



Appeal Decision

Inquiry held between 18 and 26 June 2013¹

Site visit made on 26 June 2013

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 23 January 2014

Appeal Ref: APP/A0665/A/13/2193956

Chester Road and Well Street, Malpas, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Limited against the decision of Cheshire West & Chester Council (CW&C).
 - The application Ref 12/04687/OUT, dated 18 October 2012, was refused by notice dated 27 February 2013.
 - The development proposed is residential development for up to 140 dwellings, landscape, open space, access, highway improvement and associated works.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development for up to 140 dwellings, landscape, open space, access, highway improvement and associated works at Chester Road and Well Street, Malpas, Cheshire in accordance with the terms of the application, Ref 12/04687/OUT, dated 18 October 2012, subject to the conditions in the Conditions Schedule below.

Procedural matters

2. This is an outline application with all matters being reserved for subsequent consideration. However, despite that throughout the appeal process there was an acceptance the development would have 2 accesses, one to Chester Road and the other to Well Street/Greenway Lane, and these would be linked by an internal estate road. I have considered the scheme accordingly.
3. Some third parties contended the application could not be approved as it (in part) sought outline permission in a conservation area. However there is no reason why outline proposals cannot be acceptable in such areas. Indeed CW&C has recently granted outline planning permission for housing and a surgery on a site on the west side of Chester Road that lies partially in the conservation area² (the Cockfight Field development).
4. Before the opening of the Inquiry Action For Green Fields (AGF) requested the event be deferred. This was because, firstly, the local residents needed time to consider the extensive submissions, and secondly various policy documents would be published in the near future that could influence the decision.

¹ The Inquiry sat on 18, 19, 20, 21, 25 and 26 June

² Application 13/03826/OUT

5. With regard to the first point, the timetabling of Inquiries takes into account the need for the submissions to be assessed by all those with an interest in the case, and I have no reason to consider this timetable has been breached in this instance. Turning to the second point, the preparation and revision of planning policy documents is an on-going exercise and so it is inevitable that fresh policy details will be being drafted whenever a decision is made. Therefore, these cannot necessarily be reasons to defer the determination of an appeal.
6. A Unilateral Undertaking (the Undertaking) made under section 106 of the Act (as amended) was submitted by the Appellant. This concerned financial contributions towards education, a review of traffic regulation orders, the provision of a pavement and the provision of play facilities. The various elements of this Undertaking are assessed against Regulation 122 in *The Community Infrastructure Levy Regulations 2010* (the CIL Regulations) below as part of my consideration of the issues to which they each relate.
7. In the light of concerns raised during the Inquiry, the Council has since confirmed that 'it believes' all who made representations against the planning application were notified of the appeal.
8. At the Inquiry an application for costs was made by Gladman Developments Limited against CW&C, which will be the subject of a separate decision.

Main Issues

9. The main issues in this case are
 - a) whether a shortfall in housing land supply exists, and, if so, what benefits the scheme would offer in that regard;
 - b) whether the proposal would be in a sustainable location;
 - c) its effect on infrastructure provision in Malpas;
 - d) its effect on the character and beauty of the countryside;
 - e) whether it would preserve or enhance the character or appearance of the Malpas Conservation Area, its effect on the setting of listed buildings and its implications on the archaeological record;
 - f) its effect on the provision of Grade 1, 2 and 3a agricultural land;
 - g) whether other harm would be caused by the development and
 - h) whether any harm arising from the development would significantly and demonstrably outweigh any benefit that may be identified from providing additional housing.

Policy

10. Proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. Furthermore, the weight to be attached to policies in the existing development plan should be according to their degree of consistency with the *National Planning Policy Framework* (the Framework), which is a document that sets out the Government's planning policies and is a material consideration.

11. In its reasons for refusal the Council cited 5 policies from the *Chester District Adopted Local Plan* (the Local Plan), which was adopted in 2006. Of these, Policies ENV2 and ENV24 are broadly consistent with the Framework.
12. However, Local Plan Policies ENV37 and ENV38, which concern development in or affecting a conservation area and development affecting views associated with a conservation area, are expressed in a very restrictive manner, leaving no room to accommodate harm without breaching policy. In contrast, the Framework seeks to conserve heritage assets 'in a manner appropriate to their significance' and provides tests where any harm can be weighed against benefits³. Harm or loss can therefore be allowed where there is clear and convincing justification. Consequently, these policies are inconsistent with the more balanced approach in the Framework. Similarly Policy EC20, which relates to development on high quality agricultural land, contains a more demanding test than paragraph 112 of the Framework. As a result this policy too is not consistent with the Framework.
13. As well as the adopted development plan, decision-takers may also give weight to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections and their consistency with the Framework. In this regard I am aware that CW&C is preparing replacement development plan documents, and after the Inquiry it issued its Draft Local Plan (DLP). Although CW&C has now resolved to present this for examination, it is still yet to be considered independently and so its policies could be subject to change if found unsound. Therefore I cannot be confident that it will be adopted in its current form and so although I have afforded weight to its contents this weight is limited.
14. The local community has also been preparing the *Malpas and Overton Neighbourhood Plan* (the Neighbourhood Plan). This had not been compiled at the time of the Inquiry, but it has now been drafted and a consultation process is underway, with a view to a referendum later in the year. If accepted at the referendum, it would then need to be subject to a process of examination. Moreover, I also note it says the quantum of housing development in the village⁴ should accord with the target in Policy STRAT8 of the DLP, but, as stated above, that policy could be subject to alterations as the DLP moves through the various stages of consideration. Therefore, while I have attached some weight to the emerging document before me, it could well be changed before adoption. As a result I cannot afford it the considerable weight requested by AGF.
15. The *North West of England Plan Regional Spatial Strategy to 2021* (RSS) has now been revoked and so its policies are no longer applicable. However, when considering issue (a) below I am mindful that its housing figures for CW&C are the last to be assessed objectively. Therefore, as was accepted by the Secretary of State when determining the Tarporley appeal⁵ its underpinning evidence remains relevant.
16. Reference was also made to numerous other documents prepared by or on behalf of CW&C that generally informed and supported the adopted or

³ Framework paragraphs 17, 126, 133 and 134

⁴ In the submissions some called Malpas a town. I have referred to it as a village, but this is purely following the lead of the Parish Council and has not been as a consequence of a judgement about services, facilities or similar.

⁵ Appeal reference APP/A0665/A/11/2167430 dated 29 August 2013 concerning land off Nantwich Road, Tarporley, Cheshire

emerging development plan. These were not part of the development plan and most have been subject to limited consultation or external examination. They have therefore been given lesser weight than the Local Plan. However, it is recognised that many of them contain information that is valid and relevant to the matters before me.

17. After the Inquiry the Appellant submitted a report entitled *Cheshire West and Chester: Draft Strategic Housing Market Assessment* by Regeneris Consulting. It said this was an early draft of the submissions it would be making to the DLP. Again its views and findings would be subject to scrutiny at any forthcoming examination and may well not be supported. Therefore, as a policy document the weight afforded to it is limited.

Reasons

Background

18. Malpas is in the southern part of CW&C, close to its borders with Shropshire and Wrexham. It stands apart from major towns, with Whitchurch about 9km to the south-east, Wrexham approximately 20km to the west and Chester roughly 25km to the north. It is a historic settlement but since the middle of last century it has been subject to significant development, especially on the east side.
19. The appeal site covers some 5.7ha and is mainly pastureland enclosed by hedging and trees, though the extreme southern end is marshy and often has standing water. It runs roughly round the north-eastern third of the settlement edge, from Chester Road in the north to Well Street in the south-east. Modern housing abuts the site's western boundary and housing is also to the south on the opposite side of Well Street, while open countryside with isolated dwellings and buildings lies to the east, beyond Greenway Lane, and to the north.
20. The Local Plan does not identify specific boundaries around settlements. However the parties agreed this site lay entirely outside the existing village in the open countryside.

a) Housing land supply

21. Local Planning Authorities should identify and update annually a supply of specific deliverable sites to provide 5 years worth of housing against their housing requirements, with an additional buffer of 5% (or 20% if there has been persistent undersupply). Moreover, the housing needs should be evidence based and should be objectively assessed in order to ensure their accuracy and validity. In paragraph 49 the Framework says relevant policies for the supply of housing cannot be considered up-to-date if the Local Planning Authority cannot demonstrate a 5-year supply of deliverable housing sites.
22. At the Inquiry CW&C accepted that the most recent, evidence-based and objectively tested housing figures for the borough were those from the RSS. Moreover, in October 2013 at appeals for housing in Moulton⁶ and Farndon⁷ it confirmed that the RSS contained the most appropriate figures for its housing land requirement.

⁶ Appeal reference APP/A0665/A/13/2198931 concerning land off Barnside Way, Moulton, Cheshire: Inquiry closed 4 October 2013

⁷ Appeal reference APP/A0665/A/13/2196893 concerning land opposite Brewery House, Churton Road, Farndon: Inquiry closed 11 October 2013

23. The figures in the RSS are now relatively old, and, since they were adopted, the Council has been subject to a moratorium that has affected housing delivery. Nonetheless I have no other figures before me that have been supported by evidence and objectively assessed. Therefore, mindful that both the Appellant and CW&C accepted them as suitable it is reasonable and appropriate to use those figures to consider housing land supply.
24. When measured against the RSS, at the Inquiry CW&C accepted it had only 2.6 years of housing land supply. Then in October it confirmed it could demonstrate between 2.54 years and 2.78 years housing land supply, in accordance with the position it had adopted in the Moulton and Farndon appeals. CW&C also adopted a similar position in the appeal concerning land at Kennel Lane, Chester Road and Dalefords Lane in Sandiway⁸ (the Sandiway appeal), which was subject of an Inquiry that opened in late October 2013. These figures are slightly different to those of the Appellant, who, during the Inquiry said there was a housing land supply of 2.3 years, though in September 2013 identified a supply of 2.7 years. All of these figures fall well below the requirement for 5 years contained in the Framework. Given the magnitude of the shortfall the parties agreed that any difference between their respective positions was not material insofar as my decision was concerned and this is a view I share.
25. Therefore the Council has not demonstrated a 5-year supply of housing land. Moreover, I consider it has a significant shortfall, and if it is to be made up in the next 5 years it would require house-building rates in CW&C to increase appreciably over those recently experienced.
26. In such circumstances, and having regard to paragraph 49 of the Framework, Local Plan Policy HO7, which broadly prohibits housing in the open countryside, must be considered not up-to-date and so be afforded no weight. This is because to address the shortfall it may well be necessary to allow housing outside settlements. It is noted CW&C did not cite a conflict with this policy in its reasons for refusal.
27. However, others who gave evidence at the Inquiry did not accept the shortfall in housing land supply to be as great, whilst some said there was no shortfall at all. Furthermore, in a letter of May 2013 to Stephen O'Brien MP, Councillor Mike Jones, the Leader of the Council, said CW&C did have a 5-year supply, while a report to the Local Development Framework Panel in July 2013 contended there was a minimum of a 6.1 year supply. Moreover, in accordance with the figures in the DLP in September CW&C said it had 6.97 years supply of housing land, although it subsequently stepped back from that position in October to the 2.54-2.78 years referred to above.
28. These higher estimates of housing land supply though tended to be based on policy, evidence, approaches and/or assumptions that have not yet been tested. It cannot be assumed the figures or strategies on which they variously rely will be accepted by independent examination and so the weight that can be afforded to them is limited. While the DLP had been subject to an independent peer review by consultants that does not necessarily mean that its policies and figures are going to be accepted as sound in the formal examination of the Local Plan.

⁸ Appeal decision APP/X0665/A/13/2197189 dated 12 December 2013

29. It is also noted that paragraph 49 of the Framework is worded in an absolute manner and applies no matter how great the shortfall. Therefore even if I were to accept the housing land supply amounted to say 4.5 years the relevant housing policies still could be considered not up-to-date.
30. There was also a second tier of housing land supply that was discussed in the evidence, and that related to the specific allocation for Malpas. There was no figure from the RSS or the adopted development plan concerning this. However, in the *Preferred Policy Directions* (dated August 2012) 250 houses were proposed for the village between 2010 and 2030, but this was reduced to a maximum of 200 houses in the DLP. Again though these figures have not been tested independently and they are a product of the housing supply and strategy for CW&C as a whole that still have to be considered as part of the emerging development plan. Indeed the Appellant contended higher housing figures for CW&C would emerge in due course, thereby in turn increasing the number of houses that needed to be built around the village. In relation to this matter it is of note too that while the Neighbourhood Plan says the quantum of development should accord with the DLP, it then goes on to state '*additional housing beyond this number could potentially be permitted*' in certain circumstances. The Neighbourhood Plan, as it currently stands, does not therefore view the reference to 200 dwellings as a maximum. Consequently, the weight that can be afforded to these various figures for Malpas is limited.
31. Although it was said that a significant proportion of the housing for Malpas (185 dwellings⁹) had already been approved since 2010 given the limited weight that can be afforded to the village's figure of 200 houses this does not mean the further houses now proposed would be unacceptable or unnecessary.
32. I have noted the anecdotal evidence that said there was no need for additional houses in Malpas due to the number already for sale. However, such evidence is too simplistic to be given significant weight when determining this application in the light of the housing shortfall across CW&C.
33. The Local Planning Authority accepted as well that there was a need in CW&C for the affordable housing now proposed. Mr Venning considered the intended level of provision should be viable. Although no specific evidence to show that was forthcoming I have no reason to consider it could not be delivered on this green field site. Even though affordable housing is required under policy, the provision of this is nonetheless to the benefit of CW&C.
34. While I am aware that the reserved matters application(s) would, in all probability, not be presented by the Appellant, sufficient powers would remain with CW&C to ensure a suitable overall housing mix was achieved.
35. Accordingly I conclude that a 5-year supply of deliverable housing sites has not been demonstrated, and the shortfall CW&C accepted at this Inquiry and again in October is of an appreciable scale. Moreover, while the most recent documents issued by CW&C identify 200 new houses in and around Malpas between 2010 and 2030, the weight that can be afforded to this figure is limited. Therefore, I also conclude that, in the light of this shortfall, the provision of an additional 140 dwellings, of which 35% would be affordable, represents a significant benefit to CW&C.

⁹ A figure that has since increased with the approval of the Cockfight Field development

b) Sustainability

36. The Framework highlights a presumption in favour of sustainable development. There is a need to ensure the location of new development allows a strong economy to be built and supports a vibrant healthy community with accessible local services.
37. In its various policy documents and guidance CW&C has consistently identified Malpas as a key service centre (KSC) and so it is seen as one of the more sustainable settlements in the borough. The village has grocery shops, a post office, a bank (albeit open only part of the week) a primary school, a secondary school and a doctor's surgery, as well as a number of public houses and places of worship. These facilities would no doubt experience beneficial effects both economically and in other regards from this additional housing, and the construction period would also bring certain benefits to the local economy.
38. In 2 principal respects though the village's sustainability credentials are limited, as it contains little employment and opportunity for travel by means other than the car, whether by public transport or by cycling, are poor and generally not sufficient to allow access to jobs elsewhere. As a result, any future residents would almost certainly have to drive to employment in other centres. It was also noted that while the shops could meet certain day-to-day needs, larger shopping generally required trips to Wrexham, Chester or Whitchurch.
39. However, to my mind sustainability is not an absolute matter and it is unrealistic to consider a settlement as being sustainable only if it complies strongly with every aspect of sustainability. If it were absolute, such an approach would prevent new housing from occurring outside the relatively few major centres in CW&C. Furthermore, despite the uncertainty over how many houses are to be allocated to Malpas between 2010 and 2030, the figures offered by CW&C of 200-250 dwellings show it considers a significant amount of new housing can be accommodated in the village despite any inadequacies in employment and public transport. Overall, I am therefore of the view that the village is suitably sustainable to accommodate this additional housing.
40. In assessing this aspect of the proposal I have taken into account the appeal decision at Birch Pits, No Man's Heath¹⁰ (the No Man's Heath decision). I note that settlement is not a KSC and it appears to have poorer sustainability credentials than Malpas.
41. Turning to the site itself, it is on the edge of the settlement and so a little distant from services. However, a footpath link is proposed to the network of pavements in the adjacent housing estate (known as the Well Farm Estate), along with modifications to a road junction to facilitate pedestrian access, and the effect of these works would be to allow a direct route to the centre of the village from near the middle of the site. In the Undertaking the Appellant has also committed to provide funding towards the completion of the pavement along the east of Chester Road between the site entrance and the northern end of the village. With these provisions the development would be suitably related to the principal services in Malpas.
42. Taking these factors together, and mindful of the housing already approved in the village, on balance I conclude this location to be sufficiently sustainable to support the extra houses now proposed.

¹⁰ Appeal decision APP/0665/A/13/2200122 dated 23 December 2013

c) Effect on infrastructure provision

Education

43. The development would be bringing more children of all ages to Malpas, and so their educational needs would have to be addressed by the Local Education Authority. The Council estimated how many children of primary school and secondary school age could be expected on the site, based on calculations previously used and accepted by the Appellant. I note that these figures assumed none of the children in the development were currently educated in the catchment. They also assumed that any who moved into the village would want to leave their old school to be educated in Malpas. Neither of these assumptions need necessarily apply.
44. The accuracy of the estimated increase in children has been questioned by AGF. Clearly the actual number of children who will live in the development can never be known at this stage and, as families come and go and as children grow older, over time the numbers will change. As a result, it is quite possible that the number of children would be different to those accepted by the main parties - it may be higher, it may be lower or it may result in a different mix between primary and secondary schools. However, I have no basis to consider the CW&C figures are not a reasonable estimate in such circumstances. I certainly consider that the AGF calculation of an average of 2 children per household to be excessive and unsubstantiated, and it creates no distinction between the different age-groups of the children and the effect this would have on school provision. While the actual figures from St Oswald's Court are noted, that is a smaller development of 20 dwellings and so the likelihood of proportionately significant variation in child numbers is greater.
45. On the evidence before me the primary school in the village has spare capacity to accommodate the additional expected children, and so no contribution was sought in connection with that effect of the development.
46. However, at the northern end of the village is a secondary school called Bishop Heber High School (BHHS). I was told that in January 2013 this school was oversubscribed by 11 pupils as it had 1,145 on its roll even though its capacity was 1,134¹¹. Consequently a contribution of £221,330 was sought to increase its permanent capacity to accommodate the 18 anticipated extra children of secondary school age that would live on the scheme. The Appellant had not walked away from making this payment, but rather it included this contribution in the Undertaking. However, it nonetheless considered the payment to be unnecessary and unjustified.
47. In October 2013, after the Inquiry had sat, CW&C confirmed that a £2,300,000 grant (the grant) had been received from the Department for Education to increase the permanent capacity of BHHS by 200, and that would mean the additional demand from the development could be accommodated. It therefore now accepts the contribution is no longer required.
48. AGF also drew attention to the cumulative effect of the other permitted housing developments in the catchment, but CW&C would be well aware of these permissions and I have no reason to consider they were not taken into account in its revised position of October 2013. In any event the grant offered to BHHS and the increase in capacity it would allow are each over ten times larger than

¹¹ It is noted that, in October 2013, AGF said 'there are currently 1,215 students at Heber School'.

the contribution initially sought in connection with this proposal and the additional children generated by the scheme. As such, the grant does not necessarily preclude other developments also being accommodated.

49. Therefore, given the grant I conclude BHHS will be able to accommodate the additional children arising from this development without the need for the Appellant to provide further funding, and the comments of AGF do not lead me to a different view in this regard.
50. Notwithstanding that point, of the 1,145 pupils at BHHS 541 (about 47%) came from outside the school's catchment (termed out-of-area), of which 464 lived in the different local education authorities of Wrexham and Shropshire. The Council agreed that the proportion of out-of-area children at BHHS was high.
51. When allocating places at BHHS a priority is given to children living in the catchment and those with siblings already at the school (whether out-of-area or not), while any spare places are made available to others from outside the catchment who apply. As such, in the long-term any children from this site could be accommodated within the existing school, as they would take priority in the allocations process and the number accepted from out-of-area would be reduced accordingly. The contribution's aim of achieving the permanent increase in capacity for what is not going to be a permanent issue is therefore not justified. It was said that those living elsewhere should have the opportunity to send their children to the school, but there is no reason why that should be so in planning terms.
52. While other developments in and around Malpas might have made such contributions that alone does not offer a basis for me to reach a different view.
53. Accordingly, the increase in the capacity of BHHS resulting from the grant will mean the children living at this site could be accommodated satisfactorily at that school. In any event I conclude that seeking sufficient money to secure a permanent increase in the capacity of the school is unjustified, as the development before me does not mean the school has to accommodate a permanent growth in the number of pupils. Therefore I conclude that the requirement for £221,330 is not directly related to the development and is not necessary to make it acceptable in planning terms.

Other infrastructure

54. Partly through the Undertaking the scheme would provide a level of open space and a children's play area that the Council accepted was satisfactory. I have no reason to challenge this.
55. While local residents raised concerns about drainage and flooding at the southern end of the site and on Well Street, there are no objections to the development before me from Welsh Water¹². The Appellant has made no commitment to improve this existing situation on Well Street, but it is under no obligation to do so. Rather, it is to introduce a drainage regime that ensured no greater amount of water ran from the site than at present. Therefore I consider the scheme would not exacerbate any flooding or drainage matters in the area, and so the effect in this regard would not be unacceptable.

¹² Whilst it did raise an objection to the second similar application submitted for the site by the Appellant in 2013 the Council confirmed that objection had since been withdrawn.

56. A partner from the doctors' surgery in Malpas gave evidence to the Inquiry and made it clear that the surgery was already at capacity. He acknowledged though that with additional housing in the village and with further services being devolved from hospitals, this would need to be addressed irrespective of the outcome of the appeal. It was of note that he did not object to the scheme. Furthermore, the Appellant had offered £76,000 towards improving health facilities when this application was being considered but, following consultation with the Primary Care Trust, the money was declined by the Council and no contribution was sought. I also understand that a new surgery has been granted outline planning permission as part of the Cockfight Field development. In such circumstances I have insufficient evidence to say the effect on the surgery would be unacceptable.
57. Concern was also raised about the water supply, the gas supply and the broadband connections. On the information before me I am not in a position to consider the effect on any of those elements of infrastructure would be harmful. The impact on the highway network is addressed below.
58. It was said other improvements to the infrastructure of the village should have been offered as the scheme was making few if any contributions in this regard. Clearly it would be wrong if planning permissions were either bought or sold. As a result contributions can only be a reason for granting permission if they satisfy Regulation 122 in the CIL Regulations by being directly related to the development, necessary to make it acceptable in planning terms and fairly and reasonably related to it in scale and kind. Therefore, contributions towards other improvements around the village may be welcomed by residents, but I am aware of none that are justified in this instance.
59. While AGF contended that the introduction of more than 200 new houses in the village between 2010 and 2030 would be unsustainable, this position was based upon the effects discussed above and the highways matters explored below.

Conclusions on this issue

60. Accordingly on the evidence before me I conclude the scheme would not have a harmful effect on infrastructure provision, and I also conclude the requirement of £221,330 towards education provision is not justified.

d) Effect on the countryside

61. Malpas sits in a dominant position on a ridge, in an attractive but undesignated landscape¹³ of undulating valleys and hills subdivided by hedging and small copses of trees. It is an ancient village that has grown up over the years as a market centre in a rural area. However, the housing on the east side that has been built since the middle of last century is of a design and arrangement that has relatively little regard to the historic nature and form of Malpas. Indeed some, such as on Greenfields Lane, is quite striking and distinctive. There is also little landscaping between these modern houses and the fields beyond. This results in an abrupt and sharp edge to the eastern side of the main part of the village, which is dominated by the modern houses and the fencing, domestic landscaping, sheds, conservatories and similar that are characteristic of back gardens.

¹³ Despite comments to the contrary the site is not within or near the designated Green Belt or in an area designated as being of outstanding landscape importance

62. In June 2013 planning permission was granted on appeal for 7 dwellings in the extreme north-east corner of the main part of the village (referred to at the Inquiry as the Corbett's decision¹⁴). This scheme would soften that portion of the village edge to some degree as it included significant areas of landscaping.
63. In paragraph 17 the Framework seeks to protect the intrinsic character and beauty of the countryside. While the landscape might not be identified as having any particular value, to my mind that does not diminish that test in the Framework. Indeed, the Framework offers specific advice for designated landscapes over and above that in paragraph 17, and so it can be assumed that paragraph 17 can be applied to undesignated landscapes.
64. The scheme includes a sizeable strategic landscape and habitat area¹⁵ around the eastern perimeter of the proposed housing and I accept that would integrate the village into the surrounding countryside in a better way than the current line of garden fences on the Well Farm Estate. I also have no reason to consider that, once matured, the proposal would not be an attractive and pleasing residential development in its own right. While some local residents have questioned the uncertainty over the eventual form of the scheme due to the outline nature of the proposal, adequate controls would be available to the Local Planning Authority at reserved matters' stage to ensure the built development was acceptable.
65. When seen in the wider landscape the development would have a limited zone of visual influence. In distant views such as from the footpaths along the ridge to the north-east the proposal would be substantially concealed in a valley, and when approaching along Well Street the part of the scheme that could be seen behind the balancing pond would be appreciated in the context of the existing urban edge. Therefore, from these points the scheme would not notably harm the intrinsic character or beauty of the countryside
66. However, despite those matters the loss of these fields and this rural landscape would cause some harm to the countryside in the immediate vicinity of the site, even after the proposed planting became established. Moreover, the sense of rural isolation that is currently experienced on the southern part of Greenway Lane would be diminished.
67. The scheme would also affect the viewpoint from Chester Road through the gap between the houses of Barnways and Glendohr. This point provides a view over the appeal site and, because of its elevated position, a pleasing wide panorama of the rural landscape to the east. The scheme subject of the Corbett's decision would encroach into this view to some degree, but that would not be significant and a substantial vista would remain.
68. The Appellant's witnesses said the effect of the scheme on this viewpoint would be limited as, when looking from the pavement on Chester Road, the tops of the distant ridges would still be visible over any new houses. In support of this they referred to the artist's impression in the 2013 Design and Access Statement. Given the relative height of the distant horizon though that is not an opinion I share, and indeed, as was accepted by the Appellant, the artist's impression was drawn from a height some way above the carriageway. Rather, the view of the surrounding landscape and the nature of the open countryside

¹⁴ Appeal decision APP/A0665/A/13/2191004 dated 12 June 2013

¹⁵ Shown as 0.7ha on drawing no 5153-L-03 E

would be reduced from this point as a result of the scheme now before me and confined to what could be glimpsed over the back gardens and along the estate road. Therefore the scheme would have an adverse effect on an appreciation of the countryside when seen from here. This opinion concurs with that of a previous Inspector who dismissed an appeal for 2 houses in this gap in 2006 (the 2006 decision¹⁶).

69. In assessing this issue I have noted the Sandiway appeal, which was dismissed. There are clearly some similarities between that case and this one – both for example concerned sites outside the settlement and any harm they created would be permanent. However, in that decision the Inspector placed great weight on the sylvan nature of the site, the lack of development in depth along the main road and the natural ‘edge’ to the settlement created by the existing loose, disjointed scattering of dwellings.
70. In contrast while the development before me would be at the edge of Malpas, that edge is not, to my mind, a ‘natural’ one but rather is artificial and urban in appearance. From Well Street the scheme would be seen against the modern development on the east side of the village, and the abrupt edge to the settlement that it now creates. Indeed, when travelling along that road westwards the houses on the south side of Well Street and the presence of the approaching Well Farm Estate mean one has a sense of arrival at the village as one passes the site. Moreover, from Chester Road it would continue the development in depth that is found adjacent. As such, the site is already subject to urban influences when looking towards Malpas. Although I accept that Greenway Lane is more rural in character, there is to be extensive planting along that side of the site that would do much to mitigate the effect of the development. I also consider the site itself cannot reasonably be described as sylvan. In such circumstances I am of the opinion that any permanent harm caused to the countryside or to the relationship between the settlement and the surrounding rural landscape is not as acute as with the Sandiway appeal.
71. I have also had regard to the recent refusal of planning permission for a 35m wind turbine near Malpas. The nature and location of that development though is materially different and I am aware that the decision is open to appeal.
72. Neither of these cases has therefore had a significant effect on my findings.
73. Accordingly I conclude the scheme would cause some limited harm to the character and beauty of the countryside around Malpas, in conflict with Policies ENV2 and ENV24 in the Local Plan and paragraph 17 in the Framework.

e) Effect on the conservation area and the historic environment

74. The older part of the village is in the Malpas Conservation Area. This broadly comprises an attractive combination of tight streets bounded by buildings of varying ages and styles that reflect the organic evolution and prosperity of this historic rural settlement. Even though it is on a hill, views out of the conservation area are limited due to the densely developed urban form, but from the few open spaces or along the streets the surrounding countryside can be seen.
75. An arm of the conservation area extends away from the core of the village along Chester Road to the cemetery. This arm includes the dwellings on the

¹⁶ Appeal decision APP/X0605/A/04/1171164 dated 17 March 2006

west side of Chester Road, Barnways and Glendohr on the east, and the fields and spaces in between. From this part of the conservation area the inter-relationship of the settlement and the countryside is apparent, as the open nature of the various fields and gaps allows the agricultural land around the village to be better appreciated.

76. When looking from the surrounding countryside Malpas can be seen from a substantial distance. In particular the tower of the Grade I listed Church of St Oswald, which stands on one of the highest parts of the village, is a noticeable and prominent feature that draws attention to the settlement. The recent development along the east side of the village tends to be on the lower slopes of the ridge and so does not intrude into the dominance of the older parts, and overall this means Malpas sits comfortably in the landscape.
77. Therefore, in my opinion the visual relationship between the historic heart of Malpas and the agricultural land around reflects the rural origins of the settlement and so contributes to the significance of the conservation area as a heritage asset.
78. The only part of the site that would be in the conservation area is the relatively small portion fronting Chester Road between Barnways and Glendohr. To my mind the contribution this makes to the historic character of the area lies not in the gap it creates in the streetscape but rather in the appreciation of the relationship between the village and the countryside that can be gained from the views it allows. As stated above, I consider the proposal would substantially restrict these views, and this would not change materially even if the new houses were set back out of the conservation area. The development would therefore limit the appreciation of the historic link between the village and the countryside from that point, to the detriment of the conservation area. While other views of the countryside are possible from along this section of Chester Road, in my opinion none are of the same depth and scale as this one. As such I consider that the development would cause harm, albeit less than substantial, to the significance of this heritage asset. These findings are again in line with those in the 2006 decision.
79. The remainder of the site would be separated from the conservation area by the Well Farm Estate and the other recent development on the east side of Malpas. When looking from the east the elevated nature of the older part of the village would mean an appreciation of the historic settlement from that direction would not be unduly harmed and any effect on the relationship of Malpas to its surrounding countryside would not be unacceptable. The scheme would also not be readily apparent when in the main core of the village and so would not detract from the character or appearance appreciated there. The reserved matters stage would allow suitable opportunity for the design of the scheme to be assessed in line with the submissions. I have no reason to assume that there would not be compliance with any conditions to this effect.
80. Turning to other heritage assets, the decision notice did not express a concern about the effect on the settings of any listed buildings. Despite that, CW&C contended the scheme would intrude into the profile of St Oswald's Church both from Chester Road and from Well Street. From Chester Road the profile of the church tower and nave is a significant feature marking the approach to the village. This would not be affected by the scheme when looking along the straight length of road from the cemetery. Furthermore, when seen from the junction of Greenway Lane and Chester Road, it is unlikely that any housing on

this scheme would extend above that of the new dwellings recently constructed on Greenfields Lane.

81. On Well Street again the church tower creates a focus when approaching the village. It would only be in the vicinity of the Greenway Lane junction that views of the tower would cross the appeal site but this area would contain the balancing pond and be landscaped. Although the Council expressed concern that trees could grow to a height that would obstruct the view of the tower that could be controlled by the landscaping details under the reserved matters.
82. A further listed building, the Grade II Brose Lake Farmhouse¹⁷, is immediately to the east of the site. That property though stands in a large plot and is already separated from the development site by a significant tree belt. Therefore its setting need not be harmed by the scheme.
83. Finally, concern was expressed about the impact on the archaeology of the site. As these fields were so close to a medieval settlement it is inevitable they would have been farmed at that date, and ancient field patterns are still apparent. It was also confirmed that a lynchet was present. However despite this the site is not subject to any formal archaeological designation and I am not satisfied that it comprises an archaeologically important landscape that would justify resisting the proposal. However, archaeological work should be undertaken beforehand to establish and record any features that are present.
84. Although the Appellant might not have identified the significance of the heritage assets concerned that does not necessarily result in harm if the effect on the significance is not found to be unacceptable.
85. Accordingly I conclude the scheme would preserve the settings of the listed St Oswald's Church and Brose Lake Farmhouse, and would not have an adverse effect on any archaeological record. However, I also conclude it would fail to preserve the character or appearance of the Malpas Conservation Area, and would cause less than substantial harm to its significance as a heritage asset.

f) The effect on Grade 1, Grade 2 and Grade 3a agricultural land

86. Grade 1 and Grade 2 land accounts for 54% of the site, while a further 37% is Grade 3a. Land of this quality is defined as best and most versatile (BMV) land and it still appears to be in active use. The Framework says the economic and other benefits of BMV land should be taken into account, and when significant development on agricultural land is necessary Local Planning Authorities should seek to use poorer quality land in preference to that of higher quality.
87. Taking out 5.2ha of BMV land from agricultural use would have an adverse effect on the amount of highly productive land available. However, there was some debate as to whether this constituted a '*significant*' development of such land. In my view, having regard to the extent of BMV in the area, such a quantity could not be so defined. There could also be an impact on agricultural employment and the economic benefits of the land, but given the size of the site this would not be significant. Views expressed on such matters were not supported by robust evidence and so I can only afford them limited weight.
88. Consequently, I conclude there would be harm resulting from the loss of BMV land.

¹⁷ As named in the listing description

g) Other matters

Highway safety

89. The Framework says proposals should only be refused on transport grounds where the residual cumulative impacts of development are severe. The Council raised no objections to the highway safety implications of the scheme, but this was a concern of local residents, mainly in relation to 4 aspects.
90. The first related to the effect that a further junction on Chester Road would have on the safety of motorists and of school children. Even accounting for the slight rise to the south-west of the illustrative access and the possibility of parked cars waiting for children from BHHS, I consider inter-visibility between emerging drivers and those on the road would be satisfactory to allow safe manoeuvres. Many children walk between the village and BHHS along the pavements on this section of road, but I visited here on 2 mornings during the Inquiry and noted they mainly used the pavement on the west side. That may change if the pavement on the east were to be completed as is now proposed, but there is no fundamental reason why secondary school children should encounter danger when crossing a road of this nature.
91. While there was an allegation that the road through the scheme could be used as a by-pass for the village centre, there is no basis to consider that would increase traffic flows appreciably above those suggested by the Appellant's highway consultants.
92. The second element of concern related to the congestion in and around the centre of Malpas and the primary school. It is appreciated that at times parked vehicles and the level of traffic means High Street is congested. There is also congestion outside the primary school when children are arriving or being collected. In my opinion though the Chester Road access would mainly be used by those from the development who wanted to go north while the Well Street access would tend to be used by those travelling in the other directions. Such movements would have little effect on High Street. Undoubtedly some cars would make use of High Street and the southern end of Chester Road, but given the existing vehicle flows and the financial contribution in the Undertaking to allow the review of traffic regulation orders, their additional impact would not be harmful.
93. Thirdly it was noted that Well Street was one-way and narrow, while Greenway Lane and the lane to the east were also of limited width. However, nothing before me shows that the increase in movements generated by this scheme would be sufficient to harm highway safety on these roads unacceptably.
94. Finally, there was a concern about the effect on the wider road network, and in particular the A41. Once more though, on the evidence before me the additional traffic associated with this development would not be great enough to have a material effect on traffic flows beyond the village.
95. Local residents contended the Traffic Assessment submitted with the application was undertaken at a particularly quiet time. However, even if the scheme's vehicle movements were appreciably greater I consider they could be adequately accommodated on the road network. Satisfactory parking could also be provided on the site.

96. Accordingly I conclude the scheme would not severely affect highway safety and so would not conflict with Local Plan Policies TR19 or TR13 or the Framework.

Amenity of existing occupants

97. In the Framework a core planning principle is the need to secure a good standard of amenity for existing occupants of buildings.

98. A number of the bungalows and houses on the Well Farm Estate along the western side of the appeal site have short back gardens and many are occupied by elderly people. The residents of these properties now benefit from the tranquillity of the adjacent fields and enjoy pleasing and attractive rural views.

99. The Masterplan shows some of these dwellings behind new housing while others would be next to the development's access road. This would mean the tranquillity and views associated with their current aspect would be notably changed by the proposal.

100. However, while these residents have benefitted from the undeveloped nature of the appeal site over the years, that alone cannot be a reason to prevent development on the land being brought forward. It also does not necessarily mean the impact on their living conditions would be unacceptable, as to consider otherwise would stand in the way of building on many undeveloped sites. Assuming the new houses were sited sufficiently far away to safeguard privacy, there is nothing unreasonable about looking onto other dwellings. Similarly many houses are adjacent to estate roads and, whilst undoubtedly different to the current situation, I see no reason why such a relationship should be unsatisfactory. Concerns were also raised about security of properties adjacent to the site. While this is a material consideration I have no reason to consider the effect on security would be unreasonable.

101. I accept the development could be under construction for many years, but in this instance that is not a matter the planning system can reasonably prevent or control.

102. Consequently, the scheme would not have an unreasonable effect on the living conditions of neighbouring residents.

103. To the east of the site in the countryside is a coach depot. The activity associated with this takes place mainly in an open yard, and often involves coaches arriving at or leaving the depot in the early hours of the morning or late at night.

104. The Masterplan shows housing within about 75m of that site and closer to the roads used for access, and given the quietness of the surroundings the activity may well be audible at those dwellings. Some soundproofing for those properties would therefore be reasonable to ensure those future residents were not disturbed and so, in turn, did not cause new restrictions to be placed on that existing coach depot. Given this, the proposal would not harm the operations of that business.

105. Therefore I conclude the proposal would maintain a good standard of amenity for existing occupants of buildings in accordance with the Framework.

The effect on wildlife

106. No badger sets would be directly affected by the building works, and if any were in the vicinity they could be safeguarded during construction. Although other wildlife uses the site and the wetland that is not unexpected given its rural location. However, I have no basis to suppose the habitat or foraging environment of species, whether protected or not, would be affected unacceptably by the works. New wetland habitats are to be created in the proposed pond features and the scheme would have other areas of open space and so there is opportunity for these to be an appropriate replacement.
107. Accordingly I conclude that the effect on wildlife would not be unacceptable, and so the scheme would not conflict with paragraph 118 in the Framework.

Prematurity

108. *The Planning System: General Principles* says it may be justifiable to refuse planning permission on the grounds of prematurity where a proposal is so substantial that an emerging Development Plan Document (DPD) is prejudiced because decisions about scale, location or similar that should be addressed in policy in the DPD are being predetermined. It adds that the weight to be attached to emerging DPD policies depends upon their stage of preparation.
109. AGF suggested that, if the Local Plan is out-dated, then a moratorium should be applied until up-to-date policies are in place, as this would avoid a piecemeal, developer-led greenfield-only approach to development. However, that does not reflect Government advice in the Framework, and such a course of action would result in housing supply falling further and further behind.
110. It has also been contended that the proposal would have such a substantial and significant impact on Malpas that it could prejudice decisions about new development that should be addressed through the Neighbourhood Plan. Some of the local residents who gave evidence said that if the scheme were to be allowed it would render as redundant the work so far undertaken on the Neighbourhood Plan.
111. I am aware there is no statutory requirement to prepare a Neighbourhood Plan even though, once prepared, it would be part of the development plan. Moreover, it is still unlikely to be formally adopted for a while, and so it is unable to respond to the shortfall in housing supply that now exists. I am also aware that the promotion of housing in the absence of an up-to-date development plan is specifically advocated in paragraph 14 of the Framework (to be discussed below in more detail), and so the pursuance of residential schemes in the face of emerging but unadopted development plan documents cannot, in itself, render the proposal premature.
112. Finally, the role of a Neighbourhood Plan is not solely to identify housing sites. Rather, it can serve many other purposes that it could still pursue in a valid and worthwhile manner.
113. Taking these factors together I am not satisfied that the scheme can be resisted on the grounds of prematurity. However, I share the view of the Secretary of State in the Tarporley appeal that if permitted the decision would have a de-motivating effect on those involved in the preparation of the Neighbourhood Plan, and this counts against the appeal to a limited degree.

Motives

114. The reason for submitting an application is rarely if ever a planning matter. The letter from the Appellant written by Mr Horsfield to a local land owner (dated 9 August 2011) could be seen as displaying an opportunistic motivation for pursuing the development. However, even if that were so it does not necessarily follow that the development is unacceptable in planning terms.

Conflict with the Neighbourhood Plan

115. The Parish Council has stated the scheme conflicts with many of the Neighbourhood Plan policies, and when it assessed the site against the site assessment matrix its score rendered it amongst the least appropriate locations for housing. However, as stated the weight afforded to the Neighbourhood Plan is not significant due to the stage it has reached. In any event, as can be seen from my reasoning above I do not share the Parish Council's views when the scheme is considered against many of the policies.

The effect of overwhelming Malpas

116. Throughout the appeal I was given various figures as to the existing number of homes in Malpas, though the Chairman of the Parish Council estimated there to be approximately 700, which seems to be a reasonable figure. Given this, it was said a development of this scale, particularly when taken with the housing schemes already approved elsewhere, would have an overwhelming effect on the village due to its relative size, swamping the settlement and eroding its character. However, in the light of my findings above concerning highways matters, infrastructure, sustainability and, in many regards, the effect on the historic environment, I see no reason why this impact should be unreasonable.
117. Reference was made to a change in Government policy to restrict 'land banking'. However, that would encourage development to be started rather than completed within 3 years and so need not necessarily result in an excess of new housing in Malpas.

h) Balancing any harm against the benefits of providing additional housing

118. In paragraph 14 the Framework says that where the development plan is absent or silent, or where its relevant policies are out-of-date, planning permission for sustainable development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when taken against the policies in the Framework as a whole, or specific policies in the Framework indicate development should be restricted. It does not follow from paragraph 14 that the mere presence of a housing shortfall means housing developments must automatically be allowed, and this has been demonstrated by the No Man's Heath and Sandiway decisions.
119. Moreover, while section 72 of the *Planning (Listed Buildings and Conservation Areas) Act 1990* says special attention should be paid to the desirability of preserving or enhancing the character or appearance of a conservation area, paragraph 134 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset that harm should be weighed against the public benefits of the proposal.

120. I have found there is a shortfall in housing land supply, and so, having regard to paragraph 49 of the Framework, the policies in the development plan relating to that matter must be considered out-of-date. Although I have been urged by AGF to '*rise above the mist of pure housing numbers*' this shortfall has to be a matter to which significant weight is attached. I have also come to the view that the site is suitably sustainable. Therefore, having regard to paragraph 14 in the Framework the benefits of this housing are to be balanced against the harm I have identified to the countryside, to the conservation area, to the de-motivating effects on those associated with the Neighbourhood Plan and to the supply of BMV land. Moreover, to justify resisting the proposal the harm must outweigh the benefits not just marginally, but rather 'significantly' and 'demonstrably'.
121. It was said that the 140 houses now proposed could be put on previously developed sites around Malpas, and this would avoid building in the countryside and the loss of BMV land. However, the details I had about those sites were limited, and did not show they were all available and could be viably developed. The weight attached to these as alternatives was therefore not significant.
122. Given that, the effect on the countryside resulting from the loss of greenfield land can often be a consequence of satisfying the shortfall in housing land supply. Similarly, if housing is to be built on open farm land at the edge of settlements, it is inevitable that the rural tranquility of some parts of the countryside will be diminished as they would no longer be as far from the urban area. These points must therefore be taken into account when assessing the harm arising from the loss of the fields and the impact on Greenway Lane.
123. Furthermore, although information was unclear it would appear that Malpas generally sits within an area of BMV land. Therefore, while some other sites around the village may be Grade 3a land only, the loss of BMV land is likely if additional housing is to be provided. Indeed various schemes on BMV land have already been accepted. It is also noted that the size of the site would have only a limited effect on the economic and other implications of using this agricultural land. Therefore, mindful of the extensive perimeter landscaping proposed, I consider the harm I have identified in relation to BMV land and the countryside, does not significantly and demonstrably outweigh the benefit of the housing proposed.
124. In any event, I am aware that although I have found Local Plan Policy EC20 to be inconsistent with the Framework, it does allow development on BMV in certain circumstances – the first is if there is an overriding need for the works and the second is if there is an inability for the scheme to be accommodated on lower quality land. As I have come to the view that there is a significant need due to the housing shortfall, and that it has not been shown there is opportunity to meet this need on previously-developed land or agricultural land of a lower quality, this development would not conflict with that policy.
125. With regard to the effect on the conservation area I have accepted harm would be caused by the significant closure of the gap between Glendohr and Barnways. However an appreciation of the historic rural context of the village would still be possible from other viewpoints along this section of road and elsewhere. Therefore, I again consider this issue does not outweigh the benefit identified. In assessing this impact, the balancing exercise in paragraph 134 of the Framework and the situation concerning housing land supply in paragraphs 49 and 14 are significant and material changes to the planning policy context

when compared to the circumstances that existed at the time of the 2006 decision, and to my mind they lead me to different findings.

126. Therefore, even taking these 3 issues together, along with any possible conflict with the Neighbourhood Plan and the further concern about de-motivation, they are insufficient to outweigh significantly and demonstrably the benefit resulting from the provision of 140 houses in the face of the housing shortfall in CW&C. Moreover, the public benefits resulting from the supply of more houses outweigh the less than substantial harm to the heritage asset, and so I consider the proposal would not conflict with the Framework in relation to the effect on the conservation area. In such circumstances I am not satisfied that the areas of harm I have identified conflict with specific policies in the Framework that indicate development should be restricted.
127. I have come to the view that Policies ENV37, ENV38 and EC20 in the Local Plan were not consistent with the Framework. However, I have no reason to assume my findings above would be materially different had I concluded those policies were consistent.
128. It was noted residents considered that to allow the proposal was contrary to the concept of localism, whether viewed in the context of the objections to the scheme itself or the impact on local plan preparation.
129. I have noted the number of objections made by local residents, particularly given the size of Malpas. While I have paid great attention to the comments raised and have treated them as a material consideration, the number of objections in itself cannot be a determining factor when considering a proposal. Rather, those comments have to be weighed in the balance with all other relevant planning considerations. While the housing shortfall in CW&C is not the direct result of the actions of Malpas residents that is not a matter to which significant weight can be attached.
130. Moreover, the Framework places a clear and bold emphasis on the primacy of the development plan and the opportunities communities have to shape the scale, location and timing of development. The Localism Act has put the power to plan back in the hands of communities, but with this power comes responsibility: a responsibility to meet their needs for development and growth, and to deal quickly and effectively with proposals that will deliver homes, jobs and facilities. This greater involvement will consequently depend upon the expeditious preparation of local plans that make provision for the future needs of those areas. The approach given in paragraphs 49 and 14 of the Framework therefore does not undermine the development plan process. Rather it only becomes applicable when that process has not achieved one of its fundamental tasks, namely the provision of an adequate supply of housing land.
131. Accordingly, for these reasons I do not accept that allowing the appeal would undermine the concept of localism.
132. Therefore, the adverse impacts resulting from this development would not demonstrably and significantly outweigh the benefits of the additional housing. Moreover, the benefits to housing supply would outweigh the less than substantial harm to the conservation area.

Conditions and the Undertaking

Conditions

133. I have assessed the suggested conditions against national guidance in Circular 11/95 *The Use of Conditions in Planning Permissions*. In particular, I am mindful that when considering the imposition of a condition the question should be asked whether planning permission would be refused if the condition were not imposed and, if not, special and precise justification is needed.
134. As this is an outline application, the standard conditions relating to the commencement of the development and the submission of reserved matters should be applied. These would include details of landscaping, hedgerow and tree protection, ground levels, parking, materials and external lighting of public places, so conditions addressing those matters are unnecessary at this stage.
135. In the Appellant's case great weight has been placed on its illustrative plans and the Design and Access Statement, and so the development should be substantially in accordance with those. The heights of the dwellings and their extent have also been important factors in my decision and so no house should be more than 2½ storeys high¹⁸ and housing with its associated curtilages should cover no more than 4ha of the site as shown on the Masterplan.
136. Turning to landscaping and associated matters, it is reasonable to secure the provision of a minimum of 0.7ha of the strategic landscape and habitat areas along the eastern and northern boundaries in order to soften the relationship to the countryside. As this is of a structural nature it should be provided before the occupation of the first dwelling. Moreover, along with the other areas of open space it should be subject to a management plan but it is excessive for this to run for the 25 years requested by the CW&C. Rather, 15 years would be reasonable. The Locally Equipped Area of Play (LEAP) should also be provided by the occupation of the 71st house. While it is accepted it may be some time before the 71st house is built, I am aware of no justification for it to be provided sooner.
137. With regard to highways, travel and sustainability, although access is a reserved matter the scheme has been assessed on the basis that it would have 2 accesses with a connecting link in between and so such an arrangement should be required.
138. To ensure a good pedestrian link is secured between the site and the village the alterations should be undertaken to the pavements at the junction of Rylands Close/ Leach Road/ Mercer Close, while the necessary connection between the existing paved footpath network on the Well Farm Estate and the site boundary should be formed. In the wider interests of sustainability the proposed alterations to the bus stops agreed in the *Highways Statement of Common Ground* should be completed as well. As all this work is on land outside the Appellant's control it should be undertaken prior to development commencing on the site. The *Highways Statement of Common Ground* also suggested the formation of dropped crossings on the Chester Road frontage to either side of the access, but they would be part of the overall access arrangement and need not be separately conditioned.

¹⁸ Defined as having the 3rd storey in the roof space

139. A Travel Plan was suggested, and having regard to paragraph 36 of the Framework this should be required. However, this should be in a revised form to that before me to assist its deliverability. The footpath links within the site to the Well Farm Estate boundary should be provided as well.
140. Drainage details for the scheme, including any balancing ponds, should be agreed with the Local Planning Authority before commencement and should be implemented in accordance with an approved timetable. The precise elements that these schemes address need not be stated at this stage.
141. As it is offered as a benefit of the scheme affordable housing should be secured through condition. However, as the development could take a while to be built there is no need to stipulate the precise tenure split now. Rather, that can be agreed based on demand and patterns at the time.
142. In the interests of the living conditions of future residents and the operation of the coach depot to the east, sound proofing should be introduced into houses where appropriate to protect the residents from traffic noise and noise at the coach depot. Archaeological work should be undertaken while works should protect any badgers that may be present.
143. A condition relating to the agreement of utility structures is unnecessary, and a condition concerning the agreement of lorry routing is contrary to paragraph 71 of Circular 11/95. Other legislation addresses works undertaken in relation to the bird nesting season and the provision of housing to Level 3 in the Code for Sustainable Homes. I also consider that the absence of phasing details, an agreement of a construction method statement or restrictions on the hours of operation would not justify refusing the proposal, and, given the controls of other legislation, no special and precise justification for such conditions has been offered.
144. It was proffered that a condition should prevent any development in the part of the site within the conservation area. I am not convinced though that such a condition would have a material benefit for the conservation area as the main value of that portion of the site lies in the views it provides over the countryside rather than the gap it creates in the streetscape. I would be anxious not to fetter the most suitable arrangement for that gap on the Chester Road and it is a situation that can be assessed as part of a reserved matters submission. Such a condition would therefore not be appropriate. Finally, given the description of the development there is no need to restrict the scheme to a maximum of 140 dwellings.

The Undertaking

145. In the light of my reasoning above, I conclude that the requirement to provide £221,330 for education provision at BHHS does not comply with Regulation 122 in the CIL Regulations and so that aspect of the Undertaking has not constituted a reason for granting planning permission.
146. However, I also conclude that the contributions to the pavement, to reviewing the traffic regulations orders and to secure the provision of the open space do comply with Regulation 122 in the CIL Regulations and so are reasons for granting planning permission.

Conclusions

147. Accordingly, I conclude there would be harm caused to the countryside and resulting from the loss of BMV land. The scheme would also cause less than substantial harm to the Malpas Conservation Area and would fail to preserve its character and appearance. As such, in these respects the scheme would conflict with Local Plan Policies ENV2 and ENV24. Moreover, approving the scheme would have a de-motivating effect on those involved in the preparation of the Neighbourhood Plan. However, given the accepted shortfall in 5-year housing land supply in CW&C and as this is a sustainable location, the collective harm from these issues does not demonstrably and significantly outweigh the benefit of providing 140 dwellings. This benefit would also outweigh the less than substantial harm to the Malpas Conservation Area. Therefore the proposal would be in accordance with the Framework and to my mind this is a material consideration sufficient to outweigh the conflict with the Local Plan. Consequently I conclude the appeal should be allowed.

J P Sargent

INSPECTOR

Conditions Schedule.

Time limits

- 1) Details of the access, appearance, landscaping, layout, and scale, (the reserved matters) shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall begin not later than 2 years from the date of approval of the last of the reserved matters to be approved.

Other details

- 4) The development shall be substantially in accordance with drawings 5153_L_102 and 5153-L-03 E and the Design and Access Statement dated March 2013.
- 5) No dwelling shall be more than 2½ storeys in height.
- 6) The area of housing and associated curtilages shall not exceed 4ha.

Affordable housing

- 7) The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the *National Planning Policy Framework* or any future guidance that replaces it. The scheme shall include:
 - i) the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 35% of housing units;
 - ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
 - iii) the arrangements for the transfer of the affordable housing to an affordable housing provider, or the management of the affordable housing if no Registered Social landlord involved;
 - iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Open space, landscaping and ecology

- 8) Prior to the commencement of the development a scheme for the provision of the play area (the LEAP) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the occupation of the 71st

dwelling hereby approved unless otherwise agreed in writing by the Local Planning Authority. Once provided it shall thereafter be retained.

- 9) A minimum of 0.7ha of land shall be provided as strategic landscape and habitat areas. This shall be laid out in accordance with the landscaping details approved under Condition 1 before the first occupation of any dwelling and shall thereafter be retained as strategic landscape and habitat areas.
- 10) Prior to the commencement of development a Habitat and Landscape Management Plan (HLMP), including the long-term design objectives, management responsibilities and maintenance schedules for not less than 15 years for all areas of landscaping other than those within the curtilages of individual dwellings, shall be submitted to and approved in writing by the Local Planning Authority, and the design, management objectives and maintenance of the landscaped areas shall thereafter be in accordance with the approved HLMP.
- 11) Prior to the commencement of development details shall be submitted to and approved in writing by the Local Planning Authority of measures to enhance and, if necessary, protect the habitat of the site for badgers, and the development shall then be carried out in accordance with those approved details.

Drainage

- 12) No development shall take place until a detailed scheme for the provision and future management and maintenance of foul and surface water drainage, together with a timetable for its implementation, has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be implemented in accordance with the approved details and timetable.

Archaeology

- 13) No development shall take place within the site until the Applicant or agent (or successor in title) has secured the implementation of archaeological work in accordance with a scheme (which shall include a timetable for the work) that has first been submitted to and approved in writing by the Local Planning Authority. The archaeological work shall be then carried out in accordance with the approved scheme.

Highways and travel

- 14) Upon completion the development shall have an access to Chester Road and an access to Well Street or Greenway Lane, with a connecting road in between.
- 15) No development shall take place within the site until
 - i) the kerbs at the junction of Mercer Close/ Leach Road/ Rylands Close have been modified a manner first approved in writing by the Local Planning Authority;
 - ii) footpath linkage has been laid out and surfaced in a manner first approved in writing by the Local Planning Authority between the surfaced footpath network on the Well Farm Estate and the site boundary;

- iii) the 2 bus stops nearest to the Chester Road boundary have been upgraded in a manner first approved in writing by the Local Planning Authority and
 - iv) 2 new bus stops have been introduced on Springfield Road at a location and of a design first approved in writing by the Local Planning Authority.
- 16) Submitted with the Reserved Matters shall be details of the proposed footpath linkage within the site to the footpath linkage required under Condition 15(ii) above, together with a timetable for the implementation of that linkage within the site, and the linkage within the site shall be provided in accordance with the agreed timetable and details and thereafter retained.
- 17) Prior to the commencement of development details of a Travel Plan for the development, together with a timetable for its implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved Travel Plan shall then be implemented in accordance with the approved timetable.

Noise

- 18) Prior to the commencement of the development of any individual house a scheme for the sound insulation of that house shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full in each dwelling before the first occupation of that dwelling and thereafter retained.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Evans of Counsel	Instructed by the Legal Manager of the Environment Team at CW&C
He called	
Mrs C Davis BEd(Hons)	Capital Development Manager for Children & Young People's Services at CW&C
Mr N Howard BSc(Hons) MRTPI	Consultant Planner within the Development Management Service at CW&C
Ms M Smallwood BA(Hons) IHBC	Principal Conservation & Design Officer at CW&C
Mr E Snell BA(Hons) DIPLA CMLI	Principal Landscape Architect for CW&C

FOR THE APPELLANT:

Mr J Barrett of Counsel	Instructed by Gladman Developments Limited
He called	
Mr A Brown BA BArch MSc MRTPI RIBA IHBC	Heritage consultant
Mr Chadwick BA(Hons) MIFA FSA	Archaeological consultant
Mr M Hemming	Project Manager <i>(for discussions about conditions only)</i>
Mr O Nicholson	Education consultant
Mr P Rech BA BPhilLD CMLI	Landscape consultant
Mr M Reeve BSc FISoilSci CSci MBIAC MCIWEM	Agricultural land consultant
Mr M Twigg BSc(Hons) MRTPI	Planning consultant
Mr G Venning MA	Affordable housing consultant

FOR ACTION FOR GREEN FIELDS

Mrs C Williams BSc(Hons) MRTPI	Planning Consultant
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FOR MALPAS PARISH COUNCIL

Mr J Webb	Chairman
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INTERESTED PERSONS:

Mrs C Broad	Local resident
Ms H Broad	Local resident
Mr D Brooks	Local resident
Ms F Dudley	Local resident
Dr M Edney	Partner at Laurel Bank Surgery, Malpas
Mr D Griffith	Local resident
Mr C Higgin	Local resident
Ms R Jacks	Local resident
Mr J Lewis FRICS FAAV	Local resident
Mr P Mars	Local resident
Mrs J Meredith	Local resident
Mrs K Meredith	Local resident
Cllr E Moore Dutton	CW&C Councillor for Tarporley Ward, Member of the Council's LDF Panel, and local resident
Ms R Rathbone MA(Hons) Dip Arch Edin	Local resident
Ms R Redshaw	Local resident

Mr S Redshaw	Local resident
Mr L Thornecroft	Local resident
Mr A Waddelove	Local resident
Mr C Whitehurst	Vice Chairman of the Malpas and Overton Neighbourhood Plan Steering Group
Cllr A Wright	CW&C Councillor for Malpas Ward

DOCUMENTS SUBMITTED AT OR AFTER THE INQUIRY

A) FROM THE LOCAL PLANNING AUTHORITY:

- A1 Closing submissions
- A2 Summary of Proof for Mr Howard
- A3 Summary of Proof of Evidence for Marie Smallwood
- A4 Summary Proof of Evidence of Mr Edd Snell
- A5 Draft Notice of Planning Permission for application 12/04687/OUT
- A6 Drawing RAL/163-01 *Proposed Landscape Layout* for the Appeal decision APP/A0665/A/13/2191004 dated 12 June 2013
- A7 Drawings associated with Appeal decision APP/X0605/A/04/1171164 dated 17 March 2006
- A8 Plan showing alternative sites around Malpas
- A9 Drawing 5153-L-201 *Draft Landscape Framework and Parameters Plan* concerning application 13/01213/OUT
- A10 List of neighbours notified of application 12/04687/OUT
- A11 Petition submitted in connection with application 12/04687/OUT
- A12 Bundle of representations submitted in connection with the application that was submitted to the Inquiry
- A13 E-mail from Alun Evans to Mrs Lyndsay Shinner dated 22 November 2012
- A14 Listing details of Brose Lake Farmhouse
- A15 Letters from Welsh Water dated 20 May 2013 concerning application 13/01213/OUT
- A16 Suggested route for site visit
- A17 Further bundle of representations submitted in connection with the application submitted to the Planning Inspectorate on 27 & 28 June 2013
- A18 Letter to Planning Inspectorate dated 26 July 2013 with attachments comprising Policy STRAT8 from the *Publication Draft Local Plan* and details of notification.
- A19 E-mail to the Planning Inspectorate dated 20 August 2013
- A20 E-mail to the Planning Inspectorate dated 21 August 2013
- A21 Letter to the Planning Inspectorate dated 26 September 2013
- A22 Letter to the Planning Inspectorate dated 22 October 2013
- A23 E-mail to the Planning Inspectorate dated 24 October 2013
- A24 E-mail to the Planning Inspectorate dated 29 October 2013

- B) FROM THE APPELLANT:
- B1 Opening submissions
 - B2 Closing submissions
 - B3 Professional details of Mr Chadwick
 - B4 *Statement of Common Ground* dated 14 June 2013
 - B5 Signed Unilateral Undertaking dated 17 June 2013
 - B6 Minutes of the Strategic Planning Committee dated 18 April 2013
 - B7 Extract from the *Strategic Housing Land Availability Assessment*
 - B8 Natural England Technical Information Note TIN049 *Agricultural Land Classification: protecting the best and most versatile agricultural land*
 - B9 Annotated copy of CW&C's suggested route for site visit
 - B10 Letter from the Headteacher at Bishop Heber High School to the Council
 - B11 E-mail from Brian Leonard to Mr Putnam dated 31 May 2013
 - B12 E-mail from Malcolm Reeve to Robert Hogg dated 21 June 2013
 - B13 E-mail chain from Daniel Dickinson dated 24 June 2013
 - B14 E-mail from Martyn Twigg to Nick Howard dated 15 July 2013
 - B15 Letter to the Planning Inspectorate dated 25 July 2013
 - B16 E-mail to the Planning Inspectorate dated 30 August 2013, with attachment comprising the Secretary of State's decision concerning Appeal APP/A0665/A/11/2167430 relating to land off Nantwich Road, Tarporley, Cheshire
 - B17 Letter to the Planning Inspectorate dated 16 September 2013 with attachment comprising an E-mail chain from Michael George and *Cheshire West and Chester: Draft Strategic Housing Market Assessment*
 - B18 E-mail to the Planning Inspectorate dated 28 September 2013 with attachments comprising a report to the Strategic Planning Committee concerning proposals at Brook Road, Tarporley and a letter from Hourigan Connolly to CW&C dated 17 September 2013
 - B19 E-mail to the Planning Inspectorate dated 30 September 2013
 - B20 E-mail to the Planning Inspectorate dated 7 October 2013 with attachments comprising the Closing Submissions and the Statement of Common Ground relating to Appeal APP/A0665/A/13/2198931 at Barnside Way, Moulton dated 4 October 2013
 - B21 E-mail to the Planning Inspectorate dated 10 October 2013
 - B22 E-mail to the Planning Inspectorate dated 15 October 2013 with attachments comprising the Statement of Common Ground (dated 9 October 2013) and the Closing Submissions (dated 11 October 2013) relating to Appeal APP/A0665/A/13/2196831 at Churton Road, Farndon, together with an e-mail to Daniel Dickinson from Lorraine Davison (dated 7 October 2013) concerning Appeal APP/0665/A/13/ 2197189 at Kennel Lane, Chester Road and Dalefords Lane, Sandiway
 - B23 E-mail to the Planning Inspectorate dated 11 November 2013 with attachments comprising the layout plan for application 13/03826/OUT and the conservation officer's comments on that application
 - B24 E-mail to the Planning Inspectorate dated 19 November 2013 with attachment comprising the decision of the Secretary of State concerning Appeals APP/A0665/A/12/2179410 & 2179374 relating to land at Grange Farm, Hartford, Cheshire
 - B25 E-mail to the Planning Inspectorate dated 4 December 2013
 - B26 E-mail to the Planning Inspectorate dated 17 December 2013
 - B27 E-mail to the Planning Inspectorate dated 20 December 2013
 - B28 E-mail to the Planning Inspectorate dated 14 January 2014

C) FROM ACTION FOR GREEN FIELDS:

- C1 Opening statement
- C2 Closing statement
- C3 Letter of representation dated 29 November 2012 concerning application 12/04687/OUT with attachments from Christal Planning Services Limited (CPSL)
- C4 Letter of representation dated 29 January 2013 concerning application 12/04687/OUT from CPSL
- C5 E-mail from CPSL to Councillors on the Strategic Planning Committee dated 20 February 2013
- C6 E-mail to the Planning Inspectorate dated 15 July 2013 with attachment comprising a report to CW&C Local development Framework Panel dated 22 July 2013
- C7 E-mail to the Planning Inspectorate dated 8 August 2013
- C8 E-mail to the Planning Inspectorate dated 13 September 2013, with attachment comprising decision notice for application 13/02382/OUT
- C9 E-mail to the Planning Inspectorate dated 26 September 2013, with attachments from Mr Webb, from the Proofs of Mr Howard and Mr McCorquodale concerning the Farndon appeal, and an extract from the *Tattenhall and District Neighbourhood Plan Examiner's Report*
- C10 E-mail to the Planning Inspectorate dated 15 October 2013
- C11 E-mail to the Planning Inspectorate dated 23 October 2013
- C12 E-mail to the Planning Inspectorate dated 24 October 2013
- C13 E-mail to the Planning Inspectorate dated 28 October 2013 with attachment comprising a report entitled *Education Investment and the true need for public and private sector Funding*
- C14 E-mail to the Planning Inspectorate dated 7 November 2013 with attachment comprising a note on the Parish Council approving the CW&C Local Draft Plan
- C15 E-mail to the Planning Inspectorate dated 11 November 2013 with attachment comprising newspaper article concerning extension of planning permissions
- C16 E-mail to the Planning Inspectorate dated 21 November 2013 with attachments comprising a letter and *Key Service Centres Background Paper* by CW&C dated July 2013
- C17 Further e-mail to the Planning Inspectorate dated 21 November 2013
- C18 E-mail to the Planning Inspectorate dated 1 December 2013 concerning a refusal of planning permission for a wind turbine
- C19 Appeal decision APP/A0665/A/13/2197189 concerning Kennel Lane, Chester Road and Dalefords Lane, Sandiway dated 12 December 2013
- C20 Comments linked to Malpas Neighbourhood Draft Plan v Gladman appeal
- C21 E-mail to the Planning Inspectorate dated 15 January 2014 with attachment comprising the report to the Planning Committee concerning application 13/03826/OUT

D) FROM MALPAS PARISH COUNCIL:

- D1 Submissions from John Webb
- D2 *Malpas Character Study with sample site guidance* (dated October 2012)
- D3 Letter to the Planning Inspectorate dated 11 November 2013
- D4 E-mail to the Planning Inspectorate dated 15 January 2014 with attachment comprising the agenda for CW&C Planning Committee on 14 January 2014
- D5 E-mail to the Planning Inspectorate dated 20 January 2014

- E) FROM LOCAL RESIDENTS AND OTHERS:
- E1 Statement of Mrs Barnett
 - E2 Statement of Mrs Carol Broad with attachments concerning housing land supply, gas supply and public transport.
 - E3 Statement of H Broad
 - E4 Statement of Mr D Clarke
 - E5 Statement by Mrs Davies with attachments concerning flooding
 - E6 Submissions from Fiona Dudley with attachment comprising a document entitled *The Bishop Bennet Way*
 - E7 Statement and revised statement by Mr David Griffith with photographs
 - E8 Speech from Mr C Higgin with attachment comprising an extract concerning Agricultural Land Quality
 - E9 Submissions from R Jacks
 - E10 Letter from Ann Jones of Chester District CPRE
 - E11 Proof of Evidence of JG Lewis FRICS with attachments comprising other possible development sites in Malpas
 - E12 Submissions from Mr P Mars with photographs
 - E13 Submissions from Mrs J Meredith
 - E14 Submissions from Mrs Karen Meredith
 - E15 Submissions from Mr Trevor Parker with attachments comprising school catchments
 - E16 Public comment from Mr Simon Pitt BSc(Hons)
 - E17 Submissions from Gabrielle Price
 - E18 Submissions from Rhona Rathbone MA(Hons) Dip Arch Edin with annotated photographs and plans
 - E19 Submissions from Rachel Redshaw
 - E20 Submissions from Simon Redshaw
 - E21 Speech from Sarah Vaughan
 - E22 Submissions from Adrian Waddelove
 - E23 Submissions from Mrs Waterhouse with attachments concerning drainage and gas supply
 - E24 Submissions from Chris Whitehurst on behalf of Malpas and Overton Neighbourhood Plan Steering Group with attachments comprising the housing land supply and a letter to Stephen O'Brien MP from Cllr Mike Jones
 - E25 Statement by Mrs Barbara Wilson
 - E26 Statement of Councillor Ann Wright
 - E27 E-mail from Chris Whitehurst to the Planning Inspectorate dated 12 December 2013 with attachment comprising the final version of policies relating to the Malpas & Overton Neighbourhood Plan
 - E28 Letter from Councillor Ann Wright to the Planning Inspectorate dated 20 December 2013
 - E29 Submissions from Chris Whitehurst dated 3 January 2014 with attachment comprising the full draft Neighbourhood Plan
 - E30 Letter from Councillor Ann Wright to the Planning Inspectorate dated 3 January 2014 with attachment comprising Appeal decision APP/A0665/A/13/2200122 concerning Birch Pits, No Man's Heath