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## Appeal Decision

Inquiry opened on 7 October 2014

Site visit made on 8 October 2014

**by Diane Lewis BA(Hons) MCD MA LLM MRTPI**

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

**Decision date: 11 December 2014**

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**Appeal Ref: APP/R0660/A/14/2212604**

**Land to the south of Old Mill Road, Sandbach, Cheshire**

- 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 Muller Property Group against Cheshire East Council.
- The application Ref 13/2389C is dated 6 June 2013.
- The development proposed was described in the application as up to 250 residential dwellings, open space and new access off the A534/A533 roundabout.
- The inquiry sat for four days on 7 to 10 October 2014.
- An application for costs was made by Muller Property Group against Cheshire East Council. This application is the subject of a separate Decision.

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

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### The proposal

1. Following the submission of the application the Council issued a formal screening opinion that concluded the proposal represented 'EIA development' and required an Environmental Impact Assessment<sup>1</sup> (EIA). An EIA was carried out to address the matters identified in the screening opinion. In making my decision I will take full account of the Environmental Statement and all other environmental information, including comments and representations made by statutory consultees and members of the public.
2. During the processing of the application, the proposal was amended to a residential development for up to 200 dwellings, with associated open space and a new access off the A534/A533 roundabout. The application was submitted in outline with approval sought for access. All other matters, appearance, landscaping, layout and scale, were reserved. At the inquiry the appellant confirmed that 'access' is confined to the formation of a new arm off the roundabout and that approval is not sought at this stage for accessibility and circulation routes within the site for vehicles, cycles and pedestrians. Consequently the alignment of the proposed spine road, as shown on the location plan (ref. SCP/13111/F04 D) is not for determination. The housing layout, constraints diagrams and sections are indicative only.

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<sup>1</sup> Core Document (CD) E1

3. The appeal was made against non-determination. The Council resolved that it would have been minded to refuse planning permission on two grounds<sup>2</sup>, which in summary are:
  - The development by reason of its open countryside location would be unsustainable and harmful to the intrinsic character and beauty of the countryside, contrary to Policy PS8 of the Congleton Borough Local Plan First Review 2005 and principles of the National Planning Policy Framework. The Local Planning Authority can demonstrate a five year supply of housing land and consequently there are no material considerations to indicate permission should be granted.
  - The proposal would result in the loss of the best and most versatile agricultural land and given that the Authority can demonstrate a housing land supply in excess of five years the applicant has failed to demonstrate there is a need for the development which could not be located elsewhere.
4. Subsequently the Council resolved to contest the appeal on an additional ground. This ground concerned the adverse impact on the landscape character of the area and the conflict with Policy GR5 of the Congleton Borough Local Plan First Review.
5. A unilateral undertaking dated 10 October 2014 was delivered to the Council with provisions to secure affordable housing, open space and ecological mitigation and contributions towards education and highway improvements. After the close of the inquiry a unilateral undertaking dated 20 November 2014 was submitted, primarily to correct an error in the amount of the secondary education contribution from £421,909 to £424,909. There were no other substantive changes. Each undertaking is a completed document and binds the land and the parties entering into the deed. It is matter primarily between the Council and the Appellant to resolve the procedural implications. In the circumstances it is reasonable to take account of the November undertaking.

### **The Inquiry**

6. In all the written documentation and evidence the Council's case was that a five year housing land supply was able to be demonstrated.
7. Housing land supply was dealt with on the third day of the inquiry. The Council's witness when cross-examined made a number of concessions in relation to the total housing requirement and to the supply of land. He accepted the Council was unable to demonstrate a five year housing land supply.
8. In view of the position established through cross-examination submissions were invited on behalf of the Council and the Appellant. The Council made clear that the concessions from the witness were inconsistent with its case and maintained a formal position that the concessions were misplaced. The Appellant emphasised that when tested the Council's evidence was shown not to be robust. Given that it had been established the Council was unable to demonstrate a five year housing land supply, cross-examination on the Council's case was not available.

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<sup>2</sup> The grounds are set out in full in the Statement of Common Ground at 1.8.

9. I decided that it would be inappropriate to call the Appellant's witness on housing land supply. This decision was based on the particular circumstances that arose at the inquiry, including the detail of the cross-examination and the comprehensive nature of the concessions obtained. My conclusions on the issue of a five year housing land supply will be against this background.
10. The Council's formal position remained that it was able to demonstrate a five year housing supply. In future it will be open to the Council to call other professional witnesses to support that position. Consequently it would be able to test the cases of other appellants in a manner that it was unable to do in this appeal.
11. After the close of the inquiry the Inspector's interim views on the legal compliance and soundness of the submitted Cheshire East Local Plan Strategy were published. Being a material consideration, the main parties were invited to comment in so far as relevant to this appeal and the representations have been taken into account.

### **Appeal Site**

12. The site is to the south of Sandbach town centre and consists of two areas of land.
13. The larger area to the east of the A534 has an undulating topography and is proposed for the housing and associated open space (the residential site). Along the boundary with the A534 road corridor the planting belt of mainly deciduous species is maturing well. The residential estate to the east of the site dates from the 1970's. The southern boundary adjoins the buildings and yards at Houndings Lane Farm and the winding route of Houndings Lane. Within the site is a group of buildings and yard known as Fields Farm, which is occupied by an engineering and drainage contractor. Otherwise the site is primarily grazing land, where the small irregular fields are defined by hedgerows supporting individual trees. A large mature oak tree towards the north west of the site is of high amenity value and is prominent in the local landscape. Public footpaths cross the fields and link to the wider rights of way network. To the south and south east the surrounding rural area and wider agricultural landscape is dominant.
14. The area of land to the west of the A534 is identified for surface water drainage attenuation and ecological mitigation (the west site). The adjacent land is largely of grassland pasture and the Arclid Brook flows along the majority of the western boundary.

### **Main Issue**

15. I consider the main issue is whether or not the proposal is a sustainable form of development, taking full account of the development plan and the National Planning Policy Framework (the Framework).
16. This issue will be informed by consideration of:
  - Whether the relevant development plan policies are consistent with and up-to-date with policies in the Framework.
  - The effect of the proposal on landscape character, visual amenity and the countryside setting of Sandbach.

- The effect of the development on the agricultural industry, having particular regard to loss of the best and most versatile agricultural land and the location of the housing site in relation to a working farm.
- Whether Cheshire East is able to demonstrate a five year supply of deliverable housing sites.
- Whether the site is located to maximise the use of sustainable travel modes and whether the impact on the highway network would be significant.

## **Reasons**

### ***Planning Policy***

17. The Congleton Borough Local Plan First Review adopted in 2005 (the Local Plan) applies to the appeal site and the surrounding area. The allocation of land for development requirements was made in accordance with the principles of sustainable development, the settlement hierarchy identified in Policy PS3 and the restraint policies of the plan. The strategy was to concentrate the bulk of the new development within the settlement zone line (SZL) of the towns of the Borough. Sandbach is one of the major settlements identified to be the focus of new development in accordance with Policies PS3 and PS4. Policy PS8 complements the strategy by protecting the open countryside and restricting development to that shown to be essential to local needs and the rural economy. New dwellings are to be in accordance with Policy H6, which restricts residential development in the open countryside to a limited number of categories. Policy GR5 seeks to ensure any development respects or enhances landscape character, views or landscape features and protects features that contribute to the setting of urban areas.
18. The appeal site lies outside the SZL for Sandbach and is in the open countryside. The development of up to 200 homes on the land is not a form of residential development permitted by Policy H6 and therefore the proposal is contrary to Policy PS8. The Appellant accepted that the proposal would adversely affect the character of the landscape and conflict with Policy GR5. On this basis the direction of the development plan is to reject the proposal.
19. The Framework does not change the statutory status of the development plan as the starting point for decision-taking. The importance of up-to-date plans is reinforced. Paragraph 14 confirms that a presumption in favour of sustainable development is at the heart of the Framework and sets out the implications for plan-making and decision-taking. In this appeal attention centred on the interpretation and application of the latter part of paragraph 14: "where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in this Framework as a whole". 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 deliverable housing sites (paragraph 49). Also, it is now the case that due weight should be given to the relevant policies in existing plans according to their degree of consistency with the Framework (paragraph 215).

20. The Framework promotes a strong rural economy, directs rural housing to locations where it will enhance or maintain the vitality of rural communities and seeks to avoid isolated new homes in the countryside. Policy PS8 by protecting the open countryside from inappropriate development is generally consistent with those policies of the Framework. The principle of a settlement hierarchy is also consistent with the achievement of a sustainable pattern of development. However, the SZLs, including those for Sandbach, were defined to allow for sufficient growth to meet future land use needs for the plan period to 2011. The limits are out of date because of the accepted need to provide additional land to accommodate future development beyond 2011. Development outside the SZL is subject to the Local Plan policies in respect of the open countryside. Therefore the land to which Policy PS8 applies is no longer reliably defined. Consequently Policies PS3, PS4 and PS8 in the development plan, which are policies for the supply of housing, are out of date and the test in paragraph 14 applies. Following the approach in the *Bloor Homes* judgement<sup>3</sup> it is not necessary to carry out an initial test to determine whether or not the development is sustainable.
21. The Framework states that decisions should aim to ensure that developments respond to local character and history and reflect the identity of local surroundings. The planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. The Planning Practice Guidance clarifies that local plans should include strategic policies for the conservation and enhancement of the natural environment, including landscape. This includes designated landscapes but also the wider countryside.
22. The Local Plan identifies the landscape as being important to the character and quality of the Borough and Policy GR5 shows consistency with the policies in the Framework. The fact that Policy GR5 does not incorporate a 'cost/benefit' approach to allow countervailing economic or similar benefits to be weighed in the balance does not detract significantly from that consistency of purpose<sup>4</sup>. The policy has considerable weight.
23. The new Local Plan for Cheshire East has been undergoing public examination. The emerging policies and land allocations have limited weight in view of the outstanding objections. By reason of its scale, permitting the appeal proposal would not prejudice the outcome of the development plan process. Prematurity is not a reason for withholding planning permission. The Council did not seek to argue otherwise.

### ***Landscape Character and Visual Impact***

#### *Landscape character*

24. There have been a series of landscape character assessments ranging from the national level to the more relevant County and District assessments. Referring to the Cheshire Landscape Character Assessment, the site is located in the Higher Farms and Woods Landscape Character Type. Representative characteristics that are applicable to the site and its surroundings include the

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<sup>3</sup> *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin).

<sup>4</sup> *Anita Colman v Secretary of State for Communities and Local Government and others* [2013] EWHC 1138 (Admin) paras 22, 23. *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government and others* [2014] EWHC 754 (Admin)

gently rolling and moderately undulating topography with steeper slopes around streams, small winding country lanes, a mix of field patterns delineated by hedgerows and hedgerow trees, and the presence of ponds. Urban influences are present, notably the main transport corridors around the southern edge of the town and on a smaller scale the horse paddocks and diversification that has occurred at Fields Farm.

25. The Little Moreton Character Area, within the Landscape Type, lies to the east of Sandbach. The description is of a small to medium scale character area, where the close proximity of nearby urban areas can strongly influence landscape character.
26. In the Congleton Landscape Assessment the site is located within the Wheelock Rolling Plain landscape type. The area is described as 'pleasant' and the descriptive material adds some additional detail to the County Assessment. The forces for change include new housing. Guidelines for future management refer to the promotion of areas of nature conservation, the improvement of the quality of the urban fringe at Sandbach and the management of hedgerows as conservation features within the landscape.
27. The site is not subject to any national or regional landscape designations, nor is the site within an Area of Special County Value designated under Policy PS9 of the Local Plan. There has been no opportunity to designate it as a Local Green Space in the absence of a Neighbourhood Plan. Nevertheless, as stated in the GLIVIA<sup>5</sup>, this lack of protection is not determinative of landscape value. The landscape character assessments are helpful in understanding the character and local distinctiveness of the landscape and identify the features that give it a sense of place. The landscape and visual impacts have been assessed in detail by the Council's landscape architect Mr Gomulski and the Appellant's landscape consultant Mr Berry. These assessments have informed my own conclusions.
28. The development would extend the built-up area and encroach into the countryside. There are no rare or unique features but the value is indicated by a range of other factors. The landscape is generally intact, individual elements are in good condition and are characteristic of the character area. A wildlife corridor is present on the northern and western part of the site. The land is important for its visual benefit as open countryside in close proximity to Sandbach and is of good scenic quality despite the small number of incongruous features, such as the telecommunications mast. The site is of sufficient size to offer relative tranquillity away from the main roads and urban edge. The land makes a positive contribution to the countryside setting of the market town. The role of the land in the local history of the area continues to be reflected in the landscape, including the winding route of Houndings Lane, the valley of the Arclid Brook and the historic buildings within the Fields Farm complex.
29. In terms of landscape sensitivity, the proximity to the developed area of Sandbach has influenced the landscape character but not unduly so. The dominant land use is agriculture and the open storage and clutter at Fields Farm is not obvious unless you walk through or alongside the cluster of buildings. The presence of the adjoining highways is reduced by the variations

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<sup>5</sup> Guidelines for Landscape and Visual Impact Assessment (3<sup>rd</sup> edition) The Landscape Institute and Institute of Environmental Management and Assessment 2013 paras. 5.26-5.31.

in topography, the belt of planting and, in relation to the eastern and southern parts of the site, the separation distance. The residential edge, although visually weak, is clearly defined and the residential use has not encroached onto the agricultural land. The horse paddocks have retained the essential character as grazing land, rather than being intensively used for recreation purposes. These considerations lead me to prefer the conclusion of Mr Gomulski that the landscape has a medium-high susceptibility to the proposed change.

#### *Effect of the proposal*

30. The development would result in the direct loss of a portion of typical agricultural landscape and include the loss of areas of trees and hedgerow to implement vehicular access into the site. Inevitably the fabric of the landscape would change. The open undulating green fields are enhanced by extensive hedgerows and scattered field trees and interrupted by a cluster of farm buildings. These characteristics would be replaced by essentially a residential estate with associated infrastructure and potentially some 200 dwellings. Residential built form is a component of local character and a stated design principle is to limit the housing to two storey. Nevertheless, the built up area south of the town centre would become almost continuous, broken only by the area of land to the west of the A534 containing Arclid Brook and the corridor of planting along the Bypass. Built development on the higher land of the site would have undue prominence. The rural character of Houndings Lane would be harmed and the suburban edge would be extended. Consequently the strong landscape framework that contributes positively to the setting of Sandbach would be seriously eroded.
31. The value placed on the landscape setting by the local community was questioned by the Appellant because of a lack of objection to the scheme and low attendance at the inquiry. However, the Town Council's objection to the proposal highlighted the greenfield nature of the land and the written representations by a number of individuals referred to the harm to the local environment. Councillor Corcoran, Ward Councillor for Sandbach, attended the inquiry and described how the development would radically change the aspect of the market town. I consider there is merit in the argument that the current proximity of the countryside to the town centre adds to the distinctiveness of the town. The magnitude of change would be medium high, albeit localised within the landscape character area.

#### *Mitigation*

32. The outline form of the application means that there is a high degree of uncertainty over the extent of mitigation. The concept plan indicates that sections of hedgerows and some trees would be retained but because it is purely indicative and not for approval at this stage, the plan has very little weight. The relevant design principles are generalised in nature and refer to proposed landscape buffers, provision of public open space and reinforcement of existing landscape features. On this evidence base, the mitigation would be of limited value in reducing the harm to landscape character. The mitigation strategy outlined in Mr Berry's evidence is more responsive to landscape character but principles have not been reflected adequately on the concept plan (lack of boundary planting, encroachment of infrastructure into the western boundary green corridor, retained hedgerows in domestic gardens, streets with

little reference to narrow lanes). On the evidence the significance of the landscape effects would be moderate to substantial adverse on the site and its immediate setting.

### *Visual assessment*

33. The significance of the visual effects would be strongly influenced by the location of the site close to the town, the undulating topography, the proximity of residential properties to the east and the network of public rights of way across the land and the surrounding countryside. Representative viewpoints were established through Mr Berry's evidence. These include a number of viewpoints on and around the site and from the edge of the town centre to the north. Viewpoints from footpaths further away were also highlighted. The topography, vegetation and existing development confine the extent of the visual envelope largely to the area bounded by the A534 Wheelock Bypass, the Wheelock Trail, Hassell Road and the residential estate to the east, with an extension to the north along the A533.<sup>6</sup> The most sensitive receptors would be people using the public footpath network, especially the footpaths crossing the site, pedestrians using the footways adjacent to and near the land and the occupiers of nearby homes. Views from the surrounding road network would tend to be transient and glimpsed and hence of medium sensitivity.
34. The probability is that the significance of the change would be substantial for those using the public footpaths across the site, who are likely to be enjoying the countryside. The predominantly pastoral landscape with views across the fields towards the market town would be replaced by an urban scene. The objection of Congelton Ramblers referred to the irrevocable change to the nature of Sandbach and rural pedestrian access to the centre of the town. This objection was made before the amendment to the scale of the proposal but it indicates the value placed by the community on the rural character of pedestrian routes into the town. Enhancement of surfaces and boundary treatment were suggested by the Appellant as improvements to the current context. I accept that planting within the residential area would have an increasingly beneficial effect over time. Nevertheless, the built form would dominate and the high magnitude of change would continue to have substantial significance.
35. Local views along Houndings Lane and the views from the town south across the site would assume a suburban character. The existing close visual link to the countryside and rural character would be lost. The adverse effect on the setting of the urban area would have considerable significance.
36. The outlook from nearby residential properties would be affected to a varying degree depending on such factors as proximity, the presence of existing vegetation and orientation of individual plots. The new development would be of a compatible use and built form and, subject to design, would not be visually intrusive. Overall I agree with the assessments of both experts that the visual effect would be moderate adverse, with the expectation that the perceived effect would reduce over time as a result of mitigation.
37. As explained in the Council's evidence, currently travellers along the highway network are likely to be aware of a sudden transition from the urban edge to the wider rural landscape. The farm buildings are part of the rural scene and

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<sup>6</sup> This visual envelope is indicated on Figure 2 in the Appendices to Mr Berry's proof.



the residential estate to the east is sufficiently distant to have little visual impact. The encroachment of new housing into the relatively open setting would have a moderate impact. The effect could be reduced after 15 years, dependent on the depth of the landscape buffer, the success of new planting and the siting of new dwellings.

38. At greater distance views of the development from highways and rights of way to the south of the site (viewpoints 14 to 17) would become increasingly obscured by reason of the rolling topography and the established landscape framework of intervening trees and boundary hedgerows. Harmful effects would be slight or negligible.

### *Conclusions*

39. The loss of this area of countryside to housing would adversely affect the landscape character of the site and the surrounding area and would have a negative effect on the setting to the urban area of the market town. The proposal is not supported by Policy GR5. The degree of harm and the extent to which the proposal may respect landscape elements would be dependent on the details of the scheme, which are not for consideration in the outline application. The application of the landscape mitigation principles suggests that the indicative housing layout would have to undergo significant amendment and possible reduction in housing units.
40. The Framework is not only concerned with protection of nationally designated landscapes but in preparing plans to meet development needs the aim should be to minimise adverse effects on the local and natural environment. Account should be taken of the different roles and character of different areas and recognition afforded to the intrinsic character and beauty of the countryside as core planning principles. With this proposal there would be significant harm to local character and given the lack of detail it is not possible to say that the harm would be minimised. Whether this environmental harm would be sufficient to justify refusal of permission is a matter for further consideration in assessing the overall sustainability of the proposal.

### ***Agricultural interests***

41. The residential site consists of several fields extending to some 8 hectares (ha) in total. Much of the land is used for grazing dairy cattle on Houndings Lane Farm but a smaller area is within Fields Farm, where the open land is used for grazing horses. The land slopes to the north west, with steep gradients towards the Wheelock Bypass and the apex of the site near the roundabout. The flatter land is towards the south eastern end of the site. As a matter of fact gradient is the main limiting factor on the Agricultural Land Classification grade. Some 4.6 ha (55%) is grade 2 agricultural land, around 2.8ha (34%) grade 3b/4 and just less than 1 ha is in non-agricultural use.
42. Therefore just over half the site is of the best and most versatile agricultural land (BMV). There are constraints on realising its full potential. The BMV land is not in a single contiguous parcel but is fragmented and in different ownerships. The northern triangle of grade 2 land, although part of Houndings Lane Farm, can only be accessed through lower grade, more steeply sloping land. As a result the use of farm machinery is precluded and the land is restricted to use for grazing. The expert evidence of Mr Hughes is that only about 2 ha (26% of the total area) is suitable to be used to its full potential. In

addition, the effect of the loss on Houndings Lane Farm is unlikely to be significant to the farm business as a whole. The farm holding totals some 350 ha on two sites, with about 200 ha linked to Houndings Lane Farm, where the business is based on a dairy herd of around 400 dairy cows.

43. The Framework encourages the use of areas of poorer quality land in preference to that of a higher quality. The proposal is not consistent with that objective. Nevertheless when land ownership, practical and physical constraints are taken into account the consequences of the potential loss of around 4.6 ha BMV land to the farming economy and food production would be less serious.
44. The probability is that because of the shape and topography of the site a fair proportion of the proposed dwellings would be sited to the north and east of the farm buildings and yard at Houndings Lane Farm. In fact the indicative scheme layout shows gardens backing onto a silage clamp and some dwellings sited within a few metres or so from the north western boundary of the farm unit. There is the potential for dwellings, and more especially those nearest the boundaries, to be in close proximity to the activity and the associated noise and odour associated with a working dairy farm and the outlook would be severely affected by the silage clamp. The proposed housing would have a very different relationship to the farmstead when compared to the existing residential development to the east of the site on Palmer Road, Condliffe Close and Laurel Close, which is a good distance away. The fact that there have been no complaints from residents about the farming operation provides no guide to the likelihood of future complaints after development.
45. There are proposals to reorganise and update the farmstead that includes relocation of the silage clamp. Even so, to site dwellings and private gardens immediately next to a farmyard, with no buffer space at all, would be poor design and unacceptable in terms of amenity, whether or not the silage clamp is relocated. The indicative layout adjacent to the farm would require significant revision. The Appellant advised that the loss of some 10 units would not affect the viability of the scheme.
46. In conclusion, the BMV is not critical to the efficiency and productivity of the farming operation at Hounding Lane Farm. The proposal is unlikely to have adverse economic effects in respect of farming operations and the business overall, provided that the design of the housing layout responded to the constraints imposed by the farmyard and buildings with suitable mitigation to protect amenity. The result could be a reduction in the number of dwellings achieved on the site, thereby reducing the contribution of the development to housing supply.

### ***Five Year Housing Land Supply***

47. The Council's case in all the written documentation was that it was able to demonstrate a five year housing land supply. This formal position was based on a full objectively assessed need (FOAN) of 1,180 dwellings, a buffer of 5% and supply of 11,051 units (as at 31 August 2014). These factors resulted in a housing supply of 6.36 years. The Appellant's evidence challenged all these elements and argued that the correct FOAN was 1,685 dwellings per annum (which reflected population and economic projections and market signals), a buffer of 20% was required because of persistent under-delivery and that the

supply was in the order of 7,188 units. The result was a supply of 2.33 years. The Appellant supported its case by reference to a series of appeal decisions.

48. Housing land supply in Cheshire East has been a contentious issue at a number of appeals over the last year or so. To date in all cases put to me the inspectors concluded the Council was unable to show a five year housing land supply. The most relevant appeal decisions are those issued since April 2014 because of the more comparable evidence base. Even so, analysis of those decisions shows that a range of variables have been considered and caution needs to be exercised in interpretation and applying the findings to the current position. The position has been under continuous review in light of such factors as the Planning Practice Guidance, new sources of information, evidence produced for the Local Plan examination, an updated position statement produced by the Council and principles established through case law. I am not bound to reach the same conclusions as previous inspectors provided there are good reasons for not doing so. Nevertheless, as noted above, the Council's witness made a number of concessions when cross-examined. He accepted the Council was unable to meet the policy requirement, even without taking account of the supply side of the equation. This significantly weakened the Council's case in this appeal. Subsequently the publication of the Local Plan inspector's interim views has identified shortcomings in the Council's objective assessment of housing needs. In my assessment I will focus on the evidence highlighted at the inquiry.

*Full objectively assessed need*

49. National policy is to boost significantly the supply of housing<sup>7</sup>. The Court of Appeal<sup>8</sup> clarified and confirmed that in s78 appeals objectively assessed need cannot take account of constraints. Where there is no Local Plan the housing requirement for a local authority for the purposes of paragraph 47 is the full objectively assessed need (FOAN). Likewise, more recently in the *Gallagher* judgement<sup>9</sup> a distinction was made between (i) the full objectively assessed need for housing in an area leaving aside policy considerations, and (ii) the housing requirement, which is the figure that reflects not only the assessed need for housing but also any policy considerations that might require that figure to be manipulated to determine the actual target for an area (the 'policy on' figure). The second stage is carried out through the local plan process.
50. Therefore in this appeal the starting point is the FOAN. In the recent past the Council has placed reliance on the Regional Strategy (RS) figure of 1,150 dwellings. With good reason this figure no longer is being proposed. The RS figure was a constrained 'policy on' figure and the information base has been up-dated. In summary, to derive the current FOAN the Council used 1,150 units from the interim 2011 based Sub National Population Projections as a baseline figure. Influences of demographic change, household formation, migration and economic activity, employment, market signals and affordability were factored in to result in a FOAN of 1,180 units per annum. The models

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<sup>7</sup> Paragraph 47 of the Framework in the 1<sup>st</sup> bullet point states: *To boost significantly the supply of housing local planning authorities should use their evidence base to ensure their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as consistent with the policies set out in this Framework, including identifying the sites which are critical to the delivery of the housing strategy over the plan period.*

<sup>8</sup> *Hunston Properties Ltd v SCLG & St Albans City and District Council* [2013] EWCA Civ 1610

<sup>9</sup> *Gallagher Homes Ltd, Lioncourt Homes Limited v Solihull Metropolitan Borough Council* [2014] EWHC 1283 (Admin)

used in the forecasts were based on assumptions and data informed by local knowledge and circumstances.

51. At the inquiry Mr McLoughlin agreed that the Council should have good reason for not following recent inspectors' conclusions that the FOAN was at least 1,350 and that the Council had failed to explain why a FOAN figure of at least 1,350 was incorrect. He also accepted that use of the 2011 household projections did not allow for sufficient flexibility. In the light of the Appellant's evidence account needed to be taken of the higher 2008 household projections. He agreed that the average household formation rate of 1,230 between the 2001 and 2011 censuses projected forward would equate to a housing requirement of 1,300 dwellings per annum based on the household to dwelling conversion factor for Cheshire East<sup>10</sup>.
52. Regarding economic factors Mr McLoughlin accepted that a growth rate of 0.4% used in the Council's assessment was not robust in view of an average growth rate of 1.1% between 2000 and 2010<sup>11</sup>. The Planning Practice Guidance states that the housing need suggested by household projections should be adjusted to reflect appropriate market signals. The significant shortfall in affordable housing was agreed to be a very relevant market signal, which was another factor that would increase the FOAN above 1,350 units. He accepted that for the purposes of this appeal the FOAN was at least 1,350 but declined to agree with the appellant's figure of 1,685 because he considered that was a matter appropriately resolved through the Local Plan examination. The Appellant submitted that, on the authority of *Hunston*, it was necessary to determine the FOAN and I was urged to conclude that the FOAN is 1,685 dwellings per annum.
53. The circumstances in this appeal are unusual and the variables complex. The examination of the evidence has raised serious concerns in my mind over the robustness of the 1,180 figure, particularly in respect of the demographic trends where no reasoned argument was presented to detract from the inspector's conclusion in the Hind Heath Road decision. The Council's written evidence indicates that a scenario of employment growth of 0.4% per annum, representing a moderate employment growth over and above past levels, produces an annual requirement of 1,365 dwellings. The necessity to release green field and green belt land to achieve this growth indicates that it would contribute to a 'policy on' figure, which is not within my remit. However, the fact the Council's witness did not explain and defend the economic indicators built into the FOAN of 1,180 and accepted its lack of robustness again raises unanswered questions over the process undertaken. Finally on market signals no oral evidence was forthcoming to address the affordability issue identified. On the evidence available I consider that the FOAN is likely to be at least 1,350 units and acknowledge that a FOAN of 1,685 dwellings per annum was not challenged.

#### *Delivery and the buffer*

54. A persistent under-delivery of housing triggers a requirement to bring forward an additional supply of housing, equivalent to a buffer of 20%. The purpose is to provide a realistic prospect of achieving the planned supply and to ensure

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<sup>10</sup> CD D38 para 32, Appeal decision Land off Hind Heath Road, Sandbach dated 1 August 2014 ref APP/R0660/A/14/2212992

<sup>11</sup> Op cit para 34.

choice and competition in the market for land. A buffer of 5% is required when the record of delivery has been satisfactory. The Planning Practice Guidance advises questions of judgement are involved in order to determine whether or not a particular degree of under delivery triggers the requirement to bring forward an additional supply of housing land. Factors will vary from place to place and therefore there is no universally applicable test or definition of the term. A range of issues may be considered such as the effect of imposed moratoriums and the development rates before and after any such moratoriums. A longer term view enables account to be taken of peaks and troughs of the housing market cycle.

55. The Council's initial position was that in the period from 2003/04 to 2007/08 the completions comfortably exceeded the annual requirement of 1,150 units and that a cumulative surplus was achieved over a seven year period to 2009/10. The subsequent under-delivery was caused by the national recession and the medium term effect of the moratoriums that were in place in two of the former Boroughs of Macclesfield and Congleton. Taking a longer perspective from 1996/7 there was a cumulative over-provision by 1,356 units against development plan targets. A buffer of 5% should be applied. At the inquiry Mr McLoughlin accepted there was no good reason not to use a 20% buffer on the track record of appeal decisions and saw the sense of using this figure.
56. In my opinion, in order to take a longer term view of the peaks and troughs of the housing market cycle the period under consideration should not be confined to the last five years. Prior to 2008/09 there was a sustained period of time when net completions comfortably exceeded the housing target despite the imposition of moratoriums between 2003 and 2008. The working through of the after-effects of the moratoriums and the impact of the national recession were reflected in the substantial fall in total net completions for Cheshire East in 2008/09 and subsequent years. However, under-delivery against the target has persisted now for six years. There is an indication of some slight recovery in 2014 but a marked reversal of the trend is not readily apparent in the available completion figures. The most recent appeal decisions have on balance favoured the application of a 20% buffer and at the inquiry the Council's witness was unable to explain why the approach taken in the Close Lane decision should not be followed. Given the purpose of the buffer and intention of national policy to significantly improve housing supply I conclude that the application of a 20% buffer is appropriate in the current circumstances.

### *Supply*

57. The Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites. To be considered deliverable, sites should be available now and offer a suitable location for development now. Development of the site must be viable and achievable with a realistic prospect that housing will be delivered on the site within five years. The availability of a number of identified sites was challenged by the Appellant either because of continuing active commercial use (Victoria Mills, Chelford Cattle Market, Irlam/Eddie Stobart), legal/ownership problems (Broughton Road) or absence of a planning application (Leighton West, MMU Alsager). The same sites were examined and found to be unavailable by the inspector in the Close Lane appeal decision. No evidence was presented by the Council at the inquiry to show any change in the position on these sites since that time. In

the absence of any contrary evidence, some 750 units<sup>12</sup> should be deducted from the identified supply.

58. The Close Lane decision also considered the issue of lead-in time and build rate. The inspector concluded that a higher build rate to reflect the presence of two or more developers on a site should only be applied where there is substantial evidence that this would be the case. Mr McLoughlin agreed with that approach. As a consequence a further reduction should be made from the identified supply.

### *Conclusions*

59. The key issue is whether Cheshire East is able to demonstrate a five year supply of deliverable housing sites. Given the somewhat unusual course of events at the inquiry a FOAN of 1,180 units, a 5% buffer and important sources of supply were not justified by the Council. On the evidence available I consider that the FOAN is likely to be at least 1,350 units, a 20% buffer should be applied and the supply should be reduced to account for probable non-availability of sites and lower build rates. As a consequence, on the basis of these factors alone, I conclude that the Council is unable to show that there is a five year supply of deliverable housing land. This conclusion is consistent with the inspector's interim views on the Cheshire East Local Plan Strategy.
60. The proposal would bring forward additional land for residential development and contribute to increasing the overall housing land supply in Cheshire East. The description is for 'up to' 200 dwellings, which allows for less than but not more than 200 dwellings. The need to take account of the siting of homes in relation to Houndings Land Farm is likely to reduce the number by at least 12 dwellings (based on the indicative layout). Compliance with the landscape design strategy also may affect the numbers of dwellings to be achieved. Given the outline nature of the proposal there is uncertainty over the composition of the dwelling mix that may be achieved. These factors slightly reduce the weight attached to the benefit of the proposal.
61. There is a net annual shortfall of 1,400 affordable homes across Cheshire East and the Council reported a shortfall of affordable housing delivery in Sandbach<sup>13</sup>. This scheme through a planning obligation commits to provide not less than 30% of the dwellings as affordable homes, in accordance with the Council's Interim Planning Statement on Affordable Housing. The on-site provision would contribute to the objective identified in the Framework of creating mixed and balanced communities.

### ***Accessibility and highways impact***

62. Sandbach town centre is to the north of Old Mill Road. A range of schools, health services, shops, recreation, leisure and other community facilities and services are within 1 km or 2 km of the site. There are regular bus services to Crewe, Macclesfield, Northwich and Nantwich. Sandbach station, some 2.6 km from the site, has services to Crewe and Manchester. The main parties agree that all the recommended accessibility standards of the Council are met, apart from the distance to the railway station.

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<sup>12</sup> Document 21

<sup>13</sup> CD A26 Cheshire East Strategic Housing Market Assessment 2013 Update para. 4.32 and CDI1 Officer report on the planning application 30.04.14

63. The site is separated from the town centre by the A533 Old Mill Road/ A534 Wheelock Bypass roundabout junction and approach roads. As part of the development the proposal is to enlarge the roundabout, to introduce a fifth arm to provide access into the site and to provide a toucan crossing on Old Mill Road east of the roundabout. The crossing would provide safe pedestrian and cycle access across the major highway and footway/cycle provision would be improved around the roundabout by using 3 m wide surfaces. As a result the site would have safe and reasonably convenient cycle and pedestrian links with the town centre.
64. Within the site details of the access arrangements do not form part of the outline proposal. The intention, as expressed in the design principles, is to provide a clear and legible hierarchy of routes and spaces and a high degree of natural surveillance of the public realm. There is no specific proposal for the existing public footpath network through the site, although the indicative plan indicates retention of the basic structure with potential diversions in routeing. Achievement of a safe layout with a high standard of pedestrian and cycle provisions would be a matter for resolution through detail design. There are no specific physical or space constraints to suggest design aims could not be secured.
65. The Transport Assessment demonstrated the queuing at the A533/A534 roundabout and at the Old Mill Road/High Street/The Hill traffic signalled junction to the east. In 2021, taking account of committed developments, over-capacity conditions are forecast to become worse with significant increases in queues and delays at the roundabout. Similarly the operation of the traffic signals at the junction would deteriorate. The development would add to the congestion. The additional pressure placed on an already overburdened road system was a strong objection by third parties to the planning application.
66. The highway authority is concerned about the interaction between the traffic conditions at the roundabout and at the junction of The Hill/High Street. An improvement scheme was designed to increase capacity at the two junctions and contributions to fund the improvements are being sought from a number of development proposals.
67. The current proposal would deliver the improvement to the roundabout, with an additional inclusion of the fifth arm. It would also contribute £120,000 towards the highway authority scheme at The Hill/High Street junction, the financial contribution being secured through a planning obligation. The shortfall in costs of the overall scheme would be met by contributions of some £480,000 already received from other developments. The increase in capacity at the roundabout and the signal junction would reduce queue length considerably in the morning and evening peak periods. The residual cumulative impact of development would not be severe and the highways impact would comply with policy in the Framework.

### **Other considerations**

#### *Wildlife corridor and protected species*

68. The Sandbach Wildlife Corridor lies predominantly to the west of the Wheelock Bypass but near Houndings Lane Farm the designated corridor extends eastwards. This part of the corridor covers the northern and western areas of

the residential site, where the land currently comprises managed agricultural grassland of low wildlife value. Phase 2 bat surveys carried out in 2012 found no evidence of bat roosts in the single tree and the barn on the site identified as having high bat roost potential. Within the residential site survey work recorded no evidence of other relevant protected species in association with the habitats, buildings or structures, apart from the expected common species of breeding birds. Objections by an interested party were satisfactorily addressed through rebuttal evidence and oral evidence at the inquiry by the Appellant's consultant ecologist.

69. Along the Arclid Brook corridor some 5.81 ha, comprising of the west site and adjacent land, is proposed for an ecological mitigation scheme. The scheme provides for the creation of a strip of mixed wetland and grassland habitats, at least two new linear ponds, areas of damp wildflower rich grassland, improvements to benefit water vole and new hedgerow and tree planting. Management of the pasture and a grassland restoration programme are proposed to enhance nature conservation value. Approval of details of the scheme, its implementation and management would be secured through a planning obligation. The Council confirmed that the provisions would adequately compensate for the loss of habitat associated with the development and that the scheme has the potential to enhance the overall ecological value of the Sandbach wildlife corridor. On the residential site survey work during development would be an additional safeguard and the provision of bird and bat boxes would be a small scale measure to encourage biodiversity.
70. My conclusion is that although an area within the Sandbach wildlife corridor would be lost to the residential site, the proposal would provide for the enhancement of the nature conservation value of the wildlife corridor on land to the west. The comprehensive package of mitigation and management measures, subject to the approval of details by the Council, would satisfy the objectives of Policy NR4 of the Local Plan and also policies in the Framework directed at safeguarding and enhancing networks of biodiversity.

#### *Air quality*

71. As part of the EIA an assessment of air quality was undertaken to quantify any potential cumulative impacts from road traffic exhaust emissions generated by the operational phases of the development and other committed developments on sensitive receptors and the nearby Air Quality Management Area. The potential for fugitive dust emissions during the construction phase was also identified and assessed.
72. The principal pollutants of concern were nitrogen dioxide (NO<sub>2</sub>) and particulate matter (PM<sub>10</sub>). Worst case assumptions were used and the model was verified against local monitoring data. A comparison of the without and with development results showed a negligible difference for both NO<sub>2</sub> and PM<sub>10</sub> at all sensitive receptor locations within the vicinity of the site during the operational phase, including at a site on Ormerod Close, near to the proposed roundabout and toucan crossing. The assessment demonstrated that the predicted levels for NO<sub>2</sub> and PM<sub>10</sub> would be much lower than the relevant air quality objective levels. The resultant impact of the scheme on air quality at this receptor was determined to be negligible and the potential for traffic exhaust emissions to affect air quality at the junction was not considered significant. Mitigation would not be necessary. Implementation of good



practice dust control measures during the construction phase was proposed to ensure the residual significance of potential air quality impacts would be negligible.

73. The impact on air quality was disputed by Mr Conce. He was of the opinion that because of the physical conditions of the site and the low lying nature of Old Mill Road the development would increase levels of NO<sub>2</sub> above national guideline limits. He was concerned that the increase in pollution would affect adults and children walking alongside the road and waiting at the pedestrian crossing. He also stated that attention should be given to the exposure of wildlife to NO<sub>2</sub> toxins and how pollution could be controlled.
74. The methodology of the air quality assessment in the EIA was in accordance with relevant national guidance and was agreed with the Council. Relevant European and UK legislation on air quality provided the essential context. Following the precautionary principle, the assessment assumed worst case scenarios. One of the receptor locations was in close proximity to the area of concern. The findings of the structured assessment were not disputed by the Council. In the light of all these considerations, I conclude that the effect of the development on air quality would be acceptable.

#### *Local economy*

75. The construction of new homes contributes to the economy. The Appellant estimated that the scheme would create around 100 construction jobs over a four year period. The residents of the new homes would probably shop and visit leisure facilities in Sandbach and use a range of services, all of which would benefit the health of local businesses. Therefore the scheme would be a positive factor for the local economy.
76. Having regard to the Planning Practice Guidance, finance through the New Homes Bonus would not make the scheme acceptable in planning terms and is not material.

#### *Effect on social infrastructure*

77. Policy GR19 of the Local Plan aims to ensure that all new development makes adequate provision for infrastructure requirements that arise directly as a consequence of the development proposed. In addition to the necessary highway infrastructure, this proposal has the potential to place demands on local schools.
78. The Council has explained that the proposal would generate 36 primary and 26 secondary aged pupils. The evidence also shows that the primary schools would be over capacity and the secondary school sectors would be over-subscribed from 2019. Calculated on an accepted formula, a financial contribution of £390,446 towards primary school and £424,909 towards secondary school provision is fairly and reasonably related in scale to the development. The contribution would be necessary to make the development acceptable in planning terms and be directed related to the development.
79. The unilateral undertaking dated 20 November 2014 provides for the required contributions towards the cost of accommodating school children at primary and secondary schools in the area. There is compliance with Policy GR19.

80. The new housing would be in an area where there is a deficit of amenity green space and children's play areas. In view of the size of the development open space is required to be provided on site to meet the play and recreational needs of residents. Appropriate provision is made through the unilateral undertaking for a neighbourhood equipped play area (a NEAP) and amenity greenspace on the residential site in accordance with Policy GR22 of the Local Plan and the Supplementary Planning Guidance. Consistent with Council policy, maintenance and upkeep of the open space would be through a management company. The open space would be primarily for the occupiers of the new housing and therefore would not be of wider benefit to the residents of Sandbach as a whole.

#### *Archaeological interest*

81. The archaeological assessment submitted with the application stated that development of the site could lead to the complete physical loss of a landscape of known potential historic environment interest, which includes an historic farm complex (Fields Farm) and possibly only surviving remains of the 19<sup>th</sup> century Brook Mill.<sup>14</sup> The mitigation proposals referred to a survey of field systems and specific site investigation targeting specific structures or features, such as the Fields Farm complex.
82. The advice received through consultation on the application confirmed that none of the identified historic features are sufficiently significant to generate an objection on archaeological grounds or to require further pre-determination work. The Council is satisfied that a condition requiring a programme of archaeological work would address this heritage interest. There is no evidence to the contrary.

#### **Conclusions on sustainable development**

83. A guiding principle of the Local Plan is promoting sustainable development. Objectives include minimising the loss of countryside to new development and protecting areas of landscape value. Housing provision was to be primarily accommodated within the settlement zone limits of the hierarchy of settlements. The proposal, on land in the countryside, is contrary to Policies PS8 and GR5 that govern the location of development. The conflict with fundamental objectives means that on the overall balance the proposal is not supported by the development plan, even though policy requirements on ecology, infrastructure and accessibility are met.
84. The Local Plan is now out-of-date because the land allocations were up to 2011. Relevant policies for the supply of housing are not up-to-date in the absence of a five year supply of deliverable housing sites. Therefore the presumption in favour of sustainable development applies by reason of paragraphs 14 and 49 of the Framework. The Framework identifies the economic, social and environmental dimensions of sustainable development.
85. The proposal would enable the provision of up to 200 dwellings, although the constraints suggest some 185 units may be realistic. A mix of housing should be able to be achieved and the commitment to 30% affordable housing is policy compliant. In the absence of a five year land supply the contribution to meeting housing needs and widening the choice of high quality homes would be

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<sup>14</sup> Core Document E24 page 28. None of the buildings existing now are listed buildings. The farm buildings were not identified as non-designated historic assets.

benefits of the scheme, consistent with the economic and social roles of sustainable development.

86. Land should be of the right type and in the right place at the right time. The encroachment into the countryside and the adverse effects on harm to landscape character and the setting of Sandbach would be detrimental to local distinctiveness and visual amenity. The countryside character of the public rights of way would be considerably changed, adversely affecting their recreation value. On the plus side, there would be the opportunity to achieve high quality mitigation responsive to landscape character through the reserved matters, notwithstanding the shortcomings of the indicative plan. There would be scope for some improvements to the accessibility of the public rights of way. Over 50% of the land is BMV, although the significance of its loss to development is reduced by constraints on its use and maximising its potential. The northern edge of the residential site is within the Sandbach wildlife corridor. The overall nature conservation value of habitats within the corridor at this location is poor. The proposal provides for mitigation on the west site and adjacent land that could deliver net gains in biodiversity value. The details of the scheme and the management arrangements would be resolved through the mechanisms put in place in the planning obligation, arrangements which the Council was satisfied with. The positive contribution to nature conservation interests is a significant benefit.
87. Proximity of the site to the town centre has advantages for accessibility and encouraging the use of sustainable modes of travel, particularly by foot and cycle in this instance. A travel plan, submitted as part of the ES, identifies measures to encourage residents to do so. The point of access into the site is at a location that currently suffers from congestion and delays. The proposed improvements to the roundabout would be an integral part of the scheme. The better operation of the highway network would be of benefit to all highway users. The contribution to the proposed improvement to the traffic signal controlled junction may well bring forward the implementation of the scheme. The financial contribution towards increasing the capacity of local primary and secondary schools secured through the planning obligation would address the additional demands on the education infrastructure. On-site open space for the residents would facilitate social interaction and a healthy community and avoid undue pressure on existing open spaces in the surrounding area.
88. The EIA demonstrated that no significant environmental impacts are anticipated to result from the proposal in combination with committed developments in the locality.
89. Having regard to these conclusions and all other matters, my overall conclusion is that the adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal is a sustainable form of development and should be allowed.

### **Planning conditions**

90. A list of planning conditions was agreed by the main parties, which I have considered against the six tests set out in the Framework. Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all

other respects. I have amended the detail of the wording where appropriate to ensure the conditions comply with national guidance.

91. The scope of conditions is affected by the outline form of the application which provided no details of appearance, landscaping, layout and scale and incomplete details on access. Therefore conditions are necessary to require the submission of details on these reserved matters and to set a timescale for submission and commencement of development in accordance with the statutory provisions. Such details are necessary to ensure the development complies with policy requirements and is of a high quality design, delivers a wide range of high quality homes, creates a sustainable, inclusive and mixed community and supports the move to a low carbon future. Acceptable design principles are set out in the amended design and access statement, which was required and forms part of the application. A condition linking the reserved matters to these principles is a necessary benchmark. Reference will not be made to the indicative plan because of its status and the inadequacies I have identified.
92. The probability is that the site would be developed in phases. The programme of phasing should be subject to planning control to safeguard visual and residential amenity, to ensure the development provides the appropriate infrastructure at the right time, highway safety, access and public rights of way are suitably maintained and to protect landscape assets and wildlife. All reserved matters have to be approved before commencement of development to achieve proper, comprehensive and coordinated planning of the site and a high standard of overall development. On some requirements flexibility in timing of approval or provision may be appropriately linked to the individual phases.
93. The topography of the site justifies a condition requiring detailed information on ground levels and proposed floor slabs to protect residential and visual amenity. Details of external materials will be necessary to ensure the appearance of the development respects the appearance and character of the surrounding area. Details of boundary treatment are not included in the same condition because they are subject to a separate condition.
94. A surface water drainage scheme and a scheme for compensatory flood storage are required to prevent flooding and to ensure the satisfactory disposal of surface water from the site. The wording of the conditions is based on the advice from the Environment Agency. A scheme for the disposal of foul water is necessary to prevent pollution. An undeveloped buffer zone along the Arclid Brook is a necessary measure to enable access to the water course to be maintained at all times to enable works to take place such as flood prevention works. Investigation into the presence of contaminated land and, if necessary, remediation will be required in the interests of public safety. An Environmental Management Plan is necessary to minimise disturbance, maintain highway safety and to protect residential and general amenity throughout the construction period.
95. Access within the site will be a reserved matter, which will include provision for cycles and pedestrians<sup>15</sup>. I will include a condition to make clear the alignment

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<sup>15</sup> Access, in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network (SI 2010/2184)

of the spine road is not being approved at this stage, despite being shown on the approved plan of the site access and highway improvements. The imposition of a timescale for the construction of the main access road off the roundabout is necessary to ensure the land will be served by a suitable standard of access at an early stage in the development process in the interests of highway safety and the amenity of residents on the adjacent residential estate. A condition has been proposed for a scheme of pedestrian and cycle provision for each phase. Given the scope of the reserved matters, I consider that the more relevant matter is to ensure that in each phase of the development all means of access is provided before occupation of any dwelling in the interests of highway safety for all users. The Appellant will be aware of the statutory requirements concerning the public rights of way which cross the site. A travel plan will be required in order to encourage the use of sustainable travel modes. Details and provision of electric vehicle infrastructure are also necessary to improve the sustainability credentials of the scheme.

96. The proposed planning condition that links the landscaping reserved matters to the submitted constraints plan and indicative housing layout is not a condition I am able to support. I have concluded the plan does not sufficiently reflect the landscape strategy principles advocated by the Appellant's landscape consultant. A condition to specifically require the landscaping reserved matter to make provision for replacement hedge planting is justified in the interests of visual amenity and biodiversity. An arboricultural method statement would aim to ensure tree protection measures and tree works are suitably undertaken and that good practice is followed in construction work. A condition to this effect is necessary so that trees of amenity value are retained to enhance the development and its surroundings. Details of boundary treatment to the dwellings and around the site will be important to ensure good quality provision to afford privacy, complement the soft landscaping and enhance the development. External lighting has the potential to effect landscape character, local views and residents' amenity. A condition requiring details is therefore necessary to ensure any lighting is suited to its purpose and surroundings.
97. Ecological mitigation and the provision of areas for wildlife and nature conservation would be on land to the west, which is defined and covered by a planning obligation. On the residential site, time has elapsed since survey work was carried out. The bat survey report July 2012 acknowledged that the findings were valid for only a year. Recommendations were also included on measures to be taken in the demolition of the buildings on Fields Farm. Therefore a condition is necessary and reasonable to require an ecological mitigation strategy for each phase of development. The wording of the proposed condition has been revised to improve clarity and precision. The reference to the ecological mitigation method statement (March 2013) has been omitted because that statement addresses proposed mitigation measures on the land to the west, not the residential site. In addition, conditions are necessary to ensure measures are taken to protect nesting birds during development and the provision of bird and bat boxes. The objectives of these measures are to safeguard wildlife and enhance the value of the site to protected species and biodiversity target species.
98. In view of the archaeological interest of the site a condition is necessary to secure a programme of archaeological work in accordance with an approved scheme. The information in the Archaeological Assessment indicates that specific features of interest may be lost during site preparation or in the early

stages of construction work. Therefore no development should commence until a programme of archaeological work has been carried out in accordance with an approved scheme. This approach is consistent with the advice received from the Cheshire Archaeology Planning Advisory Service.

99. The provision of adequate facilities for bin storage for recyclable and household waste has implications for the layout and for the appearance and scale of the buildings. Therefore details should form part of the reserved matters submissions rather than be resolved prior to the commencement of each phase of development. A condition is appropriate to control the provision of facilities before the occupation of each phase of development.
100. The siting of dwellings in relation to Houndings Lane Farm should be resolved through the reserved matters, informed by a noise and odour assessment and, if shown to be required, appropriate mitigation. Therefore the assessment should be carried out and any mitigation agreed before commencement of development. Area 3 (as shown on the indicative layout plan) may not be the most appropriate area for the assessment because it excludes land directly to the east of the farm but includes land some distance to the north. The definition of the relevant area should be established through the assessment. To require mitigation of the farming operations would be unreasonable and so any required mitigation should be confined and achieved through the proposed housing development. The suggested condition is reworded accordingly and is necessary to safeguard the amenity of future residents and to minimise the effect on the farm business.
101. Information has been submitted to the effect that planning permission has been obtained and arrangements are in place to relocate the silage clamp. On that basis a Grampian form of condition is reasonable to require its relocation before the commencement of development of Area 3.

### **Unilateral undertaking**

102. In summary, Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 sets out the tests that a planning obligation must meet. An obligation must be 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. The Council's CIL Regulations 2010 Compliance Statement provides a detailed justification for the planning obligations sought in connection with the proposal, with reference to the development plan and relevant supplementary planning guidance.
103. As explained under the topic headings above, I am satisfied that the planning obligations on affordable housing, education and highways contributions and open space (including ecological mitigation) meet all the tests. Therefore I have taken full account of the obligations in reaching my decision.

### **DECISION**

104. The appeal is allowed and outline planning permission is granted for up to 200 residential dwellings, open space and new access off the A534/A533 roundabout at land south of Old Mill Road, Sandbach in accordance with the terms of the application, Ref 13/2389C, dated 6 June 2013, subject to the following conditions:

- 1) Details of the access (beyond a point 50 metres into the site), 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 not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) Notwithstanding the alignment shown on plan SCP/13111/F04 rev D, details of the layout of the internal spine road shall be submitted as part of the reserved matter on access.
- 5) The reserved matters shall be in accordance with the design principles set out in the submitted Design and Access Statement Revision B dated November 2013.
- 6) The landscaping reserved matter shall make provision for replacement hedge planting for any hedgerows to be removed as part of the development.
- 7) No development shall take place until a scheme of phasing for the development has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 8) 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.
- 9) No development shall commence until such time as a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall (i) include plans to store run-off from the 100 year + 20% climate change return period storm event, (ii) provide evidence to show that runoff from greenfield areas are restricted to 5l/s/ha and that a 30% betterment is provided from the impermeable areas, (iii) include timing and phasing arrangements. The scheme shall provide for surface water to drain separately from foul water and no surface water shall be discharged directly or indirectly into the existing public sewerage system. The approved scheme shall be fully implemented in accordance with the approved timing and phasing arrangements and shall be maintained thereafter.
- 10) No development shall commence until a detailed scheme for compensatory flood storage has been submitted to and approved in writing by the local planning authority. The scheme shall include details of timing and phasing arrangements. Excavation of the compensation flood storage shall be completed before infilling commences and flood plain capacity shall be maintained during construction of the development. The approved scheme shall be fully implemented in

accordance with the approved timing and phasing arrangements and shall be maintained thereafter.

- 11) No development shall commence until a scheme for the disposal of foul 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.
- 12) No development shall take place until a scheme for the provision and management of an 8 metre wide undeveloped buffer zone alongside the Arclid Brook has been submitted to and approved in writing by the local planning authority. The undeveloped buffer zone shall be free from built development and shall be measured from bank top, bank top being defined as the point at which the bank meets the level of the surrounding land. The scheme shall include:
  - Plans showing the extent and layout of the undeveloped buffer zone, including cross sections;
  - Details of any proposed planting scheme;
  - Details showing how the buffer zone shall be protected during development and managed/maintained over the longer term, such details to include a detailed management plan, adequate financial provision and named body responsible for management;
  - Details of any proposed footpaths, fencing, lighting or other structures.

The development shall be carried out in accordance with the approved scheme.

- 13) No development shall commence until:
  - i. A Phase II contaminated land investigation has been carried out and the results submitted to and approved in writing by the local planning authority.
  - ii. If the Phase II investigations indicate that remediation is required a Remediation Statement shall be submitted to and approved in writing by the local planning authority. The remediation scheme in the approved Remediation Statement then shall be carried out.

If remediation is carried out a site completion report detailing the conclusions and actions at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority prior to the first use or occupation of any part of the development hereby approved.

- 14) No development shall take place, including any works of demolition, until an Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of:
  - i) The hours of construction work and deliveries;
  - ii) The parking of vehicles of site operatives and visitors;
  - iii) The loading and unloading of plant and materials;
  - iv) The storage of plant and materials used in constructing the development;
  - v) Wheel washing facilities;



- vi) Details of any piling required including method (which shall adopt 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 who should 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 and specifically 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.

The approved Environmental Management Plan shall be adhered to throughout the construction period of the development.

- 15) No development shall commence until a noise and odour assessment in relation to Houndings Lane Farm has been submitted to and approved in writing by the local planning authority. The assessment shall include recommendations for any necessary mitigation to be incorporated within the development hereby approved and a programme for implementation of the mitigation scheme. The approved mitigation scheme shall be carried out in accordance with the agreed timetable.
- 16) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 17) Prior to commencement of any works between 1 March and 31 August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the local planning authority. Where nests are found in any building, hedgerow, tree or scrub to be removed (or demolished in the case of buildings) a 4 metre exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to the local planning authority before any further works within the exclusion zone take place.
- 18) No development shall take place until details of the proposals for incorporation into the scheme of features suitable for use by breeding birds, including house sparrow and by roosting bats, have been submitted to and approved in writing by the local planning authority. In each phase of development the approved features shall be installed prior to the first occupation of any dwelling in that phase of development and the features shall thereafter be maintained.
- 19) No development shall commence on any phase of development, as set out in the approved phasing scheme, until an ecological mitigation strategy for the area of development in that phase has been submitted to and approved in writing by the local planning authority. The strategy

shall be informed by and include details of up-to-date survey work, with specific reference to protected or biodiversity target species.

- 20) No development shall commence on any phase of development as set out in the approved phasing scheme (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 for that phase of development has been submitted to and approved in writing by the local planning authority. The details shall include:
- A scheme (hereinafter called the approved protection scheme) which shall provide for the retention and protection of all trees, shrubs and hedges growing on or adjacent to the site which are shown to be retained on the approved layout.
  - Implementation, supervision and monitoring details of the approved protection scheme. The approved protection scheme shall be in place before the commencement of development and shall be retained in tact for the full duration of the phase of development.
  - A detailed Treework Specification.
  - Implementation, supervision and monitoring details of the Treework Specification.
  - Implementation, supervision and monitoring details of construction works within any area designated as being fenced off or otherwise protected. No excavation 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.
  - Timing and phasing of arboricultural works in relation to the approved development.

Development shall be in accordance with the approved Arboricultural Method Statement.

- 21) No development shall commence until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall include a timetable for implementation, monitoring and review. The measures in the Travel Plan shall be carried out as approved in accordance with the agreed timetable.
- 22) The access to the residential site shall be from a junction to the A534/A533 roundabout, in accordance with plan SCP/13111/F04 rev D hereby approved. Development to form the site access for a distance of 50 m into the site, the enlarged roundabout and associated works shall be carried out prior to the commencement of construction of the first dwelling on the site.
- 23) In each phase of development, as identified in the approved phasing programme, no dwelling shall be occupied until the vehicle, pedestrian and cycle provision and signage have been provided in accordance with the approved details.

- 24) Prior to the commencement of any phase of the development hereby permitted, details of electric vehicle infrastructure to be installed in that phase shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the approved infrastructure relating to that dwelling has been installed and is operational. The approved infrastructure shall be retained thereafter.
- 25) No phase of development shall commence until details of the materials to be used in the construction of the external surfaces of the dwellings to be erected in that phase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 26) No phase of development shall commence until details of the position, design, materials and type of boundary treatment proposed to be erected within that phase have been submitted to and approved in writing by the local planning authority. That phase of development shall not be occupied until the scheme of boundary treatment has been carried out in accordance with the approved details.
- 27) Within each phase of development the secure bin storage facilities approved as part of the reserved matters, which shall include facilities for both recyclable and household waste storage, shall be provided prior to first occupation of the dwellings in that phase takes place.
- 28) No phase of development shall commence until details of the proposed external lighting within that phase have been submitted to and approved in writing by the local planning authority. The details shall include the location, height, design and luminance of any lighting and measures to minimise potential loss of amenity caused by light spillage on adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details prior to the first occupation of the dwellings in that phase.
- 29) No development shall take place within Area 3, as identified on the indicative housing layout plan 2039 SK03 B, unless the silage clamp adjacent to the southern boundary of the site has been relocated to a position south of the existing yard area at Houndings Lane Farm or other approved location.

*Diane Lewis*

Inspector

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Scott Lyness, Barrister	Instructed by the solicitor to the Council
He called	
Jan Gomulski BA(Hons) MA	Principal Landscape Architect, Cheshire East Council
Ben Haywood BA(Hons) MA MBA MRTPI MCFI	Principal Planning Officer, Cheshire East Council
Nathan McLoughlin BSc(Hons) DipTP MRTPI	Director, McLoughlin Planning

### FOR THE APPELLANT:

Jeremy Cahill QC	
Nina Pindham	
Mr Cahill called	
Jonathan Berry BA(Hons) DipLA AIEMA CMLI M.Arbor.A	Partner at Tyler Grange LLP
David Hughes BSc(Hons) FBIAC	Managing Director, David Hughes Agricultural Consultancy Ltd
Dr David Bell	Director, Sensible Ecological Survey Solutions Ltd
William Booker BSc(Hons)	Director, Singleton Clamp and Partners Ltd
Patrick Downes BSc(Hons) MRICS	Director at Harris Lamb Property Consultancy

### INTERESTED PERSONS:

Sam Corcoran MA(Oxon) FCA CTA	Councillor for Sandbach Heath & East
Vince Conce	Resident

### DOCUMENTS submitted at the inquiry

- 1 Opening submissions on behalf of the Appellant
- 2 Opening submissions on behalf of the Council
- 3 Proof and Appendices of Mr Booker
- 4 Draft unilateral undertaking
- 5 Saved policies letter
- 6 Consent Order (*Gladman Developments Ltd*) (CD C14)
- 7 Inset map for Sandbach
- 8 Plan of Sandbach wildlife corridor
- 9 Extracts from the Guidelines for Landscape and Visual Assessment
- 10 Five year housing land supply position statement September 2014
- 11 Objectively assessed housing need statement (homework item no. 9)
- 12 Dusk and Dawn Bat Surveys (CD E23A)
- 13 Emails on survey reports
- 14 Plan of ecological mitigation area
- 15 Policy PS9 of the Local Plan
- 16 Letter from Councillor Corcoran
- 17 Tables on traffic impact on junctions
- 18 Table 110 and documents on housing land supply
- 19 Tables HLS(1) to HLS(4)

- 20 Table HLS(1) revised
- 21 Table of disputed sites
- 22 Air quality response
- 23 Email correspondence with Enforcement Officer
- 24 Information & planning history Houndings Lane Farm
- 25 CIL compliance statement and appendices
- 26 Signed statement of common ground
- 27 Draft planning conditions v1
- 28 Draft planning conditions v2
- 29 Certified copy of unilateral undertaking
- 30 Closing submissions on behalf of the Council
- 31 Closing submissions on behalf of the Appellant
- 32 Application for costs on behalf of the Appellant
- 33 Response to costs application on behalf of the Council

**DOCUMENTS submitted after the close of the inquiry**

- 34 Draft planning conditions v3
- 35 Certified copy of unilateral undertaking

**APPLICATION PLAN**

- A.1 Site location plan/proposed site access SCP/13111/F04 Rev D

**INDICATIVE PLANS**

- B.1 Indicative housing layout with existing contours 0239 SK05 rev A
- B.2 Constraints diagram 0239 SK01 rev B
- B.3 Constraints diagram and indicative housing layout 0239 SK02 rev B
- B.4 Indicative housing layout 0239 SK03 rev B
- B.5 Full site overview 0239 SK04 rev B
- B.6 Indicative proposed sections AA & BB 0239 SK06 rev B