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## Appeal Decision

Inquiry began on 9 September 2015

Site visit made on 17 September 2015

**by Frances Mahoney DipTP MRTPI IHBC**

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

**Decision date: 14 December 2015**

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### **Appeal Ref: APP/R0660/A/14/2228681** **Land west of Goldfinch Close, Congleton**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Seddon Homes Limited against the decision of Cheshire East Council.
  - The application Ref 13/3517C, dated 15 August 2013, was refused by notice dated 16 May 2014.
  - The development proposed is the erection of up to 230 dwellings, access, open space and associated landscaping and infrastructure.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of up to 230 dwellings, access, open space and associated landscaping and infrastructure on land west of Goldfinch Close, Congleton in accordance with the terms of the application, Ref 13/3517C, dated 15 August 2013, subject to the conditions set out at Annex A to this decision.

### **Preliminary matters**

2. The Inquiry sat on 9, 10, 11, 15, 16 and 17 September 2015 and was closed in writing on 20 October 2015<sup>1</sup>. The appeal related to an outline application with all matters, other than access, reserved for future consideration. Along with the site location plan (Red line plan 3445/21 Rev B), the site plan showing access (3445/23<sup>2</sup>) is relevant as it shows the proposed access points from Kestral Close, Goldfinch Close and The Moorings.
3. Concern was expressed by some residents that they did not receive the first letter of notification of the appeal from the Council<sup>3</sup>. As a result it was agreed<sup>4</sup> that a number of letters of representation from third parties would be added to those already before the Inquiry<sup>5</sup>.
4. Following an acceptance by the Council that the statement of Dave Hodgkinson<sup>6</sup> was contradictory to their advanced case and agreed position in

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<sup>1</sup> The Inquiry was left open at the behest of the main parties to enable them to work together to seek a resolution to an issue relating to the wording of the Unilateral Undertaking – Inquiry Doc 28.

<sup>2</sup> CD G19.

<sup>3</sup> They did, however, receive the letter giving notice of the date, time and venue for the Inquiry.

<sup>4</sup> Agreed between the parties and the Inspector.

<sup>5</sup> See Inquiry Doc 21.

<sup>6</sup> Appendix 4 of Mr King's proof.

- the Statement of Common Ground in relation to conserving and enhancing the historic environment, they requested that this be disregarded<sup>7</sup>. I have treated it accordingly.
5. Following the refusal of planning permission for the proposed development in May 2014 the Council's position in respect of whether they could demonstrate a five year housing land supply changed to a negative position. As a result in August 2015 the Council confirmed that, whilst maintaining the terms of the first three reasons for refusal, they would not be pursuing their case in defence on the basis that they could demonstrate a five-year supply of deliverable housing sites<sup>8</sup>. In respect of the fourth reason for refusal relating to highways the Council has reached an agreement on mitigating measures, including junction changes<sup>9</sup>. As a result, subject to the satisfactory securing of the identified measures<sup>10</sup>, the Council has not defended the appeal on highway grounds.
  6. However, local residents led by Mr Minshull of the Congleton Sustainability Group did continue in their opposition to the proposals on highway grounds and these matters are addressed later in this decision.
  7. An agreement made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted<sup>11</sup>(UU). The agreement promises the delivery of 30% of the development as affordable homes, on-site public open space, the provision of a management company with responsibility for the open space etc, and the payment of contributions towards off-site highway works and biodiversity. The parties have worked collaboratively to establish and agree the provisions within the completed UU for the appeal site. They have all been found to be necessary, reasonable and justified in accordance with Regulations 122 & 123 (3) of the Community Infrastructure Levy Regulations 2010<sup>12</sup>.
  8. However, a number of legal points, addressed by means of submissions, including a joint position statement<sup>13</sup>, have been presented in relation to some of the wording of clauses within the UU. I have carefully considered the concerns expressed by the Council and the explanation for the wording adopted by the appellant company. Other than in the case of the wording of clause 6.6 I find that whilst the wording within the UU does not follow the model section 106 agreement<sup>14</sup> it is of a reasonable nature and would deliver the provisions required, particularly as there are opportunities for the Council to review and approve some of the steps required to achieve the desired aims.
  9. Clause 6.6 has caused me some difficulty. This clause deals with the matter of whom the agreement can be enforced against. It introduces a restriction that the agreement will not be enforceable against individuals which did not carry out or allow the breach, if they have had no interest in the part of the site to which the breach relates since the date of the agreement. This would make enforcement much harder for the Council, although not impossible. No clear

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<sup>7</sup> See Inquiry Doc 20.

<sup>8</sup> See Inquiry Doc 12.

<sup>9</sup> This decision was taken in the context of the proposed access points already having been accepted in APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605 – CD B1 + Inquiry Plan L.

<sup>10</sup> A matter I shall return to later in the decision.

<sup>11</sup> Inquiry Doc 30.

<sup>12</sup> The Community Infrastructure Levy Regulations 2010 Compliance Statement – Inquiry Doc 6.

<sup>13</sup> Inquiry Doc 29.

<sup>14</sup> Prepared by the Law Society and DCLG.

reason has been given why the Council should be required to assess the individual liability of each of the owners for any particular breach. This is not an ideal arrangement requiring a judgement to be made regarding who has liability for a particular obligation. That notwithstanding, the UU agreement is enforceable albeit in specific circumstances and not in a straightforward manner. Whilst it does secure the proffered obligations the slight identified shortcoming does reduce the weight I can ascribe to its provisions, although such a reduction in weight would be minimal.

### **Planning history**

10. The appeal site comprises land close to and immediately to the south of the town centre of Congleton. It lies between the town's urban edges defined by The Moorings, Goldfinch Close and Kestrel Close to the east, and Howey Lane and Tudor Way to the west. It is centrally punctuated from the north by the open green, distinctly manicured grounds of Congleton Cemetery.
11. In February 2014 planning permission was granted at appeal for two schemes totalling 80 dwellings on land accessed from The Moorings and off Goldfinch Close and Kestrel Close<sup>15</sup>. Both of the permitted sites lie within the eastern extremity of the appeal site. The permitted vehicular access points are those intended to access the proposed wider development. At the time of the Inquiry reserved matters applications for both schemes were with the Council awaiting determination<sup>16</sup>. Therefore, a material consideration in the determination of this appeal is that there is already a commitment for 80 dwellings on part of the appeal site.
12. Following the refusal of the planning application now the subject of this appeal, the appellant company sought to resolve some technical matters arising from the Council's reasons for refusal. As a result a duplicate application was submitted in October 2014<sup>17</sup>. In the main the amendments centred on minor changes to the parameters plan (dwg no 502A-03J) and improvements to the proposed scheme of off-site highway works (dwg no 0011-07 Rev A)<sup>18</sup>.
13. One of the main changes to the parameters plan was a reduction in the quantum of development being applied for from up to 230 dwellings to 220 dwellings. This amendment reflects the intention of the appellant company at the time the application, the subject of this appeal, was determined, in that a revised parameters plan was submitted at that time (dwg no 502A-03H) to reflect the up to 220 dwellings along with the offer of agreement to a condition limiting the overall quantum of development to up to 220 dwellings<sup>19</sup>.
14. The appellant company and the Council were in agreement that the updated design and access statement, landscape and visual impact assessment, heritage assessment and environmental impact assessment, all submitted at the duplicate application stage, specifically relating to the development of up to 220 dwellings were the relevant base evidential documents in the case of this appeal<sup>20</sup>.

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<sup>15</sup> APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605 – CD B1 + Inquiry Plan L.

<sup>16</sup> 15/0505C & 15/0001C.

<sup>17</sup> 14/4938C – CD G25.

<sup>18</sup> It was refused in July 2015 for similar reasons to those of this appeal proposal without mention of any highway grounds.

<sup>19</sup> Statement of Common Ground paragraph 1.11 – 1.13 and 4.2 – 4.6. Rev H was later revised to Rev J.

<sup>20</sup> Inquiry Doc 8.

15. Taking into account that whilst the description of development refers to up to 230 dwellings, it is clear that it was the intention of the appellant company to reduce the quantum of development down to up to 220 dwellings at the application stage. It is not in my remit to change the description of development. However, the appellant company and the Council were in agreement that the extent of the development proposed should be no more than 220 dwellings. The appellant company confirmed their agreement to a condition limiting the number of dwellings proposed to up to 220. In addition, an Updated Parameters Plan<sup>21</sup> was also promoted which originated in the second planning application<sup>22</sup>. The proffered changes in themselves were subject to consultation through the planning application process of the second application. The Updated Parameters Plan is conceptual in its terms showing the indicative relationship of proposed development areas with open green space, woodland buffers, existing vegetation, access points/road layout, existing public rights of way, a proposed network of footpaths and existing neighbouring land uses. The plan illustrates how the proposed development might be accommodated. Both the Council and the appellant company have considered these details in this context. Taking into account that the overall change in the quantum of development represents a reduction in the scale of the scheme, I am satisfied that the proposed changes would not materially prejudice the interests of others and so I similarly have taken them as informing my consideration of the development.

### **Main Issues**

16. From the evidence before me, including all that I have seen and read, the main issues are:

- the effect of the proposal on landscape character and appearance;
- on the supply of high quality agricultural land;
- on the safety of users of the local road network<sup>23</sup>;
- on the significance of heritage assets; and
- whether the appeal proposal constitutes a sustainable development in the countryside, having regard to national and local policies on the supply of housing land.

### **Planning Policy/Housing Land Supply**

17. The Council is currently engaged in the production of the Cheshire East Local Plan Strategy (CELP). Following a number of hearing sessions, the examination was suspended in December 2014 to enable the Council to re-assess, amongst other things, the housing need and the economic, employment and housing strategy<sup>24</sup>. The Examining Inspector identified a serious mis-match between the economic strategy and housing strategy and shortcomings in the Council's objective assessment of housing need. His concern was that the proposed

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<sup>21</sup> Dwg no: 502A-03J – CD G18.

<sup>22</sup> As a result of the proposed changes minor amendments were necessary to some of the submitted supporting documents to the original planning application. As a result Inquiry Doc 8 sets out the documents relevant to the determination of this appeal.

<sup>23</sup> I have noted the concerns of third parties regarding highway issues and, notwithstanding the agreement between the main parties, I shall also examine this matter.

<sup>24</sup> Para 1 of the Schedule of Matters and Issues for Resumed Hearings – Inquiry Doc 15.

level of future housing provision seemed inadequate to ensure the success of the overall economic, employment and housing strategy<sup>25</sup>. Further examination hearings were completed in October 2015 and the additional interim findings of the Inspector are awaited. At the Inquiry the Council was unsure when the CELP would be adopted, but in the meantime work on a draft Site Allocation Plan was proceeding.

18. Congleton is identified as a Key Service Centre, with an identified requirement within CELP Policy PG6 of 3,500 new homes in the town over the period 2010-2030<sup>26</sup>. The CELP includes a number of strategic locations identified by the Council as possible allocated sites, along with an assessment of the Green Belt. This has resulted from an acceptance by the Council that there will be a reliance on greenfield sites to provide some of the land required for future growth<sup>27</sup>.
19. The National Planning Policy Framework (the Framework) acknowledges that it is highly desirable that local planning authorities should have an up-to-date plan in place. The Council is working towards achieving this goal but a reliable date for adoption was not tabled. In these circumstances of uncertainty, and the lack of confirmation of compliance with the terms of the Framework, these factors diminish the weight that can be attributed to the emerging CELP policies<sup>28</sup> which I consider to be only limited in these circumstances.
20. There is a Neighbourhood Plan in preparation to cover Congleton. However, it is in the early stages of preparation. Teams of sub-committees are working on different aspects of the plan, but it has not reached the regulation 14<sup>29</sup> draft plan stage. There is still work to be done and adoption date is not expected until next year<sup>30</sup>. The parties agreed it did not form part of the development plan and that no weight could be ascribed to the Neighbourhood Plan in its early stage of emergence. In addition, no party relied on any aspect of the Neighbourhood Plan in evidence.
21. Therefore, the development plan includes the saved policies of the Congleton Borough Local Plan First Review (LP). Adopted in January 2005, it was drafted to cover the period to 2011. The plan period has long since passed, but that does not necessarily mean that all of the policies of the LP are out-of-date.
22. Additionally, the LP pre-dates the Framework. Therefore, paragraph 215 of the Framework is engaged, setting out that the weight to be given to relevant policies, in such existing plans, depends on their degree of consistency with those within the Framework.
23. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. It identifies that Councils should ensure that their local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework. In addition, they must identify and update annually a supply of specific

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<sup>25</sup> Para 6.16 of the Statement of Common Ground.

<sup>26</sup> This is part of the strategic planning of the CELP to locate development close to main towns in the interests of achieving sustainable locations – Haywood in X- examination – this figure may also need to increase as a result of the Examination Inspector's interim findings.

<sup>27</sup> Point accepted by Haywood in X- examination. He also accepted the Council would have to allocate outside SLZs to meet their housing requirements.

<sup>28</sup> This was an agreed point between the parties.

<sup>29</sup> Of the Neighbourhood Planning (General) Regulations 2012 (as amended) – Haywood in oral evidence

<sup>30</sup> Some slippage may occur.

- deliverable sites sufficient to provide five years worth of housing against their housing requirements, with an additional buffer of either 5% or 20% (moved onward from later in the plan period), to ensure choice and competition in the market for land.
24. It was common ground at the Inquiry that the Council was unable to demonstrate the provision of five years worth of deliverable housing land, measured against their housing requirements<sup>31</sup> taking into account a 20% buffer.
25. The appeal site lies outside of the settlement zone line (SZL) of Congleton<sup>32</sup>. The specified SZL would have been fixed, having regard to the need to accommodate development planned over the plan period<sup>33</sup>. Therefore, logically, as the Council is currently unable to demonstrate a five year housing land supply, the LP defined SZL would have the effect of constraining development, including housing, within settlements. On that basis, with reference to paragraph 215 of the Framework, the settlement boundaries are out of date.
26. LP saved policy PS8 is the main policy promoted by the Council within the LP which deals with development in open countryside. It defines open countryside as that part of the plan area outside of the Green Belt and outside existing settlements. LP saved policy H6 deals with residential development in the open countryside and the Green Belt. Both policies set out a number of categories of development which would be compliant in policy terms. However, the appeal proposal is not one of the stated purposes and does not fall within the proffered exceptions and, as such, the proposal, as a matter of principle, is contrary to these LP policies.
27. Their overall objective is to protect the character and amenity of all countryside outside the defined development boundaries from indiscriminate development. This policy approach does reflect the spirit of the terms of one of the relevant core planning principles of the Framework, that being to recognise the intrinsic character and beauty of the countryside. To this extent these LP policies are consistent with the aims set out in the Framework and are relevant.
28. Nonetheless, they are inextricably linked with the constraining effect of the settlement boundaries on the housing requirement. Therefore, I consider LP policies PS8 and H6 are relevant policies for the supply of housing within the meaning of paragraph 49 of the Framework and I shall appraise the weight to be afforded to them accordingly<sup>34</sup>.

### *Housing need*

29. Paragraph 49 of the Framework advises that relevant policies for the supply of housing should not be considered up to date if a five year supply cannot be demonstrated, as in this case. This has consequences for the reliance that can

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<sup>31</sup> Para 7.27 of the Statement of Common Ground CD F7 & Para 5.22 of Haywood proof.

<sup>32</sup> Para 5.8 Haywood Proof.

<sup>33</sup> LP policy PS4, which springs from LP policy PS3, identifies Congleton as a town defined by a SZL on the inset maps. These policies direct growth to towns where facilities and public transport links exist. Para 2.62 of the accompanying text within the LP to policy PS4 states that the boundaries of the SZL will allow for sufficient growth to meet future land use needs for the plan period.

<sup>34</sup> The Council accepted that LP policies PS8 and H6 are relevant policies for the supply of housing, and that, as they are unable to demonstrate a five year supply of housing land, these policies can be considered to be out of date for the purposes of paragraph 49 of the Framework - Paragraph 6.13 of the Statement of Common Ground CD F7.

be placed on those policies in reaching a decision on this appeal. The Framework has, at its heart, a presumption in favour of sustainable development.

30. The Council accepted that they were unable to demonstrate the provision of five years worth of deliverable housing land, measured against their housing requirements. Consequently the relevant policies for the supply of housing should not be considered up to date. Whilst a lack of a five year land supply of deliverable housing land does not provide an automatic 'green light' to planning permission, a balance must be struck. The deficiency in land supply would carry substantial weight in that balancing exercise.
31. The Council accept the shortfall is significant. However, they promote the case that there is considerable developer interest in Cheshire East District<sup>35</sup> due to it being a high value area and a very popular place to live. It was the appellant company's evidence that some 15,122 dwellings were already a committed supply<sup>36</sup>. As a result the Council was confident that the identified lack of provision could be addressed elsewhere. However, this assertion was not supported by comprehensive supporting evidence, but was predominantly based on the appeal decision APP/R0660/A/14/2218286<sup>37</sup>. Here the Inspector made the point (paragraph 19) that although the provision in that case would contribute to the housing requirement that would be a contribution to a District-wide requirement potentially addressable elsewhere. However, he acknowledges that whether or not it would be possible to accommodate the scale of development then proposed within other settlements and rural areas is an issue to be addressed in the context of the CELP examination (paragraph 22). I agree.
32. Whilst some of the Council's emerging strategic housing sites to the north of Congleton, identified as part of the CELP process<sup>38</sup>, do benefit from planning permissions, the large sites, all of which lie within open countryside, on the urban edge of the town, are draft allocations still to be formalised through the adoption of the CELP<sup>39</sup>. Therefore, in the context of a possible policy requirement for a considerable number of dwellings to be specifically provided in Congleton<sup>40</sup> in the future, I find the premise that the identified deficiency in the deliverable five year housing land supply could be potentially addressable elsewhere unsubstantiated and unconvincing. Therefore, the weight to be attributed to the shortfall should be substantial. In these circumstances, it is reasonable to conclude that the appeal proposal would contribute significantly to the unmet housing need and this should weigh positively and heavily in the balance of the overall decision.

#### *Conclusion on this issue*

33. The proposal would cause harm to adopted policy objectives which seek to restrict development in the open countryside. However, the objectives of LP policies PS8 and H6 remain broadly consistent with those in the Framework

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<sup>35</sup> See Haywood proof appendix 14 and Para 7.1 of the Statement of Common Ground.

<sup>36</sup> As of the 31 March 2015 – Appendix 8 Davidson proof - This was not disputed by the Council.

<sup>37</sup> Appendix 9 – Haywood proof – The Spurstow case.

<sup>38</sup> Appendix 1 to Davidson proof - This was not disputed by the Council.

<sup>39</sup> The strategic growth to the north of the town is also connected to the provision of the northern link road. The Council was unable to provide a timetable as to when the link road would be built in relation to the various phases of the development of the draft allocations within the emerging CELP. It was also unclear whether funding had been secured in part or full.

<sup>40</sup> See paragraph 18 of this Decision.

which requires decision makers to recognise the intrinsic character and beauty of the countryside. To the extent that the policies are concerned with these matters I consider that they continue to attract due weight.

34. However, it is not disputed that LP policies PS8 and H6 are, in part, policies for the supply of housing. The adopted settlement boundaries reflected requirements to 2011 which will inevitably have to be reviewed in light of current requirements. There have also been changes to some aspects of national policy. In addition, the Council does not have a five year housing land supply and therefore, to the extent that the policies are concerned with the supply of housing, they must be regarded as out-of-date<sup>41</sup>.
35. For the above reasons, the weight given to the harm caused by a breach of LP policies PS8 and H6 is reduced by the relevant policies being out of date and by virtue of the lack of the five year housing land supply.
36. Framework paragraph 14 confirms that, where the relevant policies of the development plan are out of date, permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, taken as a whole or specific policies in the Framework indicate development should be restricted. It is necessary then to consider whether the impacts arising from granting planning permission are adverse and whether they would significantly and demonstrably outweigh the benefits of that permission in addressing the housing shortfall.

*Effect on character and appearance of the landscape*<sup>42</sup>

37. The appeal site is some 13.72 hectares of open greenfield agricultural pasture land<sup>43</sup>. It comprises small-medium scale undulating fields adjoining to the north-west and east predominantly modern residential development on the urban fringe of the town; to the south the manicured greens and fairways of the Astbury Golf Course; to the west the open, green and woodland landscape of the Howty Wildlife Corridor; and to the north the comparatively recent extension to the Congleton Cemetery which links through to St Peter's Church, with the town centre and conservation area beyond. The appeal site is bounded by Lambert's Lane to the south<sup>44</sup>, a well used route for walkers and riders alike. It links into Congleton Bridleway 4 which crosses the site linking Howey Lane and Lambert's Lane, passing close to the cemetery.
38. As a whole, the site makes a positive contribution to the character of interface between countryside and urban development of the town.
39. On the basis of the Updated Parameters Plan, the design and access statement and the reduction in the number of dwellings to up to 220 units, the Council has accepted that the design and the quality of the proposal is not at issue. It is the impact of the proposal on the landscape character which is in question.
40. The site lies in the Breton Heath Character area, a sub-division of the Lower Farms and Woods landscape type in the Cheshire Landscape Character

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<sup>41</sup> LP policies PS8 and H6 were agreed by Haywood in X examination as being out of date for the purposes of paragraph 49 of the Framework.

<sup>42</sup> The Council's case in this regard squarely centred on the impact on landscape character.

<sup>43</sup> 3.5 hectares of the appeal site is already covered by extent planning permissions APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605 for a total of 80 dwellings.

<sup>44</sup> Congleton Bridleway No 1.



Assessment<sup>45</sup>. This is an area of gently undulating agricultural land south of the River Dane, where, in a landscape of medium scale with visual diversity throughout, woodland provides an important visual characteristic. Ancient sunken pathways bounded by mature hedgerows, trees and woodland are not uncommon features.

41. The appeal site is referred to as forming part of an 'historic finger' or wedge of green land which extends northwards, almost into the very heart of the town centre<sup>46</sup>. Whether the appeal site can be reasonably described as historic is a matter I shall return to, although I acknowledge that historic/cultural interests are elements in any assessment of landscape value. The finger was differently defined at the Inquiry from extending out to Fol Hollow and Waggs Lane, to being principally the appeal site and the cemetery<sup>47</sup>. It is the latter elucidation which I favour, although it seems to me that this 'finger' is a somewhat nebulous abstraction. The linkage between the town and the appeal site has been, in the main, due to the association of the burgeoning cemetery and the Parish Church.
42. The comparatively recent extension of the cemetery out into the countryside setting of the town<sup>48</sup>, introducing a sculptured, manicured land use of regimented regularity, along with the already committed residential development on the eastern side of the appeal site, have eroded any particular sense of a 'green lung' penetrating the urban development of the town. The appeal proposal would not result in a complete loss of the green finger, with the cemetery physically and spiritually associated with the Church, and some linkage between the town and the countryside being maintained by the proposed expanded network of footpaths and the green open spaces purposefully designed into the overall scheme<sup>49</sup>. In addition, the Howty Wildlife Corridor provides a distinct linkage between town and countryside and would not be affected by the proposal.
43. The appeal site forms part of a much larger area of open countryside stretching from Fol Hollow to the west, across to Canal Street and Canal Road to the east, and bounded by Lambert's Lane to the south. It is known locally as 'Priesty Fields'.
44. The Cheshire Historic Landscape Characterisation (CHL)<sup>50</sup> classifies this area as being Medieval Town Fields (MTF)<sup>51</sup>. However, the parties agreed<sup>52</sup> that the appeal site does not exhibit key archaeological features of this type of field system, notably ridge and furrow. It is the recognisable remnant of field boundaries defined by established hedgerows which are the main landscape feature, within the appeal site, which still prevails, their alignment being of particular interest. Such small, well-defined sized fields are also characterising landscape features of Ancient Field Systems (AFS)<sup>53</sup>. The CHL does identify that there is a level of confidence of 'possible' in the group of AFS being of relevance in this case.

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<sup>45</sup> CD H2.

<sup>46</sup> This area has not been specifically defined in policy or designation, its only classification being countryside.

<sup>47</sup> Cllr Morrison described it as the green lung of Congleton.

<sup>48</sup> 2004.

<sup>49</sup> Consequently, the appeal proposal would have only a medium adverse magnitude of effect on the site and immediate vicinity.

<sup>50</sup> CD H1 & Inquiry Doc 18.

<sup>51</sup> MTF covers some 2.8% of the modern landscape in Cheshire – Page 90 CD H1 and Inquiry Doc 18.

<sup>52</sup> Including Dr Roffe

<sup>53</sup> AFS covers some 14.7% of the modern landscape in Cheshire - Page 88 CD H1 and Inquiry Doc 18.

45. It is not the case of the Council that the appeal site has a pertinent heritage value<sup>54</sup>, either in its own right or in the setting of the Congleton (Lawton Street/Moody Street) Conservation Area<sup>55</sup>. However, others making representations did offer the contention that the landscape includes features which mark it out as part of a medieval farming landscape.
46. Dr Roffe proffered the position that Priestly Fields, as an AFS, was consistent with the origins of the town as being polyfocal. Congleton was in origin not one settlement but at least three which is precisely the sort of settlement pattern that is associated with AFS<sup>56</sup>. However, this appeal is not the mechanism to determine or change the historic landscape characterisation classification of Priestly Fields, including the appeal site.
47. Priestly Fields does exhibit an element of medieval pattern of land use no matter which group of classification it falls into. The small field divisions are still apparent through the distinct lines of the hedgerows which still persist.
48. All the same, this historic landscape feature has been eroded over time with the development of Tudor Close, Howey Lane, The Moorings, Goldfinch Close and Kestrel Close. The manipulation of the landscape to create the golf course to the south and, in particular, the comparatively recent extension of the cemetery, have created modern boundaries which, I do not doubt, have disrupted the medieval field boundaries, diminishing their distinctiveness and value in the context of their relationship with medieval Congleton.
49. I am aware that both MTF and AFS are classifications of field systems which are of some rarity in the locality. However, in the altered landscape context of the appeal site, the Updated Parameters Plan<sup>57</sup>, along with the indicative site layouts for the two permitted schemes<sup>58</sup>, show how the layout of development could be sympathetically related to the present small field subdivision of the appeal site. In the main, the hedgerow boundaries would be maintained. However, the expression of the open medieval town field character would be diminished by building within the small field system. Nonetheless, I am conscious that the archaeological advice of the Council was that any archaeological interest was not sufficient to suggest that an objection on this ground would be appropriate<sup>59</sup>.
50. Paragraph 109 of the Framework states that the planning system should contribute to and enhance the natural and local environment by (amongst other matters) protecting and enhancing valued landscapes, although the term 'valued landscapes' is not defined. The landscape here is clearly valued by local people. Nonetheless, I consider the appeal site does not include specific attributes or landscape features which would take it out of the ordinary sufficient for it to amount to a 'valued landscape' in terms of the Framework<sup>60</sup>.

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<sup>54</sup> As a designated or non-designated heritage asset – no expert heritage evidence was proffered by the Council in this regard.

<sup>55</sup> And it's many listed buildings. These are at a distance to the appeal site with intervening buildings and open space.

<sup>56</sup> Paragraphs 4.4 and 4.5 of Dr Roffe's evidence Inquiry Doc 23.

<sup>57</sup> Dwg No 502A-03J – CD G18.

<sup>58</sup> APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605 – CD B1 + Inquiry Plans L, M & N.

<sup>59</sup> Officer's report to Planning Committee dated 9 Dec 2013.

<sup>60</sup> King in oral evidence confirmed the Council's position that the appeal site had value in landscape terms not in any way related to a 'valued landscape' in Framework terms.

51. That said, landscape is about the relationship between people and place. It provides the setting for our day-to-day lives. This is a landscape in which people spend their leisure time and clearly have a connection with.
52. At present only Congleton Bridleway 4 allows for permitted access across the appeal site. Lambert's Lane skirts the appeal site to the south but does benefit in places from mature screening hedgerows, including woodland trees which arch over the lane creating an appearance of seclusion. As a result, many of the field boundaries and an appreciation of the small field division can only be seen indistinctly, at a distance. The inclusion of a proposed network of footpaths<sup>61</sup>, which would permeate through the development linking Lambert's Lane and Howey Lane, predominantly following the line of the established field boundaries, would allow a closer more active appreciation of the landscape features. In addition, the field boundaries are intended to be safeguarded from development by proposed green spaces. These would further accentuate the lines of the field divisions which, although whilst no longer grazed by horses and sheep, would concentrate development in distinct pockets of building. The Updated Parameters Plan also shows areas of proposed new woodland along side Lambert's Lane and Congleton Bridleway 4. Valley Field on the steep valley slopes of the stream which runs at the base of the high ground behind The Moorings, Goldfinch Close and Kestrel Close, along with the areas which bound the cemetery are also shown to be green space, both open and wooded. I consider that such a design approach would preserve what is left of the pattern of field division within the appeal site. It would also enhance public access across the site through the network of green spaces. The proposal would not diminish the ability of the public to enjoy the countryside and with improved access across the site between the town, Lambert's Lane, the open countryside beyond and the Macclesfield Canal, there would be positive benefits for those wishing to spend their leisure time in the pleasant wider Cheshire countryside.
53. As part of the walks in the southern fringes of Congleton<sup>62</sup> 'The Priestly Trail' is identified as passing from St Peter's Church along Priestly Fields, Footpath 5 and 7 to Stony Lane, through to Moreton Meadows and on down to Astbury Village. The trail alludes to a path, the exact route of which is not known, used in the middle ages by priests from Astbury walking across the fields to serve the church in Congleton. The trail clearly has a recreational value and its association with the idea of medieval clergymen walking between settlements to preach, ignites the imagination adding to the experience. However, in heritage terms there is no evidence this route mirrors that of the medieval priests, nor that any deviation across or close to the appeal site can be identified. Therefore, I do not consider these routes add to any case of heritage value of the appeal site.
54. Nonetheless, the Priestly Trail<sup>63</sup> is well used by both visitors and residents<sup>64</sup>. At the site visit I did walk its length from Moreton Meadows up into the town. Views across the appeal site are discernible from viewpoints along Stony Lane and Congleton Footpath 5 down to Lambert's Lane. These are, in the main, glimpsed distant views. The appeal site, however, is seen in the context of the established urban edge of the town on the western side of Canal Road. The

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<sup>61</sup> See Updated Parameters Plan.

<sup>62</sup> Inquiry Doc 26.

<sup>63</sup> Along with Lambert's Lane and the other footpaths in the immediate vicinity.

<sup>64</sup> Users of the footpaths are sensitive receptors.

concentration of housing is obvious. I am also conscious that the already permitted schemes<sup>65</sup> will have some visual prominence in the landscape as they will be built at the cusp of the ridge as it runs down to the stream, further accentuating the prominence of the expanding urban edge of the town. This would be particularly so when viewed from the cemetery. However, residential development is not uncommon in the vicinity of the cemetery<sup>66</sup>. The existing boundary hedges around the cemetery along with the proposed surrounding green spaces would create a buffer between the tranquillity and sense of memorial of the cemetery and the domestic character of the proposed development. In these circumstances I do not consider the juxtaposed nature of the two uses would result in an uncomfortable relationship which might cause intrusion and disturbance.

55. Due to the undulating nature of the land to the west and south of the cemetery and adjacent to Lambert's Lane, in conjunction with the small stream valley, mature, dense intervening hedgerows and trees<sup>67</sup> both on the appeal site and those in the vicinity, the level of visibility of the proposed pockets of development would be variable. In combination, all of these features would serve to partially screen the development in the wider landscape.
56. This is a landscape which has the capacity to accommodate change in its character. However, it is undeniable that those living adjacent to the appeal site or walking close-by would look out on a residential development rather than open fields. This would change the character and appearance of the immediate landscape. This would result in harm by reason of a reduction in the amount of greenfield countryside. Whilst accepting that such impacts are an inevitable consequence of development on a previously undeveloped site, in weighing all of the factors together, in relation to the impact of the proposal on the character and appearance of the landscape, I find its open nature would be eroded causing material harm. This would be contrary to the identified objectives of LP policies PS8 and H6, in so far as they relate to the protection of the countryside and saved LP policies GR5 and GR3 which require development to respect or enhance the landscape character of the area. In this way the intrinsic character and beauty of the countryside would not be protected, which, as a planning principle identified within the Framework, carries significant weight in my consideration of this appeal. These factors are relevant to any assessment of the environmental role of sustainable development, namely to protect the natural environment, addressed later in this decision.

#### *Loss of agricultural land*

57. Paragraph 112 of the Framework identifies that the economic and other benefits of the best and most versatile agricultural land (BMVAL) should be taken into account. Significant development of agricultural land, where demonstrated to be necessary, should utilise areas of poorer quality land in preference to that of a higher quality.
58. It is common ground that 27% of the appeal site is classified grade 3a agricultural land, with the remainder being grade 3b. However, 1.29 hectares

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<sup>65</sup> APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605 – CD B1 + Inquiry Plans L, M & N.

<sup>66</sup> Eg Howey Lane and to a lesser extent Tudor Close.

<sup>67</sup> Some trees are covered by a Tree Preservation Order. However, these are concentrated mainly in the area of the previously permitted schemes. Inquiry Plan J refers.

of grade 3a land lies within the parts of the site which have planning permission for residential uses. This leaves a residual amount of 2.4 hectares of additional grade 3a land being taken up by proposed development, although 0.6 hectares of this additional land would be used as open space.

59. BMVAL is a finite resource and the Framework makes it clear that the economic and other benefits of such land must be weighed in the balance. The Council has already indicated that, in meeting their housing need, it is likely that greenfield sites, including agricultural land<sup>68</sup>, will have to be developed to produce housing growth areas<sup>69</sup>.
60. This is a comparatively small area of land, the topography of which, along with the division into small field sizes, limits its value for agricultural activities. Being hemmed in by the golf course, the town edge, and the cemetery makes it difficult to see, other than limited grazing<sup>70</sup>, what productive agricultural use it could be economically put to.
61. The main parties have agreed this is not a determinative issue<sup>71</sup>. The loss of the BMVAL would, at worst, be modest, taking into account the general quality of agricultural land across the county. I am also mindful that the previous appeal decisions for 80 units have already committed BMVAL to residential development. Nonetheless, there would be an obvious conflict with the terms of the Framework. In these circumstances, the loss of BMVAL would be a disbenefit of the proposal that must be weighed into the overall balance of the decision, although I would afford it only limited weight against the proposal.

#### *Highway matters*

62. Concern has been expressed by residents in relation to the impact of traffic generated by the proposed development on the existing highway network. Mr Minshull presented evidence that, even given the commitment to 80 units, the level of increase of traffic flow from the proposed additional 140 units would be very substantial and unacceptable. This appraisal was predicated on unease relating to pinch points along Canal Street at Burns Garage<sup>72</sup> and Albert Place<sup>73</sup>. I experienced and observed traffic passing through these pinch points. At Albert Place, and to a lesser extent at Burns Garage, ease of passage relies on a changing of priority based on common courtesy of road users. I did observe vehicles having to wait their turn to pass through the pinch point at Albert Place. However, waiting times were but a pause in passage, positively influencing vehicle speeds along this part of Canal Street.
63. Following agreement between Mr Minshull and Mr Russell<sup>74</sup> at the Inquiry that the increase in traffic that would occur at the High St/Canal St junction as a result of the development proposals would equate to an average increase of around one trip every one and half minutes during weekday am peak, and one trip every minute during weekday pm peak, and based on the Transport

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<sup>68</sup> Some of which may be BMVAL.

<sup>69</sup> Haywood in oral evidence agreed this point.

<sup>70</sup> I did observe a couple of fields being used to graze a few sheep and horses.

<sup>71</sup> Statement of Common Ground para 5.7.

<sup>72</sup> Minshull/Russell agreed the carriageway width at this point was in the order of 4.6 metres which allows for two cars to pass simultaneously but can not accommodate a car and an HGV (including a bus) to similarly pass – Inquiry Doc 25.

<sup>73</sup> Minshull/Russell agreed the carriageway width at this point was in the order of 4 metres and of insufficient width to allow two vehicles to pass simultaneously – Inquiry Doc 25.

<sup>74</sup> For the appellants company. See Inquiry Doc 25.

Assessment relating to the appeal, I am satisfied that the existing road capacity is sufficient to accommodate the additional flow from the new development<sup>75</sup>. This is subject to the proposed improvements to be carried out at the High Street/Albert Place/Lawton Street junction<sup>76</sup>.

64. The proposed improvements include the widening of the footway on the west side of Canal Street and the changing of the priority at the junction of High Street and Lawton Street<sup>77</sup>. These improvements, along with a contribution towards the designed and costed town centre scheme<sup>78</sup> would mitigate the impact of the proposal on the immediate and wider road network. In this way the terms of LP policy GR9, which seeks, amongst other things, to promote highway safety and convenience without aggravating existing traffic problems in the area, would not be compromised<sup>79</sup>.

#### *Impact on heritage assets*

65. As already established above, neither the Council nor the appellant company consider the appeal site to be or form part of either a designated or non-designated heritage asset<sup>80</sup>. Its identification in the CHL and as MTF does not directly lead to attributing significance so as to warrant its identification as a heritage asset in the terms of the Framework. In addition, the appeal site is set at a distance to the conservation area<sup>81</sup> and its component listed buildings. Whilst the appeal site does form part of the setting of the town it has a close relationship with the neighbouring residential development, the manipulated landscape of the golf course and the cemetery. Its containment by Lambert's Lane and the robust well defined hedgerows of the outer boundaries of the appeal site set it apart from the wider rural landscape. The generally peripheral experience of walking around and through the appeal site does not add to its significance in heritage terms in part due to the dominance of urban development along its boundaries<sup>82</sup> which dilutes any understanding of the relationship between the site and the medieval town centre.
66. For the above reasons, in my view, the erosion of this landscape feature by recent development has significantly diminished the historic connection of the medieval field boundaries with the town and its centre. Consequently, I find that the appeal site, whilst being of some historic landscape importance, is not sufficient to elevate it to a site of statutory status or that identified in the Framework. This does not, however, reduce the weight to be given to the effect of the proposal on the distinctiveness and value of the medieval

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<sup>75</sup> This takes into account the impact of the 80 units already committed. The Council as Highway Authority is satisfied that the surveyed flows, assessment periods, future year scenarios, consideration of committed development are appropriate, and that the local highway network in the vicinity of the site does not have an unduly poor safety record with no reason to assume that this situation should be significantly worsened as a consequence of the development. – paras 7.10 & 7.16 of Statement of Common Ground.

<sup>76</sup> Detailed on Dwg ref: 0011.07 Rev A and at para 7.14 + Appendix 3 Statement of Common Ground and para 24 -27 of Highway Statement of Common Ground.

<sup>77</sup> This would include pavement widening and re-surfacing at this junction, as well as at the junction of Albert Place and Chapel Street.

<sup>78</sup> The town centre scheme is part of the Congleton Public Realm Strategy which seeks to minimise the impact of vehicular traffic by means of design to slow down traffic, whilst at the same time improving the design of the street as a place – CD I6.

<sup>79</sup> I am also mindful that the second application, 14/4938C – CD G25, whilst refused by the Council did not include a reason for refusal relating to highway matters.

<sup>80</sup> The appeal site does not form part of the setting of a statutorily recognised heritage asset.

<sup>81</sup> The appeal site is not referenced in the Moody Street, Congleton: Conservation Area Appraisal – CD J1 – Section 3 only identifying the informal area around the bath house, the area around St Peter's Church and the formally landscaped Memorial and Community Gardens as being of special interest in respect of green spaces.

<sup>82</sup> Taking into account the 80 units already committed on part of the appeal site.

agricultural landscape in the assessment of the landscape character<sup>83</sup>. With the retention of the hedgerow boundaries and improved accessibility to open spaces concentrated along their length, the significance of the appeal site as part of the setting of the town would be preserved.

67. However, the appeal proposal does include mitigating highway measures within the conservation area as well as within the setting of listed buildings along High Street, Lambert's Lane, Albert Place and Chapel Street. These are detailed above at paragraphs 63 and 64. It is common ground that the proposed measures would preserve and enhance these heritage assets by improving the public realm of the town centre whilst positively managing traffic flows, reducing vehicle speeds thereby serving to ameliorate their impact on the historic centre. In this way these measures would meet the statutory duty placed upon the decision-maker by Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 safeguarding the significance of heritage assets for future generations.

### ***Contribution to the achievement of sustainable development***

68. The purpose of the planning system is to contribute to the achievement of sustainable development<sup>84</sup>. Paragraph 49 of the Framework sets out that housing applications should be considered in the context of the presumption in favour of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. These roles should not be considered in isolation, because they are mutually dependant.

#### *Economic role*

69. The proposal would enhance/contribute to the economic role by the creation of jobs associated with the construction stage. New residents are also likely to support existing local services and businesses, with a possible increase in local jobs as a result.
70. In addition, the new dwellings would offer homes to residents who would contribute to the labour supply, some of whom would be likely to be local.
71. Having sufficient (and available of the right type in the right places and at the right time to support growth and innovation is part of the economic role in achieving a sustainable development. There is a good prospect that the proposed housing could be delivered on the site within five years<sup>85</sup>. In addition, future Council tax payments and New Homes Bonus would be spent in the area.
72. However, I have already identified that the loss of BMVAL would be a disbenefit of the proposal, although in these circumstances I afford it limited weight<sup>86</sup>.

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<sup>83</sup> I am also conscious of the terms of the previous appeal decisions (APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605) in which the matter of historic significance and importance was not an identified issue.

<sup>84</sup> Para 6 of the Framework.

<sup>85</sup> The appellant company is a regional house building company building some 200 homes per year. Reserved matters applications for the permitted sites have already been submitted to the Council. Seddon Homes Ltd own or control some 90% of the land. They have financial exposure in respect of purchasing the site and the costs of gaining planning permission. It is their intention to develop the site within the next 5 year period – Inquiry Doc 7. I have no reason to doubt this.

<sup>86</sup> Paragraphs 57-61 of this decision.

73. Consequently, in combination the identified positive benefits to fulfilling the economic role when weighed against the limited disbenefit of developing BMVAL, in my judgement, still produces a positive outcome to which I ascribe considerable weight in the assessment of sustainability.

#### *Social Role*

74. The proposed housing would fulfil a social role by contributing to the support, strengthening, health and vibrancy of the local community by providing towards a supply of housing to meet the needs of present and future generations. This would include much needed affordable housing.
75. The proposal would also be likely to provide a mix of housing which would meet the social needs of the population of the District and in particular that of Congleton.
76. The development also includes the enhancement of the existing public footpath/bridleway which crosses the site. In addition, there would be the introduction of enhanced public access across the site via new footpaths linking through to the town. This would also allow for a closer appreciation of the small field boundaries of the MFT. Open green space and woodland areas are also part of the parameters for the design and layout of the proposed development<sup>87</sup>. These would serve to maintain and enhance access for recreational purposes promoting the wellbeing of the local population.
77. These elements would enhance local facilities and support the well-being of the local community and warrant a positive weighting of substance.

#### *Environmental role*

78. *Location* – One of the strategic aims of the CELP is to locate development close to main towns in the interests of achieving sustainable locations. Congleton is identified as a Key Service Centre with an identified requirement of 3,500 new homes in the town. It is a vibrant town with a bustling High Street offering goods and services to support the resident population. There is also ready access to public transport.
79. The appeal site lies close to the town centre, within easy walking distance. The network of proposed footpaths across the site will enhance the level of accessibility not just for future residents of the development but also for those living to the east of the development. I see this as a positive benefit. Therefore, in respect of location and a movement to a low carbon economy, the sustainability of the appeal site is positive.
80. *Open space/biodiversity* – The proposal also includes the provision of on-site open space<sup>88</sup>, including woodland and an area of natural habitat, as well as enhancing the existing hedgerows and trees<sup>89</sup>. The long term management of these areas would improve the biodiversity of the location as well as offering

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<sup>87</sup> All of these elements can be secured by means of a condition – with the terms of the UU relevant to certain aspects.

<sup>88</sup> Secured by means of the UU – Inquiry Docs 29 & 30.

<sup>89</sup> The proposal would be suitably separate from the Howty Wildlife Corridor to evade adverse impacts on this sensitive area of importance in terms of biodiversity. I have also noted that some of the trees in the eastern section of the appeal site are covered by Tree Preservation Order. However, in the main, these trees are within the vicinity of the already permitted schemes and are noted for retention.



opportunities for recreation and improvements in individual's well-being<sup>90</sup>. These factors positively contribute to the overall sustainability of the appeal site. The UU offers some provision for the management of the open space as well as towards habitat creation and enhancement works mitigating the impacts of the proposal in this regard<sup>91</sup>.

81. *Living conditions of nearby residents* - The Updated Parameters Plan gives me confidence that a layout can be produced as part of any reserved matters application which would appropriately accommodate a new housing environment juxtaposed with that existing. The enhancement of existing boundary hedgerows and trees as well as the extent of any proposed landscaping scheme would also serve to soften the impact of the new dwellings for neighbouring residents.
82. The above positive factors in the balance of the environmental role do contribute to the overall sustainability of the appeal site. This is tempered with the identified harm to the character and appearance of the landscape. These factors will be weighed into the balance of the overall sustainability of the development taking into account its performance in respect of the other roles.

#### *Overall conclusion on sustainability*

83. Sustainable development is about change for the better. The appeal proposal would assist in the provision of much needed housing<sup>92</sup> in the local area; the Borough; as well as nationally. It would also have a social and economic role to play in achieving positive growth now and into the future. Its environmental role would be less weighty, due to the impact of the proposal on the character and appearance of the landscape. Nonetheless, when the three dimensions to sustainable development are weighed together, as well as the other relevant elements of the Framework, I find on balance the outcome to be a positive one, whereby the appeal proposal can be considered to be sustainable development and I give this considerable weight in the overall balance of this decision.

#### **Conclusion and balance**

84. In this case the development plan is out of date as identified above. The proposed development has been shown to be sustainable development. Therefore, paragraph 14 of the Framework is engaged<sup>93</sup>. There would be few adverse impacts in allowing the appeal and granting planning permission. Such impacts are not sufficiently weighty to significantly and demonstrably outweigh the benefits of the scheme. In particular, the contribution of the development of the appeal site to the identified housing need in the Borough, in circumstances where a five year housing land supply cannot be identified is a persuasive and weighty factor in the consideration of this appeal. In combination with the other positive facets of the development<sup>94</sup>, it is concluded

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<sup>90</sup> These factors cross-over with the Social Role and have been accordingly weighed into both aspects as positive benefits.

<sup>91</sup> Whilst the required contributions are to mitigate the impacts of the proposed new development, they would also enhance the natural environment to the wider benefit of the community.

<sup>92</sup> Including affordable housing.

<sup>93</sup> The Wenman approach.

<sup>94</sup> Including those secured under the terms of the UU - Inquiry Docs 29 & 30. The importance of the provision of the elements within the UU, including affordable housing, is not reduced in weight markedly due to its terms being somewhat unusual and awkward. They are nonetheless enforceable albeit with some difficulty. The risk of there being a problem in this regard is small and should not be ascribed such weight as would result in the balance of this decision being tipped into a negative position.

that the presumption in favour of sustainable development applies and planning permission should be granted.

### **Conditions**

85. A list of potential conditions was discussed at the Inquiry and, as result, a number were deleted with the agreement of the parties. I have amended and amalgamated a number for clarity, elimination of duplication, and taking into account guidance in this regard.
86. Only conditions which are formally required to be discharged prior to works commencing on site have been promoted as pre-commencement conditions. These are imposed as they involve details to be approved for the arrangements of the work on site, groundworks and infrastructure approval, landscaping – tree protection, drainage or matters that affect the layout and position of development, and some mitigation measures. These details are required to be submitted to and approved by the Local Planning Authority prior to commencement of development.
87. In summary, standard conditions are required on the approval of the reserved matters and on the commencement of development. Confirmation of the approved plans is needed to define the site. Further conditions are required to ensure that the submission of reserved matters and later details comply with the considerations taken into account in the approval of the outline permission. The condition identifying the approved plans is reasonable and necessary for the avoidance of doubt and in the interests of proper planning.
88. Taking into account the terms of paragraphs 13, 14 and 15 of this decision, for the avoidance of doubt a condition has been imposed limiting the maximum number of dwellings to be built on the site to 220.
89. Due to the size of the proposed development and the involvement of another developer in relation to field E3, a condition setting out the phasing of the development is justified.
90. The locality has been identified as having some possible archaeological interest. Therefore, a condition requiring a programme of investigation is justified.
91. Conditions relating to the Construction Management/Method Plan and Statement as well as the construction access and road layout and external lighting are required in order to protect the amenities of nearby residents and general amenity.
92. Taking into account the topography of the appeal site it is necessary to include a condition to secure details of the existing and proposed ground/slab/ridge levels.
93. A condition relating to the submission and implementation of a Travel Plan is necessary to provide sustainable transport objectives, giving people a real choice about how they travel. This justification similarly applies to the provision of electric vehicle infrastructure and pedestrian and cycle provision.
94. Conditions relating to foul and surface water drainage are also deemed necessary to ensure adequate arrangements are in place to respond to local concerns, particularly in relation to flooding and in the interests of environmental impact.

95. Although evidence is limited regarding whether there is any contamination of this agricultural land, it is reasonable that investigations should be carried out in relation to possible contamination. Therefore, for this reason the condition is imposed.
96. Conditions relating to the protection of birds, reptiles and terrestrial amphibian habitat, along with Bats and Badgers, trees and hedgerows are required both in the interest of amenity as well as biodiversity. For the same reason, conditions dealing with the future management; long term wellbeing of these natural elements; and their protection during the construction phase are necessary. Pre-commencement conditions are justified to mitigate impacts during the construction phase.
97. The parties promoted the securing of the following mitigating measures, the off-site highway improvements, bus stops, pedestrian refuge elements of development by means of conditions. I agree with the utilising of such a mechanism and conditions are accordingly imposed.
98. A condition relating to the control of the hard and soft landscaping is reasonable and necessary to protect and enhance the character and appearance of the area; the living conditions of neighbouring residents; and in the interests of biodiversity.

*Frances Mahoney*

Inspector

Richborough Estates

## **Annex A – Schedule of conditions**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase of development as defined under condition 6 of this permission shall be submitted to and approved in writing by the Local Planning Authority before any development of that phase is commenced. The development of each phase shall be carried out in accordance with the details for that phase as approved. The reserved matters shall follow the general parameters set out on the Updated Parameters Plan - dwg no 502A-03J and the design principles set out in the Design and Access Statement dated October 2014. The landscaping details shall include both hard and soft landscaping as well as provision for replacement hedge planting for any hedgerows to be removed as part of the development hereby permitted, and a scheme for the provision and management of a buffer zone (at least 5 metres wide) alongside the watercourse.
- 2) Applications for approval of the reserved matters shall be made to the Local Planning Authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the details contained within the following plans:  
Red Line Plan (Drawing no. 3445/21Rev B); and  
Site Plan Showing Access (Drawing no. 3445/23).
- 5) Notwithstanding the description of development, the maximum number of dwellings constructed within the site shall be 220.
- 6) The first reserved matters application shall include a plan identifying the first phase of development and the phasing of the remainder of the development. Thereafter, each application for the approval of reserved matters relating to each further phase of the development shall be accompanied by a plan identifying the extent of that further phase. For the purposes of this planning permission the extent of a 'phase' shall be determined in accordance with this condition.
- 7) No development of the relevant phase shall take place until details of existing and proposed ground levels, the level of proposed floor slabs and the ridge heights for that phase have been submitted to and approved in writing by the Local Planning Authority. Development of each phase shall be carried out in accordance with the approved details for that phase.
- 8) The development hereby permitted shall not be commenced until a scheme to manage the surface water runoff generated by the proposed development, has been submitted to and approved in writing by the Local Planning Authority. The scheme must ensure that the site is drained on a totally separate system with no surface water discharged into the existing public sewerage system. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.

- 9) The development hereby permitted shall not be commenced until a SUDS scheme to manage the risk of flooding from overland flow of surface water has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
- 10) The development hereby permitted shall not be commenced until such time as a scheme for the disposal of foul water has been submitted and approved in writing by the local planning authority. The approved scheme shall be implemented for each phase of development prior to the first occupation of that phase.
- 11) No development shall commence unless and until a Phase II Contamination investigation has been undertaken and the results submitted to and approved in writing by the Local Planning Authority. If the Phase II investigation indicates that remediation is necessary, then a Remediation Strategy shall be submitted to the Local Planning Authority for its approval in writing. The remediation scheme in the approved remediation strategy shall then be carried out. If remediation is required, a site completion report detailing the conclusions and actions taken at each stage of the works, including validation works, shall be submitted to and approved in writing by the local planning authority prior to first occupation of any part of the development hereby approved.
- 12) Prior to the development commencing, an Environmental Management/Construction Management/Method Plan and Statement shall be submitted to and approved in writing by the Local Planning Authority. Development works shall be undertaken in accordance with the approved Environmental Management/Construction Management/Method Statement/Plan. The details shall include, amongst other things:-
- a. The hours of construction work and deliveries;
  - b. The parking of vehicles of site operatives and visitors;
  - c. Loading and unloading of plant and materials;
  - d. Storage of plant and materials used in constructing the development;
  - e. Site compound details (details of site storage compound and site offices);
  - f. Wheel washing facilities;
  - g. Details of any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;
  - h. Details of the responsible person (e.g. site manager / office) who could be contacted in the event of complaint;
  - i. 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;

- j. Waste Management: There shall be no burning of materials on site during demolition / construction;
- k. 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; and
- l. Details of the access to the construction site and the routing and management of construction vehicles.
- 13) Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. All measures contained within the approved Travel Plan shall be implemented in accordance with the timetable and scheme of monitoring and review, as long as any part of the development is occupied.
- 14) No part of the development shall be occupied until details of Electric Vehicle Infrastructure to be installed on the site in each phase have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the approved infrastructure relating to that property has been fully installed. The approved infrastructure shall thereafter be retained.
- 15) Prior to the commencement of any works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the Local Planning Authority. Where nests are found in any building, hedgerow, tree or scrub to be removed, a 4m exclusion zone shall be left around the nest until 31 August unless earlier completion of nesting has been confirmed by a suitably qualified person and a further report submitted to Local Planning Authority before any further works within the exclusion zone take place.
- 16) Prior to the commencement of development, an updated survey will be undertaken at the appropriate time, by a suitably qualified person, for the presence of roosting bats, and shall be submitted to and approved, together with details of any mitigation measures, by the Local Planning Authority. Each phase of the development shall be implemented in accordance with the approved details.
- 17) Prior to the commencement of development, a mitigation scheme for the protection of Great Crested Newts shall be submitted to and approved, by the Local Planning Authority. Each phase of the development shall be implemented in accordance with the approved details.
- 18) Prior to submission of reserved matters, an updated survey will be undertaken at the appropriate time, by a suitably qualified person, for the presence of badgers, and shall be submitted to and approved in writing, together with details of any mitigation measures, by the Local Planning Authority. The submission of reserved matters shall be informed by the presence of badgers and any mitigation measures required. The development shall be carried out in accordance with the updated information and mitigation strategy.

- 19) The reserved matters applications shall include detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds. These details shall be submitted to and approved in writing by the Local Planning Authority. The approved features relevant to each phase shall be permanently installed prior to the occupation of the first dwelling within each relevant phase or in accordance with a timetable to be agreed with the Local Planning Authority as part of the submitted details. The approved features shall be retained in perpetuity.
- 20) Prior to the commencement of any development works, a detailed arboricultural impact/method statement (AMS) shall be submitted to and approved in writing by the local planning authority. The AMS shall be based upon an up-to-date, tree and hedge survey to be submitted with the statement and shall contain details of the specification and location of tree and hedge protection or barriers, shown on a tree protection plan (TPP). The approved protection scheme shall show trees and hedges for removal and retention and provision for replacement hedge planting for any hedgerows to be removed. The erection of the protection for the retained trees and hedge shall be undertaken in accordance with the approved plans and particularly before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site (duration of the development phase). Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority. The TPP shall also show root protection areas of all retained trees and hedges and those trees and the section of hedge to be removed. Details of tree and hedge pruning should be contained in the tree survey information. No tree/hedge shall be damaged, felled, uprooted, wilfully damaged or pruned other than as expressly permitted by the approved protection scheme. The AMS shall provide details of any construction activities, including excavations that may require works within protected root areas, including the construction of specialist hard surfaces. It shall also include the timing and phasing of arboricultural works in relation to the approved development. A schedule of supervision, monitoring and sign-off for proposed pruning, felling, installation of tree protection fencing, installation of temporary ground protection and special construction methods shall also be agreed. All works shall be carried out in strict accordance with the approved details. Both the AMS and the TPP shall include protection measures for the watercourse buffer zone and its retained trees and hedgerows.
- 21) Prior to the commencement of development a detailed scheme for the off-site highway improvements to the Albert Place / High Street / Lawton Street junction shall be submitted to and approved in writing by the Local Planning Authority. The detailed scheme shall be in broad accordance with Drawing No. 0011-07 Rev A 'Proposed Improvement to High Street / Albert Place'. The scheme shall include a timetable for the delivery of the proposed scheme and the agreed improvements shall be carried out strictly in accordance with that timetable.
- 22) Prior to the commencement of development, a scheme for the provision of the proposed 2 No. Quality Bus Stops on Canal Road shall be submitted to and approved in writing by the Local Planning Authority. Prior to occupation of the first dwelling, the approved scheme shall be implemented.

- 23) Prior to the commencement of development, a scheme for the provision of the proposed pedestrian refuge on Canal Road shall be submitted to and approved in writing by the Local Planning Authority. Prior to occupation of the first dwelling, the approved scheme shall be implemented or as agreed in writing with the Local Planning Authority.
- 24) Prior to the commencement of development, details of the proposed construction access and road layout including all associated works shall be submitted to and approved by the Local Planning Authority. The works shall be carried out in strict accordance with the approved details and no dwelling hereby permitted within each phase shall be occupied until any relevant access within that phase has been implemented in accordance with the approved details.
- 25) Each phase of the reserved matters shall include a scheme of pedestrian and cycle provision and signage to be approved in writing by the Local Planning Authority. The scheme shall include shared routes for pedestrians and cyclists through the site and a timetable for implementation. The approved scheme of pedestrian and cycle provision and signage shall be carried out in accordance with the approved timetable.
- 26) No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted and approved in writing by the Local Planning Authority. The work shall be carried out strictly in accordance with the approved scheme.
- 27) No dwellings within any phase shall be practically completed until details of an external lighting scheme for that phase (excluding street lighting and that within domestic curtilages) has 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 to minimise potential loss of amenity caused by light spillage on adjoining properties. Within each phase, the lighting scheme shall thereafter be installed and operated in accordance with the approved details for the relevant phase and retained thereafter.



## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Antony Crean QC	Instructed by the Borough Solicitor
He called	
Jonathan King BSc MLD CMLI	Technical Director Wardell Armstrong LLP
Ben Haywood BA(Hons) MA MBA MRTPI MCMI	Principal Planning Officer

### FOR THE APPELLANT:

Morag Ellis QC	Instructed by Mrs Wozencroft, Indigo Planning
She called	
Bill Davidson BA(Hons) Dip TP Dip UD MRTPI	Director P4 Planning
Pauline Randall FLI MA BSc(Hons)	Partner, Randall Thorp Chartered Landscape Architects
Maggie Gatland Dip GS Dip TP MRICS MRTPI PGC Architectural History	Indigo Planning
Timothy Russell BEng(Hons) MIHT	Croft Transport Solutions
Daniel Jackson	Associate Indigo Planning
Michael Johnson	Land & Strategic Planning Manager Seddon Homes Limited

### INTERESTED PERSONS:

Peter Minshull BSc CEng MICE	Congleton Sustainability Group
Cllr Paul Bates	Ward Councillor Congleton West
Cllr Anna Morrison	Congleton Town Council
Dr David Roffe MA (Cantab) PhD FRHistS FSA	Local Resident

## **INQUIRY DOCUMENTS**

- Doc 1 Note on Council's case re: withdrawal of evidence of Dave Hodgkinson (Appendix 4 of King proof)
- Doc 2 Draft Conditions
- Doc 3 Congleton Housing Needs Assessment July 2015 – Urbanvision Enterprise CIC
- Doc 4 Draft Congleton Town Strategy Consultation – Headline Results
- Doc 5 S106 Issues to be discussed
- Doc 6 The Community Infrastructure Levy Regulations 2010 Compliance Statement
- Doc 7 Inquiry Note re Seddon Homes Ltd
- Doc 8 Agreed summary of documents upon which the appeal proposal is to be determined
- Doc 9 Comments of the Council's Principal Conservation and Design Officer
- Doc 10 The shortfall in affordable housing as of 15 September 2015
- Doc 11 Conservation Principles, Policies and Guidance – Historic England 2008
- Doc 12 Minutes of meeting of Strategic Planning Board – 29 July 2015
- Doc 13 DMRB extract – Cultural Heritage Sub-Topic Guidance: Historic Landscape
- Doc 14 Letter dated 3 September 2015 from Inspector Pratt to Head of Planning Strategy
- Doc 15 Schedule of Matters and Issues for Resumed Hearings
- Doc 16 Letter to Representors regarding the resumption of the Examination of the Cheshire East Local Plan Strategy
- Doc 17 APP/H2835/A/14/2227520
- Doc 18 The Cheshire Historic Landscape Characterisation
- Doc 19 LP Policy PS9 – Areas of Special County Value
- Doc 20 Note to the Inquiry in Respect of Mr Hodgkinson's Appendix
- Doc 21 Additional representations handed in at the Inquiry
- Doc 22 Statement of Cllr Bates
- Doc 23 Statement of Dr David Roffe MA (Cantab) PhD FRHistS FSA
- Doc 24 Statement of Anna Morrison including a copy of an extract from HC Deb 18 March 1952 and from The Chronicle, Thursday 9 January 2014 – The first battle to save Priestly Fields
- Doc 25 Points of Agreement between Mr Peter Minshull (on behalf of the Congleton Sustainability Group) and Mr Timothy Russell (on behalf of Seddon Homes)
- Doc 26 Walks and Wildlife South of Congleton
- Doc 27 Comments of Council's Principal Landscape Architect
- Doc 28 Letter dated 20 October 2015 closing the Inquiry
- Doc 29 Joint Position Statement by the Appellant and Council in respect of Section 106 Unilateral Undertaking dated 9 October 2015
- Doc 30 Unilateral Undertaking dated 9 October 2015

## **INQUIRY PLANS**

- Plan A - Plan RTR 6
- Plan B – Figure RT RIA – Brereton Heath Landscape Character Area
- Plan C – Figure RT RIB - Brereton Heath Landscape Character Area
- Plan D – Figure RT1 – Landscape and Planning Designation Context Plan
- Plans E/F – Conservation Area Boundaries
- Plans G/H – Extract from the Definitive Footpath Map
- Plan I – Extract from 1938 OS – Field notes in search of 1954 photo from the Chronicle

Plan J – Location of trees covered by Tree Preservation Order

Plan K – OS Extract

Plan L – Plans which accompanied allowed appeal decisions

APP/R0660/A/12/2188604 & APP/R0660/A/12/2188605 – CD B1

Plan M – Indicative site layout - APP/R0660/A/12/2188604

Plan N – Indicative site layout - APP/R0660/A/12/2188605

### **PHOTOGRAPHS**

Photograph A - Aerial photo of Canal Road – from High Street/Canal Street improvements to Canal Road/Moss Road junction

Richborough Estates