



Ministry of Housing,  
Communities &  
Local Government

Colin Griffiths  
Satnam Planning Services Ltd  
17 Imperial Square  
Cheltenham  
GL50 1QZ

Our ref: APP/M0655/W/17/3178530  
Your ref:

20 December 2018

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY SATNAM MILLENIUM LTD  
LAND AT PEEL HALL, WARRINGTON WA2 9LH  
APPLICATION REF: 2016/28492**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Richard Schofield BA (Hons) MA MRTPI, who held a public local inquiry starting on 23 April 2018, and which was closed in writing on 13 August 2018 (IR1.11), into your client's appeal against the decision of Warrington Borough Council ("the Council") to refuse your client's application for outline planning permission for a new residential neighbourhood including C2 and C3 uses; local employment (B1 use); local centre including food store up to 2000m<sup>2</sup>, A1-A5 (inclusive) and D1 use class units of up to 600m<sup>2</sup> total (with no single unit of more than 200m<sup>2</sup>) and family restaurant/pub of up to 800m<sup>2</sup> (A3/A4 use); site for primary school; open space including sports pitches with ancillary facilities; means of access and supporting infrastructure, in accordance with application ref: 2016/28492, dated 11 July 2016.
2. On 25 July 2017, 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.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal should be dismissed.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with his 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.

**Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental

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Impact Assessment) Regulations 2011. Having taken account of the Inspector's comments at IR1.6-1.7, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

### **Procedural matters**

6. Prior to determination of the application the description in paragraph 1 of this letter was expanded upon as follows (IR1.5): Outline application for a mixed use neighbourhood comprising residential institution (residential care home – Use Class C2) up to 1200 dwelling houses and apartments (Use Class C3); local centre including food store up to 2000 square metres (Use class A1); financial and professional services; restaurants and cafes; drinking establishments; hot food takeaways (Use Classes A2-A5 inclusive); units within Use Class D1 (non-residential institution) of up to 600 square metres total with no single unit of more than 200 square metres; and family restaurant/pub of up to 800 square metres (Use Classes A3/A4); employment uses (research; assembly and light manufacturing – Use Class B1); primary school; open space including sports pitches with ancillary facilities; means of access (including the demolition of 344; 346; 348; 458 and 460 Poplars Avenue) and supporting infrastructure.
7. The Secretary of State agrees with the Inspector at IR1.6 and does not consider that the expanded description raises any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.
8. The revised National Planning Policy Framework (“the Framework”) was published on 24 July 2018, before the Inquiry closed. The views of the parties were sought and taken into account by the Inspector. The revised Framework and the associated planning guidance (‘the Guidance’) have been taken into account as material considerations in this decision.

### **Matters arising since the close of the inquiry**

9. On 26 October 2018, Government published “Technical consultation on updates to national planning policy and guidance”, dealing with the calculation of Local Housing Need and other matters, including the People Over Wind and Sweetman v Coillte Teoranta issue. While a number of the issues dealt with in that document are relevant to this case, given these remain the subject of consultation and may not be the final position, the Secretary of State has made his decision here based on existing policy.
10. The Secretary of State received correspondence from you and the Council on 9 November 2018 in relation to the emerging Warrington Local Plan. These were circulated on 12 November 2018 and no further comments were received. 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**

11. 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.

12. In this case the development plan consists of the Local Plan Core Strategy for Warrington (CS) (July 2014). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR5.3-5.12. The Secretary of State has taken account of the fact that the High Court challenge to the adoption of that Plan means that the Strategy does not contain a housing requirement for the plan period (IR5.2).

### **Main issues**

#### *The effect of the proposed development on the safety and efficiency of the local and strategic highway network*

13. For the reasons given at IR13.8-13.41, the Secretary of State agrees with the Inspector that, overall, the appeal proposal has failed to demonstrate that it would not create an adverse impact upon the safety and efficiency of the local and strategic highway network, so that it would conflict with CS policy MP7 (IR13.42). He also agrees with the Inspector that, while the word 'severe' does not appear in policy MP7, that does not render it inconsistent with the Framework. Overall, the Secretary of State agrees with the Inspector that the requirements of neither the development plan nor the Framework have been met in this regard, so that a precautionary approach is appropriate (IR13.43-13.44).

#### *The effect of the proposed development on the character of the area*

14. For the reasons given at IR13.45-13.52 the Secretary of State agrees with the Inspector that the appeal proposal would have an adverse impact upon the character of the area which, as the appeal site was built out, would gradually change to become a busier and, for pedestrians at least, noisier area through which to travel - thereby conflicting with CS policy QE7 (IR13.53-13.54).

#### *The effect of the proposal on local air quality*

15. For the reasons given at IR13.55-13.66, the Secretary of State agrees with the Inspector that the evidence provided lacks clarity in a number of areas while the appeal site is in a very sensitive location regarding air quality management. Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR13.67 that the appeal proposal has failed to demonstrate that it would not give rise to an adverse impact upon local air quality - thereby conflicting with CS policy QE6.

#### *Whether the proposal can be regarded as deliverable*

16. The Secretary of State agrees with the Inspector at IR13.68 that there are two issues, namely, that the appellant a) does not have control of the entirety of the appeal site and b) does not appear to have support from a bus operator to run the proposed service through the site.

17. For the reasons given at IR13.69-13.72, the Secretary of State agrees with the Inspector at IR13.72 that, without any evidence that the Mill Lane playing field site is available for the development proposed, it is very difficult to see how the scheme can be regarded as deliverable as there is no reason to consider that the site would necessarily be sold to the appellant or that it would come forward as part of, or linked to, this scheme.

18. Turning to the appellant's bus service proposals (IR13.74-13.80), the Secretary of State agrees with the Inspector that it would be reasonable to expect some form of recent written commitment from a local bus service provider that an enhanced bus service would

be deliverable and confirming that the s.106 obligations are fit for the purposes expected, whereas the evidence points in the opposite direction (IR13.79).

19. Overall, therefore (IR13.69–13.82), the Secretary of State is not persuaded that the appeal scheme is deliverable as proposed and considers that there is conflict with CS policies MP1 and MP4.

#### *Other considerations*

20. The Secretary of State has considered the points raised and the Inspector's reasoning at IR13.83-13.95 and has no reason to disagree with any of his findings or conclusions.

#### **Planning conditions**

21. The Secretary of State has carefully considered the Inspector's analysis at IR12.1-12.41, the recommended conditions set out at Appendix C to the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

#### **Planning obligations**

22. Having had regard to the Inspector's analysis at IR12.42-12.52, the planning obligation dated 3 August 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion at IR12.53 that, in so far as it goes, the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, given the position set out in paragraph 17 above, the Secretary of State is concerned that the appellant does not have control of the entirety of the appeal site. Therefore, given that there are parties with interests in the site who are not signatories to the obligation, the Secretary of State is not satisfied that appellant, or any successors, would have sufficient control to ensure that the scheme could be implemented as proposed; and so he does not consider that the obligation overcomes his reasons for dismissing the appeal and refusing planning permission.

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

23. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with CS Policies MP1, MP4, MP7, QE6 and QE7, and is not in accordance with the development plan overall. 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.
24. As the CS has no housing requirement policies, the Council is unable to demonstrate a five year supply of deliverable housing land. Hence, paragraph 11(d) of the Framework indicates that planning permission should be granted unless: (i) the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or (ii) any adverse impacts of doing so significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole. The Secretary of State is not satisfied that there would be no adverse impacts on the efficiency and safety of the local and strategic network or on local air quality, and he gives significant weight to these factors. Of even greater weight, however, is the fact that he considers that the scheme is not deliverable as proposed. He also affords moderate weight to the adverse impact upon the character

of the area. The Secretary of State recognises that, if the scheme were to be considered deliverable, the fact that it could provide up to 1200 dwellings, 30% of which would be affordable, would attract significant weight. However, he considers that the merits of the scheme need to be left for further consideration once the issue of control over all parts of the site has been resolved and it becomes capable of implementation.

25. The Secretary of State therefore concludes that the appeal should be dismissed and planning permission refused.

### **Formal decision**

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for outline application for a mixed use neighbourhood comprising residential institution (residential care home – Use Class C2) up to 1200 dwelling houses and apartments (Use Class C3); local centre including food store up to 2000 square metres (Use class A1); financial and professional services; restaurants and cafes; drinking establishments; hot food takeaways (Use Classes A2-A5 inclusive); units within Use Class D1 (non-residential institution) of up to 600 square metres total with no single unit of more than 200 square metres; and family restaurant/pub of up to 800 square metres (Use Classes A3/A4); employment uses (research; assembly and light manufacturing – Use Class B1); primary school; open space including sports pitches with ancillary facilities; means of access (including the demolition of 344; 346; 348; 458 and 460 Poplars Avenue) and supporting infrastructure in accordance with application ref: 2016/28492, dated 11 July 2016 as amended in para 6 of this letter.

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

27. 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.

28. A copy of this letter has been sent to Warrington Borough Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

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# **Report to the Secretary of State for Housing, Communities and Local Government**

**by Richard Schofield BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Date: 1 October 2018**

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**Town and Country Planning Act 1990**

**Appeal by**

**Satnam Millennium Ltd**

**against the decision of**

**Warrington Borough Council**

Inquiry held on 23–27 April; 2–4 & 15 May; and 9–11 July 2018

Peel Hall, Warrington WA2 9LH

File Ref: APP/M0655/W/17/3178530

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**File Ref: APP/M0655/W/17/3178530**  
**Peel Hall, Warrington WA2 9LH**

- 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 Satnam Millennium Ltd against the decision of Warrington Borough Council.
- The application Ref 2016/28492, dated 11 July 2016, was refused by notice dated 24 February 2017.
- The development proposed is outline application for a new residential neighbourhood including C2 and C3 uses; local employment (B1 use); local centre including food store up to 2000m<sup>2</sup>, A1-A5( inclusive) and D1 use class units of up to 600m<sup>2</sup> total (with no single unit of more than 200m<sup>2</sup>) and family restaurant/pub of up to 800m<sup>2</sup> (A3/A4 use); site for primary school; open space including sports pitches with ancillary facilities; means of access and supporting infrastructure.

**Summary of Recommendation: That the appeal should be dismissed.**

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**1. Procedural Matters**

- 1.1 The Inquiry sat for 12 days, with adjournments arising to allow for additional work to be undertaken, most notably in relation to traffic modelling for Junction 9 of the M62 (M62 J9).
- 1.2 On 26 April 2018 I undertook an accompanied site visit, following a route agreed between the main parties and local residents. This visit was extensive, taking most of the day. It included a visit to the site itself as well as a tour of surrounding streets, observations of key road junctions and a walk around the village of Winwick to observe traffic on Myddleton Lane, Golborne Road and the A49. At the request of the local residents I drove to the site visit, during the morning peak traffic period, along a specific route set out by them. This brought me into north Warrington from the east, from J11 of the M62, and through Birchwood.
- 1.3 In addition to the formal site visit, I spent a considerable amount of time walking and driving around the wider area (including on the M6 and M62) at various times of the day, including the morning and evening peak traffic periods. I also visited the site alone on a number of occasions and walked around Mill Lane playing fields, Peel Hall Park, Radley Common and Radley Plantation.
- 1.4 In advance of the Inquiry the appellant submitted an additional illustrative site layout with revised site access points and off-site highway works proposals. This was referred to as "Option B". During the course of the Inquiry the appellant formally withdrew this option. As such, I have considered the appeal on the basis of the originally proposed illustrative scheme, referred to as "Option A", disregarding references in evidence to Option B and to any off-site highways works associated with it.
- 1.5 The description of development in the banner heading above is taken from the planning application form. Prior to determination of the application, this was expanded upon as follows:

*Outline application for a mixed use neighbourhood comprising residential institution (residential care home – Use Class C2) up to 1200 dwelling houses and apartments (Use Class C3); local centre including food store up to 2000*

*square metres (Use class A1); financial and professional services; restaurants and cafes; drinking establishments; hot food takeaways (Use Classes A2-A5 inclusive); units within Use Class D1 (non-residential institution) of up to 600 square metres total with no single unit of more than 200 square metres; and family restaurant/pub of up to 800 square metres (Use Classes A3/A4); employment uses (research; assembly and light manufacturing – Use Class B1); primary school; open space including sports pitches with ancillary facilities; means of access (including the demolition of 344; 346; 348; 458 and 460 Poplars Avenue) and supporting infrastructure).*

- 1.6 This description is more detailed than the original, is agreed by the parties and does not introduce any uses previously unknown. As such, I do not consider that anyone would be prejudiced by me using it as the basis for my considerations.
- 1.7 The application was submitted in outline, with all matters other than access reserved for future consideration. I have reported on the proposal on this basis, albeit that considerable emphasis was placed upon the Option A parameters plan. As such, I have afforded significant weight to the likelihood that, were planning permission to be granted, the site would be developed largely in accordance with it.
- 1.6 It is stated that the proposed development falls under Schedule 2(10) of the Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015, being an urban development project exceeding 150 dwellings and with an overall site area in excess of five hectares. The main parties agreed that an Environmental Statement (ES) should be prepared.
- 1.7 The submitted ES has been reviewed and found to have complied with the requirements of the relevant Environmental Impact Assessment regulations. I have no reason to depart from this position.
- 1.8 For the sake of completeness I record that the appeal was recovered for determination by the Secretary of State as it involved a proposal for residential development of over 150 units, which would impact significantly upon the Government's objective to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.
- 1.8 The key drawings can be found in Volume 6 of the Addendum to the Environmental Statement, within ID80 (in relation to plans referenced in conditions 5, 6, 11-13 and 21) and in electronic form within the Core Documents APN DOCS folder.
- 1.9 Various iterations of a planning obligation in the form of a Deed of Agreement under Section 106 of the Town and Country Planning Act 1990 were submitted to the Inquiry. A certified copy of the completed agreement was received before the close of the Inquiry<sup>1</sup>. This is a material consideration and is discussed in more detail below.

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<sup>1</sup> Please see ID77



1.10 The revised National Planning Policy Framework (the Framework) was published before the Inquiry closed. The views of the parties were sought upon it<sup>2</sup>. For the avoidance of doubt, I have considered the appeal on the basis of the revised Framework. Thus, any references to "*the Framework*", other than where I have reported the parties' cases, are to the revised edition unless otherwise specified.

1.11 The Inquiry was closed in writing on 13 August 2018.

## **2. The Site and Surroundings**

2.1 The appeal site and its surroundings are described in varying degrees of detail in the Design and Access Statement (DAS) (CD APN28), the Landscape and Visual Assessment (CD APN9), Ecological Reports (CD APN 10), the planning officer's report to the Council's planning committee (CD APP1) and the Statement of Common Ground on Planning Matters (PSoCG) (CD APP5).

2.2 In summary, however, the site is an extensive area of relatively flat former farmland<sup>3</sup> with some fragmented hedgerows. It is now comprised chiefly of semi-natural grassland, with areas of scrub, reed and self-seeded trees. There are some ponds on the site, which is also crossed, north to south, by Spa Brook.

2.3 The site is situated directly to the south of the M62 motorway. There is constant noise from passing traffic on the motorway, which is audible on and well beyond the site.

2.4 The site's southern boundary abuts the rear gardens of dwellings on Poplars Avenue, Newhaven Road, Windermere Avenue and Grasmere Avenue. Many of these dwellings, of which a number are bungalows, have relatively short rear gardens. To the west the site has a common boundary with the rear gardens of dwellings on Elm Road. There is more sporadic residential development, and the open spaces of Peel Hall Park and Radley Plantation, to the east. Many of the dwellings around the site have a largely uninterrupted outlook over it.

2.5 Albeit that it is outwith the red line boundary, the private dwelling of Peel Hall Farm, which houses boarding kennels, lies within and is accessed through the site along Radley Lane<sup>4</sup>. It has reasonably extensive grounds and is well-contained by mature boundary planting.

2.6 There is a United Utilities pumping station within the site, accessed from Elm Road. An underground gas main runs across the site's northern edge, alongside the M62.

2.7 A short section of a public right of way (PROW) lies within the site. It runs along Radley Lane, around Peel Hall Farm, along the edge of the M62 and then over the motorway via a footbridge.

## **3. The Proposal**

3.1 The proposed development would provide up to 1200 dwellings, suggested by the DAS as being a mix of houses, bungalows and apartments. 30% (360 units) would be affordable dwellings. There would also be a care home.

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<sup>2</sup> Please see ID74, ID78 and ID79

<sup>3</sup> See ID10 for historic photos of combine harvesting at the site.

<sup>4</sup> Referenced, incorrectly, as Peel Cottage Lane on some drawings.

- 3.2 The development would have an employment zone, restricted to B1 uses. A local centre is proposed, with a food store and other suitable uses (A1 to A5). A site for a primary school would be provided by the appellant. Sports pitches would be provided, creating a new sports hub for the area.
- 3.3 Green buffer zones would be created around Spa Brook, Radley Plantation and beside the M62. Hedgerows and existing woodland would be retained, with additional planting provided, seeking to secure a green corridor running north/south from the M62 through to Radley Common. The PROW would be retained.
- 3.4 The main accesses would be from two points on Poplars Avenue, achieved by the demolition of some existing dwellings, and from Blackbrook Avenue, over the Mill Lane playing fields, via a new roundabout. Accesses off Mill Lane and Birch Avenue would serve discrete developments of around 150 and 20 dwellings respectively.
- 3.5 Off-site highway works would be implemented in accordance with the recommended conditions (see Appendix B)<sup>5</sup>.
- 3.6 It is proposed that a new bus route through the site would be established as part of a package of mitigation measures<sup>6</sup>. Private vehicles would be prevented from using the route as a rat run by the installation of a bus gate.
- 3.7 At the time of writing, notwithstanding the provisions of the S.106 agreement, there was no certainty that such a bus service would, or indeed could, be delivered. This is addressed in more detail below.

#### **4. Planning History**

- 4.1 The site's planning history may be found in Section 2 of the PSoCG. In short, residential development of the site was envisaged in the New Town Outline Plan of 1973 but did not take place. The site was subsequently recommended for housing by the Inspector reporting on the Warrington Local Plan in 1998, but this plan was not adopted.
- 4.2 Parts of the site have been the subject of planning applications for residential and mixed-use development between 1989 and 2012. All have been refused (and dismissed on appeal where appealed) or have been withdrawn before determination.
- 4.3 Reasons for refusal have included prematurity, highways impact and a limited scope to achieve sustainable development (due to the size of the scheme in question).

#### **5. Planning Policy and Guidance**

- 5.1 The planning policy context for the proposed development is set out in the planning officer's report to the Council's planning committee (CD APP1) and in Section 3 of the PSoCG. A summary of relevant policy, including the revised Framework, is set out below.

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<sup>5</sup> Or in accordance with the disputed highways conditions (see Appendix C), if the Secretary of State considers them to be more appropriate.

<sup>6</sup> So referenced at various points in Mr Tighe's Proof

### *Core Strategy*

- 5.2 The adopted development plan for the District is the Local Plan Core Strategy for Warrington (the Core Strategy) (CD LP1/CD LP7), which was adopted in July 2014. A successful High Court challenge to its adoption means that the Core Strategy does not contain a housing requirement for the plan period. I address the implications of this in my Conclusions.
- 5.3 Policy CS1 (Overall Spatial Strategy – Delivering Sustainable Development) establishes some general principles to which new development must “*have regard*”. It reflects paragraph 11 of the Framework, stating that where relevant policies are out-of-date at the time of making a decision then permission will be granted unless material considerations indicate otherwise, taking into account whether any adverse impacts would significantly and demonstrably outweigh the benefits.
- 5.4 Policy CS2 (Overall Spatial Strategy – Quantity and Distribution of Development) sets out the broad locations to which new development should be directed, seeking to prioritise brownfield land and maintain the Green Belt. The majority of new residential development is directed to the Inner Warrington area.
- 5.5 Policy CS3 (Overall Spatial Strategy – Maintaining a 10 Year Forward Supply of Housing Land) is clear that where the Council fails to maintain an adequate supply of developable housing land it will “*bring on-stream*” additional housing sites as required, encouraging re-use of brownfield land and avoiding sites in the Green Belt where possible.
- 5.6 Policy QE6 (Environment and Amenity Protection) is clear that:  
*“the Council will only support development which would not lead to an adverse impact on the environment or amenity of future occupiers or those currently occupying adjoining or nearby properties, or does not have an unacceptable impact on the surrounding area”.*
- 5.7 Policy QE7 (Ensuring a High Quality Place) supports, among other things, proposals that function well in relation to existing patterns of movement and activity and that reinforce local distinctiveness and enhance the character and function of the local area.
- 5.8 Policy MP1 (General Transport Principles) seeks to ensure that new development reduces the need for private car use, considers demand management measures, achieves relevant parking standards and mitigates the impact of development on, or improves the performance of, the transport network.
- 5.9 Policy MP3 (Active Travel) seeks to ensure that high priority is given to the needs and safety of pedestrians and cyclists in new development, including appropriate segregation of users.
- 5.10 Policy MP4 (Public Transport) reiterates the need to locate development in areas with easy access to public transport, ensuring that it is a viable and attractive alternative to the private car. Additional public transport infrastructure should be provided where existing facilities are in need of improvement.

- 5.11 Policy MP7 (Transport Assessments and Travel Plans) requires all developments to demonstrate that they will not significantly harm highway safety and that additional trips can be adequately served by the transport network, providing appropriate mitigation to the satisfaction of the local highway authority.
- 5.12 Policy MP10 (Infrastructure) aims to ensure that development proposals are supported by the timely delivery of necessary transport, utility, social and environmental infrastructure, through planning obligations and a Community Infrastructure Levy. Development should minimise the need for new infrastructure provision, by maximising the benefits of existing provision.
- National Planning Policy Framework (the Framework) and Planning Practice Guidance (the Guidance)*
- 5.13 Although the content of the revised Framework, and of the Guidance, will be well-known to the Secretary of State, it is nonetheless helpful to draw attention to the following paragraphs.
- 5.14 Paragraph 9 states that planning decisions should reflect the character, needs and opportunities of each area.
- 5.15 Paragraph 11 requires, among other things, that development proposals that accord with the development plan should be approved without delay. Its most pertinent point for this appeal is that if there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including where a local planning authority cannot demonstrate a five-year supply of deliverable housing sites), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
- 5.16 Paragraph 15 is clear that the planning system should be genuinely plan led. Plans should be a framework for addressing housing needs and other economic, social and environmental priorities, and a platform for local people to shape their surroundings.
- 5.17 Paragraph 59 emphasises the Government's objective of significantly boosting the supply of homes and notes that it is important that a sufficient amount and variety of land can come forward where it is needed.
- 5.18 Paragraph 94 highlights the great importance that the Government attaches to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities.
- 5.19 Paragraph 97 is clear that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless, among other things, the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
- 5.20 Paragraph 103 promotes sustainable transport choices and paragraph 110 prioritises pedestrian and cycle movements within schemes and neighbouring areas. Paragraph 111 addresses how one should consider developments that generate a significant amount of movement. Paragraph 109 states that development should only be prevented or refused on highways grounds if there

would be unacceptable impacts on highway safety, or the residual cumulative impact would be severe.

- 5.21 Paragraphs 110 and 127 focus on the need for decisions to ensure that developments respond to local character; add to the overall quality of the area; are sympathetic to local character and history; and support local facilities and transport networks.
- 5.22 Paragraphs 170, 180 and 181 set out that new development should not contribute to, or be put at unacceptable risk from, air pollution; ensure that new development is appropriate for its location with regard to the likely effects of pollution on health, as well as the potential sensitivity of the site or wider area to impacts that could arise from the development; and identify opportunities to improve air quality or mitigate impacts.
- 5.23 The Guidance advises<sup>7</sup> that a negatively worded condition (i.e. limiting development until an obligation is entered into) is unlikely to be appropriate in the majority of cases. It does, however, note that in "*exceptional circumstances*", such a condition may be appropriate in the case of "*more complex and strategically important development*" where there is "*clear evidence that the delivery of the development would otherwise be at serious risk*". The six tests relating to planning conditions must also be met.

## **6. Agreed Matters**

- 6.1 A PSoCG between the Council and the appellant was submitted prior to the Inquiry. Among other things, it confirms agreement that:
- there is no strategic housing land supply policy in the Core Strategy and, as such, the development plan is silent in this regard;
  - the Council is unable to demonstrate a five-year supply of deliverable housing land when measured against the objectively assessed need figure for the borough set out in the most recent Strategic Housing Market Assessment (SHMA) Update (2016);
  - there is a considerable shortfall in delivery of affordable housing in the borough and the appeal scheme's contribution of 360 affordable dwellings would be a significant material consideration;
  - with regard to local infrastructure, planning obligations are necessary in relation to sports and recreation facilities, healthcare provision, and primary and secondary education;
  - as a matter of general principle the appeal site is suitable for housing development;
  - the appeal proposal would result in a significant improvement to the quality and quantity of sports provision in this part of the borough;
  - potential harm to landscape and ecology could be mitigated by suitable conditions; and

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<sup>7</sup> 010 Reference ID: 21a-010-20140306

- significant economic inward investment would arise from the appeal proposal.

6.2 A Statement of Common Ground on Highway and Transportation Matters (HSoCG) between the appellant and the Council (as highways authority) was also submitted to the Inquiry. This highlighted nothing in the way of substantive areas of agreement and, as such, is not summarised here.

## **7. Matters not Agreed**

7.1 The substantive matters of disagreement between the parties were a) whether there is sufficient evidence provided to enable one to reach a conclusion that the appeal proposal would not have adverse air quality, noise and highways impacts and b) whether the proposal would deliver the social infrastructure necessary to support it.

## **8. The Case for the Warrington Borough Council**

8.1 The case for the Council is summarised in their Closing Statement to the Inquiry<sup>8</sup> and is set out under a series of headings below.

### ***Introduction***

8.2 There is no objection in principle to the development of the appeal site for the uses proposed. There is also an “acute unmet need”<sup>9</sup> for additional market and affordable housing. This means that c. 8000 - 9000 houses may have to be located on land currently identified as Green Belt through the Preferred Development Options plan. In that context, Peel Hall, a non-Green Belt site in the wider urban area, is a valuable asset. The potential 60 bedroom nursing home and the B(1)(c) uses are also welcomed.

8.3 None of these advantages can, however, justify a proposal which is poorly evidenced in key respects and which may realistically result in unacceptable highway related and air quality impacts. In such circumstances, the Framework’s so-called ‘tilted balance’, which is engaged in this case, is rebutted.

### ***Preliminary Issues re Section 106 Matters***

8.4 The appellant notes the potential to provide 100 affordable units in the town centre if the parties agree<sup>10</sup>. The Framework looks to on site provision and that is what meets the national policy and legal test in this case.

8.5 The appellants say that the healthcare facilities contribution sought is not Regulation 122 compliant and rely on the Congleton appeal decision at Appendix 15 of Mr Griffiths’ Proof. The appeal decision does not assist the appellant. In that case there was no evidence at all as to how the money sought might be spent. In the present case, the clear intention is to move two existing practices into one large centre within the catchment of the appeal site. Plainly, the new on site population will need GP facilities; the money sought is directly related to the development; and it is fairly related in scale and kind.

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<sup>8</sup> ID65

<sup>9</sup> Mr Davies cross examination

<sup>10</sup> ID77 Fourth Schedule, Section 9

8.6 To rely on the fact that a scheme has not yet been identified, together with relevant costings and funding, is self-serving. This is a large scheme with an extended build-out period. It is unrealistic at this stage to expect healthcare provision to be signed off. There is no reason to doubt the evidence of Mr Armstrong that those responsible for healthcare provision are committed to finding an appropriate site and no reason to doubt that facilities will be provided as necessary. If Satnam's submissions are accepted, then developers of large schemes up and down the country will be able to side-step their obligations, avoiding making meaningful infrastructure contributions towards meeting the needs arising from their developments.

### **Background**

- 8.7 The evolution of this case has been difficult. It was submitted without a Transport Assessment (TA) that modelled impacts on the wider network. This was contrary to advice from the Council. Engagement with Highways England appears to have been limited and late. The Option B proposal has now been abandoned.
- 8.8 The evidence to support the appeal case in respect of wider impacts has had a tortured evolution so that the TA relied upon was only submitted in January 2018 (the appeal having been submitted on 22nd June 2017). Even then it failed to use the Warrington Multi Modal Transport Model 2016 (WMMTM 2016) or, at the least, origin/destination data from it.
- 8.9 Mr Tighe (of Highgate Transportation (Highgate) for the appellant) knew of the WMMTM 2016 in March 2017<sup>11</sup> and was told in November 2017 that Highgate could use it. Highgate declined, not wishing to "unpick" the work that they had thus far done. It was only in Mr Tighe's Proof that some attempt was made to engage with WMMTM 2016.
- 8.10 Problems with the TA and the appellant's Proofs of Evidence led to a series of Transport Notes having to be produced by the appellant during the course of the Inquiry.
- 8.11 Air quality issues were similarly troubling. The Air Quality chapter of the Environmental Statement, which was based on 2014 monitoring work, has effectively been abandoned.
- 8.12 Mr Hawkins' (for the appellant) Proof relied heavily on unevidenced or otherwise unexplained assertions (e.g. his air quality impact work under three scenarios was largely a series of unevidenced outputs). The result was a request from the Inspector for him to submit answers to a series of questions. The answers themselves raised more unanswered questions (see Mr Moore's (for the Council) second supplementary Proof).
- 8.13 In short, this is a case in which, in respect of Highways and Air Quality issues, the evidence has been running to catch up with, and justify, the proposal. This is not a proposal that was shaped by reliable and comprehensive evidence in respect of these key issues.

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<sup>11</sup> Mr Tighe Proof 6.42

## **Highways**

- 8.14 Cross Examination of Mr Crossley and Mr Taylor (for the Council) emphasised the absence of positive evidence from the Council of "*severe residual impacts*", as indicated by paragraph 32 of the Framework, on the highway network.
- 8.15 Paragraph 32 begins by noting that developments that generate significant movements should be accompanied by a TA. This assumes, by necessary implication, a competent and comprehensive TA. It is the job of an applicant/appellant to carry out such a task. It is not the job of a Council.
- 8.16 If an applicant/appellant carries out a competent and reliable TA then that is to be relied upon. Only if it reveals "*severe residual impacts*" should a proposal be refused. The difficulty in the present case is that the TA cannot be relied upon with full confidence.
- 8.17 Following Mr Taylor's (for the Council) expressed view, in answer to the Inspector's questions, that the appellant's chosen junctions can, with mitigation, accommodate traffic whether using the Satnam model or the WMMTM 2016, the Council's concerns principally fall into two broad categories. First, the absence of an assessment of the impacts of the proposal on unassessed junctions and, second, the impact of the proposal on Poplars Avenue and Capesthorne Road in particular.
- 8.18 Quite why the appellants never "ran" their proposals using the WMMTM 2016 is not wholly clear. They knew of the existence of the model in March 2017 and, while the Council was not prepared to allow its use, they could have sought access to the more recent origin/destination data within it. There is no clear evidence that they ever did.
- 8.19 Moreover and in any event, they were told that they could use the model on 22 November 2017<sup>12</sup>. They declined. This is the most up-to-date source of evidence on local traffic flows and distribution. It also appears that there are significant, material differences between the WMMTM 2016 and the Satnam Peel Hall model<sup>13</sup>.
- 8.20 The appellant cannot get away from the fact that their modelling relies upon origin/destination data some 10-13 years old, which they have not sought to validate. That is contrary to guidance set out in WebTAG.
- 8.21 The local road network is under significant pressure and is congested. The recent Atkins work for the Council using the WMMTM 2016 software indicated 25 junctions with a Reference Flow Capacity ratio in excess of 85%, meriting detailed investigation over and above that carried out by the appellant<sup>14</sup>. These additional movements are likely to be potentially significant.
- 8.22 Even using the Highgate junction selection methodology, there are 11 junctions requiring investigation<sup>15</sup>. The WMMTM 2016 and the recent Atkins work for M62 J9 both suggest that the Satnam Peel Hall model

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<sup>12</sup> Mr Taylor's proof Appendix 4, p7

<sup>13</sup> Mr Crossley Supplementary Proof paras 3.3-3.6

<sup>14</sup> Mr Taylor's Second Supplementary Proof paras 2.64-2.65

<sup>15</sup> Ibid para 2.68



underestimates flows on critical links. The question therefore arises as to whether it is acceptable to permit a large scheme when aspects of its impact are not properly understood and have not been properly investigated.

- 8.23 Both Poplars Avenue and Capesthorne Road are under significant stress, as testified to by local witness after local witness. From a safety point of view for both pedestrians and cyclists there are widespread local concerns. These roads are essentially residential roads characterised by frontage access and largescale on-road parking. The increase in movements along these roads is likely to be very significant<sup>16</sup>. The appellant's suggestion that the capacity of these roads is circa 10,000+ vehicles per day, by reliance on TA 79/99<sup>17</sup> (A Guide to New Urban Trunk Road Links), is inappropriate. So too is reliance on Manual for Streets, given the actual characteristics of the roads, although the anticipated flows will be significantly in excess of 10,000 vehicles per day in any event.
- 8.24 There is no evidence to demonstrate that these levels of flow along these roads will be acceptable. Microsimulation has not been undertaken by the appellant and yet it is self-evident that these roads are already carrying large traffic volumes in difficult circumstances.
- 8.25 There has been no effort to engage 'head on' with the issue of the environmental capacity of the roads. It is not for the Council to carry out microsimulation for the appellant, but rather it is for them to address a very obvious problem. They have not done so. They suggest a possible 20 mph speed limit but there is no evidence that it would address the problems and it would require a Traffic Regulation Order in any event.

### **Air Quality**

- 8.26 Air quality is not a 'Cinderella' topic. Paragraph 109 of the Framework sets its face clearly against new and/or existing development being put at unacceptable risk from air pollution. That approach is consistent with Core Strategy policy QE6.
- 8.27 This is a topic that has risen up the planning agenda as the adverse health impacts of poor air quality are better understood. In *Gladman Developments Ltd v. SoSCLG* [2017] EWHC 2968 (Admin), Justice Supperstone supported the approach of an Inspector who adopted a precautionary approach in not simply assuming that the UK would soon comply with the Air Quality Directive.
- 8.28 The appeal proposes very significant levels of development and the appeal site is in close proximity to two Air Quality Management Areas (AQMA), being the M62 (directly to the north) and the Warrington A49 (some 150 metres to the west of the site). In cross examination Mr Hawkins readily agreed that, in the present case, a) a precautionary approach should be taken to air quality issues and b) that relevant modelling and relevant conclusions should be based on the best evidence reasonably available. Unfortunately the approach to air quality issues

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<sup>16</sup> Ibid para 2.46

<sup>17</sup> ID33 Appendix 2

by the appellants has been confused and lacking in transparency.

- 8.29 The application was supported by an ES chapter on Air Quality. That document has been all but abandoned. The credibility of Mr Hawkins' evidence must be in doubt. A particular problem was that the document relied upon a four month survey in Autumn 2014 using nitrogen dioxide diffusion tubes at nine locations across the appeal site. National guidance at that time (TG(09)) looked to at least six months and preferably twelve months monitoring in most cases.
- 8.30 No clear explanation was offered as to why such a short period of monitoring was undertaken (Mr Hawkins first became involved with the site in 2012) or how the necessary 'seasonal correction' had been calculated. Similarly, the 'bias correction' factor used did not represent a 'worst case scenario'.
- 8.31 The survey data produced peculiar results. No tube recorded an exceedance of 40 ug/m<sup>3</sup> for nitrogen dioxide, yet all of the monitoring was proximate to the M62 AQMA. At 50 metres from the M62 a 24.73 ug/m<sup>3</sup> was recorded, for example. Nonetheless, the appellant proceeded to rely upon this work.
- 8.32 Had they looked at the Council's diffusion tube monitoring for 2013, 2014 and 2015 they would have discovered that 2014 was an atypical year. Similarly, a cross-reference to the Highways England Monitoring Metering Pilot Scheme Air Quality Assessment (2015), or the M62 Junction 8 Improvement Works Air Quality Assessment (2016), would have revealed that the appellant's 2014 survey work did not produce reasonable results.
- 8.33 In evidence Mr Hawkins abandoned reliance on the 2014 work. The result is that the Inquiry is without on-site air quality monitoring data. That is not critical, as Mr Moore for the Council explained, but the errors leading up to it are troubling.
- 8.34 In his submitted evidence, which sought to incorporate the ES addendum TA work, Mr Hawkins looked at off-site air quality impacts under three scenarios for both Options A and B:
- Scenario 1: The impact of the proposed flows in the ES addendum;
  - Scenario 2: The impact uplifted in line with the Council's 2016 SATURN<sup>18</sup> matrices; and
  - Scenario 3: Impacts under Scenario 1 with a 25% uplift.
- 8.35 Inexplicably, Scenario 3 is no worse in any material regard than Scenario 1.
- 8.36 These scenarios were seen as a necessary sensitivity test. Surprisingly, no assessment was carried out of the new junction proposed under Option B, which would have been located in the Warrington AQMA. This is another odd approach to evidence.
- 8.37 The above work was highly unsatisfactory insofar as it tended to produce outcomes only, rather than providing any detailed explanations of how they were achieved. Moreover, the data itself raised questions:

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<sup>18</sup> Simulation and Assignment of Traffic to Urban Road Networks

- The grid references used for the sensitive receptors did not marry up with the purported receptors;
- No detail was provided about how the model used had actually been set up; and
- No detail was provided as to what background pollutant levels had been assumed or how future background levels had been accounted for.

8.38 Thus, the Inspector requested significant additional information that was provided by Mr Hawkins in a note dated 4 May 2018<sup>19</sup>. That raised more issues, which Mr Moore and Mr Hawkins have sought to address in a series of e-mails<sup>20</sup>.

8.39 The position is an unhappy one and it is the outcome of pursuing a proposal that was based on a wholly inadequate Air Quality ES chapter and which, in respect of air quality issues, has been running to catch up ever since. This problem has been hugely complicated by the fact that the TA modelling work (on which the Air Quality Assessment is of necessity based) was not available until January 2018. The key outstanding problems are as follows:

- The Average Annual Daily Traffic (AADT) data lacks transparency. It appears a factor of 6 (i.e. AM + PM x 6) has been used on some of the links, but no advice recommending the use of such a factor has been made available. *Prima facie*, it is crude. Different roads plainly have different inter peak characteristics. Moreover, why is 6 used when Mr Tighe uses AM + PM / 2.63 x 24<sup>21</sup>? Is that the figure behind some assumed AADTs on some roads and, if so, which? If Mr Hawkins gave comprehensive AADT information, these questions could readily be answered;
- No traffic data has been presented by Mr Hawkins for 2025 or 2030 (years that are modelled by him in his submitted proof);
- It is unclear how junctions have been modelled. Only one example has been provided (Long Lane/Winwick Road), and we are told that queue lengths and speeds used in the modelling are from Mr Hawkins' on-site observations. No evidence of these observations is offered. Local Air Quality Management Technical Guidance (16) has a methodology to be used in the modelling of junctions. It has not been followed in respect of congested junctions and most junctions in the study area are congested.

8.40 The sensitive receptor locations remain an issue. Mr Hawkins says that while the grid references in the Air Quality Assessment model were wrong, the locations of the receptors relative to the roads have always been correct. That may be so. Until he provides a plan showing the 'skewed' locations, however, we cannot check that the allegedly correct locations are indeed correct.

8.41 It is perhaps unsurprising that Mr Hawkins is using a validation factor of 8, but that suggests that the model is under-predicting by a factor of 8. The simple fact is that there are multiple indicators that the air quality modelling work

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<sup>19</sup> ID38

<sup>20</sup> Appended to Mr Moore's Supplementary Proof ID54

<sup>21</sup> Please see ID33 page 6 onwards

cannot be relied upon. The overarching concern is the reliance on the bespoke Peel Hall traffic model, which uses old origin/destination data. Nonetheless, other concerns arise.

- 8.42 An adequate model is necessary to inform judgments as to the acceptability of air quality impacts. One does not exist in this case. As Mr Moore repeated in his cross examination, the result is that there is the potential for unacceptable air quality impacts to arise in this case.
- 8.43 The proposal will load significant additional traffic into an AQMA. Mr Hawkins expressly agreed that a precautionary approach should be taken based on the best evidence reasonably available. To allow this appeal would not amount to taking a precautionary approach. It would be an exercise in unevidenced guesswork. That is wholly unacceptable given the density of the local population and the close proximity of the site to two AQMAs.
- 8.44 The appellant emphasises that the Council has not demonstrated unacceptable impacts. It is not the Council's job to carry out an air quality impact assessment. It is the appellant's job to carry out a competent and reliable one and they have failed to do so.

### ***Council's Conclusion***

- 8.45 In summary, there are too many unknowns in respect of this proposal, with a clear potential for unacceptable harm. The appeal should be rejected.

## **9. The Case for Satnam Millennium Ltd (the appellant)**

- 9.1 The case for the appellant is summarised in their Closing Statement to the Inquiry<sup>22</sup> and is set out under a series of headings below.
- 9.2 Following a lengthy planning history spanning several decades, it is common ground between the appellant and the Council that there should be 1200 houses on the appeal site. That is perhaps unsurprising given the current level of housing need in the Council's area and the fact that the appeal site lies within the designated "suburban" area of Warrington on the proposals map of the Core Strategy. That is its only notation or allocation. It therefore has no protective or constraining notation at all, whether for planning purposes, landscape purposes, ecological purposes or any other.
- 9.3 The Council's objections to the appeal scheme are thus illegitimate in so far as their effect is to call into question the principle of residential-led development of the appeal site. As to the objections advanced by the Council that relate to the specific proposals put forward by the appellant, the latter's evidence has shown that those objections do not come near to establishing that the adverse impacts of the appeal scheme significantly and demonstrably outweigh its benefits, which is the threshold that must be met if planning permission is to be refused. To the contrary, the Council itself accepts that the appeal proposals would bring about substantial, positive, transformational change.
- 9.4 We address the following points in turn. We confirm at the outset that Option A alone is now pursued by the appellant, Option B no longer being pursued.

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<sup>22</sup> ID67

### ***The development plan and the Framework***

- 9.5 S38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the Council's development plan unless material considerations indicate otherwise. The appellant's evidence has shown that the appeal scheme accords with the development plan and that planning permission should be granted.
- 9.6 In its decision notice dated 24 February 2017, refusing planning permission, the Council asserts that the appeal scheme fails to accord with the development plan in the following two respects: (i) as regards its impact on highways and consequent air quality and traffic noise effects and (ii) as regards the proposed community provision (school, healthcare, and sport and recreation provision).<sup>23</sup>
- 9.7 The alleged conflict with the development plan that the Council identifies in relation to highways, air quality and traffic noise impacts is, however, expressed in terms of an absence of information. Whilst the Council continued to assert at the Inquiry that necessary information was outstanding, it did not challenge in any way the evidence of the appellant's planning witness Mr Griffiths that the appeal scheme accords with the development plan as a whole.<sup>24</sup> The evidence provided by the appellant has shown that those impacts do not result in any conflict with the development plan. We return to this below.
- 9.8 As to the second alleged conflict with the development plan, the community provision that would be provided pursuant to the s.106 agreement satisfies the relevant development plan policies.
- 9.9 There are no material considerations that indicate that planning permission should be withheld notwithstanding the appeal scheme's compliance with the development plan. In particular, the Framework indicates that planning permission should be granted. Paragraph 14 emphasises that (unless material considerations indicate otherwise) not only should development proposals that accord with the development plan be approved, they should be approved without delay.
- 9.10 The latter requirement is particularly important here where, in the context of an acute shortfall of both market and affordable housing, the appeal site has for many years failed to realise its obvious potential to make a very significant contribution to housing needs, to economic and social needs, and to regeneration.
- 9.11 The Framework goes on to provide that:

*"Where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework ["footnote 9 policies"] indicate development should be restricted".*

It is agreed that this so-called 'tilted balance' applies to the determination of the appeal.

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<sup>23</sup> CD APP1, Appendix 2.

<sup>24</sup> Para. 6.9 of his proof of evidence.

9.12 Parts of the Core Strategy having been quashed by the High Court in 2015,<sup>25</sup> the development plan is “silent” in relevant respects.<sup>26</sup> Remaining policies for the supply of housing are “out-of-date” having regard to paragraph 49 of the Framework. There is no housing requirement against which a supply of deliverable housing sites can be measured (the relevant Core Strategy policies having been quashed) and the Council is in any event unable to demonstrate a five-year supply of such sites.<sup>27</sup> No so-called ‘footnote 9’ policies apply to the appeal site. It is clear from the decision of the Supreme Court in *Hopkins Homes Ltd v SSCLG* [2017] 1 WLR 1865<sup>28</sup> that the ‘tilted balance’ is engaged in these circumstances.

9.13 The question, therefore, is whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against Framework policies taken as a whole. It is plain that they would not.

### ***Benefits of the appeal scheme***

9.14 As the officer report<sup>29</sup> to the Council’s Development Control Committee recognises, the appeal scheme is:

*“undoubtedly capable of bringing significant potential benefits as a sustainable ‘urban extension’ to the northern edge of Warrington, without intruding into Green Belt”.*

The report goes on to acknowledge the potential for the appeal scheme to make “a valuable contribution” in terms of new homes, jobs, local services and supporting social and other infrastructure<sup>30</sup>, and to effect “very substantial, positive transformational change” in an area that the Council notes is “ranked in the bottom 10, 20 and 30 per cent of the most deprived in England”. Mr Davies, the Council’s planning witness, and the author of the report, confirmed in cross-examination that these remained his views.

9.15 Dealing first with the contribution that the appeal scheme would make in terms of new homes, the evidence shows that this contribution is more than valuable: it is vital. Mr Robinson’s evidence on behalf of the appellant that the Council’s housing land supply stands between 1.47 and 2.17 years<sup>31</sup> has not been challenged. The extent of the shortfall against the Framework requirement of a five-year supply is important: Justice Hickinbottom (as he then was) observed in *Gallagher Homes Ltd v Solihull MBC* [2014] JPL 1117, “numbers matter”<sup>32</sup>.

9.16 The extent of Warrington’s housing need was also emphasised by Helen Jones MP<sup>33</sup>, who stated that:

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<sup>25</sup> Court Order at CD OD2.

<sup>26</sup> Silence in this context means an absence of relevant policy: see the judgment of Lindblom J (as he then was) in *Bloor Homes East Midlands Ltd v SSCLG* [2017] PTSR 1283.

<sup>27</sup> Planning Statement of Common Ground para. 3.2 (CD APP5).

<sup>28</sup> CD OD13.

<sup>29</sup> CD APP1, Appendix 1, p. 5.

<sup>30</sup> *Ibid.* See also the proof of evidence of Mr Robinson at sections 4 and 5.

<sup>31</sup> Table 5.4 within Mr Robinson’s proof of evidence.

<sup>32</sup> At [94].

<sup>33</sup> Letter to the Inquiry from Helen Jones MP (ID23).

*"Warrington is desperately in need of more houses to rent and affordable homes to allow young people to get a foot on the housing ladder".*

- 9.17 As Mr Davies agreed in cross-examination, the appeal site forms one of the vital elements of the Council's planned forward supply of housing.
- 9.18 The officer report<sup>34</sup> notes that, *"the principle of a substantial amount of new housing on part or all of the [appeal] site"*, having *"been mooted in various development plan drafts in the past"*, found expression in the Council's 2016 Strategic Housing Land Availability Assessment (SHLAA).<sup>35</sup>
- 9.19 The appeal site was subsequently included in the Council's July 2017 SHLAA<sup>36</sup> as a *"suitable, available and achievable"* site with the potential to contribute 1200 dwellings in total: 135 during 2017–2022; 550 during 2022–2027; and 515 during 2027–2032<sup>37</sup>.
- 9.20 On 10 July 2017 the Council's Executive Board approved the *Warrington Borough Council Local Plan Preferred Development Option Regulation 18 Consultation* (Preferred Development Option)<sup>38</sup>. The July 2017 SHLAA was reported to the Council as a technical background paper in support of the Preferred Development Option. The Preferred Development Option assumes that all sites identified as suitable, available and achievable in the July 2017 SHLAA are to be developed within the plan period.
- 9.21 The Preferred Development Option confirms a total urban capacity for 15,429 homes<sup>39</sup>. That figure includes 4869 new homes in the *"wider urban area"*<sup>40</sup>, which includes (albeit not explicitly) 1200 new homes on the appeal site<sup>41</sup>. Mr Davies agreed in cross-examination that these urban SHLAA sites are, on the current Preferred Development Option evidence base, key and predominant elements of the Council's planned forward housing supply.
- 9.22 The need for housing within the Council's area is so acute that, following a comprehensive assessment of urban capacity, the Preferred Development Option also proposes substantial Green Belt release to accommodate 9345 new homes.<sup>42</sup> It is not proposed, however, to release this Green Belt capacity until the Preferred Development Option is adopted (presently anticipated for autumn 2019)<sup>43</sup>.
- 9.23 The Preferred Development Option is subject to ongoing sustainability appraisal and strategic environmental assessment, as part of which alternatives have been considered at every stage, both as to the extent of Green Belt release

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<sup>34</sup> At p.35.

<sup>35</sup> CD APP1, Appendix 5.

<sup>36</sup> CD LP10.

<sup>37</sup> The 1200 figure relates to the appeal site excluding that part of the appeal site that is Homes England land.

<sup>38</sup> CD LP8. The Appellant does not rely on any emerging policies of the Preferred Development Options, but does rely on its evidence base.

<sup>39</sup> *Ibid* at para. 4.10.

<sup>40</sup> *Ibid* at para. 5.9 (Table 11).

<sup>41</sup> *Ibid* at paras. 5.19 to 5.23.

<sup>42</sup> *Ibid* at para. 5.9 (Table 11).

<sup>43</sup> Mr Davies's response in cross-examination (N.B. this date will now slip - see ID76)

required and as to the location of that release<sup>44</sup>. As Mr Davies accepted in cross-examination, no option has been considered that omits the appeal site from the base case. It follows that (as was also accepted by Mr Davies) the development of 1200 new homes on the appeal site would secure a significant benefit in that it would tend to reduce the need to go undesirably into the Green Belt in order to meet the housing need within the Council's area. The delivery of the homes that are needed could also be delayed were it necessary to release land from the Green Belt.

9.24 It is common ground between the Council and the appellant that the appeal site is suitable as a matter of general principle for housing development.<sup>45</sup> Given the appeal site's location (within the wider urban area and surrounded on three sides by existing residential development), the impacts identified in the Council's reasons for refusal are the inevitable consequence of the necessary development of the appeal site. Having regard to the vital role that the appeal site plays in the Council's planned forward supply of housing, however, the question is whether those inevitable impacts can be adequately mitigated.

9.25 That is the approach that was taken by the Council in 2016 to the proposal for up to 1100 new homes together with a local centre at Omega South (in effect, an urban extension to west Warrington)<sup>46</sup>. The officer report for the Omega South scheme acknowledges "*that the area does suffer with traffic congestion*"<sup>47</sup> but goes on to record the local highway authority's view as being that:

*"the highway measures proposed as part of the development are considered to acceptably mitigate the impacts of the development on the local highway network"*<sup>48</sup>.

9.26 The approach is also supported by the development plan. As Mr Griffiths explained<sup>49</sup>, Core Strategy Policies CS2 and SN1 direct new residential development (i) to the defined Inner Warrington area (60%) and (ii) to the town's suburbs and "*to a lesser extent*" the borough's defined settlements (40%), so as to preserve the Green Belt. The provision made in the Core Strategy for housing growth in Warrington's suburbs in effect acknowledges that the appeal site is the right location in principle for residential development.

9.27 We turn to the contribution that the scheme would make towards meeting affordable housing need in the Council's area. The annual net need for affordable housing is 288 dwellings per annum (dpa)<sup>50</sup>. The completion figures set out in Table 5.2 of Mr Robinson's proof of evidence were not challenged. These show that the Council has failed to deliver sufficient affordable housing every year since 2009/10 (save for 2010/11, when 291 units were delivered). During 2016/17 only 72 affordable housing units were delivered, such that the

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<sup>44</sup> Confirmed by Mr Davies in cross-examination.

<sup>45</sup> Subject to demonstrating that it is able to be adequately accessed and that social infrastructure to support its development can be delivered: SCG (CD APP5) at para. 5.36.

<sup>46</sup> Omega South officer report: CD OD9 at p. 4.

<sup>47</sup> *Ibid* p.17

<sup>48</sup> *Ibid* summary at p.28

<sup>49</sup> Evidence-in-chief

<sup>50</sup> Proof of evidence of Mr Robinson; agreed by Mr Davies in cross-examination.



cumulative shortfall against the 288 dpa figure since 2009/10 stands at 919 units.

9.28 Against the above context of a woeful level of provision in relation to defined need, the appeal scheme would provide 360 affordable housing units. That is more than the 335 units that have been delivered, across the entirety of the Council's area, since 2014/15. This contribution is a substantial benefit to weigh in the overall planning balance, as Mr Davies accepted in cross-examination<sup>51</sup>.

9.29 Mr Davies also agreed that the option of allowing a modest proportion (up to 100 units) of affordable housing to be delivered off-site on a Warrington town centre site had some planning benefit. This would be more sustainable in terms of accessibility and, generally speaking, those in need of affordable housing had less access to private transport. There is, as Mr Davies acknowledged, an "*understandable case*" for providing smaller units in an accessible location.

9.30 The evidence provided by Mr Robinson<sup>52</sup> as to the economic benefits of the appeal scheme (including job predictions) was not challenged by the Council. It shows<sup>53</sup> that the appeal scheme would impact positively on the local economy by generating a range of direct, indirect and catalytic effects as follows:

- The injection of c.£150 million of private sector investment into Warrington's economy for the construction of the site alone, which could sustain 129 Full Time Equivalent (FTE) construction jobs directly and a further 196 FTE jobs indirectly, across a range of skill levels;
- the generation of c.£20 million of direct and indirect GVA per annum during the construction phase of the appeal scheme;
- the non-residential elements of the appeal scheme are likely to sustain 453 jobs (366 FTE) directly once operational. Mr Robinson estimates that this would equate to around 332 net additional FTE jobs at a local level;
- Residents of the 1200 units are likely to generate around £6.6 million of first occupation expenditure. The total net additional expenditure of new residents is also estimated at around £13 million per year, which could sustain a further 126 local FTE jobs in retail, leisure, hospitality and other service-based sectors; and
- The New Homes Bonus award resulting from the 1200 new dwellings could be as high as £7.3 million over a 4-year period, whilst the additional Council Tax generated by the scheme could equal £1.7 million in perpetuity.

9.31 It is common ground between the appellant and the Council<sup>54</sup> that there is a qualitative and quantitative shortfall in sports provision in the part of Warrington borough in which the appeal site is located (and a qualitative shortfall across the borough) and that the appeal proposals would provide a significant improvement in that regard. The replacement of the Mill Lane pitches

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<sup>51</sup> See also the PSoCG at paragraph 5.9.

<sup>52</sup> Proof of evidence of Mr Robinson section 4

<sup>53</sup> *Ibid* para. 4.33.

<sup>54</sup> SCG (CD APP5) at para. 5.39.

to the centre and south of the appeal site is agreed as appropriate with the Council. Sport England raises no objection to that proposal<sup>55</sup>. The proposed sport and recreation provision is agreed to be a significant material consideration<sup>56</sup>.

9.32 The open space strategy for the appeal scheme is to create an extension to the existing Peel Hall Park (which lies to the south-east of the appeal site) up through the centre of the appeal site, which is to include the improved Windermere Avenue recreation area, the on-site playing fields, Radley plantation (woodland), the wood to the south of Peel Hall farmhouse and links to the pedestrian routes alongside and over the motorway to the countryside beyond. It is agreed that the provision of this significant area of open space, which would be available to both current and future residents, is a significant material consideration<sup>57</sup>. Of the 69.1ha total area of the appeal site, 13.24ha is to be semi-natural green space<sup>58</sup>.

9.33 The appeal proposals in respect of sports and recreation provision and open space accord with the healthy living objectives of the Framework<sup>59</sup>.

9.34 Other aspects of the appeal scheme that are common ground between the Council and the appellant include:

- Site layout;<sup>60</sup>
- The absence of any objection on landscape impact grounds;<sup>61</sup>
- There is agreement on ecological/biodiversity matters<sup>62</sup>. It is common ground that there are no designated or natural features within the appeal site that are not able to be satisfactorily protected, managed or resolved at the reserved matters stage<sup>63</sup>. Whilst third parties raised the potential impact on breeding birds as a concern, Mr Ryding's (unchallenged) evidence on behalf of the appellant in response was that having regard to the proposed habitat creation/enhancement and management measures, the residual impact of the construction phase of the appeal scheme might reduce from 'moderate adverse' to 'slight adverse'. His view was that the operational phase of the appeal proposals would result in a 'negligible-low' effect. We return to his evidence in more detail below. As Mr Davies explained in cross-examination, the Council's view is that adequate ecological mitigation can be secured by condition, with input from the Council and the appellant's ecological advisers.
- It is agreed that the drainage and infrastructure requirements of the appeal scheme are capable of delivery via reserved matters submissions

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<sup>55</sup> *Ibid*, para. 5.40.

<sup>56</sup> *Ibid* at para. 5.11.

<sup>57</sup> *Ibid*, paras. 5.33 and 5.34.

<sup>58</sup> See the breakdown provided as ID20.

<sup>59</sup> See, in particular, part 8 of the NPPF (CD NP1). This was agreed by Mr Davies in cross-examination.

<sup>60</sup> Confirmed by Mr Davies in cross-examination.

<sup>61</sup> SCG at paras. 5.35 and 5.41.

<sup>62</sup> *Ibid*.

<sup>63</sup> *Ibid* at para. 1.4.

and by condition<sup>64</sup>. Flooding and archaeology would also be dealt with by condition<sup>65</sup>.

9.35 The officer's report confirms that the appeal scheme is considered to be a sustainable urban extension<sup>66</sup>. It is not surprising that the Council considers that the appellant's proposal to bring forward significant sustainable development on the appeal site "*clearly*" has the potential to deliver substantial transformational benefits<sup>67</sup> and "*very substantial, positive transformational change*". The report goes on to note that:

*"the proposal reinforces the evidence that Warrington is capable of attracting large scale new mixed use development, and is a desirable location of choice for land developers, businesses and for those wishing to base themselves in Warrington, as new or re-locating residents"*.

9.36 That statement finds support in the Warrington & Co 2018 Annual Property Review.<sup>68</sup> Before summarising the findings of the July 2017 SHLAA, the Review notes that:

*"this year [Warrington] was named within the 'Top 10 Best Places to Live in the UK' in Property Week's Hot Housing Index, a scale which ranks areas against a range of criteria including affordability, employment levels, transport and school provision"*.

9.37 It also notes that Warrington has been awarded the second-place position on Channel 4's programme "UK's Best Place to Live". The Council accepts that there is strong developer interest in Warrington<sup>69</sup>.

9.38 Very substantial positive weight should be accorded in the overall planning balance to the range of potential benefits that the appeal scheme would provide. This is accepted by the Council in the officer's report<sup>70</sup>.

### ***The Inspector's main considerations***

9.39 We turn to consider the main considerations identified by the Inspector.

#### ***The effect of the proposed development on the safety and efficiency of the local and strategic highway networks***

9.40 Paragraph 32 of the Framework provides that:

*"development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe"*.

To the extent that any of the Council's development plan policies indicate that a lower level of impact will justify refusal of planning permission, only limited

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<sup>64</sup> *Ibid* at para. 5.42.

<sup>65</sup> Cross-examination of Mr Davies.

<sup>66</sup> CD APP1, Appendix 1, p. 6.

<sup>67</sup> *Ibid*.

<sup>68</sup> ID19.

<sup>69</sup> Response to Inspector's question.

<sup>70</sup> At p. 35.

weight should be given in the overall planning balance to any conflict with those policies, given that they are inconsistent with paragraph 32.

- 9.41 The Council has signally failed even to attempt to show that the residual cumulative impacts of the appeal scheme would be severe so as to justify refusing planning permission on transport grounds. Mr Crossley accepted in cross-examination that it was not the purpose or effect of his evidence to seek to demonstrate that, on the evidence available to the Inquiry, the appeal scheme would result in a significant adverse impact anywhere on the highway network. Similarly, Mr Taylor accepted that he did not identify any significant or severe cumulative impact that could not be mitigated by an appropriate planning condition. This was confirmed on Day 9 of the Inquiry following the submission of all of the further material that had arisen since his original evidence.
- 9.42 Mr Taylor acknowledged in cross-examination that in the light of the Council's support in principle for residential development on the appeal site, it was incumbent on the Council to seek solutions to traffic and access matters. It has been clear that officers have been directed by members to take an approach wholly different to that taken in relation to other major recent development sites, for example Omega and South Warrington.
- 9.43 That is apparent from the lengthy list of criticisms of the appellant's traffic work that is set out in the Council's written traffic evidence. Those criticisms do not appear in relation to the above schemes and do not (either singly or cumulatively) justify a refusal of planning permission on traffic grounds, as the Council's traffic witnesses recognised in oral evidence. The appellant's response to the individual criticisms raised is as follows.
- 9.44 Modelling: age of data and trip distribution. The Council criticises the appellant for having used the 2008 VISUM model ("2008 WMMTM") as the best available source of origin-destination data for its SATURN model, developed by AECOM. The specific point taken against the appellant is that the trip distribution that resulted from the 2008 WMMTM is unreliable.
- 9.45 The study area for traffic modelling was (and remains) agreed between the appellant and the Council<sup>71</sup>. In early April 2016, the use of origin-destination data from the 2008 WMMTM was agreed between AECOM and the Council<sup>72</sup>. Use of that data proceeded in the assessments of AECOM, Highgate Transportation ("Highgate") and the Council for 19 months, until Highgate was informed in November 2017 that the view of WSP (for the Council) was that the use of origin-destination data from the 2016 WMMTM would be more robust.
- 9.46 Mr Crossley acknowledged both AECOM's general expertise and great experience in relation to the Warrington area specifically<sup>73</sup> (AECOM constructed the model in respect of Junction 9 of the M62 for the Highways Agency/Highways England and were instructed by the Council to construct the 2016 WMMTM). He agreed that AECOM's opinions are valuable and are to be

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<sup>71</sup> Cross-examination of Mr Taylor.

<sup>72</sup> *Ibid* and CD OD8.

<sup>73</sup> In cross-examination.

respected. Mr Taylor similarly agreed that AECOM are highly respected traffic modellers with extensive local experience<sup>74</sup>.

9.47 The Council's officers expressed a similar view at a meeting on 22 March 2017, explaining that they did not intend to review the appellant's SATURN base model as part of the pre-app (nor the outputs at each stage) because they "*had confidence in AECOM*" and agreed that there was no overriding need for the step-by-step review<sup>75</sup>.

9.48 The Local Model Validation Report (LMVR) produced by AECOM in September 2017<sup>76</sup> concludes that:

*"both the AM and PM peak period SATURN models are fit for the purpose of being taking [sic] forward to forecasting in order to understand the likely impact of the proposed Peel Hall Development"*.

9.49 That conclusion was informed by a SATURN Forecasting Report that Mr Crossley accepted had calibrated the model. It is the conclusion of independent and highly respected consultants. It is plainly highly relevant to the use of the appellant's SATURN model at this Inquiry.

9.50 By letter dated 23 October 2017 Atkins, Highways England's consultants, reviewed the appellant's transport evidence in relation to the impact of the appeal proposals on the strategic road network. They expressed the view that the extraction of origin-destination data from the 2008 WMMTM was "*robust in lieu of a more up to date model*".<sup>77</sup>

9.51 As Mr Taylor confirmed in cross-examination, there has not been any material change on the highway network between the date of AECOM's conclusion in September 2017 and the present. Mr Crossley confirmed that all of the developments that have been brought forward since 2005, and to which he refers in section 6 of his proof of evidence, were known to transport modellers in 2017.

9.52 In section 5 of his proof of evidence Mr Crossley criticises the use of the 2008 WMMTM for failing to accord with the Department for Transport's WebTAG guidance. As he accepted in cross-examination, however, there is no national or local policy that suggests (still less requires) that WebTAG be used in the assessment of private development schemes. Mr Crossley was unable to identify any appeal decision in respect of such a scheme that had applied the guidance. As the guidance explains, its function is to:

*"facilitate the appraisal and development of transport interventions, enabling analysts to build evidence to support business case development, to inform investment funding decisions"*<sup>78</sup>.

9.53 Moreover, as Mr Crossley agreed, the appellant's SATURN model has, in comparison with the Council's SATURN model, *over-estimated* trips between the

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<sup>74</sup> In cross-examination.

<sup>75</sup> See para. 9 of meeting note within CD OD8.

<sup>76</sup> CD APN101, Appendix 57.

<sup>77</sup> CD APN101, Appendix 59, p. 2.

<sup>78</sup> CD CF2 at para. 1.2.1.

appeal site and those roads in the vicinity that have been identified by the Council as sensitive (including Poplars Avenue and Capesthorpe Road).

9.54 As regards trip distribution, whilst the Council contends that the appellant's trip distribution is unreliable, Mr Crossley accepted that the focus of its evidence is on establishing the extent to which the appellant's figures differ from its own figures. It has not produced any evidence at all in respect of the *consequences* of those differences (i.e. any evidence of any impact, let alone any severe impact). The Council could have produced its own evidence by running its own SATURN model in relation to the appeal scheme. It chose not to.

9.55 Mr Crossley accepted, in relation to the greater flows in paragraph 3.31 of his supplementary proof, the following:

- That this is a flexible network where with multiple routes to the south, drivers will tend to adapt their route to seek the quickest route on that day;
- This was one run of the model; another run would show slightly different patterns; and
- That in relation to roads/junctions to the south he had provided no evidence of traffic conditions there and no evidence of severe residual impact.

9.56 TN/31<sup>79</sup> was provided at the request of the Inspector. It sets out a summary of the site access and off-site junction modelling results and in particular identifies forecast queues using the modelling results for without mitigation and referring to the mitigation modelling contained within the Transport Assessment (TA/01/A). The conclusion is that either there is no material impact or where there is material impact appropriate mitigation measures have been identified.

9.57 Traffic flow diagram: As Mr Taylor records at paragraph 2.18 of his first supplementary proof of evidence, SATURN output sheets were included in Appendix 66 to the TA and a traffic flow comparison is included at paragraph 8.56 of the proof of evidence of Mr Tighe on behalf of the appellant (Table 8.1). Additional traffic flow diagrams for local streets have been provided as Appendix 1 to Highgate's Technical Note TN/30<sup>80</sup>.

9.58 Weekend assessment: Highgate's Technical Note TN/28<sup>81</sup> demonstrates that the weekday and weekend peak hour flows are of a similar magnitude such that additional modelling of a weekend peak hour is unnecessary because the flows are no greater than on a weekday peak period. It should be noted that Omega were not required to carry out a weekend assessment and their food store was also 2000sqm gross floor area. The question of weekend assessments was not pursued in oral evidence at all on Day 9 or 10<sup>82</sup>.

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<sup>79</sup> ID34

<sup>80</sup> ID33

<sup>81</sup> ID15.

<sup>82</sup> 9 and 10 July 2018.

- 9.59 Junction design:<sup>83</sup> The Council advances a multitude of queries and comments in relation to the design of both access junctions and off-site junctions. Mr Taylor conceded in cross-examination that whilst Highgate had for many months (indeed, from 2016<sup>84</sup>) been requesting the Council to identify whether any measures were required to mitigate the impacts alleged by the Council (and if so, what measures), the Council had never satisfied that request.
- 9.60 As indicated in its opening submissions, the appellant's position is that, through a set of carefully drafted conditions, all these highly detailed matters can be resolved at the detailed and/or s.278 stage. Mr Taylor accepted in cross-examination that he does not identify any junction where the Council's concerns cannot be mitigated through the working of an appropriate condition. He was asked specifically about the A49/Sandy Lane West junction and stated that his professional view as a highways engineer with knowledge of the junction was that on the balance of probabilities a suitable mitigation scheme could be delivered.<sup>85</sup> He was also asked specifically about the A50/Orford Green junction and his view, again, was that an acceptable highways solution could be achieved at that junction.
- 9.61 Highgate's Technical Note TN/33<sup>86</sup> (provided at the request of the Inspector) explains how the mitigation proposed for the A50 Orford Road/Poplars Avenue/Hilden Road junction would tie in to existing pedestrian and cycle facilities at the junction. The mitigation would not increase capacity at the expense of cycle safety<sup>87</sup>. TN/33 also explains how mitigation proposed for the Capesthorpe Road/Poplars Avenue junction has been modified, with a view to maintaining low vehicle speeds<sup>88</sup>. Mr Tighe confirmed this position to the Inspector on Day 10.
- 9.62 Strategy for assessing impact and omission of allegedly key junctions: It was agreed during the course of Mr Taylor's oral evidence that the two additional junctions in respect of which the appellant would provide assessment were (i) M62 J9/A49 Winwick Road and (ii) A49/A50. We address the former below. As to the A49/A50 junction, Highgate's Technical Note TN/31<sup>89</sup> confirms that the A49 can accommodate (in both directions and in both the AM and PM peak hours) the additional length that the appeal scheme impacts would add to queues<sup>90</sup>.
- 9.63 So far as 'omitted' junctions are concerned AECOM confirmed in e-mails in September 2017<sup>91</sup> that there was only the need to model eight specified junctions, which were duly assessed. In relation to appendix 8 to Mr Taylor's

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<sup>83</sup> The specific points taken against the appeal scheme relate to: design issues at Poplars Avenue west and central accesses; modelling and design of new A49 signal junction; modelling and design of A49/Sandy Lane West; design of A50/Orford Green; design of Capesthorpe Road/Poplars Avenue.

<sup>84</sup> CD OD8.

<sup>85</sup> Evidence-in-chief.

<sup>86</sup> ID36.

<sup>87</sup> *Ibid.*, para. 4.

<sup>88</sup> *Ibid.*, para. 5.

<sup>89</sup> ID34.

<sup>90</sup> *Ibid.* at paras. 23 and 24.

<sup>91</sup> CD OD8.

proof at paragraph 14, the three junctions listed (Junction 9 apart) were confirmed by Mr Tighe to be subject only to minimal impact.

- 9.64 Since the first part of the Inquiry WSP have apparently conducted some 'high level' assessment of junctions, resulting in Appendix 3 to Mr Taylor's second supplementary proof. Tellingly, no information at all as to the flows being used and the impacts being assessed was provided. Accordingly the Council does not put forward any junction which has not been assessed by Highgate as being the subject of material impact.
- 9.65 Impact on M62 Junction 9: The impact of the development on Junction 9 is truly minimal. On Highgate's flows, it is of the order of one additional vehicle per minute in the a.m. peak and about three additional vehicles per minute in the p.m. peak. It is essentially for this reason that Mr Marsh of Highways England confirmed in his statement of 25 June 2018<sup>92</sup> that the scale of the impact on the junction was acceptable. In technical terms that impact can be seen in tables 32 and 34 of the Atkins report of 11 June 2018. Even with the marginally greater impact when applying the Council's flows the tables lead, fairly, to Mr Marsh's assessment of overall betterment of the junction.
- 9.66 There was debate as to the assumption of the LinSig model that there is no blocking back of traffic to the junction. The Council is content that appropriate mitigation can be provided to junctions both to the north and to the south of Junction 9. Second, it is important to appreciate the specific context in which Mr Marsh raised this point. It was in the section of his statement discussing the need for microsimulation. However, the overall assessment in section 6 remains valid i.e. that owing to the marginal impact of development on the junction taken together with the overall improvement that mitigation would provide, the proposed solution is acceptable to Highways England.
- 9.67 Control of third party land required for access: The parcel of land that it is indicatively (i.e. subject to confirmation at reserved matters stage) proposed to be used for emergency access is unregistered. The appellant currently holds an insurance policy that, in the event that anyone were to establish their ownership of the land parcel, would indemnify that party in respect of the appellant's current use of the land parcel. If it is thought desirable at reserved matters stage to use the land parcel for emergency access, the appellant would increase its insurance cover so that the indemnity extends to emergency access use. This approach is common practice on sites that are in multiple ownership<sup>93</sup>. Mr Taylor agreed that this issue could be dealt with by condition.
- 9.68 Use of Mill Lane in respect of accessibility and promoting sustainability: The Council's concern is the adequacy of footways along the route<sup>94</sup>. The Inspector in the Mill Lane appeal<sup>95</sup> noted that:

*"[58] ... There are not footways for the entirety of the length of Mill Lane on both sides of the road, and in some parts the footways are below the Manual for Streets standard recommended width of 2m, some parts are as little as*

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<sup>92</sup> ID55

<sup>93</sup> Evidence-in-chief of Mr Griffiths.

<sup>94</sup> Mr Taylor's proof of evidence at 6.2.17.

<sup>95</sup> APP/M0655/A/13/2192076, Appendix DT/B to Mr Tighe's proof of evidence.



*1.2m wide. There is also some overgrowth restricting the width of footpaths, but that could be removed.*

*[59] Nevertheless there is at least 1.8m width on one side of Mill Lane for the majority of its length, which is the absolute minimum width identified in Guidelines for Providing for Journeys on Foot. That document acknowledges that existing narrow footways do provide some level of pedestrian amenity. Whilst there are instances of parking on the pavement, that is a matter for the Police. Because vehicle speeds would be slow, and also because pedestrian visibility would be good, this inadequacy of the footways to meet desirable standards would not be a fundamental objection to the scheme".*

- 9.69 She concluded that the road and footway access would be adequate and the development would not be harmful to highway safety. Mr Taylor confirmed that he was not seeking to unpick or challenge the clear conclusion reached by the Mill Lane Inspector.
- 9.70 Mr Taylor also accepted that it is not practical to form a 1.8 metre wide footway along the southern side of Mill Lane. The appellant's position is that such a footway is both unnecessary and undeliverable.
- 9.71 Lack of clarity in respect of bus mitigation measures: Mr Taylor confirmed that, Option B no longer being pursued by the appellant, the Council no longer has any concerns on this score.
- 9.72 Highgate's Technical Note TN/32<sup>96</sup> provides a detailed account of the bus mitigation proposals, which have been developed in consultation with Network Warrington since January 2016. A two phase strategy has been developed: the extension of existing services into the appeal site during the early phases of development, followed by provision of a new bus service from the town centre, through the appeal site to Birchwood, and back.
- 9.73 Under the s.106 agreement, the appellant<sup>97</sup> is to pay to the Council (or to Network Warrington/Warrington's Own Buses, if the Council agrees) £41,000 towards the extension of existing bus services, prior to occupation of the 120th dwelling and annually thereafter until the distributor road through the appeal site is completed. The appellant is then required to pay £562,000 annually towards provision of the new bus service, until the earlier of (i) completion of the last dwelling or (ii) the fifth anniversary of the completion of the distributor road. The s.106 agreement requires the Council to procure evidence from Network Warrington/Warrington's Own Buses that all financial contributions paid by the appellant under the s.106 towards bus provision have been applied to bus services only.
- 9.74 Having regard to the foregoing, we can review the conclusions of Mr Tighe<sup>98</sup> in relation to lack of conflict with the development plan policies that are cited in the first reason for refusal. There was no challenge on Day 10 to his assessment.

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<sup>96</sup> ID35.

<sup>97</sup> Together with Satnam Developments Limited, as "the Owner".

<sup>98</sup> Proof of evidence.

- 9.75 To conclude as regards the first consideration, the appeal scheme is agreed to be sustainable development and the Council is committed in principle to the early development of 1200 new homes on the appeal site. That commitment is bound to result in traffic impacts, including to the south of the appeal site. In particular, a level of impact on Poplars Avenue and Capesthorpe Road is inevitable. This was accepted by Mr Taylor in cross-examination.
- 9.76 Similarly, in the event that residential development did not come forward on the appeal site such that land for an additional 1200 dwellings had to be released from the Green Belt, that additional release would also impact on both the local and (given Warrington's location) strategic road networks.
- 9.77 There is no evidence at all before the Inquiry that demonstrates that the cumulative highway impacts that would result from the appeal proposals specifically are severe, such that planning permission should be refused, notwithstanding the Council's support in principle for the development of the appeal site. To the contrary, the appellant has addressed each of the specific concerns raised by the Council, many of which can be resolved by condition or at reserved matters stage, and has shown that the highway impacts of the appeal scheme in terms of both safety<sup>99</sup> and efficiency are acceptable.

*The effect of the proposed development on the character of the area*

- 9.78 This consideration was introduced by the Inspector during the Inquiry. The primary concern is understood to be the potential effect of traffic from the appeal scheme on the character of the area.
- 9.79 Highgate have produced Technical Note TN/30<sup>100</sup> to help quantify and explain the implications of increased traffic flows on local streets in terms of impact on local character. The Technical Note shows that traffic flows through the area are expected to increase substantially over time, even without traffic from the appeal scheme<sup>101</sup>.
- 9.80 Using the methodology that is set out in Transport Advice Note TA 79/99, only one of the links considered in the Technical Note (Capesthorpe Road) would go above the relevant threshold figure (900) that is given in TA 79/99, and then only in the PM peak and only by 18 vehicles per hour. That equates to around one vehicle every three minutes and falls within the daily variation of flow<sup>102</sup>.
- 9.81 Manual for Streets recommends that the limit for providing direct access on roads with a 30 mph speed restriction is raised to at least 10,000 vehicles per day. When Average Annual Daily Traffic ("AADT") figures are calculated using the Transport in the Urban Environment calculations factors (recommended for traffic purposes), only the Capesthorpe Road, Sandy Lane West and Poplars Avenue (between Howson Road and Capesthorpe Road) links go above the 10,000 vehicles per day figure in the 2030 future year (with development

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<sup>99</sup> Highgate's Technical Note TN/34 explains where in the evidence the Road Safety Audits can be found.

<sup>100</sup> ID33.

<sup>101</sup> *Ibid.*, para. 5.

<sup>102</sup> *Ibid.*, para. 17.

traffic)<sup>103</sup>. Furthermore Manual for Streets states that the 10,000 figure could be increased further<sup>104</sup>.

9.82 The roads within the immediate area to the south of the appeal site that are road type Urban All Purpose Road Type 3 (UAP3) (including Sandy Lane West, Poplars Avenue and Capesthorne Road) would remain as UAP3 roads. The traffic from the appeal scheme would not result in a change in road hierarchy<sup>105</sup>.

9.83 Whilst inevitably there would be an impact on the amenity of the residents in the properties either side of the new accesses onto Poplars Avenue, both Poplars Avenue and the proposed access roads are designed to the appropriate standards. The access junctions have been subject to Road Safety Audit and would not differ from the form of junction in any equivalent residential area. In highway terms the impact of the appeal scheme on the character of the area is acceptable<sup>106</sup>. The benefits of 20 mph limits are clear from Manual for Streets. An extension of the 20 mph zone is obviously an option available to the Council in due course.

9.84 The evidence of Mr Griffiths, which was not challenged, was that:

- If the appeal site were not brought forward for housing, more land within the Green Belt would have to be released. That additional release would, in his professional view, lead to greater planning harm than would the appeal proposals (if indeed any planning harm from the appeal proposals were identified);
- Officers and Members of the Council had seen fit to include the appeal site in the SHLAA and thus in the evidence base for the Preferred Development Options, knowing the location both of the appeal site itself and of its accesses. There had been "*no hint*" of an objection from the Council on grounds relating to the impact of the appeal scheme on the amenity of the area to the south of the appeal site;
- The parameters plan showed that the appeal scheme would be of a very similar urban grain to the surrounding area. The surrounding area was mixed, not wholly residential: it included areas of shops, local facilities and schools. The appeal scheme would be a natural extension of the existing urban grain;
- It was vitally important that the appeal scheme should link with the surrounding area in order to effect the transformational change sought by the Council i.e. to ensure that the surrounding area would also reap the benefits of the appeal proposals, such as increased spending power, additional employment opportunities and new and improved educational facilities. The appeal scheme would change the area, but for the better;
- The surrounding area was not a conservation area nor would any listed buildings be affected, therefore it was not a question of preserving the

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<sup>103</sup> *Ibid.*, para. 18.

<sup>104</sup> *Ibid.*, paras. 11 and 19.

<sup>105</sup> *Ibid.*, para. 20.

<sup>106</sup> *Ibid.*, para. 23.

area "*for its own sake*". Planning was about managing change and only preventing change from occurring where properly justified;

- There was nothing exceptional about the proposal to demolish a limited number of properties in order to open up land to the rear for much-needed housing development: that happened "*up and down the country*";
- It was not realistic to suppose that those working in the employment area on the appeal site would park on Elm Road and Birch Avenue; and
- There would be a Travel Plan for the employment area, which would seek to limit the use of cars in the first place and would also show which areas should (and should not) be used for parking.

9.85 As to the potential impact of HGVs serving the employment area within the appeal scheme on the character of the area, it should be noted that under the Use Classes Order 1987 the proposed use (class B1(c)) must be a use:

*"which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit"*.

Whilst that proviso regulates the use itself, employment areas in class B1(c) use tend to be serviced by vans and similarly sized vehicles rather than large HGVs owing to the size of the premises, as Mr Griffiths explained. Moreover, the existing area is mixed and includes shops and other facilities that require servicing by HGVs. It also accommodates other larger vehicles that accompany residential development such as refuse collection vehicles, bus services and removal vehicles. Mr Griffiths' view was that the employment area could quite happily co-exist with existing and proposed residential development.

9.86 It is also necessary to consider the potential traffic noise impacts from the appeal scheme on the character of the surrounding area. The original environmental statement predicted a maximum increase in noise levels of 1.9dB. The reassessment undertaken in order to account for variations in traffic flows showed that under Option A there would be a slightly smaller relative increase in traffic flows on the worst affected roads and, therefore, the impact of the appeal scheme would generally be the same or 0.1 to 0.2 dB lower than predicted by the original environmental statement<sup>107</sup>.

9.87 As Mr Smith (for the Council) agreed in cross-examination, a change in noise levels of 3dB is generally considered to be only just perceptible<sup>108</sup>. A doubling in traffic flows would be required to reach that magnitude of change<sup>109</sup>. Mr Smith accepted that the predicted increases in traffic levels as a result of the appeal proposals would have to be "*significantly higher*" in order for there to be a perceptible change in noise levels.

9.88 It is also appropriate to address under this heading the question of building heights. The building heights shown in the parameter plan are maxima. There is no expectation that buildings would reach the maximum heights shown. Rather,

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<sup>107</sup> Proof of evidence of Mr Hawkins at 2.3.6.

<sup>108</sup> *Ibid.* at para. 2.3.10.

<sup>109</sup> Also accepted by Mr Smith in cross-examination.

they would be developed up to that height in certain locations, if appropriate<sup>110</sup>. This would be determined at reserved matters stage.

The effect of the proposed development on local air quality

9.89 The Council's approach to its air quality evidence mirrors that taken to its highways evidence. Mr Moore accepted in cross-examination that his evidence does not identify any significant adverse air quality impact that would result from the appeal scheme.

9.90 The evidence of Mr Hawkins on behalf of the appellant, on the other hand, establishes the following:

- The original ES shows that the increase in annual mean pollutant concentrations would be small (less than 1 µg/m<sup>3</sup>) at all sensitive receptors<sup>111</sup>;
- The reassessment of Option A undertaken to reflect variations in traffic flows shows that there would be a slightly smaller relative increase in traffic flows on the worst affected roads, such that the impact of the appeal scheme in air quality terms would generally be the same or marginally lower than shown in the original ES<sup>112</sup>;
- The reassessment undertaken does not, overall, change the conclusions of the original ES. At worst the impact of changes in traffic flow on levels of air pollution would be less than 1 µg/m<sup>3</sup> at all receptors. This would be negligible (at worst) and not significant. The concentration of NO<sub>2</sub> is expected to remain below the National Air Quality Objective (NAQO) level at all receptors save that small exceedances are predicted at three locations in 2021. These are predicted to resolve by 2025<sup>113</sup>. Since the NAQO level is the level at which health effects may be noticeable, the predicted small increases in pollutant concentrations are highly unlikely to have any effects on human health<sup>114</sup>;
- Tables 3.1 to 3.9 within the proof of evidence of Mr Hawkins show the results of the updated calculations, for Option A in 2021, 2025 and 2030, across three traffic scenarios. The predicted impacts are negligible at all receptors save 451 Winwick Road, where a slight impact is predicted under scenario (ii) in 2025, reducing to negligible by 2030.

9.91 It became apparent in oral evidence that the Council had erroneously been assuming (without having verified the point with Mr Hawkins) that Mr Hawkins had been relying on DEFRA-predicted improvements in background air quality levels. As he confirmed, static (rather than reducing) background concentrations were used. This is a precautionary approach<sup>115</sup>.

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<sup>110</sup> Evidence-in-chief of Mr Griffiths.

<sup>111</sup> Proof of evidence of Mr Hawkins at para. 3.4.3.

<sup>112</sup> *Ibid.* at para. 3.4.4.

<sup>113</sup> Proof of evidence of Mr Hawkins, tables 3.1 to 3.9. The three locations are 451 Winwick Road, 129 Long Lane and 697 Winwick Road.

<sup>114</sup> *Ibid.* at paras. 3.4.5 and 3.4.6.

<sup>115</sup> Cross-examination of Mr Hawkins.

- 9.92 Mr Hawkins also explained that the figures given in Tables 3.1 to 3.9 for 2021 are lower than figures for 2018 would be, reflecting an expected improvement in air quality generally. The anticipated improvement is due to a number of factors, primarily a cleaner vehicle fleet. The evidence of Mr Hawkins was that considerable improvements in vehicular emissions are expected in Warrington specifically, because a local air quality strategy has been adopted<sup>116</sup>. The expected reduction in vehicle emissions is reflected in the 'without development' figures provided by Mr Hawkins for 2021, 2025 and 2030, which show the air quality position improving (notwithstanding that Mr Hawkins has used static background concentrations). The Council has not questioned the improvement in air quality shown.
- 9.93 Any attack on the credibility of Mr Hawkins is both unjustified and inappropriate, given the way in which the Council dealt with the appellant's air quality work.
- 9.94 In its pre-application response of 26 February 2016 the Council stated that the methodology for air quality assessment had been agreed. The original ES was subsequently submitted in July 2016. Whilst the Council disputed the traffic data that had informed the air quality work in the ES, not a single query was raised by the Council in relation to the methodology and/or the results of the air quality assessment based on the traffic assumptions that the appellant was using. Mr Moore's evidence was that he had considered that there was "*little point*" going into the details of the air quality assessment whilst the traffic data remained disputed. The ES Addendum was submitted in January 2018 and still the Council raised no issue with the air quality assessment methodology.
- 9.95 The unfortunate result of the Council's stance was that it failed to inform the appellant of its concerns in relation to the methodology until March 2018. Therefore, whilst the Council criticises Mr Hawkins for not having substituted the 2015 monitoring data for the 2014 monitoring data until he produced his proof of evidence, prior to March 2018 the Council had only ever indicated a concern with the traffic data, not the monitoring data. Thus the ES Addendum simply updated the traffic data, so as to enable the impacts of doing so to be understood in response to the sole concern that had at that stage been articulated by the Council.
- 9.96 The important point is that the appellant's air quality analysis no longer relies on the 2014 monitoring data, it having become apparent as monitoring data for later years became available that the 2014 monitoring data is not representative of typical conditions in the study area. It should be noted, however, that when the original ES was produced the 2014 monitoring data was the best available and certainly the most comprehensive.<sup>117</sup> The appellant's model has since been revalidated using the Council's 2015 air quality monitoring data. The increased concentrations (both on- and off-site) that resulted from the revalidation are reflected in updated calculations in Mr Hawkins' proof of evidence.
- 9.97 Mr Moore complained that there had not been monitoring undertaken at additional monitoring points and consequently that there had not been different verification factors based on such monitoring points. This complaint is quite

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<sup>116</sup> Evidence-in-chief of Mr Hawkins.

<sup>117</sup> Evidence-in-chief of Mr Hawkins.

unjustified in the light of the fact that Mr Moore had never requested that monitoring be undertaken at any additional point(s).

9.98 Mr Moore notes in his addendum proof of evidence that some of the grid references used to plot receptor points within the appellant's model are incorrect. The model is, however, internally accurate such that all of the modelled locations are correct in relation to the relevant local road links<sup>118</sup>. Thus the model does reflect the real world relationship of the receptor points to the roads and predicted pollutant concentrations at those points will be correct<sup>119</sup>. Mr Hawkins confirmed in evidence-in-chief that he was very confident that the error had not affected the actual outcome of the modelling.

9.99 That the appellant's air quality work is robust is particularly evident from consideration of Tables 3.1 to 3.9 in the proof of evidence of Mr Hawkins, which set out the results of sensitivity testing. As he explains<sup>120</sup>, Scenario (iii) is an analysis of the impact of the proposed development traffic flows as set out in the ES addendum, plus 25%. The Council has not suggested that traffic flows from the appeal scheme would reach anything like that magnitude.

9.100 It is necessary to address a number of technical points that are taken by the Council against the appellant's air quality evidence:

- The Council's concerns in relation to the bias adjustment factor used in the air quality assessment<sup>121</sup> have been resolved, as Mr Moore confirmed in cross-examination;
- The conversion factor used to determine AADT from peak hour flow was: (AM Peak + PM Peak) x 6 = AADT. The accuracy of that approximation has been demonstrated by comparing modelled traffic flows (using the approximation) against the latest DfT traffic count data: see the additional information dated 4 May 2018 provided by Mr Hawkins<sup>122</sup> at para. 2.2.2. Mr Hawkins explained in his oral evidence that in addition to the close correlation between the modelled figures (using the approximation) and observed (i.e. traffic count) data, the conversion factor was also suitable (i) because it reflects a worst case scenario and (ii) because it takes into account both AM and PM peaks. All the available evidence shows that x 6 is a robust factor and the Council has not provided any contrary evidence;
- There was a debate about the appropriate average traffic speed to apply at the relevant AQMA junctions. The general advice in TG16<sup>123</sup> paragraph 7.240-7.241 is to apply an average speed of 20-40kph. Mr Hawkins's 32kph is consistent with this. Mr Moore sought to rely on paragraph 7.248 suggesting an average speed of 20kph. This may be appropriate where there is no local information with regards to congestion and associated speeds available. Mr Hawkins's evidence is based on local assessment i.e. his own observations of junctions on site;

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<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> Para. 3.5 ff.

<sup>121</sup> Para. 5.2.2 of Mr Moore's proof of evidence.

<sup>122</sup> ID38

<sup>123</sup> CD CF12

- As to the surface roughness factor, it is common ground that any issue here falls away in the light of the agreed 50 metre condition;
- The Council considers that data from the meteorological station at Rostherne, Cheshire (which has come into operation since the original air quality assessment was undertaken) better represents the geography of Warrington than does data from the meteorological station at Manchester. Mr Hawkins has, as a sensitivity check, compared the two sets of data. The results are presented in his additional information of 4 May 2018<sup>124</sup>. Whilst Rostherne does result in marginally higher concentrations of NO<sub>2</sub> when considering the baseline scenario (0.09 µg/m<sup>3</sup>), the differences between the two sets of data for all future scenarios have been minimised by the resultant lower validation and verification factor. Consequently, the results utilising Rostherne data are approximately the same as those using the Manchester data.

9.101 The precautionary approach highlighted by Mr Manley in closing, through the *Gladman* case, was recognised by Mr Hawkins. The background levels were held constant, which shows a high level of precaution. No issue was taken by the Council with the use of the DEFRA Toolkit or Mr Hawkins' assumptions around reductions in car emissions in the future. Thus, Mr Hawkins' Scenario 3 is perfectly logical, due to the Toolkit based reducing vehicle emissions.

9.102 The relevant development plan policy as regards air quality is Core Strategy Policy QE6. The appellant's evidence has shown that the appeal scheme would not result in any materially adverse impact on air quality. There is, thus, no failure to comply with the development plan in air quality terms.

*Whether the appeal scheme would provide appropriate living conditions for future occupiers with regard to highway noise and air quality*

9.103 We deal first with the impact of highway noise on living conditions on the appeal site. The Council is satisfied that this matter can be dealt with by condition<sup>125</sup>. On-site noise monitoring was undertaken by the appellant, as detailed at 11.4.8 to 11.4.10 and within Table 4.2 of the original ES and at paragraph 2.2.1 of Mr Hawkins's proof of evidence.

9.104 The conclusion reached by Mr Hawkins is that dwellings located at a distance greater than 185m from the M62 would be acceptable in terms of noise and would not require mitigating measures. Dwellings closer to the M62 may require mitigating measures to ensure that suitable internal noise levels are achieved<sup>126</sup>. The worst affected proposed dwellings would be located around 40m from the kerb of the M62. The calculations undertaken by Mr Hawkins indicate that suitable internal noise levels could be achieved provided that bedroom windows had a minimum Rw of 34dB and all other rooms had a minimum window Rw of 30. It is likely that by the second or third line of houses from the M62, a typical double-glazed window system with a Rw of 31 to 33dB would be sufficient in all rooms. Mr Hawkins confirmed in his oral evidence that the apartments and houses closest to the motorway would not require mechanical ventilation.

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<sup>124</sup> ID38 at 2.4.

<sup>125</sup> Summary of Mr Smith's evidence at para. 1.5.

<sup>126</sup> Proof of evidence of Mr Hawkins at 2.2.6.



9.105 Noise in gardens could exceed the recommended level (55dB) at distances of up to 110 metres from the M62. Mr Hawkins's recommendation is that the first line of dwellings and the apartment blocks closest to the M62 form a continuous barrier and be sufficiently tall that they provide significant protection to the gardens behind, so as to bring noise levels in all gardens below 55dB. That would include outside space associated with the apartments (i.e. balconies and/or gardens immediately to the south of the block)<sup>127</sup>. This would be a matter for detailed design at reserved matters stage.

9.106 We turn to air quality on the appeal site. The additional information provided by Mr Hawkins dated 4 May 2018<sup>128</sup> outlines the concentrations of NO<sub>2</sub> on the appeal site in the opening year (2021). His calculations incorporate validation factors calculated using 2015 monitoring data. They show that at a distance greater than 25 metres from the M62, pollutant concentrations should be below the NAQO level for NO<sub>2</sub> in 2021. In any event the 50 metre condition deals with this aspect.

9.107 It is evident from the foregoing that the appeal scheme would provide appropriate living conditions for future occupiers with regard to highway noise and air quality.

*The effect of the proposed development on local infrastructure*

9.108 The terms of a s.106 agreement have been agreed between the Council, the appellant<sup>129</sup> and the University of Chester Academy School. Those terms make provision (*inter alia*) in respect of school places, healthcare facilities and sport and recreation and, thus, address the Council's second Reason for Refusal.

9.109 The only issue that remains in dispute between the Council and the appellant is whether the health contribution complies with regulation 122 of the Community Infrastructure Levy Regulations 2010. Regulation 122(2) provides that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development.

9.110 Whilst the appellant accepts that the appeal proposals would result in increased healthcare need, the health contribution is neither directly related nor fairly and reasonably related in scale and kind to the development. The Council wishes to put the healthcare contribution towards a new healthcare facility (the aspiration is to move two existing GP practices into a single new building). However, the evidence of Mr Armstrong to the Inquiry was that the gross floorspace requirement for the new facility has not yet been established, no site has been identified, the cost of the facility cannot yet be ascertained and there is no programme. Indeed, he emphasised that:

*"it should not be forgotten that any programme has to have significant public consultation with the patients registered with [the existing] practices".*

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<sup>127</sup> Oral evidence of Mr Hawkins.

<sup>128</sup> ID38.

<sup>129</sup> Together with Satnam Developments Limited, as "the Owner".

He accepted that the clinical commissioning group did not accrue funds and that any contributions from development went to a specific scheme.

- 9.111 Having regard to the present factual position, it is plain that the healthcare contribution does not satisfy the requirements of regulation 122. There is nothing in the Council's apparent suggestion that it suffices that those requirements be met by the point in time at which the contribution becomes due. It is obvious from the wording of regulation 122 that the three requirements must be satisfied before planning permission is granted. We also refer to the Congleton appeal decision<sup>130</sup> at paragraphs 27 to 31.
- 9.112 There is nothing remarkable about the fact that although the appeal proposals would result in increased healthcare need, the appellant is unable lawfully to contribute to meeting that need. That position is simply the consequence of Parliament having prescribed that developers cannot make unlawful payments. It will have been anticipated by Parliament in enacting the relevant legislation.
- 9.113 Nor does the appellant's inability lawfully to contribute to meeting the healthcare need generated by the appeal scheme result in a failure to comply with any aspect of the development plan. The Council in its second Reason for Refusal relies on Core Strategy policies CS1 (second and seventh bullet points) and MP10 (first, second and third bullet points).
- Policy CS1 is the Council's overall spatial strategy and simply requires development to have regard to (*inter alia*) the requirement to provide for recognised and identified development needs (second bullet point) and "*the need to ... ensure additional [infrastructure] provision where needed to support development*";
  - Policy CS2 then states that all new development should where appropriate make provision for supporting infrastructure in accordance with Policy MP10;
  - Policy MP10 itself requires the Council to (i) ensure that development maximises the benefits of existing infrastructure and minimises the need for new provision; (ii) support the delivery and enhancement of strategic infrastructure in the borough through the introduction of the Community Infrastructure Levy by building on the Infrastructure Delivery Plan to understand the wider strategic infrastructure requirements; and (iii) where appropriate, negotiate with developers to secure s.106 agreements to meet the infrastructure needs directly arising from development, where viable to do so.
- 9.114 Nothing in the above policy provisions indicates that there will be a failure to comply with their requirements where, as here, a developer is unable lawfully to contribute towards the needs generated by their development.
- 9.115 In any event, should the Secretary of State conclude (contrary to the appellant's submissions) that the health contribution is lawful, he may require it to be made by confirming in his decision letter that the health contribution complies with regulation 122 of the Community Infrastructure Levy Regulations 2010 (see clause 7.1 of the s.106 agreement).

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<sup>130</sup> APP/R0660/A/14/2219069 - Appendix 15 to Mr Griffiths' proof of evidence

Whether the scheme can be regarded as deliverable

9.116 We have already noted the context against which this consideration falls to be assessed, namely the acknowledgement in the officer's report that:

*"Warrington is capable of attracting large scale new mixed use development, and is a desirable location of choice for land developers, businesses and for those wishing to base themselves in Warrington, as new or re-locating residents"*

and the Council's more general acceptance that there is strong developer interest in Warrington.

9.117 The appellant expects residential units on the appeal site to be delivered at a rate of 120 units *per annum*. That is a realistic estimate and the rate might well be higher given the high demand for housing in Warrington (above)<sup>131</sup>:

- The appeal site is large with multiple access points, enabling a number of house builders and registered providers to be active on-site at any one time. Appendix 6 to the 2017 SHLAA sets out the build-out rates on sites that are or were active in Warrington during 2016-2017. The average build-out rate on sites that still have units to build is between 35 and 47 units *per annum, per builder*. A large site such as the appeal site might accommodate three builders at the same time;
- A 2017 study by Lichfields of large sites (1000 to 1500 homes) outside London found that delivery rates for greenfield sites averaged 122 homes *per annum* (73 for brownfield sites). One of the sites included in the study was Chapelford, an urban village to the west of the A49. This is a brownfield site but has a delivery rate of an average of 200 homes *per annum*;
- The Council's education department was originally working with an estimated delivery rate of 150 units *per annum* on the appeal site;
- Homes England presently decline to join as a party to the s.106 agreement in the absence of a commercial transaction. That transaction is bound to take place in due course. The land is vested in Homes England for their purposes i.e. the delivery of land for homes. It is fanciful to consider that the land will not be brought forward in pursuance of that objective.

9.118 As to the deliverability of the employment area within the appeal site, as Mr Griffiths explained in his evidence-in-chief, there is a large need for small units in class B1(c) use. This is supported by the evidence base for the Preferred Development Options<sup>132</sup>.

9.119 We turn to the deliverability of the care home. As a New Town, Warrington is experiencing a faster rate of ageing owing to the number of residents who arrived in its infancy and have remained<sup>133</sup>. Mr Robinson's proof of evidence<sup>134</sup>

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<sup>131</sup> Evidence-in-chief of Mr Griffiths.

<sup>132</sup> *Economic Development Needs Study*, October 2016, Executive Summary, p.4 at (x) (ID21).

<sup>133</sup> Evidence-in-chief of Mr Griffiths.

<sup>134</sup> At para. 3.32.

records a 52.2% increase in the number of residents aged 65 or more during the plan period (i.e. to 2037), against a predicted national rate of 48%. Demand for older peoples' accommodation in Warrington borough is likely to increase by 54 units annually between 2012 and 2037<sup>135</sup>. Mr Griffiths' view was that it is "*without doubt*" that there would be a need for the proposed care home. Indeed, the appellant has already received early stage interest in sheltered accommodation on the appeal site<sup>136</sup>.

9.120 Significant weight should be attributed to the care home and employment land elements of the appeal proposals. As Mr Griffiths explained, planning is concerned to provide the opportunity for facilities to be provided<sup>137</sup>. The appeal scheme would provide a real opportunity for employment and care home facilities to be provided in an area where they are not currently present. That such facilities have not yet been provided does not mean that they should not be: areas require mixed uses and local facilities in order to become vibrant<sup>138</sup> and provision of these facilities would support the transformational change that the Council wishes to see in this part of Warrington.

### ***Conclusions as to the adverse impacts of the appeal scheme***

9.121 The Council has not provided any evidence of any adverse impact. It follows that on the Council's own case, the appeal should be allowed and planning permission granted.

9.122 A useful summary of predicted residual effects is provided in section 15 of the ES addendum<sup>139</sup>. The predicted residual adverse effects are stated to be the following (there was no challenge to these conclusions from the Council):

9.123 Construction phase:

- Landscape and visual amenity: minor adverse at worst, save for one moderate adverse impact on users of the public footpath;
- Highways and transportation: minor adverse;
- Hydrology, flood risk and drainage: negligible adverse;
- Ecology and nature conservation: moderate adverse at worst;
- Air quality: negligible adverse;
- Cultural heritage and archaeology: negligible adverse;
- Noise and vibration: minor adverse;
- Recreation: major adverse at worst.

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<sup>135</sup> *Ibid.* at para. 5.31.

<sup>136</sup> Evidence-in-chief.

<sup>137</sup> Such facilities also include the local centre including the food store.

<sup>138</sup> Evidence-in-chief of Mr Griffiths.

<sup>139</sup> CD APN6, Vol. 5.

9.124 Operational phase:

- Landscape and visual amenity: minor adverse at worst, save for one moderate adverse impact on users of the public footpath;
- Ecology and nature conservation: minor adverse at worst;
- Air quality: negligible adverse;
- Cultural heritage and archaeology: negligible adverse;
- Noise and vibration: minor adverse;
- Recreation: moderate adverse at worst.

9.125 On ecology, it is necessary to have regard to Mr Ryding's (unchallenged) evidence in respect of breeding birds, which was that<sup>140</sup>:

- All of the birds recorded as breeding are common on a national scale;
- The appeal site is of 'Local (Parish) – District' value for breeding birds and does not meet any of the Local Wildlife Site selection criteria for the Cheshire Region;
- The Council's professional ecological advisor, the Greater Manchester Ecology Unit, has accepted the survey findings; and
- Having regard to the proposed habitat creation/enhancement and management measures, the residual impact of the construction phase of the appeal scheme might reduce from "moderate adverse" to "slight adverse". A "negligible-low" effect is predicted during the operational phase of the appeal proposals. The appeal scheme would not conflict with either national or local planning policy as regards breeding birds.

9.126 It is apparent that the adverse impacts of the appeal scheme are remarkably few (in number and magnitude) for a proposal of this nature and scale.

***Overall planning balance and conclusions***

9.127 The appeal proposals would effect genuinely transformational change that the local planning authority itself wishes to see brought about. The Council is right to recognise that the appeal scheme would result in substantial positive benefits (most obviously, a vital and very substantial contribution to the Council's housing land supply) and that very substantial positive weight should be given to those benefits in the overall planning balance.

9.128 The appeal scheme accords with the development plan and no material considerations indicate that planning permission should be withheld. In particular, the very considerable benefits of the appeal scheme are manifestly not outweighed (still less are they significantly and demonstrably outweighed) by the minimal adverse impacts of the appeal scheme. The Council's case in summary remains not a case of attempting to demonstrate the required levels of impacts and, so, the tilted balance cannot be rebutted. Both the development plan and the Framework indicate that planning permission should be granted.

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<sup>140</sup> Section 5 of his proof of evidence.

## **10. The Cases for Interested Parties Appearing at the Inquiry**

10.1 Oral representations made at the Inquiry, in addition to points made by the main parties, are set out below:

### *The Case for Cllr John Kerr Brown*

10.2 I have been a ward councillor for the Poplars and Hulme ward for 17 years. This is the second Inquiry in relation to Peel Hall that I have attended. I have been asked by a number of local residents to make the following comments.

10.3 The appeal proposal will result in further traffic congestion on the A49, notably on Winwick Road. Air pollution will increase due to more stationary traffic. Recent new food stores in the area mean that there is even congestion at the weekends, especially on Sandy Lane and Winwick Road.

10.4 The proposed primary school is needed at the start of the development, not at the end. Parents will be unable to get their children into nearby schools, which are full, and so will have to drive further away.

10.5 Warrington needs an additional 30 GPs. Local practices are overstretched. There is insufficient time available to build a new surgery.

10.6 There are existing problems with sewerage and flooding in the Coldstream area.

### *The Case for Mrs Jo Sullivan*

10.7 As well as being a member of the local community, I am a registered nurse and health visitor. I have treated local people with Chronic Obstructive Pulmonary Disease (COPD) and asthma. Although I do not claim to be an expert on air quality matters, there is plenty of information available detailing the adverse effects of air pollution on public health<sup>141</sup>. Warrington Council's Air Quality Action Plan states that there are 80 deaths in the town each year arising from poor air quality.

10.8 Warrington faces significant challenges with regard to air quality, as it is bounded by motorways and busy roads. There is a need to reduce the number of cars on the roads and to build a better transport infrastructure.

10.9 There will be an extra 2500 to 3000 cars in the area as a result of the proposed development. This will lead to increased congestion. North Warrington is already congested, especially at peak times. Even using local knowledge, residents are unable to avoid bottlenecks. The roads are operating beyond their capacity. All this leads to increased pollution.

10.10 The M62 is an Air Quality Management Area. It is not wise to build houses and a care home next to a motorway. The precautionary principle should apply here.

10.11 Cancer, asthma, COPD, and cardiovascular diseases arise from increased pollution levels. Long term, ongoing exposure is most harmful. Toxic air enters cars in stationary traffic and emphasises the effects of pollution.

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<sup>141</sup> Please refer to ID2

10.12 With great respect, you don't live here but we do. This scheme will not enhance our quality of life. The tone and feel of the area will be altered forever. We will lose the only remaining green space available to us.

10.13 We don't get to choose the amount of pollution that we breathe in. We ask that the Secretary of State shows a commitment to protecting us.

*The Case for Mr Jim Sullivan*

10.14 I have lived here for 30 years and, like many people, commute to work out of Warrington by car. The worst part of my lengthy journey is the A49, with the College Place roundabout being dangerous. The Winwick area is worse.

10.15 Having access for 770 dwellings onto Delph Lane would be dangerous. It is laughable to put more traffic onto it.

10.16 The Sandy Land West junction, with the new Costa and Aldi, is intolerable and chaotic. Many residents flagged up the likely problems, before planning permission was granted, and have now been proved correct. Birchwood Science Park added one million square feet of floorspace with no extra infrastructure.

10.17 A one off voucher payment to new residents is no good and will not incentivise non-car travel. Buses have no priority. There is no tram. Padgate Station is around 5.4km from the site using footways. As such there is negligible likelihood of future residents walking to the railway station on a regular basis. A bus journey to Liverpool or Manchester would take at least an hour. Transport infrastructure is not up to scratch. The picture of car use would not change.

10.18 Over 200 people turned out for a public meeting on the appeal proposal. We may not be experts but we are bright and articulate and know enough about the local area. The fundamental geography of the site militates against its development.

*The Case for Mrs Margaret Steen<sup>142</sup>*

10.19 I refer to the appellant's opening statement and comments about the "deprivation" of the area. How long does it take for a development to become "sustainable"? The playing fields, for example, will not be delivered until the 500<sup>th</sup> house is built. Mitigation needs to be on a like-for-like basis or we will suffer a double dose of "deprivation". Nor will the full bus service or primary school be provided until the end of year eight. Secondary school provision is likely to be mobile classrooms.

10.20 All local primary schools are oversubscribed and the Peel Hall site is furthest from all of them. There will be further impacts upon them if no new school is provided on site. Class sizes will increase year on year. There is no safe route to Winwick Primary School from Peel Hall.

10.21 We should not have to wait for all of the infrastructure or have to put up with the highways issues. We should be looking at improvements to the area. I

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<sup>142</sup> Please see also ID17

believe that the adverse impacts of the appeal proposal would significantly and demonstrably outweigh the benefits.

*The Case for Mrs Tina Dutton<sup>143</sup>*

- 10.22 I have lived on Birch Avenue for 28 years and represent the objections of residents to the Winwick Farm end of the proposed development.
- 10.23 The junction of Birch Avenue and the A49 is sub-standard, yet access for a further 20 houses is proposed. The Alders (NHS Child and Adolescent Mental Health Services centre) unit at the end of Birch Avenue already attracts well over the anticipated number of vehicles each day, which overspill from the car park and have to park on Birch Avenue, which is narrow. Emergency vehicles already have difficulty getting through. The proposed parking bays would be filled, like now, with overspill parking.
- 10.24 In addition, The Alders has resulted in higher levels of criminal activity, with an average of 14 police call outs a month.
- 10.25 We strongly oppose any proposal to open up Birch Avenue to become a through route and to allow access to the proposed work units from Elm Road.
- 10.26 This area becomes gridlocked if there is an accident on the M6, M62 or the M56. Junction 8 was built to relieve some of the congestion, but it was not long before the Alban retail park was extended and the Warrington Wolves rugby ground moved onto the A49. Traffic on match days is impossible and Christmas is even worse. One cannot rely on local buses.
- 10.27 I played on the Peel Hall site when I was a child and chose to live next to it when I was older. My children have played and walked on it too.
- 10.28 The appeal scheme may create jobs but it would change lives, and not for the better. Do we really need more houses when there are 40,282 empty houses in the North West, according to the National Housing Federation?
- 10.29 If the development is built we will be infested with vermin.
- 10.30 In conclusion, the appeal site is landlocked and the local infrastructure is unsustainable.

*The Case for Mrs Sandra Kavanagh*

- 10.31 I have lived here for 35 years. I believe that the appeal proposal will give rise to horrendous congestion. The proposed school will not be built for ages and there will, therefore, be increased traffic on the school run. If there are breakdowns on the M6/M62 then the area will become gridlocked.
- 10.32 I also share the concerns of the police<sup>144</sup> about the effect of the proposal on the A49/M62 J9 junction in road safety terms. Safety on Winwick Road is also a major issue, and it is often gridlocked. A Travel Plan for the site is a futile exercise.

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<sup>143</sup> See ID14

<sup>144</sup> Please refer to ID13



10.33 Pollution affects the lungs of children, as has been shown by research from North America<sup>145</sup>. In Warrington we have one of the worst pollution problems in the North West of England.

10.34 It has been suggested that the proposed supermarket would “*enhance*” our lives. But it will cause businesses to close. I once had a shop, which closed when Morrisons supermarket opened. This proposal will have significant impacts on shops on Poplars Avenue, Cotswold Avenue and Howson Road.

*The Case for Ms Helen Jones MP*<sup>146</sup>

10.35 I have been the Member of Parliament for Warrington North since 1997. The issue of development on the Peel Hall site has been the issue on which I have received the most correspondence during this time, numbering several thousand letters and emails. Only three have ever expressed support for development on the site.

10.36 This case is a great example of how local residents have engaged with the planning process, as promoted by governments of all political colours, and their voice deserves to be given a significant degree of weight.

10.37 The appeal proposal is massive in scope and would change the nature of the area irrevocably. The housing proposed would not be of the type needed in Warrington, being mainly expensive houses for commuters. The scheme would create adverse knock-on effects on infrastructure; traffic; air pollution; and loss of green space. Nothing has changed materially from when a similar application was last considered at a public Inquiry in 2013.

*The Case for Mr Geoff Settle*<sup>147</sup>

10.38 I am the Chair of the Warrington Conservation Forum and a former ward councillor for Poulton North.

10.39 The appeal site is the last green space in North Warrington, used by local residents for walking dogs, riding horses and recreation.

10.40 The Forum is proactive in trying to improve biodiversity locally. Bird species on the critical Red ‘at risk’ list have been identified on the appeal site, which is a good refuge for struggling birds and which features a good range of species.

10.41 There is a thriving population of small mammals on the site, including water voles and hedgehogs. If developed, there will be harm to wildlife as the site is landlocked and there is nowhere for the wildlife to go. It will have a much lower probability of sustaining wildlife.

10.42 Radley Plantation has drainage issues and it is uncertain what the impacts of the appeal proposal upon it may be.

10.43 If the appeal proposal goes ahead there will need to be a removal of invasive species; buffers along Spa Brook and around Radley Plantation; and a site-

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<sup>145</sup> Ibid

<sup>146</sup> Ms Jones MP submitted a letter to the Inquiry (ID23). I read this out at the request of local residents.

<sup>147</sup> Please see also ID31

wide ecology plan. It is not clear what the landscaping buffer alongside the M62 would be but it could be of benefit to wildlife. Any lighting plan would need to be sympathetic to wildlife.

10.44 There would be a noise impact upon the new dwellings from the motorway, the noise from which can even now be heard from dwellings a quarter of a mile away.

*The Case for Mr Jon Parr<sup>148</sup>*

10.45 I have lived in the area for over 30 years and played on the appeal site as a child.

10.46 The appeal proposal would contribute between 60,000 and 80,000 tonnes of CO2 during the construction period alone, with a further contribution of 10,000 tonnes every year upon completion. The nitrous oxide emissions in an air quality management area would also have adverse impacts.

10.47 The information provided by the appellant remains deficient, inaccurate and without substance. It is evident that they cannot make the proposal work, even given the ample time provided to them to do so.

10.48 The option to commute from Warrington, Padgate or Birchwood is unrealistic and proposed by someone who does not use Northern Rail services. Express services will cease to operate in May 2018, with the replacement service being less frequent and with a reduced number of carriages. Peak hour commuters are crammed onto the trains already and many are now opting to drive.

10.49 People do not walk or cycle to the stations in great numbers, especially in inclement weather and I will not leave my bike at a sleepy railway station.

10.50 More realistic traffic volumes need to be assessed as most people living in Warrington do not work here. In addition, approved developments, mainly commercial schemes, from neighbouring boroughs do not appear to have been included; no consideration has been given to traffic between February and October when Warrington Wolves play at home; and the presence of Ikea and one of the largest M&S stores in the country has not been factored in.

10.51 The appeal proposal would result in the loss of Mill Lane playing field and its relocation to Radley Playing Fields. Local residents will not venture to the relocated fields because of local school affinities. This will deprive residents of an easily accessible facility that has stood for over 30 years.

10.52 In addition, there is no evidence that the land is available for development and so the proposal could be undeliverable. The National Planning Policy Framework discusses the importance of delivering a project in a timely manner. The appeal proposal would take 10 years, during which time we will suffer the consequences.

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<sup>148</sup> Please see also ID24 (this includes a USB stick with drone footage of local roads on a day in November 2016 with no accidents on the local network or motorway)

*The Case for Mr Dave Sawyer*<sup>149</sup>

- 10.53 I have lived on Brathay Close, which is opposite the point on Poplars Avenue where access to the appeal site is proposed, since 1996/97. I am a former employee of the Warrington Development Corporation.
- 10.54 Warrington was designated as a new town in the 1960s with the intention that new development would be sited in satellite districts around the old town, connected by three major expressway routes. These were never completed, which has resulted in large amounts of cross town traffic having to make use of a totally inadequate road network.
- 10.55 Tesco's flagship store, with Warrington Wolves' stadium next door, on Winwick Road generates a substantial amount of additional traffic using Winwick Road, Poplars Avenue and Long Lane. The Junction Nine retail park on Winwick Road now contains 18 units with 963 free parking spaces. This has resulted in further traffic volumes on Poplars Avenue, Cleveland Road and Sandy Lane West.
- 10.56 These same roads are affected by east/west traffic seeking to access Ikea and the flagship M&S store, with Sandy Lane West and Cleveland Avenue also being impacted by traffic trying to leave the recently completed retail site (with Aldi, Costa, a pub and smaller stores) on Sandy Lane West. Substantial tailbacks regularly result, notably as motorists block the road in order to exit from Aldi.
- 10.57 Traffic exiting the site onto Poplars Avenue would lead to intolerable and unsustainable levels of vehicular movement throughout the ward, with the proposed supermarket likely to generate traffic around the clock. The care home would also be busy with a constant flow of visitors, ambulances and deliveries.
- 10.58 It is hard to understand why the proposed employment land is required at all, given that there is already a purpose built area in the ward less than half a mile away, with at least c.4600 square metres (50,000 square feet) of office and factory space available. The Gemini and Birchwood business parks are also nearby, as is the Grange Employment Area.
- 10.59 The area does not need another supermarket. There are four within a mile of the appeal site, with three smaller stores in the locality and an Iceland Food Warehouse at Junction Nine. An additional supermarket could also lead to closures elsewhere.
- 10.60 The ward suffers from background noise generated by the major highways in the area. Additional local traffic would add to this.
- 10.61 The prime minister recently said of planning matters that we need to have the right houses in the right places. These would be the wrong houses in the wrong place.

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<sup>149</sup> Please see also ID 25

*The Case for Ms Catherine Fortune<sup>150</sup>*

- 10.62 I have lived in Fearnhead for 37 years.
- 10.63 This area is not served well by buses, contrary to the submissions of the appellant. Recent service reductions have occurred here, impacting on Fearnhead and Cinnamon Brow residents.
- 10.64 Padgate railway station is closest to the appeal site. Served only hourly by Northern Rail it is 'semi slow' and not punctual. The westbound platform has no shelter.
- 10.65 Birchwood and Warrington Central are better for commuting, but trains are overcrowded and frequently delayed. From May 2018 the TransPennine Express route will be changing. Direct rail from Warrington to Leeds, York and Newcastle will be lost. There is little connectivity, reliability or capacity for Warrington's commuters.
- 10.66 I do not feel supported as a cyclist in Warrington, in spite of years of experience and a good knowledge of local on and off-road routes. The many parked cars on the Poplars estate are difficult to negotiate. I never cycle on Delph Lane or Blackbrook Avenue. You need a full range of defensive cycling techniques as you cycle around the area.
- 10.67 A £250 voucher might buy a decent bike and there are some lovely rides on the Transpennine Trail, but you have to get there first. None of the pedestrian and cycle routes proposed with Local Growth Fund money serve this part of Warrington.
- 10.68 The proposed green corridor along the site's northern boundary would be far too noisy to hold a conversation and I would be worried about traffic fumes there.
- 10.69 New housing is being developed in this country in a genuinely sustainable way. 'Cambridge North' is a good example of this, with reduced reliance on cars and with good transport links, including a new railway station and the Cambridgeshire Guided Busway. Cycling will be a natural choice. The contrast with transport options that would be available to future residents of Peel Hall is stark. I find the prospect of even more cars on my local roads upsetting.

*The Case for Mr Stuart Mann<sup>151</sup>*

- 10.70 I live on Myddleton Lane in Winwick village, where I have resided for over 30 years.
- 10.71 The roads around the village are on their knees as a result of current vehicle congestion. During that time around 400 houses have been built in the parish, while bus routes have been cut back and no improvements to the highway infrastructure have occurred.

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<sup>150</sup> Please see also ID26

<sup>151</sup> Please see also ID27

- 10.72 There is a massive bottleneck at the M62/M6 junction as a result of the failure to increase capacity here. The smart motorway has made no difference at all, merely slowing vehicles down, creating longer queues and more pollution.
- 10.73 To reach Manchester in time for work, I have to leave home 30 minutes earlier than I once did. Drivers now cut through Winwick to bypass daily queues on the M62 during peak commuting hours. It only takes one car to break down and the traffic increases fourfold. It is often virtually impossible, as an adult let alone as a child, to cross Myddleton Lane.
- 10.74 The appeal site has no planned investment in highways infrastructure and has a main exit onto Delph Lane, from where vehicles would naturally head through Winwick to join the motorways.
- 10.75 One also needs to consider the development of the former Parkside colliery site two miles down the A49 from Winwick and the new houses one junction further west up the M62 at Omega. Drivers from here will also learn of the Winwick village cut through.
- 10.76 If this appeal is allowed, drivers in Winwick will be trapped on their driveways for long periods because of the sheer volume of traffic using our saturated roads as a rat run.

*The Case for Ms Sian Gandy<sup>152</sup>*

- 10.77 My family and I regularly take our ponies and bikes out on the Peel Hall bridleway and other local lanes and tracks. This is an area enjoyed by many, away from the hustle and bustle of town, where I also grew up. It is the only safe place left to ride out and is an off-road area where our children can walk, run, cycle, ride and play. It is not an area that has been "*slightly forgotten*", as the appellant states<sup>153</sup>, but a local gem that we cannot afford to give up.

*The Case for Ms Emma Fitzpatrick<sup>154</sup>*

- 10.78 I live on Lysander Drive, Padgate, a stone's throw from the proposed development site.
- 10.79 I have recently had to use Warrington A&E on two occasions, due to sudden illness, where I experienced long delays while waiting to be seen and admitted. I was told that "*the problem is Warrington is growing but our hospital stays the same*". Anyone considering going ahead with this development should go and look around Warrington A&E and see for themselves that it is only going to push it to breaking point.

*The Case for Ms Jean Rogers*

- 10.80 I live on Ballater Drive. I am retired and was hoping to spend my time walking my dogs through this "*forgotten*" place<sup>155</sup>.

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<sup>152</sup> Please see also ID28

<sup>153</sup> Mr Griffiths' Evidence in Chief

<sup>154</sup> Please see also ID29

<sup>155</sup> Mr Griffiths' Evidence in Chief

- 10.81 There are a lot of elderly people, living in bungalows, in the wider area. It is hard for them to get across the roads to a bus stop and will get harder with the increased traffic from the appeal proposal.
- 10.82 There are frogs in the ponds in the park (Mill Lane fields and Radley Woods), as well as bats and foxes. I saw a heron this morning. The appeal proposal means that we will lose wildlife.
- 10.83 The proposal will affect cyclists, motorists, pedestrians and wildlife. We will all be affected by construction traffic.
- 10.84 I no longer go into Warrington on a Saturday as it is too busy and there are too many sets of traffic lights on Manchester Road. I will end up being stuck in the house.

*The Case for Mrs Helen Gurnani<sup>156</sup>*

- 10.85 I do not live near the appeal site and have never set foot upon it. I am here to make the case that there is no need to build on it or on Warrington's green belt. It is not a case of north versus south Warrington, when considering where new development should go. We should be putting a break on all this explosive development.

*The Case for Mrs Julie Kueres*

- 10.86 I am a member of the Save Warrington group. This development is not needed to meet the housing numbers set out in the Council's Preferred Development Option (PDO). We don't need 24,000 houses in Warrington and are asking for the PDO to be scrapped and for the Council to deliver a local plan that meets local community aspirations. We should have 10,000 to 15,000 houses over a twenty-year period.
- 10.87 Release of green belt land is unacceptable. The PDO is destructive and invasive. Local infrastructure provision is insufficient and the town centre is in decline. Warrington has lots of brownfield land and banked land. It is our town and we intend to keep it.
- 10.88 Sustainability is a golden thread running through the planning system, which should be full, fair and effective. The benefits of the original sale of the land are not clear. We should know about ownership and any profit share arrangements.

*The Case for Mrs Danielle Austen*

- 10.89 I live in Fearnhead. I walk our dog on Peel Hall and use the site on a regular basis. I cannot believe that the appellant is proposing to use four storey apartment buildings as a noise barrier to the M62. These dwellings would be the least expensive and so inhabited by the most vulnerable and needy. Perhaps it is because we live in what the appellant calls a "deprived area" and the proposal will help us to, as they said, "pull our socks up"<sup>157</sup>.

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<sup>156</sup> Please see also ID59

<sup>157</sup> Mr Griffiths' Evidence in Chief

*The Case for Mrs Kath Robinson*

10.90 Residents have ably and admirably described the negative impacts of the proposed development. I worry about the impacts upon my grandchildren of an increased number of vehicles, with their noise, dirt and pollution. There will be a significant human impact. Its effects will be widely felt.

*The Case for Ms Catherine Webster*

10.91 I am fighting for the next generation and the consequences of increasing traffic on all of our roads.

10.92 There are a number of small convenience stores around the area, all of which have been taken over by larger companies. If the development goes ahead there will be more retail units and businesses relying on bulk deliveries. They are delivered by very large 32 ton HGVs, which deliver to a number of shops over the Warrington area.

10.93 I have witnessed an HGV manoeuvring outside Myddleton Hall on Delph Lane. It is a very tight squeeze. I have also experienced problems with vehicles using Highfield Lane, Delph Lane, etc to access Warrington. They use this route to avoid standing traffic on the M6, etc.

10.94 More retail units on Peel Hall would be a bad thing. It would add to traffic issues. I do not believe that consideration has been given to the full impact of such vehicles on local roads not designed for such.

*The Case for Ms Wareham<sup>158</sup>*

10.95 I live on Grasmere Avenue. There will not be enough space for the proposed community centre on Radley Common. The current one is vandalised all the time.

10.96 The proposed development will result in crime going up in the area, as has happened at the new development at Chapelford Village, which is supposed to be a 'smart' place. Bus shelters will be used by drunks and drug takers. I will put my house on the market if planning permission is granted for the appeal scheme.

10.97 I am disabled and even as things are I could not get along Poplars Avenue on my mobility scooter due to vehicles blocking the pavement. Grasmere Avenue was not designed for heavy traffic but only as an access for the residents who live there.

*The Case for Cllr Cathy Mitchell*

10.98 I am the Chair of Warrington Borough Transport, responsible for Warrington's Own Buses (previously Network Warrington), which is the local bus company for Warrington. I can confirm that there is no agreement in place between Warrington's Own Buses and the appellant for the provision of bus services to the appeal site.

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<sup>158</sup> Please see also ID63

## **11. Written Representations**

11.1 The written representations received expressed some form of objection to the proposal. Those submitted in response to the original planning application are summarised in the planning officer's report to the Council's Planning Committee<sup>159</sup>. Those submitted in relation to the appeal notification are summarised below. They cover the same ground as those received in relation to the original planning application, notably that:

- nearby dwellings would become unsaleable and their privacy compromised;
- there would be an increase in crime;
- there would be a loss of habitat, wildlife and of green space used by local residents;
- local schools, surgeries, the hospital and roads could not cope;
- the proposed school would be needed earlier in the development process;
- highway safety and efficiency would be compromised on several local roads, road noise would increase and pollution levels would rise;
- access via Birch Avenue is already difficult and the street is not appropriate for more vehicles;
- there would be noise and dust for many years during construction;
- there would be an increased risk of flooding, including from the proposed balancing ponds;
- ground conditions are complex and unstable; and
- brownfield land should be used first.

## **12. Planning Conditions and Obligations**

### ***Conditions***

12.1 As set out in the Framework, conditions must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; and reasonable in all other respects. I address these matters, as necessary, under three headings below.

12.2 First, I consider those conditions that the parties agreed were necessary in the event that the Secretary of State decides to grant planning permission. These may be found at Appendix C. I have made a number of minor amendments to and/or conflated some of the agreed conditions as presented (which went through various iterations), in the interests of clarity, precision and implementation and to avoid repetition.

12.3 There was disagreement about the trigger points for the off-site highway works set out in conditions 12 and 13 (see Appendix B). I have set out my reasoning on this below. Even so, I have included in Appendix D the Council's

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<sup>159</sup> CD APP1



two alternative conditions, suggested in place of condition 12, should they be preferred by the Secretary of State if granting planning permission.

- 12.4 It was common ground that a contaminated land/land remediation condition was required, but the parties failed to agree on how this should be framed. For the reasons set out below I consider the Council's approach to be most appropriate. I have, however, included the appellant's proposed condition at Appendix C, again should it be preferred by the Secretary of State if he decides to grant planning permission.
- 12.5 Second, I raised concerns at the Inquiry about agreed condition 7. Although I have found that this condition can meet the tests as set out in the Framework<sup>160</sup>, and thus have included it in the suggested list of conditions, I do not consider that it accords with the relevant parts of the Guidance. Again, I consider this further below.
- 12.6 Finally, the Council proposed a condition in relation to works to Radley Lane<sup>161</sup> the necessity of which was disputed. This condition is considered separately below and can be found at Appendix C, should the Secretary of State consider that it meets the above tests and wish to apply it if granting planning permission.
- 12.7 Where any other matters of detail relating to otherwise agreed conditions were debated, I have addressed these under 'Agreed Conditions'.

*Agreed Conditions*

- 12.8 The conditions defining the scope of the reserved matters; specifying the time limits for submission of reserved matters and commencement of development; requiring compliance with the relevant plans; setting the maximum number of dwellings; setting the floor space of the non-residential uses; requiring the agreement of a market housing mix; and requiring phasing and master plans are necessary to provide certainty, to define the permission in line with what has been proposed and to ensure an appropriate mix of housing that reflects local needs.
- 12.9 That removing permitted development rights from the proposed B1 employment units is necessary due to their proximity to residential development, future and proposed, and the need to ensure that all future uses of the units remain compatible with this layout. I consider this situation to be exceptional, such that the condition is justified.
- 12.10 The condition relating to Secured by Design is necessary in the interests of good design, contributing to the creation of a safe environment.
- 12.11 A Sports Strategy condition is needed to provide a robust analysis of the appropriate level of new sports facilities required on the appeal site. That relating to the relocation of the Mill Lane playing fields is necessary to ensure that adequate replacement is secured.

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<sup>160</sup> Paragraph 55

<sup>161</sup> Please see ID72

- 12.12 Conditions relating to drainage are required to ensure that the site is properly drained and to mitigate flood risk on and off the site.
- 12.13 The landscape and ecological management plan condition; that requiring control of invasive plant species; that in relation to nesting birds; and those relating to bats and badgers are necessary to protect and enhance biodiversity on the site. A condition concerning a lighting scheme is necessary for the same reasons, with particular regard to securing foraging corridors for bats and other nocturnal animals.
- 12.14 Access; parking (including cycle parking); off-site and internal highways design and works; servicing and waste management; and the condition relating to access to the M62 motorway are necessary to ensure highway and pedestrian safety and highway efficiency. The condition requiring Electric Vehicle Charging points is necessary to ensure policy compliance and in the interests of mitigating CO<sub>2</sub> emissions. That referring to The Greenway is necessary to ensure policy compliance with regard to encouraging active travel.
- 12.15 The conditions relating to bus infrastructure and travel plans are necessary to ensure policy compliance, by encouraging use of sustainable modes of transport and making effective use of existing public transport opportunities.
- 12.16 The Construction Environment Management Plan condition is necessary to ensure that there is no adverse impact upon the living conditions of local residents, or upon the local highway network, during construction.
- 12.17 In line with adopted policy, groundwater and archaeological conditions are necessary given, respectively, the presence of water bodies and potential presence of contamination (notably given the past intensive agricultural use of the site), and the likely presence of historic remains, on the site.
- 12.18 The noise mitigation conditions are necessary in the interests of ensuring acceptable living conditions for future occupiers of the appeal scheme, and to protect the occupiers of neighbouring properties from noise arising.
- 12.19 The condition relating to tree and hedgerow protection is necessary to ensure that appropriate safeguards are in place for retained trees and hedges.
- 12.20 I am satisfied that, in order to enable a full and complete understanding of the nature and construction of the development that may come forward as a result of this appeal, all of those conditions requiring action before commencement of development are so structured.
- 12.21 The trigger points for highways conditions 12 and 13 were debated. I address these in turn.
- 12.22 The trigger points in dispute in condition 12 were those relating to junctions a), b), c), and g). The Council was of the view that works relating to all of these junctions should be complete before any dwellings were occupied, given the already congested nature of the local network.
- 12.23 The Council also proposed splitting the off-site highways works into two separate conditions (see Appendix D). A number of the listed works in these

conditions are proposed as the Council considers that there will be impacts upon junctions that have not been modelled to date.

- 12.24 I have found that it would be appropriate if the impacts of the appeal scheme on the highway network were modelled using the more up-to-date WMMTM 2016. This could very well mean that additional junctions would need more detailed modelling. Nonetheless, if the Secretary of State was minded to grant planning permission, I do not consider that the Council's alternative proposed conditions could be considered reasonable or necessary, given the more limited scope of the modelling work undertaken to date.
- 12.25 The appellant proposed the triggers that I have incorporated within the condition, derived from the traffic modelling work undertaken, which is based upon WMMTM 2008. Notwithstanding my concerns about the basis for that work, if planning permission was to be granted then the extent of the appellant's traffic modelling work would have been deemed to be acceptable. As such, the assessments of junction capacity derived from it would also be considered acceptable and, therefore, it seems reasonable for the appellant's trigger points to be used.
- 12.26 Responding to condition 13, Highways England was of the view that the works to M62 J9 should be completed before occupation of the 600<sup>th</sup> dwelling. At that point, the junction would be operating at 99.9% saturation. The appellant was of the view that 840 dwellings was a more appropriate trigger, at which point the junction would be at 100.4% saturation.
- 12.27 The difference between these trigger points is relatively slim. Nonetheless, given that the junction is already operating at 90% saturation and would be, as near as makes no odds, at saturation point with traffic from 600 additional dwellings, it seems to me that 600 dwellings is a reasonable trigger. There is no evidence to suggest that such a trigger would place any undue viability burden upon the development.
- 12.28 A land contamination/site remediation condition is necessary given the site's former intensive agricultural use. The substantive dispute in this instance was over the length of the two conditions proposed by the Council. Although far from concise, the conditions are clear and are logically presented. The Council's justification for them<sup>162</sup> in preference to that proposed by the appellant is compelling and I see no reason not to favour them.
- 12.29 United Utilities proposed a number of conditions, which have been included as proposed by them or the aims of which have been addressed through other conditions. I do not consider that a condition relating to foul water is necessary as this matter is addressed by other legislation and United Utilities have raised no objection on capacity grounds.

*Agreed Condition 7*

- 12.30 The appellant does not control all of the land within the boundary of the appeal site. In terms of the smaller parcels, required for access off Poplars Avenue, this issue is *de minimis* as far as the s.106 agreement is concerned. The

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<sup>162</sup> ID65

matter is much more significant with regard to the larger area of land known as Mill Lane playing fields [13.69 onwards].

- 12.31 Condition 7 seeks to prevent development on Mill Lane playing fields until all those with an interest in the land are bound by the terms of the s.106 agreement. This would be achieved through a further planning obligation.
- 12.32 Arguably, such a condition would meet the tests set out in the Framework<sup>163</sup>. It is necessary to ensure that all of the land within the appeal site is bound by the terms of the s.106 agreement. It is clearly relevant to planning and to the proposed development. It would be enforceable and is precise and reasonable.
- 12.33 The Guidance, however, which is a material consideration of considerable weight, sets out a number of other criteria that such a condition should meet [5.23].
- 12.34 First, there should be exceptional circumstances. There is no definition of what “*exceptional circumstances*” may be. They are, therefore, a matter of judgment. It is not clear what, if any, exceptional (using the common understanding of ‘unusual’ or ‘not typical’) circumstances arise in this case. The Council is unable to demonstrate a five-year supply of deliverable housing land, which could be considered as being exceptional, insofar as it is expected that a local planning authority should maintain such a supply. It is, however, far from unusual or atypical to have to consider such an eventuality when making planning decisions.
- 12.35 Second, is the matter of whether the appeal proposal can be considered complex *and* strategically important. There is no evidence before me to suggest that the appeal proposal, although for a large development, is particularly complex. The proposed planning conditions (that which is the focus of this discussion notwithstanding) and obligations are fairly standard, indicative of a relatively straightforward scheme with no need for, for example, complex engineering, land remediation or infrastructure works.
- 12.36 In terms of being strategically important, the site does not feature in any currently adopted development plan for the area. Although namechecked, it is not considered explicitly in the Council’s emerging Preferred Development Options<sup>164</sup>. The site is included in the Council’s SHLAA [9.19], with assumptions made about housing being delivered on it during the five year period going forward, but the SHLAA is not a policy document and carries very little, if any, weight as a decision making tool. In any case, as I have concluded below [13.82], the site does not appear to be available or achievable in its entirety, which would suggest that the SHLAA’s judgment is incorrect in any case.
- 12.37 Turning to the final requirement, the appellant has not presented evidence to suggest that the development would be at serious risk of non-delivery without

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<sup>163</sup> Para. 55

<sup>164</sup> Even if that were not the case, that document is at an early stage of development and, as the parties agreed, carries very little if any weight as a material consideration (CD APP5 p.8). Even less so, now that a revised draft is expected later this year for consultation (see ID76).

the proposed condition. Quite the opposite is suggested, in fact, with the site's ability to deliver at a high rate being suggested as a benefit. [9.117]

12.38 The further difficulty is that the condition would make little difference to what I consider, on the basis of the evidence currently before me, to be an undeliverable scheme. The current landowner, namely Homes England, whom the condition seeks ostensibly to tie in to the s.106, has been very clear that it is not proposing to part with the land. It has consistently declined to sign up to a s.106 agreement (hence the need for the proposed condition) and it is difficult to see how the condition would change this. It is not unreasonable to consider, somewhat ironically, that the need to find a landowner (be that Homes England or a subsequent owner) willing to tie themselves to a s.106, already agreed between other parties, before their land could be developed, could well become a risk to scheme delivery of itself.

12.39 In short, I am not persuaded that the proposed condition meets the requirements of the Guidance and, as such, although clearly necessary if the Mill Lane playing fields are to be tied into the relevant planning obligations, is inappropriate in terms and indicative of the appellant's failure to secure the land necessary for the development proposed.

*Disputed condition*

12.40 The Council proposed a condition relating to lighting on Radley Lane<sup>165</sup>, the need for and reasonableness of which was disputed by the appellant. I do not consider such a condition to be necessary. The development will be permeable for pedestrians and cyclists, with bespoke means of crossing through it to access points on various surrounding roads. These would be more suitable than Radley Lane, which is not designed for pedestrian use.

12.41 It is possible that there would be a period of time during construction when Radley Lane would be a primary pedestrian/cyclist access road, which would not be ideal. Nonetheless, this would not be the permanent situation. More fundamentally, the section in question is not in the ownership of the appellant and, as such, I do not consider that the proposed condition would be reasonable as there can be no certainty that the required lighting scheme could be delivered.

***Obligations***

12.42 Regulation 122 of the Community Infrastructure Levy Regulations 2010 (the CIL Regulations) requires that if planning obligations contained in s.106 Agreements are to be taken into account in the grant of planning permission, those obligations must be necessary, directly related, and fairly and reasonably related in scale and kind to the development in question.

12.43 The obligations relate to affordable housing (with the option to provide some of it off-site if deemed appropriate by the decision maker); the laying out and ongoing maintenance of public open space; the provision of new sports pitches and a community building with changing rooms; bus service contributions; provision, as required, within specified timescales of an area of land sufficient for the construction of a one form entry primary school on the site, along with

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<sup>165</sup> Please refer to ID72 and ID73

a Primary School Contribution and a Secondary Education Contribution (payable to the Council or to the University of Chester Academy School); and a Healthcare Contribution.

- 12.44 Evidence of the necessity, relevance and proportionality of the obligations was set out in detailed submissions by the Council<sup>166</sup> and by Mr Nick Armstrong<sup>167</sup> of Warrington Clinical Commissioning Group, both of which were discussed at the Inquiry and addressed in the Council's closing submissions<sup>168</sup>.
- 12.45 The obligation relating to affordable housing allows the appellant to deliver some affordable dwellings off-site should the Council agree<sup>169</sup>. Development plan policy allows for off-site affordable housing provision only in certain circumstances and, as such, the Council was clear that its preference was for on-site provision [8.4]. Even so, the obligation does not advance an either/or approach. In other words, it ensures that the Council would still have the final say in whether it was appropriate to provide some affordable housing off-site. I do not consider there to be any harm arising from the flexibility that the obligation affords.
- 12.46 Turning to the obligation sought towards healthcare provision, the appellant was of the view that this failed to satisfy all of the legal tests. This was rebutted by the Council in the documents noted above. [12.44]
- 12.47 There is no dispute that the obligation is necessary to make the development acceptable in planning terms. Indeed, the appellant acknowledged that the appeal proposal would give rise to increased healthcare need, which should be mitigated. Based on the calculations provided to me, derived from an adopted Planning Contributions Supplementary Planning Document<sup>170</sup>, the contribution also appears to be fairly and reasonably related in scale and kind to the development (contextualised by indicative build costs for a new facility<sup>171</sup>).
- 12.48 The pivotal issue is whether the obligation is directly related to the development. The Council (through Warrington Clinical Commissioning Group) provided extensive evidence in support of its case that the funds would be spent on the co-location of existing medical practices in Fearnhead and Padgate. There is no site yet identified and the proposal is subject to public consultation. Nonetheless, there is a clear, active strategy in place to address the need arising from the proposed development and, in my judgment, the obligation can be regarded as being directly related to the development.
- 12.49 My attention was drawn to an appeal decision wherein the Inspector found otherwise in relation to a healthcare obligation. In that instance, however, the Council in question appears to have sought a healthcare obligation as a matter of course, with no idea at all as to what it would be spent upon. That is not the case here. [8.5; 9.111]

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<sup>166</sup> A CIL compliance statement was submitted in advance of the Inquiry. This may be found in the green folder on the case file.

<sup>167</sup> Mr Armstrong's Proof and ID18

<sup>168</sup> ID66

<sup>169</sup> S.106 agreement Schedule 4; Section 9

<sup>170</sup> CD LP14

<sup>171</sup> ID18

- 12.50 Should the Secretary of State determine that this obligation does not satisfy the relevant tests, and also be minded to grant planning permission, he will need to come to a view about whether it would be appropriate for the development to go forward with an acknowledged adverse impact upon local healthcare services.
- 12.51 I consider that the unmitigated adverse effects of the proposal upon existing healthcare facilities would be a significant material consideration that would weigh against it. Putting to one side the fact that new residents might find themselves unable to access GP services, Core Strategy policy CS1 is clear that to be sustainable, development must accord with national and local planning policy, taking into account other material considerations. It may not address specifically situations where development is legally unable to make required contributions towards local infrastructure, but it sets out a clear desire to ensure additional social infrastructure is provided where needed to support development.
- 12.52 In addition, the Framework<sup>172</sup> states that achieving sustainable development means that, in social terms, the planning system should support healthy communities by fostering a well-designed and safe built environment, with accessible services that reflect future needs.
- 12.53 In conclusion, overall I consider that the submissions and oral evidence demonstrate the basis for the obligations and how they relate to the development proposed, set out (or reference) how any financial contributions have been calculated and indicate whether the CIL regulation pooling limits have breached. It is evident how the funds would be spent. They provide evidence that the above obligations meet the tests set out in the Regulations.

### **13. Inspector's Conclusions**

- 13.1 The following conclusions are based on the written evidence submitted, on my report of the oral and written representations to the Inquiry and on my inspection of the site and the wider area. The numbers in square brackets thus [ ] refer, as necessary, to paragraphs in other sections of the report.
- 13.2 At the start of the Inquiry, one of my main considerations was:
- "whether the appeal scheme would provide appropriate living conditions for future occupiers, with regard to highway noise and air quality".*
- 13.3 Such matters, should, in my view, be addressed before the reserved matters stage, so that there is a clear basis on which to take forward detailed design. This would certainly seem prudent given the site's proximity to the M62.
- 13.4 Nonetheless, on the basis of all that I heard, and having regard to what became a joint position between the main parties on this matter, it appears that these considerations could be addressed satisfactorily by condition (notwithstanding my overall conclusions on the wider issue of air quality). Even so, I do not regard this position as ideal, and feel obligated to reiterate the strong proviso that I made at the Inquiry. That is to say, any mitigation in relation to noise and air quality should be addressed through building situation

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<sup>172</sup> Paragraph 8(b)

and orientation rather than through such means as non-opening windows and mechanical ventilation. Others may form a different view, but I do not consider that such mechanisms can be regarded as conducive to the provision of optimum living conditions for future residents.

13.5 I also identified "*the effect of the proposed development on local infrastructure*" as a main consideration. This was largely addressed by the submission of a completed s.106 agreement and, as such, I do not consider it further here. The only outstanding points of dispute between the main parties in relation to local infrastructure have been considered in the section on planning obligations above [12.42 onwards].

13.6 Thus, the main considerations in this appeal are:

- *The effect of the proposed development on the safety and efficiency of the local and strategic highway network;*
- *The effect of the proposed development on the character of the area;*
- *The effect of the proposed development on local air quality; and*
- *Whether the appeal proposal can be regarded as deliverable.*

13.7 For reasons of clarity I have addressed these considerations under a range of headings below.

***The effect of the proposed development on the safety and efficiency of the local and strategic highway network***

*Overview*

13.8 In addition to the evidence given by the Council and local residents, it was abundantly clear from my many car journeys in and around Warrington that the appeal site is situated in an area that suffers from high levels of traffic congestion, chiefly at peak periods in the morning and evening, on a daily basis. The M62 and A49 appeared to be particularly badly affected. I have no reason to doubt that congestion is more acute still when there are accidents on the M62, resulting in drivers diverting onto local roads. In addition, I observed vehicles queuing back on Sandy Lane West from the A49 junction, giving rise to particular problems for vehicles seeking to exit the Fordton Retail Park.

13.9 In short, the concerns of the Council, Highways England, Cheshire Constabulary<sup>173</sup> and of local residents in relation to highway safety and efficiency are readily understandable.

13.10 Notwithstanding the lengthy exchanges of evidence on this issue, the substantive dispute between the main parties boils down to whether the appellant's use of superseded local highways data to inform their transport assessment (TA), rather than the quality of the transport work *per se*, matters.

13.11 The appellant's most recent TA derives from a bespoke "Peel Hall" SATURN transport model, constructed for the appellant by respected transport

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<sup>173</sup> ID13



consultants. This, and other work informed by it<sup>174</sup>, shows that the appeal scheme's impacts on the highway network could be successfully mitigated. I have no reason to consider that the TA is not internally consistent or that the evidence used to inform it was not, at the time that it was being put together, considered appropriate.

- 13.12 But this latter point is key. The Peel Hall model relies on origin/destination data from the Warrington Multi Modal Transport Model 2008 (WMMTM 2008). This, in turn, depends upon roadside interviews undertaken in 2005 and 2008. It was recognised at the time that use of WMMTM 2008 was only appropriate, "*in lieu of a more up-to-date model*"<sup>175</sup>.
- 13.13 WMMTM 2008 was, however, superseded by the Warrington Multi Modal Transport Model 2016 (WMMTM 2016) produced in support of the Council's Local Plan review. WMMTM 2016 includes much more recent roadside interview results and mobile phone tracking for its origin/destination data. Thus, it provides a more detailed, up-to-date and, therefore, more robust basis for transport modelling in the area than does WMMTM 2008.
- 13.14 There were considerable tit-for-tat exchanges between the parties about who said what, when, and about which data in the run up to the appeal. Ultimately, they are of little value. Mr Tighe acknowledged<sup>176</sup> that if the appellant was starting again then it would be appropriate to use this more up-to-date data. I can find no compelling reason why WMMTM 2016, or at least the origin/destination data from it, could not have been used in advance of the Inquiry, which was purposely held in abeyance<sup>177</sup> to allow the appellant to produce further transport work (finally submitted in January 2018, well after the appeal had been lodged), or why it could not now be used.
- 13.15 Indeed, having heard Mr Crossley's evidence, I briefly adjourned the Inquiry to give the main parties (and Highways England) further time to explore this option, with the aim of resolving the matter one way or the other, thus addressing head on a key point of dispute. Following discussion, the appellant determined not to follow this route but to proceed with the appeal. The reason for this was the time that it would take to prepare and run the WMMTM 2016 model, and to analyse the results.
- 13.16 This issue of time is a thread running through the appellant's transport evidence<sup>178</sup> and, as Mr Tighe agreed<sup>179</sup>, was part of the reason that the WMMTM 2016 was not used by the appellant. The other part being that WMMTM 2016 is "*not perfect*". The latter point could be so, but WMMTM 2016 is very clearly more up-to-date than WMMTM 2008. Indeed, the fact that the Council decided to produce WMMTM 2016 is itself indicative of the fact that it no longer considered WMMTM 2008 to be fit for purpose.

M62 J9

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<sup>174</sup> See ID33 – ID37

<sup>175</sup> Local Model Validation Report - Revised Transport Assessment Appendix 59

<sup>176</sup> In response to my questions

<sup>177</sup> Please refer to correspondence within the blue wallet on the case file

<sup>178</sup> Mr Tighe's Proof para 3.54

<sup>179</sup> In response to my questions

13.17 The appellant did, however, agree to Highways England carrying out additional modelling of M62 J9. The result was a technical report<sup>180</sup>, commissioned by Highways England, submitted to the resumed Inquiry. Drawing upon the report's conclusions, Highways England confirmed formally at the Inquiry<sup>181</sup> that, although there would be adverse impacts upon some arms of the junction there would be, overall, a general improvement with the mitigation proposed by the appellant.

13.18 It is notable, however, that the report assumes no blocking of the junction's exits as a result of queuing traffic on the local network. This was a matter upon which Highways England deferred to the local planning authority and upon which it required certainty (which the Council maintained it was unable to provide, to whatever degree, given its position *vis-à-vis* WMMTM 2008 and 2016). The report also identifies that:

*".....the flows used previously were significantly lower than those derived using the agreed approach for this work."*<sup>182</sup>

13.19 In other words, like the Council, Highways England also found differences in the way that the Peel Hall model and WMMTM 2016 assigned traffic flows to the network. It also maintained concerns about how the Peel Hall model had assessed the M62 J9 capacity<sup>183</sup>.

*Birch Avenue and Mill Lane*

13.20 In addition to a specific focus on M62 J9, concerns were raised by residents of Birch Avenue and Mill Lane. I address these streets in turn.

13.21 Residents' concerns about the impacts upon the Birch Avenue/Winwick Road junction from additional housing are covered by the wider discussion below. The point was also made, however, that the road itself is unsuitable for additional residential traffic.

13.22 Birch Avenue is a short cul-de-sac accessed from Winwick Road (A49), with another short cul-de-sac, Elm Road, leading off it. It is a residential street with a large NHS building, The Alders, housing Warrington Child and Adolescent Mental Health Services, at the bottom of it. The appeal scheme proposes that a discrete development of 20 units would be accessed from Birch Avenue.

13.23 This street is narrow and would be unlikely to meet current width requirements if it was proposed now. Many dwellings have no, or very limited, off street parking and, on the occasions that I visited, there were several cars and small vans parked on the road. This reduced the carriageway width such that larger vehicles could just about fit past in places<sup>184</sup>.

13.24 It was not disputed that vehicles from all three emergency services are called out regularly to The Alders, at various times of day and night, and have, on occasion, had difficulty negotiating Birch Avenue due to the presence of parked

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<sup>180</sup> ID55

<sup>181</sup> Mr Marsh in response to my questions

<sup>182</sup> ID55 p31

<sup>183</sup> Mr Marsh in response to my questions

<sup>184</sup> Please see also ID14 for photographs submitted by Mrs Tina Dutton

vehicles. On-road parking is likely to increase considerably following the appellant's actions in limiting the number of cars able to park on land owned by them at the bottom of Birch Avenue<sup>185</sup>. [10.23; 1024]

- 13.25 It may be that, in a different context, the effects of the addition of 20 dwellings to a short cul-de-sac would be *de minimis* in highway safety and efficiency terms. In this specific context, however, there is a genuine risk that increased vehicle movements along what is an already congested street, which appears to be used regularly by the emergency services, could give rise to additional vehicle conflicts and, thus, compromise highway efficiency and safety. Turning to Mill Lane, again the issue of the degree to which the proposed mitigation is appropriate is covered under the wider consideration of data integrity below.
- 13.26 The specific concerns of residents replicated those raised in the past, in relation to a residential scheme for 150 dwellings on part of the appeal site. These were addressed by another Inspector, who felt that Mill Lane was adequate for the scheme then proposed. [9.69]
- 13.27 There is no requirement upon me to accept without question the conclusion of my colleague. That said, I did not see or hear any evidence during the Inquiry that would lead me to a different conclusion. Although there was some limited on street parking on Mill Lane, and a narrowing of the footway in places, overall the road does appear to be adequate, rather than perfect, as an access route for vehicles and pedestrians, including those with disabilities.
- 13.28 My assessment of the likely use of Radley Lane, which was also drawn to my attention<sup>186</sup> in the context of highways matters, is covered above. [12.40-12.41]

*The wider issue*

- 13.29 Returning to the wider issue, it is evident that a validated WMMTM 2016 was available for use in November 2017<sup>187</sup>, but was not drawn upon by the appellant, and that the raw origin/destination data was available earlier<sup>188</sup>, but was not requested by the appellant<sup>189</sup> [8.19-8.19].
- 13.30 In addition, as Mr Tighe acknowledged, the validation of the Peel Hall model did not take in its origin/destination data, which was of a vintage well beyond the six years maximum advocated by the Department for Transport's Transport Analysis Guidance<sup>190</sup> (WebTAG). The inference from this guidance being that data beyond six years old is unlikely to be fit for purpose. [8.20]
- 13.31 There was some debate about whether this conflict with WebTAG mattered, as it is aimed principally at building evidence in support of business cases to inform investment funding decisions requiring government approval. Nonetheless, WebTAG is clear that:

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<sup>185</sup> ID57

<sup>186</sup> See ID62

<sup>187</sup> Mr Taylor's Proof Appendix 4 page 7

<sup>188</sup> Mr Tighe's Proof para 3.42

<sup>189</sup> Mr Tighe Cross Examination

<sup>190</sup> See CF3 paragraph 8.1.1

*"For interventions that do not require government approval this guidance should serve as a best practice guide".*

- 13.32 While acknowledging that there is no policy requirement to use WebTAG, it is a relevant material consideration and there is a clear expectation that it should guide, among other things, the creation of trip matrices. I consider that the TA's conflict with this advice attracts considerable weight. Even if this was not so, my basic concerns about the age of the WMMTM 2008 origin/destination data would remain.
- 13.33 As Mr Crossley's evidence demonstrates, there are some large differences in trip distribution between WMMTM 2008 and WMMTM 2016, reflective of the period of time that has elapsed between the collection of the data underlying each model. It may be that different runs of the WMMTM 2016 data would produce marginally different results [9.55], but there was no suggestion that they would change fundamentally or suddenly complement the WMMTM 2008 results.
- 13.34 Use, albeit broad brush, of the WMMTM 2016 data also flags up junctions that would require more detailed modelling, which were set aside using the WMMTM 2008 data [8.21; 9.64]. I give this work little weight, given the lack of clarity over the inputs to it, but it is still reasonable to consider that, even without this assessment, use of WMMTM 2008 data could well have resulted in a miscalculation of wider network junction impacts, neglecting junctions that should be subject to greater scrutiny.
- 13.35 Whether those differences are significant was the focus of much debate at the Inquiry, not least because the Council accepted that any mitigation needed at affected junctions (that have been modelled) could, in principle, be accommodated within the bounds of the existing highway. That said, it seems reasonable to have, in advance, clarity about the full gamut of potentially affected junctions as well as some degree of assurance, rather than a reliance on theoretical solutions, that a full range of junction works could be delivered without unexpected hiccups or knock-on effects.
- 13.36 Ultimately, this is a matter of judgment. It could be that the results of the WMMTM 2008 data and the Peel Hall model give an accurate picture of the impacts of the appeal scheme on the highway network, insofar as safety and efficiency are concerned. In my view, however, there is sufficient uncertainty, as well as an acceptance by the appellant that one would usually be required to use the most up-to-date data at the point of decision making<sup>191</sup>, that a precautionary approach is entirely appropriate in this instance.
- 13.37 I am also mindful that some junctions in the immediate area have been altered in the past in order to address matters of highway safety, seeking to reduce traffic volumes and speeds while improving conditions for pedestrians, cyclists and bus users<sup>192</sup>. One would wish to be certain that the appeal proposal would not undo any benefits of such work (indicative of an already strained network) by giving rise to works based upon assumptions from now superseded data.

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<sup>191</sup> Mr Tighe cross examination

<sup>192</sup> Please see ID11 and ID12 re Poplars Avenue and Hilden Island

- 13.38 There is no dispute between the main parties that the Council does not demonstrate, nor seek to demonstrate, that the appeal proposal would give rise to unacceptable highway safety impacts or severe residual cumulative impacts on the road network<sup>193</sup>. The appellant is, therefore, dismissive of the Council's case. This rather misses a fundamental point.
- 13.39 It is for the appellant to demonstrate, beyond reasonable doubt, that its scheme would not give rise to such effects, not for the Council to demonstrate that it would not. I do not consider that the appellant has done this, given the more recent origin/destination data available and the potential implications of it for the local and strategic highway network in an area with evident highway capacity issues.
- 13.40 To be clear, I am far from unsympathetic to the appellant's predicament or to what appears to have been, for whatever reasons, a protracted and difficult process to achieve *any* sort of TA. I am also mindful that one must draw a line somewhere, insofar as evidence gathering and modelling is concerned, if planning decisions are ever to be made. The Secretary of State may well consider that this is one of those instances and that the appellant's work, the lack of origin/destination data validation aside, is sufficiently robust that it is fit for purpose.
- 13.41 In my judgment, however, in this instance there does not appear to be any compelling reason why the most up-to-date modelling data, being WMMTM 2016, has not, or could not, be used to provide the most accurate and reliable picture of the impacts of the appeal scheme.

*Conclusion on highway safety and efficiency*

- 13.42 I conclude that, overall, the appeal proposal has failed to demonstrate that it would not create an adverse impact upon the safety and efficiency of the local and strategic highway network. It would conflict with Core Strategy policy MP7 and relevant paragraphs of the Framework, the requirements of which are set out above. [Section 5]
- 13.43 The appellant implied in Closing, albeit not terribly forcefully, that the relevant Core Strategy policies may set a lower bar than the Framework with regard to when highways issues may constitute a reason for refusal. As such, only limited weight should be given to them.
- 13.44 The word "severe" may not feature in policy MP7 but that does not, in my view, render the policy inconsistent with the Framework. Both clearly seek to ensure that highway efficiency is not compromised by new development; severity is a matter of judgment. Either way, with semantics aside, my concern remains that the evidence does not allow one to be satisfied that the requirements of either the development plan or the Framework have been met in this regard. A precautionary approach is appropriate.

***The effect of the proposed development on the character of the area***

- 13.45 The focus solely on character here, rather than appearance too, is deliberate. The concern of some local residents, and the Council, being that the additional

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<sup>193</sup> Framework para. 109.

traffic arising from the appeal proposal would alter the character of the area. [10.12; 10.37; 10.57; 10.81; 10.83; 10.92; 10.94]

- 13.46 Briefly, in terms of appearance, there is no reason why a well-designed scheme on the appeal site should appear at odds with the wider area. Nor was there any substantive argument to the contrary.
- 13.47 The character of the area is, unsurprisingly, residential. It is a dense network of, often winding, interconnected streets, with wide pavements, numerous deep verges and dwellings fronting onto the footway behind short front gardens. The reasonable inference from the positioning of the dwellings in relation to the highway, and the highway layout itself, is that these streets were designed for the purpose of conveying vehicles and pedestrians to and from pre-planned development safely. There does not appear to have been any obvious expectation (at least in terms of the (lack of) provision of access points into the appeal site) of them needing to accommodate additional flows from future major development upon the appeal site.
- 13.48 This is reflected in the character of the area today. Most vehicles do not appear to travel at speed, streets are straightforward to cross and it is a pleasant area through which to walk (although this situation changes on some streets during the peak hours). Aside from the constant background noise from the M62 in places, the area is relatively quiet.
- 13.49 The appeal proposal would be unlikely to have any impact upon the majority of residential streets in the area, in as much as there would be no obvious reason for traffic from the site to access them. Even using the appellant's figures<sup>194</sup>, however, and having regard to the 'without development' scenarios, peak hour flows along those streets that serve as routes into and out of the residential area, chiefly Poplars Avenue, Capesthorpe Road, Cleveland Road, Cotswold Road, Howson Road and Sandy Lane, would increase significantly. Sandy Lane West, Poplars Avenue and Capesthorpe Road would see Annual Average Daily Traffic (AADT) levels reach over 10,000 by 2030. [8.23; 8.24; 9.81]
- 13.50 There was debate at the Inquiry as to whether the technical function of these roads would change with such flows upon them. This is, I suggest, moot. Even if their function was to remain the same, the level of increase in the flow of traffic along them, whether technically appropriate or not, would, inevitably, make them less pleasant routes along which to walk (or cycle) and, indeed, to drive. They would be busier, noisier and, potentially, more difficult to cross especially for certain residents [10.81].
- 13.51 The extension of the 20 mph speed limit that is in place on Poplars Avenue could serve to address some such concerns. There is not, however, a firm proposal before me such that a judgment can be made, nor is there any certainty that the necessary Traffic Regulation Order could be secured. [8.25; 9.83]
- 13.52 The nature of the vehicles using the area would change too. Class B1 (c) uses and a local centre can sit comfortably with residential development [9.85]. But that is not the point. The potential presence of an employment area and a local

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<sup>194</sup> ID33 p4

centre, accessed through the extant residential area, would result in an increase in commercial vehicles, including a, albeit probably limited, number of HGVs, on streets that currently have, on the basis of my observations, few such vehicles upon them.

13.53 All of this may be considered as an inevitable consequence of any new development. In addition, change does not necessarily equate to harm. Thus, the weight to be attributed to this issue may not be considered very significant. Even so, in this instance, I conclude that the appeal proposal would have an adverse impact upon the character of the area, which would gradually, as the appeal site was built out, change to become a busier and, for pedestrians at least<sup>195</sup>, noisier area through which to travel (the issue of air quality is addressed below).

13.54 Thus, the proposal would conflict with policy QE 7 of the Core Strategy, the requirements of which are set out above. It would also conflict with aspects of the Framework<sup>196</sup>, which seek to protect local character.

***The effect of the proposal on local air quality***

13.55 There is no real dispute that the appellant's initial air quality work had some failings, chiefly with regard to the on-site air quality monitoring, and was, in effect, set aside by the appellant to be superseded by that referenced in Mr Hawkins' proof. Additional information was submitted during the course of the Inquiry, in an attempt to secure some further explanation of the evidence thus far provided. I have not found the explanations in all areas to be entirely satisfactory or to answer all of the outstanding queries.

13.56 First, there are clear discrepancies between the grid references used to plot modelled receptor locations/modelled road links and those of the locations themselves. Mr Hawkins' assertion that the modelling remains internally accurate may be correct, but no detail has been provided to show how this may be so or to support his belief that this acknowledged error has not affected the modelling outcomes. [8.40; 9.98]

13.57 Second, the basis for the modelling of affected junctions is unclear with regard to average vehicle speeds. The average speed used by the appellant is 32kph. It is claimed that this is in line with general advice contained within DEFRA's Local Air Quality Management Technical Guidance (TG16)<sup>197</sup>. This is correct, inasmuch as paragraph 7.242 considers a two-way average speed of 20 to 40kph to be most likely.

13.58 TG16 goes on, however, at paragraph 7.246 to consider congested junctions specifically. Those junctions affected by traffic from the appeal site, and around the area of the appeal, are undoubtedly congested at key periods of the day. In this instance, TG16 considers that:

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<sup>195</sup> By the end of the Inquiry there was no substantive evidence before me to suggest that this would have a significant adverse impact upon the living conditions of residents insofar as increased traffic noise is concerned.

<sup>196</sup> Paragraphs 9; 110; 127

<sup>197</sup> CD CF12

*For a busy junction, assume that traffic approaching the junction slows to an average of 20kph. These should allow for a junction, which suffers from a lot of congestion and stopping traffic.*

- 13.59 Thus, it would appear that the appellant's calculations have not taken TG16's approach to congestion fully into account. If they have, the detail of how the relevant junctions have actually been modelled has not been provided to allow for confirmation of this.
- 13.60 Even if this was not the case, the basis for the junction modelling appears to derive from on-site observations of vehicle speeds made by the appellant<sup>198</sup>. No detail about when, where or how such observations were made is provided, making it difficult to assess whether they form an appropriate basis for the modelling undertaken. [8.39; 9.100]
- 13.61 Third, there is no clarity over which traffic data has been used to generate the appellant's air quality results for 2025 and 2031. This means that it is difficult to reach a clear understanding of how the conclusions have been reached and, thus, how robust they may be. [8.39]
- 13.62 Finally, the lack of consistency in the calculation of AADT between the highways modelling and the air quality modelling is unhelpful and the implications opaque. There is no compelling explanation for the use of the "x 6" factor used in the latter, which gives rise to higher AADT figures than the AM=PM + 2.63 x 24 used by the appellant's transport modellers. This is, perhaps, of greater concern in relation to the highways modelling. The use of a higher figure in the air quality assessment would, at least, be looking at a worst case scenario insofar as a comparison with the traffic modelling is concerned. [8.39]
- 13.63 Sensitivity testing has been undertaken by the appellant. It may be that this is considered as giving the decision maker the required comfort about the degree to which traffic flows would need to increase for there to be harmful air quality impacts. In my view, however, one still needs to have confidence in the underlying assessment methodology and data, and to understand that traffic behaviour [3.39; 9.100; 10.3], as well as volume, is a key issue in order to be confident that the parameters of the sensitivity testing are appropriate. There is also the issue of whether traffic flow data is accurate in the first place, given my findings in relation to WMMTM 2008 and WMMTM 2016 above and, thus, whether the increases are realistic.
- 13.64 As with its approach to the appellant's highways work, the Council does not seek to identify any significant adverse impacts that arise from the appeal proposal. Again, therefore, the appellant dismisses the Council's case and, again, I must beg to differ.
- 13.65 The appeal site is in a very sensitive location insofar as air quality management is concerned. This, combined with a wider public policy focus on air quality, which is clearly reflected in the aims of the Framework [5.22], makes it imperative that one can be satisfied that the issue of air quality has been robustly addressed.

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<sup>198</sup> See Mr Moore's Proof p.8



13.66 The evidence provided lacks clarity in a number of areas, with some conclusions being presented absent the necessary supporting detail. In addition, given my doubts about some of the transport modelling work from which parts of the air quality work appears to derive, precaution is warranted.

13.67 Thus, I conclude that, overall, the appeal proposal has failed to demonstrate that it would not give rise to an adverse impact upon local air quality. It would conflict with Core Strategy policy QE6, and relevant paragraphs of the Framework, the requirements of which are set out above.

***Whether the proposal can be regarded as deliverable***

13.68 This consideration was introduced by me and focuses on two issues that became apparent after studying the initial evidence. Namely, that the appellant a) does not have control of the entirety of the appeal site and b) does not appear to have support from a bus operator to run the proposed service through the site. I address each point, and its implications, in turn.

*Mill Lane Playing Fields*

13.69 The key access route into the eastern part of the site from the Delph Lane/Blackbrook Lane corridor, to serve up to 700 dwellings, would be across a sizeable parcel of land known as Mill Lane playing fields<sup>199</sup>. This land would also accommodate residential units. This is all indicated on the Parameters Plan 1820\_24 Rev Z<sup>200</sup>.

13.70 Although currently leased to Warrington Borough Council (albeit with a break clause in the lease<sup>201</sup>), the playing fields are owned by Homes England. The evidence before me, in the form of direct correspondence solicited by me from Homes England<sup>202</sup>, shows consistently that there is not, nor does there appear ever to have been, an agreement, formal or otherwise, between Homes England and the appellant in relation to the sale, transfer or development of the playing fields. Homes England has also consistently declined to be a party to the s.106 agreement.

13.71 In addition, Homes England has never submitted its land as part of any call for sites by the Council in relation to its Strategic Housing Land Availability Assessment (SHLAA)<sup>203</sup>, consistent with the *prima facie* evidence that it is not, in fact, available for development at the present time.

13.72 Without any evidence that the Mill Lane playing field site is available for the development proposed, it is very difficult to see how the scheme can be regarded as deliverable. All of the transport assessment and travel plan work has been predicated on the assumption that an access to the site, for private vehicles and a new bus service, would be achievable from Delph Lane/Blackbrook Avenue. If it is not, there can be even less certainty about the highways implications arising from the proposal.

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<sup>199</sup> See ID42 for ownership plan

<sup>200</sup> See ID80

<sup>201</sup> See ID42

<sup>202</sup> See ID50 and ID64. Pre Inquiry correspondence from Homes England, dated 20<sup>th</sup> April 2018, may be found on the file.

<sup>203</sup> See ID32

13.73 The appellant's view that it is "*fanciful*" that the playing fields would not be brought forward is itself quixotic given the lack of any evidence to support it. Even if some credence were to be given to the alleged inevitability of development upon them, there is no reason to consider that the site would necessarily be sold to the appellant or that it would come forward as part of, or linked to, *this* scheme.

*Bus Service*

13.74 The appellant's bus service proposals are explained above [9.73]. They are pitched as a means of providing "*a new and high quality bus route serving the site between Warrington Town Centre and Birchwood*" and ensuring that the site is served by "*excellent public transport links*"<sup>204</sup>. Mr Tighe confirmed that they were a "*key plank*" of the proposals<sup>205</sup>, also making clear that they were needed as mitigation, insofar as the accessibility of the site is concerned.

13.75 I expressed reservations in advance of and during the Inquiry about whether the obligations would, in fact, provide an adequate period of financial support for the new service, as well as concerns about the lack of any recent evidence of commitment from a service provider to the proposed routes. Indeed, the most recent evidence before me, rather than being a commitment to the appeal scheme, was one of objection to the Option B proposal and a lack of willingness to consider anything else until that was resolved<sup>206</sup>.

13.76 On the penultimate day of the Inquiry, Cllr Cathy Mitchell, Chair of Network Warrington/Warrington's Own Buses, appeared at the Inquiry [10.98]. She confirmed that there was no agreement in place between the bus company and the appellant to provide a service to the site. This was later confirmed by a letter from the Managing Director of Warrington's Own Buses<sup>207</sup>.

13.77 I would certainly not expect to see a legal agreement in place between the appellant and a bus service provider, wherein the latter commits with the former to provide a new bus service through the appeal site. Formally securing services would be a matter for the Council. Nor would I expect a bus service provider to be a signatory to a s.106 agreement.

13.78 I would, however, expect there to be some form of recent written commitment in place from a local bus service provider giving an assurance that a "*key plank*" of the appellant's travel strategy, namely an enhanced bus service, would be deliverable and confirming that the s.106 obligations are fit for the purposes expected.

13.79 Although noting the discussion that appears to have taken place in the past between the appellant and Network Warrington/Warrington's Own Buses [9.72], no such assurance is before me. Indeed, the evidence points quite emphatically in the opposite direction.

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<sup>204</sup> Mr Tighe's Proof para. 4.20 and 6.13

<sup>205</sup> Mr Tighe in response to my questions

<sup>206</sup> Email on the case file from Mr Taylor to Mr Davies, cc-ing PINS and the appellant, 18 April 2018

<sup>207</sup> See ID68

13.80 My attention was drawn to transport arrangements for the so-called Omega development<sup>208</sup>. Notwithstanding that there is no evidence before me to suggest that Network Warrington/Warrington's Own Buses did not provide written support for what was being proposed, it is also evident that there was an established Omega Transportation Steering Group, which included Network Warrington/Warrington's Own Buses, the Council and adjoining transport authorities. Thus, this does not appear to be a comparable case to that before me.

*Conclusion on deliverability*

13.81 At present, given the problems identified above, I am not persuaded that the appeal scheme is deliverable as proposed. The lack of certainty around the availability of the Mill Lane playing fields, for vehicular access generally and bus service penetration specifically, and the lack of clarity around the proposed bus service would give rise to conflict with Core Strategy policies MP1 and MP4, the requirements of which are set out above. [5.8; 5.10]

13.82 In addition, when considering sites for residential development, in the context of a forward supply (to which the appellant claims the appeal site would make a vital contribution [9.15]) the Framework is clear that for a site to be considered "deliverable" it should be "... available for housing now..."<sup>209</sup>. That does not appear to be the case here.

**Other Considerations**

13.83 The appellant made various assertions to the effect that the Council's resistance to the appeal proposal was politically motivated or influenced by political posturing. No substantive evidence was presented in support of these assertions. Planning decisions are no more immune from politics than any other public function but there is nothing in the Council's evidence or behaviour to suggest that its case is in any way frivolous or misguided.

13.84 Various references were also made by the appellant to the so-called Omega scheme and the Council's allegedly more liberal approach to the technical data required for that scheme in comparison with the appeal proposal. There is insufficient detail of Omega before me to allow for any meaningful assessment, however, and in any case I have considered the appeal proposal on its individual merits rather than on the basis of a comparative study.

13.85 Many interested parties objected to the appeal proposal on the grounds that it would lead to the loss of the last green space in north Warrington. It was also evident from interested party statements that the site is used recreationally. On my site visits I noted what appeared to be permissive pathways across, chiefly the western half of, the site. [10.12; 10.27; 10.37; 10.39; 10.45; 10.77; 10.80; 10.89]

13.86 The appeal site is, however, private land. With the exception of the public footpath running along Radley Lane and around Peel Hall Farm to cross the M62, there is no public right of access to the appeal site. As such, its loss to development would not, in real terms, diminish the amount of recreational

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<sup>208</sup> See ID71 and appended Development Management Committee Minutes

<sup>209</sup> Glossary

open space that is, legally, available to local residents. The appeal site is largely unremarkable in appearance and situation, and there was no suggestion that it met the Framework's definition of a "*valued landscape*"<sup>210</sup>.

- 13.87 Local residents drew my attention to alleged shortcomings in relation to public transport in the area, in relation to buses and trains [10.17; 10.48; 10.63; 10.65]. I note in particular the contrast drawn between the appeal scheme and the aims of the 'Cambridge North' development. Nonetheless, the site is in an area of Warrington that the Core Strategy regards as appropriate for new development and, the town centre aside, no other areas were suggested as being any better in public transport terms.
- 13.88 This is not to suggest that one should not be seeking to innovate and improve on what exists and, in addition, my concerns in relation to the establishment of the proposed bus service are set out clearly above. Wider issues in relation to the development and funding of Warrington's public transport infrastructure are not, however, a matter for me.
- 13.89 It was suggested that the new development would result in an increase in crime in the area. Although another development in the wider area was drawn to my attention in this regard, there is insufficient detail about it before me to enable me to draw any meaningful comparisons. In addition, I note that the concerns of the Cheshire Constabulary related to highway safety, rather than to crime. The condition in relation to Secured by Design would ensure that the new development would be designed so as to deter crime and anti-social behaviour.
- 13.90 Submissions were made in relation to the Council's Preferred Development Options proposals [10.86]. As I noted at the Inquiry, this is not for me to consider but will be a matter for another Inspector in due course.
- 13.91 Some local residents expressed concern about the timing of the delivery of the proposed primary school on the site, which is a matter on which I also sought clarity [10.4; 10.19]. Ms Hilary Smith, Head of Education at Warrington Borough Council, attended the Inquiry for the s.106 discussions and I have no reason to doubt her assurances that the timing of provision, which has regard to existing and future availability of places and the need to mitigate potential impact of the draw of a new school on existing schools, is appropriate. This was not seriously disputed.
- 13.92 The Parameters Plan indicates the maximum building heights that could be achievable in different areas of the site [9.88]. For the avoidance of doubt, I do not consider that such heights would necessarily be appropriate in all instances. If planning permission were to be granted, then careful consideration would need to be given at the relevant reserved matters stage(s) to the juxtaposition of new development and extant properties. Particular regard would need to be given to the scale of surrounding dwellings and the current, in some cases expansive, outlook from them.
- 13.93 I have no reason to doubt that Peel Hall Farm is run as a successful boarding kennels. Nor do I doubt that when the kennels are full the boarded dogs can

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<sup>210</sup> Paragraph 170

be noisy. Again, if planning permission were to be granted very careful consideration would need to be given at the relevant reserved matters stage(s) to the relationship between any new dwellings and Peel Hall Farm. One would need to be fully assured that the living conditions of any future occupiers would not be adversely affected and that, equally importantly, the business would not suffer as a result of complaints in relation to noise. The Framework<sup>211</sup> is explicit that:

*Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development ... in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed.*

13.94 The issue of the capacity of the A&E unit at the local hospital was raised. I am very sympathetic to the genuine concerns, and poor experience, of the resident who highlighted this matter. I am, however, mindful that the only representation from the NHS was in relation to GP services.

13.95 I note the objection to the proposal, on highway safety grounds, from Cheshire Constabulary. I do not take this lightly and the general capacity concerns echo those of others. The specific analysis of potential highway safety issues appears, however, to be based largely upon Option B, with its proposed re-opening of Poplars Avenue, which is no longer being pursued.

## **14 Planning Balance**

14.1 I have found that it has not been proven, to my satisfaction, that the appeal proposal would not have adverse impacts upon the safety and efficiency of the highway network or upon local air quality. I have also found that it would have an adverse impact upon the character of the area. In addition, I have concluded that, on the basis of the evidence before me, the scheme does not appear to be deliverable as proposed.

14.2 In reaching these findings, I have found conflict with a range of Core Strategy policies, to which I attribute full weight. I find that the appeal proposal would conflict with the development plan when taken as a whole and that very significant weight should be attached to this conflict.

14.3 Nonetheless, it was common ground between the parties that the Core Strategy, following a High Court ruling quashing parts of it in 2015, contains no housing requirement. In addition, on the basis of a revised Objectively Assessed Housing Need, the Council was unable to demonstrate a five year supply of deliverable housing land. The Council did not dispute that this remained the case if the so-called "standard method" established by the revised Framework was used. [8.2; 9.15]

14.4 Thus, in line with paragraph 11 of the Framework, which is a significant material consideration, I consider whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the

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<sup>211</sup> Paragraph 182

benefits, when assessed against the policies in the Framework taken as a whole.

- 14.5 In social terms, the scheme could, assuming for a moment that it was considered as being deliverable, provide up to 1200 dwellings, 30% of which would be affordable, in a borough with a significant undersupply of both market and affordable units. Again, with the caveat that one assumes, contrary to my findings, that the scheme would be deliverable, this must attract significant weight, albeit tempered by what is suggested as being a ten-year build out period. [9.117]
- 14.6 It was also the view of the Council, perhaps unsurprisingly supported by the appellant, that the appeal proposal had the potential to deliver transformational change to the area. The inference is that this is social change, with reference in the officer's Committee Report being made to the fact that some residential areas to the south of the site are in the 10% to 30% most deprived in England. [9.14]
- 14.7 That said, areas to the north, east and west of the site are considerably less deprived, being within the top 50% and upwards<sup>212</sup>. In addition, local residents, who attended the Inquiry consistently, often in large numbers, spoke eloquently and at length in opposition to the appellant's suggestion that their area was in need of being transformed in the ways proposed, or that they lived in a "*slightly forgotten part of Warrington*"<sup>213</sup>. They were firmly of the view that the suggested benefits of the appeal scheme would be anything but. No evidence was presented, either by the Council or the appellant, which suggested that local residents had been asked what, if anything, they would find of benefit to their community. [10.12; 10.18-10.19; 10.28; 10.34; 10.36-10.37; 10.77; 10.80; 10.89; 10.90]
- 14.8 Nor was there any cogent explanation, from either of the main parties, how this transformational social change would be manifested. It might be that the scheme would, eventually, result in a more mixed community in the immediate area but there is no substantive evidence to support such a view. The site is on the edge of, rather than within, the more deprived area, with ready access to less deprived areas. It would, in effect, be a self-contained extension, with its own shops, primary school and sports facilities, rather than an integrated development that may serve to rebalance the socio-economic make-up of the area to the south, even if that was desirable.
- 14.9 The provision of a new school would be a necessary corollary of the scheme, rather than a benefit to the area. In addition, the locality is, from what I could see, already well served by convenience stores [10.59; 10.92] and public houses, so there is no obvious wider need for the proposed local centre (beyond serving the new development).
- 14.10 The proposed sports hub would be of greater benefit, albeit that it would be provided chiefly as mitigation for the loss of the Mill Lane playing fields and to meet the demands arising from the new development. It would be a qualitative improvement over what is currently provided in this area of

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<sup>212</sup> Please see Mr Robinson's Proof - Figure 3.1 p.14

<sup>213</sup> Mr Griffiths' Evidence in Chief

Warrington. It is also common ground between the main parties that it would be a quantitative improvement, although the rationale behind this agreement is not readily apparent from the evidence.

- 14.11 Even so, I am mindful of the views expressed by residents living near, and using, the Mill Lane playing fields. They noted, formally and in questions to witnesses, that the appeal proposal would result in the loss of this area of green space, which is used recreationally by many residents for more than just formal sport (e.g. dog walking; informal kickabouts; etc) [10.51; 10.82; 11.1]. This would be detrimental as residents would have to travel further to access such space, with no facility in as close proximity as there is at present.
- 14.12 Overall, I give this “transformational” factor moderate weight.
- 14.13 In economic terms, the Government has made clear its view that house building plays an important role in promoting economic growth. There would clearly be substantial construction investment in the scheme, which could provide some local construction jobs during its build out. Post-construction, there would be longer term expenditure in the Warrington economy, but whether this would be manifested *very* locally is questionable. There would also be some jobs arising from the employment uses on the site, as well as from the indirect effects of the scheme. [9.3]
- 14.14 That said, (in addition to my concerns about wider scheme delivery) there are no mechanisms in place to secure the delivery of the class B1(c) units, care home or local centre, suggested as being significant benefits by the appellant. Nor is there any evidence, beyond promotional literature about the attraction of Warrington, and assertions about the provision of opportunities for delivery, to give comfort that they would ever appear [9.36; 9.37; 9.116]. Overall, I give the economic benefits moderate weight.
- 14.15 The development would generate New Homes Bonus (NHB) and Council Tax receipts for the Council. The former is an incentive for local planning authorities to provide housing on suitable sites, and no direct beneficial link between the spend of the NHB and the local area has been established. The latter is a means of offsetting increased public expenditure in a local area arising from an increased population. As such, I consider that both attract very little weight as benefits in the planning balance.
- 14.16 Turning to environmental benefits, the site has some biodiversity value, which could be enhanced through careful ecological planning and management. The most sensitive area, namely Radley Plantation, would be separated from development by a 20 metre buffer. Even so, there was no suggestion that the scheme would result in any significant biodiversity benefits and, indeed, the appellant accepted that overall there would be adverse impacts as one would be losing habitat<sup>214</sup>.
- 14.17 Some additional open space would be created on the site. A large proportion of it, however, would be in the form of a buffer to the motorway, sandwiched between the highway and an indicative row of apartment blocks. Its attractiveness to, and functionality for, users would be very limited.

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<sup>214</sup> Mr Ryding in response to my questions.

14.18 Dismissing the appeal could mean that more land within the Green Belt would need to be released in order to accommodate the Borough's future housing requirement. This is, however, a matter for the emerging Preferred Development Options, which is some way off Examination yet alone adoption.

14.19 Thus, I give the environmental benefits limited weight.

14.20 Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole. In the circumstances I conclude that the proposal would not represent a sustainable form of development. Indeed, the issues arising from either the scheme's highways or air quality modelling work would alone be sufficient to lead me to this conclusion.

## **15. Recommendation**

15.1 For the reasons given above, and taking all other matters into consideration, I recommend that the appeal should be dismissed.

15.2 If the Secretary of State is minded to disagree with my recommendation, Appendix C lists the conditions that I consider should be attached to any permission granted. The reasons for these suggested conditions are set out in Section 12 of this Report. A consideration of the planning obligations is also given at Section 12.

*Richard Schofield*

INSPECTOR



## **APPENDIX A: APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mr David Manley of Queen's Counsel  
(assisted by Mr Piers Riley Smith)

Instructed by Warrington Borough  
Council

He called:

Mr Richard Crossley MICE FCHIT  
Mr Mike Taylor BTEC Dip TEP  
Mr Richard Moore BSc(Hons) MA  
Mr Michael Davies BSc DipTP MRTPI  
Mr Nick Armstrong

WSP  
Warrington Borough Council  
Warrington Borough Council  
Warrington Borough Council  
Warrington Clinical Commissioning  
Group

### FOR THE APPELLANT:

Mr Christopher Lockhart-Mummery of  
Queen's Counsel (assisted by Ms Heather  
Sargent)

Instructed by Satnam Planning  
Services Ltd

He called:

Mr Colin Robinson BA(Hons) MTP(Dist)  
MRTPI MIED  
Mr David Appleton MA NDH CMLI  
Mr Ian Ryding  
Mr Nick Hawkins MSc MIOA MIAQM  
MIEnvSc  
Mr Colin Griffiths BA(Hons) MRTPI  
Mr David Tighe BSc CEng MICE DipTpEng

Lichfields  
Appletons  
Pennine Ecological  
Hawkins Environmental Ltd  
Satnam Planning Services  
Highgate Transportation Ltd

### *Taking part in s.106/Conditions discussion*

Ms Hilary Smith

Head of Education, Warrington  
Borough Council

Ms Joanne Mullally

Environmental Protection Manager,  
Warrington Borough Council

Mr Robert Heywood  
Mr Kristian Marsh

Highways England  
Highways England

INTERESTED PERSONS:

Cllr John Kerr Brown  
Mrs Jo Sullivan  
Mr Jim Sullivan  
Mrs Margaret Steen  
Mrs Tina Dutton  
Mrs Sandra Kavanagh  
Ms Helen Jones MP  
Mr Geoff Settle  
Mr Jon Parr  
Mr Dave Sawyer  
Ms Catherine Fortune  
Mr Stuart Mann  
Ms Sian Gandy  
Ms Emma Fitzpatrick  
Ms Jean Rogers  
Mrs Helen Gurnani  
Mrs Julie Kueres  
Mrs Danielle Austen  
Mrs Kath Robinson  
Ms Catherine Webster  
Mr L Jennings  
Cllr Diana Bennett  
Ms Wareham

## **APPENDIX B: DOCUMENTS**

### **A. Core Documents**

These may be found electronically on a USB stick with an accompanying hardcopy contents list.

### **B. Documents Submitted to the Inquiry** (prefixed 'ID' in the main report)

- 1) Supplementary Statements from the Council
- 2) Various air quality publications submitted by Mrs Jo Sullivan
- 3) Draft S.106 and summary thereof
- 4) Draft conditions
- 5) Opening Statement for the appellant
- 6) A response by the appellant to Milner Ecology's submission on behalf of Winwick Parish Council
- 7) Letter from Mr Mark Olly 23 April 2018
- 8) Letter from Winwick Parish Council 20 April 2018
- 9) Plans from Mrs Sandra Kavanagh re former sewage works site
- 10) Historic photos of the site in agricultural use
- 11) Letters supplied by Mrs Sandra Kavanagh re Poplar tree TPO on, and traffic management proposals for, Poplars Avenue
- 12) Letters submitted by the Council re Hilden Island Cycle Improvements and re safety concerns in relation to the appeal scheme's proposed highway mitigation works
- 13) Mrs Jo Sullivan's hand in - article from the Guardian re air quality and a letter to The Planning Inspectorate from Cheshire Constabulary regarding the appeal proposal 3 April 2018
- 14) Mrs Tina Dutton's statement and photographs of traffic on Birch Avenue
- 15) Highgate Transportation Technical Note TN/28 A49 ATC Data Review, 23 April 2018
- 16) Plans supporting ID12
- 17) Plans and photographs supporting Mrs Margaret Steen's evidence
- 18) Additional information from Mr Armstrong, Warrington Clinical Commissioning Group, in support of a healthcare planning obligation
- 19) Extract from the Warrington & Co Annual Property Review 2018, submitted by the appellant
- 20) Breakdown of semi-natural open space typologies proposed for the site, submitted by the appellant
- 21) Extract from Warrington Borough Council's Economic Development Needs Study, October 2016
- 22) Council's response to ID15
- 23) Letter from Ms Helen Jones MP
- 24) Statement by Mr John Parr, including USB stick with footage of local road network
- 25) Statement by Mr David Sawyer
- 26) Statement by Mrs Catherine Fortune

- 27) Statement by Mr Stuart Mann
- 28) Statement by Mrs Sian Gandy
- 29) Statement by Mrs Emma Fitzpatrick
- 30) Letter from United Utilities regarding proposed planning conditions, 30 April 2018
- 31) Statement by Mr Geoff Settle
- 32) Email from Mr Kevin Usher, Warrington Borough Council confirming that Homes England have not submitted the Mill Lane playing fields site to the SHLAA, 4 May 2018
- 33) Highgate Transportation Technical Note TN/30 Link Capacity
- 34) Highgate Transportation Technical Note TN/31 Junction Queue times/lengths analysis
- 35) Highgate Transportation Technical Note TN/32 Bus Mitigation
- 36) Highgate Transportation Technical Note TN/33 Off-site Mitigation Works Capesthorpe Avenue and Hilden Avenue
- 37) Highgate Transportation Technical Note TN/34 RSA1
- 38) Additional Air Quality information by Hawkins Environmental
- 39) Letter to Mr Colin Griffiths from Wright Hassell Solicitors regarding option agreements on dwellings on Poplars Avenue, 10 May 2018
- 40) Email from Ms Fiona Pudge of Sport England regarding proposed conditions and S.106, 1 May 2018
- 41) Letter from Mr and Mrs Steen, 10 May 2018, enclosing information regarding access to Peel Hall Farm
- 42) Lease for land north of Ballater Drive between the Homes & Communities Agency and Warrington Borough Council, November 2016
- 43) Photographs of articulated lorries on Mill Lane
- 44) Email from Mr Kristian Marsh of Highways England with suggested planning conditions, 11 May 2018
- 45) Supplementary Proof of Evidence from Mr Tighe
- 46) Revised S.106 Agreement submitted 11 May 2018
- 47) Email from Mr Dave Starkie regarding the bat roost potential of conifer trees on Birch Avenue, 14 May 2018
- 48) Email from Hawkins Environmental regarding on-site pollutant concentrations, 14 May 2018
- 49) Email from Jan McKay of the UCA Trust registering an interest in securing a Free School on the appeal site, 19 February 2018
- 50) Letter from Mr Karl Tupling of Homes England regarding land in their ownership that forms part of the appeal site, 15 May 2018
- 51) Email from Ms Hilary Smith of Warrington Borough Council confirming that one Multi Academy Trust would be willing to sponsor a new primary school on the appeal site, 18 May 2018
- 52) Warrington Borough Council response to Highgate Technical Notes (ID33-37)
- 53) Email from Ms Fiona Pudge of Sport England confirming Sport England's satisfaction with amended conditions and S.106, 24 May 2018
- 54) Second Supplementary Proofs of Evidence from the Council (Mr Taylor and Mr Moore)

- 55) Highways England Supplementary Update, 25 June 2018
- 56) Further revised list of proposed conditions, 2 July 2018
- 57) Letter from Satnam Developments, 29 May 2018, re parking on Birch Avenue, and photographs of traffic on Birch Avenue submitted by Mrs Sheila Kavanagh
- 58) Copy of Heads of Terms for an option agreement to purchase 462 Poplars Avenue, with accompanying emails from July and August 2012, submitted by Mrs Sheila Kavanagh
- 59) Lyrics to the song sung at the Inquiry on 4 May 2018 by Mrs Helen Gurnani
- 60) Bus timetable for services 25, 26, 27 from 9 April 2018 submitted by Mrs Margaret Steen
- 61) Two copies of a revised draft s.106 agreement and further revised list of proposed conditions (version 21)
- 62) Photographs of Mill Lane and Radley Lane, submitted by Mrs Margaret Steen
- 63) Photographs of local crime statistics and an accident involving a stolen car, submitted by Ms Wareham
- 64) Letter from Ms Danielle Gillespie of Homes England, 10 July 2018, re-confirming Homes England's position with regard to the appeal scheme
- 65) Justification for the Council's proposed contaminated land planning conditions
- 66) Closing Submissions for the Council
- 67) Closing Submissions for the appellant
- 68) Letter from Mr Ben Wakerley of Warrington's Own Buses (formerly Network Warrington), 13 July 2018, confirming the organisation's position with regard to future bus provision to the appeal site
- 69) Email from the appellant (20 July 2018) to the Planning Inspectorate in response to ID68
- 70) Advice note to the Council from Mr David Manley QC re the provision of bus services to the appeal site via a planning obligation
- 71) Email from the appellant (30 July 2018) to the Planning Inspectorate in response to ID70
- 72) Email from the Council (1 August 2018) to the Planning Inspectorate providing a requested revision to disputed condition 2 (Radley Lane)
- 73) Email from the appellant (1 August 2018) to the Planning Inspectorate in response to ID72
- 74) Submission on the revised Framework by the appellant
- 75) Further email from the appellant (1 August 2018) to the Planning Inspectorate in response to ID70
- 76) Email from the appellant (3 August 2018) to the Planning Inspectorate re a delay to the preparation of the emerging Warrington Preferred Development Options
- 77) Executed S.106 Agreement between the appellant and the Council
- 78) Submission on the revised Framework by the Council
- 79) Email from the appellant (8 August 2018) to the Planning Inspectorate in response to ID78
- 80) A set of all plans referred to in the proposed conditions.

## **APPENDIX C: RECOMMENDED CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") in any phase shall be submitted to and approved in writing by the local planning authority before any development in that phase begins and the development shall be carried out as approved.
- 2) Application for approval of the first reserved matters shall be made to the local planning authority not later than three years from the date of this permission, and application for approval of all remaining reserved matters shall be made within ten years from the date of this permission.
- 3) The development hereby permitted shall begin no later than two years from the date of approval of the first of the reserved matters to be approved, and development of any subsequent phase shall begin no later than two years from the date of approval of the final reserved matters for that phase.
- 4) The number of dwellings to be constructed on the site shall not exceed 1200.
- 5) The development hereby permitted shall accord with the approved site plan: 150332-D-002-B.
- 6) Any reserved matters applications shall be substantially in accordance with the details shown on the approved Parameters Plan: 1820\_24 rev Z.
- 7) No works or development authorised by this planning permission shall be carried out by any party on that part of the site known as the Mill Lane playing fields (the freehold interest of which, at the date of grant of this planning permission, is registered at the land registry under title number CH442194) shown edged red on Plan 5 of the Section 106 Agreement related to this planning permission dated 3<sup>rd</sup> August 2018 and entered into between Warrington Borough Council, Satnam Millennium Ltd and Satnam Developments Limited, unless and until all interests in that land are subject to and bound by the terms of the Section 106 Agreement.
- 8) No residential dwellings, care homes, children's nurseries or schools shall be permitted within 50 metres of the M62 on any individual phase of development unless a detailed air quality assessment (the assessment), supported by on-site monitoring, is first submitted to, and approved in writing by, the local planning authority to demonstrate to the local planning authority's satisfaction that current and future air pollutant levels within 50 metres of the M62 will not have a risk of exceedance of the relevant national objectives for these uses as set out in the Air Quality Standards Regulations 2010 (as amended or superseded). No residential dwellings, care homes, children's nurseries or schools shall be permitted in those areas of the site not proven by the assessment to be free of risk from exceedances of the relevant national objectives.
- 9) The local centre hereby approved shall be limited to a food store (A1) of up to 2000 square metres, up to 600 square metres of additional units in use classes A1/A2-5 and D1 with no single unit exceeding 200 square metres, and up to 800 square metres for family restaurant/public house (use classes A3/A4).
- 10) Notwithstanding the provisions of the Town and Country Planning (General

Permitted Development)(England) Order 2015 (or any order revoking or re-enacting that Order with or without modification) the employment floor space hereby approved shall be limited to use class B1(c) and shall be limited to a maximum floor space of 7500 square metres in total with no single unit exceeding 500 square metres floor space.

- 11) No development shall take place until schemes for the design and construction of the site access points have been submitted to the local planning authority for approval in writing. The access points shall be designed in accordance with the principles set out in the following drawings: HTp/1107/30/H; HTp/1107/11/L; HTp/1107/9/M; HTp/1107/10/N; HTp/1107/08/P; HTp/1107/12/Q

The access points shall thereafter be completed in accordance with the approved schemes prior to first occupation of the relevant phase(s) accessed from them.

- 12) No development shall commence until a scheme for the design and construction of off-site highway improvement works, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The works shall include the replacement/upgrade of street lighting necessary as part of the detailed design and any drainage works necessary to facilitate the highway works and shall include Road Safety Audits and any Traffic Regulation orders required.

The off-site highway improvement works shall comprise:

- a) Widening of Sandy Lane West to the principles of Drawing No. 1107/74/A
- b) Widening of Poplars Avenue, removal of Orford Green kerb build-out and creation of two-lane circulatory carriageway through roundabout to the principles of Drawing No. 1107/72/A
- c) Widening of Capesthorne Road and widening of carriageway through roundabout to the principles of Drawing No. 1107/71/C
- d) Installation of traffic signal junction at Enfield Park Road/Crab Lane to the principles of Drawing No. 1107/70
- e) Provision of Keep Clear carriageway markings on A49 at Birch Avenue to the principles of Drawing No. 1107/79
- f) Resurfacing of footway on north eastern side of Mill Lane between the new site access and No.2 Mill Lane
- g) Widening of the A49 Newton Road at its junction with Delph Lane to the principles of Drawing No. 1107/111/A

The approved works shall thereafter be completed in accordance with the following triggers respectively:

- a) Prior to the occupation of the 300<sup>th</sup> dwelling served from Poplars Avenue
- b) Prior to the occupation of the 600<sup>th</sup> dwelling served from Poplars Avenue
- c) Prior to the occupation of the 300<sup>th</sup> dwelling served from Poplars Avenue

- d) Prior to the occupation of the 300<sup>th</sup> dwelling served from the Mill Lane / Blackbrook Avenue access roundabout
  - e) Prior to first occupation of any development served from Birch Avenue
  - f) Prior to first occupation of any development served from the northern end of Mill Lane
  - g) Prior to the occupation of the 600<sup>th</sup> dwelling served from the Mill Lane / Blackbrook Avenue access roundabout.
- 13) No development shall commence until the design and construction of strategic highway improvement works, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The works shall include the replacement/upgrade of street lighting necessary as part of the detailed design and any drainage works necessary to facilitate the highway works and shall include Road Safety Audits.

The strategic highway improvement works shall comprise improvements to M62 Junction 9/A49 in accordance with the principles established by drawings: 1107/75; 1107/77; and 1107/78.

The approved works shall thereafter be completed prior to the occupation of the 600<sup>th</sup> dwelling.

- 14) Prior to the submission of any reserved matters application, a detailed masterplan and design code covering the entire site shall be submitted to the local planning authority for approval in writing. The masterplan and design code shall be formulated having regard to principles established by the submitted Design and Access Statement and the following plans:

Illustrated Masterplan Option A 140367-B-010-C; Illustrative Local Centre Family Pub Option A 140367-B-012; Illustrative Proposed School Site Master Plan Option A 140367-B-015; Illustrative Employment Area Master Plan Option A 140367-B-013A; Indicative Sports Recreation Provision 1820\_28 Rev J; and Indicative Landscape Components Plan Option A 1820\_25 Rev N.

Thereafter, any reserved matters application(s) for any phase of development shall comply with the approved masterplan, design code and the requirements of Condition 6.

- 15) There shall be no direct vehicular or pedestrian access between the site and the motorway network. Before first occupation of any dwellings hereby approved a close boarded fence or barrier of comparable function with a minimum height of two metres to be first approved in writing by the local planning authority shall be installed along the boundary of the development with the motorway at a distance of at least one metre behind the existing motorway boundary fence.
- 16) No development hereby approved shall commence until a detailed phasing plan for the development has been submitted to and approved in writing by the local planning authority. The phasing plan shall identify the stages at which each element of the proposed development, including the affordable housing, local centre, open space, all equipped areas of play, primary school, public house, care home, employment units, roads and emergency access,



Greenway Network (including walking and cycling measures), bus measures and SuDS drainage infrastructure shall be commenced and made available for use. The development shall thereafter be implemented in full accordance with the approved phasing plan.

17) Development shall not begin until a Surface Water Drainage Strategy for the entire development site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development and in accordance with the approved Flood Risk Assessment in respect of Peel Hall, Warrington, reference 1506-45/FRA/01 Rev B, dated June 2016, has been submitted to the local planning authority for written approval. The Surface Water Drainage Strategy shall, as a minimum:

- ensure that no surface water is discharged directly or indirectly into the existing public sewerage systems, unless agreed in writing as part of an updated Surface Water Drainage Strategy;
- investigate the potential for a surface water drainage system based on infiltration through an assessment of site conditions for the entire site;
- identify any surface water drainage infrastructure connections including the volume of flows between the different phases/plots of the development;
- provide details of any improvement works to on-site watercourses/culverts; and
- provide details of any pumping arrangements demonstrated as being necessary.

Each separate phase of development will require the submission to, and written approval of, the local planning authority of a detailed surface water drainage scheme. Each scheme shall subsequently be implemented in accordance with the approved details before the relevant phase of the development is completed. Each scheme shall include as a minimum:

- details of all new retention ponds and linking SUDs infrastructure (to be designed in accordance with the latest version of the CIRIA SuDS manual or subsequent guidance), including new wetland habitat creation;
- details of any new surface water drainage works associated with Spa Brook waterbody and ecological network; and
- details of how the scheme shall be maintained and managed following completion.

18) There shall be no surface water connections between plots or phases of development other than those in accordance with the connections identified and approved by the Surface Water Drainage Strategy.

19) No drainage from the development hereby approved shall connect into or compromise the M62 motorway drainage system.

20) No development shall commence until a quantitative and qualitative risk assessment and mitigation strategy with respect to ground water protection, including details of any extra protection measures necessary to manage the risk

of pollution to public water supply and the water environment during and after construction, has been submitted to the local planning authority for approval in writing. The risk assessment shall be based on the source-pathway-receptor methodology. It shall identify all possible contaminant sources and pathways for the life of the development and provide details of measures required to mitigate any risks to groundwater and public water supply from the development. The development shall thereafter be completed, maintained and managed in accordance with the approved details.

- 21) Prior to any reserved matters application being submitted, a Sports Strategy (the Strategy) shall be submitted for written approval by the local planning authority. The Strategy shall apply to the planned improvements at Windermere Avenue/ Radley Common shown indicatively on drawing 1820-28 Rev J and include details of the strategic need for and sporting benefits of each pitch type and ancillary facility. Based upon the agreed findings of the Strategy a scale plan(s) shall subsequently be submitted to the local planning authority for written approval showing the location and dimensions of each sports facility and pitch. The development shall thereafter be carried out in accordance with the approved Strategy and scale plan(s).
- 22) The mix of any market housing for any phase of development authorised by this planning permission, including details of size and type, shall be agreed in writing by the local planning authority as part of any relevant reserved matters application(s). Development of each phase shall thereafter be carried out in accordance with the approved mix.
- 23) As part of the reserved matters application(s) for each phase a scheme shall be submitted for approval in writing by the local planning authority that demonstrates how the objectives of Secured by Design have been addressed in the development as identified in the submitted Design and Access Statement. The development shall thereafter be completed in accordance with the approved scheme.
- 24) As part of the reserved matters application(s) for each phase a scheme for the provision of electric vehicle charging points, or passive provision, shall be submitted to the local planning authority for approval in writing. The development shall thereafter be completed in accordance with the approved scheme and the provision maintained and retained thereafter.
- 25) Except for site clearance and remediation no development shall take place on any particular phase until full details and construction phasing of the internal highway network for that phase have been submitted to and approved in writing by the local planning authority. Such details shall include:
  - a) the proposed highway layout including the highway boundary;
  - b) the dimensions of any carriageway, cycleway, footway and verges;
  - c) visibility splays;
  - d) proposed buildings and site layout, including levels;
  - e) accesses and driveways;
  - f) parking provision;

- g) drainage and sewerage system;
- h) all types of surfacing (including tactile paving), kerbing and edging; and
- i) full working drawings for any structures which affect or form part of the internal highway network.

The development shall thereafter be completed in accordance with the approved drawings, details and phasing schedule.

- 26) As part of the reserved matters application for any particular phase the details of the specified bus stop infrastructure, including turning facilities, as set out in the approved phasing plan shall be submitted to the local planning authority for approval in writing. Each phase shall thereafter be completed in accordance with the approved details.
- 27) Prior to any reserved matters application for development of the Mill Lane playing fields being submitted the following documents shall have been submitted to and approved in writing by the local planning authority:
- a) An Agronomy Report containing a detailed assessment of ground conditions (including drainage and topography) of the land proposed for the replacement playing field, which identifies all constraints that could affect playing field quality; and
  - b) Based on the results of the assessment to be carried out pursuant to a) above, a detailed scheme which ensures that the playing field will be provided to the Football Association's Performance Quality Standards. The scheme shall include a written specification and detailed plans of soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

The approved scheme shall be completed prior to the commencement of any development of the existing Mill Lane playing fields. The replacement playing field land shall thereafter be made available and maintained in accordance with the scheme.

- 28) No development shall take place on any phase until the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority has been secured. Development shall thereafter be carried out strictly in accordance with the approved scheme.
- 29) A design and layout led scheme, informed by the principles of ProPG: Planning & Noise (May2017) (or revisions/replacements thereof), for insulating residential dwellings from noise sources, to include any transportation, industrial, commercial and entertainment noise both within and outside the properties, shall be submitted to the local planning authority for approval in writing before construction above ground floor slab level commences on any phase. The scheme must achieve the internal noise levels set out below and shall be based on findings from an appropriate noise assessment. The development shall thereafter be constructed in accordance with the approved scheme.

The following noise levels will need to be achieved in habitable rooms and outdoor areas as set out in BS8233:2014 and/or WHO Guidelines (or any replacements thereof):

- Daytime Noise (0700 to 2300) Living Rooms & Bedrooms - 35 dB LAeq,16hr
- Daytime Noise (0700 to 2300) Dining Areas - 40 dB LAeq,16hr
- Daytime Noise (0700 to 2300) Outdoor Amenity Areas - 50 dB LAeq,16hr. 55dB LAeq,16hr may be accepted in exceptional cases where normal mitigation cannot reach the 50dB level.
- Night time Noise (2300 to 0700) Bedrooms - 30 dB LAeq,8hr,
- Night time noise (2300 to 0700) Bedrooms - 45dBLAmax no more than 10-15 times per night (WHO guidelines)

These levels must be capable of being achieved with windows open (except for short term purge ventilation) or, as a last resort if a design led solution is not achievable, alternatively with passive ventilation systems in the open position. For the purposes of calculation, noise insulation achieved by a partially open window should be assumed to be 15dBA.

If the above levels cannot be achieved in a design led scheme with open windows or with ventilators open, then the scheme must identify how the potential for overheating of affected buildings during warmer months will be mitigated in accordance with the principles of ProPG: Planning and Noise (May 2017).

Prior to the first occupation of any dwelling on any individual phase of development, the developer shall submit a validation report to the local planning authority for approval in writing demonstrating the inclusion of all previously agreed mitigation measures, which shall be maintained and retained thereafter.

30) No development on a relevant phase shall commence until a detailed method statement for the removal/long-term management/control of Japanese knotweed, Giant hogweed and Himalayan balsam identified on the site is submitted to and approved in writing by the local planning authority. The method statement shall include:

- measures that will be used to prevent the spread of the above plants during any operations e.g. mowing, strimming or soil movement; and
- measures to ensure that any soils brought onto the site are free of the seeds/root/stem of any invasive plant covered under the Wildlife and Countryside Act 1981 (as amended).

Development shall take place thereafter in accordance with the approved method statement.

31) Prior to the commencement of any works on site for any phase of development, a Construction Environmental Management Plan (CEMP) for that individual phase shall be submitted to the local planning authority for written approval. The CEMP shall review all construction operations proposed on the site and shall

cover as a minimum the following matters on a phase by phase basis (identifying appropriate mitigation measures as necessary):

- Mechanisms to ensure the ongoing integrity of the M62 motorway embankment, with particular reference to the mitigation of potential impacts from site earthworks;
- Proposed locations of site compounds;
- Proposed routing of, and arrangements for, deliveries and exporting or materials to site compounds and/or deliveries direct to or exports direct from the site (N.B. all construction vehicles shall load/unload within the confines of the site and not on the public highway);
- Entrance/exit points from the site for visitors/contractors/deliveries;
- Hours of construction deliveries to the site;
- Hours of construction;
- Measures to protect surrounding properties from construction noise;
- Measures for controlling dust and maintaining air quality on site, including details of street sweeping/street cleansing/wheel washing facilities;
- Evidence of joining the Considerate Constructors Scheme for the lifetime of the construction period;
- Location of directional signage within the site;
- Siting of temporary containers;
- Parking for contractors, site operatives and visitors;
- Identification of working space and extent of areas to be temporarily enclosed and secured during each phase of demolition/construction;
- Temporary internal roads/areas of hard standing;
- Storage of materials and large/heavy vehicles/machinery on site;
- Details for the recycling/disposing of waste resulting from demolition and construction works;
- Protection of existing utility assets and infrastructure; and
- Start/finish dates of construction.

Development shall thereafter take place in accordance with the approved CEMP and shall be reviewed on a regular basis and in the case of receipt by the developer or local planning authority of any justified complaint. Any changes to the approved CEMP that are deemed necessary following the regular review process or following receipt of a complaint shall be first approved in writing by the local planning authority and thereafter implemented as approved.

- 32) A landscape and ecological management plan (LEMP) shall be submitted to the local planning authority for approval in writing prior to the commencement of each phase of development. The LEMP shall include the following:

- a) Description and evaluation of important landscape and habitat features to be retained, created and managed thereafter;
- b) Details of the aims and objectives of ongoing management, including ecological trends and constraints on the site that might influence management;
- c) A management work schedule (including an annual work plan capable of being rolled forward over a five-year period) demonstrating how the aims and objectives will be achieved; including details of ongoing monitoring; and setting out how remedial measures would be agreed and implemented if required;
- d) Details of the management body or organisation responsible for implementation of the LEMP, including details of how the legal and funding mechanism(s) will be secured to enable that body or organisation to deliver the long-term implementation of the plan.

The LEMP shall thereafter be implemented in accordance with the approved details.

- 33) No tree felling, vegetation clearance works, demolition work or other works that may affect nesting birds shall be undertaken between March and July inclusive, unless the absence of nesting birds has first been confirmed by further surveys or inspections the conclusions of which have been approved in writing by the local planning authority.
- 34) No construction of any particular phase of development shall commence until the owner of the phase appoints a Travel Plan Co-ordinator. The Travel Plan Co-ordinator shall be responsible for the implementation, delivery, monitoring and promotion of the Travel Plan for that phase, including the day-to-day management of the steps identified to secure the sustainable transport initiatives set out therein. The details (name, address, telephone number and email address) of the Travel Plan Co-ordinator shall be submitted to, and confirmed in writing by, the local planning authority upon appointment and immediately upon any change.
- 35) Prior to the first occupation of each residential phase a Residential Travel Plan (the Plan) in accordance with the submitted Framework Travel Plan ref: HTp/1107/FTP/01 (January 2018) shall be submitted to the local planning authority for approval in writing. The Plan shall include immediate, continuing and long-term measures to promote and encourage modes of transport other than the single-occupancy car. The Plan shall include:
  - a) Information on existing transport policies, services and facilities, travel behaviour and attitudes;
  - b) Resource allocation including Travel Plan Co-ordinator and budget;
  - c) Details for the production and distribution of an information pack for residents detailing travel options other than the private car, and how to access them, on the site and in the wider locality;
  - d) Other appropriate measures and actions to reduce car dependence and encourage sustainable travel;

- e) A marketing and communications strategy for the Plan; and
- f) An action plan, with a timetable, to include mechanisms for implementing, monitoring and reviewing the Plan.

The Plan shall thereafter be implemented as approved in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

- 36) Prior to the first occupation of each non-residential phase a Non-Residential Travel Plan (the Plan) in accordance with the submitted Framework Travel Plan ref: HTP/1107/FTP/01 (January 2018) shall be submitted to the local planning authority for approval in writing. The Plan shall include immediate, continuing and long-term measures to promote and encourage modes of transport other than the single-occupancy car. The Plan shall include:
- a) Information on existing transport policies, services and facilities, travel behaviour and attitudes;
  - b) Resource allocation including Travel Plan Co-ordinator and budget
  - c) Details of appropriate measures and actions to reduce car dependence and encourage sustainable travel, including details of access to modes of transport other than the private car;
  - d) Targets for mode share;
  - e) A car parking management strategy;
  - f) A marketing and communications strategy for the Plan, including details of how employees will be involved with its implementation;
  - g) An action plan, with a timetable, to include mechanisms for implementing, monitoring and reviewing the Plan.

The Plan shall thereafter be implemented as approved in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

- 37) Any building plant or externally located equipment shall be acoustically insulated to a scheme to be submitted to and approved in writing by the local planning authority prior to the commencement of its use. The scheme shall ensure that the rated noise level at the boundary of the nearest extant or proposed noise sensitive property will not increase above the existing background noise level in accordance with the BS4142:2014 (or replacement) methodology. Any mitigation measures proposed to attain this level shall be clearly identified. The scheme shall be implemented as approved prior to the commencement of use of the plant or equipment and shall be maintained and retained thereafter for the duration of use.
- 38) Prior to first occupation/use of premises on a particular phase details of vehicle and cycle parking provision in line with the Council's current standards shall be submitted to the local planning authority for approval in writing. The approved vehicle and cycle parking provision will thereafter be constructed as approved and shall be kept free for that specific use. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England)

Order 2015 (or any Order revoking or re-enacting that Order) no building works that reduce this provision shall take place except following the express grant of planning permission by the local planning authority.

- 39) Prior to first occupation of each phase of the development hereby permitted a servicing and waste management strategy shall be submitted to the local planning authority for approval in writing. The strategy shall, as necessary, include details of how Heavy Goods Vehicle movements will be managed to ensure that no layovers or waiting will occur on the public highway and shall set out design and operational plans for servicing, storage, transfer and collection of goods and waste ensuring that logistical requirements are appropriately considered and addressed. The strategy shall be subsequently implemented prior to first occupation of each phase in accordance with the approved details.
- 40) No development of any particular phase shall commence until a lighting design strategy for biodiversity for that particular phase has been submitted to the local planning authority for approval in writing. The strategy shall:
- identify those areas of the site (particularly breeding sites, resting places and important routes used to access key areas of territory and/or for foraging) that are of particular importance to nocturnal animals recorded on the site, notably bats, the lighting of or near which is likely to cause disturbance to said animals; and
  - show how, where and what external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that any areas to be lit will not disturb nocturnal animals, notably bats, such that thereafter they would be unable or unlikely to use these areas.

All external lighting shall be installed in accordance with the specifications and locations set out in the approved strategy and shall be maintained thereafter.

Under no circumstances shall any other external lighting be installed without prior written consent from the local planning authority.

- 41) The gradient of the vehicular access points shall not exceed 1 in 40 for the first 15 metres into the site measured from the nearside edge of the carriageway of the adjacent highway.
- 42) The layout of the development shall include a turning facility within each phase to enable vehicles to enter and leave the highway in forward gear in accordance with details to be first approved in writing by the local planning authority.
- 43) No equipment, machinery or materials shall be brought onto the site for the purposes of the development of any phase until details of the proposed type, and a plan of the proposed position of, measures for the protection of trees and hedges that are to be retained on the site, in accordance with BS 5837:2012 'Trees in relation to Design, Demolition and Construction – Recommendations' (or replacement thereof), have been submitted for approval in writing by the local planning authority for that phase of the development. The measures identified, including tree protection barriers, shall be implemented in accordance with the approved details and shall remain in place until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored, disposed of, or placed, nor fires lit, in



any area fenced in accordance with this condition and the ground levels within these areas shall not be driven across by vehicles, altered, nor any excavation made (including addition/removal of topsoil/subsoil) without prior written consent of the local planning authority.

- 44) Prior to any tree felling works required to facilitate the scheme any trees to be lost will be subject to further detailed inspection, the results of which shall be sent to the local planning authority for written approval, for their potential to support bat roosts. If bats are found by survey a Method Statement shall be submitted to the local planning authority giving details of measures to be taken to avoid any possible harm to bats and, once agreed in writing by the local planning authority, this Method Statement must be implemented in full.
- 45) Prior to any work commencing in an area of the site considered to have potential for badgers and in areas not assessed when the submitted badger surveys (Peel Hall, Warrington Ecological Reports 2012-2016 by Appletons) were undertaken, additional badger surveys, the results of which shall be sent to the local planning authority for written approval, will be required. If badgers are found by survey a Method Statement shall be submitted to the local planning authority giving details of measures to be taken to avoid any possible harm to badgers and, once agreed in writing by the local planning authority, this Method Statement must be implemented in full.
- 46) No development (other than demolition and site clearance works) for any individual phase shall take place until the steps in Sections A and B below are undertaken for that individual phase:

A: CHARACTERISATION: With specific consideration to human health, controlled waters and wider environmental factors, the following documents must be provided (as necessary) to characterise the site in terms of potential risk to sensitive receptors:

- Preliminary Risk Assessment (PRA or Desk Study)
- Generic Quantitative Risk Assessment (GQRA) informed by Intrusive Site Investigation
- Detailed Quantitative Risk Assessment (DQRA)
- Remedial Options Appraisal

Completing a PRA is the minimum requirement. DQRA should only be submitted if GQRA findings require it.

B: SUBMISSION OF A REMEDIATION & VERIFICATION STRATEGY: As determined by the findings of Section A above, a remediation strategy (if required) and verification (validation) strategy shall be submitted to and agreed in writing by the local planning authority. This strategy shall ensure the site can be made suitable for the intended use and set out how any risks to identified receptors will be mitigated. This strategy should be derived from a Remedial Options Appraisal and must detail the proposed remediation measures/objectives and how proposed remedial measures will be verified.

The actions required in Sections A and B shall adhere to the following guidance: CLR11 (Environment Agency/DEFRA, 2004); BS10175 (British Standards Institution, 2011); C665 (CIRIA, 2007).

- 47) No part of the development hereby permitted shall be brought into use on any individual phase until the following requirements have been met and the required information submitted to and approved in writing by the local planning authority:

A: REMEDIATION & VERIFICATION: Remediation (if required) and verification shall be carried out in accordance with an approved strategy. Following completion of all remediation and verification measures, a Verification Report must be submitted to the local planning authority for approval in writing.

B: REPORTING OF UNEXPECTED CONTAMINATION: All unexpected or previously-unidentified contamination encountered during development works must be reported immediately to the local planning authority and works halted within the affected area(s). Prior to site works recommencing in the affected area(s) the contamination must be characterised by intrusive investigation, risk assessed (with remediation/verification measures proposed as necessary) and a revised remediation and verification strategy submitted to and agreed in writing by the local planning authority.

C: LONG-TERM MONITORING & MAINTENANCE: If required in the agreed remediation or verification strategy, all monitoring and/or maintenance of remedial measures shall be carried out in accordance with the approved details.

No part of the development shall be brought into use until remediation and verification are completed. The actions required to be carried out in Sections A to C above shall adhere to the following guidance (or replacements thereof): CLR11 (Environment Agency/DEFRA, 2004); BS10175 (British Standards Institution, 2011); C665 (CIRIA, 2007).

## **APPENDIX D – DISPUTED CONDITIONS**

### **1. Contaminated Land/Land remediation**

*Conditions proposed by Council*

See Conditions 46 and 47 above.

*Alternative Condition proposed by the appellants*

No phase or sub-phase of the development hereby approved shall be commenced until a scheme to identify and control any contamination of land, or pollution of controlled waters has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been implemented.

In the event that it is proposed to import soil onto any part of the development site this shall comply with the requirements of the approved scheme.

If required by the approved scheme, no development shall take place until monitoring at the site for the presence of ground gas and a subsequent risk assessment has been submitted to and approved in writing by the Local Planning Authority and any recommendations implemented in full.

### **2. RADLEY LANE**

*Condition proposed by the Council<sup>215</sup>*

Prior to first occupation of any phase of development adjacent to Radley Lane a scheme for an appropriate system of street lighting along the length of Radley Lane as defined by drawing no ERGE/DC/1 shall be submitted to the Local Planning Authority for approval in writing. The approved scheme shall subsequently be implemented prior to first occupation of any phase of development adjacent to Radley Lane.

### **3. HIGHWAYS**

*Condition proposed by the Council*

No development shall commence until a scheme for the design and construction of off-site highway improvement works, including a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The works shall include the replacement/upgrade of street lighting necessary as part of the detailed design and any drainage works necessary to facilitate the highway works and shall include Road Safety Audits.

The highway improvement works comprise:

- a) Widening of Poplars Avenue at the junction of A50 Orford Green
- b) Installation of traffic signal junction at Enfield Park Road/Crab Lane to the principles of Drawing No. 1107/70

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<sup>215</sup> Please refer to ID72

- c) Provision of Keep Clear carriageway markings on A49 at Birch Avenue to the principles of Drawing No. 1107/79
- d) Resurfacing of footway on north eastern side of Mill Lane between new site access and No.2 Mill Lane
- e) Provision of footway/hardstand verge on southwestern side of Mill Lane between the new site access and Radley Lane

The approved schemes shall be implemented in accordance with the following triggers respectively:

- a) Prior to occupation of any development served from Poplars Avenue
- b) Prior to occupation of any development served from Mill Lane
- c) Prior to occupation of any development served from Poplars Avenue
- d) Prior to first occupation of any development served from the northern end of Mill Lane
- e) Prior to first occupation of any development served from the northern end of Mill Lane

*Condition proposed by Council*

No development shall commence until a scheme to mitigate the impacts of the development on the following areas of highway, including a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The works shall include the replacement/upgrade of street lighting necessary as part of detailed design and any drainage works necessary to facilitate the highway works and shall include Road Safety Audits.

The junctions are:

- a) A49 Winwick Road/Sandy Lane traffic signal junction
- b) A50 Orford Green/Hilden Road roundabout junction
- c) Capesthorpe Road/Poplars Avenue roundabout junction
- d) A49 Newton Road between M62 J9 and Delph Lane

The approved schemes shall be implemented in accordance with the following triggers respectively:

- a) Prior to any development served from Poplars Avenue
- b) Prior to any development served from Poplars Avenue
- c) Prior to any development served from Poplars Avenue
- d) Prior to the occupation of the 250<sup>th</sup> dwelling



# Ministry of Housing, Communities & Local Government

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

## 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.