Addendum to Planning Statement

Land south of Chain House Lane, Whitestake

for Wainhomes (North West) Ltd

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Project	: 18-294
Site address	: Chain House Lane, Whitestake
Client	: Wainhomes (North West) Ltd
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1. Executive Summary

1.1 This Planning Statement has been prepared on behalf of Wainhomes North West Limited (hereafter referred to as Wainhomes) to accompany their outline planning application for residential development for up to 100 dwellings with access off Chain House Lane.

1.2 We lodged this outline planning application with the local planning authority in June 2020 and a decision is currently pending (LPA ref: 07/2020/00505/OUT). It is a resubmission of application 07/2018/9316/OUT, which was refused by the Council on 27th June 2019. That decision was the subject of an appeal (PINS ref: 3234070), which was dismissed by the Planning Inspectorate on 13th December 2019. That appeal decision was the subject of a legal challenge, which was lodged by our client in January 2020. In February 2020, the Secretary of State agreed that the appeal decision should be quashed as it was legally flawed. However, South Ribble Council subsequently resolved to defend the Secretary of State's decision and a Court hearing took place on 17th June 2020.

1.3 The High Court Judgment for Chain House Lane was published on 21st August 2020 and Mr Justice Dove quashed the appeal decision. An appeal decision was also issued by the Planning Inspectorate in August 2020 for a scheme for residential development in Chorley on Safeguarded Land (Pear Tree Lane, Euxton). These two decisions have fundamental implications for our client's pending planning application 07/2020/00505/OUT:

- Should the local planning authority consider that the 5-year housing land supply should be assessed based on Core Policy 4 then a 5-year housing land supply cannot be demonstrated. Footnote 7 of the Framework is therefore engaged.
- Should the local planning authority consider that the 5-year housing land supply should be assessed on the basis of the standard method local housing need then Core Strategy Policy 4 and Local Plan Policy G3 are out-of-date for the following reasons:
  - The development plan housing target is derived from the North-West RSS and is out-of-date. Therefore the settlement boundaries, including Safeguarded Land boundaries, must also be considered out-of-date as they were set to meet that housing requirement. This is a conclusion reached by the Inspector in the recent Pear Tree Lane appeal decision and/or,
  - The application of the standard method results in a radically different spatial distribution of housing across the Central Lancashire Housing Market Area when compared the adopted development plan strategy. See Mr Justice Dove's findings at Ground 5 of the Chain House Lane Judgment.

1.4 Whichever way one wishes to interpret the Chain House Lane Judgment and the Pear Tree Lane appeal decision, the tilted balance for the purposes of paragraph 11(d) of the Framework

applies. Planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

1.5 The quashing of the appeal decision means that the proposal is to be re-determined. However the Pear Tree appeal decision is a significant material consideration and applying a consistent approach means that the LPA should now allow this resubmission.

1.6 Notwithstanding the engagement of the tilted balance, the Inspector in the Pear Tree Lane appeal went on to consider whether planning permission should be granted based on the traditional or 'flat' planning balance i.e. whether there are material considerations that outweigh any conflict with the development plan in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004. The Inspector concluded as follows:

> *"Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed."*

1.7 The policy context is identical[1] to our client's scheme at Chain House Lane and the benefits are very close. In both cases these benefits far outweigh any conflict with the relevant safeguarding policy (G3 in South Ribble and BNE 3 in Chorley). In the case of our client's scheme, there is demonstrably less harm to be weighed in the balance given that it does not result in any harm to a designated heritage asset, of which great adverse weight was given in the Pear Tree Lane decision.

1.8 The site is located on a greenfield site which is designated within the South Ribble Local Plan as Safeguarded Land for development and is therefore a suitable location to accommodate the housing needs of the Borough. We recognise that Policy G3 states that "*land remains safeguarded and not designated for any specific purpose within the Plan period*" and "*Existing uses will for the most part remain undisturbed during the Plan period or until the Plan is reviewed*".

1.9 As noted earlier, our client's planning application must be determined based on the titled balance in paragraph 11(d) whichever way one wishes to interpret Mr Justice Dove's findings in the Chain House Lane Judgment and the Pear Tree Lane appeal decision. Planning permission

[1] Policy BNE3 in Chorley and Policy G3 in South Ribble both concern safeguarded land.

should therefore be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

1.10 On the positive side of the planning balance, the following apply:

- The scale of development accords with the settlement hierarchy as expressed in Policy 1 of the Core Strategy and paragraph 3.4 of the Local Plan.
- The delivery of open market housing to assist in boosting the supply of housing in South Ribble. South Ribble is an authority which signed up to the City Deal with the Government in 2013 along with Preston to deliver 17,420 new homes in 10 years. Both authorities have failed to meet this requirement of the City Deal and this only adds further beneficial weight.
- The delivery of 30% affordable housing which accords with the development plan and would assist in addressing the very significant and persistent shortfall in affordable housing delivery.
- There would not be conflict with the purpose of the reason for the site being identified in Policy G3, i.e. it has been safeguarded for development.
- The development is in an accessible location which can accommodate the development scheme socially, economically and environmentally.
- The provision of open space to meet the needs of existing and proposed residents.
- The development will fund the existing bus service for a 5 year period to the benefit of not only the prospective residents but the communities between Preston and Chorley.
- A range of social and economic benefits including the provision of New Homes Bonus, CIL, Council Tax revenue now, construction jobs and increased spending for local services and facilities.

1.11 The great weight to be afforded to the benefits associated with open-market and affordable housing is consistent with the approach taken by the Secretary of State in recent appeals (e.g. the Stapeley case referred to in this Statement) and by the Inspector for the recent Pear Tree Lane appeal decision. If it were concluded, contrary to our case, that harm arises from any conflict with Policy G3 this would not significantly and demonstrably outweigh the above range of benefits for the following reasons:

- Any conflict with Policy G3 results in limited harm for the purposes of the planning balancing exercise given that it is out-of-date. See paragraphs 45, 48, 49 and 50 of the recent Pear Tree Lane appeal decision.
- The LPA conceded through the appeal to be redetermined at Chain House Lane that the Council cannot demonstrate a 5-year supply using Core Strategy Policy 4.

- Any contention that the release of allocated sites would be harmed by the release of the site is not evidenced and Safeguarded Land is required now to meet the persistent and significant under delivery to date.

- Land designated under Policy G3 has been specifically chosen to meet development needs. This is a site that can come forward now as the open market and affordable housing need is clear. This is particularly the case in a Green Belt authority where the only significant opportunity to increase supply is from safeguarded land

- The emerging Local Plan Review is in the very early stages and therefore there can be no concerns on prematurity or prejudice to that plan.

- The development meets the three dimensions to sustainable development and is in the control of one of the North West's most active developers who have and wish to continue to invest in South Ribble.

1.12 Therefore, if there is conflict with Policy G3, this should be given limited adverse weight in the planning balance.

1.13 Policy G3 also states that "*Planning permission will not be granted for development which would prejudice potential longer term, comprehensive development of the land*". The application site is part of the wider allocation of safeguarded land (Site S3 South of Coote Lane, Chain House Lane, Farington). The illustrative layout has been prepared to ensure that the there is no prejudice to that wider parcel of land which is controlled by the Homes England. The Applicant and Homes England have prepared a joint masterplan for the wider site and the submission by Homes England to the appeal was that they had no objection subject to a condition ensuring an unfettered access to their land. That is agreed by the Applicant.

1.14 Since the appeal was determined there has been progress with the masterplan for Pickerings Farm (The Lanes) which is to go to Planning Committee on 17th September 2020. The masterplan sets out how both the allocated land and the safeguarded land north of Chain House Lane is to be developed. This application does not prejudice that site coming forward as agreed with Homes England.

1.15 The illustrative layout and access proposals that form part of the proposal have been prepared in accordance with the relevant policies. Therefore, the proposal would have no adverse impacts that would significantly and demonstrably outweigh the benefits of the development and there are no policies in the Framework that specifically state that development should be restricted. Planning permission should be granted in accordance with paragraph 11(d) of the Framework.

1.16 Irrespective of whether the tilted balance is engaged, any limited harm arising from the proposed development would be far outweighed by the benefits of the scheme. Planning permission is therefore considered to be justified based on the general planning balancing exercise i.e. 'other

material considerations' as per Section 38 of the Planning and Compulsory Purchase Act 2004. See the approach taken by the Secretary of State in the Stapeley case and the Inspector for the Pear Tree Lane appeal decision.

1.17 In particular, the delivery of open-market and affordable housing is a significant benefit and it should be afforded great weight in the decision-making process. As noted earlier, the Inspector for the Pear Tree Lane appeal was satisfied that the 'flat' balance was satisfied even where there would be harm to a designated heritage asset.

1.18 To conclude, the tilted balance is engaged regardless of the 5-year housing land supply position or however the LPA wishes to interpret the Chain House Lane Judgment and the appeal decision at Pear Tree Lane. In short in the absence of an up to date development plan, there is no scenario where the tilted planning balance cannot be engaged.

2. Policy Context

Development Plan Context

2.1 Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that all planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise.

2.2 The development plan for the purposes of determining this application is comprised of the relevant policies contained within the following documents;

- the Central Lancashire Core Strategy (2012). It was adopted in July 2012 and forms Part 1 of the development plan; and,
- the South Ribble Local Plan (2015). It was adopted in July 2015 to meet housing need and regulate development within the Borough 2026 through the allocation of land.

2.3 In accordance with Para 48C of the Framework, due weight should be given to relevant policies in accordance with their degree of consistency with the Framework. This means that the closer the policies to the Framework the greater weight may be given in decision-making.

2.4 Both the Central Lancashire Core Strategy and the Local Plan were adopted in the context of the 2012 NPPF. However both plans were adopted on the basis of meeting the housing needs of the Borough as a minimum. We address whether or not this has been achieved later in this statement.

2.5 The following section sets out the relevant local planning policies. These are assessed in more detail under the relevant sections of this statement;

Central Lancashire Core Strategy

- Policy 1 Location of Growth
- Policy 4 Housing delivery
- Policy 6 Housing Quality
- Policy 7 Affordable and special needs
- Policy 17 Design of new buildings
- Policy 18 Green Infrastructure
- Policy 22 Biodiversity and Geodiversity
- Policy 27 Sustainable Resources and New Development

- Policy 29 Water Management
- Policy 31 Agricultural Land

South Ribble Local Plan Policy

- Policy A1 Developer Contributions
- Policy G3 Safeguarded land for future development
- Policy G8 Green Infrastructure and networks- future provision
- Policy G13 Trees and woodland
- Policy G14 Unstable or contaminated land
- Policy G16 Biodiversity and nature conservation
- Policy G17 Design Criteria for new development

2.6 The site is safeguarded for development in Policy G3 which states;

"Within the borough, land remains safeguarded and not designated for any specific purpose within the Plan period at the following locations:

S1 South of Factory Lane and east of the West Coast Main Line

S2 Southern area of the Major Development Site at Pickering's Farm, Penwortham

S3 South of Coote Lane, Chain House Lane, Farington

S4 Land off Church Lane, Farington

S5 Land off Emnie Lane, Leyland

Existing uses will for the most part remain undisturbed during the Plan period or until the Plan is reviewed. Planning permission will not be granted for development which would prejudice potential longer term, comprehensive development of the land." ***(our emphasis)***

2.7 We assess this designation in Section 4 of this statement.

Other Material Considerations

National planning policy and guidance

2.8 The National Planning Policy Framework (the NPPF) was published in February 2019.

2.9 The most relevant parts of the Framework in relation to this proposal are as follows;

2.10 At the heart of the Framework is a presumption in favour of sustainable development for decision-taking (paragraph 11). This means:

> "Approving development proposals that accord with an up to date development plan without delay; or
>
> Where there are no relevant development plan policies or the policies which are most important for determining the application are out of date, granting permission unless:

i) The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii) Any adverse impact of doping so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework when taken as a whole."

2.11 The Framework specifically states in Footnote 7 (page 6 of the Framework) that policies which are to be considered out of date include, for applications involving the provision of housing, situations wherein a local planning authority is unable to demonstrate a 5 year housing land supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73) or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75%) the housing requirement over the previous three years.

2.12 Chapter 2 of the Framework seeks to clarify what is meant by sustainable development. In doing so it states that the planning system has three overarching objectives which are interdependent and need to be pursued in mutually supportive ways. These are as follows:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future

generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and

- an environmental role – including contributing to protecting and enhancing our natural, built and historic environment.

2.13 Chapter 5 sets out the Government objectives for delivering a sufficient supply of new homes. The guidance states that a key objective is to "significantly boost" the supply of new homes. It is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups and specific housing requirements are addressed and land with permission is developed without unnecessary delay.

2.14 Paragraph 139 of the Framework refers to the need for safeguarded land. It states that land should only be allocated as safeguarded land where necessary, in order to meet the long term development needs stretching well beyond the plan period.

2.15 The Framework states that plans should make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following an update to the plan which proposed the development.

Recent Legal Cases

Wainhomes NW Ltd vs. SoS for CLG and South Ribble BC (2020)

2.16 As noted at Section 1 of this Statement, the Chain House Lane Judgment was published on 21st August 2020. We enclose a copy of this Judgment at Appendix **EP1** of this Statement.

2.17 In December 2018, Wainhomes (NW) Ltd applied for outline planning permission for up to 100 dwellings with associated works on land south of Chain House Lane, Whitestake, Preston. That application was refused by South Ribble Council in June 2019. An appeal was subsequently lodged, and a Public Inquiry took place in November 2019. The Planning Inspectorate dismissed the appeal in December 2019 and the Inspector identified the main issues as follows:

1. The housing requirement and whether a 5-year supply can be demonstrated.
2. Whether the proposed development would prejudice the Council's ability to manage the comprehensive development of the wider area with particular regard to Policy G3 of the South Ribble Local Plan 2015 ("SRLP").

2.18 The challenge was made on the basis of five grounds concerning the following:

- Ground 1 – The Inspector's consideration as to whether there had been a review.
- Ground 2 – The Inspector's consideration of the position of the other 2 local planning authorities.
- Ground 3 – The Inspector's consideration as to whether a "significant change" had taken place since the 2017 MOU.
- Ground 4 – The Inspector's consideration of the impact on the CLHMA.
- Ground 5 - The Inspector's consideration of the implications of the distributional impact of use of the standard method.

2.19 In terms of Ground 1, the contention was that the Inspector had made the error of concluding that the MOU did not amount to a review for the purposes of footnote 37 of the Framework. Mr Justice Dove accepted that the Inspector's reasoning was unclear and unlawful. See paragraphs 24 to 30 and paragraphs 39 to 40 of the Judgment.

2.20 Turning to Ground 5, the standard method for the purposes of paragraph 73 of the Framework provides a figure for a single local authority. The application of the standard method results in a radically different distribution of housing across the housing market area when compared to that contained within Core Strategy Policy 4. The contention was that by adopting the standard method, Policy G3 of the South Ribble Local Plan is therefore out-of-date for the purposes of paragraph 11(d) of the Framework.

2.21 Paragraph 11(d) states that where the policies which are most important for determining the application are out-of-date, the 'tilted balance' applies. One example of policies being out-of-date is where a local planning authority cannot demonstrate a five-year housing land supply (footnote 7). However, the claimant's point made through the challenge was that this is only one such example and there are other avenues through which the 'tilted balance' is engaged e.g. through out-of-date polices.

2.22 The Inspector for the appeal had concluded that the redistribution of housing as a result of the application of the standard method was not radical, and a situation such as this in any event is not one referred to in the Framework or the PPG as rendering a policy such as G3 out-of-date.

2.23 Mr Justice Dove agreed with the claimant that the Inspector's reasons were inadequate in that they failed to grapple with and explain adequately the consequences of the standard method for the distribution of housing across the three authorities across Central Lancashire. Paragraph 37 of the Judgment states the following:

> *"This is ground 5, related to the conclusion that Local Plan Policy G3 was not out of date. In my view there is conspicuous merit in this ground, on the basis that the Inspector's reasoning failed to deal with the claimant's argument or explain her conclusions in relation to it. The argument which was made by the claimant was related to the consequences of deploying the standard method's measurement of local housing need as a result of the earlier conclusions which the Inspector had reached. The figures set out above identify a stark difference in the housing distribution using the local housing need housing requirement, as compared to the distribution contained within Core Strategy Policy 4(a). The Inspector simply failed to provide an answer to the point raised in relation to the adoption of the standard method and its consequences for the distribution of housing contained within that policy which, in turn, underpinned the quantity and distribution of safeguarded land reflected in Local Plan Policy G3…."*
>
> *",,,, Indeed, the Inspector's reliance in her reasoning on a future exercise of policy making, involving review and a fresh exercise of redistribution, reinforced the point that Local Plan Policy G3 was in fact out of date and requiring review at the time of making the present decision if the housing requirement derived from the standard method was to be deployed….*
>
> *"…. Further, her reference to this situation as not being one referred to in the Framework or PPG as rendering this type of policy out of date does nothing to explain either why the claimant's detailed point in relation to the impact on the current distribution of housing of use of the standard method did not render Local Plan Policy G3 out of date."*

2.24 The claimant's arguments were successful on grounds 1 and 5, and it was concluded that the decision should be quashed. The Pear Tree Lane appeal decision has provided a further reason why the application of LHN results in the tilted planning balance being engaged.

Oxton Farm vs. Harrogate Borough Council and D Noble Ltd Judgment (2020)

2.25 This Court of Appeal Judgment published in June 2020 concerned a planning application for 21 dwellings and a village shop at Turnpike Lane, Bickerton, North Yorkshire. It was subject to the grant of planning permission in 2018, although Oxton Farm subsequently pursued a legal challenge against this decision.

2.26 The Harrogate Local Plan was adopted in 2009 and Policy SG1 identified a housing requirement of 390 dwellings per annum between the years 2004 and 2023. Policy SG2 identifies development and settlement limits, and Policy SG3 seeks to direct housing growth to within these development and settlement limits. Bickerton is not listed at Policy SG2 and it is within the open countryside.

2.27 The emerging local plan had been submitted for examination with the Planning Inspectorate on the 31st August 2018. The emerging local plan identified a housing requirement of 669 dwellings per annum. The Committee report published prior to the emerging plan having been submitted for independent examination stated:

> *"On balance, it is considered that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of this scheme. [Harrogate] can only demonstrate a 5.02 year supply of housing and this is not sufficiently above the 5 year supply that paragraph 11 of the NPPF can be ignored. Given this position and the proximity of nearby service settlements, officers consider the scheme should be approved. RECOMMENDATION: Approve subject to conditions."*

2.28 Paragraph 9.11 of the Committee Report stated the following:

> *"In order to maintain supply position, greenfield land outside the existing development limits will continue to be needed. This means that development limits are considered out of date and can be given no more than limited weight. Only limited weight can be attached to Core Strategy policies SG1, SG2 and SG3 as these were based on a housing target that is out of date. By virtue of this paragraph 11 of the NPPF is once again engaged."*

2.29 The challenge concerned two matters: Whether the tilted balance should have been engaged and whether the 5-year supply should have been measured against a different housing requirement. In terms of the tilted balance, the key issue was whether the Committee Report had properly advised Members as why it was engaged. The Judgment found that officers had provided good reason for the tilted balance being engaged notwithstanding the 5-year housing land supply position:

> *"….. Paragraph 9.11 gives two reasons for limited weight to Policies SG1, SG2 and SG3; and the more natural reading of 'one again' is that both the first reason and the second reason engage the tilted balance.*
>
> *On the other hand, in paragraph 9.11 the officer considered that development limits were out of date. She gave two reasons for that view. First, in order to maintain the supply of housing land, greenfield sites were needed; and that meant that settlement boundaries were out of date.* ***Second, Policies SG1, SG2 and SG3 were themselves based on a housing target that was out of date. That meant that those policies could only be given limited weight. It follows that the basis on which the tilted balance was triggered was on the basis that relevant policies were out of date****."(our emphasis)*

2.30 This Judgment reflects the well-established principle that the tilted balance will be engaged where relevant policies are out-of-date. The matter of whether a 5-year supply can be demonstrated is not the only mechanism through which paragraph 11(d) of the Framework is engaged.

2.31 We enclose a copy of the Judgment at Appendix **EP2**.

Land at Pear Tree Lane, Euxton, Chorley

2.32 In June 2019, Chorley Council refused planning permission for the erection of up to 180 dwellings with associated works at Pear Tree Lane, Euxton (LPA ref: 19/00654/OUTMAJ). The site is identified as Safeguarded Land through the adopted development plan.

2.33 The applicant subsequently lodged an appeal with the Planning Inspectorate and a Public Inquiry took place in June 2020 (PINS ref: APP/D2320/W/20/3247136). The Inspectorate issued the appeal decision letter in August 2020 and the key findings are summarised below:

- The Appellant considered that the standard method local housing need should be used as the basis for assessing whether a 5-year supply exists as per paragraph 73 and footnote 37 of the Framework.

- The Council considered that the Memorandum of Understanding between the three Central Lancashire authorities (April 2020) should be used as the basis for assessing whether a 5-year supply exists. The Council considered this was justified on the basis of paragraph 2-03 of the PPG and a redistribution of the requirement across the Central Lancashire authorities.

- The Inspector noted that it was not for an Inspector on a Section 78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure. The redistribution of housing across the Central Lancashire area is something that should be resolved through a local plan process.

- Full weight should be attached to the standard method local housing need figure for Chorley and this should be used as the basis for assessing whether a 5-year supply exists. A 5-year housing land supply could not be demonstrated on this basis.

- Policy 4 of the Joint Core Strategy should be considered out-of-date. This policy is derived from the former North West RSS, which relied upon out-of-date 2003-based household projections. Paragraph 45 of the Inspector's appeal decision:

  > *"The second step is to examine each of these policies to see whether or not they are out-of-date. The courts have established that a policy may become 'out-of-date' where it is overtaken by a change in national policy32. That is clearly the situation applying to Policy 4 of the CLCS, where its housing requirements were derived from the former Regional Spatial Strategy for the North West, which in turn relied on the 2003-based household projections. This, combined with the introduction of the standard method in the 2018 Framework and the application of the 2014-based household projections, renders the housing requirements in Policy 4 out-of-date."*

- Policy BNE3 (Safeguarded Land) should be considered out-of-date. It serves to prevent the Council from being able to provide an adequate housing land supply within the current plan period and is based on an out-of-date housing requirement. Paragraph 48 of the Inspector's appeal decision:

  > *"Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are predicated on a housing requirement in the CLCS which is out-of-date. The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the*

> *1997 Chorley Borough Local Plan. They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date."*
>
> *"Case law has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here. My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026."*
>
> *"This is further supported by the fact that the emerging CLLP35 identifies all but one of the Areas of Safeguarded Land in Policy BNE3, including the appeal site, as site proposals to meet the borough's housing needs for the period 2021-2036. Whilst the emerging CLLP is at an early stage and the final selection of housing allocations will be determined through the local plan examination process, it clearly recognises that land currently safeguarded in Policy BNE3 for development needs beyond the end of the CLP plan period in 2026, may need to be released before then to meet a housing requirement based on the standard method LHN. Although the previous appeal decision on this site36 did not consider Policy BNE3 to be out-of-date, that relied on the housing requirement in the CLCS, which at the time of the decision in 2017 was not out-of-date. However, for the above reasons, Policy BNE3 is out-of-date in the circumstances of this appeal."*

- The delivery of 30% affordable housing is a significant social benefit.
- The delivery of open market housing carries significant weight in addressing housing needs.
- The economic benefits associated with the creation of jobs and a boost to the economy attracts modest weight in the planning balance.
- There would be localised landscape harm that attracts moderate weight in the planning balance.
- There would be less than substantial harm to the heritage significance of the listed Houghton House Farmhouse.

2.34 There are no adverse impacts that could demonstrably and significantly outweigh the benefits for the purposes of the tilted balance at paragraph 11(d) of the Framework. Planning permission was granted.

2.35 In terms of the traditional, or 'flat' planning balance (i.e. if the tilted balance were not engaged), the Inspector was clear that the grant of planning permission would still be justified:

> *"Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the*

significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed."

2.36 We enclose a copy of the appeal decision letter at Appendix **EP3.**

Land off Audlem Road/Broad Lane, Stapeley, Nantwich

2.37 This Secretary of State decision issued earlier this year concerned a mixed-use development including 189 dwellings in Stapeley, Nantwich (LPA ref: 12/3747N and 12/3746N). The site was beyond the settlement boundaries established through the local plan and the scheme was contrary to a number of development plan policies, including those policies seeking to direct development to identified settlements.

2.38 The Secretary of State allowed the appeal and his findings are summarised below:

- There would be a degree of visual/landscape harm although this harm is limited by virtue of the urbanised context of the site.
- There would be a degree of harm as a result of the loss of best and most versatile agricultural land; this attracts modest weight in the planning balance.
- The Council can demonstrate a housing land supply of between 5.7 years and 6.6 years. The 'tilted balance' as per paragraph 11(d) of the Framework does not apply.
- There would be economic benefits as a result of the development, including employment during construction and expenditure into the local economy. This is a benefit that attracts medium weight in the planning balance.
- The site is in a sustainable location and Nantwich is one of the preferred locations for development in the development plan strategy. This is a benefit that attracts medium weight in the planning balance.
- The provision of extensive areas of open space? and scope for a new primary school and improvements to sustainable transport connectively represent significant social benefits. This attracts medium weight in the planning balance.
- The delivery of significant number of market housing is a significant benefit. Although the Council can demonstrate a five-year supply of housing land, the government policy imperative is to boost the supply of housing. This is a benefit that attracts significant weight in the planning balance.
- The delivery of affordable housing is a tangible benefit that attracts significant weight in the planning balance.
- The appeal scheme is not in accordance with Policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy and Policy RES5 of the Crewe and Nantwich Local Plan. Furthermore, the scheme is not in accordance with Policies G5, H1 and H5 of the Stapeley Neighbourhood Plan.

2.39 In the overall balance of material considerations, the benefits outweigh the disbenefits including conflict with the development plan. Planning permission was therefore granted on the basis of a traditional, or 'flat', planning balance (i.e. the tilted balance was not engaged).

2.40 We enclose a copy of the Secretary of State appeal decision at Appendix **EP4.**

Supplementary Planning Documents

2.41 The following provides a list of supplementary planning documents which are relevant to the proposal:

- Open Space and Playing Pitch Financial Contribution Schedule (2013);
- Biodiversity and Nature Conservation (2015);
- Central Lancashire Affordable Housing SPD (October 2012)

3. Whether the tilted balance is engaged

3.1 It is well-established that there is more than one way in which paragraph 11(d) may be engaged i.e. the tilted balance. Examples include:

- The absence of a 5-year housing land supply. See footnote 7 of the Framework.
- The adopted housing requirement and settlement boundaries being based on out-of-date housing needs. See the Oxton Farm Judgment referred to earlier and the findings of the Inspector for the Pear Tree Lane appeal decision.
- The adopted housing strategy being significantly different to an alternative housing need figure in terms of the distribution of development across a housing market area. See the Chain House Lane Judgment referred to earlier.

Scenario 1: The 5-year housing land supply is assessed on the basis of Core Strategy Policy 4

3.2 The Council can demonstrate a 3.4-year housing land supply under this scenario. See Section 4 of this Statement. Core Strategy Policy 4 and Local Plan Policy G3 would be out-of-date under this scenario.

3.3 The tilted balance at paragraph 11(d) of the Framework is engaged and planning permission should be granted unless any adverse impacts of doing so would demonstrably and significantly outweigh the benefits.

Scenario 2: The 5-year housing land supply is assessed on the basis of local housing need

3.4 The housing requirement, and by association the settlement boundaries, are derived from the obsolete North West RSS and out-of-date household projections. See paragraphs 45 and 48, 49 and 50 of the Pear Tree Lane appeal decision:

> *"The second step is to examine each of these policies to see whether or not they are out-of-date. The courts have established that a policy may become 'out-ofdate' where it is overtaken by a change in national policy32. That is clearly the situation applying to Policy 4 of the CLCS, where its housing requirements were derived from the former Regional Spatial Strategy for the North West, which in turn relied on the 2003-based household projections. This, combined with the introduction of the standard method in the 2018 Framework and the application of the 2014-based household projections, renders the housing requirements in Policy 4 out-of-date."*
>
> *"Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are*

predicated on a housing requirement in the CLCS which is out-of-date. The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the 1997 Chorley Borough Local Plan. They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date."

"Case law has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here. My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026."

"This is further supported by the fact that the emerging CLLP35 identifies all but one of the Areas of Safeguarded Land in Policy BNE3, including the appeal site, as site proposals to meet the borough's housing needs for the period 2021-2036. Whilst the emerging CLLP is at an early stage and the final selection of housing allocations will be determined through the local plan examination process, it clearly recognises that land currently safeguarded in Policy BNE3 for development needs beyond the end of the CLP plan period in 2026, may need to be released before then to meet a housing requirement based on the standard method LHN. Although the previous appeal decision on this site36 did not consider Policy BNE3 to be out-of-date, that relied on the housing requirement in the CLCS, which at the time of the decision in 2017 was not out-of-date. However, for the above reasons, Policy BNE3 is out-of-date in the circumstances of this appeal."

3.5 Core Strategy Policy 4 and Local Plan Policy G3 would be out-of-date under this scenario. The tilted balance at paragraph 11(d) of the Framework is engaged and planning permission should be granted unless any adverse impacts of doing so would demonstrably and significantly outweigh the benefits.

3.6 It should be noted that since the last application and the appeal, the Government has published the draft Standard Method for consultation. The Government consultation paper titled "Changes to the current planning system Consultation on changes to planning policy and regulations"[2] states:

> *"13. Household projections, used in the current method, have attracted criticism for their volatility and the way in which they can result in artificially low projections in some places, where overcrowding and concealed households suppress the numbers. Crucially, they cannot in isolation forecast housing need – they project past trends forward. Despite this, we have seen many progress arguments that recent reductions in projected growth should lead to less homes being built. This should not be the logical conclusion, as the Office for National Statistics (ONS) has clarified 5&6".*

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907215/200805_Changes_to_the_current_planning_system_FINAL_version.pdf

> *"15. The Government has welcomed contributions from experts, including Savills8 and Lichfields9 , on helpful proposals on how to adjust the methodology to address better these issues of alignment with real demand, stability, and consistency with the overall 300,000 target. There is general support for incorporating housing stock into the methodology, as a way of balancing out some of the issues identified with relying on household projections in isolation. We have taken into consideration the varied and useful feedback, both on the individual data inputs and also on how these might be applied in informing options for consideration.*
>
> *16. In line with our commitments10, we are now proposing a revised standard method which aligns with the Government's aspirations for the housing market. This should provide stability and certainty for all stakeholders and seek to address the issues with the current approach and use of household projections identified above."*

3.7 In the Report to Cabinet titled "Central Lancashire Memorandum of Understanding on Housing Provision and Distribution" and dated 13 November 2019, paragraph 13 states:

> *"13. All three authorities have considered the above standard method approach through the Central Lancashire Joint Advisory Committee. All three authorities are concerned that the standard method does not truly reflect their needs moving forward. For example, in South Ribble's case the long term housing delivery trend is around 347 units per annum."*

3.8 It is clear that in the context of the above, the application of LHN for South Ribble only should have limited weight at best as the Government and the LPA have accepted it is not meeting the housing needs of the Borough, the wider housing market and nationally.

Scenario 3 – The application of LHN results in a radical change to the distribution of development across a housing market area

3.9 The standard method for the purposes of paragraph 73 of the Framework provides a figure for each local authority. The application of the standard method results in a radically different distribution of housing across the housing market area when compared to that contained within Core Strategy Policy 4 as set out in Table 1 below.

Table 1: Distribution of Development between CS Policy 4 and LHN

	Policy 4	% of Total	LHN	% of total
Preston	507	37.8	241	23.3
Chorley	417	31.1	579	56.1
South Ribble	417	31.1	213	20.6
Total	1,341		1,033	

3.10 Therefore applying LHN for South Ribble would result in a radical[3] redistribution of the housing requirement within the CLHMA as set out in Core Strategy Policy 4. As the settlement boundaries and the boundaries of the safeguarded land sites were made on the Policy 4 requirement, it must follow that Policy G3 would be out-of-date under this scenario.

3.11 The same conclusion would apply using the draft Standard method if it is adopted without change. For South Ribble and the Central Lancashire housing market, the difference between the current standard method and the proposed standard method are as follows:

Table 2: Distribution of Development between CS Policy 4 and draft LHN

	Policy 4	% of Total	LHN	% of total
Preston	507	37.8	385	27
Chorley	417	31.1	771	56
South Ribble	417	31.1	238	17
Total	1,341		1,394	

Conclusion

3.12 The tilted balance is engaged regardless of whichever of the above scenarios the LPA wishes to interpret the Chain House Lane Judgment and Mr Justice Dove's findings and the appeal decision at Pear Tree Lane. In short in the absence of an up to date development plan, there is no scenario where the tilted planning balance cannot be engaged.

[3] LPA closing paragraph 18 and Claimant closing paragraph 71

4. Planning Balance and Conclusion

4.1 Our client's planning application should be determined on the basis of the tilted balance and paragraph 11(d) of the Framework regardless. The tilted balance is engaged regardless of the 5-year housing land supply position and whichever way the LPA wishes to interpret the Chain House Lane Judgment and Mr Justice Dove's findings and the appeal decision at Pear Tree Lane.

4.2 On the positive side of the planning balance, the following apply:

- the scale of development accords with the settlement hierarchy as expressed in Policy 1 of the Core Strategy and paragraph 3.4 of the Local Plan;
- the delivery of open market housing to assist in boosting the supply of housing in South Ribble. South Ribble is an authority which signed up to the City Deal with the Government in 2013 to deliver along with Preston to deliver 17,420 new homes in 10 years. Both authorities have failed to meet this requirement of the City Deal and this only adds further beneficial weight;
- The delivery of 30% affordable housing which accords with the development plan and would assist in addressing the very significant and persistent shortfall in affordable housing delivery;
- development would not conflict with the purpose of the reason for the site being identified in Policy G3, i.e. it has been safeguarded for development;
- development in an accessible location which can accommodate the development scheme socially, economically and environmentally;
- the provision of open space to meet the needs of existing and proposed residents;
- development that will fund the existing bus service for a 5 year period to the benefit of not only the prospective residents but the communities between Preston and Chorley; and;
- a range of social and economic benefits including the provision of New Homes Bonus, CIL, Council Tax revenue now, construction jobs and increase spending for local services and facilities.

4.3 If it were concluded, contrary to our case, that harm arises from any conflict with Policy G3 this would not significantly and demonstrably outweigh the above range of benefits for the following reasons:

- Policy G3 is out-of-date based on local housing need regardless of the 5-year housing land supply as it derives from an out-of-date housing target. Alternatively, it is out-of-date based on Core Strategy Policy 4 as the Council cannot demonstrate a 5-year supply.
- Any contention that the release of allocated sites would be harmed by the release of the site is not evidenced and safeguarded land is required now to meet the persistent and significant under delivery to date.

- Land designated under Policy G3 has been specifically chosen to meet development needs. This is a site that can come forward now as the open market and affordable housing need is clear. This is particularly the case in a Green Belt authority where the only significant opportunity to increase supply is from safeguarded land

- The emerging Local Plan Review is in the very early stages and therefore there can be no concerns on prematurity or prejudice to that plan.

- The development meets the three dimensions to sustainable development and is in the control of one of the North West's most active developers who have and wish to continue to invest in South Ribble.

4.4 The application site is part of the wider allocation of safeguarded land (Site S3 South of Coote Lane, Chain House Lane, Farington). The illustrative layout has been prepared to ensure that the there is no prejudice to that wider parcel of land which is controlled by the Homes England. The Applicant and Homes England have prepared a joint masterplan for the wider site and the submission by Homes England to the appeal was that they had no objection subject to a condition ensuring an unfettered access to their land. That is agreed by the Applicant.

4.5 The illustrative layout and access proposals that form part of the proposal have been prepared in accordance with the relevant policies. Therefore, the proposal would have no adverse impacts that would significantly and demonstrably outweigh the benefits of the development and there are no policies in the Framework that specifically state that development should be restricted.

4.6 Any refusal under the tilted balance must be evidenced by identified, quantified and measurable material harm and it is common ground that there is none in this case as development is not unsustainable, it is technically acceptable and granting permission will not harm the development strategy in the development plan and Homes England has no objection.

4.7 Notwithstanding the point as to the tilted balance being engaged which is our primary case, the limited harm arising from the proposed development would be outweighed by the benefits of the scheme. Planning permission is therefore considered to be justified based on the general planning balancing exercise i.e. 'other material considerations' as per Section 38 of the Planning and Compulsory Purchase Act 2004. See the approach taken by the Secretary of State in the Stapeley case and the Inspector for the Pear Tree Lane appeal decision. In particular, the delivery of open-market and affordable housing is a significant benefit and it should be afforded great weight in the decision-making process. The Inspector for the Pear Tree Lane appeal was satisfied that the 'flat' balance was satisfied even where there would be harm to a designated heritage asset.

4.8 Therefore, in accordance with section 38(6) of the Planning and compulsory purchase Act (2004) and the presumption in favour of sustainable development, this application should be granted planning permission without delay.

5. Appendices

EP1 - Wainhomes NW Ltd vs. SoS for CLG and South Ribble BC (2020)

EP2 - Oxton Farm vs. Harrogate Borough Council and D Noble Ltd Judgment (2020)

EP3 – Appeal decision: Land at Pear Tree Lane, Euxton, Chorley.

EP4 – Secretary of Statement appeal decision: Land off Audlem Road/Broad Lane, Stapeley, Nantwich

EP1

Neutral Citation Number: [2020] EWHC 2294 (Admin)

Case No: CO/234/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/08/2020

Before :

MR JUSTICE DOVE

- -

Between :

WAINHOMES (NORTH-WEST) LIMITED	**Claimant**
- and -	
SECRETARY OF STATE FOR HOUSING COMMUNITIES AND LOCAL GOVERNMENT	**1st Defendant**
-and-	
SOUTH RIBBLE BOROUGH COUNCIL	**2nd Defendant**

- -
- -

Mr Vincent Fraser QC (instructed by **Eversheds Sutherland**) for the **Claimant**
No appearance and no representation for the **1st Defendant**
Mr Giles Cannock QC and Mr Alan Evans (instructed by David Whelan South Ribble Borough Council) for the 2nd Defendant
Hearing date: 17th June 2020

- -

Approved Judgment

Mr Justice Dove :

Introduction

1. On 4 December 2018 the claimant applied for outline planning permission for up to 100 dwellings with access and associated works on land to the south of Chain House Lane, Whitestake, Preston. That application was refused by the second defendant on 27 June 2019 and the claimant appealed under section 78 of the Town and Country Planning Act 1990 to the first defendant. The first defendant's duly appointed Inspector, following a public inquiry in November 2019, decided to dismiss the appeal for reasons set out in a decision letter dated 13 December 2019. This is the application pursuant to section 288 of the 1990 Act in relation to that decision.

2. The application is pursued on a number of grounds which are set out below. However, at this stage it is pertinent to note that in relation to ground 5 the first defendant conceded that the Inspector's decision should be quashed. In particular, the concession is set out in the following terms in a letter from the Government Legal Department dated 17 February 2020:

> "This is on the basis that the Secretary of State agrees that the Inspector did not expressly consider the specific point put by the Claimant at paragraphs 80 – 81 Statement of Facts and Grounds. That is, the Inspector did not expressly consider whether the distribution of the housing requirement that would result from the application of the Standard Methodology within the Housing Market Area would render policy G3 out of date irrespective of whether the Council could demonstrate a five year supply of housing land. Accordingly, the Secretary of State accepts that the decision should be quashed but only for the reasons set out in paragraphs 80– 81, paragraph 82 (failure to give adequate reasons) and paragraph 83 (in so far as that paragraph relates to a failure to take into account a material consideration) of the Claimant's Statement of Facts and Grounds."

3. The second defendant supported the decision which was made by the Inspector, and contends that on all grounds the claim should be dismissed.

The facts

4. It is important, in order to understand the issues which arose in the appeal, to set out the policy background and the history of issues relating to planning policy prior to the consideration of the appeal. There were two important issues bearing upon the merits of the appeal. Firstly, the question of whether or not the second defendant could demonstrate a five year housing land supply. The materiality of the requirement to be able to demonstrate a five year housing land supply pursuant to paragraph 11(d) and footnote 7 of the National Planning Policy Framework ("the Framework") is well known. If a five year housing land supply cannot be demonstrated, then the tilted balance contained in paragraph 11(d) should be applied when determining whether planning permission should be granted. There were no footnote 6 policies engaged in

the present case, and therefore if the tilted balance applied, it would mean granting planning permission unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole".

5. The policy relating to maintaining a deliverable supply of housing land is contained in paragraph 73 of the Framework and those that follow. Of particular relevance in the present case is paragraph 73 and its related footnote 37 which provide as follows:

> "73. Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period, and all plans should consider whether it is appropriate to set out the anticipated rate of development for specific sites. Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old[37].The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:
>
> a) 5% to ensure choice and competition in the market for land; or
>
> b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
>
> c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.
>
> [Footnote] 37. Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance."

6. Against the background of this policy material much turned in relation to the merits of the appeal on the question of whether or not a review of the strategic policy for housing had been undertaken pursuant to footnote 37. If a review had been undertaken, and the policies had not been found to require updating, then those strategic policies would have been the basis for the calculation of the five year housing land supply. If a review had not been undertaken then, since the strategic policies for housing were more than five years old, the five year housing land supply would be assessed by reference to local housing need calculated using the standard method prescribed by national Planning Practice Guidance ("the PPG"). These calculations, as set out below, produced very different outcomes.

7. It was common ground at the inquiry that the strategic policy providing the housing requirement within the adopted development plan was Policy 4 of the Core Strategy for Central Lancashire. This Core Strategy was prepared and adopted by three adjacent authorities: the second defendant, Preston City Council and Chorley Council, who are all part of a single housing marking area identified as Central Lancashire. Policy 4 provides as follows:

> "Policy 4: Housing Delivery
>
> Provide for and manage the delivery of new housing by:
>
> (a) Setting and applying minimum requirements as follows:
>
> - Preston 507 dwellings pa
>
> - South Ribble 417 dwellings pa
>
> - Chorley 417 dwellings pa
>
> With prior under-provision of 702 dwellings also being made up over the remainder of the plan period equating to a total of 22,158 dwellings over the 2010-2016 period.
>
> (b) Keeping under review housing delivery performance on the basis of rolling 3 year construction levels. If, over the latest 3 year review period, any targets relating to housing completions or the use of brownfield are missed by more than minus 20%, the phasing of uncommitted sites will be adjusted as appropriate to achieve a better match and/or other appropriate management actions taken; provided this would not adversely impact on existing housing or markets within or outside the Plan area.
>
> (c) Ensuring there is enough deliverable land suitable for house building capable of providing a continuous forward looking 5 year supply in each district from the start of each annual monitoring period and in locations that are in line with the Policy 1, the brownfield target (of 70% of all new housing) and suitable for developments that will provide the range and mix of house types necessary to meet the requirements of the Plan area.
>
> (d) Ensuring that sufficient housing land is identified for the medium term by identifying in Site Allocations Documents a further supply of specific, developable sites for housing and in the longer term by identifying specific developable sites or broad locations for future growth."

8. In light of the fact that the Core Strategy had been adopted in 2012, on 27 June 2016 the Central Lancashire Strategic Planning Joint Advisory Committee received a report to advise members of that committee of the appointment of consultants to carry out an assessment of the Full Objectively Assessed Housing Need ("FOAN") and prepare a Strategic Housing Market Assessment ("SHMA") for Central Lancashire. The report

noted that there was a duty under section 13 of the Planning and Compulsory Purchase Act 2004 for the local planning authorities to keep matters under review which might affect the development of their area or its planning. The object of the exercise which members were being advised about was described in the following terms:

> "7. The three Central Lancashire authorities have up to date and National Framework compliant development plans consisting of the Joint Central Lancashire Core Strategy, adopted July 2012, and the three respective site allocations plans, adopted by the respective authorities on varying dates but all in July 2015. The Core Strategy is, therefore, reaching the point where, government guidance suggests that there should be some review as to whether policies need updating.
>
> 8. The housing requirement figures in the plan, set out in Policy 4 of the Core Strategy, derive from the now revoked Regional Spatial Strategy figures, which in turn are based upon population and household projection figures dating from 2003. This is becoming an issue in determining planning applications and, particularly, in defending appeals where applicants/appellants are arguing that these figures, even in a recently adopted plan, do not constitute the full, objectively assessed need for market and affordable housing in each of the three Council areas. The further argument is that this is in breach of the requirement of paragraph 47 of the NPPF, which is that local planning authorities use their evidence base to ensure that the Local Plan meets the full objectively assessed need. In such circumstances elsewhere planning inspectors have weighed in favour of the appellant. In addition the High Court has supported the view that the starting point in determining housing requirements is the full, objectively assessed need.
> …
> 13. For the reasons set out above this work is necessary and timely. In particular, taking into account the fifth anniversary of the adoption of the Central Lancashire Core Strategy in 2017, the revocation of RSS on which the Core Strategy figures are based and the latest population and household projection figures all point to the need to review this part of the local plan evidence base."

9. Members were updated in relation to this exercise on 2 March 2017. By this time the consultants had calculated a new FOAN figure, and this required finalisation so that the SHMA could be completed. The report summarised the findings in relation to the FOAN calculation, and the relationship between the FOAN figure that had been calculated and planned housing provision, in the following paragraphs, along with the recommendation that there be a retention of the housing requirement set out in Core Strategy Policy 4(a):

> "19. In summary the relationship between the Full Objectively Assessed Need for housing and the planned housing provision, therefore is:

> • The FOAN is the minimum that needs to be provided. Local Planning Authorities can plan for more housing in their area, for example, to meet economic growth aspirations.
>
> • The FOAN is an evidence figure, not policy.
>
> • The FOAN should be assessed at the Housing Market Area level; Central Lancashire has a level of containment that exceeds the threshold set out in national guidance.
>
> • Apportionment of the FOAN by agreement between local planning authorities within a Housing Market Area, which differs from the figure for each authority, is possible as long as the FOAN for the Housing Market Area is met.
>
> Moving forward pragmatically
>
> 20. As indicated above, the FOAN for Central Lancashire is only marginally lower (2%) than the housing requirement figure set out in the Core Strategy. It is, therefore, recommended that the Core Strategy requirements should be retained rather than proceed to a partial review of the Core Strategy at this time."

10. Also in September 2017 a document was signed by all three of the Central Lancashire authorities, described as the "Joint Memorandum of Understanding and Statement of Cooperation relating to the Provision of Housing Land" ("MOU"). The purpose of the MOU is described in paragraph 3.1 in the following terms:

> "3.1 The purpose of this document is to confirm and demonstrate an approach agreed by the Councils concerning the distribution of housing in the Housing Market Area referred to at paragraph 1.3 above. This agreement is informed by the Strategic Housing Market Assessment, August 2017. The Statement sets out the agreed approach to the distribution of housing prior to adoption of a new plan."

11. At paragraph 4.6 of the MOU the Central Lancashire authorities agreed that it was appropriate to retain the figures set out in Core Strategy Policy 4(a) and continue with the monitoring arrangements under the policy. The substance of the agreement contained in the MOU is set out in the following terms:

> "1. Chorley Borough Council, Preston City Council and South Ribble Borough Council agree:
>
> a) To continue until the adoption of a replacement local plan to apply the housing requirements set out in the Joint Central Lancashire Core Strategy Policy 4, i.e.

> Chorley: 417 dwellings per annum
>
> Preston: 507 dwellings per annum
>
> South Ribble: 417 dwellings per annum.
>
> b) That there is no requirement for each local planning authority to meet its identified individual Objectively Assessed Need for housing where higher in view of this agreement and the longstanding and continuing joint working between the Councils.
>
> c) To continue the existing monitoring arrangements for the Central Lancashire Core Strategy and individual local plans to confirm that the MOU is delivering as intended.
>
> 7. Review
>
> 7.1 The document will be reviewed no less than every three years and will be reviewed when new evidence that renders this MOU out of date emerges."

12. It was the claimant's contention at the public inquiry in relation to the appeal that the events of 2016 and 2017 set out above, taken as a whole, were a review of the adopted strategic policies containing the second defendant's housing requirement for the purposes of footnote 37, such that the housing land supply should continue to be calculated against the figure contained in Core Strategy Policy 4(a). In support of this contention the claimant also drew attention to a number of additional features in the evidence. Firstly, it was pointed out that the other authorities within the Central Lancashire housing market area accepted that these events amounted to a footnote 37 review, and continued to use the housing requirement contained in Core Strategy Policy 4(a) for the purposes of calculating their five year housing land supply. Secondly, reference was made to the second defendant's own publication in relation to the housing land position as at 31 March 2019, in which, in the section addressing the strategic requirement, the document noted that the events of 2016 and 2017 "could be considered to have been a review of the policy in terms of footnote 37 of the NPPF". These features, the claimant contended, supported the view that what had occurred was a footnote 37 review of the housing requirement which had endorsed the continuing validity of the requirement contained in Core Strategy Policy 4(a), and its continued use for the purposes of calculating the five year housing land supply.

13. By contrast, at the outset of the inquiry, the second defendant's position was that there had not been a footnote 37 review, and that the commissioning of the SHMA was simply, as referred to in the committee documentation, a piece of evidence in relation to housing issues. As in the publication in relation to the housing land supply as of 31 March 2019, reference was made to an appeal decision at Brindle Road, Bamber Bridge, in which the Inspector had stated that he was not convinced that the events of 2016 and 2017 represented a review of the policies. Whilst this was the position at the outset of the inquiry, during the course of cross-examination, the second defendant's planning witness conceded that, when the material was properly analysed, there had been a review of the policies for the purposes of footnote 37, and therefore the housing land supply calculation should be undertaken on the basis of the housing requirement in Core

Strategy Policy 4(a). That this was the case is reflected in the closing submissions made on behalf of the second defendant at the conclusion of the inquiry, in which it was accepted on behalf of the second defendant that there were in reality only three points that could be taken in support of the case that the MOU was not a review in the light of the concessions that had been made. These were, firstly, that there had been no public consultation in the process culminating in the MOU, secondly, there was not a review of the whole of the policy and, thirdly, reliance was placed on the Brindle Road decision.

14. A subsidiary argument made by the second defendant at the inquiry arose as a fall back if it were successfully contended that the MOU and its associated processes did amount to a review. The argument was based on the PPG. The provisions which were particularly relied upon by the second defendant were those concerning how often a plan or its policies should be reviewed. The relevant provision is as follows:

> "How often should a plan or policies be reviewed?
>
> To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.
>
> Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years. Reviews should be proportionate to the issues in hand. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption. Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below.
>
> There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.
>
> Paragraph: 062 Reference ID: 61-062-20190315"

15. It was contended on behalf of the second defendant that the change between the strategic housing requirement contained in Core Strategy Policy 4(a) and the figure provided by using the standard method for calculating local housing need was a significant change for the purposes of the PPG. On the basis of this contention the second defendant provided a second justification for using the local housing need figure for calculating their five year housing land supply. As has been alluded to above, a very different outcome resulted from the figures available at the inquiry in relation to the five year housing land supply calculation, depending upon whether the housing requirement from Core Strategy Policy 4(a) or the local housing need figure derived using the standard method was used. The claimant and the second defendant's calculations based on the housing requirement from Core Strategy Policy 4(a) for the five year housing land supply were 3.24 years or 5.96 years respectively, whereas the second defendant's calculation using the standard method was a five year housing land supply at the start of the inquiry of 17.8 years. This latter figure resulted from the outcome of the use of the standard method which led to the calculation of a housing requirement of 206 dwellings per annum (or 216 with a 5% buffer), as opposed to 417 from Core Strategy Policy 4(a).

16. The second key issue in respect of the application of the tilted balance was the claimant's contention that Local Plan Policy G3 (the other development plan policy which was most important for determining the appeal) was out of date. Local Plan Policy G3 is contained in the South Ribble Local Plan, which was adopted in July 2015. Local Plan Policy G3 identified five areas of safeguarded land for the purposes of future development. The appeal site was site S3. Safeguarded land, whilst not designated for any specific purpose and not currently required for development, is safeguarded in order to ensure that Green Belt boundaries will not need altering at the end of the plan period to meet longer term development needs, and is a well-recognised planning policy tool. The claimant's contention was that if the second defendant were to use the standard methodology rather than the housing requirement contained in Core Strategy Policy 4(a), this would lead to a very different distribution of housing requirements between the three Central Lancashire authorities, and would clearly undermine the safeguarded land provisions contained in Local Plan Policy G3 which were predicated upon the housing distribution contained within Core Strategy Policy 4(a) as between each of the three authorities. A redistribution of the housing requirements in accordance with the local housing need figures to be derived for the three Central Lancashire authorities would have significant implications for the Green Belt across Central Lancashire, alongside the availability of safeguarded land and the need for safeguarded land to be released across the housing market area to meet development requirements. In short, therefore, the settled consensus in relation to the distribution of housing requirements contained in Core Strategy Policy 4(a) would be completely fractured by the adoption of the standard method for determining local housing need, such that conclusions reached as to the extent of the need to safeguard land in South Ribble on the basis of the housing requirement in Core Strategy Policy 4(a) could no longer hold, and Local Plan Policy G3 would be out of date.

17. By the time of the close of the inquiry, and following cross examination of the second defendant's planning witness, it was conceded by the second defendant that for the reasons which have just been rehearsed, if the local housing need figure derived from the standard methodology were to be used that would render Local Plan Policy G3 out of date and trigger the application of the tilted balance. The point was conceded by the

second defendant in its closing submissions albeit that it continued to be contended that significant weight should be attributed to any harm to the policy which it was argued must be found as a consequence of the conflict of the development proposals with that policy.

18. The key issue in relation to whether or not there had been a footnote 37 review and, if there had, there had been a significant change so as to nonetheless indicate that the standard method figure for local housing need should be applied were addressed by the Inspector in the following paragraphs:

> "14. In 2016-17 a joint Strategic Housing Market Assessment (SHMA) was produced which identified an Objectively Assessed Need (OAN) for the three Central Lancashire authorities in the HMA. This totals of 1,184 dwellings pa, with 440 dwellings pa for South Ribble. The three authorities subsequently published a Memorandum of Understanding (MOU) which set out that the CS housing requirement figures in Policy 4 should be retained for a number of reasons. The dispute between the parties in relation to the housing requirement principally revolves around whether the publication of the MOU in 2017 constituted a review for the purposes of footnote 37 to paragraph 73 of the Framework.
>
> 15. Mrs Harding suggested that this could not constitute a review because there was no public consultation on the 2017 MOU. The MOU is not a development plan policy document, and I am not aware of any guidelines for its production, consultation and adoption. Even so, I would agree that consultation would be a proportionate ingredient of a review, and that it would assist in ensuring that such a document is fit for purpose.
>
> 16. There is limited evidence before me to support this and Mrs Harding's further contention that the whole of Policy 4 was not reviewed; i.e. the SHMA only relates to part (a) in relation to the figures. Nonetheless, it does provide me with further doubt about whether the MOU and SHMA process leading up to it constituted a full review.
>
> 17. I acknowledge the Appellant's reference to page 21 of the 2019 HLPS which, when referring to the MOU, states '*This could be considered to have been a review of the policy in terms of footnote 37 of the NPPF'*. To my mind the word 'could' also raises an element of doubt, and highlights that the situation is by no means clear cut. Mr Pycroft asserted that whilst the MOU alone may not have been a review of CS Policy 4 it was the outcome of the production of the SHMA, and the entire process constituted a review. I do not agree for the following reasons.
>
> 18. The SHMA is not a review of policy but part of the evidence base for a future review of the plan. I have regard to paragraph 1.2 of the SHMA which states: '*The SHMA does not set housing targets. It provides an assessment of the need for housing across the functional Housing Market Area (HMA), making no judgements regarding future policy decisions which the Councils may take'*.

19. Mr Pycroft's evidence also refers to a 2016 report to the Central Lancashire Strategic Planning Joint Advisory Committee (JAC). To my mind the paragraphs he refers to simply inform members of the JAC that the fifth anniversary of the CS is approaching, and that Government guidance requires plans and policies to be reviewed. On reading the report as a whole, it also informs members that the main purpose of the SHMA is to ensure the Councils had a full objectively assessed need (FOAN) in accordance with paragraph 47 of the former 2012 Framework. This is also evident in a subsequent report to the JAC in March 2017 which sets out that the FOAN is an evidence figure, not policy. Indeed, I note that CS Policy 4 is not specifically mentioned in either of these reports and references to 'review' are in the context of a future review of the CS.

20. I have also had regard to the Brindle Road decision where the Inspector was not convinced that the MOU was a review, although I note the basis on which these comments were made as highlighted by the Appellant. In view of the above, and the inconclusive evidence supplied by the Council regarding lack of consultation and review of the whole policy, I do not consider that the SHMA process constituted a review of Policy 4.

21. I acknowledge that both Preston and Chorley currently use the CS housing requirement in decision making and in their most recent Housing Land Position statements. Whilst I do not have the benefit of direct evidence from Preston and Chorley Councils, I have had regard to the evidence produced by Mr Pycroft and it seems to me that there are various other reasons, not solely relating to the MOU, that they continue to use the CS figures and consider that a review of Policy 4 has taken place.

22. The Preston City Council press release does not specifically refer to the MOU, instead it refers to the costs associated with defending two recent appeal decisions in their area which concluded that Preston did not have a five year supply of housing. I cannot make any conclusions on this as those decisions are not in the evidence before me. Preston's latest housing land position statement (HLPS) also refers to those appeal decisions (at paragraph 1.6), and draws attention to the Preston Local Plan examination where it was agreed that that there was no requirement to reconsider the Objectively Assessed Need. Mr Pycroft pointed out paragraph 1.9 of the HLPS in relation to the MOU. However, to my mind this suggests uncertainty given the punctuation of 'review' (in single quotation marks).

23. Preston's HLPS goes on to explain at paragraph 1.10 that its' OAN resulting from the SHMA is *lower* than the CS requirement, and it seems to me that this was a factor in the aforementioned appeal decisions. This contrasts to the situation in South Ribble, where the OAN was calculated to be very similar (and slightly higher) to the existing CS requirement.

24. Chorley's 2019 housing supply statement also applies the CS requirement figure but does not refer to the MOU in doing so. Mr Pycroft's evidence in relation to a recent appeal (Carrington Road) gives further explanation; their reasoning for continuing to apply the CS requirement

was that it was reviewed as part of the examination of the Chorley Local Plan in 2015. I also have regard to a very recent Chorley planning committee report in relation to a resubmission of a previously dismissed appeal at Pear Tree Lane, where Chorley set out their reasons as to why they consider CS Policy 4 is not out-of-date.

25. It seems to me that the reasoning taken by Chorley and Preston for their use of the CS figure is specific to those Councils and does not necessarily directly apply to the South Ribble situation. In view of this, I am not satisfied that the evidence demonstrates that they are applying the CS figure for the reason that the MOU (and SHMA process) constituted a review.

26. It has also been put to me by the Council that the 2017 MOU has been overtaken by events, i.e. a 'significant change' has taken place. Paragraph 33 of the Framework requires local authorities to update relevant strategic policies at least once every five years if their applicable local housing need figure has changed significantly. 'Significantly' is open to interpretation; and moreover the Framework does not specify whether such a change in the figure is positive or negative.

27. Paragraph 062 of the Planning Practice Guidance (PPG) on plan making gives guidance on review of policies, stating that where a review was undertaken prior to publication of the Framework in 2018 but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes in circumstances. There is a difference in interpretation of the guidance between the main parties.

28. The 2017 MOU was produced prior to the publication of the 2018 Framework. The PPG is not explicit in that it only refers to a significant change as being an existing figure that is significantly below the number generated using the standard method. I agree with the Council that the wording of paragraph 062 does not necessarily discount a situation where the existing plan figure is significantly *above* the number generated using the standard method, as is the case in South Ribble. This therefore adds little to the Appellants argument that a review of the CS has taken place.

29. The 2017 MOU itself sets out review arrangements at section 7; no less than every three years and when new evidence that renders the MOU out-of-date has emerged. Such a review of the MOU is currently taking place. A 2019 Draft MOU relating to the provision and distribution of housing land has been recently produced by the Central Lancashire authorities. This follows a Housing Study which has informed a proposed interim position in advance of the adoption of the new Local Plan for Central Lancashire.

…

33. I am mindful that if Preston and Chorley applied the standard method (not the draft re-distributed figure) to their housing requirement now, Preston would be able to demonstrate a five year supply and Chorley would not.

> This inconsistency in the way the three Central Lancashire Authorities are currently making decisions relating to housing (together with the age of the CS, current consultation on Issues and Options for a new Central Lancashire Local Plan, and the introduction of the standard method) have plainly contributed to current events where the three authorities are consulting on a revised MOU to provide more clarity in decision making.
>
> 34. I am also conscious that my conclusions in respect of the housing supply requirement for South Ribble may have consequences for decision making by the neighbouring authorities. Convincing arguments have been made by the Appellants for retaining the current CS housing requirement in view of the redistribution which may potentially result from this, but undue reliance seems to be placed on what the two other authorities are currently doing and how the use of the Standard Method will affect them. This is a matter for their own decision making and for the emerging Central Lancashire Local Plan in carrying out a full review of housing policies.
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> …
>
> 36. The Housing Study, albeit not a final report, acknowledges in its introduction that the previously agreed MOU needs to be revisited, and that a robust basis for working to agree an updated level of housing need and its distribution across the HMA is required through an updated MOU. I do not make any attempt to predicate the outcome of the final Housing Study and the current consultation on the draft 2019 MOU. However it is clear to me that the direction of travel by all three authorities is towards the standard method and a re-distribution of the housing requirement based on a range of factors including population, workforce and jobs distribution and constraints (including Green Belt).
>
> 37. Having regard to paragraphs 33, 73 (and footnote 37) and 212-213 of the NPPF, and the PPG paragraph 062, I conclude that the figure within Policy 4 of 417 dwellings per annum is out-of-date on several counts : i) the strategic policies are over 5 years old; ii) my conclusions that the 2017 MOU (and SHMA leading up to it) did not properly constitute a review; and iii) the 'significant change' resulting from the introduction of the standard method in the 2018 Framework and the Council's significantly lower figure arising from the standard method calculation. Additionally, the MOU itself requires review by September 2020; indeed a new version is currently undergoing consultation."

19. The Inspector addressed the issues in relation to whether or not Local Plan Policy G3 was out of date as follows:

> "Planning Balance and Conclusion
>
> 84. I have identified conflict with Policy G3 of SRLP. Together with Policy 4 of the CLCS, these two policies within the development plan are the most important for determining the appeal. I now assess whether they should be considered to be out-of-date for the purposes of paragraph 11(d) of the Framework.

85. Policy 4 is contained within a plan which is more than five years old, but this strategic policy is not out-of-date simply because of its age. I conclude that it is out-of-date due to the significant change identified above; the publication of the Framework in 2018 which introduced at the standard method, and the significant difference in the housing requirement generated by that calculation for local housing need.

86. It is common ground between the parties that the appeal proposals are contrary to Policy G3 and that it is compliant with paragraph 139 of the Framework, however evidence differs as to whether it is out-of-date for the purposes of paragraph 11(d) of the Framework. I have concluded that the Council can demonstrate a five year supply of deliverable housing sites by virtue of use of the standard method for the housing requirement, therefore Policy G3 is not rendered out-of-date for that reason.

87. There was some discussion at the inquiry as to whether Policy G3 would be out-of-date for other reasons. I do not agree with the premise that Policy G3 becomes out-of-date purely because of the distributional consequences that would arise across the Central Lancashire HMA as a whole if all three authorities were to apply the standard method. Such a situation is not one which is referred to in the Framework or PPG as rendering this type of policy out-of-date.

88. Moreover, whilst I have given limited weight to the Housing Study and the 2019 draft MOU, the re-distribution which is suggested within the documents is not 'radical' as suggested by Mr Fraser. I note that the re-distribution recommended in the Housing Study is based on a reasonable set of criteria including jobs, population, and affordability as well as Green Belt constraints. The recommended share of the housing requirement of 27.5% for Chorley, 40% for Preston and 32.5% for South Ribble is not significantly different from the current CS distribution of 31.1 %, 37.8% and 31.1% respectively. Distributional consequences do not weigh heavily in giving me reason to conclude that the policy is out-of-date.

89. This is a small basket of policies for determination of the appeal, nonetheless Policy G3 prevails as the most important, indeed it is the only policy specified in the reasons for refusal relating to the main issues. Taken as a whole, there is conflict with the development plan.

90. Consequently, this is a case in which the tilted balance is not engaged. The most important development plan policy is not out-of-date and the Council is able to demonstrate a five year supply of deliverable housing land."

20. In the light of these conclusions the Inspector undertook what she described as a standard planning balance, starting with the provisions of section 38(6) of the 2004 Act and she concluded that the appeal should be dismissed.

The law

21. The principles which are relevant to the determination of this challenge are both common place and uncontroversial. The decision to grant planning permission is governed by section 70 of the 1990 Act and section 38(6) of the 2004 Act. The decision is to be made in accordance with the development plan unless material considerations indicate otherwise. Amongst the material considerations which may very well be operative in a decision, and were operative in the present case, are the provisions of national government policy contained in the Framework. If planning permission is refused, and the disappointed developer appeals under section 78 of the 1990 Act to the first defendant, the first defendant enjoys all of the same powers, in essence, that were enjoyed by the local planning authority. Frequently, as here, the first defendant's powers in relation to an appeal under section 78 of the 1990 Act will be delegated to a planning inspector.

22. In *St Modwen Developments Limited v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 Lindblom LJ set out the familiar principles which are to be applied in determining an application for statutory review of an appeal decision under section 288 of the 1990 Act in the following terms in paragraphs 6 and 7 of his judgment:

> "6. In my judgment at first instance in *Bloor Homes East Midlands Ltd. v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) (at paragraph 19) I set out the "seven familiar principles" that will guide the court in handling a challenge under section 288. This case, like many others now coming before the Planning Court and this court too, calls for those principles to be stated again – and reinforced. They are:
>
> "(1) Decisions of the Secretary of State and his inspectors in appeals against the refusal of planning permission are to be construed in a reasonably flexible way. Decision letters are written principally for parties who know what the issues between them are and what evidence and argument has been deployed on those issues. An inspector does not need to "rehearse every argument relating to each matter in every paragraph" (see the judgment of Forbes J. in *Seddon Properties v Secretary of State for the Environment* (1981) 42 P. & C.R. 26, at p.28).
>
> (2) The reasons for an appeal decision must be intelligible and adequate, enabling one to understand why the appeal was decided as it was and what conclusions were reached on the "principal important controversial issues". An inspector's reasoning must not give rise to a substantial doubt as to whether he went wrong in law, for example by misunderstanding a relevant policy or by failing to reach a rational decision on

relevant grounds. But the reasons need refer only to the main issues in the dispute, not to every material consideration (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council and another v Porter (No. 2)* [2004] 1 W.L.R. 1953, at p.1964B-G).

(3) The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision (see the judgment of Sullivan J., as he then was, in *Newsmith v Secretary of State for Environment, Transport and the Regions* [2001] EWHC Admin 74, at paragraph 6).

(4) Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in *Tesco Stores v Dundee City Council* [2012] P.T.S.R. 983, at paragraphs 17 to 22).

(5) When it is suggested that an inspector has failed to grasp a relevant policy one must look at what he thought the important planning issues were and decide whether it appears from the way he dealt with them that he must have misunderstood the policy in question (see the judgment of Hoffmann L.J., as he then was, in *South Somerset District Council v The Secretary of State for the Environment* (1993) 66 P. & C.R. 80, at p.83E-H).

(6) Because it is reasonable to assume that national planning policy is familiar to the Secretary of State and his inspectors, the fact that a particular policy is not mentioned in the decision letter does not necessarily mean that it has been ignored (see, for example, the judgment of Lang J in *Sea & Land Power & Energy Limited v Secretary of State for Communities and Local Government* [2012] EWHC 1419 (QB), at paragraph 58).

> (7) Consistency in decision-making is important both to developers and local planning authorities, because it serves to maintain public confidence in the operation of the development control system. But it is not a principle of law that like cases must always be decided alike. An inspector must exercise his own judgment on this question, if it arises (see, for example, the judgment of Pill L.J. in *Fox Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2013] 1 P. & C.R. 6, at paragraphs 12 to 14, citing the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* [1992] 65 P. & C.R. 137, at p.145)."
>
> 7. Both the Supreme Court and the Court of Appeal have, in recent cases, emphasized the limits to the court's role in construing planning policy (see the judgment of Lord Carnwath in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2017] UKSC 37, at paragraphs 22 to 26, and my judgment in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, at paragraph 41). More broadly, though in the same vein, this court has cautioned against the dangers of excessive legalism infecting the planning system – a warning I think we must now repeat in this appeal (see my judgment in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 50). There is no place in challenges to planning decisions for the kind of hypercritical scrutiny that this court has always rejected – whether of decision letters of the Secretary of State and his inspectors or of planning officers' reports to committee. The conclusions in an inspector's report or decision letter, or in an officer's report, should not be laboriously dissected in an effort to find fault (see my judgment in *Mansell*, at paragraphs 41 and 42, and the judgment of the Chancellor of the High Court, at paragraph 63)."

23. In relation to contentions as to illegality arising in a decision as a result of a mistake in fact, the leading case is *E v Secretary of State for the Home Department* [2004] EWCA Civ 49. At paragraph 66 of his judgment, Carnwath LJ (as he then was) concluded when giving the judgment of the court that it was appropriate to identify a species of error of law arising from a mistake of fact, and that the jurisdiction arose when the criteria which he identified were fulfilled as follows:

> "66. In our view, the time has now come to accept that a mistake of fact giving rise to unfairness is a separate head of challenge in an appeal on a point of law, at least in those statutory contexts where the parties share an interest in co-operating to achieve the correct result. Asylum law is undoubtedly such an area. Without seeking to lay down a precise code, the ordinary requirements for a finding of unfairness are apparent from the above analysis of *CICB*. First, there must have been a mistake as to an existing fact, including a mistake as to the availability of evidence on a particular matter. Secondly, the fact or evidence

> must have been "established" in the sense that it was uncontentious and objectively verifiable. Thirdly, the appellant (or his advisers) must not been have been responsible for the mistake. Fourthly, the mistake must have played a material (not necessarily decisive) part in the Tribunal's reasoning."

The claimant's grounds and the parties' submissions

24. The claimant's ground 1 is the contention that the Inspector fell into error in concluding on the basis of the material before her, and which has been set out above, that the MOU and the processes which proceeded it did not amount to a review under footnote 37 of the framework. Mr Vincent Fraser QC, who appears on behalf of the claimant, submits that the Inspector, firstly, relied upon a matter which was plainly an error of fact when she relied in her reasons in paragraph 19 of the decision letter on the suggestion that Core Strategy Policy 4 was not specifically mentioned in either of the committee reports from June 2016 and March 2017. Policy 4 is directly referred to in paragraph 8 of the June 2016 report. Furthermore, it was plain from that report, the subsequent report of March 2017 and the MOU (which again specifically referred to Core Strategy Policy 4), that the entire exercise was referenced to Core Strategy Policy 4.

25. Mr Fraser also submits that the Inspector's reasoning was unintelligible and inadequate. He relies upon the contention that the Inspector's cross-reference to the mention of the FOAN figure being an evidence figure, rather than policy, in the 2017 report, relied upon in paragraph 19 of the decision letter, was a point of no consequence, since any review would have to be supported by evidence in any event. In the light of the consensus amongst the other Central Lancashire authorities, and indeed the consensus at the inquiry, that what had happened was a review pursuant to footnote 37, Mr Fraser submits that it was simply not open to the Inspector to reach any other conclusion but that it was such a review.

26. On behalf of the second defendant, Mr Giles Cannock QC submits that the terms of footnote 37 do not explain what might amount to a review, nor is it a matter touched upon by the PPG other than to say that a review should be proportionate to the issues that it is considering. Thus, he submits that the Inspector had a very broad area of discretionary judgment in order to reach her conclusions as to whether or not a review had in fact occurred. Mr Cannock submits that, read consistently with the established principles for considering decisions of this kind, the Inspector's decision as a matter of planning judgment was founded upon five reasons which justified her conclusion that a review had not occurred which are set out below. He accepted that there had been a factual error in relation to the suggestion that there was no specific mention in the committee report of Core Strategy Policy 4. His response to Mr Fraser's submission was that this was not a point of any material significance and this reference was simply relied upon as supportive of other points raised in paragraph 19.

27. The five reasons identified by Mr Cannock are as follows. Firstly, he submits that the Inspector's report was clear, when in paragraph 20 it referred to "review of the whole policy", that the Inspector was reaching a finding that Core Strategy Policy 4 had not been reviewed across the board or in its entirety, and therefore this included no review of Core Strategy Policy 4(a). When the Inspector referred to "in view of the above" in paragraph 20 of the decision letter, this was a reference back to all of the preceding reasoning in paragraphs 15-19. In response to this contention Mr Fraser draws attention

to the reference in paragraph 16 of the decision letter to the second defendant's witness's contention that "the whole of policy 4 was not reviewed", and further in paragraph 16 to whether or not the MOU and SHMA process "constituted a full review". He submits that the Inspector's distinction between a full review of Core Strategy Policy 4 and a partial review of Core Strategy Policy 4(a) was clearly a misapplication of the Framework's policy in paragraph 73, which was purely concerned with housing requirements, and not the other elements of Policy 4 related to monitoring housing delivery or site allocations. On this basis, firstly, the second defendant's witness had been correct to concede that there had been a review of Core Strategy Policy 4(a) and, secondly, the Inspector failed to reach any conclusion as to whether or not Core Strategy Policy 4(a) had been reviewed, or provide any reasons for any finding that it had not.

28. The second matter that Mr Cannock relies upon in support of the conclusion that the Inspector provided appropriate reasoning for her decision that there had not been a review pursuant to footnote 37 was her reference to the SHMA being a document for a future review of the Core Strategy. There is, therefore, no reason for suggesting that the SHMA itself supported the conclusion that there had been a review. In response to this contention Mr Fraser observes that the documentation contained in the committee reports made clear that the SHMA was commissioned to address the question of whether or not the housing requirement in Core Strategy Policy 4(a) might remain reliable, and not for some future unspecified review of the plan. The quote from the SHMA set out in paragraph 18 of the decision is incapable of supporting the Inspector's conclusion, since it simply referred to the fact that the SHMA did not make any judgment in relation to future policy.

29. The third matter relied upon by Mr Cannock is the absence of mention in the 2016 or 2017 committee reports of Core Strategy Policy 4(a). That was something which the Inspector was entitled to rely upon in passing as supporting her conclusions. As set out above, Mr Fraser's response to this is to draw attention to this reasoning as in fact an operative error of fact which amounts in and of itself to an error of law. Fourthly, Mr Cannock relies upon the Brindle Road Inspector and the conclusions that he reached. In response to this, Mr Fraser replies firstly, that the reasoning does not make clear at all why the Brindle Road Inspector's decision supported the Inspector's view, particularly bearing in mind secondly, the Brindle Road Inspector only addressed the MOU and not the process leading up to it.

30. Finally, Mr Cannock points out that the Inspector relied upon absence of consultation in relation to her conclusion that there had not been a footnote 37 review. He submits that the Inspector was entitled to take account of the fact that consultation would have been a proportionate ingredient of a review and assist in judging whether it was fit for purpose (see paragraph 15 of the decision letter). Mr Fraser responds by noting that there is no requirement for consultation in either law or policy and that this ingredient of the Inspector's reasoning is therefore quite unsustainable.

31. Ground 2 is focused on the sentence within paragraph 21 of the decision letter where the Inspector, having acknowledged that the other two authorities within the Central Lancashire area, Preston City Council and Chorley Council, were using the Core Strategy housing requirement from its Policy 4(a), concluded that "it seems to me that there are various other reasons, not solely related to the MOU, that they continue to use the CS figures and consider that a review of Policy 4 has taken place". Mr Fraser

submits that the Inspector's reasoning in this connection is quite unclear. This clause from paragraph 21 of the decision letter suggests that the MOU was in fact a review, and the fact that there may be other reasons to apply the Core Strategy figures in the other authority areas of Central Lancashire is neither here nor there. Furthermore, consistently both with the fact that Core Strategy Policy 4(a) applied to all three authorities, and consistent with the clear policy in paragraph 73 of the Framework, the policy and the joint committee process and MOU cannot properly be regarded as a review in two authorities but not a review in the third. Logically, this is a matter which ought to have been considered prior to the Inspector forming her conclusions in relation to whether there had been a review in paragraphs 16-20.

32. In response, Mr Cannock submits that whilst paragraph 21 of the decision letter may be infelicitously phrased, it has to be read together with the balance of the paragraphs to which it relates, and in particular paragraph 25 of the decision letter where, having rehearsed the evidence in relation to Preston and Chorley, the Inspector clearly concluded that she was not satisfied that they were applying the Core Strategy figure on the basis that the MOU and SHMA process constituted a footnote 37 review.

33. Ground 3 relates to the Inspector's conclusions in paragraphs 26-28 in relation to whether or not a significant change had occurred in the context of the paragraph of the PPG as set out above. Mr Fraser contends that the Inspector was guilty of a clear misinterpretation of the PPG when she concluded that it covered a situation where an existing plan figure was found to be significantly above the housing requirement generated using the standard method to identify local housing need. Mr Fraser submits that this reading renders the PPG pointless, on the basis that if a significant change is to be said to have occurred when the development plan figure is significantly above or below the standard method figure, then the development plan figure would only be used if there was no material difference between it and the standard method figure, and therefore the PPG would be purposeless. Moreover, Mr Fraser submits that the PPG is clear and consistent with the Framework in its approach to only regarding there having been a significant change when the development plan figure is significantly below that generated using the standard method, bearing in mind that the Framework seeks to boost significantly the availability of housing land, and ensure that all housing need is planned for as quickly as reasonably possible. In response, Mr Cannock submits that the Inspector's interpretation is consistent with a sensible approach to the PPG reflecting that the judgment of whether or not there has been a significant change in particular circumstances is one regularly undertaken in the application of planning policy. The Inspector's interpretation was a sensible and reasonable interpretation of the PPG's guidance.

34. Ground 4 focuses upon the Inspector's conclusions in paragraph 34 of the decision letter, in which she accepted that "convincing arguments" had been made by the claimant for retaining the Core Strategy requirement in view of the redistribution which might potentially result from the use of the standard method, and her conclusion that these consequences were a matter for the other authorities' decision making and the emerging Central Lancashire Local Plan. Mr Fraser complains that the Inspector, having found the arguments convincing, failed to follow them and, further, failed to appreciate that any redistribution of housing within the housing market area required a collective decision of all three authorities, and could not be done by individual decisions of the authorities acting alone. Mr Cannock submits in reply that the claimant's

submission focuses illegitimately on a single phrase in a single sentence within the decision letter. Further it fails to place that phrase in context and have regard to the surrounding reasoning. The Inspector clearly explained that whilst she may have found the Claimant's case convincing there were other arguments and considerations which were explained in the decision letter, in particular at paragraph 36, as to why the claimant's arguments could not prevail.

35. Ground 5 relates to the claimant's contentions, ultimately accepted by the second defendant's planning witness at the public inquiry, that as a consequence of the use of the standard method the distributional consequences which would arise across the Central Lancashire housing market areas would render Local Plan Policy G3 out of date. Mr Fraser submits that the Inspector's reasons in relation to her conclusion that Local Plan Policy G3 was not out of date are unclear and incoherent. Firstly, he notes the Inspector's finding that Local Plan Policy G3 of the South Ribble Local Plan and Core Strategy Policy 4 were the two most important policies for determining the appeal, and those which paragraph 11(d) of the Framework required the Inspector to assess as to whether or not they were out of date. Secondly, he notes that the Inspector's reasons for concluding that Local Plan Policy G3 was not out of date were, firstly, that the distributional consequences relied upon were not a situation referred to in the framework or PPG as rendering this type of policy out of date. This he submits is illegitimate and unclear: the Framework deliberately does not seek to identify particular circumstances when a policy may be out of date (save for the circumstances specified in footnote 7 related to the five year housing land supply).

36. Thirdly, the Inspector's second reason for rejecting this contention was articulated in paragraph 88 of the decision letter. As set out above, the claimant's argument was based upon the application of the standard method to each of the authorities and the distribution of housing that created. The split in relation to local housing need between the authorities was Preston 23.3%, Chorley 56.1% and South Ribble 20.6%, which Mr Fraser submits was radically different from the Core Strategy Policy 4(a) distribution of Preston 37.8%, Chorley 31.1%, and South Ribble 31.1%. Mr Fraser submits that the Inspector's response to this argument did not engage with its substance, and her reasons did not begin to explain how she dealt with this key point. She responded to it by referring to the redistribution recommended in the Housing Study, and in doing so compared apples with oranges, and failed to engage at all in the claimant's argument, based as it was upon the factual outcome of the application of the standard method to these individual authorities. Thus, he submits that the Inspector's reasons failed to grapple with the claimant's argument and provide an answer to it. In response to these contentions Mr Cannock submits that the claimant's submissions are an attack on the Inspector's planning judgment, and that she was entitled to look at the standard method figures as proposed to be redistributed in the housing study. She was not obliged to consider the distributional consequences of un-redistributed standard method figures, bearing in mind that work was in progress to produce answers to the distributional consequences.

Submissions and conclusions

37. It is convenient to start with the ground of challenge which is conceded by the first defendant. This is ground 5, related to the conclusion that Local Plan Policy G3 was not out of date. In my view there is conspicuous merit in this ground, on the basis that the Inspector's reasoning failed to deal with the claimant's argument or explain her

conclusions in relation to it. The argument which was made by the claimant was related to the consequences of deploying the standard method's measurement of local housing need as a result of the earlier conclusions which the Inspector had reached. The figures set out above identify a stark difference in the housing distribution using the local housing need housing requirement, as compared to the distribution contained within Core Strategy Policy 4(a). The Inspector simply failed to provide an answer to the point raised in relation to the adoption of the standard method and its consequences for the distribution of housing contained within that policy which, in turn, underpinned the quantity and distribution of safeguarded land reflected in Local Plan Policy G3. It was not an answer to Mr Fraser's point at the inquiry (namely, that the use of the local housing need requirement figures derived from the standard method presented a radically different housing distribution to that in the Core Strategy) to compare the distribution using the standard method with a Housing Study which contained housing figures which had been adjusted by an as yet inchoate emerging policy. As Mr Fraser submits, her approach involved a comparison which was not apt and failed to engage with the direct consequences for Local Plan Policy G3 of her earlier conclusion that the standard method for deriving the housing requirement should be used for the purposes of her decision. Indeed, the Inspector's reliance in her reasoning on a future exercise of policy making, involving review and a fresh exercise of redistribution, reinforced the point that Local Plan Policy G3 was in fact out of date and requiring review at the time of making the present decision if the housing requirement derived from the standard method was to be deployed. Further, her reference to this situation as not being one referred to in the Framework or PPG as rendering this type of policy out of date does nothing to explain either why the claimant's detailed point in relation to the impact on the current distribution of housing of use of the standard method did not render Local Plan Policy G3 out of date.

38. I am, therefore, satisfied that the Inspector's reasons were inadequate in that they failed to grapple with and explain adequately her answer to the point raised in relation to the consequences for the distribution of housing set out in the Core Strategy for each of the Central Lancashire authorities, upon which Local Plan Policy G3 depended, arising from her adoption of the housing requirement derived from the standard method for the purpose of taking her decision. The concession made by the first defendant was appropriate, and the claimant must succeed on ground 5.

39. I turn then to grounds 1, 2 and 3, noting Mr Cannock's undisputed proposition that the claimant must win on either grounds 1 and/or 2 as well as ground 3 in order to succeed, bearing in mind that the points raised under ground 3 are in the alternative or a fallback, and on the basis that a footnote 37 review had in fact taken place as the claimant contends. Dealing firstly with ground 1, in my judgment there is substance in the claimant's complaint that the Inspector fell into error in suggesting that Core Strategy Policy 4(a) was not mentioned in either of the committee reports. It is conceded that this was an error. The concession is rightly made, since to my mind it is plain that on any reading of the committee reports in June 2016 and March 2017 the central focus of the discussions taking place, and the exercise underway, was an examination of whether or not the housing requirement in Core Strategy Policy 4(a) remained valid. The point which she made is an error and, as a consequence, incapable of supporting her conclusions, thereby rendering her reasoning unclear and unlawful. In so far as this is relied upon as an actionable error of fact, it satisfies in my judgment the requirements set out in the case of *E*, since it was an error in relation to an established and verified

fact which was not caused by either party at the inquiry. I note that in identifying the reasons it is said that the Inspector had for forming the conclusion that there had not been a review, the second defendant relies upon her reference to Core Strategy Policy 4 being absent from the committee reports, and it is clear to me that this reference was a part of the reasoning she relied upon in reaching her conclusions in relation to the review. I am unable to accept the second defendant's suggestion that this is merely a matter raised in passing: it was part of her reasoning.

40. It follows from this that one of the strands of reasoning said by the second defendant to support the Inspector's conclusions has been found to be legally flawed. Whilst I am prepared to accept the contentions made by the second defendant in relation to the Inspector's reliance upon the absence of consultation, the reference to the Brindle Road Inspector and the fact that the SHMA was not itself a review of the policy as all being matters potentially relevant to her consideration of whether or not there had been a footnote 37 review, I have found her reasons in paragraph 20 (flowing from paragraph 16 of the decision letter) in relation to reliance on the conclusion that there was not a review of the whole of Core Strategy Policy 4 problematic. It is clear that footnote 37, related as it is to paragraph 73 of the Framework, relates to strategic polices containing a housing requirement. In this case the strategic policy containing the housing requirement is Core Strategy Policy 4(a), and not the other elements of the policy which relate to additional ancillary matters. The apparent reliance on Core Strategy Policy 4 not having been reviewed as a whole is further complicated by Mr Fraser's pertinent submission that in fact the MOU contained agreement not simply in relation to policy 4(a), but also in relation to those other ancillary matters. In short, it is difficult to understand, and the Inspector failed to explain, firstly, why the whole of Core Strategy Policy 4 had to be reviewed for the exercise to constitute a review for the purposes of footnote 37 and, secondly, why the MOU did not constitute that review of the whole policy bearing in mind the contents of the MOU. For all of these reasons, and whilst I have not concluded that all of the claimant's submissions have substance, I have concluded that on the basis of the claimant's arguments which I have accepted, they must succeed in respect of ground 1.

41. Turning to ground 2, in my view Mr Cannock is correct when he suggests that ground 2 depends upon a highly forensic examination of only a part of the Inspector's overall reasoning in relation to the position of the other neighbouring authorities within the Central Lancashire housing market area. Paragraph 21 of the decision letter could undoubtedly have been more precisely worded. However, the reference to "not solely related to the MOU", and any lack of clarity which that gives rise to, has to be put in the context of the balance of the reasoning on this issue in paragraphs 22-25 which are, in my judgment, clear as to why the Inspector formed a conclusion that she was not satisfied that the evidence demonstrated the other authorities were applying the Core Strategy Policy 4(a) figure on the basis that the MOU, and that which proceeded it, constituted a footnote 37 review. I am not satisfied, therefore, that there is substance in ground 2.

42. Turning to ground 3, it needs to be borne in mind that the passage from the PPG in relation to the need to review plans when there has been a significant change arose in the context of the arguments about whether or not Core Strategy Policy 4(a) was out of date and, in particular, was relied upon in paragraph 37 of the decision as one of the reasons for the Inspector's conclusion that Core Strategy Policy 4(a) was out of date.

Whilst it is fair to observe that the only significant change specifically instanced in the PPG is where a housing requirement is found to be significantly below the number generated using the standard method, in my view this passage of the PPG needs to be read purposefully and as a whole. The third paragraph of the passage of guidance makes clear that a plan will continue to be treated as up to date "unless there have been significant changes as outlined below". The following paragraph provides some examples where there may have been significant change but, as Mr Cannock points out, the question of whether or not there has been a significant change warranting a review of the plan on the basis that it is not up to date is not curtailed or circumscribed by the contents of the final paragraph.

43. There may be many material changes in the planning circumstances of a local authority's area which would properly render their existing plan policies out of date and in need of whole or partial review. I am unable to accept Mr Fraser's submission that it is impermissible to regard the emergence of a local housing need figure which is greatly reduced from that in an extant development plan policy as having the potential to amount to a significant change. Whilst he is entitled to point to the wider national planning policy context of boosting significantly the supply of housing land, as Mr Cannock points out in his submissions, the use of the standard method to derive local housing need is part and parcel of the Framework's policies to achieve that objective. Moreover, the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved. In short, in my view, the language of the PPG and its proper interpretation did not constrain the Inspector and preclude her from reaching the conclusion that she did, namely that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date. That was a planning judgment which she was entitled to reach and was properly reasoned in her conclusions.

44. Finally, ground 4 is the claimant's contention in relation to the Inspector's observation that the claimant made "convincing arguments" for retaining the current Core Strategy housing requirements in view of the potential consequences in respect of redistribution arising from deploying the standard method. This point arises in the context of the Inspector's consideration of whether or not Core Strategy Policy 4(a) is out of date or should be retained as the basis of the housing requirement for the purposes of calculating the five year housing land supply. I am unimpressed by the argument that simply because the Inspector described the claimant's arguments as convincing she was then obliged to accept them as a sound and proper reason for continuing to use Core Strategy Policy 4(a)'s housing requirements. Once again, the Inspector's conclusions need to be read as a whole in relation to this point. It is to my mind clear that the use of the phrase "convincing arguments" was perhaps an infelicitous use of language, and what the Inspector was describing was her view that the arguments were persuasive or not without force. It is, however, clear, in particular in her conclusions in paragraph 36 of the decision letter, that those arguments are not dispositive of the question of whether or not the housing requirement in Core Strategy Policy 4(a) should continue to be used, and whether or not it remains up to date. I do not consider, therefore, that there is any substance in the claimant's ground 4.

45. Drawing the threads together it is clear to me that this claim must be allowed, and the decision quashed, in relation to the claimant's contentions in ground 5 for the reasons I have given. I am satisfied that in ground 1, the Inspector's reasons for concluding that the MOU and the SHMA process leading up to it did not properly constitute a footnote 37 review are not legally adequate, and that her conclusions are affected by illegality in the form of an error of fact. I am satisfied that the conclusion the Inspector reached in paragraph 37(iii), that there had been a significant change pursuant to the PPG arising from the introduction of the standard method, was a planning judgment reasonably open to her based upon a correct interpretation of the PPG (albeit other conclusions might reasonably be reached by other Inspectors), and therefore she was entitled to conclude that Core Strategy Policy 4(a) was out of date. I do not consider that there is any substance in grounds 2 and 4 of the claimant's case for the reasons I have set out above. Ultimately, therefore, the decision has to be quashed in relation to ground 5, and will need to be redetermined in the light of the conclusions set out above and a re-examination of the planning merits pertaining at the time of redeterminationn.

EP2

Neutral Citation Number: [2020] EWCA Civ 805

Case No: C1/2019/2124

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE PLANNING COURT
HHJ KLEIN
CO/4430/2018

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/06/2020

Before:

LORD JUSTICE UNDERHILL
VICE PRESIDENT OF THE COURT OF APPEAL (CIVIL DIVISION)
LORD JUSTICE LEWISON
and
LADY JUSTICE CARR

- -

Between :

OXTON FARM	**Appellant**
- and -	
HARROGATE BOROUGH COUNCIL	**Respondent**
- and –	
D NOBLE LIMITED	
	Interested Party

- -
- -

Richard Wald QC (instructed by **Pinsent Masons LLP**) for the **Appellant**
John Hunter (instructed by **Harrogate Borough Council (Legal Services)**) for the **Respondent**

Hearing date : 9 June 2020

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on Thursday 25th June 2020.

Lord Justice Lewison:

Introduction

1. The issue on this appeal is whether Harrogate BC ("Harrogate") lawfully granted outline planning permission for 21 new houses and a village shop on land at Turnpike Lane, Bickerton, North Yorkshire. HHJ Klein held that the grant was lawful. His judgment is at [2019] EWHC 1370 (Admin).

2. D Noble Ltd applied to Harrogate for planning permission on 8 December 2017. One of Harrogate's planning officers reported on 28 August 2018; and, following her recommendation, conditional outline planning permission was granted on 25 September 2018.

Legal and policy framework

3. Section 70 (2) of the Town and Country Planning Act 1970 provides that:

> "In dealing with an application for planning permission … the authority shall have regard to -
>
> (a) the provisions of the development plan, so far as material to the application, … [and]
>
> (c) any other material considerations."

4. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 provides that:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

5. The starting point, therefore, is the development plan. In February 2009, Harrogate adopted Core Strategy Policies SG1, SG2 and SG3. Those policies provide that:

> "[Policy SG1:] [Harrogate] will make provision for 390 new homes per annum (net annual average) in Harrogate District during the period 2004 to 2023. In doing so it will seek to ensure that (as an interim target) about 160 of this annual provision will be homes for local people at affordable prices and that 70% of these new homes are in new buildings or conversions on previously developed land…
>
> [Policy SG2:] Development or infill limits will be drawn around the settlements listed…to allow the sustainable growth and development of those settlements within the District that have the best access to jobs, shops and services…

> [Policy SG3:] Outside the development and infill limits of the settlements listed in policy SG2 of this Core Strategy, land will be classified as countryside and there will be strict control over new development in accordance with national and regional planning policy protecting the countryside and Green Belt…"

6. Bickerton was not among the settlements listed under policy SG2. The explanatory notes to policy SG2 stated:

> "Those settlements (villages and hamlets) not listed in this policy have very few services and facilities and often no defined built up area. In accordance with national and regional planning policy regarding the promotion of more sustainable patterns of growth, the settlements should not accommodate new market housing apart from the suitable conversion of existing buildings…"

7. The heart of the case for Oxton Farm is that the grant of planning permission did not comply with policy SG3.

8. Apart from the development plan, a local planning authority must also have regard to material considerations; and material considerations may justify a departure from the development plan. Material considerations fall into two categories: those which the decision-maker may take into account (but need not) and those which the decision-maker must take into account. The point was neatly encapsulated by Holgate J in *R (Client Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 (Admin) at [99]:

> "In *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] PTSR 221 the Supreme Court endorsed the legal tests in *Derbyshire Dales District Council* [2010] 1 P & CR 19 and *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, 182 which must be satisfied where it is alleged that a decision-maker has failed to take into account a material consideration. It is insufficient for a claimant simply to say that the decision-maker did not take into account a legally relevant consideration. A legally relevant consideration is only something that is *not* irrelevant or immaterial, and therefore something which the decision-maker is *empowered or entitled* to take into account. But a decision-maker does not *fail* to take a relevant consideration into account *unless he was under an obligation to do so*. Accordingly, for this type of allegation it is necessary for a claimant to show that the decision-maker was expressly or impliedly required by the legislation (or by a policy which had to be applied) to take the particular consideration into account, or whether on the facts of the case, the matter was so "obviously material", that it was irrational not to have taken it into account." (Original emphasis)

9. Among the material considerations to which a local planning authority must have regard is national planning policy. At the date of the decision, that policy was

contained in the 2018 version of the National Planning Policy Framework ("the NPPF"). One of the key policies of the NPPF is that local planning authorities must be able to demonstrate a 5 year supply of deliverable sites for housing.

10. Paragraph 11 of the NPPF provides:

> "Plans and decisions should apply a presumption in favour of sustainable development…
>
> For **decision-taking** this means:
>
> c) approving development proposals that accord with an up-to-date development plan without delay; or
>
> d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[7], granting permission unless:
>
> …ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."

11. Footnote 7 provides:

> "This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73) …"

12. The buffer referred to varies from 5 to 20 per cent. The approach to decision-taking in paragraph 11 of the NPPF is referred to in the jargon as the "tilted balance".

13. Paragraph 48 of the NPPF provides:

> "Local planning authorities may give weight to relevant policies in emerging plans according to:
>
> a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
>
> b) the extent to which there are unresolved objections to relevant policies (the less significant the objections, the greater the weight that may be given);
>
> c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to policies in the Framework, the greater the weight that may be given)."

14. Paragraph 59 of the NPPF reaffirms the Government's objective of significantly boosting the supply of homes. It continues at paragraph 60:

> "To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for."

15. Paragraph 73 of the NPPF provides:

> "Strategic policies should include a trajectory illustrating the expected rate of housing delivery over the plan period… Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. [37]"

16. Footnote 37 qualifies this by allowing benchmarking against strategic policies that are more than five years old where they have been reviewed and found not to require updating. The glossary to the NPPF defines "local housing need" as:

> "… the number of homes identified as being needed through the application of the standard method set out in national planning guidance, or a justified alternative approach."

17. The "standard method" to which paragraph 60 and the glossary referred takes the most recent household projections made by the Office of National Statistics as its baseline. The Government policy document (NPPG) giving guidance on the standard method explained that:

> "The standard method set out below identifies a minimum annual housing need figure. It does not produce a housing requirement."

18. It also made it clear that use of the standard method was not mandatory. It went on to state:

> "The government is committed to ensuring more homes are built and are supportive of ambitious authorities who want to plan for growth. The standard method provides the minimum starting point in deciding the number of homes needed in an area."

19. A later part of the policy document states:

> "Where a strategic policy-making authority can demonstrate an alternative approach than that identified using the standard

> method for assessing local housing need, the approach should be considered sound as it will have exceeded the minimum starting point."

The facts

20. In July 2018, Harrogate published its Housing Land Supply Update showing the land supply as at 30 June 2018. The Update recorded that (i) a Housing and Economic Development Needs Assessment had concluded that housing need for the Harrogate District was 669 dwellings per year, (ii) that need was the starting point for calculating Harrogate's 5 Year Housing Land Supply and that Harrogate had, as at 30 June 2018, 5.02 years Housing Land Supply. It will be noted that this calculation of housing need was considerably greater than that envisaged by policy SG1.

21. At the same time, Harrogate had been preparing an updated development plan, which adopted the figure of 669 dwellings per year derived from the Housing Land Supply Update. The plan was sufficiently advanced for it to be sent for examination on 31 August 2018. A few days earlier the planning officer had compiled her report on the application for planning permission.

22. Her recommendation appeared in the summary at the start of the report:

> "On balance, it is considered that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of this scheme. [Harrogate] can only demonstrate a 5.02 year supply of housing and this is not sufficiently above the 5 year supply that paragraph 11 of the NPPF can be ignored. Given this position and the proximity of nearby service settlements, officers consider the scheme should be approved. **RECOMMENDATION: Approve subject to conditions**."

23. It will be noted that the summary did not say that paragraph 11 of the NPPF applied; but that it could not be ignored. Section 5 of the report identified the relevant policies in the development plan documents and also stated that the application was to be determined in accordance with the development plan unless material considerations indicated otherwise. Section 9 of the report dealt with housing land supply. The relevant parts of it read:

> "9.8 [Harrogate's] Housing and Economic Development Needs Assessment provides information on objectively assessed housing need. This document concludes that there is a requirement for 669 dwellings per annum to meet the needs of the district.
>
> 9.9 NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement with appropriate buffer. Where an authority cannot demonstrate a five year supply of housing land, policies relating to the supply of housing land are

> rendered out of date (NPPF, para.11(d), footnote 7). Instead, housing applications should be assessed under paragraph 11 of the NPPF and the presumption in favour of sustainable development, with permission granted unless policies of the NPPF provide a clear reason for refusing the development proposed or any adverse impacts would significantly and demonstrably outweigh the benefits.
>
> 9.10 The July 2018 update has been completed. This shows that [Harrogate] has a 5.02 year supply, meaning that paragraph 11 of the NPPF is not automatically triggered on that particular basis. However, the supply position is marginal and it will be important to take steps to maintain it.
>
> 9.11 In order to maintain supply position, greenfield land outside the existing development limits will continue to be needed. This means that development limits are considered out of date and can be given no more than limited weight. Only limited weight can be attached to Core Strategy policies SG1, SG2 and SG3 as these were based on a housing target that is out of date. By virtue of this paragraph 11 of the NPPF is once again engaged.
>
> 9.12 In light of the benefits that would come from the delivery of new homes in maintaining the 5 year supply, applications will therefore need to be determined on a case-by-case basis, only refusing them where the planning harm significantly and demonstrably outweighs the benefits."

24. At paragraph 9.18 the officer repeated her view that Harrogate's "existing development limit policies can only be given limited weight"; and that the proposed development would create "a reasonable rounding off of the existing built area of Bickerton". At paragraph 9.23 she said that the introduction of houses would help to sustain facilities in nearby and neighbouring settlements.

25. The final substantive section of the report was headed "Planning Balance and Conclusion". It stated:

> "10.1 At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development….
>
> 10.2 In the absence of a five year housing land supply, planning permission should be approved for the proposal unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development.
>
> 10.3 The scheme will provide 21 new homes to the District. [Harrogate] can only demonstrate a 5.02 year supply of housing and this is not sufficiently above the 5 year supply that paragraph 11 of the NPPF can be ignored. The consideration

> therefore is whether the site's location is so unsustainable as to create significant harm…
>
> 10.5 The lack of sustainable transport choices in Bickerton is a negative aspect of allowing new houses here. However, the NPPF and High Court ruling state that in rural areas, approaches to transport modes should be flexible. It is therefore considered that the positive benefits of allowing the scheme outweigh the negative sustainability concerns."

26. This led to the recommendation for conditional approval.

27. On 20 September 2018 the Office of National Statistics published its 2016-based household projections for England. The application for planning permission went before Harrogate's planning committee on 25 September 2018. Mr Stuart Vendy, a planning consultant engaged by Mr Alan Shackell, a local resident, attended the meeting and spoke against the proposal. His speaking note stated:

> "1. Para.9.10 - 5 year land supply - advice of 5.02 years. Harrogate July 2018 Housing Plan Supply Update.
>
> a. not up-to-date - need advice on weight to be attached.
>
> b. also recently released (20 Sept 2018) ONS Population Projections.
>
> c. The Effect?…Equals 669 dpa [dwellings per annum] to 383 understanding methodology.
>
> 2. 10.2 - Not only wrong on my analysis, even on the officer's own evidence. There is no "absence" of a 5 year land supply, either with [Harrogate's] last position, nor the more up-to-date ONS data.
>
> 3. Para 11 of NPPF not triggered - even if it was, there is no advice with regard weight (if any) to be attached to land supply position…
>
> 5. Failures in the report lead to incomplete information and mis-advice."

28. We were given an explanation of how Mr Vendy arrived at his figure of 383 dwellings per annum; although the figure itself is not agreed.

29. Mr Vendy amplified what happened at the meeting in his two witness statements. In the first, he said:

> "I can confirm that I explained to members of the Planning Committee the importance of the weight that the officer had attached to the housing land supply situation in Harrogate Borough, DCLG's position with regard [to] the adoption of the standard methodology and the fact that there was no update

> from officers reflecting this and the newly released ONS data. I went on to explain that the application of the standard methodology and the up-to-date population data resulted in a reduction to the annual housing need for [Harrogate] from its current 669 dwellings per annum to approximately 383 dwellings per annum and that this was highly material to the consideration of the application…
>
> I explained that I considered the lack of advice from officers on both of these matters…amounted to incomplete information and consequently [mis-advice]."

30. In his second statement he said:

> "[F]rom my first-hand knowledge of the events that took place at [Harrogate's] Planning Committee meeting on 25 September 2018 I can make the following comments:
>
> Neither the planning officer nor anyone else provided any meaningful response to my point relating to the existence or effect of the publication of the 2016 ONS data and standard methodology. In fact the only response of any type given in relation to this matter was a tongue-in-cheek remark by one of the committee members to the effect that "it is refreshing to hear a planning consultant arguing that we have a larger than 5 year land supply"…
>
> The drop in minimum requirement from 669 dwellings per annum to 383 dwellings per annum which I explained to members of the Planning Committee…would clearly have a profound effect on the 5 year land supply situation…
>
> The difference in the minimum requirement figures alone would, to informed committee members and the attending planning officer, immediately indicate that the calculation of [the 5 Year Housing Land Supply] would be substantially altered…The effect of the application of the standard methodology and the 2016 ONS data is that [the 5 Year Housing Land Supply] would increase and therefore have an important effect on the consideration of the application…
>
> …Given that the only question I received related to existing bus services in the area I assumed that the matters I had raised were understood and would be taken into consideration in the committee's determination of the application before it. It is now apparent, however, that, for whatever reason, no such consideration was in fact given."

When is the tilted balance engaged?

31. Paragraph 11 (d) of the NPPF provides that the tilted balance is engaged where (a) there are no relevant development plan policies, or (b) the policies which are most important for determining the application are out-of-date. The lack of a 5 year supply of housing land is a policy that is deemed to be out of date by virtue of footnote 7.

32. It is common ground that whether the tilted balance is engaged because of a shortfall in the supply of deliverable sites for housing is a binary question, to be answered yes or no. Either there is a 5 year supply of housing land, or there is not. If there is a 5 year supply then the tilted balance is not engaged on that basis. It does not matter, for this purpose, whether the supply exceeds 5 years by a little or a lot.

33. But the lack of a 5 year supply of housing land is not exhaustive of policies that may be out of date. Other policies which bear on the decision may also be out of date, with the consequence that the tilted balance is triggered on a different basis: *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 WLR 1865 at [58]. A policy may be out of date because of a change in national policy or because of things that have happened on the ground, or for some other reason: *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), [2017] PTSR 1283 at [45]. Whether a policy is out of date is a matter of planning judgment: *Hopkins Homes* at [55].

34. It is necessary, then, to decide why the report came to the view that the tilted balance was engaged. The approach to reports of planning officers is well-settled. In *R (Watermead Parish Council) v Aylesbury Vale DC* [2017] EWCA Civ 152, [2018] PTSR 43 Lindblom LJ put it as follows at [22]:

> "The law that applies to planning officers' reports to committee is well established and clear. Such reports ought not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge… The question for the court will always be whether, on a fair reading of his report as a whole, the officer has significantly misled the members on a matter bearing upon their decision, and the error goes uncorrected before the decision is made. Minor mistakes may be excused. It is only if the advice is such as to misdirect the members in a serious way - for example, by failing to draw their attention to considerations material to their decision or bringing into account considerations that are immaterial, or misinforming them about relevant facts, or providing them with a false understanding of relevant planning policy - that the court will be able to conclude that their decision was rendered unlawful by the advice they were given… Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave…"

35. It is, in my judgment, clear enough that the planning officer's advice did not proceed on the basis that Harrogate could not demonstrate a 5 year supply of housing land. On the contrary, paragraph 9.10 of her report made it clear that Harrogate *could* demonstrate a 5 year supply, with the consequence that the tilted balance was:

> "not automatically triggered on that particular basis."

36. Mr Hunter submitted (and the judge accepted) that the reason why Harrogate took the view that the tilted balance was engaged was because policies SG1, SG2 and SG 3 were out of date. Mr Wald QC disputed this. He pointed out that neither the summary at the beginning of the officer's report, nor her conclusions in section 10 of the report referred to policies being out of date.

37. He also pointed to the concluding sentence of paragraph 9.11 of the officer's report. Having said that policies SG1, SG2 and SG3 were out of date, she said:

> "By virtue of this paragraph 11 of the NPPF is once again engaged."

38. Mr Wald seized on the words "once again" and said that they demonstrated that the officer meant that paragraph 11 of the NPPF was engaged for a second time. If it was engaged for a second time, then it must (in the officer's view) have been engaged for the first time on the basis of a lack of housing supply. But that submission necessarily entails that the officer contradicted herself within two adjacent paragraphs of her report. I do not consider that that is a fair reading of the thrust of the report. While the use of the phrase "once again" is unfortunate, in my judgment paragraph 9.10 makes it clear that Harrogate did have a 5 year supply of deliverable housing sites; and that the officer's advice was given on that basis. Paragraph 9.11 gives two reasons for giving limited weight to policies SG1, SG2 and SG3; and the more natural reading of "once again" is that both the first reason and the second reason engage the tilted balance.

39. On the other hand, in paragraph 9.11 the officer considered that development limits *were* out of date. She gave two reasons for that view. First, in order to maintain the supply of housing land, greenfield sites were needed; and that meant that settlement boundaries were out of date. Second, policies SG1, SG2 and SG3 were themselves based on a housing target that was out of date. That meant that those policies could only be given limited weight. It follows that the basis on which the tilted balance was triggered was on the basis that relevant policies were out of date.

40. It is, I acknowledge, possible that some committee members could have read the officer's report, read overall, as advising that the tilted balance was engaged both because the 5 year supply of housing land was marginal and also because relevant policies were out of date. But if two reasons were given for the engagement of the tilted balance, one of which was good, and one of which was bad, I do not consider that it can be said that overall the advice misdirected the committee in a serious way. Because (a) the latter basis is one of the bases on which the tilted balance is triggered, and (b) whether a policy is out of date is a matter of planning judgment, the court can only interfere if the latter judgment is itself vitiated by an error of law.

Was there an error of law in the planning judgment?

41. Mr Wald argued that it was an error of law for Harrogate not to have taken into account the projections based on the ONS 2016 statistics. They were a mandatory consideration in the planning decision. There is nothing in the statutory framework which explicitly requires the ONS statistics to be taken into account. But Mr Wald submitted that it was implicit that they must be. The chain of reasoning was this:

    i) Paragraph 2 of the NPPF states that it "must be taken into account in preparing the development plan and is a material consideration in planning decisions." This is repeated in paragraph 212.

    ii) That imperative takes the reader to paragraph 60 of the NPPF and its requirement of the use of the standard method to determine minimum housing need, taking the most recent ONS projections as the starting point.

    iii) Therefore, the ONS statistics were a mandatory consideration in taking the decision to grant or refuse planning permission.

42. Mr Wald's argument entails the proposition that the ONS projections were the mandatory starting point for the calculation of objectively assessed housing need. But in my judgment that proposition is itself erroneous. Government policy states quite clearly (a) that the standard method is not mandatory; (b) that the purpose of the standard method is to determine the *minimum* starting point in deciding the number of homes needed in an area; and (c) that higher housing targets than those produced by the standard method will be considered sound. (I add that we were told by Mr Hunter that the position has now changed).

43. Second, the housing target in policy SG1 was well over five years old. In the course of formulating the new development plan, Harrogate had considered the housing target and took the view that it did need updating. Thus, in accordance with NPPF paragraph 73, it was required to assess "local housing need" as defined by the glossary. That assessment permitted an assessment either by the standard method or by a justified alternative approach. In my judgment, therefore, Harrogate was not required to use the standard method in calculating local housing need. Having used a different method, which produced a target figure much higher than the figure in policy SG1, Harrogate was entitled to conclude that that policy was out of date.

44. Third, the target figure for housing that the officer fed through into her advice was the target figure that Harrogate had adopted in the draft development plan. The development plan was sent for examination on 31 August 2018. Its target housing figure would therefore fall to be assessed in accordance with the 2012 version of the NPPF: NPPF paragraph 214. The 2012 version of the NPPF did not require the use of the standard method, even as a starting point. In accordance with NPPF paragraph 48 Harrogate was entitled to give weight to the housing policies in its emerging development plan. In addition, the government explanation of the standard method said in terms that plans that adopted higher housing targets than the minimum produced by the standard method would be considered "sound".

45. Mr Wald's second proposition is that it is necessary to calculate correctly the local planning authority's objectively assessed housing need. That way of formulating the

point seems to suggest that mathematical precision is required. But that is not so. As Lindblom LJ explained in *Hallam Land Management Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808, [2019] JPL 63 at [52]:

> "… the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker."

46. The underlying premise of this submission is that objectively assessed housing need is only calculated correctly if the standard method is used. But for the reasons I have given, I do not consider that that is correct. Moreover, as Mr Hunter pointed out, whichever method was used to calculate the 5 year supply of housing land, the conclusion would have been that Harrogate could demonstrate such a supply. That was the basis on which the committee took its decision.

47. For these reasons I do not accept that the ONS statistics were a mandatory consideration. Accordingly, the next question is whether they were so fundamental to the decision that it was irrational for Harrogate not to have considered them.

48. On this point, Mr Wald submitted, in effect, that a symmetrical approach had to be taken to housing supply. Just as lesser weight should be given to a contravention of policies in the development plan where there was a shortfall in the 5 year supply, so greater weight had to be given to those policies in a case in which there was a surplus in supply. The tilted balance was still a balance. The extent of the housing surplus was critical to striking that balance. The ONS statistics are a necessary input to determining the extent of the surplus of housing land. The construction of new homes in the countryside may have adverse effects (such as, for example, the loss of green space or open countryside, or increased demands on infrastructure) and the extent of the benefit of creating more homes must be balanced against those adverse effects.

49. In the present case, he said, there was a clear link between the extent of the surplus of housing land and the officer's advice that policies SG1, SG2 and SG 3 were out of date. The statement in paragraph 9.10 that the surplus of housing land was "marginal" was the lynch-pin for the conclusion in paragraph 9.11 that new greenfield sites were needed and that development limits were out of date. Although her statement about the "marginal" supply of land was correct when written, it was falsified by the ONS statistics published after the report was compiled. Accordingly, if it turned out that the surplus was not marginal, the officer's advice would have been seriously undermined.

50. He referred us to *Hallam Land Management Ltd v Secretary of State for Communities and Local Government* [2018] EWCA Civ 1808, [2019] JPL 63 in which Lindblom LJ said at [47]:

> "The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local

> planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth."

51. Mr Wald's point was that just as logic would suggest that the weight to be given to restrictive policies would be less if the shortfall in the housing land supply is large, and more if it is small, so in the case of a surplus one would expect the weight to be given to restrictive policies to be less if the surplus was small and greater if the surplus was large. But at [51] of the same judgment Lindblom LJ made it clear that:

> "… the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. *This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds*. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet." (Emphasis added)

52. I do not consider that Lindblom LJ was laying down a rule of law, but merely stating what he would expect. Weight is, as always, a matter for the decision maker. Lindblom LJ had already made this point in *Secretary of State for Communities and Local Government v Hopkins Homes Ltd* [2016] EWCA Civ 168, [2016] PTSR 1315 at [47]:

> "One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. *The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court.* It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy—such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission

> despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. *It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment*." (Emphasis added)

53. In *Eastleigh Borough Council v Secretary of State for Housing Communities and Local Government* [2019] EWHC 1862 (Admin) Garnham J considered a submission to like effect as Mr Wald's. He said:

> "[49] However, as Mr Glenister put it, in the context of the NPPF, there is a 'one-way consideration' for 5YHLS. As Mr Boyle submits, there is nothing in statute or policy which expressly or impliedly required the Inspector to take into account the existence of a 5YHLS when deciding the weight to be attached to countryside policies. Accordingly, it was for the Inspector to determine the weight to be attached to the fact that there was more than 5YHLS, subject only to a *Wednesbury* challenge.
>
> [50] In my judgment, a failure to give weight to the fact that the Council could demonstrate more than a 5YHLS in determining the weight which should be accorded to development plan policies was not irrational. When the Inspector came to consider the overall planning balance, at DL47, he did consider the weight to be attached to the provision of housing. That was the proper place in the analysis for that consideration. I see no basis for saying he should have *increased* the weight, prior to conducting the balancing exercise because of the absence of a negative, namely that there was no shortage of housing land." (Original emphasis)

54. In my judgment the same applies here. Moreover, as I have said, questions of weight are for the decision-maker.

55. In addition, the underlying premise of this submission is that the only correct way to calculate the surplus is by using the ONS statistics. But for the reasons I have given, I do not consider that that is correct.

Was Harrogate required to give reasons for its decision?

56. It is now common ground that Harrogate had no statutory duty to give reasons for its decision to grant planning permission. But in some cases, the common law requires reasons to be given. The Supreme Court considered that duty in the context of planning in *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108. It is important to note that in that case the committee that granted planning permission did not follow their officer's recommendation. At [52] and [54] Lord Carnwath approved the decision of this court in *R (Oakley) v South Cambridgeshire*

District Council [2017] EWCA Civ 71, [2017] 1 WLR 3765. That was a case in which the development would have a "significant and lasting impact on the local community", and involved a substantial departure from Green Belt and development plan policies, and where the committee had disagreed with its officers' recommendations. As he put it at [57]:

> "Thus in *Oakley* the Court of Appeal were entitled in my view to hold that, in the special circumstances of that case, openness and fairness to objectors required the members' reasons to be stated. Such circumstances were found in the widespread public controversy surrounding the proposal, and the departure from development plan and Green Belt policies; combined with the members' disagreement with the officers' recommendation, which made it impossible to infer the reasons from their report or other material available to the public. The same combination is found in the present case, and, in my view, would if necessary have justified the imposition of a common law duty to provide reasons for the decision."

57. The key point here is that the committee disagreed with the officer's recommendation. Where the committee follow their officer's recommendation it is a fair inference, in the absence of other evidence, that they have accepted the reasoning in the officer's report: *R (Palmer) v Herefordshire County Council* [2016] EWCA Civ 1061, [2017] 1 WLR 411 at [7]. Where, on the other hand, they have rejected the officer's advice, it may be impossible to discern the reasons for the decision. In the present case the committee followed their officer's recommendation. Mr Vendy's intervention was directed to persuading the committee that there was no shortfall in the 5 year supply of housing land; and that was the basis on which the committee took its decision. The reason why the committee's decision departed from the development plan, and in particular from policies SG1, SG2 and SG3, was because they accepted the officer's advice that those policies were out of date.

58. As the judge said at [49]:

> "This is not a case where the Planning Committee departed from the officer's recommendation. I was taken to no evidence that established that the Application would have a "significant and lasting impact on the local community" (as Oxton Farm had suggested). There is no evidence that there was widespread public controversy about the Application. The Application did not relate to a major development (a football stadium) on greenbelt land as in *Oakley* or to a major development in an area of outstanding natural beauty as in *CPRE Kent*. The Decision could be accurately described as a run-of-the-mill planning decision."

59. I agree. In my judgment no further reasons were necessary.

Result

60. I would dismiss the appeal.

Lady Justice Carr:

61. For the reasons given by Lewison LJ I too would dismiss the appeal.

Lord Justice Underhill:

62. I also agree.

EP3

The Planning Inspectorate

Appeal Decision

Inquiry Held on 22-26 June and 1-2 July 2020
Site visit made on 30 June 2020

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2020

Appeal Ref: APP/D2320/W/20/3247136
Land at Pear Tree Lane, Euxton, Chorley

- 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 Gladman Developments Limited against the decision of Chorley Borough Council.
- The application Ref 19/00654/OUTMAJ, dated 26 June 2019, was refused by notice dated 13 November 2019.
- The development proposed is the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane.

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane on land at Pear Tree Lane, Euxton, Chorley in accordance with the terms of the application, Ref 19/00654/OUTMAJ, dated 26 June 2019, subject to the conditions set out in the schedule at the end of this Decision.

Application for costs

2. At the Inquiry an application for costs was made by Gladman Developments Limited against Chorley Borough Council, which is the subject of a separate Decision.

Procedural Matters

3. The planning application was submitted in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. Access was the only detailed matter fixed for determination as part of the appeal. I have dealt with the appeal on this basis.

4. A development framework plan[1] was submitted with the appeal, which the appellant confirmed was for illustrative purposes. I have taken this plan into account in so far as it indicates the broad extent of the proposed built development, public open space and landscaping and informs my assessment of the visual, landscape and heritage impacts of the appeal proposal.

[1] Plan no. 5219-L-02 Rev W

5. A unilateral undertaking (UU) under Section 106 of the 1990 Act was submitted by the appellant. It comprises obligations to secure the provision of affordable housing, self-build and custom housebuilding plots, amenity greenspace and play space and a sustainable drainage system on site, plus financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The UU was discussed with the main parties at the inquiry and amended to clarify affordable housing eligibility criteria. The signed and executed Deed was submitted after the close of the inquiry. I have had regard to the UU in my determination of this appeal.

Development Plan Context and Main Issues

6. The development plan for this appeal consists of the Central Lancashire Core Strategy (CLCS), a joint strategic plan covering the local authority areas of Chorley, Preston and South Ribble, which was adopted in July 2012; and the Chorley Local Plan Site Allocations and Development Management Policies Development Plan Document (CLP), adopted in July 2015.

7. The appeal site comprises 7.34 hectares of agricultural land to the east of Euxton, which is defined as an urban local service centre in Policy 1 of the CLCS. Most of the land outside of the urban areas in Chorley borough is designated as Green Belt in the CLCS and CLP, where there is a general presumption against inappropriate development. However, the appeal site is designated in Policy BNE3 of the CLP, as land between the current urban edge of Euxton along School Lane and the inner boundary of the Green Belt along Pear Tree Lane, to be safeguarded for future development needs beyond the plan period, which runs to 2026. Paragraph 139 of the National Planning Policy Framework (the Framework) states that planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development.

8. There is an emerging update to the development plan, the Central Lancashire Local Plan (CLLP), which is being prepared jointly by the Council, Preston City Council (PCC) and South Ribble Borough Council (SRBC), for the period 2021 to 2036. On adoption it will replace the CLCS and the authorities' local plans, including the CLP. The appeal site has been identified as a potential allocation for housing in the Issues and Options consultation draft of the CLLP. However, the emerging plan is at an early stage, with further consultation under Regulations 18 and 19 required before it can be submitted for examination. Furthermore, there are unresolved objections to the quantum, distribution and location of housing development, which would need to be considered as part of the examination process. Although paragraph 48 of the Framework allows weight to be given to relevant policies in emerging plans, given the early stage of preparation and the unresolved objections, the emerging CLLP can be afforded limited weight in this appeal.

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. It is evident that the proposed development would conflict with the appeal site's designation as safeguarded land under Policy BNE3 of the CLP, a point accepted by the appellant[2]. However, the Framework provides other material considerations which are relevant in this case.

[2] Paragraph 8.4.1 of Christien Lee's proof of evidence (PoE)

10. The presumption in favour of sustainable development in paragraph 11(d) of the Framework directs that, where the policies which are most important for determining the application are out-of-date, the 'tilted balance' applies, whereby permission should be granted unless the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 73 of the Framework also requires local planning authorities (LPAs) to maintain a supply of deliverable sites sufficient to provide a minimum of 5 years' worth of housing against their housing requirement or local housing need. Where an LPA cannot demonstrate a 5 year supply of deliverable sites, Footnote 7 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date.

11. In this case the main parties dispute whether or not the Council can demonstrate a deliverable 5 year supply of housing land, in terms of the appropriate housing requirement for Chorley and the deliverability of the land supply. Consequently, whether the most important policies of the development plan for determining the appeal, including Policy BNE3, are out-of-date is also in dispute. These are important material considerations to be assessed in this appeal in order for me to reach a determination under Section 38(6).

12. In view of this and having regard to the Council's reason for refusal and everything else I have read, heard and seen, the main issues in this appeal are:

    a) Whether or not the Council can demonstrate a 5 year supply of deliverable housing land in Chorley borough, having particular regard to the development plan, relevant national policy and guidance, the housing need or requirement in Chorley and the deliverability of the housing land supply;

    b) Whether or not the most important policies of the development plan for determining the appeal are out of date, having particular regard to the 5 year housing land supply position and relevant national policy; and

    c) Whether this, or any other material consideration, would justify the proposed development on safeguarded land at this time.

13. The potential for the proposed development to cause adverse impacts on highway safety and capacity, landscape character, heritage assets, ecology and other local issues has been raised in representations by interested parties. These are matters of common ground between the Council and the appellant and do not form part of the reasons for refusal. Nevertheless, I consider below the effects of the proposal on the above factors, along with the benefits which would arise from the proposed development, before concluding the planning balance.

Reasons

Five Year Housing Land Supply

14. There are two main elements to consider in this appeal in determining whether the Council can demonstrate a 5 year supply of housing land, under the terms of paragraph 73 of the Framework. Firstly, what is the housing need or requirement against which the supply should be measured; and secondly whether the sites identified in the land supply can deliver the required number of homes within the next 5 years. I deal with each element in turn below before setting out my conclusions on this main issue.

Housing Need or Requirement

15. Policy 4 of the CLCS sets out the minimum housing requirement for Chorley of 417 dwellings per annum (dpa) to 2026. However, the CLCS was adopted in 2012. Paragraph 73 and footnote 37 of the Framework make clear that where strategic policies are more than 5 years old, LPAs should identify a 5 year housing land supply (5YHLS) against their local housing need (LHN), unless those strategic policies have been reviewed and found not to require updating. The Council does not rely on such a review and the preparation of the emerging CLLP recognises that the strategic policies for Chorley require updating.

16. Footnote 37 goes on to state that where LHN is used as the basis for assessing whether a 5 year supply of deliverable sites exists, it should be calculated using the standard method set out in national guidance. The main parties agree that, as at 1 April 2020, the minimum LHN for Chorley, calculated using the standard method, is 569 dpa.[3]

17. However, the Council, PCC and SRBC have prepared a Memorandum of Understanding, dated April 2020 (MOU2), which aggregates the minimum annual LHN standard method figures for the three LPAs and redistributes that housing need across the Central Lancashire area. The redistribution relies on evidence in the Central Lancashire Housing Study (March 2020) (CLHS)[4], produced to inform the preparation of the CLLP. But it also seeks to provide an interim set of district level housing requirements, which MOU2 states is '*to reflect the most sustainable pattern of development in the sub-region*' and '*to align with City Deal growth aspirations in Preston and South Ribble.*'[5]

18. The LHN figures have been updated in a Statement of Common Ground published by the three Councils in May 2020 (SoCG), to incorporate the most recent workplace-based affordability ratios released by the Office for National Statistics (ONS). Applying the MOU2 redistribution to the updated LHN figures results in a minimum housing requirement for Chorley of 278 dpa, against which the Council now seeks to calculate its 5YHLS position[6]. For ease of reference, I set out below the comparative housing need figures under the standard method calculation and the MOU2 redistribution for the Central Lancashire authorities.

Area	***Standard Method LHN***		***MOU2 redistribution***	
	Dpa	***% of total***	***Dpa***	***% of total***
Chorley	569	56.3%	278	27.5%
Preston	191	18.9%	404	40%
South Ribble	250	24.8%	328	32.5%
Central Lancashire	1,010	100%	1,010	100%

19. The main parties have presented the two alternative figures for Chorley as a binary choice in this case. Either the 5YHLS should be calculated against the LHN figure for Chorley based on the standard method, 569 dpa, or against a requirement of 278 dpa, which is predicated on a strategy that redistributes half

[3] Paragraph 2.7 of the Housing Requirement and 5 Year Housing Supply SoCG
[4] CD7.05
[5] Paragraph 6.11 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, April 2020 (CD7.23)
[6] Paragraphs 2.5 and 2.6 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, Statement of Common Ground, May 2020 (CD7.34)

(51%) of Chorley's standard method LHN to Preston and South Ribble to meet the LPAs' joint growth aspirations. In reaching a conclusion on this, I consider below, firstly, whether it is acceptable in principle, in this case, to assess the 5YHLS against a housing need or requirement other than the standard method figure; and secondly, the weight that should be attached to the alternative figure, in this appeal, in the light of the evidence and the stage the Councils have reached in the strategic policy making process.

20. On the point of principle, it is common ground between the main parties that the LHN for Chorley borough should be calculated using the standard method in accordance with footnote 37 and paragraph 73 of the Framework[7]. Paragraph 60 and the definition of LHN in Annex 2 of the Framework permit an alternative approach to the standard method to be used to calculate the LHN in the context of preparing strategic policies only, where exceptional circumstances justify this. However, the Council does not seek to argue that there are exceptional circumstances for taking an alternative approach for calculating Chorley's LHN[8].

21. Instead, the Council refers to paragraph 2a-013 of the Planning Practice Guidance (PPG) on how LHN should be calculated where plans cover more than one LPA area[9]. In such circumstances, the PPG states that the housing need for the combined area should be at least the sum of the LHN for each LPA within the area, but that it will be for the strategic policy-making authority to distribute the total housing requirement arrived at across the plan area. This is the approach the Council has taken jointly with the Central Lancashire authorities and on which the redistribution of LHN in MOU2 and the May 2020 SoCG is based.

22. The Council maintains that it is legitimate to rely on this redistribution of LHN on an interim basis, for monitoring and calculating the 5YHLS, until the adoption of the replacement CLLP. That is clear from the agreement between the three Councils in paragraph 8.1 of the MOU2. The implication of this is that a housing requirement based on the redistribution of LHN set out in MOU2, as well as informing the emerging CLLP, is to be relied upon as a material consideration for decisions on planning applications and appeals in the meantime, where the existence of a 5YHLS is at issue. The Council has sought to argue that MOU2 is not material consideration for decision-making. However, it forms the basis for the Council's case that it can demonstrate a 5YHLS, and, therefore, is a material consideration in this appeal.

23. Whilst paragraph 2a-013 of the PPG does not prohibit LPAs in joint plan areas from relying on a redistribution of LHN figures to determine planning applications in advance of the adoption of their plans, this paragraph ostensibly applies to plan-making rather than decision-making. This is clear from the question it seeks to answer[10] and its repeated references to spatial development strategies and policy-making. The national guidance on how housing need should be calculated for the purposes of decision-making is found in section 68 of the PPG on Housing supply and delivery[11].

24. The courts urge treating the PPG with considerable caution when there is a dispute about its interpretation, given that it is intended to be guidance not policy[12]. However, the guidance in the PPG on calculating housing need and the 5YHLS for

[7] Paragraph 2.6 of the Housing Requirement and 5 Year Housing Supply Statement of Common Ground (SoCG)
[8] Confirmed by Nick Ireland (Iceni) in answers to cross examination on 23 June 2020
[9] Paragraph: 013 Reference ID: 2a-013-20190220 in the Housing and economic needs assessment section of PPG
[10] 'How should local housing need be calculated where plans cover more than one area?'
[11] To which the reader is directed from PPG paragraph: 016 Reference ID: 2a-016-20190220
[12] Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin) (ID13) [33]

decision-making purposes mirrors the policy in paragraph 73 and footnote 37 of the Framework, that where the adopted housing requirement is more than 5 years old and the strategic housing policies need updating, as in Chorley, the 5YHLS will be measured against the LHN using the standard method[13].

25. The standard method was introduced into national policy in the 2018 Framework as the new baseline for assessing 5YHLS in the absence of an up to date plan, in order to incentivise LPAs to get plans in place[14]. Therefore, it is reasonable to conclude that the guidance in paragraph 2a-013 of the PPG is not intended to allow for a redistribution of LHN in joint plan areas to provide the basis for calculating 5YHLS in decision-making in advance of that distribution being properly tested at examination and found sound. For the PPG to do so would run counter to the definition of LHN in the Framework and the clearly stated policy on the application of the standard method in decision-making.

26. Nevertheless, to date the courts have held that it is not unlawful for an LPA to rely on a housing requirement or an apportionment of housing need for decision-making purposes, even if this is not contained in an adopted plan[15]. I recognise that the *St Modwen* and *Oadby & Wigston* judgements predate the standard method and the *Harrogate* judgement related to a planning permission granted before the latest version of the Framework[16] made clear that LHN could only be calculated using an alternative approach in the context of preparing strategic policies. However, these judgements remain and establish the principle that an apportionment of housing need in an emerging joint plan can be a material consideration in decision-making. Therefore, I consider below the evidence for and against the apportioned housing need figure based on the analysis in MOU2 and the weight that should be attached to it.

27. The CLHS considers a range of factors to inform the future distribution of the aggregated standard method LHN for the three Central Lancashire authorities. These include the distribution of population, jobs, workforce and affordable housing need across the sub-region, the relative affordability and urban capacity of each district, the existing spatial strategy for Central Lancashire and the proportion of land not subject to national policy constraints[17]. The distributions for Chorley range from 18% for urban capacity to 36% for affordability.

28. The recommended distribution of the aggregate LHN to Chorley is 27.5%. Whilst this sits within the range of 18-36% and recognises that a lower proportion of Central Lancashire's jobs and affordable housing needs are concentrated in Chorley and that its development capacity is more constrained, it is less than the proportion of the sub-region's population and workforce based in Chorley (32%) and below the level of housing development required to address the relative affordability needs in the district (36%). It is also lower than the share of the sub-region's housing requirement apportioned to Chorley in the existing CLCS spatial strategy (30%). The Council's witness confirmed that the 27.5% apportionment of LHN to Chorley was a judgement based on the range of factors assessed in the CLHS[18]. But it is apparent that a higher or lower percentage within the 18-36% range could also be a justified judgement depending on the relative weight given to different factors.

[13] Paragraph: 005 Reference ID: 68-005-20190722 of the Housing supply and delivery section of the PPG
[14] Paragraph 1.15 of the White Paper on Fixing our broken housing market, 2017 (CD7.06)
[15] St Modwen v SSCLG and East Riding [2016] EWHC 968 (Admin) (CD11.04); Oadby & Wigston BC v SSCLG [2016] EWCA Civ 1040 (CD11.17); R (Oxton Farm) v Harrogate BC & Anr [2020] EWCA Civ 805
[16] Published in February 2019
[17] Table 4.14 of the Central Lancashire Housing Study, 2020 (CD7.05)
[18] Confirmed by Nick Ireland (Iceni) in answers to Inspector's questions on 23 June 2020

29. I acknowledge that the standard method figure of 569 dpa for Chorley, amounting to 56% of the aggregate LHN across Central Lancashire, is well above the distribution for Chorley for any of the factors assessed in the CLHS. If adopted for the emerging CLLP, it would represent a significant shift away from the current spatial strategy and housing distribution for the sub-region. However, there is also evidence, presented by the appellant, which suggests that adopting a requirement based on the MOU2 redistribution would deliver less than half of the number of homes in Chorley that the standard method LHN indicates is needed, leading to an undersupply of housing and worsening affordability in the district. Although Central Lancashire functions as a single Housing Market Area (HMA), the appellant's evidence points to more localised sub-markets within it[19] and a level of affordable housing need in Chorley, which the proposed apportionment of 278 dpa would fail to meet applying the current affordable housing policy[20].

30. I recognise the arguments for focussing a greater proportion of future growth in and around Preston as the largest urban centre in Central Lancashire and to align with the City Deal growth aspirations and infrastructure investment plans in Preston and South Ribble. I also note the evidence that the 2014-based projections on which the standard method LHN is based were influenced by a trend-based migration component for the period 2009-14, which for Chorley coincided with a higher than normal level of completions at Buckshaw village during that period. However, I am not persuaded that applying the standard method housing figure in Chorley would unduly affect the delivery of housing in Preston and South Ribble needed to support the City Deal growth and funding model, in the light of the high levels of housing completions which have been sustained in both Chorley and Preston over the last 3 years.

31. All of the above and the rebuttals submitted by both parties to these points, constitute arguments and evidence which need to be properly tested through the emerging CLLP preparation and examination process, in order to arrive at a housing requirement for the sub-region and for Chorley, which satisfies the tests of soundness in paragraph 35 of the Framework. Whilst MOU2 was the subject of consultation, it is evident[21] that there are significant and substantive objections to the proposed redistribution of the LHN and the evidence which supports it, which remain outstanding and will need to be resolved, ultimately through the CLLP examination. The Court of Appeal has established that *'it is not for an Inspector on a S78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure'*[22].

32. Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework. This guides my assessment of the weight that can be given to a housing requirement based on the redistribution of LHN in MOU2, as a policy document which informs the emerging CCLP. The emerging plan is at a very early stage and carries limited weight in this appeal. Although the MOU2 redistribution is an agreed position by the LPAs, there are significant unresolved objections to the recommended figures, which may result in Chorley's apportionment being modified following examination. For these reasons and in the light of my

[19] James Donagh's PoE
[20] James Stacey's PoE
[21] From the report on the consultation of the Revised Joint MOU to the Central Lancashire Strategic Planning Joint Advisory Committee in January 2020 (ID24)
[22] City and District of St Albans v Hunston Properties [2013] EWCA Civ 1610 [26] (CD11.12)

consideration of the evidence submitted, I attach limited weight to the housing requirement figure for Chorley of 278 dpa in this appeal.

33. However, full weight can be attached to the standard method LHN figure for Chorley, given that its value and use in this case are entirely consistent with the Framework and the PPG. Accordingly, I conclude that the figure of 569 dpa should be used for the purposes of calculating the 5YHLS in this appeal. This would also support the Government's objective, in paragraph 59 of the Framework, of significantly boosting the supply of homes.

34. In reaching this view, I have had regard to the previous decision for the appeal site in 2017[23]. Whilst the Inspector in that appeal applied a redistribution of the objectively assessed housing need (OAN) for Chorley based on the 2017 version of the MOU[24] (MOU1) in order to calculate the 5YHLS, the apportionment in MOU1 aligned with the adopted CLCS, rather than an alternative arrangement. In addition, national policy on the calculation of 5YHLS at the time of that decision was very different, in that it predated the 2018 Framework and the introduction of the standard method. However, I also note that in the Chain House Lane appeal decision[25], which dealt with the draft version of MOU2 in the context of the new Framework and the standard method, the Inspector gave limited weight to the draft MOU2 and concluded that the standard method LHN figure for South Ribble should be used in that case. I have explained my reasoning for attaching limited weight to a housing requirement based on the redistribution of LHN in MOU2 in the light of the evidence before me in this case.

Housing Land Supply

35. The Housing SoCG sets out two alternative housing land supply calculations for Chorley of 5.5 years or 2.5 years of deliverable supply. These are respectively based on annual requirements of 278 dpa and 569 dpa, with a buffer of 5% in light of the 2019 Housing Delivery Test Measurement, and a 5 year deliverable housing supply of 1,617 or 1,505 dwellings.

36. I have concluded above that 569 dpa is the appropriate housing requirement figure for Chorley for the purposes of calculating the 5YHLS in this appeal. The main parties dispute the deliverability of an allocated site at Cowling Farm, for which the Council includes 112 dwellings in the supply to the end of March 2025. However, even if the Cowling Farm figure were included in the deliverable supply, 1,617 dwellings would only amount to a 2.7 year supply against the LHN calculated using the standard method[26], still well below the 5 year requirement. Consequently, it is not necessary for me to consider the evidence for and against the inclusion of the Cowling Farm site any further here.

Conclusion on Five Year Housing Land Supply

37. Overall, therefore, in the light of the evidence before me at this appeal, the provisions of the development and the relevant national policy and guidance, I conclude that the Council is unable to demonstrate a 5 year supply of deliverable housing sites measured against the LHN for Chorley.

[23] APP/D2320/W/17/3173275
[24] Joint MOU and Statement of Co-operation relating to the Provision of Housing Land, September 2017 (CD7.22)
[25] APP/F2360/W/19/3234070
[26] 1,617 dwellings/598 dpa = 2.7 years

Most Important Development Plan Policies

38. Footnote 7 and paragraph 11(d) of the Framework establish that in situations where the LPA cannot demonstrate a 5 year supply of deliverable housing sites, the policies which are most important for determining the application are out-of-date and the 'tilted balance' in paragraph 11(d) is engaged for the purpose of decision-taking. However, in this case, given the evidence before me, it is also necessary to consider whether or not the 'most important' policies are otherwise to be regarded as 'out-of-date' under the terms of paragraph 11(d).

39. The courts have defined a three-step approach to be taken in making such an assessment[27]. First, it is necessary to identify which are the 'most important' policies for the decision. The Planning SoCG identifies a number of policies in the CLCS and CLP which are relevant to the appeal. However, I concur with the Inspector in the Nine Mile Ride appeal decision[28], that 'most important' does not mean all relevant policies and that it is a matter of judgement for the decision-maker to decide which are the 'most important' policies.

40. It is common ground between the main parties that Policy BNE3 of the CLP is one of the most important policies for this application and appeal. It sets the parameters for the restrictions on the development of Safeguarded Land, for which the appeal site is designated, and it is referenced in the reason for refusal. The appellant also considers that Policy BNE2 of the CLP is one of the most important policies, as it identifies the types of development allowed in Areas of Other Open Countryside (AoOOC), which Policy BNE3 defines as permissible within Safeguarded Land. However, the appeal site is not within an AoOOC and, as such, the proposal is neither in conflict nor in accordance with Policy BNE2. It is Policy BNE3 which acts to constrain development on the appeal site. It does so by reference to the types of development identified in Policy BNE2, but it is not Policy BNE2 of itself which sets those limits for Safeguarded Land. Accordingly, whilst Policy BNE3 is one of the most important policies for the determination of this appeal, I consider that Policy BNE2 is not.

41. Policy 1 of the CLCS sets the spatial strategy for Chorley borough, guiding the location of development to suitable sites and settlements, including Euxton. It is common ground between the main parties that Policy 1 is one of the most important policies of the development plan for this decision[29].

42. Policy 4 of the CLCS sets the minimum housing requirement for the district. It is common ground between the main parties that Policy 4 is out-of-date[30]. As such, the Council contends that it is not a most important policy. However, to exclude from the list of 'most important' policies those which are out-of-date, would undermine the purposes of paragraph 11(d) of the Framework, which seeks to ensure the 'tilted balance' is applied where the 'most important' policies of the development plan are out-of-date. The MOU confirms that Policy 4 is of particular relevance to the provision of housing land[31]. Given that the appeal proposal is for housing development and that there is a dispute over whether the Council can demonstrate a 5YHLS, it follows that Policy 4 of the CLCS must be one of the most important policies in this case.

[27] Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin) [55-58] (CD11.10)
[28] APP/X0360/W/19/3238048, paragraph 11 (CD10.11)
[29] Page 29 of Christien Lee's PoE and paragraph 66 of the Council's closing submissions (ID 39)
[30] Paragraph 2.4 of the MOU (CD7.23) and page 29 of Christien Lee's PoE
[31] Paragraph 2.3 of the MOU (CD7.23)

43. The appellant also regards Policy 7 of the CLCS as a 'most important' policy, because it addresses the need for affordable housing. However, whilst the extent of affordable housing need in Chorley is disputed by the parties, the contribution the appeal scheme should make to that need is not, namely 30% of the total number of dwellings. Policy 7 itself guides the proportion of affordable housing to be provided on site, which would be met through the UU. As a result there is no suggestion that the proposal fails to satisfy the terms of Policy 7. Other relevant policies act in a similar way, for example Policies 14 and 24 of the CLCS, which place requirements on the proposed development to provide for school places and recreation facilities. If the proposal failed to comply with those policies they could be determinative, but they are not regarded as amongst the most important policies. On the same basis, I do not consider Policy 7 of the CLCS is one of the most important policies for this decision.

44. Therefore, Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP are the 'most important' policies in this case, defining the need and appropriate locations for housing in Chorley and the limitations on development on the appeal site as Safeguarded Land.

45. The second step is to examine each of these policies to see whether or not they are out-of-date. The courts have established that a policy may become 'out-of-date' where it is overtaken by a change in national policy[32]. That is clearly the situation applying to Policy 4 of the CLCS, where its housing requirements were derived from the former Regional Spatial Strategy for the North West, which in turn relied on the 2003-based household projections. This, combined with the introduction of the standard method in the 2018 Framework and the application of the 2014-based household projections, renders the housing requirements in Policy 4 out-of-date.

46. However, the fact that Policy 4 is out-of-date for this reason, does not necessarily mean the spatial strategy in Policy 1 of the CLCS for the distribution of its housing requirements is also out-of-date. Although the two alternative distributions of the standard method LHN figures put forward in this appeal would lead to a much higher (569 dpa) or lower (278 dpa) quantum of housing growth in Chorley borough than the CLCS apportionment (417 dpa), Policy 1 still provides for growth to be concentrated in Chorley town and some to be located at Euxton and other local service centres in the borough.

47. I note the conclusions of the Wheatley Campus appeal decision[33] on this point, but that was a different policy context, where the relevant policies in the South Oxfordshire development plan defined settlement boundaries outside of which development was not permitted. In this case, Policy 1 does not of itself define settlement boundaries or limit development only to sites within settlements in Chorley borough. The evidence before me does not show that Policy 1 would unreasonably constrain the ability of the borough to accommodate its standard method housing requirement of 569 dpa. As such, I do not consider that Policy 1 of the CLCS is out-of-date for the purposes of this appeal.

48. Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains

[32] Bloor Homes Limited v SSCLG [2014] EWHC 754 (Admin) [paragraph 45]
[33] APP/Q3115/W/19/3230827 (paragraphs 13.8-13.10)

the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are predicated on a housing requirement in the CLCS which is out-of-date. The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the 1997 Chorley Borough Local Plan. They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date.

49. Case law[34] has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here. My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026.

50. This is further supported by the fact that the emerging CLLP[35] identifies all but one of the Areas of Safeguarded Land in Policy BNE3, including the appeal site, as site proposals to meet the borough's housing needs for the period 2021-2036. Whilst the emerging CLLP is at an early stage and the final selection of housing allocations will be determined through the local plan examination process, it clearly recognises that land currently safeguarded in Policy BNE3 for development needs beyond the end of the CLP plan period in 2026, may need to be released before then to meet a housing requirement based on the standard method LHN. Although the previous appeal decision on this site[36] did not consider Policy BNE3 to be out-of-date, that relied on the housing requirement in the CLCS, which at the time of the decision in 2017 was not out-of-date. However, for the above reasons, Policy BNE3 is out-of-date in the circumstances of this appeal.

51. The third step that the *Wavendon* judgement established as required by paragraph 11(d) of the Framework, is to assess the basket of 'most important' policies in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. In this case the 'basket' comprises Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP. Although the overall spatial strategy for Central Lancashire in Policy 1 is not itself out-of-date, the policies establishing the amount of housing needed in Chorley borough and designating the appeal site as Safeguarded Land, so preventing it from contributing to those needs, are out-of-date. On this basis therefore, taken as a whole, I conclude that the 'most important' policies for determining this appeal are out-of-date.

Other Material Considerations

Shortfall in Housing Supply

52. Based on the Council's housing land supply estimate, the deliverable supply of housing sites in Chorley borough would at best provide 1,617 dwellings over the next 5 years from April 2020 to March 2025. The 5 year requirement for the borough for the same period established by Chorley's standard method LHN is

[34] Suffolk Coastal District Council v Hopkins Homes Ltd and anr [2017] UKSC 37 [paragraph 63]
[35] Annex 1 to the CLLP Issues and Options Consultation, November 2019
[36] APP/D2320/W/17/3173275

2,990 dwellings. On this basis, there would be a substantial shortfall in the housing supply of 1,373 dwellings over the next 5 years. The appeal proposal would provide up to 180 market and affordable dwellings, meeting 13% of the shortfall. As such it would make a significant contribution to the housing needs of the borough.

Affordable Housing

53. Up to 54 (30%) of the proposed dwellings would be affordable housing, with a tenure mix of 70% social rented and 30% intermediate units, secured through the provisions of the UU. This would accord with the requirements of Policy 7 of the CLCS and the Central Lancashire Affordable Housing Supplementary Planning Document (SPD) and meet the expectations of paragraphs 61-64 of the Framework.

54. Although there is a pipeline of 91 affordable housing units with planning permission still to be built in Euxton, the evidence indicates a net need for further affordable housing in Euxton and the borough. The Housing Register for the borough contained 655 households in need of accommodation, as at 1 April 2020, of which 124 had selected Euxton as their preferred location and had a local connection to the borough. Therefore, purely based on current social housing needs, there is a requirement to increase the supply of affordable housing in Euxton.

55. Despite a healthy track record of both market and affordable housing delivery in the borough over the last 10 years[37], there is evidence of steadily worsening housing affordability. Average house prices in Chorley increased by 15% between 2010/11 and 2017/18 and the ratio of house prices to incomes in the borough has increased by 10% to 6.88 since the start of the plan period[38].

56. In terms of future affordable housing requirements, the CLHS identifies a need for 132 dpa of affordable rented housing in Chorley borough for the period up to 2036[39]. It is agreed between the parties that based on a 5YHLS of 1,617 dwellings, 60 dpa of affordable housing could be delivered over the next 5 years[40]. This would result in a shortfall of around 360 affordable housing units in the borough over the next 5 years[41]. The Council could offer little evidence as to how it would address this need.

57. For the above reasons, therefore, the affordable housing component of the appeal scheme would be a significant social benefit. It would provide for households on the Housing Register with a need for social housing in Euxton, reduce the shortfall in the supply of affordable housing across Chorley over the next 5 years and help to address the growing affordability problems in the borough.

Self-Build and Custom House Building

58. The appeal scheme would also provide up to 18 (10%) of the proposed dwellings as self-build or custom house building plots, secured through the UU. Although not a requirement of the CLCS or CLP, the housing needs of people wishing to build their own homes is one of the types of housing need which paragraph 61 of the Framework seeks to address.

[37] Table at paragraph 3.7 of Zoe Whiteside's Rebuttal Proof
[38] Paragraphs 8.30 and 8.31 of James Stacey's PoE
[39] Table 5.6 of the Central Lancashire Housing Study, March 2020 (CD7.05)
[40] Paragraph 8 of Note for Inspector on future supply of Affordable Housing in Chorley borough (ID26)
[41] (132 dpa x 5 = 660 units) – (60 dpa x 5 = 300 units) = 360 units

59. To that end local authorities are required to keep a register of people seeking to acquire serviced plots within the area for self-build and custom house building, and to grant enough planning permissions to meet the identified need[42]. Chorley's self-build register contained expressions of interest in serviced plots from 9 individuals at March 2020[43]. However, the CLHS acknowledges this may underestimate demand for self-build, because awareness of the Right to Build Registers in England is low[44].

60. The PPG advises that data on registers can be supplemented from secondary data sources to obtain a robust assessment of demand[45]. The Buildstore Custom Build Register, the largest national database of demand for self and custom build properties, has 185 people registered as looking to build in Chorley, with 699 subscribers to its PlotSearch service[46]. Data from a national survey conducted by Ipsos Mori for the National Custom and Self-Build Association, when applied to Chorley's population, indicates that as many as 1,929 people may wish to purchase serviced plots in Chorley over the next 12 months[47]. Whilst the secondary data sources may reflect a level of aspiration rather than genuine need and include households registering an interest in more than one district, the CLHS concludes they provide evidence of a greater level of demand for self-build than the Council's register shows.

61. In terms of supply, the Council's 5YHLS statement contains 49 self-build and custom house building plots with planning permission, including 20 in Euxton, but only 27 of the 49 plots have been secured by legal agreements. For the remaining 22 plots permitted, the applicants have indicated the intention to exercise self-build exemption from CIL. However, evidence[48] for the period 2016-2019 shows that only around 30% of such developments in Chorley have ultimately qualified for self-build exemption, which indicates that CIL self-build exemption applications are not a reliable proxy for the actual level of self-build supply.

62. Even so, and treating the Buildstore demand figures with caution, the evidence clearly indicates that the 5 year supply of self-build plots in the borough is likely to fall well short of the anticipated demand. As such the provision of a further 18 self-build and custom house building plots on the appeal site would make an important contribution to the need for this type of housing in Chorley. This would be an additional benefit of the scheme to which proportionate weight should be given in the planning balance.

Highway safety

63. Local residents have objected to the effects of the proposed development on the operation and safety of the surrounding highway network. Particular concerns which have been raised include the proposed southern access to the site from School Lane at a bend in the road where visibility is poor; the danger of an increase in traffic for pedestrians using Pear Tree Lane and School Lane, given their limited widths, the absence of footpaths in places, and the fact that School Lane is used by parents and children to access the schools on the western side of Wigan Road; the effects of an increase in traffic on the junction of Pear Tree Lane

[42] Footnote 26 of the Framework
[43] Paragraph 4.20 of Andrew Moger's PoE and paragraph 7.21 of Zoe Whiteside's PoE
[44] Paragraph 9.33 of the Central Lancashire Housing Study, March 2020 (CLHS) (CD7.05)
[45] Paragraph: 003 Reference ID: 67-003-20190722
[46] Paragraph 9.41 of the CLHS
[47] Paragraph 9.39 of the CLHS
[48] From the Council's response to an FoI request in June 2020 (see Andrew Moger's Supplemental Evidence)

and Euxton Lane where there is a history of accidents; and an increase in traffic at the junction of School Lane and Wigan Road, which is already busy.

64. The highway and traffic impacts of the proposed development have been assessed in the Transport Assessment (TA)[49] submitted with the application, which proposes a series of improvements intended to mitigate the effects of the proposal on the highway network[50]. The Highways SoCG between the appellant and Lancashire County Council, as the local Highway Authority (HA), confirms the robustness of the traffic and junction modelling in the TA and that, subject to the implementation of the proposed improvements, the cumulative impact of the appeal development on the road network would not be severe. No other highways evidence was submitted to me to counter the technical evidence contained in the TA and SoCG.

65. With regard to the main traffic and safety concerns raised by residents, the accesses to the proposed development would form two new priority-controlled T-junctions on School Lane, one on the northern frontage of the site and the other at its south-western corner. The main internal road to the development would become the principal traffic route between School Lane and Pear Tree Lane, reducing through traffic on the northern section of School Lane. The junction at the south-western corner would improve visibility at the bend in School Lane and the T-junction would significantly reduce the potential for conflict between vehicles at the existing corner. Footways would be installed along the northern frontage of the site and adjacent to the junction at its south-western corner to provide a continuous pedestrian route along the length of School Lane. This would link up with the footpath running through the Rowland Homes development to the north, providing a safe walking route to Euxton Lane, to avoid pedestrians having to use the carriageway on the northern section of Pear Tree Lane. Traffic calming measures are also proposed along the length of the through route from the junction of Pear Tree Lane with Euxton Lane to the junction of School Lane with the A49 Wigan Road, together with a 20mph speed limit and additional street lighting. I am satisfied that these measures would improve the safety of School Lane and Pear Tree Lane for pedestrians, cyclists and drivers and adequately mitigate the effects of additional traffic along these roads.

66. Traffic modelling in the TA shows that the traffic generated by the development would result in an increase in vehicles at the junctions of School Lane with Wigan Road and Pear Tree Lane with Euxton Lane of 2.9-3.6% during the morning and evening peak hours, with resultant increases in queuing times. There has been only 1 'slight' accident in the last 5 years at the Pear Tree Lane/Euxton Lane junction; therefore, the accident records of the junctions are not a cause for concern. However, improvements are proposed, to be provided by the developer, at both junctions. At the School Lane/Wigan Road junction, a MOVA[51] system would be installed to manage the traffic light sequencing, minimising waiting times and queue lengths. At the Pear Tree Lane/Euxton Lane junction the bell mouth would be widened, visibility improved and a pedestrian island and refuge added on Euxton Lane. The modelling indicates that both junctions would continue to operate within capacity with the development traffic included. The T-junctions at the site accesses are both predicted to operate with high levels of spare capacity and minimal queues.

[49] CD1.08
[50] Plans numbered: 1318/09 Rev G and 1318/23 Rev A
[51] Microprocessor Optimised Vehicle Actuation

67. The appeal site is accessible by sustainable modes of transport to shops, community facilities and employment, which should minimise the need for car journeys. It is within convenient walking distance of a number of local services in Euxton, including primary schools, a nursery, health centre, dental surgery, community centre and places of worship. An equipped play area is proposed on-site, which would be secured through the UU. There are bus stops on Wigan Road and Euxton Lane within 800 metres of the site, with frequent services to a wider range of shops, services and employment in Buckshaw Village, Leyland, Chorley and Preston. There are two railway stations near to the site at Balshaw Lane in Euxton (1.35 km away) and Buckshaw Parkway (1.6 km away), providing rail services to the major centres and services of Manchester, Liverpool and Blackpool. Bus stop improvements are proposed and a travel plan, which would encourage the use of sustainable modes of transport. The travel plan would be monitored to measure the modal shift from private car to sustainable modes of travel. The costs of monitoring would be funded by the development via the UU, which is both necessary and reasonable.

68. Therefore, given the location of the appeal site and its accessibility by sustainable transport modes, and subject to the range of improvements proposed to mitigate the effects of additional traffic on the road network, which could be secured by condition, I conclude that the proposed development would not result in an unacceptable impact on highway safety or a severe impact on the operation of the road network. Accordingly, it would comply with paragraphs 103 and 109 of the Framework and with the expectations of Policies ST1 and BNE1(d) of the CLP.

Landscape and Visual Impacts

69. The appeal site consists of five fields, currently used for grazing, which are bounded by tall hedgerows with trees. It sits between the existing urban edge of Euxton to the west and north and countryside to the east and south. Along its western boundary, the site is fringed by housing in School Lane and The Cherries, which forms a strongly urban context to this part of the site. In contrast, on its eastern boundary, Pear Tree Lane retains the appearance of a country lane lined by mature trees and hedgerows, with dispersed dwellings and farm buildings, lending a more rural character to this side of the site. Along the northern boundary of the site, School Lane is similarly lined by trees and hedgerows, albeit the context here is changing from rural to urban, with new housing to the north seen through the roadside hedges. The southern boundary of the site is formed by a well-established hedgerow and woodland surrounding Rushton's Brook, with countryside beyond.

70. There are no public footpaths running across the appeal site and views of it from the footpaths to the south and east and more distant viewpoints are largely screened by the intervening landscape. However, there are views into and across the site from Pear Tree Lane and School Lane, which are used by local residents for walking and exercise. There are also views across the site from the rear of properties adjoining the site on School Lane, Pear Tree Lane and The Cherries.

71. The Landscape and Visual Appraisal (LVA)[52] submitted with the application and the Landscape SoCG confirm that no landscape designations apply to the site and that it is not part of a 'valued landscape' referred to in paragraph 170(a) of the Framework. It is located within the Lancashire Valleys national landscape

[52] CD1.05

character area and in the Cuerden-Euxton landscape character area of the Undulating Lowland Farmland landscape character type, as defined in the Landscape Strategy for Lancashire (LSL). The description of these landscapes[53] recognises that agricultural land within the Lancashire Valleys is fragmented by urban development and, as such, that within the Cuerden-Euxton landscape, its rural character is compromised. This is true of the appeal site, given its partially urban surroundings. Policy 21 of the CLCS, in respect of Landscape Character Areas, expects new development to be well integrated into existing settlement patterns and appropriate to the landscape type in which it is situated. The proposal would not conflict with Policy 21, which is common ground between the main parties[54].

72. Nevertheless, the site's open landscape is clearly of value to local residents, as a visual amenity and as part of the wider rural setting of Euxton on this side of the settlement. The construction of up to 180 dwellings would result in a permanent change to the character of the site from agricultural land to urban development, causing harm to the landscape. However, in part this could be mitigated by the retention of the existing trees and hedgerows within and on the edge of the site, which could be secured by condition, helping to soften the visual impact of the development, particularly in views from Pear Tree Lane and School Lane. As the site is well contained by the surrounding landscape and dwellings from more distant views, the visual impact of the proposed development on the wider rural landscape would not be significant.

73. The Arboricultural Assessment[55] submitted with the application confirms that a number of trees would need to be removed to enable the construction of the proposed site accesses. This includes the specimen Oak tree at the southern entrance off School Lane, which is prominent in the street scene and of amenity value locally. However, its loss could be mitigated by planting replacement trees to either side of the proposed access, which could form part of the reserved matters landscaping scheme and be secured by condition.

74. The LVA provides a robust analysis of the landscape and visual impacts of the proposed development. Based on this, it is common ground between the main parties[56] that the proposal would have minor to moderate adverse effects on the landscape and visual amenity of the site and surroundings. In the light of my assessment above, I concur with this view. Whilst landscape harm would occur, the impacts would be localised and could be partially mitigated by retained and new landscaping. Moreover, the development would be seen in the context of existing housing on Pear Tree Land and School Lane. Accordingly, the landscape and visual harm carries no more than moderate weight in the planning balance.

Heritage Assets

75. Houghton House Farmhouse, a Grade II listed building, lies adjacent to the north-east corner of the appeal site. Its principal elevation benefits from open views across the northernmost field of the site, which forms part of the setting of the listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering development that affects a listed building or its setting, special regard shall be given to the desirability of preserving that building or its setting. Paragraph 194 of the

[53] Paragraphs 3.2, 3.5 and 3.6 of the Landscape SoCG
[54] Paragraph 4.2 of the Landscape SoCG
[55] CD1.11
[56] Paragraph 5.8 of the Landscape SoCG

Framework advises that the significance of a designated heritage asset can be harmed by development within its setting. Policy BNE8 of the CLP refers to the Framework for proposals affecting the setting of a heritage asset.

76. The significance of Houghton House Farmhouse is derived principally from its historical and aesthetic value. It is the primary building in a former farm complex, dating from the late 18th century, the associated barns and outbuildings of which have since been converted for residential occupation. Its historical interest relates to its place in the agricultural economy of Euxton. Its aesthetic value is seen in its symmetrical form, vernacular stone materials, original features and architectural detailing, making it a fine example of a farmhouse of its period.

77. The appeal site once formed part of the land holding of the farm. However, the surrounding farmland is now dissociated from the plot and no longer has any functional relationship with Houghton House Farmhouse. The wider historic rural setting of the Farmhouse has also been compromised by the residential expansion of Euxton to the north and west. The appeal site plays little role in affording views of the listed building, apart from distant private vistas from the rear of the houses along School Lane to the west. Public views of the main façade of Houghton House approaching east along School Lane are largely restricted by the roadside trees and vegetation, until arrival at the entrance to the property.

78. Therefore, despite forming part of the setting for Houghton House Farmhouse, it is common ground between the Council and the appellant that the appeal site only makes a minor contribution to the significance of the listed building.[57] For the reasons given above, I concur with this view. However, I also consider that the proposed development would reduce the remaining pastoral setting of Houghton House Farmhouse and thereby cause harm to its significance. The Heritage Statement submitted with the application proposes mitigation in the form of an area of open space in the north of the site, landscaping to the site boundary with Houghton House Farmhouse and setting back development from the north-eastern edge of the site[58]. These measures would reduce the harm, but not avoid it.

79. Nevertheless, given the minor contribution of the appeal site to the significance of the heritage asset, the proposals would amount to less than substantial harm to the heritage significance of Houghton House Farmhouse. With the inclusion of the mitigation measures proposed, I consider this would be towards the lower end of the spectrum of less than substantial harm. Paragraph 196 of the Framework states that where a development proposal would lead to less than substantial harm to the significance of a heritage asset, the harm should be weighed against the public benefits of the proposals. I consider this below as part of the overall planning balance.

80. The Archaeological Desk Based Assessment submitted with the application identified the potential for archaeological deposits from the Roman period along the eastern boundary of the site. However, the County Archaeological Service did not object to the proposal subject to a programme of archaeological work prior to the start of any development, which could be secured by condition. Accordingly, the potential effects on the archaeological interest of the site would not weigh against the proposal.

[57] Paragraph 5.1(4) of the Heritage SoCG
[58] Paragraph 5.3.1 of the Heritage Statement, April 2019 (CD1.17)

Ecology

81. An Ecological Appraisal (EA)[59] of the appeal site, informed by surveys of habitats and protected species, was submitted with the application. An Ecology SoCG between the main parties was also submitted with the appeal. These confirm that the site mainly comprises species-poor, improved agricultural grassland of negligible nature conservation value. The hedgerows subdividing and bounding the fields are the habitats of principal importance, but the development framework plan and EA indicate these would be retained as part of the landscaping scheme for the site, which could be secured by condition. Likewise, the evidence indicates that the trees on site, which offer both amenity value and potential habitat for roosting bats and nesting birds, would mostly be retained. That includes the strip of woodland along the northern boundary and the woodland around Rushton's Brook on the southern boundary, which would be protected by a buffer of land.

82. In terms of protected species, Rushton's Brook offers ecological value for a range of species. Although the brook is off-site, measures are recommended to prevent pollution from the construction and operation of the site, which again could be secured by condition. There is a pond in the centre of the site, which surveys showed to be of average suitability for Great Crested Newts (GCNs), albeit GCNs were found to be absent from it and from any ponds within 500m of the site at the time of the surveys. However, the development framework plan shows the pond to be retained as part of the open space and landscape provision within the development. The Greater Manchester Ecology Unit also recommended that, if the development were to proceed, an Amphibian Mitigation Strategy be secured by condition to avoid any future harm to newts.

83. The site is used by foraging bats and nesting birds. However, hedgerows and trees, which form the main habitats to support these types of wildlife, would be largely retained. A condition could be imposed to ensure any clearance or construction work would be undertaken outside of the nesting season. As part of the landscaping scheme, bird and bat boxes on existing trees or new buildings are proposed to enhance opportunities for birds and bats.

84. The Council's view is that the proposed development would be likely to result in a net gain in biodiversity, which carries moderate weight in favour of the scheme in the planning balance[60]. I concur with this conclusion for the following reason. Although the proposal would involve a major urban development of the site, it would also provide the opportunity to retain, manage and enhance the existing habitats of value on site and introduce new habitats for nature conservation, as part of the landscaping, open space and sustainable drainage proposals for the site. I am also satisfied that the mitigation measures proposed would avoid or compensate for any residual harm to ecology that may occur.

85. As such the proposed development would comply with the principles for protecting and enhancing habitats and biodiversity in paragraph 175 of the Framework and with the requirements of Policy BNE9 of the CLP. It would also satisfy the relevant tests under the Conservation of Habitats and Species Regulations 2017 (as amended).

[59] CD1.10
[60] Paragraph 7.26 of Zoe Whiteside's PoE

Flood risk

86. The application was accompanied by a Flood Risk Assessment (FRA)[61], which demonstrates that the appeal site is located within Flood Zone 1 and therefore at the lowest risk of flooding. As such, the proposal would meet with the expectations of paragraph 158 of the Framework, to steer new development to areas with the lowest risk of flooding.

87. However, the FRA proposes a number of measures to ensure surface water run-off is managed and would not increase flooding elsewhere. These include a sustainable drainage system (SuDS) with an attenuation basin in the south-west corner of site, the use of culverts under School Lane on the northern part of the site, and setting development levels across the site so that flows would be contained within the existing ditch systems and pond. Implementation and management of the SuDS would be obligated through the UU. The other measures could be secured by condition.

88. On this basis, the proposed development would not result in increased flood risk. It would, therefore, accord with Policy 29(d) of the CLCS, which seeks to manage flood risk in all new development and with paragraph 163 of the Framework which seeks to ensure flood risk is not increased elsewhere.

Local infrastructure

89. The proposed development would increase the population of Euxton, generating additional spending for local businesses, which would be an economic benefit. However, it would also increase pressure on existing community services and infrastructure. Policy 2 of the CLCS seeks to ensure that development makes an appropriate contribution to the costs of infrastructure necessary to support it.

90. I have concluded above that the proposed transport improvements would be sufficient to mitigate the effects of the proposal on the highway network. The UU provides for financial contributions to create additional primary school places at local schools and to improve playing pitches at Gillet Playing Fields in Chorley. In addition, it secures the provision of a new play area on site, which would meet the needs of the development, but also be of benefit for the wider community.

91. The playing pitch contribution is proportionate to the number of dwellings proposed and the primary education contribution is based on the anticipated number of primary school age children who would be living on the site. They have been calculated according to the relevant formulae in the Council's SPDs and are agreed by the Council and the Local Education Authority (LEA). Local residents have expressed concerns about the absence of any provision for secondary school places as part of the proposal. However, there is forecast to be a surplus of secondary school places within 3 miles of the site once the development is occupied, and, therefore, the LEA does not require a contribution to secondary education provision.

92. A contribution towards improvements to local healthcare facilities is also not proposed. Whilst, the Euxton Medical Centre has expressed concerns about the capacity of the surgery to take on further patients, a financial contribution to local healthcare facilities has not been requested by the statutory providers, NHS England and the local Clinical Commissioning Groups.

[61] CD1.13

93. Therefore, I am satisfied that contributions towards secondary education and healthcare facilities would not be necessary to make the proposed development acceptable in planning terms. However, the financial contributions to primary education, recreation and travel plan monitoring would meet the tests for planning obligations in paragraph 56 of the Framework.

94. The Planning SoCG[62] confirms that the wider impact of the proposed development on strategic infrastructure in Chorley would be adequately mitigated through CIL payments, for which the appeal scheme would be liable. Accordingly, subject to the provision of CIL and the planning obligations in the UU, the appeal proposal would not have an unacceptably adverse impact on infrastructure, services or facilities in Euxton and the surrounding area. It would as such comply with Policy 2 of the CLCS.

Living conditions

95. With regard to impact of the proposed development on the privacy and outlook of the occupiers of residential properties adjacent to the site, whilst their view would change from open fields to houses, there is no evidence that this would result in harm to living conditions through overlooking or an overbearing outlook. As layout and appearance are reserved matters, the Council would be able to control the detailed design of the development to ensure adequate separation distances between the new and existing dwellings. As such the proposal would not conflict with paragraph 127(f) of the Framework, which seeks a high standard of amenity for existing and future occupiers. Accordingly, this matter does not weigh against the proposal.

Economic Benefits

96. It is common ground between the main parties that the appeal proposal would generate a number of economic benefits[63]. These are quantified by the appellant as including a £19.9 million investment in construction on the site, approximately 353 direct and indirect FTE jobs in construction and associated industries, and around 400 new residents of whom at least half would be economically active generating a combined annual household expenditure of £4.9 million, a proportion of which would be spent in the local economy. These are not insignificant economic benefits, which carry weight in favour of the proposal in the planning balance.

Planning Balance

97. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development would conflict with the appeal site's designation as Safeguarded Land under Policy BNE3 of the CLP. The policy remains broadly consistent with paragraph 139 of the Framework, in safeguarding land to meet longer-term development needs. Accordingly, paragraph 213 of the Framework establishes that due weight should be given to it. However, Policy BNE3 is also out-of-date, because it continues to safeguard land for longer-term development needs, based on a housing requirement in Policy 4 of the CLCS which is out-of-date, and when most of the safeguarded land is being promoted by the Council in the emerging CLLP for development to meet housing needs

[62] Paragraph 4.19.6 of the Planning SoCG
[63] Paragraph 4.20.1 of the Planning SoCG

from 2021 onwards. Although limited weight can be attached to the emerging CLLP given it is at an early stage in the plan-making process, its recognition that Safeguarded Land, including the appeal site, may be released for housing development in the near future, is a material consideration which reduces the weight that can be given to the conflict with Policy BNE3 in this appeal.

98. Paragraph 11(d) of the Framework is also an important material consideration in this case. I have concluded above that the most important policies for this decision are out-of-date, both on their own merits and because the Council is unable to demonstrate a 5YHLS against the standard method LHN for Chorley. As such the 'tilted balance' in paragraph 11(d) is engaged for this decision. This means that planning permission should be granted unless: i) the policies of the Framework that protect areas or assets of particular importance, as defined in Footnote 6, provide a clear reason for refusing the development proposed; or, ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

99. On the first limb of paragraph 11(d), it is common ground between the main parties that there are no policies in the Framework which provide a clear reason for refusal[64]. Although the previous appeal decision on this site[65] found that Safeguarded Land was a specific policy in the Framework indicating development should be restricted, national policy has changed since then and Safeguarded Land is not listed in Footnote 6 in the current Framework.

100. The Framework's policies on designated heritage assets are Footnote 6 policies. Paragraph 193 of the Framework establishes that great weight should be given to an asset's conservation when considering the impact of a proposed development on the significance of a designated heritage asset. In this case the proposal would cause less than substantial harm to the significance of Houghton House Farmhouse and that harm would be at the lower end of the range of heritage harm, for the reasons I have explained above. Paragraph 196 of the Framework establishes that where less than substantial harm arises it should be weighed against the public benefits of the proposal. The public benefits of the appeal scheme include its contribution to reducing the shortfall in the housing supply and to meeting needs for affordable and self-build housing, a boost to the local economy from jobs and investment, a net gain in biodiversity on the site and additional local play facilities. I am satisfied that the combined effect of these benefits outweighs the less than substantial harm to the significance of the heritage asset in this case. Accordingly, I agree that the policies in the Framework for the protection of areas and assets of importance do not provide a clear reason for dismissing the appeal.

101. Turning to the second limb of paragraph 11(d), the adverse impacts of the proposal comprise a conflict with the site's status as Safeguarded Land under Policy BNE3, minor to moderate adverse effects on landscape and visual amenity, and less than substantial harm to the significance of the listed building. I attach limited weight to the conflict with Policy BNE3, because it is out-of-date and no more than moderate weight to the harm to the landscape and visual amenity. This is added to the great weight which should be attached to conserving the heritage asset.

[64] Paragraph 4.21.1 of the Planning SoCG
[65] Paragraph 63 of APP/D2320/W/17/3173275

102. Balanced in favour of proposed development, the delivery of up to 180 new dwellings carries significant weight in addressing housing needs and reducing the shortfall in the housing land supply by 13%. The designation of up to 54 of the units as affordable homes, of which 38 (70%) would be social rented tenure, would reduce the 360 unit shortfall in the projected supply of affordable rented housing by more than 10%, which also carries significant weight in addressing housing needs in the borough. The provision of 18 of the units as self-build or custom house building plots should also attract significant weight in favour of the proposal, given the level of demand for self-build as a sector of housing need in Chorley.

103. In terms of the economic benefits of the scheme, the creation of 353 FTE jobs and almost £20million of investment during the construction phase, plus an ongoing annual injection of almost £5million of expenditure, would serve to boost the local economy. However, in the overall scale of the economy in Chorley, the contribution would be modest and in the main temporary, thereby attracting moderate weight. The net gain in biodiversity carries moderate weight in favour of the proposal. Likewise the provision of an equipped play area offers a local benefit of modest weight. The highway improvements and contributions to education and playing fields would serve to mitigate the impact of the proposal and therefore carry neutral weight in the planning balance.

104. No other adverse impacts have been identified and there are no other policies in the Framework or the development plan which weigh against the proposal. Accordingly, taking all considerations into account, I conclude that adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Under the presumption in favour of sustainable development in paragraph 11(d) of the Framework, this means permission should be granted.

105. Overall, therefore, notwithstanding the proposal's conflict with the appeal site's designation as Safeguarded Land in Policy BNE3 of the CLP, the presumption in favour of sustainable development in paragraph 11(d) of the Framework is a material consideration which, in this case, warrants a decision other than in accordance with the development plan. Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed.

Conditions and Planning Obligations

106. The Council submitted a set of suggested planning conditions which were discussed at the inquiry. I have considered which conditions are required having regard to the tests contained in paragraph 55 of the Framework and the Planning Practice Guidance. I have revised some of the wording, either as discussed at the inquiry or in the interests of clarity and enforceability.

107. A condition to specify the approved plans, including the access arrangements, is necessary in the interests of good planning and highway safety. It is also

necessary to specify the reserved matters to be submitted for approval and the time limits for their submission and the subsequent implementation of the permission in accordance with the requirements of the Act.

108. Conditions are included requiring a landscape retention, creation and management plan, lighting strategy and method statement on measures to avoid harm to amphibians, and to ensure no works to trees during the nesting season. I have amended the landscape condition to ensure it refers to the replacement of trees lost to create the site accesses. These are necessary to preserve the important habitats on site, avoid harm to protected species, enable a net gain in biodiversity and mitigate impacts on the landscape and visual amenity. However, I am satisfied it is not necessary to specify compliance with the wildlife legislation, as suggested in representations. I have assessed the proposal in terms of the tests in the 2017 Conservation of Habitats and Species Regulations, which the conditions referred to above would help to meet. The developer will be under a separate statutory duty to ensure compliance with the relevant legislation for the protection of wildlife and habitats during the construction phase.

109. A condition requiring an arboricultural method statement is necessary to ensure the appropriate measures are taken during construction to protect trees and hedgerows which form part of the retained landscape features. It is also necessary to impose a condition to ensure the implementation of the landscaping scheme as soon as possible after occupation or completion in the interests of the overall appearance of the development.

110. A separate condition to ensure the landscaping scheme incorporates measures to screen the development from Houghton House Farmhouse is necessary to meet the statutory duty to preserve the setting of the heritage asset. To preserve any archaeological heritage, a scheme of archaeological investigation and a programme of works are also required to establish the presence or absence of archaeological remains and, where necessary, to preserve or record them before construction starts.

111. A condition requiring finished floor levels to be agreed before the start of each phase is necessary to control the height of the development and safeguard the amenities and living conditions of local residents. Although the provision of public open space and an equipped play area is an obligation of the UU, a condition to ensure the position, layout, design and phasing of the open space provision is agreed as part of the reserved matters is necessary for the proper master planning of the development and the timely provision of public open space.

112. A condition requiring all dwellings on the site to achieve emission rates of 19% above the requirements of the 2013 Buildings Regulations is both necessary and reasonable to comply with Policy 27 of the CLCS. This would ensure the energy performance of the proposed dwellings would be at least equivalent to that of the former Code for Sustainable Homes (CSH) Level 4. Although the CSH has been withdrawn, continuing to require compliance with the equivalent energy efficiency standard accords with the transitional arrangements put in place by the Government until housing standards are set through revised building regulations. It is also consistent with national policy on climate change. I have amended the suggested wording of this condition to ensure it applies to all new dwellings proposed, as required by Policy 27, rather than the development as a whole.

113. A series of conditions were suggested for the approval and implementation of a surface water drainage scheme. I have condensed these into two conditions requiring an overall master strategy and details of the system for regulating the flow of surface water. This includes measures to prevent pollution of surface waters, such as Rushton's Brook. I consider these conditions are necessary to ensure the sustainable drainage of the site, prevent an increase in flooding elsewhere in line with the requirements of the Framework and protect wildlife habitat and ecology. I am satisfied that conditions to control the construction of estate roads to the required standard for adoption, their completion for each phase and details of their subsequent maintenance and management along with all parts of the public realm are also necessary to ensure highway safety and visual amenity.

114. A Full Residential Travel Plan (Full RTP) is necessary to encourage sustainable modes of travel and reduce car journeys. I have amended the suggested condition to refer to the Framework Travel Plan submitted with the application, to ensure the Full RTP remains consistent with the sustainable transport measures proposed in the Transport Assessment which address the traffic impacts of the development. A condition requiring a construction management plan to control the hours of site operation, noise, dust, emissions and waste during the construction phase is also necessary to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety.

115. A condition is proposed requiring a strategy and infrastructure to support super-fast broadband on the site. Paragraph 112 of the Framework expects planning decisions to support the expansion of electronic communications networks, including full fibre broadband connections. Policies 1 and 3 of the CLCS also encourage greater use of information technology and better telecommunications to enable home working as a means of reducing the need to travel. I note the appellant's objections to this condition, but am satisfied there is a clear national and local policy basis for it and that it meets the Framework tests as necessary and reasonable to support the delivery of full fibre broadband connections for each property within the development.

116. A condition requiring an Employment and Skills Plan is a reasonable and necessary requirement to allow for local residents to benefit from the employment and training opportunities which would be available during the construction phase of the proposed development. This would also accord with Policy 15 of the CLCS.

117. A condition requiring a road link to the southern boundary of the site to enable access to the remainder of the BNE3.9 Safeguarded Land allocation to the south was discussed at the inquiry. Although the land to the south is not currently proposed for development, I am satisfied that the condition meets the Framework tests in the interests of good planning and to avoid this land being sterilised, should it be required for longer-term development.

118. A condition requiring the construction of the proposed accesses and off-site highway works before the development is occupied is necessary to ensure the effects of the proposal on the surrounding roads are adequately mitigated, in the interests of highway safety and the efficient operation of the highway network. I have amended the wording of the condition to remove the phrase which means the potential highway works would not be 'not limited to' those

listed, as this is too open ended. The intention of the condition is to ensure those works identified as necessary to mitigate the impacts of the development on the highway network are delivered. However, there may be ancillary accommodation works, such as street lighting, drainage and services diversions, which the Highway Authority is concerned may be necessary to enable the construction of the listed works to adoptable highway standards. I have therefore added these words for preciseness.

119. Finally, the Council suggested a condition requiring the location of the affordable housing to be submitted as part of the reserved matters relating to layout. However, the UU contains a legally binding obligation for an affordable housing scheme, including details of the numbers, type, tenure and location of the affordable housing units, to be approved by the LPA before the development is commenced. Therefore, a condition effectively requiring the same is not necessary.

120. The proposal is also subject to the signed UU, dated 6 July 2020, to secure the provision of 30% affordable housing, 10% self-build and custom housebuilding plots, amenity greenspace and play space and a SuDS on site, together with financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The obligations accord with the development plan and are required to mitigate the impact of the proposed development. As such they are necessary to make the development acceptable in planning terms. They are also directly related to the development and fairly and reasonably related in scale and kind to it. Accordingly, the deed meets the tests set out in paragraph 56 of the Framework and in Regulation 122 of the CIL Regulations 2010 (as amended).

Conclusion

121. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be allowed, subject to the conditions in the attached schedule and the obligations in the S106 UU, dated 6 July 2020.

M Hayden

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 5219-L-04 Rev A and Indicative Access Arrangements 1318/09 Rev G.

2) Prior to the commencement of development, full details of the layout, scale appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out as approved.

3) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission.

4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

5) The first reserved matters application shall be accompanied by a Landscape Retention, Creation and Management Plan for the entire site, which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. This shall include the following details:

   a) Details of new ponds / wetland creation;
   b) Details for the retention of hedgerows, trees and ponds / wetlands on the site and how they are to be protected during any construction period, in accordance with the recommendations of the FPCR Ecological Appraisal, dated April 2019, the FPCR Arboricultural Assessment, dated June 2019, and the Heritage Statement, April 2019;
   c) Planting plans, including details for the replacement of trees removed to create the site accesses off School Lane, taking into account the need to mitigate impacts on landscape and visual amenity, and to contribute to landscape connectivity and the creation of a coherent local ecological network;
   d) Details of the location of bird boxes;
   e) Detailed measures required to support bats;
   f) Written specifications (including cultivation and other operations associated with plant and grass establishment);
   g) Schedules of plants, noting species, planting sizes and proposed numbers/ densities where appropriate;
   h) Implementation timetables.

   The development shall be implemented in accordance with the approved details.

6) The first reserved matters application shall be accompanied by a 'lighting design strategy' that shall identify areas/features on site that are potentially sensitive to lighting for bats and any other species that may be disturbed, to show how and where the external lighting will be installed (through appropriate lighting contour plans), so that it can be demonstrated clearly that any impacts on wildlife are negligible (in particular bats), in accordance with the recommendations in the FPCR Ecological Appraisal, dated April 2019. All external lighting shall be installed in accordance with agreed specifications and locations set out in the strategy.

7) The first reserved matters application shall be accompanied by a comprehensive Method Statement describing Reasonable Avoidance Measures for the avoidance of harm to amphibians, and shall subsequently be implemented as approved.

8) No tree felling, vegetation clearance works, or other works that may affect nesting birds shall take place between 1st March and 31st August inclusive, unless surveys by a competent ecologist show that nesting birds would not be affected.

9) The first reserved matters application shall be accompanied by an Arboricultural Method Statement that shall include details for the protection of all trees to be retained and details of how construction works will be carried out within any Root Protection Areas of retained trees. The development shall only be carried out in accordance with the approved Arboricultural Method Statement and with British Standard BS 3998:2010 or any subsequent amendment. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the Root Protection Areas.

10) Any Reserved Matters submission for landscaping associated with the development hereby approved shall provide sufficient screening to the development site from the adjacent grade II listed building, Houghton House Farmhouse, in accordance with the recommendations of the Heritage Statement, dated April 2019. The development shall be carried out in conformity with the approved landscaping details.

11) Either with any reserved matters application or prior to the commencement of each phase full details of the existing and proposed ground levels and proposed dwelling finished floor levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such details shown on previously submitted plans(s). The development shall be carried out strictly in conformity with the approved details.

12) Either with the first or any subsequent reserved matters application, full details of the position, layout, phasing and equipping of the public open space and play areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the provision and equipping of these areas shall be carried out in strict accordance with the approved details.

13) Prior to the construction of the superstructure of any of the dwellings hereby permitted details shall be submitted to and approved in writing by the Local Planning Authority demonstrating that all new dwellings proposed to be constructed on the site will achieve a minimum Dwelling Emission Rate of 19% above the 2013 Building Regulations. Thereafter, the development shall be completed in accordance with the approved details.

14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any dwellings on each phase or following the completion of the development within the relevant Phase, whichever is the earlier. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

15) A programme of archaeological work in accordance with a written scheme of investigation, which shall have been submitted to, and approved in writing by, the local planning authority, shall be undertaken and submitted to the local planning authority as part of the first reserved matters application. This programme of works shall include an initial phase of geophysical survey and trial trenching, as well as the compilation of a report on the work undertaken and the results obtained. These works should aim to establish the presence or absence of buried archaeological remains and their nature, date, extent and significance. If archaeological remains are encountered, then a subsequent phase of impact mitigation (which may include preservation in situ by the appropriate design or siting of new roads, structures and buildings, formal excavation of remains or other actions) and a phase of appropriate analysis, reporting and publication shall be developed. A written scheme of investigation for that mitigation phase along with a timetable for its implementation shall be submitted for approval to the Local Planning Authority as part of the reserved matters application. All archaeological works shall be undertaken by an appropriately qualified and experienced professional archaeological contractor and comply with the standards and guidance set out by the Chartered Institute for Archaeologists. The development shall be carried out in accordance with the agreed details.

16) At the same time as the submission of the first Reserved Matters application a Surface Water Drainage Master Strategy for the whole site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall be guided by the principles of the submitted Lees Roxborough Flood Risk Assessment - Pear Tree Lane, Euxton, Chorley, Ref. 5901/R3, dated June 2019, including the Drainage Strategy, Ref: 5901 01-02 Rev. A. The Master Strategy shall include the following details as a minimum:

    a) schedule of pass forward rates for each phase or part phase;

    b) preliminary timetable for implementation of the SuDS system;

    c) The development levels appropriately set to ensure flows are contained within the existing ditch systems and directed safely through the development down to the boundary watercourse system to the south.

    Thereafter development should proceed in accordance with the approved Strategy, unless the Local Planning Authority gives written consent to any variation.

17) Prior to the commencement of each phase of the development, full details for a surface water regulation system and means of disposal for that phase, based wholly on sustainable drainage principles, shall be submitted to, and approved in writing by, the Local Planning Authority. For the avoidance of doubt no surface water shall discharge directly or indirectly into the public foul or combined sewerage systems. The details for each part or phase must be consistent with the approved Surface Water Drainage Master Strategy for the whole site. Those details shall include:

    a) Final sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels;

    b) The drainage scheme should demonstrate that the surface water run-off and volume shall not exceed the pre-development runoff rate and volume.

The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

c) Sustainable drainage flow calculations (1 in 1, 1 in 30 and 1 in 100 + climate change) with 10% allowance for urban creep;

d) A plan/plans identifying areas contributing to the drainage network;

e) Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;

f) A plan to show overland flow routes and flood water exceedance routes and flood extents;

g) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates;

h) Details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.

Thereafter development shall proceed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.

18) No roads proposed for adoption shall be commenced until full engineering, drainage and constructional details for them have been submitted to, and approved in writing by, the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.

19) Prior to the commencement of development, other than site enabling works, an Estate Street Phasing and Completion Plan shall have been first submitted to, and approved in writing by, the Local Planning Authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards to which estate streets serving each phase of the development will be completed. No dwelling or dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has/have been completed in accordance with the Lancashire County Council Specification for Construction of Estate Roads.

20) No dwellings shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets and public open space and any other areas within the development not to be adopted (including details of any Management Company) have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details, until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.

21) No development shall commence until a Full Residential Travel Plan has been submitted to, and approved in writing by, the Local Planning Authority, together with a timetable for its implementation. The Full Residential Travel Plan shall be guided by the principles in the Ashley Helme Framework Travel Plan, Ref. 1318/4/D, dated May 2019, submitted with the application. The

provisions of the Full Residential Travel Plan shall be implemented and operated in accordance with the timetable contained therein unless the Local Planning Authority gives written consent to any variation. All elements of the Full Residential Travel Plan shall continue to be implemented at all times thereafter for a minimum of 5 years after the completion of the development.

22) No development shall take place, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved CMP shall be adhered to throughout the construction period. The CMP shall provide for:

a) vehicle routing and the parking of vehicles of site operatives and visitors;

b) hours of operation (including deliveries) during construction;

c) loading and unloading of plant and materials;

d) storage of plant and materials used in constructing the development;

e) siting of cabins, site compounds and material storage area(s) (ensuring they comply with the Method Statement for the avoidance of harm to amphibians);

f) the erection of security hoarding where appropriate;

g) wheel washing facilities that shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud and stones being carried onto the highway;

h) measures to mechanically sweep the roads adjacent to the site as required during the full construction period;

i) measures to control the emission of dust and dirt during construction;

j) a scheme for recycling/disposing of waste resulting from demolition and construction works.

23) Prior to the construction/provision of any utility services, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works within the site boundary only.

24) The development shall not commence until an Employment and Skills Plan that is tailored to the development and will set out the employment and skills training opportunities for the construction phase of the development has been submitted to, and approved in writing by, the Local Planning Authority, unless the Local Planning Authority gives written consent to any variation. Thereafter, the development shall be carried out in accordance with the Employment and Skills Plan.

25) Any Reserved Matters application submitted in relation to layout shall include the exact location and details of an internal access road that links School Lane with the southern boundary of the application site at a point between X and Y as marked on plan ref. 2018-013/303, to ensure access to the land located to the south within the wider safeguarded allocation BNE3.9 in the Chorley Local Plan 2012-2026 Policies Map, July 2015.

26) No part of the development hereby approved shall commence until a scheme for the construction of the site accesses and the off-site works of highway improvement has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with the Highway Authority (as part of a section 278 agreement, under the Highways Act 1980). The scope of the works are shown on Drg. Nos. 1318/09 Rev. G and 1318/23 Rev. A and shall include;

a) Extension of the 20mph speed limit eastward along School Lane to the junction with Pear Tree Lane and introduction of a 20mph speed limit on Pear Tree Lane between the junction with Euxton Lane and the junction with School Lane;

b) Introduction of a footway on the south side of School Lane along the northern Site frontage and to Pear Tree Lane;

c) Introduction of a footway on Pear Tree Lane;

d) Introduction of street lighting on School Lane and Pear Tree Lane;

e) Introduction of traffic calming measures on Pear Tree Lane;

f) Introduction of traffic calming measures on School Lane between the southern Site access and the A49 Wigan Road;

g) Improvement works at Euxton Lane/Pear Tree Lane junction (SJ5) as indicated on Drg No 1318/23/A;

h) Introduction of MOVA at A49/School Lane traffic signal junction (SJ2);

i) The upgrade of 2No bus stops in the vicinity of the Appeal Site to quality disability compliant standards;

j) Any ancillary accommodation works to street lighting, drainage and services diversions, which are necessary to enable the construction of the listed works to adoptable highway standards.

No part of the development hereby approved shall be occupied until the approved schemes have been constructed and completed in accordance the scheme details.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, of Counsel	instructed Chorley Borough Council (CBC)
Nick Ireland BA (Hons), MRTPI	Director, Iceni Projects
Katherine Greenwood MTCP, MRTPI	Planning Policy & Housing Officer, CBC
Zoe Whiteside BA(Hons), PG Dip, MSc, CIHCM	Planning Policy Manager, CBC
Alison Marland BA(Hons), MRTPI	Principal Planning Officer, CBC
Iain Crossland MPLA, MRTPI	Principal Planning Officer, CBC
Stephanie Leach LLB(Hons)	Solicitor, CBC

FOR THE APPELLANT:

Christopher Young QC	instructed by Gladman Developments Limited (GDL)
James Donagh BA(Hons), MCD, MIED	Director, Barton Willmore
Andrew Moger BA(Hons), MA, MRTPI	Associate Director, Tetlow King Planning
James Stacey BA(Hons), Dip TP, MRTPI	Director, Tetlow King Planning
Christien Lee BSc (Hons), MCD, MRTPI	Planning Manager, GDL
Ben Jackson	Director, Ashley Helme Associates
Jason Clemens	Director, Head of Heritage Planning, Savills
Gary Holliday	Director, FPCR Environment and Design
Suzanne Mansfield	Director of Ecology, FPCR
Nicola Baines	Solicitor, GDL

INTERESTED PARTIES:

Glenn Robinson DMS	Team Lead, Highways and Transport, Lancashire County Council
Mrs S. Shannon	Local Resident
Susan Fox	Local Resident
Debra Holroyd-Jones	Homes England

DOCUMENTS SUBMITTED AT THE INQUIRY

ID01 Appellant's opening statement

ID02 Council opening statement

ID03 Written statement from Mrs S. Shannon

ID04 Joint Memorandum of Understanding and Statement of Co-Operation relating to the Provision and Distribution of Housing, Statement of Common Ground, Central Lancashire Local Plan, May 2020 (CD7.34)

ID05 Draft suggested Planning Conditions V6 from the Council.

ID06 Chapter 2a, PPG 2014, on Housing & Economic Development Needs Assessments.

ID07 Extracts from chapter 61 of PPG 2019 on Plan Making

ID08 Appeal decision APP/R1038/W/17/3192255, Land at Deerlands Road, Wingerworth, November 2018

ID09 Summary Grounds of Resistance in Gerald Gornall v Preston City Council High Court claim CO/1962/2020, 18 June 2020

ID10 Enclosures with Defendant's Summary Grounds of Resistance in the Gerald Gornall v Preston CC High Court claim, 18 June 2020

ID11 Claimant's Summary Statement of Facts and Grounds, Gornall v Preston CC.

ID12 Note for Inspector from Tetlow King Planning on Custom Build Homes (Buildstore) Demand Data, 22nd June 2020

ID13 Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin)

ID14 Draft S106 Unilateral Undertaking, submitted by the Appellant

ID15 Education Contribution Methodology, Lancashire County Council, April 2020 Revision

ID16 Written representations from Ms. Susan Fox, dated 18th, 23rd June and 25th June 2020

ID17 Written representation from resident of Belfry Close, Euxton

ID18 Schedule of 66 written representations on the appeal, Chorley BC

ID19 SHELAA Methodology Statement, Central Lancashire Local Plan, April 2019

ID20 Chorley Borough Council Local Plan Review, Written Statement, Adopted Edition, August 2003

ID21 South Ribble Local Plan, Policy G3 - Safeguarded Land for Future Development, adopted July 2015

ID22 Oxton Farm v Harrogate Borough Council [2020] EWCA Civ 805

ID23 CIL Compliance Statement, addendum on Self-Build and Custom Housebuilding Plots, submitted by CBC

ID24 Report to Central Lancashire Strategic Planning Joint Advisory Committee Consultation on Consultation of the Revised Joint Memorandum of Understanding, 28th January 2020

ID25 Response from CBC to written representations from Ms Fox (ID16)

ID26 Agreed note to the Inspector on future supply of Affordable Housing in Chorley borough

ID27 Chorley Local Plan [Publication] Policies Map (2012), Map 1

ID28 National Planning Policy Framework, July 2018

ID29 Core Strategy Policy 27: Sustainable Resources and New Developments, Position Statement following Deregulation Act 2015, submitted by CBC

ID30 CBC Note to the Inspector on Suggested Planning Condition 25

ID31 CBC Response to the Inspector's questions on Suggested Conditions v7

ID32 Appellant (FPCR) Response to written representations from Ms Fox (ID16) on matters relating to ecology, 25th June 2020

ID33 Appellant (Tetlow King) Response to Issues and Options Consultation Call for Sites Part 3 Annex 7

ID34 Appellant note on the Publication of the 2018-based Household Projections, 30 June 2020

ID35 Letter to MPs from Robert Jenrick, Secretary of State for Housing, Communities and Local Government, about Housing and Planning Update, 30th June 2020

ID36 Appellant (FPCR) further response to written representations from Ms Fox, dated 1st July 2020

ID37 Costs application on behalf of the Appellant, 2 July 2020

ID38 LPA response to the appellant note on the Publication of the 2018-based Household Projections (ID34), 2 July 2020

ID39 Closing submissions on behalf of the Council, 2 July 2020

ID40 Closing submissions on behalf of the Appellant, 2 July 2020

DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY

ID41 Location plan (drawing no. 2018-013/303) relating to suggested condition 25

ID42 Certified and signed copy of S106 Unilateral Undertaking from Gladman Developments Limited, dated 6 July 2020

ID43 Email from Gladman Developments containing agreed revised wording for suggested condition 25

ID44 Council response to appellant’s costs application, dated 9 July 2020.

ID45 Manchester City Council v Secretary of State for the Environment [1988] J.P.L. 774; [1988] 1 WLUK 266 (QBD)

ID46 Appellant final reply to the Council’s response to Costs application

EP4

Ministry of Housing, Communities & Local Government

Patrick Downes
Harris Lamb Ltd
75-76 Francis Road
Birmingham
B16 8SP

Our ref: APP/R0660/A/13/2197532
APP/R0660/A/13/2197529

15 July 2020

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MULLER PROPERTY GROUP
LAND OFF AUDLEM ROAD/BROAD LANE, STAPELEY, NANTWICH AND LAND OFF PETER DE STAPELEIGH WAY, NANTWICH
APPLICATION REFS: 12/3747N AND 12/3746N

1. I am directed by the Secretary of State to say that consideration has been given to the report of David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC, who held a public local inquiry on 20-24 February 2018 into your client's appeal against the decision of Cheshire East Council to refuse your client's application for outline planning permission for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and against the failure of Cheshire East Council to determine your client's application for Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.

2. The Secretary of State issued his decisions in respect of the above appeals by way of his letters dated 17 March 2015 and 11 August 2016. Those decisions were challenged by way of an application to the High Court and were subsequently quashed by orders of the

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Court dated 3 July 2015 and 14 March 2017. The appeals have therefore been redetermined by the Secretary of State following a new inquiry into this matter. Details of the original inquiry are set out in the 17 March 2015 and 11 August 2016 decision letters.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeals be allowed and planning permission should be granted.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to allow the appeals and grant planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State notes that, prior to the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road and that this has necessitated an amendment to the description of development to reflect the changes (IR7). The Secretary of State also notes that the Inspector subsequently received comments on the revisions following consultation by the appellant. For the reasons given in IR7-8, the Secretary of State agrees with the Inspector that the proposed revisions should be taken into account in the determination of this case and he is satisfied that no interests have thereby been prejudiced.

6. The Secretary of State has noted that a reference to policy RG6 of the Cheshire East Local Plan Strategy (CELPS) in IR424 should refer to policy PG6.

Matters arising since the close of the inquiry

7. On 21 February 2019, the Secretary of State wrote to the main parties to afford them an opportunity to comment on:

    - The Written Ministerial Statement on housing and planning, issued on 19 February 2019.

    - The publication, on 19 February 2019, of the 2018 Housing Delivery Test (HDT) measurement by local planning authorities and a technical note on the process used in its calculation.

    - The Government's response to the technical consultation on updates to national planning policy and guidance, published 19 February 2019.

    - The revised National Planning Policy Framework, published on 19 February 2019.

    - Updated guidance for councils on how to assess their housing needs.

    The representations that were received in response were circulated to the main parties on 11 March 2019. Further representations were subsequently received, including an assessment of the 5-year housing land supply submitted on 23 April 2019 by Harris Lamb on behalf of the appellant and the Cheshire East Annual Housing Monitoring Update Report (HMU) (Base Date March 2018) received on 24 April 2019 submitted by Cheshire East Council. Further representations were received in response to the HMU 2018.

Subsequently the Cheshire East Annual Housing Monitoring Update Report (Base Date March 2019) was submitted by Cheshire East Council on 8 November 2019. Representations received were circulated with the final correspondence received on 12 February 2020. All representations are listed at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

8. The 2019 Housing Delivery Test results were published on 13 February 2020. The Council's score was assessed as 230%, requiring no further action. The Secretary of State is satisfied that this does not affect his decision and does not warrant further investigation or a referral back to parties.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

10. In this case the development plan consists of the Cheshire East Local Plan Strategy 2010 – 2030, adopted July 2017 (CELPS), the Stapeley and Batherton Neighbourhood Plan, made in 2018 (S&BNP) and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005) (CNLP). The Secretary of State considers that relevant development plan policies include those set out in paragraph 5.1 of the Planning Statement of Common Ground (IR26).

11. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those listed in IR28-29. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR380-381.

Character and appearance

13. For the reasons given in IR382-387 and IR418 the Secretary of State agrees with the Inspector at IR388 that the proposals are in conflict with the letter and principles of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policy GS1, H1 and H5 of the S&BNP. However, he also agrees that the appeal sites are now effectively bordered on three sides by existing and emerging development. The Secretary of State also agrees with the Inspector that the rural hinterland, anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. The Secretary of State agrees with the Inspector that the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution green space makes to the scheme, would, in actuality, be limited in extent (IR418). Overall the Secretary of State affords the harm to character and appearance, and visual amenity, limited weight in the planning balance.

BMV Agricultural land

14. As set out in IR389-390 and IR419 the Secretary of State agrees with the Inspector that the proposed development would result in the loss of best and most versatile agricultural land and is contrary to Policy SE2 of the CELPS. The Secretary of State further agrees that the area of land is modest and predominantly at lower grade, and that its loss cannot be judged significant. He agrees it merits only modest weight against in the planning balance.

15. The Secretary of State notes that no other substantive harms have been identified and agrees with the Inspector that the other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance (IR419).

Highway safety

16. The Secretary of State acknowledges that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. For the reasons given in IR391–392 and IR416 the Secretary of State agrees with the Inspector that such concerns must be afforded no more than very limited weight.

Housing land supply

17. The Secretary of State has considered the Inspector's assessment of housing land supply at IR393-409 and has also taken into account the revised Framework, Housing Delivery Test (HDT) and material put forward by parties as part of the reference back processes set out in paragraph 7 of this letter. As part of this, the Council submitted their Annual Housing Monitoring Update Report (HMU) (base date March 2019) which concludes that the Council can demonstrate 7.5 years of housing land supply, assessed from 2019-2024. The appellant disagrees with this figure and concludes that the Council can demonstrate 4.72 years of housing land supply.

18. For the reasons given in IR393 the Secretary of State agrees that the basic housing requirement for Cheshire East Council is 1800 dwellings per annum (9000 over 5 years) and notes that this was agreed in a statement of common ground between the parties and was also set out in the CELPS. The shortfall to be addressed is now 3582 dwellings, which is set out in the Council's HMU 2019 and also referred to in the appellant's correspondence of 4 December 2019. The Secretary of State, therefore, uses this figure of 3582 dwellings as the shortfall rather than 5635 dwellings set out in IR393. For the reasons given in IR397-398, the Secretary of State agrees with the Inspector that any backlog should be made up within the first 8 years of the plan period as determined by the CELPS and the Examining Inspector, and that this 8-year period should not be rolled forward. As the 8-year period began on 1 April 2016, and concludes on 31 March 2024, the shortfall of 3582 should therefore be made up in the 5-year period on which the current HMU is based, with the housing requirement at this stage of the calculation being 12,582.

19. The Secretary of State notes that since the closure of the Inquiry the revised Framework and updated HDT 2019 figures have been published. The HDT figures mean that the Council is only required to add a 5% buffer in line with paragraph 73 of the Framework rather than the 20% buffer that was required at the time of the Inquiry. Including this buffer, the housing requirement is 13,211.

20. The Secretary of State considers that the Inspector's assessment of housing supply at IR400-409 is now out of date given the new information that has been submitted by parties since the end of the Inquiry.

21. The Secretary of State has reviewed the information submitted by the parties, in particular the sites where deliverability is in dispute between the appellant and the Council. The Secretary of State agrees with the appellant that some of the sites identified by the Council, at the time the evidence was submitted, may not meet the definition of deliverability within the Framework. He considers that, on the basis of the evidence before him, the following should be removed from the supply: sites with outline planning permission which had no reserved matters applications and no evidence of a written agreement; a site where there is no application and the written agreement indicates an application submission date of August 2019 which has not been forthcoming, with no other evidence of progress; and a site where the agent in control of the site disputes deliverability. He has therefore deducted 301 dwellings from the supply of housing figures.

22. The Secretary of State also considers that there are further sites where the evidence on deliverability is marginal but justifies their inclusion within a range of the housing supply figures. This group includes sites where the Council has a written agreement with an agent or developer and this indicates progress is being made, or where there is outline planning permission or the site is on a brownfield register and the Secretary of State is satisfied that there is additional information that indicates a realistic prospect that housing will be delivered on the site within 5 years. The Secretary of State considers that in total the number of dwellings within this category is 2,234.

23. Applying these deductions to the Council's claimed deliverable supply figure of 17,733, the Secretary of State is satisfied therefore, on the basis of the information before him, that the Council has a 5 year deliverable supply of between 15,198 dwellings and 17,432 dwellings. As the Secretary of State also considers that the Council has a total 5 year requirement of 13,211 dwellings, he is satisfied that the Council is able to demonstrate a supply of housing sites within the range of 5.7 years to 6.6 years. The Secretary of State has considered the Inspector's comments in IR423-425, and considers that in the light of his conclusion that there is a 5 year housing land supply, the presumption in favour of sustainable development does not apply in this case.

Need for a mixed use development

24. The Secretary of State agrees with the Inspector at IR410 that the right approach is to consider the proposal as a whole, as to do otherwise would be to invite independent evaluation of the constituent elements across the board.

Distortion of the Council's spatial strategy

25. For the reasons given in IR411, the Secretary of State agrees with the Inspector that the development proposed here cannot be considered of such a magnitude as to distort the spatial vision. He therefore agrees with the Inspector that there is no breach of policies PG2 and PG7 of the CELPS.

The benefits of the scheme

26. For the reasons given in IR412 and IR421, the Secretary of State agrees with the Inspector that the proposal would bring economic benefits, in terms of direct and indirect

employment during its construction and expenditure into the local economy. The Secretary of State also agrees with the Inspector that the site is in a sustainable location and notes that Nantwich is one of the preferred locations for development in the CELPS. He agrees that these benefits should be afforded medium weight.

27. For the reasons given in IR413 and IR421, the Secretary of State agrees with the Inspector that there will be a number of social benefits including extensive areas of public open space embracing a new village green and an enlarged Landscape and Nature Conservation Area, the scope for the development of a further primary school and improvements to sustainable transport connectivity. He agrees that these would represent significant additional social benefits, not just to new occupiers of the development, but to those in the locality as well. He also agrees with the Inspector that these benefits should be afforded medium weight.

28. For the reasons given in IR414 and IR420 the Secretary of State agrees with the Inspector that the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Whilst the Secretary of State has concluded that the Council can demonstrate a 5 YHLS, he has taken into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework, and he considers that this benefit should be afforded significant weight.

29. The Secretary of State also agrees with the Inspector at IR415 and IR420 that the scheme will include 30% affordable homes which will help meet the need in Cheshire East. The Secretary of State agrees that this is a tangible benefit and merits significant weight.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR368-372, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.

31. Having had regard to the Inspector's analysis at IR373-378, the planning obligation dated 2 March 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR374-378 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with PG6, SD1, SD2, SE2 of the CELPS, Policy RES5 of the CNLP and Policies G5, H1 and H5 of the S&BNP and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

33. Weighing against the proposal, the harm to character and appearance, and visual amenity, is afforded limited weight and the loss of BMV agricultural land is afforded modest weight. Any concerns due to increase in traffic are afforded only very limited weight. No other substantive harms have been identified.

34. Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight. The provision of affordable housing to help meet a need in Cheshire East is also given significant weight. The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight. The social benefits, including extensive areas of public open space, the scope for the development of a further primary school and improvements to sustainable transport connectivity are given medium weight.

35. The Secretary of State has found that the Council can now demonstrate a 5 year housing land supply. However, having carefully taken into account the factors weighing for and against this scheme, he considers that the overall balance of material considerations in this case indicates a decision which is not in line with the development plan – i.e. a grant of permission for both proposals.

36. The Secretary of State therefore concludes that the appeals should be allowed and planning permission should be granted.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeals and grants planning permission subject to the conditions set out in Annex B of this decision letter for Appeal A: Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works; and Appeal B: Proposed new highway access road, including footways and cycleways and associated works, in accordance with applications 12/3747N and 12/3746N.

38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

40. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

41. A copy of this letter has been sent to Cheshire East Council, Stapeley and District Parish Council and Nantwich Town Council.

Yours faithfully

Jean Nowak
Jean Nowak
Authorised by the Secretary of State to sign in that behalf

Annex A – List of representations

Annex B – List of Conditions

Annex A

Representations received in response to the Secretary of State's Rule 19 letters of 12 April 2017 and 10 May 2017

Party	Date
Cheshire East Council	5 May 2017
Patrick Cullen	5 May 2017
John Davenport	8 May 2017
Stapeley & District Parish Council	9 May 2017
Hill Dickinson (on behalf of Muller Property Group)	19 May 2017
Patrick Cullen	7 June 2017
Muller Property Group	9 June 2017

Secretary of State's letter: 21 February 2019

Party	Date
Cheshire East Council	5 March 2019
Knights plc (on behalf of Muller Property Group)	6 March 2019

Circulation of responses of 11 March 2019

Harris Lamb (on behalf of Muller Property Group)	15 March 2019
Cheshire East Council	18 March 2019

Letter from Planning Casework Unit: 19 March 2019

Hill Dickinson	22 March 2019

Letter from Planning Casework Unit: 27 March 2019

Harris Lamb	23 April 2019
Cheshire East Council	24 April 2019
Nantwich Town Council	23 April 2019

Circulation of responses: 30 April 2019

Cheshire East Council	1 May 2019

Variation of timetable: 2 May 2019

Harris Lamb	29 May 2019
Cheshire East Council	29 May 2019

Circulation of responses: 4 June 2019

Hill Dickinson	6 June 2019

Letter from Planning Casework Unit: 12 June 2019

Hill Dickinson	25 June 2019

Circulation of Hill Dickinson letter: 26 June 2019

Cheshire East Council	4 July 2019

Response to Cheshire East Council and circulation: 9 July 2019

Harris Lamb	11 July 2019

Cheshire East Council	8 November 2019

Circulation of documents received from Cheshire East Council 13 November 2019

Harris Lamb	4 December 2019

Circulation of Hill Dickinson response: 9 December 2019

Cheshire East Council request for extension	10 December 2019

Cheshire East Council	13 January 2020

Circulation of Cheshire East Council response: 14 January 2020

Hill Dickinson	31 January 2020

Circulation Hill Dickinson response: 4 February 2020

Hill Dickinson	7 February 2020

Cheshire East Council	12 February 2020

Note: Entries in bold indicate letters/circulation of information by the Secretary of State

Annex B

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.

2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

   Mixed Use and Access Applications Diagram – dwg SK15 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK16 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK17 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK19 Rev D (11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:

   a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
   b. a scheme to limit the surface water run-off generated by the proposed development
   c. a scheme for the management of overland flow
   d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
   e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
   f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).

   g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.

h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

- plans showing the extent and layout of the buffer zone
- details of any proposed planting scheme (for example, native species)
- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

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. wheel washing facilities

f. measures to control the emission of dust and dirt during construction.

g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and 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. control of noise and disturbance during the construction phase, 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.

8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.

9. Prior to the commencement of development:

a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.

b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.

c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.

10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.

11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.

12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been

constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.

15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:

    - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kV charging.
    - 5% staff parking on the office units with 7KV Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

    The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall

be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.

a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority

21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.

22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of

the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.

b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.

d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.

24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.

25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.

26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)

27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
   a. Site Location Plan reference no. BIR.3790_13
   b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).

3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number, species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.

5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.

   (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
   (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
   (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
   (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved n writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.

11.No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under t this permission.

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The Planning Inspectorate

Report to the Secretary of State for Housing, Communities and Local Government

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

an Inspector appointed by the Secretary of State

Date: 14 January 2019

Town and Country Planning Act 1990

Appeals by Muller Property Group

Cheshire East Council

Inquiry Held on 20-24 February 2018

Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire
Land off Peter Destapeleigh Way, Nantwich, Cheshire

File Ref(s): APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

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List of Abbreviations

5YS 5 year housing land supply
appx Appendix
AF Adrian Fisher – 5YS witness for CEC
BMV Best and most versatile agricultural land
b/p bullet point
CEC Cheshire East Council
Cllr Councillor
CNRLP Crewe and Nantwich Revised Local Plan 2006
DPD Development Plan Document
FN Footnote
FOI Freedom of Information
GLVIA Guidelines for Landscape and Visual Assessment (3rd edition)
HMU Housing Monitoring Update 2017, published Aug 2017 with a base date of assessment at 31/3/17
JB Jon Berry – landscape architect for Appellants
LCA landscape character area
LCT landscape character type
LDS Local Development Scheme
LHA Local Highway Authority
LP Local Plan
LPA Local Planning Authority
LPI Local Plan Inspector – Stephen Pratt
LPS Local Plan Strategy
LPpt2 Emerging Local Plan Part 2 – containing allocations and development management policy synonymous with the SADPDPD
LVIA Landscape and Visual Impact Assessment
MW Matt Wedderburn – 5YS witness for the Appellant
NP Neighbourhood Plan
NPPG National Planning Practice Guidance
OAN Objectively Assessed Needs (usually housing)
OPP Outline Planning Permission
PD Pat Downes – planning witness for Appellant
PoE Proof of evidence
PP Planning Permission
PTQC Paul G Tucker QC – counsel for the Applicants
PPG Planning Policy Guidance
ReX re-examination
RfR reason for refusal
rNPPF revised National Planning Policy Framework
RJ Reasoned Justification of the Development Plan
RM reserved matters
RTQC Reuben Taylor QC – counsel for LPA
RT Richard Taylor – planning witness for the LPA
SADPD the Site Allocations and Development Plan D (aka LP pt2)
SHLAA strategic housing land availability assessment
SOCG statement of common ground
SoS the Secretary of State for the Ministry of Housing Communities and Local Government
SPB Spatial Planning Board – CEC's planning committee

SPD Supplementary Planning Document
TA Transportation Assessment – here undertaken by SCP
XC examination in chief
XX cross examination
XX'd cross examined
WB William Booker – the Appellant's highway consultant
WMS Written Ministerial Statement

Appeal A: File Ref: APP/R0660/A/13/2197532
Land off Audlem Road/Broad Lane, Stapeley, Nantwich, Cheshire CW5 7DS

- 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 Mr Carl Davey, Muller Property Group against the decision of Cheshire East Council.
- The application Ref 12/3747N, dated 28 September 2012, was refused by notice dated 16 April 2013.
- The development proposed is Proposed residential development for up to a maximum of 189 dwellings; local centre (Class A1 to A5 inclusive and D1) with a maximum floor area of 1,800 sq.m Gross Internal Area (GIA); employment development (B1b, B1c, B2 and B8) with a maximum floor area of 3,700 sq. m GIA; primary school site; public open space including new village green, children's play area and allotments, green infrastructure including ecological area; access via adjoining site B (see below) and new pedestrian access and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Appeal B: File Ref: APP/R0660/A/13/2197529
Land off Peter de Stapeleigh Way, Nantwich, Cheshire CW5 7HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Carl Davey, Muller Property Group against Cheshire East Council.
- The application Ref 12/3746N is dated 28 September 2012.
- The development proposed is Proposed new highway access road, including footways and cycleways and associated works.

Summary of Recommendation: that the appeal should be allowed and planning permission should be granted subject to conditions.

Procedural matters

1. The application to which Appeal A relates was submitted in outline form with all matters reserved except for access. The extent of development is set out in the Design and Access Statement (DAS). An agreed Schedule of Drawings is listed in the Statement of Common Ground (SoCG) appendix X. Appeal B was not determined but Council members resolved that it would have been refused because it would be unsustainable and result in a loss of habitat for protected species and part of an area allocated for tree planting, landscaping and subsequent management, contrary to various policies.

2. Section 106 Agreements were submitted under section 106 of the Town and Country Planning Act 1990 (s106) in respect of both applications. As agreed, signed and dated versions were submitted after the Inquiry closed. All parties had the opportunity to comment on an unsigned though otherwise identical

agreement during the Inquiry. I deal with the contents of the Agreement below.

3. The Inquiry sat for 4 days. I held an accompanied site visit held on 24 February. Evidence regarding housing land supply (HLS) was heard as a round table discussion on Thursday 22 February 2018.

4. This is a redetermination following the quashing of the previous decision of the Secretary of State in the HC.

5. Since the last determination of the appeals the Cheshire East Local Plan Strategy (CELPS) has been formally adopted (20 September 2017).

6. Also since the last determination of the Appeals the Stapley & Batherton Neighbourhood Plan (S&BNP) has also been made following Referendum in February 2018 and now forms part of the Development Plan.

7. Prior To the opening of the Inquiry the appellant submitted a revised layout of the proposals which omitted the proposed access off Audlem Road; this has necessitated and amendment to the description of development to reflect the changes. Whilst such amendments have been considered and accepted by the Council, acknowledged in the SoCG, they had not been the subject of formal consultation in accordance with standing regulations. After the close of the Inquiry this consultation was undertaken by the Appellant, comments collated and submitted to the Planning Inspectorate to an agreed timetable.

8. I have taken the subsequently received comments on the revisions into account whilst writing my report. Having considered the proposed revisions and the commentary on them I conclude that as they represent a diminution in the scope of the proposals and indeed address a number of previously expressed concerns on this aspect of the proposals, it would be appropriate for them to be taken into account in the determination of the appeals. I therefore recommend the Secretary of State duly take then into account in the determination of this case.

9. The revised National Planning Policy Framework (hereafter referred to as the rFramework) was published on the 24 July 2018. In light of the revisions contained therein parties were invited to comment on them insofar as relevant to both appeals. Their responses have been taken into account below.

10. There appear to be different ways of spelling Destapeleigh. I have adopted that used on the application form.

11. Although concerns over highway safety do not form part of the Council's case, given the degree of concern expressed on this matter by other parties at the Inquiry this issue is included in the main issues and is addressed in the reasoning that follows.

12. In accordance with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant was consulted on all the pre-commencement conditions provisionally considered at the Inquiry. They

confirmed in writing that they were content with the terms of each of such conditions and these are therefore included in the report.

The Site and its Surroundings

13. The site is 12.06 hectares of flat agricultural land located to the south of the main built up area of Nantwich. It principally comprises of two fields bounded by native hedgerows with some tree cover within them. There is a field ditch along the northern boundary. The land is currently in agricultural use, primarily arable and some grazing. It is bounded to the north by Peter Destapleigh Way (A5301) and the ecology mitigation/woodland landscape area for the Cronkinson Farm development although the obligations associated with the extant consent and s106 agreement have yet to be met.

14. To the west it is bound by residential properties accessed off Audlem Road, including an approved residential development for 11 dwellings and to the east by the recently constructed residential development. The upper floors and roofs of some of the new properties may be seen from the Appeal Site. The principal length of the southern boundary runs to the south of an existing hedgerow. Part of the site runs further south, adjoining existing residential development to the west.

15. To the north of Peter Destapleigh Way is the Cronkinson Farm residential development. This includes a small parade of five shops including a Co-Operative convenience store and a public house. Pear Tree Primary School and a community hall are also situated within this residential development. To the north of the Cronkinson Farm development is the railway line connecting Nantwich / Crewe / Chester and beyond, with the town centre to the north west.

16. Existing residential development in ribbon form is situated along Audlem Road. It comprises of a mix of properties from different eras. Within this housing is The Globe public house. Bordering the south west of the application site (and accessed off Audlem Road) is Bishops Wood housing development constructed in the 1970's. Audlem Road turns into Broad Lane south of the Bishops Wood cul-de-sac and has ribbon residential development along it as well as Stapeley Broad Lane Primary School further to the south.

17. London Road, an arterial route into Nantwich, is located to the east of the former Stapeley Water Gardens site and there is residential ribbon development to the south of that site. The land between the London Road and the Appeal Site has been infilled by residential development and open space. Further to the south along London Road are more dwellings together with Stapeley Technology Park, a small employment site with a mix of office uses based around the former Stapeley House.

18. There are a number of bus stops in close proximity to the site located off Audlem Road. These bus stops are served by the No. 73 and 51 bus service. These bus services provide direct connections to Nantwich bus station and rail station continuing on to Whitchurch.

19. Nantwich train station is approximately 1.4 km to the north of the site, accessed via Audlem Way and Wellington Road. Nantwich Town Centre is approximately 1.3 km to the north-east of the site, to the north of Nantwich train station. Nantwich Town Centre provides a range of services, facilities and job opportunities. The site is, therefore, well served by a range of services, facilities and public transport opportunities, and comprises a location which is accessible to modes of transport other than the private car.

20. The Appeal B site is approximately 1.71 hectares in size and comprises part of a single field which adjoins Peter Destapleigh Way to the north. The site comprises of a mixture of unmanaged semi-improved grassland, bramble / scrub and a drainage ditch. There are two existing ponds within the site and to the west and south east of the site are areas set aside for Great Crested Newt mitigation. This relates to the Cronkinson Farm development and to the Stapeley Water Gardens scheme.

21. The western and southern boundaries of the site comprise hedgerows interspersed in places with trees. The eastern boundary of the site runs through the centre of the field and will follow the edge of the proposed new highway.

22. Further to the east of the site is recently constructed residential development. To the north of the site beyond Peter Destapleigh Way is a predominantly residential area. To the west of the site are two fields, the built up edge of Nantwich and the A529 Audlem Road which is flanked by development on either side. To the south of the site is the site of the proposed mixed use led development subject to planning appeal APP/R0660/A/13/2197532.

23. The site will connect to the Peter Destapleigh / Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The spur for the fourth arm is already in place with signals, street lighting and tactile paving. It is agreed by the parties that this planning permission is, therefore, extant.

24. Planning permission was granted on the 4th January 2001 for the "construction of new access road into Stapeley Water Gardens" (planning application reference: P00/0829). This permission allowed the construction of a carriageway on a north-south alignment similar to that now proposed in this planning application with a connection to the Peter Destapleigh Way /Pear Tree Field highway junction via a fourth arm.

Planning Policy

25. The revised National Planning Policy Framework (the rFramework) was published on the 24 July 2018. Paragraphs 7-14 and 59-76 of the rFramework, together with their attendant footnotes (as paragraph 3 affirms), are particularly relevant to HLS. The rFramework also sets out the position with regard to weight and conformity of existing development plan policies. The PPG confirms that any shortfall in HLS should be made up over the next 5 years.

26. The Development Plan for Cheshire East comprises for the purpose of the appeals the recently adopted Cheshire East Local Plan Strategy 2010 - 2030, and the saved policies from Crewe and Nantwich Replacement Local Plan (February 2005). The relevant policies from each of the plans considered relevant are set out in the Planning SoCG[1].

27. As a result of a Referendum held on the 15 February2018 the Stapley & Batherton Neighbourhood Plan was approved and consequently is now considered 'made', and thus now forms part of the Development Plan.

28. The Planning SoCG also identifies the following as material planning policy considerations: Interim Planning Statement: Affordable Housing (Feb 2011), Strategic Market Housing Assessment (SHMA), Strategic Market Land Availability Assessment (SHLAA), Article 12 (1) of the EC Habitats Directive and the Conservation of Habitats and Species Regulations 2010.

29. High Court cases referred to include Suffolk Coastal Appeal Court Judgement[2] , Suffolk Coastal Supreme Court[3], St Modwen Appeal Court Judgment[4], and the Shavington High Court Judgement[5].

Planning history

30. The planning application for Appeal A scheme was submitted to the Council in September 2012 and it was registered on 9th October 2012. It was assigned planning application reference number 12/3747N. The application was determined at Committee on 3rd April 2013 and was refused planning permission by Members in accordance with the planning officer's recommendation[6].

31. The original appeal was considered at a public local inquiry between 18th and 21st of February 2014 in association with Appeal B. Both appeals were recovered by the Secretary of State following the close of the public inquiry. The inquiry Inspector recommended in his report dated 18th June 2014 that planning permission be granted for both appeals but in his decision letter dated 17th March 2015, the Secretary of State rejected this Inspector's recommendation and refused both appeals. (The '**Original Decision'**) The Original Decision of the Secretary of State was subject to an application to the High Court and was subsequently quashed by order of the court dated 3rd July 2015. The appeals were, accordingly, re-determined by the Secretary of State and he issued a new decision on 11th August 2016. (The '**Second Decision'**).

32. In the Second Decision the Secretary of State refused planning permission Appeal A on two grounds, the first being that, '*the proposals would cause*

[1] Paragraph 5.1 ID2.
[2] CDQ1.
[3] CD C12.
[4] CDQ2
[5] [2018] EWC 2906 (Admin) Case Number: CO/1032/2018.
[6] CD K2

harm to the character and appearance of the open countryside, for the reasons at Paragraph 27 to 28 above. This harm will be in conflict with Paragraph 7 and the fifth and seventh bullet points of Paragraph 17 of the Framework. Having given careful consideration to the evidence to the inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with Paragraph 112 of the Framework and carries moderate weight against the proposals for the reasons given at Paragraphs 31 to 34 above.

33. The *Secretary of State concludes that the environmental dimension of sustainable development is not met due to the identified harm, especially to the character and appearance of the countryside. He concludes that the development does not deliver all three dimensions of sustainable development jointly and simultaneously, and is therefore not sustainable development overall.*

34. *For the reasons given above, the Secretary of State concludes that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the polices and the Framework taken as a whole*.'

35. The Second Decision was challenged by the Appellant and in a Consent Order issued by the High Court on 14th March 2017 the Second Decision was also quashed. In the letter of 12th April 2017 from DCLG confirming that the Second Decision had been quashed, the Secretary of State invited further representations in respect of the following matters:

    a) Progress of the Emerging Cheshire East Local Plan Strategy;
    b) The current position regarding the five year supply of deliverable housing sites in the Council's area;
    c) Any material change in circumstances, fact or policy, that may have arisen since the decision of 11th August 2016 was issued and which the parties consider to be material to the Secretary of State's further consideration of this application.

36. Having requested that written representations be submitted in respect of these matters, the Secretary of State determined that, in the light of representations received the inquiry should be re-opened, by way of correspondence dated 3rd August 2017.

37. The purpose of the planning application for the Appeal B scheme was to provide access to the adjoining mixed use proposal that is subject to Appeal A. Originally, Appeal A had a separate access arrangement but it is now agreed between the parties that the Appeal Site A should be accessed solely from Appeal Site B and the original access arrangements suggested for Appeal Site A (via Audlem Road / Broad Lane) are no longer pursued. Thus, Appeal Site A falls to be determined on the basis that access will be achieved through Appeal Site B alone. The process by which this is to be achieved is explained in Section 3 below.

38. The planning application for the Appeal B scheme was submitted to Cheshire East Council in September 2012. It was registered by the authority on 5th October 2012. The target date for the determination was 30th November 2012 but the application was not determined prior to the appeal being lodged.

39. The process by which the Appeal B scheme was determined by the Secretary of State is the same as for Appeal A above. The appeal will be heard alongside Appeal A. It is agreed that the merits of the two appeals stand or fall together.

The proposals

40. The details are confirmed in the Planning SoCG. The concept for Appeal A is also set out in the Design and Access Statement (DAS)[7]. Most of the houses would be on the western side of the site. On the eastern side, linking in with the new highway access road in Appeal B, would be land for employment, public open space including a new village green with an equipped play area, a local centre and a primary school. Allotments would back onto the existing houses to the west. The DAS confirms the amount of development as 189 dwellings at an average density of just over 30 dwellings per hectare with up to 57 affordable dwellings in a series of clusters.

41. These would comprise five elements as follows:

- Parcel 1 is on the northwest side of the site and could contain up to 51 dwellings.
- Parcel 2 is located to its south and could have up to 62 dwellings.
- Parcel 3 is to the south of the employment area could deliver 15 dwellings.
- Parcel 4 is along the main southern boundary and could contain up to 36 dwellings.
- Parcel 5 is on the eastern side of application site and could provide up to 25 dwellings.

42. The application proposals will be a mix of 2, 3, 4 and 5 bedroom dwellings. The affordable housing mix would be based on 2 and 3 bedroom homes, split between 35% intermediate tenure for sale and 65% social rented. The total affordable housing provision represents 30% of the total number of units. Parcel 5 forms part of a new village centre. Located around a village square and adjoining the village green, the residential element forms the eastern side of the village centre with the new primary school site and local centre forming the western side. The village green will have both general open space (with appropriate pathways and street furniture sited on the edges) and a children's equipped play area in the form of a LEAP. The primary school site will be reserved for future education expansion.

43. The local centre comprises of up to 1,800 sq m (19,375 sq ft) and would accommodate a range of uses. It is envisaged that the local centre will

[7] CD H12.

comprise of 8 – 10 separate units with a single A1 unit of 1,000 sq m (10,764 sq ft) and the remaining floorspace split between units ranging from 50 sq m to 150 sq m (538 sq ft to 1,615 sq ft). The employment accommodation is situated adjacent to the local centre. Comprising of 3,700 sq m (39,826 sq ft) in total, it is envisaged this will be divided into units based on 100 sq m (1,076 sq ft). 2.7 Located on the south western side of the application site is an allotment area of 0.5 hectares. The allotments will be available to both new and existing residents. The provision of open space will be controlled by planning conditions.

44. In addition to the public open space there are two principal interlinked areas of green infrastructure. The first is along the northern boundary in the vicinity of the new village centre and the employment area. This will include the planting of a new hedgerow. At its western end, it connects to the second principal green infrastructure area which runs on a north-south axis to the east of residential parcels 1 and 2. This reflects an existing mature hedgerow.

45. The development would include a pedestrian/cycle network which, taken with its close proximity to the established community, would be intended to provide safe, direct, convenient and interesting routes through the site. The single vehicular access now proposed utilises the putative infrastructure already established on Peter Destapeleigh Way. This is now supported with linkages to the new realigned access road giving access to the greater site. This in effect comprises Appeal B, which differ from the extant and part implemented scheme previously granted planning permission[8].

46. Appeal B proposes an access onto Peter Destapleigh Way at its junction with the Pear Tree Field signalised junction in the form of a fourth arm to the signalised junction. The application subject to Appeal B is similar in nature to the approved scheme (P00/0829) for access on this site, albeit with some amendments. The spur of the fourth arm is already in place with signals, street lighting and tactile paving.

47. Planning permission was granted on the 4th January 2001 for the "construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829). This permission allowed the construction of a carriageway on a north – south alignment, similar to that now proposed as part of Appeal B. The spur of the fourth arm junction has been constructed so that the permission has been implemented. A copy of the correspondence from CEC which confirms this position is in the Core Document List (CD E2).

48. Appeal B is similar in nature to the extant scheme, albeit with some minor amendments. Appeal B realigns the road further east in order to create a direct route into the land to the south, subject to Appeal A. The position of the roundabout has also been relocated further south. A plan showing the road layout for the extant scheme, Appeal B and a composite plan showing Appeal B overlaid on the approved scheme is included in the appeal documents.

[8] Planning application ref. P00/0829

Other matters agreed between the Parties

49. The parties have also agreed a Sustainability Analysis[9] in relation to key facilities and services in the context of the site, which include:

- Primary Schools – Pear Tree Primary School, St Annes Catholic Primary School and Stapeley Primary School;
- Secondary Schools – Brine Leas Secondary School;
- Health Facilities – Kiltearn Medical Centre, a pharmacy and numerous dentists;
- Retail – Morrisons Supermarket, Coop Convenience Store and numerous non-food retail units located to the south of Nantwich; and Public Transport Facilities – Nantwich Railway Station and numerous bus stops

50. The site has been assessed against the North West Sustainability Toolkit. Whilst some of the distances vary slightly between the Appellant's assessment, the Council concluded in the committee report to the original application that '*on the basis of the above assessment the proposal does appear to be generally sustainable in purely locational terms*'. The Council has reaffirmed this position in the report to committee of 22nd November 2017.

51. In terms of connectivity to higher order centres, Crewe lies 6.4 km (4 miles) to the north east of Nantwich and Newcastle-under-Lyme is 21 km (13 miles) to the east. These settlements have employment, advanced educational facilities, retail, leisure and entertainment venues. These settlements can be accessed via a variety of routes, which avoid the town centre. These include Broad Lane, London Road and Newcastle road.

52. In addition to the topics set out above further additional matters are agreed between the parties;

- The original planning permission in respect of appeal B is acknowledged as extant by CEC (P00/0829). It, therefore, represents a fall-back position.
- Access to Appeal Site A will only be achieved through Appeal Site B if Appeal A is allowed.
- Since it is no longer necessary to access the site via Audlem Road / Broad Lane, the masterplan and the red line area for Appeal A can be amended. This reduces the extent of Appeal Site A. The parties agree that updated plans L9 should now form part of the Appeal Scheme A if planning permission is granted.
- It is agreed that 25% of the aggregated sites constitute best and most versatile land 6% of the site is grade 2 and 19% of the site is grade 3a.
- It is agreed that there is no reason to resist the scheme in terms of ecology and that a suitable mitigation package can be provided as part of the proposed planning obligation under s.106.

[9] 4.13 Planning SoCG ID2.

- It is agreed that there are no technical reasons to resist a development in terms of highways, drainage, residential amenity and environmental health matters.
- The Council's Landscape Officer does not consider that the proposals will have a significantly adverse landscape impact.

53. The Housing Land Supply SoCG also covers other significant areas of agreement. This advises that: the LPA's current position on 5 year HLS is set out in the Housing Monitoring Update published August 2017, base date 31st March 2017; the Housing Monitoring Update takes the housing requirement of 1,800 dwellings per annum set out in the Cheshire East Local Plan Strategy (LPS) as the relevant housing target for the calculation of 5 year HLS; The Housing Monitoring Update has a base date of 31st March 2017. The relevant five year period in HMU is therefore 1st April 2017 to 31st March 2022; that the backlog should be calculated over the plan period to date (1 April 2010 – 31 March 2017) and amounts to 5,365 dwellings and that in accordance with paragraph 47 of the first published version of the NPPF it is agreed that it is necessary to apply a 20% buffer, reflecting persistent under-delivery against the housing requirement.

54. Paragraph 73 of the rFramework revises the format of applying the buffer to the requirement, indicating a range of percentages to be applied in different scenarios. This matter is addressed in detail through each party's submissions in relation to the rFramework NPPF below.

The Case for the Muller Property Group

55. At the time that these proposals were submitted almost 5.5 years ago, there was no Local Plan Strategy in place, and CEC at the time undoubtedly couldn't demonstrate a 5YS. As matters stand now, whilst the LPS is now in place, the next part of the Local Plan, which considers the merits of non-strategic allocations and which will review settlement boundaries, is still a long way from adoption. Of more concern is that CEC are still lack a sense of urgency about the need to bring forward additional housing in sustainable locations now, despite two recent appeals which have concluded that a 5YS cannot be demonstrated. And despite the fact that even on its best case that CEC has only a marginally above 5 years supply. In fact for the reasons articulated in evidence by the appellant, CEC has significantly less than 5YS of deliverable housing, and this site is needed now.

56. Thus, residential development on this site was originally recommended for refusal but was refused by members at a time when there was no plan and no 5YS. Then, after appeal it was recommend for grant by an Inspector when there was no plan and no 5YS. It was refused by the SOS whose decision was then quashed, re-determined only to be quashed in the High Court again both when there was no plan and no 5YS. In the same month that the LPS was adopted instead of re-determining the appeal the SOS decided to reopen this inquiry. That was a disappointment to the Appellant, however ironically it has provided the opportunity for the SOS to determine the appeal based upon a properly robust scrutiny of CEC's housing supply. Back in July 2017 CEC were robustly contending that their assessment of 5YS had been

endorsed by the LPI who had concluded that CEC should have a 5YS on adoption, however his conclusions were caveated with the following warning:

> *"Much will depend on whether the committed and proposed housing sites come forward in line with the anticipated timescale and amended housing trajectory."*

57. The essential reason why two Inspectors concluded that there was not a robust 5YS after two inquiries in 2017 was that the 2017 HMU, published at the end of August 2017 demonstrated that the anticipated delivery rates for last year (ie 2016/17) were significantly below those being put to the LPI, demonstrating a failure in the first year after the period being assessed by the LPI. Predictive exercises tend to become less accurate the further one looks into the future. Here the prediction being put forward by a combination of private sector evidence being put to the examination and the application of the LPA's standard methodology on lead in times and build rates has gone wrong immediately. Moreover there is strong evidence to conclude that has gone wrong in relation to 2017/18 as well.

58. It is notable that the LPI concluded that CEC should be able to demonstrate a 5YS on adoption. Had he known about the substantial under-delivery when compared to the trajectory he endorsed in the LP, then he would plainly have been far more circumspect. As was put in cross examination, based on what we now know to have been the actual delivery in 2016/17, then the supply position before the LPI was that CEC couldn't demonstrate a 5YS based on their own trajectory. It was for that reason that CEC sought to downplay the importance of the trajectory as predictive tool for assessing the overall realism of CEC's claimed supply (past and future). The problem with that is not only that it was based upon an erroneous understanding of the St Modwen case (see below), and that it is at odds with the role of a housing trajectory in national guidance and policy, but most importantly, it ignores the fact that the housing trajectory in CEC was the yardstick that the LPI uses to gauge whether or not the supply position in CEC is realistic.

59. Properly understood CEC cannot demonstrate a robust 5YS and their anticipated delivery rates claimed before the LPI are untenable. Yet instead of reacting to the recent appeals with an immediate reassessment of its standard methodology on build rates and lead in times and an immediate sense check of likely delivery from its various components of supply CEC has instead done a further trawl of agents/developers to try to make good its evidential deficit, it has sought to down play quite how wrong its LP trajectory was, and how implausible its HMU trajectory is. It now contends that the Park Road Inspector got the supply figure wrong by well over 1000 units.

60. This mixed use scheme brings benefits which are diverse and considerable – ie not simply the provision of much needed homes, but deliverable commercial development which will provide opportunities for local businesses and for the local population, which will result in a sustainable pattern of development, as well as a small local centre which will meet the needs of both the proposed housing and employment but also recently consented housing which is being constructed nearby. The reality of the position is that

the appeal proposals are a sustainable form of development and that the only objection to them is the in principle one that the proposals are an unjustified incursion into the countryside beyond the settlement boundary. Contrary to that position the development is plainly needed now, the tilted balance is engaged and there are no adverse effects which significantly and demonstrably outweigh the benefits.

5 year land supply

61. For the reasons explained in evidence the issue of 5YS is not a determinative one in relation to the outcome of this appeal. Even if the LPA were to be able to just demonstrate a 5YS then it is firmly submitted that the appeals should still be allowed, since on the LPA's best case the position is a marginal one given its substantial under-delivery compared to the position endorsed by the LPI.

62. However on the evidence, it is clear that CEC cannot demonstrate a robust 5YS and therefore paragraph 11 (by means of footnote 7) is triggered. Prior to the exchange of evidence the Appellant invited CEC to agree to this appeal being determined on the same basis as the Park Road Inspector ie that there is a range which is just above or just below 5 years but the LPA can't demonstrate a robust 5YS therefore the presumption is triggered. This was thought to be a proportionate course of action, mindful that consistency in decision making is a material consideration of considerable importance. CEC declined this invitation.

Planning Policy Guidance context

63. Before turning to the detail of the current land supply position in Cheshire East, it is worth setting out the correct approach to guidance covering the subject; the provisions in the PPG supplement the NPPF and, do not have the same status as NPPF policy. Of most relevance to this appeal are 3-031 and 3-03311. From those paragraphs the following points arise:

    a. Deliverable sites include those with permissions in the LP, unless there is clear evidence that the site won't be implemented within 5 years. From this:

        i. Once a site is included as deliverable then there remains a requirement to assess the likely yield from sites with permission or an allocation. It is simply wrong to say, as the Council does in closing at paragraphs 31 and 32, that an assessment of yield is not required. PPG 3-031 is clear the "robust, up to date evidence" is required on the deliverability – i.e. the yield. It is difficult to see how an assessment of supply can be undertaken if that an assessment of yield is not undertaken. On AF's approach the decision maker would be obliged to accept the LPA's judgments when assessing delivery from sites with an allocation or permission, absent contrary evidence. However this is no more than an approach to assessing yield which –without policy support– presumes that the Council is always right. Not only is that not supported in policy it belies the repeatedly experience of this particular LPA's predictive ability over many years.

ii. This means that sites with PP are presumed to be deliverable unless there is evidence to the contrary. It does not mean that if a site has planning permission, then there is a rebuttable presumption that its yield is whatever the Council says it will be.

iii. This approach does not include allocated sites with the presumption that they are to be treated as deliverable, but the PPG does. There may be an interesting question at some future point in time as to whether that makes any difference, but in this case there is almost no dispute as to which sites are the ones which are considered to be deliverable – the dispute revolves around the likely yield from those sites.

b. When assessing whether a site should be included in the 5YS and the yield from that site, the decision maker must consider the time it will take to commence development (lead in time) and the build out rate.

c. The PPG makes clear (3-033, paragraph 2) that the yield of sites as well as the deliverability of sites forms part of the annual assessment of the 5YS that the LPA is required to conduct. Ie it self-evidently points out to an authority that deliverability and then likely yield are two separate exercises.

d. If an LPA does the following, then it will be able to demonstrate a 5YS (from PPG 3-033):
i. A robust annual assessment;
ii. A timely annual assessment;
iii. Using up to date and sound evidence;
iv. Considering the proposed and actual trajectory of sites in the supply;
v. Considering the risks to a proposed yield;
vi. Include an assessment of the local delivery record;
vii. All of the above assessments must be realistic; and,
viii. The approach must be thorough.

64. Drawing all of this together, it is not right to suggest that Inspectors in the Park Road and White Moss cases were wrong and that there is no requirement on the Council that their assessment of the 5YS is robust. The questions seemed to be put on the basis that the word "*robust*" is not included in the NPPF. This cannot possibly be correct. The language of the PPG (as above) clearly indicates that the LPA must demonstrate a 5YS – within that the evidence must be sound and it must stand up to scrutiny. If the Council's approach was right (which no Inspector has to our knowledge endorsed) then Appellants up and down the country have been wasting time and money arguing contrary land supply positions; provided the Council can show some sort of evidence that would suffice.

65. CEC advanced an argument that when trying to assess the yield from a site, that the correct test was the capability of the site to deliver the expected numbers, and not the probability. His basis for this argument was paragraph 38 of *St Modwen*. This is, simply put, wrong and counter to common sense.

66. CEC fell into the trap that Lindblom LJ was warning decision makers of in paragraph 39 of the same judgment:

> *One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".*

67. CEC were unable to say whether or not they were identifying the "likely yield", the "possible yield" or the "almost certain yield" from the sites assessed. This from an apprehension not to give up the interpretation of the St Modwen case in which they failed to understand that the case revolved around the meaning of the term "deliverable"– a point which just doesn't arise in this case. This inability to explain the yield from sites within 5 years fundamentally undermines the utility of his exercise and means that it is not comparable to the appellant's approach to "probable yield". If CEC's position is merely what the site is "capable of delivering" then it is bound to be higher than what is probable and therefore betrays a fundamental error on the part of CEC which may explain why the LPA's predictive ability has proven to be wrong.

68. On the application of the above analysis, the following points are agreed:

- It is agreed that the requirement is 1800 dpa.
- The agreed five year period runs from 31 March 2017 (the base date of HMU) to 31 March 2022.
- The agreed backlog in delivery between 2010 and 2017 amounts to 5635 dwellings, which equates to 3 years of the overall requirement for the first 7 years of the plan.
- It is agreed that a 20% buffer applies in relation to paragraph 47 of the Framework and that 10% applies in relation to paragraph 73 of the rFramework, if appropriate.

69. From the examination of the sites claimed to be within the supply the following is clear:

i. The appellant's assessment of the sites the Council seeks to include in the supply are identified in evidence. A number are drawn-out to illustrate the key arguments against the sites being included in the supply to the extent claimed by the Council:

ii. LPS 1 and the Crewe opportunity area is not a "*specific deliverable site*" in NPPF§47 terms and should not be included within the supply.

iii. The Appellant's assessment of lead in times to construction in Cheshire East (Appendix MW 6) the following should be applied – 1 year from submission to the grant of outline permission; 1 year to a reserved matters application; 6 months to determine the reserved matters application; and, one year to the completion of the first dwelling. This is a total lead in time of 3.5 years. This is vital to deciding what is in the supply as it allows for an assessment of yield. Unlike CEC's standard methodology for lead in times and build rates, MW's evidence is transparently evidenced and is palpably more reliable than CEC's "black box" approach. Thus, whilst MW accepts these conclusions on average lead in times can be rebutted by specific evidence, it requires sound, realistic and up to date evidence (see para 2.5(d) above and PPG 3-033). No such evidence was forthcoming from the Council. Instead the Council offered a partial assessment of lead in times from a self-serving data set in Mr Fisher's rebuttal proof of evidence (Appendix 2). Mr Fisher's assessment is partial as it completely fails to take into account sites started before the adoption of the LPS and the lead in times between application and between construction starting and the first unit emerging from the ground (conceded by Mr Fisher XX).

iv. Despite the policy requirements in the Framework/rFramework and PPG (see paragraph 2.4 and 2.5 above), Mr Fisher thought it appropriate for the Council to make assumptions about sites being delivered by multiple builders without any supporting evidence. Whilst that may be a correct statement that doesn't mean it comprises evidence! The Secretary of State cannot as a matter of law (given the clear interpretation of policy and guidance above) adopt this approach when evidence not an aphorism is needed. If the Council cannot produce evidence to support their assumptions on build rates, yield or commencement timelines then the Secretary of State must prefer the reasoned and evidenced approach put forward by the Appellant, which precisely mirrors the concerns of the last 2 inspectors to consider this topic in detail. Indeed Mr Fisher continued to make unsubstantiated assertions – "*we increasingly see single builders doing 50+ units a year on a site*". The Council's own assessment of build out rates in the 2017 HMU (Appendix MW17) does not support Mr Fisher's statement. Statements such as this cannot be given any weight when the Council's only evidence does not support them.

v. The 'sense check' for the use of the LPA's standard methodology as to lead in times and build rates is what it has predicted will be delivered and what has actually been delivered. As noted below the prediction for 2016/17 in the LP trajectory of 2955 (presumably based on the optimism of those making representations to the hearing) has proven to be groundless, and this year looks set to be similarly wrong compared to the LP and the HMU trajectory.

vi. MW and the Inspectors in the WMQ[10] and Willaston[11] inquiries are in agreement on the yield from many of the sites. Mindful of the materiality of consistency of decision making, the SOS should be slow to deviate from those conclusions without the clearest possible evidence for so doing (the sites are noted in Appendix MW4), with respect AF asserting that he thinks that the Inspector's got it wrong is not a such a reason.

vii. AF at one point made the bold point that both Mr Inspector Rose in the White Moss Quarry ("WMQ") inquiry[12] and Mr Inspector Hayden in the Willaston inquiry[13] both fell into serious error by concluding that a 5YS could not be demonstrated having concluded that the supply was either just above or just below 5 years. Whilst the language used was that of 'precaution', in fact both Inspectors reached an orthodox conclusion with regard to paragraph 47[14], having determined that the supply was within that range. Thus, the conclusion reached by those senior Inspectors was that they were unable to determine with confidence that the Council had a 5YS. That means no more than that they could not be satisfied that the LPA could demonstrate that it had a deliverable 5YS. Therefore they approached the evidence on the assumption that Framework paragraphs 49 and 14 were engaged – deciding those appeals using the tilted balance. Both Inspectors' reasons were impeccable.

It was notable by its absence in relation to the sites where MW allies himself with the conclusions of those previous Inspectors' that time and again the Council failed to bring forward evidence to rebut the Inspectors' conclusions, reached after an exhaustive analysis of the evidence before them, in those inquiries from 8 November 2017.[15]

Even if the Council is correct on their least attractive argument that they are not required by policy to rely upon "robust' evidence to demonstrate a 5YS, they nonetheless are forced to accept that these appeal decisions are material considerations. Furthermore they accepted in XX the fundamental importance of the consistency of

[10] C.D29 Appendix MW1.
[11] CD D29 Appendix MW2 at [103].
[12] Ibid.
[13] Ibid.
[14] Subsequently paragraph 11 incorporating footnote 7.
[15] CD29 / Appendix MW1 at [28] – [59] and Willaston - CD D29 / Appendix MW2 at [58]–[89]).

decision taking, and that the Secretary of State in this appeal would need to give reasons (and therefore have supporting evidence) for deviating from those decisions. Whilst this is trite law, it makes it all the more baffling that having accepted those principles, they failed to produce any evidence to properly rebut conclusions of the WMQ and Willaston Inspectors.

The Council has comprehensively failed on both counts – they have failed to produce robust evidence to demonstrate a 5YS; and, they have not produced any evidence to rebut the Inspectors' conclusions in the early appeals, either evidence arriving post those decisions or to explain why those Inspectors got it wrong. Instead they continue to rely upon the approach in the LPS, the same arguments that failed in the WMQ and Willaston inquiries.

viii. What is interesting is to consider the predictive confidence with which sites were said to be on the verge of progressing in the HMU in August 2017 and then again at inquiries in late 2017, but where there has been yet further slippage. Time and again sites where applications were on the verge of being made haven't resulted in applications (e.g. the promise in the Park Road inquiry made by AF that the Handforth Growth Village application would be lodged in January, when there is still not even a masterplan in the public domain in March let alone an application), and for sites where applications were on the verge of determination then they remain on the verge of determination (e.g. the reserved matters application on White Moss phase 1).

ix. The Council has adopted a hybrid "Sedgepool 8" approach to addressing its backlog. Mr Fisher sought to explain the approach as meaning that the 8 year period rolled forward throughout the plan period. This approach runs counter to the specific conclusions on the matter by the Local Plan Inspector[16]. The LP Inspector concludes at paragraph 72:

"CEC therefore proposes to fully meet the past under-delivery of housing ***within the next 8 years*** *of the Plan period ("Sedgepool 8"). This would require some 2,940 dw/yr (including buffer) over the next 5 years, which would be ambitious but realistic and deliverable, as well as boosting housing supply without needing further site allocations."*

It is plain from this part of the LP Inspector's report that he envisioned the Council meeting its under-delivery in the first 8 years of the Plan – i.e. by April 2024. As Mr Wedderburn made clear, Sedgepool 8 is not Sedgefield, it is unique to Cheshire East. In the absence of an accepted approach that everyone understands, Sedgefield or Liverpool, the words of the LP Inspector carry a great deal of significance as the only direction for how this unique

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methodology should be applied. Had the Inspector wanted the 8 year period in Sedgepool 8 to have rolled forward, he would have explicitly said so. Not to do so in effect means that the backlog keeps getting rolled ever forward, at least on the Liverpool method the backlog has to be addressed within the LP period. Thus if Sedgepool 8 means rolling the shortfall forward over a perpetually rolling 8 year period then it will be a longer period than the Liverpool methodology, if it means doing so until the 8 years hits the end of the plan period then it is the Liverpool methodology by stealth – either way it is a distortion of the grace afforded by the LPI to deal with the shortfall within the next 8 years. It is of course recognised that the Park Road Inspector didn't agree with this argument – but his argument was based upon giving the Council some leeway in the early years after adoption of the plan. With respect that is not grappling with the issue properly, and the SOS is therefore respectfully invited to do so.

x. Instead of the high delivery rates that were contended for as being realistic before the LPI (evidenced by the LP trajectory and noted by the LPI at paragraph 72 of his report) delivery rates thus far are well below those needed by CEC to plausibly claim a robust 5YS. To use a different metaphor, wheels have come off the Cheshire East Local Plan Strategy ("CELPS") in the first year after that assessed by the LPI. As at the base date of 1/4/17, it has under-delivered by 5365 units (equating to a deficit of 3 years of the requirement in the first 7 years of the plan), already.

xi. The LP trajectory identifies that to secure a 5YS the LPA needs to deliver 2466dpa each year from 1/4/17. That figure is comparable under the HMU because the rolling Sedgfield 8 lets the LPA off the hook from not reducing a single unit from its shortfall last year (1796 – essentially equating the requirement but not eroding the shortfall at all – which is still then spread over the next 8 years). AF projects in his evidence that this year there will be delivery of 2000 units based on current information – which means delivery way below the ~2500 figure needed each year for the next 5 and pushing back meeting the shortfall by yet another year. In the real world this is woeful under-delivery and yet AF sought to argue it as if things were on-track.

Mr Fisher accepted that the LP Inspector put weight on the anticipated delivery described in the LP trajectory[17]. However, he somewhat inexplicably sought to argue against the 2955 figure being CEC's realistic prediction on the basis that there was no adopted plan during the first 3 years of the plan period – something the LP Inspector would have been well aware.

The only sensible conclusion is that the LP Inspector saw Sedgepool 8 as meeting the undersupply by 2024, and therefore having rolled the base date forward by one year the shortfall should be met within the

[17] CD A40 paragraph 68.

next 7 years resulting in an annual requirement (including shortfall) of 2955. On this basis alone CEC cannot demonstrate a 5YS.

70. The yardstick of the LPA's judgment is of course its own predictive ability, and in this case it has been found wanting in the starkest possible terms within the first year of the period considered by Inspector Pratt. The figures could not be more telling, contrasting the case being put last year before Inspector Pratt and that being put this year at this inquiry. Thus comparing the trajectory at the end of the 2016 Housing Topic Paper, which might usefully be considered to be its 2016 HMU against the trajectory at the back of the HMU, the following obvious points can be made:

(i) in the 2016 HMU, the LP predicted that its delivery for 2016/17 would be 2955, in fact it was 1762 (ie 40% less than it predicted and told Mr Inspector Pratt). Even if the target was 246617 as AF now maintains, that is still 27% below the level it should have been;

(ii) both AF and MW provide evidence which triangulates upon around 2000 units as the likely delivery in 2017/18, against a requirement of 2466 on AF's case or 2955, which is either 19% or 32% below where it should be. That is also 2 years out of the 5 years considered by Inspector Pratt where the prediction of the LPA has failed – one wonders at what point the LPA go back to re-read the serious caution that Inspector Pratt issued in paragraph 68 of his final report?

(iii) in the 2017 HMU it predicts that delivery in 2017/18 will be 3373, which is double that actually achieved in 2016/17 (1762), and is way above any trendline of delivery. It is also 33% higher than CEC were predicting would be delivered in 2017/18 in its 2016 HMU (which predicted 2549 being delivered). In fact it is likely to be around 2000 units. That difference alone should lead anyone to seriously question whether its predictive methodology is flawed;

(iv) other figures for the 5 year period under consideration at this inquiry (ie 5 years from 1/4/17) also vary wildly from the 2016 HMU to the 2017 HMU; for example in 2016 it was predicted that 2019/20 would deliver 3,501 but in 2017 it is predicted that it will be only 3032;

(v) both trajectories (the LP and the HMU 2017) reveal that in no year has the LPA ever achieved its requirement (1800 pa) in the seven years since the plan started (2010), which means that year on year the backlog has been increasing until it is now the equivalent of 3 years supply. Had delivery taken place as planned in 2016/17 the backlog would have reduced by 1155 units, as it is, it has increased and is not now proposed to be removed for a further 8 years despite it relating to need arising now;

(vi) to be blunt, both trajectories have an air of unreality to them since both are predicated on an immediate and dramatic upturn in delivery – ie they assume imminent delivery way in excess of past delivery rates for a decade after which delivery rates will once again fall back

to pre-2017 rates. The LPA's case was tough before the LPI but is now implausible. In order to achieve a 5YS now it needs to take a far more positive attitude to the release of deliverable sites without land use constraints in sustainable locations, and not to assume an ever more ostrich-like approach to what has actually taken place compared to its predictions since Inspector Pratt's assessment based on a base-date of April 2016.

(vii) Importantly, the failure of the LPA's predictive ability has been in the first year of delivery – if a plan fails that badly, this early the need for intervention is acute. There is no warrant to give the plan a bit more time to play out – the need for action is an immediate one and is overwhelming on the evidence. It is depressing that having been told that implicitly by two Inspectors that CEC are trying ever harder to man the bilge pumps on their own private
Titanic that is their claimed 5YS.

71. The supply of housing land is not a ceiling and given the current state of affairs in this LPA, they should be actively searching out new sites with manageable planning harms to come forward. The Council's closing submissions (paragraphs 63 – 67) argues that permitting this site would reduce the allocations going forward to meet more local needs. This argument is wafer thin, and completely unsupported by any evidence provided at the inquiry. The figures contained in a local plan (including CELPS where this point is recognised at 8.73) are a floor and not a ceiling, and there is no support in policy or evidence to support this argument. Given there are no technical objections to this appeal site, its locationally sustainable and its intrinsic merits have already been endorsed by one Inspector (in the context of there being an immediate need), it is an obvious candidate to come forward now to help this Council meet its needs and to help to address its already significant under supply.

72. The Council's closing go on to say that if the SoS concludes that the LPA has failed to demonstrate a 5YS, then settlement boundaries will need to flex, but it contends that it should not be at this site (paragraph 153). This approach shies away from meeting an immediate problem. This approach has no founding in policy; it suggests that some sort of sequential test should be applied when a 5 year housing land supply problem arises. The appropriate approach is to consider whether or not the development being put forward to rectify the 5 year housing land supply problem is acceptable in planning terms and constitutes sustainable development. If it is, then it should be permitted. Sustainable sites should not be precluded from being developed when there is an immediate need on the basis that the Council thinks that there might be better sites to meet the need that it has denied, and based on evidence it has not presented! This is an abrogation of proper decision making.

73. The Council sought to argue that lapse rates shouldn't be applied, when it accepts that permissions do in fact lapse at a rate which is presently unknown. It's reasons for rejecting MW's approach in this regard is that it is said to duplicate the buffer – which it plainly doesn't – one relates to appraising supply, whereas the other relates to establishing the requirement.

CEC bases its argument on a fundamental misunderstanding of *Wokingham BC v SOSCLG* [2017] EWHC 1863 (Admin). When that case is examined correctly, the issue was whether the Inspector was right in law to apply a lapse rate despite no party raising it during the inquiry (at paragraph 55). When the judge went on to consider whether lapse rates could be law *per se*, he concluded (paragraph 69):

> *It is for the decision-maker to determine in the first instance whether or not the application of a "lapse rate" to the estimated five-year supply of deliverable housing to reflect the Council's "record of tending to over-predict delivery" involves an unwarranted adjustment, given an increase in the housing requirement by 20% "where there has been a record of persistent under delivery of housing", in each case in order "to provide a realistic prospect of achieving the planned supply.*
>
> Therefore, provided the issue is fully ventilated before the Inspector, as it was at this inquiry, then the conclusion can be made to add a lapse rate onto the requirement. Given this Council's history of under delivery and continuing over estimation of future performance, a lapse rate of 5% as proposed by the Applicant is entirely appropriate. Indeed, it will be a vital tool to pushing this Council to meeting its need to provide homes.

74. In conclusion, on both methodology and content, the evidence before this Inspector confirms the Appellant's case that the LPA can demonstrate at most 4.25 YS. If the Council's approach to Sedgepool 8 is applied, the land supply position on the LPAs approach to yield goes to 4.42 years. It follows from such an outcome on the land supply position that paragraph 49 of NPPF is engaged (subsequently paragraph 11 if the rFramework through footnote 7) and the decision necessarily should be taken based upon the tilted balance therein. The SOS will undoubtedly be told by CEC that the recently adopted local plan can, and is, delivering the houses to meet the identified need. However, it is not that straightforward. One cannot say that simply because there is a recently adopted LP, that the land supply position is safe. The following points are of note:

> a. The Appellant is not seeking to "go behind" the conclusions of the LPS Inspector which were based upon an analysis of Housing Supply position as at April 2016. Rather this inquiry is charged with critiquing the 2017 HMU which has rolled the position forward by one year;
> b. AF at one point in his evidence seemed to run an argument that has repeatedly failed at inquiry – that the task of an inquiry is to review the position as it was known at the base date and then close one's mind to knowledge of what has come to light in relation to the various components of supply since the base date. With respect that position is wrong:
>
> i. It is not the approach of the LPA in its 2017 HMU which relies on information which has come to its attention after the base date;
>
> ii. It is not the approach of AF who also relied upon information which has come to his attention after the base date, and indeed he has

sought to gather more evidence after the LPA lost the 5YS argument at 2 previous appeals;

iii. It is not the approach of Inspectors in countless appeals across the Country;

iv. It is contrary to the approach required as a matter of law in the *Stratford on Avon DC v SOSCLG* [2013] EWHC 2074 (Admin);

v. It literally makes no sense – a decision maker is required to form a view on what the 5YS is on the evidence before him/her a s.78 appeal is not a form of quasi-judicial review to review the LPA's assessment at a point in time.

75. Inspectors in the White Moss and Willaston decisions[18] both concluded that a precautionary approach should be taken to the 5YS issue and that the tilted balance should be engaged. It is just wrong to contend (as AF now seeks to) that the LPA was constrained in how it wished to put its case, or that there was a misunderstanding of the implications of the St Modwen case. To the contrary in both appeals there was no constraint on the information that the LPA was able to bring forward, noting that it had failed to provide much of the base information on which the 2017 HMU was predicated AND submissions on the St Modwen case were made by leading counsel for CEC in the latter case which followed the reporting of the decision of the Court of Appeal.

76. As noted above the St Modwen case is in any event something of a red herring. It deals with what should be the components of supply and essentially concludes that the footnote to the then paragraph 47 means what it says; but it says nothing about how to approach what is the expected yield that should be assessed from those components of supply, where the PPG requires robust evidence to be provided where PP is not in place.

77. The Inspector's decision in Shavington is being challenged, as the Council is eager to point out. The basis of challenge seeks, through the Shavingon decision, to impugn the rational and unimpeachable approach to calculating 5YLS in the WMQ and Willaston decisions. This challenge is being robustly defended, by both the Secretary of State and the Land Owners. Until the claim is heard, those decisions stand and the approach to 5YLS they adopt should be followed – not just in the interests of consistency in decision making, but because it is the correct approach in law and a failure to do so would be unlawful. The presumption of legality applies, and the Inspector is invited to give precisely no weight to the fact of the challenge (just as was the case in relation to the local plan challenge which was live at the time of the White Moss Quarry and Park Road appeals). Moreover, insofar as some of the arguments raised in that challenge mirror the fallacious arguments being raised by CEC in this case then the Secretary of State is respectfully invited to have regard to the rejection of those self-same arguments being raised on his behalf by the Government Lawyers. It is apprehended that the challenge will

[18] Ibid.

have long failed by the time that this decision is ultimately made by the Secretary of State in any event. It has of course not been welcome news to the LPA that it cannot demonstrate a robust 5YS, and as a professional one can have a degree of sympathy for the LPA which has gone through a very long process to secure adoption of the LPS only to discover that houses aren't being delivered sufficiently quickly to ensure a 5YS. However, what is startling is that rather than taking steps to remedy the position (e.g. advancing the pt2LP, and releasing more deliverable sites) the LPA has chosen instead to deploy its resources into defending the obviously indefensible. Based on a robust and objective assessment AF is wrong and the LPA cannot demonstrate a 5YS, and the deficit can only be made good in the short-term by the release of additional sustainable and deliverable sites without technical constraints such as this one.

Appellant's supplementary comments on revisions to the National Planning Policy Framework

78. Paragraph 73 of the revised Framework states:

> *"Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old".*

79. The requirement to assess the housing supply as set out previously in NPPF para 47 therefore remains. In the case of Cheshire East the housing requirement is established in the Cheshire East Local Plan Strategy ("the LPS"). Policy PG 1 sets a housing requirement of 1,800 dwellings per annum. This plan was adopted on 27 July 2017 and is therefore less than 5 years old. In accordance with paragraph 73, this housing requirement should therefore form the basis of the assessment. The housing requirement set out in the LPS was used in the appellant's evidence heard at the Inquiry in February 2018 and indeed it was common ground at the Inquiry that this housing target should be applied. The appellant's approach is therefore considered appropriate with regard to the revised NPPF.

Identifying the Base Date and Five Year Period

80. The rFramework does not comment on the base date or the 5 year period to apply to the assessment. The appellant's evidence on 5 year HLS applied a base date of 31st March 2017 and a five year period of 1st April 2017 to 31st March 2022, which aligned with the Local Planning Authority's Housing Monitoring Update (published August 2017, base date 31st March 2017). This based date of 31st March 2017 was therefore agreed, and is contained within the Statement of Common Ground (SoCG). This approach is considered appropriate with regard to the rFramework.

The Appropriate Buffer

81. Paragraph 73 of the rFramework states:

> "*The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:*
>
> - *5% to ensure choice and competition in the market for land; or*
> - *10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
> - *20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply."*

82. Footnote 39 of the rFramework explains that from November 2018 "*significant under delivery*" of housing will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement. At the time of writing, the relevant section of the PPG which may provide further guidance on this matter has not been updated to reflect the revised NPPF.

83. As above, footnote 39 is clear that the Housing Delivery Test will not be used to measure significant under delivery until November 2018 or thereafter. Paragraph 215 of the rFramework also explains that the Housing Delivery Test will apply from the day following the publication of the Housing Delivery Test results in November 2018.

84. Paragraph 73(b) advises that a 10% buffer can be applied by a LPA where it wishes to demonstrate a five year land supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market that year. The reader is then directed to footnote 38 which states:

> *"For the purposes of paragraph 73B and 74 a plan adopted between 1st May and 31st October will be considered recently adopted until the 31st October of the following year; and a plan adopted between the 1st November and the 30th April will be considered recently adopted until 31st October in the same year".*

85. As set out in evidence at the inquiry, in the first seven years of the LPS plan period, net housing completions in Cheshire East had been on average 1,034 dwellings per annum, and did not reach the 1,800 target at any point. It was therefore common ground at the inquiry earlier this year that a 20% buffer be applied, reflecting persistent under delivery as identified in the Framework.

86. In respect of the implications of the rFramework, the Local Plan Strategy was adopted by Cheshire East on 27 July 2017. As such it qualifies as *"recently*

adopted" until 31 October 2018. Whilst the PPG has not been updated to provide detailed guidance upon this matter, the rFramework indicates that a 10% buffer to housing land supply is appropriate in any decision taken up to 31 October 2019.

87. From 1 November 2018, whether there has been a significant under delivery of housing will then be a matter for the decision maker to determine. Therefore the appellant maintains that a 20% buffer should apply from 1 November 2018 given the previous under delivery throughout the plan period.

88. It is also noted however that the Housing Delivery Test will then be used to measure significant under delivery from the day following its publication in November 2018. It is expected to use the national statistics for net additional dwellings, which have typically been published in mid-November over the last few years. Consequently, it seems likely to be later in November or thereafter before the Housing Delivery Test is in place.

89. The Framework is clear that the measurement of what amounts to "significant" under-delivery will be based upon the publication of the Housing Delivery Test that will be November 2018. In this case, the 10% buffer should apply as a minimum as the LPA have a recently adopted local plan in accordance with footnote 38 of the Framework. rFramework paragraph 73 gives flexibility to allow the decision maker to apply judgement as to whether or not criteria a) b) and c) applies based upon the evidence before them.

90. Whilst footnote 39 may not apply until November 2018, and because the Framework is silent on how one should determine what is "significant in the interim, it is considered that the 20% buffer should apply as until this time, the application of a 20% buffer is a matter for the decision maker to determine.

91. "Significant" under-delivery is defined as being below 85% of the annual housing requirement. It should be noted here that the transitional arrangement identified at paragraph 215 of Annex 1 only applies to the application of footnote 7 in terms of triggering the tilted balance of paragraph 11d of the Framework. It does not affect the determination of whether or not the 20% buffer applies. The appellant's 5 year HLS calculation is therefore resupplied below showing both a 20% and also a 10% buffer to cover NPPF para 73b.

Addressing the under-provision

92. The rFramework does not specifically state how the backlog should be addressed, however it does set out the Government's objective of "*significantly boosting the supply of homes"* (paragraph 59). Addressing the backlog as soon as possible would be consistent with this paragraph. The supporting Planning Practice Guidance (PPG) has not been updated at the time of writing. Paragraph 3-035 of the PPG: *"How should local planning authorities deal with past under-supply?"* provides the guidance that was set out in the evidence for the appeal. It states:

"Local planning authorities should aim to deal with any undersupply within the first 5 years of the plan period where possible. Where this cannot be met in the first 5 years, local planning authorities will need to work with neighbouring authorities under the 'Duty to Cooperate'."

93. Consequently, the PPG is clear that Local Planning authorities should aim to deal with the backlog within five years. Whilst the PPG does appear to recognise that there may be circumstances in which this is not possible, it does not suggest that the backlog should be addressed over any other period in those circumstances. Instead it states that local planning authorities will need to work with neighbouring authorities under the 'Duty to Co-operate', presumably with adjacent authorities looking to help to address the backlog by making immediate provision.

94. A draft HLS section of the PPG was made available in association with the consultation on the draft rFramework. The draft PPG proposes to remove the reference to the Duty to Co-operate and replace it with reference to the plan making and examination process. It states (on page 14):

"Local planning authorities should deal with deficits or shortfalls against planned requirements within the first five years of the plan period. If an area wishes to deal with past under delivery over a longer period, then this should be established as part of the plan making and examination process rather than on a case by case basis on appeal".

95. This draft guidance is consistent with the appellant's position given in evidence and maintained at the inquiry. The appellant's position was to acknowledge that the matter of undersupply of housing delivery had been considered at the Local Plan examination and that the first year of the 'Sedgepool 8' period had elapsed. The appellant's position is that the LPA's "rolling" 'Sedgepool 8' approach would result in the shortfall continuing to be moved backwards and not actually be addressed at all, rather than being addressed within the 8 years as the LPS Inspector intended. The appellant's approach to addressing the under-provision therefore is considered appropriate with regard to the rFramework.

Assessing the Deliverable Supply

96. Paragraph 67(a) of the rFramework is particularly relevant to the appellant's 5 yr HLS case in this appeal. At the Inquiry, there were a number of sites contested at inquiry between the Council and the appellant over whether they should be expected to deliver housing within five years. The assessment of the parties and the supporting evidence was provided within the context of footnote 11 of paragraph 47 of the previous version of the NPPF where *'deliverable'* was defined. That footnote was the subject of a number of Court Judgements, in particular the *St Modwen* judgement, which was discussed at the Inquiry. In the rFramework, the definition of "*Deliverable"* is set out in the Glossary at Annex 2, and this states:

"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five

years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."

97. The definition of deliverable has now been clarified and sets out the expectations for both local planning authorities and others in assessing the supply of housing land. This change is significant in that it sets out separate tests for two categories of sites as follows:

- Category A - Sites that are not major development (i.e. 9 dwellings or less[19]) and sites with detailed planning permission: these should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (some examples are given as to what constitutes clear evidence).
- Category B - Sites with outline planning permission, permission in principle, allocated in the Development Plan or identified on a Brownfield Register: these should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.

98. In summary, sites under Category A are to be considered deliverable unless the appellant, in challenging the LPA's 5 year HLS, provides clear evidence that those sites are not deliverable. Conversely sites in Category B should not be included in the five year housing land supply by the LPA unless there is clear evidence that housing completions will begin on these sites within five years. This is a significant change as the test has now been reversed for sites with outline permission or development plan allocations. Previously under footnote 11 sites were deemed to be deliverable unless there is clear evidence that they were not. Therefore, national policy now stipulates that these should no longer be included unless there is specific evidence that they are deliverable.

99. The appellant considers that this change in approach to considering whether a site is deliverable gives overall support to the appellant's position and undermines the Council's approach to the supply in the evidence before this appeal.

100. In general, it does not alter the appellant's position on the sites that were challenged in the appellant's evidence in this appeal. Without seeking to introduce new evidence or reopen the detailed consideration of sites undertaken at the inquiry, the appellant's approach at the inquiry was

[19] As per the definition of "major development" within Annex 2 of the rFramework.

generally not to challenge whether sites should be considered deliverable, but to challenge whether sites had a realistic prospect of delivering of the number of units indicated by the Council within 5 years. The change in approach in the rFramework would add weight to our concerns for Category B sites, that the Council has not demonstrated (to quote the rFramework) with *"clear evidence that housing completions will begin on site within five years"* (and without seeking reopen the detailed consideration of sites undertaken at the inquiry it may also provide a reason to challenge further sites in the supply).

101. The appellant provided evidence disputing 41 sites and the majority of these were sites within category B. Of these sites, 34 were sites without planning permission, sites with outline planning permission or sites with outline permission subject to S106. In the case of these sites, the onus would now be on the Council to demonstrate in evidence why it should be considered that housing completions will begin on site within five years. A summary of the sites falling within Category A and Category B are set out in the table below.

Site Name/ Reference	**Category A**	**Category B**
LPS1 Central Crewe		✓
LPS2 Basford East Crewe (Phase 1)		✓
LPS4 Leighton West (part a)		✓
LPS5 Leighton		✓
LPS6 Crewe Green		✓
LPS8 South Cheshire Growth Village		✓
LPS10 East Shavington	✓	
LPS11 Broughton Road, Crewe		✓
LPS13 South Macclesfield Development Area		✓
LPS14 Kings School, Fence Avenue		✓
LPS15 Land at Congleton Road		✓
LPS16 Land south of Chelford Road, Macclesfield		✓
LPS17 Gaw End Lane, Macclesfield		✓
LPS18 Land between Chelford Road and Whirley Road		✓

LPS20 White Moss Quarry, Alsager		✓
LPS27 Congleton Business Park		✓
LPS29 Giantswood Lane to Manchester Road		✓
LPS33 North Cheshire Growth Village		✓
LPS36 Land north of Northwich Road and land west of Manchester Road, Knutsford		✓
LPS37 Parkgate Industrial Estate, Knutsford		✓
LPS38 Land south of Longridge, Knutsford		✓
LPS42 Glebe Farm, Middlewich		✓
LPS43 Brooks Lane, Middlewich		✓
LPS46 Kingsley Fields	✓	
LPS48 Land adjacent to Hazelbridge Road, Poynton		✓
LPS57 Heathfield Farm, Wilmslow		✓
LPS61 Alderley Park	✓	
1934 Land off Dunwoody Way, Crewe	✓	
2991 Land adjacent to 97 Broughton Road, Crewe	✓	
3535 Santune House, Rope Lane, Shavington	✓	
3574 Land west of Broughton Road, Crewe	✓	
3612 Land south of Old Mill Road, Sandbach		✓
2896 Land to the north of Moorfields, Willaston		✓
4302 Kings School, Macclesfield		✓
4752 Land off East Avenue, Weston		✓
4725 Abbey Road, Sandbach		✓
5672 Land off Church Lane Wistaston		✓
5709 Land off London Road, Holmes Chapel		✓
406 Victoria Mills		✓
3175 Chelford Cattle Marker and Car Park		✓

5899 Elmbank House, Sandbach		✓

102. The change in approach to considering whether a site is deliverable does however run very much counter to the LPA's approach in this appeal with regard to assessing the deliverable supply. The Council's evidence to the appeal set out a number of observations on the *St Modwen* judgement and the consideration of whether a site is deliverable. The Council essentially suggested that the *St Modwen* Court of Appeal Judgement is a 'game changer' in that the threshold for calculating 5 year HLS had been lowered in some significant respect and contending that, given the strategic sites are allocated and these sites are 'capable' of having homes built on them, *St Modwen* obviated the need for the LPA to evidence that their yields in the 5 year period are 'realistic'. Clearly the rFramework now makes absolutely clear that Category B sites should no longer be included in the supply unless there is specific evidence that they are deliverable. It is therefore it is clear that robust evidence on delivery is needed, as was argued by the appellant.

103. In summary, the supply of deliverable sites must be determined within the context of the rFramework which is a material change from that in the superseded Framework. It is for this reason, and the test in paragraph 67A (and associated definition of what comprises a deliverable site provided within Annex 2) that means that the Appellant's housing land supply position should be favoured over the Councils.

Housing land supply calculation

104. The above comments in respect of the approach to 5 year HLS in the rFramework refer to each of the key stages of assessment. The final stage is to undertake the calculation itself. The appellant's calculation was set out in the Appellant's 5 year HLS Proof of Evidence in Table 16 entitled "Conclusions on 5 year land supply CEC / Appellant". At the end of the Inquiry on 23 February 2018 a revised version of this table was submitted at the Inspector's request, updated to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground (SoCG).

105. It is considered that, given the reference to a 10% buffer in rFramework para 73(b), it may be of assistance to now provide a table showing the appellant's position updated to reflect the concessions on supply made by both parties in the SoCG with a 10% buffer applied.

Updated version of Table 16 of the Appellant's Proof of Evidence "Conclusions on 5 year land supply CEC / Appellant" to reflect the concessions on supply made by both parties in the 5 year HLS Statement of Common Ground in this appeal and also showing the calculation applying a 10% buffer

		Appellant's position when the 20% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)	Appellant's position when the 10% buffer is applied (supply addressed in 7 years) (updated to reflect SoCG on sites)
A	**Net annual requirement (2010 to 2030)**	1,800	1,800
B	**Housing requirement 1 April 2017 – 31 march (A x 5)**	9,000	9,000
C	**Shortfall 1 April 2010 - 31 March 2017**	5,365	5,365
D	**Shortfall to be addressed in 5 years**	3,832	3,832
E	**Requirement + shortfall (B+D)**	12,832	12,832
F	**Buffer (20% of E)**	2,566	n/a
	Buffer (10% of E)	n/a	1,283.2
G	**Requirement + buffer (E+F) = supply required**	15,398	14,115.2
H	**Assessment of Supply (updated)**	13,101	13,101
I	**Supply demonstrated (H/G x 5) in years**	4.25 years	4.64 years

106. The table above sets out that, where the appellant's approach to supply is preferred, even if a 10% rather than 20% buffer is applied the Council's 5 year HLS figure remains below the requirement.

107. The appellant's position in the light of the rFramework therefore remains that the LPA cannot demonstrate a deliverable five year housing land supply, as was set out in evidence to this appeal and at the inquiry. Therefore, in accordance with paragraph 73 of the rFramework it remains the position of the appellant that the Council are unable to robustly demonstrate a 5 year supply of deliverable housing sites. Therefore, the tilted balancing exercise required by paragraph 11d of the rFramework is engaged as per footnote 7. The conclusions reached by the appellant in the evidence heard before the inquiry therefore remain valid in the context of policies contained within the revised Framework.

Landscape

108. The application site carries no designation, nor is anyone arguing that it is a valued landscape in rFramework terms. In local landscape policy terms

(SE4), the scheme is compliant for the reasons explained by Mr Berry. Moreover, it is clear from the proposed Landscape Strategy principles that the development will respond to the existing landscape with good legibility and a strong sense of place. Any marginal criticisms that have been raised over the course of the last 4 years have been fully taken on board in the latest revisions to the illustrative masterplan. In JB's view the appeal site is an unremarkable and ordinary parcel of land with no particular features that would set it out of the ordinary. Its relationship to the urban area, especially following recent planning permissions granted to the east and west and illustrated on JB's appendix 1, drawing SK19, underscore the site's obvious capacity to accommodate the proposed development. Importantly, that capacity has only increased since the application was first refused (contrary to officer's recommendations) as a result of the adjacent development (especially the DWH land to the east which will have been evident on site); and also as a result of the scheme no longer proposing its own dedicated access to the south, but through an access from the north of the site, the junction with Peter Destapeleigh Way already having been completed.

109. Given that CEC have never refused this application on landscape grounds and have never raised a freestanding landscape impact case against the proposals either at this inquiry or its precursor, one might legitimately ask why the Appellant has sought to present a fully articulated landscape case. Indeed, Mr Gomulski CEC's landscape architect who is habitually called at housing appeals in this borough reiterated his advice back in November 2017 that there would be no significant adverse landscape and visual impacts (after mitigation) and that a landscape reason for refusal could not be substantiated.

Local Plan considerations

110. The Council's case is in essence that there is no need for additional housing and that there are breaches of the recently adopted Local Plan Strategy ('CECLP') whose policies should be treated as not out of date and therefore the application must be refused. To put it mildly, that is an oversimplification of the situation of the task that is before this Inquiry, and takes a myopic view of the actual position that CEC finds itself. Unarguably, in accordance with s.38(6) of the 2004 Act the SOS must determine this appeal in accordance with the development plan unless material considerations indicate otherwise. As PD pointed out in his evidence, whether the policies of the development plan remain relevant and up to date is a material consideration that must be taken into account. Further, the question of whether or not the appeal proposal is in accordance with the relevant policies of the development plan is not simply a yes or no question the answer to which determines the outcome of this appeal. The degree of conflict is plainly relevant and an essential question to consider. Similarly, the actual land use consequence of a policy breach has to be interrogated.

111. That is particularly important here when the alleged harm is the principle of development beyond settlement boundaries, and not any particular significant land use harm, such as landscape, ecology, drainage etc, other than the loss of an area of BMV agricultural land (which is agreed not to be a determinant issue in any event). However the loss of BMV is not significant

and the site is not currently farmed. As recorded in the note submitted to the Inquiry by the Appellant, and not disputed by the Council, only 17% of the appeal site A is BMV (sub-grade 3a). As set out in appendix 2 to PD's POE (the POE of M J Reeve on BMV for the original inquiry at para 6.1), the site "would primarily use one of the few areas dominated by poorer non-flooding land on the margins of Nantwich, so meets the requirements of the NPPF to use poorer quality land in preference to that of a higher quality. The LP at policy SE.2 requires that BMV is "safeguarded". It is agreed that the site will result in the loss of BMV it is a small amount (2.6ha in total across Appeals A and B) and that this loss is not determinatve (see SoCG). Taking these points together, in the context of a county where most of the land is of similar grade (see RT PoE at 6.33), the poor quality of the other land in site A and that the parties agree that the loss of BMV is not determinative, the loss of BMV must accord no more than limited weight (as PD concludes in his POE at page 60). Furthermore, if the SoS concludes that the Council cannot demonstrate a 5YHLS, then greenfield sites will need to be delivered and he should reach the same conclusion as the original inspector at paragraph 12.1626 that in those circumstances the release of the BMV on this site to development causes no harm.

112. The starting point for considering whether the relevant policies are up-to date and the weight to be afforded to any breaches of them is a consideration of the basis upon which the plan was adopted. It is agreed by both of the main parties planning witnesses that the settlement boundaries used in the CECLP are those from the previous Crewe and Nantwich local plan. PD explained that the LP settlement boundaries that were set in 2006 were only ever intended to last until 2011, by which time there would have been expectation that they would have been reviewed.

113. The only modifications that were made to these boundaries during the recent LPS process was to incorporate the strategic allocations into them. This did not constitute a review of the boundaries and it is agreed by both planning witnesses that there is therefore a need for the boundaries to be reviewed as part of the next stage of plan preparation SADPDPD/LPpt2, which will also consider allocating additional sites so as to meet CEC's needs, for a plan whose plan period started back in 2010. This was acknowledged by the LPI in his report at paragraph 111 and is expressly acknowledged in Policy PG 6 itself along with its supporting text27.

114. As a matter of sensible planning, as a matter of logic and as a matter of mere common sense the geographical extent of these settlement boundaries are therefore obviously "out of date", even if the text of the policies themselves correspond to the approach of the rFramework – a distinction which goes unremarked in the LPA's evidence. This is further evidenced, by the number of dwellings that have been granted planning permission by the Council and at Appeal over the last 5 years and in the overall approach adopted in the LPS itself that involves very significant development outside of settlement boundaries of the saved Local Plan – thereby underscoring it's out of datedness. In a situation where it is acknowledged that development will be required outside of adopted boundaries to meet identified development needs it is nonsensical of the Council to argue that those boundaries are up to date.

115. One final point is that the position is not altered by the making of the NP. That is because Inspector Jonathan King in emasculating the draft NP rewrote the housing chapter of the NP to mirror the settlement boundary in the saved LP and the NP expressly notes that the boundaries will be reviewed as part of the Ppt2. It follows that policies RES-5 and Policies PG-6 are out of date in their geographical extent and this must reduce the weight to be attached to them and the weight to be attached to any breaches of them. This is precisely the approach of the Park Road Inspector who at paragraph 16 observed:

> *"Whilst, for the time being, the settlement boundaries and extent of the Open Countryside in the CNRLP as amended continue to carry weight as part of the development plan, there is clearly an acceptance in Footnote 34 and the CELPS Inspector's report that they will be subject to further change. This may be to accommodate non-strategic sites allocated for development as part of the SADPDPD or where planning permissions have been granted for development beyond existing boundaries or in the light of other criteria yet to be defined. To this extent the current boundaries cannot be considered to be fully up to date."*

Thus, it is accepted by the Appellant that these policies are breached but as the Appellant correctly contends the extent of that breach has to be assessed to determine what weight to be attached to the breach. The appeal site lies in the defined open countryside but is in no way an isolated or irregular intrusion into the open countryside. It is an obvious extension to the settlement of Nantwich with development on three sides. Importantly, other than the fact of the breach, the Council does not identify any land use harm arising from the breaches of policies RES-5 and PG-6. That there is no land use harm that arises from the breach of these policies must reduce still further the weight to be attached to these policy breaches.

116. There is an allegation within the RfR as well as RT and AF's proof that to allow the appeal proposals would somehow place the Spatial Vision of the LPS 'out of whack'. That is founded upon the proposition that Nantwich has already delivered the amount of housing that was anticipated as part of the LPS spatial distribution. The point is however nonsensical and belied by the words of the LPS itself, since policy PG7 sets out figures for each settlement that are expressly said to be "neither a ceiling nor a target". And yet RT purports to interpret PG7 in precisely that way, at one point even alleging that there was a conflict with the policy (despite it not being cited in the RfR). Moreover, the table following paragraph 8.77 in the LPS is expressed to be an 'indicative distribution'. Thus whilst it may be that CEC could contend that it would be a powerful material consideration against a scheme which was grossly out of kilter with the overall distribution of the LPS, it is an abuse of the express language of the plan to contend that there is a breach of policy PG7 as RT alleges.

117. However, to arrive at that point one has to come to the view that the proposals would indeed be sufficiently at variance with the indicative distribution to be said to result in a land use distribution contrary to the objectives of the LPS. In White Moss Quarry, Inspector Rose seems to have

arrived at the conclusion albeit for a much bigger proposal close to a much smaller settlement. However, merely being a little above the indicative figure of 2050 when that figure is not a ceiling nor a target does not lead to the inexorable conclusion of an offence against the distribution contended for by RT.

118. Moreover, RT was unable to answer the "so what?" point – i.e. even if there is development in excess of the notional distribution, if there is an immediate need for more housing in CEC there are no land use consequences identified which arise as a result why is there a consequence which even weighs into the 'harmful' side of the scales. In XC it was argued that the position is directly analogous to the White Moss Quarry appeal – however that decision bears close reading, since the Inspector there was dealing with an argument that the proposals (which were much bigger than those proposed here close to a much smaller settlement) would give rise to harmful out-commuting– whereas here no such allegation is made.

119. As RT was at pains to emphasise in his proof, PG-7 does not identify maximum limits on housing numbers in any location, nor does it identify targets. For a breach of PG-7 to arise it cannot simply occur as a result of a numbers game, there has to be a consequence of that number of housing units coming forward in the location in question. Here there has been no attempt at all to identify any such harm. Thus there was no alleged (unmitigated) infrastructure harm to Alsager and there was no harm to social cohesion, further there is therefore no technical justification for withholding consent.

120. It is all well and good to allege that a proposal is contrary to the spatial strategy of the development plan but in order for such an allegation to be credible the proposal in question must actually be contrary to the spatial strategy and even if it is there must be some consequence of that. Here, the appeal proposal is not contrary to the spatial strategy because the numbers identified in PG-7 are not maxima, and harm has not been shown if panning permission is granted.

121. The appeal proposal should be decided in accordance with the development plan unless material considerations indicate otherwise. When looking at the development one looks at whether the proposal is in overall accordance with the development plan. The appellant accepts there are some breaches of development plan policies, but these are limited30, where the breaches arise as a result of settlement boundaries the geographical extent of these policies are out of date and when harm is considered, there is none. This proposal does not give rise to harm to the spatial strategy, gives rise to not meaningful land use harm and comprises sustainable development. Consequently, regardless of the 5yrHLS situation the appeal proposal should be approved.

Other considerations

Deliverability

122. In something of an unexpected turn of events CEC ran a surprising and misguided case against the appeal proposals, namely that even if panning permission was granted that the proposals would not deliver very much within the plan period in any event.

123. The first attack was both an attack "ad hominem", or in modern parlance, the LPA sought to play the man and not the ball. AF presented 3 examples of where consents had been granted to the Appellant but where delivery had not come forward as expected. However, in XX he readily accepted that he had presented a deeply partial picture and had identified only those sites which had under-delivered and that he had said nothing at all about sites where the Appellant had brought forward sites which had readily delivered units. That of itself should have compromised AF's credibility. However, he also failed to point out that the third of the sites that he cited (Old Mill Sandbach) hadn't delivered because of a land dispute with the Council, where the latter (as landowner) were essentially holding-out for ransom value for land which had been compulsory purchased as part of a highway scheme but was never needed. The picture painted was a disingenuous and partial one.

124. The argument was then put that based upon MW's delivery rates, and assuming that the SOS wouldn't issue his decision quickly that the delivery rates for the site would be low. AF's picture painted in his proof of a dilatory land-banking strategic land company is with respect ludicrous;

    (v) agents have been appointed as PD explained in XC and the likely purchaser for part of the residential component will be DWH, who are building homes rapidly next door – this will be a continuation of that site, resulting in obvious benefits in terms of lead in time as well as evidencing a clear local market;

    (vi) there is clear evidence of a demand for the employment units – see letter from RWR Walker Surveyors - 15 March 2018.

125. There is no basis for the pessimism expressed by AF (which may be contrasted with gross over-optimism elsewhere), there is compelling evidence that this site will deliver within the 5 year period.

Neutral outcomes and Benefits

126. The Transport Assessment concludes without challenge from the highway authority that the existing road network has the capacity to readily accommodate the traffic anticipated from the scheme. There would therefore be neither severe adverse effects nor deleterious impacts on the safety of other road users. This matter therefore, despite the recognised apprehension of local people, would be rendered neutral in the planning balance. If permitted this scheme will bring forward much needed market and affordable homes. The delivery of these homes will provide employment opportunities.

The employment site will provide employment opportunities and strengthen the local economy generally. The services such a site will be a benefit in terms of those services and by reducing trips.

127. The provision of a site for a primary school represents a potential long term benefit of the proposal which could be provided as and when future development requirements for Cheshire East are assessed.

128. The scheme includes extensive areas of open space and landscaping (see CD L9), including habitats with biodiversity benefits. 7.3.4 The section 106 agreement provides, in addition to the affordable housing, for an education contribution and a highways contribution to improve public transport facilities.

Overall Conclusions

129. It is the Appellant's case that the LPA can demonstrate at most 4.25 YS (with a 20% buffer. If a 10% buffer is applied the land supply is 4.64 years. If a more critical view on delivery post-rFramework is factored-in the supply drops further[20]. On any of the outcomes above, the Council cannot demonstrate a 5YS as required by rFramework paragraph 11 (footnote 7). Therefore the consequences flow from this and the tilted balance in NPPF in paragraph 11.

130. Even if it was concluded that the LPA's optimism was well founded and that it could (just) demonstrate a 5YS, then that does not mean that the appeal should necessarily be dismissed:

a. on its best case, at 5.45 years the LPA is only just able to demonstrate a 5YS, and even that based upon heroic assumptions about future delivery;

b. the settlement boundaries were established in the C&NLP over ten years ago and have not been reviewed, save for account being taken of strategic allocations since then;

c. the settlement boundaries will need to be reviewed and updated as part of the CELPpt2 which is still not even at the earliest stage of preparation;

d. there is no technical objection to the appeal proposals, including any allegation that there is no capacity to meet infrastructure requirements; and,

e. the existence of a 5YS is not a ceiling nor is it a proper basis to withhold consent for otherwise sustainable development, especially

[20] These account for the revised figures submitted after the revisions to the Framework have been accounted and differ from the Appellant's assessment in closings after the Inquiry.

when as at 1/4/17 there has been an under-delivery of over 5300 homes or more than 3 years of the adopted LP requirement. Indeed even the figures in the CELPS are firmly expressed as not being maxima, and it would be perverse to treat them as such in the manner implicitly asserted by CEC.

131. The scheme complies with the settlement hierarchy by locating in a Key Service Centre. Furthermore, the scheme complies with the terms of the Neighbourhood Plan as it provides important residential development next to the existing boundary of Nantwich, as the plan envisions (despite the revisionist approach now being taken to interpretation). The Council's arguments in closing (paragraph 156) that this scheme, if permitted, would skew the strategy for Nantwich simply ignores that the CELPS directs residential and employment development to Nantwich as a Key Service Centre. Therefore if the Council has failed to demonstrate a 5YS, then Nantwich would be a prime candidate for flexing settlement boundaries to deliver the homes that are being held up by this Council.

132. Furthermore, the Council's claim that permitting this site would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS is misleading. The 18% is presumably (the Council conveniently don't show their working) arrived at by taking the 2246 allocated plus the 189 on this site, giving 2434. This equals 18.7% more than the 2050 in policy PG7. What the Council fails to mention is that as 2246 has already been allocated, CEC has shown they are happy to go over the 2050 and are already over it by 12%. Therefore the percentage increase on the allocated sites (2246) of this proposed scheme (189) is 8.4%. So the Council is not only misleading in paragraphs 61 – 65, but they have also got their arithmetic wrong.

133. The Scheme also provides significant employment, housing and social benefits set out in Mr Downes' evidence. Despite the Council's protestations in closing, there is no policy requirement that weight should not be given to economic proposals if they are not accompanied by a clear indication of the occupier, that would stifle development across the UK were the proposition to have any force. The Appellant has made a planning application and there is no reason to suggest that development will not be forthcoming, indeed it is understand that correspondence has been provided by the landowner in response to the latest consultation exercise from a local commercial agent which demonstrates exactly this point. There is therefore no reason not to place significant weight to the benefit of the economic aspect of the scheme.

134. A section 106 agreement has been concluded providing for affordable housing education, public open space and transportation.

135. Given there are no identified harms that could significantly and demonstrably outweigh the benefits of this scheme, the Inspector is respectfully invited to recommend to the Secretary to (finally) allow the appeal and to grant permission to these applications which propose a sustainable form of development in the context of clear evidence of need.

The case for the Council

The Starting Point

136. The starting point for any decision in the present case is, of course, section 38(6) of the 2004 Act. This requires assessment of whether the proposed development accords with the Development Plan.

137. The Development Plan consists of:

a. Saved Policies of the Crewe and Nantwich Plan 2011;
b. The Stapeley and Batherton Neighbourhood Plan adopted in February 2018; and
c. The Cheshire East Local Plan Strategy 2017 ("the CELPS").

138. The CELPS was, of course, only adopted in July 2017 and sets out the strategy to meet the needs of this area including housing needs. The Examination Inspector concluded:

> "I consider the Overall Development Strategy for Cheshire East, including the provision for housing and employment land, is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

139. In reaching that conclusion the Examination Inspector considered a wide range of objections including a number presented by housing developers and their advisors. They raised wide-ranging concerns including those relating to:

a. Lead-in times; and
b. Deliverability of sites.

140. After a lengthy and detailed consideration of those concerns and after considering the views of all stakeholders in the Local Plan process, the Examination Inspector rejected them. He concluded that:

> "CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy…
>
> I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years." (Examination Inspector's Report p19 para 69)

Subsequent appeal decisions

141. Since then matters have moved on. The Council has been party to a number of planning appeals not least those relating to Sites at White Moss and at Willaston. The Inspector's in those appeals reviewed the evidence presented to them and concluded that there was a range of realistic views. That range, they said, straddled the five-year housing land boundary.

142. They then both adopted what they described as a precautionary approach. We submit that there is no policy guidance which supports this. There is nothing in the NPPF or the NPPG that indicates that where the realistic range of deliverable sites falls either side of the five-year supply line the decision maker should assume that there is no five-year housing land supply.

143. The Inspectors in these decisions both dismissed the appeals and refused to grant planning permission. As a result, the Council was not a person aggrieved and could not challenge the lawfulness of the approach adopted to five year housing land supply issues.

A Precautionary Approach is Unlawful

144. In the Claim relating to the Shavington Appeal, the Council contends that the adoption of a precautionary approach is unlawful. The reasons why are set out in the Statement of Facts and Grounds but are summarised below.

145. Paragraph 14 of the NPPF explains that the presumption in favour of sustainable development means for decision taking:

> "where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
>
> – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
> – specific policies in this Framework indicate development should be restricted."

146. Thus, in order to apply the tilted balance, a decision maker must conclude that the development plan is absent, silent or relevant policies are out of date.

147. As Lord Carnwath explained in ***Hopkins Homes v Secretary of State for Communities and Local Government*** [2017] 1 W.L.R. 1865 at paragraph 59:

> "The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of

Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed".

148. It is submitted that, as a result of the words of paragraph 14 and **Hopkins Homes,** in order to apply the tilted balance, the decision maker has to determine that relevant policies in the development plan are out of date. In order to do that by reference to five-year housing land supply considerations, a decision maker must conclude that there is currently no five-year housing land supply of specific deliverable sites.

Determining Deliverability

149. The decision in ***St Modwen Developments Ltd. v Secretary of State for Communities and Local Government*** [2017] EWCA Civ 1643 was delivered by the Court of Appeal on the 20th October 2017. It provides significant clarification as to the approach to adopt to the consideration of what is meant by a deliverable site within the NPPF.

150. Paragraph 47 of the NPPF provides that local planning authorities are to "identify and update annually a supply of specific deliverable sites sufficient to provide five-years' worth of housing against their housing requirements…"

151. Footnote 11 of the NPPF then explains what a "specific deliverable site" is as follows:

> "To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, **unless there is clear evidence that schemes will not be implemented within five years**, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."

152. Further guidance is provided in the National Planning Practice Guidance:

> "What constitutes a 'deliverable site' in the context of housing policy?
>
> **Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within 5 years.**
>
> However, planning permission or allocation in a development plan is not a prerequisite for a site being deliverable in terms of the 5-year supply. **Local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites, ensuring that their judgements on deliverability are clearly and transparently set out.**

If there are no significant constraints (eg infrastructure) to overcome such as infrastructure sites not allocated within a development plan or without planning permission can be considered capable of being delivered within a 5-year timeframe".

153. The size of sites will also be an important factor in identifying whether a housing site is deliverable within the first 5 years. **Plan makers will need to consider the time it will take to commence development on site and build out rates to ensure a robust 5-year housing supply**." (emphasis added)

154. In **St Modwen**, Lindblom LJ explained at paragraph 38:

> "The first part of the definition in footnote 11 – amplified in paragraphs 3-029, 3-031 and 3-033 of the PPG – contains four elements: first, that the sites in question should be " available now"; second, that they should "offer a suitable location for development now"; third, that they should be " achievable with a realistic prospect that housing will be delivered on the site within five years"; and fourth, that "development of the site is viable " (my emphasis). Each of these considerations goes to a site's capability of being delivered within five years: not to the certainty, or – as Mr Young submitted – the probability, that it actually will be. The second part of the definition refers to "[sites] with planning permission". This clearly implies that, to be considered deliverable and included within the five-year supply, a site does not necessarily have to have planning permission already granted for housing development on it. The use of the words "realistic prospect" in the footnote 11 definition mirrors the use of the same words in the second bullet point in paragraph 47 in connection with the requirement for a 20% buffer to be added where there has been "a record of persistent under delivery of housing". Sites may be included in the five-year supply if the likelihood of housing being delivered on them within the five-year period is no greater than a " realistic prospect" – the third element of the definition in footnote 11 (my emphasis). This does not mean that for a site properly to be regarded as "deliverable" it must necessarily be certain or probable that housing will in fact be delivered upon it, or delivered to the fullest extent possible, within five years."

155. Thus, to be included in the supply side of the five-year housing land assessment, a site needs to be one where there is a realistic prospect of housing coming forward within the 5 year period. Lindblom LJ then went on to contrast that approach with the approach required in produce a housing trajectory "of the expected rate of delivery":

> "One must keep in mind here the different considerations that apply to development control decision-making on the one hand and plan-making and monitoring on the other. The production of the "housing trajectory" referred to in the fourth bullet point of paragraph 47 is an exercise required in the course of the preparation of a local plan, and will assist the local planning authority in monitoring the delivery of housing against the plan strategy; it is described as "a housing trajectory for the plan period " (my emphasis). Likewise, the "housing implementation strategy" referred to in the same bullet point, whose purpose is to describe how the local

planning authority "will maintain delivery of a five-year supply of housing land to meet their housing target" is a strategy that will inform the preparation of a plan. The policy in paragraph 49 is a development control policy. It guides the decision-maker in the handling of local plan policies when determining an application for planning permission, warning of the potential consequences under paragraph 14 of the NPPF if relevant policies of the development plan are out-of-date. And it does so against the requirement that the local planning authority must be able to "demonstrate a five-year supply of deliverable housing sites", not against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period".

156. Thus, a housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment.

157. ***St Modwen*** has been applied in an important Inspector's decision in the East Riding of Yorkshire. In that decision an Inspector, in the light of St Modwen explained:

> "the decision maker has to have clear evidence to show that there is not simply doubt or improbability but rather no realistic prospect that the sites could come forward within the 5-year period."[21]

158. ***Accordingly***, ***St Modwen*** clarifies that the test to be applied to sites with planning permission or which are allocated is whether there is clear evidence to show that there is no realistic prospect that a site would come forward (see footnote 11 and the NPPG guidance set out above).

159. ***Assuming*** that both the Inspectors in the White Moss and Willaston appeals applied to the correct approach to identifying the realistic number of units that sites are capable of delivering over 5 years, there appears to be no basis for asserting that sites are incapable of delivering at the top of the range. i.e. the top of the range must be realistic since it is included in a range which sought to identify what sites were capable of delivering on that basis. It follows necessarily that the White Moss and Willaston Inspectors both reached a conclusion which must mean that a five-year housing land supply of specific deliverable sites was demonstrated.

160. ***The*** Framework does not state anywhere that a precautionary approach to the identification of a 5 year housing land supply is to be applied. Such a proposition cannot be inferred from the indication that the policy intention is to significantly boost supply since that intention is fulfilled by the inclusion of a 20% buffer in the housing requirement.

161. It is submitted that the application of a precautionary approach was thus unwarranted on the basis of the policy set out in the Framework and unjustified on the evidence. It is submitted that to adopt the same approach

[21] Appeal Ref: APP/E2001/W/16/3165930 Land north and east of Mayfields, The Balk, Pocklington, East Riding of Yorkshire YO42 1UJ paragraph 12)

as the Inspectors in the White Moss, Willaston and Shavington decisions would be to err in law.

162. Instead, what must be undertaken is an appraisal of the sites at issue on the basis identified in St Modwen. Where the site has planning permission or is allocated then the approach that the Council has adopted (which was accepted by the Examination Inspector) should be accepted unless the Appellant has proven that there is no realistic prospect that the site would come forward.

Robust Evidence

163. The Inspector in the Willaston appeal also made another material error and this too was adopted by the Shavington Inspector. He adopted the position that the local planning authority had to present "robust and up to date" evidence as to the likely contribution that a particular site would make to five-year housing land supply. This was based upon a misreading of the NPPG and a failure to apply the words in the Framework.

164. Footnote 11 and the NPPG make it clear that sites which have planning permission or are allocated are to be included in the 5 year supply unless there is clear evidence that there is no realistic prospect that they be implemented within 5 years. The emphasis is on realism. Thus, a different approach to that adopted by a local planning authority can be adopted when there is clear evidence that the Council's approach to sites with planning permission or with an allocation is unrealistic (see the East Riding of Yorkshire case).

165. The part of the NPPG that the Willaston Inspector relied upon as the foundation of his test for "robust and up to date evidence" is not dealing with sites with planning permission or with an allocation as Mr Weddernburn properly accepted in XX – if it were it would contradict the approach set out in the previous earlier paragraph in the NPPG and also footnote 11 of the Framework. Accordingly, the Willaston Inspector approached the sites on the basis that the Council had to adduce robust and up to date evidence to justify its approach to sites with planning permission and/or which were allocated when this was not the case.

166. The Appellants would have you reject all of the above in favour of an approach that there is some two tiered test:

- Whether a Site is specifically deliverable – the Appellant appears to content that the test of whether a Site would realistically contribute to the 5 year housing land supply position is to be applied here simply to identify the pool of sites examined in the second test.

- If so, the Appellant contends that the second test is what is the likely number of units a site will contribute to housing land supply within the five-year period.

You and the SofS would err in law if you were to accept this position since it is found upon a grievous misinterpretation of National Planning Policy.

167. Mr Wedderburn in his evidence described the second-tier test as "the more central issue" in housing land supply cases (see Wedderburn p26 footnote 19). He adopted the position that the evidence to support the yield produced by a local planning authority has to be robust and up date.

168. The first point to note is that Mr Wedderburn was totally unable to identify where his second-tier test was addressed in National Planning Policy. If the approach really were "the more central issue" and really did form part of National Planning Policy in such an important area it is submitted that it would be set out in the Framework; it is not and Mr Wedderburn accepted that it is not. It must be remembered that the guidance in the NPPG is just that; the NPPG does not contain planning policy and must not be applied as if it does.

169. The second point is that the Appellant's approach is totally logically inconsistent.

170. It applies the same test to sites with planning permission and with an allocation as those without either. This conflicts with the Framework which makes it plain that the evidential burden in relation to sites with planning permission and which are allocated is reversed – they are included unless there is no realistic prospect of them coming forward.

171. It is not logical to include a site with planning permission/allocation if there is not clear evidence that it will not be implemented only to then apply a test which requires robust and up-to-date evidence to prove it will actually yield any development.

172. If that were the intent of Policy, there would only be a need for a single test namely, is there robust and up-to-date evidence that a site will yield housing within the 5 year period. However this is not what the Framework actually says.

173. Indeed, as can be seen from the analysis above, to apply the Appellant's approach thus subverts the intent of the Framework and footnote 11 – it renders the presumption specifically contemplated by Policy in respect of deliverability of housing from sites with planning permission/allocation wholly otiose.

174. The third point is to have in mind why the Framework would include such a presumption in the first place. The answer is obvious. It is included in order to reduce the scope for debate in determining five-year housing land supply in relation to Sites with planning permission/allocation. The adoption of the Appellant's approach would have precisely the opposite consequence. It would mean that the yield from every single site (whether one with planning permission/allocation or not) would have to prove in every single case. The administrative burden that this would create for local planning authorities

and the Inspectorate cannot be underestimated and cannot have been the intention behind the Framework.

175. The only approach to sites with planning permission/allocation which is consistent with the words of the NPPF, St Modwen and the NPPG is that presented by the Council in this Appeal, namely is there clear evidence that there is no reasonable prospect of the yield identified by the local planning authority being delivered.

176. Mr Wedderburn's assessment of the likely contribution of sites is thus flawed since he applied an incorrect test based upon a fundamental misunderstanding of National Planning Policy. His site appraisal conclusion must therefore be rejected; at the very least his appraisal of individual sites must be approached with great caution lest one draws conclusions similarly contaminated by an error of law.

Additional Evidence

177. A further difference in the present appeal to previous appeals has been the fact that Mr Fisher has produced evidence which was not available to the previous Inspectors. In particular the material produced to the CELPS Inspector has been produced and further and updated evidence has been given in relation to specific sites.

178. It is submitted that, as a result of all of the matters above, the Secretary of State is entirely free to reach a different conclusion of five-year housing land supply to that reached by his Inspectors in recent months. Indeed, the Council submits that, if the appraisal of sites undertaken by the White Moss and/or Willaston Inspectors were accepted given that the top end of the range must be taken to be a realistic figure, the only conclusion, once their error regarding a precautionary approach is jettisoned, must be that they should have concluded that there is a five-year supply of housing sites.

THE CONFLICT WITH THE DEVELOPMENT PLAN

Policy PG6 of the CELPS

Policy RES5 of the CNLP and Policy PG6 both seek to restrict housing in the "open countryside".

179. Policy PG6 defines the Open Countryside as the area outside of any settlement with a defined settlement boundary. The Appeal scheme lies outside of the settlement boundary and is within the Open Countryside.

180. Policy PG6 provides that within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. The appeal scheme does not fall within this paragraph.

181. PG6 also goes on to reference to a number of exceptions that might enable development in the open countryside to proceed. None apply to the proposed development. The Appeal scheme is thus contrary to Policy PG6.

182. In considering Policy PG6 (Although it was then referred to as Policy PG5), the Examination Inspector explained:

> "Policy PG5 seeks to provide for development required for local needs in the open countryside to help promote a strong rural economy, balanced with the need for sustainable patterns of development and recognising that most development will be focused on the main urban areas. The "open countryside" is defined as the area outside any settlement with a defined settlement boundary; a footnote confirms that such boundaries will be defined in the SADPDPD, but until then, settlement boundaries defined in the existing local plans will be used, as now listed in Table 8.2a. Issues about the detailed extent of specific settlement boundaries can be addressed in the SADPDPD. This is an appropriate and effective approach, given the strategic nature of the CELPS. " (Examination Inspector's Report p28 para 111)
>
> He concluded:
>
> "Consequently, with the recommended modifications, the approach to the Green Belt, Safeguarded Land, Strategic Green Gaps and the Open Countryside is appropriate, effective, positively prepared, justified, soundly based and consistent with national policy." (Examination Inspector's Report p29 para 113)

Policy RES.5 of the CNLP

183. Policy RES.5 of the CNLP is the sister policy to PG6. It provides:

> "Outside settlement boundaries all land will be treated as Open countryside. New dwellings will be restricted to those that:
>
> A) meet the criteria for infilling contained in policy NE.2; or
>
> B) are required for a person engaged full time in Agriculture or forestry, in which case permission will not be given unless…"
>
> The Policy then lists a series of exceptions.

184. The proposed development is located in the "open countryside" as defined for this policy also. It does not fall within Part A (i.e. it is not infilling as referred to in Policy NE.2) and it does not fall within Part B. the proposed development is then contrary to Policy RES.5 of the CNLP.

185. Although not considered by the Examination Inspector, the policy approach set out in RES.5 is wholly consistent with the approach in PG6 that he found to be "appropriate, effective, positively prepared, justified, soundly based and consistent with national policy"

Policies PG2 of CELPS

186. Policy PG2 defines the settlement hierarchy of the newly adopted CELPS. It creates four tiers. Nantwich lies within the Key Service Centres tier in respect of which Policy PG2 states:

> "In the Key Service Centres, development of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town will be supported to maintain their vitality and viability."

187. The Examination Inspector explained at paragraph 79:

> "This settlement hierarchy recognises the size, scale and function of the various towns, as well as their future role in the development strategy. In my earlier Interim Views (Appendix 1), I considered the proposed settlement hierarchy is appropriate, justified and soundly based, and no new evidence has been put forward since then to justify any further changes to the settlement hierarchy as set out in Policy PG2."

188. At paragraph 82 of his report the Examination Inspector concluded:

> "the Settlement Hierarchy and Visions for each town and settlement are appropriate, effective, locally distinctive, justified and soundly based, and are positively prepared and consistent with national policy."

Policy PG7 of CELPS

189. Policy PG2 needs to be read alongside Policy PG7 of the CELPS which defines the spatial distribution anticipated by the CELPS. Whilst the nature of settlements in Cheshire East is diverse, each with different needs and constraints, Policy PG7 sets indicative levels of development by settlement. These figures are intended as a guide and are expressly neither a ceiling nor a target. The explanatory text explains that provision will be made to allocate sufficient new sites in each area to facilitate the levels of development set out in the policy.

190. The explanatory text to Policy PG7 (paragraph 8.75) makes clear that the distribution of development between the various towns of the borough is informed by the Spatial Distribution Update Report. This has taken into account a large number of considerations including Settlement Hierarchy, various consultation stages including the Town Strategies, Development Strategy and Emerging Policy Principles, Green Belt designations, known development opportunities including the Strategic Housing Land Availability Assessment, Infrastructure capacity, Environmental constraints, Broad sustainable distribution of development requirements.

191. Indeed, the distribution also takes into account the core planning principles set out in the Framework, which states that planning should take account of the varied roles and character of different areas, and actively manage patterns of growth to make the fullest possible use of public transport,

walking and cycling and focus significant development in locations that are or can be made sustainable.

192. The Examination Inspector considered Policy PG7 (then known as Policy PG6) and explained that it is

> "a key policy setting-out the spatial distribution and scale of proposed development at the Principal Towns, Key Service Centres, Local Service Centres and Other Settlements & Rural Areas. In my Further Interim Views (Appendix 2), **I considered that the revised spatial distribution of development represents a realistic, rational and soundly-based starting point for the spatial distribution of development; it is justified by a proportionate evidence base and takes account of the relevant factors, including the crucial importance of the Green Belt and the outcome of other studies undertaken during the suspension period. It is also based on sound technical and professional judgements and a balancing exercise, which reflects a comprehensive and coherent understanding of the characteristics, development needs, opportunities and constraints of each settlement.** Since that time, there is no fundamental or compelling new evidence which suggests that these conclusions should be reviewed." (Examination Inspectors Report para 83 – Emphasis added)

193. The Examination Inspector's overall conclusion in relation to the Spatial Distribution contained in the CELPS at paragraph 92 of his report was:

> "Consequently, with the recommended modification, I conclude that the Spatial Distribution of Development and Growth to the various towns and settlements is **appropriate, effective, sustainable, justified with robust evidence and soundly based, and fully reflects the overall strategy of the Plan**. I deal with specific issues relating to particular settlements on a town-by-town basis, later in my report." (emphasis added).

194. The text of Policy PG7 explains in respect of Nantwich this level would be in the order of 3 hectares of employment land and 2,050 new homes.

195. Appeal Site A was considered during the plan process as a potential site for meeting this requirement but was rejected. This decision was upheld by the Examination Inspector who concluded that (paragraph 252 Examination Inspector's Report):

> "Some participants argue that more housing development should be allocated to Nantwich, given the absence of other new sites and its close relationship to Crewe. However, Nantwich has seen significant new housing development in the recent past and, with existing commitments and future proposals, is well on the way to meeting its overall apportionment. Further development would almost inevitably involve additional greenfield sites, which could adversely affect the character and setting of the town and the adjoining Strategic Green Gap. The Plan

already provides some flexibility in housing provision (6.4%) and no further sites are needed to meet currently identified housing needs."

196. The result of the adoption of the CELPS is that 2246 units have been allocated over the plan period. In addition, there is currently provision for 4.15 ha of employment land. It follows, as Mr Taylor explain in his evidence (paragraph 6.25), that there is then no requirement to allocate further sites to meet employment or housing needs through the SADPDPD.

197. Thus, the Appeal Scheme would radically and significantly reduce the allocations going forward to meet more local needs elsewhere within the Council's administrative area in the remaining plan period.

198. The Appeal scheme if permitted would add 189 units and 0.37 ha of employment space to the land already allocated/committed for housing an employment needs. In other words this would lead to housing provision of 18% above the level identified as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement.

199. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.

200. The only reasonable conclusion is that the proposed development would significantly undermine the settlement hierarchy and spatial distribution set out in the CELPS. It is contrary to Policies PG2 and PG7.

Best and Most Versatile Land

201. Paragraph 112 of the NPPF states:

"Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality."

202. CELPS Policy SE2 provides that the loss of BMV should be minimised.

203. It is submitted that the policy approach requires consideration of:

a. Whether there is a need for the development proposed?

b. If so, has it been demonstrated that development of BMV is "necessary" i.e. that there is no area of poorer quality agricultural land to locate the development upon?

204. The Council submits that, since it has a five-year supply of specifically deliverable housing sites, it cannot be contended that the housing element of the proposed development is needed.

205. So far as the commercial element is concerned, some 0.37 ha of commercial floorspace is proposed. Mr Taylor has explained and was not challenged that 3ha of employment land was identified as required for Nantwich in the CELPS. 4.15 ha is already anticipated to come forward. The grant of Appeal Scheme would mean some 4.52 ha would come forward i.e. 50% provision over and above the CELPS expectation. Mr Downes in XX accepted that he was not contended that there was a local need for additional commercial floorspace in this location.

206. Remarkably, the Appellant is seeking planning permission for some 3600 sq m of commercial floorspace on a greenfield site which includes BMV in the open countryside without any justification whatsoever.

207. It follows that it has not been established that the proposed development is needed.

208. Even if this is rejected, however, the next stage in applying policy is to ask whether it has been established that the development could not be accommodated on poorer quality agricultural land.

209. The Appellant, as Mr Downes confirmed in XX, has presented no evidence on this point. There has been no study undertaken. No assessment has been made. In short, no attempt whatsoever to show that the development could not be accommodated elsewhere on poorer quality agricultural land.

210. This is particularly important in respect of the commercial element of the proposed development; there has been no attempt to examine whether that could be provided on poorer quality agricultural land within the Borough.

211. It is submitted that as a result of the above it has not been established that it is necessary to develop the BMV that would be permanently lost to the proposed development. Nor that development needs could not be met by utilising poorer quality agricultural land.

212. The proposed development is contrary to paragraph 112 of the NPPF and to Policy SE2 of the CELPS.

Neighbourhood Plan

213. The most recently adopted element of the statutory development plan is the Stapeley and Batherton Neighbourhood Plan adopted in February 2018.

214. Policy GS1 can only be sensibly construed as preventing development in the open countryside unless it falls within the exceptions delineated in paragraphs (a) to (i). The proposed development does not fall within any of those paragraphs as an exception. Accordingly, it is contrary to the Stapeley and Batherton Neighbourhood Plan.

215. In terms of housing, the Neighbourhood Plan sets out in policy H1 and H2 the kinds of housing that accords with the Plan. The proposed development does not fall within the scope of the development that is supported and is thus contrary to these policies.

216. There was an attempt to suggest that the proposed development accords with Policy H5. This policy provides:

> "Subject to the provisions of other policies in the Neighbourhood Plan, the focus for development will be on sites within or immediately adjacent to the Nantwich Settlement Boundary, with the aim of enhancing its role as a sustainable settlement whilst protecting the surrounding countryside.
>
> Outside the settlement boundary any development is subject to the Cheshire East Local Plan Strategy Countryside Policy PG 6 and other relevant policies of this Plan."

217. The proposed development is outside the settlement boundary. As such as Policy H5 provides it is subject to Policy PG6 and "other relevant policies of this Plan". Since there is conflict with Policies GS1, H1 and H2 of the Neighbourhood Plan then the proposed development cannot accord with Policy H5 either.

THE WEIGHT TO BE GIVEN TO THE CONFICT WITH POLICY

218. Mr Downes properly accepted that the overall aims and objectives of these policies are broadly consistent with the aims and objectives of the Framework (Taylor p17 para 5.3). Indeed, given the conclusions of the Examination Inspector he could hardly do otherwise.

219. Nevertheless, it appears to be the Appellant's case that, notwithstanding the adoption of the CELPS only last year and the Neighbourhood Plan only a few weeks ago, the policies addressed above should all be given "very limited weight" (see Downes XX and Taylor Proof p 18 para 5.6). This is a remarkably brave contention.

220. In summary, the Appellant contends that:

a. the Council cannot demonstrate that it has a 5-year housing land supply of deliverable sites;

b. the settlement boundary must flex in order to bring sites forward in order to provide a 5-year housing land supply of deliverable sites;

c. the settlement hierarchy similarly must flex in order to enable sites to come forward to provide a 5-year housing land supply of deliverable sites;

d. Accordingly, in order to meet 5-year housing land supply needs these policies must be given very little weight so that the appeal scheme

can come forward to assist in providing the 5-year housing land supply which is required.

A 5 Year Housing Land Supply

221. As already outline above, the Examination Inspector considered a wide range of evidence on housing land supply from numerous parties. This included points raised relating to the methodology used in relation to build out rates and lead in times.

222. Mr Fisher explained to the Inquiry the work undertaken to inform the Examination on these issues. The Council has looked at every application over a 10 year period, looking at thousands of sites. Further, in terms of delivery, the Council had contacted and obtained information from the land owners/developers of all of the strategic sites.

223. The Examination Inspector explained at paragraph 65:

> "Housing land supply was not covered in my earlier Interim Views, since the latest figures and assessments were not available. This issue was discussed regularly throughout the examination hearings, with developers, housebuilders and local communities challenging the deliverability of specific sites, particularly the larger strategic sites. **By the end of the hearings, CEC had undertaken a considerable amount of work to establish the timescale and deliverability of its housing land, including those strategic sites proposed in the CELPS-PC**." (emphasis added)

224. In this same vein, the Inspector continued at paragraph 69:

> "**CEC has undertaken much detailed work in establishing the timescales and delivery of these sites, including setting out the methodology for assessing build rates and lead-in times, using developers' information where available and responding to specific concerns [PS/B037]. Although there may be some slippage or advancement in some cases, I am satisfied that, in overall terms, there are no fundamental constraints which would delay, defer or prevent the implementation of the overall housing strategy.** The monitoring framework also includes specific indicators related to housing supply with triggers to indicate the need for review. I deal with site-specific issues later in my report on a town-by-town basis. On the basis of the evidence currently available, **I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5-year supply of around 5.3 years**." (emphasis added)

225. It is very important to note that the Appellant in the present case has not contended that any of the triggers in the monitoring framework referred to by the Inspector are engaged.

226. At paragraph 76 the Examination Report, the Inspector concluded:

"On the basis of the evidence before me, I conclude that the CELPS-PC, as updated and amended, would provide a realistic, deliverable and effective supply of housing land, to fully meet the objectively assessed housing requirement, with enough flexibility to ensure that the housing strategy is successfully implemented. Similarly, CEC should be able to demonstrate that there is at least a 5-year supply of housing land when the CELPS is adopted."

227. He concluded in terms that the provision for housing and employment land within the CELPS including the 5-year housing land supply position "is soundly based, effective, deliverable, appropriate, locally distinctive and justified by robust, proportionate and credible evidence, and is positively prepared and consistent with national policy." (Examination Inspector's Report p21 para 78)

The Inspector's Decisions

228. The approach adopted in the White Moss, Willaston and Shavington decisions was wrong in law for reasons set out above. The approach set out in those decisions must not be followed in this one. The proper approach is:

    a. In respect of sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of the Site delivering housing as assessed by the Council;

    b. In respect of sites without planning permission/allocation is to ask whether there is robust and up to date evidence that there is a realistic prospect of the Site delivering housing as assessed by the Council.

229. It is also submitted that there is no policy requirement for the Council to demonstrate that it has a "robust" five-year housing land supply. Nor is there any policy requirement that a "precautionary approach" should be adopted to five-year housing land supply considerations.

The Housing Monitoring Update August 2017

230. The Council's Housing Monitoring Update August 2017 sets out in detail a re-appraisal of the position. The Housing Monitoring Update which shifts the base date to 31 March 2017 utilises the same methodology employed in the CELPS Examination process. This methodology was described by the Examination Inspector as resulting in a "robust, comprehensive and proportionate assessment" housing delivery (Examination Inspector's Report p19 para 69).

231. The HMU reveals that completions have increased to a level more than double that delivered in 2013/14 and for the fourth year in a row. In addition, there has been a net increase in commitments of some 3157 units compared to the position in March 2016 – a 19% increase on the position in March 2016. Indeed, the level of planning permissions granted/resolutions to approve in the last 12 months stands at 5269 units. Thus, not only have completions increased since March 2016 but also the pool of planning

permissions to enable additional housing to come forward has increased very substantially.

232. It is submitted that this demonstrates that the pool of deliverable sites has increased since March 2016 and not decreased as the Appellant contends.

The Appellant's Case on Housing Land Supply

233. The 'big picture issues' between the parties are as follows.

Backlog

234. Mr Wedderburn contended that the "Sedgpool 8" method of addressing backlog adopted by the Council and accepted by the Examination Inspector is to be applied so that the period it relates to shrinks year on year i.e. in the second year it is to be applied to a 7 year period in the third a six year period and so on until it shrinks to no period at all.

235. Mr Wedderburn has got this badly wrong. It is well established that the Sedgefield approach to backlog is a rolling approach and there is no reason not to apply this approach to the backlog in Cheshire East. He produced no appeal decision which supported the approach of a gradually shrinking period over which backlog should be applied.

236. Further and more significantly, Mr Wedderburn's point was taken and rejected in the Willaston appeal where the Inspector concluded (document D30 para 45):

> "The Sedgepool 8 method was agreed by the examining Inspector for the CELPS on the basis that the backlog would be met within the next 8 years of the plan period from 1 April 2016. I note the appellant's concern that applying Sedgepool 8 from April 2017 effectively rolls the backlog forward another year. However, the CELPS Inspector agreed to vary the Sedgefield method because delivering the backlog over 5 years in Cheshire East would result in an unrealistic and undeliverable annual housing requirement. Dealing with a shortfall in housing delivery since the start of the plan period is a rolling requirement in the calculation of the 5 year housing requirement at any point in the plan period. The Council has factored the backlog for 2016-17 into the calculation of the current 5 year requirement. It would be unreasonable at such an early stage in the life of the new CELPS to depart from the Sedgepool 8 approach, given the basis for it in Cheshire East. To do so would in effect impose a further variant of the Sedgefield and Liverpool methods outside of the local plan examination process."

237. The Council submits that there has been no relevant change in circumstances since that decision. It continues to be unreasonable to adopt a different approach outside of the Plan process. The Appellant's case in this regard must be rejected.

Build Rates

238. Mr Wedderburn's position accepted the build rates on sites adopted by the Council (which reflected the approach accepted by the Examination inspector) other than on larger sites. On these larger sites he explained that he only accepted a 50 dpa yield where there is specific evidence to show that two builders would be on-site. In other words, he relies upon an absence of evidence to prove there would be two builders on site rather than any assessment of the realism of the assertion that two builders on site would not be realistic.

239. This is a perfect example of an approach at odds with the Policy position in the Framework. The policy compliant approach (as set out above) in relation to sites with planning permission/allocation is to ask whether there is clear evidence that there is no realistic prospect of two builders on site. Mr Wedderburn produced no evidence on this whatsoever.

240. Indeed, it is entirely unclear what evidence he would accept. For example, in relation to his approach to site LPS4 he explained that evidence from site promotors cannot be relied upon. If the evidence of the likely manner of build out of a site from those promoting a site cannot be relied upon, it is difficult to see how a local planning authority could evidence justify an assumption that two builders would actually come forward.

241. The evidence presented by Mr Fisher (rebuttal p13 table below paragraph 68), however, was that in practice the build rate is frequently significantly higher than the Council's methodology assumed in many cases by a factor of more than 100%. Even a small increase in the build rate over all of say 10% would produce an increase of supply of 1295. It cannot be said that there is no prospect of an increase in overall build rate of 10% or more than the Council has assumed.

242. It is submitted that Mr Wedderburn's evidence on this issue should be rejected. Only where there is specific evidence that there is no reasonable prospect of a large site being developed out by two builders should an assumption of anything less than 50 dpa be adopted.

Lead-In Times

243. Mr Wedderburn also attacked the Council's approach to examining sites by reference to a study of lead-in times he had undertaken. This examined some 70 sites through the planning process (see his appendix MW6). He then applied timings for various stages of the planning process to sites in the future i.e. he applied timings from the past and assumed they would be comparable in the future; his approach is flawed.

244. Firstly, 20 sites out of his 70 (29%) were sites which obtained planning permission on appeal. That was because prior to the adoption of the CELPS there were considerable issues relating to the principle of development on sites within Cheshire East. This gave rise to much argument, many appeals and many delays.

245. With the adoption of CELPS, the basis for these in principle arguments has been removed. The whole point of adopting a Local Plan is, after all, to provide a reliable basis for decision making which minimises scope of in principle disagreement. Indeed, Mr Wedderburn accepted in XX that he would not expect the same proportion of appeals going forward as had been experienced in his sample of sites.

246. As Mr Fisher explained in his rebuttal evidence (page 7 paragraph 35), the circumstances are very different now. Virtually all sites in the supply are either committed or are allocated. Accordingly, the number of appeals has also reduced – with no further residential inquiries programmed after the current one. Further, Local plan adoption not only resolves the principle of development (a major stumbling block previously – hence the number of appeals) – but it also assists in agreement on matters of detail (education, highways, landscaping etc) as all now relate to clear adopted policies. Added to this the Council has also adopted SPD on design guidance (May 2017), which again makes the position on detailed layouts clearer. In addition, the s106 process is assisted since the planning obligations are now linked to adopted policies (e.g affordable housing).

247. These are all reasons why the timing adopted in the past is relation to particular stages of the planning process are unlikely to be continued in the future. Thus, pointing to the past, as Mr Weddderburn has, does not establish that the approach adopted by the Council to lead in times is clearly unrealistic.

248. Indeed, they cannot be viewed as such given that the lead-in times utilised in the Council's evidence were accepted by the Examination Inspector as appropriate. That Inspector has the evidence now present in the present appeal and had the benefit of representations from all stakeholders, not just Mr Wedderburn. The lead-in times presented were the product of discussion with those stakeholders. In confirming that the lead-in times utilised were appropriate the Examination Inspector would have been aware of the points relating to the effect of adoption of CELPS and timings.

249. To reject the lead-in times adopted by the statutory plan process via the s78 appeal process is a radical step. It wholly undermines the basis on which the CELPS housing land supply was calculated and found sound. In other words, it undermines the strategic basis for the CELPS at its core. It would leave the man in street wondering how a Local Plan can be sound one month and then some 9 months later be found to have been adopted on a basis which can no longer supported. What a colossal waste of public resources it would be to have promoted a Plan which is then effectively jettisoned less than a year later?

250. It is submitted that great care needs to be taken to ensure that such a significant step is not taken lightly or else it will bring national planning policy and the planning system as a whole into disrepute. It must only be a rare case indeed, when a methodology accepted at Examination a few months before is deemed inappropriate a few months later only on the basis of the sort of generalised evidence presented by Mr Wedderburn. The time for consideration of that generalised evidence was in pursuit of objection to the

CELPS at Examination when all stakeholders involved could have their views aired and considered and not subsequently in a s78 appeal where other stakeholders views are not provided.

251. But of course, unlike Mr Wedderburn, the Council's appraisal is not simply reliant upon the application of generic time periods from a study of 70 sites in the past.

252. Mr Fisher set out in his evidence an exercise which sought to look at the lessons to be learned from recent post adoption data. He analysed major applications that commenced between 1 April and 31 December 2017. He considered that he had obtained a decent but not comprehensive sample of what is currently taking place.

253. His evidence showed that for the 16 Major developments that have started by Q3 of 2017/18 the median timeline between the date of detailed consent and the start of construction is 0.43 years – or just over 5 months. A similar picture applies to both larger and smaller developments. For those applications that featured an outline the median timeline between the date of outline consent and the start of work is 1.47 years. Once again, the picture is similar for both larger and smaller applications. This data is set out in Appendix 2 to Mr Fisher's rebuttal.

254. The most up to date information reinforces the timelines employed in the standard methodology and demonstrates that sites can commence and deliver initial units within relatively short timescales. Whilst not every site may deliver in this way, those starting in 2017/18 follow this pattern.

255. The data also reveals that of the sites of 100 units or more, 44% of sites have started ahead of the timescales in the HMU. It is submitted that this illustrates the reasonableness of the Council's approach and that sites are not only capable of meeting the timescale in that approach but also of improving upon them. It is submitted that this provides a good indicator of what will happen in future. It demonstrates that sites are fully capable of delivering to the timescales anticipated by the Council and that those timescales are realistic.

256. A further and important point to note from Mr Fisher's analysis of this data is that full applications (as opposed to reserved matters) were made on more than 50% of the sites. This includes half of the sites over 100 units. This shows that on allocated sites, companies are willing to use the greater certainty that the development plan provides to proceed straight to a detailed application.

257. By contrast Mr Wedderburn confirmed in XX that he had assumed that all sites without planning permission would come forward as outline applications. The evidence that Mr Fisher has adduced demonstrates that this assumption is not realistic. As a result timescales are applied to sites on a basis that an outline planning permission will be obtained when the evidence shows that for a large proportion that will not be the case. The result is that Mr Wedderburn's approach is seriously unrealistic.

258. Further, the Council has relied upon site specific evidence and has specifically contacted site owners and promoters. Such site-specific evidence must constitute better evidence than the generalised approach of Mr Wedderburn.

259. In particular, there may be a number of site specific reasons why a site would come forward faster or slower. In looking at the position, it is submitted that site owners/promoters must be in the best position to advise on a number of factors including, the likely phasing and thus timing of reserved matters applications since phasing is often tied to funding issues. They have knowledge of timing issues arising out option agreements which no other party knows and which can include the need for certain stages to be met by certain dates. They also have access information relating to construction including implications for financing, and labour supply and materials.

260. These are all matters known by site owners/promoters and no-one else. Yet Mr Wedderburn's approach was to ignore this. He negated all of this by asserting that statements by promoters were not reliable. Admittedly caution has to be applied to statements made prior to the adoption of a Local Plan which allocates sites, since there may be a desire for some to present a rosier picture of deliverability of their site in order to secure allocation. Indeed, this point is crucial because it undermines any reliability in the exercise conducted by Mr Wedderburn (his rebuttal page 5 paragraph 4.7) looking at outturn against comments. The comments he examined were all made prior to the adoption of the CELPS and the allocation of the sites concerned.

261. It is the case, however, that after allocation that motivation is simply removed. Indeed, Mr Wedderburn struggled to identify why post allocation a site owner/promotor would make unreliable statements regarding the yield of units from their site in XX.

262. All of these matters point to a single conclusion; there is no basis for accepting that there is clear evidence that there is no realist prospect of the lead-in times adopted by the Council and accepted by the Examination Inspector coming about. The reality here is that there is ample evidence to establish that they are robust, up to date and realistic.

263. It is submitted that the approach advocated by the Appellant must be rejected and the approach that lies behind the recently adopted Local Plan and utilised by Mr Fisher in his appraisal must be accepted.

5% Discount

264. Mr Wedderburn adopted an approach in which he was entirely alone; no other planning consultant in any of the appeals post-adoption of CELPS has contended that a percentage discount to the total supply should be applied to take account of planning permissions which expire. He is a lone voice in this. The reason why is that it is a thoroughly bad point.

265. Firstly, his figures were miscalculated even if it were right to apply the discount. He had applied it to permissions that were already implemented;

once implemented a planning permission cannot expire. Mr Wedderburn agreed that his discount should not be applied to implemented permissions.

266. Secondly. Mr Wedderburn has identified his 5% figure by reference to data from the Council which contained an error. Mr Fisher explained in his rebuttal evidence that the consequences of that error meant that a figure of 5% expiry could not be supported from the data; rather a figure of 4% (Fisher rebuttal paragraph 45). But this is before an allowance is made for sites which obtain a new planning permission after expiry. Mr Wedderburn allowed 1% for this. That would get one to a 3% discount figure.

267. However, Mr Wedderburn had made no investigation of the extent to which the sites where consent had lapsed in the past had obtained planning permission post expiry. Mr Fisher explained that in practice many sites regain consent in short order and are subsequently developed. This illustrates that even if a site lapses it is capable of development. Further, the NPPG indicates that where there is robust evidence a site without planning consent can be included in the supply. Where planning consent has been given in the past and there are no significant physical impediments, it is in line with national guidance to include sites within the deliverable supply.

268. As Mr Fisher explained in his rebuttal at paragraph 47 the Council only employs 63% of commitments within its 5-year supply. It is very far from counting every last house from consent. There is plenty of scope for other commitments to deliver better than expected.

269. Even more significantly, however, Mr Wedderburn's approach if adopted would result in a double counting. The effect of applying a lapse rate to a housing requirement is that additional sites need to be found to make up the shortfall. However, the housing requirement in Cheshire East already includes a 20% buffer. Paragraph 47 explains that the purpose of the 20% buffer is to "to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land". Thus the 20% buffer rate is already applied in order to achieve the objective of Mr Wedderburn's discount. There is no reason to both increase the housing requirement and to decrease to pool of available sites for the same purpose. To do so results in double counting.

270. Mr Wedderburn was unable to identify any coherent reason why in the circumstances pertaining to Cheshire East both a 5% discount and a 20% buffer should be applied when he was questioned on the point in cross-examination.

271. The dangers of applying a discount for the decision maker can be seen in the case of ***Wokingham Borough Council v Secretary of State*** [2017] EWHC 1863 where the High Court quashed an Inspector's decision for failing to explain why in a 20% buffer context it was appropriate to apply a discount lapse rate. Indeed, in that case reference is made to a decision of the Secretary of State in respect of a proposed development in Malpas, Cheshire. In that case the Secretary of State agreed with the Inspector's reasoning on certain points including these. The Inspector considered the objective of the 20% "buffer" was to provide a realistic prospect of achieving the planned

supply and to ensure choice and competition in the market and that "the buffer figure thereby allows for some uncertainty and slippage in the delivery of some sites". He added:

> "there is no evidence to support the arbitrary 6 month or 12 month slippage rate assumed by the Appellant across all developments. To apply such an assumption, or the alternative 10% discount (which is equally arbitrary), would result in double counting in that the 20% buffer would also allow significant slippage or non-implementation."

272. The same reasoning applies to the present case. For all these reasons Mr Wedderburn's suggested 5% lapse rate must be rejected.

Windfall

273. Mr Wedderburn has adopted an inconsistent approach to windfall. He included an allowance for windfall in areas not including Crewe. There was no rational reason for this and this needs to be taken into account when looking at the "allocation" for windfall for the Crewe area.

A Comparison between Trajectory and Actual Delivery

274. The Appellant has placed significant emphasis on a comparison between the actual delivery of housing and that which was anticipated in the housing trajectory. A number of annotated graphs were produce on behalf of the Appellant to illustrate the points being made. These points were put forward as a basis for suggesting that the Council's identification of housing land supply is suspect in some way. The comparison in fact does not such thing.

275. As the Court of appeal emphasised in St Modwen, paragraph 49 of the NPPF requires a local planning authority "demonstrate a five-year supply of deliverable housing sites". This is not the same things as comparing against the requirement that the authority must "illustrate the expected rate of housing delivery through a housing trajectory for the plan period" as part of Plan preparation. A housing trajectory is undertaking a different task from the exercise that must be undertaken when looking at deliverable sites for purposes of a 5 year housing land supply assessment. Accordingly, the comparative exercise undertake is of only very limited utility in a decision taking context.

276. Further, it has to be remembered that the issue here relates to the delivery of houses over a five-year period. As the Examination Inspector recognised there will inevitably be slippage or advancement of some sites in reality compared with any forecast. However, over a five-year period this effect is, absent particular evidence relating to a particularly significant and large strategic site, likely to even out. For example, a site where delivery slips will simply deliver in the next year. Thus, overall delivery in the next year is likely to be higher than anticipated unless units in that next year have come forward in an earlier year in significant number. That is why the Council's trajectory in the HMU for next year increases; that is entirely logical and indeed an obvious consequence of slippage in the year to 1 April 2017.

Conclusion on Housing Land Supply

277. For the reasons set out above, the Appellant's case on housing land supply must be rejected. If the White Moss and Willaston Inspectors had applied the correct legal approach and not the unlawful "precautionary" one that they did, they would have concluded that the Council had a 5-year housing land supply. Mr Wedderburn's attempt to argue that the position is far worse than these Inspectors identified must be rejected.

278. The reality here is that the CELPS was only found sound because there was accepted to be a five-year housing land supply. To find the opposite but a few months later as a result of adopting a different approach to that accepted by the CELPS examination Inspector without any material change in circumstances is to fall into error and worse to undermine the public's faith in the plan led system; what is the point of communities accepting the loss of greenbelt land in order to produce a Plan if the basis of that Plan is undermined by s78 Appeal decisions but a few months later? It is submitted that the public's faith in the planning system will be wholly undermined if section 78 decisions conclude so lightly that a five year supply is lost so soon after plan adoption. It submitted that the conclusions of an Examination Inspector that a methodology is robust and that there is a five-year housing land supply must be treated as of significant weight. Those conclusions should only be undermined if there is strong evidence to demonstrate that there has been a fundamental change of circumstances in the intervening period. There is not such evidence and no such change of circumstances in the present case. The only reasonable conclusion in this appeal is that the Council has demonstrated that it has a five-year housing land supply of deliverable sites.

Flexing the Settlement Boundaries

279. Since the Council has a 5-year housing land supply of deliverable sites, there is no policy imperative to "flex" the settlement boundaries and the Appellant's contention in that regard must be rejected. Indeed, Mr Downes accepted in XX that if there is a five-year housing land supply the settlement boundaries must be up to date.

280. It is incorrect to assert, as the Appellant has done, that the settlement boundaries are out of date in any event since their review is foreseen in the CELPS itself. As Mr Taylor explained, the CELPS anticipates a review of boundaries in order to facilitate development later in the plan period; the settlement boundaries right now are up to date.

281. Indeed, the Examination Inspector himself necessarily considered the question of whether the settlement boundaries were up to date. He must have, since a number of policies depend upon them and could not be sound unless the boundaries were up to date. Further, he considered numerous objections including those of the Appellant in relation to the Appeal site that sought to change the settlement boundaries. Since he concluded that the Council had a 5 year supply of housing, he must have concluded that, with the adjustments proposed, the settlement boundary was up to date.

282. It is submitted that, if you conclude that the Council has demonstrated that it has a five-year supply of deliverable housing sites, you must conclude that the settlement boundary is up to date.

283. On the other hand, if you conclude that the Council has not demonstrated that it has a five-year supply of deliverable housing sites, then logically it must be the case that settlement boundaries must flex somewhere in order for further housing to come forward. In such circumstances, Policies PG6 and RES.5 must be given reduced weight; what has not been established, however, is that they must flex here in order to allow the Appeal scheme to come forward given its location and position in the settlement hierarchy.

Flexing the Settlement Hierarchy and Spatial Distribution

284. There is no evidence that the settlement hierarchy and spatial distribution anticipated in the CELPS has to flex in the absence of a five-year supply of deliverable housing sites. If you conclude that there is a five-year supply of deliverable housing sites then there can be no basis for such "flexing".

285. If there is a need for further sites to meet 5 year housing needs in the short term, it is obviously preferable that these are met at sites which do accord with the settlement and spatial distribution hierarchy; to accept otherwise is to subvert the newly adopted CELPS and the plan led system.

286. As set out above, the Appeal Scheme is contrary to Policies PG2 and PG7. The Appeal scheme if permitted lead to housing provision of 18% above the level identified for this part of the District as appropriate in terms of spatial distribution in the CELPS and would add some 10% to the appropriate employment floorspace required resulting in employment provision some 50% above the appropriate requirement. These are very significant levels of unplanned growth. It is so significant that it must necessarily undermine the careful balance between employment growth and housing that forms the basis of the strategy for Nantwich within the CELPS.

287. It is submitted that even if there is no 5-year housing land supply of deliverable sites, Policies PG2 and PG7 of the CELPS should be given significant weight.

The Planning Balance

288. In order to assist in undertaking the planning balance these submissions address the planning balance on two alternative bases:

If there is a five-year housing land supply; and

If there is no five-year housing land supply

There is a Five-Year Housing Land Supply

289. If there is a five-year housing land supply then the policies in the development plan are up to date. There is then no basis for applying the tilted balance. Instead paragraph 14 of the NPPF requires the development to

be assessed against the policies in the Development Plan. The significant conflict with the development plan has been identified in above. In a context where the development plan is up to date, the breaches of policy identified above must be given full weight.

290. Section 38(6) of the 2004 Act falls to be applied. This indicates that given the breach of development plan policy planning permission should be refused unless material considerations indicate otherwise.

291. The development would provide market and affordable housing. However, as set out above, the Council is in a position where a 5-year supply can be demonstrated and the Council is meeting its market housing needs and has made the necessary strategic provision for the future. Therefore only limited weight can be given to this benefit, particularly given that the CELPs have addressed Nantwich's housing needs, including through the strategic allocations at Kingsley fields and Snow Hill.

292. The provision of affordable housing is a benefit of the proposed development and would result in 57 affordable properties being provided based on a 189 house development. However, affordable housing is required to be delivered by all housing developments. As set out above, the appeal scheme is not needed in order to secure a five-year supply of housing, and the Examination Inspector concluded that the CELPS, by delivering its planned housing numbers, appropriately meets affordable housing needs. Nevertheless, given local housing need, it is accepted that the delivery of affordable housing in an accessible location is an important benefit of the scheme.

293. Overall the proposal would also provide social and economic benefits. These would include employment opportunities generated in construction, spending within the construction industry supply chain and indirectly as a result of future residents contributing to the local economy. There would also be a boost to the local economy through additional spending and support for existing facilities and services.

294. Although economic benefits from the construction of the site would be limited as these would cease upon completion of the development. Indeed, it has not been established that the economic benefits here would be additional to those which would arise in any event. For example, if the construction workers were not on this site, it is likely they would be employed elsewhere.

295. The appeal site (A) proposes a package of development in addition to the housing. This includes a local centre incorporating a convenience store with 7 other small shop units, a potential new primary school and the provision of employment units. However, there is no commitment to these actually being provided and no evidence that they would be. Accordingly, it is submitted that only limited weight should be attributed to the benefits arising from the proposed local centre.

296. So far as the new employment provision is concerned, the evidence has established that there is no commitment to delivering this aspect of the scheme. Further, there is already substantial overprovision of employment

land in Nantwich. The benefits associated with this element of the scheme are also to be given only limited weight.

297. Subject to a suitable Section 106 package, the proposed development would provide adequate public open space and highways improvements. However, these are not considered benefits of the development as they are required to make the development acceptable in planning terms. Therefore, whilst these factors do not weigh against the proposal they also do not weigh in favour.

298. In the light of the above, in a context where it is accepted that there is a 5-year supply of housing sites, the proposed development would lead to a very significant breach of the Development Plan. That breach must be given substantial weight against the grant of planning permission. Whilst there would be some benefits of granting planning permission these are of the kind that would arise from any housing scheme. There is nothing particular about the material considerations associated with the Appeal scheme which is of such particular benefit that it can be considered to outweigh the breach of the Development Plan.

299. As a result, the only reasonable conclusion is that, applying section 38(6), planning permission must be refused.

No Five Year Housing Land Supply

300. If, contrary to the Council's case it is concluded that there is no five-year housing land supply, then policies which are policies for the supply of housing are out of date and the tilted balance must be applied.

301. It is submitted that none of the policies identified above as being in breach by the proposed development are policies for the supply of housing in the narrow sense identified in Hopkins Homes. However, in Hopkins Homes it was recognised that the weight of policies that would operate to constrain development to meet housing needs could be affected by a conclusion that there is no five-year housing land supply; otherwise the policy objective of meeting housing needs might be frustrated.

302. It is then necessary to carry out an exercise of:

Examining harm against benefits in order to apply the tilted balance; and

Undertaking the exercise required by section 38(6) of the 2004 Act.

303. The appeal scheme will have material economic and social benefits as set out above. I also acknowledge that the actual delivery of housing to meet needs within 5 years in a context where there is no 5-year supply of housing is a factor to which weight should be given. How much weight depends upon the extent to which the proposed development is likely to deliver housing within this time-scale. In the present case there are a number of factors that are likely to mean that the actual contribution towards the current five-year supply will be very limited.

304. There is likely to be a substantial delay in the decision-making process given the time taken for decisions to be made previously in this case. Following the Public Inquiry held in February 2014 the appeals were not dismissed by the Secretary of State until 17th March. Subsequent to the quashing of this decision by the High Court on 3rd July 2015, the appeals were re-determined by the Secretary of State with the decision issued on 11 August 2016.

305. As set out by Adrian Fisher when applying the Council's assumed lead-in times, a site with outline planning permission of the size of the appeal proposal would start on site at 2 years with 15 dwellings being completed that year. A completion rate of 30 dwellings/year would be assumed for years 3, 4 and 5. With this in mind, if the Secretary of State was to allow this appeal, say, twelve months on from this Inquiry, the site would at best, on the Council's lead in times contribute 45 completions to the 5 year supply.

306. However, if Mr Wedderburn's approach to standardised lead-in times followed there would be even less of a contribution made to supply within five years. The additional year's delay that that approach would deliver would reduce the Appeal scheme's contribution to just 15 homes in the five-year period (see Taylor proof paragraph 6.58). Thus, whilst the development might make some contribution towards the five-year housing land supply it is likely to be small, and at best 45 dwellings but likely less.

307. It is on this point that the Appellant's evidence performs a remarkable volte face; instead of applying the standard approach to sites with outline planning permission that Mr Wedderburn applied to every other site, the Appellant adopts a bespoke timetable which results in a much faster rate of delivery. It is even more remarkable that the Appellant should do this in the face of Mr Wedderburn's evidence that decision makers should be wary of site owners/promoters overselling the rate of delivery from their sites. The Appellant's wholly inconsistent case must be rejected in this regard.

308. Whilst the Appeal scheme would deliver a limited number of homes to meet five-year housing land supply needs, it would remain housing that is not justified spatially. For reasons set out above, the conflict with the settlement hierarchy should still be given significant weight. In addition, the conflict with development plan policies seeking to protect the loss of BMV should also be given significant weight since it has not been established that needs could not be met on less valuable agricultural land.

309. In relation to affordable housing, the position here is the same as set out above. Against this it is necessary to weigh the benefits of the proposed development. The benefits associated with the provision of a local centre are to be given only limited weight for the reasons set out above. In addition, it is to be noted that no need for a local centre has been asserted or established by the Appellant. In relation to the employment, as set out above, there is no established need for the employment aspect of the proposed development. The benefits associated with it are to be given limited weight as already explained. As a consequence, the additional benefits compared to the situation where there is a five-year housing land supply only change by reference to the weight attributable to the actual contribution the

proposed development would make supply, which is likely to be limited for reasons set out above.

Impacts

310. It is acknowledged that in the absence of a five-year housing land supply the geographic extent of the settlement boundaries can be regarded as out of date, but nonetheless the proposals would harm the Policy objectives of recognising the intrinsic character and beauty of the open countryside for the reasons set out above.

311. The Secretary of State has considered the extent of that harm previously and there has been no material change in circumstances which means that a different conclusion should be reached. The decision letter of August 11th 2016 concludes:

> "Weighing against the proposals, the Secretary of State considers that the proposals would cause harm to the character and appearance of the open countryside, for the reasons given at paragraphs 27-28 above. This harm would be in conflict with paragraphs 7 and the 5th and 7th bullet points of paragraph 17 of the Framework. Having given careful consideration to the evidence to the Inquiry, the Inspector's conclusions and the parties' subsequent representations, the Secretary of State considers that the harm to the character and appearance of the open countryside should carry considerable weight against the proposals in this case. He further considers that the loss of BMV land is in conflict with paragraph 112 of the Framework and carries moderate weight against the proposals, for the reasons given at paragraphs 31-34 above." (para. 46).

312. It is important to remember that much of this harm is likely to be caused by housing that would not contribute to 5-year housing supply and thus would not contribute to any identified shortfall in that supply. In addition, no justification for the local centre or employment provisions has been proffered as Mr Downes accepted in XX. Thus, granting planning permission would result in adverse impact upon the open countryside from housing which is not required to meet any 5-year housing land supply needs and from other development which is not required to meet retail/employment floorspace needs. As a result, it is submitted that the weight to be given to such adverse impacts from unjustified development in the open countryside, on BMV and in a location which conflicts with the adopted settlement hierarchy is very substantial.

313. As explained above, the proposed development will result in the loss of BMV for a scheme which is not necessary since the greater part of it is not required to meet any identified need. Further, there has been no assessment which has established that the part of the scheme which may be needed (the small number of housing units that might come forward to meet five-year housing needs) cannot be accommodated on less valuable agricultural land.

314. Overall, it is submitted that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed

against the policies in the Framework taken as a whole. It is thus submitted that the proposed development is not sustainable development and is not supported by the NPPF.

315. So far as the section 38(6) exercise is concerned, it is submitted that the proposed development would give rise to significant breaches of the Development Plan. Where there is no five-year housing land supply however, it is necessary to identify the appropriate weight to give to those policies.

316. The Court of Appeal in the Suffolk Coastal case, in a passage which is not affected by the Supreme Court decision gave some guidance as to factors which are relevant to a decision makers consideration of the weight to give to policies in this context at paragraph 49:

> "One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment (see paragraphs 70 to 75 of Lindblom J.'s judgment in Crane, paragraphs 71 and 74 of Lindblom J.'s judgment in Phides, and paragraphs 87, 105, 108 and 115 of Holgate J.'s judgment in Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council [2015] EWHC 1173 (Admin))."

317. It is then relevant to consider;

- The extent to the shortfall;
- The action being taken by the local planning authority to address that shortfall; and
- The particular purpose of a restrictive policy.

318. In this context, to the extent that a shortfall can be identified, it must be very small indeed. As Mr Fisher explained the next stage of the development plan is for the identification of additional housing sites. Any shortfall now is

likely to be addressed very shortly, and in all probability before the Appeal Scheme is likely to deliver any housing units.

319. So far as the particular purposes of the relevant restrictive policies are concerned, the protection of the open countryside and of the best and most versatile land are objectives wholly supported by the Framework. In addition, the sustainable distribution of development via appropriate settlement hierarchy is supported by the Framework.

320. Accordingly, in a context where there is no 5-year housing land supply, the relevant restrictive policies cannot be given full weight, however they can be given weight at a level just below that since any shortfall identified will be very small, is likely to be addressed very quickly indeed and before the Appeal Scheme could contribute units and seek to achieve objectives supported by the Framework.

321. Against this the benefits of the scheme must be weighed. These have been addressed above. In essence, the Appeal scheme would only deliver a very limited number of units to meet five-year housing land supply needs. The remaining housing units, the local centre and the employment use proposed would not meet any identified need and are wholly unjustified. In this context, the harm that they would cause and the breach of development plan policy they give rise to is not justified by reference to any public interest need for them.

322. As a result, it cannot be the case that there is a justification for the proposed development. The Council submits that even where there is not five-year housing land supply, the conflicts with the development plan identified above are not outweighed by any material considerations. Thus, it must be concluded that planning permission should be refused and the appeal dismissed.

Supplementary evidence submitted following the publication of the revised National Planning Policy Framework

STATUS OF THE DEVELOPMENT PLAN

323. The rFramework does not change the statutory status of the development plan as the starting point for decision making. Planning law requires that applications for planning permission be determined in accordance with the development plan. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted (paragraph 2, 12 and 47 of the rFramework). The adopted development plan for Cheshire East currently comprises of the following documents:

- The Cheshire East Local Plan Strategy (adopted 27 July 2017) (CELPS)

- The saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (adopted 17 February 2005) (CNLP)

- The Stapeley and Batherton Neighbourhood Plan (made on the 15th February 2018).

324. These plans were adopted prior to the introduction of rFramework. Paragraph 213 confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

CONSISTENCY OF ADOPTED POLICIES WITH THE NPPF

Spatial Strategy

325. The CELPS sets out the overall vision and planning strategy for the Borough. It is an up-to-date plan that provides a positive vision for the future and provides a framework for addressing housing needs and other economic, social and environmental priorities in accordance with paragraph 15 of the rFramework. The plan clearly sets out an overall strategy for the pattern, scale and quality of development, and makes sufficient provision for housing to meet the objectively assessed needs of the area. Policy PG1 states that sufficient land will be provided for a minimum of 36,000 new homes over the 20 year plan period, in accordance with rFramework paragraph 20. It should be noted that this figure is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum (22,840 over 20 years). The CELPS therefore seeks to significantly boost housing supply, having regard to paragraph 59, providing a clear strategy for bringing sufficient land forward, and at a sufficient rate, to address objectively assessed needs over the plan period, in line with the presumption in favour of sustainable development.

Settlement hierarchy

326. The CELPS establishes a settlement hierarchy for development. In essence, this ensures that the majority of development takes place close to the borough's Principal Towns and Key Service Centres to maximise use of existing infrastructure and resources and to allow homes, jobs and other facilities to be located close to one another. The plan therefore plays an active role in guiding development towards sustainable solutions having regard to paragraph 7 of the rFramework. As at the 31.3.2017, some 37,196 dwellings were committed, completed or allocated, leaving a small residual requirement to be addressed through the subsequent Site Allocations and Development Policies Document (SADPD) which will be published for consultation in September 2018. It should be noted that through existing allocations, completions and commitments, sufficient deliverable and developable land and sites to meet the housing requirement of 36,000 homes has already been provided. The additional allocations identified through the future SADPD will therefore serve to provide for local housing needs in particular settlements.

Open countryside

327. The Council's evidence demonstrates that the development will result in harm to the intrinsic character and beauty of the open countryside. This harm was acknowledged in the previous decision letter of the Secretary of State. The appeal proposal conflicts with Policy PG6 of the CELPS and Policy RES5 of the CNLP. These policies are considered to be consistent with Paragraph 170 of the rFramework which states that planning policies and decisions should contribute to and enhance the natural and local environment by:

> 'recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'.

Best and Most Versatile Agricultural Land

328. CELPS Policy SE.2 encourages the re-use/ redevelopment of previously developed land and also seeks to safeguard natural resources, including high quality agricultural land. The supporting text advises that agricultural land is a finite resource which cannot be easily replicated once lost. Policy SD2 (v) also states that the permanent loss of areas of agricultural land quality 1,2 or 3a should be avoided unless the strategic need overrides these issues. These policies are considered to be consistent with the rFramework as they recognise the economic and other benefits that are derived from best and most versatile land. Furthermore, the Council has recognised through Policy SD2 that there may be occasions where a strategic need may override such loss.

329. These policies are considered to be consistent with the rFramework. Paragraph 170(b) of the rFramework states that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland. Best and Most Versatile Land is also relevant to plan making. Paragraph 171 states that plans should allocate land with the least environmental or amenity value, where consistent with other policies in the Framework. Footnote 53 advises that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Stapeley & Batherton Neighbourhood Plan

330. The Stapeley and Batherton Neighbourhood Plan forms part of the development plan. Where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted in accordance with Paragraph 12 of the rFramework. At Paragraph 29, the rFramework states that neighbourhood planning gives communities the power to develop a shared vision for their area. Neighbourhood plans can shape, direct and help to deliver sustainable development, by influencing local planning decisions as part of the statutory development plan.

Neighbourhood plans can play an important role in identifying the special qualities of each area and explaining how this should be reflected in development (paragraph 125).

331. The Stapeley Neighbourhood Plan was made on 15th February 2018 and is a recently adopted plan that includes local policies which seek to ensure that the special qualities of the area are recognised in the planning system. The plan contains notable policies on the landscape and open countryside, housing and design that should influence planning decisions, ensuring that development is appropriate to the area. The Neighbourhood Plan does not preclude residential development but rather it sets out the circumstances in which development will be permitted in order to ensure that it is commensurate with the character of the Parish and avoids intrusion into the open countryside.

332. As submitted in evidence, the appeal proposal clearly conflicts with adopted policies GS1, Policies H1 and H2. These policies are considered to be consistent with paragraphs 77 – 79, 83, 125 and 170 of the rFramework and full weight should therefore be given to them.

THE WEIGHT TO BE GIVEN TO ANY CONFLICT WITH POLICY

333. The appellant's case is that the Council cannot demonstrate a 5 year supply of deliverable housing sites. In these circumstances, footnote 7 and paragraph 11 of the NPPF apply. The NPPF states that where the policies that are most important for determining the planning application are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. As submitted in evidence, the Council has demonstrated that a sufficient 5 year supply of housing sites to meet identified requirements can be demonstrated. Any implications from revised NPPF on matters of housing requirements, delivery and supply are identified below.

The Cheshire East Local Plan Strategy

334. Paragraph 74 of the rFramework states that a five year supply of deliverable housing sites, with the appropriate buffer, can be demonstrated where it has been established in a recently adopted plan which:

a) has been produced through engagement with developers and others who have an impact on delivery, and been considered by the Secretary of State; and
b) incorporates the recommendation of the Secretary of State, where the position on specific sites could not be agreed during the engagement process.

335. As submitted in evidence, the CELPS was adopted on the 21 July 2017. Therefore it should be considered a recently adopted plan having regard to paragraphs 73 & 74 and footnote 38. The Cheshire East housing requirement and the five year supply of housing sites were subject to lengthy and thorough examination, involving engagement with those stakeholders that

have an impact upon the delivery of sites. The adopted plan incorporated the recommendations of the Secretary of State. Upon adoption, the Inspector concluded that the Local Plan would produce a five year supply of housing, stating that:

> *'I am satisfied that CEC has undertaken a robust, comprehensive and proportionate assessment of the delivery of its housing land supply, which confirms a future 5 year supply of around 5.3 years'*.

336. Full weight should therefore be given to the CELPS as a recently adopted plan in accordance with paragraph 74. It should also be noted that the 5 year supply of specific deliverable sites considered by the Examining Inspector incorporated within it the maximum possible buffer – 20% (see Paragraph E.9, Appendix E of the CELPS). This buffer is double that now required to be applied to recently adopted plans having regard to paragraph 73(b) of the NPPF. If a 10% buffer had been applied to the Cheshire East 5 year housing supply requirement at the point of the adoption, this would have the effect of reducing the overall 5 year requirement by some 1,235 dwellings.

337. The intention of the rFramework guidance appears to be to try and limit endless debates over 5 year housing supply, most particularly where the Secretary of State has recently ruled on the matter. This can be done either through the new annual assessment process or through the adoption of a local plan. National Policy now weighs heavily against attempts in S78 planning appeals to re-examine housing supply where a definitive conclusion has been reached through the Local Plan process. The NPPF sets clear time limits on the currency of those conclusions. In the case of Cheshire East, it is evident that a 5 year supply can be demonstrated up to 31 October 2018 based on the recent Local Plan adoption.

338. The Council therefore respectfully requests that the Appeal Inspector and Secretary of State follows rFramework guidance in this regard and concludes that a 5 year supply can be demonstrated for the purpose of this appeal.

The housing requirement

339. Paragraph 60 of the rFramework states that strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach. As submitted in evidence, the adopted CELPS housing requirement for Cheshire East over the plan period is some 36,000 homes, equivalent to 1,800 per annum. This is significantly higher than that previously published by MHCLG in its indicative assessment of housing need of 1,142 dwellings per annum. By adopting a significantly higher figure, the Council has clearly not shirked its responsibilities to significantly boost housing delivery within the Borough.

340. The Council's 5 year housing land supply assessment is based on a very generous assessment of need compared to the standard approach. The purpose of having a specific 5 year deliverable supply of housing sites is to ensure that sufficient land is available to enable homes to be built to meet housing need. In using a significantly higher figure than that produced by

standard methodology, even if the calculated supply was exactly 5 years (or as in this case, that supply exceeds the 5 year requirement), it would fully achieve the objective of ensuring that there is sufficient land available to meet housing need.

Presumption in favour of sustainable development

341. Paragraph 11 and footnote 7 concerns the application of the presumption in favour of sustainable development to both plan making and decision taking. For decision-taking, the presumption in favour of sustainable development means:

a) approving development proposals that accord with an up-to-date development plan without delay; or
b) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
c) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
d) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

342. Footnote 7 explains that for the purposes of d) that out of date policies includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1.

343. As submitted in evidence, the appeal proposal does not accord with the adopted development plan. The CELPS is a recently adopted plan having regard to Paragraph 73 & 74 and footnote 38. Its adoption established a 5 year supply of specific deliverable housing sites with the maximum buffer. The Council has submitted detailed evidence to the Inquiry to demonstrate that a continued 5 year supply of deliverable housing sites can be demonstrated since the adoption of the CELPS.

The Housing Delivery Test

344. The Housing Delivery Test (HDT) will apply from the day following the publication of the Housing Delivery Test results in November 2018 (see paragraph 215 of the rFramework). The HDT result will have a number of implications for decision-taking, including the circumstances in which the presumption in favour of sustainable development applies as explained at footnote 7. Under transitional arrangements, delivery of housing considered to be 'substantially below' the housing requirement will equate to delivery below 25% of the housing required over the previous three years.

345. The accompanying Housing Delivery Test Measurement Rule Book provides the methodology for calculating the HDT result. The Housing Delivery Test is effectively a percentage measurement of the number of net homes delivered against the number of homes required, over a rolling three year period. The number of net homes delivered is taken from the National Statistic for net additional dwellings over a rolling three year period, with adjustments credited for net student and net other communal accommodation. The national statistics are published annually in November.

346. The number of net homes required, will be the **lower** of the latest adopted housing requirement (excluding any shortfall3) **or** the minimum annual local housing need figure. Under transitional arrangements, for the financial years 2015-16, 2016-17 and 2017-18, the calculation of the minimum annual local housing need figure is to be replaced by household projections only. This is shown below.

Year	**Adopted annual CELPS Requirement**	**Household projections (annual average over 10 year period)4**	**Net additional dwellings**
2015/16	1800	1,100	1573
2016/17	1800	1,100	1763
2017/18	1800	900	1509 dwellings
TOTAL	5400	3,100	4,8457

347. What is clearly evident from the above table is that net additional dwellings over the three year period already comfortably exceeds the housing requirement calculated using 2012 and 2014 household projections. When the housing delivery test is applied against the completions data set out in the Council's proof of evidence, it is evident that the test is met and exceeded by a significant margin (1,745 homes) even without the full year data for 2017/18.

348. While the Council has not yet published its annual housing monitoring update for 2017/18, as submitted in evidence, completions continue to show a positive direction of travel and it is likely that the final total of completions for the year ending 31 March 2018 will exceed that of previous years. However based simply on the evidence before the Inquiry, the November 2018 HDT result, using the formula in the published rule book, will show that housing delivery significantly exceeds the minimum number of net homes required.

The buffer

349. Paragraph 73 requires that Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need

where the strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

a) 5% to ensure choice and competition in the market for land; or
b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or
c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply

350. Footnote 39 advises that from November 2018, the requirement to apply a 20% buffer will be measured against the Housing Delivery Test result, where this indicates that delivery was below 85% of the housing requirement.

351. As submitted in evidence, net completions over the past three years have continued to increase in Cheshire East. For the monitoring years 2015/16 and 2016/17, net completions have exceeded the household projections result by as considerable margin.

When the CELPS was adopted, it should be noted that the Council applied the maximum possible buffer to its calculation of the 5 year housing land supply requirement and with this buffer, the Examining Inspector confirmed that a 5 year supply could be demonstrated. The 20% buffer was also applied to the 5 year supply of deliverable sites identified in the subsequent Housing Monitoring Update (base date 31 March 2017). Evidence submitted to the Inquiry robustly demonstrates that a continued five year supply including the maximum buffer can be identified. It goes without saying, that if the buffer was to drop to 10 or 5 per cent, taking account of delivery over the past three years, the 5 year housing land supply requirement would also drop significantly.

Definition of deliverable

352. As per earlier guidance, the rFramework definition retains the previous requirement for sites to be available, suitable and achievable with a **realistic** prospect that housing will be delivered on the site within 5 years. As submitted in evidence, the relevant test is whether there is a realistic prospect of a site coming forward, i.e. is the site capable of being delivered within 5 years rather than it being absolute certainty that it will be delivered. The revised definition makes a distinction between sites that are small or have full planning permission and those that have outline planning permission or are allocated in a development plan or otherwise have planning permission in principle or identified through a brownfield land register. For small sites (less than 10 dwellings) and all sites with full planning permission should be considered deliverable until the permission expires, unless there is clear evidence that they will not come forward. For those sites with outline planning permission o planning permission in principle, allocated in the development

plan or sites identified in the brownfield land register. These can be considered deliverable where there is clear evidence that housing completions will begin within five years.

353. The Council has submitted detailed evidence not only through the recent examination of the Local Plan Strategy, particularly in relation to strategic allocations but also to the Inquiry. A considerable body of evidence has been submitted on the deliverability of sites to respond to the very the detailed scrutiny of sites undertaken by the appellant. The Council's evidence has been fully revised and updated, looking afresh at the latest position on key sites and the housing sector generally and this included evidence on many sites including those with outline planning permission and allocated through the CELPS. The evidence submitted included an updated 5 year housing land supply assessment, taking into account a small number of concessions made following the Park Road, Willaston appeal decision. It should be noted that evidence was submitted both in relation to the current appeal and a second appeal, APP/R0660/W/17/3176449: Land to the West of New Road, Wrenbury, which has now reported and a copy of the Inspector's Decision Letter is appended. Based on the latest available evidence, the Inspector concluded that a deliverable 5 year supply was in place.

354. Therefore the Council remains of the view that in light of the revised NPPF, a deliverable supply of housing sites to meet the five year requirement can be demonstrated.

355. To conclude:

- Adopted development plan policies are up-to-date and consistent with the rFramework
- The appeal proposal conflicts with up-to-date policies and full weight should be given to the findings of the Inspector who confirmed that upon adoption, a five year supply could be demonstrated. In accordance with the rFramework, the CELPS should be considered recently adopted until 31 October 2018. In line with NPPF paragraph 74 this shows that a 5 year supply of can be demonstrated at the time of writing. The rFramework effectively settles the matter.
- In addition, to the above, a considerable body of updated evidence has been submitted to the Inspector on the specific supply of deliverable sites. The Council has demonstrated that a five year supply of housing sites can be demonstrated. This view is collaborated by the recent findings of the Inspector in 'Land to the West of New Road, Wrenbury'. The Inspector and Secretary of State therefore has all relevant information to enable the determination of the appeal.
- The five year housing requirement built in the maximum possible buffer. The rFramework indicates that a lower buffer of 10% should be used where the local planning authority wishes to demonstrate a five year supply of deliverable sites through a recently adopted plan.
- Housing completions over recent years have shown a continued positive direction of travel. Delivery over the last 3 years is likely to exceed by some margin, the local housing need requirement established through the Housing Delivery Test in November 2018.

- The applicable buffer to be applied to the 5 year supply requirement will reflect the HDT result from November 2018 onwards. It is very unlikely that given past performance over the last 3 years, that a 20% buffer will be applied.
- Notwithstanding any changes that may take place in the future to the buffer, in submitting evidence to the Inquiry, the Council has robustly demonstrated that a five year supply of deliverable sites can be demonstrated with the maximum 20% buffer.
- Very detailed evidence has been submitted in relation to the supply of specific sites to support the conclusions reached about 5 year supply.
- Having regard to the rFramework and the matters outlined above, the Council remains firmly of the view that a 5 year supply of deliverable housing land can be demonstrated and as such paragraph 11d is not engaged.

Overall Conclusion

356. The Council submits that where there is a five-year housing land supply or not, the application of section 38(6) of the 2004 act results in the conclusion that planning permission for the proposed development must be refused and the appeal dismissed.

The Case for the Interested Parties

The material points are:

357. Councillor Mathew Theobold, Chairman of Stapeley &District Parish Council[22], seeks to emphasis the newness of the Stapely and Batherton Neighbourhood Plan, it having been Made on the 15 February 2018. After setting out the relevant policies of the plan, Councillor Theobold goes on to identify the key areas of conflict the proposals have with these policies. Whilst accepting that Policy H5 directs development to within or directly adjacent to the Nantwich Settlement Boundary (where the proposed development is proposed), such proposals also have to be considered 'subject to the provisions of other policies of the Plan'. When the proposals are considered against the provisions of Policy H1 that can be held to be in clear conflict with all criteria contained in the policy (criteria H1.1- H1.4)

358. Councillor Theobold goes on to identify further concerns over the provision of local facilities, specifically the absence of a formal mechanism to secure their delivery, and shortcomings in the Appellant's Air Quality Document and Acoustic Planning Report. The Council also made further submissions on the contents of the draft section 106 agreement. Concerns were expressed over the potential conflict of ecological provisions and community based aspirations for publicly accessible community orchards, an aspiration of the plan.

[22] ID10 and ID32.

359. Mr Patrick Cullen[23], a local resident, also expressed concerns in relation to the section 106 agreement and the effect of cumulative local housing development on local infrastructure. Concerns relating to the 106 agreement covered the outstanding commitments on land within the appeal site (Appeal B) and the desire of the community to secure a Community Orchard on the land to reflect local preference. Evidence relating to local housing development draws attention to the number and scale of housing sites currently under construction and draws attention to the effect such will have on local infrastructure and services.

360. Mr Philip Staley also submitted evidence to the Inquiry in respect of levels of traffic in the locality and the effect of further housing development on these levels and on the extend of public transport provision adjacent to the appeal sites. He also presented a short video in addition to a written submission.[24] Mr Staley suggests that traffic congestion on Peter de Stapeleigh Way at peak times (0800-0900hrs and 1500-160hrs) is sever, and quotes an Inspector's conclusions in respect of this issue in relation to a dismissed appeal on Audlem Road[25]. The cumulative effects of this and other proposals will cause harm to the local area and to local residents. Mr Staley also advised that sense the submission of the Appellant's evidence local bus services in the vicinity of the site had bed reduced, limiting the local service to only 4 journeys each way during normal shop hours. The provisions of the draft section 106 agreement to fund an increase in local bus services for a specified period would therefore have limited effect in mitigating the increased demand for such local services.

361. Ms Gilian Barry also made representations to the Inquiry supporting the statements in respect of the effects traffic generation by the proposed development[26]. She also made objections on the grounds of adverse effect on air quality, the prospect of flooding on the site, loss of habitat, including trees and hedgerows, and the effects of the development on public safety.

Written Representations

362. There is a large body of correspondence in respect of the initial applications and the subsequent appeal, the body of which has been set out in the previous Reports to the Secretary of State.

363. Most correspondence came from objectors. They were particularly concerned with increased traffic, including the access, on adjoining road and at nearby level crossings, and the effects on the open countryside, the proposed loss of trees, recently felled trees, planned wildlife mitigation, lack of medical, dental and other facilities, shortage of school places, loss of privacy at the proposed roundabout, noise, air and light pollution, poor house design, and the potential for much more development.

[23] ID11.
[24] ID12.
[25] APPEAL ref: APP/R0660/W/15/319474.
[26] ID13.

364. There themes are repeated in the written responses to the current appeals, though they also refer to the adoption of the current local plan and the establishment of a five year land supply inherent in that and the advanced state of the Stapely and Batherton Neighbourhood Plan.

365. Further correspondence has been received in respect of the current appeals and, following the advertisement of amendments to the scheme during the Inquiry, further representations made in respect of these matters.

366. Mr Paul Tomlinson states the appeals are flawed due to 'flawed' traffic data as a result of being based on material over ten years old. Mr Andrew Hale states that the commercial units proposed in Appeal A would not contribute to the local economy or culture. He also states the proposals would fail to make use of the existing access to Peter de Stapeleigh Way. Mr David Wall refers to the site being within the Green Belt and expresses concerns over the ability of emergency services being able to access the site. Ms Jane Emery states there is a need for the development to mitigate the effects it will have on local infrastructure.

367. Mr D Roberts and Mrs H S Thompson Also raise objection on the basis that the traffic assessment is flawed and that the proposals represent a considerable risk to the safety of highway users[27].

Conditions

368. A discussion was held as to the suitable wording of, and reasons for, any conditions on 23 February with reference to the tests for conditions in the *Framework*. Following these discussions, with only a few exceptions which I set out below, in the event that the appeals are allowed, the conditions in the attached Schedule should be imposed, for the reasons set out below. Some conditions have been adjusted from those suggested in the interests of precision, enforceability or clarity.

Appeal A

369. As well as the standard conditions 1-3, control is required over matters in the other conditions for the following reasons:

4, 5 & 9: flood risk reduction, contamination mitigation and ecological enhancement, including concerns raised by the Parish Council
6: protection of archaeological remains
7, 8 & 10: residential and visual amenity and sustainability
11, 12, 13 & 27: highway safety and sustainability
14 & 15: sustainability
16-20: protected and other species mitigation
21-25: reserved matters clarification and implementation

[27] ID34.

370. For clarity and for the avoidance of doubt, condition 26 establishes the sole vehicular access to the site will be through the junction with Peter Destapeleigh Way.

Appeal B

371. As well as the standard conditions 1& 2, control is required over matters in the other conditions for the following reasons:

3-6: the visual amenity and landscape quality of the area
7-10: protected and other species mitigation and public amenity

372. Condition 11 is necessary in order that the Local Conservation Area is appropriately delivered, maintained and managed under the terms of this planning permission. This is all the more the case in view of Mr Cullen's concerns for its future management and the challenges to ensuring this identified in the previous report to the Secretary of State.

Planning Obligations

373. The draft s106 agreement was discussed at the Inquiry during the same sessions as the conditions. A final signed and dated versions were submitted, as agreed, after the Inquiry closed. The agreement makes provision for the revocation of previous obligations in respect of the precious applications and also, in conjunction with condition 11 in relation to Appeal B, makes a commitment to the submission of a scheme for the Local Nature Conservation Area (LNCA) should the appeals be granted. The Council, in support of their request for financial and physical contributions to local infrastructure, have presented a detailed Community Infrastructure Levy Regulations 2010 Compliance Statement which evidences their necessity in relation to the regulatory requirements and the expectations of the rFramework. The agreement submitted by the Appellant reflects these requirements.

374. Firstly the agreement confirms that 30% of the proposed homes with be affordable which is policy compliant. The agreement also sets out the mix of tenure types reflecting local need in the area. Such a contribution therefore fully accords with the regulations and expectations of the rFramework and may be taken into account.

375. A further obligation facilitates contributions to secondary special needs education in the area. Again this recognises that future families occupying the development will place demand on local education facilities that will require mitigation. This is also calibrated through established formulae and is thus proportionate, related to the development and necessary to make it acceptable in planning terms. It too therefore may be taken into account.

376. For related reasons there is also an obligation securing open space and children's play areas, justified on the basis of the increased numbers of people anticipating use of such facilities. These provisions are also justified against policy, calculated to agreed formulae and proximate to the site. This too may therefore be taken into account.

377. A key obligation securing an enlarged LNCA is also presented which also ow makes provision for its ongoing management. Not only, given the ecological interest of the site, is this provision necessary to make the development acceptable in planning terms, it addresses one of the key concerns of interested parties who have made representations in respect of both appeals. On all counts therefore it may properly be taken into account.

378. There are a further three obligations securing funding for an additional pedestrian crossing of Peter Destapleigh Way, two additional bus stops and a subsidy for the local bus service. The first enhances the safe pedestrian connectivity of the development, the second brings it within ready access to a sustainable transport service whilst the latter enhances that service for residents. All are necessary to make the development acceptable in planning terms, are proportionate and are directly related the site. They may also therefore be taken into account.

Inspector's Conclusions

379. I have reached the following conclusions based on all of the above considerations, the evidence and representations given at the Inquiry, and my inspection of the appeal sites and their surroundings. At the beginning of each topic for consideration the relevant paragraphs of the respective parties are identified to assist in an understanding of the reasoning set out therein.

Main considerations

380. In respect of Appeal A these are:

a) The effect of the development on the character and appearance of the area with particular regard to the open countryside and policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS); policy RES.5 of the Borough of Crewe and Nantwich Replacement Local Plan (BCNRLP) and Policies GS1, H1 and H5 of the Stapeley & Batherton Neighbourhood Plan (S&BNP) and;

b) the loss of BMV agricultural land and;

c) the effect of the development on the safety of highway users and;

d) whether or not the Council can demonstrate a 5 year HLS and the implications of this with regard to policy in the rFramework.

381. In respect of appeal B these are the effects of the proposals on:

Its effect on the character and appearance of the area with regard to policy PG6 of the above.

Character and appearance

The relevant preceding paragraphs for the Appellant are 108-109.
The relevant preceding paragraphs for the Council are 310-312 & 327-329.

The relevant preceding paragraphs for the other parties are 357-359.

382. Policy PG6 explains that 'open countryside' is defined as the area outside of any settlement with a defined settlement boundary. It goes on to established that within such designations, development will be restricted to that essential for the purposes of agriculture, forestry, recreation and infrastructure, though with exceptions listed in 6 criteria. The supporting justification for the policy also confirms inter alia that ...'the intrinsic character and beauty of the countryside will be recognised'.

383. The proposals as presented in Appeal A, as a mixed use scheme, are both outwith the Nantwich settlement boundary as currently defined, and do not conform with any of the types of exceptional forms of development identified in the criteria. The proposals are therefore, as the Council maintain in conflict with policy PG6 of the CELPS and with sub- paragraph b) of paragraph 170 of the rFramework.

384. In common with the conclusions of the Secretary of State in his previous (now quashed) decision, set out in his letter of 17 March 2015, the Council also assert the proposals would result in harm to the intrinsic character and beauty of the open countryside. This view is supported, perhaps more in relation to natural habitat, by other representations made by local residents.

385. Although the degree to which the site as an element of countryside may be considered open, its character is nevertheless agrarian and naturalistic in character. The construction of the proposals, with its mix of uses (notwithstanding the areas of open space and areas of habitat) would certainly change this established agrarian character, transforming it into an urban enclave – an extension of the settlement. Insofar as this would result in the loss of an element of countryside of intrinsic character, this would cause a degree of harm to that character, compounding the technical breach of the policy.

386. Insofar as they would also fail to protect or enhance the natural environment, they would also conflict with criterion 14 of Policy SD1 and, the same reasons, it may be held to conflict with Policy SD2 (criteria ii and iii thereof) of the same. Policy RES.5 of the CNLP, as sister policy to PG6 also relates to the restriction of development in the open countryside. For the same reasons therefore the proposals presented in Appeal A may also be considered in conflict with it.

387. It is the case that Policy H5 of the S&BNP acknowledges that 'the focus for development will be on sites within or immediately adjacent to the Nantwich settlement boundary' and as a consequence of the proposed development being so adjacent garners some support from this element of the policy. However, this is a narrow reading of the policy, as its prefix makes clear that such an expectation will be subject to the provisions of other policies of the S&BNP. This clearly engages Policy H1, which, inter alia, anticipates (at H 1.1) development being 'limited infilling in villages or the infill of a small gap with one or two dwellings in an otherwise built up frontage'. Neither does the proposed development conform to the other exception criteria of the policy nor with Policy GS1, which only permits development in the countryside in

limited circumstances. Moreover, as the plan explains these policies follow 'a consistent theme around conserving and maintaining the character of the Neighbourhood Area'.

388. It may quickly be concluded that the proposals are in conflict with the letter and purpose of these Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the specific circumstances of the site and its context do need to be taken into account. The fact of the matter is that the appeal sites are now effectively bordered on three sides by existing and emerging development. Whilst the purpose of the policies is to maintain character it is evident that the rural hinterland anticipated by the plan vision has, in the circumstances of these cases, been extensively eroded. Such circumstances necessarily calibrate the actual harm to existing countryside character accordingly. Nevertheless, the proposals remain in breach of the policies and this needs to be accounted for in the final planning balance.

BMV agricultural land

The relevant preceding paragraphs for the Appellant are 111.
The relevant preceding paragraphs for the Council are 201-212, 312-314 &328.

389. The proposed development would result in the loss of 2.6 hectares of the best and most versatile agricultural land (25% of the aggregated site is designated as such, 6% being Grade 2, 19% being 3a). Accordingly such a loss would render it contrary to Policy SE2 of the CELPS which expects development to safeguard high quality agricultural land. The rFramework, through paragraph 171, and specifically through footnote 53, makes clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred.

390. Although technically in breach of policy SE2, the area of land is modest and predominantly at lower grade. Moreover, the engagement of the consideration of the rFramework is contingent on the loss of such designated land being significant. By any reasonable measure the loss identified here cannot be judged as such. Moreover, in the light of the conclusions below in relation to the supply of housing land, it is inevitable that the use of BMV will become a consideration in help correcting supply. Nevertheless the breach of policy and the loss of such land does represent a harm, though in light of the above, one meriting only modest weight in the planning balance.

Highway safety

The relevant preceding paragraphs for the Appellant are 126-128.
The relevant preceding paragraphs for the other parties are 359-361.

391. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. Both written and video evidence was presented at the Inquiry to support the notion

that any development on this site would exacerbate already challenging highway usage in the locality.

392. Video evidence of peak-time congestion in any given area is inevitably compelling; who has not experienced the frustration of not being where we want to be at any given time in a car? Be that as it may, the expression of such frustration does not equate to a robust argument or justification, as paragraph 109 of the rFramework requires, for the rejection of the proposals as they are presented. None of the detailed evidence of the appellant, nor the considered acceptance of it by the Council, is convincingly rebutted by the heartfelt, though non-empirical submissions of those opposing the scheme. In the absence of such substantial rebuttal, such concerns must inevitably be afforded no more than very limited weight. Moreover, the mitigation through transport infrastructure provision and the creation of enhanced pedestrian and cycle routes through the site for the use of residents, workers and others further increase the opportunities for non-car transport modes.

Housing Land Supply

The relevant preceding paragraphs for the Appellant are 55-107.
The relevant preceding paragraphs for the Council are 149-178, 218-278 & 333-355.

The Requirement

393. A statement of common ground (SoCG) on housing land supply (HLS) (thus HLSSoCG) was submitted by the appellant at the inquiry[28]. It confirms as a starting point that that the housing requirement for Cheshire East Council is 1800 dwellings per annum. Elsewhere it is common ground that the five year period runs from the 31 March 2017 to 31 March 2022. Such agreement extends also to the extent of the backlog in delivery between2010 and 2017, which stands at 5635 dwellings, equating to three years of the overall requirement for the first seven years of the plan.

394. It is also agreed in the HLSSoCG that, reflecting a pattern of historic under delivery, a 20% buffer also applies to the aggregated numbers. This consensus reflects the position of parties in two key previous appeals referred to in evidence[29].

395. Paragraph 73 of the rFramework, replacing paragraph 47 of the previous addition, requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing supply. This number should include a buffer of either:

a) 5% to ensure choice and competition in the market for land; or

b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or

[28] CD3.
[29] White Moss Quarry and Park Road, CD29 &CD30.

recently adopted plan, to account for any fluctuations in the market during that year; or

c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply.

396. The Council predicts in its submissions in relation to the revisions to the framework that after November 2018 and the initiation of the Housing delivery Test it is unlikely that a 20% buffer will be required as a result of increased housing delivery. Indeed, in their further representations they set out variations of the supply position referencing the 5% and 10% scenarios, each of which correspondingly indicate and increase in the supply: 6.11 years @5% and 5.38 years @10%. Even if the Council's expectations in relation to the Housing Delivery Tests were to be met, it remains apparent that in the first seven years of the LPS plan period housing completions within Cheshire East have averaged 1,034 dpa, considerably below the expected,1800 target . Under the terms of the third bullet point of paragraph 73 of the revised Framework therefore, there would still be a compelling case to apply the 20% buffer. Be that as it may, that is in the future. For current purposes, both parties agree in the HLSSoCG that a 20% buffer should be applied. Notwithstanding this point, the appellant maintains, again in light of the evidence before the Inquiry, that even if the scenario b) of a 10% buffer were applied in this case, the Council would remain unable to demonstrate a five year supply of housing land, indicated as being 4.64 years.

397. Thus the net annual requirement, plus the shortfall (including that to be met in the first five years) in addition to the 20% buffer, in both the Council's and the Appellant's 'Sedgpool8' methodology agreed and applied by the CELPS Examining Inspector, both equate to a requirement of 14,842 over the supply period. The Appellant also goes on to model a scenario whereby the agreed eight year delivery period is not rolled forward (ie the supply period remains fixed and diminishes as time moves forward), the requirement increases. The net figure is increased by 574 dwellings, which in turn impacts on the final supply figure.

398. The Council interpret the 'pool' element of the calculation to facilitate the rolling forward of the backlog in the calculation, thus allowing the number of units to be made up over the greater part of the plan period. However, this runs counter to the current position set out in the rFramework and the PPG which anticipates that any backlog should be made up within the first five years of the plan period (or in this case the 8 year period as determined by the CELPS and the Examining Inspector)[30]. This has to be the right approach unless where express circumstances dictate otherwise[31]. Whilst such an approach would not be consistent with that applied in Park Road Appeal[32] it is consistent with the expectations of the Local Plan Inspector, who anticipated that the Council fully

[30] CD40 Examining Inspector's Report paragraph 72.
[31] PPG/NPPF ref.
[32] Ibid.

meet past under-delivery within the next 8 years of the plan period[33]. Whilst not supported by the Wrenbury decision[34], a rolling deferment of meeting the shortfall beyond the anticipated eight year cycle is at variance with the Government's policy commitments to boost significantly the supply of new homes.

399. The difference in the calculation of backlog delivery of 574 dwellings is a significant number, in the view of the appellant contributing to a depleted five year supply figure of 4.24 years. However, even if the Councils calculation is preferred, in combination with anticipated delivery rates, the Council's five year supply position stands at just 5.37 years or as advised in their last submissions 5.35 years. That said, as in the two other recent appeals[35] the greater divergence of view in respect of the supply position is focused on the delivery of housing sites that will help meet the anticipated trajectory. The Council's assessment of supply (recalibrated after the round table discussion at the Inquiry) 15,908 over the defined period, whilst the Appellant calculates a number of 13,101 (again recalibrated) applying the Sedgepool8 methodology, a difference of 2,807 dwellings. These respective positions are reached on the one hand by standard methodology (previously referred to as the 'in principle' approach)[36] and more specifically though narrow analysis by the Council, and a detailed exploration of a wider range of larger sites (previously defined as above as 'performance') by the appellant. These matters are now considered below.

Supply

400. With regard to the 'in principle' differences between the parties, the Council applies a standard methodology to predict the lead in times for site delivery and build rates for strategic and non-strategic sites, basing these on past experience. For strategic sites without planning permission, the standard methodology anticipates an average of 2.5 years to the point of completion of the first dwellings. These are calibrated by applying information from site promoters or agents where evidence supports a site coming forward more quickly or the reverse.

401. The Examining Inspector was clear that a lot depends on whether the committed and proposed sites come forward in line with the anticipated timescale in the housing trajectory. Since March 2016 it is evident there has been slippage in the anticipated timescales for delivery of a number of the strategic sites when the March 2017 HMU and the March 2016 position are compared. Delivery in 2016/17 of 1,762 dwellings also fell short of the anticipated trajectory of 2,955 dwellings and in 2017/18 the target of 3,373 dwellings looks like being short by approximately 130 units. Although the CELPS is only two years old, and inertia caused by such factors as the absence of the plan and the unpredictabilities of appeal-based permissions are no longer present, thus potentially hastening delivery, it is difficult to

[33] Paragraph 72 Local Plan Inspector's Repot (CD A40).
[34] Appeal Ref: APP/R0660/W/17/317649.
[35] Ibid
[36] CD29, Paragraph 13 White Moss Appeal.

escape the conclusions of the two previous Inspectors[37] that the assumed delivery rates of the housing trajectory have in fact failed.

402. Although there are positive signals that delivery is picking up, also recognised in the two previous appeals, it is inevitably perhaps in the light of their wider conclusions the Council also presents an analysis of 16 specific sites to demonstrate that on-the-ground delivery is in fact meeting or exceeding the expectations of the trajectory.

403. The evidence here is initially compelling. The Council suggest a commencement period post-detailed consent averaging around 5 months and for those with outline consent around 1.47 years. Such evidence suggests that just under half the chosen sites have started ahead of expectations in the HMU (the 'in principle' expectation time of 2.5 years), an indicator, the Council suggest, of likely commencement rates in the future. This evidence is also supported by feedback from developers and promoters, offering a site specific record of particular circumstances . With the 'in principle' figures consolidated by these accelerated lead-in times delivering above expectation numbers, the Council maintain a 5 supply of 5.35 years with a 20% buffer and 5.83 years with 10% buffer applied, as identified in their post rFramework submissions.

404. However, by the Council's own admission this assessment, though 'decent' was not 'comprehensive'. Indeed, numbering just 16 sites, and without a transparent methodology for selection, it is difficult to avoid the conclusion offered by the appellant that there may have been an element of inadvertent self-selection in the process, and that such evidence does not, of itself, convincingly establish a significant upward trend in delivery. Moreover, this, and the 'in principle' evidence, needs to be considered against that presented (and recalibrated following the round table discussion at the Inquiry) in the context of the site specific evidence presented by the appellant, covering a total of 41 sites within the district. Without reference to each detailed site-specific analysis the sum of the appellant's conclusions on lead in time to construction anticipates 1 year from submission to grant of outline consent; 1 year to reserved matters application; 6 months to their determination and 1 year to the completion of the first dwelling, a total lead-in time of 3.5 years. Such an analysis, as the appellant points out, correlates with the broad conclusions of both Inspectors in the White Moss and Park Road cases, with the Park Road Inspector identifying an average of between 3 and 4 years for strategic sites without planning permission to first completion[38] .

405. With such lead-in times applied to the 41 sites identified in the appellant's case and the commensurate reduction in the number of units accounted), the broad slippage in delivery previously identified repeated, the appellant identifies a 4.25 year supply with the 20% buffer applied and a 4.64 year supply with the lower 10% buffer used. Even if one were to add the 5% of the total discounted by the appellant to account for lapsed planning permissions as the Council advise (or any part lesser %), this would still not achieve the five year supply threshold, even with a 10% buffer applied.

[37] Those who determined White Moss and Park Road.
[38] Paragraph 51, APP/R0660/W/17/3168917.

406. Moreover, and notwithstanding the various submissions to the Inquiry, paragraph 67 of the revised Framework clarifies the definition of the term 'deliverable' in relation to the supply of housing, setting this out in Annex 2 therein. In summary the definition applies to two categories of sites; those lesser sites and those with planning permission, which should be considered deliverable and; sites without planning permission in principle or allocated in development plans. These should now only be considered deliverable where there is clear evidence that housing completions will begin on site within five years. This represents a significant shift in emphasis from the previous Framework position; now the latter sites re no longer to be included unless there is specific evidence that they will indeed deliver within the five year period. These clarifications effectively supersede interpretations around the St Modwen case[39] that preoccupied the evidence on housing delivery heard at the Inquiry.

407. 34 of the 41 sites identified by the appellant were those without planning permission, those with outline planning permission or those also subject to section 106 commitments. Whilst the Council, on notification of the revisions to the Framework, chose not to address these sites in any detail, it is clear that by default, those within the latter category, without the clear evidence that completions will begin within five years, must now be at risk of dropping out of the calculation. This being so, to Council's position of asserting a 5.35 year supply with a 20% looks to be increasingly untenable, whilst that of the appellant's assessment of 4.25 years, and even that of 4.64 years with a reduced 10% buffer, looks the more robust. Whilst the conclusions reached by the Inspector in the Wrenbury case[40] take a contrary view on the 5 year land supply position, this appeal was determined prior to the publication of the rFramework and the weight to be conferred it is very significantly reduced as a result.

408. Even if the most generous conclusion is reached, there has to be reasonable doubt that the Council is able to demonstrate a five year supply of housing land. Thus the precautionary approach taken by the two Inspectors in the White Moss and Park Road decisions may equally and rightly apply here. Whilst such a conclusion may not only be viewed as consistent with the previous approached, it also now enjoys the support of the High Court in the form of the dismissal of the Shavington case[41] (previously advised of by the Council) which had sought to demonstrate, by proxy reference to White Moss and Park Road, that the 'precautionary approach' adopted by the two previous Inspectors, and as is applied here, was unlawful. Such a view was comprehensively rejected by the Court. This case however also predated the publication of the revised Framework and the editing-out of paragraph 49 of the former document making reference to the requirement for Councils to demonstrate a five year supply of housing sites. However this changes little beyond the structure of the document. Paragraph 11 at sub paragraph d) though footnote 7 makes clear

[39] St Modwen Developments Ltd v Secretary of State for Communities and Local Government [2017] EWCA Civ 1643.
[40] APP/R0660/W/17/3176449 appended to the Council's NPPF revisions submission IDXX.
[41] [2018] EWHC 2906 (admin). Case No. CO/1032/2018.

that where a local authority cannot demonstrate a five year supply of deliverable housing sites policies most important for determining the application can be considered out-of-date. The delegation of the need to identify a supply to a foot note does not diminish the status of the policy as paragraph 3 of the rFramework makes clear; 'The Framework should be read as a whole (including footnotes and annexes).

409. On the basis of the evidence presented, the Council is unable to demonstrate a five year supply of housing sites. In accordance with paragraph 11 of the rFramework therefore, the policies most important for determining these applications are out-of-date. Their status as such will thus need to be taken into account in the final planning balance.

Need for a mixed use development

The relevant preceding paragraphs for the Appellant are 110-112.
The relevant preceding paragraphs for the Council are 279-283.

410. The Council argue in closing that disaggregating the employment component of the scheme and accounting for it in the context of employment floor space would add some 10% to the appropriate employment floor space required by policy. This would amount the Council suggest to 'very significant levels of unplanned growth'. However, the supply of employment land, over and above development plan targets or otherwise, has hitherto not formed part of the Council's case, that application having always been viewed as a mixed use scheme, led by the significant residential component that has always remained the focus of the Council's and the Secretary of States considerations. This is the right approach as to do otherwise would be to invite independent evaluation of its constituent elements across the board. The Secretary of State is invited to consider the proposal as a whole and against the substantive policy issues hitherto set out.

Distortion of the Council's Spatial Vision

The relevant preceding paragraphs for the Appellant are 112-121.
The relevant preceding paragraphs for the Council are 284-287 &325-326.

411. The Council argue that as Nantwich has achieved target numbers identified in the CELPS and to allow further development above that number would serve now only to distort the spatial vision of the strategy in conflict with its broad strategic policies PG2 and PG7. However, the numbers set out therein are expressed as neither a ceiling not a target to be reached. Moreover, the supporting material for the policy advises such numbers as being an indicative distribution, and no more. Whilst a development of a scale reaching way beyond these aspirational targets may well be seen as distorting the spatial vision, in the context of the phrasing characterised above, the development proposed here cannot be considered of that magnitude. Indeed, it also remains consistent with the policies of the rFramework in paragraphs 59 and 60, which continue to emphasise the imperative of significantly boosting the supply of homes, and in so doing, determining the minimum, not the maximum number of homes needed in differing circumstances. There is therefore no breach of

policies PG2 and PG7 of the CELPS, and therefore no policy-based harm to considerer in the planning balance in this regard.

The benefits of the scheme

The relevant preceding paragraphs for the Appellant are 126-128.
The relevant preceding paragraphs for the Council are 291-294 & 303-322.

412. The construction of new housing would create jobs, and support growth, as would new space for employment development. Notwithstanding the Council's view that the employment component of the scheme is not required, such provision, in close proximity to services, new residential property and transport links is likely to prove an attractive offer, and would readily therefore contribute to the growth of the local economy. Nantwich is also one of the preferred locations for development in the CELPS and there is no dispute that in locational terms at least, the site is in a sustainable location. Such recognised benefits garner a medium measure of weight.

413. The provision of a new primary school site to meet future educational provision, the children's play area, and extensive areas of public open space including a new village green and an enlarged LNCA would represent significant additional social benefits, not just to new occupiers of the development but to those in the locality as well. There would be contributions towards new bus stops and an extensive service linking with the town centre and railway station in addition to new path and cycle path networks offering alternative transport modes to the town and its services. Beyond necessary mitigation, these are also measurable social benefits that weigh in favour of the proposals.

414. In both the local and national context the delivery of significant numbers of market housing in a sustainable location is a significant benefit. Nationally, it is a government policy imperative to boost the supply of housing and this is given fresh emphasis in the recently published rFramework. Locally, although the Council fear the final yield of the site within the five year supply period may be curtailed this is rebutted convincingly by the appellant, and the site will in all probability make a contribution to housing numbers within the anticipated part of the plan period. This has all the more value given the identified shortfall in delivery. In both contexts therefore the delivery of market housing merits substantial weight being afforded in favour of the scheme.

415. The proposal would not provide affordable housing above that anticipated by policy, nor would it be above the level expected on other sites. However, such provision would be a tangible benefit when judged against the identified need in the district. Nor is there a suggestion that the contribution, if lost, would be made up from other developments. In light of the above, this contribution to affordable housing also merits significant weight.

416. It was clear from the representations made at the Inquiry that there was a significant degree of apprehension amongst local residents over any increase in traffic numbers in the locality as a result of the development proposed. However, such apprehension does not have the support of technical evidence that would convincingly rebut the appellant's view, not challenged by the

Council, that no severe highway harms would result from the scheme. Such concerns therefore carry the most minimal of weight.

Planning balance

417. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the rFramework. The question of a 5 year housing land supply in relation to these appeals is very finely balanced. It is therefore recommended, in accordance with reasoning adopted in the White Moss and Park Road appeals, and as now endorsed by the Shavington case[42], that a precautionary approach is applied, taking the worst-case position within the range on housing land supply presented, and apply the 'tilted balance' in sub-paragraph d) of paragraph 11 of the rFramework in the determination of these appeals. This makes clear that where the policies most important for the determination of the proposals are out-of-date, permission should be granted unless other policies of the rFramwork dictate otherwise, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

418. In terms of the adverse impacts of the proposal, the appeal sites form part of the Open Countryside on the boarders of Nantwich. As such the development is in clear conflict with the letter and purpose of Policies PG6, SD1 and SD2 of the CELPS, Policy RES5 of the CNLP and Policies GS, H1 and H5 of the S&BNP. However, the degrees of harm to visual amenity here, because of the very specific urbanised context of the site and the contribution open green space makes to the scheme, would, in actuality, be limited in extent.

419. It is also the case that the proposals would result in the loss of BMV and again this would be in conflict with Policy SE2 of the CELPS. No other substantive harms have been identified and other effects of the development can be effectively mitigated through the provisions of the section 106 obligations, thus rendering them neutral in the planning balance.

420. Set against these identified harms the development would deliver up to 189 dwellings. In the context of the national imperative to significantly boost the supply of homes, the identified shortfall in housing delivery over the plan period, and supported by the indicators that it may come forward to the market relatively quickly, this is a clear benefit meriting significant weight in favour of the scheme. This is the more so in light that the site the scheme would also include up to 30% affordable homes, secured through the S106 agreement. Given that there is an undisputed need for affordable housing in Cheshire East, which the appeal scheme would help meet, this is again a benefit meriting significant weight in favour of the proposals.

[42] Ibid.

421. The development would also bring economic benefits in terms of direct and indirect employment during its construction phase, expenditure into the local economy and sustain further enterprise through the mixed uses on offer. Moreover, there are other social benefits in terms of the open space, improvements to sustainable transport connectivity and the scope for the development of a further primary education facility. These latter benefits would accrue not only to occupiers of the residential development proposed, but to others within the vicinity as well. Taken together these positive attributes can be afforded a medium degree of weight.

422. The Secretary of State will be mindful that both the CELPS and the S&BNP are relatively new components of the development plan, each of which has seen the subject considerable investment in terms of local resource and commitment and are which both relatively recently adopted and made. Moreover, there are also incipient signs that delivery of housing sites may indeed pickup more in accordance with expectations later in the plan period. The policies of the development plan should not therefore be set aside lightly. However, against the conflict with these policies, for which there is a presumption development shall be determined in accordance with, there are some material considerations of considerable importance and weight to consider.

423. The first is that despite the conflict with countryside policies, the degree of harm to visual amenity is in fact limited, and reflected in the Council's position on the proposals from the outset. More significantly however, the Council has been found unable to demonstrate a five year supply of housing land and this, in accordance with paragraph 11 of the rFramework and its attendant foot note 7, triggers the presumption in favour of sustainable development heralded therein on the basis that policies most important to the determination of the cases are out-of-date. The policies referred to above (PG6 and SE2 of the CELPS, Policy RES5 of the CNLP and Policies GS1, H1 and H5 of the S&BNP) have to be viewed as being the most import of policies for the determination of these proposals as they are critical to the permitting of residential development in open countryside and immediately adjacent to settlement boundaries. It must follow therefore that in light of the supply position they are out of date, thus diminishing the weight to be afforded them in the planning balance.

424. Moreover, it might be right that the aims and purposes of Policy RG6 remain consistent with those of the rFramework (as the Council maintain). However, in the absence of a five year supply of housing land it has to be considered somewhat Canute-like to argue that the settlement boundaries drawn to reflect the past aspirations of the former local plan (2006-2011) can still be held to be not-out-of date. This is a conclusion all the more compelling given the evidence of appeals being allowed and the Council granting planning permission for development outwith these boundaries in years subsequent to their anticipated utility in order to meet supply. Neither does it come as a surprise that the LP Inspector for the CELPS anticipated that such boundaries would have to be reviewed in the future allocations component of the plan. This position is again reflected in the reasoning of the Inspector in the Park Road Appeal[43].

[43] Ibid, paragraph 16 thereof.

425. All of these weighty considerations combine to reduce the weight to be applied to these policies in the light of the very particular supply situation identified in this case. Whilst there remains conflict with the policies of the development plan, these proposals would bring forward substantial benefits. These benefits are such that they are not significantly or demonstrably outweighed by the lesser harms identified. The proposals, presented in both appeals, therefore constitute the sustainable development for which the rFramework presumes in favour of.

Recommendation

426. I recommend that both appeals should be allowed and planning permission granted subject to the attached Schedules of Conditions.

David Morgan

INSPECTOR

Schedule of Conditions

Appeal A

1. Details of appearance, access landscaping, layout and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority (LPA) before any development begins, and the development shall be carried out as approved.

2. Application for approval of all the reserved matters shall be made to the LPA not later than three years from the date of this permission. The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

3. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:

   Mixed Use and Access Applications Diagram – dwg SK15 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK16 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK17 Rev C (11 November 2017)
   Mixed Use and Access Applications Diagram – dwg SK19 Rev D (11 November 2017)

4. No development shall commence until details of a scheme for the disposal of foul and surface water from the development has been submitted to and approved in writing by the LPA. The scheme shall make provision, inter alia for the following:

   a. this site to be drained on a totally separate system with all surface water flows ultimately discharging in to the nearby watercourse
   b. a scheme to limit the surface water run-off generated by the proposed development
   c. a scheme for the management of overland flow
   d. the discharge of surface water from the proposed development to mimic that which discharges from the existing site.
   e. if a single rate of discharge is proposed, this is to be the mean annual run-off (Qbar) from the existing undeveloped greenfield site. For discharges above the allowable rate, attenuation for up to the 1% annual probability event, including allowances for climate change.
   f. the discharge of surface water, wherever practicable, by Sustainable Drainage Systems (SuDS).

   g. Surface water from car parking areas less than 0.5 hectares and roads to discharge to watercourse via deep sealed trapped gullies.
   h. Surface water from car parking areas greater than 0.5 hectares in area, to have oil interceptor facilities such that at least 6 minutes retention is provided for a storm of 12.5mm rainfall per hour.

The development shall not be occupied until the approved scheme of foul and/or surface water disposal has been implemented to the satisfaction of the LPA.

5. No development shall commence until a scheme for the provision and management of an 8 metre wide buffer zone alongside the watercourse on the northern boundary measured from the bank top (defined as the point at which the bank meets the level of the surrounding land) has been submitted to and approved in writing by the LPA. The scheme shall include:

   - plans showing the extent and layout of the buffer zone
   - details of any proposed planting scheme (for example, native species)
   - details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan.

   This buffer zone shall be free from built development other than the proposed access road. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the LPA.

6. No development shall commence within the application site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved by the LPA.

7. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the LPA. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

   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. wheel washing facilities

   f. measures to control the emission of dust and dirt during construction.

   g. details of any piling operations including details of hours of piling operations, the method of piling, duration of the pile driving operations (expected starting date and completion date), and 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. control of noise and disturbance during the construction phase, 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.

8. No development shall take place on the commercial and retail element until a detailed noise mitigation scheme to protect the proposed dwellings from noise, taking into account the conclusions and recommendations of the Noise Report submitted with the application, shall be submitted to and agreed in writing by the LPA. The approved mitigation measures shall be implemented before the first occupation of the dwelling to which it relates.

9. Prior to the commencement of development:

a. A contaminated land Phase 2 investigation shall be carried out and the results submitted to, and approved in writing by the LPA.

b. If the Phase 2 investigations indicate that remediation is necessary, a Remediation Statement including details of the timescale for the work to be undertaken shall be submitted to, and approved in writing by, the LPA. The remedial scheme in the approved Remediation Statement shall then be carried out in accordance with the submitted details.

c. Should remediation be required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works including validation works shall be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.

10. No development shall commence until a scheme of destination signage to local facilities, including schools, the town centre and railway station, to be provided at junctions of the cycleway/footway and highway facilities shall be submitted to and agreed in writing by the LPA. The approved scheme shall be provided in parallel with the cycleway/footway and highway facilities.

11. No development shall commence until schemes for the provision of MOVA traffic signal control systems to be installed at the site access from Peter Destapleigh Way and at the Audlem Road/Peter Destapleigh Way traffic signal junctions, has been submitted to and approved in writing by the LPA . Such MOVA systems shall be installed in accordance with approved details prior to the first occupation of the development hereby permitted.

12. The Reserved Matters application shall include details of parking provision for each of the buildings proposed. No building hereby permitted shall be occupied until the parking and vehicle turning areas for that building have been constructed in accordance with the details shown on the approved plan. These areas shall be reserved exclusively thereafter for the parking and turning of vehicles and shall not be obstructed in any way.

13. Prior to the first occupation of the development hereby permitted a Travel Plan shall be submitted to and approved in writing by the LPA. The Travel Plan shall

include, inter alia, a timetable for implementation and provision for monitoring and review. None of the building hereby permitted shall be occupied until those parts of the approved Travel Plan that are identified as being capable of implementation after or before occupation have been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review, as long as any part of the development is occupied.

14. No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall be submitted to and approved in writing by the LPA. The approved scheme shall be implemented and retained as operational thereafter.

15. Prior to first occupation of each unit, Electric Vehicle Infrastructure shall be provided to the following specification, in accordance with a scheme, submitted to and approved in writing by the LPA which shall including the location of each unit:

    - A single Mode 2 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kV charging.
    - 5% staff parking on the office units with 7KV Rapid EVP with cabling provided for a further 5% (to enable the easy installation of additional units).

    The EV infrastructure shall be installed in accordance with the approved details and thereafter be retained.

16. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are found in any hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

17. Prior to the commencement of development detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds shall be submitted to and approved in writing by the LPA. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the LPA.

18. The reserved matters application shall be accompanied by a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated 2013 prepared by CES

Ecology (CES:969/03-13/JG-FD). The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

19. Prior to the commencement of each phase of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority.

a) The details shall include the location, height, design and luminance and ensure the lighting is designed to minimise the potential loss of amenity caused by light spillage onto adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.
b) The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

20. All trees with bat roost potential as identified by the Peter Destapleigh Way Ecological Addendum Report 857368 (RSK September 2017) shall be retained, unless otherwise agreed in writing by the Local Planning Authority

21. The first reserved matters applications shall include a Design Code for the site and all reserved matters application shall comply with provisions of the Masterplan submitted with the application and the approved Design Code.

22. Prior to the commencement of each phase of development a scheme for landscaping shall be submitted to the Local Planning Authority and approved in writing. The approved landscaping scheme shall include details of any trees and hedgerows to be retained and/or removed, details of the type and location of Tree and Hedge Protection Measures, planting plans of additional planting, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes and proposed numbers/densities and an implementation programme.

The landscaping scheme shall be completed in accordance with the following:-

a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428 (1989) Code of Practice for General Landscape Operations (excluding hard surfaces).

c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BSD5837: 2005 Trees in Relation to Construction: Recommendations.
d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

23. An Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations shall be submitted in support of any reserved matters application which shall evaluate the direct and indirect impact of the development on trees and provide measures for their protection.

24. No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the LPA. No building hereby permitted shall be occupied until the boundary treatment pertaining to that property has been implemented in accordance with the approved details.

25. The Reserved Matters application for each phase of development shall include details of bin storage or recycling for the properties within that phase. The approved bin storage facilities shall be provided prior to the first occupation of any building.

26. Notwithstanding the details shown on plan reference no. BIR.3790.09D (September 2012) access to the development herein permitted shall be exclusively from Peter Destapeleigh Way as shown on plan reference no. dwg SK16 Rev C (11 November 2017)

27. Unless otherwise agreed in writing, none of the dwellings hereby permitted shall be first occupied until access to broadband services has been provided in accordance with an action plan that has previously been submitted to and approved in writing by the LPA.

Appeal B

1. The development hereby approved shall commence within three years of the date of this permission.

2. This permission shall refer to the following drawing numbers unless any other condition attached to the permission indicates otherwise:
a. Site Location Plan reference no. BIR.3790_13
b. Site Access General Arrangement Plan reference no. SCP/10141/D03/ Rev D (May 2015).

3. No development shall commence until there has been submitted to and approved by the LPA a scheme of landscaping and replacement planting for the site indicating inter alia the positions of all existing trees and hedgerows within and around the site, indications of those to be retained, also the number,

species, heights on planting and positions of all additional trees, shrubs and bushes to be planted.

4. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the LPA gives written consent to any variation.

5. Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 Trees in Relation to Design, Demolition and Construction : Recommendations, which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority.

   (a) No development or other operations shall take place except in complete accordance with the approved protection scheme.
   (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
   (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
   (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

6. No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

7. Prior to development commencing, a detailed Ecological Mitigation strategy including a great crested newt mitigation strategy informed by the recommendations of the submitted Protected Species Impact Assessment and Mitigation Strategy dated MARCH 2013 REVISION) prepared by CES Ecology (CES:969/03-13/JG-FD) shall be submitted to and approved n writing by the Local Planning Authority. The development shall be implemented in accordance with the measures of the approved ecological mitigation strategy.

8. Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey shall be carried out by a suitably qualified person to check for nesting birds and the results submitted to the LPA. Where nests are

found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to LPA before any further works within the exclusion zone take place.

9. Prior to the commencement of development details of the proposed lighting scheme should be submitted to and approved in writing by the Local Planning Authority. The scheme should include dark areas and avoid light spill upon bat roost features, boundary hedgerows and trees. The scheme should also include details of: Number and location of proposed luminaires; Luminaire light distribution type; Lamp type, lamp wattage and spectral distribution: Mounting height; Orientation direction; Beam angle; Type of control gear; Proposed lighting regime; and Projected light distribution maps of each lamp. The lighting scheme shall be installed in accordance with the approved details.

10. Prior to the commencement of development , and to minimise the impact of the access road on potential wildlife habitat provided by the existing ditch located adjacent to the southern site boundary, the detailed design of the ditch crossing shall be submitted to and approved in writing by the LPA . The access road shall be constructed in full accordance with the approved details.

11. No development shall commence on site unless and until a Deed of variation under s106A TCPA 1990 (as amended) has been entered into in relation to the S106 Agreement dated 20 March 2000 between Jennings Holdings Ltd (1), Ernest Henry Edwards, Rosemarie Lilian Corfield, James Frederick Moss, Irene Moss, John Williams and Jill Barbara Williams (2), Crewe and Nantwich BC (3) and Cheshire County Council (4) to ensure that the Local Nature Conservation Area is delivered, maintained and managed under this permission.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Reuben Taylor of Queen's Counsel	Instructed by the Solicitor to Cheshire East Council

He called:

Mr Richard Taylor BA (Hons) BTP MRTPI

Mr Adrian Fisher BSc MTPL MRTPI

FOR THE APPELLANT:

Mr Paul Tucker of Queen's Counsel	instructed by Patrick Downes, Harris Lamb on behalf of Müller Property Group
Assisted by Mr Philip Robson of Counsel	

He called:

Mr Jonathan Berry BA (Hons) Dip LA CMLI AIEMA M ArborA

Mr Patrick Downes BSc (Hons) MRICS

Mr Matthew Weddaburn BSc MA MRTPI

Mr William Booker BSc (Hons)

INTERESTED PERSONS:

Councillor M Theobald	Stapeley & District Parish Council
Mr P Cullen	Resident
Councillor P Groves	Cheshire East Council
Mr P Staley	Resident
Ms J Crawford	Resident
Ms G Barry	Resident

Mr K Roberts	Resident
Councillor A Martin	Councillor

INQUIRY DOCUMENTS (IDs)

1. Appearances – Appellant
2. Planning SoCG
3. Housing SoCG
4. Draft s106
5. Revised plans – Appellant
6. Revised Appendix 14 (Mr Fisher) – Council
7. Openings – Appellant
8. Openings – Council
9. Statement Councillor Groves
10. Statement Councillor Theobald
11. Statement Mr Cullen
12. Statement Mr Staley
13. Statement Ms Barry
14. Amended red line drawing
15. Strategic sites list with references
16. Wokingham High Court Decision – Council
17. E mail site LPSA 2
18. Map – LPS 27
19. Appendix E CELPS (Housing trajectory)
20. Appellant's housing evidence amended table 17
21. CD of Traffic issues – Mr Staley
22. Extract PPG paragraph 26
23. Accident Record of area (map) – Appellant
24. Aerial photograph highway improvements – Appellant
25. Bus timetables – Appellant
26. List draft conditions
27. Agricultural land analysis – Appellant
28. Stapley and Batherton Neighbourhood Plan
29. Amended landscape condition
30. CIL compliance schedule
31. Updated s 106
32. Councillor Theobold comments on s106
33. Amended housing supply table – Appellant
34. Letters/email from D Roberts/H THompson

DOCUMENTS RECEIVED AFTER THE ADJOURNMENT OF THE INQUIRY

1a Final list of Core Documents
2a Closings Appellant
3a Closings Council
4a Grounds for Claim to High Court (Shavington case) – Council
5a Comments on rFramework – Appellant
6a Comments on rFramework – Council
7a Final comments on Council's submissions - Appellant

Background (A)	
	National Planning and Ministerial Statement
A9	The Plan for Growth (2011)
A10	Supporting Local Growth (2011)
	Local Plan Policy and Guidance
A11	Extracts of Adopted Crewe and Nantwich Replacement Local Plan (2005) ("CNRLP")
A12	Secretary of State's Direction (Saved Policies) February 2008
A13	Removed
A14	Removed
A15	Removed
A16	Interim Planning Policy on Release of Housing Land (February 2011)
A19	Extract of the Draft Nantwich Town Strategy
	Emerging Local Plan Background Documents
A20A	Extracts from the Cheshire East Local Plan Strategy 2010 – 2030 ("LPS")
A24	Extracts of Cheshire East Strategic Housing Market Assessment (2010)
A25	CEC Strategic Housing Land Availability Assessment (March 2012)
A26	CEC Strategic Housing Land Availability Assessment Letter (4th December 2013
A27	Letter of representation from The Home Builders Federation to the SHLAA update methodology (January 2014)
A28	Letter from Muller Property Group to the SHLAA update methodology (January 2014)
A35	Extract from Annual Monitor on Affordable Housing Provision
A36	Stapeley and Batherton Neighbourhood Plan, Referendum Version (SBNP)
A37	Stapeley and Batherton Neighbourhood Plan Examiner's Report
A38	Council Decision on report of SBNP
A39	Cheshire East Local Plan Strategy 2010 – 2030 July 2017
A40	Report on the Examination of the Cheshire East Local Plan Strategy Development Plan Document, 20 June 2017
A41	Inspector's Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes), 13 December 2016
A42	Inspector's Interim Views on the legal compliance and soundness of the submitted Local Plan Strategy, 6 November 2014
A43	Inspector's Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted Local Plan Strategy, 11 December 2015
A44	Cheshire East Local Plan: Nantwich Town Report, March 2016
A45	Crewe and Nantwich Replacement Local Plan, 2011

Technical Papers (B)	
B3	Extract of Manual for Streets 2 – Wider Application of the Principles (CIHT, 2010)
B4	Extract of Manual for Streets (2007)
B17	Transport for Statistics Bulletin
B18	Walking in Britain
B19	South Worcestershire interim conclusions on the South Worcestershire Development Plan
B20	LDC initial findings report (Sept 2013)
B21	Strategic Housing Land Availability Assessment and the development plan document preparation

B22	Cheshire East Council Housing Supply and Delivery Topic Paper (August 2016)
B23	Cheshire East Council Housing Monitoring Update (published August 2017, base date 31st March 2017

High Court and Supreme Court Cases (C)	
C11	High Court Judgement West Lancashire vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2017] EWHC (Admin)
C12	Supreme Court Judgement Carnworth, Suffolk Coastal District

Appeal Cases (D)	
	Ministerial Appeal Decisions
	Inspector Appeal Decisions
D29	Planning Inspectorate appeal reference: APP/R0660/W/17/3166469. White Moss, Butterton Lane, Barthomley, Crewe CW1 5UJ. 8th November 2017
D30	Planning Inspectorate appeal reference: APP/R0660/W/17/3168917. Land to the south of Park Road, Willaston, Cheshire. 4th January 2018
D31	Planning Inspectorate appeal reference: APP/M4320/W/17/3167849. Land to the south of Andrews Lane, Formby L37 27H. 5th December 2017

Relevant Applications (E)	
E1	Decision Notice for the extant permission - construction of a new access road into Stapeley Water Gardens" (planning application reference P00/0829)
E2	Letter from CEC confirming that planning application reference P00/0829 is extant
E3	Cronkinson Farm Schedule 106 Agreement 2000

Landscape Documents (F)	
F1	Extract of the Guidelines for landscape and Visual Impact Assessment, 3rd Edition The Landscape Institute and IEMA 2013
F2	Extract of the Landscape Character Assessment – Guidance for England and Scotland – Scottish Natural Heritage and the Countryside Agency (2002)
F3	Site Context Plan (2064/P01a JB/JE January 2014)
F4	Site Setting (Aerial Photograph) (2064/P04 JB/JE January 2014)
F5	Extract from the Countryside Agency (now Natural England), Character Area 61 Description
F6	Extract of Cheshire Landscape Character Assessment SPD – Type 7: East Lowland Plain
F7	Extract of Cheshire Landscape Character Assessment SPD – ELP 1: Ravensmoor
F8	Munro Planting Scheme – Appeal B
F9	Tyler Grange Winter Photographs (January 2014) (2064/P03 JB/LG January 2014)
F10	Winter viewpoint locations (TG Ref: 2064/P03)

Ecology & Arboricultural Documents (G)	
G1	Extract of English Nature Great Crested Newt Mitigation Guidelines 2001
G2	Extract of Natural England LPA Standing Advice Species Sheet Great Crested Newts
G3	Extract of Bats {Natural England LPA Standing Advice Species Sheets}
G4	Extract of Badger {Natural England LPA Standing Advice Species Sheets}
G5	Extract of Birds {Natural England LPA Standing Advice Species Sheets}
G6	Extract of Water Vole {Natural England LPA Standing Advice Species Sheets}

G7	Extract of Natural England Advice Note European Protected Species & The Planning Process Natural England's Application of the 'Three Tests' to Licence Applications
G8	Extract of Cheshire East Borough Council (Stapeley – the Maylands, Broad Lane) Tree Preservation Order 2013

APPEAL A

Appeal A - Application Documents (H1)	
H1	Covering Letter September 2012
H2	Application Forms
H3	Site Location Plan
H4	Site Setting (Aerial Photograph)
H5	Indicative Masterplan
H6	Archaeological Report
H7	Transport Assessment
H8	Framework Travel Plan
H9	Statement of Community Involvement
H10	Retail Statement
H11	Nantwich Housing Market Assessment
H12	Design and Access Statement
H13	Planning Statement
H14	Arboricultural Implications Assessment
H15	Movement and topography
H16	Landscape Character Plan
H17	Index to views
H18	Viewpoint Location Plan
H19	Viewpoints
H20	Landscape Visual Impact Assessment
H21	Flood Risk Assessment
H22	Phase 1 Contamination Report
H23	Protected Species Impact Assessment and Mitigation Strategy (2012)

Consultee Responses (I)	
I1	Environmental Health (Noise / Air / Light)
I2	Cheshire Wildlife
I3	United Utilities
I4	Network Rail
I5	Public Rights of Way
I6	Natural England
I7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
I8	Nantwich Town Council
I9	Reaseheath College
I10	Highways
I11	Arboricultural
I12	Design
I13	Landscape

Documents submitted after the initial submission (J)	
J1	Revised Arboricultural Impact Assessment Phase 2 – Report Ref NWS/11/10/AIA P2 25th May 2012

J2	Revised Air Quality Assessment – Report Ref AQ0310 Dec 2012
J3	Tree Plan – Drawing No. NWS/SP/03/12/01 – 12th March 2013
J4	Tree Constraints Plan Tile 1 – Report Ref NWS/11/10/TCA/01 – 9th November 2011
J5	Tree Constraints Plan Tile 2 – Report Ref NWS/11/10/TCA/02 – 9th November 2011
J6	Tree Constraints Plan Tile 3 – Report Ref NWS/11/10/TCA/03 – 9th November 2011
J7	Tree Constraints Plan Tile 4 – Report Ref NWS/11/10/TCA/04 – 9th November 2011
J8	Great Crested Newt Survey
J9	Noise Assessment
J10	9.1.13 – SCP Technical Note
J11	11.1.13 – SCP Technical Note – Response to Parish Council
J12	14.1.13 SCP Technical Note – Sensitivity Test
J13	11.3.13 – SCP Technical Note

Reporting and Decision (K)	
K1	Planning Officers Report to Planning Committee
K2	Formal Decision Notice
K3	Secretary of State First Decision letter 17/03/15
K4	Original Inspector's Report
K5	Consent Order 3/07/15
K6	Secretary of State Second Decision letter 11/08/16
K7	Consent Order
K8	DCLG letter of 12/04/17, inviting further representations
K9	DCLG letter of 03/08/17 relating to the re-opening of the inquiry
K10	Updated Officer's Report to Cheshire East Council Strategic Planning Board of 22/11/17
K11	Strategic Planning Board Report on applications 12/3747N and 12/3746N, 31/1/18

APPEAL B

Appeal B - Application Documents (L)	
L1	Covering Letter September 2012
L2	Application Forms
L3	Site Location Plan
L4	Site Access
L5	Transport Statement
L6	Protected Species Impact Assessment and Mitigation Strategy (2012)
L7	Design and Access Statement
L8	Planning Statement
	Updated Application Documents Appeals A and B
L9	Updated Masterplan Documents and Access Drawings
L10	Land Research Letter – BMV – 25/9/17
L11	Redmore Environmental – Air Quality Assessment 29/9/17
L12	Shields Arboricultural Impact Assessment – 26/9/17
L13	RSK Ecological Addendum Report Sept. 2017
L14	Betts Hydro – Flood Risk and Drainage Addendum 26/9/17
L15	SCP – Transport Technical Note 3/10/17
L16	Landscape and Visual Technical Note 26/9/17
L17	Lighthouse Acoustics – Acoustic Note 29/9/17

Consultee Responses (M)

M1	Environment Agency
M2	Environmental Health
M3	Natural England
M4	Public Rights of Way
M5	Nantwich Town Council
M6	Reaseheath College
M7	Bob Hindhaugh Associates Ltd on behalf of Stapeley Parish Council
M8	Highways
M9	Arboricultural
M10	Cheshire Wildlife
M11	Affordable Housing

Documents submitted after the initial submission (N)	
N1	Flood Risk Assessment
N2	Great Crested Newt Survey (Revised November 2012)
N3	SCP Technical Note - 11.01.13
N4	Arboricultural Implication Assessment Phase 2
N5	Protected Species Impact Assessment and Mitigation Strategy (March 2013)

Reporting and Decision (O)	
O1	1st Planning Officers Report to Planning Committee
O2	2nd Planning Officer's Report to Planning Committee
O3	Strategic Planning Board Meeting - 19/6/13 Notes of Planning Application 12/3746N

Supreme Court Judgements (P)	
P1	Removed

Appeal Court Judgements (Q)	
Q1	Suffolk Coastal Appeal Court Judgement
Q2	St Modwen Appeal Court Judgment

Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.