



Department for
Communities and
Local Government

Our Ref: APP/R0660/W/15/3129954

Gladman Developments Limited
Gladman House
Alexandria Way
CONGLETON
Cheshire
CW12 1LB

24 November 2016

Dear Sir/Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY GLADMAN DEVELOPMENTS LIMITED
LAND OFF MAIN ROAD, GOOSTREY, CHESHIRE CW4 8LH
APPLICATION REF: 14/5579C**

1. I am directed by the Secretary of State to say that consideration has been given to the report of G D Jones BSc(Hons) DipTP DMS MRTPI, who held a public local inquiry for 5 days between 17 and 24 May 2016 into your appeal against the decision of Cheshire East Council to refuse outline planning permission for your application for residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing), structural planting and landscaping, informal open space, surface water attenuation, a vehicular access point from Main Road and associated ancillary works, at land off Main Road, Goostrey, Cheshire, CW4 8LH, in accordance with application ref: 14/5579C, dated 28 November 2014.
2. On 17 November 2015, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal relates to proposals which raise important or novel issues of development control and/or legal difficulties.

Inspector's recommendation and summary of the decision

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

Matters arising since the close of the inquiry

5. Following the close of the inquiry, the Secretary of State received a representation from Ken Morris, dated 22 August 2016, and a further representation in his capacity as Vice-Chair of Goostrey Parish Neighbourhood Plan Committee, dated 18 October 2016. A representation was also received from Sharon Jones on behalf of Goostrey Parish Council, dated 21 September 2016.
6. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

7. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
8. In this case the development plan consists of the saved policies of the Congleton Borough Local Plan First Review January 2005, the plan period of which ran to 2011. The Secretary of State considers that the development plan policies of most relevance to this case are PS5, PS8, PS10, BH4 and H6.
9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
10. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

11. The emerging plan comprises the Cheshire East Local Plan Strategy (eCELPS). The Secretary of State considers that the emerging policies of most relevance to this case include Policy PG2 (IR17).
12. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. In this case eCELPS is still at examination stage, and there are unresolved issues relating to site allocations and the distribution of housing. The Secretary of State considers that emerging Policy PG2 is broadly in accordance with the principle set out in paragraph 17 of the Framework that planning should take account of the different roles and character of different areas. Overall the Secretary of State attributes limited weight to eCELPS.

13. The Regulation 14 Pre-submission Consultation version of the Goostrey Neighbourhood Plan was published on 17 October 2016, after the inquiry. It is at a very early stage, and as pre-submission consultation has not yet been completed, it is not yet clear what objections may be received. The Secretary of State considers that it currently carries little weight.

Main issues

14. The Secretary of State agrees with the Inspector that the main issues are those set out at IR247.

Jodrell Bank Radio Telescope

15. The Secretary of State agrees with the Inspector's assessment at IR249-272. He notes the common ground between the parties that there is currently a substantial exceedance of the ITU threshold and that there would be at least some additional interference resulting from the proposed development (IR263). Like the Inspector, he considers that Professor Garrington's predictions of the total interference signal from the proposed development received at the telescope relative to the ITU threshold and the existing interference are reasonable (IR265). Overall, after considering the effect of existing and additional interference, as well as the very large absolute exceedance of the ITU threshold and the likely relative increase in interference, the Secretary of State agrees with the Inspector's conclusion that even against Dr Trotta's scenario, it has been reasonably demonstrated or 'shown' that the appeal development would impair the efficiency of the Jodrell Bank Radio Telescope such that it would conflict with Policy PS10 (IR268 and 271). The Secretary of State agrees with the Inspector that Jodrell Bank Observatory as an established world class facility should be afforded reasonable protection (IR270), and considers that this proposal could damage the world class work being carried out by the Observatory (IR308). In his view the harm to the efficiency of the Radio Telescope carries substantial weight against the proposal.

Development strategy

16. The Secretary State notes that Goostrey is identified in Local Plan Policy PS5 as one of the ten second-tier settlements, a *Village in the Open Countryside*, and further notes that these settlements are expected to absorb the bulk of the housing and employment requirements for the rural areas (IR274). He agrees with the Inspector, for the reasons given at IR275, that there is no direct conflict with Policy PS5. For the reasons given at IR277, the Secretary of State agrees with the Inspector's conclusion that the proposal would be at odds with the Council's development strategy, with particular regard to development in the countryside, in conflict with Policies PS8 and H6.¹

The setting of Swanwick Hall

17. For the reasons given at IR278-280, the Secretary of State agrees that the site is within the setting of Swanwick Hall, and that the development would *cause less than substantial harm* to the setting of Swanwick Hall as a listed building. He has taken into account the duty placed on him by s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting. He has also had regard to paragraph 134 of the Framework, which states that where a development proposal will lead to less than substantial harm to the significance

¹ The Secretary of States notes that in the last sentence of IR277, PS8 is erroneously typed as PS6.

of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

18. The Secretary of State agrees with the Inspector's reasoning and conclusions at IR281-287. Like the Inspector, the evidence indicates to the Secretary of State that the area between the Hall and the current village fringe, including the appeal site, makes an important contribution to the significance of the listed building given its historic use as a farmhouse (IR286). Whilst he acknowledges that the appeal development would provide the opportunity to soften the rather suburban edge of the village, he agrees with the Inspector that it would very substantially reduce the gap between the Hall and the village, significantly diminishing the current open undeveloped character of the area (IR287). He shares the Inspector's view that this would significantly affect the setting of Swanwick Hall, causing harm to the significance of the listed building that would lie within the middle to higher end of *the less than substantial harm* spectrum (IR287). Accordingly he agrees with the Inspector that the appeal development would conflict with Policy BH4 of the Local Plan (IR287). The Secretary of State, in accordance with the s.66 duty, attributes considerable weight to this harm.
19. In relation to the two matters of Holly Bank and the Lovell Telescope, the Secretary of State agrees with the Inspector's reasoning and conclusions at IR289-290, and considers that the impact on the setting of Holly Bank carries very limited weight.

Housing land supply and weight to be attached to Local Plan policies

20. The Secretary of State notes the agreement between the main parties that there is not a Framework compliant supply of housing land (IR12) and agrees with the Inspector at IR295 that on either of the main parties' evidence, the extent of the housing supply shortfall is significant. He further agrees, for the reasons given in IR292, that Policies PS8 and H6 are both relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework, as they seek to limit development beyond Settlement Zone Lines. The Secretary of State considers that these policies are out of date for the purposes of paragraph 14 of the Framework. For the reasons given in IR292, he shares the Inspector's view that despite their multifaceted nature, the weight carried by these policies is limited.
21. The Secretary of State also agrees with the Inspector that Policy PS10 is a relevant policy for the supply of housing and is out of date for the purposes of paragraph 14 of the Framework (IR293). He further agrees that the reasonable protection of Jodrell Bank Observatory is a matter of global significance (IR294) and, for the reasons given at IR297, agrees that the protection of Jodrell Bank Observatory as a facility of international importance transcends the housing land supply circumstances of the case. The Secretary of State therefore attaches considerable weight to Policy PS10.
22. With regards to Local Plan Policy BH4, the Secretary of State is in agreement with the Inspector that as the policy does not include the provision that less than substantial harm should be weighed against the public benefits of the proposal, it does not fully reflect the approach set out in the Framework (IR299). The Secretary of State considers that this policy carries moderate weight.

Benefits of the scheme

23. For the reasons given at IR295-296 and IR300, the Secretary of State agrees with the Inspector that the delivery of 119 homes would make a genuine, valuable and important

contribution to relieving significant housing need (IR296), and is a significant planning benefit (IR295). He considers that the increase in the supply and choice of housing the proposal would offer, including affordable homes at a rate of 30% of the whole development, in an area where the evidence indicates there is a significant need for both market and affordable housing, carries significant weight.

24. The Secretary of State has considered the matters set out at IR300-305. He notes that the Council would receive New Homes Bonus (IR301). However, in accordance with the advice in the Guidance, he considers it would not be appropriate to make a decision based on the potential for the development to raise money for the Council in the absence of evidence to demonstrate how that money would be used to make this particular development acceptable in planning terms. He therefore gives this matter no weight. He further notes that the matters which would be secured by the unilateral undertaking and planning conditions are primarily intended to respond to needs arising from the proposed development (IR304). He attributes little weight to these matters. Overall he considers that the benefits of the development set out in IR300-305 carry moderate weight in favour of the proposal.

Other matters

25. For the reasons given at IR308, the Secretary of State agrees with the Inspector that the loss of BMV land carries limited weight against the proposal. He further agrees that there would be some limited landscape and visual impact as a result of the proposal, and considers that this carries limited weight (IR305). He agrees with the Inspector's assessment at IR309 that it is likely that an acceptable layout could be reasonably identified in terms of density and adequate car parking.

Planning conditions

26. The Secretary of State has given consideration to the Inspector's analysis at IR311-315, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning obligations

27. The Secretary of State has had regard to the Inspector's analysis at IR316-318, the planning obligation dated 24 May 2016, paragraphs 203-205 of the Framework, and the Guidance and the Community Infrastructure Levy Regulations 2010, as amended. Like the Inspector, the Secretary of State considers that the education contributions and the healthcare contribution would not accord with the CIL Regulations (IR316-318). He agrees with the Inspector's conclusion that the remaining obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development. Overall, the Secretary of State does not consider that the obligation overcomes his reasons for deciding that the appeal should be dismissed.

Planning balance and overall conclusion

28. The Secretary of State considers that the proposed development is not in accordance with Policies BH4, PS8, H6 or PS10 of the development plan and is not in accordance with the development plan as a whole. As set out in paragraphs 20-22 above, he considers that none of these policies carry full weight. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
29. As Policies PS8, H6 and PS10 are relevant policies for the supply of housing and are out-of-date (see paragraphs 20-22 above), paragraph 14 of the Framework sets out that permission should be granted unless:
- any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or
 - specific policies in the Framework indicate development should be restricted.²
30. Paragraph 134 of the Framework is a 'specific policy' for the purposes of paragraph 14 of the Framework, and the Secretary of State has considered whether the *identified less than substantial harm* to the significance of Swanwick Hall is outweighed by the public benefits of the proposal. In accordance with the s.66 duty, he attributes considerable weight to the harm. He considers that the provision of housing carries significant weight and the benefits of the proposal as set out in IR300-305 and discussed at paragraph 24 above carry moderate weight in favour of the proposals.
31. Overall the Secretary of State agrees with the Inspector at IR306 that the benefits of the appeal scheme are not collectively sufficient to outbalance the identified *less than substantial harm* to the significance of Swanwick Hall bearing in mind that such harm should be given considerable importance and weight. He considers that the balancing exercise under paragraph 134 of the Framework is therefore not favourable to the proposal.
32. For the reasons given at IR297-298, the Secretary of State considers that the Council's housing land supply shortfall – while significant and set in a national planning policy context – is largely a local issue, while Jodrell Bank Observatory is a facility of international importance such that its protection from the identified harm transcends the current housing land supply circumstances. He considers that the harm to the efficiency of the Radio Telescope carries substantial weight against the proposal.
33. He further considers that the loss of BMV land carries limited weight, the harm to landscape and visual impact carries limited weight, and the impact on the setting of Holly Bank carries very limited weight against the proposal.
34. Overall the Secretary of State does not consider that there are any material considerations which indicate that the proposal should be determined other than in accordance with the development plan. He therefore concludes that the appeal should be dismissed and planning permission refused.

² Footnote 9 to paragraph 14 states: For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

Formal decision

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your appeal and refuses outline planning permission for your application for residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing), structural planting and landscaping, informal open space, surface water attenuation, a vehicular access point from Main Road and associated ancillary works, at land off Main Road, Goostrey, Cheshire, CW4 8LH, in accordance with application ref: 14/5579C, dated 28 November 2014.

Right to challenge the decision

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

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

Yours faithfully

Maria Stasiak

Authorised by Secretary of State to sign in that behalf

Richborough Estates

Report to the Secretary of State for Communities and Local Government

by G D Jones BSc(Hons) DipTP DMS MRTPI

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

Date: 22 August 2016

TOWN AND COUNTRY PLANNING ACT

CHESHIRE EAST COUNCIL

APPEAL BY

GLADMAN DEVELOPMENTS LIMITED

Richborough Estates

Inquiry opened on 17 May 2016

Land off Main Road, Goostrey, Cheshire CW4 8LH

File Ref: APP/R0660/W/15/3129954

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Richborough Estates

File Ref: APP/R0660/W/15/3129954

Land off Main Road, Goostrey, Cheshire CW4 8LH

- 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 Gladman Developments Limited against Cheshire East Council.
- The application Ref 14/5579C, dated 28 November 2014, was refused by notice dated 7 July 2015.
- The development proposed is described as residential development comprising of up to 119 dwellings (including a minimum of 30% affordable housing), structural planting and landscaping, informal open space, surface water attenuation, a vehicular access point from Main Road and associated ancillary works.
- The Inquiry sat for 5 days on 17-20 and 24 May 2016.

Summary of Recommendation: The appeal be dismissed

Preliminary Matters

1. Determination of the appeal was recovered by the Secretary of State by way of a direction dated 17 November 2015. The reason given for the recovery is that 'the appeal relates to proposals which raise important or novel issues of development control and/or legal difficulties.'
2. The proposal is for outline planning permission with access only to be determined at this stage and with appearance, landscaping, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the details relating to these reserved matters submitted with the application and the appeal as a guide as to how the site might be developed.
3. The application was refused for two reasons. In summary the grounds for these were that the proposed development would:
 - 1) Impair the efficiency of Jodrell Bank Radio Telescope and conflict with development plan policies that control development in the area around Jodrell Bank Observatory and in the open countryside, and these considerations significantly and demonstrably outweigh the benefits of the development; and
 - 2) Harm the settling of Swanwick Hall, a listed building at grade II.
4. Following a report to its Strategic Planning Board on 23 September 2015, the Council (CEC) resolved to change the wording of its second refusal reason to include reference to the identified harm being *less than substantial* in the terms of the National Planning Policy Framework (the Framework) and to that harm not being outweighed by the public benefits of the proposal¹. Although a revised decision notice has not been issued, the appellant confirmed at the start of the Inquiry that it had no objection to the appeal being determined on the basis of the revised wording and it is, therefore, on that basis that I have considered the appeal.
5. A unilateral undertaking dated 24 May 2016 containing planning obligations pursuant to section 106 of the Act (the UU) was submitted by the appellant during the Inquiry².

¹ CD7

² ID 25

6. I carried out a site visit on 23 May 2016 which was accompanied during my visit to Jodrell Bank Observatory but unaccompanied for all other elements of my visit.

The Site and Surroundings

7. The appeal site extends over three agricultural fields and covers an area of some 6.9 hectares. It is well defined and contained by existing physical features. It is bound by Main Road to the south and existing residential development in Sandy Lane, Swanwick Close and Main Road to the west and south. There is an access track to the north, which is separated from the appeal site by a post and rail fence. This access links Booth Bed Lane, to the west, with Swanwick Hall, which is located a little to the north of the site beyond Shear Brook. The access drive is the only formal vehicular access to the Hall and also forms part of a public right of way, footpath 12. This footpath continues roughly northward through the courtyard immediately to the front of the Hall and then returns to Goostrey village to the southeast.
8. The tree lined Shear Brook runs adjacent to the southern portion of the eastern site boundary. Further north this boundary is more open and defined by a post and rail fence. A permissive footpath, which offers an alternative route to the right of way that runs to the front of the Hall, runs to the east of this post and rail fence before rejoining footpath 12 to the east beyond the Brook. There are also a number of hedgerows and occasional trees along the site boundaries and towards the centre of the site. While it is largely within Flood Zone 1, a small portion of the site along the eastern boundary adjacent to Shear Brook is within Flood Zone 3. The site also principally comprises grades 2 and sub-grade 3a agricultural land, such that it is best and most versatile land (BMV).
9. The Lovell Radio Telescope at Jodrell Bank Observatory (JBO) located some 3km to the west of Goostrey is clearly visible from many parts of the village including from some areas in and around the site. The site is located within the open countryside, beyond the Settlement Zone Line (SZL) or limits to development, as well as within the Jodrell Bank Consultation Zone as identified in the Congleton Borough Local Plan First Review January 2005 (the Local Plan).
10. Goostrey has a range of services/facilities including Goostrey Primary School, some shops including a pharmacy and a part-time post office, pubs, a village hall, children's play area, playing fields and churches which are within walking distance of the site. There are wider facilities in nearby settlements including a supermarket, a nursery, secondary school and healthcare in Holmes Chapel, which is some 3km to the south of the site. A railway station is located at the easternmost edge of Goostrey with train services to stations between and including Manchester and Crewe. The No 319 Sandbach – Holmes Chapel bus service runs one-way through Goostrey Monday to Friday between 09.33 and 14.03. There is a bus stop for this service some 500 metres from the site entrance as well as at the station.

Planning Policy

11. The National Planning Policy Framework (the Framework) outlines a presumption in favour of sustainable development, which it indicates has three dimensions – economic, social and environmental. Paragraph 14 sets out how this presumption is to be applied and indicates that development proposals which accord with the development plan should be approved without delay, while going

on to say that where it is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits or specific policies in the Framework indicate development should be restricted.

12. In respect to housing delivery, the Framework requires CEC to meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. Applications for housing should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The main parties agree that there is not a Framework compliant supply of housing land, but have divergent positions regarding the scale of the shortfall, which is mainly because the appellant follows the Sedgefield approach whereas CEC favours a hybrid of Sedgefield and Liverpool, it terms 'Sedgepool'³.
13. Although it is a weighty material consideration, the Framework does not change the statutory status of the development plan. The development plan for the area includes the saved policies of the Local Plan, the plan period of which ran to 2011. The reasons for refusal indicate that the appeal development would be contrary to its Policies PS8, PS10, BH4 and H6.
14. Local Policy PS8 restricts development in the open countryside outside the Green Belt and beyond the SZLs. Among the limited range of development categories identified in Policy PS8 which may be acceptable are new dwellings that accord with Policy H6. That policy explains that residential development will not be permitted in the open countryside unless it meets one of a limited set of criteria including, among other things, a locational requirement for a rural enterprise, the replacement of an existing dwelling or affordable housing in the rural parishes. Among other things, Local Plan Policy BH4 states that planning permission for development affecting the setting of a listed building will only be granted subject to criteria including that it would not adversely affect that setting.
15. Local Plan Policy PS10 states that development within the Jodrell Bank Telescope Consultation Zone (the Consultation Zone) will not be permitted which can be shown to impair the efficiency of the Radio Telescope. The purpose of the Policy is given in accompanying paragraph 2.69, which indicates that it is to take account of the Town and Country Planning (Jodrell Bank Radio Telescope) Direction 1973⁴. Paragraph 2.69 adds that 'Detailed consultations with the University of Manchester have taken place in order that the Local Plan's major land use allocations, in particular those for housing, take account of the University's requirements in respect of maintaining the efficiency of the Radio Telescope in terms of its ability to receive radio emissions from space with a minimum of interference from electrical equipment.'
16. That Direction requires CEC to consult with the University of Manchester, which manages and operates the Lovell Telescope, and give notice of its decision. It

³ CEC's position on housing land supply, including 'Sedgepool', is set out in its Housing Supply and Delivery Topic Paper, February 2016, CD18

⁴ CD23

also refers to taking account of the University's requirements in respect of maintaining the efficiency of the Radio Telescope in terms of its ability to receive radio emissions from space with a minimum of interference from electrical equipment.

17. The Cheshire East Local Plan Strategy (the eCELPS)⁵ was submitted to the Secretary of State in May 2014 however examination was suspended in October 2014 to allow CEC to do additional evidence base work. Further hearings took place in October 2015. Following the publication of the Inspector's 'Further Interim Views' in December 2015, CEC published a revised version of the eCELPS, which was the subject of statutory consultation that ran until 19 April 2016. Further examination hearings are anticipated later in 2016. Goostrey is identified as a Local Service Centre (LSC) in the eCELPS. Policy PG 2 states that in LSCs small scale development to meet localised objectively assessed needs and priorities will be supported where they contribute to the creation and maintenance of sustainable communities. The supporting text to the Policy states that in the case of Goostrey it is anticipated that development needs will largely be provided for in Holmes Chapel⁶. The reasons for refusal do not refer to the eCELPS.
18. The parish of Goostrey was designated as a Neighbourhood Area in May 2015. The evidence base is still being prepared such that the Goostrey Neighbourhood Plan is at a very early stage of preparation.

The Proposals

19. The appeal seeks planning permission for up to 119 dwellings, of which 30% would be affordable. The details proposed at this stage include a single vehicular access formed to the site's frontage with Main Road to its southern boundary but no access details within the greater site such that those details would be reserved. The illustrative material relating to the reserved matters indicates that the dwellings would be set back from the southern boundary and in from the eastern and northern boundaries behind existing/proposed planting, informal open space and a surface water attenuation basin. This includes a Development Framework Plan⁷, which indicates that the area of residential development would equate to an area of some 4.5 hectares of the greater site such that the density would be around 26 dwellings per hectare. This Plan also shows a proposed footpath/cycleway/bridleway extending along a large section of the site's eastern and northern fringes connecting to footpath 12 to the north.

Other Agreed Facts

20. CEC and the appellant (the main parties) produced a general Statement of Common Ground (the SoCG) prior to the inquiry⁸. Although Goostrey Parish Council (GPC) as a Rule 6 party at the Inquiry is not a signatory to the SoCG, it has made useful comments on this document which help indicate whether or not it agrees, and to what extent, with this document⁹. The main parties have also

⁵ CD12

⁶ Paragraph 8.34

⁷ CD1.3

⁸ OPID 1

⁹ OPID 2

agreed a separate Highways Statement of Common Ground¹⁰. The SoCG describes the site, the proposal and the policy context. Among other things, it also confirms that the site lies within the setting of Swanwick Hall and that CEC cannot demonstrate a Framework compliant supply of housing land. While the main parties disagree over the extent of the shortfall, they agree that it is significant and that the delivery of market and affordable housing is a significant planning benefit.

21. Although not directly covered in the SoCG, the Square Kilometre Array (the SKA) is referred to in the cases for CEC, GPC, the appellant and interested parties. The SKA is an international radio astronomy project involving the erection of arrays of dishes and antennae in Australia and South Africa, which is led by the International SKA Organisation, and its predecessor the SKA Project Design Office, which have been based at Jodrell Bank since 2008. In April 2015 Jodrell Bank was chosen as the site for the HQ of the organization which will build and run the SKA. While data would be fed to Jodrell Bank, the SKA would not be directly affected by potential radio interference from the appeal development as the data would be collected from the arrays in the southern hemisphere¹¹.
22. Again although not directly addressed by the SoCG, from the written and oral evidence it is clear that the parties agree that JBO produces world class work, which is valuable and important and that it is an important facility for the Universities in the UK and for collaborative work internationally.
23. It is also common ground that the appeal development would give rise to at least some radio emissions. Modern technology has the potential to emit radio waves. In some cases this is intentional, such as mobile phones, but others can be a consequence of the operation of the device, such as a dishwasher and a hairdryer. Radio telescopes, such as the Lovell Telescope at JBO, are used to listen to radio waves emitted in space. Devices that emit radio waves intentionally do so in internationally regulated and restricted frequency regions, designed to keep dedicated radio bands free of interference for the exclusive use of radio astronomical observations. Other devices are not regulated in this manner, such that they have the potential to cause terrestrial interference to the extra-terrestrial information that radio astronomers wish to observe. Put simply, if homes are built, people would live in them; those residents would bring with them devices, which could cause interference to radio waves emitted from space such that they would have the potential to affect the work of radio astronomers.
24. The parties' cases also refer to an appeal decision in respect to a proposal for 14 houses and associated development at a site in Twemlow (the Twemlow appeal)¹², a village located some 1km to the southeast of Goostrey. The effect of that proposed development on JBO was one of the main issues considered as part of the (allowed) appeal decision and that Inspector concluded that that scheme would accord with Local Plan Policy PS10.
25. There is an application for the diversion of footpath 12 around Swanwick Hall such that it would be rerouted along the current permissive footpath.¹³ For the

¹⁰ ID 13

¹¹ Prof Garrington oral evidence

¹² CD21.1 – Appeal Decision Ref APP/R0660/A/12/2174710, 4 February 2013

¹³ ID 22

avoidance of doubt, in this regard I have considered the appeal on the basis of either scenario: its current alignment as well as its proposed diverted route.

26. The summaries of cases of the parties now set out are based on the closing submissions¹⁴, as supplemented orally, and the written and oral evidence, with references given to relevant sources.

The Case for Cheshire East Council

27. CEC sees this as a test case as it is the first in decades to fall to be determined by the Secretary of State where the key issue is protecting the integrity of the Lovell Radio Telescope, and with it radio astronomy, at Jodrell Bank. As is common ground the Lovell Radio Telescope is of international importance and protecting it and the work of the Observatory from harm is of global significance.
28. The Government has worked extremely hard to bring the global HQ of the SKA to Jodrell Bank. SKA decided to have its HQ at Jodrell Bank because it is a world-class, operational observatory, 'a key factor being that the [radio frequency interference] environment remains as benign as possible'¹⁵. Allowing 119 homes to be built close and in the direction where the Lovell Telescope is deployed for much of the time conducting its most internationally significant work (pulsar timing measurements) in circumstances where the internationally accepted definition of the threshold above which interference would be detrimental to radio astronomy. Benefits would be exceeded to a very large extent by emissions from the proposed development and the proposal would run the risk of undermining the confidence of the SKA in its desire to be associated with Jodrell Bank.
29. While the work of the SKA would not be *directly* impinged upon by interference from the development, the point is one of esteem, of pride through association. If the JBO is not protected from *avoidable* harm to its work, what message does that send to the SKA about the continuing wisdom of its decision to have its HQ at Jodrell Bank? The question answers itself but in the words of the SKA's Director-General this 'may well have a negative impact on the view of the UK as an international partner to projects such as the SKA.'
30. The point about *avoidable* harm is an important one. There is nothing practicable that can be done to reduce the increase in devices used by existing residents near to JBO, which now, and will increasingly in the future, cause very real problems for the efficacy of the Lovell Telescope. But the Government does have the ability to stop new development adding to them by refusing planning permission for the appeal proposals.
31. Applying section 38(6) of the 2004 Act, the appeal should be dismissed. The development is undoubtedly not in accordance with Local Plan Policies BH4, H6 and PS8, and CEC says it is in breach of PS10 as well. Accordingly, the appeal must be dismissed unless material considerations indicate otherwise. They do not.
32. Under the first limb of section 38(6) a conclusion must be reached following a straightforward application of the legally correct meaning of the policies to the

¹⁴ INSP.3, INSP.4 and INSP.5

¹⁵ SKA Director-General's letter, 12 April 2016, at Annex C to Prof Garrington's proof of evidence

circumstances of the case in hand. Weight is irrelevant at this stage and only comes into play under the second limb (material considerations).

33. The applicable principles were set out by Lord Clyde in the *City of Edinburgh Council* case, the relevant part of which is recited in the Judgment of Laws LJ in the *West Berkshire Council* case.¹⁶ As Lord Clyde held: 'If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance.'

Local Plan Policy BH4

34. It is common ground that the setting of Swanwick Hall would be adversely affected by the appeal development. In cross examination Mr Clemons and Mr Mackenzie, for the appellant, agreed that accordingly the appeal proposals do not accord with Local Plan Policy BH4 (IV).
35. As the Local Plan predates the Framework, Policy BH4 does not replicate the approach of paragraph 134 which in cases of *less than substantial harm* sets out that this should be weighed against the public benefits. However a policy does not have to state the obvious, that if it is breached one must always consider whether there is good reason such as public benefits for deciding to allow the development in question despite this.¹⁷ That said, as Policy BH4 does not contain the weighing process found in Framework paragraph 134, this must affect its weight to some degree. Nonetheless, as it seeks to protect heritage where there is an elevated statutory duty, Policy BH4 should be given significant weight as too should the breach of it that would arise in this case.
36. The appellant considers that the harm to setting would be at the minor end within the scale of *less than substantial harm*, while CEC says that it would be at the higher, considerable, end of the scale. Fundamentally the difference appears to turn on how much of a positive role the appeal site plays in the setting of the listed building in terms of contributing to its significance and how much of a negative role it would play with the appeal development upon it.
37. In cross examination Mr Clemons agreed that the appeal site currently makes a positive contribution to the significance of the listed building. He considers that it is limited because as far as he is concerned the real interest of the Hall lies in its 17th Century origins. Mrs Fairhurst, heritage witness for CEC, takes a different and much more convincing approach of emphasising that as one approaches the Hall along its only access, which is also public footpath 12, with the appeal site, open, unbuilt upon and rural / semi-rural in appearance immediately beside one for much of the walk, the appeal site enables one to understand that the Hall is a farmhouse standing separate and distinct from the village, surrounded by farmland. This contributes to the significance of the listed building which lies in its history as a farmhouse and its representation of the growth in prosperity of farming in this part of Cheshire in the past. This link is made all the stronger by the fact that in its farming heyday the site was in the same ownership as the Hall and much of it was farmed by the tenant of the Hall.

¹⁶ ID 5, paragraph 19

¹⁷ ID 5, paragraph 21

38. With the appeal development on it, the site would no longer make a positive but rather a negative contribution to the significance of the listed building. The transformation would be fundamental (a point accepted by Mr Clemons in cross examination), from open to almost entirely built-upon and that landscaping whether subtle or dense would not make any real difference to this effect and dense screening would probably make matters even worse. Mr Clemons agreed in cross examination that the site would change from semi-rural to edge of settlement and that the village would be brought considerably closer to the listed building. As far as Mrs Fairhurst is concerned these points amply demonstrate that the degree of harm, while *less than substantial*, would be considerable nonetheless and certainly not minor / inconsequential.
39. In any event, the law requires the decision-maker to give considerable importance and weight to the desirability of preserving the setting of the listed building, and so in carrying out the weighing process under Framework paragraph 134 the scales are tilted towards dismissing the appeal, as agreed by Mr Mackenzie in cross examination.
40. The public benefits of the appeal proposals, including the contribution to housing land supply, do not outweigh the harm and the statutory presumption against allowing the harm to occur, especially as the contribution that the appeal proposals would make to addressing housing land supply issues in Cheshire East would be miniscule. On the appellant's figures the housing land supply is currently 3.3 years. It would remain at 3.3 years with the proposed development added as the contribution is so small it is lost in the rounding.
41. In these circumstances the appeal should be dismissed come what may. If however a different view is formed then the harm would feature again in the wider, overall, weighing process.

Local Plan Policies H6 & PS8

42. As agreed by Mr Mackenzie in cross examination, the appeal proposals do not accord with Local Plan Policies H6 and PS8. The weight to be accorded to these Policies should take into account the fact that they were drawn up against a very different requirement for housing land and they should be given some weight as *recognising the intrinsic character and beauty of the countryside* is entirely consistent with the Framework.¹⁸

Jodrell Bank

Weight – Local Plan Policy PS10

43. Local Plan Policy PS10, when read with its explanatory text at paragraph 2.69, protects from impairment the efficiency of the Jodrell Bank Radio Telescope, in terms of its ability to receive radio emissions from space with a minimum of interference from electrical equipment. Two issues concerning weight arise. The first is how much weight should be given to the policy itself in reaching a decision on the appeal. The second is, if it is decided that the appeal proposals do breach it, how much weight should be given to a breach of the Policy.

¹⁸ Core Principles at paragraph 17, fifth bullet point

44. On the basis of the approach adopted by the Court of Appeal in the *Richborough Estates* case¹⁹ because CEC *cannot demonstrate a five-year supply of deliverable housing sites* Policy PS10 is to be characterised under Framework paragraph 49 as amongst the *relevant policies for the supply of housing* and thus *should not be considered up-to-date*, and should be considered to be *out-of-date* for the purposes of paragraph 14 of the Framework.
45. However as was emphasised by the Court of Appeal in *Richborough Estates* this does not tell the decision-maker how much weight should be given to the development plan policy. It is for the decision-maker to decide as a matter of planning judgment how much weight to give to the policy. Amongst the circumstances which are relevant to deciding how much weight to give is *the particular purpose of a restrictive policy*. As the Court of Appeal held, *"there will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify refusal of planning permission despite their not being up-to-date under the policy in [Framework] paragraph 49 in the absence of a five-year supply of housing land."*²⁰
46. The concept of a policy being given sufficient weight to justify refusal of permission can be dubbed 'determinative weight'.
47. Given that the Jodrell Bank Radio Telescope is a facility of international importance and that protecting it, and the work/research of the Observatory, from harm is a matter of global significance, it follows that the purpose of Policy PS10, which is to protect the efficiency of the Jodrell Bank Radio Telescope from impairment, means that the Policy is capable of being given determinative weight in a case where the Policy is breached. Mr Mackenzie agreed with this in cross examination.
48. In short, the international importance of the Jodrell Bank Radio Telescope and the global significance of protecting it from harm transcends the shortfall of housing land in Cheshire East which put at its highest raises issues under national planning policy.

Meaning and Effect - Local Plan Policy PS10

49. On a straightforward reading of the Policy, together with its explanatory text the meaning and effect of the policy are easy to see, without there being any need to read in (to imply) any words which are not found in the development plan.
50. Planning permission is to be refused for development *which can be shown to impair the efficiency of the Jodrell Bank Radio Telescope*. To *impair* means to weaken or damage and amongst its synonyms are to harm, to diminish. The words *the efficiency of the Jodrell Bank Radio Telescope* are explained in the supporting text to the policy which refers to *maintaining the efficiency of the Radio Telescope in terms of its ability to receive radio emissions from space with a minimum of interference from electrical equipment*. *Minimum* means the least amount possible.
51. Accordingly the meaning and effect of Policy PS10 are that if it can be shown that a proposed development would impair, as in weaken or damage or harm or

¹⁹ CD22.6, e.g. at paragraph 33

²⁰ CD22.6 at paragraphs 46 & 47

diminish, the efficiency of the Jodrell Bank Radio Telescope, in terms of its ability to receive radio emissions from space with a minimum, as in the least amount possible, of interference from electrical equipment, then permission is to be refused.

52. In the Twemlow decision a planning inspector accepted an interpretation of Policy PS10 which had been agreed between that appellant and CEC, namely that to be contrary to the Policy *the level of impairment ... needs to be unacceptable* and that interpretation was fundamental to that Inspector's decision²¹. This interpretation is wrong as a matter of law and CEC no longer accepts any such interpretation.
53. This was demonstrated by the inability of the appellant's witnesses to explain how to go about deciding whether the level of impairment is acceptable or unacceptable. *Unacceptable* is meaningless in the context of this Policy. The appellant maintains that the international threshold of *interference detrimental to radio astronomy* found in ITU-R RA.769-2²² is of no use.²³ The appellant, sensibly, disowns any suggestion that the threshold should be whether JBO would be prevented from continuing to function as a world class facility or that it would be prevented from contributing to a world-wide pulsar timing effort.
54. Dr Trotta and Mr Mackenzie maintained that the fractional (i.e. as a percentage) increase in exceedances *of the international threshold* that the proposed 119 dwellings would give rise to *over and above* the degree of exceedance of the international threshold from existing dwellings is relevant. Ultimately Dr Trotta considered that his *average* representation of this, namely that according to his analysis the proposed development would lead to a 3.5%²⁴ addition to exceedances *of the international threshold* from Goostrey, is the most appropriate figure to use.²⁵ But Dr Trotta made it clear in oral evidence that what one should do with this 3.5% in the decision is a matter of judgment, he expressed no view as to whether this was acceptable or unacceptable and made no judgement at all.
55. The incremental approach has the obvious vice that it would be judged against an ever-increasing baseline. The fundamental problem with the appellant's approach is that it would leave JBO unprotected from 'death by a thousand cuts' as, if the test is that an individual development has to have an *unacceptable* impact then there is no way for cumulative impacts to be accounted for.
56. And so one wonders, what could the words 'unacceptably' or 'to an unacceptable level' possibly mean? How would implying them into the policy help matters? Ultimately the position adopted by Mr Mackenzie in oral evidence (Dr Trotta having disavowed that it was any part of his evidence to deal with such matters) was that it was all 'very difficult' but that a 'material' impairment has to be demonstrated. If by 'material' Mr Mackenzie means 'unacceptable' then all the same questions are begged; if something else, then Mr Mackenzie gave no hint as to what.

²¹ CD21.1 including paragraphs 9, 10, 19, 24 & 31

²² The words found in Recital (q) on page 2 of RA.769 - CD24

²³ Evidence in chief of Dr Trotta & Mr Mackenzie

²⁴ 3.5% is found in Dr Trotta's Table 4 and it is the percentage increase represented by 14,000 [proposed development] (Table 3) over 400,000 [existing Goostrey] (Table 4)

²⁵ Dr Trotta explained this in evidence in chief and confirmed it in cross examination

57. All of these problems arise from implying into the Policy words such as *unacceptably* which simply are not there. Whereas if one just reads the plain words of Policy PS10 and its explanatory text in a straightforward manner then permission is to be refused.

How to determine whether there is a breach of Policy PS10

58. Radio astronomy is a specialist science. How then is a layman to judge whether there would be impairment in this sense? One way would be simply to accept the testimony of Prof Garrington, who has responsibility for the Observatory and who was the only radio astronomer to give evidence at the Inquiry, that the proposed development would impair the efficiency of the Lovell Telescope. After all, there was no evidence at all that the proposed development would not impair it; the high point of the appellant's case was for Mr Mackenzie to express the opinion that as far as he was concerned Prof Garrington had not demonstrated a *material* impairment – however that is to be judged.

59. As Prof Garrington was at pains to explain, there is an internationally accepted way in which it can be determined whether interference would be detrimental to radio astronomy, and that is ITU-R RA.769-2²⁶. This is the only internationally accepted threshold.²⁷ The international standard says in terms that its criteria concern "*interference detrimental to ... radio astronomy*"²⁸. If a proposed development can be shown to give rise to interference at the Jodrell Bank Radio Telescope that would fall within the criteria defined by ITU RA-769-2 as detrimental to radio astronomy then there is a breach of Policy PS10. It would be wrong as a matter of law to conclude otherwise.

60. The position is that currently the ITU threshold is exceeded a great deal and this impairs the efficiency of the Lovell Telescope and with the proposed development there would be even more exceedances which could only worsen the Radio Telescope's efficiency. It is as simple as that.

61. It would be wrong to say that the ITU threshold cannot be the measure by which to judge whether Policy PS10 is breached on the basis that if it is, then development in Goostrey and indeed the Consultation Zone would be 'sterilised'. The effects of terrain and clutter mean that development can take place in Goostrey and elsewhere in the Consultation Zone without breaching the ITU threshold – everything turns on the particular circumstances of each site. Even if this were to be correct it would not mean that the international threshold for assessing whether interference would be harmful to radio astronomy is irrelevant and / or is not the measure by which one should judge whether Policy PS10 is breached in the context of whether the proposed development accords or not with the development plan; that would be a matter for the second limb of section 38(6).

Would the proposed development breach Policy PS10?

62. If CEC's case that the ITU threshold constitutes the measure by which to decide whether the proposed development would breach Policy PS10 is accepted, then it is common ground that the proposed development would not accord with the

²⁶ CD24

²⁷ Prof Garrington in chief and confirmed by Dr Trotta in cross examination

²⁸ CD24 page 2 recital (q) and see also recommendation 2 on page 2 (and recommendation 3, page 2)

Policy as Prof Garrington's evidence is that the threshold would be exceeded by a factor of 400 'a very large margin'²⁹ whereas Dr Trotta calculates it as an exceedance, on his preferred 'most robust' 'average' scenario, by a factor of 14,000.³⁰ Given such very large exceedances of the threshold it is clear that the proposed development would breach Policy PS10 i.e. that it has been shown that it would impair the efficiency of the Lovell Telescope in terms of its ability to receive radio emissions from space with a minimum of interference from electrical equipment.

63. Prof Garrington gave practical examples of the way in which existing interference impairs the Radio Telescope's efficiency and of how worsening this, as the appeal development would, would make matters even worse. Dr Trotta confirmed in oral evidence that he did not doubt Prof Garrington's evidence nor was he in any position to do so. In section 10 of his proof of evidence Prof Garrington explains the harm caused to JBO's work and research by existing interference. The additional worsening that the proposed development would cause is explained in paragraphs 11.10 to 11.14.4 of his proof. This is not least because the appeal site lies close to JBO and to the south-west of it, which is a very important direction for pulsar timing measurements, which is the primary observing and research programme for the Lovell Telescope; the proposed development would produce a 'hotspot' in the distribution of interference, pretty much in the worst location for such a hotspot. The additional interference would 'represent a significant additional contribution' to the impairment of the efficiency of the Lovell Telescope, as set out in paragraph 14.6 of Prof Garrington's proof.
64. In his rebuttal³¹, Prof Garrington gives practical examples of the way existing interference leads to impairment through extensive corruption of data and the degradation of pulsar observations, at paragraphs 8 to 10. He assesses the additional exceedances of the ITU threshold from the proposed development over and above existing exceedances from Goostrey as 6.8 %, which additional interference is 'a substantial threat', at paragraphs 12 and 13. He explains the deleterious impact of existing and additional interference on pulsar measurements at paragraph 14. In oral evidence he also explained how the percentage additional exceedances could be calculated at some 8% and 16%. Dr Trotta considered his 'average' scenario the most robust which leads to an additional 3.5% from Goostrey; his range was from 0.9% to 6.7%. In contrast to Dr Trotta's modelling, Prof Garrington's work has been independently reviewed and verified as 'truly exemplary'.³² Key is the detailed terrain mapping that Prof Garrington has used, and Dr Trotta has not.
65. In oral evidence Prof Garrington said that at any of the additional increments of harmful interference, based on either his or Dr Trotta's estimates, there would be 'a substantial threat' to the work of JBO. He stressed that additional interference would be 'an irreversible step downwards' that the increase in interference is an 'irreversible process'. He described it as storing up problems for decades to come. He also emphasised in oral evidence that additional interference from the development would limit JBO's future scientific opportunities, it would threaten future competitiveness.

²⁹ 11.09 pages 38 & 39 of Prof Garrington's proof of evidence

³⁰ 9.65 of Dr Trotta's proof of evidence

³¹ OPID 3

³² Letter from CRAF dated 18th April 2016, within the letter at Annex C to Prof Garrington's proof of evidence

66. Again in oral evidence Prof Garrington described the additional worsening that the proposed development would bring about as 'important' and that the additional increment in interference would increase the impairment of the Lovell Telescope, and that corrupted data could not be 'corrected'. He said that in any of the percentage increments the increase would be 'significant': '3%, 6%, 10% from one development is a significant increase. It is that continuous cumulative impact which is having the largest impact on our work.' He also said that continually increasing levels of interference continually degrade JBO's operational efficiency.
67. Mitigation is very difficult to achieve in practice and to maintain in perpetuity. One only needs to open a window or door, or sit in the garden with a device, and the mitigation by building materials is either eradicated or greatly reduced. In any event, no one claims that mitigation could reduce the level of emissions such that when received at the Lovell Telescope they would not breach the ITU threshold.
68. The entire community of astronomers supports JBO in its position at this Inquiry. There is not a single astronomer who has supported Dr Trotta's thesis. On any basis, the proposed development would breach Policy PS10.

How much weight should be given to the breach of Policy PS10?

69. So important is it to protect JBO from harm to its work and research that the breach of Policy PS10 should be given determinative weight such that the appeal must be dismissed. The protection of JBO ranks on an international, a global, scale whereas however beneficial it would be to help towards lowering the housing land shortfall in Cheshire East this is a local issue, set in a national planning policy context.
70. This imbalance between the global, JBO, and the local, Cheshire East's housing land supply, is compounded by the fact that the contribution that this appeal scheme would make to addressing the housing land shortfall would be miniscule, whereas the damage that it would cause to the efficiency of the Lovell Telescope by its very large exceedance of the internationally accepted definition of harm to radio astronomy, would be irreversible. Cheshire East needs more housing land but the nation and the world needs to protect the work of JBO.
71. The schedule of representations in respect to other planning applications from JBO³³ shows that in the wake of the Twemlow decision, which was a major blow for JBO, the Observatory has sought to develop a system by which it can place the degree of harm that a proposal would cause on a scale of greater or lesser significance. A huge amount of work has been done by JBO since that decision and applying this work, the appeal development is at the most harmful end of the scale. But even if JBO has been inconsistent over time – that is not material here.
72. The appellant has complained that JBO refused to disclose its analysis of exceedances of the ITU threshold in advance or to agree to exchange evidence a week earlier. Be that as it may, the appellant's expert has calculated the exceedances to be at an even higher level than JBO has.

³³ ID 16

Drawing the points together

73. The case should not be determined by applying the significant and demonstrable harm test in paragraph 14 of the Framework. The Framework is by law simply a material consideration and in this case given the international importance of the Jodrell Bank Radio Telescope and the global significance of protecting it from harm, the Framework does not constitute a material consideration which indicates otherwise than the outcome of deciding the case in accordance with the development plan, and in particular Local Plan Policy PS10.
74. If a different view is formed about the weight to be given to Framework paragraph 14 then the adverse impacts to JBO, and to the setting of Swanwick Hall, and to the countryside, as well as the loss of BMV agricultural land, would *significantly and demonstrably outweigh the benefits* of allowing the appeal, which in essence are a miniscule contribution to meeting the shortfall in housing land supply. This latter point is a material consideration by virtue of the decision of the High Court in *Phides*.³⁴ Of all of these points, harm to JBO on its own is more than sufficient to justify dismissing the appeal.
75. Ultimately CEC's case is simply that in applying section 38(6) the appeal should be dismissed as it is not in accordance with the development plan and material considerations do not indicate otherwise.

The Case for Goostrey Parish Council

Introduction

76. This is the first time that GPC has been represented as a formal party in a planning appeal and that it has now done so is a reflection of the seriousness of its concerns. Those concerns overlap substantially with those of CEC, in particular in relation to the impact that it would have on JBO and the setting of the grade II listed Swanwick Hall, but they also extend beyond them and embrace a number of additional reasons why the proposals cannot be regarded as a sustainable form of development in any event.

Jodrell Bank

77. Goostrey is unusually lucky in having a facility of such iconic importance as JBO so close by and its residents know it. This was not only because of what it gives to the local area (e.g. economically, educationally and through its presence in the landscape and views) but also because they take great pride in the special contribution it makes at a national and international level to scientific endeavour and general human understanding of the universe. It is not grade I listed for no reason. Without the benefit of a radio astronomer amongst its numbers, GPC cannot hope to provide the same assistance that CEC and Prof Garrington can give in this regard. On this basis it adopts their case and makes some observations on certain planning issues that arise from it.
78. Firstly, CEC's interpretation of Policy PS10 is clearly correct. The interpretation of the policy is a matter of law³⁵. In light of Professor Garrington's evidence, this development would impair the efficiency of the telescope contrary to Policy PS10.

³⁴ CD22.3 paragraph 60

³⁵ *Tesco v Dundee CC* [2012] 2 P&CR 19.

79. Second, the appellant is unable to shed any real light on how any criterion of *acceptability* could actually be applied as a development management tool. It cannot require that the telescope is unable to operate, as that would go far beyond the concept of *impairment* – ‘telescope harm’ does not mean ‘telescope death’. Furthermore, since additional interference would affect the quality of all the work that they produce, and since JBO is operating in a context where it must compete with other installations around the globe, it is in practice impossible for planners to set any meaningful threshold in order to determine what level of impairment would and would not be *acceptable*.
80. Third, the appellant had no convincing answer to the concern about precedent. This is the biggest and closest development to be proposed recently in the vicinity of the telescope, as well as being in a particularly sensitive location with respect to its observation of pulsars. If the proposed development is permitted, therefore, it will inevitably be much more difficult for permission to be refused for other schemes, particularly if they are smaller or located in less sensitive, but still harmful, positions – of which there are several likely to be waiting in the wings³⁶. Even on the appellant’s own case, this would be likely to add further incremental interference which, like the development proposed as part of this appeal, is highly unlikely to be reversible, and would only get worse as we rely more and more on new technology and related emissions become only more pervasive. Unlike in the Twemlow appeal, there is here evidence of a number of additional schemes which would be likely to come forward in the event that this appeal were to be allowed.
81. Fourth, the impact of this would not only be felt in educational/scientific terms but also economically and socially. The weight of evidence from the Science and Technology Facilities Council and the SKA, and the Royal Astronomical Society, as well as other distinguished persons and bodies shows that this is in fact a very real risk.
82. It would, therefore, constitute an act of gross and inexplicable self-harm to the UK’s own interests if this appeal were to be allowed.

Swanwick Hall

83. The development would cause harm to the setting of Swanwick Hall; the only question is how great that harm would be. While the appellant contends that it is only slight the Parish Council considers that it would be much greater. The difference between these judgments appears to turn substantially on whether the significance of the Hall is essentially confined to the evidential value of its 17th Century timber frame or as CEC contends whether its significance is wider than that, embracing the evolution of its exterior and the historical associations it has with the development of farming in the area and of Goostrey in connection with that.
84. The appellant’s witness’s evidence was entirely unconvincing; it was inconsistent in major respects with the account of significance put forward by his own consultancy in the original heritage report, and also defies common sense. The building is a farmhouse and reads as such. Its open and relatively isolated setting allows one to appreciate the historic associations with the surrounding

³⁶ 8.3.4 of Dr Morris’s proof of evidence.

fields and the area. By contrast, when this part of its original setting is lost, those connections and the building's basic character as an historic farmhouse will be much harder to appreciate.

85. Paragraph 134 of the Framework indicates that development should be restricted where the public benefits of a proposal do not outweigh the less than substantial harm that would be caused to the significance of a designated heritage asset. It is important in this connection not to be misled by references in *Forest of Dean* to the required balancing exercise being *unweighted*³⁷. This was only to make clear that the 'tilted balance'³⁸ in the second bullet point of Framework paragraph 14 is not to be applied – it does not imply that the scales start off even in the balance.
86. On the contrary, the statutory requirement that *considerable weight and importance* is given to any harm to a listed building or its setting means that the scales are in fact already heavily pre-weighted in favour of the refusal of permission³⁹. It follows that, even if the harm to the setting of Swanwick Hall were only 'at the lower end of the spectrum', there would still be a *strong presumption* against the grant of permission⁴⁰. However, as set out above the harm is much greater than this such that the weight attached must be greater still.

Holly Bank

87. Paragraph 135 of the Framework provides that the effect of a development on the significance of a non-designated heritage asset should be taken into account. The definition of 'heritage asset' in the Framework is such that it is able to cover buildings which have not been listed either at national or local level if they are judged to have sufficient heritage interest. The building has such interest for the reasons set out in Mr Miller's report⁴¹ which were not substantially challenged beyond Mr Clemons saying that the building was evidently of much lower significance than the Hall. Accordingly, the impact of the development on the setting of Holly Bank is at least material and should be weighed in the balance.

Impact on trees and historic hedgerow

88. The development would involve the loss and/or translocation of various sections of historic hedgerow which have been assessed by the appellant's consultant as being 'important' for the purposes of the Hedgerow Regulations 1997, as well as the loss of protected trees. Such harm is inevitable due to the position of the access and so will not be able to be avoided at reserved matters stage. It is also doubtful how far harm within the site could be reduced by reconfiguration of internal roads/paths. This would cause a negative impact from the point of view of nature conservation and in terms of heritage impacts, exacerbating the heritage harm already discussed.

³⁷ CD22.5, paragraphs 16, 32 and 35.

³⁸ ID2 - this expression is used in at 41 and also in *Exeter CC v SSCLG* [2015] EWHC 1663 (Admin) at 15.

³⁹ ID20 at paragraph 66.

⁴⁰ *South Lakeland* at 146E-G per Lord Bridge and *Barnwell Manor* at 23 and 26 per Sullivan LJ – applied to a finding of 'slight harm' in *Blackpool BC v SSCLG* [2016] EWHC 1059 (Admin) at 54: 'the inspector fell into the error of regarding the harm to the significance of the synagogue as relatively slight and, because it was relatively slight, he decided that the weight to be given to that harm should also be relatively slight.'

⁴¹ ID 12

Impact on landscape and views

89. The proposals would also necessarily have a significant impact on views and the local landscape. Of particular concern are the views of JBO and Swanwick Hall from footpath 12, which are highly valued and evidently were not properly taken into account in the appellant's Landscape and Visual Impact Appraisal (LVIA)⁴². The LVIA, nevertheless, acknowledges that the development would have 'major adverse' impacts. The importance of views from the south of the Hall will only increase if the proposed diversion of footpath 12 is confirmed.

Accessibility

90. Goostrey and the site in particular would not be high on a list of sustainable locations for housing growth in the eastern part of Cheshire. Whilst it has some facilities and services, it is not well located for jobs⁴³ or many of the kind of facilities and services that people living at the site would need to use on a regular basis such as a secondary education, health centre and nursery. Residents would need to go to Holmes Chapel for the majority of such services, a round trip of some 11km. Travel on foot will not be convenient, nor would it be by cycle given the distance and the nature of the local roads.
91. Travel by train would not be a realistic option other than for commuters to the destinations served by the line. Goostrey station is 2km from the site with narrow and, in parts single, footways, its car park is usually full and the bus does not return from the station. The local bus service is currently limited with no peak hours and no Sunday or Bank Holiday service, it runs to a circular route and the bus stop is 800m away. It would remain so even if the funding offered by the appellant brings the service closer to the appeal site, for instance because of the operator's existing commitments to the service for Sandbach High School and the low level of usage. That funding would also last only five years and whatever extended service is secured is unlikely to be continued thereafter.
92. That Goostrey scores very poorly for accessibility is consistent firstly with the fact that it has only two or three of 12 essential services in the evidence base for the eCELPS. Secondly the Highway Authority considers it to be too car-dependent and not sustainable⁴⁴. Thirdly, independent consultants ranked Goostrey as least sustainable of the 13 LSCs in the eCELPS⁴⁵. Fourthly, uniquely among the LSCs, it is envisaged that the bulk of its development needs will be met in another settlement, Holmes Chapel.
93. Therefore, in terms of paragraphs 7, 29 and 34 of the Framework, and even taking account of its rural context, the development would not:
- Be accessible for the local services required to support its needs and health, social and cultural well-being;
 - Provide a *real choice* of sustainable modes of transport – on the contrary, it would inevitably depend predominantly on car use; and
 - Be located where the need to travel is minimised and the use of sustainable modes of transport can be maximised.

⁴² CD1.8

⁴³ ID 9

⁴⁴ CD3.4

⁴⁵ ID 6

94. Accordingly, even if the proposition that Goostrey is a suitable location to accommodate some growth were accepted for the purposes of argument, it is plainly not a suitable location to accommodate growth *on this scale* – particularly from a single development, which falls not far short of what the eCELPs treats as a strategic site (150 or more dwellings).

Impact on services

95. The appellant accepted that local schools are currently oversubscribed in current years and so it is unlikely that children from the development would be able to join those years and would therefore have to travel further afield to find a school with capacity – this is plainly a negative impact. While the appellant argues that local schools currently admit a number of out-of-catchment pupils there is no analysis for example of the extent to which this is made up of siblings of existing pupils, who are likely to have higher priority in the admissions criteria than children from the development. Nor does there appear to have been any analysis of what the effect on any displaced pupils would be. For instance, some children are likely to live outside any settlement in the countryside; they may be forced to travel even further to attend another school.

96. If, as the appellant contends, the health care contribution would not meet the CIL tests the adverse impact the development would have on the already-stretched health centre is not currently capable of being mitigated.

Design: parking and density

97. Whilst layout is reserved, the appellant has not shown how an acceptable layout could be achieved with sufficient parking without creating other new adverse consequential impacts. It cannot be assumed, without such a demonstration, that an acceptable layout incorporating this number of dwellings can be achieved.

Loss of Best and Most Versatile Agricultural Land

98. The loss of 6.9ha of BMV (grade 2/3a, possibly also partly grade 1⁴⁶) is an adverse effect to be taken into account in the decision and the need to take into account the benefits identified in paragraph 112 of the Framework is not limited to cases where *significant* development of agricultural land is proposed. The matter goes further because that paragraph goes on to say that where *significant* development of agricultural land is proposed, then even if it is demonstrated to be necessary, local planning authorities should seek to direct development to lower quality land in preference to land of a higher quality.

99. The policy, therefore, is expressly restrictive in its effect insofar as it indicates that significant development of BMV should not occur save in cases where it has been demonstrated to be necessary and that there is no alternative suitable land of lower quality available. It therefore falls within the ambit of the kind of *specific policies* referred to in the second indent to the second bullet in paragraph 14 of the Framework. The judgment in *Forest of Dean* is important here as it establishes that the test for whether a specific policy *indicates that development should be restricted* is not whether it contains any clear prohibition on development or expressly requires permission to be refused. *Restricted* has a

⁴⁶ Mr MacKenzie's Appendix 1, p.12: Detail of observations at each sampling point – see obs. No.3. *NB this document is an update to CD1.13*

wider meaning than that. This is illustrated by the fact that, by virtue of Footnote 9⁴⁷, it encompasses policies such as that in paragraph 114 of the Framework, 'protecting and enhancing' areas of Heritage Coast. The second sentence in paragraph 112 imparts a more obvious restriction on development than that policy or even Framework paragraph 134, which only expressly mentions *balancing* less than substantial harm against public benefits.

100. The relevant questions that arise therefore are whether the sentence is relevant, because significant development of BMV is proposed, and, if so, whether the criteria in the second sentence of paragraph 112 are met. The answers are yes and no respectively.
101. While the appellant argues that the second sentence in paragraph 112 is not engaged, this relies on a DEFRA document⁴⁸ which is not applicable to this point. It is merely a reference to the 20ha threshold in the DMPO⁴⁹ which triggers a duty to consult Natural England. There is nothing in the Framework or elsewhere which suggests that 20ha provides the threshold for whether there is *significant development* for the purposes of paragraph 112. What the second sentence of paragraph 112 is referring to must either be whether it is significant development of agricultural land proposed in the local planning authority's area, which it is here, or that it requires a judgment to be made on a more local basis. For a small settlement such as Goostrey the loss of 6.9ha of some of the most valuable agricultural land would plainly be significant.
102. In terms of whether it would be necessary, if the issue falls to be considered at a district-wide level, there is a general need to do so because of the housing shortfall across the district. However, if it is assessed at a local level, such a need has not been demonstrated and, even if there is such a need, it has certainly not been shown that it is not possible to meet it by developing other land in the area of lower quality in preference to this site. In particular:
- There has been no assessment of alternative sites presented by the appellant;
 - The soil report produced by the appellant does not go so far as to say that there is not any land of lower quality available. In fact, the original report identified at least one 5.26 ha area of lower quality land in the south-west of Goostrey⁵⁰; and
 - Dr Morris has referred to a number of other sites in and around Goostrey being promoted for development in the context of the emerging Neighbourhood Plan – most of which are brownfield land and thus, by definition, would not involve the same loss of BMV.
103. Therefore the potential for locating any housing development that may be necessary in or around Goostrey on other land of lower quality has not been properly considered or assessed. Consequently, even if the second indent to the second bullet point were not engaged on the basis of paragraph 134 of the Framework, it would still be engaged on the basis of paragraph 112.

⁴⁷ Footnote 9 to paragraph 14 of the Framework

⁴⁸ Mr MacKenzie's proof of evidence, paragraph 8.4.59.

⁴⁹ Town and Country Planning (Development Management Procedure) Order 2015, Schedule 4, para.(y)

⁵⁰ CD1.13, paragraph 4.6

Planning balance/decision-making

104. The structure for decision-making must follow section 38(6) of the 2004 Act. Relevant policies of the Framework, including the presumption in favour of sustainable development, will normally be material considerations which are capable, in principle, of indicating otherwise. However, whether they do so and whether they should take precedence over the plan will, of course, depend on the circumstances.
105. The proposals here are clearly contrary to the development plan. If the Secretary of State were to conclude that there was no conflict with either PS10 or BH4 the proposals would still manifestly not be in accordance with the plan overall and specifically policies PS5, PS8 and H6 because of the site's location in the open countryside.
106. Nor does the Framework indicate a decision should be made contrary to the development plan. This is because even where relevant policies are *out-of-date* due to the lack of a five-year supply of housing, paragraph 14 only encourages the grant of permission if:
- (a) The adverse effects of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; and
 - (b) Specific policies in the Framework do not indicate that development should be restricted.
107. Neither criterion, however, can be met here. For the reasons already explained, specific policies *do* indicate that development should be restricted. In any event, it is absolutely clear that the adverse effects of granting permission would not just significantly and demonstrably but overwhelmingly outweigh the benefits⁵¹.
108. The former include: direct and indirect harm to the operation of the radio telescope at JBO (in terms of the economic and social arms of sustainable development), harm to the setting of the listed Swanwick Hall; harm to the setting of Holly Bank; harm to historically *important* hedgerows (in terms of environmental sustainability); harm to important views and the landscape (in terms of environmental and social sustainability); the unjustified loss of BMV (in terms of economic and environmental sustainability); the fact that the site in particular is poorly located for access to jobs, services and facilities and therefore will not minimise the need to travel or in general provide residents with any real choice about how they travel (in terms of environmental and social sustainability); and also the significant further strain the development would put on public services, which are already operating over-capacity (in terms of social sustainability).
109. Set against all that, the benefits claimed by the appellant appear almost paltry. The provision of housing would qualify as a significant social benefit, as would the provision of affordable housing, albeit only at the level that policy would require of any development. However, given the size of the district and the housing numbers required to establish a five-year supply, the contribution

⁵¹ Cf. the inspector in *Stringer v Minister of Housing and Local Government and another* [1970] 1 WLR 1281 at 1291 who found that the arguments against granting permission (in that case for just 23 houses in Brereton Heath) were also 'overwhelming'.

that the scheme would make to reducing the overall shortfall judged on a district-wide basis is very small. The identified harm is of a different magnitude.

110. Furthermore, it is impossible for the appellant to claim any specific benefit in terms of meeting needs local to Goostrey. Firstly, what these needs might be has not been determined. The only concrete evidence that there is regarding affordable need comes from the appellant's own survey to which not one of the households that replied indicated that they were either in need of affordable housing or knew anyone else that was. Second, in any event, whatever they might be, the strategy of the eCELPS – to which, it appears, there is no objection from any party – is for Holmes Chapel to meet the bulk of those needs.

111. In terms of the economic benefits flowing from the development, these are even more generic since they would be realised in substantially the same form wherever the development was located. They are also in many cases merely temporary, and thus would evaporate almost as soon as the construction phase is complete – unlike the various forms of harm that would be caused by the development which would be permanent. Furthermore, the scale of such benefits has in any event been subject to a certain amount of 'spin' in order to give them the appearance of being greater than they are.

Conclusion

112. For all of these reasons the appeal should be dismissed and planning permission refused.

The Case for Gladman Developments Limited

The Principal Question

113. The key elements of this case are as follows:

- (i) The development plan is in rather poor condition by a number of measures. Its function is to provide for the needs of the district in a manner which balances the many competing interests which exist. Here it reflects demographic data which are no longer relevant. The plan is time-expired. It has in any event failed in its task and objective of providing for the housing, and consequent economic growth, of the District. It leaves a present position in which there is merely 3.3 years of housing land supply and a backlog in excess of 5000 dwellings;
- (ii) The Framework seeks to deal with such circumstances. Where the plan has failed it seeks to correct the position via the presumption in favour of sustainable development, which applies in any event;
- (iii) Here the presumption in favour of sustainable development is particularly strong because Goostrey is evidently a sustainable location. Indeed, CEC expects Goostrey to take a proportion of 3500 dwellings which are to be provided in the larger service centres;
- (iv) Consequently, the presumption in favour of sustainable development is tenacious; displacing that tenacious presumption is very difficult to do;
- (v) Here, the presumption in favour of sustainable development is particularly weighted in favour of the proposal by reason of paragraphs 49 and 14 of the Framework;
- (vi) The proposal should receive planning permission;
- (vii) CEC seeks to overcome this significant hurdle by reference to JBO, Swanwick Hall and incidental reference to open countryside and BMV; and

- (viii) The principal question, therefore, is whether the tenacious presumption that permission should be granted has been displaced.

Tenacious Presumption in Favour of the Grant of Planning Permission

114. The principal issue in this case is the balancing of the substantial benefits and the identified need for the appeal proposal against such harms as may be identified. It is very difficult to identify and assess whether a proposal is unacceptable without first understanding why the proposal is a good idea in the first place. It is a good idea. It is sustainable development, which in the present circumstances in Cheshire East, should be granted planning permission. Very cogent reasons indeed are required to displace these circumstances.

In *Renew Land*⁵², Jay J said this:

21 On this approach, the effect of paragraph 14 is that proposals which would otherwise have been refused because their planning merits were finely balanced should be approved – subject to the first indent of the second bullet point being made out. Another way of putting the matter is that the scales, or the balance, is weighted, loaded or tilted in favour of the proposal. This is what the presumption in favour of sustainable development means: it is a rebuttable presumption, although will only yield in the face of significant and demonstrable adverse impacts.

22 In practice, there will be questions of fact and degree. If, for example, the planning advantages are assessed to be non-existent, the presumption is likely to be easily displaced. The stronger the planning benefits are assessed to be, the more tenaciously the presumption will operate and the harder it will be to displace it.

115. CEC cannot demonstrate an up to date Local Plan and housing policy requirement, or a five year land supply. The objectively assessed need is 36,000 dwellings over the period 2010-2030; an annual need of 1,800 dwellings. There is an agreed backlog in completions of 5,089 dwellings (accrued since April 2010). The resultant land supply is merely 3.3 years. It follows that the delivery of 119 open market and affordable dwellings would represent a very significant planning benefit, which would be delivered; nobody suggests that this is a site which is anything other than set up to deliver real dwellings for real people to live in, who are in real housing need, now.

116. Chapter 6 of the Framework seeks to ensure that the supply of housing is not only provided in accordance with paragraph 49, but is also boosted significantly so that the needs of society for housing are appropriately met. The whole purpose is to avoid the social ills which come with under-provision. Those social ills are prevalent in this district in the form of years of failure to provide affordable housing and relatively high open market house prices.

117. The economic benefits are well known: construction jobs, further income locally, support for local services, new homes bonus. The construction spend and associated direct and indirect employment, over £14M, is important. Without it, the construction industry cannot be maintained. Had CEC met its obligations the construction industry in the District would have been larger; the economy

⁵² ID2

likewise. This is the main focus of Chapter 6 of the Framework. Such benefits are achievable without effect upon ecology, biodiversity, the creation of a flood risk or any other material environmental effect.

118. Moreover, the above benefits would be achieved in a sustainable location. Goostrey is such a location and enjoys a range of services and facilities within walking and cycling distance which include: a primary school, play area, sports fields, pharmacy, newsagent, railway station, public houses; as agreed by CEC⁵³. Indeed, local people spoke at the Inquiry on the same topic: Mr Pittam points to the church, thriving school and playgroup village hall, two pubs and a sports venue. Goostrey is a second tier settlement in the eCELPS and is one of the least constrained. The evident sustainability of the settlement and its clear role in both the extant and emerging development plan are highly material points.

The Imaginative Points and Approaches

119. The Councils, particularly CEC, show ingenuity and imagination in their cases, particularly via these propositions:
- (i) A planning policy provides protection against change which is acceptable;
 - (ii) A relevant standard is one which is already exceeded by some tens of thousands of times;
 - (iii) A planning policy is to be read to include exceptions which are simply not there – so, for Policy BH4 you read in an entire policy provision which is not there, yet for Policy PS10, you cannot read it as protecting against the unacceptable;
 - (iv) Where the development plan is out of date and/or inconsistent with the Framework for a variety of reasons, you first of all ignore the implications and find the proposal to be not in accordance with the development plan, and shuffle the implications to 'material considerations'; and
 - (v) Framework paragraph 114, re BMV, is a restrictive policy which requires that the weighted presumption in paragraph 14 is disapplied.

PS10

120. Policy PS10 of the Congleton Borough Local Plan First Review provides: *Within the Jodrell Bank Radio Telescope Consultation Zone, as defined on the proposals map and inset maps, development will not be permitted which can be shown to impair the efficiency of the Jodrell Bank radio telescope.* This policy is explained, in the supporting text, to have the purpose of taking account of the Town and Country Planning (Jodrell Bank Radio Telescope) Direction 1973.

121. As the Twemlow Inspector explained in his decision at paragraph 10, *although it also refers to taking account of the University's requirements in respect of maintaining the efficiency of the Radio Telescope in terms of its ability to receive radio emissions from space with a minimum of interference from electrical equipment, it does not suggest that any increase in interference would necessarily result in an unacceptable impairment to this efficiency.* He was correct. CEC's case is that a simple exceedance of the ITU suffices and that acceptability is irrelevant. However, it is clear that neither the policy nor CEC's case is anything so diffuse as a 'clear and present risk'.

⁵³ PID 1 & ID 13

122. The phrase *which can be shown to impair the efficiency* is one which brings with it the idea that the University is going to have to show something. Certainly, the ultimate question of impairment to efficiency is one for which the University can provide the evidence. This is because the question is one which includes an understanding of:
- (i) What interference exists in any event;
 - (ii) How that interference is dealt with;
 - (iii) What it is that the telescope is being used for;
 - (iv) Whether it is achieving that objective;
 - (v) What further interference would be expected from a proposal;
 - (vi) Whether that further interference can be mitigated at source; and
 - (vii) Whether the further interference, after mitigation, can be addressed fully or in part by the techniques, technology and experience which the University has in sifting the radio waves which it wants to study from those which it does not.
123. It follows that the question of whether it *can be shown to impair the efficiency* is not concerned with any additional interference because that does not say whether there is impairment to efficiency or not. To approach the policy in any other way would be perverse and leave the above matters out of account, which would have consequences.
124. CEC's approach in this Inquiry is, therefore, novel and:
- (i) Contrary to its own evidence and position as advanced on precisely the same policy and precisely the same issue in the 2013 Twemlow appeal;
 - (ii) Contrary to, and inconsistent with, its own application of the policy in its development management decisions where it has accepted effects and imposed conditions to require mitigation; and
 - (iii) Inconsistent with the context, particularly the baseline exceedance of the ITU.

The ITU

125. The International Telegraphic Union makes recommendations. It has produced a recommendation which both Prof Garrington and Dr Trotta have considered – ITU RA 769-2. It is a recommendation which is certainly used in order to control intentional transmission at radio frequencies. It has been adopted by CEC as an inviolable standard by which to determine planning applications⁵⁴. CEC's case⁵⁵, as stated by its witness Mr Crowther, is that any exceedance of the ITU threshold was a breach of Policy PS10 and led to refusal of planning permission. This case is bold. In fairness CEC has now significantly diluted its approach, perhaps because it has appreciated that it is very, very bold for a decision maker to suggest that the relevant standard by which to assess harm such that planning permission should be refused is one which has already been exceeded by some tens of thousands of times, while the feature that the threshold is said to protect functions at a standard that is world class.
126. The boldness of the case is just as easily illustrated by the fact that one single device on the appeal site would exceed the threshold. Not one dwelling; one

⁵⁴ Although the term 'inviolate' was used in closing, given the context and the appellant's wider case, I take this to mean 'inviolable'

⁵⁵ Cf to CEC's case before the SoS in February 2013

device, alone. Yet, despite the presence of 937 dwellings in Goostrey and the thousands of associated devices, the JBO produces work which is world class.

127. This bold position has been adopted by all three parties who invite refusal of planning permission because it suits each of them for different reasons. Firstly, JBO is focused on one issue, observing and learning about space. It is not required to consider the effects of its preferred environment on the wider social, economic and simply basic needs of society. It has always been so. In 1967, an application for residential development four miles from the telescope was refused, giving rise to an appeal to the Secretary of State⁵⁶. Sir Bernard Lovell appeared at the Inquiry. The judgment records (p262):

The telescope was built in the knowledge that certain towns and villages existed in the neighbourhood. For instance, there was Goostrey about a mile and a half to the south-west and Holmes Chapel about three miles to the south-west.

Continuing (p263)

It seems to me that the broad intentions of this unhappy agreement are inconsistent with the performance of that duty as regards applications for planning permission at Brereton Heath and elsewhere. It is true that the county council's undertaking to discourage development at Brereton Heath is qualified by the words "within the limits of their powers." Sir Bernard Lovell, however, bluntly interprets the agreement as meaning that development at Brereton Heath and at other places was to be resisted. The planning authority admit that, since the agreement was signed, they do not override the Jodrell Bank objections to development in the areas in question. It is, however, the duty of a planning authority to deal with the individual planning application before them and to have regard to all considerations which are relevant to that application. Plainly, on an application for planning permission to build houses in a particular place, one consideration which must always be material is the need for houses in that place, and no doubt there are other considerations, totally unrelated to the requirements of the telescope, which may be material to the application. It seems to me that the intention of this agreement was to bind the authority to disregard considerations to which, under the terms of the section, they are required to have regard.

128. As the map progression for the period from 1960 to 1990's shows⁵⁷, Goostrey continued to grow, and by substantial amounts. Nevertheless, the JBO continues to produce work which is world class.

129. Secondly CEC lacks enthusiasm for residential development, as shown by: the backlog in completions; its underestimation of the need for housing in the preparation of its Local Plan⁵⁸ having been invited by the examining Inspector to revise those figures upwards; and its strong track record of challenging decisions which inhibit its scope to refuse planning permission⁵⁹. So, a standard which even a residential extension would struggle to meet would be a useful development management tool for such an authority. Finally, as for GPC and

⁵⁶ Stringer v SoS [1971] 22 P&CR - Appendix B20 to Dr Morris's proof of evidence at pages B357 & B359

⁵⁷ Appendix 4 to Mr Clemons' proof of evidence

⁵⁸ Mr MacKenzie's proof of evidence, 6.2.1

⁵⁹ Most recently *Richborough Estates*, which runs on (CD22.6); *Renew Land* (1D2)

many local people who object on any and all grounds to residential development in Goostrey; the ITU standard would suit its objectives perfectly.

Policy BH4

130. Such is CEC's fear that the proposal will be found to accord with the development plan, it has submitted that policy BH4 is consistent with the Framework. The ingenious part of the submission is to rely on *West Berkshire – But the law by no means demands that a public policy should incorporate exceptions as part of itself.*⁶⁰

131. But it is wrong, because the law does not permit you to read a new national policy element into an older development plan policy in the way suggested. It is rather obvious that a policy cannot possibly be read by reference to and incorporating something which did not exist when the policy was written. In fact it is really simple – Policy BH4 does not include the balancing element of paragraph 134 of the Framework and so the Policy cannot be applied in the same way and with the same weight as it would have been prior to March 2012.

Section 38(6)

132. This should not be difficult. However, the development plan is dilapidated and its interaction with the Framework does raise important issues. The debate is as to when the weight to be given to the four relevant policies is to be adjusted, but is in fact a matter for the decision-taker. *West Berkshire* provides a good introduction⁶¹. *City of Edinburgh* continues that it was properly open to the Inspector to assemble all the relevant material including the provisions of the development plan and proceed at once to the process of assessment, paying of course all due regard to the priority of the latter, but reaching [her] decision after a general study of all the material before [her].⁶²

133. Where the development plan is new, not damaged, dated and dysfunctional, then it is correct to say that you firstly address compliance with the development plan and then turn to material considerations. But that is deceptively simple; it fails to deal with the fact that all four relevant policies are affected to very substantial degrees by external factors. The reality is that the relevant parts of the development plan on which CEC relies have lost much of their power; their force in development management decisions is 'mega-janskys' (massively) less than it was. In CEC's closing submissions there is no reference to Policies PS8 and H6 being affected in this way; they appear to have been abandoned and not relied upon.

134. This must be properly recognised in the decision alongside the fact that there is compliance with the strategic policies of the Development Plan.

Miniscule

135. The argument that a contribution to the housing shortfall should be given little weight because the contribution is miniscule in comparison to the substantial shortfall is as misconceived as it is unattractive.

⁶⁰ ID 5, paragraph 21

⁶¹ ID 5, at paragraph 19 of

⁶² *City of Edinburgh v Secretary of State for Scotland* [1997] 1 WLR 1447 at 1460

BMV

136. There is a run of cases in the Planning Court, some making their way to the Court of Appeal, on the operation of paragraph 14 and Footnote 9 of the Framework. GPC raised this point; it is a bold but bad point, on the evidence. The only relevant evidence before the Inquiry in this regard is the Land Research Associates report⁶³. It states that there is no lower grade agricultural land available. On the facts, paragraph 112 of the Framework could not restrain the development because there is no lower grade land to point to, even if it were a restrictive policy within the meaning of paragraph 14 and Footnote 9, which it is not. Hence, the *Forest of Dean* (Coulson J)⁶⁴ judgment is of no application.

JBO

137. JBO produces work which is world class. It is an important facility for the Universities in the UK and for collaborative work internationally. Its work is fascinating and valuable.

138. The case of CEC on PS10 and ITU is dealt with above.

139. CEC fails to deal with the only useful and relevant measure. Dr Trotta's scholarly evidence as to the baseline for the existing interference and as to the likely effect of the proposal went very much unquestioned. Dr Trotta's robust approach, spanning the spectrum of plausible assumptions produced an outcome which, at the pessimistic end of the spectrum, matched that of Prof Garrington. In itself, that showed that Prof Garrington was using pessimistic assumptions.

140. The appellant does not contend for the most optimistic assumptions as to where the devices would be or how their effects would be mitigated. For similar reasons, it is not realistic to expect all of the pessimistic assumptions to combine simultaneously. That said, each party is content with a condition which is specific so as to control attenuation. The appellant is content with a condition which specifies attenuation at the highest realistic level, around 20dB. The effects of the development should, therefore, be assessed on the basis of the agreed condition.

141. CEC has imposed conditions as a matter of routine (see the schedule of such permissions submitted by the appellant)⁶⁵. It cannot realistically be said by CEC that such is not enforceable. It is plainly enforceable so far as construction is concerned. It is further realistic to expect that future occupants will not tear out the insulation to their properties.

142. So, the real question in this part of the case is how to treat the additional 3.5% of interference? Context is everything. The context stretches back to the decision to site the telescope in Cheshire, knowing that there was interference nearby. The context includes the development which has taken place in the decades since the arrival of the telescope. The context includes the changes in areas of interest, the changes in the technology for sifting the signal from the noise and the change in the connectedness of radio astronomy around the world. The context further includes the agreement by Prof Garrington that the proposal

⁶³ CD1.13 and Appendix 1 to Mr MacKenzie's proof of evidence

⁶⁴ CD22.5

⁶⁵ ID 16

would not give rise to additional costs at JBO nor give rise to any risk to the jobs or the investment at JBO for the SKA headquarters.

143. Most importantly, the increase in additional interference must not be equated in any direct or simple way with impairment to efficiency. That would be to materially misunderstand the evidence. In fact, all that Prof Garrington's evidence says is that there are difficulties arising from interference and additional development makes those difficulties worse. However, the question posed by Policy PS10 is whether it has been shown that the efficiency of the telescope would be impaired. On the basis that the ITU is not a useful measure in these circumstances, that question simply has not been answered.
144. To reach a conclusion that PS10 is breached, and if so to what extent, that question must be answered by those who have the information, but who flatly refused to share any of it despite repeated requests. Moreover, they must answer the question clearly so that the decision maker understands how the operation of the telescope will be materially, or unacceptably, impaired.
145. Dr Trotta has not expended the very considerable effort required to assess the existing and proposed interference simply to establish that there will be an addition to the existing interference. That is immediately obvious to the lay person. Rather, the incremental change which has been shown is plainly small, but JBO has not shown that it gives rise to any identified impairment to efficiency. Consider this. The JBO undertakes pulsar timing observations which take defined amounts of observation time to undertake, yet oddly, we are not told whether they will take materially longer to undertake. We do not know whether the telescope will be less efficient as a result.
146. The evidence does show impairment from existing interference. Prof Garrington's rebuttal⁶⁶ indicates that 10.4% of pulsar data are discarded. The appellant does not suggest there is no existing impairment, there plainly is and there plainly was in 1960. The question is what difference will the proposal make? Prof Garrington deals with interfering signals in his proof⁶⁷. He explains the effect of interference on sensitivity and that it may be possible to compensate for this by observing for a longer period, but we are not told whether a 3.5% increase (or Prof Garrington's 6.8%) would result in longer periods of observation nor, if so, how much. Importantly, we were told that there was no case advanced by JBO that there would be increased costs of observation.
147. A bare assertion that 'the additional interference will make things worse' is not evidence. Neither is a submission that Prof Garrington's opinion should be accepted because he is a radio astronomer. The evidence does not show impairment from the proposal affecting efficiency. It does not show impairment to efficiency to an extent which overcomes a presumption in favour of the proposal. Rather, the broad view, which is what is needed, is that: there would be additional interference; that is undesirable; the effects are not known (as per (i) to (vii) of paragraph 122 above); and the increase in interference is to be seen in the context of continued world class observations, against a substantial background of interference.

⁶⁶ OPID 3

⁶⁷ Paragraph 10.3

148. There remains a precedent/cumulative point which is dealt with in the Analysis section below.

Swanwick Hall

149. Swanwick Hall is a farmhouse. It reads as a 19th Century farmhouse, but contains the historically interesting core of 17th Century timbers. The historic interest remains, clad in the 19th Century remodelling. GPC also refer to Holly Bank. This is a 'non point' – it is not a heritage asset for the reasons given by Mr Clemons.
150. The appeal site is experienced as a transitional area with some rural traits. It is neither truly suburban nor rural. Along Main Road within Goostrey the site is perceived as a comparatively narrow strip of pasture between houses with a hedge along the road frontage.
151. The transitional character of the appeal site is also apparent on the approach to Swanwick Hall. The black-top access drive, with its traffic lights, is experienced in the same context as the suburban housing to the south west and southern boundaries of the site. Similarly, once one moves beyond the houses that back onto this driveway there are open views of the northern part of the site, with its post and rail fence. The south west and southern boundaries are edged with modern houses and their gardens. This means that this part of the appeal site is transitional in character. It is not entirely rural because of the visual prominence and proximity of the housing along the south west and southern boundaries. The edge of settlement character of this part of the appeal site is in contrast to the open, rural and agricultural character of fields to the other side of the Shear Brook to the north east.
152. CEC's case relies heavily on the fact that the farmhouse is surrounded by some fields. It is, ultimately, no more than that open agricultural land forms the setting to the farmhouse which contributes to its significance.
153. GPC's case aligns with CEC's case. Its approach does however merit some caution. During the Inquiry GPC submitted the Heritage Impact Assessment⁶⁸ as evidence. Dr Morris said in evidence for GPC that it was not relied upon so far as Swanwick Hall is concerned, but was nonetheless put to Mr Clemons so far as Swanwick Hall was concerned. So, in respect of a report which was introduced just before GPC gave evidence, for which the author was not called, on which GPC said it did not rely, GPC now use it to support its case.
154. It is part of a broader problem, which goes to the weight to be given to GPC's case and submissions. The general approach has been to put all kinds of planning materials before the Inquiry, not call anybody with the expertise to answer questions on those materials, and then to enjoy the luxury of cross examining the appellant's specialists. There is nothing inherently objectionable in that approach, but it does have an impact on the weight to be given to GPC's submissions.
155. The approach to assessment of harm to the significance of heritage assets by development within their setting is set out in *The Setting of Heritage Assets* (English Heritage, 2011, revised 2015), namely:

⁶⁸ ID 12

- a. Identifying the historic assets affected and their settings;
- b. Assessing whether, how and to what degree these settings make a contribution to the significance of the historic asset(s);
- c. Assessing the effect of the proposed development on the significance of the asset(s);
- d. Maximising enhancement and minimising harm; and
- e. Making and documenting the decision and monitoring outcomes.

156. It also makes clear that 'Setting is not a heritage asset ... Its importance lies in what it contributes to the significance of the heritage asset'.

157. It is important that the Inspector's report approaches that heritage issue in this way. When that is done, it will be clear that the lion's share of the significance of the grade II listed building is the earlier 'inside' of the building, behind a later exterior. That is not to say that there is no significance in the exterior, but it will be difficult to reach a conclusion that most of the significance is not in the rare part of the building.

158. The contribution which the now only semi-rural, edge of settlement setting would make is evidently at the low end of less than substantial harm. It is plainly outweighed by the substantial public benefits on which the appellant relies.

Analysis

159. When these matters are drawn together, the appeal proposals generally comply with the relevant, remaining provisions of the Development Plan⁶⁹. In particular, the proposal to direct housing development to a (Policy PS5) village, which is identified in the Local Plan to absorb the bulk of development requirements for the rural areas, complies with the broad spatial objectives of the Plan and is a key guiding principle of the Plan to promote sustainable development. It is noted that the reasons for refusal also do not identify any conflict with Policies PS3 and PS5 and no conflict is identified with any of the General Requirements of the Local Plan.

160. So far as the conflicts with Policies PS8, H6, PS10 and BH4 are concerned, it is accepted and agreed that there are factors in play which affect the weight to be given to each of them, for the reasons canvassed in evidence and set out above. However you care to analyse the policy position, it comprises elements which are favourable to the proposal: strategic compliance; a tenacious presumption in its favour and specific saved development plan policies which attract reduced weight. In any event, to the extent that the balance and weighting of the policies results in some non-conformance with the Development Plan, material considerations outweigh such conflict.

161. Those material considerations are very powerful indeed. They start with the significant weight to be attached to the provision of housing in a District which has had and still does have serious shortfalls. Alongside that very substantial benefit is the provision of 30% affordable housing. Each attracts substantial weight.

162. Not least because CEC has wholly failed to refer to the benefits in its closing submissions. There are the economic benefits from the construction and

⁶⁹ See the proof of evidence of Mr Mackenzie at 8.3.2

occupation of 119 dwellings. GPC has not persisted with its failure to deal with benefits having failed to identify a single benefit in its evidence, but in closing submit, in adjacent sentences, that the benefits are 'paltry' but that 'significant social benefit would arise'. However, as Mr Mackenzie explained:

- (i) There would be additional support for the vitality of the facilities provided in Goostrey – a particularly strong example is the failure of the butcher's shop, closed with a sign explaining that its customers were appreciated but were too few and too far between;
- (ii) Such support for the vitality of Goostrey is supported by paragraph 55 of the Framework;
- (iii) Indeed, local spending power would increase by some £3M⁷⁰;
- (iv) Similarly, the population of Goostrey has matured⁷¹, and there is a real need for opportunities for younger people to stay in or move to Goostrey – the proposal would deliver this; and
- (v) Further, house prices are higher than the north west average and a need to redress that imbalance.

163. Hence, consistent with paragraph 19 of the Framework, the proposal would provide significant economic growth, which the planning system seeks to support.

164. A finding consistent with CEC's case on JBO would be an effective moratorium on most forms of development in Goostrey and much of the 1973 Consultation Zone. The effect would be widespread with obvious consequences in the district.

165. A finding that it has not been shown that the proposal would impair the efficiency of the telescope would be a case-specific finding. It would set no absolute ceiling on interference either generally or in Goostrey. Indeed, it would not be right to make a decision which has such an effect because such general matters are properly the business of development plan making.

166. Additional interference is a matter which has been dealt with by the planning system on a case by case basis for decades – since the 1960s. This case is no different. Any further case would be assessed against: (i) the evidence as to additional interference which may be more, less or similar to this proposal, and (ii) the planning circumstances in the District, including the land supply position, backlog, the weight to be attached to the emerging local plan and neighbourhood planning etc. Each case is necessarily a case specific assessment.

167. Cumulative effects are to be assessed against the existing baseline. That is what has been done. It would be incorrect to suggest that assessment of any one proposal should have regard to future development unless it is clearly identified by reference to an extant permission or application in the planning system. CEC has not done this and there is no evidence in this regard.

168. The proposal meets the identified and justified off-site impacts. In respect of an education contribution, that can be met in full if it is decided against the

⁷⁰ CD1.5 at 3.4.13

⁷¹ CD1.5 at 2.2

arguments of EPDS Consultants⁷². However, the appellant submits that the EPDS material is both compelling and correct.

Conclusion

169. When CEC's and GPC's points are understood, and sensible, common sense approaches taken in their stead, one is left with a small number of key features in this decision: a tenacious presumption in its favour, a fascinating and valuable feature in the form of JBO and a balance to be struck.

170. That balance is to be struck in accordance with the evidence. The evidence is clear that Goostrey is a sustainable settlement which would benefit from the growth. The District would benefit from that growth, which it should have had years ago. That growth is therefore both necessary and beneficial to those who require housing, to the settlement, to proper planning of the District and to the economy of the area.

171. The appellant has addressed the JBO issue with care and via robust evidence. CEC has shown that JBO is valuable and important, which was and is a given. The natural conclusion on assessment of all of the evidence as to effect is that there is existing difficulty at JBO but no evidence which properly leads to the conclusion that the efficiency of the telescope would be impaired by reason of the development, still less sufficiently to displace the presumption and balance which indicates that permission should be granted in accordance with the draft conditions and the unilateral undertaking.

The Case for Other Parties Who Gave Evidence at the Inquiry

The Case for Catherine Morris

172. The appeal should not be allowed as the development is locationally and socially unsustainable. Unsustainable car travel is unavoidable for most activities and the appellant has failed to demonstrate that it is possible to deliver parking provision for the proposed 119 dwellings.

173. Residents of Goostrey have to travel out of the village for work, for shopping, for out of school activities, child care, and health care. Even within Goostrey it is not safe to walk from one end to the other with young children since for stretches the pavements only exist on one side of the road and there are lengths which are too narrow to walk side by side with a child. The bus service is rarely used by anyone who is not retired because it simply does not meet residents' needs and although the train is there for trips into Manchester and Crewe, it is too impractical and expensive for everyday family usage. So public transport is not a convenient or suitable travel option for most journeys for people who live in Goostrey, so in reality people use cars.

174. The appellant says that people can cycle to the essential facilities in Holmes Chapel, including taking small children by bike to day-care. There are two possible routes cyclists could take, the A535 or the A50. The A535 is known as one of the best routes to drive in the UK because, as professional racing driver Oliver Web said of it, it is 'a great road ... [it] has a perfect mix of corners for all driving abilities and cars.... There are some great dips and tight blind corners,

⁷² As principally set out in ID 17

hard to navigate in one sense but satisfying to drive at any pace'. Alternatively residents could cycle the even more dangerous A50 which is a red route and also the route used whenever there is a problem on the M6. According to the Cheshire Fire Service website Red Routes are eight routes across Cheshire which potentially carry the highest risk to road users of suffering a serious or fatal crash. Cycling either route during commuting time would be irresponsible as impatient drivers coming in both directions toss up as to whether or not to squeeze the cyclist into the verge or risk overtaking.

175. The appellant also somewhat incredibly suggests that prospective residents can tackle this 10km round trip by cycle when going to the doctors or to the supermarket. After commuter time the roads will be quieter, but this allows traffic to travel faster. By way of justification the appellant refers to the cancelled document PPG 13; at paragraph 77 it states that cycling has the potential to substitute for short car trips, particularly those under 5km. However the appellant misses the primary point of this section of the guidance which is to encourage the development of safe cycle routes. It suggests utilising redundant railway lines, space alongside canals and rivers or modifying existing highways so that the needs and safety of cyclists can be given priority. Throughout the section of the document to which the appellant refers there is stress on safety and absolutely no suggestion that simply because a trip is less than 5km it should be cycled regardless of obvious and significant dangers.
176. There are no cycle lanes on these routes and beyond the conurbations both of these roads are unlit. They are dangerous for cyclists, and cyclists on the road would endanger motorists. It would not be responsible to suggest that cycling to Holmes Chapel is an alternative form of transport. There are limited day to day facilities within Goostrey, but for needs beyond that, and to work residents have to travel elsewhere. Travel by bike is not a safe option, public transport is rarely practical, so regardless of any theory or desk top analysis they are not options which will be selected by prospective residents. They will travel by car. Goostrey is not a sustainable location.
177. While the revised illustrative masterplan is only illustrative, it has clearly been given a lot of consideration and is the optimum design which the appellant has been able to create so deserves serious consideration. It shows that it is not possible to put 119 dwellings on this particular site, with adequate parking, with all of its inherent constraints. At least not without so significantly changing the proposed layout and landscaping that a new application would have to be made.
178. Notable features of the illustrative plan which indicate the problems with delivering 119 houses on this particular site are: there are only 118 houses shown; five houses have no parking spaces; 15 three-bedroom family houses only have one space each; the 18 one-bedroom apartments only have one space each; and there is no visitor parking for any of the 18 one-bedroom apartments, the 37 three-bedroom properties or for 14 of the four/five-bedroom properties.
179. For the legalistically minded the number of parking spaces indicated is inadequate because it is significantly below Cheshire East's minimum parking standards. For the practically minded it is clearly going to lead to stress, chaos, emotional outbursts and anger as residents are denied what is now seen as an inherent right. That is the right to have adequate space to park their cars outside or at least very near their homes. The single parking spaces for people

living in the 15 three-bedroom family homes are too narrow for practical family use. Whilst it is possible for an agile driver to get in and out of a family car in the space allocated, it would be impossible to load or unload a child. Residents may park across spaces to give themselves adequate space and may leave their car protruding into the road as they care for their family. What is clear is that there will be dented cars, and domestic and social tension.

180. Supermarkets and shopping centres recognised these issues and provide family sized spaces: this design does not give such consideration. Additionally the width of the road required to get out of one of these narrow right angled spaces is only just enough; so if anyone happens to be parking on the opposite side of the street the cars will be trapped.
181. The inevitable result of lack of off street parking spaces is on street parking. The Institute of Highway Engineers and the Chartered Institution of Highways and Transportation in their Guidance Note on Residential Parking say 'There are few issues that can inflame an entire community more than parking provision and inadequacies of it.' The appellant's Design and Access Statement makes a feature of narrow streets with restricted visibility. This, together with the illustrative plan, show that the roads will not be wide enough to facilitate traditional parallel parking in front of the houses. However this will be the only option and the outcome will certainly not result in harmonious social cohesion and it will reduce road safety for both pedestrians and cyclists. The Guidance Note on Residential Parking also says 'The emergency services, especially the Fire Service, are sometimes confronted by the partial, or even total, obstruction of streets where the design concept for parking has failed to marry up with the expectations and practice of the occupiers and their visitors.'
182. The Guidance Note continues, 'Parking problems manifest themselves in pavement parking, obstruction of driveways and accesses, hindrance to larger delivery vehicles and refuse freighters, damage to soft landscaping and footways, and cluttered, unsightly streets. They cause tension between neighbours that has been known to escalate into violence in some cases. They appear to reduce the likelihood of children using the street for play, and may have other implications for non-car travel and health. Otherwise well-designed neighbourhoods are often compromised in terms of their appearance and enjoyment by ill-considered approaches to the provision of parking for residents and their visitors.'
183. Current residents are dependent upon cars for many journeys each week. Future residents will be equally dependent. The revised Masterplan demonstrates that it is not possible to provide enough parking spaces within the proposed Framework for 119 dwellings without significant changes to some or all of the framework plan, the tree retention plan, the structural planting and landscaping and informal open space.
184. The Design and Access Statement for the appeal development asks the question is resident and visitor parking sufficient and well integrated so that it does not dominate the street? A basic check of the illustrative masterplan shows that they failed to create a design which delivers this standard. There is not enough resident parking and there is no visitor parking. The appellant is clearly a highly professional, well resourced and well organised company. If it could have produced a plan which meets this requirement would they not have done so?

185. The appeal includes the framework plan, the tree retention plan, landscaping, structural planting and informal open space. The appellant fails to show that it is possible to deliver 119 socially sustainable houses within the constraints of these elements.

The Case for Janet Lardner-Burke

186. Goostrey has been put forward as a LSC, however this designation is misleading. The LSC does not mean Goostrey Parish as it also includes the rural parishes of Cranage, Twemlow and Swettenham as well. People who live in the four parishes do not go to Goostrey for their services as they do not exist in Goostrey village. These four parishes do not have a doctor, dentist, supermarket, day nursery, secondary school, bank or ATM. With such limited facilities people go to the neighbouring Holmes Chapel, a round trip of about 10km.

187. In fact, the eCELPS states at paragraph 8.34 that 'In the case of Goostrey which adjoins Holmes Chapel, a larger Local Service Centre, it is anticipated that development needs will largely be provided for in Holmes Chapel.' With very few jobs in Goostrey, if this development with around 250 new residents were to go ahead, notwithstanding the objections of JBO, outward commuting would be significantly increased.

The Case for Dr Martin Hudson

188. Some villagers had the privilege to know Sir Bernard Lovell. All villagers value Jodrell Bank's Lovell Telescope as an icon of British Engineering and scientific brilliance. The Telescope has become well known throughout the UK and across the world not only for its pioneering development of Radio Astronomy but also as one of the most important radio telescopes in the world. This fact was recognised by the world of international radio astronomy when the JBO was granted leadership of the International SKA scientific programme. The Lovell Telescope is also a major player in the Merlin Project⁷³. The Government has also supported this work with large donations of funds and they would no doubt not wish to see this important work jeopardised and public funds wasted.

189. The telescope played a vital role during the Cold War and the 'Space Race' and in particular during the Cuban missile crisis. Although this was a long time ago we still live in dangerous times and who knows whether a similar crisis might develop in the future when the telescope could again prove to be an important part of our national security. While there are other defence establishments which protect the UK it is not inconceivable that the Lovell telescope could be called on in the future for the detection of more remote objects that are not detectable by the MOD early warning systems. The Lovell telescope also plays an important role in co-operation with other space exploration countries such as the USA, European Space Agency and Russia to further scientific enquiry and improve our knowledge of the universe.

190. In recent years the Lovell Telescope has enjoyed a high profile not only in Cheshire but throughout the UK. It has become a major tourist attraction inspiring countless visitors in particular members of the younger generation, and

⁷³ See para 207

as well by way of regular BBC Television programmes beamed from Jodrell Bank and presented by Prof Brian Cox.

191. The importance of the Lovell Telescope has been confirmed by Prof Garrington, who states in his written evidence that this development, which is within two miles of the telescope will have a major deleterious effect on the important work at this Radio Telescope. He has cogently argued that the large number of microwaves, mobile devices and other electronic equipment which such a large development will inevitably contain will create a considerable amount of radio-wave interference. Whilst it may be possible to create some type of radio interference 'barrier' this is by no means certain to be effective and has enormous cost implications. It is inconceivable that all the experts at the Lovell Telescope would base their argument against local developments if they were not 100% sure of the facts. They represent the finest scientists working in this field in the UK if not in the world.
192. Another radio astronomy academic has submitted an alternative argument implying that the amount of additional radio interference which this development will create will not have any worsening interference effect. However, Prof Garrington is determined to protect the important work of the Telescope which is of major international importance whereas Dr Trotta has been engaged to support a major housing development and as he competes with JBO for grants from the same sources presumably has a conflict of interest. This fact should be carefully considered.⁷⁴
193. Furthermore, this very large proposed housing project is unsustainable. It is a fact that the local schools, health facilities, shops and car parking facilities in the village and neighbouring villages are already at saturation point. There is also concern that the present sewage system will not cope with the additional volume of sewage. Local employment opportunities are also scarce. The available facilities in the nearby village of Holmes Chapel, which is currently seeing major housing development, are already at maximum capacity.
194. Villagers and visitors often use the footpaths around the proposed site and very much value the open countryside and the views of the grade I Lovell Telescope. The proposed development should also be resisted because of the loss of first class agricultural land, which is used annually for growing a variety of food crops and which is a haven for a variety of wild life. The proposed development is also close to a grade II listed building at Swanwick Hall Farm as well as several well established residential properties.
195. While new houses are needed and it is Government policy to encourage new house building, these houses should be built on brownfield sites nearer to better transport facilities, schools, health provision and employment opportunities. Also it is difficult to understand how house prices in this area which are already outside the financial reach of many families can become more affordable by this proposed development.

⁷⁴ During the Inquiry it was established that Dr Trotta does not in fact 'compete' with JBO for grants such that there is no such conflict of interest; the matter, therefore, should carry no weight in the determination of the appeal.

196. Goostrey is a small rural village in the heart of Cheshire and such a major development would have a serious effect on its limited infrastructure and local facilities which are already overwhelmed.

The Case for Dave Pittam

197. What attracts people to live in Goostrey are that it is a traditional English village set in open countryside with a strong agricultural heritage; numerous footpaths surround the community affording the opportunity to enjoy open vistas, lovely rural views and a wide range of flora and fauna; and a strong sense of community which is bolstered by the existence of a church, a thriving school and playgroup, a village hall that hosts many activities, two pubs for socialising and in more recent years a sports venue.

198. The appellant is seeking approval for the construction of 119 houses on what has always been productive agricultural land and which has a very well used footpath running adjacent to and across the back of the proposed site. The grade II listed Swanwick Hall Farm is also located just to the rear of the site, and was until recently a significant part of the site. The development would fail to preserve the settings of this building in a similar way to that referred to in the dismissed appeal in Maldon District⁷⁵. There is a delightful, wide range of wildlife in and around this field; foxes playing in the snow on a moonlit night, bats flying across the field and in our garden, badgers, buzzards, skylarks, plovers, pheasants and partridge nesting in the tilled furrows. Any housing development can only **have** a negative impact upon this environment and its wild inhabitants.

199. The sustainability of this very large proposed development and the infrastructure to support it is questionable. Where will the employment that offers a sufficient level of working hours and remuneration come from to support families moving into these new homes? Certainly not in Goostrey or the immediate vicinity, which means that any new residents will join existing ones who in the main must travel to work some miles away. Whilst Goostrey does have a railway station linking the village to Crewe and through to Manchester there are no direct links to Knutsford, Middlewich, Northwich, Sandbach or Altrincham. Our bus service is extremely limited and restricted in its timetable to hours outside normal commuting times, providing direct access only to Holmes Chapel and Sandbach. One must therefore conclude that the use of cars will be the main means of getting to and from places of employment, putting further strain on our village roads and surrounding routes.

200. Our already stretched services will be further strained by the demands that this level of increased population would place upon them. Our successful primary school cannot support a large increase in pupil numbers, nor can the secondary school in Holmes Chapel which is already under pressure, especially due to the demand for places created by the new housing developments already under construction or having being given approval for construction there. Similarly Holmes Chapel Health Centre is already struggling to provide the level of service it would wish to its patients and having already been extended and remodelled in the past it has no further scope to do so again.

⁷⁵ Appeal Ref APP/X1545/W/15/3032632

201. JBO, a world renowned and respected centre of scientific research is located only a short distance away from this proposed development which itself is in direct line of sight of the main dish. A considerable amount of money has recently been invested in Jodrell Bank both by the UK Government and the EU as it takes on the lead role and becomes the headquarters of the SKA international research programme. No housing development should be allowed to restrict or cause significant hazard to the work of this establishment.
202. The development will remove the views of several properties to the grade II listed Swanwick Hall Farm and the grade I listed Jodrell Bank radio telescope.

The Case for Jane Stubbs

203. Goostrey is a small rural village which has been based on farming of the surrounding agricultural land for hundreds of years. The open countryside and public rights of way are highly valued by local residents. The proposed site is particularly valued as it is possible to walk along the footpath between the fields of Swanwick Hall Farm. The grade II listed building and its surrounding fields give a sense of the social and economic history of Goostrey. The fields have been worked for hundreds of years and are still obviously productive to this day. The public right of way links to other footpaths in Goostrey which pass the old mill and the bluebell woods of the Bongs. From the footpath to Swanwick Hall it is also possible to see the grade I Lovell telescope, which is a reminder of the pioneering science that started here in the 1950's, and which now sits alongside the internationally important SKA headquarters. Residents value Jodrell Bank, and are proud to have the facility so close, not least because it puts Goostrey on the map, it provides visitor and educational facilities and it is famous around the world. These visual reminders of ancient and modern times would be badly affected by the construction of 119 houses on this valued landscape.
204. Goostrey does not have the facilities to support such a large influx of people. There are very few jobs in Goostrey and the village does not have a doctors, dentists or associated medical facilities. These services together with other convenience stores, bank, library, and secondary school are a minimum 10km round trip away in Holmes Chapel. Further travel is required for supermarkets and employment opportunities. The proposed housing would become a dormitory estate for commuters who would have to rely on car travel for the majority of day to day needs. The cross roads in the village at Booth Bed Lane is the scene of frequent accidents. A photograph supplied⁷⁶ shows a collision that took place there on the Saturday before the Inquiry opened, and another write-off occurred there in September 2015. More traffic is only going to make this problem worse.
205. Scientists at JBO are concerned about the adverse impact on the radio telescopes. Cheshire East is an area of more than a quarter of a million acres. To allow, or even risk, damage to JBO caused by building on this particular site in Cheshire East, would not be the right or proper decision.

The Case for David Johnson

206. JBO is a thriving inspiration to many children, and has been so for many generations, remaining a contemporary world leader in Astronomical,

⁷⁶ As appended to Ms Stubbs' written statement

Astrophysical and other scientific knowledge and education to this day. Over the years many schools have taken students on visits to JBO, indeed over 160,000 visitors visit JBO's Discovery Centre every year. It continues to win awards for its work with schools, and has recently secured millions of pounds of public funding for development of their outstanding education and visitor centres, and up to an estimated half a billion pounds of public and private funding to inspire the next generation of Scientists, Engineers, Computer Scientists, and IT Professionals with the SKA, now with its permanent international HQ at JBO.

207. Other critical infrastructure funding includes an upgrade to the Lovell telescope dish of £16M, e-Merlin (UK national telescope array, of which JBO is the main cornerstone), continued support by the Science and Technologies Facilities Council i.e. the UK Government (ongoing millions of pounds of investment), the SKA involving £100M from the UK Government alone, and other telescope infrastructure upgrades involving £1M from CEC. All such massive, hard to come by, and largely public tax-payer funded investments and their effectiveness at JBO must be maximised and safeguarded, not wasted or otherwise compromised by an outside party in any way.
208. Prof Brian Cox, who annually hosts the BBC's 'Star Gazing Live' from Jodrell Bank, watched by millions of viewers each year, has recently challenged the UK Government to ensure that 'Britain becomes the best place to do science'. Speaking about a £12m Lottery Fund awarded in 2015 for an educational visitor pavilion centre project at JBO called 'First Light', Prof Cox said: 'The rich scientific history of the UK is a key part of our culture and Jodrell Bank is the standout icon of UK science and engineering. When I was young, visiting Jodrell Bank was one of the things that inspired me to become a scientist. This new project will inspire many more young people to carry on our great tradition of science and engineering.'
209. Prof Tim O'Brien & Prof Teresa Anderson, Directors at JBO, have won prestigious scientific education awards such as the Kelvin Medal of the Institute of Physics for outstanding contribution to the public understanding of physics. The Institute's citation recognises their work in creating a new, award-winning Discovery Centre at Jodrell Bank and the development of an education programme that reaches over 16,000 schoolchildren every year. On receipt of the Kelvin Medal, Prof Anderson said: 'It is very special to be recognised by the Institute for the work we've done here. We're delighted that Jodrell Bank is a place of inspiration for the scientists of the future as well as a site for world-leading research. The new Discovery Centre is packed with school groups during the week and families at the weekend. I feel very proud to have been able to help create a place where inspiration and learning takes place. Jodrell Bank holds a place in people's hearts across the North West and beyond. It has become a major landmark in the Cheshire countryside and an icon of science & engineering. But it is also a landmark visitor destination, with educational programmes inspiring the next generation.'
210. Prof O'Brien was quoted at the same time as saying: 'After 70 years, Jodrell Bank remains at the cutting edge of scientific research. Work which will continue for decades to come, thanks to projects such as the SKA, the next great radio telescope, whose international headquarters is now at Jodrell Bank. It is a real privilege to work at such a wonderful facility.' Since 2011 Profs O'Brien and Anderson have also helped organise and run annual 'Live From Jodrell Bank' Science & Music weekend festivals helping reach an annual audience of approx. 45,000 young adults, engaging them with live links to other observatories around the world,

and discussing a wide range of latest scientific research, such as the Large Hadron Collider, graphene, photon science, the physics of music and so on.

211. George Osborne MP has also stated that Jodrell Bank served as an inspiration for him whilst he was young, and is now the centre of his scientific vision for the Northern Powerhouse in Manchester & Cheshire, affording the region scientific excellence and jobs. He visited Jodrell Bank on 30th April 2015 and shortly afterwards said: 'We've worked with Manchester University to bring this world leading science to the North of England. The SKA will be the largest instrument in the world, it will focus on how gravity works, including the existence of black holes and dark matter, and will handle data 10 times the world's internet traffic every day.'
212. IT that has not even been invented yet will be needed at Jodrell Bank for Big Data applications at the SKA from a proposed Go-Live of 2020 onwards. Computer Scientists and IT Professionals will make up part of the initially estimated additional 200 new jobs on the site as part of this estimated half a billion pounds of recent funding investment. If Mr Johnson's son becomes a scientist or an IT enthusiast, JBO could very well be his inspiration and potential future life's work.
213. Ultimately Bernard Lovell moved his telescope out of Manchester to the Cheshire countryside over 70 years ago in 1945 to get away from radio interference. CEC and the UK Government have a duty to protect this UNESCO World Heritage shortlisted site and grade I listed building (i.e. globally unique in its scientific and cultural importance), and its surroundings for future generations of Scientists, Engineers, Computer Scientists and IT Professionals.
214. JBO have long stated their concerns over the damaging practical impairment of the telescopes at the site due to cumulative effects of Radio Frequency Interference due to growth in size of their most immediate neighbour, i.e. Goostrey village. Indeed this was the very reason for the development of a 6-mile radius Consultation Zone in 1973, enshrined in the both the Local Plan and the eCELPS (Policies PS10 / SE14). This proposed development is the first large-scale proposal since the formation of this Consultation Zone (thus for many decades in the village) yet currently many other proposals stand behind it awaiting the result of this appeal, so this proposal must necessarily be considered in this clear cumulative context; this decision will set a pivotal precedent.
215. The developer's own witness Dr Trotta admits in his submitted evidence there will be a negative effect upon JBO observations as a result of the proposed development. There simply does not need to be this negative effect, as there simply does not need to be these houses on this site.
216. There are many hundreds of thousands of acres of fields in Cheshire where new homes can be built without damaging or destroying this unique regional, national and internationally vital scientific facility and cultural icon, and ultimately with it, this country's world-leading science and education. There is only one JBO, it is an active world-leading scientific research facility, and a centre of educational excellence. We must continue to protect it for current and future generations.

The Case for Cllr Andrew Kolker

217. The Framework clearly states that there should be a presumption in favour of sustainable development, but this does not mean that any development of any size, near an existing village is automatically sustainable. If the facilities and amenities within a village or community are at saturation point then surely they cannot be considered as available within a sustainability argument.
218. The Primary School is full and is acknowledged as such in the planner's report. The Comprehensive School in Holmes Chapel is also full. The headmaster confirmed at the start of the Inquiry that the school's Published Admission Number capacity is 1250 and they actually currently have 1253 pupils. So where are the children going to go to school? Indeed the headmaster is so concerned about this that he has written several articles to the local press.
219. A pupil's mother was on the point of tears because she had recently moved to the area and her child had been refused a place at the Comprehensive because they were full. She feared that because he would have to be bussed to school miles away, he would find it difficult to make friends locally. He would be excluded from local events and groups and would feel isolated from the community they had moved to. Surely this is wrong and is not the measure of sustainable community. Throwing a bit of section 106 money at the problem may help, but only where the school physically has the capability to expand. In the case of Goostrey School and Holmes Chapel Comprehensive schools, this simply is not possible. The sites are full and this is now not counting the 600 houses in Holmes Chapel that have planning permission but are yet to be built.
220. Even the most cursory drive through Goostrey will lead one to the conclusion that it will be necessary to visit other ESCs for all but the most basic provisions. The residents of Goostrey rely on access to Holmes Chapel for the doctors, the library and a variety of slightly larger shops. But Holmes Chapel too is at saturation point. You simply cannot park. When residents need to go to the doctors, they go in pairs. Whilst one is being seen, the other drives round and round the village until they eventually re-emerge so that they can be picked up and both go home together.
221. On several occasions, the Councillor has driven to Holmes Chapel with a view of going to either the Coop or mini Sainsburys. After a tour of the various car parks and side roads he has had no option but to give up and come back home empty handed because there isn't a single available car parking space. Again this is now, before the additional 600 houses that currently have planning permission in Holmes Chapel are built. It could be argued that if parking spaces are desperately needed in Holmes Chapel village, then developers could be asked to provide s106 funding. But this too is simply not a solution because there is no land on which to put a car park anywhere near the centre of Holmes Chapel.
222. Goostrey is lucky enough to have a railway station, although few trains stop there. But even the most optimistic developer cannot realistically believe that, on those cold dark mornings between October and March commuters will walk from this site to the station. They simply won't. But in those winter months the station car park is jam packed full to capacity. A full car park is not an accessible car park and without a car park, neither is the station.

223. Please consider this evidence from a resident of Goostrey. It is simply not possible to continue stuffing more and more houses into villages that cannot accommodate them. Goostrey is full, Holmes Chapel is full and residents of this and future generations will not forgive the urban vandalism that is the packing of villages with houses that do not have the amenities to serve them.

The Case for John Dyke as Leader of the Goostrey Footpath Group

224. The aim of the Footpath Group is to encourage people to use the local rural footpaths and, with CEC, to keep the paths in safe enjoyable condition. Footpath 12 is of particular interest to the Group, because during the later part of the 20th Century it had become impassable and had fallen into disuse. As a Millennium Project for Goostrey and with £3,650 of support from Cheshire County Council, Manchester Airport and other donors, plus considerable volunteer effort, the Group brought the path back into service, constructing a substantial boardwalk across the marshy ground which had made the route impassable.

225. It is the only way of walking from one half of Goostrey to the other without walking along Main Road. The route is used by Goostrey folk (especially dog-owners) out for physical exercise and mental refreshment, and also by many folk from further afield. A rural walk including this footpath is featured as Walk 8 in the Millennium Edition of the Footpath Group's publication 'More Goostrey Walks & Strolls', of which there are 2,000 copies in circulation.

226. It has become well-known in the Ramblers Association, and by other walking groups. The route has also featured in 'Pocket Pub Walks, Cheshire', and even in glossy Cheshire publications - perhaps because it goes right by Swanwick Hall, a grade II Listed Building, and has a grand view across the fields to the Lovell Telescope, a fine piece of engineering which is grade I Listed and on the short list for World Heritage status.

227. One of the particular merits of footpath 12 is that unlike the nearby footpath 2 through The Bongs, it has no steep climbs or descents so it can be used safely by the less agile. Indeed the Boardwalk was designed with advice from a disabled-access group, having in mind that the whole length of the path may eventually be wheelchair-friendly and perhaps more important, push-chair friendly.

228. Access to open country is increasingly recognised as significant for both psychological and physical health, for young and old. The proposed housing development would adjoin footpath 12 for over 250m. For a start, it would block the view to the Telescope from the whole of that 250m, and ruin the approach to the grade II Hall.

229. The view across the fields from this part of the path is enjoyable and refreshing — you feel 'out in the country'. To place housing alongside would completely destroy this open, rural feel. And this happens to be the part of the path which is already fully accessible to wheel-chairs and push-chairs.

230. The Goostrey Footpath Group strongly opposes this planning application.

The Case for John Dyke as a Local Resident (retired electronic engineer)

231. The mathematics of Dr Trotta's paper is impressive, but the overall approach is not. This is a situation that is not amenable to mathematical modelling, as exemplified at 8.21 of his proof of evidence where a 4.6dB discrepancy has to be described as 'a relatively small difference'. In a motor accident inquiry, evidence that said 'I have calculated the vehicle speed by one method and make it 31mph, and by a different method I make it 90mph' would not be regarded as reliable — but that is only a 4.6dB difference. If Dr Trotta had hired a telescopic mast and a spectrum analyser, and made measurements from a field near the telescope, it would be more confidence-inspiring.
232. On the basis of over 60 years experience in the electromagnetic radiation world it seems that Prof Garrington's Rebuttal⁷⁷ is the paper that actually gets to grips with the realities of the situation, and it is strongly recommended that this should be relied on.
233. Additionally there are some practical points:
1. It is unwise to expect special measures in the construction of houses to dramatically reduce unwanted radiation. Poor joints and significant gaps at intermediate floors and between walls and roof make the use of foil-backed plasterboard, foiled insulation, and K-glass less effective than might be expected, as can be demonstrated by taking a mobile phone into such a building. Modern house wiring techniques bypass the screening effect of foil-backed plasterboard. Also, the wiring to outside lights, satellite dishes and TV aerials all collect electrical noise from inside the building and radiate it outside.
 2. The new houses will radiate more interference than the existing houses because the houses are aimed at younger people, who make greater use of modern technology. Also they will be required by planning to use low-energy lighting. Nowadays that means LED lighting. Each LED lamp includes a switch-mode power supply. Switch-mode power supplies need to be very carefully designed to meet CE standards for unwanted radiation. The units in equipment manufactured under the control of US and European companies generally are, but LED lamps manufactured in the Far East with little western control but under extreme price pressure are not. Almost all of the illegal radiation from them will be at frequencies of no relevance to astronomy, but inevitably they will add to the white-noise background in bands that are important, including 1400MHz.
 3. Dr Trotta hints that as additional white noise can often be compensated for by spending more time making the observation, it is of little consequence. For all practical purposes time is inelastic, so more noise means less science.
 4. Dr Trotta's paper puts forward the proposition that since there is already an unwelcome level of interference, adding to it won't make much difference. This is the thought process of the young man who sees a couple of empty cans lying in the gutter, so throws his empty to lie with it.

⁷⁷ OPID 3

And the next person adds his fast-food tray to the heap. There is already a noise problem at JBO: let's not make things worse when we should be trying to make things better. If the present noise level was 20dB below the acceptable noise level, then there might be a case that a 1dB or even a 2dB increase would not be a problem — but this is far from the situation here. With the noise level already high, all that is acceptable is no increase.

5. We should not lose sight of the fact that JBO is not a local facility, nor indeed a national facility. It is an observatory of world-wide significance, which should be very carefully protected.

Written Representations

*Representations Made at Appeal Stage*⁷⁸

234. There is a written representation of objection from **Fiona Bruce MP** on behalf of her Congleton constituents along with extracts from Hansard and is made 'with the full backing of the Goostrey community'. A key objection to the appeal development is its proximity to the nationally important Jodrell Bank radio telescope and the potential interference with the telescope which such a development could have. Additionally a development of the size proposed in a relatively small village would be wholly inappropriate and impose unjust pressure on local facilities not least Goostrey Primary School, which is full, and Holmes Chapel Health Centre, the clinicians at which already struggle to serve the needs of the local community; just two examples of several facilities which could not cope with the demands which would result from such a sizeable development.
235. There are some 313 further **individual written representations** on the appeal from some 244 different sources/addresses, including from local residents, the Sheer Brook Action Group, local Councillors and the Shropshire Astronomical Society. These largely raise **objections** to the proposal on grounds similar to those made at the Inquiry by CEC, GPC and the other interested parties who gave evidence at the Inquiry.
236. There is also one written representation from a resident of Goostrey who **supports** the appeal development on the basis that objections are based on 'nimbyism': Goostrey is an ageing village (the 2011 census indicates that 32.7% of people are aged over 65, twice the national average); over time the number of children that commute into the village for schooling coming from farther and farther away has increased; young families can no longer afford to purchase a home and migrate out of the village (the largest outward migration is in the 15-29 age group; not all classes at the Primary School are full, the majority of pupils reside outside Goostrey; houses are needed to prevent decay due to an over-aged population; young people should not be forced out of their village by house prices and shortage of affordable homes (house prices in Goostrey are higher than the national average e.g. a detached house in Goostrey = £420k, compared to £320k nationally); small family homes are needed for people to be able to own their own home through to more retirement properties to enable people to downsize thus freeing large properties; Goostrey is an affluent village, average weekly pay is £900 compared to the national average of £673 (source

⁷⁸ INSP.1

income/support pension credit dwp-2012); an improved bus service should be welcomed; and there are other means of controlling radio emissions to protect JBO such as the Australian Radio Quiet Zone.

Representations Made at Application Stage

237. The representations received by CEC as a result of its consultation on the planning application were attached to its appeal questionnaire and summarised in the Committee report⁷⁹. The report records that approximately **600 letters of representation were received** from local residents, visitors to Goostrey and the local MP objecting to the proposal. It provides an analysis of the matters raised in the objections, which are generally on grounds repeated by interested parties at the appeal stage. The Committee report also sets out the majority of the responses from **consultative bodies** to the application⁸⁰.

Conditions

238. During the course of the Inquiry CEC and the appellant jointly submitted a schedule of 20 suggested conditions⁸¹. While these are largely agreed between these parties the appellant questions the necessity for condition Nos 3 (facing materials), 14 and 15 (landscaping) on the basis that they concern matters that would be reserved and controlled by condition Nos 1 and 2. At the Inquiry session on conditions there was also further discussion and broad agreement between the main parties regarding some of the detail of the suggested conditions.

239. In respect to condition No 20, which concerns radio wave insulation of the proposed dwellings with regard to JBO, there was discussion regarding the addition of a measureable attenuation level. CEC made reference to an 'achievable' attenuation level of up to a total of 15-20dB as identified by Dr Trotta⁸² and Mr Mackenzie, for the appellant, indicated that either 15dB or 20dB would be acceptable in this regard. Both parties also indicated that the condition should be amended to secure the retention of any attenuation. Mr Mackenzie also stated that he would have no objection to the imposition of an additional condition removing permitted development rights along the lines of condition No 13 attached to the Twemlow decision⁸³ as requested by CEC to protect the operation of JBO.

Obligations

240. In summary, the UU⁸⁴ contains planning obligations in respect to:

- General matters controlling commencement of development, the phasing of development and the provision of an open space scheme and associated management plan;
- The provision, use and management of on-site open space;
- The creation, financing and retention of a management company to maintain and renew the open space, and the transfer of the open space to that management company; and

⁷⁹ CD5

⁸⁰ CD4. Further responses are contained in CD6

⁸¹ INSP.2

⁸² 9.20-9.21 of Dr Trotta's proof of evidence

⁸³ CD21.1

⁸⁴ ID 25

- Financial contributions, which would be index linked:
 - £130,000 to extend the hours of the No 319 bus service for five years;
 - £249,464.67 for primary education;
 - £294,168.42 for secondary education;
 - £115,319 for healthcare
 - £143.53 x the total number of residents based on the assumed Occupation Rates set out in Schedule 3 of the UU for the enhancement of the existing Booth Bed Lane play area;
 - £298.50 x the total number of residents based on the assumed Occupation Rates set out in Schedule 3 of the UU for maintenance of the enhanced play area;
 - £15,000 for CCTV and cycle facilities at Goostrey railway station; and
 - £5,000 for monitoring the travel plan, which the main parties suggest should be secured by planning condition in the event that planning permission is granted.

241. CEC has provided a 'Community Infrastructure Levy Regulations 2010 Compliance Statement' (the Planning Obligations Statement)⁸⁵ in support of all of the obligations except for the healthcare contribution. It addresses the application of statutory requirements to the planning obligations within the UU, including pooling for infrastructure projects, and also sets out the relevant planning guidance and policy justification, as appended to that document.

242. Clause 3.2 in the UU seeks to disapply individual obligations in the event of a finding of non-compliance with Regulations 122 or 123 of the CIL Regulations. The appellant has not invited such a finding other than in respect to the primary and secondary education contributions. The appellant's concerns in regard to this matter were explained by Mr Nicholson during the session on the UU with reference to a report he had produced for the appeal (the EPDS Report)⁸⁶.

243. Mr Hodgkiss of CEC's Children's Services also attended that session and, with reference to a 'proof of evidence' produced by that Service (the Proof)⁸⁷, advised that CEC considers the education contributions to be necessary. Nonetheless, Mr Hodgkiss acknowledged that there are errors in the 'Catchment' section of the Proof in that Eaton Primary and the County High School in Leftwich are not the nearest primary and secondary schools in the Cheshire West and Chester administrative area to the appeal site, but that Byley primary and the University of Chester Academy (the UoCA) in Northwich, respectively, are. It is common ground between the main parties that the development would give rise to additional demand for 23 primary and 18 secondary school places.

244. In summary, the EPDS Report concludes that primary and secondary school aged children resident on the appeal scheme would be able to obtain places at the catchment schools primarily on the basis that these schools currently attract out-of-catchment students due to parental choice. The Report also concludes that the contributions sought by CEC would act to support current patterns of parental preference and that this is something that Inspectors have consistently found to be unnecessary against the statutory tests. It also identifies the

⁸⁵ ID 15

⁸⁶ ID 17

⁸⁷ ID 18

location of Byley primary school and UoCA relative to the appeal site⁸⁸ and that the UoCA has 397 available student places⁸⁹. In oral evidence Mr Nicholson advised that there are 26 available student places at Byley primary⁹⁰.

245. Primary Care, Cheshire and Wirral Area, NHS England requested the contribution of £115,319 towards the cost of additional health infrastructure⁹¹. However, it was confirmed during the Inquiry that CEC does not seek any such contribution in light of other recent appeal decisions in the area⁹².

Inspector's Conclusions

246. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

Main Considerations

247. Having regard to CEC's reasons for refusal as amended, the relevant policy context and the evidence to the Inquiry, the main considerations that need to be addressed are:

- a) The effect of the proposed development on the Jodrell Bank Radio Telescope;
- b) Its effect on CEC's development strategy, with particular regard to development in the open countryside;
- c) Its effect on the setting of Swanwick Hall, a grade II listed building; and
- d) Whether any development plan conflict and harm arising is outweighed by any considerations including that CEC cannot currently demonstrate a Framework compliant supply of housing land.

248. The cases of the main parties differed in respect to the stage at which the weight to be attributed to the relevant development plan policies is applied [31-33, 61, 75, 104, 114-118, 132-134]. In broad terms, in the three following subsections I conclude against the relevant development policies and then in the final subsection deal with the weight to be attached to these policies.

a) Jodrell Bank Radio Telescope

249. At the Twemlow appeal CEC agreed with that appellant that the level of impairment to Jodrell Bank Telescope needs to be unacceptable to be contrary to Local Plan Policy PS10, and that Inspector accepted this interpretation of the Policy. In this case the appellant takes a similar approach, however, in light of recent legal advice⁹³, CEC now takes a different view in respect to Policy PS10. [52, 120-125]

⁸⁸ Both schools are marked with yellow stars in ID 17: Byley is to the west of the site as shown in Graphic 1 on page 6 and UoCA is to the southwest as shown on Graphic 2 on page 10, and their respective distances are also shown in ID 23

⁸⁹ 4.5.15 of ID 17

⁹⁰ Mr Nicholson advised that based on the DfE Edubase website Byley primary school has a student capacity of 84 and a total of 58 students as evidenced in ID 23

⁹¹ CD6.1 and ID 24

⁹² In this regard Appeal Decision Ref APP/R0660/A/13/2204723, 7 January 2015, was brought to my attention, which appears at Appendix 12 to ID 17

⁹³ As explained at paragraph 5.5 of Mr Crowther's proof of evidence

250. I recognise that the meaning and effect of any development plan policy is a matter of law rather than planning judgement. The Twemlow Appeal Inspector would, nonetheless, have come to his conclusion regarding the interpretation of Policy PS10 on the basis of the information before him and this appears likely to have been influenced by the fact that CEC then accepted that appellant's interpretation of the Policy. Given CEC's, now changed, position on this matter the circumstances here differ compared to those of the Twemlow appeal. [52, 124]
251. In my view the meaning of Policy PS10 is found in a straightforward reading of the words in the Policy itself. The Policy has two parts which can be put as two questions. Firstly, *is the proposed development within the identified Consultation Zone?* In this case the answer is *yes it is*. The second question is then engaged, *has it been shown that the proposed development would impair the efficiency of Jodrell Bank Radio Telescope?* If such impairment has been shown then the proposal would not accord with the Policy. So, in this case, has it been shown that the appeal development would impair the efficiency of the Radio Telescope?
252. In broad terms the evidence refers to two main potential points of reference against which any possible additional interference resulting from the appeal development could be measured. The first is ITU-R RA.769-2⁹⁴ (the ITU threshold) and the second is the level of interference that currently exists. [28, 53, 54, 59-67, 72, 121, 123, 125-129, 142, 143, 145-147]
253. The ITU threshold is a recommendation used in order to control intentional transmission at radio frequencies in the context of radio astronomical measurements and is the only internationally accepted threshold of its kind. The evidence of both the appellant's and CEC's witnesses, Dr Trotta and Prof Garrington respectively, is that the ITU threshold is already substantially exceeded in the vicinity of Goostrey and Jodrell Bank. [53, 59-61, 121, 125-129]
254. It is for that reason, or at least partly for that reason, that the appellant considers that the ITU threshold alone is of no use, favouring instead the percentage increase in exceedance of the ITU threshold that the appeal development would give rise to over and above the existing degree of exceedance of the ITU threshold from existing development. Both methods require an assessment of the likely amount of interference that would result from the proposed development and the latter an assessment of the existing level of interference. [28, 53, 54, 59-67, 72, 79, 121, 123, 124, 143, 142, 145, 146, 147]
255. While it is not planning guidance or policy, the ITU threshold is internationally recognised and applied such that, notwithstanding the appellant's submissions, it is a useful tool in the assessment of the appeal. Indeed it expressly considers the technical criteria concerning interference detrimental to the radio astronomy service. Nonetheless, it should be seen and considered in the context that it is already substantially exceeded in this location and bearing in mind that it appears to be very sensitive, for instance a single device at the appeal site would exceed the threshold⁹⁵. [28, 53, 54, 59, 60, 62, 64, 125, 126, 139, 145, 146, 171]

⁹⁴ CD24 – International Telegraphic Union Radiocommunication Assembly: Protection criteria used for radio astronomical measurements. Recommendation ITU-R RA.769-2 (2003)

⁹⁵ A point considered by the Twemlow Appeal Inspector at paragraphs 14 & 19 of his decision letter – CD21.1

256. Dr Trotta uses a range of assumptions based, in part, on where interference emitting devices would be located or how their effects would be mitigated to give a range of potential outcomes which he describes as 'optimistic', 'average' and 'pessimistic'. The appellant promotes his 'average' scenario, which - based on Dr Trotta's evidence - would result in an additional 3.5% of interference. Nonetheless, the appellant also says that a higher level of attenuation could be secured and controlled via planning condition, thereby reducing the increase in interference. I return to this latter point a little later. [54, 62, 64, 139, 140, 142, 146]
257. Dr Trotta's assessment in this regard appears to have much to commend it. Nonetheless, it also appears to have some shortcomings relative to that of Prof Garrington. For instance, it does not take account of the actual topography of the area. This appears to be of little significance in respect to the appeal site itself as it mostly has a line of sight to the Lovell Telescope which is unobstructed by terrain. However, that is not the case for the wider area. Prof Garrington's evidence illustrates the importance of taking the actual topography into account in contrast to using propagation models as employed by Dr Trotta.⁹⁶
258. Furthermore, unlike Prof Garrington's assessment, Dr Trotta does not have any information about geographical distribution of development beyond the Goostrey area and does not use any population information or have a loss map⁹⁷. Another difference of approach is that Dr Trotta assumes an attenuation level of 9dB for existing buildings and up to 20dB in the proposed development⁹⁸. This assumption does not appear to be clearly justified whereas Prof Garrington's approach is stated to be based on a 2014 Ofcom report⁹⁹. Although Dr Trotta uses a more detailed approach in respect to the potential location of devices within buildings, Prof Garrington's overall assumptions regarding domestic emissions appear to be reasonable.
259. Overall, therefore, Dr Trotta's 'optimistic', 'average' and 'pessimistic' scenarios appear likely to be flawed such that they over-estimate the extent of current exceedance of the ITU threshold. While there would be some cancelling out between the existing and additional interference resulting from the development due to common assumptions, on this basis it also appears likely that Dr Trotta's predictions of the percentage increase in interference that would result from the appeal development would be under-estimates. Nonetheless, while CEC submit that the appellant has not provided any evidence that the development would not impair the efficiency of the Lovell Telescope, in the context of Local Plan Policy PS10 it is for CEC to show such impairment given that it refused planning permission on that basis. [50, 58, 120, 122]
260. Prof Garrington's proof of evidence has been reviewed by the Chairman and the Frequency Manager of the Committee of Radio Astronomy Frequencies (CRAF). They fully support the arguments presented regarding the importance of radio astronomy and the need to be able to observe without detrimental interference. In summary, they are also of the opinion that the methodology used is defined and applied according to the best uses and practices seen at the

⁹⁶ 5 of Prof Garrington's rebuttal, OPID 3

⁹⁷ 12 of Prof Garrington's rebuttal

⁹⁸ 14 of Prof Garrington's rebuttal

⁹⁹ 11.7 of Prof Garrington's proof of evidence, 'Building Materials and Propagation' (Ofcom 2014)

level of the International Telecommunications Union.¹⁰⁰ Their comments appear to be a clear endorsement of Prof Garrington's evidence. [64]

261. Prof Garrington assumes a figure of 15dB for 'building loss', the attenuating effect of the building envelope, in his calculation of the level of interference arising from the proposed development¹⁰¹. The appellant is content with a condition which would specify attenuation at 'the highest realistic level – around 20dB'. If this higher level of attenuation was to be secured by planning condition it could only realistically be applied to the buildings' structures or envelopes such that its full effect could only be achieved when all windows and doors of those buildings are closed. It would also be likely to have little or no effect on emissions from unregulated devices used outdoors. Therefore, even if such a level of attenuation were to be secured by planning condition, I do not consider Prof Garrington's assumed 'building loss' figure to be unreasonable. [67, 140]
262. I recognise that modelling, including the evidence of Prof Garrington, carries with it a degree of uncertainty. At the Twemlow appeal that Inspector concluded that neither of the models that were before him accurately modelled the actual situation, and that it was difficult to conclude with any certainty that the interference from devices used at the proposed development would exceed the ITU threshold, such that the theoretical assessments of the likely interference had limited use in his determination of that appeal¹⁰².
263. In the case of the current appeal, however, it is common ground that there is currently a substantial exceedance of the ITU threshold and that there would be at least some additional interference resulting from the proposed development. Furthermore, in contrast to the Twemlow Appeal, CEC has now produced evidence of the existing level of interference. [54, 60, 62, 64, 125, 139, 145, 146]
264. Overall, while there are no doubt some similarities between the assessments/models that were before the Twemlow Appeal Inspector and the evidence before me, from what I have read, heard and seen, Prof Garrington's work appears to be based on reasonable assumptions applied to a rational methodology in respect to calculating both the absolute and relative increase in interference resulting from the appeal development.
265. Consequently, I consider that Prof Garrington's predictions of the total interference signal from the proposed development received at the telescope relative to the ITU threshold and the existing interference are reasonable.
266. Prof Garrington concludes that the total interference signal from the proposed development received at the telescope would exceed the ITU threshold by 26dB, a factor of 400; this assumes no antenna gain from the Lovell Telescope and takes no account of the actual distribution of where in the sky observations are made¹⁰³. Taking these matters into account Prof Garrington finds a significant area of sky in the direction of the proposed development where the ITU threshold would be exceeded by more than 30dB, a factor of 1000. The level of exceedance is greater as the gain of the telescope as a function of pointing

¹⁰⁰ Annex C to Prof Garrington's proof of evidence – CRAF letter, 18 April 2016

¹⁰¹ 11.10.2 of Prof Garrington's proof of evidence

¹⁰² CD21.1 paragraph 18

¹⁰³ 11.9 of Prof Garrington's proof of evidence

direction is taken into account. This is an important area of the sky for pulsar observations by JBO.¹⁰⁴ Prof Garrington also explained how the percentage additional exceedances relative to existing interference could be calculated in the range of some 6.8-16% [62-64, 80].

267. Prof Garrington has provided examples of how existing interference affects the work of JBO and how he considers that worsening this interference would worsen the effects. These include corruption of data, degradation of pulsar observations and that some effected data could not be corrected. They are due, in part, to the appeal site's location close to JBO and to the south-west of it, an important direction for pulsar timing measurements, which is the primary observing and research programme for the Lovell Telescope. Dr Trotta confirmed that he did not doubt Prof Garrington's evidence and, in regard to some of that evidence, he accepted Prof Garrington's criticism¹⁰⁵ of his assessment¹⁰⁶ that current data are unimpaired. [63-66]

268. However, the evidence does not, for instance, express how much longer pulsar timing observations would take as a result of the appeal development or quantify the effect of dealing with additional interfering signals. I also note that there is no evidence from CEC that the scheme would result in increased costs to JBO or give rise to risk to jobs. Nonetheless, in view of the evidence outlined above regarding the effect of existing and additional interference and bearing in mind the very large absolute exceedance of the ITU threshold along with the likely relative increase in interference, even against Dr Trotta's 3.5% 'average' scenario, I consider that it has been reasonably demonstrated or 'shown' that the appeal development would impair the efficiency of the Jodrell Bank Radio Telescope in the terms of Local Plan Policy PS10. [50, 53, 54, 58-67, 72, 79, 80, 120-129, 139, 140, 142-147, 171]

269. JBO is a world class facility and has remained so in the face of continuing development within the Consultation Zone, including in and around Goostrey, as well as the progressive use of electrical devices. World class observation and science continues even though the ITU threshold is now substantially exceeded and is likely to have been for very many years. However, the evidence outlined above indicates that this is in spite of JBO's challenging operating environment and, in oral evidence, Prof Garrington explained that some aspects of scientific work are closed to JBO due to existing interference. Interference, therefore, already has an impeding effect. [28, 53, 54, 60, 62-66, 125-128, 137, 139, 145-147, 171]

270. In scientific terms, the Lovell Telescope would not, in an ideal world, have been sited where it now is, a point perhaps illustrated by the choice of locations for the SKA's arrays. The reality is, however, that JBO is located at Jodrell Bank and, as a well-established world class facility, it should be afforded reasonable protection. [21, 28, 142]

271. For the foregoing reasons therefore the appeal development would have a detrimental effect on the Jodrell Bank Radio Telescope such that it would conflict with Policy PS10 of the Local Plan. This finding does not necessarily equate to a

¹⁰⁴ 11.10.3 of Prof Garrington's proof of evidence

¹⁰⁵ As set out in paragraph 9 of Prof Garrington's rebuttal, OPID 3

¹⁰⁶ As set out from 10.23 of Dr Trotta's proof of evidence

moratorium on most forms of development in Goostrey and the wider Consultation Zone, just as a finding that it has not been shown that the proposal would impair efficiency of the telescope would have been a case-specific finding. The effects of topography and 'clutter', as well as other case specific circumstances, mean that development has the potential to take place in Goostrey and the Consultation Zone at large without necessarily exceeding the ITU threshold. Even in cases where conflict with Policy PS10 is found there may be other material considerations in play that result in the granting of planning permission. [61, 164-167]

272. I also note the evidence regarding the consistency, or otherwise, of the approaches taken by JBO and CEC in respect to development proposals within the Consultation Zone. However, even if there has been such inconsistency this would have no direct bearing on my findings on the foregoing matter bearing in mind the current evidence. [71, 72, 124]

b) Development Strategy

273. The Council's location strategy for new development in the Borough is set out in the development plan. It includes Policy PS3 of the Local Plan which establishes a settlement hierarchy of three tiers. *Towns* are positioned at the top of the hierarchy, followed by *Villages in the Open Countryside and Inset in the Green Belt* and then *Settlements in the Open Countryside and Green Belt*.

274. Local Plan Policy PS4 relates to *Towns*, while Policy PS5 identifies Goostrey as one of the ten second-tier settlements, a *Village in the Open Countryside*. Among other things, the supporting text to Policy PS5 says these settlements provide a basic level of community services which are used by the local population, including those parishes surrounding them, and are expected to absorb the bulk of the housing and employment requirements for the rural areas¹⁰⁷.

275. GPC considers that the proposed development conflicts with Local Plan Policy PS5. It is, nonetheless, a permissive policy in that it allows for development, subject to certain criteria, within the identified SZLs. In any event, as the appeal is beyond Goostrey's SZL there is no direct conflict with Policy PS5. [9, 105, 159]

276. Local Plan Policy PS8 is something of a counterpart to Policies PS4 and PS5 as it concerns development outside the SZLs of the settlements defined therein, as well as outside the Green Belt. By its association with Policy PS8, the same principle applies to Policy H6 of the Local Plan. [14]

277. While the appeal site is located adjacent to the fringes of Goostrey it is not within the defined SZL. There is also no reason to believe that the proposed development would fully meet any of the relevant exception criteria of Local Plan Policies PS8 and H6. Indeed it is common ground that the scheme would conflict with both of these Policies and nor does the appeal site fall within any land identified for development in the wider development plan. Consequently, in this regard the appeal scheme would be at odds with CEC's development strategy,

¹⁰⁷ 2.63 of the Local Plan

with particular regard to development in the open countryside, in conflict with Policies PS6 and H6 of the Local Plan. [42, 109, 160]

c) *The Setting of Swanwick Hall*

278. In considering whether to grant planning permission for development which affects a listed building or its setting, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the PLBCA Act) requires that the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
279. Swanwick Hall is located approximately 100m northeast of the appeal site. It is common ground that the site is within the setting of the Hall and I have found no good reason to disagree. It is a two-storey and attic farmhouse of late 17th Century origins but with late 19th Century external appearance due to additions and remodelling. [20, 37, 83, 149]
280. The parties disagree as to where the balance of the significance of this grade II listed building rests, between its 17th Century core and the 19th Century remodelling. While the differing approaches result in differing conclusions regarding the degree of harm, there was general agreement among the respective witnesses at the Inquiry that the development would cause *less than substantial harm* to the setting of Swanwick Hall as a listed building. [34, 36-38, 83, 84, 152, 156-158]
281. The appeal site stands within part of a swathe of land that separates Swanwick Hall and the built edge of Goostrey village, which in broad terms runs in an arc to the southwest, south and southeast of the Hall. This area between the Hall and the village is largely in agricultural or equine use, as is the land to the north of Swanwick Hall. [7, 8, 37, 38, 84, 150, 151, 152]
282. In the vicinity of the appeal site there are a number of urban/suburban features which have an influence on the character and appearance of the area. These include the hard surfacing to the drive that serves Swanwick Hall, post and rail fencing along the drive and to the south of the Hall and the set of give-way lights that are positioned on the drive. The area immediately between the appeal site and the Hall through which the permissive right of way passes is well maintained and has a semi-domestic, garden-like feel to it. The area is also seen against the backdrop of largely 20th Century housing along the village edge and associated rear boundary treatment, which have a largely suburban character. [7, 8, 150-151]
283. However, notwithstanding the presence of these features and characteristics this area at large has retained a generally rural or semi-rural feel due to the land uses, the largely undeveloped nature of the land and the existing planting. This is especially the case within the appeal site itself due to its agricultural use, the hedgerows and the mature trees. This is readily visible and experienced from the right of way that runs along the drive to Swanwick Hall but is also discernable at the site's, albeit reasonably narrow, frontage to Main Road. While views are limited and filtered from within and around the appeal site, Swanwick Hall can be seen. Any one travelling along the footpath, be it via the section of footpath 12 that runs through the farmyard of the Hall or the permissive footpath that runs a little to the south, would pass close to the Hall and experience it in its wider

- context of largely undeveloped fields, including the appeal site. [7, 8, 36-38, 84, 150-152]
284. The Hall and nearby outbuildings, although now in equine use, read as a farm group. These buildings are evidence of how the site evolved and of its use as a farmstead, as is the undeveloped, open character of much of the surrounding land and the access drive to the Hall from the majority of which that undeveloped openness is readily apparent. Although it appears to have been slightly realigned during the 1800s, the drive signals the Hall's presence from the public highway, with the Hall ultimately providing the focal point at its head. The length of the drive and the farmstead's relative separation from the village is also likely to be an indication of the Hall's relative status. [7, 8, 36-38, 84, 150-152]
285. The evidence indicates that there is a historical relationship between the Hall and the land surrounding it, including the appeal site, in terms of the ownership, such that the open fields surrounding the Hall contribute to the site's historical value particularly bearing in mind that Goostrey's economy was, historically, largely reliant on agriculture. The significance of this property lies therefore, at least in large part, in its associations with farming in the area. [37, 38, 83, 84, 152, 157]
286. As outlined above and with the progressive expansion of Goostrey, particularly to the west of the appeal site, I recognise that the context of Swanwick Hall has changed since it was erected in the 17th Century and remodelled in the 19th Century and that there has also been change since the Hall was listed in 1987. Nonetheless, the area between the Hall and the current village fringe, including the appeal site, has largely retained an open, undeveloped rural / semi-rural character and appearance. As part of the setting of the Hall and given its historic agricultural associations, this area makes an important contribution to the significance of the listed building given its historic use as a farmhouse. [7, 8, 20, 34, 36-38, 83, 84, 149, 150-152, 156-158]
287. The appeal development would provide the opportunity to soften the rather suburban edge of the village, which currently stops somewhat abruptly with the rear boundary treatment of the houses to the south/west of the appeal site, as well as to provide additional/screen planting. Nonetheless, these properties are reasonably distant from the Hall, whereas the appeal development, due to its scale and location, would very substantially reduce the gap between the Hall and the village significantly diminishing the current open, undeveloped character of the area. As a consequence the setting of Swanwick Hall would be significantly affected causing harm to the significance of the listed building; harm that would lie within the middle to higher end of the *less than substantial harm* spectrum. Accordingly the appeal development would conflict with Policy BH4 of the Local Plan. [7, 8, 20, 34, 36-38, 83, 84, 149, 150-152, 156-158]
288. I appreciate that Local Plan Policy BH4 does not include the weighing of the identified *less than substantial harm* against any public benefit exercise set out in the Framework. I address this point, among others, in the following section. However, before leaving heritage considerations there are two matters raised in the evidence that can be usefully dealt with here first. [7, 8, 20, 34, 35-38, 83, 84, 130, 131, 149, 150-152, 156-158]
289. GPC considers Holly Bank to be a non-designated heritage asset in the terms of the Framework. Holly Bank is a small farmstead consisting of a house and a

barn dating from the 19th Century located to the north of Main Road and to the west/south of the appeal site. The buildings appear to be of some historical and architectural interest due, in large part, to them representing one of Goostrey's outlying farms. Nonetheless, they are not a designated heritage asset in the terms of the Framework. Nor has Holly Bank been identified / included by CEC in its local list, whereas Goostrey railway station has been¹⁰⁸. Moreover, CEC's Conservation Officer has not identified Holly Bank as a non-designated heritage asset via the consultation process. Accordingly any weight arising from any effect on its setting resulting from the development would carry only very limited weight. [87, 149]

290. The Lovell Telescope itself is a listed building at grade I. CEC's Committee report on the appeal proposals¹⁰⁹ notes that while the telescope is visible from the driveway to Swanwick Hall it is *considered to be unlikely that the proposed development would have a significant impact upon the setting of the telescope, given the separation distance*. From the evidence and from what I observed when visiting the area I have found no good reason to disagree.

d) Other Issues and Planning Balance

291. In undertaking the planning balance I have considered the weight to be given to the relevant development plan policies and made an assessment of whether the appeal proposal would amount to sustainable development in the terms of the Framework. In doing so I have had regard to, among other things, the absence of a Framework compliant supply of housing land and the contents of the Framework as a whole.

292. Policies PS8 and H6 of the Local Plan contribute to CEC's development strategy for the Borough, including for housing. Although they also address wider matters, they both have a direct bearing on the supply of housing land by seeking to limit development beyond settlements' SZLs. Consequently, Local Plan Policies PS8 and H6 are both relevant policies for the supply of housing in the terms of paragraph 49 of the Framework. Notwithstanding their multi-faceted nature, the weight carried by these Policies is limited bearing in mind the appeal site's edge of settlement location and the wider contents of the development plan. [14, 36, 42, 105, 132-134, 159, 160]

293. As CEC cannot demonstrate a five-year supply of deliverable housing sites, given the approach adopted by the Court of Appeal in the Richborough Estates case¹¹⁰, Local Plan Policy PS10 is also to be considered as a relevant policy for the supply of housing. On this basis, taken in isolation from the consequences of the development's effect on heritage assets which I return to below, it would *not be considered to be up-to-date* and would be considered to be *out-of-date* for the purposes of paragraph 14 of the Framework. This is, therefore, a direct consequence of the current local housing land supply circumstances. [44, 45, 132-134, 160]

294. As a well-established world class facility, the reasonable protection of JBO is a matter of global significance. It follows that Policy PS10 is capable of being given such weight as to justify refusal of planning permission notwithstanding the

¹⁰⁸ Mr Clemons in oral evidence

¹⁰⁹ CD5.1, page 14

¹¹⁰ CD22.6

absence of a Framework compliant supply of housing land and the terms of paragraphs 14 and Chapter 6 of the Framework. [47, 48, 160]

295. In Cheshire East, on either of the main parties' evidence, the extent of the housing supply shortfall is significant. The delivery of market and affordable housing is a significant planning benefit. I accept that the extent to which a proposal would contribute to the shortfall is material. In this case the appeal development would not alter the appellant's preferred housing land supply figure of 3.3 years, once rounded [12, 20, 40].
296. Put in those terms the contribution made by the scheme to housing supply would be very small. This, however, would be to take a very narrow view of the point. For instance, it is also important to see the potential contribution in absolute terms. There is no good reason to believe that the development would not be delivered in a timely manner were planning permission to be granted. It would deliver up to 119 homes for real people, thereby making a genuine and valuable contribution to relieving significant housing need and the ills associated with it. That contribution would be important and cannot be reasonably characterised as 'miniscule'. [40, 70, 74, 135]
297. CEC's housing land supply shortfall is, nonetheless, a local issue set within the context of national housing delivery and national policy which seeks to boost significantly the supply of housing. In contrast JBO is a facility of international importance such that its protection from the identified harm transcends the housing land supply circumstances of the case. [48, 69]
298. I am also mindful that the housing land supply shortfall is substantial and as such likely to take some time to bridge. It is, nonetheless, likely to be a temporary situation. In contrast, notwithstanding its challenging operational environment, JBO is long-established and it appears likely that it will continue its valued work on a more permanent basis than any such housing supply issue is likely to persist. [20, 22, 27, 28, 47, 61-66, 81, 137, 142]
299. Local Plan Policy BH4 does not include the provision that less than substantial harm should be weighed against the public benefits such that it does not fully reflect the approach set out in the Framework. Consequently the weight carried by Policy BH4 is somewhat limited. The identified harm to the significance of Swanwick Hall as a listed building due to the effect of the appeal development on its setting should also be considered in the context of the legal requirement to give considerable importance and weight to the desirability of preserving the setting of listed buildings as well as the requirements of the Framework. I consider the public benefits along with the other main considerations under the three dimensions of sustainable development and then return to this matter. [34, 35, 39, 40, 85, 86, 130-134, 160]
300. The appeal development would offer a number of potential benefits. In terms of the social dimension of sustainable development, the scheme would increase the supply and choice of housing, including affordable homes at a rate of 30% of the whole development, in an area where the evidence indicates there is a significant need for both market and affordable housing. [20, 109, 110, 115, 116, 161]
301. The development would also contribute towards economic growth during the construction phase including in terms of employment and potentially an increase

- in local spending. It would also deliver new homes bonus and increase Council Tax revenue. Increasing the supply of housing has the potential to reduce house prices. In the longer term, the additional population would be likely to increase local spending power, for instance in local shops, and help support the sustainability of local services. The delivery of these new homes would also be likely to improve the pool of labour available to local businesses. [111, 117, 162, 163]
302. As the population of Goostrey has matured, there would be social benefits associated with the opportunity the appeal development would bring for younger people to stay in or move to Goostrey. These matters contribute to the economic and social dimensions of sustainable development and by supporting the vitality of Goostrey they are supported by paragraph 55 of the Framework. [118, 162, 163]
303. Goostrey has fairly limited services, facilities and access to employment opportunities, while pedestrian and cycle links to other settlements are limited. Nonetheless, for a village of this scale it does have a reasonable range of facilities. It also has a bus service which would be increased, at least for a five year period, as part of the appeal scheme. It also has a railway station and a primary school that are accessible from the appeal site by a range of transport options. Given its location on the edge of the existing village within fairly close proximity to these services/facilities, notwithstanding the submissions of GPC and interested parties, I consider that the site is a reasonably sustainable location for the development proposed. This conclusion is also supported by Goostrey's status as a second tier settlement in the Local Plan and as a LSC in the emerging Local Plan. This is a benefit in economic, social and environmental terms. [10, 17, 20, 90-96, 108-111, 118, 162]
304. The development would also bring with it the matters proposed to be secured by the planning obligations of the UU and planning conditions, which cut across all three dimensions of sustainable development. While these are primarily intended to respond to needs arising from the proposed development, some of these would also be of benefit to the wider community. In addition to the extended bus service, these benefits include the provision of on-site public open space with a path/cycleway, enhancement of the Booth Bed Lane play area and improved facilities at the railway station [168, 240, 241].
305. Regarding the environmental dimension, while the development would result in the loss of some hedgerow associated with the formation of the site access and some limited landscape and visual impact as identified in the LVIA, it also offers potential for the incorporation of energy efficiency measures as well as additional planting and habitat enhancement. [88, 89, 117]
306. The collective weight of these benefits would be significant. However, given the importance of the JBO and the harm to it that would result from the development, the benefits of the appeal scheme would also be significantly and demonstrably outweighed by that harm. In any event, I am also not persuaded that those benefits are collectively sufficient to outbalance the identified *less than substantial harm* to the significance of Swanwick Hall bearing in mind that such harm should be given considerable importance and weight. Therefore, the balancing exercise under a restrictive policy is not favourable to the proposal in the terms Framework paragraph 14 under the second indent of its fourth bullet

point. Consequently, irrespective of the absence of a five-year supply of housing land and the effect of the development on JBO, permission should be refused and the proposal does not represent sustainable development. [7, 8, 10, 12, 17, 20, 22, 27, 28, 34-39, 40, 47, 48, 50, 53, 54, 58-67, 69, 70, 72, 74, 79-81, 83-85, 88-96, 108-111, 115-118, 120-129, 130-135, 137, 139, 140, 142-147, 149, 150-152, 156-158, 160-167, 171, 240, 241]

307. Although I have not done so, had I found the result of the balancing exercise in respect to the significance of Swanwick Hall to be favourable to the proposal, notwithstanding that the weight carried by the development policies cited in the reasons for refusal of planning permission would have been diminished, when taken together the benefits of the appeal scheme would have been substantially outweighed by the harm caused to the significance of Swanwick Hall and to JBO, such that the proposals would not have represented sustainable development in the terms of the Framework.
308. The development would also result in the loss of BMV agricultural land. Given its reasonably limited size in the context of available agricultural land nearby I do not consider that the proposal would represent significant development in the context of paragraph 112 of the Framework. Although not determinative, this carries additional weight against the appeal scheme, albeit limited weight. Given the harm identified, allowing the appeal would also be likely to have at least some detrimental effect on the reputation and esteem of JBO as a world class facility. This too carries some weight against the proposal [as at 306 plus 29, 82, 98-103, 119, 136].
309. GPC and interested parties have also raised concerns regarding density and whether adequate car parking provision could be achieved within the development. However, given that layout is a reserved matter and the overall level of flexibility that would be offered in terms of the detail of the developed site were outline planning permission to be granted, I consider that it is likely that an acceptable layout could be reasonably identified in this regard. [2, 19, 97]

Conditions

310. Conditions to be imposed on a grant of permission were discussed at the Inquiry, and largely agreed. A set of conditions, incorporating the agreed amendments and minor improvements to wording, which are recommended in the event of the appeal being allowed is included in an Annex. I set out below a justification for the conditions.
311. In order to provide certainty, a condition requiring that the development is carried out in accordance with the approved plans, insofar as they relate to details of access and controlling the phasing of the development would be necessary.
312. To ensure that the proposed vehicular access would be installed in a timely manner and in the interests of highway safety, a condition to that effect would be necessary. A condition to secure on-site affordable housing would be necessary to assist with the provision of homes that are affordable for local people. In the interests of flood prevention, a condition to secure and control surface water runoff management in accordance with the flood risk assessment would be necessary.

313. To promote sustainable modes of transport and reduce the need for travel and in the interests of highway safety, conditions to secure the implementation of a Travel Plan and the provision of electric vehicle charging points would also be necessary. The submission and approval of an Environmental Management Plan would also be necessary to safeguard the living conditions of local residents and in the interests of highway safety. Subject to minor amendment as suggested by the main parties during the Inquiry, conditions requiring a site investigation of the nature and extent of contamination affecting the site, along with any requisite remediation, would also be necessary to safeguard the health and well being of future occupiers.
314. Conditions would also be necessary to secure arboricultural and biodiversity mitigation to protect the character and appearance of the area as well as trees and hedgerow and wildlife and their habitat. A condition to secure additional measures to screen the buildings against radio frequency emissions would be necessary as a mitigation measure to safeguard the operation of JBO as would an additional condition to control permitted development.
315. However, as suggested condition Nos 3, 14 and 15 relate to matters reserved for future consideration, they would not be necessary.

Obligations

316. I have considered the UU in light of Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (as amended) and government policy and guidance on the use of planning obligations. Having done so, I am satisfied that most of the obligations therein would be required by and accord with the policies set out in CEC's Planning Obligations Statement. Overall, having regard to the wider contents of the Planning Obligations Statement I also consider that those obligations are directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms. However, with reference to Clause 3.2 of the UU, I do not consider that the education contributions or the healthcare contribution would accord with the CIL Regulations. [240-245]
317. On the evidence, although there are currently significant capacity issues with the nearest primary and secondary schools to the appeal site in Goostrey and Holmes Chapel respectively, it appears that primary and secondary school aged residents of the development would, at least over time, be able to obtain places at the catchment schools. On this basis I am not satisfied that either of these obligations would be directly related to the proposed development, fairly and reasonably related to it and necessary to make it acceptable in planning terms. [242-244]
318. CEC no longer seeks the healthcare contribution. In this regard it has drawn my attention to an appeal decision in respect to a proposal for up to 120 dwellings at a site in Audlem, which is also within Cheshire East¹¹¹. In that case, among other things, the lack of a NHS plan where the available funding would be appropriately targeted was found by that Inspector to be a serious flaw which undermined any justification for the contribution. In the case of the current appeal scheme the information before me does not give significantly

¹¹¹ Appeal Decision Ref APP/R0660/A/13/2204723, 7 January 2015, which appears at Appendix EPDS to ID 17

greater reason to believe that the funding to be secured would be appropriately targeted. Consequently, I have no good reason to disagree with CEC such that I am not satisfied that the healthcare contribution would satisfy the CIL tests. [245]

Overall Conclusion

319. As it does not include the provision that *less than substantial harm* should be weighed against the public benefits, Local Plan Policy BH4 does not fully reflect the approach set out in the Framework and its weight is, therefore, somewhat limited. Nonetheless, having regard to s66(1) of the PLBCA Act, the identified harm to the significance of Swanwick Hall due to the effect of the appeal development on its setting as a listed building should also be considered in the context of the legal requirement to give considerable importance and weight to the desirability of preserving the setting of listed buildings, as well as the requirements of Chapter 12 of the Framework.
320. I have found that the collective weight of the benefits of the appeal development, although significant, do not outbalance the identified *less than substantial harm* to the significance of Swanwick Hall. Therefore, as the balancing exercise under a restrictive policy is not favourable to the proposal in the terms of Framework paragraph 14, the proposal does not represent sustainable development and permission should be refused.
321. I have also found that the proposed development would not comply with the policies of the development plan. Had I found the result of the balancing exercise in respect to the significance of Swanwick Hall to be favourable to the proposal, the weight carried by Local Plan Policies PS6 and H6 would have been very much reduced in view of the significant shortfall in housing delivery in the area such that the important contribution to housing delivery offered by the appeal scheme would have outweighed that policy-breach and the associated conflict with CEC's development strategy.
322. The appeal development would also conflict with Local Plan Policy PS10 concerning the protection of JBO. This Policy would also have been considered as a relevant policy for the supply of housing. Nonetheless, CEC's housing land supply shortfall, while significant and set in a national planning policy context - is largely a local issue, whereas JBO is a facility of international importance such that its protection from the identified harm transcends the current housing land supply circumstances. I have found, therefore, that in this case Policy PS10 would have had sufficient weight as to justify refusal of planning permission in spite of the absence of a five-year housing land supply had the result of the heritage balancing exercise been favourable to the proposal.
323. In many respects the proposal would contribute positively to sustainable development objectives as set out in the Framework, particularly in respect to the benefits associated with housing delivery, and planning conditions and obligations could deal satisfactorily with infrastructure and many of the impacts arising. However, in view of the harm that would be caused to the significance of Swanwick Hall the proposal does not represent sustainable development and permission should be refused. Were it not for that harm, given the identified harm that would be caused to JBO, as well as the much lesser harm associated with the loss of BMV agricultural land, as an overall judgment having regard to

the Framework as a whole, the proposal would not have represent sustainable development in any event.

Recommendation

324. I recommend that the appeal be dismissed.

325. In the event that the Secretary of State disagrees, I recommend that the conditions set out in the attached Annex be applied to any permission granted.

G D Jones

INSPECTOR

Richborough Estates

Appearances

FOR THE APPELLANT:

Richard Kimblin, of Queens Counsel	Instructed by John Mackenzie, Gladman Developments Ltd
He called	
Dr Roberto Trotta MSc FRAS FHEA	Imperial Consultants (ICON)
Jason Clemons BA(Hons) MA MSc MRTPI IHBC	Director and Head of Historic Buildings, CgMs
John Mackenzie BSc DipTP MRTPI	Planning and Development Manager, Gladman Developments Limited
Oliver Nicholson ¹¹²	Strategy Director, EPDS Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Katkowski, of Queens Counsel	Instructed by Cheshire East Council
He called	
Emma Fairhurst BSc(Hons) MSc MA IHBC	Conservation and Design Officer, Cheshire East Council
Prof Simon Garrington BSc PhD	Director, Jodrell Bank Observatory and e-MERLIN National Facility
Adrian Crowther BA(Hons) MTP MRTPI	Major Applications Team Leader, Cheshire East Council
Simon Hodgkiss ¹¹³	Children's Services, Cheshire East Council

FOR GOOSTREY PARISH COUNCIL

John Hunter, of Counsel	Instructed by Poole Alcock Solicitors
He called	
Dr Ken Morris	Goostrey Parish Council

INTERESTED PERSONS:

Catherine Morris	Local Resident
Janet Lardner-Burke	Local Resident
Dr Martin Hudson	Local Resident
Dave Pittam	Local Resident
Jane Stubbs	Local Resident
David Johnson	Local Resident
Cllr Andrew Kolker	Ward Councillor, Cheshire East Council
John Dyke	Leader of the Goostrey Footpath Group and separately as a Local Resident

¹¹² Mr Nicholson attended the session on the UU and spoke to ID 17

¹¹³ Mr Hodgkiss attended the session on the UU and spoke to ID 18

Documents

Core Documents

- CD1 Application Documents, including:
- 1.2 Location Plan - Drawing No. 6006-L-04, rev B
 - 1.3 Development Framework Plan
 - 1.5 Socio-Economic Sustainability Statement
 - 1.8 Landscape and Visual Impact Appraisal
 - 1.13 Agricultural Land Quality
- CD2 Supplementary reports submitted after validation, including:
- 2.3 Gladman's letter to CEC, 7 April 2015, Appendix 1 – Highways Technical Note including updated Access Drawing
- CD3 Correspondence with Cheshire East Council and consultees, including:
- 3.4 Emails between Rebecca May (Gladman) and Sue Orrell (CEC)
- CD4 Consultation Responses
- CD5 Committee Reports and Decision Notice, including:
- 5.1 Strategic Planning Board Officers Report
- CD6 Omitted Consultation Responses, including:
- 6.1 NHS England
- CD7 Committee Report and Minutes - update
- CD8 Relevant Post Appeal Correspondence
- CD9 Congleton Borough Local Plan First Review Written Statement (2005) (extract)
- CD10 Congleton Borough Local Plan First Review Proposals Map (2005) (extract)
- CD11 SoS Saving Direction and Schedule of Saved Policies (2008)
- CD12 Cheshire East Local Plan Strategy Submission Version (2014) (extract)
- CD13 Cheshire East Local Plan Strategy Submission Version Proposed Changes (2016) (extract)
- CD14 LDF Background Paper: Determining the Settlement Hierarchy (November 2010)
- CD15 Cheshire East Strategic Housing Market Assessment 2013 Update (September 2013) (extract)
- CD16 Cheshire East Housing Development Study 2015 (June 2015)
- CD17 Assessment of the Urban Potential of the Principal Towns, Key Service Centres and Local Service Centres and Possible Development Sites Adjacent to those Settlements (July 2015) (extract)
- CD18 Housing Supply and Delivery Topic Paper (February 2016)
- CD19 Cheshire East Local Plan Strategy - Examination in Public
- CD20 Other Relevant Planning Documents
- CD21 Appeal Decisions, including:
- 21.1 Twemlow Lane, Twemlow, Holmes Chapel (APP/R0660/A/12/2174710)
- CD22 Court of Appeal and High Court Judgments, including:
- 22.3 Phides Estates (Overseas) Ltd v SSCLG and Shepway District Council and David Plumstead ([2015] EWHC 827) Judgment of Mr Justice Lindblom
 - 22.5 Forest of Dean District Council v SSCLG and Gladman Developments Ltd ([2016] EWHC 421) Judgment of The Hon Mr Justice Coulson
 - 22.6 Suffolk Coastal District Council and Hopkins Homes Ltd and SSCLG / Richborough Estates and Cheshire East Borough Council and SSCLG ([2016] EWCA Civ 168) Judgment of Lord Justice Jackson, Lord Justice Vos and Lord Justice Lindblom
- CD23 The Town and Country Planning (Jodrell Bank Radio Telescope) Direction 1973

- CD24 ITU Radiocommunication Assembly: Protection criteria used for radio astronomical measurements. Recommendation ITU-R RA.769.2 (2003)
- CD25 BSI Standards Publication: Electromagnetic compatibility of multimedia equipment -- Emission requirements (BS EN 55032:2012) (May 2012)
- CD26 Historic England Historic Environment Good Practice Advice in Planning: Note 2: Managing Significance in Decision-taking in the Historic Environment (March 2015)
- CD27 Historic England Historic Environment Good Practice Advice in Planning: Note 3: The Setting of Heritage Assets (March 2015)
- CD28 Cheshire Landscape Character Assessment (November 2008) (extract)
- CD29 Natural England National Character Area Profile: 61 - Shropshire, Cheshire and Staffordshire Plain (2014)
- CD30 Gladman Developments Ltd v SSCLG and CEC (CO/7165/2013) Consent Order
- CD31 Cheshire East Borough Council (Goostrey - land north of Main Road) Tree Preservation Order 2015

Other Documents Submitted Prior to the Inquiry

- OPID 1 Statement of Common Ground between Gladman Developments and Cheshire East Council signed on the 10 and 11 May 2016 respectively
- OPID 2 Copy of the Statement of Common Ground (PID 1) annotated by Goostrey Parish Council received by email of 13 May 2016 at 10.17
- OPID 3 Prof Garrington's 'Rebuttal of Proof of Evidence by Dr R Trotta'

Documents Submitted at the Inquiry

- ID 1 Appeal Decision and Inspector's report, Ref: APP/G2435/A/14/2228806
- ID 2 Cheshire East Borough Council v SSCLG and Renew Land Developments Ltd, Neutral Citation Number: [2016] EWHC 571 (Admin), 16 March 2016
- ID 3 'A Note on my Proof of Evidence' by Dr Trotta, 12 May 2016
- ID 4 Letter from Prof Martin Barstow, President of the Royal Astronomical Society, 17 May 2016
- ID 5 SSCLG v West Berkshire District Council and Reading Borough Council, Neutral Citation Number: [2016] EWCA 441, 11 May 2016
- ID 6 Appendix B: Cheshire East Local Service Centre Comparator Study, to a Story Homes document, produced by wyg, April 2016
- ID 7 Goostrey Parish Council comments on the Proposed Changes Version of the Local Plan Strategy concerning paragraph 8.30, 15 April 2016
- ID 8 Goostrey Parish Council comments on the Proposed Changes Version of the Local Plan Strategy concerning Policy PG 2 Settlement Hierarchy, 19 April 2016
- ID 9 Extracts from Spatial Distribution report, AECOM
- ID 10 'Green and Brown Field sites which are known to be available for development now or within the next 5 years' plan
- ID 11 Neighbourhood Plan 2016 Call for Sites response from Pochin Property in respect to the land at Former Railway Sidings, Goostrey, 13 May 2016
- ID 12 Heritage Impact Assessment by Garry Miller Historic Building Consultancy, February 2015
- ID 13 Statement of Common Ground in Relation to Highways and Transport Matters, between the appellant and Cheshire East Council, 18 May 2016
- ID 14 Plans showing the Viewpoints to the Photographs in Appendix 3 to Mr Clemons' Proof of Evidence

- ID 15 Cheshire East Council's Community Infrastructure Levy Regulations 2010 Compliance Statement
- ID 16 Table of planning applications in the area around Jodrell Bank Observatory
- ID 17 Education Contributions Position Statement for Gladman Developments, EPDS Consultants, 18 May 2016
- ID 18 Children's Services, Cheshire East Council Proof of Evidence, May 2016
- ID 19 Draft S106 Agreement
- ID 20 North Norfolk District Council v SSCLG and David Mack, Neutral Citation Number: [2014] EWHC 279 (Admin), 14 February 2014
- ID 21 R. (on the application of Blackpool BC) v SSCLG and Thompson Property Investments Ltd, Neutral Citation Number: [2016] EWHC 1059 (Admin), 9 May 2016
- ID 22 Application for the Diversion of Footpath Nos. 12 (part), Parish of Goostrey report to Cheshire East Council's Public Rights of Way Committee meeting in June 2016
- ID 23 Map - distances from the appeal site and from Holmes Chapel Comprehensive School to University of Chester Academy, Northwich and to The County High School Leftwich; and from the appeal site to Byley Primary School and to Eaton Primary School.
Tables - showing, among other things, the capacity of and number of pupil at University of Chester Academy, Northwich and Byley Primary School.
- ID 24 Email from NHS England North (Cheshire & Merseyside) to Cheshire East Council of 20 May 2016
- ID 25 Final S106 Agreement dated 12 May 2016

Plans

- Location Plan - Drawing No. 6006-L-04, rev B (CD1.2)
- Site Access Arrangements - Drawing No. C14145-001 Rev A (within Appendix 1 to CD2.3)
- Illustrative drawings, including the Development Framework Plan (CD1.3)

Inspector's Documents

- INSP.1 Two folders of appeal representations
- INSP.2 Draft Conditions – v4, as attached to email from John Mackenzie to Adrian Crowther 23 May 2016
- INSP.3 Closing Submissions on Behalf of the Cheshire East Council
- INSP.4 Closing Submissions on Behalf of the Goostrey Parish Council
- INSP.5 Closing Submissions on Behalf of the Appellant

Annex: Recommended conditions

1. Details of appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the local planning authority not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - Location Plan (Drawing No. 6006-L-04, rev B)
 - Site Access Arrangements (Drawing No. C14145-001 Rev.A)
4. No development shall take place until a plan showing the phasing of development has been submitted to and approved in writing by the local planning authority. Thereafter, development shall be carried out in accordance with the approved phasing plan.
5. No dwelling on any phase of the residential development shall be occupied until the access for the proposed phase of development, as shown on Drawing No. C14145 Rev.A has been constructed in accordance with construction details that have been approved in writing by the local planning authority.
6. The residential development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing set out in the Glossary to the National Planning Policy Framework. The scheme shall include:
 - The numbers, type, tenure and location on the site of the affordable housing provision which shall consist of not less than 30% of the dwellings
 - The tenure shall be split 65% social rented or affordable rented and 35% intermediate and the dwellings shall be 'pepper-potted' across the site.
 - The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing. No more than 80% of the open market dwellings shall be occupied before the affordable housing is completed and available for occupation provided that there shall be a high level of pepper-potting of the affordable units.
 - The arrangements for the transfer of the affordable housing to a Registered Provider or for the management of any affordable housing if no Registered Provider is involved
 - The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing including arrangements where appropriate for the subsidy to be recycled for alternative affordable housing provision and
 - The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such the affordable homes are to be let or sold to people who are in housing need and have a local connection. The local connection criteria used in the agreement should match the Councils allocations policy.

7. No development hereby permitted shall be commenced until such time as a scheme to limit the surface water runoff generated by the development based on the approved Flood Risk Assessment and Surface Water Drainage Strategy (Hydrock Ref: R/C14145/FRA001.08, November 2014) has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development hereby permitted.
8. No phase of residential development shall be occupied until a Travel Plan for that phase has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. No part of that phase shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented in accordance with the approved scheme of monitoring and review as long as any part of the phase of development is occupied.
9. Prior to the commencement of development on any phase, details of Electric Vehicle Charging Points to be provided within the development and a timetable for implementation shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.
10. No phase of development shall commence until an Environmental Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The plan shall address the environmental impact in respect of air quality and noise on existing residents during the construction phase. In particular the plan shall include:
 - a) The hours of construction work and deliveries;
 - b) The parking of vehicles of site operatives and visitors;
 - c) Loading and unloading of plant and materials;
 - d) Storage of plant and materials used in constructing the development;
 - e) Wheel washing facilities;
 - f) Details of any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
 - g) Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
 - h) Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - i) Waste Management: There shall be no burning of materials on site during demolition / construction; and
 - j) A scheme to minimise dust emissions arising from demolition / construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.

11. Prior to the development commencing:
 - a) An investigation and assessment of the risks posed by any contamination shall be carried out and the results submitted to, and approved in writing by the local planning authority (LPA);
 - b) If the approved investigation and assessment indicate that remediation is necessary, then a Remediation Statement including a timetable for the implementation of any remediation shall be submitted to and approved in writing by the LPA. The scheme of remediation in the approved Remediation Statement shall then be carried out in full and in accordance with approved timetable.
12. No phase of development shall commence until a Habitat and Landscape Management Plan (HLMP), including the long-term design objectives, management responsibilities and maintenance schedules for not less than 15 years for all areas of habitat and landscaping other than those within the curtilages of individual dwellings for residential phases, shall be submitted to and approved in writing by the local planning authority, and the design, management objectives and maintenance of the landscaped areas shall thereafter be in accordance with the approved HLMP.
13. No development of any phase of development shall take place until a detailed Arboricultural Method Statement in respect of that phase has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - a) Details of the retention and protection of trees, shrubs and hedgerows on or adjacent to the site;
 - b) Implementation, supervision and monitoring of the scheme of protection;
 - c) A detailed treework specification and details of its implementation, supervision and monitoring;
 - d) Implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage parking, and deposit of spoil or liquids; and
 - e) The timing of arboricultural works in relation to the approved phase of development.
14. No construction works in any phase of development shall take place between 1st March and 31st August in any year, until a detailed survey of nesting birds has been submitted to and approved in writing by the local planning authority, and a 4m exclusion zone established around any nest found. No development of that phase shall take place within the exclusion zone until a report confirming the completion of nesting has been submitted to and approved in writing by the local planning authority.
15. No phase of development shall commence until detailed proposals for the incorporation of bird boxes into that phase suitable for use by breeding birds has been submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved details and retained thereafter.
16. Prior to the commencement of development, the following information shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details, that is:
 - a) A scheme for the provision and protection of a 10m undeveloped buffer zone adjacent to the watercourse on the eastern boundary of the site;

- b) An updated badger survey undertaken by a suitably qualified and experienced individual. The submitted report is to include mitigation and compensation proposals to address any adverse impacts identified;
 - c) A Reptile mitigation strategy; and
 - d) Proposals for the incorporation of gaps for hedgehogs into any garden or boundary fencing proposed. The gaps to be 10cm by 15cm and located at least every 5m.
17. Prior to the commencement of development, plans showing details of all external facing material, including windows and doors, and internal insulation to the buildings to attenuate to 20dB shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in full accordance with the approved details and the approved insulation shall be retained thereafter.
18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows or other openings other than those expressly authorised by this permission shall be constructed in the walls or roof on the north and east facing elevations of the buildings hereby permitted and no development otherwise permitted under Classes A, B, C, D and F of Part 1 Schedule 2 of the Order shall be carried out.

Richborough Estates



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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