



Department for  
Communities and  
Local Government

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Our Ref: APP/R0660/W/15/3129235

31 October 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPLICATION MADE BY HIMOR (LAND) LTD, SIMON FODEN, PAUL FODEN AND  
RICHARD FODEN  
LAND TO THE REAR OF PARK LANE AND CREWE ROAD, SANDBACH, CHESHIRE  
APPLICATION REF: 14/3892C**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Mrs Zoë Hill BA (Hons) Dip Bldg Cons(RICS) MRPTI IHBC, who held a public local inquiry on 26, 27 and 28 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 redevelopment of the land to the rear of Park Lane and Crewe Road, Sandbach, Cheshire to provide up to 200 homes and a community facility, in accordance with application ref: 14/3892C, dated 7 August 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 dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to dismiss the appeal and to refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Environmental Statement**

4. 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.

### **Policy and statutory considerations**

5. 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.
6. In this case the development plan consists 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 IR17-19.
7. 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').
8. 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.
9. The emerging plan comprises the Cheshire East Local Plan Strategy (CELPS) (IR20). The Secretary of State agrees with the Inspector and the parties (IR21 and IR262) that the emerging policies of most relevance to this case include Policies PG5 (open countryside) and SE2 (efficient use of land). However, he also agrees with the Inspector that, for the reasons given at IR262, CELPS cannot at this stage be afforded significant weight.

### **Main issues**

10. The Secretary of State agrees with the Inspector that the main issues are those set out at IR254.

#### *The Planning Policy Position*

11. 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 200 dwellings conflicts with policies PS8 and H6 of the CBLP (IR256). He also with the Inspector that policies PC1, PC3 and H1 of the SNP are of greatest significance in this case (IR257).
12. However, the Secretary of State agrees with the Inspector (IR258) that, as the Council does not have a five year housing land supply and having regard to paragraph 49 of the Framework, there is no dispute that CBLP policies PS8 and H8, which were only intended to run to 2011, are out of date. Additionally, for the reasons given by the Inspector at IR259, the Secretary of State agrees that the SNP is out of date in terms of policies relating to housing land supply.
13. However, for the reasons given at IR260-262, the Secretary of State agrees with the Inspector at IR263 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 results in a recommendation as to whether material considerations justify determining the proposal other than in accordance with the development plan. The Secretary of State agrees with the Inspector (IR263) that, 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, as well as the other matters to which she refers at IR263.

#### *Housing Land Supply*

14. The Secretary of State agrees with the Inspector (IR264) that there is a shortfall in housing land supply in this local planning authority area. He agrees that the extent of the shortfall, while not agreed, is clearly significant and this is material to the planning balance (IR265). Furthermore, for the reasons given by the Inspector at IR266-268, he shares the view that, on the basis of the evidence before him, the housing land supply situation weighs significantly in favour of supporting the appeal scheme. Additionally, the Secretary of State agrees with the Inspector (IR270) that the appeal proposal would provide a policy compliant level of affordable housing of mixed tenure and that this adds weight in favour of the appeal scheme.

#### *Character and Appearance*

15. The Secretary of State has carefully considered the Inspector's analysis at IR271-273. He agrees that, in terms of the landscape character, the area is pleasant agricultural land but that it is not exceptional in landscape terms. He also agrees that it would be inevitable that developing a greenfield site with housing would alter the character of the area. He further agrees (IR274) that the development would maintain a good degree of separation from Abbeyfields such that there would be no material harm to the setting of that listed building; and that although views would be significantly altered for occupiers of the neighbouring dwellings, this is not harm to which significant weight should be attached (IR275). Hence, the Secretary of State agrees with the Inspector's conclusion at IR276 that any visual harm would be modest but that this is different from assessing the impact on the Strategic Gap.

#### *Strategic Gap*

16. Whilst agreeing with the Inspector at IR277 that the proposed development would include significant amounts of open space, including a potential school playing field area, and would retain hedgerows and trees, he also agrees with her that a development of up to 200 houses and a community facility would affect the existing open character of the site. The Secretary of State has therefore carefully considered the Inspector's analysis at IR278-283 and, for the reasons which she gives, he agrees at IR284 that the configuration of the site, its extent, relationship to existing landscape features and topography are such that there would be material conflict with the objectives and aspirations of SNP Policy PC3 as well as with Policy PC1.

#### *Best and Most Versatile Agricultural Land*

17. For the reasons given at IR285, the Secretary of State agrees with the Inspector's conclusion that the loss of best and most versatile land, whilst being a negative in the planning balance, is not in this instance a matter of significant weight.

#### *Highways and pedestrian safety*

18. For the reasons given at IR287, the Secretary of State agrees with the Inspector that the traffic modelling shows that the traffic which would be generated by the development could be adequately accommodated, particularly bearing in mind on-going improvements to the road network. He also agrees that, whilst there are likely to be observed queues these would dissipate relatively quickly and so not result in severe highway concerns that would justify withholding planning permission; and he has taken account of the fact that neither the Council nor the Highway Authority objects to the scheme on highway grounds (IR287).

19. Similarly (IR288), the Secretary of State is satisfied that the appeal proposal would not result in unacceptable highway conditions for pedestrians.

#### *Air Quality*

20. Having regard to the Inspector's analysis at IR289, the Secretary of State agrees with her that, subject to the imposition of conditions, air quality is not a matter of significant weight in this case.

#### *Living Conditions*

21. The Secretary of State agrees with the Inspector that there is no substantiated evidence to suggest that a scheme could not be negotiated that would result in acceptable levels of privacy and daylight, so that concerns in this regard would not be sufficient to withhold planning permission (IR290).

#### *Trees and Ecology*

22. For the reasons given at IR291, the Secretary of State agrees with the Inspector that trees and ecology are not matters that should preclude development subject to the imposition of appropriate conditions in this regard (IR291).

#### *Listed Building*

23. The Secretary of State agrees with the Inspector at IR292 that the Abbeyfields listed building would be well screened from the appeal site by existing planting and that the extent of separation and planting is such that the development would not materially impact on the setting of the listed building.

#### *Brine*

24. The Secretary of State notes that concerns are raised regarding salt extraction from the area and the potential for former brine workings to result in subsidence for both buildings and drainage. He agrees with the Inspector that whilst there might be issues which require additional consideration at reserved matters stage, given the size of the site in relation to the housing proposed means that there would be scope to be flexible with the layout. He agrees nonetheless that a brine site investigation would need to be undertaken as part of a reserved matters application and action taken on the resultant recommendations (IR293).

#### *Other Issues*

25. Having carefully considered the other issues at IR294-299, the Secretary of State agrees with the conclusions reached by the Inspector.

#### **Planning conditions**

26. The Secretary of State has given consideration to the Inspector's analysis at IR247, 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. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

#### **Planning obligations**

27. Having had regard to the Inspector's analysis at IR248-253, the s.106 Unilateral Undertaking dated 26 April 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector that the Undertaking complies with Regulations 122 and 123 of the CIL Regulations and the tests at paragraph 204 of the Framework and would

be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. However, the Secretary of State does not consider that the Undertaking overcomes his reasons for deciding that the appeal should be dismissed.

### **Planning balance and overall conclusion**

28. 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 so is not in accordance with the development plan as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
29. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the proposal represents sustainable development and whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
30. In terms of economic benefits, the Secretary of State agrees with the Inspector at IR301 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.
31. The Secretary of State agrees with the Inspector at IR302 that in terms of the social role the proposed dwellings would provide much needed homes, including affordable homes that would provide for key workers. Furthermore, he agrees that the housing proposed could bring very real and tangible benefits to people's lives, could improve the way in which they live and widen the choice of homes within the community. The Secretary of State agrees that these reflect important objectives of the Framework (IR303). However, like the Inspector, he gives little weight to the potential benefit of the proposed community facility (IR305). Also, like the Inspector (IR306-307), while the Secretary of State recognises that the SNP is an important document in terms of community planning, the fact that it contains policies which are already out-of-date as a result of the Council's overall housing situation means that it is outweighed by the social benefits of providing much needed housing, including affordable housing.
32. Turning to the environmental role, the Secretary of State agrees with the Inspector at IR308 that the essentially irreversible loss of open countryside, despite its lack of significance in terms of particular landscape character and the inevitable loss of such land in this authority, is of concern because of its location within a strategic gap. Whilst the scheme would not result in a coming together of settlements, he considers that the erosion of the strategic gap would have the effect of increasing the perception of settlements beginning to merge. Furthermore, while some environmental improvements are proposed, the Secretary of State agrees with the Inspector at IR309 that they essentially relate to the need to mitigate the scheme and so he accords them little weight as benefits of the proposal. Overall, the Secretary of State agrees with the Inspector's conclusion that there would be environmental harm (IR310).
33. In conclusion, therefore, while the Secretary of State recognises the social and economic benefits of the proposal, he agrees with the Inspector at IR311 that the environmental harm so significantly that it outweighs the economic and social benefits so that, having

regard to paragraphs 7 and 8 of the Framework, the proposal would not represent sustainable development.

### **Public Sector Equality Duty**

34. 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, he acknowledges that the appeal scheme would have some positive impact on protected persons arising from the provision of affordable housing.

### **Formal decision**

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for your client's application for planning permission for redevelopment of the site to provide up to 200 homes and a community facility, in accordance with application ref: 14/3892C, dated 7 August 2014

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

36. 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.

37. 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

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# 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

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Town and Country Planning Act 1990

Appeal by HIMOR (Land) Ltd, Simon Foden, Paul Foden and Richard Foden

Against the decision of

Cheshire East Council

Richborough Estates

Inquiry held on 26, 27 and 28 April 2016

Land to the rear of Park Lane and Crewe Road, Sandbach, Cheshire

File Ref: APP/R0660/W/15/3129235

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Richborough Estates

## Abbreviations

AoS	Areas of Separation
BMV	Best and Most Versatile (land)
CBLP	Congleton Borough Local Plan First Review (2005)
CELPS	Cheshire East Local Plan Strategy
CPRE	Campaign to Protect Rural England
DAS	Design and Access Statement
dph	dwellings per hectare
EIA	Environmental Impact Assessment
ES	Environmental Statement
FOAN	full objectively assessed need for market and affordable housing
ha	hectares
KSC	Key Service Centre
The Framework (also referred to when quoted as NPPF)	National Planning Policy Framework
LCA	Landscape Character Assessment
LVIA	Landscape and Visual Impact Assessment
NEAP	Neighbourhood Equipped Area for Play
OAN	Objectively Assessed Need
PPG7	Planning Policy Guidance Note 7: The Countryside – Environmental Quality and Economic and Social Development (PPG7)
PPS3	Planning Policy Statement 3: Housing
PROW	Public Right of Way
RPG	Regional Planning Guidance
RS	Regional Strategy
The Council	Cheshire East Council
The planning guidance	The National Planning Practice Guidance
SHLAA	Strategic Housing Land Availability Assessment
SHMAA	Strategic Housing Market Area Assessment
SNP	Sandbach Neighbourhood Development Plan
SoS	Secretary of State
SP	Cheshire Structure Plan
SZL	Settlement Zone Line

**File Ref: APP/R0660/W/15/3129235**

**Land to the rear of Park Lane and Crewe Road, Sandbach, Cheshire**

- 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 HIMOR (Land) Ltd, Simon Foden, Paul Foden and Richard Foden against the decision of Cheshire East Council.
- The application Ref: 14/3892C, dated 7 August 2014, was refused by notice dated 3 June 2015.
- The development proposed is redevelopment of the site to provide up to 200 homes and a community facility.

**Summary of Recommendation: The appeal be dismissed.**

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**Procedural Matters**

*Inquiry Dates*

1. The Inquiry sat on 26, 27 and 28 April 2016 with the site visit taking place on the 28 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, he shall determine the appeal because the proposal involves a residential development of over 10 units in an area where a neighbourhood plan has been made.

*Other Inquiry*

3. In the week preceding the Inquiry I held another Inquiry for a site close to this appeal site. Each has been considered on the basis of the evidence before me for the relevant appeal. Inevitably some of the matters result in similar considerations thus certain aspects are common to both appeals.

*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" following a meeting 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)<sup>1</sup> was submitted with the planning application, including a Non-Technical Summary<sup>2</sup>. None of the reasons for refusal allege any deficiency in the EIA.

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<sup>1</sup> CD 40.17

<sup>2</sup> CD 40.18

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 Agreement*

7. A s.106 Agreement was signed on 26 April 2016 for consideration with the appeal proposals. It provides for affordable housing at 30% of the dwellings to be provided, to be split as 65% social rented homes and 35% intermediate housing. It sets out that the affordable housing shall be occupied by qualifying persons or key workers and establishes standards for that housing, the timescale for its provision in relation to the open market housing and the recycling of surplus sale proceeds following sales of equity in affordable housing.
8. The s.106 sets out the need for approval of the open space scheme, timing for its completion, inspection by the Royal Society for the Prevention of Accidents and management arrangements.
9. The s.106 also commits to paying a Highways Contribution (£166,000) and a Footpaths Contribution (Wheelock Trail and Footpath No 21) (£42,280). However, the revised Statement of Common Ground, reflecting what I heard at the Inquiry, confirms that the scheme for which the £166,000 Highway Contribution was sought is now fully funded and the Council is no longer seeking that contribution. As such, requiring that sum in the absence of need for it would fail to comply with the requirement of the Community Infrastructure Levy Regulations 2010 and thus this aspect of the s.106 is not a matter to which I attach weight in the planning balance.
10. Finally the s.106 commits to a contribution for secondary education (£490,280.70) along with trigger points, in terms of the extent of development, for the monies to be paid. The money is to be used for classrooms and specialist education arising from the needs of the development.

#### **The Site and Surroundings**

11. The site extends to 9.79 ha and is located at Sandbach in the Cheshire East Council's area.
12. The site is located off Park Lane and Crewe Road and is used for agricultural purposes; a small proportion of the site is used for crops, whilst the majority is used for grazing. Close to the site, beyond the north western boundary there is a woodland area and a number of ponds. Beyond this there is a large property, Abbeyfields, a grade II listed building.
13. Established hedgerows are located along some of the boundaries with a number also crossing the site, breaking the whole area up into smaller fields. The boundary of the site to the east is characterised by a mix of boundary treatments depending on the structures put in place by the owners of the neighbouring properties which face Crewe Road. The north-eastern boundary also adjoins residential properties fronting Park Lane. The southern boundary adjoins a narrow strip of land beyond which, in a cutting, is the Wheelock Rail Trail.
14. Access for agricultural vehicles and associated pedestrian access is currently taken from Park Lane. No access is available from Crewe Road at present. There is no public access to the site. The site is slightly sloping and there are a few mature trees on the site.

## Planning Policy

15. 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.
16. The CBLP was adopted in January 2005 and covered the period to 2011.
17. Policies PS8 and H6 of the CBLP are relevant to this appeal. 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).
18. 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.
19. 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.
20. The Cheshire East Local Plan Strategy (CELPS) which is intended to guide development up to 2030 was submitted for independent examination on 20 May 2014, with examination Hearings commencing in September 2014. The examination was suspended to enable additional evidence based work to take place. The examination resumed and Hearings were held 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.
21. The main parties agree that CELPS Policies PG5 (open countryside) and SE2 (efficient use of land) are relevant to this appeal.

## The Appeal Proposals

22. The proposed development seeks outline planning permission for up to 200 dwellings and a potential site for a community facility. Access is to be considered at this stage but all other matters are to be reserved for subsequent consideration. However, the supporting Design and Access Statement (DAS)<sup>3</sup> identifies a mix of property types and an indicative layout showing public open space, a location for a community facility and landscaping.
23. The details of the community facility are unknown but suggestions have been made including, but not limited to, a primary school, a health facility or a community centre. A large amount of public open space is proposed, but the precise details for it and a Neighbourhood Equipped Area for Play (NEAP) would be determined at reserved matters stage.
24. Tree planting and retention of mature hedgerows are proposed to enhance the residential area and provide environmental and screening benefits. Full details will be provided at reserved matters stage.

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<sup>3</sup> CD 40.5

25. It is proposed that vehicular access is taken from Crewe Road, with a further pedestrian / cycle access from Park Lane also being created. A pedestrian link onto the Wheelock Trail is also proposed.

### **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."*

### **Other Agreed Facts**

#### *Five year housing land supply*

27. It is agreed that the Council cannot demonstrate a 5 year housing land supply and that paragraph 14 of the National Planning Policy Framework (the Framework) is engaged. It is agreed that the shortfall is substantial.
28. The main parties agree that the site is located where it has a good level of access to local services and facilities.

#### *Affordable Housing*

29. It is agreed that affordable housing would be provided on the site. This would be 30% of the total housing proposed and 65% would be for social or affordable rent with 35% for intermediate tenure. This is a matter which would be secured through the s.106.

#### *Highways*

30. The Cheshire East Strategic Highways Manager has confirmed that there is no objection to the scheme. It has also been clarified that the highways works scheme for which a contribution from this proposal was originally sought has now been fully funded from other speculative development and therefore the Council are not seeking a highways contribution in respect of the appeal proposal.

### *Agricultural Land Quality*

31. The main parties agree that the site consists of a mix of grade 2 and 3a agricultural land. This is 'Best and Most Versatile' land (BMV).

### *Living Conditions*

32. The main parties agree that a reserved matters scheme could provide adequate separation from existing properties and so there should not be an unacceptable impact upon residential amenity.

### *Noise*

33. The main parties agree that noise is only likely to be an issue during the construction phase and conditions could be imposed to mitigate the harm.

### *Public Rights of Way*

34. There are no public rights of way across the site. The Wheelock Trail is not designated as a public right of way (PROW). However, it is used by the public and in order to improve footpaths in the locality a contribution of £25,000 is made towards improving access to the Wheelock Trail, and £17,280 towards upgrading PROW No.21 between Mill Lane and Coronation Crescent. These sums would be secured through the s.106 Agreement.

### *Archaeology*

35. The main parties agree that no further archaeological work is required on the site.

### *Air Quality*

36. The main parties agree that the proposed development raises no air quality objections subject to conditions.

### *Trees and Hedgerows*

37. Subject to retention of the hedgerow boundaries and high value trees there is no objection to the scheme in this regard.

### *Design*

38. The main parties agree that the indicative layout would achieve an acceptable layout, highways and public open space whilst providing natural surveillance. It is acknowledged that this is one way the scheme could progress but that the detail would be provided at reserved matters stage and could vary.

### *Ecology*

39. The main parties agree that a landscape buffer is required between the site and Wheelock Rail Trail, a local wildlife site, should be secured by condition with landscaping for this buffer being secured at reserved matters stage. As hedgerows are a biodiversity action plan priority habitat consideration has been given to them and the main parties agree that any loss of hedgerow should be compensated for as part of a landscaping scheme. A buffer is also required at that part of the northern boundary of the site near to the ancient woodland and this could be secured by condition.

40. It is agreed by the main parties' ecologists that great crested newts, water voles, otter and reptiles are unlikely to be present on site or affected by the proposed development. Roosting/breeding barn owls are unlikely to be affected by the scheme.
41. The main parties agree that a Badger corridor/buffer and linear park along the sites southern boundary should be incorporated in the reserved matters scheme. Bats are unlikely to be affected and any impacts that there are would be likely to be localised and could be mitigated through landscaping proposals. Common Toad would have adequate terrestrial habitat retained on site such that there should be no significant impact. Breeding birds would be safeguarded by use of a condition in respect of construction avoiding the breeding season.

#### *Public Open Space*

42. Some 3 ha of public open space would be provided along with a NEAP, with at least 8 pieces of play equipment, and it would be secured through the s.106 Agreement.

#### *Education*

43. The Education Officer has stated that if the community facility is to be a primary school it would need to be large enough to accommodate a one form entry. However, there is no requirement for a contribution to mitigate primary education requirements of the site.
44. A contribution of £490,280.70 is required for secondary education. This would be secured through the s.106 Agreement.

#### *Flood Risk and Drainage*

45. The main parties agree that the site is in Flood Zone 1 and therefore has a low risk of flooding (less than 1 in 1000 year probability of flooding).
46. Neither the Environment Agency nor United Utilities objected to the scheme.

#### *Health Infrastructure*

47. The main parties agree that there is sufficient capacity within the existing medical practices in the area to accommodate new patients and, as such, there are no concerns regarding health provision in the area.

### **The Case for HIMOR (Land) Ltd, Simon Foden, Paul Foden and Richard Foden - The Appellant**

#### *Introduction*

48. This Inquiry has, the appellant contends, descended into a detailed forensic examination of the relevant planning policy background. However, that examination should never lose sight of the unassailable proposition that this is an eminently suitable site for housing.
49. There is a chronic need for more market and affordable housing in this Council's area now. It is agreed that the Council is dependent on greenfield sites outside settlement boundaries, adjacent to sustainable settlements, to effect the required step change in housing delivery. This is a site which is surrounded on three sides by existing housing. It has a high capacity to accommodate housing



development. It is a sustainable location, adjacent to the Key Service Centre (KSC) of Sandbach. The development could deliver much needed market and affordable housing, and the attendant economic benefits new housing brings, with no more than the loss of open countryside and BMV, which is inevitable in this area if the Council is to address its housing needs. This is unanswerably sustainable development. Indeed, that was the conclusion of the Strategic Housing Land Availability Assessment (SHLAA) and the Council's Officers on 10 March 2015, when the application was recommended for approval<sup>4</sup>.

50. It was common ground between the parties that, whilst the proposal was contrary to PS8 and H6 CBLP, it constituted sustainable development and should be granted planning permission. On 15 March 2015, the draft SNP was published for consultation. On 3 June 2015, the recommendation was changed for the appeal proposal and at the Strategic Planning Board that day the application was refused. The publication of the Sandbach NDP was the reason for the reversal in the recommendation. The reasons for refusal are set out on the decision notice<sup>5</sup>.

51. Since then the Council has revisited its reasons for refusal and revised reasons provided (as set out above). These 'revised reasons' relate to conflict with SNP policies PC1, PC3 and H1 and prejudice to the local plan making process and, loss of BMV and open countryside, contrary to PS8 and H6 CBLP and PG5 and SE2 CELPS. The Council clarified that it does not assert that there is any prejudice to the local plan making process. It is therefore common ground that there is no prematurity argument.

52. The appellant contends that the main issues are:

- (i) Does the Council have a 5 year supply of deliverable housing sites?
- (ii) Are the policies of the Development Plan up to date and consistent with the Framework, such that weight can be attached to them?
- (iii) Is the default position in the Framework at paragraph 14 engaged?
- (iv) What (if anything) is the adverse impact of the proposed development?
- (v) What are the benefits of the development?
- (vi) Does the development comprise "sustainable development" i.e. does any loss of open countryside and/or BMV significantly and demonstrably outweigh the significant benefits of the proposal?

53. The main issues fall to be determined in accordance with the development plan unless material considerations indicate otherwise<sup>6</sup>.

54. Article 35(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires the reasons for refusal to be full. Conflict is alleged with the following policies in the Development Plan: CBLP – PS8, H6; and SNP – PC1, PC3 and H1. It is agreed that all these policies are relevant policies for the supply of housing (for the purposes of the Framework at paragraphs 49 and 14).

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<sup>4</sup> CD 43.1

<sup>5</sup> CD 43.3

<sup>6</sup> s.38(6) Planning & Compulsory Purchase Act 2004

### *Relevant Case Law*

55. The policies of the development plan need to be considered in the light of the Framework, which requires Councils to boost significantly the supply of housing (Framework paragraph 47). There have been a number of well-known decisions on the application and interpretation of this paragraph. These include *Stratford DC v SoS CLG* and *JS Bloor* [2013] EWHC 20, *Hunston Properties Ltd v St Albans CDC* and *SoS CLG* [2013] EWCA Civ 1610, *South Northants v SoS CLG* and *Barwood Land and Estates Ltd* [2014] EWHC 573 and, *Gallagher Homes Ltd v Solihull MBC* [2014] EWHC 1283.

56. In particular the judgment of Justice Hickinbottom in *Gallagher* is worthy of repetition:

*(Para 97) However, that fails to acknowledge the major policy changes in relation to housing supply brought into play by the NPPF. As I have emphasised, in terms of housing strategy, unlike its predecessor (which required a balancing exercise involving all material considerations, including need, demand and relevant policy factors), the NPPF requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the NPPF dictate otherwise. That, too, requires a balancing exercise – to see whether other policy factors significantly and demonstrably outweigh the benefits of such housing provision – but that is a very different exercise from that required pre-NPPF. The change of emphasis in the NPPF clearly intended that paragraph 47 should, on occasions, yield different results from earlier policy scheme; and it is clear that it may do so.*

*(Para 98) Where housing data survive from an earlier regional strategy exercise, they can of course be used in the exercise of making a local plan now – paragraph 218 of the NPPF makes that clear – but where, as in this case, the plan-maker uses a policy on figure from an earlier regional strategy, even as a starting point, he can only do so with extreme caution – because of the radical policy change in respect of housing provision effected by the NPPF...in my judgment, in his approach, he failed to acknowledge the new, NPPF world, with its greater policy emphasis on housing provision; and its approach to start with full objectively assessed housing need and then proceed to determine whether other NPPF policies require that, in a particular area, less than the housing needed be provided. The WM RSS Phase 2 Revision Panel did not, of course, adopt that approach. Nor did the guidance provided by the Secretary of State on the revocation of regional strategies in 2010 (see paragraph 71 above) take the new policy into account. Both were pre-March 2012, when the NPPF was published.*

57. Paragraphs 97-99 have been expressly endorsed by Lord Justice Laws in the Court of Appeal.

58. In the light of such judgments, it is submitted that the following conclusions on the application of paragraph 47 of the Framework can be reached, the Framework has introduced a major policy change from the former Planning Policy Statement 3: Housing (PPS3) and requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the Framework dictate otherwise - that is a very different balancing exercise from that required by PPS 3 and was

intended to deliver different results. A figure in a revoked Plan cannot be used as the full objectively assessed need for market and affordable housing (FOAN) and a figure in a revoked plan cannot be used even as a proxy for the FOAN. Where the plan maker uses a policy-on figure from an earlier plan, they can only do so "with extreme caution". If the Council is relying on the former Regional Strategy (RS) or Structure Plan (SP), they can only do so if the RS/SP have identified the FOAN and considered the area's ability to meet the FOAN. If the RS/SP has failed to undertake that process, they cannot be relied upon (even as a surrogate) to demonstrate compliance with the Framework. The FOAN is not a constrained figure. It is not for the Inspector or SoS in a s.78 Appeal to assess the extent to which the FOAN is constrained. Rather, this is an exercise for the emerging Local Plan Strategy. Where there is no Local Plan produced in accordance with the Framework, then the housing requirement (for the purposes of paragraph 47) is the FOAN.

59. These submissions have been set out in evidence and openings and have not been challenged so can be taken as agreed.

60. Paragraph 47 of Lord Justice Lindblom judgment in the Richborough Estates states<sup>7</sup>:

*(Para 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) ).*

61. In the light of the relevant legal and planning policy background, it is necessary to consider the relevant development plan policies and the housing requirement on which they are premised.

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<sup>7</sup> CD 22.3

### *The Local Plan*

62. Consultation on the Local Plan Review commenced in 2000. It was adopted in 2005 and its policies ran to 2011. It is therefore agreed that the CBLP only seeks to meet housing needs up to June 2011. Even at adoption there was a commitment to an early review in order to provide guidance to 2016. It is agreed that a replacement plan was intended before 2011, in order to provide continuity in the plan-led system. A review of Policies PS 8 and H6 is, therefore, overdue by at least 5 years.
63. The housing chapter of the CBLP was produced in the context of PPG3 and PPG7. The strategic context of the CBLP was Regional Planning Guidance 13 (2003), the Cheshire Structure Plan (SP) and the emerging replacement RPG.

### *Strategic Context*

64. RPG 13 had an emphasis on reducing the number of new build homes. The Council accepted that this was the antithesis of paragraph 47 of the Framework.
65. The SP housing requirement was based on the Government's 1992-based demographic projections. Such evidence is more than 20 years old and is clearly out of date.
66. The SP strategy explains where development will be accommodated and where it will be restrained. The SP deliberately seeks to restrain total house building in Cheshire in order to reduce out-migration and support urban regeneration in Liverpool, Manchester and the Potteries (areas which were then exhibiting housing market failure). The SP therefore sought to constrain housing development in Congleton Borough. Policy HOU 1 required Congleton Borough to deliver 3800 homes between 1996 and 2011 (253 d/pa). This was a 40% reduction in the previous SP. This was, therefore, a policy of significant constraint on new house building in Cheshire.
67. It is clear, therefore, that the SP did not seek to boost significantly the supply of housing; was based on evidence which is significantly out of date; predated the "radical shift" in national policy contained in the Framework (Gallagher); and was produced in a manner which is wholly inconsistent with paragraph 47 of the Framework, applying Gallagher and Hunston.
68. Further, it was anticipated that the replacement RPG would require a yet further significant reduction in housing delivery (253 d/pa reduced to 200 d/pa).
69. CBLP Policy H1 set a housing requirement to 2011 of 3800 (253d/pa). It is agreed that this requirement was derived from the SP without further analysis. However, at the time of adoption (2005), all of the housing requirement had been met. The CBLP did not, therefore, plan for any new housing growth in the remaining plan period at all. Settlement Zone Lines (SZL) were therefore drawn tightly around existing settlements. Rather, Policy H1 actively sought to constrain annual housing delivery to below 200 d/pa (in line with emerging RPG). The nature and purpose of Policy H1 is actively working to frustrate the Framework imperative to boost significantly the supply of housing. It can therefore be afforded little if any weight.
70. CBLP Policy PS4 sets out the SZL for Sandbach. The SZL is derived from, and intrinsically linked to, the housing requirement in Policy H1. It is common ground

that the SZLs were not intended to provide long term boundaries. It follows that, as the housing requirement is out of date and time expired, the SZLs are also out of date and time expired.

71. It is expressly agreed that the SZL for Sandbach serves two purposes: to define an area in which housing is acceptable to meet the identified needs of the revoked SP ("the first purpose"); and, to define an area outside of which restrictive policies apply to constrain housing development because housing is not needed and to protect the open countryside ("the second purpose"). It is agreed that the two purposes cannot be disaggregated. They are "counterpart provisions".
72. CBLP Policies PS8 and H6 apply in the open countryside, which is defined as that area outside the SZL defined in PS4. Both policies prevent market housing development outside the SZL, in order to protect the open countryside for its own sake (in accordance with PPG7). The nature and purpose of Policies PS4, PS8 and H6 is therefore to constrain housing development to a SZL which is time expired and based on an out of date housing requirement. This is the antithesis of paragraph 47 of the Framework which seeks to boost significantly the supply of housing to meet an up to date assessment of housing need.
73. In the light of the evidence, the appellant submits: Policies PS8 and H6 are policies for the supply of housing; the CBLP housing policies are time expired (from 2011); the LP housing policies are based on out of date demographic evidence from the SP; the housing requirement in the CBLP/SP cannot be used even as a proxy for compliance with the Framework (as in Gallagher); the CBLP does not seek to boost significantly the supply of housing; the CBLP was produced in a radically different national policy context; the CBLP housing policies are out of date and inconsistent with the Framework; Policies PS4, PS8 and H6 in the CBLP are out of date (regardless of the 5 year housing land supply position) such that Framework paragraph 14 is engaged; if policies are out of date and time-expired, the weight to be attached to them is reduced; if the policies are actively working to frustrate the national policy imperative to boost significantly the supply of housing to meet current identified needs, the reduction in weight must be significant.
74. It is noteworthy that nowhere in its evidence does the Council make any reference to the above points. This is a significant omission of points which (out of fairness) should have been drawn to the attention of the SoS. The above submissions demonstrate that: Policies PS8 and H6 are policies actively seeking to constrain housing development; Policies PS8 and H6 are out of date; PS8 and H6 are substantially inconsistent with the Framework (applying 215); the weight to be attached to Policies PS8 and H6 is substantially reduced; the weight to be attached to Policies PS8 and H6 is limited.
75. The Council has sought to argue that such points are not relevant. That is absurd: the nature and the purpose of the policies and their consistency with national policy is of central relevance to the weight to be attached to them (Lord Justice Lindblom in Richborough). Indeed, in the March 2015 Committee Report, the Council did not consider that acknowledged conflict with Policies PS8 and H6 justified refusal. Rather, the significant benefits of the proposal outweighed any such conflict.

### *Dual Purpose of PS8 and H6*

76. The Council nonetheless considers that weight can be attached to Policies PS8 and H6, as part of their purpose is to protect the intrinsic value of the countryside for its own sake. That proposition is hopeless.
77. Firstly, it is not possible rationally to disaggregate the 2 purposes.
78. Secondly, the guiding principles of the CBLP, which include the need for restraint on the basis of the SP are "interrelated". Policies PS8 and H6 seek to facilitate housing restraint to support urban regeneration as well as open countryside protection. It cannot, however, be ascertained (with any certainty or at all) the extent to which the policies advance one guiding principle above another.
79. Thirdly, the Council accepted that the "first purpose" is out of date and inconsistent with the Framework. The effect of attaching significant weight to the "second purpose" is to indirectly but effectively give weight to the policy's first purpose of constraining housing to an out of date and revoked SP housing requirement. That is irrational and is expressly deprecated in the judgment of Justice Ouseley in *Barwood Land*: *...This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide full and appropriate distribution and location of development.*
80. In answer to that point, the Council sought to argue that the two purposes were not counterpart provisions. That answer is absurd and was expressly inconsistent with the previous admission that the purposes could not be disaggregated.
81. Fourthly, Policies PS8 and H6 seek to protect the open countryside for its own sake, in accordance with PPG 7 (as set out in the reasoned justification). That is inconsistent with the Framework. Framework paragraph 113 requires distinctions to be drawn between a hierarchy of designations; the policies make no such designation. Framework paragraph 109 affords "protection" only to valued landscapes; the policies do not require any judgment on whether parts of the open countryside form part of a valued landscape. Framework paragraph 17 bullet point v requires decision makers to take account of the different roles and character of different areas; the policies do not take any such account. Framework paragraph 17 bullet point v also requires the intrinsic character and beauty to be "recognised" (not protected). The policies do not require the intrinsic character and beauty of the open countryside to be recognised in any way. The policies simply seek to prevent all market housing development in the open countryside, regardless of designation, value, role, character and beauty. This is wholly inconsistent with the Framework which (it is agreed) does not seek to protect the whole of the open countryside for its own sake.
82. Fifthly, the Council's suggestion that this means that no value is therefore placed on land which is undeveloped is simply wrong. Policy GR5 requires development to respect the landscape character of undeveloped sites. However, it is agreed that the proposal complies with this policy. Policies PS8 and H6 do not seek to respect landscape character; they simply protect the open countryside from housing development for its own sake.

83. Sixthly, the Council accepted that Policies PS8 and H6 would be inconsistent with the Framework if they were rigidly applied. However, there is no other way in which the SZLs can be applied. The policies are applied rigidly and are therefore inconsistent with the Framework.
84. Seventhly, it is candidly accepted by the Council that it is inevitable that the SZLs will have to be breached to meet housing needs in this plan period. It makes no sense, in such circumstances, to add weight to the SZL policies (PS4, PS8 and H6).
85. Eighthly, the Council simply has no answer to such points. Instead, the Council relied on a number of decision letters, which endorse their flawed approach. However, whilst there should be consistency in administrative decision making, there is no consistency on this point. There are numerous Appeal Decisions which support the appellant's position, of which the Crewe Road decision (CD 21.3 paragraph 10) is but one. The appellant has not sought to place every such decision before the SoS. Ultimately, the appellant submits that this issue must be determined on the evidence and submissions before this Inquiry, in the light of the very recent Court of Appeal authority. The decisions relied upon by the Council do not address the above submissions (adequately or at all). They are not binding on the SoS and are of very limited utility.
86. The appellant therefore submits that it is not possible to disaggregate the constituent parts of Policies PS 8 and H6. Even if it could, the second part is still a policy for the supply of housing, inconsistent with the Framework, and should be afforded limited weight.
87. In conclusion, therefore, the appellant submits that there is conflict with Policies PS 8 and H6 but that very limited weight can attach to such policies and any limited conflict with them (regardless of the position on 5 year supply).

#### *The Neighbourhood Plan*

88. The Framework considers an up to date Local Plan to be "highly desirable" (paragraph 12). Indeed, there is an express requirement for Local Plans to be kept up to date (paragraph 17(i)). It is not unlawful for a NP to be adopted in the absence of an up to date Local Plan (see *Gladman v Aylesbury Vale DC* [2014] EWHC 4323 (Admin)). However, as the Council accepted, the clear premise of paragraph 184 of the Framework is that a NP will reflect the strategic policies of an up to date Local Plan i.e. a plan which has sought to plan to boost significantly the supply of housing to meet identified needs.
89. The Examiner assessed whether the SNP was in general conformity with the Local Plan<sup>8</sup> (see CD 18 at 2.2 and 5.15). The SNP was not tested against the CELPS. Indeed, the Examiner states expressly that it would not be appropriate to test the SNP against the emerging policies. It follows that, as the SNP is seeking to be in conformity with a Local Plan which is significantly out of date and inconsistent with the Framework, the SNP is also out of date. No other conclusion is reasonably possible.
90. It has always been accepted that the development is contrary to Policy PC3 because the site lies outside the SZL and is not one of the exceptions. However,

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<sup>8</sup> See CD 18 at 2.2 and 5.15.

the SZL in the SNP is simply the time expired SZL from the out of date CELP, updated to reflect consented development since 2005. The SZL does not allow for any future expansion of Sandbach at all, even though it is accepted that this Council is dependent on accessible sites outside SZLs to meet the housing requirements. Indeed, the Council is heavily dependent on green belt sites. Conflict with Policy PC3 therefore adds very little (if anything) to conflict with Policies PS8 and H6.

91. The Examining Inspector was expressly concerned with the lack of flexibility of PC3<sup>9</sup>. He therefore recommended a relaxation in the Plan Strategy to acknowledge that an identified future shortfall could be addressed by identifying additional land through the CELPS and/or an Allocations Development Plan Document.
92. The policy is not, therefore, against the need for more housing being met outside the out of date SZL. Accordingly, the only harm, which the Council can identify, is to the plan led system. Putting aside the fact that this Council has had a commitment to review the CBLP since 2005, the Council expressly conceded that prematurity could not be a reason for refusal. Accordingly, whilst there is a conflict with Policy PC3, very little weight can attach to such a conflict because there is no harm which arises from it (as there would be no harm to the emerging plan). On the contrary, the grant of permission may assist the Council in demonstrating at the resumed Examination that it has a deliverable 5 year supply.
93. The interpretation of Policy PC1 has taken up a wholly disproportionate amount of Inquiry time, for a simple matter. The appellant accepts that there is a conflict with PC1 because there is conflict with PC3. To that extent, PC1 adds nothing to PC3.
94. There appeared to be a misunderstanding over why the appellant's landscape witness was accepting conflict with Policy PC1. Having been asked the question in a number of ways, this witness stated (on the appellant's counsel's note "*I accept conflict with PC1 because PC1 and PC3 operate together. PC1 adds little to PC3. I do not accept that the proposal would result in further coalescence. [The proposal] would minimise the impact on open character.*") The basis of any conflict with Policy PC1 is PC3.
95. However, the Council seeks to argue (as another "layer") that the development is contrary to the policy on a freestanding basis. The appellant disagrees.
96. The purpose of the policy is to maintain the established pattern of development and the distinctive identity of Sandbach and Ettiley Heath. The Council agreed that this required an assessment of their pattern and identity. The policy also seeks to prevent "further coalescence." Coalescence is defined as: "different elements of something join together and become one." Read strictly and objectively, therefore, a development complies with the policy if it falls short of joining areas together and becoming one. However, the appellant does not adopt that interpretation of policy. It is accepted that there could be a perception of coalescence which falls short of actual joining. A judgment is therefore required on whether there will be a perception of coalescence. A key part of that

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<sup>9</sup> CD 18 at 6.189



judgment is whether the established pattern of development and the distinctive identities are maintained. The Council's approach (any movement of built form is coalescence) is contrary to the definition of coalescence and to the express acceptance that the policy was not seeking to prevent all built development. A judgment is therefore required on whether the proposal (with or without the appeal heard in the week before this one) would lead to coalescence or whether there is "meaningful separation".

97. The separation distances that remain are a matter of fact and are very substantial. The required judgment is not a mathematical exercise. The percentage reduction in separation is largely irrelevant. Rather, an assessment of how the significant area of remaining separation would be perceived in 3 dimensions is critical. It is therefore a significant failing in the Council's analysis that it has failed to identify any viewpoint from which it would appear that the existing housing would have coalesced. Further, there is a failure to assess whether the established pattern and identities of the areas would be maintained. In contrast, the appellants robustly demonstrate why there would be neither actual coalescence nor a perception of it.
98. Indeed, that conclusion is expressly endorsed by the Council's own Landscape Architect, who considered applying the rationale of the Inspector at the nearby housing site allowed on appeal (to the north-west of the appeal site) that a large swathe of land would remain open unlike at present, there would be greater public access, the loss of part of the green gap would not in itself be sufficiently harmful to make the proposal unacceptable. The preponderance of professional evidence is, therefore, that separation would be maintained and there would not be coalescence.
99. The basis of Policy PC1 is unclear but appears founded in a Landscape Character Assessment (LCA), which set out the functions of the Areas of Separation (AoS). The appellant's landscape witness has assessed the proposal against each of the functions of the AoS which were the evidential justification of the designation. He concludes that the impact would in fact be marginally positive on such functions. His assessment on the functions of the AoS (not contested by the Council) further supports his conclusion that, whilst there is a conflict with the policy (as a result of conflict with PC3) no weight should attach to such conflict because the purpose of the policy is met and there is no harm which arises from the breach of Policy PC3.
100. Again, the interpretation of Policy H1 is very straightforward. It provides that future housing growth will be delivered through "windfalls". "Windfalls" are not defined in the SNP. A windfall is a site which is not allocated in a plan. There is no other conceivable definition. The appeal site is a windfall site. There is no qualification in the policy. The term is not restricted to "windfall sites in the SZL" and/or "small scale windfalls". There is no conflict with the policy.
101. If Policy H1 applies only to windfalls in the SZL, it adds nothing to Policy PC3. The Council claimed Policy H1 adds to PC3 because it endorses a plan led approach. That is simply wrong. Allowing windfall development (of any scale) is inconsistent with the plan led approach. Further, Policy PC3 also seeks to embody a plan led approach and Policy H1 does not add to it. But in any event, the Council present no evidence of any harm to the plan led system and/or prematurity which arises from any breach of Policy PC3 and/or H1.

*The CELPS*

102. The Council seeks to attach weight to a housing requirement of 2750 in Sandbach<sup>10</sup>. It was a constant refrain that the housing target for Sandbach had been met. This position is flawed for 9 reasons:
- (i) The 2750 is an indicative level;
  - (ii) The 2750 is a "guide" it is "neither a ceiling nor a target". It is totally inappropriate to use the language of a target being met;
  - (iii) Housing need must be met in the HMA area<sup>11</sup>. It cannot be disaggregated down to a settlement level. The need for housing in the Council's area is acute. It cannot conceivably be argued that it has been "met";
  - (iv) The Council claims the level of completions is 2801. Accordingly, as a matter of fact, it has not been applied either by the Council or Inspectors as a hard limit that has been "met";
  - (v) There is no evidence of any harm if the guide figure is exceeded (either by the appeal site or the appeal for Abbey Road or both). Rather, the consequences are all positive in meeting the urgent need for new homes;
  - (vi) A lapse rate should be applied to the 2801, as not all of the consented units will be delivered. Applying even a 5% lapse rate, consents are 2660;
  - (vii) It is inappropriate to include Albion Mill in the 2801, as it is divorced from Sandbach and should logically be included in the rural area – a further reduction of 371 dwellings. There is, therefore, significant headroom against even the guide figure of 2750;
  - (viii) As the 2750 is a guide, it follows that if some key service centres underperform, others will (and may have to) over perform. This is anticipated in the policy. Sandbach is one of the more sustainable key service centres and therefore is an appropriate location for more growth;
  - (ix) There has been (literally) no testing of the significant green belt releases. If the sites do not meet the stringent "exceptional circumstances test", there will be a need to redistribute housing amongst the key service centres.
103. Further or alternatively, limited weight can be attached to the policies of the CELPS applying general principles (Framework paragraph 216). It is still at an early stage, a consultation draft has just been published and, whilst consultation has just concluded, the results of it are unknown. The Council has not collated the responses and/or published a submission version. There has not been any Examination informed by any evidence on the significantly revised CELPS.

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<sup>10</sup> CD 11 p.88

<sup>11</sup> Framework paragraph 47

104. Limited weight can, therefore, attach to the policies of the CELPS. Indeed, this was the conclusion of the NP examiner in the light of the Inspector's Second Interim views (January 2016). There has been no material progress since the start of the year. Further, it was the position in the SoCG at the Holmes Chapel Inquiry 3 weeks before this Inquiry, which is currently before the SoS.
105. The Council nonetheless place significant reliance on the CELPS and the interim views of the Examining Inspector. The appellant submits that such reliance is misplaced.
106. The Inspector's Interim Report<sup>12</sup> is clear that the Council had submitted a significant amount of new evidence, which has significant and wide ranging implications for the submitted CELPS. The new evidence includes: a new economic strategy; a new OAN; a new affordable housing assessment; new assessment of the green belt; a new Urban Potential Study; a new Spatial Distribution of Development; reports on the highway implications of new developments; a revised sustainability appraisal; and a revised HRA.
107. Such evidence results in a significant increase in the overall amount of housing proposed, a revised Spatial Distribution, additional and amended strategic site allocations, the replacement of a proposed new area of green belt; and a need to consider the cross boundary implications.
108. It is fairly described as a "new plan". It is (at the very least) a substantially changed plan, as the Interim Report says such changes will "inevitably require significant changes to the submitted LPS".
109. As the Interim Report further notes, there has been "limited engagement" with stakeholders and interested parties and "no formal consultation". Whilst there were Hearings in Oct 2015, interested parties had not been able to submit any evidence. Finally, the Interim Report notes :
- "...At present it is not known where, when and how much new housing development will be identified and allocated in the amended LPS, and how much might be left for the subsequent Site Allocations LP and NDP. Until this is established, I cannot take a firm or final view on the most appropriate housing requirement for figure for CE".*
110. The Interim Report has not, therefore, expressed a firm view on the housing requirement. On that basis, very little, if any, weight can be attached to a spatial distribution of that figure, when there has been no testing of it and consultation has only just finished.
111. In all the circumstances, very little weight can attach to 2750 being a housing target for Sandbach and/or the CELPS in general.
- Weight to be attached to Development Plan Policies*
112. The appellant's case is that very limited weight can attach to Policies PS8, H6, PC1, PC3 and H1 for a number of reasons.
113. Firstly, Policies PS8 and H6 (and by implication PC3) are time expired. Secondly, Policies PS8, H6 and PC3 are out of date as they are premised on SZLs derived

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<sup>12</sup> CD 14

from the SP/CBLP. Thirdly, it is agreed that seeking to constrain housing development to out of date SZLs derived from an out of date (revoked) SP is the antithesis of the Framework. Such policies are inconsistent with the Framework and can be afforded very limited (if any) weight. The nature and purpose of the policies suggests very limited weight can attach to them. Fourthly, it is common ground that Policies PS8, H6, PC1, PC3 and H1 are (in any event) policies relevant to the supply of housing. It is common ground that the LPA does not have a 5 year supply of housing sites, that Framework paragraph 49 is engaged, that housing policies are out of date and that Framework paragraph 14 is engaged.

114. The Council accepted that the absence of a 5 year supply reduces the weight to be attached to such policies. It is common ground that the shortfall is substantial, that there has been persistent under delivery and under-delivery has been significant each and every year over the last 5 years. It is also agreed that the level of shortfall is "substantial" at some 5089, the shortfall (5089) is 2.8 years supply (at the contested 1800 d/pa) and the annualised requirement has almost doubled in 5 years to 3381 d/pa (applying Sedgefield). As a consequence delivery has been running at 810d/pa, so that delivery needs to increase by more than 4 times ( $810 \times 4 = 3200$  d/pa) to meet the minimum requirement of the Framework to demonstrate a 5 year supply. The Council has between a 3.3 and a 3.5 year supply (applying Sedgefield which is the preferred approach of the planning guidance). The Council has a supply of 11,189 but needs 16907 to demonstrate a 5 year supply so that the shortfall is 5718 (which is more than 3 years' supply). There is a need for a dramatic step change in the delivery of housing land now, if this Council is ever to be able to demonstrate a 5 year supply. There is no robust housing trajectory and no evidence as to when this Council may be able to address the shortfall. It is likely to be years.
115. It follows that the weight to be attached to the policies of restraint must also be significantly reduced (or else the operation of paragraphs 47 and 49 of the Framework are frustrated). Indeed, as held in *Woodcock Holdings*<sup>13</sup>: *"Plainly, the object is to increase the likelihood of planning permission being granted for a housing proposal where a 5 year supply does not exist, by applying a "presumption in favour of sustainable development", subject to taking into account all other material considerations..."*
116. The Council seeks to add weight to the out of date policies. However, its points do not bear scrutiny. The Council argues the SNP is being "strangled at birth". However, the SNP was always going to be out of date as it sought to conform to the time expired CBLP (contrary to the clear premise of Framework paragraph 184). Further, it is the operation of paragraph 49 of the Framework which renders the SNP out of date. It is the application of a policy mechanism. It is clearly the lawful intended result of the Framework that a newly adopted NP is out of date when there is no 5 year supply (*Woodcock Holdings*). If the Framework did not want newly adopted NPs to be considered out of date it could and would have said so.
117. The SNP does not preclude growth on the perimeter of Sandbach. However, such developments would be in the open countryside. It is absurd and irrational to

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<sup>13</sup> CD 46.1

seek to attach weight to Policies PC3 and H1, which seek to restrain development in the open countryside, because there are available sites in the open countryside (just not the appeal site). There has been a 35% increase in Sandbach in the last 5 years. However, there is still a massive deficit and the rate of housing needs to increase 4-fold across the HMA as a whole. Further, all of those developments were permitted by the Council or SoS and it was concluded that they were sustainable developments. This provides no reason to increase weight to an out of date policy. The Council is taking steps to remedy the shortfall. However, such steps are clearly inadequate to remedy the shortfall and/or provide a 5 year supply. The Council needs to identify (now) more than 5,000 units just to meet the minimum requirement of a 5 year supply. The Council's action has not been adequate. There is no reason to add weight to restraint policies when housing delivery has been so poor, the requirement is so high and every aspect of the CELPS is contested and a new consultation draft has only just been published.

118. The Richborough decision provides that the weight to be attached to an out of date policy for the supply of housing will normally be less. However, it will vary according to the circumstances. In the circumstances of this case, the above submissions demonstrate individually that limited weight can attach to the policies of the development plan. Collectively, it is unanswerable that very limited weight should attach to Policies PS 8, H6, PC1, PC3 and H1.

#### *Sustainable Development*

119. The Framework requires decision-making to be approached in a positive way. Decision-makers at all levels should look for solutions not problems and should seek to consent proposals for sustainable development where possible.
120. The Framework expresses a presumption in favour of sustainable development. Sustainable development is defined with reference to the Framework paragraphs 18-219 taken as a whole. It comprises a social role, an economic role and an environmental role. The roles are mutually dependent and should not be pursued in isolation.
121. In this case, it is common ground that paragraph 14 of the Framework is engaged. Planning permission should, therefore, be granted unless any adverse impacts significantly and demonstrably outweigh the benefits. This has been described as a "heavy" weighting in favour of development.<sup>14</sup>
122. The application of the test therefore requires a robust identification of all of the benefits of the development (and a consideration of the weight to be attached to them) before a consideration of any alleged harm.
123. The application of Framework paragraph 14 is not in dispute. In truth, the application of paragraph 14 has never been difficult and/or controversial. The appellant relies on the recent decision of Justice Jay in *Cheshire East BC v SoS CLG and Renew Land Developments* [2016] EWHC 571 (Admin) and Lord Justice Lindblom in the Richborough decision.

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<sup>14</sup> CD 21.8

*Social Role*

*Need for Market Housing*

124. The Council had advanced an Objectively Assessed Need (OAN) of 1180 d/pa at the Examination (Nov 2014). This was not endorsed by the Inspector in his Interim Findings. The Council's latest position is that the OAN is 1800 d/pa. This is contested (for example by GDL who contend the OAN is 2271 d/pa).
125. It is agreed that there has been persistent under-delivery, such that a 20% buffer is required. The Council conceded that the levels of under delivery (against 1800 d/pa) have been significant in each year and significant in total. Indeed, the existing shortfall is agreed to be "substantial" at 5089 as acknowledged in the SoCG. The shortfall alone is now worth 2.8 years' supply.
126. Applying the Council's 'Sedgepool' (a cross between Sedgefield and Liverpool approaches wherein the former seeks that the shortfall is made up in the next five years while the latter allows it to be made up over the plan period) method, the Council's annualised requirement is 2923 d/pa. This is required each and every year for the next 5 years just to meet the minimum requirement of the Framework.
127. However, the planning guidance is clear that the Sedgefield method should apply. On that basis, applying the OAN uncritically, the annualised requirement is a massive 3381 d/pa. The annualised requirement has therefore almost doubled as a result of the persistent under delivery of housing by this Council.
128. Whichever figure is applied, it is clear that a dramatic step change in housing delivery is required. Average completions in the last 5 years have been 810 d/pa. There needs to be, therefore, a fourfold increase in the delivery of annual housing ( $810 \times 4 = 3240$ ). There is an urgent demand for more housing now. This is acknowledged by the Council. However, the CBLP is actively working to frustrate such a step change because it is actively seeking to restrain housing development. In such circumstances, the Council's reliance on the out-dated development plan policies is unreasonable, irrational and inconsistent with its position in March 2015.
129. Further, the scale of any shortfall is material (as set out in Hunston<sup>15</sup>). The greater the shortfall the greater the weight should be attached to the need for housing. In this case, the appellant's case is that there is a 3.4 year supply.
130. It is therefore unanswerable that significant weight must attach to the need for housing in the Framework weighted planning balance (applying paragraph 47). This was the accepted position in March 2015 and at Holmes Chapel (3 weeks before this Inquiry). There has been no material change in circumstances.
131. The Council's position is that there is a need for a significant increase in housing delivery. It reduces the weight to be attached to this benefit in the planning balance because the need for housing in Sandbach has been met. This is not a

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<sup>15</sup> Hunston Properties Ltd v SSCLG & St Albans City & District Council [2013] EWHC 2678 (Admin) EWCA Civ 1610

robust approach. However, the Council still places a “high degree of weight” on this planning benefit.

#### *Need for Affordable Housing*

132. The evidence in the SHMA 2013 Update is that net affordable housing need is 1401 d/pa (2013/2014 to 2017/18). A different figure (355 d/pa) is contained in the Housing Development Study (2015). The Council has produced a wholly inadequate explanation for the significant disparity to the CELPS Examination and further information is awaited by participants when it resumes.
133. Either way, this is significantly greater than the 280 affordable houses/pa which have been delivered. The Council concedes that affordability is a key issue and that this is an “important benefit” of the scheme. Indeed, this Council is dependent on viable market housing schemes delivering affordable housing. The fact that this development can deliver a policy compliant 30% affordable housing without public subsidy, when not all sites in Cheshire East are able to deliver affordable housing (as acknowledged by the Council’s witness) is a benefit of significant weight as set out in the Framework at paragraphs 50 and 54.
134. It follows that the development derives significant support from the need to deliver more market and affordable housing.

#### *Accessibility*

135. Given the significant need for housing, it is agreed that this Council is heavily dependent on greenfield sites, sites outside SZLs in the open countryside, sites in the green belt (there are 1465 green belt homes in the latest 5 year supply) and, sites on BMV.
136. In short, the Council concedes that it is dependent on greenfield land releases outside SZLs on accessible sites, adjacent to sustainable settlements i.e. sites precisely like this one.
137. It is therefore significant that it is agreed that Sandbach is a key service centre, a sustainable settlement for future growth in the plan period and the appeal site is an accessible site adjacent to this sustainable settlement. Indeed, this is precisely the conclusion reached by the SoS in the nearby appeal decision<sup>16</sup>.
138. These points have not been the subject of examination at the Inquiry (because they are agreed). However, the appellant strongly submits that Sandbach is a highly sustainable location for further housing development in the plan period.
139. Further, given the requirement for significant urban extensions, the appeal site is highly accessible to modes of transport other than the private car. The appeal site is, therefore, precisely the type of site on which this Council is heavily dependent to meet identified housing needs. It is agreed that the proposal complies with Framework paragraphs 29-36.

#### *Highway Impact*

140. The highway proposals are agreed to be acceptable. The proposal complies with paragraph 32 of the Framework.

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<sup>16</sup> CD21.1

### *The Economic Role*

141. The application demonstrated the socio-economic benefits of the proposals, which were accepted in the March 2015 Committee Report. The economic benefits of the development can be summarised as significant construction spend supporting construction jobs for the build period, direct, indirect and catalytic economic benefits as result of such investment and employment, an increased annual spend locally, improving the vitality and viability of the town centre and the New Homes Bonus.
142. These economic benefits are an important material consideration in support of the proposal. It is agreed that they should be afforded significant weight individually and cumulatively (applying Framework paragraphs 18 and 19). The economic benefits were afforded significant weight in the March 2015 Committee Report. Indeed, the Government has recently stated in a Ministerial Statement that house building is a key part of its long term economic plan.
143. It follows that the proposal derives significant support from the social and economic roles of sustainable development.

### *Paragraph 198 of the Framework*

144. The Framework at paragraph 198 suggests that a proposal should not “normally” be allowed where there is conflict with a NP. “Normally” permits exceptions. The appellant submits that this is not a “normal” situation (as that term is understood in the Framework) and that the exception is met.
145. Firstly, paragraph 184 of the Framework explains that “normally” a NP would be adopted after the adoption of an up to date local plan, which has been adopted after an examination of its OAN and spatial housing distribution. It is where there is conflict with a NP which is in general conformity with an up to date local plan that permission should not be granted. That is emphatically not the case here.
146. Secondly, the SNP relies on out of date SZLs derived from a revoked SP, which is the antithesis of paragraph 47 of the Framework. This is not the “normal” approach because it is inconsistent with the Framework.
147. Thirdly, the NP Examiner’s Report expressly stated that he could not test the SNP against the CELPS.
148. Fourthly, the Framework requires it is read as a whole. Paragraph 47 requires Council’s normally to demonstrate a 5 year supply as a minimum. The Council cannot, demonstrating that this is not a normal situation. Indeed, paragraph 49 is engaged, which makes Policies PC1, PC3 and H1 out of date. Applying paragraphs 198 and 49 together, the SNP cannot rationally justify refusal (or else paragraph 49 is rendered otiose).
149. Fifthly, there are countless decisions of Inspectors and the SoS where planning permission has been granted in conflict with a NDP. In this case, there is a conflict to which very limited weight can attach and planning permission should not be withheld. Paragraph 198 of the Framework does not weigh against the proposal in the application of paragraph 14 here (as in other decisions).



### *The Environmental Role*

150. This is an outline application and matters of design are matters to be addressed at the reserved matters stage (SoCG). There is no claimed adverse impact on heritage assets and/or residential amenity. The site lies in Flood Zone 1. Ecological mitigation (with the possibility of enhancement) would be secured through conditions and/or the s.106. The open space provided on the site would be significant (3ha).

### *Landscape and Visual Impact*

151. There is no reason for refusal citing landscape and visual impact as a reason for refusal. It is not addressed (at all) in the Council's evidence.
152. The Framework seeks to protect and enhance valued landscapes (paragraph 109). It does not seek to protect the open countryside for its own sake. The appeal site does not lie in any designation which seeks to value its landscape. The site is not part of a valued landscape. The assessment of the appellant's landscape witness is uncontested. Framework paragraph 109 is not engaged. On this basis alone, any landscape or visual harm cannot be seen as significant (applying Framework paragraphs 109 and 113).
153. Rather, the appellant's case is that the landscape impact would be very localised. It would not extend beyond the zone of visual influence, which is tightly constrained by existing built development. The visual impact is to no more than the site and viewpoints on the immediate edge of the site (VP 1 and 9). However, the Council do not suggest there is any additional mitigation which could be proposed. The landscape and visual impact has been minimised. It is no more than the inevitable consequence of building housing on a greenfield site outside a SZL.
154. In the real world, this is a significant positive. All of the significant benefits can be delivered with no more than the inevitable impacts on the character and appearance of the local area. This cannot rationally justify refusal.
155. The sole adverse land use planning impact therefore concerns loss of BMV. Yet, this is a site of 10ha, well below the 20ha threshold at which the Department for Environment, Food and Rural Affairs (DEFRA) would be even a consultee. The site is (essentially) used for cattle or feed for cattle. It is 3% of a larger unit. The development will not impact on the viability of the unit and/or result in any severance. The economic value of the land for agriculture is minimal and dwarfed by the economic contribution of housing. There is no arguable conflict with paragraph 112 of the Framework, which requires development to be directed to areas of lower quality land. In this Council's area this is simply not possible. It is accepted that very significant areas of BMV will have to be developed in the plan period. Therefore, as there is inevitably going to be a loss of BMV somewhere, this is not a material impact which weighs against the proposal.
156. The loss of open countryside and BMV must significantly and demonstrably outweigh the significant weight which must attach (individually and cumulatively) to the identified social and economic benefits of the development.
157. The appellant's case is that the adverse impacts do not significantly and demonstrably outweigh the benefits. Indeed, that was the conclusion of the case

officer in March 2015. Rather, the benefits significantly and demonstrably outweigh the limited landscape and visual impact.

158. In conclusion it is, therefore, the appellant's case that planning permission should be granted subject to conditions and a s.106 obligation.

### **The Case for Cheshire East Council**

#### *Introduction*

159. The site lies in the open countryside and outside the settlement boundary, which Policies PS8 and H6 of the CBLP protect from development. There is no dispute that the proposals would be in clear breach of those policies.
160. The appeal scheme also conflicts with Policies PC1, PC3 and H1 of the recently made SNP. This has distilled the matter to conflict with policies rather than prejudice to the plan making process.

#### *Main Case*

161. SNP Policy PC3 defines and continues the local plan settlement boundary around the town of Sandbach subject to allocations made in the CELP. It restricts development to that which requires a countryside location, with the exception of that planned through the CELP. None of the specified types of development permitted by this policy apply in this case. These proposals are plainly not planned development.
162. SNP Policy PC1 seeks to maintain the green spaces and AoS between settlements by providing that future planned growth and development permitted in accordance with SNP 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.
163. The appellant's approach to Policy PC3 has been wholly confused. The appellant's landscape witness accepted that on his analysis the proposals did not accord with Policy PC3, such that there was also conflict with Policy PC1. He also accepted that the proposal breached Policy PC1 irrespective of the conflict with Policy PC3. Although this witness appeared unable or unwilling to appreciate its significance, the only logical source of the concession is an acknowledgement that, on the terms of the policy, the proposals would lead to further coalescence (the question of whether proposals minimise effects on openness only applies to development which accords with Policy PC3 or is planned, neither of which are agreed to apply here).
164. The appellant's planning witness appeared to suggest that because conflict with Policy PC3 led to a breach of Policy PC1, there was effectively no policy 'content' to PC1, despite their landscape witness's position of accepting an independent source of conflict with the policy. Quite apart from the inconsistency, this ignores the additional purpose of AoS policy which is to recognise the need to protect the relevant land from development in a sensitive location between two distinct settlements.
165. The proposals are neither planned and nor do they accord with Policy PC3. Thus the circumstances in which the policy allows for development within the AoS, as

an area where separation is to be maintained and not just as open countryside, do not apply. The proposal would not accord with the policy.

166. Further, even when the question of “further coalescence” is considered separately, the approach of the appellant again appeared to change and ultimately was difficult to understand. The written evidence suggested an interpretation of “coalescence” which connoted an end state of having “come together”. Similarly the oral evidence at one point appeared to suggest that a physical touching of development was necessary before proposals caused “further coalescence” under the policy. In the end it was accepted that this was not advocated as a means of applying the policy but, in any event, the obvious implication (that there would be a breach of Policy PC1 independently of conflict with Policy PC3) is that the proposals would fall foul of the policy in this respect too.
167. The Council contends that there would clearly be “further coalescence” in this case. The concept of further coalescence means a “process of coming or growing together”, rather than an end state of merging.<sup>17</sup> When considered against the objective of “maintaining” a defined area of separation between Sandbach and Ettiley Heath, this development would plainly involve such a process. Building up to 200 homes on land recognised by the development plan as necessary to maintain the separation of settlements can do nothing but harm the objectives of the policy and no amount of careful design or landscaping can alter that. To find otherwise would neuter the control that the policy is intended to provide, by allowing individual proposals to claim that there would be little impact whilst avoiding the strategic and holistic approach that is necessary to uphold its purpose and function.
168. This is confirmed by the agreed measurements of how the gap between the settlements would change. Even on the appellant’s figures, there would be a reduction in the gap of between 15 and 31% attributable to these proposals alone. In terms of area, there would a loss of around 20%.<sup>18</sup>
169. The visual perception of the AoS would also be materially and adversely affected: the appellant’s Landscape and Visual Impact Assessment (LVIA) accepts that from locations on the Wheelock Trail and at the edge of Sandbach,<sup>19</sup> which provides a route between the settlements, there would be a substantial visual impact, a fundamental component of which would involve the perception of built development within Sandbach moving away from the town and closer to Ettiley Heath. The strength of Policy PC1 is indicated by the glossary definition of AoS in the SNP which, although not part of Policy PC1 itself, states that reductions in visual openness are to be avoided; and this would occur here. The fact that visual or landscape impacts may be local in their scope does not affect this clear adverse effect on this AoS.
170. The concerns about the deleterious effect of this scheme are amplified when the proposals for Abbey Road are taken into account. The claim for the appellant that (notwithstanding the approach to Policy PC1) the two proposals could

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<sup>17</sup> As set out in the Cambridge Dictionary.

<sup>18</sup> As set out by the Council’s witness at 5.41/30.

<sup>19</sup> See VP 1, 9-10.

somehow come forward without undermining the AoS and Policy PC1, highlighted the sense of unrealism in the appellant's approach. It has not been suggested that any distinction can be drawn between the two schemes and, when they are considered together, they would clearly cause a fundamental and harmful change to the AoS as designated. The gap would be reduced by up to 59% in distance and by nearly 40% in area. It cannot seriously be suggested that development on this scale would maintain the AoS and meet the aspirations of the policy.

171. For all these reasons there is clear conflict with Policy PC1 and its objective. Other factors considered are not of particular relevance to the policy (such as the "undistinguished" quality of the development edge) and the appellant's Landscape Witness's wider assessment of AoS "attributes" strayed from the more focussed approach to further coalescence and maintaining a specifically defined area of protection, as subsequently endorsed by the Examining Inspector.
172. Turning to SNP Policy H1, this states that "future growth to meet the housing requirement established in the Cheshire East Local Plan will be delivered through existing commitments, sites identified in the Cheshire East Local Plan (Strategy and Allocation Documents) and windfalls".
173. The only point raised by the appellant on this policy is that there is no conflict with its terms because it anticipates windfall development coming forward. However, this misunderstands the premise of the policy and therefore why these proposals would frustrate its objectives. The policy applies to the delivery of future growth established through the Local Plan process. Allowing these ad hoc proposals now would frustrate that mechanism of delivery and run contrary to the explicit purpose of the policy: to promote controlled housing growth through the plan-led process, following substantial but unplanned growth recently in the town. These proposals are a classic example of the piecemeal development on greenfield land that the policy is intended to restrict.
174. By virtue of section 38(6) the determination of this appeal in accordance with the development plan means it should be dismissed, "unless material considerations indicate otherwise".
175. It is important to understand that this does not provide for a simple weighing of good and bad. The issue becomes whether "other material considerations are strong enough to outweigh the statutory presumption in favour of the plan – considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given it"<sup>20</sup>
176. It is also necessary to understand the extent of the departure from the plan. The policies in question do not deal with detail or minutiae, but rather the fundamental question of whether it is acceptable to build on the land in question. Constructing up to 200 dwellings on this site would constitute a significant breach of and departure from the development plan. Attempts to argue otherwise confirmed the unreality in the appellant's approach to policy.
177. As for what "material considerations" might indicate otherwise, the main consideration advanced by the appellant is that the Council cannot demonstrate a five-year supply of deliverable housing sites. It is agreed that no such supply can

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<sup>20</sup> Bloor Homes v. SSCLG [2014] EWHC 754 (Admin) (The Council's Appendix 10).

be demonstrated. Whilst the parties have advanced different figures (appellant 3.5 years applying Sedgefield, the Council adopting 3.8 years on its preferred "Sedgepool" basis and 3.3 years on a Sedgefield basis), it is agreed that for present purposes nothing turns on these differences. Following the Richborough decision<sup>21</sup> the result, it is agreed, is that the above policies are relevant policies for the supply of housing and are to be deemed out-of-date under the Framework.

178. It is also argued that the housing requirement, and the settlement boundaries which flow from it, are out of date because housing needs and policy have moved on from the time of the CBLP. That too is agreed, as the preparation of the CELP confirms, and it is unnecessary to look back to the genesis of the CBLP to confirm the point.
179. However, as the Court of Appeal made clear in Richborough (*as follows*), the temptation to simply disregard the policies concerned is fundamentally incorrect, even when considering paragraph 14 of the Framework. They remain part of the development plan and the weight to be accorded to them may justify the refusal of planning permission in the circumstances of any particular 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 disappplied. 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

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<sup>21</sup> CD 22.3

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)).

180. The evidence of the appellant succumbs to this temptation by jumping straight to the erroneous conclusion that policies should be given "no" weight because of the absence of a five-year supply. However, there are several factors in this case which demonstrate that despite the absence of a five-year supply, considerable weight should still be applied to the above policies so as to justify dismissal of this appeal. They are as follows.
181. First, as regards the CBLP policies, there would be harm to the objectives of the open countryside policies which remain consistent with national policy, in particular the core planning principle in the Framework of taking account of the differing character of different areas and recognising the intrinsic character and beauty of the countryside.
182. The appellant sought to argue that although these policies had a dual purpose (of defining where housing needs were to be met and protecting the countryside), it was impossible to "disaggregate" them so that if the housing needs work on which they were based was out of date it was impossible to attach any weight to the "flip side" consideration of intrinsic countryside character.
183. This approach is simply wrong. The reliance on the *Barwood* case<sup>22</sup> to support this approach is misplaced. Open countryside policies may have been regarded as the "counterparts" to policies for the provision of housing, but this only established that they were relevant policies for the supply of housing, not that they are divested of any weight as "restrictive" policies, as *Richborough* has confirmed.
184. Further, there are several Inspector's decisions which confirm that even where the settlement boundary is deemed out of date, the objective of considering the effect of developing unbuilt upon land in the countryside is still consistent with the Framework. In *Hind Heath* it is set out thus:

*"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 [NPPF] paragraph 17... Insofar as these policies are concerned with protecting the character of the countryside, I consider they attract substantial weight";<sup>23</sup>*

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<sup>22</sup> The appellant's planning witness Appendix 10

<sup>23</sup> CD45.1

For Goldfinch Close:

*“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 [NPPF], 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 [NPPF]”;*<sup>24</sup>

185. Additionally, Loachbrook Farm,<sup>25</sup> The Gables<sup>26</sup> and Park Road,<sup>27</sup> are further examples which confirm that the restrictive nature of the countryside policies accords with the Framework principle of policies “recognising the intrinsic character of the countryside”. The examiner to the SNP similarly found that Policy PC3 accorded with the Framework.<sup>28</sup> Moreover, the Framework means to recognise the intrinsic – the inherent, the innate – character of all countryside as countryside. Whilst the appellant was at pains to emphasise that the land is not designated for landscape quality, this does not prevent harm from arising to the loss of any countryside as such. 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. It makes no sense to somehow accept that there would be harm in this respect pursuant to the Framework, but then deny that this has anything to do with the weight to be accorded to the open countryside policies of the development plan.
186. Turning to the SNP, the shortfall in housing supply does not avoid or suppress the harm that would be caused to the AoS as explained above. The AoS policy has been found to be consistent with national policy<sup>29</sup> which requires policies to recognise the different roles that different areas may play; and the proposals would involve a substantial encroachment of development into an area which has been identified as significant in maintaining the separation of settlements.
187. Whilst there is a substantial shortfall in housing supply across the District, the SNP acknowledges the particular circumstances of Sandbach: it has substantial housing development already committed around the town, which already meets its proposed contribution towards meeting housing needs identified in the CELP.
188. The CELP seeks to make provision for an OAN of 36,000 and “allocates” 2,750 new dwellings as a guide for Sandbach for the period 2010-2030. As matters stand, 2801 dwellings have been completed or committed (and the CELP also allows for 150 dwellings next to Junction 17 of the M6 to support infrastructure provision on that site). There has been no real dispute with these figures: there was nothing in the written evidence of the appellant’s Planning Witness; there was no real attempt in oral evidence to show why any permitted sites in Sandbach would not come forward;<sup>30</sup> and nothing to explain why the Albion site

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<sup>24</sup> CD21.7

<sup>25</sup> The Council’s witness Appendix 1

<sup>26</sup> The Council’s witness Appendix 9

<sup>27</sup> The Council’s witness Appendix 3

<sup>28</sup> CD 18 paragraphs 6.80 -6.90

<sup>29</sup> CD18 paragraph 6.58

<sup>30</sup> footnote 11 of the Framework.

should not be treated as functionally related to Sandbach despite lying technically outside the parish boundary.<sup>31</sup>

189. The upshot is that on the best information currently available Sandbach is already contributing more than its "fair share" to meeting the needs of Cheshire East. This feature of the housing needs position is confirmed by the development plan itself: it is part of the justification for Policy H1 in the SNP, which adds that this level of commitments and completions has come at the cost of a "rapid rate of unplanned growth [which] is not considered sustainable." This "significant over-achievement", even within the first five years of the plan period, "equates to an increase of 35% in the size of Sandbach". Sandbach has contributed "more than any other town" to meeting currently assessed housing needs.<sup>32</sup> Policy PC3 is also to be read against the latest settlement boundary in the SNP which updates the CBLP to the extent that it already takes into account these permissions.
190. It is important to recognise therefore that although the shortfall in supply can be seen on a district-wide basis, the current evidence suggests that more ad hoc residential development outside Sandbach would not be directing housing where it is likely to be required. The urgent need for action to address the shortfall, as claimed by the appellant, must be seen in this context.
191. The appellant argues that the spatial distribution for Sandbach is indicative and draft only forming part of the CELP to which only "very limited weight" can be attached. This is again an unrealistic distortion of the progress that has been made with the CELP. As even a cursory look at the history reveals, the earlier submission draft of the CELP did not find the favour of the Examining Inspector, who explained why and what action had to be taken to address the issues he raised. This led to further work on his direction by the Council, on which interested parties, including the appellant, were able to comment<sup>33</sup> before further views were expressed by the Examining Inspector in December 2015. The Examining Inspector considered that the Council "seems to have undertaken a comprehensive reassessment of the economic strategy, employment land requirements and an objective assessment of housing need";<sup>34</sup> there had been a "thorough assessment of the potential for development within and on the edge of the town and settlements within Cheshire East".<sup>35</sup>

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<sup>31</sup> As the Council explained, the appellant itself has at least one other site (Handforth) which is claimed to functionally relate to the settlement whilst lying outside a parish boundary.

<sup>32</sup> CD 34 Report to SPB February 2016 12.31-2/16

<sup>33</sup> See appellant's planning witness 27, along with submissions made on behalf of the appellant at every stage of the process to date: NL 24-6

<sup>34</sup> CD 14

<sup>35</sup> CD 14



- (a) the review of the Spatial Distribution of Development represented a “reasonable starting point for establishing how future development needs are to be met”;<sup>36</sup>
- (b) the “nature, scope and approach of the additional evidence has largely met the concerns set out in my earlier Interim Views relating to the adequacy of the evidence base”;<sup>37</sup>
- (c) “the overall housing requirement figure...would seem to provide a balanced level of housing provision, which is aligned with the economic strategy and would fully meet the identified objective assessment of housing needs”;<sup>38</sup>
- (d) “at this stage and on the basis of the evidence and discussions at the resumed hearings, 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 and takes account of the relevant factors, including the crucial importance of the green belt<sup>39</sup> and the outcome of other studies undertaken during the suspension period. It also seems to be based on sound technical and professional judgments and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement”.<sup>40</sup>

192. The support of the Examining Inspector properly recognised that further consultation would take place, but as the examiner to the SNP recorded, “it is clear that more confidence can be placed on the latest housing figures”.<sup>41</sup> The Examining Inspector has already had regard to objections (from the appellant and others) which raised concerns about the housing figure and the spatial distribution before reaching these views. Overall the progress with the plan justifies material weight being placed on the contribution that has already been made by the town towards meeting its spatial distribution. The indicative nature of the policy figure does not disturb that conclusion.

193. Even if further housing is required on the perimeter of the town to overcome the shortfall in supply, the SNP is quite clear in setting out the approach for making such provision; it should be done through the CELP. Granting permission for piecemeal proposals would ride roughshod over a central objective of the SNP and Government policy which both advocates plan-led development and supports neighbourhood planning as a powerful tool for communities to shape development in their area.

194. SNP Policies PC3, PC1 and H1 consistently refer to the local plan process as the means by which any necessary housing should come forward, beyond that

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<sup>36</sup> CD 14

<sup>37</sup> CD 14

<sup>38</sup> CD 14

<sup>39</sup> The Inspector also supported the approach taken to inform where green belt release may be necessary.

<sup>40</sup> CD 14

<sup>41</sup> CD 18

already provided. The rationale for this approach was well understood by the SNP Examiner: Policy PC1 for example “reflects the genuine concerns of local residents that the scale of recent and committed development is eroding the character of Sandbach and the immediately adjacent settlements.”<sup>42</sup> It is also reflected in the justification for the policies.

195. SNP Policy PC3 refers to the settlement boundary being amended to reflect permissions being “granted outside of any plan-led approach and one of the purposes of this Neighbourhood Plan is to introduce a clear planning framework through which there will be greater certainty about planning decisions.”<sup>43</sup> SNP Policy H1 expressly responds to concerns about the rapid rate of unplanned and unsustainable growth resulting from large scale development on greenfield locations. Its reliance on the CELP to meet any further need is an attempt to ensure that future decisions are “plan-led, another key requirement of national policy”.
196. The SNP, as part of the development plan, is therefore clear in its expectation that further growth should be planned and not allowed through piecemeal development such as this proposal. This is of particular importance in Sandbach given the scale of housing commitments and the rapidity with which they have come forward. Allowing this appeal (and Abbey Road) would exacerbate the unplanned growth which the SNP confirms as unsustainable in the context of this town.
197. It is the Council’s view that if more housing is found to be required there is a prospect that it could be accommodated on land which lies outside the AoS. The Urban Potential Study undertaken for the Local Plan illustrates that there are several potential development sites that fall outside the AoS, which together could yield over 3500 homes on some 133ha.<sup>44</sup> The point is not to advocate any of these sites as alternatives to this one for the purposes of this appeal, but to illustrate that it may well not be necessary to sanction a conflict with a major spatial objective of the SNP. This underscores the merits of avoiding ad hoc greenfield development in this location, pursuant to the clear strategy of the SNP.
198. Allowing such development to continue through the grant of permission in this case (and Abbey Road) would undermine almost immediately the objectives of a recently endorsed plan and continue the rapid unplanned growth which the plan is designed to avoid. The appellant did not dispute that notwithstanding the lack of a five-year supply, granting permission in this case would fundamentally conflict with a central aspiration of this neighbourhood plan. It would also run directly contrary to the Framework’s objective of giving communities the direct power to “shape and direct sustainable development in their area.”<sup>45</sup>
199. Whilst the substantial shortfall in supply has been acknowledged, it is also necessary to consider the positive steps being taken by the Council to address it as part of the overall balancing exercise (as in Richborough). The progress with the CELP, in anticipation of a final round of hearings in September,<sup>46</sup> is one

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<sup>42</sup> CD 18

<sup>43</sup> CD 19 p.36

<sup>44</sup> The Council’s Witness Evidence and Appendix 7.

<sup>45</sup> The Framework paragraph 185

<sup>46</sup> The Council’s Witness Evidence

important factor. This is reflected in the latest Housing Topic Paper which sets out a housing trajectory showing how commitments and strategic sites will be able to address the shortfall and ensure a five-year supply.<sup>47</sup> Whilst the shortfall in supply (currently 5089) is based on figures from April 2010, the Council has approved substantial numbers of homes recently: nearly 12,000 homes since 2012, a figure which has continued to rise with the approval of around 2000 (net) units since 2015. The Housing Topic Paper also refers to the grant of funding by DCLG to progress Local Development Orders in town centre sites in Macclesfield, the development of a brownfield toolkit to work with developers to unlock important development sites across the borough and the preparation of a SHLAA which identifies 50,000 potential units for delivery over the next 15 years.<sup>48</sup>

200. Despite the current shortfall, therefore, the Council is taking serious and significant steps to address the supply issues in its area.
201. All the above are significant factors which strongly limit the influence of the housing land supply shortfall in this case. Having regard to Richborough (and in the specific context of neighbourhood plan policy, similar dicta in Woodcock),<sup>49</sup> the restrictive policies in the CBLP and SNP should still be given considerable weight. Even allowing for the housing land supply shortfall, it would say little for the commitment of Government to neighbourhood planning if this SNP were to fail at the first stage of testing, when its policies are entirely consistent with Framework objectives, including those which uphold the plan-led system. In the specific circumstances of Sandbach, the town has already provided more housing than the best current evidence on need and spatial distribution requires it to. To the extent that more housing is considered to be required here to address what is a temporary district-wide shortfall, its neighbourhood plan is flexible enough to allow for further growth, through the plan-led system, and without requiring the permanent harm held in prospect by this scheme. The grant of permission in this case would send entirely the wrong message to this community and others on the value of the neighbourhood plan process. Importantly, the planning guidance advises that even where there is a shortfall in supply, decision-makers should take account of guidance that proposals in conflict with neighbourhood plans should “not normally be granted”.<sup>50</sup> That conflict cannot easily be dismissed even where there is a shortfall in supply. In this case it is submitted that dismissal should follow.
202. When considered against the test of “sustainable development”, all these factors present a powerful case against these proposals, having regard to the environmental and social aspects of sustainability. However, there are other considerations to place on the negative side of the planning balance. The appellant accepts that there would be adverse effects, albeit localised, to landscape character; and this is distinct from harm to the AoS or to the “intrinsic” character of the countryside. Further, the site comprises best and most versatile agricultural land (Grades 2 and 3a) (BMV) and both SE2 of the CBLP and paragraph 112 of the Framework militate against losing such land to development. The argument that the need for housing land in Cheshire East will

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<sup>47</sup> The Council’s Witness Evidence Appendix 2 Table 4.2 p. 14.

<sup>48</sup> See 4.16

<sup>49</sup> At 105-107.

<sup>50</sup> See 41-083-20160211, referring to paragraph 198 of the Framework.

inevitably require the development of more BMV actually reinforces the sense of keeping it unless its loss is necessary; and here it is not.

203. On the positive side of the planning balance, the Council recognises that building market and affordable homes would contribute towards the economic and social dimensions of sustainable development and are important material considerations (although qualified by the contribution already made by Sandbach to meeting needs). Whilst there would be some economic spin offs for the local economy, these have not been quantified and there is no evidence that the new development would make a difference to the viability of any businesses in the town. In the absence of a direct connection between the intended use of any New Homes Bonus payment and this scheme, it is submitted that this cannot be counted as a benefit either. There is no proposed use, occupier, management regime or funding for the community facility mentioned in the application and no weight can be accorded to it as a benefit of the scheme. Contributions would essentially mitigate impacts and are not benefits. Any landscaping which replicates the existing hedgerow patterns would be seen in the context of the adverse impact of the scheme as a whole. Ultimately, therefore, building up to 200 dwellings on the appeal site, in the countryside, in a newly designated AoS, and on an ad hoc basis contrary to the central objectives of the neighbourhood plan, is unsustainable. The benefits of providing market and affordable housing, even with the current shortfall, do not make it otherwise.
204. If these conclusions apply to these proposals, then as the appellant accepts, they must apply to the Abbey Road scheme as well. Whilst the effect of this scheme on its own would be significant and demonstrably harmful, the cumulative impact of allowing both this and the Abbey Road scheme, in the open countryside, in the same AoS, and as piecemeal proposals, would be even more serious: a substantial extension of the urban form of Sandbach into open countryside, and encroachment into the AoS. The result would be severe damage to the confidence that the local community can place in their neighbourhood plan. The community would rightly ask what the point was of working hard for years on an endeavour which can be undermined, a matter of days after the plan was made, by precisely the type of harmful proposal that the plan seeks to prevent.

#### *Council's Conclusions*

205. It is therefore submitted that this appeal should be dismissed and the Council invites the Inspector to so recommend to the Secretary of State.

#### **The Cases for others Appearing at the Inquiry**

206. **Cllr Benson** set out his involvement with the making of the SNP. In particular Cllr Benson focussed upon the SNP and the conflict he considers that there is with it in respect of policies PC1, PC2, PC3 and PC4.
207. Cllr Benson explained that the site is in the AoS which, with Policy PC1, is designed to maintain, shape and guide the established pattern of development. In particular Cllr Benson notes that the AoS includes the Abbeyfields ancient woodlands which require protection and bring Policy PC4 into particular consideration.
208. Policy PC2 is designed to protect the identity of Sandbach as a historic market town within its open countryside and farmland setting. Development of the land

would not, he considers, respect the landscape setting. While nearby housing on Middlewich Road might benefit from the provision of open space, housing does not justify this. The developer led masterplan has not involved community consultation unlike the SNP. Unlike the developer the community considers that the landscape here is important and of great value. While the SNP assessment is not a technical document the Examiner noted that it complies with national planning policy by expecting new development to reflect local surroundings. The scheme would conflict with that requirement.

209. Turning to Policy PC4, Cllr Benson set out that there is a strong desire by local residents to protect areas of high biodiversity and geodiversity. The appellant acknowledges that Abbeyfields is a grade II listed building but says, he claims, nothing about the ancient woodland. This information was available on the Cheshire East website on 14 July 2015, yet the only comments indicate the appeal site contains nothing of interest and does not acknowledge the importance of the ancient woodland. Whilst the Ecological Appraisal assesses otter, badger and common toads it does not address the woodland which he considers should not be left to reserved matters. Thus, he finds the proposal contrary to Policy PC4.
210. In view of these comments Cllr Benson seeks that the appeal is refused, particularly given paragraph 198 of the Framework indicates that where a planning application is in conflict with a neighbourhood plan that has been brought into force it should not normally be granted.
211. **James Harris** explained that he is part of the Crewe Road and Park Lane Action Group. Along with his family Mr Harris has been a resident of Crewe Road for six years.
212. Mr Harris explained that his concerns focus on the cumulative/ net ecological and biodiversity impact of the proposed development. His first concern is that the primary sources of the Council's Principal Nature Conservation Officer for this case are taken from the different reports written by consultants working for, and representing, the appellant. The Council has not commissioned its own reports. The developer's reports are of a mixed quality, some very good and very informative, but inclined to drawing premature conclusions. For instance the Bat Report and Bat and Owl Report make bold statements about the absence of roosts but are snapshot based. Moreover, inspection techniques were limited and selective. Mr Harris is not sure whether they are representative but considers them to be lacking and that the Council has not questioned them but taken them on face value.
213. Mr Harris is also concerned that the Council's Principal Nature Conservation and Landscape Officer has made his assessment on the basis of desk based information and has not visited the site.
214. The June 2014 Arboricultural Assessment does not record the ancient woodland. However it acknowledges the need for more detailed assessment at reserved matters stage. The ancient woodland lies adjacent to the appeal site (Phase 1), and is in an area earmarked for 'Phase 2'. An Ecological Impact Assessment has not been submitted in respect of that area to consider wildlife habitat fragmentation or exposure of the ancient woodland to development. Nor has there been isolation modelling. Without such an assessment appropriate buffers

cannot be determined and should not, in Mr Harris's view, be left to reserved matters stage.

215. Cheshire Wildlife Trust have just confirmed their designation of Abbeyfields Woodland as a Local Wildlife Site, recognising its status. As such, Mr Harris considers the designation invalidates the ecological information provided for the appeal proposal. Thus, further assessment should, in his view, take place before the planning decision is made.
216. **Carolyn Jealous** is a local resident living in Park Lane and she explained that she was at the Inquiry to represent the Park Lane and Crewe Road Action Group. That group supports the Council's refusal of planning permission and endorses the Council's view about the loss of BMV land.
217. The Action Group are aware of the difficulties faced by the Council in terms of housing land, but believe this site is unsuited to development.
218. The Action Group are concerned about the impacts of brine workings. No photographic evidence was provided of concerns so that the Brine Board did not seek a Brine Risk Assessment. Nonetheless, there are concerns about ground stability and the contents of paragraphs 120 and 121 of the Framework suggest it should be considered as a planning matter. Potential movement would not just affect houses but also the drains.
219. The Action Group also expresses concerns about the sustainability of the site having regard to traffic and air pollution. This is of particular concern where there are few jobs locally so that many people have to commute. The train and bus services are not sufficiently frequent and increased congestion will only worsen bus times. Sandbach is becoming a commuter town and there is a need to address congestion created by through traffic at peak times as well as that from increased housing numbers. That need is identified in SNP Policy IFT1.
220. Infrastructure is also a concern. The Action Group consider that it will be difficult to maintain support needed for health, social and cultural well-being in providing accessible local services that reflect the community's needs. The appellant appears aware of this by suggesting a health centre instead of a school as initially proposed. That said, the facility is not offered, rather just a site for it is proposed.
221. Mrs Jealous states that schools have not been consulted on the proposal. While standards of education are high locally this attracts many to the area. Although a sum for education is being sought she expresses concern that this will not address the education standards issue.
222. Concern is also raised about the impact of the loss of agricultural land, wildlife and the enjoyment of views from the Wheelock Rail Trail. In her view, this would be contrary to paragraph 109 of the Framework regarding protecting and enhancing valued landscapes as well as Policies PC1 and PC3 of the SNP.
223. The three dimensions of economic, social and environmental gains would not be met so the development would not be sustainable. Moreover, this would contribute to a cumulative development impact which should be taken into account as set out by Brandon Lewis MP.

224. The illustrative masterplan also shows a wider scheme for the land in this area which is of concern to local residents.
225. **Dave Whitworth** is also a member of the Crewe Road and Park Lane Action Group and has been resident in Sandbach for some 19 years. Mr Whitworth explains that his house is adjacent to the site access. He is a mathematic modeller and has taken a particular interest in traffic and air quality matters for the appeal scheme.
226. Mr Whitworth considers that the traffic congestion in Sandbach is currently severe and that the traffic from the proposed development would exacerbate that situation to the extent that the scheme would fail to accord with paragraph 32 of the Framework.
227. Initially the Council recommended refusal on highway grounds due to lack of information. One of the concerns of the Strategic Highways Manager was related to queuing lengths which were observed to be significantly longer than the modelled scenarios. The appellant responded that queue lengths were no more than 55 metres and transient. Mr Whitworth observed queue lengths of 300 metres for much of the peak period, but that at worst it was 700 metres. As such, Mr Whitworth concluded the Strategic Highways Manager was correct to have concerns particularly given that with morning traffic exceeding modelled scenarios by a factor of 10. He also concluded traffic data under-predicts the severity of traffic on the highway network.
228. Mr Whitworth observed that in December 2014 Cheshire Highways entered into an agreement for a commuted sum of £166,000 and subsequently withdrew its objection. He commented that the sum was derived by scaling the monies from another site (Hawthorn Drive) where the sum agreed was to help fund traffic lights and a roundabout. This improvement was to mitigate the impact of the Hawthorne Drive development in Sandbach Heath on the Old Mill Lane corridor to Junction 17 of the M6 motorway. This improvement would have a more limited impact in the area of the appeal site, although this could only be assessed using the Council's VISSIM model. The Hawthorne Drive application has not been determined by the Council but is now to be determined by the SoS.
229. The current position for the appeal is that a technical note has been appended to the appellant's statement calling into question the level of contribution. This statement considers that the development on Crewe Road, when considered on its own merits, will not result in a severe impact on the highway network under the terms of the Framework. Mr Whitworth explains that despite seeking further clarification from the Highways Authority none has been forthcoming.
230. In terms of his own observations Mr Whitworth concludes that the primary cause of congestion is the increasing traffic levels which exceed the capacity of the traffic lights on Middlewich Road at the junction of Chapel Street and the entrance road to Ashfields Medical Centre. He considers this is as a result of roundabout traffic at Crewe Road/Middlewich Road/ Hightown Road backing up so that traffic seeking to turn left to the medical centre cannot do so. This is exacerbated by incorrect use of keep clear areas causing further blocking. The traffic lights are the first controlled junction on Middlewich road and traffic tends to flow more freely on the Sandbach side of these lights. None of the

assessments has carried out an assessment of this traffic light junction nor has VISSIM modelling<sup>51</sup> been undertaken which might have identified it as a possible congestion factor on the Middlewich Road Corridor. If the M6 is disrupted Sandbach can become gridlocked.

231. Mr Whitworth suggests that the Hind Heath Road development might be a better comparator and here some £200,000 was secured for highway improvements. Even this scheme relied on an earlier scheme to be delivered.
232. In conclusion on traffic matters Mr Whitworth considers the scheme cannot be shown to be acceptable unless the VISSIM model is run, that the lack of a LINSIG assessment for the traffic lights by Ashfields Medical Centre is a shortcoming and that the appellant's assessment is invalid. He also concludes that the financial contribution would do nothing to mitigate traffic impact along Crewe Road and that the appeal should be dismissed due to traffic impact and conflict with the Framework.
233. Mr Whitworth also objects to the scheme on grounds of pedestrian safety. Traffic on Crewe Road travels too fast and the site access is too close to Wheelock Primary School at some 82 metres distant. No mitigation is proposed nor has this matter been properly considered by the Highway Authority.
234. In terms of speed, even with a police presence, speeding is reported as occurring with some 17 people stopped for speeding on 19 May 2015 during a police speed check exercise.
235. Mr Whitworth notes the impact of speed on pedestrian safety. He goes on to suggest that the hazards to pedestrians using Crewe Road for the primary and secondary schools could be increased by about 40% but that this has not been assessed by the appellant or Highway Authority. This concern has been raised with the Council and Highway Authority yet there are no notes to confirm that it has been properly assessed. This contrasts with other development sites where refusals on highway safety grounds have been made. He considers that the hazard has not been adequately dealt with by the Highway Authority and that had this happened there would have been a refusal on highway grounds.
236. Turning to air quality issues Mr Whitworth contends that traffic pollution on Middlewich Road is already approaching or exceeding statutory limits. He contends that future traffic related pollution is underestimated because it takes no account of increasing traffic volumes. Thus, on pollution grounds he considers the development unsustainable and to be in conflict with CBLP policy GR6 and CELP Policy SE12.
237. Whilst air pollution is not, he says, likely to cause health problems for the majority of people, some, who are more sensitive including those with pre-existing conditions such as heart disease, may be more severely affected. The area near the appeal site includes sensitive groups such as the young and elderly. The school headmaster has expressed concern about pollution levels.
238. The Council currently monitors air quality. One monitoring point is on Middlewich Road by Ashfields Medical Centre. The measured level here is 39 micrograms/cubic metre for nitrogen dioxide (NO<sub>2</sub>), although it has been

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<sup>51</sup> A modelling package designed for use by the Council to assess specific traffic circumstances



confirmed that it has reached 42 micrograms/cubic metre so exceeding the objective level of 40 micrograms/cubic metre.

239. Mr Whitworth has considered three recent air quality assessments and notes none have allowed for increasing traffic levels and none have allowed for increased HGV traffic resulting from a waste transfer station be granted planning permission at Cledord Lane, Middlewich.
240. Comparing results from the different assessments for similar locations shows discrepancies. For example, at Middlewich Road 30.5 micrograms/cubic metre contrasts with 41.6 at the nearby Crewe Road. The Crewe Road Abbeyfields roundabout assesses 25.7 micrograms/cubic metre whereas Crewe Road assesses 55.8. However, that latter reading is not in a residential area so is not reported in the Crewe Road air quality assessment.
241. Mr Whitworth concludes that the air quality assessment is flawed because it significantly underestimates future pollution from increased traffic, where assessed locations have levels above objective levels no attempt is made to measure nearby residential levels, existing levels on Middlewich Road are close to or exceeding the objective level and this is only likely to increase as traffic increases. Thus he considers that the appeal should be dismissed on grounds of being environmentally unsustainable.

## Written Representations

### *Letters at the Appeal Stage*

242. **Fiona Bruce MP** has written setting out that this appeal proposal has been a concern to constituents for a considerable period during which she has objected to the scheme. The current situation is different to that at the application stage in that Sandbach now has a well supported neighbourhood plan in force. The weight to be attached to neighbourhood plans was confirmed in the House of Commons by Government Ministers and Hansard records Brandon Lewis MP setting out that neighbourhood plans are of prime importance and that they have weight in law. Furthermore where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.
243. In addition to letters from those who spoke at the Inquiry I received letters from Mr John Minshull, Ms Sheila Fairlie, Robert and Mary Vince, Mr Roy Payne, Mr William Frank Jones, the Kennerley Family, M Price, Mr Colin Tucker, Kenneth and Geraldine Johnson, Mrs Carol McDonald, Mrs J C Stanway, Mrs J Simcox, Mr John Jones, and Mrs Alma Jones. All of these people object to the proposal.
244. In addition to the objections raised by the interested parties at the Inquiry they raised concerns regarding the need for a 30 metre buffer around the ancient woodland and impacts on ecology. In addition concerns are raised about sinkhole depressions resulting from salt mining and brine extraction and implications for structural stability of dwellings and on drainage/services along with concerns about the management and maintenance of sustainable drainage systems, flood risk and overloaded sewers.
245. Concerns are also raised about the use of greenfield instead of brownfield land, impacts of fencing (particular to the Wheelock Rail Trail), inadequate doctors' (general practitioner) and dentist facilities, loss of privacy for dwellings on Crewe

Road as a result of dwellings being built behind them (especially 205 Crewe Road due to illustrative layout), and a feeling of being ignored by the planning system. Furthermore, concerns are raised about parking congestion at school times which would be exacerbated by more parents dropping children from the new development creating further gridlock, difficulties for those collecting children from school and particularly grandparents who have to have children while parents work and who are less able to walk far, inadequate school places and lack of consultation with the schools themselves.

#### *Letters at the Application Stage*

246. The Council committee report of 1 December 2014 records that 260 households made objections at the application stage. In addition to concerns set out above, those objections also included concerns about the intention of the scheme to provide financial gain for the developer, noted long term intentions for 450 dwellings on the wider site and expressed concern about precedent for green site development. The objectors also set out that there is no need for further housing with 360 dwellings for sale in the area, that there is a need for retirement bungalows but not executive houses. Concerns were also raised regarding disturbance during construction, visual intrusion, loss of light, noise pollution, noise disturbance from the proposed community facility, archaeological impact and concerns that pre-application consultation was undertaken during the holiday period.

#### **Conditions and Obligations**

247. 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. I have omitted the timing of a community facility within the phasing as without knowing what is needed or justified it seems potentially unnecessary for the much needed housing to be held back for a facility which may not be required. However, retaining a phasing plan requirement would provide opportunity for dialogue between the main parties on this matter in the event that the appeal be allowed. Where necessary, specific conditions have been addressed in the 'Inspector's 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.

248. The s.106 Unilateral Undertaking<sup>52</sup> provides for affordable housing, open space, a secondary education payment, and a contribution to highway improvements and to the Wheelock Rail Trail as well as a secondary education payment, as set out in the details at paragraphs 7-10 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

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<sup>52</sup> INQ16 – note this document is not paginated but I have no reason to consider that this would prevent enforceability

to the development. As explained above, the Highway Contribution would not satisfy the tests of s.122 because the Council considers it now to be unnecessary. I therefore do not attach weight to this matter.

249. In terms of the affordable housing the s.106 provides for a policy compliant requirement and I am satisfied that this affordable housing is needed and fulfils the tests.
250. The open space requirement relates to the needs of the development and these include the provision of a neighbourhood equipped area for play (NEAP) for 4-10 year olds of at least 8 pieces of equipment. The open space, to include all landscaped areas and drainage areas, would be the subject of a management plan (with a service charge). This approach to providing public open space and its management satisfies the tests. 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 INQ20).
251. 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 sum are to provide classroom accommodation and specialist education arising from the needs of the site. The money is to be spent at Sandbach School/Sandbach High or Sir William Stanier Secondary School Crewe which is located 3 miles from the appeal site. The Scheme is identified as Sandbach Secondary Project F. This scheme does not result in any issue with regard to other projects or pooling of s.106 monies. The CIL Compliance Statement (INQ20) sets the calculations out. The Policy basis for this payment is established by CBLP Policies GR1 and GR19.
252. The Wheelock Trail improvements (for which £25,000 is provided) and PROW improvement (£17,280) are appropriate to serve the needs of future residents because access to this route is close to the site. In particular improved access at the western end of the Wheelock Trail is sought, the creation of an access onto Park Lane and an improved pedestrian link. The PROW sum relates to resurfacing of footpath 21 between Mill Hill Lane and Coronation Crescent. The calculation for the sum is set out in INQ20. No other monies have been secured for the PROW works and the monies for Wheelock Trail relate to specific improvements that are not provided for in any other scheme. 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.
253. Thus, from the information and evidence provided, other than in respect of the Highway Contribution, 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***

254. 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 a planning balance are: -

- (a) the planning policy position in terms of the proposal;
- (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***

255. 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.

256. 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 200 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. [50,70,90]

257. 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 SLZ 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. [18,172]

258. 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. [27]
259. The SNP has been assessed for general conformity with the development plan (i.e. the CBLP) and the Examiner was mindful of the emerging CELPS. As such, the SNP policies reflect the CBLP document which it is agreed is out-of-date and has some regard to the CELPS (but was not tested against it) but, in any event, the CELPS 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. [89]
260. 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, even taking the policy as being wholly out-of-date it being a counterpart provision, the objective of recognising the intrinsic character and beauty of the countryside remains a planning matter identified in the Framework which should be weighed in the planning balance. That said, it is of more modest weight than envisaged by CBLP Policies PS8 and H6 due to the wider change in policy background since the CBLP policies were formed. [76-87, 185-186]
261. SNP Policy PC1, whilst seeking to reinforce Policy PC3 has a another role: 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. [162]
262. 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 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, 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. [20-21]

263. 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 traffic, pedestrian safety, air quality, land stability relating to brine workings, specific living conditions issues, and ecological matters, including impacts upon an area of ancient woodland, which also require consideration. [52, 207, 225-241]

### ***Housing Land Supply***

264. 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 it seems to be sizeable. The appellant's case that there is some 3.4 years supply does not appear unrealistic given that the Council considers it to be 3.3 years based on 'Sedgefield' and 3.8 years based on 'Sedgepool' (the Council's amalgamation of elements of the Sedgefield and Liverpool approaches). [27,114, 123-131]
265. The extent of the shortfall, while not agreed, is clearly significant and this is material to the planning balance. This is particularly so given the Framework's objective of boosting significantly the supply of housing.
266. 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. 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. [189,195-200]
267. Furthermore, the SZLs are outdated and it is accepted that they will be breached. Moreover, it is anticipated that land will have to be released from the green belt if housing requirements are going to be met. Thus, it is the case that each site must be considered in that context and on its own specific merits and circumstances. This clearly lessens the weight of policies which establish the boundaries for the SLZs and also the strategic gaps. [102]
268. 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 or not the 'The Albion' site, of 371 dwellings, is 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. It is 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.

269. Thus, on the basis of the evidence before me, the housing land supply situation weighs significantly in favour of supporting the appeal scheme.
270. Although there are no clear figures in respect of affordable housing needs, the Council concedes that affordable housing is a key issue such that the provision of affordable homes is an important benefit of the scheme. The appeal proposal would provide a policy compliant level of affordable housing of mixed tenure. This adds weight in favour of the appeal scheme. [29,132,203]

### ***Character and Appearance***

271. The site currently comprises agricultural fields, some for pasture and others used for crops. There are field hedges which include trees that subdivide the site. The land is gently sloped towards a small valley with a stream running through it. To one side there is the distinct linear form and varied back garden boundaries of the properties facing Crewe Road. Other features outside the appeal site, but close to it, include the Abbeyfields complex built around the main house which is a listed building. To the south of the site is the Wheelock Trail pedestrian/cycle route.
272. The appeal proposal, whilst being in outline only, provides 'masterplan' illustrative details. This indicates a core area towards the centre of the site for a community facility and a woodland park close to the existing woodland area. Dwellings are indicated as following a similar pattern to those facing Crewe Road with loops of development beyond. The dwellings at the new countryside boundary are shown as facing out over that area with the road network coming close to that outer boundary. This form of development would not be dissimilar to that to the north-west of the site and would be of a low density similar to other existing housing. However, it would not particularly reflect the existing housing on this side of Crewe Road which is of ribbon form. In depth development at this point, with a significant access road, would to some extent alter the character of this part of Crewe Road. I note that the appellant's landscape witness explained to me his view that having dwellings looking over the countryside would be preferable to the current rear garden edge, but that does not alter the fact that a change would arise to the pattern and layout of development here. [151-154]
273. In terms of the landscape character, the area is pleasant agricultural land but it is not exceptional in landscape terms. Nonetheless, it is inevitable that developing a greenfield site with housing would alter the character of the area. This is particularly so in this location where the backs of the houses on Crewe Road form a distinct linear boundary. The appeal site comprises a large swathe of land beyond with a much more varied boundary which reflects a field boundary and boundary around the trees but otherwise requires new boundary formation which, in terms of the area annotated 'school playing fields', appears rather uncharacteristic. That said I appreciate it appears intended to remain visually open. [151-154]

274. The development would maintain a good degree of separation from Abbeyfields such that there would be no material harm to the setting of that listed building. [169]
275. In terms of public vantage points the views most altered would be at the access points and, to a lesser extent, the views from the Wheelock Trail. This is because the trail itself is set within a cutting where it is nearest to the appeal site. Views would, however, be significantly altered for occupiers of the neighbouring dwellings but change to those private views is not a harm to which I attach significant weight.
276. Thus, considered in isolation, I do not consider that significant landscape character harm would arise, rather any visual harm would be modest. However, this is different from the assessment regarding the impact on the Strategic Gap to which I turn next.

### **Strategic Gap**

277. Whilst the proposed development would include significant amounts of open space, including a potential school playing field area, and retain hedgerows and trees, a development of up to 200 houses and a community facility would affect the existing open character of the site.
278. It is agreed that the appeal scheme is not a future planned growth or a Policy PC3 development. Moreover, given the policy is out-of-date because of the housing supply situation it is important to look at its intent.
279. Whether or not the impacts of the proposal have been minimised, and in this regard I note that existing hedgerows and trees would be retained on site, it is clear that Policy PC1 puts great weight on the matter of preventing 'further coalescence'.
280. The appellant argues that coalescence is defined as 'different elements of something join together and become one' such that, on strict reading, the proposal would not fail the policy requirement of preventing further coalescence. Being fair, the appellant accepts that a judgement is required on whether there would be a perception of coalescence. I concur with the appellant that preventing coalescence does not mean that no development at all can be acceptable within the strategic gap and, indeed, the policy allows for some forms of development. However, it is also obvious that the policy objective is to keep the strategic gap open. That said, in the current circumstances of extreme housing shortfall, it is necessary to be very clear about whether or not material harm would arise as a result of this proposed development and the extent of that harm. [96, 166]
281. As with the Abbey Road appeal site,<sup>53</sup> 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 definite planning purpose in that respect. The appeal site is a long, linear area of considerable size. In effect, it would move the whole of one edge of the strategic gap westwards. The boundary of the site would wrap around an existing woodland block that currently appears

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<sup>53</sup> APP/R0660/W/15/3128707



free standing and set in agricultural fields. That woodland visually links to the Abbeyfields trees and associated development. Whilst not seen from outside the site, it seems to me that there would be public access to the proposed housing development and, from here, there would be a sense of closing the strategic gap. Moreover, when seen from within the site there would be views towards the football club site, the industrial estate beyond and the edge of Ettiley Heath. It seems to me that, as a result, there would be a real sense the narrowing of the strategic gap. I appreciate that a physical gap of countryside would remain, but the perception of a meaningful gap would begin to be eroded. This would, in part be exacerbated because of the topography as the land in this direction slopes downwards so giving scope for open views across to Ettiley Heath.

282. I also note that the appellant's LVIA acknowledges that there would be a long term, moderate adverse impact from the Wheelock Trail at the most southern part of the site (viewpoint 1). Whilst other viewpoints would be likely to improve over time, the concern that there would be harm to this public view is of greater concern given the objectives of the Strategic Gap policy in the SNP. [169]
283. Although I do not place significant weight on the physical distance, the Council's calculation that the strategic gap would be reduced by between 15 and 31% reinforces my conclusion. [168]
284. On this matter, the configuration of the site, its extent, relationship to existing landscape features and topography are such that there would be material conflict with the objectives and aspirations of SNP Policy PC3 as well as with Policy PC1.

### ***Best and Most Versatile Agricultural Land***

285. 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. [31,155,202]

### **Other Matters**

#### *Sources of Evidence*

286. Concerns are raised by some local residents that the Council has relied upon evidence provided by the appellant. It is normal for planning applications to be accompanied by such documents. It is important to be clear that professionals providing advice do so in accordance with professional codes of conduct. Interested parties, as well as the Council and its consultees, are able to scrutinise that evidence in order that matters of concern are addressed. However, it is not for the Council to provide its own set of comparable reports. [212-213]

### *Highways*

287. Many local residents are concerned that additional road traffic on the network will exacerbate existing traffic issues. However, the traffic modelling shows that the traffic which would be generated by the development could be adequately accommodated, particularly bearing mind ongoing improvements to the road network. Whilst there are likely to be observed queues these would dissipate relatively quickly and so not result in severe highway concerns that would justify withholding planning permission. Neither the Council nor the Highway Authority objects to the scheme on highways grounds. Whilst a commuted sum was initially sought towards highway improvements, that sum has already been secured in association with another development. Those works should therefore assist with improving circumstances on the highway network. [30,140,226, 232]

### *Pedestrian Safety*

288. Concerns about pedestrian safety are raised, particularly with regard to school children and traffic speeds. Traffic speeds can be dealt with through other enforcement means. However, objectors have also referred to traffic congestion at school times which suggests that speed may not be a significant issue. In terms of scheme details, adequate visibility splays would be provided. Moreover, there is no substantiated evidence to demonstrate that there would be material harm to pedestrian safety. Thus, noting that the Highway Authority raise no concerns in respect of this matter, I am satisfied that this proposal would not result in unacceptable highway conditions for pedestrians. [30,233-235]

### *Air Quality*

289. The areas where air quality is recorded as particularly poor are outside the residential environment. The Council is actively monitoring air quality and putting measures in place to protect it where this is necessary. The modelling for this site may vary from that used in other locations. Given that concerns relate to pollutants from vehicular traffic, it is important that opportunities are taken for reducing the reliance on the private car. However, the work on air quality undertaken in respect of this site has not resulted in objections to the scheme by the Council. In the absence of substantiated evidence that indicates significant harm to public health would occur as a result of this scheme, I do not consider it to be a matter of significant material weight in this case. However, I consider that conditions are necessary in respect of this matter. [36,236-241]

### *Living Conditions*

290. Although I understand local residents' concerns regarding the impacts of the proposed development on their living conditions, this is an outline application. There is no substantiated evidence to suggest that a scheme could not be negotiated that would result in acceptable levels of privacy and daylight. Views cannot be protected. There would be additional comings and goings along the access road, but there is adequate space to allow for planted verges to either side. As such, concerns in this regard would not be sufficient to withhold planning permission. [32,38,245]

### *Trees and Ecology including Ancient Woodland*

291. Local residents are concerned about the protection of local ecology and particularly the ancient woodland. That woodland is outwith the application site

and the main parties agree that the position of development on the site could provide an adequate separation. Having in mind the advice of the main parties ecologists I do not find trees or ecology are matters that should preclude development. However, it would be necessary to impose conditions in this regard. [37,39,207, 209, 214]

#### *Listed Building*

292. The Abbeyfields listed building would be well screened from the appeal site by existing planting. I am satisfied that the extent of separation and planting is such that the development would not materially impact on the setting of this listed building.

#### *Brine*

293. Concerns are raised regarding salt extraction from this area and the potential for former brine workings to result in subsidence for both buildings and drainage. Subsidence and stability of the land are matters which would be dealt with under the Building Regulations. Whilst there might be issues which require additional consideration at reserved matters stage, given the size of the site in relation to the housing proposed there is scope to be flexible with the layout. Nonetheless it is essential that, as part of the reserved matters application, a brine site investigation is undertaken and action taken on the resultant recommendations. [218, 244]

#### *Other Issues*

294. It is not unreasonable for developers to seek to make a profit- to do so assists the economy. Whilst the developers of this site may wish to seek a larger scheme I must deal with this proposal on the basis of the application details. [246]
295. While recycling of brownfield land can be preferable to use of greenfield sites, given the housing shortfall in this authority use of greenfield land is inevitable and is not a matter which counts against the scheme in principle. [246]
296. The objectors also set out that there is no need for further housing with 360 dwellings for sale in the area. However, houses for sale do not equate to meeting housing needs as those dwellings are already accounted for in the housing stock. There is no substantiated evidence of a particular need for retirement bungalows. However, this site would provide a significant number of affordable dwellings to provide for those assessed as complying with local housing need criteria, including key workers. [246]
297. Disturbance during construction is an inevitable part of development but can be mitigated in some respects through the use of conditions. Whilst the potential community facility proposed under this appeal might result in noise disturbance that would be a matter to be addressed in a subsequent application. [33,246]
298. There are no outstanding concerns in respect of archaeology. [246]
299. Consultations appear to have generated significant interest so the timing of consultation exercises appears to have had negligible impact on the opportunities for local residents to be involved in the planning process. [246]

### ***The Planning Balance***

300. 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 and for the nearby appeal site I refer to above.
301. 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. In this regard I find the scheme similar to that for the Abbey Road site.
302. In terms of the social role the proposed dwellings would provide much needed homes, including affordable homes that would provide for key workers. 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 services.
303. The housing proposed could bring a very real and tangible benefit to people's lives. It could improve the way in which they live and widen the choice of homes within the community. These reflect important objectives of the Framework.
304. Some local residents may feel that the proposed housing would lead to a diminution in their quality of life. However, the reserved matters stage would enable assessment of precise details and provide for acceptable levels of amenity.
305. The scheme also provides scope for a community facility. However, it is not possible to attach significant weight to this possibility. I was advised at the Inquiry that there is no need for monies for primary school facilities so such a scheme as shown on the masterplan may be unlikely. No other particular community facility need has been cited. Thus the potential benefit of a community facility is simply that and so cannot attract significant weight.
306. In terms of social impacts I am aware of the strong local perception that if the endeavours to create the SNP are to prove worthwhile it needs to be seen to be effective in planning decisions. In essence, local residents wish to see that their neighbourhood plan, as part of the development plan, is upheld. However, in this case the housing related policies of the SNP were out-of-date on the day that they were made.
307. Nevertheless, the SNP is an important document in terms of community planning. However, this does not outweigh the social benefits of providing much needed housing, including affordable housing.
308. Turning to the environmental role, I have not identified specific harm to wildlife or ecology. However, the essentially irreversible loss of open countryside, despite its lack of significance in terms of particular landscape character and the inevitable loss of such land in this authority, is of concern because of its location within a strategic gap. Whilst the scheme would not result in a coming together

of settlements, I have no doubt that the erosion of the strategic gap would have the effect of increasing the perception of settlements beginning to merge. This would be seen from within the host site and at points outside the site, particularly from the Wheelock Trail, an important local pedestrian/cycle route that runs along the periphery of and between the 'village' areas of this part of Sandbach. There would also be a significant change as a result of the in depth development behind Crewe Road into that strategic gap which would be seen from this main thoroughfare.

309. Some environmental improvements are proposed. However, they essentially relate to the need to mitigate the scheme thus I accord them little weight as benefits of the proposal.
310. Overall, I conclude that there would be environmental harm.
311. 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. I recognise the social and economic benefits of the proposal. However, having in mind paragraphs 7 and 8 of the Framework which make it plain that the roles should not be taken in isolation, because they are mutually dependant, the environmental harm so significantly outweighs the benefits that I cannot conclude the proposal would be sustainable development.
312. I understand that the appellant considers that my recommendation should be the same for both this and the Abbey Road appeal. However, the sites are materially different in their relationship to the surrounding areas. I have assessed and judged each on its own merits having regard to what I have heard, read and seen.

### **Inspector's Recommendation**

313. I recommend that the appeal be dismissed.
314. Should the Secretary of State come to a different conclusion I recommend that the conditions in the attached Annex A are imposed.

*Zoë H R Hill*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Scott Lyness	Instructed by P Evans
He called	
Mr Adrian Fisher	Planning Witness
	Cheshire East Council

### FOR THE APPELLANT:

Giles Cannock	Instructed by Nick Lee
He called	
Mr Iain Reed	Landscape Witness
	Iain Reed Landscape Planning Limited
Mr Nick Lee	Planning Witness
	Managing Director NJL Consulting

### INTERESTED PERSONS:

Cllr Mick Benson	Sandbach Town Council
Mr James Harris	Local Resident
Mrs Carolyn Jealous	Local Resident
Mr Dave Whitworth MIMA, Chartered Mathematician	Local Resident

## INQUIRY DOCUMENTS AND PLANS (SUBMITTED AT THE INQUIRY)

INQ1	Drawing No SK21328-001 (access plan)
INQ2	Statement of Dave Whitworth
INQ3	Statement of Carolyn Jealous
INQ4	Statement of Cllr Benson
INQ5	Statement of James Harris
INQ6	Draft Planning Obligation
INQ7	Sandbach Commitments Sheet
INQ8	Opening Submissions on behalf of the Appellant
INQ9	Opening Submissions on behalf of the Council
INQ10	Existing Land Uses and Site Boundary
INQ11	Draft Conditions
INQ12	Statement of Common Ground
INQ13	Core Reading List
INQ14	Technical Note (Transport)
INQ15	Cheshire 2011 – Replacement Structure Plan extract
INQ16	Additional condition (Brine)
INQ17	Woodcock Holdings [2015] EWHC 1173 (Admin)
INQ18	Suffolk Coastal [2016] EWCA Civ 168
INQ19	Certified Copy of s.106 Agreement
INQ20	CIL Compliance Statement
INQ21	Closings for the Council
INQ22	Closings for the Appellant

## POST EVENT DOCUMENTS

- INQ23 Revised Statement of Common Ground
- INQ24 Further Technical Note - Highways

## CORE DOCUMENTS

### 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 6
- CD 30 The Framework March 2014
- CD 31 Housing Delivery and Topic Paper (February 2016) (extract)
- CD 32 Interim Planning Statement: Affordable Housing (extract)
- CD 33 Cheshire East Housing Development Study 2015 ORS (June 2015)
- CD 34 Cheshire East Council Report to: Council, Cabinet and Strategic Planning
- CD 35 National Character Area 61: Shropshire, Cheshire and Staffordshire Plain (extract)
- CD 36 Cheshire landscape Character Assessment: East Localan Plain Landscape Character Type and ELP5 Wimboldsley Landscape
- CD 37 Landscape Assessment of Congleton: Wheelock Rolling Plain Character Area (extract)
- CD 38 Green Infrastructure Framework for North East Wales, Cheshire and the Wirral (extract)
- CD 39 Guidelines for Landscape and Visual Impact Assessment (3<sup>rd</sup> edition) (extract)
- Folder 7
- CD 40.1 Application Covering Letter, Forms and Certificates



- CD 40.2 Site Location Plan
- CD 40.3 Planning Statement
- CD 40.4 Statement of Community Involvement
- CD 40.5 Design and Access Statement
- CD 40.6 Transport Statement
- CD 40.7 Sustainability and Climate Change Statement
- CD 40.8 Arboricultural Impact Assessment
- CD 40.9 Archaeological Desk Based Assessment
- CD 40.10 Agricultural Land Classification
- CD 40.11 Flood Risk Assessment
- CD 40.12 Noise Assessment Report
- CD 40.13 Outline Utility Strategy
- CD 40.14 Phase 1 Desktop Study
- CD 40.15 Topographical Survey
- CD 40.16 Landscape and Visual Impact Assessment

Folder 8

- CD 40.17 Environmental Statement
- CD 40.18 Environmental Statement Non-Technical Summary
- CD 40.19 Extended Phase 1 Habitat Survey
- CD 40.20 Ecological Surveys
- CD 40.21 Constraints and Opportunities Map
- CD 40.22 Design Principles
- CD 40.23 Ecology Boundary Sections
- CD 40.24 Illustrative Masterplan
- CD 40.25 Rural Interface Sections
- CD 40.26 Site Boundary
- CD 40.27 Site Structure
- CD 41.1 Archaeology
- CD 41.2 Cheshire Brine Board
- CD 41.3 Ecology Response
- CD 41.4 Education Contribution
- CD 41.5 Environment Agency
- CD 41.6 Environmental Protection
- CD 41.7 Flood Risk
- CD 41.8 Highways
- CD 41.9 Housing Officer
- CD 41.10 Landscape Officer
- CD 41.11 Natural England
- CD 41.12 POS
- CD 41.13 Sandbach Town Council
- CD 41.14 Tree Officer
- CD 41.15 United Utilities
- CD 42.1 Pre-application meeting note and advice note
- CD 43.1 Officer's Report to Strategic Planning Board – March 2015
- CD 43.2 Officer's Report to Strategic Planning Board – June 2015
- CD 43.3 Decision Notice
- CD 43.4 Strategic Planning Board Officer's Report - February 2016
- CD 43.5 Strategic Planning Board Minutes - February 2016
- CD 44.1 Appeal Form
- CD 44.2 Appellant Statement of Case
- CD 44.3 Appeal Procedure Choice

CD 44.4 CEC Statement of Case

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 1, 2 and 3 relate to another appeal (APP/R0660/W/15/3128707) so are not included for this appeal (some of the other folders are common to both appeals)

Richborough Estates

## 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) Prior to the commencement of development a Brine Risk Assessment which includes details of structural precautions which will be incorporated into the development to protect against brine subsidence damage shall be submitted to the local planning authority for approval in writing. The development shall be completed in accordance with the approved details.

*Reason for the condition:*

*To ensure the site is developed in a satisfactory and safe manner.*

- 4) This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

- Drawing No. 013-014a-P001                      Location Plan
- Drawing No. SK21328-001                      Access Plan

The housing development shall be substantially in accordance with the Illustrative Masterplan (Drawing 013-014a) and the Design and Access Statement.

*Reason for the condition:*

*To ensure the site is developed in accordance with the approved plans.*

- 5) 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. The 'development' refers to the development of up to 200 dwellings and a community facility. The development shall be carried out in accordance with the approved phasing plan.

*Reason for the condition:*

*To ensure the site is developed in accordance in a phased manner to ensure services and facilities are provided for each phase as required.*

- 6) No dwelling on any phase of the development or the community facility shall be occupied until the access for the proposed phase of development, as shown on drawing no. SK21328-001 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 the site is developed with suitable highways access in the interests of highway safety.*

- 7) No development hereby permitted shall be commenced until such time as detailed proposals for the disposal of surface water (including a scheme for on-site storage and regulated discharge) and a scheme to limit the surface water runoff 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 any part of the development hereby permitted.

*Reason for the condition:*

*To ensure the site is developed with suitable drainage in the interests of the safe and satisfactory living and working conditions of those using the site once developed.*

- 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 the site is developed with sustainable travel objectives in the interests of reducing the need to travel by car thereby reducing traffic congestion, use of fossil fuels and air pollution levels.*

- 9) Prior to the commencement of development 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 support sustainable travel objectives in the interests of reducing the use of fossil fuels and air pollution levels associated with the site.*

- 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:

- a) The hours of construction work and deliveries;
- b) the parking of vehicles of site operatives and visitors;
- c) loading and unloading of plant and materials;
- d) storage of plant and materials used in constructing the development;
- e) wheel washing facilities;
- f) 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
- g) details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint
- h) 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;
- i) waste management which shall include the provision that there shall be no burning of materials on site during demolition / construction
- j) a scheme to minimise dust emissions arising from demolition / construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.

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

*Reason for the condition:*

*In the interests of local residents living near to the site and in the interests of the wider environment.*

11) Prior to the development commencing:

- (a) A Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority in accordance with the recommendations of the Phase I desktop report, ensuring all likely risks are considered.
- (b) If the Phase II investigations indicate that remediation is necessary, then a Remediation Strategy shall be submitted to, and approved in writing by, the local planning authority. The remediation scheme in the approved Remediation Strategy shall then be carried out.
- (c) 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 or occupation of any part of the development hereby approved.

*Reason for the condition:*

*To ensure that the site is safe for workers and future occupiers.*

12) No phase of development shall commence until a Habitat and Landscape Management Plan (HLMP), 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 HLMP.

*Reason for the condition:*

*In the interests of local ecology and the well-being of future occupiers arising from their environment.*

- 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 of protection shall be retained throughout the period of construction of the phase.

*Reason for the condition:*

*In the interests of local ecology and the well-being of future occupiers arising from their environment.*

- 14) No construction works in any phase of development shall take place between 1st March and 31st August in any year, until a detailed survey of nesting birds has been submitted to the local planning authority, and a 4m exclusion zone established around any nest found. No development of that phase shall take place within the exclusion zone until a report confirming the completion of nesting has been submitted to and approved in writing by the local planning authority.

*Reason for the condition:*

*In the interests of local birdlife and the wider environment.*

- 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 retained thereafter

*Reason for the condition:*

*In the interests of local birdlife and the environment.*

- 16) No 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 any 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. These approved measures shall be implemented in strict accordance with the approved details.

*Reason for the condition:*

*In the interests of the protection of Badgers and the environment.*

- 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:
- details of the design of one wildlife pond to be constructed within the open space including sections and landscaping;
  - details of proposals to enhance opportunities for bio-diversity on the site (including native tree planting and species rich grassland);
  - the provision of a buffer to the Wheelock Rail Trail designated Local Wildlife Site (LWS); and,
  - a timetable for implementation of the agreed measures.

The approved scheme shall then be fully implemented in strict accordance with the approved details and strategy.

*Reason for the Condition:*

*To ensure that adequate mitigation is made for the loss of the open countryside to housing and for the protection of wildlife.*

- 18) The reserved matters application(s) shall include details of a minimum buffer of at least 15 metres, and exceeding that if identified as necessary, between the ancient woodland and the development. For the avoidance of doubt the buffer shall be of semi-natural habitat only and shall not include footpaths/cycleways, SuDS ponds, formal public open space or playing fields.

*Reason for the Condition:*

*In order to protect the ancient woodland.*



## **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.