed that the OAN is likely to be found sound, it is the appellant's view that there is a chance the OAN can be found sound.
57. That startling under-delivery relates to general market housing but is especially keenly felt in the under-delivery of affordable homes.
58. It is simply no answer to suggest that the deficit is elsewhere in the Council's area and that delivery has been hampered because of other settlements being constrained in their delivery of housing – the need is now and it is a substantial one that needs to be remedied now.
59. Whilst the CELPS has advanced somewhat it is a very long way from adoption. It is clear from the Inspector's second interim letter⁵ that he has not yet come to a concluded view on strategy and that there is a need to examine site specifics before he can do so. The consultation on the extensive mid-examination modifications has only just ended (19 April 2016) and the forthcoming examination in September looks set to be a highly contentious event. There is no prospect of an early release of sites from the green belt which would be essential for the Council to create a step change in its housing land supply.
60. Thus, the context for this appeal is not 'yet another five year housing land supply appeal' but a sustainably located site with no meaningful technical justification to withhold planning permission in a Local Planning Authority area with an immediate housing need and a huge backlog in supply. Moreover, the Council have readily conceded that the presumption in favour of sustainable development is engaged.
61. As to the site specific concerns, it is crucially important to note:
- (i) there is no landscape or visual amenity case which is put against the appeal site;
 - (ii) there is no technical reason for refusal on the grounds of highways, heritage, ecology or any of the other possible impediments to delivery;
 - (iii) the site is in a suitably accessible location;

⁵ CD 14 paragraphs 37 & 71

- (iv) the site is eminently deliverable; and
- (v) for reasons which are explored below, there is no breach of any up-to-date policy.

62. Indeed, even though the Council's witness sought to express concern that Sandbach has taken its fair share of development in recent years, not only does that claim not bear scrutiny on the facts, but more importantly he could not point to any particular reason why addition of 165 units to the existing level of development in Sandbach would give rise to any meaningful land use harm.
63. Given that the first "revised" reason for refusal is no more than a duplication of part of the second reason for refusal, and that it is agreed that the loss of best and most versatile agricultural land is not a determinative reason to withhold planning permission, the real concern in this case is the tension with the recently adopted SNP. As to that, not only are the relevant policies presumed to be out-of-date but it is now clear that the evidence base which underpins the AoS is far from satisfactory but more importantly the effect of the proposal, properly understood would not give rise to harmful coalescence within the meaning of the policy or at all.

The Development Plan

64. It is agreed that all of the policies which are alleged to be breached in the putative "revised" reasons for refusal are presumed to be out-of-date by reason of the application of paragraph 49 of the Framework, which is to be given a 'wide' meaning as a result of the decision in the Richborough case⁶.
65. Thus, irrespective of the question of consistency of policies in the adopted CBLP and emerging CELPS with Framework paragraphs 215 and 216 respectively, the uncontested point is that the weight to be afforded to those policies must be diminished by reason of their being presumed to be out-of-date as a result of paragraph 49 of the Framework. Indeed, the Council's witness accepted that 'out-of-datedness' of the policies in the circumstances of this case did in fact diminish the weight to be afforded to such policies.
66. All of the policies which are alleged to be breached, in the CBLP, CELPS and the SNP are all agreed to be presumed to be out-of-date by reason of the application of paragraph 49, and the weight to all of those policies must be diminished in the circumstances of this case.
67. The CBLP policies are already at a low level of weight since they rely upon a geographic definition of the extent of the open countryside determined on the basis of a need established over a decade ago; and which have been repeatedly breached by decisions of the SoS and the Council over the last 4 years. Whilst time was spent trying to establish that PS8 and H6 had as part of their role countryside protection and that some Inspectors have considered that this aspect of the policies are consistent with the Framework, that misses two fairly obvious points:

⁶ Secretary of State for Communities and Local Government v Hopkins Homes Ltd [2016] EWCA Civ 168

- (i) Inspectors can fall into error and the Council accepted that 'protection' as such arises explicitly only for valued landscapes⁷ and that there is a materially different approach taken to the generality of the countryside in the Framework⁸. A policy founded on the basis of the protection of the countryside for its own sake is a policy founded on the back of superseded and not current policy;
- (ii) even if the policies of the CBLP carry some consistency with the Framework at paragraph 215 that weight is agreed to be diminished on the basis of the policies being presumed to be out-of-date.

68. The Council is optimistic that the CELPS can be described as being a long way down the road to its adoption. However, in contrast, the appellant considers that the progress of the plan has been extraordinarily troubled. The first examination was suspended before the Inspector had gone past the strategy stage of the plan and the Council was required to undertake work on its evidence base as regards housing and employment growth and green belt release. The Council accordingly went away and formulated a raft of new evidence documents. The Inspector then undertook a very unusual process by convening a further examination hearing into the evidence base. He then issued a further interim letter which essentially indicated that he was prepared to allow the examination to proceed on the basis of a significantly revised strategy rather than starting again. However the Council has been obliged to promote mid-examination modifications which are, on any view, extensive.
69. The appellant considers that to contend that one can pick policies from the CELPS and argue that the agricultural land policy and the countryside policy could have an elevated weighting is optimistic. However, even if there was something in these arguments the effect of paragraph 49 would be to knock the weighting right back down to 'limited'.
70. The starting point as a matter of law is s.38(6). However, the effect of the above analysis means that the contravention of CBLP and CELPS policy is to be given limited weight and could not possibly outweigh the presumption in favour of development. The Council's witness was asked whether but for the breach of SNP policy he would still resist the appeal. Rightly he conceded that the case would be much more finely balanced. Thus, the real determinative issue in this case is whether or not the breach of SNP policy amounts to sufficient harm to outweigh the presumption in favour of this sustainable scheme.

The Sandbach Neighbourhood Plan

71. The SNP has just been made. However, it was rightly conceded by the Council's witness that the only three policies which are alleged to be contravened (PC1, PC3 and H1) are all policies for the supply of housing. Moreover, whilst it was contended that there may be circumstances in which the 'out-of-datedness' of policy might not diminish the weight to be afforded to policy breaches, no such circumstances could be identified here. Thus, the starting point is that the three policies which are alleged to be breached ought to be afforded diminished weight.

⁷ Framework –paragraph 109

⁸ Framework - paragraph 17

72. Next this appeal is being determined in the context of housing need. However, the SNP is explicit that housing need is not being determined within the SNP but is being deferred to the CELPS. Since the CELPS is still some way off adoption and there is an immediate need for additional housing it would be odd for the policies of the SNP to prevent otherwise sustainable development coming forward to meet that need.
73. Indeed the SZL established in the SNP does no more than roll forward the SZL of the CBLP save that it encompasses recent commitments and one draft allocation from the CELPS. It was explicitly recognized by the Council's witness that the boundaries of the SNP would have to play second fiddle to whatever happens in the CELPS, should additional land be needed to be released. Policies H1 and PC3 are in effect dependent upon the SZLs and therefore could not 'trump' the need for additional housing.
74. Accordingly most focus has been upon Policy PC1 which relates to the AoS. It is quite plain that the Council has approached Policy PC1 on the assumption that it precludes anything which diminishes the physical extent of the designated land. Such a policy had been put to the SNP Examiner and expressly rejected. Rather the text of the policy has three components, compliance with PC3 or minimizing effect upon landscape character and avoidance of 'further coalescence'. The appellant's planning witness's interpretation of Policy PC1 is that the first sentence of the policy is not engaged in a development management context. However, even if he is wrong, on the appellant's landscape witness's evidence the proposal would, as a matter of fact, minimise the impact upon landscape character and the policy would not be breached.
75. The second part of the policy is the most critical part for the determination of this appeal. As a matter of interpretation it is firmly submitted that the policy (as amended by the Examiner) is not breached merely by development within the AoS. For there to be 'further coalescence' there is a need to understand what is meant by 'coalescence'. The concise Oxford English Dictionary defines the verb to 'coalesce' as: '*come or bring together to form one mass or whole*'. Plainly the effect of the proposal would not be to give rise to the creation of 'one mass or whole' area of development.
76. To the contrary, the proposed development would leave a large swathe of open land to the east and south east open and undeveloped and separating Ettiley Heath/Elworth on the one hand and Wheelock/Sandbach. On no basis could it be alleged that coalescence would have occurred. The land to the east would comprise a substantial extension to the permitted country park to the north, and beyond that would be the substantial landscaped area around Abbeyfields. To the south is the open land use of Sandbach Football Club, beyond which are extensive areas of agricultural fields. It follows that there is a negligible prospect of there being any further erosion of the gap.
77. If there is a yardstick to judge the effectiveness of the gap then it is to be found in the consideration of the appeal in respect of the land to the north of the appeal site. In that case the Inspector⁹ considered that the proposed country park (3.4ha) would provide a large open swathe of land which would preserve the separate identities of the two parts of the town, a view with which the SoS

⁹ CD 21.1 paragraph 100

- concluded¹⁰. It is self evident that the combined areas of community park which would exist after the proposed and existing developments are completed would be substantially greater.
78. Another yardstick to judge the effectiveness of what remains is to compare it to other areas of separation which, without exception, are all much narrower.
79. The final yardstick is probably the most obvious, this is to consider whether what is proposed is a significant extension of the urban area into the AoS. Here again the appeal proposals fare well since the proposed developable part of the appeal site nestles between the industrial area to the south, the committed housing development on Middlewich Road to the north¹¹ and Abbey Road to the West. It is a classic infill and not an urban extension.
80. Thus, even if the policy sought to avoid diminishing the AoS so as to reduce the gap, on the facts of this case that simply would not happen. That is, even if Policy PC1 can be breached by development that would fall short of coalescence, the appeal proposals would not be in breach of the policy in any event. The reality is however, that the Examiner for the SNP expressly recommended amendments to avoid the AoS being the blanket restriction that it had been in its draft version¹². It is quite clear from paragraphs 6.64 and 6.66 of his report¹³ that there was an express intention to ensure that Policy PC1 had sufficient flexibility within it to accommodate future growth needs. Whilst the Examiner had in mind that there might be further potential changes to the CELPS, his point about the need for flexibility in the policy to accommodate growth applies with equal force to the release of land to make up a deficit against a 5 year housing land supply shortfall. In short, to interpret the policy in the inflexible way urged upon the Inquiry by the Council is a reversion to a position which has been rejected by the Examiner (which is also why the suggestion that the proposal would fundamentally undermine the will of the Sandbach people embodied in the SNP just plainly wrong).
81. The final point on Policy PC1 is that it is a policy which has a poor evidential foundations basis. Whilst there is no requirement for policies of a neighbourhood plan to be 'soundly based' in the same way as local plan policies, it is nonetheless relevant when judging the degree of harm that might arise from the breach of neighbourhood plan policy to assess the extent to which the policy objectives are well founded (being mindful that this goes further than whether the Basic Conditions are met). In this instance there is no proper landscape character assessment which underpins any of the AoS. Rather the landscape character assessment that has been produced is no more than descriptive and provides no explanation as to why this parcel of land, or any other, fulfils a separation role. Thus, it cannot be inferred that land use harm automatically arises if this neighbourhood plan policy is breached.
82. Bringing all of the above together, Policies PC1, 3 and H1 of the SNP are presumed to be out-of-date and the weight to be afforded to any breach is agreed to be diminished. Properly understood Policy PC1 is not actually breached

¹⁰ CD 21.1 paragraph 36

¹¹ Consented by CD 21

¹² CD 16

¹³ CD 18

by the proposals, but even if it is there would be little or no effect upon the separation of parts of Sandbach as a matter of fact, and there is no sound evidence base to suggest to the contrary. Thus, whichever way one considers the policies of the SNP there is simply no harm that comes close to outweighing the presumption in favour of sustainable development.

Harm to Process

83. In evidence the Council's witness expressly disavowed any suggestion that the proposals would give rise to a concern over prematurity. However, he was at pains to point out that there are 2801 consents, completions or commitments in Sandbach against a CELPS requirement of 2750 (with 2950 units to be allocated to the town for flexibility). The following points arise:
- (i) the Council's witness failed to point to any land use harm that might arise from an additional 165 units in Sandbach, to infrastructure, landscape or anything else;
 - (ii) 2750 is a minimum and not a maximum figure in the emerging CELPS;
 - (iii) the figure is in any event a draft figure and over the course of the last 3 years the minimum target for Sandbach has risen from 1300 through 2200 to 2750 now. There is no reason to think that it may not be revisited, especially when the CELPS Examiner's interim conclusions are so heavily caveated¹⁴;
 - (iv) the 2801 figure mistakenly includes 371 commitments from the Albion Chemical Works which are at a site divorced from Sandbach by 1km and ought to be properly ascribed to the rural areas figures. Thus, there is more than enough headroom in the Sandbach figures in any event;
 - (v) even if the 2750 figure was a ceiling (which it is not) and if land use harm arose (which is not alleged) then any such target is in any event presumed to be out of date by reason of Framework paragraph 49;
 - (vi) the CELPS Examiner in his interim conclusions¹⁵ expressly disavowed an endorsement of the particular distribution under Policy PG6 of the CELPS.
84. The appellant considers that whilst it may be politically expedient for the Council to suggest Sandbach has had its fair share of growth that is no answer given the proposed development would give rise to no land use harm and there is, in any event, no policy preclusion.
85. In terms of other harms it is agreed that the loss of an area of undeveloped countryside to development weighs against the proposal. Such harm does not result in the proposal being unsustainable. It is a loss which gives rise to, at worst, a minor adverse effect in landscape character terms and a negligible visual impact, notwithstanding that it is an otherwise sustainable site in an accessible location.
86. The development would also result in the loss of an area of best and most versatile agricultural land but it is not a critical part of any landholding from which it is, in any event, severed by development and the adjacent football club. As with every other case in Cheshire East over the last three years, where need

¹⁴ CD 14 paragraphs 37 and 71

¹⁵ CD 14 paragraphs 37 and 71

has been proven, the loss of a small area of best and most versatile land is not a determinative factor against the proposal.

87. Curiously, in the appellant's view, the Council has sought to argue that if there is a need then there are alternative sites available. However, the point appears to be ill thought out. If the planning balance favours dismissal of the appeal then the existence of alternative sites is irrelevant. However, the Council's witness initially accepted that if the Inspector considered that the appeal proposals were acceptable on their merits then the existence of an alternative site would not then render an otherwise acceptable scheme unacceptable. He then retracted that logically unimpeachable answer and suggested that the existence of alternative sites somehow tempered the weight to be afforded to other factors. It remains difficult to understand why that would be the case.
88. However on the evidence before this Inquiry it does not help anyway since the Council's witness only refers to some sites which are 'better' in one respect that being that they are not in the AoS. The Council made no attempt to demonstrate that there is any site in Sandbach (or anywhere else) that is actually better in overall land use terms. Or that any such site is deliverable, suitable or even available. Thus, the 'alternative sites' point is an irrelevant distraction.

Appellant's Conclusions

89. Overall it is firmly submitted for the appellant that:
- (i) there are a substantial benefits that arise, in particular:
 - the delivery of market housing in a District with at best a 3.3 year supply of housing and a massive backlog of 5089 under-delivery since 2010;
 - the delivery of 30% affordable housing when there is an acknowledged acute need;
 - the delivery of a country park to tie in to the park to the north resulting in 7ha of accessible recreational land at the heart of the settlement with the opportunity for ecological enhancement also;
 - other benefits e.g. significant economic benefits¹⁶.
 - (ii) the absence of a 5 year housing land supply means that:
 - paragraph 49 of the Framework is engaged and so is paragraph 14; therefore the presumption in favour of sustainable development applies;
 - all of the policies alleged to be breached are policies for the supply of housing and are therefore presumed to be out-of-date and therefore carry diminished weight;
 - permission should be granted unless significant adverse harm could be demonstrated.
 - (iii) In fact it is agreed that:
 - the appeal site is in an accessible location;
 - there is no technical reason to withhold consent (highways, ecology etc);
 - there would be no heritage impacts;
 - there would be no significant landscape or visual impacts.
 - (iv) the only real harm that is alleged is to the supposed objectives of SNP Policy PC1, as to which:

¹⁶ see the Regeneris Report CD1.19

- the Council has misinterpreted PC1, which in fact is not breached;
- it is agreed that actual coalescence would not occur;
- any reduction in the physical extent of the AoS would be minor and would not, in reality, give rise to any change in the separation of different parts of Sandbach Town.
- any such harm, together with the loss of a limited area of countryside and best and most versatile land comes nowhere close to outweighing the presumption in favour of sustainable development.

90. In short, the appellant concludes that, the land use harm which arises from the proposals is limited and the benefits are substantial. The presumption in favour of sustainable development should therefore prevail and this appeal should be allowed.

The Case for Cheshire East Council

Introductory Comments

91. It is common ground that given that the appeal proposal breaches CBLP policies PS8 and H6 and PC3 and H1¹⁷ of the SNP, under the first limb of s.38(6) of the 2004 Act, the appeal should be dismissed unless material considerations indicate otherwise.
92. In that context it is particularly important to note that the SNP was made as recently as 12 April 2016 and is now part of the Statutory Development Plan.
93. The role of the SNP as part of the Development Plan needs to be kept in mind when the conflict of the proposed development with the relevant policies of the SNP is considered. The Framework states that neighbourhood plans give communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need (paragraph 183). Neighbourhood plans are able to shape and direct sustainable development in their area (paragraph 185). The Planning Practice Guidance (the practice guidance) provides further detail, explaining that communities: "... are able to choose where they want new homes, shops and offices to be built, have their say on what those new buildings should look like and what infrastructure should be provided, and grant planning permission for the new buildings they want to see go ahead. Neighbourhood planning provides a powerful set of tools for local people to ensure that they get the right types of development for their community where the ambition of the neighbourhood is aligned with the strategic needs and priorities of the wider local area."¹⁸
94. Further, before jumping to material considerations (primarily that the Council cannot demonstrate a 5 year housing land supply), it is necessary to consider the nature and extent of the breach of the Development Plan¹⁹. It was agreed in cross examination that LP policies PS8 and H6 and PC1, PC3 and H1 of the SNP are 'in principle' policies (rather than policies that deal with points of detail). It is the Council's case that building up to 165 dwellings on the land should be characterised as a significant breach of, and an inconsistency with, the

¹⁷ The Council's case is that the appeal scheme also breaches SNP policy PC1 (see further below).

¹⁸ Practice guidance paragraph ID-41-001

¹⁹ Based on *Tesco Stores Ltd v Dundee City Council* [2012] UKSC

Development Plan. As such, when it comes to the issue of whether material considerations indicate that the appeal should be allowed, rather than dismissed, because of its breach of the Development Plan, the question to be asked is whether those material considerations are sufficiently weighty to justify sanctioning a significant departure from the Development Plan.

95. However, that is not the end of the matter. In order to allow the appeal, not only must the material considerations be judged to be as weighty as explained above, they must also be sufficiently weighty to justify not according the Development Plan 'the priority which the statute has given it.'²⁰ In other words the bar is set high.
96. The Council accepts that it cannot demonstrate the requisite 5 year housing land supply, that the shortfall is substantial and is a significant material consideration. The appellant's views as to the OAN²¹ are not accepted by the Council, (and it should be noted that the appellant's planning witness agreed with the description of the position that the Council is in a position of having the OAN which might be found sound), but it was common ground that in the light of the housing land supply position, there was no need to take up Inquiry time debating detailed differences as to calculation.
97. As to whether material considerations are sufficiently weighty to justify not according the Development Plan 'the priority which the statute has given it', the main material considerations in this appeal spring from the Framework. The presumption in Framework paragraph 14 (granting planning permission unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole) applies in any one of three circumstances; the first (where the development plan is absent) and second (where it is silent) do not arise here; the third (where relevant policies are out-of-date) applies in the present case.

CBLP Policies PS8 and H6

98. The Council accepts that because it cannot demonstrate a 5 year housing land supply then by virtue of the *Barwood*²² line of case law (and now *Suffolk Coastal/Richborough*²³), Framework paragraph 49 applies such that CBLP policies PS8 and H6 can be considered to be out-of-date in terms of their geographical extent (i.e. in terms of how much land is protected on the basis of it being countryside). Accordingly, the Council accepts that the weight to be accorded to the policies is reduced.
99. However, as the Council's witness explained, in terms of consistency in principle with the Framework (paragraph 215), the CBLP countryside policies (PS8 and H6) (and SNP policies PC1, PC3) are consistent with the fifth core planning principle of the Framework at paragraph 17 of 'recognising the intrinsic character and

²⁰As set out in *Bloor Homes East Midlands v SSCLG & Hinkley & Bosworth BC* [2014] EWHC 754 (Admin).

²¹ Set out in the appellant's planning witness's proof p 54 footnote 16.

²² *South Northamptonshire Council v SSCLG & Barwood Land & Estates Ltd* [2014] EWHC 573 (Admin)

²³ *CD 22.3 Suffolk Coastal DC v Hopkins Homes, Richborough Estates v Cheshire East BC* [2016] EWCA Civ 168

beauty of the countryside'. The March 2015 Ministerial letter also makes it clear that it is consistent with the Framework to seek to protect the countryside from being built upon.

100. As the appellant's planning witness accepts, the Framework means to recognise the intrinsic (that is the inherent, the innate) character and beauty of all countryside as countryside. This has nothing to do with special designations for landscape quality. If the countryside means only the particularly beautiful and not all countryside then this would render the next few words in the fifth bullet point of Framework paragraph 17 nonsensical – the next few words are "*and supporting thriving rural communities within it*" – the "it" is the countryside (and not that the support given to thriving rural communities would be only to those in the more beautiful areas of countryside, such as Areas of Outstanding Natural Beauty). Of course some parts of the countryside are more characterful and beautiful than others, but all countryside is regarded by the Framework as intrinsically characterful and beautiful.
101. The appellant's planning witness acknowledged the dual purpose of policies PS8 and H6, but considered that the countryside protection purpose of the policies should be accorded very little weight. In doing so, he relied upon the *Crewe Road* decision²⁴, where the Inspector (whilst noting that the equivalent policies NE2 and RES5 were *not* time limited), reduced the weight given to the policies, inter alia because the term protect is used in the Framework for valued landscapes.
102. However, as was accepted, the preponderance of the relevant appeal decisions in the Core Documents show examples of cases where even though Inspectors have allowed appeals, they have concluded that the countryside protection purpose of the policies is consistent with the Framework and should be accorded weight. For example: *Hind Heath*²⁵, "... *Saved Policies PS8 and H6 are thus aimed in part at protecting the countryside from unnecessary development. This aspect of the policies accords with the core planning principle set out at [Framework] paragraph 17... Insofar as these policies are concerned with protecting the character of the countryside, I consider they attract substantial weight...*" *Saltersford Farm*²⁶, "...*the purpose of these policies is reasonably consistent with one of the core planning principles of the [Framework]. Insofar as they protect the character of the countryside, in accordance with 215 of the [Framework] the saved policies carry due weight as part of the local development plan.*" *Goldfinch Close*²⁷, "...*Their overall objective is to protect the character and amenity of all countryside outside of the defined development boundaries from indiscriminate development. This policy approach does reflect the spirit of the terms of one of the relevant core planning principles of the [Framework], that being to recognise the intrinsic character and beauty of the countryside. To this extent these LP policies are consistent with the aims of the [Framework]...*" *Loachbrook Farm, the Gables and Park Road* were the same too²⁸.

²⁴ CD 21.3 paragraph 10

²⁵ CD 45.1 paragraph 7

²⁶ CD 45.2 paragraph 10

²⁷ CD 21.7 paragraph 27

²⁸ CD 45.3 *Loachbrook Farm* (Adrian Fisher App 1), *The Gables* (Adrian Fisher App 7), *Park Road*

103. The appellant's planning witness agreed that the fact that policies are not up to date does not mean that they should be discarded. The Council's witness explained that weight should be given to the policies because of their countryside protection purpose, consistent with the approach set out in the Suffolk Coastal/Richborough case:

"46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is "out-of-date" should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied. That idea appears to have found favour in some of the first instance judgments where this question has arisen. It is incorrect.

47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in *Crane*, paragraphs 71 and 74 of Lindblom J.'s judgment in *Phides*, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin))"

104. The Council invites the Inspector and the SoS to give weight to the countryside protection purpose of the CBLP policies, consistent with the approach set out in the decisions referred to above.

PC1, PC3 and H1 of the SNP (CD 19)

105. PC1 seeks to maintain the green spaces and the Areas of Separation (AoS) between the distinctive village settlements by providing that future planned growth and development permitted in accordance with Policy PC3 should

minimise the impact on the open character of the AoS. Developments which would result in further coalescence in the AoS will not be permitted.

106. The appellant's planning witness agreed that seeking to maintain the separation of settlements is a sound planning aspiration. PC1 is designed to set out what is important around the urban form of Sandbach – it is a spatial policy that seeks to reinforce distinctiveness. Indeed, as the SNP notes in the supporting text to PC1, 96% of the respondents in the phase 2 consultation survey strongly agreed or agreed that each settlement has a distinct identity and should be given adequate protection from development and it is identified as one of the key issues in the SNP²⁹.
107. The appellant's planning witness also accepted that the appeal scheme does not fall within the category of 'future planned growth' or 'development permitted in accordance with PC3', but he considered that therefore, the first sentence of PC1 is 'not relevant'. This suggested construction of the policy is untenable. On the contrary, the fact that the scheme does not fall within either category of development in the first sentence of PC1 means that it conflicts with the policy. As to the 'relevance' of the first sentence of PC1, it is notable that contrary to the appellant's planning witness's consideration of PC1, their landscape witness was asked whether, and if so the extent to which, the proposed development minimised the impact on the open character of the AoS.
108. On the appellant's planning witness's reading of the policy, the acceptability of a scheme proposed in an AoS that is neither 'planned growth' nor a rural exception development would rest solely upon whether the development resulted in 'further coalescence'. The proper construction of PC1 is that if future planned growth or a rural exception development comes forward in an AoS, it should minimise the impact on the open character of the AoS. Development which would result in further coalescence will not be permitted. The appeal scheme plainly conflicts with Policy PC1.
109. Policy PC3 establishes a settlement boundary around the town of Sandbach sufficient to encompass the allocations in the emerging CELPS. Other than those allocations (and existing commitments), development will be restricted to that which requires a countryside location (none of the specified types of development in the countryside apply in this case). It is common ground that the appeal scheme conflicts with PC3.
110. Policy H1 indicates that the strategic need for housing will be met through existing commitments, sites identified in the emerging CELPS and windfalls. It is common ground that the appeal scheme conflicts with Policy H1.
111. The Council accepts that Policies PC1, PC3 and H1 of the SNP are policies for the supply of housing within the meaning of Framework paragraph 49. It is also acknowledged by the Council that as a 5 year housing land supply cannot be demonstrated, then even though the SNP was only made recently, by virtue of Framework paragraph 49, all three policies are not up to date³⁰.

²⁹ CD 19 p24

³⁰ CD 46.1 - Woodcock Holdings v SSCLG & Mid Sussex DC [2015] EWHC 1173 (Admin) and the Framework

112. However, although even the recently made SNP policies PC1, PC3 and H1 are not up to date because the Council cannot demonstrate a 5 year housing land supply, there are a number of matters to take into account in determining the weight to be accorded to the three policies.
113. Firstly, the emerging CELPS seeks to make provision for an OAN of 36,000. It is proposed that 2,750 dwellings be accommodated in Sandbach. To ensure that this number is built, the CELPS allocates sites for 2,950 new homes and ensures that Sandbach is taking its 'fair share' of housing. In this regard it is particularly relevant to note that Sandbach has substantial housing development already committed around the town, such that the proposed CELPS distribution has already been met. This includes the Albion Works – whilst there may be disagreement about its inclusion it is agreed that is a matter that will be determined in due course by the Local Plan Inspector. In any event, even if contrary to the Council's case, the 371 figure was to be deducted, Sandbach would nearly have met the proposed distribution over the period to 2030 and the small amount remaining would not warrant permitting the appeal scheme, given the material adverse impacts identified.
114. Policy PC1 (together with the operation of Policy H1) does not preclude further housing on the perimeter of the town if considered necessary or appropriate. In other words, if the emerging CELPS results in a need for further appropriate provision of housing at Sandbach, the SNP sets out the approach for such provision. (The Urban Potential Study undertaken for the Local Plan illustrates that there are several potential development sites that fall outside the AoS.) The Council acknowledges that no comparative exercise had been undertaken for the purposes of this Inquiry, in terms of the suitability of other sites outside of the AoS, and the Council is not endorsing the development of any of them, but the point is that *if* further housing needs to be found in future on the edge of Sandbach, there are several potential development sites that fall outside the AoS and so do not conflict with a major spatial objective of the SNP.
115. Policies PC1 and PC3 are consistent with the Framework, in particular the fifth core planning principle in paragraph 17. The SNP is in general conformity with the strategic (saved) policies of the CBLP in force and has been produced taking into account the strategic direction and policies of the CELPS³¹.
116. In particular, the SNP has therefore been prepared in the context of the emerging CELPS revised housing requirement. Whilst it is the case that the Local Plan Inspector has only issued Interim Views at this stage and that further changes might ensue as a result of the Examination process, as referred to above, it is apparent at this stage that he considers the revised OAN figure to be *"... a reasonably objective assessment of housing need..."*³²[CD 14]. Further, the Local Plan Inspector notes that *"...the additional evidence supporting the revised spatial distribution of development seems to represent a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base... it also seems to be based on sound technical and professional judgements and a balancing exercise, which reflects a*

³¹ Examination Report CD 18 e.g. at paragraphs 5.23 p18, 5.33 p19, 6.3 p20 and the SNP (CD19 p9).

³² CD 14 paragraph 37

*comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement*³³ (paragraph 71). For the avoidance of doubt, it is acknowledged that the Inspector stated that he could not firmly endorse the OAN, or distribution, prior to the consultation exercise and the further Examination of the CELPS, but his clear interim views on both are plainly relevant and material.

117. The appellant as 'Fox/Gladman' made detailed written representations³⁴ setting out extensive objections to the SNP which, was fairly accepted, were all considered by Examiner and addressed in his Report.
118. The Examiner rejected the 'Fox/Gladman' submissions that the SNP was unduly restrictive and did not accord with the Government's growth agenda³⁵. The Examiner recommended modifications to PC1 to focus on particular areas around the town, to the wording of PC3 to ensure future decisions about the scale and location of additional housing development is plan-led rather than piecemeal, that the then proposed cap on the number of dwellings in policy H1 should be removed and that there should be explicit reference to the fact that the SNP relies on the emerging CELPS to establish the target for Sandbach³⁶. As the Examiner stated³⁷ his recommended changes were to "future proof" the SNP. Therefore, building up to 165 dwellings on the appeal site would be fundamentally contrary to the provisions of the SNP. Although, the Council cannot demonstrate a 5 year housing land supply, the relevant SNP policies should still be accorded considerable weight in determining the appeal scheme.
119. As set out above, the strategic needs of Sandbach have already been met by housing commitments. Any identified future housing shortfall would be addressed by identifying additional sites through the emerging CELPS, or the future Allocations DPD. This would ensure that future decisions about the scale and location of additional housing development are plan-led rather than piecemeal.
120. However, approval of the appeal proposal would further compound the piecemeal approach to housing development (in a settlement that has borne a substantial amount of residential development in recent years), contrary to the principles of the SNP. The SNP Examiner specifically recommended modifications to relax the SNP Strategy to acknowledge that any identified future housing shortfall could be addressed by identifying additional sites through the emerging CELPS to "*... ensure that future decisions about the scale and location of additional housing development is plan-led rather than piecemeal...*"³⁸. The CELPS and the approach set out in the Framework at paragraph 185 provides for a situation where neighbourhood plans will be able to shape and direct sustainable development in their area.

³³ CD 14 paragraph 71

³⁴ CD 17

³⁵ CD 18 at paragraphs 4.26 p11, 6.24 p24, 6.33-6.49, p26-28, 6.60-6.66 p29-30, 6.82-6.866 p33-34

³⁶ CD 18 6.189 p51

³⁷ CD 18 6.199 p52

³⁸ CD 18 paragraphs 6.86, p34 and 6.190, p50

ustainability

121. In light of the recent judgments in the Suffolk Coastal/Richborough and Renew cases³⁹, the Council accepts that whether the development is, or is not, sustainable is to be assessed by the exercise to be undertaken in accordance with Framework paragraph 14, (in other words, so that the proposed development would not be sustainable only if the adverse impacts significantly and demonstrably outweigh the benefits).
122. Therefore, the absence of a 5 year housing land supply is not an 'automatic green light' to planning permission (see e.g. the Goldfinch Close decision⁴⁰) - a lack of 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 all relevant considerations.
123. So, the Council considers the key question is, 'is the proposed development sustainable development?' On the positive side of the weighing scales, the Council recognises that building market and affordable homes against the backdrop of a need for both and the provision of a community park, provides important benefits and contributes towards the economic and social dimensions of 'sustainable development' as expounded in Framework paragraph 7 and should be given significant weight.
124. On the negative side of the weighing scales is the loss of open greenfield land in the countryside which is also best and most versatile land. It would result in the fundamental undermining of a recently made neighbourhood plan. In this respect, whilst the Middlewich Road appeal decision (CD 21.3) on the site to the north is a material consideration, the circumstances now are materially different, particularly in relation to the existence of the SNP and specific policies dealing with development in the countryside generally and within the AoS specifically, and also in relation to the progress of the emerging CELPS.
125. Building up to 165 dwellings in the countryside on the appeal site is unsustainable and the benefits of providing market and affordable housing and a community park do not make it otherwise. Although the Council does not object to the appeal scheme on landscape or visual impact grounds, the loss of open countryside in this location would be a significant adverse impact of the scheme. As set out above, the Framework does not only protect designated special landscapes, but the 'intrinsic character and beauty of the countryside' more generally is recognised and protected as well, and that is something valued by local residents. The fact that this land is close to the built up area if anything makes it more, not less, important, particularly for local residents. This can clearly be seen by the objections raised by residents as set out in the officer's report⁴¹.
126. The Council invites the Inspector and SoS to prefer the evidence that the appeal proposals would result in a significant extension of the urban form of Sandbach into open countryside east of Abbey Road, diminishing the AoS and leading to further coalescence. The proposed urban extension would result in a

³⁹ CDs 22.3 and 46.2.

⁴⁰ CD 21.7 paragraph 30

⁴¹ See written representations section above for further detail

fundamental change of character from open greenfield pasture land to housing estate. Whilst the hedgerows and trees on the site would be largely retained, they would exist in a completely different landscape context.

127. The site makes a positive contribution to the character of the open countryside and the setting of Sandbach. Building up to 165 dwellings on these pleasant and attractive fields would result in an urban extension to Sandbach that would significantly reduce the AoS between Ettiley Heath and Wheelock/Sandbach and harm the intrinsic character and beauty of the countryside, contrary to Policies PS8 and H6 of the CBLP, and Policies PC1, PC3 and H1 of the SNP and Policy PG5 of the emerging CELPS.
128. The Council considers that, however well landscaped as a housing estate, the proposed development would transform, and cause a change for the worse to, the site's intrinsic character and beauty as countryside, and this change for the worse would have a significant and permanent effect on that character.
129. The fact that greenfield sites on the edge of settlements are needed to meet the housing requirement in the Borough does not mean that the impact on the open countryside in the present case must be acceptable. Each proposed development falls to be determined on its merits and the Council has permitted development of some sites in the open countryside where they have been considered to be sustainable. In this case, the Council's witness attaches significant weight to the harm to the countryside's intrinsic character and beauty. Therefore, on this basis this is not a place where it would be appropriate for the settlement boundary to "flex", rather greater weight should be given to protection of the countryside in this location.
130. The Council also objects to the appeal scheme because the site comprises best and most versatile agricultural land (grades 2 and 3a) and both SE2 of the CELPS and Framework paragraph 112 militate against losing such land to development. The loss of best and most versatile land contrary to Policy SE2 and Framework paragraph 112 is a further negative impact of the appeal scheme, to be weighed in the planning balance.
131. Finally, paragraph 198 of the Framework states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted. That paragraph is important. The SNP has been carefully prepared in accordance with the Regulations and Guidance, has been examined (during which examination this appellant took ample opportunity to set out its representations) and has been made. The Government promotes neighbourhood plans as an important part of the planning system (they are surely part of the social dimension of sustainability in the Framework at paragraph 7), but just a week after the SNP was made, we are at Inquiry considering the merits of a scheme for up to 165 dwellings in the countryside that conflicts with the SNP.
132. The Framework and practice guidance emphasise the role of neighbourhood plans. Neighbourhood plans give communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need (Framework paragraph 183). Neighbourhood plans are able to shape and direct sustainable development in their area (Framework paragraph 185). Granting planning permission for the proposed development would conflict with the community's stated wishes for its own area – in the Council's view fundamentally

undermining a carefully and very recently made neighbourhood plan, almost as soon as it has come into effect. Councillor Benson and his fellow residents would rightly wonder why they had bothered to spend years of hard work and endeavour producing such a commendable neighbourhood plan which carefully sets out the shared community vision, and shapes and directs sustainable development for their neighbourhood, only for it effectively to be disregarded.

Council's Conclusions

133. To conclude, the negatives weigh heavily against the proposal in the weighing scales. In the Council's judgment the adverse impacts here would significantly and demonstrably outweigh the benefits, (including of providing market and affordable housing and a community park) such that, having weighed the competing considerations, the appropriate conclusion to reach is that the appeal scheme is not 'sustainable development' and therefore the presumption to grant permission would be displaced.

134. In these circumstances the appeal should be dismissed, as it would follow from the conclusion that the proposal is not 'sustainable development' and that material considerations would not indicate otherwise than dismissing the appeal, because of the (significant) breaches of the Development Plan.

The Cases for Other Appearing at the Inquiry

135. **Cllr Benson** explained his involvement in the making of the SNP and the relevant dates of its progress. Cllr Benson focused on four policies of the SNP with which he has identified conflict, those being Policies PC1, PC2, PC3 and PC4.

136. In terms of Policy PC1 Cllr Benson drew attention to the Sandbach residents concerns about keeping the individual settlement areas separate and the importance of the AoS in this respect. Policy PC1 in his view is intended to maintain, shape and guide the established pattern of development. Allowing this proposal would, he considers, result in further coalescence in the AoS. This AoS includes Abbeyfields ancient woodlands added to Natural England's inventory in July 2015 so the AoS is not an unremarkable area of agricultural land.

137. Turning to Policy PC2, this is a landscape character policy. The appeal site would not respect the landscape setting of this market town. As the current development on Middlewich Road would benefit from public open space an extension to this community park is not needed and does not justify further housing. The appeal proposal has been developer-led and not involved consultation with the community as has the SNP. The proposed 165 dwellings could not be said to respect landscape setting. The Landscape Character Assessment seeks to describe the area from the perspective of the local community who value it greatly. It is not a technical document but complies with national policy by expecting new developments to reflect their surroundings. Policy PC3 is linked to both Policies PC1 and PC2.

138. Policy PC4 deals with bio and geo diversity and lists areas of importance, including wildlife sites. The appellants only identify Abbeyfields, a grade II listed building, as being of importance. Abbeyfields ancient woodlands are, however, of particular value and this has been recognised by Natural England as a site of just under a 1ha. Neither the Council nor the appellant has inspected this site and they do not acknowledge its importance. The nearby appeal for Land at Crewe

Road provides much more detailed assessment of ecological matters. Biodiversity matters should be dealt with for this site and not left for reserved matters, so again Cllr Benson finds clear policy conflict.

139. In concluding Cllr Benson records the importance given to neighbourhood planning in paragraph 198 of the Framework – that where such plans are brought in force planning permission should not normally be granted. Thus, he seeks that the appeal is dismissed.
140. **Mr Roberts** set out his role as Chairperson of the interest group Friends of Abbeyfields. In particular he raised concerns regarding traffic. At peak hours local residents consider that the primary junctions and arterial roads in Sandbach are becoming increasingly congested as there have been numerous new housing developments that have added to the population. The traffic data produced does not identify the queue sizes experienced by residents. For example the maximum reported queue at Abbey Road is set out as 8 vehicles. In contrast the new development on Middlewich Road generates queues of up to 30 vehicles. This casts significant doubt on the weight to be attached to the highways data. The proposed Abbey Road junction would exacerbate matters and, when linked could cause an undesirable rat run. There are further concerns from residents about noise and disturbance as a consequence of the proposed new road.
141. Additionally local residents are worried about the impact upon the avenue of trees which run along one side of Abbey Road, as there would be a loss of trees and this should be a pleasant pedestrian route.
142. The Albion site should not be discounted from housing figures as it is close to Sandbach in terms of traffic, schools and other services.
143. In terms of transport sustainability in Cheshire East, other than Crewe and Macclesfield, the towns are small and self contained. As a result the populations and distances between the towns does not provide a capital incentive which could lead to integrated transport being provided which might provide an alternative to the use of the private car. Bus services finish early, taxi's need to be booked well in advance and cycle lanes are disjointed and usually merge into vehicle lanes with narrow pinch points. The appeal proposal does not commit to helping a step change to improve transport infrastructure. This is of particular significance in the context of rapid housing growth in Sandbach, especially without a proportional increase in employment. The distinct character of Sandbach is being diluted as it becomes an increasingly car dependant commuter town with an excess of homogenous housing estates.
144. The appellant's have suggested that another 165 houses proposed in this scheme would be a modest addition to the local housing stock. However, this fails to acknowledge the 280 dwellings already under construction to the north of the appeal site. It also ignores the 'Masterplan & Vision' which connects these developments to other areas where there is an intent to develop. There is a concern, Mr Robert's explained, that the appellant's/developers are trying to manipulate the system by submitting separate applications covering incremental areas taking advantage of each proposal being judged on its own merits. As a result, he seeks that the scheme is seen as one of a series of incremental stages designed to improve its own success whilst being part of a progression towards the much larger goal of developing a large contiguous area. It seems wrong that an existing recently developed site can be used as justification to permit another

one. The developers use professional expertise to make sure schemes do not conflict with policy and regulation under the guise of providing sustainable housing whilst in reality they are financial speculators specialising in generating differential value through conversion of open countryside into property.

145. In conclusion Mr Roberts' seeks that high weight is given to Cheshire East to make its own decisions. He seeks that local residents are supported and that there is no leniency to allow the appellant's to continue with their profit motivated advance in housing development. The Council tax payers of Cheshire East would, he considers, much prefer the Planning Department to be engaged in productive planning than having to defend appeals against well resourced developers seeking to make profits.

Written Representations

146. In response to the appeal there were 12 letters of objection, including one from Mr Roberts who spoke. These objections are made on the grounds of:

- i) a lack of primary school provision where the objectors estimate a shortfall of 300 places by 2018 despite increased capacity in the three local schools.
- ii) There is concern about road infrastructure, particularly at peak times and given that there are only three main roads into the town all of which are single carriageway. There is also concern that the link to the site under construction means a rat-run would be caused. It is also noted that Abbey Road is a designated HGV route (linking Hind Heath with Springvale Industrial Estate).
- iii) It is indicated that some 2000 dwellings have been erected in a 5 minute drive time of the site over the last twelve months and that this is a significant amount of people compared to infrastructure, resources and green space. These dwellings are identified as Gilberts Cross (125) Elworth Gardens (269) Hind Heath (269) Elworth Park, Abbeyfields (280) and Albion Lock (371). Reference is made to poor water pressure and impacts on schools, playschools and nurseries as well as local health services. It is considered further development should wait until the CELPS is approved to direct development. Similarly it is felt that the scheme should reflect the awaited SNP (now made). Lack of accord with CBLP policies PS8 and H6, and CELPS policies PG5 and SE2 are cited.
- iv) It seems unfair that Sandbach is having absorb such significant housing growth. It is calculated that 43% of what would have been Congleton's housing requirement has been absorbed at Sandbach.
- v) There is concern about the merging of Elworth with Sandbach.
- vi) The scheme would result in the loss of trees and local habitat to the detriment of the health and well being of local residents. This would be compounded by increased traffic and pollution. The Abbey Road trees are particularly important and protected by Tree Preservation Orders. There are concerns that the Badger Report was kept confidential and that a license would need to be applied for in which case the objector feels that the badgers should be left alone.
- vii) There would be a loss of agricultural land.

- viii) The housing would be used by commuters because of the lack of local employment.
 - ix) It is considered that brownfield sites should be developed first and Foden Trucks on Elworth Road is suggested.
 - x) Views from the Abbeyfields listed building would be protected yet the nearest existing dwellings would not have such protection.
 - xi) There are concerns that a property at the access would have the access road alongside its side and rear elevation resulting in a loss of privacy and security, and that the proposed dwellings would cause overshadowing.
 - xii) The construction phase would cause noise and disturbance to existing residents.
 - xiii) Dwellings should reflect those desirable properties in the surrounding area with large gardens and large homes. Bungalows would be preferred. One objector is concerned that the 'rabbit hutch' sized homes are inadequate for the needs of growing families and cramped dark space can lead to feelings of depression and other mental health problems. They also suggest there would be a loss of green space for dog walking/socialising.
147. Amongst those objections is one from the Campaign to Protect Rural England (CPRE). Whilst the CPRE acknowledge the need for housing they consider that there is no justification for developing this site. The CPRE request that, should the appeal be allowed, conditions are imposed to achieve the objectives of controlling the mass, height and proximity of buildings in relation to Abbeyfields to protect this listed building. That alien species are cleared from the site and that a management plan is put in place. They seek provision of artificial nest sites for bats and barn owls and other species as relevant. They also request that there is protection and replanting of existing hedges, which are a UK Biodiversity Action Plan priority habitat, and that native species of planting are used, including to replace ailing trees. They also seek that badgers and other relevant species are protected. These matters are addressed in the conditions proposed albeit some are less directly controlled as for instance the relationship of dwellings to Abbeyfields would be something for the reserved matters details.
148. A further letter from CTC, a national cycling charity, sought improved cycle facilities for Park Lane/ Abbey Road, and upgrading of Sandbach footpath 21 between Mill Hill Land and High Street so as to provide a shared pedestrian/cycle facility along this route. The CTC welcome the travel plan but seek cycle specific data is collected as part of the monitoring.
149. At the Inquiry a further objection was received (INQ2) from Mr Newton who had already written objecting, the grounds it contains are already set out above.
150. At the application stage the Officer Report records 118 letters of objection from local households as well as objections from Sandbach Town Council. In addition to matters raised by the letters above the following objections are made:
- i) the site is outside the SZL / the site is not identified for development,
 - ii) residents are unable to sell dwellings due to the house numbers, being built,

- iii) the required level of affordable housing is not being met,
- iv) residents don't want more housing,
- v) worries about danger to pedestrians and cyclists,
- vi) traffic speeds along Abbey Road and there are parking problems on this road,
- vii) there should be more cycle storage in Sandbach,
- viii) traffic calming is needed on Hind Heath Road,
- ix) the highway cannot cope if there is an accident on the M6 so traffic divert through this area,
- x) access to the site should be via Middlewich Road,
- xi) increased flooding,
- xii) poor gas pressure in the area,
- xiii) increased light and noise pollution,
- xiv) the site suffers from subsidence,
- xv) impacts on property prices,
- xvi) lack of consultation and,
- xvii) archaeological implications.

Conditions and Obligations

151. Conditions were discussed at the Inquiry in the light of the advice in the practice guidance which has replaced, in part, Circular 11/95. Those conditions would be necessary in order to achieve an acceptable development, were the Secretary of State to consider the principle of the development to be acceptable. Thus, they are set out in the Schedule attached at Annex A. Where necessary, specific conditions have been addressed in the Considerations below. Reasoning for the conditions is otherwise contained with the conditions in the Annex. The conditions set out would be relevant, necessary to make the development acceptable and otherwise comply with the necessary tests. The CTC welcome the travel plan but seek cycle specific data is collected as part of the monitoring; condition 8 would provide scope to do so, thus this is a matter for the Council to bear in mind should the appeal be allowed.
152. The s.106 Unilateral Undertaking provides for open space, a secondary education payment, a highways improvement payment and a contribution to improvements to the Wheelock Trail as set out in the details at paragraphs 7-9 above. I have had regard to this planning obligation in the light of the tests set out in the s.122 of the Community Infrastructure Levy Regulations 2010 and repeated in the Framework at paragraph 204. These state that a planning obligation may only be sought if it is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development.
153. I am satisfied that there is a rationale behind the sum sought in terms of the secondary education contribution and that the sum is fairly and reasonably related to the housing proposed as it is based on a clear calculation based on likely secondary school pupil yield (no primary school contribution is required). The purposes of that payment are for improving capacity at Sandbach School or Sandbach High and Sixth Form College (Sandbach Project D). This scheme does not result in any issue with regard to other projects or pooling of s.106 monies.

The CIL Compliance Statement (INQ21) sets the calculations out. The Policy basis for this payment is established by CBLP Policies GR1 and GR19.

154. The recreational and play space (NEAP) requirements, along with private management company maintenance arrangements, relate to the development proposed and also reflect the need to protect the strategic gap and the setting of Abbeyfields from harm. Children and Young person's space are particularly needed because the proposed housing would result in a deficit of provision locally. In addition, on this site areas of water are proposed and it is the Council's policy not to take transfer in these circumstances. As such, long term management needs to form part of the agreement. The Policy basis for the open space and play requirement is established by CBLP Policy GR22, Revised Supplementary Planning Guidance Note on Provision of Public Open Space in New Residential Development and Interim Policy Note: Public Open Space for New Residential Development (all appended to INQ21).

155. The Wheelock Trail improvements are appropriate to serve the needs of future residents because access to this route is close to the site. I walked part of the route and saw that there are needs to upgrade access, because at certain points the only access is via steep steps. Schemes have been suggested to improve cycle access by adding a wheel track to the side of shallower steps or to provide better access for prams, cycles and wheelchairs by creating a suitably graded ramp. Either scheme would significantly improve accessibility. In terms of other contributions only one has been secured on another scheme providing £10,000 towards surfacing and access points. The sum here (£25,000) could provide for a cycle access track, or be used as part of the money towards a more significant improvement. This aspect of the s.106 is supported by CBLP Policy GR19, and Policies GR14, GR15, GR16 which relate to walking and cycling. In addition support is given to this type of scheme through the Cheshire East Local Transport Plan and the Local Plan Vision for Cheshire East in 2030, with Local Plan Strategic Priorities seeking, amongst other things, the need to create sustainable communities and promoting more sustainable means of transport.

156. Thus, from the information and evidence provided, I am satisfied that the obligation tests set out in the Framework would be met for these items. It is therefore appropriate to take these aspects of the obligation into account in the determination of this scheme.

Inspector's Conclusions

[References to earlier paragraphs are set out in square brackets]

The Main Considerations

157. The main issue in this case is whether or not the proposed development amounts to sustainable development having regard to local and national planning policy for the supply of housing. In order to arrive at a recommendation in this regard, the main considerations I have set out before arriving at the planning balance are: -

- (a) whether or not the proposal accords with local and national planning policy and the implications of this;
- (b) the implications of housing land supply for the proposed development;

- (c) the effect of the proposed development on the character and appearance of the area;
- (d) the effect of the proposed development on the strategic gap;
- (e) the implications of the use of best and most versatile land; and,
- (f) the assessment of other matters.

The Planning Policy Position

158. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where the development plan contains relevant policies, applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise. [28,29,91]
159. The appeal site is situated outside the Settlement Zone Line (SZL) for Sandbach as defined by Policy PS4 of the adopted Congleton Borough Local Plan (2005) (CBLP). As a result, this proposed scheme for residential development of up to 165 dwellings conflicts with Policies PS8 and H6 of the CBLP. Policies PS8 and H6, taken together, seek to restrict development in the open countryside to a number of types which do not include speculative housing as proposed in this appeal. [28,94,98-104]
160. In addition, the very recently adopted Sandbach Neighbourhood Plan (SNP) forms part of the development plan. Policies PC1, PC3 and H1 are of greatest significance in this case. Policy PC1 identifies the Areas of Separation (AoS). It explains that development permitted in accordance with Policy PC3 should minimise impact on the open character of the AoS. It also says developments which would result in further coalescence in the AoS will not be permitted. Policy PC3 seeks to limit development outside the SZL to specified types, none of which apply here. Policy H1 seeks to promote controlled housing growth, so that the housing required by the emerging Cheshire East Local Plan Strategy (CELPS) is delivered through existing commitments, sites identified by the CELPS and windfalls. [105-120]
161. However, the Council does not have a 5 year housing land supply. Given this, based on the advice of the Framework at paragraph 49, there is no dispute that CBLP policies PS8 and H6, which were only intended to run to 2011, are out-of-date; they clearly sought to restrain development to specific SZLs and were linked to a housing allocation that specifically sought to restrain housing supply, to the extent that it made provision for phasing housing schemes to avoid the rate of construction exceeding the allotted housing requirement for the area. [30]
162. The SNP has been assessed for general conformity with the development plan (i.e. the CBLP) and the Examining Inspector was mindful of the emerging CELPS. As such, its policies reflect the CBLP document which it is agreed is out-of-date and has some regard to the CELPS which does not yet have statutory weight. Thus, whilst the SNP is only just made, upon being made it was immediately out-of-date in terms of policies relating to housing land supply. The main parties agree that, having in mind the Richborough case, SNP Policy PC1 is out-of-date. [67]

163. The issue of being out-of-date is clearly linked to that part of the policies which restrict the supply of housing. However, CBLP Policies PS8 and H6 also have a role in seeking to protect the countryside from unacceptable development based on the former Planning Policy Guidance Note 7: The Countryside – Environmental Quality and Economic and Social Development (PPG7). Whilst that former government guidance no longer carries weight, the current Framework identifies, as a core principle, the importance of recognising the intrinsic character and beauty of the countryside. Even so, it is clear that the Framework, at paragraph 14, differentiates between countryside and specific designated countryside assets (i.e. those set out in ‘footnote 9’) and ‘recognising’ the intrinsic character and beauty of the countryside is not the same as ‘safeguarding it for its own sake’ which was the Government’s policy at the time the CBLP was drawn up. Thus, the weight to be afforded to the protection of the countryside has seen a shift in emphasis. Nonetheless, although the policy is out-of-date part of the policy objective remains a planning matter which should be weighed in the planning balance albeit it of more modest weight due to the wider change in policy background since the CBLP were formed. [67,94-97,100-103]
164. SNP Policy PC1, whilst seeking to reinforce Policy PC3 has a another role: in that of maintaining separation between the distinctive village areas, in this case separating Ettiley Heath from Sandbach Town/Wheelock Village which have merged by virtue of development alongside or reaching east from Crewe Road. Indeed, Policy PC1 seeks specifically to resist developments in the AoS which would result in further coalescence. [71-82,136,137]
165. The emerging CELPS includes Policies PG5, which relates to open countryside, and SE2, in respect of the efficient use of land. This document has been the subject of considerable additional work and change to date. As a consequence, whilst it may have been started examination a reasonably long time ago and has made some advances, it is apparent that there is likely to be significant further discussion arising in the forthcoming hearings and with potential for much change and, as such, it cannot be afforded significant weight. Furthermore, allocations are yet to be made and it is likely that this will involve the release of land from the green belt. This in itself is likely to be contentious and may lead to delay. Nevertheless, as already set out recognising the countryside for its intrinsic qualities and making efficient use of land are consistent with the objectives of the Framework. [59-69]
166. As such, it is important to consider a number of matters in arriving at a conclusion as to whether or not the development is a sustainable one and it is the balance of these that results in the recommendation as to whether material considerations justify determining the proposal other than in accordance with the development plan. In particular, it is necessary to consider the housing land supply position, the effect of the proposed development on the character of the countryside and the strategic gap, and the effect on best and most versatile land. It is also necessary to consider the implications of the proposal for neighbourhood planning having regard to the Framework as a whole and the advice of the practice guidance. There are some further matters raised by interested parties, relating to the free flow of traffic, specific living conditions issues, and ecological matters which also require consideration.

Housing Land Supply

167. There is no dispute that, following a period where policy aimed to suppress new housing, there is a shortfall in housing land supply in this local planning authority area. Moreover, whilst the parties do not agree on the extent of that shortfall given the range of supply agreed at the Inquiry is between 3.3 and 3.5 years (based on the Sedgefield approach wherein the shortfall is made up over five years) the shortfall is significant.
168. The Council and others opposing the scheme consider that Sandbach is playing its part in terms of housing delivery. This is because it is considered that Sandbach can provide for the housing the Council anticipates as being required following the interim CELPS Inspector's Report. However, I am not satisfied that this provides justification for the town distancing itself from housing that is required now to fulfil existing needs that are not being met by the Council for its area as a whole. The green belt constraints elsewhere within the Council's area may mean that residents of Sandbach and the Council feel it has taken more than its fair share of housing. Be that as it may, given the debates to be had about green belt release, it is not appropriate to set aside lightly the clear sustainability credentials of Sandbach, where no such constraints exist. [113]
169. It is also evident that the Council places reliance upon certain aspects of the CELPS Inspector's Interim Report whilst seeking to defer decisions on other matters relating to the ongoing local plan process. For instance, it seeks to leave the matter of whether the 371 dwellings at 'The Albion' site should be classed as within Sandbach for calculation purposes to the CELPS Inspector. That site is outwith the town boundary and I saw that the distance of separation is such that it does not feel particularly like a 'Sandbach' location although it may act as one. I agree that is a matter for the CELPS Inspector to decide whether the Albion site amounts to a rural area allocation or a Sandbach Town allocation. However, it indicates that matters are not as straightforward in terms of a stand-alone Sandbach housing supply as the Council would wish all to believe. [83,113,142]
170. It is also the case that there is no policy restriction which puts a ceiling on the level of housing which the area might deliver.
171. Thus, whilst the Council may be able to demonstrate that Sandbach is likely to provide the level of housing to 2030 that is likely be allocated to it, I am not satisfied this removes Sandbach from its part in providing for more dwellings in the light of the current severe shortage in housing land supply for the Council's area as a whole. [83,119]

Character and Appearance

172. The appeal site currently comprises agricultural fields used for crops/pasture and so appears open. There are hedgerows around part of the site and across it. However, the site has one boundary adjoining the rear of houses on Abbey Road, another will have housing development adjoining it albeit beyond a hedge, another adjoins a small industrial estate. This leaves three other boundary areas. One adjoins a sports facility of mainly open pitch areas, another adjoins the boundary with a large listed building, Abbeyfields, and the third adjoins agricultural land part of which would adjoin the community park allowed as part of the neighbouring housing development which is under construction. [74,79,85,127,137]

173. This scheme proposes a continuation of that community park. The masterplan indicates that the eastern portion of the site would be used for that park extension so that it would adjoin the permitted community park area and the listed Abbeyfields property. This location would avoid material harm to the setting of that listed building. As a result, much of the proposed housing would be contained on three sides by existing development. The consequence is that whilst agricultural land would be lost, there would be limited change to the wider character of the surrounding area. The proposed park extension would establish a link between the approved community park to the north and the sports pitches to the south. Whilst this might result in a change to the agricultural character of the land its open character would remain. [79,100]
174. The division between the proposed housing and proposed community park extension would be arbitrary rather than follow a defined existing feature. But, on balance, the proposed housing scheme, because of its position in respect of existing development, would not have an unacceptable impact upon the character of the area albeit open countryside would be lost. The harms arising would be modest and outweighed by the combined benefits of the much needed housing that is proposed and the community park extension.
175. In terms of built appearance this is an outline application which does not set out detailed design. However, contrary to the assertions made by local residents that the proposal would not respect local character, I have no evidence to suggest that the dwellings would not be well designed or that they would fail to reflect nearby built development (and particularly so the phase of development under construction to the north of the site). Thus, in this respect the housing proposed would reflect the character and appearance of its neighbouring development. [61,81,128]

Strategic Gap

176. Notwithstanding the large area put aside to create a continuation of the community park, development of more than half the site at the western side with up to 165 dwellings would undoubtedly affect the open character of that area. [136]
177. The application of Policy PC1 raised debate as to whether failure to comply with the requirement to be 'future planned growth' or 'Policy PC3 development' in the first sentence means you do not assess the proposal against the second element; rather you take it that the scheme has fallen at the first hurdle. [74,107]
178. Whether or not that should be the case, it is agreed that the appeal scheme is not a future planned growth or a Policy PC3 development and, given the policy is out-of-date because of the housing supply situation, it is important to look at its intent. [108-9,114]
179. If the appeal scheme was for future planned growth it would have to have its impacts minimised. In that scenario, I consider that the location within a partly enclosed area and with suitable screening would have minimised its impacts.
180. Turning to the second test it is clear great weight is put on the matter of preventing 'further coalescence'. Whilst the appellant places emphasis on a dictionary definition of 'joining together' that very factual adjoining of built areas

is clearly not what the policy is about. Other definitions may vary but, in pragmatic planning terms, for an area to have coalesced it would have got to the point where areas have merged to such an extent that they appear as one. This need not mean built development adjoining other built development, rather it would be more a perception of whether areas are separate and distinct or whether there is a blurring of areas. Thus there is no set distance to create separation or acceptable separating uses or physical features; rather it depends on each locality and the interrelationship between developments and features. [63,75-6]

181. In this case, there is no doubt that the SNP has, amongst other things, reflected the wishes of the local community in seeking to retain the distinctiveness of the former 'village' areas. The strategic gap in which the appeal site is situated has a clear planning purpose in that respect. However, the western part of the appeal site is a relatively modest part of the whole AoS and because of its configuration and relationship to built development does little in terms of preventing the merger of Ettiley Heath with SandbachTown/Wheelock Village. The eastern part of the site is much more significant in terms of separation because it lies between the football pitches and the site for the community park associated with the housing development under construction and adjoins the Abbeyfields site. Those areas all contribute to the gap in a positive way and in the case of the latter two they adjoin sizeable tracts of agricultural land. [106,120]
182. Although I do not place significant weight on the physical distance, I note that other strategic gaps set out in the SNP include tracts of land some 300m wide (as shown on INQ7). The appeal scheme would retain a much greater separation. There would be more than double a 300m distance separating the edge of the proposed dwellings to edge of the existing housing in Wheelock on Crewe Road and around a 300m distance for Park Lane. More significant though is the character of that land which includes stands of woodland in the northern part and a distinct valley of agricultural land at the southern end. Those landscape features make the intervening land, between the urban areas, and between those areas and the proposed built area of housing development, appear both as 'open' and as 'countryside' resulting in the retention of a clear strategic gap area that would serve the separation function the AoS is intended to have.
183. Thus, developing the western part of the site would have a limited impact on the strategic gap. Providing the eastern part of the site as part of a community park would facilitate public access and maintain openness within the strategic gap and have a positive impact upon it and would not conflict with the policy objectives. [78]
184. In this respect the appeal scheme, subject to the reserved matters details, would not be materially harmful. [77]

Best and Most Versatile Agricultural Land

185. The appeal site comprises higher graded 'best and most versatile land'. That land is a limited resource and is therefore a source of economic benefit and is also linked to food security. The Framework makes it clear, at paragraph 112, that where development of agricultural land is necessary, as will be the case in this authority given the high requirement for housing and the lack of housing land supply (to the extent that green belt release is anticipated), local planning

authorities should seek to use areas of poorer land quality. However, this is an area of the country where land quality is high. Thus, it is likely that future housing development will involve not only green belt land but also higher graded agricultural land. In the light of this, and bearing in mind the advantages of this sustainable location, the loss of best and most versatile land, whilst being a negative in the planning balance, is not a matter of significant weight. The Council concedes that to be the case. [53,63,85,124,130]

Other Matters

Highways

186. Local residents have expressed concerns regarding the free flow of traffic in the locality at peak times. It is accepted that modelling of traffic flows will not always reflect what is actually seen. This is because of the time periods over which the recording/modelling takes place. However, it is clear that whilst there can be higher peak incidents these dissipate rapidly so that, on balance, there is no material harm. There is no disagreement between the main parties on this point and the Highway Authority is satisfied that the scheme is acceptable in highways terms. As part of that position there is a proposed improvement scheme for the Brookhouse Road/A533 Old Mill Road/A534 roundabout junction⁴², which forms part of the Cheshire East Council Infrastructure Delivery Plan. The appellant in the s.106 has agreed to make a £137,211 contribution towards that £1.5M scheme and I consider that this is justified for the scheme proposed. [139]

187. I appreciate concerns regarding occasions when the M6 is closed. However, it is not realistic to prohibit development because such matters can occur or to expect any development to be able to cater for such circumstances. There is no substantiated evidence before me to demonstrate why pedestrian and cyclist safety would be harmed. The scheme has been designed to accord with required highways standards. Issues regarding cycle parking facilities, traffic on Hind Heath Road, parking on Abbey Road and speeding on Abbey Road are existing matters rather than products of the proposed scheme and therefore need considering, as appropriate, separately to this proposal. A single access using Middlewich Road is not before me and, whether or not that might be preferable to some, it is necessary to consider the scheme as proposed. There is nothing before me to lead me to conclude the access proposed is unacceptable. [150]

188. Therefore, there is no substantiated evidence that leads me to conclude that the highways impact of the scheme would be unacceptable.

Living Conditions

189. Concerns are raised by occupiers of the dwellings adjoining the site and its access about impacts on their environment. Whilst a scheme of this size would inevitably result in a change to levels of activity in the locality, residential activity would be similar to existing residential activity in the vicinity and so would not materially harm living conditions. The scheme is submitted in outline such that detailed design would be considered at reserved matters stage when matters such as privacy, daylight and sunlight, and outlook would need to be considered. [140]

⁴² INQ6

190. I acknowledge that there would be greater change for those either side of the access road because of noise and activity associated with the access. However, there would be adequate space for the access with existing screening and a good degree of separation from the dwelling No 83 at one side. To the other side, adjoining No 93, the detailed scheme could provide for a wall and some landscaping to provide for privacy and some noise attenuation. This would be a detail for the Council to consider at reserved matters stage should the appeal be allowed. Traffic associated with other dwellings would be likely to follow a common pattern of movement so that there would not be significant disturbance at antisocial hours. Moreover, this type of change to the living conditions for the occupiers of the existing dwellings either side of a new estate access road would not be sufficient reason for withholding planning permission. [146,150]

Trees and Ecology

191. The appeal site is largely open agricultural land so has limited ecological value. That said, there are hedges which include a few trees. These would be protected and further hedgerow and ecological habitat created. There would be the need to remove two trees to provide for access onto Abbey Road. One is a category C tree (low quality and the other category B (moderate quality). Whilst they contribute to the street scene and wider Avenue of trees, given their poor form the Council's tree officer considers neither is a specimen for which is worthy of retention and I do not disagree. Within and adjoining the site there are Tree Preservation Order protected trees which could be protected through use of appropriate conditions. [14,89]

192. The Abbeyfields ancient woodland referred to by interested parties is situated near to the Abbeyfields listed building and away from the appeal site. Given the extent of separation and noting the master plan for the community park extension, there is no substantiated evidence that the appeal scheme would result in harm to that area of woodland which is outside of the application site. [46,61]

193. Turning to other ecological matters, the Council's ecologist identified the site as having potential habitat for bats and the Common Toad. However, given the extent of the site area, the scope for new habitat and the retention of trees within the site it is considered that the proposed development would not be harmful to those species subject to conditions regarding tree/hedgerow works and mitigation measures. [50,61]

194. Despite concerns raised by some interested parties a Barn Owl survey was undertaken for the site and no evidence was found to indicate their presence on site. [147]

195. The parties accept that there is evidence of Badger setts/Badger in the area and local residents confirm this. A Badger Report was produced to identify the extent of any issue. However, it was a confidential report because of concerns regarding Badger welfare/safety. As a consequence it was not a document provided for the Inquiry and I did not see it. However, I have no reason to doubt that it was a professional report that was assessed by the Council's ecologist in a robust manner. As Badgers move about, particularly in terms of outlier setts, any development proposal at the detailed stage would need to reassess their presence and an appropriate scheme for mitigation would need to be provided. Any sett closure would be the subject of a Natural England licence. In my

experience such mitigation schemes are not uncommon and thus I am satisfied that, given the extent of open space proposed in this scheme, a satisfactory solution could be achieved. The appellant/developer will also be aware of the legal requirements in respect of protected species. [51,147-8]

196. In terms of trees, hedgerows and other ecological matters, I am satisfied that the conditions proposed would result in an acceptable scheme. This is a matter on which both parties agree. Given the separation from existing ecological designations I find no conflict with SNP Policy PC4. Whilst the Crewe Road scheme is considered by interested parties to have provided greater assessment, I am satisfied regarding the assessment for this site, which is considerably further from the ancient woodland than that of the Crewe Road site. [138]

Listed Building

197. The extent of separation from Abbeyfields was increased as part of the application process and the ES chapter therefore supplemented with an addendum. Based on that greater separation distance and the intervening planting the scheme would not harm the setting of that listed building (or the non-designated asset that is its garden) so as to materially detract from its special architectural and historic interest. I note that the Council's Conservation Officer, who had expressed concern about the scheme on the basis of the information originally submitted, is satisfied on the basis of the addendum details. There is no evidence before me to substantiate any different view. In coming to this conclusion I have been mindful of the Statutory duty under s.66 of the Planning (Listed Buildings and Conservation Areas) Act that in considering whether to grant planning permission for development which affects a listed building or its setting regard shall be paid to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possess. As such, and based upon what I have seen, this matter is neutral in the planning balance. [46,89]

Other Issues

198. Property values and prices are not a matter of this appeal. [150]
199. Subsidence is raised as a concern. However, this is a matter that would be dealt with under building regulations. [150]
200. There is nothing before me to indicate that the proposed development would result in harm to existing gas supplies. [150]
201. Flooding is raised by interested parties as an issue. However, the main parties agree that it is not an issue, the site being in Flood Zone 1, thus with a low probability of flood risk, and the flood risk assessment confirms this is the case for all types of flooding. Moreover, the flood risk assessment confirms that the proposed development would be not increase flood risk in the locality. The Environment Agency, United Utilities and the Council's Flood Risk Manager were all consulted on the scheme and raised no objection subject to conditions. [51,150]
202. Whilst some concern was raised about consultation it is evident from the extent of local interest that adequate consultation took place so that residents could respond to the proposal.

The Planning Balance

203. The planning balance must be considered in the light of the Framework as a whole. This sets out that there are three dimensions to sustainable development; economic, social and environmental. Gains should be sought jointly and simultaneously for each of those roles. It is inevitable that there will be times when different strands pull in different directions, as is the case here. [97,121]
204. In terms of economic benefits there would be gains in housing delivery, including affordable housing, and in the value of the construction works and subsequent housing to the local economy. The housing would be sustainably located and so would make economic sense in terms of reducing the need to travel. I consider those benefits significantly outweigh the disbenefit, in economic terms, of losing the site from agricultural use.
205. In terms of the social role the proposed dwellings would provide much needed homes, including affordable homes. The social benefits of being able to house people are significant in creating stable communities. In this case I there is no reason to doubt that the homes would create a high quality environment with good access to local facilities and including the proposed community park. This would provide for an improvement in people's quality of life, improving the conditions in which they live, and take leisure and widening the choice of quality homes. These are all important objectives of the Framework. There would also be benefits for existing residents as a result of access to the community park and its ability to link with an existing community park area and potentially with recreational facilities. I appreciate that for some existing residents that adjoin the site they may feel the scheme is to the detriment of their living conditions. However, development is likely to have that impact in many cases and the living conditions of those residents would be considered in the light of normal development management policies at the time of the reserved matters application. [123]
206. The greater concern in terms of social impacts is that of the perception of undermining the SNP, an important community document. Indeed the Framework and practice guidance place important weight on the role neighbourhood planning has in giving communities direct power to develop a shared vision for their neighbourhood, so that they get the right types of development for their community, with neighbourhood plan policies taking precedence over existing non-strategic policies in Local Plans. In this case, all parties acknowledge that the SNP already contains policies which are out-of-date and that this is no criticism of the community who have worked so hard to get it made; rather it is a matter of circumstance given the housing situation in this authority. [93,124,131,139]
207. Nevertheless, the SNP in its very early days has already played an important role in the consideration of this appeal. Considering the objectives of the key policy, Policy PC1, the appeal scheme would not undermine what it seeks to achieve. Instead it has provided a clear focus for the appeal, in a policy with no equivalent in the CBLP, and has resulted in thorough consideration of the impact of the scheme proposed. It also has assisted it making it clear how important it is that the eastern portion of the appeal site remains undeveloped as proposed in this appeal scheme. [131,132]

208. Weighing these social role matters I consider that, for the foregoing reasons, the balance of social benefits weighs in favour of the appeal proposal.
209. Turning to the environmental role, there would be a loss of green space, but given its current agricultural use it has limited ecological value. The appeal scheme would retain existing hedgerow features and the community park area would provide for additional managed habitats. The extent of separation from the Abbeyfields ancient woodland and the historic asset of Abbeyfields house are such that harm would not arise. Only marginal harm would arise to the character of the area and this would be offset by the benefits of the community park. Thus on balance, I conclude that the environmental gains and harms would be neutral in the planning balance. [126]
210. It is not disputed that there would be conflict with adopted/made policies of the development plan, those being the policies of the CBLP and SNP. As noted above, s.38(6) requires that applications for development should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the Framework is a significant material consideration. Because the development plan policies are out-of-date, the Framework test is whether any adverse impacts of approving this development would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. It is my view that the appeal should succeed as the harms do not outweigh the benefits of the scheme and so I find the proposed development to be a sustainable one.

Inspector's Recommendation

211. I recommend that the appeal be allowed on the basis of the revised scheme for up to 165 dwellings and planning permission be granted subject to conditions set out in Annex A.

Zoë H R Hill

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY*:

Graeme Keen

He called

Mr Adrian Fisher

Cheshire East Council

FOR THE APPELLANT*:

Paul Tucker QC

Instructed by Marc Hourigan

He called

Mr Marc Hourigan

Partner Hourigan Connolly

BA(Hons) BPL MRTPI

Mr Tim Jackson

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BA(Hons) DipLA CMLI

INTERESTED PERSONS:

Cllr Mike Benson

Sandbach Town Council

Mr Brian Roberts

Chairperson of Friends of Abbeyfields

* Mr Evans and Miss Fitzgerald also took part in the conditions/s.106 session

INQUIRY DOCUMENTS AND PLANS (SUBMITTED AT THE INQUIRY)

INQ1	Appearances on behalf of the Appellant
INQ2	Letter From John Newton
INQ3	Statement of Cllr Mike Benson
INQ4	Access Plan Drawing: 1224/34
INQ5	Statement of Common Ground
INQ6	Abbey Road Briefing Note (Highways)
INQ7	Fig 3 Areas of Separation – annotated distances
INQ8	Sandbach Housing Commitments
INQ9	Opening on behalf of the appellants
INQ10	Opening on behalf of the Council
INQ11	CELPS Representations for Housing Sites in Sandbach Plan
INQ12	Combined Plan - Representations for Housing Sites in Sandbach with SNP AoS
INQ13	Statement of Mr Roberts
INQ14	Draft s.106 Unilateral Undertaking
INQ15	Draft Conditions
INQ16	Plan – distances for Areas of Separation – different appeal scenarios
INQ17	Advert for Application
INQ18	Advert for Appeal
1NQ19	Closing Submissions on behalf of Cheshire East Council
INQ20	Closing Submissions on behalf of The Appellant
INQ21	CIL Compliance Statement

POST EVENT DOCUMENTS

INQ22 Certified Copy of s.106 Unilateral Undertaking

CORE DOCUMENTS

Folder 1

- CD 1.1 Environmental Statement Covering Letter
- CD 1.2 Environmental Statement Contents and Non-Technical Summary
- CD 1.3 Environmental Statement Volume 1 - Chapters
- CD 1.4 Environmental Statement Volume 2 - Appendices
- CD 1.5 OPAD1 Application Covering Letter, Forms and Certificates
- CD 1.6 OPAD2 Location Plan
- CD 1.7 OPAD3 Development Framework Plan
- CD 1.8 OPAD4 Planning Statement & Draft S106 Heads of Terms
- CD 1.9 OPAD5 Design and Access Statement
- CD 1.10 OPAD6 Landscape and Visual Impact Assessment
- CD 1.11 OPAD7 Transport Assessment
- CD 1.12 OPAD 8 Travel Plan

Folder 2

- CD 1.13 OPAD9 Ecological Appraisal
- CD 1.14 OPAD10 Arboricultural Assessment
- CD 1.15 OPAD11 Flood Risk Assessment
- CD 1.16 OPAD12 Air Quality Screening Report
- CD 1.17 OPAD13 Noise Screening Report
- CD 1.18 OPAD14 Archaeological Desk-Based Assessment Report
- CD 1.19 OPAD15 Socio-Economic Impact of New Housing Development
- CD 1.20 OPAD16 Statement of Community Involvement
- CD 1.21 LPA's Agreement to change the Description of Development

Folder 3

- CD 2.1 Barn Owl Survey (25-09-14)
- CD 2.2 Environmental Statement Addendum - Chapters
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- CD 3
- CD 3.1 Environmental Impact Assessment Screening Opinion and Checklist (19-03-14)
- CD 3.2 Environmental Impact Assessment Screening Direction (21-03-14)
- CD 3.3 Environmental Impact Assessment Screening Direction (26-03-14) - Phase I and II Site Investigations
- CD 3.4 Letter/email from Rebecca May (FLP) to Dan Evans (CEC) (29-07-14) - submission of ES
- CD 3.5 Email from Rebecca May (FLP) to Dan Evans (CEC) (31-07-14) - chasing validation
- CD 3.6 CEC Case Officer Letter (07-08-14)
- CD 3.7 Emails between Rebecca May (FLP) and Dan Evans (CEC) (02-09-14) - consultee responses
- CD 3.8 Emails between Rebecca May (FLP) and Dan Evans (CEC) (19-09-14) - ecology and consultee responses
- CD 3.9 Emails between Simon Helme (AHA) and Nigel Curtis (CEC) (24-09-14) - highways and VISSIM
- CD 3.10 Emails between Rebecca May (FLP) and Dan Evans (CEC) (25-09-14) - AQ, VISSIM and consultation
- CD 3.11 Email from Rebecca May (FLP) to Dan Evans (CEC) (26-09-14) - ecology

- and consultee responses
- CD 3.12 Emails from Simon Helme (AHA) to Nigel Curtis (CEC) (29-09-14) - VISSIM
- CD 3.13 Emails between Simon Helme (AHA) and Nigel Curtis (CEC) (30-09-14) – VISSIM
- CD 3.14 Email from Rebecca May (FLP) to Dan Evans (CEC) (03-10-14) - consultee responses and highways
- CD 3.15 Emails between Simon Helme (AHA) and Nigel Curtis (CEC) & Neville Mckenzie (JMP) (03-10-14) - VISSIM
- CD 3.16 Emails between Simon Helme (AHA) and Neville Mckenzie (JMP) (08-10-14) – VISSIM
- CD 3.17 Emails from Simon Helme (AHA) to Neville Mckenzie (JMP) (10-10-14) – VISSIM
- CD 3.18 Emails between Rebecca May (FLP) and Dan Evans (CEC) (25-09-14) – consultee
- CD 3.19 Email from Rebecca May (FLP) to Dan Evans (CEC) (22-10-14) - AHA speed survey, visibility splays, revised access drawing and VISSIM
- CD 3.20 Emails from Simon Helme (AHA) to Nigel Curtis (CEC) (27-10-14) - VISSIM and access
- CD 3.21 Emails between Nigel Curtis (CEC) & Neville Mckenzie (JMP) and Simon Helme (AHA) (10-11-14) - VISSIM
- CD 3.22 Emails from Nigel Curtis (CEC) to Simon Helme (AHA) (10-11-14) - speed survey and visibility splays
- CD 3.23 Email from Rebecca May (FLP) to Dan Evans (CEC) (10-11-14) - VISSIM and consultee responses
- CD 3.24 Emails from Simon Helme (AHA) to Nigel Curtis (CEC) (28-11-14) - supplementary TA
- CD 3.25 Emails between Nigel Curtis (CEC) and Simon Helme (AHA) (08-12-14) - schedule meeting
- CD 3.26 Emails between Nigel Curtis (CEC) and Simon Helme (AHA) (08-12-14) - supplementary TA and VISSIM
- CD 3.27 Emails from Simon Helme (AHA) to Nigel Curtis (CEC) (08-01-15) - supplementary TA, VISSIM and contribution offer
- CD 3.28 Emails between Dan Evans (CEC) and Rebecca May (FLP) (09-01-15) - highways, request to meet, consultation and determination
- CD 3.29 Emails from Nigel Curtis (CEC) to Simon Helme (AHA) (12-01-15) - VISSIM
- CD 3.30 Emails between Rebecca May (FLP) and Dan Evans (CEC) (20-01-15) - scheduling meeting
- CD 3.31 Emails between Nigel Curtis (CEC) and Simon Helme (AHA) (21-01-15) - VISSIM
- CD 3.32 Emails between Dan Evans (CEC) and Rebecca May (FLP) (22-01-15) - scheduling meeting
- CD 3.33 Emails between Hilary Ellis (CEC) and Paul Graveney (Hydrock) (09-02-15) - surface water strategy
- CD 3.34 CEC Environmental Impact Assessment Regulation 22 Letter (18-02-15)
- CD 3.35 Emails between Nigel Curtis (CEC) and Simon Helme (AHA) (21-01-15) – acceptance of contribution
- CD 3.36 Letter/email from Rebecca May (FLP) to Dan Evans (CEC) (30-03-15) - submission of ES Addendum
- CD 3.37 Emails between Dan Evans (CEC) and Rebecca May (FLP) (16-04-15) -

- chasing consultee responses
- CD 3.38 Emails between Dan Evans (CEC) and Rebecca May (FLP) (15-05-15) - chasing consultee responses and determination
- CD 3.39 Emails between Dan Evans (CEC) and Rebecca May (FLP) (19-05-15) - extension of time, B&MV, consultee responses and Sandbach Neighbourhood Plan (SNP)
- CD 3.40 Emails between Paul Emms (FLP) and Dan Evans & David Hallam (CEC) (21-05-15) - Nature Conservation comments
- CD 3.41 Email from Rebecca May (FLP) to Dan Evans (CEC) (10-11-14) - SNP, enclosing:
 - Letter from Kate Fitzgerald (FLP) - SNP prematurity and weight Woodcock Holdings Ltd v SoS & Mid-Sussex District Council (2015 EWHC 1173) Judgment of Mr Justice Holgate (01-05-15)
- CD 3.42 Emails between Dan Evans & David Hallam (CEC) and Paul Emms (FLP) (26-05-15) - Nature Conservation comments
- CD 3.43 Emails between Martyn Twigg (FLP) and David Malcolm (CEC) (28-05-15) - SNP
- CD 3.44 Email from David Malcolm (CEC) to Martyn Twigg (FLP) (29-05-15) – SNP
- CD 3.45 Email from Rebecca May (FLP) to Dan Evans (CEC) (29-05-15) - highways contribution
- CD 3.46 Email from Kate Fitzgerald (FLP) to David Malcolm & Dan Evans (CEC) (29-05-15) - SNP, enclosing:
 - Advice from Alan Evans (Kings Chambers) (29-05-15) - SNP prematurity and weight
- CD 3.47 Emails between Martyn Twigg (FLP) and David Malcolm (CEC) (01-06-15) - SNP CEC comments
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- CD 4.1 Environment Agency (07-05-14)
- CD 4.2 Strategic Housing (07-08-14)
- CD 4.3 Archaeology (11-08-14)
- CD 4.4 Parks (15-08-14)
- CD 4.5 United Utilities (26-08-14)
- CD 4.6 Brine Authority (27-08-14)
- CD 4.7 Sandbach Town Council (28-08-14)
- CD 4.8 Countryside Access (02-09-14)
- CD 4.9 Environmental Health (02-09-14)
- CD 4.10 Natural England (02-09-14)
- CD 4.11 Nature Conservation (09-09-14)
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- CD 4.13 Education (29-09-14)
- CD 4.14 Conservation and Design (05-01-15)
- CD 4.15 Nature Conservation (06-01-15)
- CD 4.16 Flood Risk Management (09-01-15)
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- CD 4.18 Natural England (15-04-15)
- CD 4.19 Brine Authority (22-04-15)
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- CD 4.22 Strategic Highways (26-05-15)
- CD 5.1 Strategic Planning Board Officers Report (03-06-15)
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- CD 5.3 Decision Notice (03-06-15)

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- CD 5.4 Strategic Planning Board Minutes (03-06-15)
 - Folder 4
 - CD 6.1 Emails between Kate Fitzgerald (FLP) and Adrian Fisher (CEC) - 5 year housing land supply / FOI
 - CD6.2 Housing Supply and Delivery Topic Paper (Inserted before commencement of Inquiry)
 - CD 7 Congleton Borough Local Plan First Review Written Statement (2005)
 - CD 8 Congleton Borough Local Plan First Review Proposals Map (2005) (extract)
 - CD 9 Secretary of State's Saving Direction and Schedule of Saved Policies (2008)
 - CD 10 Cheshire East Local Plan Strategy Submission Version (2014) (extract)
 - CD 11 Cheshire East Local Plan Strategy Submission Version Proposed Changes (2016) (extract)
 - CD 12 Strategic Housing Land Availability Assessment (February 2013) (extract)
 - CD 13 Inspector's Interim Views on the Legal Compliance and Soundness of the Submitted Local Plan Strategy (November 2014)
 - CD 14 Inspector's Further Interim Views on the Additional Evidence Produced...and its Implications for the Submitted Local Plan Strategy
 - CD 15 Sandbach Neighbourhood Development Plan Landscape Character Assessment (September 2015)
 - CD 16 Sandbach Neighbourhood Development Plan Submission Version (September 2015)
 - CD 17 Gladman Developments Ltd Representations to the Sandbach Neighbourhood Development Plan Submission Version Consultation (November 2015)
 - Folder 5
 - CD 18 Sandbach Neighbourhood Plan (Examination Version): Report of the Independent Examination (January 2016)
 - CD 19 Sandbach Neighbourhood Development Plan 2010-2030 (January 2016)
 - CD 20 Cheshire East Council Sandbach Neighbourhood Plan Decision Statement (February 2016)
 - CD 21.1 Land off Abbey Road and Middlewich Road, Sandbach (APP/R0660/A/10/2141564) (17-02-13)
 - CD 21.2 Land off Mountsorrel Lane, Rothley (APP/X2410/A/13/2196928 & 2196929) (08-01-14)
 - CD 21.3 Land off Crewe Road, Haslington (APP/R0660/A/14/2213304) (15-08-14)
 - CD 21.4 Land off Bath Road, Leonard Stanley (APP/C1625/A/13/2207324) (21-07-14)
 - CD 21.5 Land bounded by Gresty Lane, Rope Lane, Crewe Road and A500, Crewe (APP/R0660/A/13/2209335) (19-01-15)
 - CD 21.6 Land west of Beech Hill Road, Spencers Wood (APP/X0360/A/13/2209286) (09-06-15)
 - CD 21.7 Land west of Goldfinch Close, Congleton (APP/R0660/A/2228681) (14-12-15)
 - CD 21.8 Land south of Greenhill Road, Coalville (APP/G2435/W/15/3005052) (05-01-16)
 - CD 21.9 Land north of Gloucester Road, Tutshill (APP/P1615/W/15/3003662) (14-01-16)
 - CD 21.10 Land off Milltown Way, Leek (APP/B3438/W/15/3005261) (18-01-16)
 - CD 22.1 Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council, English Heritage, National Trust and SSCLG ([2014] EWCA Civ

- 137) Judgment of Lord Maurice Kay, Lord Justice Sullivan and Lady Justice Rafferty (18-02-14)
- CD 22.2 Stroud District Council v SSCLG and Gladman Developments Ltd ([2015] EWHC 488 (Admin)) Judgment of Mr Justice Ouseley (06-02-15)
- CD 22.3 Suffolk Coastal District Council and Hopkins Homes Ltd and SSCLG / Richborough Estates and Cheshire East Borough Council and SSCLG ([2016] EWCA Civ 168) Judgment of Lord Justice Jackson, Lord Justice Vos and Lord Justice Lindblom (17-03-16)
- CD 23.1 Strategic Planning Board Officers Report - update (24-02-16)
- CD 23.2 Strategic Planning Board Minutes- update (24-02-16)
- CD 24 Historic England Historic Environment Good Practice Advice in Planning: Note 2: Managing Significance in Decision-taking in the Historic Environment (March 2015)
- CD 25 Historic England Historic Environment Good Practice Advice in Planning: Note 3: The Setting of Heritage Assets (March 2015)
- CD 26 Cheshire Landscape Character Assessment (November 2008) (extract)
- CD 27 Guidelines for Landscape and Visual Impact Assessment: 3rd edition (April 2013) (extract)
- CD 28 Natural England National Character Area Profile 61 - Shropshire, Cheshire and Staffordshire Plain (2014)
- CD 29 Agreed Statement of Common Ground between Cheshire East Council and Ashley Helme Associates Ltd - Highways (February 2016)
- Folder 9*
- CD 45.1 Land off Hind Heath Road, Sandbach (APP/R0660/A/14/2212992) (01-08-14)
- CD 45.2 Saltersford Farm, Macclesfield Road, Holmes Chapel (APP/R0660/A/14/2221374) (10-02-15)
- CD 45.3 Land to the south of Park Road, Willaston (APP/R0660/W/15/3011872) (23-03-16)
- CD 46.1 Woodcock Holdings Ltd and SSCLG and Mid-Sussex District Council ([2015] EWHC 1173) Judgment of Mr Justice Holgate (01-05-15)
- CD 46.2 Cheshire East Borough Council v SSCLG and Renew Land Developments Ltd ([2016] EWHC 571) Judgment of Mr Justice Jay (16-03-16)

* folders 6,7,8 relate to another appeal (APP/R0660/W/15/3129235) so are not included for this appeal (some of the other folders are common to both appeals)

Annex A 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.

Reason for the condition:

As required to be imposed by Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 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. 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.

Reason for the condition:

For the avoidance of doubt and to ensure the satisfactory development of the site.

- 3) The development hereby permitted shall be carried out in accordance with the following approved plans unless any other condition attached to this permission indicates otherwise: Drawing No. 4333-L-01 Location Plan; Drawing No. 1224/34 Rev B Access Plan, and shall be broadly in accordance with the Framework Plan (Drawing No. 433-L-102 Rev G) and the Design and Access Statement.

Reason for the condition:

For the avoidance of doubt and to ensure the satisfactory development of the site.

- 4) 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. Thereafter, development shall be carried out in accordance with the approved phasing plan.

Reason for the condition:

This pre-commencement condition is required to ensure that the key elements of each phase of the development is completed in an order which ensures that infrastructure needs, landscaping/open space, access and supporting/servicing facilities are in place relevant to each phase before further development is undertaken, in the interests of good planning.

- 5) No dwelling on any phase of the development shall be occupied until the access for the proposed phase of development, as shown on Drawing No.

1224/34 Rev B, has been constructed in accordance with construction details that have been agreed in writing by the local planning authority.

Reason for the condition:

To ensure a safe means of access for each dwelling before it is occupied in the interests of highway safety and amenity.

- 6) The development shall not begin until, on each phase, 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 set out in the Glossary to the National Planning Policy Framework. The scheme shall include:
- xiv) The numbers, type, and location on the site of the affordable housing provision which shall consist of not less than 30% of the dwellings
 - xv) The tenure shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be 'pepper-potted' across the site
 - xvi) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing shall be such that no more than 80% of the opening market housing shall be occupied before the affordable housing is completed and available for occupation provided that there shall be a high level of pepper-potting of the affordable units
 - xvii) 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
 - xviii) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing including arrangements where appropriate subsidy is to be recycled for alternative affordable housing provision
 - xix) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such criteria shall be enforced
 - xx) The affordable homes shall be built to the standards adopted by Homes and Community Agency at the time of development.

Reason for the condition:

To ensure that affordable housing is provided on the site in of appropriate number and location and tenure so as to accord with CBLP Policy H13.

- 7) No development hereby permitted shall commence until such a time as a scheme to limit the surface water run-off generated by the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development hereby permitted.

Reason for the condition:

This is required as a pre-commencement condition to ensure that the site is adequately drained and does not result in drainage problems elsewhere.

- 8) 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 after occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved scheme of monitoring and review as long as any part of the phase of development is occupied.

Reason for the condition:

To ensure that a Travel Plan is produced and implemented so as to reduce the reliance on the private car in the interests of sustainability, reduction in pollutants and improvements in health.

- 9) Prior to the commencement of development on any phase, details of Electric Vehicle Charging Points to be provided within the development and a timetable for implementation shall be submitted to the local planning authority for approval in writing. The approved scheme shall be implemented in accordance with the approved timetable.

Reason for the condition:

To ensure timely delivery of electric charging points interests of sustainability, reduction in pollutants and improvements in health.

- 10) No phase of development shall commence until an Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the construction phase. In particular the plan shall include:
- i) the hours of construction works 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 any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
 - vii) details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
 - viii) mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;

- ix) waste management – there shall be no burning of materials on site; and,
- x) measures to control the emission of dust and dirt during construction and methods to monitor emissions of dust arising from the development.

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

Reason for the condition:

This condition is required pre-commencement so as to protect the living conditions of nearby residents and the surrounding environment during the construction phase.

- 11) Prior to the development commencing:
 - i) a Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority;
 - ii) if the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to and approved in writing by the local planning authority. The remediation scheme in the approved Remediation Statement shall be carried out as approved;
 - iii) 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 use of occupation of any part of the development hereby approved.

Reason for the Condition:

This condition is required to be pre-commencement to ensure that risks from land contamination to the future users of the land and neighbouring land are identified early in the development process and minimised, together with those to property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.

- 12) No phase of development shall commence until a Habitat and Landscape Management Plan, including the long-term design objectives, management responsibilities and maintenance schedules for not less than 15 years for all areas of habitat and landscaping other than those within the curtilages of individual dwellings, shall be submitted to and approved in writing by the local planning authority, and the design, management objectives and maintenance of the landscaped areas shall thereafter be in accordance with the approved Habitat and Landscape Management Plan.

Reason for the condition:

This condition is required and to be agreed pre-commencement to safeguard the ecological interests of the site before works commence that could cause irrevocable harm and to ensure adequate maintenance for the

protection of landscape and habitat in the interests of ecological and local amenity.

- 13) No development of any phase of development 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 shall be retained throughout the period of the construction phase.

Reason for the Condition:

This condition is required and to be agreed pre-commencement to safeguard the trees on the site in the interests of visual amenity and ecology of the site.

- 14) No construction works in any phase of development 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 4 metre 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.

Reason for the Condition:

In order to prevent harm to nesting birds and their nests.

- 15) 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 thereafter be retained.

Reason for the Condition:

To provide for the ornithological interests of the site.

- 16) No phase of development shall commence until an updated survey for the presence of any Badger at the site has been carried out, submitted to and

approved in writing by the local planning authority. The survey shall be carried out by a suitably qualified person and approved in writing by the local planning authority. If any evidence of Badger is found, then the report shall include measures for their protection during development and for the retention of existing or provision of alternative Badger Setts including a timetable for doing so should it be necessary. The approved measures shall be implemented in strict accordance with the approved details and timetable.

Reason for the Condition:

In order to safeguard the proper protection of Badgers and their habitat having in mind the likelihood of changes to sett positions that may occur between planning permission being granted and development commencing.

- 17) The reserved matters application(s) shall include the precise details of a scheme in respect of pond construction and habitat creation. The scheme shall include:
- i) details of the design of one pond to be constructed within the community park including sections and landscaping;
 - ii) precise details of proposals to enhance opportunities for bio-diversity on the site (including native tree planting and species rich grassland);
 - iii) a timetable for implementation of the agreed measures.
- The approved scheme shall then be fully implemented in strict accordance with the approved details, timetable and strategy.

Reason for the Condition:

For the avoidance of doubt and in the interests of the ecology of the site.



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.