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## Appeal Decision

Inquiry held on 20-22 September 2016

Site visit made on 22 September 2016

**by Karen L Baker DipTP MA DipMP MRTPI**

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

**Decision date: 07 November 2016**

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**Appeal Ref: APP/R0660/W/16/3141688**

**Open grassland, Crewe Road, Shavington, Cheshire CW2 5AH**

- 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 Mrs J Thompson against the decision of Cheshire East Council.
  - The application Ref. 15/1210N, dated 10 March 2015, was refused by notice dated 10 July 2015.
  - The development proposed is the development of 68 houses including new vehicular entrance, boundaries, infrastructure and landscaping, with primary access from the Crewe Road shown and other matters reserved.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the development of 64 houses including new vehicular entrance, boundaries, infrastructure and landscaping, with primary access from the Crewe Road shown and other matters reserved, on open grassland, Crewe Road, Shavington, Cheshire CW2 5AH in accordance with the terms of the application, Ref. 15/1210N, dated 10 March 2015, and subject to the conditions in Appendix 1.

### Procedural Matters

2. The planning application was made in outline with all matters reserved for subsequent approval, with the exception of access.
3. The application form describes the proposed development as set out above. Indeed, the Council determined the planning application on the basis of it being a development of 68 houses. However, following the Council's Decision, the appellant submitted additional information, including a revised Indicative Site Development Plan (Drawing No. 22945 D (-) 003 Rev. P5<sup>1</sup>) which sought to address the Council's third reason for refusal. This revised plan was considered by the Council's Southern Planning Committee<sup>2</sup>, on 28 October 2015, in advance of this appeal, where Members resolved that the third reason for refusal would not be contested on the basis of the amended indicative layout plan. The Statement of Common Ground Addendum<sup>3</sup> says that the main parties agree that this appeal is being contested on the basis of the provision of a maximum of 64 dwellings on the site and that the description of the development should be amended accordingly. Although this revised plan was

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<sup>1</sup> Core Document 5

<sup>2</sup> Core Document 4

<sup>3</sup> Document 2

not published for public consultation prior to its consideration at the Southern Planning Committee, it has been publicly available as part of the appeal process and interested parties have been able to comment upon it. Given this, along with the slightly lower number of houses proposed, I am satisfied that my consideration of the provision of 64 dwellings, rather than 68, on the appeal site would not prejudice the interests of third parties. I have, therefore, considered the appeal on this basis.

4. The Statement of Common Ground confirms that, in addition to the decision not to contest the third reason for refusal, Members of the Southern Planning Committee also resolved to defend this appeal in relation to the first reason for refusal as existing and to defend the second reason on the following grounds:

*The proposal would result in the loss of the best and most versatile agricultural land and the applicant has failed to demonstrate that there is a need for the development, which could not be accommodated elsewhere. The use of the best and most versatile agricultural land is unsustainable and contrary to Policy NE.12 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and the provisions of the National Planning Policy Framework.*

5. At the Inquiry, the appellant confirmed that, in the course of drafting the Section 106 Agreement and on investigation of Land Registry title deeds, it has become apparent that a small parcel of land in the south eastern corner of the appeal site is unregistered. As a result, amendments have been made to the red line on the Site Location Plan and the Indicative Site Development Plan to reflect the land ownership position. The appellant therefore submitted 2 amended plans at the Inquiry, Drawing Nos. 22945 L (-) 001 Rev. P1<sup>4</sup> and 22945 D (-) 003 Rev. P6<sup>5</sup> respectively. These amendments were agreed by the Council and included in the Statement of Common Ground Addendum. Copies of the plans were made available for interested parties to view and comment on at the Inquiry. Given the small scale nature of this change, I am satisfied that my consideration of these amended plans would not prejudice the interests of third parties. I have, therefore, considered the appeal on this basis.
6. During the Inquiry, the Council submitted a certified copy of the Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990<sup>6</sup>. This includes obligations in respect of the provision of 30% of the housing as affordable and the provision of an open space scheme, along with a management plan for its future management and maintenance. I have had regard to this, along with the Council's Community Infrastructure Levy (CIL) Regulations Compliance Statement, which addresses the tests on obligations arising under Regulation 122 of the CIL Regulations and the compliance of planning obligations sought with regard to the 'pooling' of contributions arising under Regulation 123, during my consideration of the appeal.

## **Main Issues**

7. The main issues in this appeal are:

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<sup>4</sup> Document 4 and Core Document 54

<sup>5</sup> Document 5 and Core Document 55

<sup>6</sup> Document 30

- a. the effect of the proposed development on the visual character of the landscape;
- b. the effect of the proposed development on the Green Gap between Shavington and Crewe;
- c. the effect of the proposed development on the best and most versatile agricultural land; and,
- d. whether or not any harm identified would significantly and demonstrably outweigh the benefits of the scheme.

## **Planning Policy**

### ***The Adopted Local Plan***

8. The development plan for the area is the Borough of Crewe and Nantwich Replacement Local Plan 2011<sup>7</sup>, adopted in February 2005. Policies NE.2, NE.4 and NE.12 of the Replacement Local Plan are of the most relevance to this appeal.
9. Policy NE.2 says that all land outside the settlement boundaries defined on the Proposals Map will be treated as open countryside. It goes on to say that, within open countryside, only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted, although an exception may be made where there is the opportunity for the infilling of a small gap with one or 2 dwellings in an otherwise built up frontage. The appeal site is not located within the settlement boundary of Shavington and the proposed residential development would not fall within the permitted uses set out in this policy. Although this policy is not referred to in the reasons for refusal, the Council confirmed at the Inquiry that this was an omission and that the proposal would be contrary to this policy.
10. The appeal site lies within the Shavington/Weston/Crewe Green Gap, as defined by Policy NE.4 and shown on the Proposals Map, where approval will not be given for the construction of new buildings or the change of use of existing buildings or land which would result in erosion of the physical gaps between built up areas, or adversely affect the visual character of the landscape. Exceptions to this policy will only be considered where it can be demonstrated that no suitable alternative location is available.
11. Policy NE.12 says that development on the Best and Most Versatile (BMV) agricultural land (Grades 1, 2 and 3a in the Ministry of Agriculture Fisheries and Food (MAFF) classification) will not be permitted unless the need for the development is supported in the Local Plan; it can be demonstrated that the development proposed cannot be accommodated on land of lower agricultural quality, derelict or non-agricultural land; or other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land. The appeal site is BMV agricultural land.
12. It is agreed<sup>8</sup> that the Council cannot currently demonstrate a 5 year supply of deliverable housing land and, as such, it is also agreed<sup>9</sup> that paragraph 49 of

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<sup>7</sup> Core Document 6

<sup>8</sup> Paragraph 4.2.1 of the Statement of Common Ground

the National Planning Policy Framework (The Framework) and the fourth bullet point of paragraph 14 of The Framework are engaged in this case.

Furthermore, having regard to the Court of Appeal Decision<sup>10</sup> in *Suffolk Coastal District Council v Hopkins Homes Limited* and the Secretary of State for Communities and Local Government/*Richborough Estates Partnership LLP v Cheshire East Council* and the Secretary of State for Communities and Local Government, it is agreed<sup>11</sup> by the main parties that, for the purposes of paragraph 49 of The Framework, Policies NE.2, NE.4 and NE.12 of the Replacement Local Plan are relevant policies for the supply of housing.

13. Policies NE.2, NE.4 and NE.12 are the most pertinent policies in this appeal. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The starting point is, therefore, that the determination of this appeal must be in accordance with these policies. However, The Framework is a material consideration and it sets out the weight to be given to development plan policies in certain specified circumstances. Paragraph 49 of The Framework says that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. Furthermore, paragraph 215 of The Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with The Framework.
14. The main parties agree that Policies NE.2, NE.4 and NE.12 of the Replacement Local Plan are relevant policies for the supply of housing. I note that this accords with the view of the Secretary of State in a recent Decision in respect of Policies NE.2 and NE.4. However, he concluded that Policy NE.12 was not such a policy. Nevertheless, I note that, in doing so, the Secretary of State said<sup>12</sup> that he agreed with the parties that Policy NE.12 was not a policy for the supply of housing and should therefore apply. The appellant states<sup>13</sup> that the agreement made between the parties in that case reflected the position before the Suffolk Coastal/Richborough Court of Appeal Decision and should be seen in that light. The Secretary of State was made aware of the Court of Appeal Decision, however, following the close of the Inquiry and prior to his Decision being issued.
15. In this case, the main parties agree that Policy NE.12 is a policy for the supply of housing. Having regard to the Suffolk Coastal/Richborough Court of Appeal Decision, paragraph 33 makes it clear that the interpretation of the concept of 'policies for the supply of housing' is not confined to policies in the development plan that provide positively for the delivery of new housing, in terms of numbers and distribution or the allocation of sites, but that it extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed. Paragraph 35 of the Decision goes on to say that restrictive policies, whether broadly framed or designed for some more specific purpose, may have the effect of constraining the supply of housing land and, if they do have that effect, they

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<sup>9</sup> Paragraph 4.2.1 of the Statement of Common Ground

<sup>10</sup> Core Document 16

<sup>11</sup> Paragraph 4.2.2 of the Statement of Common Ground and paragraph 2.2 of the Statement of Common Ground Addendum

<sup>12</sup> Document 28 - Paragraph 16 of the Decision letter

<sup>13</sup> Document 34 - Paragraph 13

may act against the Government's policy of boosting significantly the supply of housing land. It goes on to say that if a local planning authority is unable to demonstrate the requisite 5 year supply of housing land, both the policies of its local plan that identify sites for housing development and policies restrictive of such development are liable to be regarded as not up-to-date under paragraph 49 of The Framework and out-of-date under paragraph 14.

16. In my view, Replacement Local Plan Policies NE.2, NE.4 and NE.12 are all restrictive of such development as they restrict the locations where new housing may be developed. I therefore concur with the main parties that they are relevant policies for the supply of housing and, having regard to paragraph 49 of The Framework, should not be considered up-to-date given that the Council cannot currently demonstrate a 5 year supply of deliverable housing sites. As such, I have afforded these policies limited weight in my consideration of this appeal.

### ***The Emerging Local Plan***

17. The Cheshire East Local Plan: Local Plan Strategy Submission Version was submitted to the Secretary of State on 20 May 2014 for Examination. The Examination took place in September/October 2014, but was adjourned before consideration was given to the Strategic Site allocations. The Examination Inspector produced his Interim Views<sup>14</sup> on 6 November 2014. Further Examination Hearing Sessions took place in September 2015 to consider changes to the Local Plan Strategy. In December 2015, the Inspector issued his Further Interim Views<sup>15</sup>. The Inspector also recommended that the Council make revisions to the Submission Version and consult on those revisions. The public consultation on the revisions took place in March and April 2016. Further Examination Hearing Sessions to consider the changes to the Local Plan Strategy and the Strategic Site allocations began in September 2016.
18. Policy PG 4a of the Local Plan Strategy Proposed Changes 'Clean Version', Consultation Supporting Document, March 2016, identifies areas between settlements, including Crewe/Shavington/Basford/Weston, as Strategic Green Gaps, the detailed boundaries of which will be defined through the Site Allocations and Development Policies document and shown on the Adopted Proposals Map. It goes on to set out the purposes of Strategic Green Gaps as being to provide long term protection against coalescence; protect the setting and separate identity of settlements; and retain the existing settlement pattern by maintaining the openness of land. Furthermore, the policy states that within Strategic Green Gaps, Policy PG 5 will apply and planning permission will not be granted for the construction of new buildings or the change of use of existing buildings or land which would result in erosion of a physical gap between any of the settlements named in the policy; or adversely affect the visual character of the landscape, with exceptions only considered where it can be demonstrated that no suitable alternative location is available.
19. Local Plan Strategy Policy PG 5 says that the Open Countryside is defined as the area outside of any settlement with a defined settlement boundary. It goes on to say that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or

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<sup>14</sup> Core Document 8

<sup>15</sup> Core Document 9

statutory undertakers, or for other uses appropriate to a rural area, will be permitted, with some exceptions. The policy also states that the retention of gaps between settlements is important, in order to maintain the definition and separation of existing communities and the individual characters of such settlements. Footnote 40 to this policy makes it clear that the settlement boundaries will be reviewed and defined through the production of the Site Allocations and Development Policies Development Plan Document (DPD) and Neighbourhood Plans, until such time the spatial extent of the settlement boundaries are those defined in the saved policies and proposals maps of the existing local plans for Crewe and Nantwich, Macclesfield and Congleton and amended to include sites detailed in the Local Plan Strategy.

20. The main parties agree<sup>16</sup> that limited weight should be attributed to the policies in the emerging Local Plan Strategy. Having regard to the stage of preparation of the emerging Local Plan Strategy and the extent of unresolved objections, I concur with this view.

## **Reasons**

### ***Visual Character of the Landscape***

21. The appeal site is an agricultural field, which has been used for the grazing of cattle. It is sited on the eastern side of Crewe Road, immediately to the north of the settlement of Shavington. To the east and south of the appeal site are residential properties along Westway, Northway, Park Estate, Meadow Close and Crewe Road. To the west of the appeal site, on the other side of Crewe Road, a ribbon of residential development exists, beyond which, to the north, is an area of commercial development which extends up to the junction of the A500 link with Crewe Road. Immediately to the north of the appeal site and the dwellings along Westway and Northway is an area of agricultural land, which at the time of my site visit was being used, in part, for the grazing of cattle. Beyond this agricultural land is the A500 and its link with Crewe Road.
22. The proposed development would include the erection of 64 houses on the appeal site, with a single access from Crewe Road. The Indicative Site Development Plan<sup>17</sup> (Drawing No. 22945 D (-) 003 Rev. P6) shows how the proposal could be accommodated on the appeal site. As well as the residential development, it indicates how the public footpath could be accommodated within a landscaped area along the southern part of the appeal site and the provision of a large area of public open space, which would include a formal children's play area, across the northern part of the appeal site. The Council and local residents are concerned, however, about the impact of the proposed development on the visual character of the landscape.
23. Cheshire County Council adopted the Cheshire Landscape Character Assessment in February 2009. This Assessment identifies 20 different character areas or types within the County, with the appeal site located within Landscape Character Type 10: Lower Farms and Woods<sup>18</sup>. Within Type 10, the Landscape Character Assessment identifies 7 distinct sub-areas, including the LFW7: Barthomley Character Area, within which the appeal site is located.

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<sup>16</sup> Paragraph 3.4.6 of the Statement of Common Ground

<sup>17</sup> Document 5 and Core Document 55

<sup>18</sup> Core Document 5 - Appendix 1

24. Following the refusal of planning permission by the Council and the subsequent meeting of the Southern Planning Committee on 28 October 2015, to consider additional information submitted by the appellant in advance of this appeal, the appellant submitted a Landscape and Visual Appraisal (LVA)<sup>19</sup> which provides an assessment of the landscape and visual effects of the proposed development. As part of the evidence presented to the Inquiry, the Council has undertaken its own assessment<sup>20</sup> to determine the landscape and visual effects that would result from the proposed development.

#### *Landscape Effects*

25. In terms of landscape effects, the appellant's LVA assesses the impact of the proposed development on the landscape features of the appeal site and the landscape character of the area. With regards to the landscape features, which are identified as comprising the boundary hedgerows, a single large, mature Sycamore tree located adjacent to the southern boundary and the existing sward of semi-improved grassland, the LVA considers that the Sensitivity would be Medium, with a Magnitude of Effect of Low and the Significance of Effect being Minor Adverse/Negligible. In terms of landscape character, the LVA has assessed the appeal site and the wider study area. It concludes that, with respect to the appeal site, the Sensitivity would be Medium, with a Magnitude of Effect of Medium/High and the Significance of Effect being Moderate Adverse, and in respect of the wider study area, the Sensitivity would be Medium, with a Magnitude of Effect of Low and the Significance of Effect being Minor Adverse.
26. In terms of landscape character sensitivity, Tables 1 and 2 of the Council's assessment set out the factors affecting susceptibility to change of the study area and factors affecting the landscape value of the site and the study area, in order to identify the overall Sensitivity of the landscape resource in the study area, which the assessment concludes is Medium-High. The assessment states that the Magnitude of Landscape Change has been based upon the size or scale of the change to the landscape resource; the geographical extent of the area influenced (the study area); and its duration and reversibility. The direct landscape effects are identified in Table 3 and these relate to the open land between settlements; replacement of pasture with housing and associated development; and the loss of agricultural land. The assessment also considers the indirect effects of the development by assessing how the direct landscape effects are perceived outside the appeal site and relate to the loss of open land between settlements. It also refers to the appeal site forming part of the Green Gap between Shavington and Crewe. The assessment indicates that the Magnitude of Change is considered to be High on the site and within the immediate setting and Medium-High within the wider area of the Green Gap between Shavington and Crewe. Finally, the Council concludes in its assessment that Significance of landscape impact would be Substantial-Moderate Adverse on both the site and its immediate setting and Moderate Adverse on the wider Green Gap between Shavington and Crewe.
27. Both the appellant's LVA and the Council's assessment have been undertaken having regard to the Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> Edition, published by the Landscape Institute and the Institute of Environmental Management and Assessment in 2013.

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<sup>19</sup> Core Document 5

<sup>20</sup> Section 4 of Mr Gomulski's Proof of Evidence

28. The appellant considers that the proposed development would generate low levels of adverse landscape effect through the removal of a short section of existing hawthorn hedgerow along the western boundary of the appeal site and the loss of the semi-improved grassland within the appeal site. However, the appellant states that this would be tempered by the landscape proposals associated with the proposed development, which would include the introduction of a significant quantity of new tree planting throughout the proposed development and, in particular, within the open space proposed on the northern part of the appeal site and within the proposed footpath corridor, along the southern part of the appeal site. Furthermore, new sections of native species hedgerow, with associated trees, are to be planted along the north eastern boundary.
29. Although the character of the appeal site would be changed significantly by the proposed development, the appellant says that the level of adverse landscape effect associated with this change would be moderated by its existing character, given its location mostly within an indent of development on the north eastern edge of Shavington, being contained on 3 sides by mixed residential development; and the proximity and prominence of this neighbouring development, which gives the appeal site its urban fringe character. In terms of the wider area, the appellant considers that, although the character of the appeal site itself would be changed significantly by the proposed development, given the indented nature of the proposed development within the existing urban edge of Shavington; the existing urban fringe character of the appeal site and its surroundings; and its low level of prominence, it would not be of a size and scale that would affect the landscape character of the wider area associated with the LFW7 Barthomley Character Area.
30. The Council considers that the appeal site and the wider rural landscape exhibit many of the characteristics identified in the Cheshire Landscape Character Assessment 2009 for the Barthomley Character Area (LFW7). The Council also says that this is a landscape in which there is evidence of incremental development, pressure for expansion of existing settlements and ribbon development and infill. As designated Green Gap, the appeal site and wider rural landscape provide an important function. The local topography, vegetation and agricultural character, mean that the appeal site is an integral part of the wider open countryside, and that it displays the character of the open countryside, located as it is beyond the settlement boundary, rather than that of the urban fringe or derelict landscape in need of enhancement. Indeed, the Council considers that it is a functioning agricultural landscape and that the very features which give this area its attractive character, namely topography, hedgerows, trees and vegetation, are the very things that contrast and separate it so clearly from Shavington, to the south, and Crewe, to the north, which results in it being an area which clearly justifies its Green Gap designation.
31. It is apparent from the evidence before me that the appeal site is located within the Green Gap between Shavington and Crewe. However, it is sited immediately to the north of the settlement of Shavington, with residential development immediately to the east, south and west. A hedgerow exists along the western and northern boundaries of the appeal site, which is grassed and used for the seasonal grazing of adult cattle. The Indicative Site Location Plan shows how the appeal site could be developed for 64 dwellings by



extending the built form of the settlement, beyond an enhanced public footpath corridor, to the north, in general line with the extent of the existing development along Northway/Westway and the western side of Crewe Road, with a large area of public open space sited on the northern part of the appeal site beyond the built up area. The existing hedgerow along the northern boundary would be retained and a new native hedgerow would be planted along the north eastern boundary. Further tree planting would occur within the proposed development. The submitted plan also shows how most of the hedgerow along the western boundary of the appeal site would be retained and enhanced.

32. The appeal site does not benefit from any formal landscape designation. I acknowledge, however, that it is sited within the Green Gap where approval would not be given for the construction of new buildings which would adversely affect the visual character of the landscape. The proposed development would include the loss of some open countryside. However, given the contained nature of the appeal site and its location immediately adjacent to the built up area of Shavington, along with the retention of many of the existing landscape features, including boundary hedgerows and trees, and the addition of further planting within the proposed development, I do not consider that the proposal would introduce features that would be completely uncharacteristic of the immediate area or would represent a substantial intrusion into the landscape of the wider area. Nevertheless, given the nature and scale of the proposed development, it would cause some harm to the landscape character of the appeal site and the wider area.

#### *Visual Effects*

33. The appellant's LVA identifies 9 Receptor Groups (RG1-RG9) and 8 Viewpoints (VP1-VP8) from which it has assessed the visual effects of the proposed development. The Receptor Groups and Viewpoints are not disputed by the Council. The LVA has identified the visual receptors as users of a public footpath (Shavington cum Gresty FP3); residents of nearby dwellings; and, pedestrian and vehicular users of Crewe Road. Both the appellant's LVA and the Council's assessment set out the Sensitivity, Magnitude of Effect and Significance of Effect for each Receptor Group.
34. With regards to the public right of way (RG1), the appellant's LVA concludes that the footpath, which runs through the southern part of the appeal site, is a popular route, which is likely to be used by local people for recreational purposes, dog walking and as a pedestrian link between Park Estate/Weston Lane and Crewe Road. The LVA considers that the footpath does not track through an area which is acknowledged for its scenic quality, and there are no relevant designations, interpretive provision or identified viewpoints. However, it says that the views currently experienced are of an attractive agricultural landscape, with an obvious urban influence due to the close and prominent urban edge of Shavington. Once developed, the LVA acknowledges that walkers would experience immediate and clear views of the new houses, access roads and footpath corridor. Table 1 in Appendix 2 to the appellant's LVA sets out the Sensitivity, Magnitude of Effect and Significance of Effect for each Receptor Group. It concludes that RG1 would have a Sensitivity of Medium/High, a Magnitude of Effect of High and a Significance of Effect of Major/Moderate Adverse.

35. The Council's assessment says that the rural tranquillity and openness of the landscape can currently be appreciated by users of FP3, with views into the wider countryside and to the peaks at a distance to the east. Once developed, the assessment considers that the views from FP3 would be transformed from rural to urban, which would dominate the entire route within the appeal site. As such, it concludes that RG1 would have a Sensitivity of High, a Magnitude of Change of High and a Significance of Effect of Substantial.
36. It was apparent from my site visit that views of the appeal site are clear and uninterrupted along the full length of that part of FP3 which runs through the appeal site. The appellant's LVA includes VPs1, 2 and 3 from along this footpath. It was also apparent from my site visit, and from the submitted photographs, that longer distance views beyond the northern boundary of the appeal site are restricted by the existing boundary hedgerow and tree planting associated with the A500 and A500 Link Road. Some longer distance views are possible to the north east, however, given the open nature of that part of the appeal site's boundary. The proposed development would include a diversion to the route of the public footpath, in order that it would meander through a new landscaped area along the southern part of the appeal site. Nevertheless, given the close proximity of the proposed dwellings to this footpath and the scale of the development proposed, in my opinion, the proposed dwellings and associated infrastructure would appear dominant and visually obtrusive to users of FP3 and would inhibit longer distance views to the open countryside beyond, to the detriment of these users.
37. With regards to the views of local residents, the appellant's LVA says that generally these residential receptors are likely to experience visual effects as a result of the implementation of the proposed development. However, the proposal incorporates the necessary off set distances between the existing and proposed properties in order to ensure that the required residential amenity standards are achieved.
38. The Council considers that an acceptable scheme could be secured at the reserved matters stage that would not have a detrimental impact upon residential amenity. However, the Council's assessment states that what are currently rural views over the appeal site from neighbouring properties would become urban following the construction of the proposed development.
39. The appellant's LVA sub-divides RG2, with all groups having a Sensitivity of Medium/High, but with the residents of Nos. 187a, 191 and 193 Crewe Road having a Low/Negligible Magnitude of Effect and a Significance of Effect of Minor Adverse/Negligible; the residents of Nos. 195 and 197 Crewe Road having a Low Magnitude of Effect and a Significance of Effect of Minor Adverse; and, the residents of No. 199 Crewe Road having a Low/Medium Magnitude of Effect and a Significance of Effect of Moderate Adverse.
40. The Council's assessment also sub-divides RG2, with all groups having a Sensitivity of Medium/High, but with the residents of Nos. 191 to 197 Crewe Road having a Magnitude of Change of Low and a Significance of Effect of Minor; and, the residents of Nos. 187a and 199 Crewe Road having a Magnitude of Change of Medium and a Significance of Effect of Moderate.
41. The dwellings at Nos. 187a, 191, 193, 195, 197 and 199 Crewe Road (RG2) are located to the west of the appeal site, on the other side of the highway. No. 187a is set back from Crewe Road, beyond the dwelling at No. 187. Residents

of this dwelling would have views of the proposed development. However, given its setback nature, along with the intervening buildings and hedgerow along the western boundary of the appeal site, I do not consider that the proposal would appear unduly prominent or visually intrusive to the occupiers of this dwelling. The dwellings at Nos. 191 – 197 are also set back from Crewe Road and are accessed via a cul de sac. A substantial hedgerow exists along the western side of Crewe Road, between it and the cul de sac. Given this, I consider that these residents would experience only partial views of the proposed development. I am satisfied, therefore, that it would not appear unduly dominant or visually obtrusive to the occupiers of these dwellings. No. 199 is sited closer to Crewe Road. However, although the residents of this dwelling would have clearer views of the proposed development than others in this Receptor Group, I am satisfied that, given the distance from the proposed dwellings and the intervening public open space, along with the retention of some of the hedgerow along the western boundary of the appeal site, it would not appear unduly dominant or visually intrusive to the occupiers of this dwelling.

42. The appellant's LVA sub-divides RG3, with all residents having a Sensitivity of Medium, but residents of No. 187 Crewe Road having a Low Magnitude of Effect and a Minor Adverse Significance of Effect and residents of Nos. 185 and 185a having a Low/Negligible Magnitude of Effect and a Minor Adverse/Negligible Significance of Effect. The Council's assessment also sub-divides RG3, with all residents having a Sensitivity of Medium, but residents of No. 187 Crewe Road having a Magnitude of Change of Medium and a Significance of Effect of Moderate and residents of Nos. 185 and 185a having a Low Magnitude of Change and a Minor Significance of Effect.
43. The dwellings at Nos. 185, 185a and 187 Crewe Road in RG3 are located on the western side of the highway, to the south of the appeal site. The front elevations of these dwellings are sited close to Crewe Road. Given their siting and location, along with existing trees and hedgerows, residents of these properties would only experience partial and oblique views of the proposed development. I am satisfied, therefore, that the proposal would not appear unduly prominent or visually obtrusive to the occupiers of these dwellings.
44. The appellant's LVA says that the residents of Nos. 164 – 176 Crewe Road in RG4 have a Sensitivity of Medium, a Magnitude of Effect of Low/Negligible and a Significance of Effect of Minor Adverse/Negligible. The Council's assessment says that these residents have a Sensitivity of Medium, a Magnitude of Change of Low and a Significance of Effect of Minor.
45. The dwellings in RG4 are sited to the south of the appeal site, on the eastern side of Crewe Road. The front elevations of these dwellings are sited close to the highway. Given their siting and orientation, only oblique and partial views from these dwellings of the proposed development would be likely, predominantly from the upper floor windows in the rear elevations. As such, I am satisfied that the proposal would not appear dominant or visually intrusive to the occupiers of these dwellings.
46. The appellant's LVA says that the residents of Nos. 5, 6 and 7 Meadow Close in RG5 and Nos. 33 – 55 Park Estate in RG6 have a Sensitivity of Medium/High, a Magnitude of Effect of Medium/High and a Significance of Effect of Moderate/Major Adverse. The Council's assessment indicates that these

- residents have a Sensitivity of Medium/High, a Magnitude of Change of High and a Significance of Effect of Substantial/Moderate.
47. The properties in RG5 are sited to the south of the appeal site. The rear elevations of these dwellings mostly face the appeal site. The residents of these dwellings currently experience clear views across the appeal site and beyond, to the A500 corridor to the north, from windows in their rear elevations, particularly at first floor level, and from their rear gardens. Although this view would change from rural to urban, given the distance between these properties and the proposed dwellings, along with the intervening landscaped footpath corridor proposed, I am satisfied that the proposal would not appear unduly prominent or visually obtrusive to the occupiers of these dwellings.
48. The appellant's LVA sub-divides RG7 with both groups having a Sensitivity of Medium/High, but with the residents of Nos. 1, 3 and 5 Northway having a Magnitude of Effect of Medium/High and a Significance of Effect of Moderate/Major Adverse and the residents of Nos. 7, 10, 12, 14, 16 and 18 Northway and Nos. 1, 2, 3, 4, 6, 8, 10 and 12 Westway having a Magnitude of Effect of Medium and a Significance of Effect of Moderate Adverse. The Council's assessment also subdivides RG7 with both groups having a Sensitivity of Medium/High, but with the residents of Nos. 1, 3 and 5 Northway having a Magnitude of Change of Medium/High and a Significance of Effect of Moderate/Substantial and the residents of Nos. 7, 10, 12, 14, 16 and 18 Northway and Nos. 1, 2, 3, 4, 6, 8, 10 and 12 Westway having a Magnitude of Change of Medium and a Significance of Effect of Moderate.
49. Nos. 1, 3 and 5 Northway are sited to the east of the appeal site. The rear elevations of these dwellings face the appeal site. The residents of these dwellings have clear views across the appeal site, towards Crewe Road, from the first floor windows in their rear elevations. However, the existing hedge along the eastern boundary of the appeal site would limit views from the ground floor windows and rear gardens of these properties. Although this view would change from rural to urban in nature, given the distance between these dwellings and the proposed houses, the proposal would not appear prominent and visually intrusive to the occupiers of these dwellings from within their homes. The other dwellings on Northway and Westway in RG7 are either positioned with their gable ends facing the eastern boundary of the appeal site (Nos. 1, 2, 3, 4, 6, 8, 10 and 12 Westway) or are set back from the appeal site boundary, with intervening dwellings, which would limit the views of the proposed development (Nos. 7, 10, 12, 14, 16 and 18 Northway). In my opinion, the proposal would not appear unduly dominant or visually obtrusive to the occupiers of these dwellings, given their orientation or distance from the appeal site and the intervening built form.
50. The appellant's LVA identifies the residents of Nos. 2, 4, 6, 8 and 20 Northway and Nos. 24, 26, 28, 30 and 32 Park Estate in RG8 as having a Sensitivity of Medium, a Magnitude of Effect of Low and a Significance of Effect of Minor Adverse. The Council's assessment identifies these residents as having a Sensitivity of Medium, a Magnitude of Change of Low and a Significance of Effect of Minor.
51. The dwellings at Nos. 2 – 8 and 20 Northway and Nos. 24 – 32 Park Estate in RG8 are sited on the eastern and southern sides of these highways

- respectively. Their front elevations face the appeal site, however, there are intervening properties on the western side of Northway and the northern side of Park Estate, which ensure that only oblique or partial views would be available of the proposed development to the residents of these properties. Given this, and the distances between these properties and the appeal site, I am satisfied that the proposal would not appear unduly prominent or visually intrusive to the occupiers of these dwellings.
52. Finally, in respect of users of Crewe Road in RG9, the appellant's LVA identifies them as having a Sensitivity of Low/Medium, a Magnitude of Effect of Medium and a Significance of Effect of Moderate/Minor Adverse. The Council's assessment identifies these users as having a Sensitivity of Medium, a Magnitude of Change of High and a Significance of Effect of Substantial/Moderate.
53. In terms of the views of road users on Crewe Road, the appellant's LVA acknowledges that, given the relatively close proximity of Crewe Road to the western boundary of the appeal site, people travelling along it would experience clear, partial and oblique views of the appeal site from distances of between around 5m and 275m. It goes on to say that pedestrians, cyclists and car users would experience limited views of the appeal site, given that the boundary hedgerow, which is around 1.8m high, forms an effective lower level screen, particularly when it is in leaf. Furthermore, it says that people travelling in taller vehicles may experience clearer views of the appeal site over the hedgerow on its western boundary with Crewe Road.
54. The Council's assessment states that the existing agricultural views of hedgerow trees, with intermittent views through field openings of the wider rural landscape beyond, would fundamentally change. Indeed it concludes that the proposed dwellings would be a prominent feature in views along Crewe Road, particularly given that the existing hedgerow would be partially removed to allow pedestrian and vehicular access to the site.
55. It was apparent from my site visit and from the submitted photographs of VPs 3 – 8 that people travelling along Crewe Road would experience clear, partial and oblique views of the proposed development at various points along this highway. A hedgerow currently exists along the western boundary of the appeal site, however, the Indicative Site Development Plan shows that part of this would be removed in order to accommodate the proposed access. This indicative plan also shows that much of the boundary hedgerow would be retained, along with the provision of a large area of public open space, and that the proposed dwellings would be set back from Crewe Road, with intervening hard and soft landscaping. Nevertheless, in my opinion, the proposal would appear prominent and visually intrusive to users of Crewe Road. However, given the existing extent of built development on the western side of Crewe Road, the proposal would be seen as a continuation of the existing settlement.
56. I have found, therefore, that the proposed development would cause some harm to the Visual Receptor Groups RG1 and RG9.
57. Having regard to the harm that I have identified to the landscape character of the appeal site and the wider area, along with the harm to 2 of the visual receptors, I conclude that the proposal would harm the visual character of the landscape. As such, the proposed development would be contrary to Replacement Local Plan Policy NE.4, in this regard. However, given the nature

of these impacts, I consider that only some weight should be afforded to the landscape changes and visual effects that would result from the proposed development.

***Green Gap between Shavington and Crewe***

58. The appeal site is located within the Green Gap between Shavington and Crewe. The Council considers that the designated Green Gap in this location, which includes the appeal site, serves to physically separate and prevent the merging of Shavington and Crewe and maintains them as distinct settlements. The Council and local residents, along with Shavington Parish Council, are concerned that any development within the Green Gap in this location would reduce the extent, and erode the integrity, of the Green Gap, which would make it more difficult to retain the essential separateness, identity and individuality which characterises the settlement of Shavington. Furthermore, they are concerned that this proposed development and others like it would result in Shavington being merged into Crewe, with which local residents have no affinity.
59. Paragraph 4.18 of the reasoned justification to Replacement Local Plan Policy NE.4 says that the areas designated as Green Gaps need additional protection in order to maintain the definition and separation of existing communities and to indicate support for the longer term objective of preventing Crewe, Willaston, Wistaston, Nantwich, Haslington and Shavington from merging into one another. It goes on to say that the building of principal traffic routes through the narrow gaps between the settlements has the potential to increase pressure for new development up to and along those routes. Furthermore, that pressure, it says, is already manifest in the Green Gaps, justifying a stricter level of development control to ensure continuing separation of the settlements.
60. I note the historical context of the development of the Green Gap policy within the former Borough of Crewe and Nantwich set out by the Council and their specific function which is to prevent neighbouring towns and villages from merging into one another as a result of the unrestricted sprawl from the larger built up area of Crewe. I also acknowledge the Council's statement that the Green Gap policy should be viewed as the continuation of a long-held planning objective, to impose a stricter level of development control than open countryside policy, in areas the designation of which has been consistently accepted following examination, the process of which has highlighted the need to avoid the cumulative dilution of policy by allowing development to 'nibble away' at these areas.
61. The appellant considers that by developing the appeal site, a relatively small, indented part of the Green Gap would be affected, however the proposed development would not physically narrow the Green Gap between Shavington and Crewe, as the gap is currently determined by the spurs of development to the east and west of the appeal site. As such, the appellant is of the view that the proposed development would not represent a significant erosion of the Green Gap. Furthermore, the appellant considers that the perception of the Green Gap on the ground should also be considered. Indeed, the appellant points to the presence and proximity of existing development and the A500 and its associated embankments and planting as being fundamental to the perception of the Green Gap in the vicinity of the appeal site. In particular,

although the physical extent of the Green Gap, defined on the Replacement Local Plan Proposals Map, extends as far south as Shavington House (No. 199 Crewe Road), which is located on the western side of the highway, opposite the appeal site, the appellant says that the perceived gap on the ground is somewhat different, given the location of the commercial development on the western side of Crewe Road, to the north of No. 199 and between it and the A500 link road. This, the appellant says, is consistent with the Council's New Green Belt and Strategic Open Gap Study<sup>21</sup>, published in September 2013, prepared as part of the evidence base for the emerging Cheshire East Local Plan, which says that the sense of the gap, along this part of Crewe Road, is reduced by the presence of employment uses up to the junction with the A500.

62. The appellant agreed in cross examination at the Inquiry that the proposed development would result in the erosion of the physical gap between Shavington and Crewe. Furthermore, the appellant confirmed that it has not been demonstrated that no suitable alternative location is available. As such, this proposal could not be considered as an exception to Policy NE.4 and its development would be contrary to it. Nevertheless, the appellant does not consider that the proposed development would undermine the objectives of Policy NE.4.
63. The proposed development would be sited within the Shavington/Weston/Crewe Green Gap as shown on the Proposals Map in the Replacement Local Plan. Within the Green Gaps, Policy NE.4 is very clear that approval will not be given for the construction of new buildings which would result in the erosion of the physical gaps between built up areas; or, adversely affect the visual character of the landscape. In this case, it is apparent from the evidence before me that, by its very nature, the proposed development of 64 dwellings would result in the erosion of the physical gap between Shavington and Crewe; and, I have found that it would adversely affect the visual character of the landscape. The appellants have not demonstrated that no suitable alternative location is available for the proposed development. As such, the proposal would be contrary to Policy NE.4 of the Replacement Local Plan.
64. Nevertheless, I have had regard to the reasoned justification to Policy NE.4 contained in paragraph 4.18 of the Replacement Local Plan and in particular the purpose of the policy and the reason for the designation of Green Gaps which is to maintain the definition and separation of existing communities and to indicate support for the longer term objective of preventing Crewe, Willaston, Wistaston, Nantwich, Haslington and Shavington from merging into one another. It is also apparent from the emerging Cheshire East Local Plan Strategy that this is a policy approach which the Council wishes to retain and extend in the future and which has tremendous support from local residents and the Parish Council.
65. With regards to the distance between Crewe and Shavington, the existing Green Gap has been measured by the appellant as being around 450m along Crewe Road, to the north and south of the A500, and around 260m between the northern extent of the housing on Northway/Westway and the A500. At the Inquiry, the Council submitted a plan<sup>22</sup> which indicates that the northern boundary of the appeal site is sited around 355m from the southern boundary of the proposed housing site included within the Local Plan Strategy –

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<sup>21</sup> Core Document 47

<sup>22</sup> Document 31

Consultation Draft Proposed Changes Version: Policies Map (March 2016), which forms part of Site CS 2 Basford West, Crewe. It also indicates that the appeal site is around 134m wide at this point.

66. The proposed development would, therefore, involve a reduction in the Green Gap of around 134m at this point. However, given the extent of the public open space proposed on the northern part of the appeal site, along with the extent of the built development within Shavington immediately to the east and west, which the built form on the appeal site would not extend beyond, the proposal would not, in my opinion, perceptibly narrow the Green Gap in this location. Furthermore, when travelling along Crewe Road, given the existing commercial properties on the western side, along with the A500 link road junction, the sense of the Green Gap is substantially reduced. To my mind, the development of the appeal site as indicated would retain the perception of the Green Gap along Crewe Road beyond what is the extent of the existing residential development along the western side of Crewe Road and Northway/Westway.
67. I acknowledge that the location of the A500 through this Green Gap has the potential to increase pressure for new development up to and along this route and this is evidenced by the proposal before me, as well as other developments which have been the subject of planning applications and appeals within this locality. However, in this location, I do not consider that the proposed development would perceptibly reduce the Green Gap between Shavington and the A500, given its siting between existing built development on Crewe Road and Northway/Westway.
68. Indeed, in my opinion, although the proposed development would physically erode the Green Gap to a limited degree, it would not cause significant harm to the wider functions of the Green Gap in this location, given the extent of the remaining gap between Shavington and Crewe and that the maintenance of the definition and separation of these 2 settlements would not be significantly diminished.
69. I conclude, therefore, that the proposed development would result in the erosion of the physical gap between the built up areas of Shavington and Crewe, and as such, it would be contrary to Replacement Local Plan Policy NE.4, in this regard. However, there would be little harm to the purposes of the Green Gap in this location. Although the proposed development would involve a breach of Policy NE.4, given that it is a policy for the supply of housing to which I have afforded limited weight, I have afforded this breach only limited weight in my consideration of this appeal.

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

70. The appeal site is around 2.19ha of permanent grassland, used for the seasonal grazing of adult cattle. It is classified as Grade 3a in MAFF's Agricultural Land Classification, along with most of the agricultural land to the north of Shavington. The Council and local residents are concerned about the permanent loss of this area of agricultural land.
71. Following the refusal of the planning application, the appellant submitted a report by Reading Agricultural Consultants Limited, dated July 2015, titled 'Consideration of the Agricultural Reason for Refusal'. This report sets out a number of problems associated with the location of this agricultural field and



the nature of its boundaries with the neighbouring residential development. In particular, it refers to the public footpath which runs through part of the appeal site, from a pedestrian link to Park Estate through to Crewe Road, close to its southern boundary. This, it states, has caused considerable problems for farming the land over many years including vandalism to boundary fencing and livestock water supplies; and, uncontrolled access to the field, which has resulted in litter, including cans and glass bottles, being left in the field, and a number of dog attacks on cattle. These issues, it states, pose a very real constraint on the agricultural management of the field, such that the land is very restricted in its potential agricultural uses. Indeed, it cannot be used for arable agriculture because of the extent of trespass and uncontrolled dog walking around the field; grazing young cattle, sheep or other more vulnerable livestock, because of the risks associated with dog attacks; and hay and silage production, because of the extent of dog fouling.

72. At the Inquiry, local residents suggested that these issues could have been addressed through the erection of an electric or other fence along the northern side of the public footpath, or the erection of appropriate signage, in order to prevent walkers and dogs from encroaching any further into the field, but the appellant has not done this. In response, the appellant referred to the costs of erecting such a fence and the potential gross margin from this field, set out in the agricultural report, of around £2,000 per annum, which would have to cover fixed (overhead costs) which for the appeal site would include a substantial amount for repairs and maintenance.
73. Paragraph 112 of The Framework says that local planning authorities should take into account the economic and other benefits of the BMV agricultural land. It goes on to say that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. Policy NE.12 of the Replacement Local Plan seeks to prevent the development of the BMV agricultural land, with some exceptions.
74. It is apparent from the evidence<sup>23</sup> before me that the Council has a substantial shortfall of 5,205 dwellings already within the Plan period of the emerging Local Plan Strategy (1 April 2010 to 31 March 2016) and that the use of BMV agricultural land will be required to meet the Council's identified housing need. Furthermore, the economic benefits of the agricultural land are modest, given the nature and location of the appeal site. Nevertheless, no assessment has been made by the appellant of what value could be taken from the land if improvements were made to limit access to the field from the public footpath, to maximise its potential for use as either arable or grazing land. In any event, the proposal would result in the loss of around 2.19ha of BMV agricultural land, contrary to Policy NE.12 of the Replacement Local Plan. As such, this matter should be afforded some weight in the overall planning balance.

### **The Planning Balance**

75. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan

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<sup>23</sup> Core Document 14 – Table 4.1

- should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
76. Paragraph 14 of The Framework says that at its heart is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision taking this means approving development proposals that accord with the development plan without delay; and, where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework as a whole; or specific policies in The Framework indicate development should be restricted.
77. In this case, the main parties agree that bullet point 4 of paragraph 14 is engaged, given that Policies NE.2, NE.4 and NE.12 of the Replacement Local Plan are relevant policies for the supply of housing which should not be considered up-to-date, as the Council cannot currently demonstrate a 5 year supply of deliverable housing land.
78. Paragraph 7 of The Framework sets out the 3 dimensions to sustainable development: economic, social and environmental and Paragraph 8 says that the roles performed by the planning system in this regard should not be undertaken in isolation, because they are mutually dependent. It goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system, which should play an active role in guiding development to sustainable solutions.
79. In terms of the economic role, the appellant states that the proposed development would provide significant economic benefits through the provision of employment during the construction phase, new homes and benefits for local businesses in Shavington. The Council acknowledges that there would be some economic benefits associated with the proposed development, albeit that these elements would be temporary or remain unquantified.
80. With regards to the social role, the appellant refers to the delivery of up to 64 dwellings on the appeal site, including the provision of 30% affordable housing which would go some way to addressing the general housing shortfall and the pressing and acute need for affordable housing in Cheshire East. The development would, therefore, be consistent with the requirement in The Framework to boost significantly the supply of housing. Furthermore, the main parties agree that the appeal site would be locationally sustainable, given its siting on the edge of Shavington and the accessibility of local services and facilities.
81. The Council states that, although the provision of affordable housing would be socially sustainable, this must be balanced against the efforts that the Council is making to address the current problem. Furthermore, I note the positive steps being taken by the Council in respect of addressing the housing shortfall in the work carried out for its emerging Local Plan, the granting of planning permission for a substantial number of dwellings recently and the development of a brownfield toolkit to work with developers to unlock important development sites across the Borough.

82. In terms of the environmental role, the appellant refers to the public open space provision, which would provide a facility for future residents of the proposed development and other residents in Shavington. The Council and local residents consider, however, that the harm to the visual character and physical erosion of the Green Gap in this location, along with the loss of BMV agricultural land, would significantly and demonstrably outweigh the benefits of the scheme.
83. In my judgment, although I acknowledge the positive steps being taken by the Council in respect of addressing the housing shortfall, the lack of a 5 year supply of deliverable housing land is a material consideration of substantial weight in this appeal, particularly given the substantial shortfall in supply identified. I also note the Council's efforts in seeking to address the significant need for affordable housing in the District. However, the provision of 30% of the dwellings on the appeal site as affordable homes is a material consideration of significant weight in this appeal. It is agreed that the appeal site is locationally sustainable, given its siting on the edge of Shavington, close to local services and facilities. This is a matter which attracts some weight in this appeal, as do the economic benefits of the scheme through the provision of employment during the construction phase, new homes and benefits for local businesses in Shavington. Furthermore, the environmental benefits of the proposed development, which include the provision of a large area of public open space, including a children's play area and an enhanced public footpath, would be a benefit of significant weight.
84. On the other hand, however, the proposed development would harm the visual character of the landscape, contrary to Replacement Local Plan Policy NE.4, to which I have afforded some weight, and would result in the erosion of the physical gap between the built up areas of Shavington and Crewe, which would also be contrary to Policy NE.4, to which I have afforded limited weight. In addition, the proposal would result in the loss of around 2.19ha of BMV agricultural land, contrary to Policy NE.12 of the Replacement Local Plan, to which I have also afforded some weight.
85. I have considered all the other matters raised by the Council and third parties including precedent; the significant level of new housing development approved and proposed in and around Shavington; the preference for the development of brownfield sites; the impact on local services and facilities; the impact of the proposal on local wildlife and ecology; the living conditions of neighbouring residents; the increase in traffic; and highway and pedestrian safety concerns. However, I do not consider that these matters and the harm identified to the visual character of the landscape and the erosion of the physical gaps between built up areas, along with the loss of BMV agricultural land, would significantly and demonstrably outweigh the benefits of the proposed development, which would provide much needed housing in Cheshire East. As such, I conclude that the appeal should be allowed.

### **Conditions**

86. An agreed list of suggested conditions was included in the Statement of Common Ground. In addition to the standard time limit and reserved matters conditions, a further 16 conditions have been suggested. I have had regard to

the advice in the Planning Practice Guidance<sup>24</sup> (The Practice Guidance) when considering these conditions. Given the outline nature of the proposal and that reference is made to specific plans where appropriate in other conditions, I do not consider that a condition which requires that the permission shall refer to particular drawing numbers would be necessary. A condition which requires that the development be carried out in general accordance with the submitted Indicative Site Development Plan was discussed at the Inquiry. However, I do not consider that such a condition would be sufficiently precise or necessary to safeguard the character and appearance of the area, given that layout is a reserved matter.

87. A condition requiring the submission and approval of existing and proposed ground levels and proposed floor slabs, would be reasonable to safeguard the character and appearance of the area and the living conditions of neighbouring residents. A requirement that samples of the materials to be used in the construction of the external surfaces of the dwellings would not be necessary as this would be dealt with during the consideration of appearance at the reserved matters stage. A requirement that each reserved matters application be accompanied by a detailed lighting plan would be necessary to safeguard the character and appearance of the area and the living conditions of neighbouring occupiers.
88. A surface water drainage scheme would be necessary to reduce the risk of flooding and pollution. Although a condition was suggested that requires that the mitigation recommended in the submitted acoustic report be implemented, it was confirmed at the Inquiry that this report does not contain specific mitigation measures. The main parties therefore agreed that a condition which requires the submission and approval of a scheme of mitigation would be more appropriate. I consider that such a condition would be reasonable to safeguard the living conditions of neighbouring occupiers and to ensure appropriate living conditions for future occupiers of the proposed development. An Environmental Management Plan would be necessary to safeguard the living conditions of neighbouring residents during the construction period and in the interests of highway safety.
89. Conditions which require the development of a Travel Plan and the provision of an Electric Vehicle Charging Point in each property with a designated parking space would be reasonable to promote sustainable forms of travel and to reduce transport related emissions. Conditions relating to the retention and protection of trees, shrubs and hedges during the construction period and the provision of replacement hedge planting would be reasonable to safeguard the character and appearance of the area. A requirement that the development be carried out in accordance with Drawing No. Figure SK10 would be reasonable in the interests of highway safety. Conditions requiring the incorporation of features into the scheme suitable for use by breeding birds and that the development be carried out in accordance with the recommendations of the submitted ecological report, would be reasonable in the interests of ecology.
90. At the Inquiry a further agreed condition was proposed by the main parties which would limit the number of dwellings on the appeal site to 64. I consider that such a condition would be necessary to ensure a satisfactory layout of the proposed development and to define the maximum capacity of the

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<sup>24</sup> Circular 11/95: The Use of Conditions in Planning Permissions has been largely superseded by the Planning Practice Guidance, with the exception of Appendix A (Model Conditions)

development. It was confirmed at the Inquiry that there would be no need for any conditions relating to archaeology matters, given the consultation response from the Council's Archaeologist that there is no evidence of particular archaeological potential on the appeal site. I have no evidence before me that would dispute this and, as such, I do not consider that such conditions would be necessary.

91. At the Inquiry, it was suggested by a third party that a condition which would require the provision of a pedestrian crossing across Crewe Road would be necessary, given that it is a busy highway. The Highway Authority is not seeking such provision, having had regard to the nature of the application and the number of units proposed. There is no evidence before me which shows that a pedestrian crossing along this part of Crewe Road would be reasonable or necessary to serve the proposed development. As such, I have not imposed such a condition.

### **Section 106 Agreement**

92. I have considered the planning obligations included within the Section 106 Agreement<sup>25</sup> in the light of the statutory tests contained in Regulation 122 of the CIL Regulations. I have also had regard to the Council's CIL Compliance Statement. This confirms that, where Regulation 123 applies, there would be no Section 106 obligations contributing towards each infrastructure project and therefore the obligations within the Section 106 Agreement would be compliant. The obligations within the Section 106 Agreement relate to the following matters.
93. *Affordable Housing*: Policy RES.7 of the Replacement Local Plan says that an element of affordable housing will be sought on windfall sites of 25 units or more, or greater than 1ha in size, in Nantwich and the rural areas. It goes on to say that affordable housing targets on windfall sites will be 30%. Policy RES.7, as modified, says that the need for affordable housing will be met through negotiation on a site by site basis with developers for an element of affordable housing on windfall sites of 15 units or more, or greater than 0.5ha in size in Crewe, Nantwich and the rural areas.
94. The Council's Interim Planning Statement: Affordable Housing says that, in areas with a population exceeding 3,000, the Council will negotiate for the provision of an appropriate element of the total dwelling provision to be for affordable housing on all unidentified windfall sites of 15 dwellings or more, or greater than 0.4ha in size, with the general minimum proportion of affordable housing for any site normally being 30%, in accordance with the recommendation of the 2010 Strategic Housing Market Assessment (SHMA), with a tenure split of 65% social rent and 35% intermediate housing.
95. The SHMA Update 2013 identified a requirement for 270 new affordable homes between 2013/14 and 2017/18 in the Wybunbury and Shavington Sub-Area. The Council confirmed that there are currently 47 applicants on the housing register, with Cheshire Homechoice, who have selected Shavington as their first choice. The Council is seeking 30% of the total dwellings to be provided as affordable housing, with 65% provided as affordable or social rented dwellings and 35% as intermediate tenure dwellings. The Section 106 Agreement includes the provision of 30% of the total dwellings on the appeal

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<sup>25</sup> Document 30

- site as affordable, with 65% for social rent and 35% as intermediate housing. Given the level of unmet need for affordable housing in the District, and Shavington in particular, and having regard to the policy requirements, I am satisfied that this obligation would pass the statutory tests.
96. *Open Space*: Policy RT.3 of the Replacement Local Plan says that in new housing developments with more than 20 dwellings the provision of a minimum of 15sqm of shared recreational open space per dwelling will be sought. It goes on to say that, where the development includes family dwellings, namely those with 2 or more bedrooms, an additional 20sqm of shared children's play space per family dwelling will be required as a minimum for the development as a whole. Policy SC 2 of the Cheshire East Local Plan Strategy – Proposed Changes (Consultation Draft): March 2016 says, amongst other things, that in order to provide appropriate outdoor sports facilities for the communities of Cheshire East, the Council will make sure that major residential developments contribute, through land assembly and financial contributions, to new or improved sports facilities where development will increase demand and/or there is a recognised shortage.
97. The Council says that, based on 64 dwellings and 2.4 persons per dwelling, the proposal would lead to an increase of around 154 new residents in Shavington. Having regard to Replacement Local Plan Policy RT.3 the Council states that in this case it is seeking 2,240sqm of open space to serve the development of 64 dwellings. The Section 106 Agreement includes the provision of an Open Space Scheme, which would be subject to approval in writing by the Development Manager in respect of each phase, along with the setting up of a Management Company to own, maintain, manage and renew the open space in accordance with a Management Plan.
98. The Open Space Scheme would include: details of the size, location and type of open space; details and specifications for works and materials showing how the open space would be graded, drained landscaped, seeded, planted, laid out and provided fit for use by the public; in relation to the LEAP: details of the design and layout of the play area, the construction specification, the safety surfacing, materials and play equipment, together with details of fencing, seating for supervising adults and a buffer zone landscaped with low level planting; and a specification of the construction method and materials to be used.
99. Given the scale and nature of the proposed development it is likely that there would be significant demand for the use of public open space by future occupiers. The Indicative Site Development Plan (Drawing No. 22945 D (-) 003 Rev. P6) shows how the proposed development could accommodate around 3,500sqm of public open space, including a LEAP. As such, I am satisfied that sufficient open space could be accommodated within the appeal site to meet the needs of future occupiers. I consider, therefore, that this obligation would pass the statutory tests.
100. At the Inquiry, local residents and the Executive Headteacher of Shavington Primary School<sup>26</sup> raised concerns about the lack of sufficient places within the school to meet the needs of this development and the need for a financial contribution towards such provision. The Education Authority has not requested that the Section 106 Agreement should include a financial

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<sup>26</sup> Document 27

contribution as sufficient capacity exists at other schools nearby<sup>27</sup>. As such, an obligation within this Section 106 Agreement to provide a financial contribution towards the provision of new school places would not pass the statutory tests and has not been included.

*Karen L Baker*

INSPECTOR

Richborough Estates

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<sup>27</sup> Document 26

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Scott Lyness <i>of Counsel</i>	Instructed by Mrs Patricia Evans, Solicitor to the Council
He called	
Mr Jan Gomulski	Principal Landscape Architect
BA(Hons) BLD MCD CMLI	
Mr Daniel Evans MCD	Principal Planning Officer
MRTPI	
Mrs Patricia Evans	Solicitor (Conditions and Section 106 Agreement Sessions only)

### FOR THE APPELLANT:

Mr John Barrett <i>of Counsel</i>	Instructed by Mr Peter Yates, Planning and Development Consultant
He called	
Mr Nicholas Folland	Director of Barnes Walker Limited
BA(Hons) DipLA CMLI	
Mr Peter Yates BA(Hons)	Planning and Development Consultant
MPhil MRTPI	
Ms Rachel Thornley BA	Consultant at Civitas Planning Limited
MCD	(Conditions and Section 106 Agreement Sessions only)

### INTERESTED PERSONS:

Mrs Sarah Bielby	Local Resident
Ms Beverley Ashcroft	Local Resident
Mr David Ketley	Local Resident (also attended the site visit)
Councillor Matt Ferguson	Shavington-Cum-Gresty Parish Council
Councillor Steven Edgar	Ward Councillor for Shavington (also attended the Site Visit)
Mr William Atteridge	Local Resident
Mr Peter Reddish BSc(Hons)	Local Resident (also attended the Site Visit)
Mr Gustav Pilsel	Local Resident
Mrs Patricia Jacks	Local Resident
Mr Iain Ford	Local Resident
Mrs Jane Critchley	Local Resident
Mr P Thompson	Landowner (Site Visit only)
Mrs Susan Moss	Landowner (Site Visit only)
Mr Moss	Interested Party (Site Visit only)
Mrs Blackburn	Local Resident (Site Visit only)
Mr David Thomason	Local Resident (Site Visit only)

## DOCUMENTS

- 1 Appearances on behalf of the appellant
- 2 Statement of Common Ground Addendum, submitted by the appellant



- 3 Core Document 53 – Appeal Decision (Ref. APP/R0660/W/15/3136431) Land to the rear of Cheerbrook Road, Willaston, Cheshire, submitted by the appellant
- 4 Core Document 54 (Plan A1/1) – Site Location Plan (Drawing No. 22945 L (-) 001 Rev. P1), submitted by the appellant
- 5 Core Document 55 (Plan A1/3) – Indicative Site Development Plan (Drawing No. 22945 D (-) 003 Rev. P6), submitted by the appellant
- 6 High Court Decision Cheshire East Borough Council v Secretary of State for Communities and Local Government and Harlequins (Wistaston) Limited [2016] EWHC 694 (Admin), submitted by the appellant
- 7 Extract from the Borough of Crewe and Nantwich Replacement Local Plan 2011 Inspector’s Report: Chapter 7: Housing, submitted by the Council
- 8 Sealed Order re: The Queen on the application of Stretton Willaston Limited v the Secretary of State for Communities and Local Government and Others CO Ref: CO/2307/2016, submitted by the Council
- 9 Opening on behalf of the appellant
- 10 Opening submissions on behalf of Cheshire East Council
- 11 Statement by Ms Beverley Ashcroft
- 12 Statement by Mrs Sarah Bielby
- 13 Statement by Mr David Ketley
- 14 Statement by Councillor Matt Ferguson
- 15 Letters from Sir Philip Craven MBE, submitted by Councillor Steven Edgar
- 16 Statement by Councillor Steven Edgar
- 17 Statement by Mr William Atteridge
- 18 Statement by Mr Peter Reddish
- 19 Statement by Mr Gustav Pilsel
- 20 Statement by Mr Iain Ford
- 21 Indicative Site Development Plan (Drawing No. 22945 D (-) 003 Rev. P1), submitted by the Council
- 22 (Plan A1/4) Principles of Proposed Widening of Crewe Road Site Side Footway in the Vicinity of the Application Site Frontage (Drawing No. Figure SK10), submitted by the Council
- 23 Unsigned copy of the Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990, submitted by the Council
- 24 Appendix 5 to the Council’s CIL Compliance Statement, submitted by the Council
- 25 Housing Land Supply Briefing Note updating Mr Evans’ Proof of Evidence, submitted by the Council
- 26 Table setting out pupil forecasts for primary and secondary schools, submitted by the Council
- 27 Letter from Shavington Primary School Executive Head Teacher, dated 21 September 2016, submitted by Mrs Critchley
- 28 Secretary of State’s Decision and Inspector’s Report in appeal Ref. APP/R0660/W/15/3136524, submitted by the appellant
- 29 Extract from the Guidelines for Landscape and Visual Impact Assessment Third Edition, submitted by the appellant
- 30 Certified Copy of the Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990, submitted by the Council
- 31 Plan indicating distance between Shavington and Crewe, submitted by the Council
- 32 Extract from the Cheshire East Local Plan: Local Plan Strategy Proposed

Changes 'Clean Version', Consultation Supporting Document, March 2016,  
submitted by the appellant

33 Closing Submissions on behalf of Cheshire East Council

34 Closing on behalf of the appellant

## **PLANS**

A1/1 Site Location Plan (Drawing No. 22945 L (-) 001 Rev. P1) (Document 4)

A1/2 Site Context Plan (Drawing No. 22945 D (-) 004 Rev. P1)

A1/3 Indicative Site Development Plan (Drawing No. 22945 D (-) 003 Rev. P6)  
(Document 5)

A1/4 Principles of Proposed Widening of Crewe Road Site Side Footway in the  
Vicinity of the Application Site Frontage (Drawing No. Figure SK10)  
(Document 22)

A1/5 Topographic Survey as of 21/12/12 Sheet 1 of 3 (Drawing No. R-  
S6917/204 Rev. B)

A1/6 Topographic Survey as of 21/12/12 Sheet 2 of 3 (Drawing No. R-  
S6917/205 Rev. B)

A1/7 Topographic Survey as of 21/12/12 Sheet 3 of 3 (Drawing No. R-  
S6917/206 Rev. B)

Richborough Estates

## Appendix 1 – 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall not exceed 64 dwellings.
- 5) No development shall take place until details of existing ground levels, proposed ground levels and the level of proposed floor slabs have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) Each reserved matters application shall be accompanied by a detailed lighting plan for the phase of the development to which it relates. No development shall take place except in complete accordance with the approved plan.
- 7) The development hereby permitted shall not commence until details of the detailed design, implementation, maintenance and management of a surface water drainage scheme using sustainable drainage methods have been submitted to, and approved in writing by, the Council. Those details shall include:
  - a) Information about the design's storm period and intensity (1 in 30 and 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
  - b) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
  - c) Flood water exceedance routes, both on and off site; and,
  - d) A timetable for implementation.Development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of development, a scheme of acoustic mitigation shall be submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme.

- 9) No development shall take place until an Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The Plan shall provide for:
- i) the hours of construction work and deliveries;
  - ii) the parking of vehicles of site operatives and visitors;
  - iii) loading and unloading of plant and materials;
  - iv) storage of plant and materials used in constructing the development;
  - v) wheel washing facilities;
  - vi) details of any piling required (which shall be limited to 0900hrs to 1730hrs (Monday to Friday), 0900hrs to 1300hrs on Saturdays, with no piling on Sundays or Bank Holidays) including method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, and prior notification to the occupiers of potentially affected properties;
  - vii) details of the responsible person (for example Site Manager/Office) who could be contacted in the event of complaint;
  - viii) mitigation measures in respect of noise and disturbance during the construction phase including vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
  - ix) waste management: there shall be no burning of materials on site during construction; and,
  - x) a scheme to minimise the emission of dust during 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 shall be adhered to throughout the construction period for the development.

- 10) A Travel Plan shall be developed with the aim of promoting alternative/ low carbon transport options. The Travel Plan shall be agreed with the local planning authority prior to the first occupation of the dwellings and shall include suitable and measurable targets with the aim to reduce transport related emissions. The Travel Plan shall be implemented and enforced throughout the use, reviewed every 5 years, with a report provided to the local planning authority annually on achievements against the agreed targets.
- 11) A single Electric Vehicle Charging Point shall be provided in each property with designated parking spaces (including garages) prior to their first occupation. Charge points to be suitable for overnight charging of electric vehicles.
- 12) The Landscaping Scheme required by Condition No. 1 shall include:
- a) a tree survey to inform the design of the layout; and,
  - b) a scheme which shall make provision for the retention of those trees that are classed as Category A and Category B in the Arboricultural Report (THL-R13/65-2) prepared by Tree Heritage Limited, dated 10 February 2015.

- 13) No development or other operations shall commence on site until a scheme (hereinafter called the Approved Protection Scheme), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, has been submitted to, and approved in writing by, the local planning authority. No development or other operations shall take place except in complete accordance with the Approved Protection Scheme, which shall be in place prior to the commencement of work. The Approved Protection Scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the local planning authority.
- 14) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the Approved Protection Scheme.
- 15) The reserved matters shall make provision for replacement hedge planting for any hedgerows to be removed as part of the development hereby permitted.
- 16) The development hereby approved shall not be occupied until the works shown on the plan 'Principles of Proposed Widening of Crewe Road Site Side Footway in the Vicinity of the Application Site Frontage' (Drawing No. Figure SK10), have been carried out.
- 17) Prior to the commencement of the development hereby permitted, detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds, including swifts and house sparrows, shall be submitted to, and approved in writing by, the local planning authority. The features shall be permanently installed in accordance with the approved details prior to the first occupation of the development hereby permitted.
- 18) The development hereby approved shall be carried out in accordance with the recommendations of the Preliminary Ecological Appraisal and Great Crested Newt Impact Assessment prepared by United Environmental Services Limited, dated 20 January 2015.