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## Appeal Decision

Inquiry held on 6 to 8 September 2016

Site visit made on 8 September 2016

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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

**Decision date: 26 October 2016**

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**Appeal Ref: APP/R0660/W/15/3139474**

**Land to the rear of 144 Audlem Road, Nantwich, Cheshire CW5 7EB**

- 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 Wainhomes (North West) Ltd against the decision of Cheshire East Council.
  - The application Ref 15/3868N, dated 21 August 2015, was refused by notice dated 23 November 2015.
  - The development proposed is residential development for up to 104 dwellings (Use Class C3) and land for expansion of Brine Leas School (Use Class D1).
  - At the Inquiry an application for costs was made by Wainhomes (North West) Ltd against Cheshire East Council. This application is the subject of a separate Decision.
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### DECISION

1. The appeal is dismissed.

### The Appeal Site and Proposal

2. The appeal site, some 6.2 hectares, comprises one residential plot of land fronting onto Audlem Road and two fields which lie between Brine Leas School to the north and Elliot's Wood to the south. The illustrative layout shows the larger southern field developed for housing, including public open space. The main access road, an area of ecological mitigation and a small number of homes would occupy part of the northern field.
  3. The remaining land is proposed for the expansion of Brine Leas School. The description of the proposal requires amendment in order to identify a specific act of development for which planning permission is sought. The description 'a material change in the use of the land to use for educational purposes (Use Class D1)' was agreed by appellant. The stated Use Class indicates that any sport or recreational facility would be ancillary to a primary educational use, as distinct from a D2 Use Class, which includes use of an area for outdoor sports or recreation.
  4. On 21 January 2016 the Secretary of State directed that the proposal is not Environmental Impact Assessment development.
  5. The planning application sought outline permission and approval of access in respect of the housing development. All other matters regarding appearance, landscaping, layout and scale are reserved. The details of access for determination primarily relate to those associated with the proposed junction
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- with Audlem Road and do not include details within the housing site. The proposed access arrangements are the same as those approved when outline planning permission was granted on appeal by a decision dated 4 August 2014 for up to 40 dwellings on the northern field (the 2014 decision)<sup>1</sup>.
6. Following that decision, a layout of 33 dwellings and applications to discharge pre-commencement conditions were approved. Planning permission was granted to demolish the bungalow at 144 Audlem Road and the work was carried out to facilitate the access into the site. The Council did not dispute that the development allowed in 2014 has commenced.
  7. A resubmission of the outline proposal for up to 104 dwellings, including public realm enhancement proposals for Audlem Road, was refused planning permission by the Council in July 2016. The appellant was willing for the enhancement scheme to form part of a permission for the current outline scheme, if deemed necessary to overcome any objection. Having heard submissions, I explained at the start of the inquiry that the proposals formed no part of the appeal application and were not considered necessary by the appellant to provide a safe scheme. A definite proposal has to be under consideration to ensure clarity for all concerned and it was not for me to select one of two options. Accordingly the public realm enhancement proposals will not be taken into account.
  8. Following the inquiry I requested submissions from the appellant and the Council on whether the outline form of application referred only to the housing proposal and in the context of a possible split decision whether the proposed change of use is clearly severable from the housing development. The appellant confirmed that the primary and overriding purpose of the application is the proposed residential development. With reference to the *Elliot* case<sup>2</sup>, the proposed change of use of land was stated to be part of a hybrid application. The appellant also confirmed that the open space (the educational land) is only being offered as part of the proposal for housing development. In the event permission is not granted for the housing development the land would not be made available to the school. The Council was also of the opinion that the development should be judged as a single development and both parties considered it would not be appropriate to grant permission for the change of use if the residential element is refused. Given that consensus, I will determine the proposal as a composite hybrid scheme.

### **Planning Policy**

9. The development plan for the area is the Crewe and Nantwich Replacement Local Plan 2011, adopted in 2005 (the Local Plan). The appeal site, apart from the plot of the former bungalow, is located outside the settlement boundary of Nantwich as defined on the Proposals Map. The Local Plan pre-dated the National Planning Policy Framework (the Framework) and therefore due weight should be given to relevant policies according to their degree of consistency with the Framework. Furthermore, at the present time the Council is unable to demonstrate a five year housing land supply. Therefore, having regard to paragraphs 14 and 49 of the Framework, relevant policies in the Local Plan for the supply of housing are out of date. The *Richborough Estates* Court of

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<sup>1</sup> Ref APP/R0660/A/13/2204971

<sup>2</sup> *Elliot v Secretary of State for Communities and Local Government* [2013] EWCA Civ 703.

Appeal judgement is the authority for the proper interpretation and application of paragraph 49 of the Framework<sup>3</sup>.

10. The Cheshire East Local Plan Strategy was submitted for examination in May 2014. Following the initial hearings and interim views of the Inspector further work was carried out. A Consultation Draft of the Proposed Changes was published in March 2016 and hearing sessions to consider the changes opened in September 2016. The earliest date for adoption of the Local Plan Strategy is likely to be the summer of 2017. In view of the stage reached in its preparation and the unresolved objections the emerging policies have limited weight.
11. The Stapeley and Batherton Neighbourhood Plan mainly covers the rural area to the south east of Nantwich, although part of the built-up area of the town is included. In the vicinity of the site, the plan area boundary follows the boundary between the northern and southern fields. There are significant objections to the Neighbourhood Plan arising from the Regulation 14 consultation stage. The Neighbourhood Plan is at a relatively early stage in its preparation and the relevant emerging policies have little weight.
12. Consequently in determining this appeal I will rely on the relevant Local Plan policies and the Framework.

### **Main Issues**

13. These are:

- The effect of the proposed junction and associated highway works on highway safety and the functions of Audlem Road.
- Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme such that the proposal does not represent sustainable development.

### **Reasons**

#### **Highway safety**

##### *Policy and guidance*

14. Referring to the development plan for the area, Policy BE.3 of the Local Plan is the only policy cited in the Council's reason for refusal. The relevant requirements of this policy are that new development should provide safe pedestrian access and safe vehicular access and egress arrangements. The statement of common ground also draws attention to Policy BE.2. This policy requires proposals to achieve a high standard of design, wherever possible to enhance the built environment and to provide a layout of buildings, roads and spaces which increases public safety. Policy TRAN.3 requires appropriate provision to be made for pedestrians.
15. The Framework in paragraph 32 requires that decisions should take account of whether:
  - safe and suitable access to the site can be achieved for all people; and

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<sup>3</sup> *Suffolk Coastal & Hopkins Homes Ltd & Secretary of State for Communities and Local Government, Richborough Estates Partnership LLP & Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168

- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
16. The Framework also states that high quality and inclusive design goes beyond aesthetic considerations. In summary, decisions should address the connections between people and places. The aim should be to ensure that developments will function well and add to the quality of the area over the lifetime of the development. Permission should be refused for development which would not fulfil that aim<sup>4</sup>.
17. National Planning Practice Guidance advises that a Transport Assessment may propose mitigation measures where these are necessary to avoid unacceptable or "severe" impacts. The Guidance also indicates that Assessments can positively contribute to creating accessible, connected and inclusive communities, improving health outcomes and quality of life and improving road safety. Measures should not be used to penalise motorists.
18. Manual for Streets and Manual for Streets 2 set out principles of inclusive design and include advice on a range of issues. Context and street types, carriageways, visibility, pedestrian and cyclist needs are the most relevant considerations in this case.
19. Mr Walpole, the Council's highway witness, helpfully drew attention to additional policy considerations. An objective of the Local Transport Plan 2011-2016 is to improve road safety for all users and to increase personal and community safety. At national level the Strategic framework for road safety, published in 2011, refers to the importance of local decision making and of prevention in addressing the problem of road traffic injuries.
20. Therefore highway safety is integral to and very much related to the quality of the local environment and promoting healthy communities.

*Character and function of Audlem Road*

21. Audlem Road, part of the A529, connects Nantwich to Market Drayton and is one of the main routes into the town from the south. There is a traffic signalled controlled junction at its northern end, where Audlem Road connects with the highway network serving the town and the wider area. In the vicinity of the site access Audlem Road is a single lane carriageway subject to a 30 mph speed limit. Footway provision is continuous on the eastern side of the road, although the width is below the 2 metre (m) minimum width in Manual for Streets<sup>5</sup>. On the western side a footway only occurs north of number 112. At the Batherton Lane junction there is a pinch point because of the siting and building line of the Toll House. Waiting restrictions apply along a short section of the road near the traffic signals but otherwise residential on-street parking occurs at varying levels throughout the day, more particularly on the eastern side of the road.
22. The housing fronting onto both sides of the road contributes to a residential character north of Batherton Lane. A sense of enclosure is particularly

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<sup>4</sup> The Framework section 7 particularly paragraphs 56-58, 61 and 64.

<sup>5</sup> Manual for Streets paragraph 6.3.22 states: "There is no maximum width for footways. In lightly used streets (such as those with a purely residential function) the minimum unobstructed width should generally be 2m."

noticeable along the section between the Toll House to just north of the site access plot as a result of the proximity of the buildings to the highway. Many properties have on-site parking space<sup>6</sup>. The chapel and the Globe public house are thriving community facilities that generate activity associated with daily use and regular functions. Each has its own car park. South of Batherton Lane the houses are restricted to the south side of the road leading to a more spacious semi-rural character. The houses on the Bishops Wood development are grouped around culs-de-sac off an estate access road, which joins Audlem Road to the south of Batherton Lane.

23. The traffic flow information obtained in March 2015 shows that over a 12 hour period (0700 to 1900 hours) the total flow is in the order of 3,029 vehicles and 3,519 vehicles over a 24 hour period. Total 2-way flows in the morning peak hour (0800 to 0900 hours) are in the order of 390 vehicles and in the evening peak (1700 to 1800 hours) 288 vehicles. However, coinciding with the end of the school day, the mid-afternoon total flow of 328 vehicles (1515 to 1615 hours) is higher than the evening peak. The proportion of heavy goods vehicles (HGVs) is less than 5% of total flow.
24. Overall, the volume of traffic and numbers of HGVs on Audlem Road are significantly lower than at the locations on the three 'A' classified routes in the Nantwich area for which the figures were reported<sup>7</sup>. However, as I observed on my site visits, Audlem Road is busy during the peak hours. It is a bus route, an important traffic route to the nearby schools and is used regularly by agricultural vehicles. The impact of heavy goods vehicles, although relatively low in number, is not to be underestimated.
25. In respect of pedestrian movements, Mr Khan (the appellant's highways witness) described Audlem Road as a principal access route to Weaver Primary School and Brine Leas Secondary School and to other destinations to the north, including the town centre. No survey information exists for pedestrian movements. The Headmaster of Brine Leas observed that the number of pupils walking on Audlem Road was in the order 'of pennies'. This description was consistent with the small number of pupils seen when the accompanied site visit took place between 0800 and 0900 hours. There was no noticeable flow of children attending the primary school either. As noted above, the presence of the schools has a more obvious effect on vehicular traffic.
26. According to the Council's survey information, pedal cycles/motor cycles form about 2.1% of vehicle movements (24 hour weekday average), which amounted to 74 movements in total. Whilst not high, the numbers are significant.
27. The accident information over a five year period 2011-2016 did not record any personal injury accidents within the vicinity of the proposed site access. The reported 4 personal injury accidents occurred slightly further south, 3 involving collisions with parked cars and the other incident involved a vehicle reversing out of a private drive. The accident record does not indicate the existing highway design causes a safety problem.
28. Manual for Streets identifies five principal functions of streets, of which place and movement are the most important in determining character. Having regard

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<sup>6</sup> Mr Khan's Appendix B Drawing B6 shows what he considers to be existing off-street car parking provision.

<sup>7</sup> See Appendix D Data D5 in Mr Khan's Appendices for the 2014 appeal.

to various factors such as use, the presence of facilities, traffic volume and the role within the highway network, I consider Audlem Road in the near vicinity of the site access is a residential street with a medium movement function and a medium place function. Parking is also a key function for some residents who rely on the street to meet their parking needs.

29. The development would result in a new area of housing to the west of Audlem Road. The illustrative layout indicates that the housing site would be self-contained and inward looking with no frontages to the main road. The travel plan is in outline form and provides no guidance as to targets for modes of travel. As I explain in more detail later in my decision the walking distance between the proposed homes and local facilities is such that residents probably would use their car for most trips, apart from walking to the two nearby schools. Taking into account these considerations and the proposed new infrastructure my conclusion is that Audlem Road would continue to be a residential street with a medium movement function and a medium place function.

*Proposed access*

30. The main access to the proposed development would involve construction of a new priority T junction onto Audlem Road, utilising the plot of land previously occupied by a bungalow at number 144. The existing carriageway would be narrowed to 5.5 m over a length of approximately 160 m in order to provide lateral visibility splays. As a result a new footway along the western side of Audlem Road would be constructed, 1.9 m in width by the site access and tapering down towards the northern and southern ends. By addressing the existing deficiencies in pedestrian provision, a design objective is to enhance highway safety and to promote pedestrian priority over vehicular traffic to achieve a better balance between the place and movement functions of the street. The Batherton Lane/Audlem Road junction would be improved by increasing visibility, especially to the south, by slightly narrowing the road through carriageway hatching. The minor works involve road markings only and the appellant accepts that this improvement is not required for the development.
31. No capacity issues are forecast as a result of the scheme. The major concern of the Council is that the development would have a severe and unacceptable impact on road safety, with the reduction in the carriageway width preventing Audlem Road from fulfilling its function as an important transport corridor. Residents, too, strongly object to this element of the scheme for a wider range of reasons.

*Carriageway narrowing*

32. The existing carriageway of Audlem Road is approximately 7.2 m to 7.4 m wide, which enables the largest vehicles travelling in opposite directions to pass, provided there is no on-street parking. Two cars travelling in opposite directions also can easily pass one another and, as I observed, by reducing speed they are able to pass a parked car as well.
33. Manual for Streets 2 advises on carriageway and lane widths and sets out a number of local considerations that should be taken into account when

determining lane widths<sup>8</sup>. The needs of cyclists are highlighted in the document. In this case, little attention appears to have been given to cyclists, the effect of the proposed street works on their safety and how cycling by new residents could be encouraged.

34. A reduction in carriageway width to 5.5 m would require large vehicles travelling in opposite directions to pass at very low speeds, with their nearside wheels running against the kerb and their mirrors overhanging the footway. Mr Khan had no concern because he considered the scenario described would be 'very remote'. He believed that a scenario causing personal injury was hypothetical in any event because the wing mirrors would be above the height of the tallest man.
35. The numbers of HGV's and a short 1 day video survey indicate that the probability of two large vehicles meeting would not be a very frequent occurrence. However, to say the scenario would be very remote is too dismissive and the consequences do require consideration. A carriageway of 5.5 m would enable a bus or lorry to pass an oncoming car with a clearance of some 50 cm, which in practice would mean vehicles slowing down and pulling into the nearside kerb to pass safely. Encroachment of a large vehicle very close to the pedestrian space would reduce safety, especially for people using the narrower sections of footway. The margin for error would be reduced compared with the current situation. Even without actual physical contact or harm, the presence of large vehicles in such proximity would be intimidating, as indicated in Manual for Streets<sup>9</sup>. In my judgement, the resulting situation would not be at all desirable along this residential stretch of the road. There would be harm to the place function as well as the movement function.
36. The probability is that on-street car parking would continue to occur on Audlem Road despite the improved visibility at some properties and the provision of the parking bays on the site access road, matters that I will return to. Parked vehicles would mean that one vehicle at a time would be able to proceed along the carriageway. In effect there would be one way working and potentially an increase in the amount of manoeuvring in the carriageway as vehicles negotiate the parked cars.
37. As a result of a driver's poor judgement the situation also may arise that a vehicle would have to reverse to enable an oncoming vehicle to get through. I observed such an occurrence just before 0800 hours on the site visit when a HGV, which did not slow down, was unable to pass the parked cars before it met an oncoming car near the pinch point by the Toll House. The HGV had to stop suddenly and the car had to reverse. This incident lends support to the Council's case that a reduction in carriageway width would lead to an increase in the likelihood of head on collisions or collisions with parked vehicles. Also, visibility for a driver travelling behind the HGV would be effectively blocked by the HGV and therefore a sudden stop may not be anticipated, resulting in a collision from behind. It could be said that this was a very unusual or atypical event that just happened to coincide with the AM peak site visit and consequently it should have little weight. However, the incident is consistent with the evidence of the residents who emphasised the daily difficulties and hazards caused by HGVs.

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<sup>8</sup> Manual for Streets 2 paragraphs 8.61 to 8.6.12

<sup>9</sup> Manual for Streets paragraph 6.3.17

38. A stage 1 and 2 road safety audit (RSA) was carried out on the proposal in May 2016. Seven problems were identified. Problem 1 was that with the proposed road narrowing opposing large vehicles such as HGVs may have difficulty passing one another without increased risk of head-on conflicts. Even though the design response was accepted, reservations were expressed. The video traffic survey was considered as a snap shot and not indicative over a longer period. This reflects my own opinion, especially as the survey was based on current day HGV flow, which may be subject to short term fluctuations or more sustained increase over time. Furthermore, the auditor was of the view that it may be reasonable to expect and provide for 2-way HGV flow on this 'A' class road. The 'on balance' conclusion was that the narrowing may be appropriate in this instance given the relatively short length of narrowing and observed HGV flow. This does not amount to a clear endorsement of the narrowing element of the scheme.
39. A stage 1 RSA dated 2 June 2016, carried out at the request of the Council, also identified a problem of vehicular conflict as a result of the proposed reduction in carriageway width. The appellant did not have the opportunity to submit a design response to see if the auditor's concerns could be overcome. However, I find it very significant that the same road safety hazard is being consistently highlighted.
40. The Framework Travel Plan confirms that Audlem Road is a bus route for an hourly service Monday to Saturday between Nantwich and Whitchurch via Audlem. A single service operates on a Wednesday between Nantwich and Market Drayton. I also noted a school bus service uses the road. Manual for Streets advises that carriageways on bus routes should not generally be less than 6.0 m wide, although this width could be reduced on short sections with good inter visibility between opposing flows. The presence and arrangement of on-street parking and the manner of its provision are factors also identified by Manual for Streets 2 as affecting width requirements. This initial review indicates that the proposal is not in accordance with the guidance, which could have an adverse effect on the movement function. A similar conclusion applies to emergency vehicles.

*On-street parking*

41. On-street parking occurs within the vicinity of the proposed site access and it was a feature commented on and taken into account in the road safety audits<sup>10</sup>. To establish existing levels of on-street parking the appellant referred to a 'number of surveys'. In fact, the reported surveys in his evidence consisted of one carried out by Mr Khan on the morning of 4 October 2013, when he observed 7 cars parked just before 0800 hours and 4 cars at about 0900 hours. In addition a single count on 16 December 2013 showed 9 cars parked at 2300 hours. Reliance is also placed on the inspector's observation in the 2014 decision that during his site visits at least four cars, and during the evening 8 cars, were parked along the western side of the road (the probability is that it should read eastern side). The parking takes place despite the existing availability of space within residential curtilages to park a car off the road.
42. Mr Walpole was unable to conduct his own survey because of the available period coinciding with the summer holiday. Residents in their evidence referred

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<sup>10</sup> Both audits included photographs of vehicles parked on the street close to and opposite the proposed junction.



to increasing levels of parking due to new younger residents moving into the street, the parking of delivery and trade vehicles. Attention was drawn to the on-street parking outside the chapel in connection with weddings and funerals, notwithstanding the car park at the rear. On my visits (during the morning and evening peaks, the afternoon and early evening) the levels of parking were slightly higher than reported in the surveys.

43. I take issue with Mr Khan's descriptions of the parking as 'very low' and 'limited' because these expressions do not adequately bring out the adverse effect of the parking on the flow and movement of vehicles along the road, even without the proposed reduction in width. In fact on-street parking is recognised as a matter that needs to be addressed because the proposal includes as mitigation a parking lay-by on the site access road to accommodate a minimum of 6 cars. Mr Khan's expectation is that the lay-by would be used by some, if not most, of the local residents who currently park on the street because it would be safer and residents would be able to see their cars from their homes. I do not share that optimism because some residents, particularly those who have mobility problems, need to park directly outside their home and the spaces would be visible to only a few residents. Mr Khan also accepted that manoeuvring on the estate road near the new junction should be discouraged by providing a turning facility further within the site. This would increase the inconvenience to residents and be an additional discouragement to use the spaces.
44. Mr Walpole was of the opinion that the level of on-street parking would increase if the carriageway width is reduced because it would be harder to turn into and out of private drives. He anticipated that local residents may choose to park on street during the day and put the car in the drive overnight. However, that may be the current practice. Also, there would be some improvement in visibility for manoeuvring as a result of the new footway. The indication was that a dropped kerb would be provided where garden space has been converted to parking, such as in front of the terrace north of the Toll House, to make access into driveways easier.
45. The probability is that on-street parking levels would remain similar to the current levels given the factors encouraging and discouraging continuation of on-street parking. The likelihood is there would be no material reduction. There is also a probability that the reduced carriageway width would encourage vehicles to be parked with one wheel on the footway – a practice that I noted occurs now where a larger car is parked. Conditions for pedestrians would suffer as a consequence.
46. Mr Walpole's evidence as well as the RSAs identified problems at the proposed site access junction. Concern was expressed that because of on-street parking and the reduction in carriageway width there would effectively be one lane available. The May audit concluded there may be an increased risk of head-on conflicts between overtaking southbound vehicles and vehicles turning left out of the proposed site access junction. Subsequently the designer's response was accepted. The June RSA highlighted the increased difficulty of leaving the proposed junction and the potential for drivers to have to drive on the wrong side of the road.
47. With the benefit of exploration of evidence at the inquiry I have reservations about various points raised by Mr Khan in the response to the auditor, notably

on the description of parking levels and the likely use of the proposed lay-by. The probability is that there would be one way working at the site access, which would not be a desirable or typical design feature. The result would be a reduction in highway safety.

48. Linked to this issue, the May RSA expressed concern that large vehicles turning into or out of the junction may find it difficult to manoeuvre without the risk of kerb over-running or encroaching into the opposing traffic lane risking head-on conflicts with passing vehicles. The risk assessment was accepted eventually by the auditor. Nevertheless in practice on-street parking close to the site access would be a constraint on turning movements. Vehicle tracking diagrams for a refuse vehicle provided by Mr Khan show only two of a possible four manoeuvres and the wheels are very close or practically on the kerb line. Tracking diagrams for the previous appeal<sup>11</sup> show how a refuse vehicle would require much of the narrowed carriageway to manoeuvre and the effect of a parked vehicle. The probability is that on occasions the junction would not function well. Dependent on the circumstances a large vehicle would be unable to manoeuvre entirely within the carriageway and therefore would over-run the kerb to the detriment of pedestrian safety. The daily number of large vehicles using the junction such as refuse vehicles, removal lorries and delivery vehicles, would be low but nevertheless the potential adverse effect cannot be discounted.

#### *Visibility*

49. The relevant guidance on visibility is set out in Manual for Streets 2, which incorporates the guidance in Manual for Streets and research findings. Visibility requirements are based on stopping sight distance (SSD), which is the distance drivers need to be able to see ahead in order to stop from a given speed. It is calculated from the speed of the vehicle, the time taken for a driver to identify a hazard and to begin to brake and the vehicle's rate of deceleration. For existing streets the 85<sup>th</sup> percentile wet weather speed is used. Manual for Streets 2 in paragraph 10.2.5 recommends for assessments of SSD that an allowance for bonnet length is made by adding 2.4 m to the distance calculated using the formula. It is suggested that the bus/HGV SSD should not need to be assessed when the combined proportion of HGV and bus traffic is less than 5% of traffic flow, subject to consideration of local circumstances. The minor arm X distance should normally be 2.4 m in most built-up situations. The Y distance (the distance to left and right along the main alignment) is based on the recommended SSD.
50. The visibility splay at a junction ensures that there is adequate inter-visibility between vehicles on the major and minor arms. Manual for Streets 2 also advises that based on reported research and unless there is local evidence to the contrary, a reduction in visibility below recommended values will not necessarily lead to a significant problem.
51. The proposed visibility splays at the new junction, based on measured 85<sup>th</sup> percentile speeds and shown on the submitted plan of the access to the site, are: to the north (to the left) 2.4 m x 34 m measured to the carriageway edge and to the south (to the right) 2.4 m x 32 m, measuring 0.17 m into the carriageway. The forward SSD for vehicles on the main road is shown to be greater than 125 m for both north and south bound traffic.

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<sup>11</sup> Core Document 17c appendix 3

52. Mr Walpole, using the 85<sup>th</sup> percentile wet weather speed derived from the appellant's 6 November 2013 survey, calculated a SSD of 38 m (to the left) and 36 m (to the right) based on the Manual for Streets methodology.
53. It seems to me that Mr Walpole's figures provide the appropriate base line figures against which to test the acceptability of proposed visibility splays because they include bonnet length, apply the correct wet weather adjustment and are based on the survey information included in the Transport Assessment. The proposed splays shown on plan look to be the splays that definitely may be achieved within the extent of the adopted highway, rather than the splays derived from applying a clear, justified methodology. I note that the original scheme had visibility splays of 2.4 m x 35 m to the south and 2.4 m x 37 m to the north.
54. The Y distances on the submitted plan are measured to the kerb edge (to the north) and 0.17 m into the carriageway (to the south). Manual for Streets 2 advises that for simplicity the Y distance has previously been measured along the nearside kerb line of the main arm, even though vehicles will normally be travelling at a distance from the kerb line. Therefore a more accurate assessment of visibility splay is made by measuring to the nearside edge of the vehicle track<sup>12</sup>. Mr Khan has shown that with a vehicle track being 0.5 m from the reduced edge of the carriageway a visibility splay of 2.4 m x 41 m would be achieved to the north and 2.4 m x 36 m to the south. Mr Khan adopted what he described as a common sense approach to determining the likely position of the vehicle track. However, as Mr Walpole explained, this is a theoretical position because new carriageway conditions would be created as a result of the proposal. An accurate measurement to the vehicle track is not possible in this instance. Therefore I do not accept Mr Khan's figures to be necessarily a worst case scenario, although they indicate that some slight improvement on the submitted visibility splays may be achieved.
55. Manual for Streets 2 explains why it is recommended that an allowance is made for bonnet length. The SSD figure relates to the position of the driver, whereas the distance between the driver and the front of the vehicle is typically up to 2.4 m, a significant proportion of stopping distance. I accept the appellant's argument that a driver emerging from the site access would need only to see the front of the car in the main road. In that respect the allowance is not critical. The Council emphasised the importance of inter-visibility. However, in this instance the visibility on the main road is good because of its relatively straight alignment. Therefore these considerations indicate that an allowance for bonnet length is not essential in the circumstances in this case.
56. There is the possibility that the reduction in road width would lead to a reduction in vehicle speed. Mr Khan has calculated, assuming a nominal speed reduction of 2 mph, the required splays based on the 2012 speed survey would be 2.4 m x 31 m to the north and 2.4 m x 29 m to the south. However, recorded speeds have shown some slight variability. Also the Council made a valid point that reductions in speed are less likely to be achieved over shorter lengths of narrower highway. Taking such sensitivities into account I attach limited weight to these calculated splays.
57. In conclusion, given the obstruction caused by parked vehicles, the different stopping characteristics of buses and HGVs using the route and to achieve a

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<sup>12</sup> Paragraph 10.5.3 Manual for Streets 2

high quality design it is desirable to achieve the recommended SSDs. When account is taken of 'vehicle track' and an adjustment for bonnet length, the visibility splays at the new junction would be borderline acceptable. However, the adequacy of the visibility to the south rests on the position of the vehicle track, over which there is uncertainty. The potential visibility falls slightly short of the level I think should be achieved.

#### *New footway*

58. The lack of a footway along the western side of Audlem Road means that residents of a number of properties have to step from their driveway onto the carriageway without the normal protection of a footway. They also have to cross the road to get to the footway on the eastern side. The front gardens of some of these properties have been converted into parking spaces, even though manoeuvring in and out of the spaces is hazardous due to the poor visibility.
59. The proposed new footway would address such issues, make crossing the road easier and improve safety for people on foot and using their driveways, in line with an objective of Policy TRAN.3. On a more detailed matter, the terrace properties in particular have narrow frontages and providing for access into driveways may well result in a continuous length of dropped kerb. There has been no assessment of the implications and how this may affect driver behaviour on Audlem Road.
60. Interestingly the residents and community have sustained their strong objection to the scheme even though they probably would benefit from a new footway. This factor is important in deciding on the degree of improvement and where the balance lies when weighing up the positives and the negatives of the proposal.

#### *Traffic from new housing*

61. The agreed vehicular trip generation from the proposed development is in the order of 59 two-way trips in the AM peak and 61 two way trips in the PM peak. All the generated traffic would have to use the new junction with Audlem Road. Therefore there would be a significant number of turning movements at a point where the highway would be narrowed and where on-street parking occurs. I share the concerns expressed in the RSA about the consequences of turning movements where in effect there would be one-way working.

#### *Initial Conclusion*

62. The proposed junction and narrowing of the highway would have adverse consequences for highway safety and the functions of the street when all deficiencies and probable effects are considered in the round. In my judgement safe and suitable access would not be achieved for all people. The impact would be unacceptable and severe. Therefore the policy tests of the Framework and the relevant criterion in Policies BE.2 and BE.3 of the Local Plan are not satisfied.

#### *Fallback*

63. There is an extant planning permission for a smaller number of dwellings served by the same access arrangement (the fallback). The appellant confirmed that the intention would be to proceed with that development in the

event the current proposal is not successful. The approval of the reserved matters application, the submission of details in compliance with pre-commencement planning conditions and the progress on the detailed design of the highway works all indicate that there is a greater than theoretical probability of the earlier scheme going ahead.

64. There is a significant difference in the numbers of dwellings being proposed. The basic difference between the two schemes is that the current proposal is for up to 104 dwellings compared to up to 40 dwellings under the 2014 permission. However, for the purposes of the fallback comparison, the scheme likely to proceed is for 33 dwellings approved under the reserved matters. Therefore the current proposal is for just over three times the number of dwellings, a very significant increase. The vehicle trip generation, calculated for the 40 unit scheme, is around a total of 23 two-way trips in the morning peak hour and 23 two-way trips in the evening peak hour. It may be expected that the current 104 dwelling scheme would generate in the order of 3 times the amount of traffic compared to the approved 33 dwellings.
65. The appellant through Mr Khan's evidence cautioned against accepting a linear relationship between an increase in the number of dwellings and an increase in risk. Nevertheless, the proposal would lead to many more vehicles turning in and out of the junction every day, which would exacerbate the safety concerns.
66. Undoubtedly the 2014 scheme is a consideration to be weighed in the balance but in my opinion the existence of the fallback (whether 33 or 40 units) provides insufficient weight to justify accepting the 104 dwelling scheme served by an inappropriate highway arrangement.

*Consistency in decision making*

67. Consistency in decision making is important to both developers and development control authorities and for securing public confidence in the operation of the development control system. However, there is no requirement that like cases must be decided alike and the *North Wiltshire* judgement confirms that an inspector must always exercise his own judgement. An inspector is free to depart from an earlier decision but before doing so reasons must be given and regard must be given to the importance of ensuring consistent decisions<sup>13</sup>.
68. The proposed access arrangements were found to be acceptable by the inspector in the 2014 decision. Similar issues related to the access were subject to scrutiny – effects of narrowing the carriageway, visibility and so on. The policy tests have not changed. Even so, whilst I am not aware of all the evidence presented at that time, in this appeal the 'new' evidence includes the RSAs. The residents indicated that their evidence has been more comprehensive. Furthermore, the context for assessing the highway scheme is different in that the proposal is now for a significantly greater number of dwellings. There are matters on which I have come to similar conclusions as my colleague – such as aspects regarding visibility, the use of the proposed parking spaces and the benefits of the new footway. Where we appear to differ is in the weight given to relevant factors, including the balance between the functions of Audlem Road, the effect of on-street parking, the effects of the

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<sup>13</sup> *North Wiltshire District Council v Secretary of State for the Environment and Clover* (1993) 65 P. & C.R. 137

road narrowing on highway safety and possibly local knowledge and day to day experience of the community.

69. The appellant also drew attention to the several highly experienced highway engineers who have found the scheme to be acceptable. The support does however have to be placed in its full context. I have commented already on the responses of the road safety auditors. The initial 'in principle' approval by a principal highways engineer of the Council was before the submission of the planning application. This response may have been without the benefit of detailed study and was for a design with a higher standard of visibility (2.4 m x 35 m to the south and 2.4 m x 37 m to the north). The more relevant consideration is after the end of the formal consultation when the recommendation was refusal. The highway authority defended that position as part of the Council's case at the last inquiry.
70. The consultation response on the current scheme set out that the highway authority made a case for severe traffic impact related to the proposed 40 dwellings. Subsequently the views expressed by the inspector in his appeal decision that such impact was not severe led to the conclusion by officers of the highway authority that a highways refusal could not be sustained on the 104 dwelling scheme, even with the increased delay associated with the road narrowing. Overall, the appeal decision appears to have had a strong influence on later advice. The inspector's conclusions were also cited and relied on by Mr Khan in the responses to the RSAs.
71. Mr Walpole outlined his engagement in the appeal process and how after reviewing the documentation and carrying out a site visit he was able to support the reason for refusal. The fact he did not advise the Council on the resubmission application is of little relevance. I found the analysis of Mr Walpole, an expert witness with considerable experience, to be well balanced. The detailed local knowledge of the conditions and traffic on Audlem Road through the evidence of the residents was very helpful. Their evidence together with the site visits brought to life the figures and statistics.

*Overall conclusion*

72. I have approached the matter afresh, whilst at the same time taking full account of the reasoning and conclusions on the access in the 2014 decision. In my judgement, on the evidence presented in this appeal, the design of the means of access, involving significant change to the highway, is unacceptable. The potential harm to highway safety would be exacerbated with the higher number of dwellings now proposed. In light of the conflict with development plan and national policy I attach substantial weight to the inadequacies of the design of the proposed access arrangements on Audlem Road. This conclusion weighs heavily against the proposal.

***Other considerations***

*Brine Leas School*

73. Policy CF.2 of the Local Plan supports proposals for community facilities, subject to compliance with the stated policy criteria. These include achievement of a high standard of design and no significant detrimental impact on local amenity or area character.

74. The Framework states the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Great weight should be given to the need to create, expand or alter schools.
75. The use of a major part of the northern field for educational purposes would be incompatible with the extant planning permission for residential development. It appears, somewhat surprisingly, that at the time of consideration of that proposal there was no concern expressed by the school or the local planning authority that the development of the land for housing would prevent an expansion of the school site and its capacity to respond to increased local demand for school places. The appellant explained that the issue arose when the reserved matters were being progressed.
76. The aim of this element of the proposal is to provide land to enable the School to expand and continue its success as a popular academy and achievement of excellence. More specifically the appellant stated that transfer of the land would enable the provision of additional playing fields and described the intention of the school to build an all-weather pitch for students and for use by the local community out of normal school hours.
77. In support of the proposal the Headmaster explained how the school has grown in line with demand for more places, reaching 1,100 students last year. A number of developments have expanded and improved facilities but there remains considerable pressure on the school and existing yards for play/sports/recreation. He believed that the additional land would prevent the school from becoming landlocked. The land would give an opportunity for further expansion, an all weather facility, community use and other benefits.
78. The use of the land for educational purposes would be compatible with the schools, playing fields and housing in the surrounding area and the landscape character of the settlement edge. Access probably would be through the school site to the north and no vehicular access or pedestrian access to the new housing is shown on the illustrative layout plan for the housing. Consultations did not identify any specific constraints or objections. On this analysis the proposal complies with Policy CF.2 of the Local Plan and is in accordance with national policy. Nevertheless, and notwithstanding the comments of the appellant and the School, the description of the development is in general terms. No specific use or act of operational development, such as provision of an all weather pitch, is proposed in the application. There is no indication within the appeal proposal as to how the material change of use would occur.
79. A unilateral undertaking under section 106 of the 1990 Act has been submitted, which I understand is to demonstrate the appellant's commitment to the proposed transfer of the land. The Council expressed concerns about the form, effectiveness and enforceability of the deed.
80. Brine Leas School is a party to the deed, to enable it to enforce the terms of the undertaking under the usual rules of contract<sup>14</sup>. However, the School's interest in the land has not been identified<sup>15</sup>. The appellant maintained that it

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<sup>14</sup> Document WH3 sets out the background to the unilateral undertaking and the appellant's response to concerns raised by the Council.

<sup>15</sup> See section 106(1) and section 106 (9)(c) of the 1990 Act.

is not necessary to have an interest in land to be party to a planning obligation, but without providing any support or explanation for this statement. Therefore it has not been adequately explained how the statutory requirements have been met.

81. Summarising the deed, the appellant covenants to reserve the land for a period of 5 years from the commencement of development solely for use as playing fields/sporting facilities by the School and not to carry out any further works in pursuance of the existing planning permission<sup>16</sup>. If during that period the School requests a transfer of the land, the parties are to use reasonable endeavours to agree terms and complete the transfer based on the form of transfer set out in the deed. The existing planning permission would be surrendered from the date of transfer of the land to the School.
82. The way the deed is worded indicates that its primary purposes are to express willingness by the developer to transfer the land to the School and to identify heads of terms or provisions of the transfer document. The document is not worded negatively or in such a way as to place restrictions on the use of the land or to enable the Council to enforce its provisions. I am not satisfied that the planning obligation falls within the scope of the section 106(1). It is in the form of a personal undertaking by the appellant.
83. The provision regarding surrendering the benefits of the existing planning permission has no force because only a local planning authority has the power to revoke a planning permission under the provisions of the 1990 Act<sup>17</sup>. There was local concern that the land would be developed for housing in addition to the development of the land to the south. A mechanism available with the current proposal would be to impose a planning condition limiting the number of dwellings to be served by the access. However, it would be open to anyone in the future to seek to change the lawful use or to develop the land by means of a new planning application.
84. I conclude that the unilateral undertaking adds little to the planning merits of this element of the proposal. It has not been demonstrated that the deed is necessary to make the hybrid development acceptable in planning terms and therefore it fails to meet one of the policy tests in paragraph 204 of the Framework.
85. In summary, the proposal provides an opportunity for expansion of the school but there is uncertainty over the type of educational development, transfer of the land and delivery. Therefore whilst the need to expand the school has great weight under the Framework, the form of the current proposed development is such that I attach much less weight to it.

*Contribution to housing need*

86. In the emerging Local Plan the strategy of planning for growth has a priority to provide sufficient land to accommodate the full, objectively assessed needs for the Borough of at least 36,000 homes between 2010 and 2030. The housing distribution in respect of key service centres indicates that the expected level of development for Nantwich (2,050 dwellings) would be met by an allocation

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<sup>16</sup> The document does not detail the permission but the probability is that it is a reference to the outline permission for up to 44 dwellings.

<sup>17</sup> See sections 97 to 100 and section 107.



at Kingsley Fields to the north west of the town, as well as the contribution made by completions to date and existing commitments.

87. At the present time the Council is unable to demonstrate a 5 year housing land supply. On the basis of the most up to date position reported at the inquiry and an annual requirement of 2,941 dwellings, the land supply is equivalent to 3.7 years. There is therefore a significant shortfall of deliverable housing land, a conclusion accepted by the Council.
88. A study to inform the emerging Local Plan indicates a minimum need for 7,100 affordable homes over the 20 year plan period or 355 dwellings per year. The need could rise to 675 dwellings per year dependent on the assumptions made. The appellant also drew attention to the Strategic Housing Market Assessment, which identified a need for 78 affordable homes per year 2013/14-2017/18 for Nantwich and 54 affordable homes per year for Wybunbury and Shavington. Therefore the need for affordable housing in the area is significant and immediate.
89. The proposed level of development of up to 104 dwellings would make a modest contribution to the annual supply of dwellings. The scheme is not unduly constrained by land preparation or infrastructure provision. There is the prospect of delivery of homes in the short term in advance of the realisation of the strategic allocations in Nantwich. In addition the scheme would deliver 30% affordable housing, resulting in up to 31 affordable homes. This level of provision is consistent with the Council's Interim Planning Statement on Affordable Housing and Policy RES.7 of the Local Plan. The proposal's contribution to meeting housing needs has significant weight.

*Open countryside and landscape character*

90. The site is in the countryside, outside the defined settlement boundary for Nantwich. Policy NE.2 of the Local Plan seeks to restrict development in the open countryside and Policy RES.5 applies the restriction to housing. Both policies rely on the settlement boundaries defined on the Proposals Map to identify the land to be treated as open countryside. The proposal is contrary to Policies NE.2 and RES.5 given the scale of housing development and the failure to show the use of part of the site for Class D1 educational purposes is a use appropriate to a rural area.
91. The next step is whether other considerations, including relevant policies in the Framework, nevertheless indicate that planning permission should be granted.
92. Policies NE.2 and RES.5 are relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework because the policies limit the location and have the effect of constraining the supply of housing land. The policies are not up to date because of the lack of a five year housing supply.
93. The purpose of the Local Plan policies to protect the countryside is consistent with core principles of the Framework to recognise the intrinsic character and beauty of the countryside and to enhance the natural environment. In those respects the policies continue to serve a sound planning purpose. Nevertheless the Framework also supports a prosperous rural economy, promotes healthy communities and housing for local needs. The rigidity of the Local Plan policy criteria does not adequately reflect these policies. The Council are taking measures to remedy the shortfall in housing land, particularly through the new

Local Plan and the intention is to review settlement boundaries as part of the development plan process. The likelihood is that some boundaries will be adjusted to take account of an up to date assessment of housing need and it will be necessary to remove land for development from the open countryside. In this case, the Council agreed that the principle of the development on the site is acceptable, although regarding the loss of open countryside as an adverse outcome of the proposal. All matters considered the policies carry some weight and the direction against the proposal is not decisive.

94. As to the actual effect on landscape character my conclusions have been informed by the landscape and visual appraisal (the LVA) submitted with the application. The proposal would result in the permanent loss of areas of semi-improved grassland. There is the scope to retain existing mature trees on the site boundaries and to minimise the loss of boundary hedgerows. An existing pond would be lost but two new ponds would be formed. There would be the opportunity through a detailed landscape scheme to strengthen existing landscape features, to introduce extensive new planting especially in conjunction with the provision of open space and ecological mitigation.
95. In the wider context the site is bordered by sports fields, residential development, woodland and open countryside. To the south of Nantwich the incremental expansion of development has created an uneven, indented edge to the settlement. The proposed housing would extend the built-up area some way south to Elliot's Wood, which is described in the LVA as a suitably robust physical and visual feature to provide a high quality edge to the new housing. The perimeter planting proposals also would help to assimilate the housing into the surroundings and reduce the visual harm.
96. I accept the LVA's conclusion that the proposal would not cast a far reaching influence over the surrounding countryside or townscape. Nevertheless, the significant extension of the built envelope southwards would intrude into the open countryside beyond the settlement edge created by Bishops Wood to the east and Weaverside further to the west. The area of new housing would be an isolated block of built development to the west of Audlem Road, when account is taken not only of the adjacent fields but also the playing fields to the north. By way of comparison, the approved 33 dwelling scheme limited to the northern field would be compact and more readily integrated within the settlement form of this part of Nantwich. In conclusion, the proposal's encroachment into the open countryside would be harmful to local character, a factor that has significant weight.

#### *Agricultural land quality*

97. The appellant accepted that the site of 6.2 ha is best and most versatile (BMV) Grade 3A agricultural land. In 2014 the inspector had reason to think the land could be viable to remain in productive use. At the recent inquiry Mr Harris (the appellant's planning witness) explained that this stand-alone field is not part of a wider holding and that the land to the west, under Council ownership, is no longer farmed.
98. Policy NE.12 of the Local Plan protects BMV as a long term national resource and to that extent the policy is consistent with the objective of paragraph 112 of the Framework. However, paragraph 112 relates the endeavour of using poorer quality land to where the development is 'significant', a qualification that is not reflected in Policy NE.12. Furthermore Policy NE.12 is a relevant

policy for the supply of housing and, given the current circumstances on housing land supply, is not up to date. This is highlighted by the policy criterion which relates the acceptability of a proposal to the need supported by the Local Plan. I conclude Policy NE.12 has only moderate weight.

99. Clearly the proposed loss of BMV is contrary to Policy NE.12 but in light of the above conclusions other factors have to be weighed in the balance. The quantity of land involved is significantly below the 20 hectare threshold where consultation with Natural England would be required. The loss of the northern part of the site has been accepted. The evidence has not identified any harmful economic or viability effects on a farm holding as a result of an extension of development to the south. I conclude that the loss of BMV would give rise to limited harm.

#### *Accessibility*

100. It is common ground between the Council and the appellant that the site is accessible in terms of its location and proximity to services such as local shops, schools, public transport and other services and facilities to meet the needs of prospective residents of the site. The proposal is to improve the public footpaths (PF1 and PF28) that run along the western side of the site. The intention is to positively promote travel by sustainable modes by a means of a travel plan and also to upgrade two nearby bus stops with shelters.
101. I have found that there are constraints on accessibility by foot, cycle and use of public transport because of the location of the housing land outside the built up area. The most accessible part of the site is proposed for educational purposes, open space and ecological mitigation. It would not be realistic to expect most people to walk a distance in the order of 1,400 m into the town centre and walk back a similar distance, especially with shopping. The footpath improvements would be beneficial but without lighting and with a high degree of enclosure, use in hours of darkness and inclement weather would not be encouraged.
102. Cycling would be a more realistic option to access local facilities in terms of distance. However, it is necessary to use Audlem Road to reach the wider cycle network. Residents currently consider cycling on Audlem Road hazardous and it appeared to me that especially in the busy peak hours the route would not be attractive, especially for the young. I have explained my concerns over the effects of the proposed narrowing of the carriageway and continuing on-street parking. In the absence of evidence to show otherwise, the conditions for cyclists on this stretch of Audlem Road probably would get worse.
103. Bus stops are conveniently located to the site, within easy walking distance. However, with reference to the observations of the highway authority, the services are limited in terms of frequency and destination and can be described as poor to moderate. No details have been provided of the proposed bus shelters and as seen on the accompanied site visit the width of the footway on Audlem Road may be a constraint.
104. The Framework Travel Plan has limited content on encouraging use of sustainable travel modes and like the highway authority I am sceptical about the ability of a travel plan to bring about a significant influence on modal split.

105. I conclude that although the accessibility of the site would be acceptable, there is not the high level of accessibility described by the appellant. This factor is neutral in the overall balance.

*Public open space*

106. The development is proposed to incorporate 0.364 hectares of public open space, including a local equipped area for play (LEAP). This level of provision complies with Policy RT.3 of the Local Plan and is in accordance with policy in the Framework to ensure delivery of recreational facilities for community needs. The open space is primarily in response to the increase in population that would result from the new development, although it would be available for use by residents in the surrounding area in accordance with the terms of the section 106 agreement. To that extent the scheme would improve public open space in the locality.

*Biodiversity*

107. The Framework sets an aim to conserve and enhance biodiversity. An ecological survey confirmed that the agriculturally improved grassland is species poor. All hedgerows are a habitat of principal importance for conservation, providing habitat structural diversity and a habitat connectivity function within the fields of low ecological value. The two ponds within the site have local ecological value and provide a habitat for European protected species including a great crested newt population. Elliot's Wood is designated as a lowland mixed deciduous woodland UK Biodiversity Action Plan (BAP) priority habitat.
108. The ecological assessment and revised illustrative master plan demonstrate how habitat protection together with provision of compensatory and new habitat for use by nesting birds, amphibians, roosting bats and invertebrates may be achieved. Such measures could be suitably secured through planning conditions on any outline permission and the subsequent reserved matters application(s). Mitigation works for great crested newt under a licence issued by Natural England also would be necessary to progress development but there is nothing in the evidence to suggest such a licence would be refused.
109. In conclusion there is an opportunity to deliver a net gain in biodiversity in accordance with policy in the Framework and to conserve the natural conservation resource and protected species in accordance with Policies NE.5 and NE.9 of the Local Plan.

*Housing mix*

110. The Parish Council expressed concern that the proposed mix and size of housing in the scheme would not meet the future needs of the local area established by the Housing Needs Assessment to inform the Stapeley and Batherton Neighbourhood Plan. However, details of the housing types would be resolved through the submission of the reserved matters and is not a relevant matter for consideration in this appeal.

*Flood risk and air quality*

111. The site is within Flood Zone 1 based on the Environment Agency Flood Maps. The flood risk assessment identifies drainage techniques for limiting new

surface water flows from the development. Details of surface and foul drainage would be appropriately resolved through planning condition.

112. An air quality assessment has shown that future traffic emissions of nitrogen dioxide and particulate materials associated with the proposed housing would be either imperceptible or negligible. The Council raised no objections on this impact. However in respect of the 2016 re-submission application the Council's environmental health officer was concerned about the potential impact on the nearby Hospital Street Air Quality Management Area (AQMA). Mitigation was suggested by use of planning conditions in relation to submission of a Travel Plan, electrical vehicle infrastructure and dust control. I consider this approach would be acceptable.

*Securing affordable housing and infrastructure*

113. Policy BE.5 of the Local Plan is concerned to ensure adequate and reasonable provision is made for any infrastructure and or community facilities required as a direct result of a development. A deed of agreement under section 106 of the 1990 Act contains planning obligations in respect of affordable housing, open space, footpath improvements and accommodation to fulfil requirements for secondary education and special education needs. The obligations, including the financial contributions, are fully justified in the Community Infrastructure Levy Regulations 2010 Compliance Statement.
114. The education contribution is to enable an increase in capacity at secondary schools in response to the additional demands for school places from the new housing. The contribution is limited to what is necessary to ensure no adverse impact and therefore I do not regard it as a specific benefit of the scheme. In a similar way the contribution to footpath improvements is necessary as a means of encouraging the occupants of the new housing to access facilities by foot. The role of the footpath would change from the existing primarily recreational countryside footpath to one facilitating pedestrian movement within the built up area of the settlement.
115. I am satisfied that the planning obligations are 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. The statutory and policy tests are met, which enables me to take full account of the obligations in coming to my decision.

***Sustainable development***

116. At the heart of the Framework is a presumption in favour of sustainable development. The planning system is required to perform an economic role, a social role and an environmental role.
117. The key benefit of the scheme is the development of much needed new homes, including affordable housing, which would support the development of a strong community. Additional social, environmental and economic benefits to which I attach less weight are the provision of an opportunity for Brine Leas School to acquire land for expansion, the improvement in public open space, the potential net gain in biodiversity and the provision of jobs during the construction phase. The accessibility of the site to services and facilities is a neutral factor, as is the education contribution. The appellant also considered positive weight should be given to 'a high quality design and landscape led

scheme'. I am unable to come to such a conclusion because of the outline form of the application where layout, landscaping, appearance and scale are reserved matters.

118. The overall effect of the proposed access arrangements would be an unacceptable adverse impact on highway safety and the associated deterioration in the place-making and movement functions of Audlem Road. Referring to paragraph 32 of the Framework, the residual cumulative impacts of development would be severe. The way the area functions would not be improved but be hindered. The social well-being of the community would not be supported. In my judgement these factors weigh heavily against the development. Additional adverse effects, both related to the environmental role, would be the harm to local character as a result of the encroachment into the open countryside and the limited harm through a loss of BMV.
119. I conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme. Consequently the proposal does not represent sustainable development and is contrary to the Framework.

### **Conclusions**

120. The proposal is contrary to Policies BE.3 and BE.2 of the Local Plan in that the scheme would fail to provide safe vehicular access and egress arrangements and would not deliver a high standard of design. These are strong objections. There is also conflict with Policies NE.2, RES.5 and NE.12. Whilst there is compliance with other Local Plan policies, as I have explained above, the proposal is not compliant with the development plan as a whole. Given my findings on the sustainable development matters there are no material considerations that warrant a decision other than in accordance with the development plan. The proposal is unacceptable.
121. For the reasons given above, and having taken account of all other matters raised, the appeal should be dismissed.

*Diane Lewis*

Inspector

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Scott Lyness of Counsel	Instructed by Patricia Evans, solicitor, Cheshire East Council
He called	
Mr David Walpole	David Walpole Associates, Transport Planners and Engineers
BSc(Hons) MCIHT	
Mr Adrian Crowther	Major Applications Team Leader, Cheshire East Council
BA(Hons) MTPI MRTPI	

Ms Evans and Mr Greenland (Senior Planning Officer) participated in the discussion on planning obligations and planning conditions

### FOR THE APPELLANT:

Mr Vincent Fraser QC	Instructed by Mr S Harris, Emery Planning
He called	
Mr Amjid Khan MSc BSc	Director of Transport, WYG Transport
CEng MICE MCIHT	
Mr Stephen Harris BSc	Director of Emery Planning
(Hons) MRTPI	

### INTERESTED PERSONS:

Mrs Alma Latham	Local resident
Mrs Hilary Mottershead	Local resident
Mr Neil Cammish	Local resident
Rev Malcolm Lorimer	Minister of Broad Lane Methodist Chapel
Councillor Peter Groves LL.B	Speaking on behalf of Mr P Cullen JP
Councillor Peter Groves LL.B	Ward Councillor, Member of Nantwich Town Council and of Stapeley Parish Council
Mrs Carol Lindsay	Local resident
Mr Philip Staley	Local resident
Mr Roderick Greenow	Local resident
Mr Andrew Cliffe	Headmaster, Brine Leas School
Mrs Gillian Barry	Local resident
Mrs Jill Crawford	Local resident
Mr David Greaves	Local resident

## **DOCUMENTS submitted at the inquiry**

### Documents submitted by interested parties

- 1 Statement by Mrs Latham
- 2 Statement by Mr Cammish
- 3 Statement by Rev Lorimer
- 4 Statement by Mr Cullen
- 5 Statement by Cllr Groves
- 6 Statement by Mrs Lindsay
- 7 Statement by Mr Staley

- 8 Statement by Mr Greenow
- 9 Statement by Mrs Mottershead
- 10 Statement by Mrs Barry, with photos
- 11 Statement by Mr Greaves with photos
- 12 Statement by Mr Cliffe
- 13 Bundle of letters, petition, photos from public meeting 18 August 2106
- 14 Representation by Mr Wood
- 15 Representation from Mrs Kay
- 16 Representation from Mrs Park

Documents submitted by the Council

- CE1 Road safety audit stage 1 June 2016
- CE2 Revised list of planning conditions
- CE3 Revised CIL Compliance Statement and supporting documents
- CE4 Closing submissions
- CE5 *North Wiltshire District Council v Secretary of State for the Environment & Clover* (1993) 63 P & C R 137

Documents submitted by the Appellant

- WH1 Accident statistics categories
- WH2 Draft unilateral undertaking 05.09.16
- WH3 Correspondence on unilateral undertaking 06.09.16
- WH4 Closing submissions
- WH5 Application for Costs

Documents: general

- G1 Appeal decisions Land off Audlem Road and Land off Peter Destapeleigh Way dated 11 August 2016 ref APP/R0660/A/13/2197532, 2197529
- G2 Details of Tree Preservation Order

PLANS

- I Location Plan ref 1257WHD/AREx-LP01
- II Sketch layout 1257WHD/AREX-SK01 Rev H
- III Site access and off site improvements A085768-SK001A
- IV Safety improvements Batherton Lane/Audlem Road junction A085768-SK005
- V Constraints and opportunities 1257WHD/AREx-Cn001 Rev B