
Appeal Decision

Inquiry held on 3 - 6 June and 30 June 2014

Site visit made on 6 June 2014

by David Richards BSocSci DipTP MRTPI

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

Decision date: 1 August 2014

Appeal Ref: APP/R0660/A/14/2212992

Land off Hind Heath Road, Sandbach, CW11 3WA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Richborough Estates Partnership LLP against Cheshire East Council.
- The application Ref 13/3887C, is dated 12 September 2013.
- The development proposed is the erection of up to 100 dwellings, public open space, green infrastructure and associated works.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Applications for costs

1. At the Inquiry an application for costs was made by the Appellants against the Council. An application for partial costs was made by The Council against the Appellant. These applications are the subject of separate Decisions.

Main Issues

2. The main issues are:
 - i. Whether the proposal is sustainable development within the meaning of the paragraph 7 of the National Planning Policy Framework (the NPPF);
 - ii. Whether the Council has a five year supply of housing land;
 - iii. Whether any identified benefits of the proposal are significantly and demonstrably outweighed by any harm such that the presumption in paragraph 14 of the Framework to consider favourably applications for sustainable development is outweighed.

Planning Policy

3. Cheshire East Council is a unitary authority which came into existence on 1 April 2009. It was formed from the former local authorities of Congleton Borough Council, Crewe and Nantwich Borough Council, Macclesfield Borough Council and Cheshire County Council. Sandbach lies within the area of the former Congleton Borough.

4. The relevant development plan for the appeal site consists of the Congleton Borough Local Plan First Review (CBLP). It was adopted in 2005 with an end date of 2011. A number of policies have been saved until Cheshire East Council adopts its first local plan.
5. Of particular relevance to this appeal are saved policies PS8 (Open Countryside) and H6 (Residential development in the Open Countryside and the Green Belt). The thrust of the CBLP development policies is to concentrate new development within or on the edge of defined towns and villages, including Sandbach. Settlement zone lines (SZLs) were defined within which there is a presumption in favour of development. Land outside the SZLs is shown as open countryside on the proposals map, where development is to be restricted. Saved Policy PS8 of the CBLP sets out categories of development which will be permitted in the open countryside, none of which include the type of residential development proposed in this appeal. Saved Policy H6 sets out the circumstances in which new residential development will be allowed in the open countryside. Again, the proposed development is not within any of the categories listed in H6. Although close to the existing built up area of Sandbach, the site is not within the development limits as currently defined by the SZL.
6. The SZLs were defined in order to allow for sufficient growth to meet future land use needs for the plan period. Thus the development limits of Sandbach were last defined in the context of development needs up to 2011. CBLP paragraph 2.53 specifically states that the SZL is not intended as a long term boundary. It is therefore, at least in part, a policy which is relevant to the supply of housing. Paragraph 49 of the Framework provides that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites. The existence or otherwise of a 5 year supply in Cheshire East, and hence the weight to be accorded this aspect of the development plan, are matters which will be addressed later in this decision.
7. As CBLP paragraph 2.52 explains, the SZL's were also defined to protect the character of the settlements and important views of the surrounding countryside, as well as to protect the countryside from development in order to preserve its intrinsic character and beauty. Saved Policies PS8 and H6 are thus aimed in part at protecting the countryside from unnecessary development. This aspect of the policies accords with the core planning principle set out in paragraph 17 of the Framework, that account should be taken of the different roles and character of different areas ... recognising the intrinsic character of the countryside and supporting thriving rural communities within it. Insofar as these policies are concerned with protecting the character of the countryside, I consider they attract substantial weight in accordance with the advice in paragraph 215 of the Framework.
8. A replacement plan, the Cheshire East Local Plan is now being prepared. Consultation took place on a pre-submission draft of the Local Plan Core Strategy at the end of 2013. A draft plan has been submitted for examination, with the examination expected to take place later in 2014. The timetable for the Site Allocations and Development Policies document is longer, with adoption not anticipated before 2016. There is a substantial volume of objection to the Core Strategy. As it is currently in draft and has not yet been

the subject of an examination, very limited weight can be attached to the emerging plan at this time.

9. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development. For decision-taking this means: approving development proposals that accord with the development plan without delay; and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in the Framework indicate development should be restricted.
10. Paragraph 47 of the Framework sets out the steps that local planning authorities should take to boost significantly the supply of housing.
11. Paragraph 48 states that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of housing sites.
12. The Planning Practice Guidance was issued on 6 March 2014. I have taken the guidance into account in considering the appeal, and where necessary have commented on specific paragraphs in the relevant sections of the decision.

Reasons

Sustainability

13. The appeal site lies to the south west of Sandbach, between the developed areas of Wheelock and Ettiley Heath. It adjoins a housing development site for 269 dwellings, known as Saxon Lea, which was granted planning permission by the Secretary of State (SoS) in December 2012 and is currently under construction (Ref. APP/R0660/A/10/2141255 & 2143265). The SoS considered the sustainability credentials of this adjoining site at paragraphs 28 – 30 of his decision. He noted that Sandbach has a good range of shops and other key facilities but is not a town where significant economic growth is expected and many of the residents work elsewhere. He agreed with the Inspector that the distance between the town centre and the appeal site [i.e the Saxon Lea site] is close to or probably over the limit that most people would be willing to walk on a regular basis. However, he also considered that the [Saxon Lea] site is in a location where future residents would have reasonable options to use sustainable methods of public transport should they choose to do so (paragraph 28).
14. With regard to the other dimensions of sustainability identified in the Framework, the SoS considered that the development would fulfil an economic role by ensuring that housing is provided to meet needs and support growth, including the provision of infrastructure to support the development. It would fulfil an important social role, by providing affordable housing to meet needs, as well as market housing. He found nothing to indicate that the proposal would not have the potential for good design. Whilst he agreed that the site is on the limits of regular walking distance from the town centre, he considered it to be reasonably well located in respect of Sandbach, and that the proposed footpath and cycleway should encourage less reliance on the private car. In

respect of the environmental dimension he accepted that development of the site would inevitably change the character of the site and result in the loss of open land. However he found that, with the exception of local plan general countryside policies, the site was not covered by any specific policy that indicates that development should be restricted (paragraph 29).

15. In paragraph 30 of the decision letter he concludes as follows: *'For the reasons given in the preceding paragraphs, the SoS considers that the positive factors outweigh the negative factors when considering the sustainability of the proposed development'*. He further noted that the local planning authority had not contested the sustainability of the proposed development in evidence to the Inquiry or in subsequent post-inquiry representations.
16. While in this case, the local planning authority has contested the sustainability of the site, I consider that very similar considerations apply to the current appeal site. The proposed site entrance on Hind Heath Road is a little further from Sandbach town centre and the bus stops on Crewe Road than is the entrance to the Saxon Lea site. Nevertheless I do not consider that this additional distance would be of such consequence as to materially alter the balance of consideration as regards the sustainability of the site in locational terms. It would be reasonable to say of the appeal site that it is on the limits of regular walking distance from the town centre, whilst being reasonably well located in respect of Sandbach. There are a limited number of other facilities including a primary school, a convenience store and a public house within reasonable walking distance. The footpath and cycleway alongside Hind Heath Road, currently being constructed in connection with the Saxon Lea site, would also encourage less reliance on the private car by future occupiers of the appeal development. The bus stops on Crewe Road, which provide regular services to Crewe, Sandbach town centre and Macclesfield, would be within 760 metres of the centre of the site, approximately 9 minutes walk. The site entrance would also be marginally closer than Saxon Lea to Sandbach railway station, which provides regular services to Crewe and a number of significant settlements along the route to Manchester.
17. With regard to the economic role, the proposal would support employment in the construction industry directly, as well as through an on-going requirement for maintenance and improvement and the economic stimulus of the additional household expenditure. With regard to the social dimension of sustainability, the development would make a meaningful contribution to housing supply in accordance with the advice in the Framework, including a significant proportion of affordable housing, for which there is an accepted need. I regard these as important benefits which weigh in favour of the proposal.
18. It is not disputed that there would be harm to the open countryside and conflict with saved policies PS8 and H6 of the CBLP. Housing development proposed for the eastern part of the site would extend built development onto the currently open fields between Hind Heath Road and the Trent and Mersey Canal. Nevertheless, the visual impact of development on any sensitive receptors would be relatively contained by the topography and by existing vegetation, with opportunities for reinforcement of planting through a landscaping condition. For example identified viewpoints from the canal towpath and other rights of way in the vicinity, as referred to in the Appellant's landscape evidence, would have very limited views of the development. Whilst the outlook from the properties adjacent to the lane serving the United Utilities

site would change, the effect would not be so harmful as to warrant refusal of permission.

19. The principal effect would be to advance the edge of built development in a westerly direction, but there would be no significant impact in the wider landscape. Whilst the agricultural landscape is well-maintained and characteristic of the current setting of development around Sandbach, it is not the subject of any special designation for its particular qualities.
20. I have also considered the loss of agricultural land. The main development area of the site is classified as best and most versatile (BMV) agricultural land in agricultural land classification 2. The Framework advises that the economic and other benefits of BMV land should be taken into account. The Council did not identify the loss of agricultural land as a potential issue in its statement of case and no information was put before the Inquiry which could give a clear picture of the extent to which Cheshire East Council's housing needs could be accommodated on lower quality land. In my experience it is not unusual for BMV land to be located on the edge of existing towns and settlements, in locations which in other respects are likely to offer the most sustainable opportunities for development. The Framework does not place any absolute prohibition on the development of BMV land, and it was accepted at the Inquiry that it would be reasonable to deal with any loss of good quality land as something to be considered in the overall balance.
21. Set against this limited harm to the character of the countryside, and loss of BMV land, I consider that the proposed linear park along the valley of the stream would be of considerable benefit. It could serve a number of purposes, including as a wildlife habitat and recreational area, the detail of which could be considered as part of a reserved matters application. It also provides an opportunity to reinforce existing landscape features to help integrate the development in the surroundings.
22. A core planning principle of the Framework is to take account of the different roles and character of different areas, promoting the vitality of our main urban areas, ... recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it. These are important considerations but the assessment of sustainability requires all three dimensions to be taken into account. As the SoS concluded in respect of the Saxon Lea site, I consider that the positive factors outweigh the negative factors when considering the sustainability of the proposed development.

Whether the Council has a five year supply of housing land

23. Paragraphs 47 to 55 of the Framework are concerned with the delivery of a wide choice of high quality homes. A key objective is 'to boost significantly the supply of housing ...'. In order to achieve this paragraph 47 of the Framework advises that local planning authorities 'should identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against the housing requirement with an additional buffer of 5% to ensure choice and competition in the market for land. Where there has been a persistent record of under-delivery of housing, the local planning authorities should increase the buffer to 20% ... to provide a realistic prospect of achieving the planned supply and secure choice and competition in the market for land.'

24. The Council's Position Statement on housing land supply indicates that there was either a 5.86 or a 5.13 years supply depending on whether a 5% buffer or a 20% buffer is applied in accordance with the advice in paragraph 17 of the Framework. The Appellant contested this, considering that the actual supply was some 2.38 – 2.72 years.

Housing requirement

25. Paragraph 47 of the Framework requires that local planning authorities should use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including identifying key sites which are critical to the delivery of the housing strategy over the plan period. In the judgement of the Court of Appeal in the Hunston case¹ it was held that it was mistaken in the context of a S78 appeal to use a figure below the full objectively assessed needs figure until such time as the Local Plan process came up with a constrained figure (paragraph 26). Furthermore, the judgment in the recent case of Gallagher Homes and Lioncourt Homes and Solihull Metropolitan Borough Council² (the Solihull judgment) confirms that where there is no Local Plan, then the housing requirement for a local authority for the purposes of paragraph 47 [of the Framework] is the full objectively assessed need.
26. The Council considers that the North West Regional Strategy (RS) requirement for Cheshire East (1,150 dwellings per annum) is still the only rigorously tested evidence base to establish need, and has used it as the basis of the five year supply calculation. The Appellant argues that this is a constrained figure, of the type referred to in the Hunston judgement, and therefore it should not be used as the requirement in the calculation of the 5 year supply.
27. The Appellant's evidence is that the RS target for Macclesfield, Congleton and Crewe was constrained below the level of need suggested by projections made at the time, particularly those that were based on recent trends in economic growth, in line with the policy aspiration to concentrate growth in the conurbations of Liverpool and Manchester. For example, Table 4.17 of the Technical Appendix to the submitted draft Regional Spatial Strategy 2006³ shows that the proposed requirements for Congleton, Macclesfield and Crewe and Nantwich were significantly below long term trends on a medium economic activity rate scenario. It is clear that the panel also considered that higher rates of growth in Congleton and Crewe and Nantwich could prejudice the regeneration of the larger cities, including the North Staffordshire conurbation⁴. I find this evidence convincing, and in the absence of an up-to-date requirement that has been arrived at through the local plan process, the use of a constrained figure deriving from the RS should be treated with extreme caution.
28. I note that, when considering the housing requirement in the Housing Background Paper March 2014 (part of the evidence base for the now submitted Cheshire East Local Plan), the Council rejected the use of 1,150 as the requirement because, amongst other reasons, 'it would not provide for all

¹ [2013] EWCA Civ 1610: City and District of St Albans and The Queen (on the application of) Hunston Properties Limited

² [2104] EWHC 1283 (admin)

³ Page 184/5 of Mr Donagh's Appendices (Appellant's evidence)

⁴ Ibid, pages 147/8.

the locally generated housing need of the population of Cheshire East'. On this basis it is difficult to sustain an argument that the RSS figure represents the full objectively assessed housing need of the Borough in current circumstances.

29. The same Housing Background Paper goes on to identify the Council's current position for the objectively assessed housing need: 'Scenario 3c [1,350 dwellings per annum] therefore encompasses both the demographic requirement and plausible economic growth requirements of the plan area and represents the full objectively assessed housing need for the Cheshire East Local Plan Strategy. Consistent with draft NPPG, this is a level of growth that is presented unconstrained by any local delivery and environmental factors'.
30. The Planning Practice Guidance (6 March 2014) – (the PPG) states that where there is no robust recent assessment of full housing needs, the household projections published by DCLG should be used as the starting point, but the weight to be given to these should take account of the fact that they have not been tested.
31. The Interim 2011 based Sub National Populations Projections predict an annual increase of 1180 households in Cheshire East, in the period to 2020. The Council considers that this figure corroborates reliance on the RSS figure of 1150. Paragraph 015 of the PPG section entitled 'Housing and economic development needs assessments' advises that the household projections are trend based i.e. they provide the household levels and structures that would result if the assumptions based on previous demographic trends in the population and rates of household formation were to be realised in practice. They do not attempt to predict the impact that future government policies, changing economic circumstances and other factors might have on demographic behaviour. It is also the case that they may require adjustment to reflect factors affecting local demography and household formation rates which are not captured in past trends. For example, formation rates may have been suppressed historically by under-supply and worsening affordability of housing. The assessment will therefore need to reflect the consequences of past under delivery of housing.
32. It is also apparent that between the 2001 and 2011 censuses, 1,230 households formed each year on average in Cheshire East. That rate of household formation alone, projected forward, would equate to a housing requirement of about 1,300 dwellings per annum, taking into account the relevant household to dwelling conversion factor for Cheshire East.
33. For the latter reason, I consider that reliance on the interim trend based projections is likely to under-estimate of the objective dwelling requirement for Cheshire East significantly. The census data on which it relies includes the period of recession when housing completions fell below requirement. It does not take into account market signals which point to a substantial affordability gap in the relevant housing market areas.
34. The Appellant company has commissioned its own assessment of the requirement for Cheshire East - 1800 dwellings per annum - which is presented as an objective assessment. The assessment uses a projection of workforce jobs by Experian for Cheshire East that c.23,000 workforce jobs will be created by between 2010 and 2030, an annual growth rate of 0.6%. It is argued that this figure is low in comparison with the actual rate of job growth in Cheshire East between 2000 and 2010 of 20,300 jobs, an annual average growth rate of

1.1%. In contrast, the jobs growth figure underpinning household projections for the emerging Local Plan is 14,800 jobs, an annual average growth rate of 0.4%. The Appellant refers to Cheshire East's growth aspirations as the most successful economy in the North of England, as set out in Chapter 11 of the emerging Local Plan. It refers to a 2013 document 'East Cheshire, Engine of the North' which identifies projects with the potential to deliver some 34,000 new jobs to 2030, though it is recognised that this is a point in time analysis and will be kept under review.

35. None of the alternative figures presented to the Inquiry have been tested through the Local Plan process. The Council's position⁵ is that higher dwelling requirements, including the 1800 dwellings per year proposed by the current appellant (Scenario 3e) implies population growth of 62,000 (17%) over the plan period, much higher than has been achieved in Cheshire East over the last 30 years. It would require an average net inflow of 3,000 migrants per year, and assumes an average growth in economic output of 2.7% per annum. The Council's conclusion is that there is a very significant risk that this would prove to be economically unsustainable over the plan period, demographically unrealistic and that it posed unnecessarily high economic risks.
36. The appellant's analysis has been carried out by a reputable and experienced firm. However, while it has not relied on the highest predictions of jobs growth for Cheshire East, it is predicated on a high level of employment growth continuing, which to my mind is a policy sensitive consideration. I would therefore categorise it as a 'policy-on' assessment, to use the language of the recent Solihull judgement. I acknowledge that the objective of achieving Cheshire East's full economic potential derives strong support from the Framework, and Cheshire East's own stated aspirations, as set out for example in Chapter 11 of the emerging Local Plan. I note the Appellant's views that the submitted local plan does not in fact reflect the Council's stated growth aspirations. Nevertheless, this is a matter of policy that can only properly be addressed through the local plan process, with its provisions for wide public consultation and engagement.

Backlog and 'underdelivery'

37. Paragraph 47 of the Framework confirms that an additional buffer of 5% should be added to the requirement to ensure choice and competition in the market for land. Where that has been a record of underdelivery of housing, local planning authorities should increase the buffer to 20% (moved forward from later in the plan period) to provide a realistic prospect of achieving the planned supply.
38. Until recently, appeals in East Cheshire have proceeded on the basis that there was no evidence to justify the application of a 20% buffer. However the SoS's decision at Abbey Road and Middlewich Road dated 17 October 2013⁶ expressed the view that 'the Appellant's approach to the accommodation of the shortfall in housing completions in the 5 year period, with an additional 20% buffer to reflect persistent under delivery over the last 5 years, accords more closely with the Framework requirement to boost significantly the supply of housing than the Council's approach.'

⁵ As set out in Appendix 3 to Cheshire East Local Plan: Local Plan Strategy Background Paper Population projections and forecasts – March 2014

⁶ Ref APP/R0660/A/10/2141564, paragraph 26

39. More recently, an appeal decision has been issued at Elworth Hall Farm, Sandbach⁷. The Inspector found that Cheshire East (and its constituent Boroughs) had not met housing targets since 2008/9, a period of almost 6 years, and a further 2 years in Congleton Borough, of which Sandbach was then a part. He concluded in paragraph 19 that 'in the context of this appeal site's location there has been a persistent significant under delivery of housing for some time' during which he considered there to have been persistent under delivery amounting to over 3,000 dwellings and that a 20% buffer should apply in accordance with the Framework.
40. In reaching his conclusion it is clear that he took into account the Planning Practice Guidance, then in draft form. In respect of the relevant paragraphs of the draft guidance he stated that 'I am aware that some of these years of shortfall coincided with the recession but I am not persuaded that an unavailability of sufficient housing land for a considerable period of time has not been the major cause of under delivery within Cheshire East. Historically the Borough of Congleton was subject to housing restraint policies and this is a relevant consideration. However, while the moratorium would have contributed to the under performance in 2006/7, it was abundantly clear that by 2007, when the Examination in Public into the North West Regional Strategy 2006 was held that this was coming to an end. Despite this, no action was taken to boost the supply of land for a number of years (paragraph 20).'
41. I am aware that this decision is subject to challenge by the Council (Document 16) on several grounds, including that the decision does not adequately address or reason the matters of under delivery which determines the application of a 5% or a 20% buffer, build rates and lead in times, and the inclusion of C2 housing provision. The outcome is a matter for the courts. However it is necessary for each decision maker to reach a view on the basis of current guidance and the evidence before him or her. I consider this below.

Housing Supply

42. There is significant disagreement about housing supply. The Council has prepared and approved an updated position statement dated February 2014 which has a base date of 31 December 2013. The Council's starting position is that there is a supply of 5.95 years (applying a 5% buffer) or 5.21 years (applying a 20% buffer). This analysis was carried out before the publication of the Practice Guidance on 6 March 2014. In evidence to the Inquiry, the position has been reviewed and an allowance made for the inclusion of accommodation for older persons and students in the completions data. On this basis, the Council considers that the supply should be increased to 7.06 years (5% buffer) or 6.18 years (20% buffer).
43. In respect of both the 5% and 20% buffer positions, the Council's analysis has used the Sedgfield approach, which includes the identification of sufficient land to account for and deliver previous under delivery during the first five year period rather than spreading it over the whole of the plan period.
44. The Appellant challenges the degree of reliance placed by the Council on Strategic Sites. Eleven strategic sites have been identified as being deliverable, or partly deliverable, during the 5 year period. They were included in the pre-submission Core Strategy, on which consultation took place between

⁷ Ref APP/R0660/A/13/2196044, dated 11 April 2014

November and December 2013. Only those sites which the Council considers to be at a reasonably advanced stage, for example where a planning application has been prepared or is capable of being submitted in the near future, have been included. The Council considers that a contribution of 1,741 dwellings from such sites is reasonable. The Appellant accepts that some contribution will come forward, but applies what are considered to be more realistic delivery assumptions.

45. While the Council is confident that this level of delivery can be achieved, many of the sites do not yet have planning permission and remain subject to objection. Even where planning permissions are in course of preparation, it is possible that determination of the application or completion of a Section 106 obligation may be delayed, and it is unsafe to assume that construction work would start immediately on grant of permission. In the circumstances, I consider that the Appellant's more cautious assessment is to be preferred.

Build rates and lead in times

46. The Appellant generally accepts the build out rates which the Council has used. However it is suggested that the Council's approach to large sites has been overoptimistic. The Council considers that sites of 200 to 250 units are more likely to involve multiple house builders, and therefore an increased build rate can be justified. There was some evidence of multiple builders being involved in larger developments, though the picture was not consistent on all such sites. While there are clear signs of recovery evident, some caution needs to be exercised in applying build rates which reflect current buoyancy. In my judgment it would be prudent to take a longer term perspective.
47. The Appellant also suggests that the Council's lead in times are overoptimistic. The lead in times relied on in the position statement have been reduced significantly in comparison with the 2013 SHLAA, which itself had already reduced the lead in times used in the 2012 SHLAA⁸ (base date 31 March 2011), the most recent occasion on which lead in times were validated by consultation and agreement with stakeholders making up the Housing Market Partnership. The Appellant gave numerous examples of sites where lead in times on larger sites had exceeded the Position Statement's assumptions on lead in times. I acknowledge that in the current housebuilding revival, developers are likely to be keen to proceed expeditiously where permission has been granted. I also acknowledge that the Council has taken steps to expedite matters such as negotiations on S106 agreements. Nevertheless until such time as revised build out rates are consulted upon and perhaps agreed, I consider that it is preferable to use the lead-in times from the SHLAA 2013, which gives a more realistic figure for lead in times for sites over 200 dwellings, of 3.5 years.

Care homes and student accommodation

48. Following the publication of the Planning Policy Guidance on 6 March 2014 the Council has reviewed the assessment to take account of previously unaccounted for supply in respect of accommodation for elderly persons and students. In the Council's assessment this would increase the supply to 6.67 years (5% buffer) or 5.84 years (20% buffer)⁹.

⁸ Strategic Housing Land Availability Assessment

⁹ Inquiry Document 20, Supply Position table 1.4

49. There was considerable discussion at the Inquiry as to whether it was legitimate to include these elements in the calculation of supply. The Appellant's position is that no allowance was made for this type of accommodation in calculating the household requirement and therefore it should not be included on the supply side.
50. Paragraph 37 of the PPG states that local planning authorities should count housing provided for local people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan
51. There are no relevant local plan provisions addressing the contribution of housing provided for older people in Cheshire East. Nevertheless having regard to the Practice Guidance it seems reasonable in principle to make such an assessment and include it in the calculation. The Council suggested a reduction of one fifth would provide an appropriate sensitivity test to account for the fact that a unit of elderly person's accommodation would not necessarily release an equivalent number of dwellings for general occupation.
52. With regard to student accommodation, the Appellant argued that student accommodation recently completed in Cheshire East would be even less likely to free up a significant number of dwellings for general need. Much of the accommodation at Reeseheath College, Nantwich was for 16 – 18 year olds, and likely to accommodate students who would otherwise be living at home with their parents. Evidence in relation to Manchester Metropolitan University, which provides student accommodation at Crewe campus, indicates that alternative accommodation available for students tends to be in properties of at least 3 bedrooms, so that 3 units of student accommodation would release at most one unit of market accommodation. In other words, a reduction of $\frac{2}{3}$ on the gross number of units provided would not be unreasonable.
53. While I consider that it is reasonable to include some allowance for elderly persons and student accommodation, in the absence of a detailed study on which there has been consultation, and to avoid unrealistic assumptions about the level of contribution, the 'worst case' discounts of $\frac{1}{5}$ of elderly person accommodation and $\frac{2}{3}$ student accommodation should be applied.

Summary

54. The Council has relied on the RSS figure to demonstrate the existence of a 5 year supply. For the reasons given above I consider that this is a constrained figure, which cannot be relied on as a proxy for the full objective housing requirement. The Appellant has put forward a requirement of 1800 dwellings per annum as an objective assessment of housing need. On this basis, it is argued that the supply may in reality be as low as 2.72 years (5% buffer) or 2.38 years (20% buffer). However, this assessment of need has not been subject to any consultation and is likely to be one in a range of assessments presented to the forthcoming local plan examination. While it has been carried out by a reputable and experienced company, I do not consider that it represents an objective study, as it makes assumptions about growth rates which are matters of policy.
55. I note that the figure of 1,150 dwellings per annum is considerably lower than the Council's position in the submitted local plan which identifies an annual requirement of 1350. While limited weight can be attributed to the emerging

local plan at this stage, it is useful to test the consequences of adopting the higher requirement for land supply. As a proxy, this figure at least has the merit of being close to the adjusted predictions of household growth for Cheshire East, taking into account household formation between 2001 and 2011 (Paragraph 32 above), though I accept that it would not be likely to address the problem of worsening affordability.

56. Using the figure of 1,350 dwellings per year, the total requirement for the period 1 April 2010 – 31 December 2013 would be $1,350 \times 3.75$ years i.e. 5,062. From this it is necessary to subtract completions in the same period (2,150), giving an accumulated backlog at 31 December 2013 of 2,912.
57. Using the format adopted in the jointly produced summary (Inquiry Document 20), the position would look as follows:

Base Requirement	$1350 \times 5 = 6750$
Backlog 1.4.2010 – 31.12.2013	2912
5 year requirement	9662 ($6750 + 2912$)
5 year requirement (inc 5% buffer)	10045 (2009 units per annum)
5 year requirement (inc 20% buffer)	11954 (2330 units per annum)

58. I have concluded that the Council's assumptions on build out rates and lead in times are overoptimistic and therefore prefer the Appellant's approach in respect of these matters. The Council's figure for total supply presented to the Inquiry of 10,061 (including a proportion of elderly persons and student accommodation) should accordingly be reduced to 8,784¹⁰.
59. It can be seen that the supply figure would produce a significant shortfall, whether or not a 20% buffer is applied. Even on the Council's more optimistic assumptions regarding lead in times, the identified supply would only barely produce a five year supply assuming a 5% buffer, and would still produce a shortfall if a 20% buffer is applied.
60. I therefore conclude on the balance of probability that the Council's assertion that it can demonstrate a five year supply of housing land rests on application of favourable assumptions in respect of the housing requirement and elements of supply, which I consider to be unrealistic for the reasons given above.
61. I am aware that the Hunston case places the burden of identifying the full objective housing requirement on the decision maker. Realistically I do not consider that the information provided to me at the Inquiry is sufficient for a full objective assessment to be made. Nevertheless it has been possible to reach a balanced conclusion in respect of land supply which allows me to be confident that a five year supply cannot currently be demonstrated by the Council.

¹⁰ Inquiry Document 20, Table 'Lead in 1.5'

Whether any identified benefits of the proposal are significantly and demonstrably outweighed by any harm such that the presumption in paragraph 14 of the Framework to consider favourably applications for sustainable development is outweighed

62. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
63. At a number of previous inquiries, the Council has accepted that Policies PS8 and H6 are out of date insofar as they seek to control the supply of housing land. My conclusion that the Council remains unable to demonstrate a 5 year supply of housing land means that remains the position in respect of the these Policies. Paragraph 49 of the Framework is engaged, and this appeal should be considered in the context of the presumption in favour of sustainable development. The end date for the CBLP was 2011. While the policies have been saved for an indefinite period, the SoS expressed a clear expectation that they would be replaced with up to date policies at an early date.
64. Insofar as the policies are concerned with protection of the Countryside they continue to attract weight in accordance with the advice in the Framework. It is not disputed that the proposal would conflict with this aspect of the policy. However, conflict with the development plan is capable of being outweighed by other material considerations.
65. It is accepted by the local planning authority that the housing needs of Cheshire East cannot be met without the release of sites in the Countryside. The local planning authority has itself taken a proactive role in granting permission on number of such sites in order to boost the supply of housing in advance of the Local Plan.
66. The Framework's policies for significantly boosting the supply of housing are material considerations of great significance and weight. I have concluded that the proposal represents sustainable development and should therefore be considered in the context of the presumption in favour, as set out in paragraph 14 of the Framework. While there would be conflict with policies PS8 and H6 of the CBLP insofar as they are concerned with protecting the countryside, the harm would be limited in the context of the present character of this part of Sandbach. I attach greater weight to the urgent need to boost housing supply, including the delivery of 30% as affordable housing. This need is emphasised by the continuing absence of a demonstrable 5 year supply of housing land in Cheshire East. The provision of an area of open space with opportunities for landscaping and planting weighs in favour of allowing the development. Any adverse effects of granting permission, including the loss of best and most versatile land, would not be of such consequence as to significantly and demonstrably outweigh these benefits, when assessed against the policies of the Framework taken as a whole.
67. For the reasons given above, I conclude that the appeal should be allowed and planning permission granted.

Conditions

68. The Appellant and the Council agreed a list of conditions to be attached in the event of permission being granted. The application was made in outline, with

all matters except access reserved, so it is necessary to attach the appropriate outline and timetable conditions. A condition requiring details of site levels is necessary to ensure that the development relates well to the surroundings in the interests of ensuring a satisfactory appearance. A phasing condition is necessary to ensure that development proceeds in a logical and orderly manner. Submission of samples of materials is necessary to ensure a satisfactory appearance which reflects local distinctiveness.

69. Conditions to address surface water run-off, flood risk management and foul drainage are necessary to achieve satisfactory drainage, and avoid the risk of flooding or pollution. A condition dealing with the potential for contamination to be discovered during construction works is necessary to ensure that such contamination is effectively remediated before the development is occupied. An environmental management plan is necessary to protect the amenity of local residents during construction.
70. Preparation of a travel plan is needed to enhance options for sustainable travel patterns. The provision of a buffer zone along the water course is a standard requirement to enable access for maintenance. An ecological mitigation strategy and a condition in respect of nesting birds are required to address and mitigate any ecological impacts of the development. Conditions dealing with replacement hedge planting, tree protection, landscape design and management, and open space are necessary to ensure a satisfactory appearance and a good standard of amenity.

S106 Obligation

71. A signed obligation dated 6 June 2014 was submitted at the Inquiry. This would secure the provision of 30% of the dwellings as affordable housing, including a proportion of affordable rented dwellings, as well as intermediate housing. It would also secure the provision of open space within the development, ongoing maintenance and for safety inspection of the play equipment. It requires the owner or successors in title to make the following financial contributions: a Highways Contribution of £200,000 for works to alleviate congestion at local pinch points, such as Old Mill Road/ the Hill, Crewe Green Roundabout and Junction 17 of the M6; an educational contribution of £342,610 to provide primary and secondary school places required by the development; and a Cycling Contribution of £100,000 for improvements to cycling provision in the Wheelock, Sandbach and Elworth/Etiley Heath area. A management company would be set up to secure ongoing management and maintenance of open space.
72. Inquiry Document 18 is a compliance statement prepared by the Council. It sets out the policy basis which underlies the requirement for contributions. Having regard to these policies I consider that the provisions of the signed obligation are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. They therefore accord with the advice in paragraph 204 of the Framework, and with the statutory tests set out in the Community Infrastructure Levy Regulations.

Decision

Appeal Ref: APP/R0660/A/14/2212992

73. The appeal is allowed and planning permission is granted for the erection of up to 100 dwellings, public open space, green infrastructure and associated works at Land off Hind Heath Road, Sandbach, CW11 3WA in accordance with the terms of the application, Ref 13/3887C, dated 12 September 2013, subject to the conditions set out in the attached Schedule.

David Richards

INSPECTOR

Richborough Estates

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) No development shall take place until details of existing ground levels, proposed ground levels and the level of proposed floor slabs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) The Reserved Matters shall include a scheme of phasing for the development. The development shall be carried out in accordance with the approved scheme unless amended by a subsequent Reserved Matters application.
- 6) No development shall take place until samples of the materials to be used in the construction of boundary treatments and the external surfaces of the dwellings to be erected have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) The development hereby permitted shall not be commenced until such time as a scheme to limit the surface water runoff generated by the proposed development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
- 8) The development hereby permitted shall not be commenced until such time as a scheme to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
- 9) The development hereby permitted shall not be commenced until such time as a scheme for the disposal of foul water has been submitted and approved in writing by the local planning authority. For the avoidance of doubt, surface water must drain separately from the foul and no surface water will be permitted to discharge directly or indirectly into the existing public sewerage system. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
- 10) Prior to the development commencing:-
 - (i) A Phase II investigation shall be carried out and the results submitted to, and approved in writing by, the Local Planning Authority (LPA).

- (ii) If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by, the LPA. The remediation scheme in the approved Remediation Statement shall then be carried out.
 - (iii) If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.
- 11) Prior to the development commencing, an Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. In particular the plan shall include:-
 - (i) The hours of construction work and deliveries;
 - (ii) The parking of vehicles of site operatives and visitors;
 - (iii) Loading and unloading of plant and materials;
 - (iv) Storage of plant and materials used in constructing the development;
 - (v) Wheel washing facilities;
 - (vi) Details of any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
 - (vii) Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
 - (viii) Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;
 - (ix) Waste Management: There shall be no burning of materials on site during demolition / construction;
 - (x) A scheme to minimise dust emissions arising from demolition / construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development.
- 12) Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. No part of the development hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.
- 13) No development shall take place until a scheme for the provision and management of at least an 8 metre wide buffer zone alongside the watercourse in the western section of the site shall be submitted to and

agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping. The scheme shall include:

- (i) Plans showing the extent and layout of the buffer zone.
 - (ii) Details of any proposed planting scheme.
 - (iii) Details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.
 - (iv) Details of any proposed footpaths and boundary treatments.
- 14) Notwithstanding the submitted Ecological Mitigation Strategy (August 2013), any future reserved matters application shall be supported by a revised Ecological Mitigation Strategy. The Strategy shall be in accordance with the recommendations of the submitted Ecological Mitigation Strategy (August 2013).
- 15) Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the local planning authority. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to Local Planning Authority before any further works within the exclusion zone take place.
- 16) The reserved matters shall make provision for replacement hedge planting for any hedgerows to be removed as part of the development hereby permitted.
- 17) No development shall commence (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until a detailed Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. No development shall take place except in complete accordance with the approved Method Statement. Such Method Statement shall include details of the following:-
- (i) A scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a Tree Preservation Order currently in force, or are shown to be retained on the approved layout, which shall be in place prior to the commencement of work.
 - (ii) Implementation, supervision and monitoring of the approved Protection Scheme. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority.

- (iii) A detailed Treework Specification.
 - (iv) Implementation, supervision and monitoring of the approved Treework Specification.
 - (v) Implementation, supervision and monitoring of all approved construction works within any area designated as being fenced off or otherwise protected. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (vi) Timing and phasing of Arboricultural works in relation to the approved development.
- 18) A Landscape Design and Management Strategy will be prepared and agreed in writing by the Local Planning Authority prior to development commencing. This strategy will identify enhancements to the publicly accessible open space, including, but not restricted to, hedgerow and hedgerow tree planting to the western boundary, supplementary tree planting to the northern boundary, and various native tree and shrub planting along the stream corridor; along with various informal footpath connections linking the open space with the existing context and proposed development, and a timetable for implementation. The approved Strategy shall be implemented in accordance with the approved timetable.
- 19) Prior to commencement an Open Space Scheme shall be submitted to, and approved in writing by, the Local planning Authority. The scheme shall include details of the location, layout, size, timing of provision, proposed planting, location and type of any boundary structures, and specification of materials. In order to maintain the integrity and long term future viability of the open space, no site and work compounds can be located on the open space areas without the prior consent of the Local Planning Authority. The Open Space shall be provided in accordance with the approved scheme.
- 20) Prior to the implementation of any area of public open space identified in the Open Space Scheme, a Management Plan for the future management and maintenance of the open space shall be submitted to, and approved in writing by, the Local Planning Authority. The Plan shall identify the maintenance requirements including all ongoing maintenance operations, and shall be thereafter implemented in perpetuity.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Timothy Straker QC	4 - 5 Gray's Inn Square
He called	
Graham Stock BA Hons, MA, MRTPI, AIEMA	Deloitte LLP, on behalf of Cheshire East Council

FOR THE APPELLANT:

Christopher Young of Counsel	No 5 Chambers
He called	
David Stentiford BA (Hons), BTP, MRTPI	Pegasus Planning
James Donagh BA (Hons), MCD, MIED	Barton Willmore LLP
Andrew Williams BA (Hons) DipLA DipUD CMLI	Define Planning and Design Ltd
John Coxon BSc (Hons), MRTPI	Emery Planning Partnership Ltd

INTERESTED PERSONS:

Gail Wait	Ward Councillor for Ettiley Heath and Wheelock Ward, Cheshire East Council
John Minshull	Local resident
Carolyn Jealous	Local resident

DOCUMENTS

1	Extracts from Cheshire Waste Plan.
2	Cheshire East Council Strategic Planning Board Officer Report – Hassall Road, Sandbach.
3	Stratford on Avon DC v Secretary of State and JS Bloor, Hallam Land & RASE Judgement [2013] EWHC 2074 (Admin).
4	David J Stentiford Proof of Evidence – Errata Sheet.
5	South Northamptonshire Council v Secretary of State and Barwood Land and Estates Judgement [2014] EWHC 573 (Admin).
6	Cheshire East Council table of Windfall Sites.
7	Extracts from the North West Regional Spatial Strategy.
8	Policy 19 of Cotswold Distinct Local Plan 2001 – 2011.
9	Appellant table 'Assessment of Residential Applications Determined Between 4 th Dec 2013 & 5 th February 2014'.
10 (i)	Cheshire East Council table showing appeals where they claimed a 5 year supply at close of inquiry but that position not supported by the Inspector.
10 (ii)	Appellant table 'Assessment of Residential Applications Determined Between 4 th Dec 2013 & 5 th February 2014' with Cheshire East Council comments.
10 (iii)	Email from Paul Campbell of the Appellants to Cheshire East Council - submitted to the Inquiry by Cheshire East Council.
11	Secretary of State's Congleton Borough Local Plan Saving Direction.
12 (i)	Timeline for the preparation of the North West Regional Spatial Strategy – submitted to the Inquiry by Cheshire East Council.
12 (ii)	Timeline for the preparation of the Congleton Borough Local Plan – submitted to the Inquiry by Cheshire East Council.
12 (iii)	Extracts from Planning Policy Guidance.
13	Conditions agreed between the Appellant and Cheshire East Council.
14	Local Plan Statement of Consultation (Regulation 22).
15	List of people who wish to attend the Local Plan Examination and present evidence.
16	Elworth Hall Farm – Court Claim Form.
17	Statement of Common Ground
18	Cheshire East Council CIL Compliance Statement
19	Cheshire East Council CIL Compliance Statement – Appendices
20	Summary of Appellant and Cheshire East Council housing supply positions
21	Details on disputed supply sites
22	Bus service frequencies
23	Statement of Carolyn Jealous

24	Statement of John Minshull
25	Statement of Councillor Gail Wait

Richborough Estates

Costs Decision

Inquiry held on 3 - 6 and 30 June 2014

Site visit made on 6 June 2014

by David Richards BSocSci DipTP MRTPI

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

Decision date: 1 August 2014

Costs application in relation to Appeal Ref: APP/R0660/A/14/2212992 Land at Hind Heath Road, Sandbach

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Richborough Estates Partnership LLP for a full or partial award of costs against Cheshire East Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of up to 100 dwellings, public open space, green infrastructure and associated works.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Richborough Estates Partnership LLP

2. The costs regime is aimed at ensuring, amongst other things, that planning authorities exercise their responsibilities properly, and rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.
3. The Council's proposition that the proposal is not sustainable development is untenable in view of the Secretary of State's (SOS) recent decision on the adjoining site. The SOS granted permission for a larger housing development immediately adjacent to the appeal site, expressly concluding that it was sustainable development. That conclusion was reached in the full knowledge that the site was greenfield land, located beyond the settlement boundary and at around 2km from the town centre.
4. The Council's case is that permission was only granted on the adjoining site because there was a sizable shortfall in land supply. It also argues that a five year supply can now be demonstrated. On this basis it is suggested that the current appeal site should be considered unsustainable. This line of argument does not stand up to scrutiny having regard to the language used by the SoS. The present appeal site is nearly identical. While it is acknowledged that there are adverse impacts from developing greenfield land designated as countryside, these were equally relevant to the determination of the appeal on the adjoining site. A balancing exercise needs to be carried out.

5. Of more significance is that the Congleton Borough Local Plan (CBLP) was not time expired in terms of meeting development needs at the previous Inquiry. In this case, the CBLP is time expired. The position in terms of the relevant up to date development plan policies has deteriorated and there is still no replacement plan to which weight can be given.
6. The site is sustainable and it is not reasonable to argue otherwise. It encompasses economic and social benefits to which the Council has failed to give sufficient weight. Sustainable development is not just about environmental concerns. The site is well located for many important daily facilities such as the primary school, bus routes, and the railway station.
7. The Council has placed undue reliance on policies PS4, PS8 and H6. They are all concerned with the fact that the site is outside the identified settlement zone line (SZL) for Sandbach. The Council's approach fails to acknowledge that the CBLP does not address present development needs, and has not done so for 3 years. It has failed to have regard to the following considerations: the view expressed by the SoS at the time of the saving direction, that there should be expeditious progress towards adopting a replacement plan, which has not happened to date; the advice that until a replacement plan was adopted the LPA should focus on regional and national policy in determining applications; and the new approach of the Framework, which places equal weight on economic and social benefits of development.
8. The weight which the Council places on these outdated policies is misplaced. The Council is also being completely inconsistent, as these policies have not been cited as a bar to the grant of permission for urban extensions and greenfield sites elsewhere in Cheshire East.
9. Landscape impact was not identified as a reason for refusal, and the Council has not called any evidence in this respect. At the Inquiry it relied on the harm as arising from loss of countryside. The issue of agricultural land quality is simply raised as a matter to be considered in the balance. It is evident that numerous other sites are being developed for housing on best and most versatile (BMV) land. These issues were not raised in the Statement of Case and are in truth makeweights.
10. When the application was ready for determination, the Council was fully aware that there were no technical reasons for refusal. The Council was, at that time, granting planning permission for a variety of different greenfield sites since it accepted at the time that there was not a five year supply of land. It was content to grant permissions contrary to adopted policies on land outside the settlement boundaries in adopted LPs between October 2013 and February 2014. This proposal was due to be determined in December 2013.
11. The Appellant was advised by a Council officer to await a decision from the Council rather than to appeal against non-determination. However the Council never determined the application. It appears to the Appellant that determination was delayed until the Council had reviewed its land availability assessment and felt able to assert that it had a five year supply of land. The officer's advice should be interpreted as clear evidence that this was an application that was eminently suitable for the grant of planning permission, in the circumstances prevailing at the time.

12. In conclusion, the Council should not have delayed the grant of permission. It failed to carry out a proper balancing exercise and give weight to the merits of the proposal, which delivers social and economic benefits with very limited harm to the countryside. It should have been granted planning permission regardless of the presumption in favour of sustainable development because the material considerations clearly outweigh conflict with the development plan. But in any event the presumption does apply because the relevant policies of the adopted LP are out of date. The presumption also applies because there is no five year supply of housing land. It does not, however, depend on this. It applies in any event because the policies of the plan are out of date.

The response by Cheshire East Council

13. The application for costs is made in respect of the substance of the Council's case. It is solely directed to the planning merits of the matter, on the assumption that the merits lie in the Appellant's favour. There is no complaint of unreasonable behaviour or conduct.
14. The Appellant appears to proceed on a basis inconsistent with the lawful approach to decision making. The simple point is that the Planning and Compulsory Purchase Act 2004 expressly provides that policies can be saved in which case they are as much part of the development plan as if they had been adopted yesterday. It is the formal saving that matters. When parliament lays down an obligation it expects its will to be obeyed down to the minutest detail.¹
15. The Appellant says, erroneously, that the Framework sets out a wholly new way of approaching development control. It does not, and could not. The Framework has absolutely no characteristic equivalent to a statement of legal approach. It is made plain that the approach to development control is given by legislation which requires applications to be determined as the development plan indicates unless material considerations indicate otherwise. To do as the Appellant suggests would be a serious error.
16. The Appellant appears to be arguing that it would be unreasonable to ascribe any weight to the development plan. However, the law demands that the development plan be considered so far as material, and demands that the decision should reflect the development plan unless material considerations indicate otherwise. Accordingly, it is not a tenable proposition not to ascribe some weight to development plan policies.
17. This case turns on whether material considerations indicate otherwise. The case is naturally concerned with the attribution of weight. On the development plan, the Appellant has a losing case. The sole point in the Appellant's favour is that these days it is regarded as desirable to increase the supply of housing. The decision maker therefore has to weigh on the one hand the development plan with its support of open countryside, in line with the Framework, and on the other hand the desire for housing, which may or may not be enhanced depending on the question of the five year supply. The balancing exercise is one on which reasonable people can have different views. The whole point about planning control is that it is submitted to not under a threat of costs, but so that impartially a view can be given.

¹ London and Clydeside Estates v Aberdeen [1980} 1 WLR 182

18. The Appellant's case on sustainability proceeds on the fallacy that because another site is just considered sustainable on its merits it flows that the appeal site is sustainable. There are obvious concerns about sustainability. Are people really going to walk the distances involved? The questions about agricultural land and landscape impact cannot just be waved away. Planning is an exercise in the public interest, which is very different from a private interest. These matters are not make weights but material considerations on which the Council has produced proportionate and fair evidence.
19. The fact that there was no formal determination by the Council is not relevant. An Appellant has its application in its own hands both in terms of timing and appeal. The fact that there are other applications in the system is a natural consequence of living in a plural society. The application should be dismissed. The local planning authority has behaved reasonably procedurally and substantively. The Inquiry has been provided with fair, credible and proportionate evidence.

Reasons

20. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
21. The Appellant considers that the Council did not properly assess the implications of the Secretary of State's decision on an adjacent site, where the SOS came to the conclusion that that site should be considered as sustainable development. In the decision to which this application relates I have agreed that the present proposal has many elements in common with the adjacent site, such that it should be considered sustainable. I note that the Secretary of State considered the site before him to be close to or probably over the limit that most people would be willing to walk on a regular basis. Nevertheless, the Framework considers that there are three dimensions to sustainability. In my view the Council has not properly assessed the economic and social benefits of the current scheme in reaching the view that the site is unsustainable. It is clear from the Framework that sustainability encompasses more than a locational and environmental dimension. The social and economic dimensions are equally important. In my view the Council has behaved unreasonably in failing to consider sustainability in the round, as the Secretary of State properly did in reaching his conclusion on the adjacent site.
22. With regard to the weight to be given to the development plan, it was not disputed at the Inquiry that there would be some harm to the countryside setting of Sandbach and conflict with Policies PS8 and H6 of the Congleton Borough Local Plan. These policies continue to carry substantial weight insofar as they seek to protect the Countryside in accordance with the advice in the National Planning Policy Framework. However, they are clearly out of date insofar as they are relevant to the consideration of housing supply, and the Council did not seek to argue otherwise.
23. While the policies are saved until such time as they are replaced, S38(6) of the Planning and Compensation Act 2004 requires applications to be determined in accordance with the development plan, *unless material considerations indicate otherwise*. The development plan clearly remains the starting point. However, the Framework and the policies expressed therein are material considerations of great significance and weight, which are capable of outweighing

development plan policy. In arguing for the primacy of the development plan the Council, even whilst acknowledging that some aspects of the saved policies are outdated, appears in this instance to have closed its mind to the significance of other material considerations in an unreasonable manner. I note that the Council has not sought to rely on these policies when favourably determining other greenfield and urban extension sites.

24. With regard to landscape and countryside impact, the Council called no specific professional evidence on these matters. While the Council's witness, as a generalist planner, is no doubt eminently capable of assessing such matters, the case presented did not identify specific harm to the wider landscape, but focused primarily on the policy conflict and encroachment into the countryside. The Appellant's assessment of the landscape impacts was not contested in any significant way, and the Council appears to have accepted that the harm would be limited to the extension of urban development. I accept that loss of countryside may in itself be considered harmful, but it is a matter to be weighed in the balance in assessing sustainability. It is another example of the consequences of failing to consider the three dimensions of sustainability. The same applies to the loss of agricultural land, on which the Council did not put forward any evidence.
25. Much Inquiry time was spent on the issue of housing land supply. I have found on the balance of probabilities that the Council remains unable to demonstrate a five-year supply of housing land. In the absence of a five year supply of land, the development should have been considered as sustainable development, to which the presumption in favour of development set out in paragraph 14 of the Framework applies.
26. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the National Planning Policy Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

27. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cheshire East Council shall pay to Richborough Estates Partnership LLP, the costs of the appeal proceedings described in the heading of this decision.
28. The applicant is now invited to submit to Cheshire East Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

David Richards

INSPECTOR