



Appeal Decision

Inquiry held on 2 to 4 June 2015

Site visits made on 4 and 10 June 2015

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Decision date: 03 December 2015

Appeal Ref: APP/R0660/A/14/2227135

Land off School Lane, Bunbury, Cheshire CW6 9NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Bloor Homes North West against the decision of Cheshire East Council.
 - The application No:14/2204N, dated 29 April 2014, was refused by notice dated 28 August 2014.
 - The development proposed is the erection of 34 No. dwellings, a school car park with associated access road and new landscaping.
-

Applications for costs

1. At the Inquiry applications were made by Bloor Homes North West and by Cheshire East Council (CEC) for awards of costs against each other. These applications are the subject of separate Decisions.

Decision

2. The appeal is dismissed.

Preliminary matters

3. CEC considered a revised scheme from that originally submitted with the application. The revised scheme amended the layout and some house types to reflect agreements reached with CEC about affordable housing. It is the scheme shown on the drawings listed in the Schedule of Plans attached to this decision that I have used in my consideration of the appeal.
4. CEC refused the application on the grounds that the proposed residential development was unsustainable because it is located within the open countryside, contrary to saved and emerging policies and the principles of the *Framework*. The decision notice also states that CEC can demonstrate a 5 year housing land supply in accordance with the *Framework*, and so the proposal was contrary to the emerging Development Strategy and that there were no material circumstances to indicate that permission should be granted contrary to the development plan.

5. CEC subsequently acknowledged that it cannot demonstrate a deliverable five year supply of housing in accordance with paragraph 47 of the *Framework*.¹ It therefore resolved that the appeal would be defended on the following grounds:²

"The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policies NE2 (Open Countryside) and RES5 (Housing the Open Countryside) of the Crewe and Nantwich Replacement Local Plan, Policy PG5 of the emerging Cheshire East Local Plan Strategy – Submission Version and the principles of the National Planning Policy Framework which seek to ensure development is directed to the right location and open countryside is protected from inappropriate development and maintained for future generations enjoyment and use. As such it and (sic) creates harm to interests of acknowledged importance."

At the same meeting a duplicate application was refused on the same grounds, but added a further reason for refusal relating to the conflict with the emerging Bunbury Neighbourhood Plan (BNP).³

6. The certificates attached to the application and to the appeal notified the Bunbury Aldersey CE Primary School about the proposal, but it was not discovered until the Inquiry stage that the owners of the school, The Haberdashers' Company had not been formally notified. This defect was corrected by serving a revised notice.⁴ The Inquiry was adjourned to give time for the correct certificate to be issued. The adjournment was also to provide an opportunity for planning obligations concerning affordable housing, open space and the proposed car park for the school to be finalised.
7. A draft planning agreement to deal with affordable housing and public open space was discussed at the Inquiry.⁵ Subsequently, a planning agreement, dated 19 June 2015, provides for affordable housing and provision of on-site open space. The obligation is for 10 affordable dwellings, comprising 4 two-bed bungalows for affordable rent to persons over 55 years of age, 4 two-bed intermediate dwellings and 2 two-bed affordable rented dwellings.⁶
8. The terms required for an obligation to secure the proposed school car park were also discussed at the Inquiry, but no draft was available. Subsequently, the owners of that part of the appeal site proposed for the school car park, The Haberdashers' Company, advised by letter dated 16 June 2015 that it had carefully considered the Bloor Homes proposal, but regretted that it does not support the planning application and will not enter into the legal agreement with Bloor Homes for the construction of a car park at the Thomas Aldersey Church of England Primary School (hereinafter the school).⁷
9. Given the references in the Statement of Community Involvement and the Design and Access Statement about provision of the school car park as an integral part of the scheme, the parties were advised that I was minded to resume the Inquiry to consider the position in the light of the representation

¹ SoCG paragraph 4.14.

² Cheshire East Planning Committee meeting held on 22 April 2015.

³ Application Number 14/5533N.

⁴ ID19.

⁵ ID14.

⁶ ID22.

⁷ ID21 and emails from appellant and CEC at ID24 and ID25.

from the landowners. However, a suitable time to reconvene could not be agreed and so I invited submissions about progressing the appeal by means of written representations.⁸ CEC objected to this approach, but given the impasse, I considered that it was the only fair way to proceed for all those involved. I therefore instructed the parties to advertise the opportunity for written submissions about the current circumstances.⁹ 76 written representations were submitted, including submissions by Bunbury Parish Council, CEC and the appellant.¹⁰

10. CEC is concerned that this approach has failed to maintain an impartial and fair inquiry process by providing the appellant with an excessive degree of latitude to overcome a problem which should already have been ruled fatal in accordance with the agreed procedure. In the circumstances, I believe that it was a fair way to proceed that provided an opportunity for all to submit written representations about the prevailing circumstances. This ensured that I had all the information necessary to determine the appeal, in a process which was open, fair and impartial. By doing so the car park has not been excluded from the proposal. For the reasons set out below, I reject CEC'S submission that I am under a mandatory obligation to reject the appeal on the grounds that the landowner has not agreed to enter into a legal agreement about construction of the car park. The consultation process does not, therefore, remove from CEC and other objectors, an otherwise decisive argument. I am satisfied that the additional publicity given to the opportunity for further comments, along with the number of submissions received, and the issues raised therein, means that it is unlikely that anyone would be prejudiced by proceeding to deal with the appeal on the basis of all the information now before me.
11. Many submissions stated that all the consultation, comment and discussion made during the planning process were based on the proposal in its entirety, and that a significant part of the scheme can no longer be achieved. Three respondents indicated that they did not object to the planning application initially because they considered that the benefits of the school car park outweighed any disbenefits of the proposed residential development. They have now objected to the scheme. Many argued that the provision of the school car park and resultant reduction in vehicle congestion in School Lane would have influenced opinion and decision making, and that as the car park is now undeliverable this renders the application invalid and the appeal redundant.
12. However, there is nothing to prevent an application for the development of land which is not within the control of the applicant, provided that the appropriate notices have been issued. As indicated above the defective notice has been remedied. The fact that the current landowner of the site for the proposed school car park does not support the appeal scheme, does not make either the application invalid or the appeal redundant. I deal later with what weight should be given in the planning balance to any benefits of the proposed school car park.

⁸ ID26.

⁹ ID27.

¹⁰ ID28 (1-76).

13. The opportunity for further comment on the 76 submissions closed on the 14 September 2015. Having taken into account all the evidence submitted before and during the Inquiry, along with the later written submissions, I was satisfied that I had all the relevant information necessary to determine the appeal, and so I closed the Inquiry in writing on 15 September 2015.

Main issues

14. The main issues in this appeal are the effects of the proposed development on the character and appearance of the area, having regard to policies for development in the countryside and for housing.

Planning policy

15. The development plan for the area includes saved policies of the Borough of Crewe and Nantwich Replacement Local Plan 2011, which was adopted in 2005 (LP). The appeal site, except for a small part of Heath Villa that would provide access to School Lane, lies outside the settlement boundary for Bunbury designated in the LP. Policy NE.2 treats all land outside settlement boundaries as open countryside, where only development essential for certain purposes, which do not include the appeal scheme, would be permitted. Policy RES.5 restricts new dwellings in the countryside to limited infilling or for persons engaged in agriculture or forestry.
16. Bunbury is identified in the settlement hierarchy of the emerging Cheshire East Local Plan Strategy as a Local Service Centre, where small scale development to meet localised objectively assessed needs and priorities would be supported where they would contribute to the creation and maintenance of sustainable communities. Emerging Policy PG.5 carries forward the objectives of LP Policy NE.2. However, the emerging strategy cannot be attributed full weight given the stage it has reached.
17. The BNP completed its Regulation 14 stage on 21 May 2015 and the Inquiry was advised that it is intended to submit a Regulation 15 version towards the end of June or in early July. However, the Regulation 15 stage had not occurred at the time this decision was drafted.
18. There is a dispute between the parties about how paragraph 14 of the *National Planning Policy Framework* (hereinafter the *Framework*) should be interpreted. This occupied a lot of Inquiry time and is the basis of the appellant's costs application. I deal with this in more detail later in this decision.

Reasons

Character and appearance

19. CEC considers that the proposed residential development would be unsustainable because it is located within the open countryside, contrary to amongst other things, the principles of the *Framework*, and would create harm. CEC's evidence to the Inquiry was that the harm resulting from the conflict with countryside protection objectives, and the impact on the intrinsic character and beauty of the countryside setting of Bunbury outweighed the benefits of the scheme. CEC made clear at the Inquiry that the application was not refused on landscape grounds. However, the character of the area and visual effects was

- an issue for third parties.¹¹ The appellant called evidence from a landscape expert, who made reference to the landscape and visual impact assessment (LVIA) submitted with the application.
20. The appeal site comprises five fields divided by hedgerows. It lies to the south of ribbon housing development along this part of School Lane, and to the west of an open field that abuts the school and its associated open space. An open field lies to the west of the appeal site, beyond which are the long rear gardens of ribbon housing development fronting onto this part of the A49. These houses, along both sides of the A49, are outside the designated settlement boundary. The southern boundary of the appeal site in part abuts the rear curtilage of a dwelling located on the A49, with the remainder adjoining an open field. There are more open fields to the south-east of the appeal site. Beyond these is a belt of mature woodland, Sadlers Wells Community Woodland, which follows the valley of the River Gowy. A footpath extends between the A49 and Sadlers Wells. This public right of way (PROW) follows the boundary between the open fields to the south of the appeal site and the woodland. There is another PROW to the north of the appeal site that runs behind houses between School Lane and the A49. The appeal site lies approximately 500 m to the west of Bunbury village centre. It is within the area known as Bunbury Heath in the 2009 *Village Design Statement (VDS)*.¹²
21. The generalised descriptions for National Character Area 62 Cheshire Sandstone Ridge and the Ravensmoor character area of the East Lowland Plain in the 2008 regional character assessment are not very helpful in describing the relationship between the appeal site and built areas of the village. It was evident from my site visits that Bunbury is characterised by areas of built form around a central core, along with areas of ribbon development, some of which are separated some distance from the village core because of the network of local roads. A key feature of this pattern of development is the extent to which areas of open countryside penetrate into and through the built areas.
22. There is an open area between the core of the village and the development that extends south of St Boniface Church towards Lower Bunbury. The open countryside is a feature in views to the north of School Lane. In the western part of Bunbury Heath, a block of open countryside extends from the woodland into the area bounded by the houses at the end of Sadlers Wells, the school, and the rear of the ribbon development along School Lane and the A49. These roads are oriented at an acute angle, so that this area of open countryside is wedged deeply into this part of the village. This configuration for the village means that its rural setting can be appreciated from many vantage points. The relationship between the existing built form and its setting within the surrounding open countryside makes an important contribution to the particular character and distinctiveness of Bunbury.
23. The proposed development would occupy a central position within this block of open countryside that extends into the western part of Bunbury Heath. The appeal site is not specifically identified in the VDS, unlike the open fields between Higher and Lower Bunbury, which the VDS states should be protected.¹³ However, I do consider that this means that the appeal site does

¹¹ ID8, along with written representations at the application and appeal stages.

¹² CD7.2.

¹³ I note that permission has been granted by CEC for houses at Wych Lane, which is within this locality as shown on ID1.

not make an important contribution to the setting of the village. The VDS recommends that the separation of Higher Bunbury, Lower Bunbury, Bunbury Heath and Bunbury Commons should be maintained. It adds that Bunbury Heath is still a largely linear settlement, characterised by larger plot sizes with paddock land behind and between the ribbon development. The VDS also recommends that any development should respect and retain the remaining open spaces within the village which contribute to the feeling of spaciousness and the rural character.

24. It was evident at my site visit that the southern part of the appeal site feels very detached and remote from the core of the village. This area relates much more to the open countryside and woodland to the south than it does to the ribbon development along either School Lane or the A49. The proposed development would significantly erode the extent to which the open countryside penetrates into the village. In particular, proposed plots 19-26, towards the southern boundary of the site, would isolate the open field to the west of the appeal site from the open countryside located to the south. This would have a particularly harmful effect on the setting of the village.
25. I consider that the appellant's view¹⁴ that the proposal site is located in an area which would have no impact on the setting of the village, no impact on important features which contribute to its character, and no impact on landscape characteristics that contribute to local identity, significantly understates the likely impact of the scheme on the landscape resource. The LVIA finds that with landscape mitigation the effects for the wider landscape would be slight to negligible. I consider that the magnitude of change would be high. With medium sensitivity, the proposal would have a landscape effect of moderate-substantial significance. I turn next to visual effects.
26. The LVIA considered 7 representative viewpoint locations. Substantial adverse effects were identified due to the proximity of residential properties to the site boundaries at one location, but it was argued that with landscaping these effects could be reduced to moderate-substantial significance. From other residential properties and PROW the LVIA found that the filtered views through existing and proposed vegetation would result in an effect on the visual resource of between negligible and moderate significance. However, it was apparent at my site visit that although views into the site from public vantage points are limited, the overall extent and scale of the proposed development would be evident to observers, even if only from filtered glimpses of it, for those receptors walking, cycling or driving within the village and its surrounds. With high sensitivity receptors and a medium magnitude of change, I find that the proposed development would have an adverse visual effect of moderate-substantial significance.
27. Taking into account all the evidence before the Inquiry, along with what I saw at my site visits, it seems to me that both the appellant and CEC have understated the effects of the proposed development on the local landscape. I consider that the proposed development would result in significant harm to the character and appearance of the area. This is a consideration which weighs heavily against the proposal.

¹⁴ Mr Patrick's Proof of Evidence paragraph 8.5.

Housing land supply

28. The proposed development would conflict with LP Policy NE.2. It would also be contrary to LP Policy RES.5 because 34 dwellings would not constitute limited infilling. However, CEC acknowledges that it cannot demonstrate a five-year supply of deliverable housing sites. Paragraph 49 of the *Framework* provides that housing applications should be considered in the context of the presumption in favour of sustainable development, and that relevant policies for the supply of housing should not be considered to be up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. This affects the weight that can be given to the conflict with LP Policies NE.2 and RES.5, which I return to later in considering how the proposal squares with the *Framework*.
29. The proposal would also conflict with the currently proposed wording of BNP Policy H2 concerning the scale of development. BNP Policy H1 provides for a minimum of 80 new homes to be built in Bunbury in the period from April 2010 to March 2030 on sites within the carefully extended settlement boundary of the village.¹⁵ However, BNP Policy H2 states that new development would be supported in principle provided that it is small scale, and in character with the settlement phased over the period of the Plan, and a maximum of 15 new houses on any one available and deliverable greenfield site. It also precludes co-location with any other new housing development. There are outstanding objections to this emerging policy, and the BNP has further periods of consultation and examination before adoption. This limits the weight which can be given to it in determining this appeal. I understand the strength of local opinion about the proposal being fundamentally at odds with the direction of travel of the BNP. However, given the stage it has reached, I do not consider that the emerging BNP should be a decisive factor in determining this appeal.
30. I find that the provision of 24 dwellings for the open market and 10 affordable units would make an important contribution to boosting the supply of houses in the area. The proposed affordable housing would be particularly beneficial to the village, given the affordable housing requirement of 90 units in the period 2013/14 to 2017/18. These are considerations which weigh significantly in favour of allowing the appeal.

Other matters

31. CEC and local residents referred me to an appeal decision at Spurstow.¹⁶ However, it was apparent on my unaccompanied visit to this site that it is not directly comparable with the Bunbury appeal site. The Spurstow site has a more open wider aspect, in which the Peckforton Hills are a prominent feature. The Inspector in that case found that the site offers a vista of the wider landscape toward the Peckforton Hills. That is not so for the Bunbury site, which is more contained within its local landscape context. The Spurstow decision does not lend any support to the objector's case in the appeal before me.

¹⁵ The appellant considers that this figure has not been justified.

¹⁶ Appeal Ref:APP/R0660/A/14/2218286.

32. I have taken into account the concerns of some local residents about the effects of the proposed development on the living conditions of neighbours with particular reference to privacy, visual impact, sunlight, noise and disturbance. The occupiers of nearby houses are concerned about the proximity of the dwelling proposed for Plot 1. However, this would be a bungalow, and I am satisfied from what I saw at my site visit that the proposed separation distance and intervening landscaping would minimise any adverse effects on privacy, visual impact and sunlight, to an acceptable standard for this locality. The proposed landscaping and boundary treatment would safeguard the occupiers of the dwellings either side of the proposed access onto School Lane from any unacceptable visual intrusion or vehicle noise. Construction noise and disturbance could be minimised by the implementation of an approved environmental management plan. The view from nearby properties would change from open fields to a housing estate, but I am satisfied, in terms of the effects on the outlook from existing dwellings, that the proposed development would not have a dominating or overbearing impact. I find no convincing evidence that the proposal would have an unacceptable adverse effect on the living conditions of neighbours or future occupiers, and no reason to find conflict with LP Policy BE1 concerning amenity.
33. There is local concern about the effects of the proposal on highway safety. However, I am satisfied that the submitted Transport Statement reasonably shows that the proposal would not be detrimental to the operational performance of the local highway network, in terms of either queuing or delays. The site would be in reasonable walking and cycling distance of local facilities. Footway improvement works proposed on School Lane between Sadlers Wells and The Acreage would be of some benefit to pedestrians getting to and from the school.
34. Parts of the appeal site have in the past been subject to surface water ponding. There is local concern that the proposed development would exacerbate the problem, particularly in the field identified for the school car park. However, the scheme would provide an opportunity to improve the drainage of the area. I am satisfied that an appropriate design for surface water management could be devised and implemented for this site, which would also safeguard Sadlers Wells Community Woodland from pollution. This is a matter that could be addressed by the imposition of appropriate planning conditions.
35. There is local concern about the loss of wildlife, particularly due to the removal of the mature hedgerows.¹⁷ However, the submitted ecological survey and assessment found no substantive ecological constraints on the development of the site, subject to appropriate mitigation measures. These are matters that could be addressed by planning conditions. To some extent the proposed landscaping could help to offset any harm to local wildlife, but overall I consider that the proposal would have a neutral effect on nature conservation interests.
36. Some local residents thought that the style of the proposed dwellings was not in keeping with the local vernacular. However, there is a mix of design and style of dwellings in the village, and I find no conflict with LP Policy BE2 concerning design standards. Concern was also expressed about the ability of local services and facilities to meet the additional demand that would arise

¹⁷ These are shown on the aerial photograph at ID9.

from the occupiers of 34 more dwellings. But there is no substantive evidence to indicate that services would not cope, especially as Bunbury is identified as a Local Service Centre in the emerging strategy. Future occupiers of the proposed dwellings would assist in maintaining local shops and the school. The considerable investment in the local area, along with direct and indirect benefits of construction jobs, would be beneficial to the local economy.

Paragraph 14 of the National Planning Policy Framework

37. I asked for a written statement setting out CEC's submissions about how paragraph 14 applies.¹⁸ CEC refer to the judgment in *Davis*, which CEC considers was not disagreed with in *Dartford*.¹⁹ It also relies on the more recent judgment in *Wenman*.²⁰ CEC says this states explicitly at paragraph 79, "Applying these authorities, the Inspector was entitled to make a free-standing assessment of the sustainability of the proposed development, in the exercise of his planning judgment, at an appropriate stage in the reasoning process.....I am unable to discern any error of law in his approach." Accordingly, CEC say to the extent that it is thought that the *Framework* presumption applies e.g. to moderate the application of LP Policy NE.2 in circumstances where there is not a 5 year housing land supply, this would not eventuate if it is concluded that the proposed development is not sustainable. CEC argues that the assessment of whether the development is sustainable for the purpose of determining whether paragraph 14 should be engaged is to be done on a level playing field, with no pre-disposition either to grant or to refuse permission; whereas once it has been established that paragraph 14 should apply, and the development falls to be considered under the fourth bullet point of that paragraph, the weighing scales are pre-tilted in favour of the grant of permission.
38. At the Inquiry CEC's witness said that this involves a pre-loading of the scales. It was explained that this would involve two balancing exercises, which could be undertaken in parallel. The first balancing exercise would determine whether the proposal was sustainable development, and if so a second balancing exercise would be required with the scales pre-loaded to give effect to the presumption in favour of sustainable development. It was confirmed, in answer to my questions, that in this approach the adverse impacts would be the same in both balancing exercises, as would the benefits, with the only difference being the weight to be given to the presumption in favour of sustainable development.
39. The appellant considers that CEC's approach misinterprets paragraph 14. It cites the judgment in *Tewkesbury* that after the publication of the *Framework* if a five year housing land supply could not be demonstrated, relevant policies would be regarded as out-of-date, and therefore of little weight, and there would be a rebuttable presumption in favour of the grant of planning permission.²¹ The judgment in *Colman* referred to this.²² The appellant also relies on the judgment in *Dartford*.²³ In *Bloor* it was held that in the context of decision-taking paragraph 14 identifies three possible shortcomings in the

¹⁸ ID10.

¹⁹ *William Davis Ltd Jelson Ltd and SoSCLG North west Leicestershire DC* [2013] EWHC 3058(Admin) at CD 9.4. *Dartford BC v SoSCLG* [2014] EWHC 26636 (Admin) at CD9.7

²⁰ *Mark Wenman and SoSCLG* [2015] EWHC 925 at CD9.21.

²¹ *Tewkesbury BC and SoSCLG* [2013] EWHC 286 (Admin) paragraph 20 at CD9.9.

²² *Anita Colman and SoSCLG* [2013] EWHC 1138 (Admin) paragraph 5 at CD9.10.

²³ *Dartford* paragraph 54.

development plan, any one of which would require granting planning permission unless it was clear in the light of the policies in the *Framework* that the benefits of doing so would be “significantly and demonstrably” outweighed by “any adverse impacts”, or there were specific policies in the *Framework* indicating that “development should be restricted”.²⁴ It was held in *Crane* that if pursuant to paragraph 49 relevant policies were out-of-date (first step) then the “presumption in favour of sustainable development” in paragraph 14 will be engaged, with the second step considering whether permission should be withheld for either of the two possible reasons given in paragraph 14.²⁵ The appellant states that the Judge in *Wenman* does not now argue for a prior finding, and now accepts that the test in paragraph 14 determines whether development is sustainable for not.

40. Taking all the above into account, I find nothing in either Government policy or in Court judgments to say that determining sustainable development necessitates two balancing exercises. It seems to me that paragraph 14 can be given a sensible meaning with a much more straightforward interpretation. The first sentence of paragraph 14 establishes that there is a presumption in favour of sustainable development at the heart of the *Framework*.²⁶ It then sets out what this means for plan-making and decision-taking. The “this means” clearly refers to the ‘presumption in favour of sustainable development’, but not to my mind in any strict defining sense, but in setting out what it means in terms of consequences, or what follows from this insofar as the *Framework* is concerned. One such consequence is that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole, or specific policies in the *Framework* indicate development should be restricted. The *Framework* taken as a whole is paragraphs 1-219 and includes the core planning principles, and of course paragraph 14. In decision-taking the assessment required by the first part of the fourth bullet point would therefore incorporate an assessment of the sustainability credentials of the proposal by reference to paragraphs 6-10 and 18-219. It would seem unlikely to be necessary to do so if a determination under these paragraphs that the proposal amounted to sustainable development was also a pre-requirement for the matter to be considered under paragraph 14 in the first place. It seems to me that the first part of the fourth bullet point in paragraph 14 provides guidance, in circumstances where the development plan is absent, silent or relevant policies are out-of-date, about how the weight should be distributed in conducting the balancing exercise that determines whether a proposal is sustainable development to which the presumption applies.
41. In my view, the *Framework* requires that all development should be considered having regard to paragraph 14, and that the *Framework* requires only one overall balancing exercise to determine whether development is sustainable development to which the presumption should apply.

²⁴ *Bloor Homes East Midlands Ltd and SoSCLG* [2014] EWHC 754 (Admin) paragraph 44 at CD9.12.

²⁵ *Ivan Crane and SoSCLG* [2015] EWHC 425 (Admin) paragraph 65 at CD9.17.

²⁶ A dictionary definition of ‘presumption’ is something that is or may be presumed or supposed to be true, and so may be taken for granted. A presumption is rebuttal. How it should apply in particular circumstances is a matter that can be prescribed.

42. This interpretation would accord with the judgment in *Dartford*, which rejected a formulaic approach to be followed in a step by step sequential order in a decision.²⁷ I have had regard to Mrs Justice Lang's view in *Wenman* "...that the presumption in paragraph 14 of the NPPF can only apply in favour of development which is "sustainable", as defined in paragraphs 6 and 7, and explained in the policies in paragraphs 18 to 219."²⁸ However, this judgment does not rule out the approach outlined above in my paragraph 41. Furthermore, *Wenman* makes it clear that it is the presumption in paragraph 14 which only applies to sustainable development, and it does not mean that paragraph 14 is only in play if the proposal is first determined to be sustainable development. A reasonable interpretation of the *Framework* would be that the references to paragraphs 6 and 7, and 18 to 219, deal with what sustainable development means in practice for the planning system, whereas paragraph 14 sets out what the presumption in favour of sustainable development means. I note that paragraph 197 of the *Framework* states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.
43. In the light of the evidence before me, I reject CEC's view that the presumption in favour of sustainable development requires some pre-loading or pre-tilting of the balance in the second of a two-part planning balance exercise. In determining this appeal I have had regard to paragraph 14 of the *Framework* on the basis of my findings set out above in my paragraph 41.

Planning balance

44. The core planning principles set out in the *Framework* include proactively driving and supporting sustainable economic development to deliver needed homes, whilst recognising the intrinsic character and beauty of the countryside. The purpose of the planning system is to contribute to the achievement of sustainable development, which has economic, social and environmental dimensions. The mutually dependent economic, social and environmental roles required of the planning system require a balancing exercise, taking into account local circumstances.
45. The housing and economic benefits of the proposed development should be given significant weight. There would also be some highway safety benefits from the provision of the missing footway link along part of School Lane. However, given that there is currently no certainty about the construction of the proposed school car park, I do not believe that it is a consideration which can be given much weight as a benefit of the appeal scheme. An extant permission for the car park would, in itself, be of some advantage in that it would permit its construction in the future, if ever circumstances were to change. Nevertheless, it seems to me that the provision of 10 off-street car parking spaces for the school would, in any event, have only a marginal effect on the congestion on School Lane at peak times. It was evident on my site visit that taking 10 parked cars off this part of School Lane would do little to ameliorate the local congestion that results from the substantial number of vehicles that cram into the local streets for short periods at the start and end of the school day. It was a fine and dry day when I visited; I imagine that it is

²⁷ *Dartford* paragraph 52 at CD9.7

²⁸ *Wenman* paragraph 74 at CD9.21.

even worse on cold wet days. The proposed car park for the school is not a factor which weighs significantly in favour of the appeal scheme.

46. For the reasons set out above, I have found that both the appellant and CEC have significantly understated the likely effects of the proposed development on the setting of Bunbury, and the harm that would result to the character and appearance of the area. Irrespective of whether the appeal site is a valued landscape or not, a core principle of the *Framework* is to take account of the different roles and character of different areas, and recognising the intrinsic character and beauty of the countryside. The harm I have identified is significant and weighs heavily against the proposed development when compared to the benefits of the scheme as outlined above. In my judgement, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole. Given this finding it is not necessary for me to address the submissions about Footnote 9 of the *Framework*. The planning balance here falls against the proposal.

Conclusions

47. There is considerable local opposition to the proposed development, which is evident from the 150 written representations opposing the scheme at the application stage, and the 44 letters of objection lodged about the appeal. Many of the 76 written representations about the current circumstances regarding the school car park also raised or reiterated objections to the proposal. One of the aims of national planning policy is to strengthen local decision making.²⁹ However, local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons. The proposal therefore falls to be determined on its planning merits. I have taken into account all other matters raised in evidence, but have found nothing to outweigh the main considerations that lead to my conclusions.
48. I am required to decide this appeal having regard to the development plan, and to make my determination in accordance with it, unless material considerations indicate otherwise. The proposal would conflict with relevant development plan policies, but more weight should be given here to the *Framework*. Given the need to boost the supply of housing, I find that the proposed market and affordable housing would contribute significantly to the social and economic advantages of the scheme, but I have found that the benefits of the proposed development would not outweigh the environmental harm. Furthermore, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole. I find that the proposal would not be sustainable development for the purposes of applying the policy set out in the *Framework*. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

John Woolcock
Inspector

²⁹ *National Planning Policy Framework* Annex 1: Implementation.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Crean QC

Instructed by Cheshire East Council.

He called

Ron Pulford

Chairman Bunbury Parish Council and
Chairman Bunbury Neighbourhood Plan Group.
Major Applications Team Leader.

Ben Haywood BA(Hons) MA MBA
MRTPI MCFI

FOR THE APPELLANT:

Jeremy Cahill QC

Instructed by DWF LLP.

He called

Justin Cove BA(Hons) MSc MRTPI
Kit Patrick BA(Hons) Dip La CMLI

Associate Director Nexus Planning.
Director TPM Landscape.

INTERESTED PERSONS:

Sarah Nash

Local resident.

Janet Thomas

Local resident.

Michael Thomas

Local resident.

Leila Potter

Local resident.

Michael Crompton

Local resident.

Nick Parker

Local resident.

David Grace

Local resident.

Local residents also asked questions of opposing witnesses and participated in the discussion about possible planning conditions.

DOCUMENTS SUBMITTED AT AND AFTER THE INQUIRY

Document	1	Maps and photographs of sites referred to in proofs of evidence.
Document	2	Committee report Weaver Farm outline planning application for residential development.
Document	3	Opening statement on behalf of the appellant.
Document	4	Opening submissions on behalf of the Council.
Document	5.1	Letter from Bunbury Aldersey CE Primary School, dated 23 May 2014.
	5.2	Letter from Bunbury Aldersey CE Primary School, dated 9 June 2014.
Document	6	Ofsted Report Bunbury Aldersey CE Primary School 3-4 February 2015.
Document	7	Part 1 Closing submissions on behalf of the Council.
Document	8	Statement by Sarah Nash.
Document	9	Annotated aerial photograph and notes by Michael Thomas.
Document	10	Addendum to proof of evidence of Ben Haywood. [requested by Inspector]
Document	11.1	Extant planning permissions, completions and outstanding applications, since March 2010.
	11.2	Revised table including outstanding applications and affordable housing.
Document	12	Costs application on behalf of the local planning authority.
Document	13	The Community Infrastructure Levy Regulations 2010 Compliance Statement.
Document	14	Draft section 106 deed re affordable housing public open space.
Document	15.1	Closing submissions on behalf of the Council: Part 1.
	15.2	Closing submissions on behalf of the Council: Part 2.
Document	16	Closing submissions on behalf of the appellant.
Document	17	Response to local planning authority's costs application.
Document	18	Costs application on behalf of the appellant.
Document	19	Revised Certificate dated 5 June 2015.
Document	20	Email exchange dated 11 March and 2 April 2014 concerning housing mix.
Document	21	The Haberdashers' Company letter dated 16 June 2015.
Document	22.1	Section 106 Deed dated 19 June 2015.
	22.2	Power of Attorney.
Document	23	Agreed list of conditions.
Document	24	Appellant's email dated 18 June 2015 concerning The Haberdashers' Company letter dated 16 June 2015.
Document	25	CEC email, dated 18 June 2015, in response to ID24.
Document	26	Email exchanges between 2-13 July 2015 about resuming Inquiry or proceeding by written representations.
Document	27	Inspector's instruction, dated 13 July 2015, to advertise and re-notify third parties about ID21.
Document	28	Written representations in response to ID27.
	(1-76)	

SCHEDULE OF PLANS

Site Location Plan (Drawing Ref: SL_B_02)
Proposed Site Layout (Drawing Ref: SL_B_01_D)
The Bradenham floor plan (Drawing Ref: 509_SLB_FR_P1 Rev A)
The Bradenham floor plan (Drawing Ref: 509_SLB_P1 Rev A)
The Bradenham elevation (Drawing Ref: 509_SLB_FR_E1 Rev A)
The Bradenham elevation (Drawing Ref: 509_SLB_E1 Rev A)
The Waddesdon floor plan (Drawing Ref: 507_SLB_FR Rev A)
The Waddesdon floor plan (Drawing Ref: 507_SLB_P1 Rev A)
The Waddesdon elevation (Drawing Ref: 507_SLB_E1 Rev A)
The Waddesdon elevation (Drawing Ref: 507_SLB_FR_E1 Rev A)
The Brereton floor plan (Drawing Ref: 526_SLB_P1 Rev A)
The Brereton elevation (Drawing Ref: 526_SLB_E1 Rev A)
The Osterley elevation (Drawing Ref: 421_SLB Rev A)
The Osterley elevation & floor plan (Drawing Ref: 421_SL_FR Rev A)
The Pentrich elevation (Drawing Ref: 504_SLB_HR_E1 Rev A)
The Pentrich floorplan (Drawing Ref: 504_SLB_HR_P1 Rev A)
The Berrington elevation & floorplan (Drawing Ref: 419_SLB_HR Rev A)
The Berrington elevation & floorplan (Drawing Ref: 419_SLB Rev A)
The Westacre elevation & floorplan (Drawing Ref: B201_SLB Rev A)
The Lynsted elevation & floorplan (Drawing Ref: 3B5P_SLB Rev A)
The Hemsby elevation & floorplan (Drawing Ref: 403_SLB Rev A)
The Rainham elevation & floorplan (Drawing Ref: 406_SLB_HR Rev A)
The Astley elevation & floorplan (Drawing Ref: 412_SLB Rev A)
The Astley elevation & floorplan (Drawing Ref: 412_SLB_HR Rev A)
The Buckland (Drawing Ref: 413_SLB Rev A)
The Wardle elevation & floorplan (Drawing Ref: 416_SLB Rev A)
The Wardle elevation & floorplan (Drawing Ref: 416_SLB_HR Rev A)
The Earlswood elevation & floorplan (Drawing Ref: 417_SLB Rev A)
The Eltham (Drawing Ref: 2B5P_SLB)
The Pelynt (Drawing Ref: 2B4P_SLB)
Garage Plan (Drawing Ref: GL01/G02_SLB)
Landscape Layout (3064_01)
Proposed Site Access (136-01/GA-01)
Proposed Footway Improvement (136-01/GA-02)

CORE DOCUMENTS

1. Original Application Documents
 - 1.1 Planning Application Form/Certificates
 - 1.2 Site Location Plan (Drawing Ref: SL_B_02)
 - 1.3 Proposed Site Layout (Drawing Ref: SL_B_01_B)(Superseded)
 - 1.4 Design and Access Statement (Nexus Planning)
 - 1.5 Statement of Community Involvement (Lexington Communications)
 - 1.6 Landscaping Strategy (DEP Landscape Architecture)
 - 1.7 Landscape Layout (DEP Landscape Architecture)
 - 1.8 Landscape and Visual Impact Appraisal (TPM Landscape Ltd)
 - 1.9 Transport Statement (Cameron Rose Associates)
 - 1.10 Proposed Site Access (I36-01/GA01)
 - 1.11 Proposed Footway Improvement (I36-01/GA-02)
 - 1.12 Ecological Appraisal (Ribble Ecology Ltd)
 - 1.13 Flood Risk Assessment (Lees Roxburgh Consulting Engineers)
 - 1.14 Tree Survey Plans and Documents (Tree Solutions)
 - 1.15 Phase 1 Site Investigation Report (TerraConsult Limited)
 - 1.16 B201_SLB (A3; 1:100; March 2014)(Superseded)
 - 1.17 3B5P_SLB (A3; 1:100; March 2014)(Superseded)
 - 1.18 403_SLB (A3; 1:100; March 2014)
 - 1.19 406_SLB_HR (A3; 1:100; March 2014)
 - 1.20 412_SLB (A3; 1:100; March 2014)
 - 1.21 412_SLB_HR (A3; 1:100; March 2014)
 - 1.22 413_SLB (A3; 1:100; March 2014)
 - 1.23 416_SLB (A3; 1:100; March 2014)
 - 1.24 416_SLB_HR (A3; 1:100; March 2014)
 - 1.25 417_SLB (A3; 1:100; March 2014)
 - 1.26 419_SLB (A3; 1:100; March 2014)
 - 1.27 419_SLR_HR (A3; 1:100; March 2014)
 - 1.28 421_SLB (A3; 1:100; March 2014)
 - 1.29 421_SLB_FR (A3; 1:100; March 2014)
 - 1.30 504_SLB_HR_E1 (A3; 1:100; March 2014)
 - 1.31 504_SLB_HR_P1 (A3; 1:100; March 2014)
 - 1.32 507_SLB_E1 (A3; 1:100; March 2014)
 - 1.33 507_SLB_P1 (A3; 1:100; March 2014)
 - 1.34 507_SLB_FR_E1 (A3; 1:100; March 2014)
 - 1.35 507_SLB_FR_P1 (A3; 1:100; March 2014)
 - 1.36 509_SLB_P1 (A3; 1:100; March 2014)
 - 1.37 509_SLB_E1 (A3; 1:100; March 2014)
 - 1.38 509_SLB_FR_P1 (A3; 1:100; March 2014)
 - 1.39 509_SLB_FR_E1 (A3; 1:100; March 2014)
 - 1.40 526_SLB_E1 (A3; 1:100; March 2014)
 - 1.41 526_SLB_P1 (A3; 1:100; March 2014)
 - 1.42 GL01/02 (A3; 1:100; March 2014)
 - 1.43 GL01/GL02_SLB (A3; 1:100; March 2014)
2. Revised or additional Application Documents
 - 2.1 SL_B_01_D Revised Layout (provided 2 July 2014)
 - 2.2 2B3P_SLB – The Elham (provided 3 July 2014)
 - 2.3 2B4OP_SLB – The Pelynt (provided 3 July 2014)
 - 2.4 Updated Arboricultural Impact Assessment (Ref: 14/AIA/CHE/(E)/54)(Tree Solutions Ltd) dated 29 January 2015

- 2.5 Design and Access Statement Addendum (Nexus Planning) dated February 2015

3. Consultee Responses
 - 3.1 Bunbury Parish Council
 - 3.2 Natural England
 - 3.3 Environmental Protection
 - 3.4 Education
 - 3.5 Cheshire Fire and Rescue Service
 - 3.6 Environment Agency
 - 3.7 Strategic Housing Officer
 - 3.8 Emails between Bloors Homes and Strategic Housing Officer
 - 3.9 Strategic Highways Manager
 - 3.10 Sustrans Comments

4. Development Plan
 - 4.1 Borough of Crewe and Nantwich Replacement Local Plan 2011 – Written Statement
 - 4.2 Borough of Crewe and Nantwich Replacement Local Plan 2011 – Proposals Map
 - 4.3 Secretary of State’s Saving Direction (Government Office for the North West, 14 February 2008)
 - 4.4 Secretary of State’s covering letter to Saving Direction

5. National Planning Policy Documents
 - 5.1 National Planning Policy Framework (Communities and Local Government, March 2012)
 - 5.2 Extracts from the Planning Practice Guidance (Communities and Local Government, March 2014)
 - 5.3 The Neighbourhood Planning (General) Regulations 2012, SI 2012/637
 - 5.4 Town and Country Planning Act 1990, Sch 4B as amended by the Planning and Compulsory Purchase Act 2004
 - 5.5 Planning and Compulsory Purchase Act 2004, ss38A – 38C
 - 5.6 Department for Business Innovation and Skills–Plan for Growth 2011 pp1–40

6. Emerging Local Planning Policy Documents
 - 6.1 Cheshire East Council Local Plan Strategy Submission Version (Cheshire East Council, March 2014)
 - 6.2 Cheshire East Council Local Plan Strategy Policies Map (Cheshire East Council, March 2014)
 - 6.3 Local Plan Inspector's Interim Views on Examination into Cheshire East Local Plan Strategy dated 6 November 2014

7. Other Local Documents
 - 7.1 Draft Bunbury Neighbourhood Plan (Released for Regulation 14 consultation on 9 April 2015)
 - 7.2 Bunbury Village Design Statement (March 2009)
 - 7.3 Strategic Housing Market Assessment 2013 Update (Cheshire East Council, September 2013)
 - 7.4 Interim Planning Statement: Affordable Housing (Cheshire East Council, February 2011)
 - 7.5 Cheshire East Strategic Housing Land Availability Assessment 2012 (Cheshire East Council, February 2013)

- 7.6 Cheshire East Housing Development Study 2015 – draft of 13 May 2015
- 7.7 Cheshire East Council Cabinet Member for Housing and Jobs – Minutes of Meeting of 5 May 2015
- 7.8 Cheshire East Council – Cabinet Member for Housing and Jobs – Report for Meeting of 5 May 2015
- 7.9 Cheshire East Council – Cabinet Member for Housing and Jobs – Report for Meeting of 5 May 2015 – Appendix 1.
- 7.10 Notes of meeting between Bunbury Neighbourhood Planning Group and Bloor Homes.
- 7.11 Land Adjacent, The Gables, Peckforton Hall Lane
Application Number 14/2078N.
- 7.12 Letter from Kit Patrick to Landscape Officer at Cheshire East enclosing Ravensmoor Character Area Assessment, dated 28 May 2015.
- 7.13 Land off Wyche Lane, 10 affordable, recommendation to Committee, dated 3 May 2012. Application number P07/0867

8. Appeal Decisions
- 8.1 Land off Crewe Road, Haslington, Cheshire, Ref: APP/R0660/A/14/2213304.
Decision issued 15 August 2014
- 8.2 Land off Hind Heath Road, Sandbach, Ref: APP/R0660/A/14/2212992.
Decision issued 1 August 2014
- 8.3 Land north of Congleton Road, Sandbach, Cheshire
(APP/R0660/A/13/2189733) (18 October 2013)
- 8.4 The Poplars, Marsh Lane, Edleston, Nantwich (APP/R0660/A/13/2202618)
Page 5
- 8.5 Land West of High Street and Land West of Alfred Street, Irchester
Northants: APP/H2835/A/12/2182431, 5 June 2013

- 8.6 Sandbach Road North, Alsager: APP/R0660/A/13/2195201, 18 October 2013
- 8.7 Sandbach Road Alsager Consent to Judgement
- 8.8 Appeal decision relating to Muller Property Group (A) Land off Audlem Road / Broad Lane, Stapeley, Nantwich and (B) Land off Peter DeStapleigh Way, Nantwich.
- 8.9 Land Bounded By Gresty Lane, Rope Lane, Crewe Road And A500, Crewe -
Application Ref: 13/2874n APP/R0660/A/13/2209335 19 Jan. 2015 (Gresty Oakes)
- 8.10 Pulley Lane, Newland Road, Newland Lane and Primsland Way, Droitwich Spa (Wychavon DC) (Refs: 13/2199085 and 2199426) 2 July 2014
- 8.11 Elworth Hall Farm, Dean Close, Sandbach, Cheshire, CW11 1YG. Application Ref: APP/R0660/A/13/2196044 11 April 2014
- 8.12 Saltersford Farm, Macclesfield Road, Holmes Chapel, Crewe CW4 8AL, APP/R0660/A/14/2221374, 10 February 2015
- 8.13 Land West of Broad Road, Hambrook, West Sussex PO18 8RG Ref: APP/L3815/A/13/2205287
- 8.14 Buckleigh Road, Westward Ho!, Devon EX39 1BL Ref: APP/W1145/A/13/2207840, 13 May 2014

9. High Court Cases
- 9.1 High Court judgement in respect of South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land and Estates Limited [2014] EWHC 573 (Admin)] (10 March 2014)

- 9.2 Bloor Homes East Midlands Limited v. Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council [2014] EWHC 754 (Admin) (19 March 2014) Lindblom J
- 9.3 Cotswold District Council v Secretary of State for Communities and Local Government, Fay and Son Limited; Cotswold District Council v Secretary of State for Communities and Local Government, Hannick Homes and Development Limited; The Queen on the application of Cotswold District Council v Secretary of State for Communities and Local Government v Hannick [2013 EWHC 3719 (Admin)] (27 November 2013)
- 9.4 William Davies etc v SCLG and others (2013 EWHC 3058 (Admin)) Judgement of Mrs Justice Lang DBE (11 October 2013) Page 6
- 9.5 William Davis Ltd v. SSCLG Refusal of Consent to Appeal
- 9.6 The Queen on the Application of Gibson v. Mid Sussex District Council [2014] EWHC 1296 (Admin) (26th March 2014). Ouseley J
- 9.7 Dartford Borough Council v. Secretary of State for Communities and local Government and Landhold Capital Ltd. [2014] EWHC 2636 (Admin) Patterson J.
- 9.8 Stratford on Avon District Council v SSCLG and others [2013] EWHC 2074 (Admin) (18 July 2013) Hickinbottom J.
- 9.9 Tewkesbury Council v SSCLG and others [2013] EWHC 286 (Admin) (20 February 2013) Males J.
- 9.10 Anita Colman v Secretary of State for Communities and Local Government, North Devon District Council, RWE Npower Renewables Limited [2013] EWHC 1138 (Admin) (9 May 2013)
- 9.11 Stroud District Council v Secretary of State for Communities and Local Government, Gladman Developments Limited [2015] EWHC 488 (Admin) (6 February 2015)
- 9.12 Bloor Homes East Midlands v Secretary of State for Communities and Local Government and Hinckley and Bosworth Council [2014] EWHC 754 (Admin) (16 December 2013)
- 9.13 Woodcock Holdings Limited v Secretary of State of for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 (Admin) (25, 26 February 2015)
- 9.14 Muller Property Group v Secretary of State of Communities and Local Government, Cheshire East Council, Details of Claim, 23 April 2015
- 9.15 R (Larkfleet Homes Limited) v Rutland County Council and Uppingham Town Council [2014] EWHC 4095 (Admin)
- 9.16 R (Gladman Developments Limited) v Aylesbury Vale District Council and Winslow Town Council [2014] EWHC 4323 (Admin)
- 9.17 Ivan Crane v Secretary of State for Communities and Local Government and Harborough District Council, [2015] EWHC 425 (Admin)
- 9.18 BDW Trading Limited (t/a Barratt Homes), Wainhomes Developments Ltd v Cheshire West & Chester Borough Council, Stephen Robinson (The Counting Officer for CWCBC) v Tattenhall & District Parish Council, Taylor Wimpey UK Ltd [2014] EWHC 1470 (Admin)
- 9.19 Burton and South Derbyshire College v Secretary of State for Communities and Local Government, Consent Order
- 9.20 McTaggart and Mickel Limited v Secretary of State for Communities and Local Government (1) and Wiltshire County Council (2), Consent Order
- 9.21 Mark Wenman v Secretary of State for Communities and Local Government (1) and Waverley Borough Council (2) [2015] EWHC 935 (Admin)

- 10. Reporting and Decision
 - 10.1 Planning Officer's Report to Cheshire East Council Southern Planning Committee 27 August 2014 (planning application ref: 14/2204/N)
 - 10.2 Decision Notice – issued 28 August 2014

- 11. Inquiry Documents
 - 11.1 Appeal form
 - 11.2 Appellants Statement of Case
 - 11.3 LPA's Statement of Case
 - 11.4 Statement of Common Ground
 - 11.5 Draft S106 Planning Agreement

Richborough Estates