



Department for
Communities and
Local Government

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B16 8SP

Our Ref: APP/R0660/A/13/2197532 and
APP/R0660/A/13/2197529
Your ref: P1007

11 August 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY MULLER PROPERTY GROUP: (A) LAND OFF AUDLEM ROAD/BROAD
LANE, STAPELEY, NANTWICH, CHESHIRE and (B) LAND OFF PETER
DESTAPELEIGH WAY, NANTWICH, CHESHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, David Nicholson RIBA IHBC, who held a public local inquiry between 18 and 21 February 2014 into your client's appeals against:

Appeal A: the refusal by Cheshire East Council ('the Council') to grant outline planning permission for residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1800m² Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700m² GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points; and associated works in accordance with application ref: 12/3747N, dated 28 September 2012; and

Appeal B: the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission for a new highway access road, including footways and cycleway and associated works, in accordance with application Ref: 12/3746N, dated 28 September 2012.

2. The appeals were recovered for the Secretary of State's determination on 5 March 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because they involve proposals for residential development of over 150 units which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. The Secretary of State issued his decision in respect of the above appeals in his letter dated 17 March 2015. That decision letter was the subject of an application to the High

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Court and was subsequently quashed by order of the Court dated 3 July 2015. The appeals therefore fall to be redetermined by the Secretary of State.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeals be allowed, and planning permission granted subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendations and dismisses the appeals. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Matters arising following the close of the inquiry

5. Following the close of the inquiry, your firm, acting on behalf of the Appellants, sent the two Section 106 Planning Obligations referred to in paragraph 37 below to the Secretary of State on 30 October 2014, and confirmed that these had been sent to the Council on 23 October 2014. The Council subsequently confirmed to the Secretary of State on 3 November 2014 that they were satisfied that the terms of the Undertaking relating to Appeal B resolve the Council's concerns regarding title and content. Furthermore, in addition to correspondence relating to timetable variations, the Secretary of State received correspondence from your firm on behalf of your client, dated 20 October 2014 and 21 November 2014. The former drew the Secretary of State's attention to the outcome of an appeal determined by an Inspector in respect of a proposed housing development at Old Mill Road, Sandbach; and the latter drew his attention to the interim comments of the Cheshire East Council Local Plan Strategy Inspector published on 12 November 2014. As all this correspondence related to public documents, the Secretary of State has not considered it necessary to circulate it to the parties to this case for specific comment. This correspondence is listed at Annex A.
6. Following the quashing of his decision letter, on 17 July 2015 the Secretary of State issued a letter under Rule 19 of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 to all interested parties setting out a written statement of the matters with respect to which further representations were invited for the purposes of his re-determination of the appeals. These matters were:
 - a) the emerging Cheshire East Local Plan Strategy;
 - b) the current position regarding the 5 year supply of deliverable housing sites in the Council's area;
 - c) the implications, if any, of the judgment in the case of *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government & Mid-Sussex District Council* [2015] EWHC 1173 (Admin); and
 - d) any other material change in circumstances, fact or policy, that may have arisen since his decision of 17 March 2015 was issued and which the parties consider to be material to the Secretary of State's further consideration of the appeals.
7. Alternatively, interested parties could ask for the inquiry to be reopened.
8. On 18 and 24 August 2015, the Secretary of State circulated the responses he had received to his letter of 17 July 2015. On 15 September 2015, he circulated the further representations he had received and informed the parties that he was of the view that

there were no substantive issues that required the inquiry to be re-opened. The responses to the Secretary of State's correspondence of 17 July and 18 and 24 August 2015 are listed at Annex A below.

9. Following the Court of Appeal judgment in the case of *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168, the Secretary of State referred back to parties on 23 March 2016 to seek their views on any implications of this judgment. A response was received from Muller Property on 4 April, which emphasised that where the local planning authority cannot demonstrate a five year supply of deliverable housing sites and where relevant policies for the supply of housing are out of date, there is a clear presumption in favour of a grant of permission in accordance with paragraphs 14 and 49 of the Framework. This response was circulated to parties on 18 April. A response from the Council was received on 25 April, which emphasised that the weight to be given to out of date policies is a matter for the decision-maker in accordance with the considerations at paragraph 47. This was circulated to you on 16 June, and a response was received on 22 June, which stated that the letter from Muller Property of 4 April adequately deals with the issues raised, and commented that there is no prospect of a plan being adopted in the foreseeable future, and that the Council is still unable to demonstrate that it has a deliverable supply of housing. These responses are listed at Annex A below.
10. The Secretary of State also received other representations following the quashing of his 2015 decision, as set out at Annex A below. The Secretary of State has given careful consideration to these representations but, as he does not consider that they raise new issues that would affect his decision or require him to refer back to parties, he has not circulated them.
11. Copies of the representations listed in Annex A are not attached but will be made available on written request to the address at the foot of the first page of this letter.

Policy considerations

12. In deciding these appeals, 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. In this case, the development plan consists of the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (LP), adopted in 2005 to cover the period to 2011. The Secretary of State agrees with the Inspector that the most relevant policies are those referred to at IR3.3-3.4. Notwithstanding that the LP only covers the period to 2011, he does not agree with your client's suggestion in IR6.3 that the development plan is silent or absent, as the relevant policies have been saved and still apply.

Emerging policy

13. The Secretary of State has had regard to the Inspector's remarks on the emerging Cheshire East Local Plan Strategy (CELPS) at IR3.5-3.6. He considers that relevant emerging policies include MP1 (Presumption in favour of sustainable development); PG1 (Overall development strategy); and PG5 (Open countryside). He has also taken account of the representation submitted by the Council on 12 August 2015 which sets out the further steps taken in the development of the CELPS since the close of the

inquiry and which argues that certain emerging policies, specifically those relating to open countryside, should carry more than limited weight. The Secretary of State also observes, following the representation of 12 August 2015 from the Council, that the Examining Inspector published his Further Interim Views on 11 December 2015 and that, on 13 January 2016, the Council published its response to those views including the steps which the Council intends to take prior to a resumption of the Examination hearings to consider amendments to the CELPS and proposed site allocations in September 2016. The Local Plan Strategy – Proposed Changes Version was published for consultation between 4 March and 19 April 2016, and the Council's responses were submitted on 8 July 2016.

14. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State has given careful consideration to the further steps still required prior to resubmission of the CELPS for examination (as set out by the Council on 13 January 2016 in its response to the Inspector's Further Interim Views). He has also given careful consideration to your representation dated 28 August 2015, which states that there are extensive and substantial outstanding objections to both the housing requirement and the distribution of development, and also sets out why you do not agree with the Council that more than limited weight should be attached to the CELPS open countryside policy. Evidence from the Council's consultation portal is that unresolved objections remain. The Secretary of State considers that the overarching aim of Policy PG5 is consistent with the Framework's aim of conserving and enhancing the natural environment, for example at paragraph 17. Overall he attributes little weight to relevant policies in the CELPS at this stage.
15. The Secretary of State has also given careful consideration to the emerging Stapeley and District Neighbourhood Plan, which has been published for consultation. He considers that relevant emerging policies include GS2 (Green spaces), GS3 (Landscape quality, countryside and open views), H1 (Scale of housing development) and H6 (Housing development), and has considered them against paragraph 216 of the Framework and the Planning Guidance (including the amendments made in February 2016 in respect of Neighbourhood Plans). The Secretary of State has taken into account the early stage which the Neighbourhood Plan has reached, and consultation responses on earlier stages of the Neighbourhood Plan process (which he notes show a low level of unresolved objections). With regard to the third limb, the Secretary of State considers that at this stage the relevant policies in the emerging Neighbourhood Plan do not appear to contain obvious inconsistencies with the Framework. Overall, the Secretary of State takes the view that the relevant policies in the emerging Neighbourhood Plan carry little weight.
16. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the associated Planning Guidance, as well as the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).

Main issues

17. The Secretary of State agrees with the Inspector that the main considerations in these appeals are those set out at IR12.1-12.2.

Appeal A

Housing land supply

18. The Secretary of State has given careful consideration to the Inspector's remarks at IR12.5-12.15 including his conclusions that a 20%, rather than a 5%, buffer should be favoured in these appeals (IR12.10), that the Council does not currently have a 5 year housing land supply and that the elements of policies NE.2 and RES.5 which serve to limit housing in the countryside should be considered as not up-to-date and so be afforded no weight in this decision (IR12.14).
19. He has also carefully considered the representations submitted following the quashing of his previous decision before reaching conclusions on housing land supply. He observes that the Council's representation of 12 August 2015 states that, against a revised 5 year housing land supply target of 9,000 dwellings (or 1,800 dwellings per year), a 20% buffer to take account of persistent under delivery of housing, plus an allowance for the backlog, the Council is unable to demonstrate a 5 year supply of housing land. The Secretary of State agrees. He has also had regard to your representation of 28 August 2015, which states the view that the Council's objectively assessed need figure of 1,800 dwellings per annum is subject to further objections and may rise further still. Taking into account the analysis at IR12.6-12.15 and the representations cited above, including the latest representations referred to at paragraph 9, the Secretary of State considers that there remains a clear shortfall in housing land supply.
20. The Secretary of State has considered the implications for this case of the Court of appeal judgment in the cases of *Suffolk District Council v Hopkins Homes Ltd* and *Richborough Estates Partnership LLP v Cheshire East Borough Council & Secretary of State for Communities and Local Government* [2016] EWCA Civ 168. In the light of this case he considers that the Inspector adopted an erroneous approach at IR12.3, 12.4 and 12.14 in ignoring the out-of-date policies and giving policies NE2 and RES5 no weight pursuant to paragraph 49 of the Framework.
21. In the circumstances of this case, the Secretary of State considers that saved LP Policies NE.2 and RES.5 are relevant policies for the supply of housing for the purposes of paragraph 49 of the Framework. Therefore, as the Council cannot demonstrate a five-year supply of deliverable housing sites, these policies should not be considered up-to-date. He considers that these policies attract reduced weight, rather than no weight, and has gone on to consider what weight they carry.
22. He has taken into account the Council's reference back response of 25 April 2016, which states that in the light of the steps the Council is taking to remedy the shortfall in housing supply, including progress on the Local Plan and the fact that large scale housing has been approved in Nantwich, the countryside policies can properly be apportioned weight. He has also taken account of the Council's statement that only 60% of the Borough meaningfully contributes to housing supply because of constraints such as Green Belt and other significant designations which require the Local Plan to formally unlock. He notes that settlement boundaries will be reviewed and defined

through the production of the Site Allocations and Development Policies DPD and neighbourhood plans, and that the Council proposes to consult on an Issues and Options paper later in 2016.

23. The Secretary of State has also taken into account that the overall purpose of these policies is to protect the countryside, which accords with the core principles in paragraph 17 of the Framework to recognise the intrinsic character and beauty of the countryside and to conserve and enhance the natural environment. He considers that they are generally consistent with the Framework.
24. The Secretary of State considers that the policies and the boundaries serve a sound planning purpose; it would be necessary to have boundaries to define the ambit of open countryside and so the justification for boundaries remains. He acknowledges that the settlement boundaries are based upon the existing defined settlement boundary in the Crewe and Nantwich Local Plan 2005, and are not based upon an up-to-date assessment of housing need. The boundaries will therefore need to be reviewed, and some boundaries adjusted to remove some land for development from the open countryside. However, it is likely that not all boundaries will change, and not all countryside will need to be opened up for development. In the light of these considerations and the Council's statement at paragraph 5.23 of their 12 August 2015 representation that 'it is not a place where it would be appropriate for the settlement boundary to flex', he considers that weight should still be given to the boundaries at the present time.
25. Overall, having considered paragraph 215 of the Framework, he considers that these policies and boundaries carry reduced but still significant weight.

Character and appearance of the open countryside

26. The Secretary of State has taken into account that there was no dispute that the Appeal A proposal for new housing in the countryside, outside the settlement boundary for Nantwich, would conflict with saved LP Policies NE.2 and RES.5 (IR12.3). Having also had regard to the representations submitted following the quashing of his previous decision including those submitted by you on 11 and 28 August 2015 and by the Council on 12 August 2015, he is satisfied that this remains the case. For the reasons set out in paragraphs 22-25 above, he gives these policies reduced but still significant weight. He further considers that the Appeal A proposal would conflict with emerging policy PG5 of the CELPS, and emerging policy GS3 of the Stapeley and District Neighbourhood Plan, albeit these emerging policies carry little weight.
27. The Secretary of State has taken into account that the loss of open countryside would harm the environment (IR12.23), and he agrees with the Inspector at IR12.26 that there would be harm to the character and appearance of the countryside. The Secretary of State agrees with the Inspector that there is a need for additional housing in the area which cannot be met by the existing supply of housing land and that greenfield agricultural land will need to be used to meet this requirement (IR12.26).
28. He has also taken into account the Council's statement that 'the appeal site makes a positive contribution to the character of the open countryside and the rural setting of Nantwich ... The protected trees also have a significant and recognised amenity value. The proposed development would adversely change the character of this part of Stapeley and would result in the loss of intrinsic beauty and rural character of the area ... However well landscaped as a housing estate, the proposed development would

utterly transform, and cause a change for the worse to, the site and the area's intrinsic character and beauty as countryside' (paragraphs 5.19-5.22 of the Council's 12 August 2015 representation). Although the Council's concerns about the loss of trees can be avoided (paragraph 35 below), it would not be possible to prevent the harm that would be caused to the character and appearance of the countryside.

29. Overall he considers that the harm to the character and appearance of the open countryside carries considerable weight.

Best and most versatile (BMV) agricultural land

30. The Secretary of State observes that IR2.1 is incorrect in stating that 25% of the Appeal A site is categorised as BMV land of which 6% is Grade 2 and 19% is Grade 3a. The Secretary of State is satisfied that the correct position, as agreed between parties, is that 25% of the aggregated sites (site A and site B) are BMV land. The amount of BMV land on site A is less than 25% and it includes no Grade 2 land. Your representation of 11 August 2015 also stated that 'part of the appeal site is the subject of an extant planning permission for an access road which means that the Grade 2 agricultural land which occurs on the site is already the subject of an extant planning permission'.
31. Having taken into account all the available evidence, the Secretary of State agrees with the Inspector at IR12.16 that there is no dispute that the scheme would result in the loss of agricultural land in the open countryside. Further, he concludes that the scheme would result in the loss of some BMV land, albeit a proportion of that is already subject to an extant planning permission. The Secretary of State observes that LP Policy NE.12 does not permit development on BMV agricultural land unless: the need for the development is supported in the local plan; it can be shown that the development proposed cannot be accommodated on land of lower agricultural quality, derelict or non-agricultural land; or other sustainability considerations suggest that the use of higher quality agricultural land is preferable to the use of poorer quality agricultural land. The Secretary of State considers that Policy NE.12 is largely consistent with paragraph 112 of the Framework, and is consistent with its objectives.
32. The Secretary of State has taken account of the Statement of Common Ground (listed as document 31a at page 2 of the IR) which states 'It is agreed that in order to meet likely housing land supply needs some greenfield sites will have to be utilised'. He has also given careful consideration to the Inspector's remark that the Council has insufficient land for housing without taking greenfield land and that lower grade land is not available and that, consequently, the scheme would not conflict with Policy NE.12 (IR12.16). He notes that the Statement of Common Ground does not state that the greenfield land required must consist of BMV land. He further notes the Appellants' representations that previous appeals have been granted which involve much greater losses of BMV land, that the Council has sought to allocate land for development on BMV land, and that the Council has granted planning permission for many housing sites involving an element of loss of BMV land (IR6.8 and your representation of 11 August 2015). However, he does not consider that decisions relating to other locations are determinative of the approach which should be taken in the circumstances of this case.
33. Overall he considers that the need for the use of BMV land at this location is not supported in the local plan. For the reasons given in paragraph 32 above, he

considers that it has not been demonstrated that the need could not be accommodated on land of lower agricultural quality. He is not satisfied that there are other sustainability considerations to suggest that the proposed use of BMV land is preferable to the use of poorer quality agricultural land. He therefore disagrees with the Inspector and considers that there is conflict with Policy NE.12.

34. Taking into account the evidence on BMV land from the inquiry, the Secretary of State considers that the loss of BMV land that would arise as a result of this scheme would be harmful. As well as bringing the scheme into conflict with LP Policy NE.12, this harm would conflict with paragraph 112 of the Framework. He considers that this harm carries moderate weight.

Landscaping, including trees

35. The Secretary of State has taken account of the Inspector's comments about landscaping including trees at IR12.17-12.19, including his remark that the proposed mitigation would be expected to take 20 years before the trees reached a comparable size to those which would be lost (IR12.17). The Secretary of State agrees with the Inspector (IR12.17) that the proposed access in Appeal A would require the loss of 10 protected trees, in direct conflict with LP Policy NE.5. However, given the Inspector's remark at IR12.19 that a condition could remove the proposed access from any permission for Appeal A, and in view of the Council's indication in its letter to the Secretary of State on 3 November 2014 that it was satisfied that the terms of the Undertaking relating to Appeal B resolve its concerns regarding the legality of constructing the Appeal B access (which could therefore be constructed if the whole scheme were to proceed), the harm would not arise.

Conditions

36. The Secretary of State has had regard to national policy set out at paragraphs 203 and 206 of the Framework, the Planning Guidance, the proposed conditions for Appeal A and B at pages 25-30 of the IR, and the Inspector's comments on them at IR10.1-10.5. He is satisfied that the proposed conditions meet the tests of the Framework and the Planning Guidance. In particular, he agrees with the Inspector at IR10.3 that the proposed access should be excluded from the Appeal A scheme and that this could be achieved by attaching proposed condition 29. The Secretary of State agrees with the Inspector that the loss of trees could be avoided through the use of a condition (IR12.23), and that the objections with regard to highway safety could be overcome by a condition (IR12.24-12.25). However, he does not consider that the imposition of these conditions would overcome his reasons for refusing these appeals.

Obligations

37. The two s106 Unilateral Undertakings (UU) referred to at paragraph 5 above were discussed in draft at the inquiry (IR11.1); and signed and dated versions were subsequently completed on 3 July 2014 in respect of Appeal B and 11 July 2014 in respect of Appeal A. The Secretary of State has carefully considered the s106 UUs, the Inspector's analysis at IR11.1-11.8, national policy set out at paragraphs 203-205 of the Framework, the relevant Planning Guidance, and the CIL Regulations 2010 (as amended). The Secretary of State concludes that the covenants and obligations within the Appeal A s106 UU, save for the Network Rail contribution and the sum for additional mitigation through the CAVAT method, comply with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

38. As to the Network Rail contribution, the Secretary of State agrees with the Inspector that, for the reasons given at IR11.3-11.5, the figure for the Network Rail contribution in the Appeal A UU cannot be considered as fairly and reasonably related in scale and kind to the proposed development, and so would not satisfy the third test in Regulation 122 of the CIL Regulations and paragraph 204 of the Framework. The Secretary of State agrees with the Inspector, for the reasons given at IR11.6, that the contribution relating to mitigation through the CAVAT method cannot be considered as fairly and reasonably related. It is also unnecessary, as the Secretary of State agrees that the access should be excluded from the proposals, in favour of the access in appeal B. Overall, he does not consider that the Appeal A s106 UU overcomes his reasons for refusing the appeal.
39. With regard to the Appeal B Undertaking, the Council has confirmed (in its representation of 3 November 2014) that its concerns regarding title and content have been satisfied. The Secretary of State is satisfied that the proposed mitigation is reasonable and necessary and that it complies with CIL Regulation 122.
40. The Secretary of State observes that the date of the planning obligation and the date of the Inspector's Report both pre-date the commencement of CIL regulation 123 (as amended). The Secretary of State has considered whether it is necessary for him to refer back to parties in respect of regulation 123 prior to determining this appeal. However, the Secretary of State does not consider that the s106 UUs overcome his reasons for deciding that the appeal should be dismissed for reasons which are unrelated to the adequacy of the section 106 obligations, as set out in this decision letter. Accordingly, he does not consider it necessary for him to do so.

Planning balance

41. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
42. For the reasons given at paragraphs 20-25 above, the Secretary of State considers that LP policies NE.2 and RES.5 are not up to date and carry reduced but still significant weight. For the reasons given at paragraphs 26-29 and 30-34 above, he considers that harm would arise from the conflict with policies NE.2 and RES.5. He concludes that Appeal A would not be in accordance with the development plan overall and has gone on to consider whether there are material considerations that indicate Appeal A should be determined other than in accordance with the development plan.
43. The Secretary of State considers that the Appeal A proposal would conflict with emerging policy PG5 of the CELPS, and emerging policy GS3 of the Stapeley and District Neighbourhood Plan. Since he gives this conflict only little weight, he does not consider that this is sufficient to justify refusal on prematurity grounds, and this is not determinative of the decision made on this appeal.
44. Given that policies for the supply of housing are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. Therefore he has considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole.

45. Weighing in favour of the proposals, the Secretary of State agrees that the construction of new housing would create jobs, and support growth, as would new space for employment development (IR12.20) and considers that the economic benefits of the scheme carry moderate weight. Having had regard to the Inspector's remarks at IR12.21-12.22 he considers that the provision of housing and affordable housing carries considerable weight in favour of the proposals and would be in accordance with paragraph 47 of the Framework and the policy objective of boosting significantly the supply of housing. He agrees that a primary school, children's play area and public space including a new village green, would add to the social benefits, and he has taken into account the contributions toward new bus stops and an extensive service linking with the town centre and railway station. He further agrees that the proposed pedestrian/cycle network would provide safe, direct, convenient and interesting routes through the site, and that subject to reserved matters, the proposals have the potential to achieve the good design which is promoted by the Guidance. He considers that these benefits carry moderate weight. He considers that the provision of allotments and green infrastructure carry limited weight in favour of the proposals (IR12.23).
46. Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above.
47. The Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.
48. For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Overall conclusion on Appeal A

49. The Secretary of State has found that Appeal A would conflict with the development plan overall. He has considered whether there are material considerations to justify determining the appeal other than in accordance with the development plan. Having taken into account all material considerations, including the need for and benefits of the provision of housing, he has concluded that overall the material considerations do not indicate that Appeal A should be determined other than in accordance with the development plan.

Appeal B

50. Having carefully considered the Inspector's analysis at IR12.28-12.32, the Secretary of State agrees with the Inspector that Appeal A should not proceed unless the Appeal B scheme were also to be constructed. Conversely, in determining Appeal B, the Secretary of State gives great weight to the fact that the scheme would only be required if Appeal A were to proceed and, in view of his conclusion in paragraphs 41-49 above, there would be no justification for allowing any harm arising from the Appeal B development without granting permission for the development in Appeal A.

Formal decision

51. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendations. He hereby dismisses your client's appeals and refuses planning permission for:

- **Appeal A:** (in outline) residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1800m² Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700m² GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points; and associated works in accordance with application ref: 12/3747N, dated 28 September 2012;

and

- **Appeal B:** a new highway access road, including footways and cycleway and associated works, in accordance with application Ref: 12/3746N, dated 28 September 2012.

Right to challenge the decision

52. 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 six 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.

53. A copy of this letter has been sent to Cheshire East Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

Maria Stasiak

MARIA STASIAK

Authorised by Secretary of State to sign in that behalf

Annex A Representations received

Date	Name	
20/10/14	Harris Lamb	Re Appeal Decision 2212604
30/10/14	Harris Lamb	Unilateral Undertakings
3/11/14	Cheshire East	Unilateral Undertakings
21/11/14	Harris Lamb	Interim views of Cheshire East local plan inspector
20/03/15	Cheshire East	To Inspector re CE local plan
1/07/15	Laura Denny	pre rule 19 objection
11/08/15	Harris Lamb	Rule 19 response – appellant
11/08/15	John Davenport	Rule 19 response
12/08/15	Cheshire East	Rule 19 response – Council
12/08/15	Patrick Cullen	Rule 19 response
12/08/15	Stapeley & district Parish Council	Rule 19 response
13/08/15	Councillors Peter Groves and Andrew Martin	Rule 19 response
28/08/15	Harris Lamb	Rule 19 response – appellant
29/08/15	Patrick Cullen	Rule 19 response
31/08/15	Mark Williams	Rule 19 response
2/09/15	Mark Williams	Rule 19 response (follow up)
9/09/15	Cheshire East	Rule 19 response – Council (nothing to add)
7/08/15	Mike Docker	Post rule 19 objection
9/08/15	Edward Leetham	Post rule 19 objection
10/08/15	R Sutcliffe	Post rule 19 objection
10/08/15	Roger Lancaster	Post rule 19 objection
11/08/15	Susan Pritchard	Post rule 19 objection
12/08/15	Jane Thomasson	Post rule 19 objection
12/08/15	Joyce Vernon,	Post rule 19 objection
12/08/15	K&J Bellamy	Post rule 19 objection
12/08/15	Lynn Wood	Post rule 19 objection
12/08/15	Olga and Albert Pye	Post rule 19 objection
13/08/15	R Greenow	Post rule 19 objection
4/04/16	Muller	Response to ref back 23/03/16
25/04/16	Cheshire East	Response to ref back 23/03/16
22/06/16	Harris Lamb	Response to recirculation of Cheshire East letter of 25/04/16

Report to the Secretary of State for Communities and Local Government

by David Nicholson RIBA IHBC

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

Date: 18 June 2014

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE EAST COUNCIL

APPEALS BY MULLER PROPERTY GROUP

Inquiry held on 18-21 February 2014. Site visit held on 21 February 2014

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire CW5
Land off Peter Destapeleigh Way, Nantwich, Cheshire CW5 7

File Refs: APP/R0660/A/13/2197532, APP/R0660/A/13/2197529

Appeal A: APP/R0660/A/13/2197532

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire CW5

- 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 Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref. 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is residential development up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1800m² Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700m² GIA; primary school; public open space including new village green, children's play area and allotments; green infrastructure including ecological area; new vehicle and pedestrian site access points; and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: APP/R0660/A/13/2197529

Land off Peter Destapeleigh Way, Nantwich, Cheshire CW5 7

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref. 12/3746N is dated 28 September 2012.
- The development proposed is new highway access road, including footways and cycleway and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

1. Procedural Matters

- 1.1 The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG)¹ appendix 3. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies².
- 1.2 Two Unilateral Undertakings were submitted under section 106 of the Town and Country Planning Act 1990 (s106). As agreed, signed and dated versions were submitted on 7 March 2014 after the Inquiry closed³. The Council commented on the final versions by letter dated 28 February. I deal with the contents of the Undertakings below.
- 1.3 The Inquiry sat for 4 days. I held an accompanied site visit held on 21 February. Evidence with regard to housing land supply (HLS) was heard as a round table discussion on Thursday 20 February 2014.

¹ Inquiry Document (ID) 31a

² Full wording in the SoCG ID 31a paragraph 1.14

³ ID 42a&b

- 1.4 The appeals were recovered by the Secretary of State on 5 March 2014⁴, after the Inquiry had closed, for his own determination⁵.
- 1.5 The (renamed) submission version of the emerging Cheshire East Local Plan Strategy Submission Version⁶ (emerging LP), dated March 2014, was published during the Inquiry.
- 1.6 Appeal Decision APP/R0660/A/13/2195201 – Land off Sandbach Road North, Alsager⁷ - was quashed by a Consent Order in the High Court⁸. Planning practice guidance (ppg) was published shortly after the Inquiry closed. I subsequently gave the main parties the opportunity to comment on any implications as a result of this Decision being quashed and on the ppg⁹. I have taken these comments into account in reaching my conclusions and recommendations.
- 1.7 There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.

2. The Site and Surroundings¹⁰

- 2.1 The site in Appeal A extends to some 12.43 hectares. It mostly comprises two fields of arable land with some grazing bounded by native hedgerows and trees. 25% of the Appeal A site is categorised as the best and most versatile (BMV) agricultural land of which 6% is Grade 2 and 19% is Grade 3a¹¹. The remainder is Grade 3b or of a lower category. The Council acknowledged¹² that it has insufficient land for housing without taking greenfield land and that therefore lower grade land is not available. A tree preservation order¹³ (TPO) covers a large number of trees, and groups of trees, in the vicinity, including nine Scots Pines and one Beech tree.
- 2.2 Residential redevelopment is underway to the east of the site where planning permission has been granted for 146 dwellings beyond the adjacent former Stapeley Water Garden site. It is bounded to the north by Peter Destapeleigh Way and an ecology mitigation/woodland landscape area associated with a development at Cronkinson Farm. This development includes a parade of 5 shops and a public house, Pear Tree Primary School and a community hall. Audlem Road, to the west of the site, is lined with residential development from different eras and The Globe public house. Audlem Road becomes Broad Lane as it heads south past further ribbon residential development and Stapeley Broad Lane Primary School. There is a secondary school close to the Nantwich end of Audlem Road.
- 2.3 The site is approximately 1km from the nearest railway station and some 1.3km from the town centre. There are a number of bus stops close to the site which are served by the No.73 and No.51 services and provide direct

⁴ Letters on main file

⁵ because they involve proposals for residential development of over 150 units or on a site of over 5 hectares which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

⁶ ID 30

⁷ CD D10

⁸ Attached to letter dated 16 April from the appellant, on main file

⁹ Letter dated 13 March to the main parties

¹⁰ See ID 31a: SoCG para 3.1 onwards

¹¹ Ibid, SoCG between the Council and the appellant, paragraph 7

¹² Ibid paragraph 5.1.4

¹³ See Hudson appendix 5

connections to Nantwich bus station and Nantwich railway station, approximately 1km to the north of the site via Audlem Road and Wellington Road. It is common ground that the Appeal A site is well served by a range of services, facilities and public transport opportunities and is accessible to modes of transport other than the private car. The site could therefore provide sustainable development in locational terms, and the Council broadly agreed the accessibility assessment and location of local services and facilities¹⁴.

- 2.4 The site for Appeal B covers approximately 1.71 ha within a single field. It is part of a large field of unmanaged grassland and scrub which adjoins Peter Destapeleigh Way to the north. It contains two ponds and areas set aside for Great Crested Newt (GCN) mitigation for the Cronkinson Farm and Stapeley Water Gardens schemes¹⁵. The site will connect to the fourth arm of the new signalised junction on Peter Destapeleigh Way, which has been constructed.
- 2.5 An area of land, including the site, is subject to a s106 Agreement¹⁶ between the landowners at the time and the Council, following the housing development to the north of Peter Destapeleigh Way, requiring its use for wildlife mitigation and tree planting including areas set aside for GCN mitigation. The extent of the loss of physical land for planting and habitats (under LP policy NE.10) was not agreed.

3. Planning policy

- 3.1 The National Planning Policy Framework (the *Framework*) was published in March 2012. Paragraphs 12-14 and 47-50 of the *Framework*, together with footnotes 11-12, are particularly relevant to HLS. The *Framework*¹⁷ also sets out the position with regard to weight and conformity of existing development plan policies. The ppg confirms that any shortfall in HLS should be made up over the next 5 years¹⁸.
- 3.2 The Regional Strategy for the North West (RS) was revoked in May 2013. The Borough of Crewe and Nantwich Replacement Local Plan¹⁹ (LP) was reviewed to cover the period up to 2011 and adopted in February 2005. Numerous policies were 'saved' by Direction in February 2008²⁰.
- 3.3 Of particular relevance to these appeals, LP Policy NE.2 treats all land outside the defined settlement boundaries as open countryside. Within open countryside, it restricts development other than in exceptional circumstances which do not apply here. In doing so, it seeks to safeguard the countryside for its own sake. Policy RES.5 refers specifically to housing and again restricts new dwellings outside settlement boundaries where it treats all land as open countryside.

¹⁴ ID 31a: SoCG paragraphs 3.6, 5.1.3 and 5.1.5 and appendices 1 and 2

¹⁵ See Natural England representations at CD M3 and CD E1: planning permission P00/0829 granted on 4 January 2001 for the 'Construction of new access road into Stapeley Water Gardens'

¹⁶ ID11, Cullen appendix 2 sections D3 and D4, and CDs E1-3

¹⁷ Ibid paragraph 215

¹⁸ Ref. 3-034-20140306/3-035-20140306 Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. This was previously referred to as the 'Sedgefield' method.

¹⁹ CD A11

²⁰ That is to say their life was extended by the Secretary of State's Direction (Saved Policies) February 2008 see CD A12 and SoCG para 4.5

- 3.4 LP Policy NE.5 deals with all nature conservation and habitats. In seeking to protect, conserve and enhance the natural conservation resource, it only permits development where, amongst other things, natural features such as trees are, wherever possible, integrated into landscaping schemes on development sites. With regard to unavoidable damage to wildlife habitat, the policy allows for compensation through similar provision nearby, but it is silent on mitigation for tree loss. Policy NE.12 does not permit development on the BMV agricultural land unless: the need is supported in the local plan; it can be shown that the need could not be accommodated on land of lower agricultural quality; or other sustainability considerations suggest that it is preferable to the use of poorer quality agricultural land.
- 3.5 Cheshire East Council (the Council) was formed in 2009. The latest version of its planning policy is set out in the emerging LP. Although the consultation period has expired, there are objections to the housing strategy which are yet to be objectively tested and so in general the emerging LP should be given limited weight²¹. Emerging Policy PG1 sets out the overall development strategy for the delivery of at least 27,000 homes between 2010 and 2030, equating to an average net increase of about 1,350 dwellings per annum. However, it then looks at options to gradually increase the number to be delivered from 1,200 to 1,500 per annum.
- 3.6 The evidence base used in preparing the emerging plan comes from the Cheshire East Council Population Projections and Forecasts Background Paper²². This identifies²³ that the medium growth strategy from the Council's Issues and Options Paper is the most appropriate housing requirement. This gives a figure of 1,350 which is repeated in the Council's more recent Housing Background Paper²⁴.
- 3.7 The main parties' summary on HLS is set out in a Position Statement²⁵. The number of housing units delivered within Cheshire East since 1996 has been agreed²⁶. This shows an over provision every year between 1996 and 2007 but an under provision compared with the RS target every year since 2008. These dates coincide with the prolonged economic downturn. The matter of whether or not a policy for the supply of housing should be considered up-to-date has been considered at appeal by a number of Inspectors, including for appeals in Cheshire East²⁷.
- 3.8 Interpretation of some of the paragraphs in the *Framework* with regard to HLS has been clarified by a number of Court cases. The *Hunston*²⁸ Judgment sets out how the objectively assessed needs²⁹ should be identified. In that case, the Appeal Court judges found that the Inspector had been wrong to rely on the out-of-date figures from the obsolete RS when better figures were available. In the *Tetbury*³⁰ case, the Judge found that the Inspector's

²¹ ID 31a: SoCG paragraph 4.6

²² CD A33, September 2013

²³ Ibid paragraphs 3.2-3.9

²⁴ CD A22, November 2013, paragraphs 6.1-6.3

²⁵ ID7

²⁶ Ibid Table 2

²⁷ See list at ID 27 and Mr Wedderburn's proof of evidence paragraph 6.1

²⁸ *Hunston Properties Ltd and Secretary Of State for Communities and Local Government St Albans City and District Council* 2013 EWCA 2678 (Admin) and Court of Appeal [2013] EWCA Civ 1610. CD C1 and CD C2

²⁹ *Framework* paragraph 47

³⁰ CD C6: *Cotswold District Council, Fay and Son Limited, Secretary of State for Communities and Local Government, Hannick Homes and Development Limited* [2013] EWHC 3719 (Admin)

approach, in looking forward and backwards by five years, was reasonable, and that where the local planning authority cannot demonstrate a 5 year HLS, a policy which restricts housing development should be disapplied to the extent that it seeks to restrict the supply of housing.

- 3.9 In the *Alsager* Decision, the Court found that the Inspector had erred in law in concluding that Policies PS4, PS8 and H6 of the Congleton Local Plan were not relevant policies for the supply of housing within the meaning of paragraph 49 of the *Framework* to the extent that they seek to restrict the supply of housing. Although that Decision involved policies from a different LP to these appeals, I note that the latter policies seek to restrict development in the open countryside and so the principles are relevant to interpretation of LP policies NE.2 and RES.5 in this case.

4. The Proposals

- 4.1 The details are confirmed in the SoCG. The concept for Appeal A is set out in the Design and Access Statement (DAS)³¹. Most of the houses would be on the western side of the site³². On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.
- 4.2 The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site³³. The proposed vehicular access would require a new three arm roundabout and visibility splays, within the appeal site, at a bend on Audlem Road/Broad Lane. It would also require the felling of the nine Scots Pine trees and one Beech tree subject to a TPO. Mitigation for this could be secured through conditions and the s106 Undertaking using the Capital Asset Value for Amenity Trees (CAVAT) method³⁴.
- 4.3 Most of the detailed proposals would be submitted as part of the reserved matters applications or are covered by provisions within the s106 Undertakings. I deal with these below.
- 4.4 Appeal B concerns a site access road and ecological mitigation measures within a Local Nature Area of Conservation (LNAC). The proposals differ slightly from an extant permission³⁵, which has been implemented by virtue of the spur for the junction.

5. Other Matters Agreed between the Main Parties

- 5.1 Appeal A is not dependent on permission for Appeal B but the latter could be used as an alternative means of access as well as providing access to

³¹ DAS CD H12, p45 onwards

³² Full details in SoCG ID 31a para 2.2

³³ DAS CD H12, paras 6.39-6.40

³⁴ Mr Shields appendix F

³⁵ Planning application ref. P00/0829

potential development sites to its south, subject to planning permission. The original planning permission for the access in Appeal B is extant and represents a fall back position.

- 5.2 Some green field sites, which include BMV agricultural land, will be required to meet likely HLS needs in the area. The extent of local services is also agreed³⁶. The Council has accepted that there are no technical reasons to resist Appeal A in terms of highway safety, drainage, residential amenity or environmental health matters.

6. The Case for the Muller Property Group

The material points are:

- 6.1 The main issues give rise to the following topics: the status of LP policies RES.5 and NE.2, 5 year housing land supply (HLS), BMV agricultural land, tree loss, and the acceptability of the Appeal B scheme compared with the agreed fall back position.
- 6.2 The development plan boundaries arise solely from saved policies and were drawn to provide sufficient housing land until 2011. The Saving letter expects replacement policies to be put in place promptly. LP Policies RES.5 and NE.2 seek to limit development and so are in tension with the *Framework* which aims to boost HLS. If there is less than a 5 year HLS, paragraph 14 of the *Framework* creates a presumption in favour of granting planning permission. Interpretation of policy is a matter for the Courts³⁷. Without a 5 year HLS, relevant policies should not be considered to be up to date³⁸. Taken with paragraph 49 of the *Framework*, it follows that policies RES.5 and NE.2 should be regarded as out of date insofar as they restrict housing, albeit that they may have relevance to a site in open countryside well beyond settlement limits.
- 6.3 Paragraph 14 of the *Framework* asks if policies are absent, silent or, if relevant, out of date. The LP is silent with regard to where development can take place after 2011. Provision for housing is absent after 2011. The reference to relevant policies should be applied one policy at a time. The presumption in paragraph 14 therefore applies regardless of the 5 year HLS position. On top of this, paragraph 47 aims to boost housing supply.
- 6.4 The 5 year HLS has 2 elements: the target (including shortfall and buffer) and the supply. The target figure must be arrived at as set out in paragraph 47. It should be derived from a Strategic Housing Market Assessment (SHMA). Any reference to the old evidence base in Regional Strategies (RS) must be supplemented by up to date robust local evidence (paragraph 218) and use of this material should be for plan making not decision taking. Using a housing requirement figure derived from a revoked plan, as the Council has done in its Position Statement³⁹, has been criticised by the Courts⁴⁰. Paragraphs 2.1-2.3 of the Position Statement fail to refer to paragraph 159 of the *Framework*. To ignore the most recent evidence from

³⁶ Ibid appendix 2.

³⁷ *Tesco Stores Ltd v Dundee Council (Asda Stores Ltd. and another Intervening)* [2012] UKSC 13

³⁸ CD C6 *Cotswolds case* [2013] EWHC 3719 (Admin)

³⁹ See ID3, para 1.15

⁴⁰ CD C1 and C2: *Hunston Properties Ltd vs Secretary of State for Communities and Local Government, and St Albans City and District Council* (2013 EWHC 2678 (Admin)) and Court of Appeal (2013 EWCA Civ 1610 (Admin))

household projection is especially unacceptable when those used for the RS are completely out of date.

- 6.5 The emerging LP covers 2010-2030 with an annual average figure of 1,350, some 200 more than the RS. Added to this is a 'backloading' towards the end of the plan period which is at odds with the *Framework* and will doubtless be exposed at the Examination in Public. Even if this were adopted, the 5 year figure (before considering the shortfall and buffer) should be 1,280 not 1,150. *Hunston* confirms that the objectively assessed figures should be used, whether or not these have been tested at an Examination in Public. There is no justification for 'backloading' the target figures towards the end of the plan period. At the very minimum, a figure of 1,350 should be used from which it is clear that there is no 5 year HLS.
- 6.6 Even using the Council's figures, the shortfall is 2,130. This demonstrates a persistent record of under delivery over the last 5 years, found by the Courts to be the appropriate period⁴¹. The ppg confirms that the 'Sedgefield' method should be used. The challenge to the *Tetbury* decision allowed this approach to be tested and confirmed. The Council has failed to deliver even against its target of 1,150 for each of the last 5 years and, with this history, a 20% buffer is appropriate.
- 6.7 The supply figure has been considered at a number of recent appeals⁴². The case of *Wain Homes*⁴³ indicates that: emerging Plan sites subject to objection should be excluded, lead in times should be longer, a second developer on a site is less likely than suggested, developers talk up the prospects of delivery, and windfalls can only be included if the rate can be demonstrated. The Council has consistently overestimated completions⁴⁴, latterly by over 33%. Using the correct target figure gives a supply of 3.1 years.
- 6.8 Only 25% of the site is BMV agricultural land. This should be weighed in the balance, noting that there is a good deal of BMV in the area, that there is an urgent need for housing and recent appeal decisions have allowed much greater losses of BMV agricultural land.
- 6.9 The proposed access in Appeal A would result in the loss of 9 Scots Pines and one Beech tree subject to a TPO. This must similarly be balanced against the scheme but again noting that: there would be significant areas available for replanting which, when mature, could form an impressive public avenue; it is acceptable to take a long view; most of the replanting would be publicly visible; additional compensation is available; and there would be a road traffic benefit. Moreover, policy NE.5 recognises that tree loss can be compensated for in principle and the Council has not argued that there could be a better access. There would also be highway safety advantages to the new access⁴⁵.
- 6.10 While a condition ensuring access is only from Appeal B is possible, it is not desirable as the above benefits, including the avenue, would be lost. The great areas of publicly accessible land would clearly compensate for the loss

⁴¹ CD D17 appeal ref. APP/F1610/A/11/2165778 – Highfield Farm, Tetbury

⁴² 3 appeals at ID27

⁴³ CD C7

⁴⁴ ID 4

⁴⁵ Mr Booker's evidence

and so there would be no breach of policy NE.5. In addition, the s106 Undertaking would offer a CAVAT sum for tree planting over and above the extensive landscaping proposed for the site.

- 6.11 With regard to the ppg, this confirms the Sedgfield approach to shortfalls. Although the wording on prematurity in the ppg is slightly different to that referred to at the time the proofs of evidence were written, the thrust of the guidance is similar and the evidence on which to assess prematurity has not altered. It was not raised as an issue by the Secretary of State.

Appeal B

- 6.12 The proposed wildlife and mitigation would be better than the fall back position which has run into difficulties with Counsel's Opinion⁴⁶ that the s106 agreement is no longer enforceable. While this is disputed, there is no doubt that nothing has happened in terms of planting for almost 3 years. The new s106 Undertaking should therefore be seen as a godsend. The 2011 approval could be cancelled and the new details approved without an amendment to the original s106. The new s106 Undertaking should therefore be put into effect. Nevertheless, if thought necessary, this position could be buttressed by the use of a *Grampian* condition.

Conclusions

- 6.13 The Inquiry has seen unusual support for the proposals which would provide housing, growth and affordable housing. The Council has fought a series of appeals to try and avoid releasing land for housing. Both appeals would bring benefits and should be allowed.

7. The Case for the Council

The material points are:

- 7.1 The *Framework* does not, and could not, change the law or the lawful approach to decision making⁴⁷ but is a material consideration⁴⁸. It requires a determination in accordance with the development plan unless material considerations indicate otherwise. The most that paragraph 14 can do is to suggest that the weight given to certain benefits, when gauged against the *Framework* as a whole, may (but not must) outweigh adverse impacts including breaches of the development plan. A deficiency in housing land supply is not a green light to development proposals.
- 7.2 These cases are straightforward. They have become complicated by an unnecessary attempt to lessen the impact of the development plan with an effort to characterise policies which express geographical constraints as subject to temporal limits. All types of policies may be informed by temporal considerations. They can become out of date either because the time has passed or because the activity has ceased, for example, policies to protect a railway that has been ripped up.

⁴⁶ Not before the Inquiry

⁴⁷ As confirmed in paragraph 12: This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

⁴⁸ The *Framework* paragraph 13

- 7.3 It cannot be said that a policy is out of date just because, within defined land, only particular development will be allowed. There is nothing in Policy NE.2 to indicate a temporal limit. The same is true of RES.5 which restricts new dwellings to exceptional classes. It makes no sense to say that a policy which limits development from certain areas carries with it a temporal limit so as to be out of date. The characteristic of being out of date is not dependent on a varying set of circumstances so that sometimes the policy is out of date and sometimes it is within. Just because a policy has an inhibitory effect on development doesn't mean that it becomes out of date. The appellant gave no explanation for why, for example, a green belt policy is to be treated differently from these policies.
- 7.4 HLS policies, which are temporal, should not be seen as equivalent to general policies which protect the land from development. The argument is that the policy has become out of date. However, the policies are generally indiscriminate. All development (subject to exceptions) is precluded by Policy NE.2. No one suggests the policies are to be rewritten. If they are out of date they are out of date. This means that they lose their inhibitory effect on development not just on housing development. That cannot be right. On the appellants' approach, a developer could say: I can build houses, therefore the land is not to be regarded as open, therefore I should be able to build retail or light industrial.
- 7.5 The appellants' defective argument is unnecessary. The *Framework* does not change the way applications should be determined. Indeed, it expressly says⁴⁹ that the test remains as in the statutory provisions and can never be as to whether permission should be granted but how weight should be attributed. There is no dispute that an absence of a five year HLS can be a weighty consideration, able to outweigh development plan policies. There is no need to argue that policies subject only to a limitation in place are subject to a limitation in time.
- 7.6 The important point about saving the policies is the fact they were saved. Reliance has been placed on the *Tetbury* judgment⁵⁰. This did not lay down a definitive construction of the *Framework*. It resolved a particular case where the underlying issue was different and was not purporting to bind consideration in other cases⁵¹. The reference relied upon by the Appellant⁵² is within a passage referring to other grounds of challenge which are dealt with in short form. It refers not to a general categorisation of out of date but rather that a policy should be disapplied to a particular and limited extent. This does not mean that the policies are out of date. All they can say is that the policies are not *per se* policies for the supply of land. In fact the point was about weight which was lessened enough to be disapplied.
- 7.7 Accordingly, the argument that the relevant policies are out of date should be dismissed. The argument that *relevant policies*, in its context in paragraph 14 of the *Framework*, means *any* policy is defective. The starting point is the development plan and it is agreed that, on its face, the relevant development plan policies are breached and the policies indicate refusal. It is next necessary to consider HLS.

⁴⁹ In paragraph 14 of the *Framework*

⁵⁰ Of Lewis J: CD C6

⁵¹ Paragraphs 3, 4 and 5 reveal the principal issues

⁵² Paragraph 70 et seq, especially para 72

- 7.8 Until at least 20 January 2014 the starting point was the objective assessment for the RS. The RS figures have been used in a string of appeal decisions⁵³ and result in a target figure of 1,150 dwellings per annum. The reason given is consistent with the *Framework* (paragraph 47) and has not been undermined by events between 21 January 2014 and 21 February 2014, i.e. the untested status of proposed figures remains as such. That untested status was the reason, note the use of the word therefore, for use of the extant tested figures, i.e. those at the time of the Regional Strategy.
- 7.9 The *Framework* was satisfied up to at least 20 January 2014 and there has been no supervening event since, other than publication of the emerging LP. However, it is but part of an uncompleted process where previous rounds of consultation have considered HLS. The relevant report⁵⁴ reveals that all steps precede 20 January 2014, and were known to the appellant, yet it is only between 21 January and now that it has changed position. A background paper of population projections and forecasts⁵⁵, dated September 2013 which superseded a previous paper published in January 2013, has not previously been used to suggest the agreed position as to the latest tested data was deficient.
- 7.10 A number of scenarios are put forward⁵⁶ including those based on growth strategies which involve attracting employment and thereby generating a need for housing. This contingency has neither been examined nor tested. These papers do not constitute an objective assessment of needs but are based on the misconception that present housing need can be based on a prospective decision about economic growth and the release of land for employment purposes. The *Hunston* case described an inspector who discounted DCLG projections because restraints on development departed from the *Framework*⁵⁷. The error was to not use objectively assessed needs. The case takes the Appellant nowhere and it is interesting to note that it is dated 20 November 2013, after the earlier Court of Appeal decision.
- 7.11 Accordingly, the starting annual target figure is 1,150. This is consistent with the Appellant's position up to 20 January 2014. It has been adopted for reasons in previous appeals and in Document 7. This leads to a five year target of 5,750 and a shortfall of 2,165. This leads to a total requirement⁵⁸ of 7,915.
- 7.12 Next is the question of persistent under delivery. The *Framework* indicates⁵⁹ that where there has been a record of persistent under delivery there should be an additional buffer of 20%. The sentence carries its ordinary meaning. The need to identify a supply for a specific number of years does not mean

⁵³ Listed in the Council's closing ID 38 paragraph 11: Appeal refs.: 2189733, land north of Congleton Road: CD D9; 2195201, land off Sandbach Road, North Alsager [since quashed] CD D10; 2141564, Abbey Road, Middlewich Road: CD D7; 218800, Hassall Road, Alsager: CD D19. See also ID 23: from Mr Wedderburn of 6 January 2014; Mr Downes at 5.8: "the database ...remains ...material...for the purposes of calculating the housing requirement...it represents the most recently tested data." He refers to D7, D8, D9 and D10 all being recent decisions which support that view; and the evidence of Mr Wedderburn at 21 January 2014, where he says that the correct target needs to be identified (page 7 of 32) and that (paragraph 7.5, page 8 of 32) given the untested status of the proposed Cheshire East target figures, i.e those coming forward in the local plan, the delivery of housing "should therefore be considered in the context of the targets previously set by the Regional Strategy".

⁵⁴ ID 32 reveals the chronology.

⁵⁵ CD A33

⁵⁶ See pages 7-16

⁵⁷ Paragraphs 12-13 and 32 of the *Framework*

⁵⁸ Using the *Sedgefield* method, see ID 7

⁵⁹ Paragraph 47

that particular number should be used when considering a past record. This would not apply to weather or economic forecasts. The *Framework* is asking for a past record not whether a state of affairs was persisting. It does not specifically ask for a recent record. If a batsman is being considered for a tour to take six months of Australia and India, and the selectors said they would consider his first class record, he would properly be aggrieved if they only considered the preceding six months.

- 7.13 Here there is a record⁶⁰ of delivery of sites for the area and it is not defective. It doesn't show persistent under delivery but that delivery has fluctuated which reflects the effects of the deepest recession since the Great Depression. It follows that a 5% buffer should be used. This produces a figure of 8,311. (If 20% were used the figure would be 9,498).
- 7.14 On the supply side, the request is for specific deliverable sites. It is unlikely that those who drafted the *Framework* envisaged that it would lead to a planning inquiry into a specific site having to trawl over sites questioning whether houses would be built by this or that builder, or whether they would cooperate with each other, or won't operate for less than an unspecified profit margin. The *Framework*⁶¹ enquires whether there are sufficient sites. If there is planning permission the site is presumed deliverable subject to clear contrary evidence. The framework also envisages sites which don't have planning permission as falling within the supply⁶². There is no reason why there should not be big sites, small sites and windfall sites. The question is one of supply in a practical world where people prefer doing things to not doing things and earning money to not earning money.
- 7.15 Accordingly, there is a five year HLS which results in a reduction of 118 dwellings⁶³. This still renders the supply as greater than 5 years on either buffer. In the approach at the end of *Hunston*, the judge made plain that a balancing exercise had to be undertaken. Any decision must reflect on the scale of the shortfall and its context. There is no shortfall, but if it is considered that one exists, the context is of a council striving hard to achieve a five year HLS. This lessens the weight to be given to any deficiency.
- 7.16 The development plan policies suggest refusal and there are clear amenity considerations. It is undesirable to cause the loss of protected trees with amenity value and to undermine the open countryside. The Council considered the additional matters raised after the Inquiry closed⁶⁴ but finds that these do not alter the considerations before the Secretary of State.
- 7.17 Appeal B has special considerations because of the existence of a prior section 106 agreement. This binds the land and cannot be discharged other than through a given, statutory route. Both Appeals should be dismissed.

⁶⁰ Table 2 in the Position Statement ID 7

⁶¹ Paragraph 47

⁶² *Framework* footnotes 11 and 12

⁶³ Following agreement at a recent Inquiry – see ID3a

⁶⁴ Letter dated 28 April 2014 on main file

8. The case for interested parties

The material points are:

- 8.1 Patrick Cullen⁶⁵ represented Protect Stapeley, a group of some 202 local residents objecting to the appeals. Their first objection is to the loss of protected trees, when alternative access points are available. While not approving of any access, if alternatives are available they should be used rather than trees being felled. With regard to Appeal B, the route would be different to the extant permission and would involve land subject to an existing s106 agreement. Importantly, pages D6 and D7.1 to their Appendix 2 are copies of the Council's approval of a drawing submitted in accordance with the agreement. It is the view of Protect Stapeley that these demonstrate that the agreement is still in place and enforceable. Consequently, Appeal B would result in the loss of land designated as mitigation land for Great Crested Newts.
- 8.2 Matthew Theobald⁶⁶ represented the Board of Governors of Stapeley Broad Lane CE Primary School. He presented a short video⁶⁷ of the existing traffic conditions along Broad Lane near the entrance to the school and evidence suggesting that the number of road accidents occurring is greater than reported. There should be no doubt that the governors have legitimate concerns with regard to the safety of children using Broad Lane. The school has obtained planning permission for a small car park and drop off point to help alleviate the current situation. The proposed housing and new access would bring additional traffic movements onto Broad Lane and therefore increase the risk to road users. In the school's view, this would be significant. The scheme also includes proposals for a new primary school. However, the developer would not provide this and the Council does not have the funds. Existing schools are full and so children living in the new development would have to travel unsustainable distances.
- 8.3 Robert Walker⁶⁸ is the agent for Mosaic Estates Ltd., which owns the access land, and was also concerned with the existence or otherwise of a 5 year HLS in Cheshire East. His current clients include Taylor Wimpey, Barratts, Persimmon, David Wilson and Bellway. Mr Walker made representations and contributed to the round table discussion on HLS. He related his increasing frustration with the apparent inability of Cheshire East [Council] to engage with the reality of housing supply and the consequential undersupply and log-jam of appeals. With regard to the Council's Position Statement, he claimed that this simply repeats the mistakes of the past. As well as commenting on specific sites, Mr Walker flagged up the Council's failure to engage properly with the Housing Market Partnership, the use of unrealistic times for lead in periods and s106 agreements, inclusion of unrealistic targets for strategic sites, assumptions that larger sites would be developed by more than one builder, use of unrealistic build rates, and reliance on sites with fundamental problems, including small sites. His evidence cites various examples to illustrate his arguments.

⁶⁵ ID 11

⁶⁶ ID 13

⁶⁷ Dates of recordings, as requested by the appellant, are at ID 25. No point was raised with regard to these.

⁶⁸ ID 14

- 8.4 Keith Nord⁶⁹, a parish councillor, spoke on behalf of Stapeley & District Parish Council. Its key grounds of objection are: traffic congestion, flooding, ecological damage, and the loss of an area of open countryside of value to local residents. The Parish Council commissioned an expert witness, Mr Bob Hindhaugh, to give detailed evidence on highways matters⁷⁰. The Parish Council has been approached by a number of residents looking for assistance with flooding issues as the land is very low lying and there is scant information about how drainage would be achieved.
- 8.5 John Davenport lives very close to the proposed new access. He expressed concern that the new roundabout was seen as a speed calming measure as the speed limit has been lowered to 30mph and there have been no accidents since the road surface was upgraded. Rather the new access might lead to a greater risk of accidents with more noise, pollution and fumes.
- 8.6 Nantwich Town Council⁷¹ sent its Town Clerk, Ian Hope, to represent it. Its objections included the fact that the site is not proposed or favoured as a strategic option, not well related to the urban edge, and in the open countryside. Development would result in an excess number of approved dwellings, when the Council has a 5 year HLS, and Nantwich should not be expected to supply more dwellings to make up for any lack of supply elsewhere. The scheme would cause problems with infrastructure, in particular at the level crossings on the direct routes into the town centre.

9. Written representations⁷²

- 9.1 In his written representations⁷³, Mark Williams argued that LP Policy NE.2 is not out of date or time-expired, that the former district of Crewe and Nantwich has out-performed other districts in what is now Cheshire East and contributed to an over-supply. He claimed that the loss of TPO protected trees would render the scheme unsustainable and submitted a photograph to show that these can be seen from the public bridleway on Deadman's Lane.
- 9.2 Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining roads and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development. One representation suggested that the proposed village green and employment land were no more than gimmicks.

10. Conditions

- 10.1 Discussions were held as to the suitable wording of, and reasons for, any conditions on 25 September, 11 and 16 October with reference to the tests for conditions in the *Framework*. Following these discussions, with only a

⁶⁹ ID 21

⁷⁰ CDs I17 and M7

⁷¹ ID 20

⁷² Red folder

⁷³ ID 12

few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

APPEAL A

- 10.2 As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:

4: residential amenity and sustainability
5&7: flood risk reduction and ecological enhancement, including concerns raised by the Parish Council
6: protection of archaeological remains
8-11: residential amenity
12: sustainability
13-15: highway safety
16&17: sustainability
18-22: protected species mitigation
23-26: reserved matters clarification and implementation
27-28: residential amenity.

- 10.3 For the reasons set out below, the proposed access should be excluded from the scheme. This could be done by attaching condition 29 without contravening the principles in the case of *Wheatcroft*⁷⁴. Given that this matter was aired at the Inquiry, nobody would be prejudiced by its inclusion.

APPEAL B

- 10.4 As well as the standard conditions 1 and 2, conditions 3-6 should be imposed to protect existing trees and other vegetation, and in the interests of visual amenity.
- 10.5 The parties had different proposals for resolving the conundrum of Appeal B, as set out below. For the reasons given there, the requirement that a scheme should be submitted would provide a sufficiently precise and reasonable solution which would also be relevant and enforceable.

11. Planning Obligations

- 11.1 The draft s106 obligations⁷⁵ were discussed at the Inquiry during the same sessions as the conditions. Final signed and dated versions were submitted, as agreed, after the Inquiry closed.

APPEAL A

- 11.2 This Undertaking⁷⁶ would require 30% of the new dwellings to be affordable housing, provide public open space, and contributions towards CAVAT, education, highways and network rail. A condition of the Undertaking⁷⁷ is that, following this report, it requires a finding in the Secretary of State's decision letter that each of the contributions is necessary.

⁷⁴ That the extent of development may be reduced by a condition but not increased

⁷⁵ ID 33a&b

⁷⁶ ID 42a

⁷⁷ Clause 16

- 11.3 The Council produced evidence⁷⁸ of compliance with the Community Infrastructure Levy (CIL) Regulations and the tests in the *Framework*⁷⁹. For the reasons given in the detailed justifications, these were all agreed except for the Network Rail contribution⁸⁰. This was sought to upgrade the existing railway level crossings between the site and Nantwich. The appellant was concerned that there was no proper justification for this, that the likely increase in traffic would be very small, that there was no properly costed scheme, and that Network Rail is a private company⁸¹.
- 11.4 The scheme would result in up to 189 new houses and other uses all of which could be expected to result in additional car journeys between the site and Nantwich and so increase the use of these level crossings. The crossings pose a risk of serious incident. Notwithstanding the appellant's arguments, the scheme, and other proposed housing developments in the area, would therefore increase the risk above that which would be likely to occur either without the additional development or with better level crossings. As a first principle, Network Rail would aim to close these crossings and seek funding from developers for the cost of mitigation, which could include replacement road and foot bridges. It has also referred to the view of the Inspector with regard to railway crossings at another appeal⁸² but the circumstances there were very different.
- 11.5 In the first instance, in November 2012, Network Rail was concerned that it had not been properly notified of the proposals. Following a meeting with the Council, it sent an email in March 2013 in which it sought a contribution of £1,500-£2,000 per dwelling. However, other than the overall figure in this email of around £4m, to upgrade two crossings, there was no justification at the Inquiry to support this sum. Consequently, while the contribution could be argued to be necessary and directly related to the development, in the absence of any details, the figure in the Undertaking cannot be considered as fairly and reasonably related in scale and kind and so does not satisfy the final test in the *Framework*.
- 11.6 The additional mitigation through the CAVAT method would provide a sum of £87,526⁸³. However, the location and details of these extra trees have not been identified and so the contribution cannot be considered as fairly and reasonably related. In any event, if the access were to be excluded from the proposals, in favour of the access in Appeal B, this would be unnecessary.

APPEAL B

- 11.7 The s106 Undertaking for Appeal B was put forward to replace that linked to the extant permission which has not been implemented. There was disagreement as to whether or not the earlier Undertaking could be enforced. As above, Protect Stapeley considers that its documentation proves that it is enforceable. The appellant has received Counsel's Opinion⁸⁴ to the effect that it is not. The new Undertaking could not resolve this difficulty as it could not take away rights under the existing s106 Agreement, and would only relate to a small part of the land covered by the original

⁷⁸ ID 26

⁷⁹ Paragraph 204

⁸⁰ See IDs 37a&c and 43

⁸¹ ID 36

⁸² ID 37b

⁸³ Shields appendix B

⁸⁴ Not before the Inquiry

obligation. After unsuccessful attempts to resolve the problem by agreement during the Inquiry, the Council expanded on this concern, and other reservations, after the Inquiry closed⁸⁵.

- 11.8 There is little doubt that the Council's aims regarding the habitat of protected species have merit and support in law and planning policy. Similarly, the appellant has willingly entered into an Undertaking with the aim of protecting this habitat. Unfortunately, the existence of an earlier Undertaking, binding a wider area of land, which may or may not be enforceable, rather complicates matters. The sensible solution would be to attach a condition of the *Grampian* type, as above, to prevent development until an agreed scheme has been entered into. Moreover, this would be in line with policy in the *Framework*⁸⁶ which sets out a clear preference for conditions over planning obligations.

Richborough Estates

⁸⁵ By letter dated 28 February 2014, on main file

⁸⁶ Paragraph 203

12. Inspector's Conclusions

I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal site and its surroundings. The references in square brackets [] are to earlier paragraphs in this report.

Main considerations

APPEAL A

12.1 The main considerations are the effects of the proposals on:

- (a) the character and appearance of the area with particular regard to the open countryside and LP policies NE.2 and RES.5;
- (b) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the *Framework*;
- (c) the loss of BMV agricultural land, and;
- (d) the loss of trees.

APPEAL B

12.2 The main consideration is the effect of the proposals on the habitat of protected species with particular regard to land allocated for ecological mitigation measures as a LNAC, tree planting and landscaping, and the existence of a 'fallback' position.

Character and appearance

12.3 There was no dispute that the Appeal A proposal for new housing in the countryside, outside the settlement boundary for Nantwich, would conflict with saved LP Policies NE.2 and RES.5. Rather, the disagreement centred on whether or not these policies should be considered current, and so attract any weight, in the light of recent interpretation of paragraph 14 of the *Framework* by the Courts. The parties alternately argued that this meant any relevant policy or all such policies. The important matter is to determine whether or not housing policies are out-of-date by virtue of a lack of HLS. If so, any policies, or parts of policies, which seek to restrain housing development are out-of-date and should be given no weight. Other than for determining their accord, or otherwise, with the development plan as a whole, a forensic analysis of every part of every policy is unnecessary. The issue is whether to give any weight to any part of the plan which seeks to restrain housing development. [3.3, 6.1-6.2, 7.3-7.4]

12.4 Policies RES.5 and NE.2 restrict housing development. Subject to the conclusion drawn with regard to HLS, the appellant is therefore correct to say that these policies should be regarded as out-of-date. It may be right that, if 'open' is interpreted as at a distance from other development rather than just unoccupied by development, they could have some relevance to a proposal on a site in open countryside, well beyond settlement limits. However, that would be of limited relevance to these appeals. Insofar as the housing development in Appeal A is concerned, both policies are out-of-date and should be given no weight. Although the scheme includes other development as well as housing, this would be complementary, in the interests of sustainable development, and nobody has sought to object

separately to the ancillary uses as in conflict with Policy NE.2.
[3.1, 3.9, 6.2, 7.3]

Housing land supply (HLS)

- 12.5 At previous Inquiries in Cheshire East the Council has conceded that it does not have a 5 year HLS and this was the position when proofs of evidence were submitted. However, matters are constantly moving and, by the time the Inquiry opened, the Council was arguing that it did have a 5 year supply. The evidence should therefore be reviewed afresh and the Decision based on the information available at the Inquiry. [3.7]

TARGET FIGURE

- 12.6 The Regional Strategy (RS) has been abolished. Nevertheless, the *Framework* allows figures from the RS evidence base to be used and these are the most recent to have been tested⁸⁷. The RS figures result in a target figure of 1,150 dwellings per annum. It was agreed at the Inquiry that, for the purposes of Appeal A, the emerging LP should be interpreted as requiring a target of 1,350, albeit that the weight to be attributed to this was not agreed. The *Framework* explicitly refers to up-to-date household projections⁸⁸. A more recent evidence base was used for the emerging LP figures but they have not been tested. The Judgment in *Hunston* clarifies that, to arrive at full objectively assessed needs, the most up-to-date figures should be used. The figures from the recent evidence base used for the emerging LP are both reasonably up-to-date and robust; therefore they are to be preferred. [3.6, 6.5, 7.8, 7.11]
- 12.7 The Council has rightly pointed out that the emerging LP puts forward a number of scenarios which include those based on growth strategies. However, most of these would result in substantially higher HLS targets than 1,350. The suggestion in the emerging LP that the trajectory for new housing should be weighted towards the back end of the plan period would defeat the object of a buffer (see below). Although limited weight should be given to the emerging LP as a whole, 1,350 dwellings per annum is a reasonable figure for the purposes of assessing the HLS in Appeal A. A target figure of 1,350 dwellings per annum gives a total of 6,750 over 5 years. There is a current shortfall which was agreed as either 2,165 or 2,197 based on the RS figures (the difference is of little consequence). [6.5-6.6, 7.10-7.11]
- 12.8 As above, the *Framework* also requires a buffer of either 5% or 20%. It is agreed that there was a shortfall between 2008 and 2013 but that the delivery figures were easily exceeded for the earlier years. The test for the amount of buffer in the *Framework* is a *record of persistent under delivery*. Although the phrase could be considered as pejorative, that is not necessarily the case. Rather, the test is to make a factual assessment with the simple aim *to provide a realistic prospect of achieving the planned supply*. There may be many reasons why the target has not been achieved recently. Indeed, the Council merger and the prolonged economic downturn may both be good reasons why there has been a shortfall for over 5 years and so a finding of a prolonged shortfall should not necessarily be taken as a criticism of the Council's efforts to meet its targets.

⁸⁷ *Framework* paragraph 218

⁸⁸ *Ibid* paragraph 159

Nevertheless, as a matter of fact, there has been a shortfall which has persisted for 5 years and persists today. Even though over the last 18 years the target has been met more often than not, following the support for the Inspector's reasoning in the *Tetbury* Judgement, looking back 5 years is a reasonable approach. [3.7, 6.6, 7.13]

- 12.9 The Council's cricketing analogy⁸⁹ is not particularly supportive as one would expect the England selectors to look more closely at recent performance than at a batsman's longer first class record to determine whether or not he was on form. There can be no doubt from the figures that, with regard to the provision of HLS, Cheshire East Council is not currently on good form. [7.12]
- 12.10 For all these reasons, a 20% buffer should be favoured with regard to the HLS target in these appeals. Taken together with the emerging Local Plan target and the existing shortfall, spread over 5 years⁹⁰, the target should be approximately 10,700 dwellings over the next 5 years. In the event that only a 5% buffer was appropriate the figure would be around 9,350 dwellings.

SUPPLY FIGURE

- 12.11 On the supply side, the appellant acknowledged that the Council had a supply of 7,112 dwellings but disputed sites for a further 2,772 dwellings. Following discussions, the agreed difference was narrowed by 118. The evidence on the disputed sites was discussed site by site following a series of tables grouping sites with similar characteristics with regard to whether permissions have been granted, whether allocations are only draft, the length of lead-in times and other factors. However, the appellant and an interested party⁹¹ outlined reasons why some of these might not come forward as hoped. [3.7, 6.7, 7.15]
- 12.12 Sites with permission should generally be considered deliverable unless there are convincing reasons why not⁹², while most of those which are simply draft allocations should be looked at more cautiously unless pre-application discussions are well advanced. Of those where the difference is down to the lead-in times or build rates, there is likely be more enthusiasm for delivering houses rapidly at the moment as the economy improves, and so the Council's figures are broadly acceptable. [3.7, 6.7, 7.14]
- 12.13 Looking at all these sites in the round, there is probably a deficiency of around half the dwellings on the disputed sites, mostly from the optimistic lead-in times for sites with long standing s106 complications or those with only draft allocations which are either contentious or problematic. This adjustment provides a supply figure of barely 8,500 dwellings. [6.7, 7.13]
- 12.14 Even accepting the Council's assessment that it has a supply of 9,884 dwellings⁹³ over the next 5 years, the target of 10,700 would not be met. Moreover, using the estimate that only 8,500 dwellings will come forward within 5 years, and using a 5% buffer, there would still be a shortfall of the difference between 8,500 and 9,350 dwellings. The conclusion for Appeal A

⁸⁹ ID 38 paragraph 16

⁹⁰ Using the agreed 'Sedgefield' method

⁹¹ Mr Walker

⁹² footnote 11 of the *Framework*

⁹³ ID35 Table 1

should be that the Council does not currently have a 5 year HLS. Consequently, the elements of policies NE.2 and RES.5 which serve to limit housing in the countryside should be considered as not up-to-date and so be afforded no weight in this Decision⁹⁴. I acknowledge that the Council is striving hard to adopt a new LP including a 5 year HLS but until this plan comes into operation the HLS deficit should activate paragraph 14 of the *Framework*. [3.9, 6.2, 7.15]

- 12.15 Nevertheless, the absence of a 5 year HLS does not mean that housing development should be permitted anywhere. Rather, the *Framework* sets out a consequential presumption in favour of sustainable development⁹⁵. The question is therefore whether or not the proposals would amount to sustainable development, taking account of the other issues.

BMV agricultural land

- 12.16 There was no dispute that the scheme would result in the loss of agricultural land in the open countryside, but the Council has insufficient land for housing without taking greenfield land and lower grade land is not available. Consequently, the scheme would not conflict with Policy NE.12. Furthermore, the policy reference to 'other sustainability considerations' could be reasonably interpreted as referring to land in close proximity to towns and services. [2.1, 6.8]

Trees

- 12.17 The proposed access in Appeal A would require the loss of 10 protected trees. This loss would be in direct conflict with Policy NE.5. The appellant argued that the proposals would offer extensive mitigation over the next 20 years, including a new avenue of trees, on site planting and additional planting in the area through a CAVAT contribution. I saw that the existing specimens appear neither young nor old but in the prime of their lives. The mitigation would be expected to take 20 years before the trees reached a comparable size to those which would be lost. However, over that same period the existing trees could be reasonably expected to grow and so maintain a gap in size and amenity benefit between the extant trees and any mitigation. [2.1, 4.2, 6.9, 7.16]
- 12.18 Landscaping is a reserved matter. Therefore limited weight should be given to the appellant's argument that excluding the new access would result in the omission of some of the proposed landscaping benefits. The additional mitigation through the CAVAT method has not been identified and so would not satisfy the test in the *Framework* with regard to being directly related. The claimed road traffic advantages at the proposed access were somewhat overstated and disputed by local residents. However, these only need to be considered in the event that the proposed new access is implemented, which it should not be. [2.1, 4.3]
- 12.19 Policy NE.5 acknowledges that tree loss can be compensated for in principle. Although opposed to the scheme in principle, interested parties have argued that there could be 3 better site accesses, including that put forward in Appeal B. As above, following the *Wheatcroft* principles, a condition could remove the proposed access from any permission. In

⁹⁴ *Framework* paragraph 49

⁹⁵ *Ibid* paragraph 14

conclusion on this point, the tree loss would weigh heavily against the proposals, and conflict with Policy NE.5 but, subject to the Decision on Appeal B below, this could be overcome by a condition removing the access from the scheme. Moreover, removing the proposed access would also eliminate the concerns, justified or otherwise, of the Parish Council, school governors and local residents with regard to highway safety at the proposed access. [3.4, 8.1-8.2, 8.4-8.5]

Conclusions on sustainable development

- 12.20 The *Framework* explains that there are three dimensions to sustainable development which require the planning system to perform three different roles, namely economic, social and environmental. There was no dispute that the construction of new housing would create jobs, and support growth, as would new space for employment development. Nantwich is also one of the preferred locations for development in both the existing and emerging local plans. [3.5]
- 12.21 Housing, and affordable housing in particular, would contribute to the social role in the *Framework* and this should be given extra impetus in the light of the Council's lack of a 5 year HLS. A primary school, children's play area, and public open space including a new village green, would add to the social benefits. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station. The site adjoins the edge of Nantwich including the shops and two pubs. For these reasons, the Appeal A site could provide sustainable development in locational terms. [4.1, 5.3]
- 12.22 The proposed pedestrian/cycle network would provide safe, direct, convenient and interesting routes through the site. Although the application is mostly in outline form, the ppg amplifies the emphasis on design in the *Framework*. In particular, it notes that: achieving good design is about creating places or spaces that work well; successful integration is an important design objective; and proposals should promote safe local routes by making places that connect appropriately and are easy to move through⁹⁶. Subject to reserved matters, the proposals have the potential to achieve all these and this weighs in their favour. [4.2, 5.3]
- 12.23 There was little disagreement that the loss of trees, BMV land, and open countryside would harm the environment. However, the former could be avoided through the use of a condition and the unavoidable circumstances in Cheshire East would mean that the latter two would not conflict with up-to-date LP policies. Allotments and green infrastructure (including a new hedgerow) would weigh on the positive side. Notwithstanding objections by interested parties, it is common ground that there are no technical reasons to resist the scheme in terms of highways, drainage, residential amenity or environmental health matters and that suitable mitigation can be provided with regard to ecology. [5.2, 10.3]
- 12.24 As was explained on behalf of the Board of Governors of Stapeley Broad Lane CE Primary School, the new access might make matters worse for highway safety in the vicinity of the school. Regardless of whether or not this concern could amount to a sound reason for refusal by itself,

⁹⁶ Ppg refs. ID 26-001, 26-007, 26-008 and 26-024, all dated 20140306

nonetheless it is a factor to be considered in assessing sustainable development. [8.2]

- 12.25 On the other hand, the perceived additional risk to highway safety and the loss of trees could both be avoided if an alternative access was used. Appeal B would provide one such opportunity. I therefore find that the objections with regard to trees and highway safety could, and should, be overcome by a condition. Subject to such a condition, the proposals would amount to sustainable development as defined by the three dimensions in the *Framework*. [10.3]
- 12.26 For all the above reasons, I conclude that there is a need for additional housing in the area which cannot be met by the existing supply of housing land and that greenfield agricultural land will need to be used to meet this requirement. It follows that the need for housing would outweigh the harm to the character and appearance of the countryside and the loss of some BMV agricultural land. [5.2]
- 12.27 On balance, Appeal A would accord with up-to-date policies in the development plan as a whole and the scheme would comply with the policy presumption in the *Framework* which should be afforded considerable weight.

Appeal B

- 12.28 There was no agreement at the Inquiry as to whether or not the existing s106 Agreement is still enforceable and no appetite on either side to test this in Court. The dispute centred on whether or not a scheme had been submitted to the Council. The letter from the Council to the owners, and associated map, suggest that a scheme was submitted and that the time limit did not prevent its enforcement. On the balance of probabilities, and on the information before the Inquiry, it is likely that the Agreement could be enforced although this would ultimately be a matter for the Courts. [2.5, 6.12, 7.17, 8.1]
- 12.29 The purpose of the proposed access would be as an alternative means of access and also to provide the opportunity for further development to the south, if required and if planning permission were granted. It is common ground that an extant permission (ref. P00/0829) for the access road would allow much of the development to take place. The spur for the fourth arm has been constructed and so the permission has been implemented, is extant and represents a fall-back position. [2.4, 4.4]
- 12.30 The proposed access would result in the loss of some of the GCN mitigation land. However, this could be overcome by the provision of additional land and funding. The appellant has offered an alternative s106 Undertaking. However, the details are not the same as those in the drawing submitted under the existing s106 Agreement creating some conflict between the two. While it should be possible to submit a mechanism which would provide alternative mitigation without compromising the enforceability of the extant s106, no such solution was forthcoming by the end of the Inquiry. [6.12, 7.17]
- 12.31 Consequently, it would be wrong to place any great weight on the likelihood that the new s106 would achieve the necessary mitigation without creating other harms. Moreover, it not within the power of the appellant, who was

not a signatory to the original s106 and does not own all the land, to carry out the terms of that Agreement.

- 12.32 However, given that it should be possible to resolve this problem, a condition preventing the use of the new access until a suitable scheme (which might or might not include the new s106 and/or a letter from the Council cancelling the existing drawing and approving the new drawing under the extant s106) should have a reasonable prospect of being implemented. As above, the extent of mitigation could therefore be overcome by a *Grampian* condition requiring a scheme for mitigation to be submitted and approved before development commences. In these circumstances, the proposals would not harm protected species, but would accord with LP policies NE.9 and NE.10 and paragraph 118 of the *Framework*, and the appeal should be allowed. [10.5]

Overall conclusions

- 12.33 For the above reasons, Appeal B should be allowed. Consequently, the access proposal in Appeal A could be removed by condition. This would remove the greatest objection to Appeal A such that the balance would fall on the side of the proposals amounting to sustainable development. In the event that the Secretary of State agrees that the Council does not have a 5 year HLS, this consideration would outweigh any conflict with the development plan. It follows that both appeals should be allowed subject to the attached Schedules of conditions.

13. Recommendation

- 13.1 I conclude that both appeals should be allowed and planning permissions granted subject to the attached Schedules of conditions.

David Nicholson

INSPECTOR

Schedules of conditions

APPEAL A

1. Details of appearance, landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.
2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission (see condition 29) indicates otherwise:
 - Site Location plan reference no. BIR.3790.09D (September 2012)
 - Site Setting (Aerial Photograph) reference no. SP(90)11
 - Indicative Masterplan, reference no. BIR.3790.12 (September 2012)
 - Movement and Topography
 - Landscape Character Plan reference no. SP/90/01
 - Tree Plan Drawing no. NWS/SP/03/12/01
 - Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 (9th November 2011)
 - Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 (9th November 2011)
 - Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 (9th November 2011)
 - Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 (9th November 2011)
4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:
 - a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
 - b. a scheme to limit the surface water run-off generated by the proposed development
 - c. a scheme for the management of overland flow
 - d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
 - e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Q_{bar}) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
 - f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).

- g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
- h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.
7. The Reserved Matters shall make provision for development fronting on to the existing watercourses within the site.
8. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
- a. the hours of construction work and deliveries
 - b. the parking of vehicles of site operatives and visitors
 - c. loading and unloading of plant and materials
 - d. storage of plant and materials used in constructing the development
 - e. wheel washing facilities
 - f. measures to control the emission of dust and dirt during construction.
 - g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and prior notification to the occupiers of potentially affected properties
 - h. details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint

- i. control of noise and disturbance during the construction phase, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes
 - j. waste management: there shall be no burning of materials on site during demolition/construction.
9. Prior to its installation details of the location, height, design, and luminance of any proposed lighting shall be submitted to and approved in writing by the LPA. The details shall ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
10. No development shall take place until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.
11. Prior to the commencement of development:
 - a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.
 - b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.
 - c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
12. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.
13. The improvement of junction of Peter Destapeleigh Way/Elwood Way/London Road as shown in SCP/10141/GA04 Rev B (moving the 'stop' line on London Road south towards the junction, provision of an additional lane and island on the London Road south arm and upgrade on kerbside detectors to ensure efficient operation of the pedestrian stage), shall be carried out prior to the first occupation of the development hereby permitted.
14. The improvement of junction of Elwood Way/Newcastle Road as shown in SCP/10141/GA05 Rev A (inclusion of the 80m left turn lane from Newcastle Road with 3.65m wide lanes), shall be carried out prior to the first occupation of the development hereby permitted.

15. The Reserved Matters application shall include details of parking provision for each of the dwellings hereby permitted. No dwelling hereby permitted shall be occupied until the parking and vehicle turning areas for that dwelling have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.
16. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. No part of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
17. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.
18. No development shall take place except in complete accordance with the submitted protected species mitigation unless varied by a subsequent Natural England licence.
19. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.
20. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.
21. No development shall take place until details of the design of the proposed pond including fencing to prevent public access have been submitted to and approved in writing by the LPA. The new pond shall be for nature conservation purposes only and shall be provided prior to the first occupation of the development hereby permitted.
22. No development shall take place until proposals for in perpetuity management of the retained and newly created habitat areas have been

submitted to and approved in writing by the LPA. The habitat areas shall thereafter be managed in accordance with the approved proposals.

23. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.
24. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping for the site indicating inter alia:
 - conservation and enhancement of important hedgerows within the site as an integral and structuring part of the Landscape Framework
 - replacement planting for any trees or hedgerows to be removed
 - The number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted
 - a high quality and robust new Landscape Framework, including public open space, new trees, structure planting, hedgerows and other mixed habitats and open spaces
 - an appropriate landscape management and maintenance regime to ensure the successful establishment and continued thriving of the existing and new planting and landscape areas.
25. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
26. The Reserved Matters shall include an Arboricultural Impact Assessment in Accordance with BS: 5837:2012 which shall include:
 - Trees proposed for retention
 - Trees proposed to be removed
 - Trees to be pruned
 - An evaluation of the impact of any proposed tree losses
 - Evaluation of tree constraints
 - A Tree Protection Plan
27. No development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No dwelling hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.
28. The Reserved Matters application for each phase of development shall include details of bin storage for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of the properties to which they relate.

29. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. SCP/10141/D03 (September 2012).

APPEAL B

1. The development hereby approved shall commence within three years of the date of this permission.
2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
 - a. Site Location Plan reference no. BIR.3790_13
 - b. Site Access General Arrangement Plan reference no. SCP/10141/D03 (September 2012)
3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of any to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.
4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development whichever is the sooner and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.
5. No development or other operations shall commence on site until a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a TPO currently in force has been submitted to and approved in writing by the LPA. No development or other operations shall take place except in complete accordance with the approved protection scheme, which shall be in place prior to the commencement of work. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the LPA.
6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
7. No development or other operations shall commence on site unless and until a scheme of mitigation for the habitat of protected species has been submitted to and approved in writing by the LPA. The scheme shall be implemented as approved.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Tim Straker QC	instructed by the solicitor to Cheshire East Council
He called	
Graham Stock BA MA MRTPI AIEMA	Deloitte
Christopher Hudson MSc DipArb MarborA	Cheshire East Council
Ben Haywood (round table session only)	Cheshire East Council

FOR THE APPELLANT:

JEREMY CAHILL QC	instructed by Patrick Downes, Harris Lamb on behalf of Müller Property Group
He called	
Jonathan Berry BA (Hons), Dip LA, AIEMA, CMLI, M.Arbor.A	Tyler Grange
William Booker BSc (Hons)	Singleton Clamp and Partners Ltd.
Patrick Downes BSc (Hons), MRICS	Harris Lamb
James Grundy MCIEEM	Cheshire Ecological Services Ltd.
Malcolm James Reeve BSc, FISoilSci, Csci, MBIAC, MCIWEM	Land Research Associates Ltd.
Stephen J.A. Shields Dip.Arb (RFS), MICFor	Shields Arboricultural Society
Matthew Wedderburn BSc, MA, MRTPI	Müller Property Group

INTERESTED PERSONS:

Patrick Cullen	Representing 'Protect Stapeley'
Matthew Theobald	Representing the Governors of Primary School
Keith Nord	Councillor, Stapeley and District Parish Council
Robert Walker RICS	Local property agent
John Davenport	Local resident
Ian Hope	Town clerk, Nantwich Town Council

INQUIRY DOCUMENTS (ID)

1	Letter of notification of the appeal
2	Appellant's opening
3	Appellant's assessment of the Position Statement by CEC and appellant
4	Housing land supply projections
5	Paul Tucker's closing for Rose cottages appeal inquiry
6	Council's opening
7	Position statement by CEC
8	Technical note from Mr Booker
9	Rose cottages decision
10	List of properties with dates of permissions and completions
11	Protect Stapeley representations (Mr Cullen)
12	Mark Williams representations
13	Theobald representations for Primary School governors
14	Walker's statement
15	Part of CD A12 previously missing
16	Accident statistics
17	Statement with regard drainage and flooding
18	Note on Costs
19	Policy 19 Cotswold District Council
20	Statement by Mr Hope, Nantwich Town Council
21	Statement by Mr Nord, Stapeley and District Parish Council
22	List of suggested conditions
23	Letter from Mr Wedderburn dated 6 January 2014
24	List of sites for less than 10 units
25	Dates of video recording by Mr Theobald
26	Community Infrastructure Levy justification
27	Analysis of relevant previous conditions
28	Extracts from relevant Decisions
29	Decision addressing 'Coleman' re paragraph 215 of the <i>Framework</i>
30	Submission version of the emerging Local Plan, March 2014
31a	Statement of Common Ground
31b	Proposed site visit itinerary
32	Report to the Strategic Planning Board with regard to the emerging Local Plan
33a&b	Draft unilateral undertakings
34	Email from Mr Booker to the appellant
35	Mr Wedderburn's calculations and minor alterations
36	Representations from SCP with regard to the rail crossings
37ab&c	Network rail email; relevant Decision; Queen's Drive reference
38	Council's closing submissions
39	Appellant's draft conditions
40a&b	Council's amendments to Unilateral Undertakings
41	Appellant's closing submissions
42a&b	Unilateral undertakings
43	Original network rail representations
44	Emails with regard to bus stops

CORE DOCUMENTS (CD)

Background (A)

	NATIONAL PLANNING AND MINISTERIAL STATEMENT
A1a	Extract from the National Planning Policy Framework Guidance (Aug 2013)
A1b	Article 31 of The Town and Country Planning (Development Management Procedure) (England) Order 2010
A2	Relevant extracts of 'Laying the Foundations: A Housing Strategy for England' (November 2011)

A3	Housing and Growth Ministerial Statement DCLG (September 2012)
A4	The Planning System, General Principles – ODPM 2005
	Regional Planning Policy and other guidance
A5	Chief Planning Officers Letter: Revocation of Regional Strategies (6 July 2010)
A6	RPG 13: Regional Planning Guidance for the North West (March 2003)
A7	North West of England Plan Regional Spatial Strategy (2008)
A8a	Land Supply Assessment Checks, Communities and Local Government, May 2009
A8b	Strategic Housing Land Availability Assessment Practice Guidance Communities and Local Government, July 2007
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	LOCAL PLAN POLICY AND GUIDANCE
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005)
A12	Secretary of State's Direction (Saved Policies) February 2008
A13-15	-
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A17	Stapeley Parish Plan 2008
A18	Stapeley and District Parish Plan update 2012
A19	Extract of the Draft Nantwich Town Strategy
	EMERGING LOCAL PLAN BACKGROUND DOCUMENTS
A20	Extracts of the Pre-Submission Core Strategy (November 2013)
A21	Extracts of the Core Strategy Sustainability (Integrated) Appraisal (November 2013)
A22	Extracts of Cheshire East Housing Background Paper (November 2013)
A23	Extracts of Cheshire East Preferred Sites Background Overview (November 2013)
A24	Cheshire East Strategic Housing Market Assessment (2013 Update)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4 th December 2013)
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A29	Letter from Emery Planning to the SHLAA update methodology (January 2014)
A30	CEC's press release on the 5 year housing land supply position statement (28 th January 2014)
A31	CEC's 5 year housing land supply position statement with appendices (December 2013)
A32	SHLAA: Housing Market Partnership Workshop minutes (19 th December 2013)
A33	CEC Population Projections and Forecasts Background paper (Sept 2013)
A34	Harris Lamb's Local Plan Representations on behalf of Muller Property Group to the Pre-Submission Document (December 2013)

Technical Papers (B)

B1	Town and Country Planning Tomorrow Series Paper 16: New Estimates of Housing Demand and Need in England 2011 to 2031; by Alan Homes published by Town and Country Planning Association, September 2013
B2	Housing the Next Generation Speeches. 10 January 2013
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B5	Guidance on Transport Assessment (Department for Transport, 2007)
B6	Design Manual for Roads and Bridges, TD9/93 and TD16/07
B7	North West Sustainability Appraisal Checklist for Developments
B8	Building on Success Accelerating Economic Growth in Cheshire and Warrington Business Plan 2013 to 2015 (Cheshire and Warrington LEP, 2013)

B9	Unleashing the Potential of Cheshire and Warrington (July 2011) Cheshire and Warrington LEP Business Plan, 'Building on Success' (2013)
B10	Cheshire & Warrington Sub Regional Housing Study, Barton Willmore, November 2012
B11	Geography of Housing Market Areas: Final Report, Colin Jones, Mike Coombes and Cecilia Wong (Nov, 2010)
B12	Technical Background Paper; Initial Technical work on Housing Provision and Job Growth Figures for the North West, July 2010, 4NW Regional Leaders Board
B13	Ten key principles for owning your housing number – finding your objectively assessed needs: Local Government Association / Planning Advisory Service, July 2013
B14	Extract of Cheshire East Annual Monitoring Reports (2011 – 12)
B15	Extract of Cheshire East Annual Monitoring Reports (2010 – 11)
B16	Extract of Cheshire East Annual Monitoring Reports (2009 – 10)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

High Court Cases (C)

C1	High Court Judgement (5 September 2013), Hunston Properties Ltd vs Secretary of State for Communities and Local Government, and St Albans City and District Council (Neutral Citation Number: 2013 EWHC 2678 (Admin))
C2	Court of Appeal Judgement (12 December 2013), City and District Council of St Albans vs The Queen (on the application of) Hunston Properties Limited, Secretary of State for Communities and Local Government and (Neutral Citation Number: 2013 EWCA Civ 1610 (Admin))
C3	High Court Judgement (18th July 2013) Bloor Homes vs Secretary of State for Communities and Local Government and Stratford on Avon District (Neutral Citation Number: 2013 EWHC 2074 (Admin))
C4	High Court Judgement (20th February 2013) Tewksbury Borough Council vs Secretary of State for Communities and Local Government, Comparo Ltd, Welbeck Strategic Land LLP. Neutral Citation Number 2013 EWHC 286 (Admin)
C5	High Court Judgement (9th May 2013) Anita Colman and Secretary of State for Communities and Local Government and North Devon District Council and RWE N Power Renewable Ltd. Neutral Citation Number 2013 EWHC 1138 (Admin)
C6	High Court Judgement (27th November 2013) Cotswold District Council vs Secretary of State for Communities and Local Government, Fay and Son Limited % Hannick Homes and Development Limited. (Neutral Citation Number: [2013 EWHC 3719 (Admin))
C7	High Court Judgement (25th March 2013), Wain Homes (South West) Holdings Limited vs Secretary of State for Communities and Local Government, and Wiltshire Council (Neutral Citation Number 2013 EWHC 597 (Admin))
C8	High Court Judgment (2nd March 2012), Fox Strategic Land and Property Limited vs Secretary of State for Communities and Local Government and Cheshire East Council (Neutral Citation Number: 2012 EWHC 444 (Admin))
C9	High Court Judgement (October 2011), Richborough Estates vs Secretary of State for Communities and Local Government, and Cheshire East Council (Neutral Citation Number: [2013] EWHC 1022 (Admin))
C10	High Court Judgement (March 2013) Mr and Mrs Dale vs Secretary of State for Communities and Local Government, and Cheshire East Council (Neutral Citation Number: [2013] EWHC 892 (Admin))

Appeal Cases (D)

	MINISTERIAL APPEAL DECISIONS
D1	Planning Inspectorate appeal reference APP/U4230/A/11/2157433: Land at Burgess Farm, Hilton Lane, Worsley, Manchester, M28 3TL (July 2012)
D2	Planning Inspectorate appeal references APP/G1630/A/11/2146206 & APP/G1630/A/11/2148635 – Land at Bishops Cleeve, Gloucestershire (16 July 2012)
D3	Planning Inspectorate appeal reference APP/F1610/A/12/2173305 – Land to the South of Berrells Road and the West of Bath Road, Tetbury, Gloucestershire; Secretary of State Decision (25 March 2013)
D4	Planning Inspectorate appeal reference APP/A0665/A/11/2167430 – Land off Nantwich Road, Tarporley, Cheshire (29 August 2013)
D5	Planning Inspectorate appeal reference APP/J3720/A/11/2163206 – Land south west of Stratford Upon Avon, Warwickshire (24 October 2012)
D6	Planning Inspectorate appeal reference APP/F1610/A/10/2130320 – Todenham Road, Moreton in Marsh, Gloucestershire, GL56 9NL (12 April 2011)
D7	Planning Inspectorate appeal reference APP/R0660/A/10/2141564 – Land off Abbey Road and Middlewich Road, Sandbach, Cheshire Decision (17 October 2013)
	INSPECTOR APPEAL DECISIONS
D8	Planning Inspectorate appeal reference APP/R0660/A/10/2141564 – Abbey Road and Middlewich Road, Sandbach, Cheshire
D9	Planning Inspectorate appeal reference APP/R0660/A/13/2189733 – Land north of Congleton Road, Sandbach, Cheshire, CW11 1DN; Inspectors Decision (18 October 2013)
D10	Planning Inspectorate appeal reference APP/R0660/A/13/2195201 – Land off Sandbach Road North, Alsager, Stoke on Trent, ST7 2EH; Inspectors Decision (18 October 2013)
D11	Planning Inspectorate appeal reference APP/H1840/A/12/2171339: Land between Station Road and Dudley Road, Honeybourne, Worcestershire
D12	Planning Inspectorate appeal reference APP/H1840/A/12/2172588: Land off Station Road, Honeybourne, Worcestershire; (18 September 2012)
D13	Planning Inspectorate appeal references APP/T2405/A/13/2193758 & APP/T2405/A/13/2193761; land east of Springwell Lane, Whetstone, Leicestershire
D14	Planning Inspectorate appeal reference APP/C3430/A/12/2189442 - Land off Elmwood Avenue, Essington
D15	Planning Inspectorate appeal reference APP/D2320/A/12/2172693 – Land to the north and West of Lucas Lane, Whittle le Woods, Chorley
D16	Planning Inspectorate appeal reference APP/R0660/A/11/2158727 – Loachbrook Farm, Sandbach Road, Congleton, Cheshire, CW12 4PE.
D17	Planning Inspectorate appeal reference APP/F1610/A/11/2165778 – Highfield Farm, Tetbury; Secretary of State Decision (13 February 2013)
D18	Planning inspectorate appeal reference APP/P1805/A/11/2152467 - Land at St Godwald's Road, Bromsgrove
D19	Planning inspectorate appeal reference APP/R0660/A/12/2188001 – Land at Hassall Road, Alsager, Cheshire (12 December 2013)
D20	Planning inspectorate appeal reference APP/R0660/A/12/2173294 – Land at Rope Lane, Shavington, Crewe (28 November 2012)
D21	Planning inspectorate appeal reference APP/Z3825/A/12/2183078 - Land East of Daux Avenue, Billingshurst West Sussex (18 April 2013)
D22	Planning inspectorate appeal reference APP/P0119/A/12/2186546 - Land Between Iron Acton Way and North Rd, Engine Common, Yate, South Gloucs, 8 April 2013
D23	Planning inspectorate appeal reference APP/G2435/A13/2192131 - Land south of Moira Road Ashby-de-la-Zouch, 30 May 2013

D24	Planning inspectorate appeal reference APP/H/1033/A/11/2159038 - Land at Manchester Road & Crossings Road, Chapel en-le-Frith, 23 Aug 2012
D25	Planning inspectorate appeal reference APP/T2405/A/11/2164413 - Land to the west of Sapcote Road, Sapcote Leicester, 27 June 2012
D26	Planning inspectorate appeal reference APP/U1105/A/12/2180060 - Land at Butts Road, Ottery St Mary, East Devon, 14 December 2012
D27	Planning inspectorate appeal reference APP/R0660/A/12/2170820 – land at Crewe Road, Crewe, Cheshire, CW2 5AD, 29 January 2014
D28	Planning inspectorate appeal reference APP/R0660/A/12/2188604 & 2188605 – Land off the Moorings, Congleton, Cheshire & land off Goldfinch Close and Kestrel Close, Congleton, Cheshire.

Relevant Applications (E)

E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000
E4	Queens Drive Planning Application Decision Notice (App Ref: 12/4654N) & Committee Report
E5	Queens Drive Planning Committee Report (App Ref: 12/2440N)
E6	Queens Drive application Heads of Terms
E7	Land south of Hall Drive, Alsager Committee Report (App Ref: 13/4092c) (permitted 9th December 2013)

Landscape Documents (F)

F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3 rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)

G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}
G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013
G9	Extract of Veteran Trees: A Guide to Good Management Chapter 2 published by Natural England (Read 2000)
G10	Cavat Full Method Users Guide

APPEAL A

Appeal A - Application Documents (H1)

H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)

I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)

J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25th May 2012
J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9 th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9 th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9 th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9 th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment

J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)

K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice

APPEAL B

Appeal B - Application Documents (L)

L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement

Consultee Responses (M)

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Appeal B – Affordable Housing

Documents submitted after the initial submission (N)

N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)

O1	1st Planning Officers Report to Planning Committee
O2	2nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19th June 2013 Notes of Planning Application 12/3746N

Additional Documents (Q)

Q1	Planning Inspectorate appeal reference APP/H1840/A/13/2203924 - Land between Leasowes Road and Laurels Road, Offenham, Worcestershire
Q1(2)	Costs application in relation to Appeal Ref: APP/H1840/A/13/2203924 Land between Leasowes Road and Laurels Road, Offenham, Worcestershire
Q3	Planning Inspectorate appeal references APP/G2245/A/13/2195874, APP/G2245/A/13/2195875, APP/G2245/A/13/2197478 & APP/G2245/A/13/2197479 - Land at Broom Hill, Swanley, Kent



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.