

Appeal Decision

Inquiry held on 23 May 2017

Site visit carried out on the same day

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 14 June 2017

Appeal Ref: APP/R0660/W/15/3135683

Land north of Moorfields, Willaston, Crewe

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Richborough Estates against Cheshire East Council.
 - The application, No 14/0365, is dated 17 January 2014.
 - The development proposed comprises up to 146 dwellings with associated infrastructure and open space provision.
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Decision

1. For the reasons that follow, the appeal is allowed and planning permission is granted for development of up to 146 dwellings with associated infrastructure and open space provision on land north of Moorfields, Willaston, Crewe, in accordance with the terms of application No 14/0365, dated 17 January 2014, subject to the conditions set out in the attached schedule.

Background and Procedural Matters

2. In August 2013, an outline application for 170 dwellings on this site, with all matters other than access reserved for future consideration, was submitted to the Council (Application No 13/3688N). The Council failed to determine the application within the prescribed period and an appeal was lodged. Prior to commencement of the related Inquiry, the description of development was amended, with the maximum number of dwellings proposed reduced from 170 to 146. The appeal, which was determined on that basis, was successful, with permission being granted on 1st August 2014 (APP/R0660/A/14/2211721).
 3. The Inspector's decision was challenged through the courts, culminating in an appeal to the Supreme Court by the Council. The judgement, handed down on 10 May 2017, dismissed the Council's appeal and the original appeal decision was upheld, the Supreme Court concluding that the Inspector had correctly and accurately applied Paragraph 14 of the National Planning Policy Framework (the Framework) and thus there was no reason to question the validity of the permission. Accordingly, the original planning permission, granted on appeal in August 2014, remains extant.
 4. That judgement has a material bearing on the approach of the Council in relation to the current appeal. On 18 November 2015, prior to the judgement of the Supreme Court, the Council resolved that, had it determined the application, it would have been refused for reasons relating to the countryside location of the site, its location within a designated Green Gap, and the loss of
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best and most versatile agricultural land, notwithstanding the inability of the Council to demonstrate a five year housing land supply. However, in light of the judgement, the Council, although represented at the Inquiry, did not pursue any of the putative reasons for refusal and did not present any evidence, although it did submit a statement confirming its position in relation to five year housing land supply and the weight to be afforded to the emerging Local Plan and the approach to development in the Green Gap.¹

5. The development the subject of this current appeal (an outline application with all matters other than access being reserved for future consideration) is described on the planning application form as providing up to 170 dwellings. However, to ensure that the scheme is the same as that considered by the previous Inspector, amended details were submitted in March 2017, reducing the number of dwellings proposed from 170 to 146, relocating the play area to the eastern side of the site together with additional landscaping. The appellant undertook further consultation on those amendments with local residents, Parish Councils, statutory consultees and the Council, all of whom were provided with the opportunity to respond.
6. I have taken into account the representations submitted on the amendments, as well as those submitted to the Council in relation to the scheme as originally proposed. In the absence of any contrary view at the Inquiry, and being satisfied that no-one's interests would be prejudiced by so doing, I have considered the appeal on the basis of the amended proposal. As agreed at the Inquiry, I have amended the description of the development scheme accordingly. That is reflected in the header above.
7. A Statement of Common Ground (SoCG) agreed between the Council and the appellant was submitted to the Inquiry.² It sets out descriptions of the appeal site and its surroundings and of the proposed development (both as originally submitted and as amended) the relevant planning history and planning policy, together with the areas of common ground and contention between the parties. It also addresses planning conditions and refers to planning obligations. Whilst I have had regard to the SoCG, I recognise that interested persons were not party to it and do not necessarily concur with all its content.
8. A planning obligation by deed of undertaking, pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was submitted at the Inquiry.³ The undertaking is a material consideration and I return later to consider its specific provisions in more detail.

Main Issue

9. The development proposed comprises residential development in the open countryside, adjacent to but outside any defined settlement boundary, on best and most versatile agriculture land within a Green Gap. There is no dispute, in this regard, that it conflicts with the relevant policies of the development plan.⁴ However, the Council accepts that at the present time it is unable to demonstrate a five year supply of housing land. As a consequence, paragraph 49 of the Framework is engaged which, in turn, engages the so called tilted

¹ Listed as Inquiry Doc 6

² Doc 7

³ Doc 2

⁴ Saved policies NE.2 (Open Countryside) NE.4 (Green Gap) NE.12 (Agricultural Land Quality) and RES.5 (Housing in Open Countryside) of the Crewe and Nantwich Replacement Local Plan adopted in 2005.

balance set out in Framework paragraph 14. The tilted balance would be engaged in any event, as the Crewe and Nantwich Replacement Local Plan (RLP) which has an end date of 2011, is agreed as being out of date. On that basis, the main issue in this case is whether, having regard to material planning considerations, any adverse impacts of the development proposed would significantly and demonstrably outweigh any benefits, when assessed against the policies of the Framework as a whole.

Reasons for the Decision

10. A significant material consideration in this case, is the extant planning permission for exactly the same development as allowed in the previous appeal, which provides a fall-back position. The Courts have held that the fall-back does not have to be probable, or even have a high chance of occurring. Rather, in order for it to be a material consideration, a fall-back only has to be more than a merely theoretical prospect. While the likelihood of the fall-back occurring may affect the weight to be attached to it, that does not affect its status as a material planning consideration. Given the efforts of the appellant in securing the original planning permission, I have no reason to suppose that it would not be implemented, albeit within the tight remaining timescale. I was provided, in this regard, with evidence of ongoing discussions between the developer (Bovis Homes) and the Council, which confirms that the company is in the advanced stages of preparing reserved matters submissions for the entire site.⁵ I am in no doubt therefore, were this appeal to fail, that the site would be developed in any event.
11. For substantial weight to be afforded to a fall-back position, there needs to be not only a reasonable prospect of it being carried out in the event that planning permission was refused, but it would also need to be equally (or more) harmful than the scheme for which permission is sought. The development the subject of the current appeal is exactly the same in all respects as that already approved. It was also confirmed that reserved matters details would be submitted before 1 August 2017. Given the effort that has gone into securing the permission, I am in no doubt that it will be implemented. On that basis, I am satisfied that the extant permission carries significant weight as a material fall-back position.
12. The concerns of local residents in relation to this current appeal reflect those considered by the previous Inspector. I rely on the findings of my colleague in this regard. In terms of the Green Gap, the Inspector concluded that its function, in maintaining the definition and separation of Willaston and Rope, would not be significantly diminished by the development proposed. He also found that despite their close physical proximity, Willaston and Wistaston have clearly maintained their separate community identities. Whilst he found harm in terms of landscape and visual impact and the loss of best and most versatile agricultural land, he considered that harm to be modest. He considered Willaston to be a sustainable location on the edge of the built up area of Crewe and, subject to conditions, he found no adverse impact on local services and facilities, highways and traffic, biodiversity and nature conservation or flood risk. He also concluded that there was adequate sewerage capacity available and that there were no significant problems in relation to connection to other utilities. There has been no change in the physical setting or surroundings of

⁵ Doc 8

the appeal site since that decision, and I have no reason to come to a different view from him on any of these matters.

13. The emerging Cheshire East Local Plan: Strategy (CELP) is, of course, further advanced and closer to adoption than was the case before, and thus its policies carry more weight than they did at the time the previous appeal was determined. The Submission Version (March 2014) was submitted to the Secretary of State in May 2014. Two rounds of Hearing sessions were held in 2014 and 2015, with consultation on the proposed changes carried out in the Spring of 2016. Hearing sessions resumed in September 2016 to consider the proposed changes, and consultation on the proposed Main Modifications took place in January/February 2017. At the Inquiry, I was advised that adoption is expected in the next few weeks.
14. The CELP has been amended during its journey. In particular, it now includes a specific policy provision (policy PG4a) to accommodate the judgement of the Supreme Court in the event that it reached the decision it did. In order not to delay adoption of the emerging Plan further, it commits the Council to removing the appeal site from the Green Gap at the second detailed stage of the Local Plan (the Site Allocations and Development Policies Document) which is currently scheduled for completion around the end of 2018. This approach is set out in the *'Report of Consultation: Schedule of Proposed Main Modifications to the Local Plan Strategy - April 2017'*.⁶
15. Whilst the appellant objects to that approach, and has made an objection in this regard to the Local Plan Inspector, I am not persuaded that that makes any material difference to my considerations in this appeal: as it stands, the development proposed would not be contrary to the CELP as proposed to be amended. Whilst not wishing to pre-empt or pre-judge what the Local Plan Inspector might have to say on this particular matter in due course, I am satisfied, given the background to the amendment, that policy PG4a of the emerging Plan can be given appreciable, if not significant, weight at this time.
16. A Neighbourhood Plan is currently being prepared for Willaston. However, it still remains at draft stage. Whilst the Neighbourhood Plan Group is progressing with its Regulation 15 document, no definitive timescales have been confirmed as to when the next consultation will be undertaken, or when the Plan might go to referendum or be made. I also note that it is subject to challenge, since it relies on the settlement boundaries in the RLP and does not take account currently of the judgement of the Supreme Court. As a consequence of all of these factors, it can be afforded only limited weight.

Planning Obligation

17. Consideration of planning obligations is to be undertaken having regard to the advice at paragraph 204 of the Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that planning obligations may only constitute a reason for granting planning permission where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not be a pooled contribution where more than five such pooled contributions have already been collected.

⁶ Core Document CD 5.14

18. Subject to the usual contingencies, the undertaking provides for financial contributions towards secondary and special educational needs and biodiversity offsetting. It also secures the provision of open space, including a Local Equipped Area of Play, together with arrangements for the ongoing management and maintenance of that space. In addition, it sets out detailed obligations regarding the provision of 30% of the dwellings proposed as affordable housing as part of the development.
19. As set out in a document submitted by the appellant,⁷ there are some differences between the obligations now secured and those secured in relation to the extant permission. In particular, the highways contributions previously sought for off-site works is no longer required, the necessary funding having been secured via contributions from other approved development schemes. A primary education contribution is no longer required either, the evidence before me demonstrating that there is currently a surplus of primary school places within a two mile radius of the site. Contributions are secured, however, towards secondary and special needs education, where there is now a shortfall in provision.
20. The Council has provided a compliance statement in respect of the Community Infrastructure (CIL) Regulations 2010.⁸ The justification for the infrastructure contributions demonstrates that they would be directly related to the development proposed, are fairly and reasonably related in scale and kind and are necessary to make the development acceptable. The statement also confirms that the contributions secured are compliant with the provisions concerning the pooling of infrastructure contributions. I conclude that the obligations, which also have policy support, would comply with the requirements of Regulation 122 and 123 of the CIL regulations and with the tests in the Framework.

Benefits of the Development Proposed

21. The Framework advises that significant weight should be placed on the need to support economic growth through the planning system. I am advised that the development proposed is expected to support approximately 70 full-time equivalent construction jobs over a four year construction period. In addition, future occupiers would generate additional spend in the Cheshire East area, estimated to be in the region of some £1.1 million in the local economy of Crewe and Nantwich, some £1.5 million for Cheshire East. It would support the creation of some 29 new jobs across the Borough, plus up to 15 new public sector jobs. The Council would also benefit from approximately £1.37 million in New Homes Bonus. These are economic benefits which carry significant positive weight in the planning balance.
22. The provision of new market dwellings at a time when the Council cannot demonstrate a five year supply of housing land is a significant benefit. In providing 30% of the homes on the appeal site as affordable dwellings, the scheme would be policy compliant. In considering whether this can be weighed as a benefit of the scheme, I note that the Council's SHMAA identifies an acute need for affordable housing in the Borough. The provision of affordable housing as part of the appeal scheme would leave the community better off in this regard and thus is a major benefit of the scheme.

⁷ Doc 10

⁸ Doc 5

23. The development would provide at least 1.8 hectares of open space, including a Local Equipped Area of Play. Whilst intended as a necessary facility for future residents of the scheme, it was confirmed that the provision exceeds policy requirements and it would be readily accessible for existing residents. The provision therefore attracts moderate weight. Compared to agricultural use of the land, there would also be a net gain to biodiversity which would be a benefit of the scheme.

Planning Balance and Overall Conclusion

24. As set out at the start, there is no dispute that the development proposed conflicts with the relevant policies of the development plan. Furthermore, the Council accepts that, at the present time, it is unable to demonstrate a five year supply of housing land. I recognise, in this regard, the Council's contention that once the CELP is adopted, it will be in a position to demonstrate a five year supply. The appellant contests that. Either way, I am required to make my decision in the light of current circumstances. In the circumstances that currently prevail here, paragraph 49 of the Framework is engaged which, in turn, engages the 'tilted' balance set out at paragraph 14 of the Framework. That tilted balance would be engaged in any event, as the RLP is agreed as being out of date.
25. For decision taking, the tilted balance indicates that, where the development plan is absent, silent or relevant policies are out of date, then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole (or where specific policies of the Framework indicate that development should be restricted⁹).
26. To be weighed against the modest harm arising from landscape and visual impact and the loss of best and most versatile agricultural land, are the benefits that would accrue from the proposal. In total, they are substantial and would resonate with the economic, social and environmental dimensions of sustainable development. The combination of those benefits accords with the principal thrusts of the Framework of securing economic growth and boosting significantly the supply of housing, and are sound arguments carrying considerable weight in favour of the proposal. In addition, whilst not a benefit of the scheme, there is also the significant weight I afford the fall-back position, namely the extant planning permission for exactly the same development as that currently proposed.
27. In the overall planning balance, I am satisfied that the adverse impacts of the development, such as they are, would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken in the round. Even if they had, the fall-back position is a consideration of such weight that the outcome of the appeal would have been the same in any event. All in all, the proposal can be considered as comprising sustainable development and thus benefits from the presumption in favour of such as set out in the Framework. Therefore, I conclude that the appeal should succeed.
28. I recognise that this decision will be disappointing for local residents and am mindful, in this regard, of the role that local people have to play in shaping their surroundings. However, the views of local residents, very important

⁹ There is no suggestion that this latter consideration applies in this case.

though they are, must be balanced against other considerations. In coming to my conclusions on the issues that have been raised, I have taken full and careful account of all the representations that have been made, which I have balanced against the provisions of the development plan, the Framework and the fall-back position. For the reasons set out above, the evidence in this case leads me to conclude that the appeal should be allowed.

Conditions

29. I have considered the suggested conditions¹⁰ in the light of the tests set out in paragraph 206 of the Framework, the advice in the Planning Practice Guidance and the related discussion at the Inquiry. During that discussion, some conditions were deleted on the basis that they were unnecessary, that the provisions were covered elsewhere or, in the case of sustainable drainage, that they could be combined. Additional conditions were also discussed in the light of consultation responses and recommendations within the various reports that accompanied the planning application. The conditions set out in the attached schedule, including amended wording, reflect the discussion.
30. In addition to the standard conditions relating to the submission of reserved matters and commencement of development (1, 2, 3) it is necessary for the outline permission to define the maximum capacity of development and to ensure that any reserved matters applications are informed by the parameters plan. (4, 5) In order to provide certainty, a condition is required to ensure that the development is carried out in accordance with the approved plans. (6)
31. In the interest of ensuring a sufficiently inclusive and mixed community as required by paragraph 50 of the Framework, a condition is necessary to control the location of affordable housing within the development and the phasing of delivery in relation to market housing provision. (7)
32. In order to avoid pollution and to prevent increased risk from flooding, details of a sustainable surface water drainage scheme are required, together with details for ongoing management which are essential to ensure that the scheme continues to perform as intended. (8) Conditions 9, 10, 11, 12 are necessary in the interests of biodiversity, the protection of wildlife and visual amenity.
33. Condition 13 is required in the interest of vehicular and pedestrian safety. Condition 14 is necessary to address capacity problems at the Wistaston Road/A534 Crewe Road junction that are a likely consequence of the development proposed. Off-road car parking is required for each dwelling in the interest of highway safety, together with cycle parking/storage in order to encourage sustainable travel. (15) Whilst a 'draft' Travel Plan was submitted with the planning application, a Final Travel Plan is required in order to promote more sustainable travel choices in accordance with national policy and local guidance. (16)
34. The potential for contamination on part of the site has been identified. A condition to secure any necessary remediation is required in this regard. (17)
35. In order to protect the living conditions of existing residents, and also in the interests of highway safety, protection of the environment, visual amenity and sustainable development, a Construction Management Plan is required for the duration of works. (18)

¹⁰ Doc 1

36. To help mitigate and adapt to climate change, in accordance with national policy and policy CO2 of the CELP, a condition securing the provision and operation of electric car charging points for each dwelling within the development is justified. (19) Details of bin stores, site levels, timing of the provision of the play area secured by the planning obligation, and any external lighting within the development, are necessary in the interests of visual amenity, to ensure acceptable living conditions for future residents, and wildlife protection. (20, 21, 22 and 23)

Jennifer A Vyse
INSPECTOR

Schedule of Conditions
Appeal APP/R0660/W/15/3135683
Land north of Moorfields, Willaston

Reserved Matters

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins. Development shall be carried out in accordance with the approved details.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) 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.

Development Parameters

- 4) The development hereby permitted shall include no more than 146 dwellings and shall include not less than 1.8 hectares of open space and landscape buffers.
- 5) The reserved matters to be submitted pursuant to condition 1 above shall accord with the Parameters Plan, No 13010 04.

Plans

- 6) The development hereby permitted shall be carried out in accordance with the following approved plans, but only insofar as they relate to access to the site.
13010 00 Location Plan
13010 03 C Proposed Illustrative Layout
T12514 Fig 6.1 Highways Access Plan

Affordable Housing

- 7) The reserved matters to be submitted pursuant to condition 1 shall include details of the location within the site of the affordable housing, the timing for construction of the affordable housing and its phasing in relation to occupancy of the market housing.

Flooding and Drainage

- 8) No development shall take place, including works of site clearance and ground preparation, until details of a sustainable surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details and timetable. The scheme to be submitted shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from

the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii) include a timetable for implementation of the scheme; and,
- iii) provide a management and maintenance plan for the scheme, for the lifetime of the development, which shall include the arrangements for adoption of the scheme by any public authority or statutory undertaker, and any other arrangements to secure the operation of the scheme throughout its lifetime.

Ecology/Wildlife/Trees

- 9) The reserved matters to be submitted pursuant to condition 1 shall be supported by a revised Ecological Mitigation Strategy and Method Statement which shall be in compliance with the recommendations of the submitted Ecological Mitigation Strategies (August 2013). No development shall commence until the revised Strategy has been approved in writing by the local planning authority. Development shall be in complete accordance with the revised Strategy.
- 10) The reserved matters to be submitted pursuant to condition 1 shall be supported by a Habitat and Landscape Management Plan (HLMP), including the retention and enhancement of the existing pond, long-term design objectives, management responsibilities and maintenance schedules for ten years for all areas of habitat and landscaping, other than those within the curtilages of individual dwellings. No development shall commence until the HLMP has been approved in writing by the local planning authority. Thereafter the design, management objectives and maintenance of the landscaped areas shall be in accordance with the approved HLMP.
- 11) Prior to any commencement of works between 1 March and 31 August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the local planning authority. Where nests are found in any hedgerow, tree or scrub to be removed, a 4 metre exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to the local planning authority before any further works within the exclusion zone take place.
- 12) The reserved matters to be submitted pursuant to condition 1 shall be accompanied by an Arboricultural Method Statement specifying the measures to be put in place during the construction period for the protection of those trees and hedgerows to be retained. No development (including works of site clearance, tree felling, tree pruning, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) shall take place unless and until the Method Statement has been approved in writing by the local planning authority. Development shall be carried out in accordance with approved Arboricultural Method Statement. The Method Statement shall be prepared in accordance with the principles set out in BS5837:2012 – *Trees in relation to design, demolition and construction: Recommendations* and shall include details of the following:
 - (a) a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on the site including trees which are the subject of a Tree Preservation Order currently in force, or are shown to be retained on the approved layout, which shall be in place prior to the commencement of work;
 - (b) a scheme for implementation, supervision and monitoring of the approved protection scheme. The approved protection scheme shall be retained intact for the full duration of the development hereby

permitted and shall not be removed without the prior written permission of the local planning authority;

- (c) a detailed treework specification;
- (d) a scheme for implementation, supervision and monitoring of the approved treework specification;
- (e) a scheme for implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme; and
- (f) the timing and phasing of arboricultural works in relation to the approved development.

Highways/Parking/Travel Plan

- 13) The access to the development hereby permitted shall be constructed in accordance with the approved Highways Access Plan (no. T12514 Fig 6.1) prior to occupation of the first dwelling.
- 14) No dwelling shall be occupied until a detailed and safety audited scheme for the provision of traffic signals at the junction of Wistaston Road and Crewe Road has been submitted to and approved in writing by the local planning authority. No more than 99 of the dwellings within the development hereby approved shall be occupied until the approved traffic signal scheme has been implemented in full.
- 15) No dwelling shall be occupied unless and until related provision for off-road car and cycle parking/storage has been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Once provided, such facilities shall be retained thereafter for their intended use.
- 16) Prior to first occupation of the development hereby permitted, a Final Travel Plan to reduce reliance on the private car shall be submitted to and approved in writing by the local planning authority. The Final Travel Plan shall include arrangements for the appointment of a Travel Plan coordinator for a period to be agreed, objectives, targets, mechanisms and timescales for implementation, together with monitoring and review provisions. The measures contained within the approved Final Travel Plan shall be implemented in accordance with the agreed timetable and retained thereafter.

Contaminated Land

- 17) Prior to the development commencing, a phase II contaminated land investigation shall be carried out and the results submitted to, and approved in writing by, the local planning authority. If the phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the local planning authority, setting out a remediation scheme. The remediation scheme in the approved Remediation Statement shall then be carried out and a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to, and approved in writing by the local planning authority prior to the first use or occupation of any part of the development hereby approved.

Construction

- 18) Prior to the development commencing, a Construction Management Plan shall be

submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall thereafter be adhered to throughout the construction period. The plan shall include, but is not confined to details of:

- a) the hours of construction work, including works of site clearance, and the timing for deliveries to/from the site;
- b) site management arrangements, including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
- c) wheel washing facilities;
- d) any piling required, including the method (using best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties) hours, duration and arrangements for prior notification of such works to the occupiers of potentially affected properties;
- e) the responsible person (e.g. site manager/officer) who could be contacted in the event of any construction work related complaint;
- f) measures to minimise noise and disturbance during the construction phase, including vibration and noise limits, monitoring methodology, screening, and a detailed specification of plant and equipment to be used;
- g) a scheme to minimise dust emissions arising from construction activities on the site, such scheme to include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development;
- h) there shall be no burning of materials on site during construction; and
- i) a construction waste management plan that identifies the main waste materials expected to be generated by the development during construction, together with measures for dealing with such materials so as to minimise waste and to maximise re-use, recycling and recovery.

Electric Vehicle Charging

- 19) No dwelling shall be occupied unless and until an electric vehicle charging point for that dwelling has been installed and is operational in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The approved infrastructure shall be permanently retained thereafter.

Bin Stores

- 20) No dwelling hereby permitted shall be occupied until associated facilities for the storage of refuse and waste, including recyclables, have been provided in accordance with details that shall previously have been submitted to and approved in the writing by the local planning authority.

Site Levels

- 21) Development shall not begin, including any works of site clearance and ground preparation, until details of existing ground levels, proposed ground levels and the level of proposed floor slabs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Play Area

- 22) Prior to commencement of development, a scheme for the provision of the Local Equipped Area of Play (LEAP) to be provided shall be submitted to and approved in writing by the local planning authority. No more than 40 dwellings within the

development hereby approved shall be occupied until the LEAP has been implemented in full and made available for use.

External Lighting

- 23) Prior to commencement of development, details of a wildlife sensitive lighting scheme for roads and footpaths within the site, and any lighting for the areas of public open space, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out only in accordance with the approved details.

-----END OF CONDITIONS-----

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Young, of Counsel

Instructed by Mark Sitch of Barton
Willmore LLP

He called

Mark Sitch
BSc(Hons) DipTP MRTPI

Senior Planning Partner at Barton Willmore LLP

The appellant also submitted written evidence from the following, all of which was taken as read:

Andrew Williams BA(Hons) DipLA DipUD CMLI – Landscape and Visual Impact

Stephen Harris BSc(Hons) MRTPI – Housing Land Supply

James Stacey BA(Hons) DipTP MRTPI – Planning and Affordable Housing

Tony Kernon BSc(Hons) MRICS FBIAC – Agricultural Land

FOR THE APPELLANT:

Graeme Keen, of Counsel

Instructed by the Head of Legal Services for
Cheshire East Council

He called

Richard Taylor
BA(Hons), BTP, MRTPI

Principal Planning Officer with the Council. Mr Taylor did not give evidence, but participated in the discussion on possible conditions and S106 contributions.

INTERESTED PERSONS:

Mrs Brenda Shone

Local resident

Mrs Susan Clark

Local resident

Malcolm Brown

Local resident

DOCUMENTS HANDED UP DURING THE INQUIRY

Doc 1 Draft conditions

Doc 2 Completed planning obligation

Doc 3 Daventry v SSCLG and Gladman [2015] EWHC 3459 confirmed in the Court of Appeal – Gladman Developments Ltd v Daventry DC [2016] EWCA Civ 1146, plus summary

Doc 4 P F Ahern (London) Limited v SSE and Havering BC [1998] QBD CO/159/97

Doc 5 CIL Compliance Statement

Doc 6 Statement from Cheshire East, as amended at the Inquiry, confirming its position in relation to five year housing land supply and the weight to be afforded to the emerging Local Plan and the Green Gap policy.

Doc 7 Final Statement of Common Ground

Doc 8 Letter from Bovis Homes confirming discussions in advance of the submission of reserved matters in relation to the original appealed application (16 May 2017)

Doc 9 Medical practices accepting new patients in the vicinity of the appeal site

Doc 10 Summary of the provisions of the unilateral undertaking

Doc 11 Errata in relation to core document references in proofs of the appellant

Doc 12 Closing submissions on behalf of the appellant

CORE DOCUMENTS

1. Application Documents and Reports

CD1.1	Application Form and Certificate B
CD1.2	Planning Statement
CD1.3	Design and Access Statement
CD1.4	Landscape and Visual Impact Assessment (as amended)
CD1.5	Affordable Housing Delivery Plan
CD1.6	Agricultural Land Classification Survey
CD1.7	Air Quality Assessment
CD1.8	Badger Survey
CD1.9	Ecological Assessment
CD1.10	Ecological Mitigation Strategy
CD1.11	Ecological Method Statement
CD1.12	Flood Risk Assessment
CD1.13	Foul Water and Utilities Statement
CD1.14	Hedgerow Assessment
CD1.15	Heritage Assessment
CD1.16	Phase 1 Desk Study Report
CD1.17	Protected Species Assessment
CD1.18	Statement of Community Involvement
CD1.19	Topographical Survey
CD1.20	Transport Assessment
CD1.21	Travel Plan
CD1.22	Tree Survey (as updated)
CD1.23	Socio Economic Impact Statement
CD1.24	Site Location Plan
CD1.25	Indicative Masterplan Ref: 13010 03
CD1.26	Proposed Highways Access Plan Ref: T12513 Fig 6.1
CD1.27	Proposed Refuse Plan Ref: T12514 Fig 6.2 Rev A

2. Consultee Responses

CD2.1	Environmental Health Officer (February 2014)
CD2.2	Highways Officer (May 2014)
CD2.3	Public Right of Way Officer (February 2014)
CD2.4	Sustrans (February 2014)
CD2.5	Wistaston Parish Council (February 2014)
CD2.6	Officers Report to Strategic Planning Board (November 2014)

3. Amendments to Scheme via Wheatcroft Principle

CD3.1	Layout Plan Ref: 13010 03 C
CD3.2	Parameters Plan Ref: 13010 04 A
CD3.3	Responses to Amended Scheme (April 2017)

4. Original Appeal Decision and Relevant Judgments specifically relating to Appeal Site

CD4.1	Appeal Decision Ref: APP/R0660/A/14/2211721
CD4.2	High Court Judgment Ref: CO/4217/2014
CD4.3	Order of LJ Sullivan Ref: CO/2015/0894
CD4.4	Court of Appeal Judgment Ref: [2016] EWCA Civ168
CD4.5	Supreme Court Judgment Ref: [2017] UKSC 36

5. Planning Policy Documentation

CD5.1	National Planning Policy Framework "NPPF" (2012)
CD5.2	Planning Practice Guidance "PPG" (2014)
CD5.3	Housing White Paper – Fixing our broken housing market (February 2017)
CD5.4	Crewe and Nantwich Replacement Local Plan (2015)

CD5.5	Interim Planning Statement on Affordable Housing (2011)
CD5.6	Local Plan Strategy Submission Version (2014)
CD5.7	New Green Belt and Strategic Open Gap Study (2013)
CD5.8	New Green Belt and Strategic Open Gap Study Appendices (2013)
CD5.9	New Green Belt and Green Gap Policy Technical Annex (2015)
CD5.10	Cheshire East Housing Development Study (2015)
CD5.11	Cheshire East Local Plan Strategy – Proposed Changes (Consultation Draft) (2016)
CD5.12	Inspector’s Views on Further Modifications needed to the Local Plan Strategy -Proposed Changes (2016)
CD5.13	Schedule of Proposed Main Modifications to the Cheshire East Local Plan Strategy – Proposed Changes (March 2016 Version)
CD5.14	Cheshire East Main Modifications Report of Consultation (April 2017)
CD5.15	Housing Supply and Delivery Topic Paper (August 2016 Update)
CD5.16	Willaston Neighbourhood Plan Regulation 14 (January 2017)
CD5.17	Willaston Neighbourhood Plan Supporting Documents (January 2017)
CD5.18	Cheshire Design Aid (hard copy only to be provided by Appellant)
CD5.19	Guidelines for Landscape and Visual Impact Assessment Third Edition, LVIA3 (hard copy only to be provided by Appellant and Council)
CD5.20	Inspector’s Interim Views (2014)
CD5.21	Inspector’s Further Interim Views on the additional evidence produced by the Council during the suspension of the Examination and its implications for the submitted Local Plan Strategy (2015)
CD5.22	Cheshire East Homelessness Strategy (2014 – 2017)

6.1 Legal Cases

CD6.1	Bernard Wheatcroft Ltd vs. Secretary of State for the Environment [1980] 43 P&C 233
CD6.2	Stroud District Council v Secretary of State for Communities and Local Government and Gladman Development Limited [2015] EWHC 488 (Admin)
CD6.3	St Modwen Developments SSCLG and East Riding Council [2016] EWHC 968 (Admin) Ouseley J
CD6.4	St Albans City and District Council v Hunston Properties and SSCLG [2013] EWCA Civ 1610 – Sir David Keene
CD6.5	Daventry District Council v SSCLG and Gladman [2015] EWHC 3459 (Admin) – Lang J
CD6.6	Cheshire East Borough Council v SSCLG and Renew Land Developments Ltd [2016] EWHC 571 (Admin) Jay J

7. Planning Policy Documentation

CD7.1	Land at Sketchley House, Burbage, SoS Decision (November 2014) Ref: APP/K2420/A/13/2208318
CD7.2	Land off Rilshaw Lane, Winsford, Cheshire, SoS Decision (October 2015) Ref: APP/A0665/A/14/2229269
CD7.3	Hook Norton, Banbury SOS Decision (December 2015) Ref: APP/C3105/A/2226552
CD7.4	Money Hill, Ashby-De-La-Zouch, SoS Decision (February 2016) Ref: APP/G2435/A/14/2228806
CD7.5	Mitchelswood Farm, Allington Road, Newick, Lewes, SoS Decision (November 2016) Ref: APP/P1425/W/15/3119171
CD7.6	Land to the North West of Boorley Green, Winchester Road, Boorley Green, Eastleigh, Hampshire, SoS Decision (November 2016) Ref: APP/W1715/W/15/3130073
CD7.7	SoS Decision and Inspector’s Report concerning Land at Gotham Road, East Leake, Nottinghamshire (March 2008) APP/P3040/A/07/2050213
CD7.8	SoS Decision and Inspector’s Report concerning Land adjacent to SIMS Metal UK, Long Marston, Pebworth (July 2014) APP/H1840/A/13/2202364
CD7.9	

- CD7.10** SoS Decision and Inspector's Report concerning Land At Kirby Road/Ratby Lane, Glenfield, Leicester APP/T2405/A/10/2138666
- CD7.11** SoS Decision and Inspector's Report concerning: Land East Of A413 Buckingham Road And Watermead, Aylesbury APP/J0405/A/14/2219574

8. Appeal Decisions

- CD8.1** Land off Bath Road, Leonard Stanley (July 2014)
Ref: APP/C1625/13/220734
- CD8.2** Land at Bradford Road, East Ardsley, Leeds (December 2016)
Ref: APP/N4720/W/15/3004034
- CD8.3** Land North of Upper Chapel, Launceston (April 2014)
Ref: APP/D0840/A/13/2209757
- CD8.4** Greetham Garden Centre, Oakham Road, Greetham (May 2015)
Ref: APP/A2470/A/14/2222210
- CD8.5** Agricultural land to both the north and south of Mans Hill, Burghfield Common, Reading, Berkshire Ref: APP/W0340/A/14/2226342
- CD8.6** Land off Field End, Witchford, Cambridgeshire (June 2015)
Ref: APP/V0510/A/14/2224671
- CD8.7** Land adjacent to Cornerways, High Street, Twynning, Tewkesbury (July 2015)
Ref: APP/G1630/W/14/3001706
- CD8.8** Land at Firlands Farm, Burghfield Common, Reading, Berkshire (July 2015)
Ref: APP/W0340/A/14/2228089
- CD8.9** Walcot Meadow, Walcot Lane, Pershore, Worcestershire (August 2015)
Ref: APP/H1840/W/15/3005494
- CD8.10** Land at Fountain Lane, Davenham (September 2015)
Ref: APP/A0665/A/14/2226994
- CD8.11** Land at Foldgate Lane, Ludlow, Shropshire (August 2016)
Ref: APP/L3245/W/15/3137161
- CD8.12** Land between Leasowes Road and Laurels Road, Offenham, Worcestershire (February 2014) Ref: APP/H1840/A/13/2203924
- CD8.13** Land adj Gretton Road, Winchcombe (May 2013)
Ref: APP/G1630/A/12/2183317
- CD8.14** Land off Elmwood Avenue, Essington (April 2013)
Ref: APP/C3430/A/12/2189442
- CD8.15** Land to the north and west of Lucas Lane, Whittle-le-Woods, Chorley (September 2012) Ref: APP/D2320/A/12/2172693
- CD8.16** Land east of Springwell Lane (Ref: APP/T2405/A/13/2193758) and Land off Countersthorpe Road and Springwell Lane, Whetstone (August 2013) Ref: APP/T2405/A/13/2193761
- CD8.17** Land Between Iron Acton Way and North Road, Engine Common, Yate (April 2013) Ref: APP/P0119/A/12/2186546
- CD8.18** Land east of Butts Road, Higher Ridgway, Ottery St Mary (December 2012)
Ref: APP/U/1105/A/12/2180060
- CD8.19** Land adjacent to 28 Church Street, Davenham, Cheshire (January 2016)
Ref: APP/A0665/W/15/3005148
- CD8.20** Land to the east of Broad Marston Road, Mickleton, Gloucestershire,
Ref: APP/F1610/A/14/2228762
- CD8.21** Land rear of 62 Iveshead Road, Shepshed (February 2016)
Ref: APP/X2410/W/15/3007980
- CD8.22** Former Holsworthy Showground, Trewyn Road, Holsworthy, Devon
Ref: APP/W1145/A/09/2117379
- CD8.23** Land at Beachley Road, Sedbury, Gloucestershire,
Ref: APP/P1615/A/14/2220590
- CD8.24** Land opposite Rose Cottages, Holmes Chapel Road, Brereton Heath, Cheshire
Ref: APP/R0660/A/13/2192192
- CD8.25** Dodworth Road, Barnsley Ref: APP/R4408/A/09/2116278
- CD8.26** Land at the Worcestershire Hunt Kennels, Fernhill Heath, Worces
Ref: APP/H1840/W/15/3003157

- CD8.27** Land east of Nutbourne Park, Main Road, Nutbourne, Chichester
Ref: APP/L3815/A/12/2186455
- CD8.28** Land off Tanton Road, Stokesley
Ref: APP/G2713/A/14/2223624
- CD8.29** Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire CW9 8JU.
Ref: APP/A0665/W/14/3000528
- CD8.30** Land at Sentrays Farm, Exminster, Exeter, Devon
Ref: APP/P1133/A/11/2158146
- CD8.31** Land adjoining Hay House, Tibberton, Newport.
Ref: APP/C3240/W/15/3003907
- CD8.32** Land off A49 and Bromfield Road, Ludlow, Shropshire
Ref: APP/L3245/W/15/3001117
- CD8.33** Land off Worcester Road, Drakes Broughton, Worcestershire
Ref: APP/H1840/W/15/3008340
- CD8.34** Land North of Long Copse Lane, Westbourne, Emsworth, West Sussex,
Ref: APP/L3815/W/15/3003656

9. Other Relevant Material Considerations

- CD9.1** Landscape Evidence of Mr Andrew Williams presented at Appeal
Ref: APP/R0660/A/14/2211721 (Land to the north of Moorfields, Willaston)

10. Additional Documents – Post Agreement

- CD10.1** Updated Education Contribution Response TBC
- CD10.2** Updated Highways Contribution Response TBC
- CD10.3** Statement of Common Ground (Draft) TBC
- CD10.4** Section 106 – Draft TBC