

1. **Suffolk Coastal v Hopkins Homes, Richborough Estates [2017] UKSC 37**
[at 79]: Rigid enforcement of policies constraining the supply of housing will prove counter-productive.
2. **Cheshire East v SSCLG [2016] EWHC 57 (Admin)** [at 18-37]: Outcome of Tilted Balance: Decision maker provided with an answer as to whether the proposal is sustainable development.
3. **Wainhomes v SSCLG [2013] EWHC 597 (Admin)** [34(iv)], [35] and [37]: Differentiation between broader land availability assessment and 5YHLS assessment; Tilted balance.
- ...
4. **APP/A0665/W/19/3220360: Land at The Hollies, School Lane, Hartford, Northwich:** Traffic; Severity of impact.
5. **APP/A0665/A/12/2179410 & APP/A0665/A/12/2179374: Land at Grange Farm, Hartford, Cheshire and Land to the East of School Lane, Hartford:** (DL24 and IR14.38 - 14.70): Secretary of State's views regarding assessment of what does not amount to a severe impact: residential development resulting in e.g. a peak hour increase of 1 minute per vehicles on existing delays of 6 minutes, not considered severe.
6. **APP/P2935/A/14/2212989: Land South of A196, Stobhill, Morpeth, Northumberland** (DL13-16 and IR259-264): Traffic; Severity of impact.
7. **APP/C3105/W/19/3229631: Land North of Shortlands:** (DL13-16): 5YLS not a ceiling figure; material exceedence.

*The Inspector is respectfully invited to note that the Appellant will additionally wish to admit the forthcoming **Budget Statement**.



Department for
Communities and
Local Government

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Director
Turley Associates
1 New York Street
Manchester
M1 4HD

Our Ref: APP/A0665/A/12/2179410 &
APP/A0665/A/12/2179374

Mr M Gilbert
The Planning Consultancy
Bridge Farm
Sarn
Malpas
Cheshire
SY14 7LN

18 November 2013

Dear Madam and Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEALS BY HARROW ESTATES PLC AND BY BRIDGEMERE LAND PLC AND
BRIDGEMERE JV LTD - LAND AT GRANGE FARM, HARTFORD, CHESHIRE
AND LAND TO THE EAST OF SCHOOL LANE, HARTFORD, NORTHWICH,
CHESHIRE, CW8 1PW
APPLICATION REFERENCES 11/05765/OUT AND 11/05805/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Stephen Roscoe BEng MSc CEng MICE, who held a public inquiry on 4-7 and 11 December 2012 into your clients' appeals as follows:

APPEAL A by Harrow Estates plc against a decision of Chester West and Chester Council (the Council) to refuse planning permission for 'up to 300 dwellings comprising: 42 detached four and five bedroomed dwellings with associated car parking (details of vehicular access, layout, scale and appearance to be approved); up to 258 three, four and five bedroomed dwellings up to a maximum of 2.5 storeys in height (including details of means of access); the re-use of Grange farmhouse for either residential or non-residential institutional use (Use Class D1); a public car park; and an associated community green and linear park' at Land at Grange Farm, Hartford, Cheshire, in accordance with application reference 11/05765/OUT, dated 9 December 2011.

APPEAL B by Bridgemere Land PLC and Bridgemere JV Ltd against a decision of the Council to refuse planning permission for 'a residential development comprising up to 350 dwellings and associated amenity areas together with a new access onto School Lane' at Land to the East of School Lane, Hartford, Northwich, Cheshire, CW8 1PW, in accordance with application reference 11/05805/OUT, dated 9 December 2011.

2. On 27 July 2012 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeals involve proposals for residential development of over 150 units on sites of over 5ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that both appeals are allowed and planning permission is granted. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. At the inquiry applications for costs were submitted by each of your clients against the Council. These applications are the subject of a separate decision letter, also being issued today.
5. The Secretary of State has had regard to the two issues identified by the Inspector at IR2.2 and 2.3 and notes that neither issue led to any objection from any party.
6. Following applications for screening opinions made in May and November 2011 in respect of the proposed residential developments, the Council confirmed by letters dated 14 June and 10 November 2011 that Environmental Impact Assessments would not be required (IR2.4). Like the Inspector (IR2.4), the Secretary of State is satisfied that there is no reason to depart from this position.
7. He also notes that the Council withdrew its second reason for refusal of planning permission in relation to both applications (IR2.6).

Matters arising after the close of the inquiry

8. On 24 April 2013 following the close of the Inquiry, the Regional Strategy for the North West (Revocation) Order 2013 was laid before Parliament. The Order came into force on 20 May 2013. The Secretary of State wrote to interested parties on 7 May 2013 seeking their views on the implications of the then impending revocation of the Regional Strategy for the North West (the RS) to the case they put to the inquiry. On 19 July 2013 the Secretary of State wrote to interested parties enclosing certain responses to his letter of 7 May 2013 (as

outlined in Annex A of the 19 July 2013 letter). He also enclosed a summary of responses received from the large number of other parties who made representations in response to his letter of 7 May 2013 (as outlined in Annex B of the 19 July 2013 letter). The Secretary of State's letter of 19 July 2013 invited further comments. In response to this he received further comments from the parties listed at Annex 1 of this decision letter. In addition to the revocation of the RS, a number of other issues were raised by parties in their representations in response to the Secretary of State's letters of 7 May and 19 July. He has carefully considered these additional matters which are outlined in the summary of representations that he circulated to parties with his letter of 19 July 2013. The Secretary of State is satisfied that most of the issues raised were considered at the inquiry including, for example, the transport impacts of the proposals and the emerging neighbourhood plan, and that none of the other issues raised would affect his decision.

9. The Secretary of State is also in receipt post inquiry representations which were received by the Planning Inspectorate too late to be considered by the Inspector from: Brendan Sheppard-Baker dated 26 November 2012 and A C McBride, Managing Director of Redrow Homes date 6 December 2012. Additionally he has received post inquiry representations from: Councillor Rita Hollens dated 15 April 2013 on behalf of the Hartford Joint Action Group (HJAG); Dr John Swaffield MBE dated 5 July 2013 on behalf of HJAG; Mr Chris Bates dated 22 July 2013; Mr David Gardner dated 29 July 2013, Mr Phil Herbert dated 12, 27 and 28 of August 2013; and Mr J Pritchard dated 30 August and 15 October 2013. The Secretary of State has given careful consideration to the representations identified in this paragraph, but as they do not raise new matters that would affect his decision he has not considered it necessary to circulate them to all parties. Mr Herbert's representations are referred to further at paragraph 28 below.
10. Furthermore the Secretary of State has received two letters from the Council in relation to housing supply. The first, dated 11 September 2013, provides an update on progress with the draft local plan and indicates that as of 13 August 2013 the Council considered that it has 6.97 years housing land supply based on a new housing target for 22,000 dwellings in the plan period 2010 to 2030. However, in the second letter dated 22 October 2013, which was sent to the Planning Inspectorate in relation to a number of undecided housing appeals including Appeals A and B, the Council acknowledges that it cannot currently demonstrate a five year supply of housing land in the borough and estimates the supply at between 2.5 and 2.8 years. The Council has confirmed to the Secretary of State that its letter of 22 October 2013 represents its current position on housing supply. The Secretary of State does not consider it necessary to circulate the Council's letter of 22 October 2013 to parties for comment because in his view it does not represent a significant change to its position at the inquiry on the matter of housing supply.
11. Copies of all representations received in response to the Secretary of State's letters of 7 May 2013 and 19 July 2013, the summary of responses circulated with his letter of 19 July 2013 and the other post inquiry representations identified in paragraphs 9 and 10 above may be obtained by written request to the address at the foot of the first page of this letter.

Policy considerations

12. In deciding the application, 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.
13. In this case, the development plan comprises the saved policies of the Vale Royal Borough Local Plan First Review Alteration 2006 (the LP). In light of the revocation of the RS and all saved structure plans under the RS order the Secretary of State has not had regard to policies in the RS or the 2005 Cheshire Structure Plan Alteration, or to the Inspector's remarks about the extent to which the appeal schemes comply with them. The Secretary of State considers that the development plan policies most relevant to the appeal are those identified by the Inspector at IR4.5 to 4.7 and IR14.6 to 14.7.
14. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework ('the Framework'); Circular 11/95: *The Use of Conditions in Planning Permission*; the Community Infrastructure Levy (CIL) Regulations (2010 and 2011) and the other documents identified by the Inspector at IR14.9. The Secretary of State has also had regard to the fact that on 28 August 2013 the Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed limited weight to it.
15. The Secretary of State has also had regard to the Publication Draft Local Plan (Part One) - Strategic Policies which was published by West Cheshire and Chester Council on 6 September 2013. However, as it has not yet been subject to testing at examination and so is subject to change, it has been afforded little weight.
16. In deciding Appeal A, given that part of the site lies within, and part adjacent to, the Hartford Conservation Area (IR7.32), the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main issues

17. The Secretary of State considers that the main considerations in this case are those matters identified at IR14.2 and the relationship of the proposals to the development plan.

Housing Demand and Supply

18. The Secretary of State has carefully considered the Inspector's comments at IR14.10-14.26 together with parties' responses to his letters of 7 May and 19 July on the implications of revocation of the RS and the Council's letter of 22 October 2013. The Council and the appellants agreed at the inquiry that the RS provided the housing land requirements from which land supply should be calculated and that 1,317 dwellings should be provided annually in the Council's area between 2003 and 2021 (IR7.2). Based on the RS requirement, the Inspector reports that

the Council's latest Housing Land Monitor shows that it has a housing land supply of 2.6 years against the Framework requirement of five years, and that this is lower than the 2.9 years agreed between the two main parties, indicating a worsening situation (IR14.11).

19. Following the Inquiry the Council, in its letter of 24 May 2013, indicated that the revocation of the RS would raise no issues that would affect its case to the public inquiry. Each appellants' position was similar to this, with Turley Associates' letter of 22 May 2013 on behalf of the Appeal A appellant and The Planning Consultancy's letter of 23 May 2013 on behalf of the Appeal B appellant both indicating that the RS housing requirement is based on the most up-to-date, objectively tested evidence base figures. In its letter of 22 October 2013 the Council states that its housing land supply is between 2.5 and 2.8 years.
20. In light of the evidence before him the Secretary of State considers that the RS evidence base which underpinned its former RS housing requirement should be given weight in this case in the absence of a more robust locally derived target. This is because the RS evidence base was objectively tested through a full examination process prior to publication of the RS. For the reasons set out at paragraph 15 above, the Secretary of State gives little weight to the Council's emerging local plan and the housing requirement set out in it. Based on the RS requirement the Inspector considers that there is a shortfall in the supply of deliverable housing sites. The Council's letter of 22 October 2013 accepts that it cannot currently demonstrate a five year supply of housing land in the Borough. The Secretary of State is therefore satisfied that there is a shortfall in the supply of deliverable housing sites.
21. The Secretary of State agrees with the Inspector that the Council has a record of persistent under delivery of housing land, and that the five year requirement should therefore be increased by 20% (IR14.14). He also sees no reason to disagree with the Inspector that there is a shortfall in the provision of affordable housing (IR14.14) and that the 195 affordable dwellings that the appeal schemes would provide would make a valuable contribution in this regard (IR14.16). For the reasons given at IR14.17-14.20, the Secretary of State agrees with the Inspector that both sites are, and have been for some time, on the horizon for housing development (IR14.20). Regarding the Inspector's comments on localism at IR14.22-14.23 he agrees with Inspector that the significant demand for housing in the Council's area has to take precedence over the absence of an updated local plan and neighbourhood plan. However in reaching this conclusion, the Secretary of State does not agree with the Inspector's comment that, without an updated local plan, the community of Hartford does not have the parameters for its neighbourhood plan (IR14.22). For the reasons given by the Inspector, the Secretary of State agrees with his conclusion that the proposals would not be sufficiently large in their policy context to trigger prematurity issues or to prejudice the outcome of the emerging local plan process (IR14.24). Regarding the issue of previously developed land, the Council considers that there is a shortage of previously developed sites within its area (IR14.25). The Secretary of State agrees.
22. The Secretary of State agrees with the Inspector's conclusions on housing demand and supply at IR14.26. He agrees that: the Council's poor housing land

supply situation renders the related LP policies out of date; the appeal proposals, either in combination or individually, are necessary now to meet immediate housing need; and the presumption in favour of sustainable development in the Framework applies (paragraphs 14 and 49). He also agrees that the proposals would provide substantial benefits in terms of the Government's objective to secure a better balance between housing demand and supply and would accord with the Framework in this regard.

High Quality Communities

23. The Secretary of State agrees with the Inspector's reasoning and conclusions set out at IR14.27-14.37. He agrees with the Inspector's conclusion that the proposals, either in combination or individually, would provide substantial benefits in terms of the Government's objective to secure the creation of high quality, sustainable, mixed and inclusive communities (IR14.37).

Highways

24. The Secretary of State has carefully considered the Inspector's assessment of highways issues set out at IR14.38-14.70. For the reasons given by the Inspector, the Secretary of State agrees with his conclusions at 14.70 that the proposals would not have a severe impact on the transportation network with reference to the highway junctions in Hartford and that they do not conflict with the Framework in this regard or any element of LP Saved Policy T1 which is not to be regarded as out of date. He agrees with the Inspector (IR14.70) that the proposals would have an adverse but limited impact on the network in relation to the morning peak queuing on The Green and on Chester Road in an eastbound direction.

Other Considerations

25. In respect of Hartford Conservation Area, the Secretary of State agrees with the Inspector's conclusion (IR14.75) that the built form of the Appeal A proposals would preserve the character and appearance of the conservation area. In reaching this conclusion the Secretary of State agrees with the Inspector that the proposal would result in less than substantial harm to the open nature of the Grange Farm site that contributes to the significance of the conservation area, but that this harm would not outweigh the public benefit that would result from the provision of housing on the site which would be likely to take place and the positive contribution to the significance of the conservation area which would result from the potential re-use and future conservation of the Grange farmhouse (IR14.74). Regarding primary school places, he has had regard to the Inspector's comments at IR14.76-14.77, the unilateral planning obligations submitted in this respect, and to the fact that the Council in its capacity as Education Authority, has not objected to the proposals (IR14.76). The Secretary of State is satisfied that the proposals are not unacceptable in this respect.
26. The Secretary of State agrees with the Inspector's assessment of the proposals' impact on landscape at IR14.78-14.79. He agrees that the Appeal B proposal would not have a harmful effect on the surrounding landscape (IR14.78) and that the Appeal A proposal would not result in any landscape harm (IR14.79).

Regarding suggestions that part of the Grange Farm site should be developed as a village centre (IR14.80), for the reasons given by the Inspector, the Secretary of State agrees with his conclusion that the possibility of such a scheme coming forward would be no reason to dismiss the appeal.

27. The Secretary of State notes that Natural England has not objected to the proposals on ecological grounds and that the Council believes that the proposals would generally enhance the biodiversity of the sites (IR14.81). The Inspector is satisfied that the Appeal A proposal complies with the provisions of the Conservation of Habitats and Species Regulations 2010 and with Article 16 of the Habitats Directive and these conclusions are supported by Natural England (IR14.81). The Secretary of State agrees with the Inspector's conclusion.
28. The Secretary of State notes that both sites are included in historical recorded event records, and that the appellants have carried out archaeological assessments (IR14.82). He has also carefully considered the representations of 12, 27 and 28 August 2013 made by Mr P Herbert in respect of the Grange Farm site and the addition of the World War Two Crash site of an Armstrong Albermale in Hartford to the Cheshire Historic Environment Record Monument Record. Overall, taking into account the fact there has been no objection from the Council's archaeologist to the proposals (IR14.82) and also taking into account the requirements of condition 6 set out in Annex 2 in respect of archaeological investigation, the Secretary of State agrees with the Inspector that there is no justification for dismissing the appeals on the basis of archaeological issues.
29. In addition the Secretary of State agrees with Inspector's reasoning and conclusions in respect of those issues identified at IR14.83-14.84.

Conditions

30. The Secretary of State has considered the proposed conditions at Appendix A and B to the IR, the Inspector's comments at IR13.1 and IR14.89-14.92 and national policy as set out in paragraph 206 of the Framework and Circular 11/95. He is satisfied that the proposed conditions are reasonable and necessary and meet the other tests set out in the Framework and Circular 11/95. The conditions relevant for each appeal are reproduced at annexes 2 and 3 of this letter.

Planning Obligations

31. The Secretary of State has considered the dated and certified unilateral undertakings submitted at the Inquiry (IR13.1), the Inspector's comments at IR13.1-13.2 and IR14.85-14.88 and national policy as set out in paragraphs 203 and 204 of the Framework and Regulation 122 of the CIL Regulations 2010. He notes that the Council has no objection to the terms of the agreements and like the Inspector considers that the submission of unilateral undertakings instead of agreements between the owners of the sites and Council, as suggested in the Council's SPD1, does not count against the appeals (IR14.85). The Inspector considers that the sums secured by the undertakings directly relate fairly and reasonably to the proposal in scale and kind, and they would meet the tests set out in Regulation 122 of the CIL Regulations 2010 as amended (IR14.88). The Secretary of State agrees and accords weight to provisions of the undertakings.

Overall Conclusions

32. The Secretary of State agrees with the Inspector's conclusions at IR15.1-15.5. He has found that the Council is unable to demonstrate a 5 year supply of deliverable housing sites and agrees with the Inspector (IR15.1) that the appeals should be considered in the context of the presumption in favour of sustainable development. He has also found that proposals would provide substantial benefits both in terms of the Government's objective to secure a better balance between housing demand and supply, and the Government's objective to secure the creation of high quality, sustainable, mixed and inclusive communities.
33. The Secretary of State further concludes that the proposals would not have a severe impact on the transportation network with reference to the highway junctions in Hartford, although would have an adverse but limited impact on the network in relation to the morning peak queuing on The Green and on Chester Road in an eastbound direction. He also agrees with the Inspector's conclusion at IR15.3 that the impact in combination or individually would not significantly and demonstrably outweigh the benefits of the proposals such as to justify dismissing the appeals. The Secretary of State is satisfied that the proposals represent sustainable development.
34. Overall, like the Inspector (IR15.4) the Secretary of State concludes that the proposals accord with the relevant up to date policies of the development plan including H14, T1, T3, T9, and T20 and the Government's policies as set out in the Framework including in respect of delivering a wide choice of high quality homes and promoting sustainable transport.

Formal Decision

35. Accordingly, the Secretary of State agrees with the Inspector's recommendation. He hereby:

Allows **APPEAL A** by Harrow Estates plc for up to 300 dwellings comprising: 42 detached four and five bedroomed dwellings with associated car parking (details of vehicular access, layout, scale and appearance to be approved); up to 258 three, four and five bedroomed dwellings up to a maximum of 2.5 storeys in height (including details of means of access); the re-use of Grange farmhouse for either residential or non-residential institutional use (Use Class D1); a public car park; and an associated community green and linear park' at Land at Grange Farm, Hartford, Cheshire, in accordance with application reference 11/05765/OUT, dated 9 December 2011 subject to the conditions set out at Annex 2;

Allows **APPEAL B** by Bridgemere Land PLC and Bridgemere JV Ltd for 'a residential development comprising up to 350 dwellings and associated amenity areas together with a new access onto School Lane' at Land to the East of School Lane, Hartford, Northwich, Cheshire, CW8 1PW, in accordance with application reference 11/05805/OUT, dated 9 December 2011 subject to the conditions set out at Annex 3.

36. 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.
37. 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

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
39. A copy of this letter has been sent to Cheshire West and Chester Council and the Hartford Joint Action Group. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

Authorised by Secretary of State to sign in that behalf

Annex 1

Responses to the Secretary of State's letter of 19th July 2013

Derek Bowden	22 July 2013
MoreenMorrison	22 July 2013
Arthur and Maureen Wyatt	23 July 2013
Dr Robert Mais	23 July 2013
Eira Bowden	23 July 2013
Sam Ryan, Turley Associates	23 July 2013
M Gilbert, The Planning Consultancy	24 July 2013
Peter Jackson	24 July 2013
Aileen Penny	25 July 2013
Allan and Sheila Bell	25 July 2013
Andy Rae	25 July 2013
Anne Lynda Kenny	25 July 2013
Anne Radband	25 July 2013
Anne Roberts	25 July 2013
Arthur and Maureen Wyatt	25 July 2013
B R Slaney	25 July 2013
Brian Wilkinson	25 July 2013
CA and JG Castle	25 July 2013
Carole Miller	25 July 2013
Caroline and Tony Houghton	25 July 2013
Claire Hope	25 July 2013
Craig Hewett	25 July 2013
David Barr	25 July 2013
Derek Bowden, on behalf of the Northwich Town Council	25 July 2013
Neighbourhood Plan Working Group	
Deryck Petty	25 July 2013
Dr David Richards and Mrs Jenny Richards	25 July 2013
Dr John Swaffield, Secretary, Hartford Civic Society	25 July 2013
Eileen Roberts	25 July 2013
Elizabeth Davies	25 July 2013
Graham Shaw	25 July 2013
Iris Isserlis	25 July 2013
Janet Poole	25 July 2013
John Szostek	25 July 2013
Judith Gordon, Cheshire West and Chester Council	25 July 2013
Julia Griffiths	25 July 2013
June Orton	25 July 2013
Kathryn Joy Hitchenson, John Hitchenson and Kathleen Joan Harrop	25 July 2013
Lucy Roberts	25 July 2013
Mary and Stuart Mellish	25 July 2013
Michael Isserlis	25 July 2013
Mrs Rosemary Jackson and Dr Stephen Jackson	25 July 2013
Neville Roberts	25 July 2013
Paul Flanagan	25 July 2013
Peter Davis	25 July 2013
Peter Fahy	25 July 2013

Philip Ingram	25 July 2013
Philip Millar	25 July 2013
Rox Ellis	25 July 2013
Simon, Joanne and Emily Walker	25 July 2013
Susan Gibb	25 July 2013
Susan Slaney	25 July 2013
Valerie Davies	25 July 2013
Alan Cox	26 July 2013
Alison Gardiner	26 July 2013
Bruce Ursell	26 July 2013
Councillor Paul Dolan	26 July 2013
David Gardner	26 July 2013
David Glenn	26 July 2013
David Tasker	26 July 2013
Diane Hewett	26 July 2013
Dr A P Sharratt	26 July 2013
Dr Alan Adams	26 July 2013
Dr Claire Banner	26 July 2013
Gareth Williams	26 July 2013
Helen Rae	26 July 2013
Hilda Millar	26 July 2013
Joan Dowling	26 July 2013
Joan Parkes	26 July 2013
Jon Pritchard	26 July 2013
Katharine and Clive Thompson	26 July 2013
Katrina Pritchard	26 July 2013
Keith Sexton	26 July 2013
Malcolm Haigh	26 July 2013
Margaret and Eugene Boyle	26 July 2013
Marie Hodgson	26 July 2013
Martin Loftus	26 July 2013
Michael Smith	26 July 2013
Mrs G Pickup	26 July 2013
Mrs J P Sharratt	26 July 2013
Nicholas Smith	26 July 2013
Oliver Rae	26 July 2013
Patricia Cox	26 July 2013
Paul Evans	26 July 2013
Pauline Glenn	26 July 2013
Peter Craven	26 July 2013
Phil Herbert	26 July 2013
Rita Hollins, on behalf of Hartford Parish Council, Hartford Joint Action Group and Hartford Neighbourhood Plan Working Group	26 July 2013
Robert and Debbie Jones	26 July 2013
Robert and Margaret Baker	26 July 2013
Robert Hollens	26 July 2013
Sarah Round	26 July 2013
Sion Hughes	26 July 2013
Vicki Carnell	26 July 2013
W V Gillies	26 July 2013

Richborough Estates

Annex 2 – list of planning conditions for Appeal A (Land at Grange Farm)

- 1) Details of the landscaping for Phase 1 and the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") in respect of each other phase, details of which are to be approved by Condition 5 below, shall be submitted to, and approved in writing by, the local planning authority before any development on that phase begins, and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than 12 months in respect of Phase 1 and not later than three years for subsequent phases from the date of this permission.
- 3) Each phase of the development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved for that phase.
- 4) Phase 1 of the development hereby permitted and applications for the approval of reserved matters shall be in accordance with the parameters set out in the Design and Access Statement (received 12/12/11) and the approved plans and documents listed in Schedule 1.
- 5) No development shall take place until full details of the phasing of the construction of the development hereby permitted, including temporary highway and pedestrian routings, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved phasing details unless otherwise approved in writing by the local planning authority.
- 6) No development shall take place within the site until the appellant, or their agents or successors in title, have secured a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.
- 7) Development in any phase shall not begin until full details of both hard and soft landscape works in respect of that phase have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved. These details shall include:
 - i) proposed finished levels or contours;
 - ii) means of enclosure and boundary treatments;
 - iii) car parking layouts;
 - iv) other vehicle and pedestrian access and circulation areas;
 - v) hard surfacing materials;
 - vi) minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc);
 - vii) bird nesting-box details;
 - viii) street furniture;
 - ix) proposed and existing functional services above and below ground (eg. drainage, power and communication cables, pipelines etc. indicating lines, manholes, supports etc.);

- x) retained historic landscape features and proposals for restoration, where relevant;
 - xi) trees, hedgerows and woodland areas to be retained;
 - xii) a landscape strategy plan to indicate species and landscape themes within the different areas to help create an identity and to include reinforcement of the boundaries; and
 - xiii) in terms of soft landscaping, existing vegetation to be retained or removed, planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants (noting species, plant sizes and proposed numbers or densities where appropriate), an implementation programme and rabbit protection of the proposed planting (including bulbs and proposed grass seed mixes).
- 8) No retained tree, hedgerow or woodland area shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 10 years from the date of occupation of the development or any phase of the development, whichever is the later, other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.
- 9) Retained hedgerows shall be protected during construction through the installation of protective fencing in accordance with a scheme to be submitted to, and approved in writing by, the local planning authority for each phase prior to the commencement of development in that phase. Development shall be implemented in accordance with the approved scheme.
- 10) Development in any phase shall not begin until a scheme, setting out a precautionary method of working with regard to bats and birds, for that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall include methods of working to Grange farmhouse and for the clearance of trees, shrubs and hedgerows. Development shall be carried out in accordance with the approved scheme. No vegetation clearance or building demolition shall be undertaken from 1st March to 31st August (inclusive) unless otherwise approved in writing by the local planning authority.
- 11) Development in any phase shall not begin until an up to date badger survey in relation to that phase has been undertaken and a method statement detailing any mitigation to avoid harmful impacts to badgers has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved method statement.
- 12) No development shall take place until a planting plan and programme for the replanting of fruit trees, to compensate for those lost through redevelopment of the site, have been submitted, to and approved in writing by, the local planning authority. Planting shall be carried out in accordance with the approved plan and programme and be thereafter retained.
- 13) Dwellings in any phase shall not be occupied until a 20 year habitat and landscape management plan (setting out long-term design objectives, management responsibilities and maintenance schedules) for all landscape areas within that phase has been submitted to, and approved in writing by, the

local planning authority. The habitat and landscape management plan shall be implemented as approved.

- 14) Development in any phase shall not begin until details of proposed earthworks in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The details shall include the proposed grading and any mounding of land areas, including the levels and contours to be formed, and show the relationship of any proposed mounding to existing vegetation and the surrounding landform. Development shall be carried out in accordance with the approved details.
- 15) Development in any phase shall not begin until details of proposed substations and other utility structures in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Substations or other utility structures shall not be installed until a noise impact assessment of the proposed substation or utility structure has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and noise impact assessment, unless otherwise approved in writing with the local planning authority.
- 16) Development in any phase shall not begin until there has been submitted to, and approved in writing by, the local planning authority a plan indicating the positions, design, materials and type of construction-related and permanent boundary treatment to be erected in respect of that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 17) Development in any phase shall not begin until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples.
- 18) Development in any phase shall not begin until a strategy and scheme detailing all external lighting equipment, including floodlighting, in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The strategy shall include details of both external lighting during construction phases as well as the permanent lighting of the completed development. Any lighting scheme shall be designed in accordance with the Institute of Lighting Professionals 'Guidance for the Reduction of Obtrusive Light'. The scheme shall include full details of: the hours of operation, location, size and design of luminaires and fittings; the type and output of light sources, with lux levels; and isolux drawings to demonstrate the levels of illumination within the site and the amount of overspill of lighting onto vegetated areas and beyond the site boundaries. Development shall be carried out in accordance with the approved strategy and scheme and shall thereafter be retained. No other external lighting equipment within public areas shall then be used within the development, other than as approved by the local planning authority.
- 19) Development in any phase shall not begin until a tree pruning and felling specification in respect of that phase has been submitted to, and approved in

writing by, the local planning authority. Development shall be carried out in accordance with the approved specification.

- 20) Development in any phase shall not begin until a plan and details identifying tree Root Protection Areas (RPAs) in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Where it is found that there is conflict between identified tree RPAs and the proposed development, the details shall include a construction specification and method statement relating to those areas. Development shall be carried out in accordance with the approved plan and details.
- 21) Notwithstanding Condition 4, no development shall take place until details, and a programme for the installation, of a removable bollard to prevent unauthorised vehicular access on Footpath 5 - Hartford have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details. Notwithstanding Condition 4, the existing surface of Footpath 5 - Hartford, shall be retained with its grass verges.
- 22) Notwithstanding Condition 4, no development shall take place until house type details relating to Plots 1-3 and 52-56 have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 23) Construction work shall not begin on any phase of the development until a scheme for protecting the proposed dwellings from noise has been submitted to, and approved in writing by, the local planning authority in respect of that phase. The scheme shall ensure that the following noise levels are met:
 - i) maximum noise levels within habitable rooms during the day and evening (07.00 to 22.59hrs) of 35dB(A)LAeq,8hrs;
 - ii) maximum noise levels within bedrooms during the night (23.00 to 06.59hrs) of 30dB(A)LAeq,8hrs and 45dB(A)LAm_{ax}; and
 - iii) maximum noise levels in gardens during the day and evening (07.00 to 22.59hrs) of 50dB(A)LAeq

In the event that the scheme incorporates acoustic bunds or barriers, it shall include details for the long term maintenance of those barriers to maintain their efficiency and protect residential amenity. All works which form part of the approved scheme shall be completed before the dwellings to which they relate are occupied and shall be thereafter retained.

- 24) Demolition or construction works, including deliveries to or dispatched from the site, shall not take place outside 08.00 to 18.00 hours Mondays to Fridays and 08.00 to 13.00 hours on Saturdays, nor at any time on Sundays or Bank Holidays. There shall be no deliveries by HGVs to the site between the hours of 08.00 to 09.00 and 17.00 to 18.00. Any variation to the above hours of works and deliveries shall be submitted to, and approved in writing by, the local planning authority prior to any such variation being implemented.
- 25) No development shall take place until the following components (a to d) of a structured scheme to deal with the risks associated with actual or potential contamination of the site have each been submitted to, and approved in

writing by, the local planning authority, unless another date or stage in development is agreed in writing with the authority:

- (a) a preliminary risk assessment which identifies all previous uses on or within an influencing distance of the site, potential contaminants associated with those uses, a conceptual model (indicating the sources, pathways and receptors of contamination), actual or potentially unacceptable risks arising from contamination and initial remediation options;
- (b) a detailed scheme of site investigation based on component (a) from which a detailed assessment of risk to all current and future receptors that may be affected, including those off site, shall be derived;
- (c) a remediation options appraisal and implementation strategy, based on the detailed results of (b), giving full details of the remediation measures required and how they are to be undertaken; and
- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the remediation works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The pre-development scheme shall be implemented as approved unless revision is approved by the local planning authority in writing.

In the event that no contamination requiring remediation or verification is found, and this finding is submitted to, and approved in writing by, the local planning authority, components (c) and (d) shall not apply.

- 26) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from a different source, containing a new contaminative substance or affecting a new pathway or receptor), then revised proposals for detailed investigation, risk assessment, remediation and verification shall be submitted to, and approved in writing by, the local planning authority, prior to all but urgent remediation works necessary to secure the area. Development shall be carried out in accordance with the approved revised proposals.
- 27) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from an existing risk assessed source, containing comparable risk assessed substances and affecting an already risk assessed pathway or receptor) that could be addressed by a simple extension of the approved scheme to a larger area, then the local planning authority shall be notified promptly in writing confirming details relating to: the areas affected; the approved investigation; remediation and validation measures to be applied; and the anticipated completion timescale. Development shall be carried out in accordance with the confirmed details.
- 28) In the event that site investigation works identify a need for remediation, as approved by the local planning authority, no part of the development site within the relevant phase of this permission shall be occupied until:

- i) all components of the pre-approved or revised scheme to deal with the risks associated with actual or potential contamination of the site within that phase have been completed; and
 - ii) written evidence of satisfactory completion and of the suitability of that part of the site for occupation has been submitted to, and approved in writing by, the local planning authority.
- 29) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) details of construction traffic phasing;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) the loading and unloading of plant and materials;
 - iv) the storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust, dirt, noise, vibration and light during construction;
 - viii) a scheme for the recycling or disposal of waste resulting from construction works;
 - ix) hours of construction;
 - x) details of any piling; and
 - xi) demonstration that the works will be carried out in accordance with guidance provided in BS 5228-1: 2009 "Code of practice for noise and vibration control on construction and open sites – Part 1: Noise".
- 30) Development shall not begin until details of the proposed access, including all associated works within the public highway, as set out on drawing no CBO-0018-002 Rev A, have been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied until that access has been constructed in accordance with the approved details.
- 31) Development in any phase shall not begin until a design and construction specification and scheme, together with a surface course laying programme, for all highways, footways and cycle ways within that phase of the development, as indicated on the approved plans, have been submitted to, and approved in writing by, the local planning authority. No dwelling or building shall be occupied until that part of the highway, footway or cycleway network which provides access to it has been constructed up to base-course level in accordance with the approved specification and scheme. The surface course shall then be completed in accordance with the approved specification, scheme and programme.

- 32) Development in any phase shall not begin until details of cycle storage for each dwelling within that phase of the development have been submitted to, and approved in writing by, the local planning authority. No dwelling shall be occupied until the cycle storage relating to it has been provided in accordance with the approved details. The cycle storage shall thereafter be retained.
- 33) The development shall not be occupied until a controlled crossing facility has been provided on Chester Road in accordance with the details shown on drawing no CBO-0018-002 Rev A.
- 34) Development shall not begin until details of a car parking area, between Grange farmhouse and Chester Road shown illustratively on drawing no. PL1111 M101 Rev A, have been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied until the car parking area has been constructed in accordance with the approved details and made available for public use, including the approved number of spaces for disabled persons. The car parking area shall be retained for public use, unless otherwise approved in writing by the local planning authority.
- 35) Notwithstanding the terms of the Unilateral Planning Obligation dated 11th December 2012, a Travel Plan shall be submitted to, and approved in writing by, the local planning authority prior to the marketing of dwellings within any part of the development hereby permitted. The Travel Plan shall be implemented in accordance with the approved details and timetable set out in that plan prior to the occupation of any dwellings within the site.
- 36) No building hereby permitted shall be occupied until surface water drainage works in relation to that building have been completed in accordance with details that have been submitted to, and approved in writing by, the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable urban drainage system, and the results of the assessment submitted to, and approved in writing by, the local planning authority.
- 37) No development shall take place until a scheme for the management of overland flow, from surcharging of the site's surface water drainage system, during extreme rainfall events has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of the proposed ground and building finished floor levels and details of measures to prevent blockage of the railway culvert flowing from the site, together with any compensatory flood storage required to accommodate a 1 in 100 year flood event. Development shall be carried out in accordance with the approved scheme.
- 38) No development shall take place until a scheme, showing how foul water will be dealt with, has been submitted to, and approved in writing by, the local planning authority. Only foul drainage shall be connected into the public sewerage system, and the scheme shall provide for all tree protection requirements on the development site. No part of the development shall be brought into use until all drainage, relating to that part of the development, has been completed in accordance with the approved scheme.
- 39) Development in any phase containing proposed play areas shall not begin until a scheme for the provision of play areas in respect of that phase, including the management thereof, has been submitted to, and approved in

writing by, the local planning authority. Dwellings within that phase shall not be occupied until play areas have been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The play areas shall not thereafter be used for any purpose other than a public play area.

- 40) Development in any phase containing proposed public open spaces shall not begin until a scheme for the provision of public open space in respect of that phase, including the management thereof, has been submitted to, and approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until public open space has been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The approved areas shall not thereafter be used for any purpose other than public open space.
- 41) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 42) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no building, extension or structure, and no wall, fence or other means of enclosure shall be erected on Plots 1-3 and Plots 52-56 of Phase 1, other than those expressly authorised by this permission.
- 43) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no alteration or enlargement shall be made to the dwellings on Plots 1-3 and Plots 52-56 of Phase 1, other than that expressly authorised by this permission.
- 44) Development in any phase shall not begin until a scheme, including a timetable for implementation, to secure at least 10% of the predicted energy supply of the development from decentralised and renewable or low carbon energy sources, as defined in the glossary of the National Planning Policy Framework, in respect of that phase has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.

Annex 3 – list of planning conditions for Appeal B (Land to the East of School Lane)

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") in respect of each phase, details of which are to be approved by Condition 5 below, shall be submitted to, and approved in writing by, the local planning authority before any development on that phase begins, and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than 12 months in respect of the first phase and not later than three years for subsequent phases from the date of this permission.
- 3) Each phase of the development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved for that phase.
- 4) The applications for the approval of the reserved matters shall be in accordance with the parameters described and identified in the Design and Access Statement and the Design and Access Statement Addendum for a maximum of 350 dwellings. The development hereby permitted shall also be carried out in accordance with the approved plans listed in Schedule 2.
- 5) No development shall take place until full details of the phasing of the construction of the development hereby permitted, including temporary highway and pedestrian routings, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved phasing details, unless otherwise approved in writing by the local planning authority.
- 6) No development shall take place within the areas of archaeological interest 078/079, 211/219 and 355/359 as identified on the 'Finds' plan appended to the Archaeological Monitoring of Metal Detecting Survey, until the applicant, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.
- 7) Development in any phase shall not begin until full details of both hard and soft landscape works in respect of that phase have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved. These details shall include:
 - i) proposed finished levels or contours;
 - ii) means of enclosure and boundary treatments;
 - iii) car parking layouts;
 - iv) other vehicle and pedestrian access and circulation areas;
 - v) hard surfacing materials;
 - vi) minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc);
 - vii) bird nesting-box details;
 - viii) street furniture;

- ix) proposed and existing functional services above and below ground (eg. drainage, power and communication cables, pipelines etc. indicating lines, manholes, supports etc.);
 - x) retained historic landscape features and proposals for restoration, where relevant;
 - xi) trees, hedgerows and woodland areas to be retained;
 - xii) a landscape strategy plan to indicate species and landscape themes within the different areas to help create an identity and to include reinforcement of the boundaries; and
 - xiii) in terms of soft landscaping, existing vegetation to be retained or removed, planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants (noting species, plant sizes and proposed numbers or densities where appropriate), an implementation programme and rabbit protection of proposed planting (including bulbs and proposed grass seed mixes).
- 8) No retained tree, hedgerow or woodland area shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 10 years from the date of occupation of the development or any phase of the development, whichever is the later, other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.
- 9) Retained hedgerows shall be protected during construction through the installation of protective fencing in accordance with a scheme to be submitted to, and approved in writing by, the local planning authority for each phase prior to the commencement of development in that phase. Development shall be implemented in accordance with the approved scheme.
- 10) No development shall take place until a badger protection strategy, providing for protection to badgers on and adjoining the site, has been submitted to, and approved in writing by, the local planning authority. The strategy shall include a survey and details of phased mitigation measures, which shall be updated and informed by up to date badger surveys prior to the commencement of development on each phase, and shall be implemented as approved.
- 11) No vegetation clearance or building demolition shall be undertaken from 1st March to 31st August (inclusive) unless otherwise approved in writing by the local planning authority.
- 12) Dwellings in any phase shall not be occupied until a 20 year habitat and landscape management plan (including the replacement of inappropriate species planting on the valley floor, long term design objectives, management responsibilities and maintenance schedules) for all landscape areas within that phase has been submitted to, and approved in writing by, the local planning authority. The landscape management plan shall be implemented as approved.
- 13) No development shall take place until details to secure a minimum 15 m Buffer Zone along the edge of the Marshall's Arm Nature Reserve have been submitted to, and approved in writing by, the local planning authority. If private gardens are proposed to be incorporated into the Buffer Zone, then the

details shall include a tree management scheme for existing and new tree planting within the Buffer Zone. Development shall be carried out in accordance with the approved details.

- 14) No development shall take place until a scheme to secure the retention and protection of the tree T29, identified in the Tree Survey Report submitted with the planning application, has been submitted to, and approved in writing by, the local planning authority. The scheme shall ensure that the tree will be located in an open or garden area. Development shall be carried out in accordance with the approved scheme.
- 15) Development in any phase shall not begin until details of proposed earthworks in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The details shall include the proposed grading and any mounding of land areas, including the levels and contours to be formed, and show the relationship of any proposed mounding to existing vegetation and the surrounding landform. Development shall be carried out in accordance with the approved details.
- 16) Development in any phase shall not begin until details of proposed substations and other utility structures in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Substations or other utility structures shall not be installed until a noise impact assessment of the proposed substation or utility structure has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and noise impact assessment, unless otherwise approved in writing by the local planning authority.
- 17) Development in any phase shall not begin until there has been submitted to, and approved in writing by, the local planning authority a plan indicating the positions, design, materials and type of construction-related and permanent boundary treatment to be erected in respect of that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 18) Development in any phase shall not begin until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples.
- 19) Development in any phase shall not begin until a strategy and scheme detailing all external lighting equipment, including floodlighting, in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The strategy shall include details of both external lighting during construction phases as well as the permanent lighting of the completed development. Any lighting scheme shall be designed in accordance with the Institute of Lighting Professionals 'Guidance for the Reduction of Obtrusive Light'. The scheme shall include full details of: the hours of operation, location, size, design of luminaires and fittings; the type and output of light sources, with lux levels; and isolux drawings to demonstrate the levels of illumination within the site and the amount of overspill of lighting onto

vegetated areas and beyond the site boundaries. Development shall be carried out in accordance with the approved strategy and scheme and shall thereafter be retained. No other external lighting equipment within public areas shall then be used within the development, other than as approved by the local planning authority.

- 20) Construction work shall not begin on any phase of the development until a scheme for protecting the proposed dwellings from noise has been submitted to, and approved in writing by, the local planning authority in respect of that phase. The scheme shall ensure that the following noise levels are met:
- i) maximum noise levels within habitable rooms during the day and evening (07.00 to 22.59hrs) of 35dB(A)LAeq,8hrs;
 - ii) maximum noise levels within bedrooms during the night (23.00 to 06.59hrs) of 30dB(A)LAeq,8hrs and 45dB(A)LAmx; and
 - iii) maximum noise levels in gardens during the day and evening (07.00 to 22.59hrs) of 50dB(A)LAeq

In the event that the scheme incorporates acoustic bunds or barriers, it shall include details for the long term maintenance of those barriers to maintain their efficiency and protect residential amenity. All works which form part of the approved scheme shall be completed before the dwellings to which they relate are occupied and shall be thereafter retained.

- 21) Demolition or construction works, including deliveries to or dispatched from the site, shall not take place outside 08.00 to 18.00 hours Mondays to Fridays and 08.00 to 13.00 hours on Saturdays, nor at any time on Sundays or Bank Holidays. There shall be no deliveries by HGVs to the site between the hours of 08.00 to 09.00 and 17.00 to 18.00. Any variation to the above hours of works and deliveries shall be submitted to, and approved in writing by, the local planning authority prior to any such variation being implemented.
- 22) No development shall take place until the following components (a to d) of a structured scheme to deal with the risks associated with actual or potential contamination of the site have each been submitted to, and approved in writing by, the local planning authority, unless another date or stage in development is agreed in writing with the authority:
- (a) a preliminary risk assessment which identifies all previous uses on or within an influencing distance of the site, potential contaminants associated with those uses, a conceptual model (indicating the sources, pathways and receptors of contamination), actual or potentially unacceptable risks arising from contamination and initial remediation options;
 - (b) a detailed scheme of site investigation based on component (a) from which a detailed assessment of risk to all current and future receptors that may be affected, including those off site, shall be derived;
 - (c) a remediation options appraisal and implementation strategy, based on the detailed results of (b), giving full details of the remediation measures required and how they are to be undertaken; and

- (d) a verification plan providing details of the data that will be collected in order to demonstrate that the remediation works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The pre-development scheme shall be implemented as approved, unless revision is approved by the local planning authority in writing.

In the event that no contamination requiring remediation or verification is found, and this finding is submitted to, and approved in writing by, the local planning authority, components (c) and (d) shall not apply.

- 23) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from a different source, containing a new contaminative substance or affecting a new pathway or receptor), then revised proposals for detailed investigation, risk assessment, remediation and verification shall be submitted to, and approved in writing by, the local planning authority, prior to all but urgent remediation works necessary to secure the area. Development shall be carried out in accordance with the approved revised proposals.
- 24) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from an existing risk assessed source, containing comparable risk assessed substances and affecting an already risk assessed pathway or receptor) that could be addressed by a simple extension of the approved scheme to a larger area, then the local planning authority shall be notified promptly in writing confirming details relating to: the areas affected; the approved investigation; remediation and validation measures to be applied; and the anticipated completion timescale. Development shall be carried out in accordance with the confirmed details.
- 25) In the event that site investigation works identify a need for remediation, as approved by the local planning authority, no part of the development site within the relevant phase of this permission shall be occupied until:
 - i) all components of the pre-approved or revised scheme to deal with the risks associated with actual or potential contamination of the site within that phase have been completed; and
 - ii) written evidence of satisfactory completion and of the suitability of that part of the site for occupation has been submitted to, and approved in writing by, the local planning authority.
- 26) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) details of construction traffic phasing;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) the loading and unloading of plant and materials;

- iv) the storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust, dirt, noise, vibration and light during construction;
 - viii) a scheme for the recycling or disposal of waste resulting from construction works;
 - ix) hours of construction;
 - x) details of any piling; and
 - xi) demonstration that the works will be carried out in accordance with guidance provided in BS 5228-1: 2009 "Code of practice for noise and vibration control on construction and open sites – Part 1: Noise".
- 27) No construction in relation to the causeway access route shall take place until a wildlife protection plan has been submitted to, and approved in writing by, the local planning authority. The plan shall include:
- i) a plan showing wildlife protection zones where construction activities will be restricted and where protective measures will be installed or implemented;
 - ii) details of protective measures, both physical measures and sensitive working practices, to avoid impacts during construction;
 - iii) a timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (birds/badgers); and
 - iv) details of replacement planting (trees and shrubs).
- All construction activities shall be implemented in accordance with the approved plan and timetable, unless otherwise approved in writing by the local planning authority.
- 28) No dwelling accessed from School Lane shall be occupied until the access from School Lane has been constructed in accordance with the approved drawing nos. HEY/09 001 P7 and CBO-0019-001 Rev B.
- 29) No dwelling accessed from Douglas Close shall be occupied until the access from Douglas Close has been constructed in accordance with the approved drawing no CBO-0019-002.
- 30) Development in any phase shall not begin until a design and construction specification and scheme, together with a surface course laying programme, for all highways, footways and cycleways within that phase of the development, as indicated on the approved plans, has been submitted to, and approved in writing by, the local planning authority. No dwelling or building shall be occupied until that part of the highway, footway or cycleway network which provides access to it has been constructed up to base-course level in

accordance with the approved specification and scheme. The surface course shall then be completed in accordance with the approved specification, scheme and programme.

- 31) Development in any phase shall not begin until details of cycle storage for each dwelling within that phase of the development have been submitted to, and approved in writing by, the local planning authority. No dwelling shall be occupied until the cycle storage relating to it has been provided in accordance with the approved details. The cycle storage shall thereafter be retained.
- 32) Notwithstanding the terms of the Unilateral Planning Obligation dated 11th December 2012, a Travel Plan shall be submitted to, and approved in writing by, the local planning authority prior to the marketing of dwellings within any part of the development hereby approved. The Travel Plan shall be implemented in accordance with the approved details and timetable set out in that plan prior to the occupation of any dwellings within the site.
- 33) The site access, from Douglas Close, shall serve only as an access for motor vehicles to no more than 50 dwellings.
- 34) No building hereby permitted shall be occupied until surface water drainage works in relation to that building have been completed in accordance with details that have been submitted to, and approved in writing by, the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable urban drainage system, and the results of the assessment submitted to, and approved in writing by, the local planning authority.
- 35) No development shall take place until a scheme to ensure that no ground levels would be raised within the 1 in 100 year fluvial floodplain has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 36) No development shall take place until a scheme for the management of surface water from surcharging of the site's surface water drainage system during extreme rainfall events has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of the proposed ground and building finished floor levels. Development shall be carried out in accordance with the approved scheme.
- 37) No development shall take place until a scheme to dispose of foul sewage has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 38) Development in any phase containing proposed play areas shall not begin until a scheme for the provision of play areas in respect of that phase, including the management thereof, has been submitted to, and approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until play areas have been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The play areas shall not thereafter be used for any purpose other than a public play area.
- 39) Development in any phase containing proposed public open space shall not begin until a scheme for the provision of public open space in respect of that phase, including the management thereof, has been submitted to, and

approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until public open space has been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The approved areas shall not thereafter be used for any purpose other than public open space.

- 40) No building hereby permitted shall be occupied until a scheme for the eradication of Japanese Knotweed has been submitted to, and approved in writing by, the local planning authority. The eradication scheme shall include: surveying and the identification of the extent of the Japanese Knotweed on a plan; a programme for implementation; and arrangements and a programme for the submission and approval in writing, by the local planning authority, of a validation report confirming the nature of the treatment and eradication. Should a delay of 12 months or more elapse between the submission of the scheme and the commencement of development, a further survey shall be carried out and a revised scheme submitted to, and approved in writing by, the local planning authority before the buildings hereby permitted are occupied.
- 41) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 42) Development in any phase shall not begin until a scheme, including a timetable for implementation, to secure at least 10% of the predicted energy supply of the development from decentralised and renewable or low carbon energy sources, as defined in the glossary of the National Planning Policy Framework, in respect of that phase has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.



Report to the Secretary of State for Communities and Local Government

by Stephen Roscoe BEng MSc CEng MICE

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

Date: 27 February 2013

TOWN AND COUNTRY PLANNING ACT 1990

**APPEALS BY HARROW ESTATES PLC AND BY BRIDGEMERE LAND PLC AND
BRIDGEMERE JV LTD**

CHESHIRE WEST AND CHESTER COUNCIL

Inquiry held on 4-7 & 11 December 2012

Site Visit held on 12 December 2012

Land at Grange Farm, Hartford, Cheshire and Land to the East of School Lane, Hartford, Northwich,
Cheshire CW8 1PW

File Refs: APP/A0665/A/12/2179410 & 2179374

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GLOSSARY

ASLEV	Area of Significant Local Environmental Value
CA	Hartford (Extended) Conservation Area
CIL	Community Infrastructure Levy
CS	Core Strategy
DAS	Design and Access Statement
DCLG	Department for Communities and Local Government
DfT	Department for Transport
DP	Development Plan
DPD	Development Plan Document
EA	Environment Agency
EIA	Environmental Impact Assessment
IHT	Institution of Highways and Transportation
JAG	The Hartford Joint Action Group
LP	Local Plan
LTP	Local Transport Plan
MfS2	Manual for Streets 2
MOVA	Microprocessor Optimised Vehicle Actuation
NE	Natural England
RS	Regional Strategy
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SOCG	Statement of Common Ground
SP	Structure Plan
SPD	Supplementary Planning Document
SuDS	Sustainable Urban Drainage System
TA	Transport Assessment

Appeal A

File Ref: APP/A0665/A/12/2179410

Land at Grange Farm, Hartford, Cheshire

- 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 Harrow Estates plc against the decision of Cheshire West and Chester Council.
- The application Ref 11/05765/OUT, dated 9 December 2011, was refused by notice dated 7 June 2012.
- The development proposed is an outline application for up to 300 dwellings comprising: 42 detached four and five bedroomed dwellings with associated car parking (details of vehicular access, layout, scale and appearance to be approved); up to 258 three, four and five bedroomed dwellings up to a maximum of 2.5 storeys in height (including details of means of access); the re-use of Grange farmhouse for either residential or non-residential institutional use (Use Class D1); a public car park; and an associated community green and linear park.

Summary of Recommendation: The appeal be allowed.

Appeal B

File Ref: APP/A0665/A/12/2179374

Land to the East of School Lane, Hartford, Northwich, Cheshire CW8 1PW

- 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 Bridgemere Land PLC and Bridgemere JV Ltd against the decision of Cheshire West and Chester Council.
- The application Ref 11/05805/OUT, dated 9 December 2011, was refused by notice dated 7 June 2012.
- The development proposed is a residential development comprising up to 350 dwellings and associated amenity areas together with a new access onto School Lane.

Summary of Recommendation: The appeal be allowed.

1. Preamble

- 1.1 This report includes: descriptions of the sites, surrounding areas and the proposed developments; a summary of the planning histories and relevant policies; the material points of representations made; my appraisal and conclusions; and my recommendations. Document references are shown in square brackets and, in my appraisal and conclusions, the numbers in subscript indicate the relevant paragraphs of the report to which reference is made. Details of those who took part in the Inquiry and comprehensive lists of the documents and plans referred to are attached at the end of the report. Recommended conditions are attached as appendices.

2. Procedural Matters

- 2.1 At the Inquiry, an application for costs was made by the appellant against the Council. This application is the subject of a separate Report. Prior to the Inquiry, the Hartford Joint Action Group (JAG) was granted Rule 6(6) Party status by letter dated 14 September 2012 [G16].
- 2.2 Mrs J Gordon BA(Hons) MSc MRTPI Principal Planning Officer, Cheshire West and Chester Council did not appear. Her submitted proofs and appendices have

therefore been taken as written representations [JG1 – JG4]. There was no objection from appellants or any other party to this course of action.

- 2.3 At the opening of the Inquiry, the Council requested that certain sections of the rebuttal proof of Mr Posford be deleted from his evidence, and the document has been marked up accordingly [CWC3]. Again, there was no objection from appellants or any other party to this course of action.
- 2.4 The planning applications which are the subject of these appeals were submitted as recorded above [CD1 & CD5]. Applications for screening opinions, pursuant to Regulation 5 of the Environmental Impact Assessment (EIA) Regulations 1999 and 2011, were made in May and November 2011 in respect of the proposed residential developments. The Council confirmed, by letters dated 14 June and 10 November 2011 in respect of Grange Farm and School Lane, that EIAs would not be required, and there is no reason to depart from this position [G17 & G18].
- 2.5 Appeals were made on 10 July 2012, in respect of the Grange Farm and School Lane proposals [G4 & G5] against the refusals of permission by the Council, dated 7 June 2012, [CD3 & CD7] following reports to its committee, [CD2 & CD6]. Each of the Council's decision notices contained two reasons for refusal, as set out below:
 1. The development proposals would have a severe impact on the highway network. It is considered that the mitigation measures proposed are insufficient to overcome such impact. Accordingly, the proposal is contrary to the provisions of the National Planning Policy Framework and Policy T1 of the Vale Royal Borough Local Plan First Review Alteration 2006.
 2. Insufficient information has been provided as to the transport impact that the proposed development would have on the Northwich Vision Area. Accordingly, the proposal is contrary to Policy GS9P of the Vale Royal Borough Local Plan First Review Alteration 2006.
- 2.6 The appeals were recovered by the Secretary of State on 27 July 2012 under Section 79 of the Town and Country Planning Act 1990 [G6]. This was as the appeals involved proposals for residential development of over 150 units on sites of over 5ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and to create high quality, sustainable, mixed and inclusive communities. The Council subsequently withdrew its second refusal reason in relation to each of its decisions [G13 & G14].
- 2.7 The Inquiry sat for five days between 4 and 7 and on 11 December 2012. I carried out an accompanied site visit on 12 December 2012 following the closure of the Inquiry. This included viewing the appeal sites and the surrounding area. I was accompanied throughout this site visit by representatives of the appellants and the Council. I also undertook unaccompanied site visits in the surrounding area on 3, 4, 10 and 12 December 2012.

3. The Sites and Their Surroundings

- 3.1 The appeal sites and their surroundings are described in the Statements of Common Ground (SoCGs) [G7 secn 4, G8 secn 4, G9 – G12] which have been agreed between the Council and the appellants. Photographs of the sites and surrounding areas are included in the Design and Access Statements (DASs) submitted with the planning applications [CD1 & CD5].
- 3.2 The Grange Farm site comprises an irregular shaped plot of land of approximately 15.4ha in area and generally adjacent to the settlement boundary of Hartford. The site is enclosed by existing development comprising residential uses to the north, east, south and west together with The Grange and sports facilities to the east. Situated to the north of Chester Road and to the south of the Chester to Manchester railway line, the site has clearly defined and defensible boundaries. Existing fences, hedges and mature tree planting also contain the site where it abuts existing dwellings and the school grounds.
- 3.3 A small area of the site is partly within the Hartford settlement boundary and was previously developed. The remainder of the site comprises predominantly open land that has been in intermittent agricultural use. It is sub-divided into a number of fields by mature hedgerows.
- 3.4 The site contains the former Grange farmhouse which is situated towards the south on Chester Road and is designated as a locally listed building. The house and its grounds are currently derelict and have been since the farmhouse was abandoned. It has suffered fire and vandalism and is in a very poor state of repair.
- 3.5 There is an existing vehicular access to the Grange farmhouse from Chester Road which is also a public footpath that links to The Grange to the east. There are no other vehicular or pedestrian routes directly into or crossing the site. Part of the site, fronting Chester Road and running parallel to the rear boundaries of the properties on the eastern side of Walnut Lane, lies within the Hartford (Extended) Conservation Area (CA) which extends to the south and east.
- 3.6 Beyond the site boundaries, the surrounding area is predominantly residential in character with areas of housing to the east and west and to the north and south, beyond the railway line and Chester Road respectively. 37 properties share boundaries with the site.
- 3.7 The School Lane site has an area of 34ha and is primarily in agricultural use. Whilst it is crossed by a number of hedgerows, it is an open area with few significant features, apart from woodland around its periphery and a belt of recently planted trees. The westernmost part of the site forms a level area, beyond which, to the east, the land falls away towards the River Weaver which forms the eastern boundary of the site.
- 3.8 The Marshall's Arm Nature Reserve adjoins the site to the north. This is an area of ancient woodland, beyond which is the Hartford Campus, which is occupied by a number of schools and colleges. To the west and north west, the site is adjoined by the established residential area of Hartford, whilst to the south it is fringed by the A556. Beyond the River Weaver to the east is the residential area of Kingsmead. The site is not within or adjoining any conservation areas.

- 3.9 The site is currently accessed from School Lane through residential development along Whitehall Drive and Douglas Close. Views of the site from School Lane are entirely obscured by a combination of intervening development and mature woodland. A public footpath runs alongside the River Weaver linking Northwich town centre to the A556 at Hartford Bridge.

4. Planning Policy

- 4.1 The development plan comprises the Regional Strategy¹ (RS) [CD9] and the Saved Policies of the Structure Plan² (SP) [CD11] and the Local Plan³ (LP) [CD10]. RS Policy DP 1 sets the spatial principles for the region. Policy DP 2 seeks to promote sustainable communities by, amongst other things, fostering sustainable relationships between homes and other concentrations of regularly used services and facilities. Policy DP 4 seeks to make the best use of existing resources and infrastructure by, amongst other things, building upon existing concentrations of activities and infrastructure. It also sets out a sequential approach for the location of development where, after locations within settlements, it seeks to encourage development on land which is well related in relation to services and infrastructure.
- 4.2 Policy DP 5 seeks to manage travel demand, reduce the need to travel and increase accessibility. It also promotes sustainable access between homes and a range of services such as retail, health, education and leisure, and seeks to ensure that this influences locational choices. Policy DP 7 seeks to promote environmental quality, and Policy DP 9 seeks to reduce emissions and reduce climate change.
- 4.3 Policies RDF 1 and RDF 2 set out spatial priorities throughout the region and priorities for rural areas. Policy RDF 1 identifies Northwich as one of the third priority towns for development, behind Manchester and Liverpool together with the inner areas that surround them. Policies L 4 and L 5 set out regional housing provision and potential delivery mechanisms for affordable housing.
- 4.4 The only SP saved policy of any relevance to these appeals is Saved Policy T7 which seeks to ensure that the provision of car parking is used to manage demand for car travel.
- 4.5 The following saved policies of the LP are relevant to these appeals. Saved Policies T1 and T20 relate to transport requirements and travel plans. Saved Policy T1 records that the Council will have regard to, amongst other things: the Cheshire Local Transport Plan⁴ (LTP) [CD23]; reducing the need to travel, especially by car; the production of Transport Assessments (TAs); the accessing of proposals by various transport means; the minimisation of traffic generation; and the production of Travel Plans, detailed in Saved Policy T20.
- 4.6 Saved Policy H4 identifies Hartford as a Tier 1 settlement in the hierarchy for housing development. Saved Policy H14 seeks to ensure that 30% of housing provided on windfall sites within Tier 1 settlement boundaries, for developments of 15 or more dwellings, is affordable. Policies GS2 and GS5 relate to new development in the Borough and the open countryside. Saved

¹ The North West of England Plan: Regional Spatial Strategy: 2008

² Cheshire Structure Plan Alteration: 2005

³ Vale Royal Borough Local Plan First Review Alteration: 2006

⁴ Cheshire West and Chester Council: Local Transport Plan: Integrated Transport Strategy 2011-2026

Policy GS2 seeks to ensure that new development is concentrated on the edge of Northwich amongst other areas, including Hartford. Saved Policy GS5 aims to restrict the construction of new buildings outside settlement boundaries.

- 4.7 Saved Policies NE7 and NE12 refer to the protection of landscape features and the prevention of unacceptable harm to Areas of Significant Local Environmental Value (ASLEVs). Saved Policies NE1, NE5 and NE8 seek to protect the natural conservation resource, endangered species and valuable ecological features. Saved Policies T3 and T9 seek to ensure the provision of safe, secure and covered cycle parking together with facilities for public transport. Saved Policy BE1 seeks to ensure, amongst other things, that adequate amenity and open space is provided. Saved Policy BE4 requires developers to enter into planning obligations to provide new or enhanced infrastructure and community facilities where necessary.
- 4.8 The Council's Core Strategy (CS), which is a key document in the emerging Local Plan, is still at an early stage of preparation and is not expected to be adopted until 2014 at the earliest.
- 4.9 The Council's Supplementary Planning Document 1⁵ (SPD1) [CD12] and CA Appraisal⁶ [CD14] are relevant to these appeals. SPD1 requires, amongst other things, that affordable housing is normally secured by a Section 106 agreement between the Council and the landowner and anyone with a legal interest in the land.
- 4.10 The following Council evidence base documents are also relevant to these appeals. They are the Strategic Housing Land Availability Assessment⁷ (SHLAA) [CD17], the Housing Land Monitor⁸ [CD18] and the Strategic Housing Market Assessment⁹ (SHMA). The Housing Land Monitor shows the Council to have 2.6 years housing land supply.
- 4.11 This report also pays particular regard to the National Planning Policy Framework, Circular 11/95¹⁰ and the Community Infrastructure Levy Regulations as amended [CD21]. It also has particular regard to Planning for Growth [CD15] and The Plan for Growth [CD16].

5. Planning Histories

- 5.1 The planning histories of the appeal sites are described in the SoCGs [G7 & G8]. The Grange Farm site was the subject of an outline planning application in 2000 for some 350 dwellings. The application was however withdrawn following the publication of new national policy which introduced a sequential test for new housing to focus on the development of previously developed land in the first instance.
- 5.2 The site was included within the settlement boundary and allocated for housing development in the 2001 Local Plan. At that time, Hartford was identified as a

⁵ Vale Royal Borough Council: Supplementary Planning Document 1: Affordable Housing: September 2007

⁶ Vale Royal Borough Council: Hartford (Extended) Conservation Area Appraisal: February 2004

⁷ Strategic Housing Land Availability Assessment: 2010 – 2011

⁸ Cheshire West and Chester Council: Local Plan: Housing Land Monitor: September 2012 Update

⁹ Cheshire West and Chester: Strategic Housing Market Assessment: Update December 2010

¹⁰ Circular 11/95: The Use of Conditions in Planning Permissions

Tier 1 settlement and a main focus for new development. The allocation was larger than the appeal site.

- 5.3 This 2001 housing allocation was deleted from the 2006 LP and the settlement boundary altered to exclude most of the site and identify it as open countryside. This was due to the Regional Planning Guidance and SP policies in place at the time, which sought to restrict housing development in the shires and focus on regeneration in areas of housing market failure. The SP anticipated that the Borough strategic housing requirement could be largely met by developing on previously developed land in urban areas. The current LP therefore only contains a limited number of housing allocations and a windfall housing policy.
- 5.4 A development comprising 19 dwellings on the former Hollies Farm, immediately adjoining the School Lane site, was granted permission in March 2010 Ref 09/01980/FUL. It has now been implemented. Planning permission was granted, on appeal, in 2009 for a 6m wide field access from School Lane just to the north of the Hartford Hotel, the access being carried across a pond by means of a bridge. This permission was renewed in March 2012 Ref 11/05186/EXT.

6. The Proposals

- 6.1 The proposals are described in the SoCGs [G7 secn 6 & G8 secn 6].
- 6.2 The application for the Grange Farm site contains the majority of the details for the first phase of 56 dwellings. In this phase, notwithstanding the description of the proposal in the planning application, only landscaping is reserved for subsequent approval. For the remaining, and larger, part of the site, details were only submitted for vehicular access with an illustrative masterplan for these areas, including an area of off-street parking fronting Chester Road. Details are set out in the DAS [CD1].
- 6.3 The first phase would be located at the southern end of the site between Walnut Lane and The Grange. It would comprise: two to five bedroom dwellings, the larger units being on generous individual plots fronting Walnut Lane; a new community green on Chester Road; the spine road into the site; and a cul-de-sac of 24 dwellings adjacent to The Grange. The larger units would lie within or immediately adjacent to the CA, would have a layout and design to reflect the character of the CA and would complement the surrounding development. The other units in the first phase would comprise smaller two, three and four bedroomed units centrally located within the site.
- 6.4 The illustrative masterplan demonstrates how the remainder of the site could accommodate some further 244 units comprising a mix of two to five bedroom dwellings arranged in blocks centred on the primary residential street and around open spaces. The masterplan shows that the 0.5ha community green would have links to a linear park cutting north – south through the site. The 0.6ha park would enable longer views over and through the site towards the open space of the school playing fields adjacent to the north-eastern boundary. Such views are currently largely screened from public views along Chester Road due to an overgrown leylandii hedge.
- 6.5 The primary street would run through the site, approximately parallel to Walnut Lane, the starting point for which would be adjacent to the community

green. The street would meander around a series of open spaces towards the northern and western boundaries of the site. Pedestrian routes would run through the site adjacent to, or within, areas of open space linking into the community green, linear park and routes to Chester Road. The existing pedestrian access to The Grange would be retained.

- 6.6 The proposal would be accessed via a priority vehicular junction onto Walnut Lane together with a modification of the existing priority junction of Walnut Lane with Chester Road. An emergency access would also be provided at the northern end of Walnut Lane. It would link to an existing public footpath, would be pedestrianised, with bollards fitted to enable the passage of emergency vehicles only.
- 6.7 The masterplan shows the landscaped area of dedicated off-street parking partly in lieu of the loss of 6 car parking spaces on Chester Road. These spaces would be accessed directly from Chester Road. They would be provided to serve visitors to the nearby shops and facilities as well as the potential D1 use of the Grange farmhouse. A number of minor improvements and amendments to the public highway and footpaths are proposed, including the provision of a controlled Puffin crossing on Chester Road.
- 6.8 The masterplan proposes a large amount of open space across the remainder of the site. Overall, a total of 2 ha of open space is identified within the site in the form of areas of informal recreation, local equipped areas of play and landscaping. All of the existing trees identified in Categories A or B (retention most desirable or desirable respectively) would be retained. Where possible, existing hedgerows would also be retained. The natural topography, and the existing ditch system, of the site would offer the potential for the use of Sustainable Urban Drainage Systems (SUDS) as part of open areas, particularly in the north-western part of the site.
- 6.9 The development would be likely to comprise a variety of detached and semi-detached houses with some short terraces, up to 4 units, and up to a maximum of 2.5 storeys in height. The style and design of the housing would comprise dwellings constructed of a mix of brick, tile, render and weatherboarding to reflect the local style and vernacular in The Grange and Walnut Lane. The affordable housing would be pepper-potted throughout the site.
- 6.10 The proposal includes the retention and re-use of the Grange farmhouse, which offers the potential for reuse for local community purposes, such as a dental surgery. Alternatively, if there is no commercial interest in the building, it could be refurbished as a dwelling.
- 6.11 The planning application for the School Lane site is in outline with all matters reserved except for access. The indicative layout indicates that the area of built development would be limited to some 19ha of the site, with some 15 ha, alongside the River Weaver, being used for open space purposes. Tree removal, for the purposes of forming the access and elsewhere, together with hedge removal, would be kept to a minimum. A buffer zone would be incorporated within the proposal to safeguard the Marshall's Arm Nature Reserve. The priority junction access to School Lane would be at a very similar point to that which has already been approved for an agricultural access, just to the north of Hartford Hall Hotel. A pond would however be crossed by means of a causeway rather than a bridge. A small number of

dwelling would be accessed from Douglas Close, which would also provide a secondary emergency access for the whole site.

- 6.12 The proposal includes the upgrading of a footpath alongside the River Weaver, to provide a footpath and cycleway into Northwich town centre and a similar link through the nature reserve to the Hartford campus. These would be considered in more detail at reserved matters stage following concerns expressed by council consultees.
- 6.13 The 15ha of open space would be laid out primarily as an informal area of parkland with additional areas of open space, for amenity and children's play, provided within the built up area of the site. Landscaping treatment would provide an acceptable interface between the built up area and the parkland to maintain the character of the river valley. The parkland would also enable the enhanced use of the river corridor for recreation purposes and the layout would provide improved access to the corridor for the existing residents of Hartford.

7. Other Agreed Facts

General

- 7.1 Other facts agreed between the appellants and the Council are included within SoCGs. For the Grange Farm proposal, SoCGs have been agreed on planning, heritage and environmental issues and on transportation [G7 & G9]. For the School Lane proposal, SoCGs have been agreed on planning and environmental issues and on transportation [G8 & G11]. The SoCGs refer to the following matters, amongst other things.
- 7.2 The RS provides the housing land requirements from which land supply should be calculated [CD9]. Some 1,317 dwellings should be provided annually in the Council's area between 2003 and 2021 [CD9 tbl 7.1]. There is a 2.9 year supply of housing land that the Council considers to be deliverable within five years as of 1 April 2012 [CD18]. This amounts to a five year shortfall of 3,615 dwellings.
- 7.3 The LP saved policies relating to housing land supply should therefore be considered out of date, and the Framework sets out clear guidance for decision makers in these circumstances [CD8 paras 14 & 49 & CD10]. The proposal would not accord with LP Saved Policy GS5, but this policy should be read in the context of the Framework as a material consideration [CD8 para49].
- 7.4 There has been an under provision of 3,918 dwellings between 2003 and 2012, and completions only exceeded the average annual requirement in 2005/06. There is therefore a record of persistent under delivery of housing, and the five year requirement should be increased by 20% [CD8 para 47]. To significantly boost the supply of housing, local planning authorities should use their evidence base to ensure their local plan meets needs for market and affordable housing [CD8 para 47].
- 7.5 It is therefore necessary to identify a 6 year supply of housing land to make up the shortfall as quickly as possible. The current deliverable supply is less than half this figure, and there is an urgent need to bring forward appropriate sites. Given the significant shortage of deliverable previously developed sites to make up this shortfall, priority should be given to other performance criteria

such as location and sustainability. The proposals would make an important contribution to the supply of housing in the district, and the affordable homes would be constructed alongside the open market dwellings.

- 7.6 There is a gross annual shortfall in affordable housing of 1,311 dwellings, and new households are forming at a rate of 1,140 per annum with 470 of these being unable to afford open market prices or rents for housing [CD19]. Net affordable dwelling annual completions have averaged 304 over the past four years [CD18]. The proposals would provide 30% affordable housing in accordance with LP Saved Policy H14, and this would make a valuable contribution towards meeting housing needs [CD10].
- 7.7 The LP identifies Hartford as a Tier 1 settlement and a main focus for development due to its sustainable location. The LP seeks to concentrate new housing within and on the edge of Northwich, including Hartford. A principal element of the LP is the regeneration of Northwich Town Centre, including the development of the Winnington Urban Village. The proposals have the opportunity to link with the regeneration priorities and investment in Northwich and would not have any materially detrimental impact on the delivery of this regeneration project. Moreover, none of the LP brownfield housing allocations in Northwich Town Centre have so far been delivered.
- 7.8 The emerging Local Plan can only be afforded limited weight as it is still at an early stage of progress, and the CS is unlikely to be adopted until the end of 2014. The evidence base for the CS (including the SHLAA and the SHMA) does however provide some relevant background to the emerging Local Plan [CD17 & CD19]. The SHLAA has been prepared in accordance with the Strategic Housing Land Availability Assessments Practice Guidance.
- 7.9 The Council's January 2011 Issues and Options Paper put forward housing growth rates for Northwich, including Hartford, of between 10 and 30%. It also suggested that greenfield sites would be required to achieve supply in the short, medium and long term. Further consultation indicated that greenfield sites would be required under a moderate growth strategy in all the main urban areas.
- 7.10 The proposals are not so significant in the context of the overall housing requirement and not so substantial as to raise issues of prematurity as set out in paragraph 19 of the General Principles Document¹¹. Furthermore, given the early stage of preparation of the emerging Local Plan, the proposals would not raise any unacceptable issues of prematurity or precedent.
- 7.11 The LP does not provide any basis for disaggregating the housing land supply requirements to the more local level so as to provide a sound strategic basis for the preparation of a neighbourhood plan for Hartford. The preparation of such a plan will therefore need to await the formulation of the CS where, it is intended that, appropriate strategic guidance will be set out. It is thus likely to be at least the end of 2014 before such a document can be adopted.
- 7.12 A recent appeal relating to residential development at Cuddington raised similar circumstances to those posed by the current appeals [CD20].

¹¹ The Planning System: General Principles: ODPM: 2005

- 7.13 The statutory school walking distances, defined by the Council, are 2 and 3 miles for primary and secondary age children. The Council considers it appropriate, subject to reasonable exceptions, for children to walk this distance to get to and from school, accompanied if necessary. No travel subsidy is provided within these limits or if, due to parental choice, a child does not attend his or her nearest school.
- 7.14 There are 18 state and privately run education facilities within the statutory walking distances of all of the sites [G9 App GCG1 & G11 App HCG1]. Of the state, special and faith schools, there are 7 primary and three secondary schools. The number of school places in many of these schools exceeds that which is taken by residents within those catchments.
- 7.15 Hartford has two railway stations. Hartford station has regular high speed services to Liverpool, Runcorn, Winsford, Crewe, Stafford and Birmingham [G9 fig GCG4 & G11 fig HCG4]. Greenbank station has local commuter services to Manchester, via Northwich, and Chester. A 30 min interval weekday bus service to Chester and Northwich runs along Chester Road [G9 fig GCG5 & G11 fig HCG5].
- 7.16 There are also a number of major employment facilities in the surrounding area, and the Council's emerging Local Plan evidence base acknowledges that Northwich plays an important sub regional role as a centre for retail, employment and local services [G9 App GCG2 & G11 App HGC2].
- 7.17 The profile for traffic flows on Chester Road across a typical day, measured on Wednesday 12 October 2011, show: an am peak, from 08.00 to 09.00; a school closing pm peak, from 15.15 to 16.15; and a commuter pm peak from 17.00 to 18.00. There are no major half day closures locally or any other reason that would affect the count results. As flows measured during the school holiday period, on Thursday 27 October 2011, are far lower, the educational establishments increase traffic in the area.
- 7.18 Queue lengths were measured on Thursday 20 September 2012, in school term time, and on Thursday 27 October 2011, in school holiday time, and profiles have been plotted [G9 App GCG4 & G11 App HCG4].
- 7.19 The Base Case demand flows for the peak hours include an allowance for committed development. They are an appropriate benchmark against which the development can be assessed prior to an allowance for trip demand reduction as a result of any Travel Plan or driver behavioural change [G9 App GCG3 & G11 App HCG3]. The daily variation in flows could however be plus or minus 15%. The Draft Interim Travel Plans are appropriate and acceptable [G10 & G12].
- 7.20 The traffic growth rate is currently zero in Hartford at peak commuter and education travel periods and has been so for at least 10 years. This is likely to be due to a perceived inconvenience for travel by car at these times compared to alternatives. The result is a pool of suppressed demand for car travel at these times.
- 7.21 The Council has improved the junctions of Chester Road with Bradburns Lane and The Green. One of the consequences was to improve pedestrian facilities which in turn can reduce traffic capacity when there is significant pedestrian use.

- 7.22 The five year accident record for Hartford does not show any consistent pattern of repeats. Whilst any accident is regrettable, the accident characteristics are not unusual and do not give cause for anything more than usual concern. Moreover, the Council has not identified the Hartford transport network as requiring accident remediation.

Grange Farm

- 7.23 The outline planning application in 2000 for some 350 dwellings on the site, which was subsequently withdrawn, included a medical centre and a community hall.
- 7.24 In the 2001 Local Plan, the policy requirements for the site included the provision of a village green, car parking for the local shops and the re-use of Grange farmhouse.
- 7.25 The 2001 housing allocation was deleted from the 2006 Local Plan. The changes to the policy status of the site over the years, particularly in relation to the 2001 and 2006 Local Plans are explained by reference to strategic priorities and the planning context set by national and regional policy.
- 7.26 The site is partly within the Hartford settlement boundary and is partly developed with the remainder allocated as open countryside within LP Saved Policy GS5. The site is not allocated as protected open space, lies adjacent to a Tier 1 location and is the highest priority for development. The Council, in its SHLAA, has identified the site as being suitable for housing with a capacity of 300 dwellings in years 6 to 15 [CD17].
- 7.27 Beyond the site boundaries, the surrounding area is predominantly residential in character. A number of schools are located in close proximity to the site, including two primary schools, two high schools and Mid Cheshire College, all within 1.3km of the centre of the site.
- 7.28 The centre of the site is located 0.65km from the crossroads at the centre of Hartford. There are shops and services immediately to the south of the site including a supermarket, public house, bakery, butcher, florist, hairdresser and pharmacy. A post office, community hall, Church and sports and social club are all located within a short walking distance from the site. A newsagent, doctor's surgery and a dentist are situated within an acceptable walking distance from the site. It is highly accessible and falls well within the Council's accessibility range [HE4 para 2.7].
- 7.29 The bus service to Chester and Northwich runs along Chester Road, immediately to the south of the site [G9 fig GCG5]. Bus stops are located within walking distance of the majority of the site. Chester Road has footways on either side of the carriageway providing access to the rest of the settlement [G9 fig GCG3].
- 7.30 Hartford's two railway stations are both within a comfortable walking and cycling distance of the site. Hartford station is 0.5km to the west of the site and Greenbank station is some 1.5km to the east of the site.
- 7.31 The proposal would accord with the spatial priorities and principles set out in RS Policies RDF 1 and DP 1 to 9. The DAS submitted with the planning application demonstrates how, with appropriate conditions, the principles of good design could be embodied in the development of the site.

- 7.32 Part of the site lies within, and part adjacent to, the Hartford CA, which is supported by a CA Appraisal [CD14]. The appraisal describes four important spaces that relate to an open linear spine of Chester Road in the CA, one of which is the Grange Farm site adjacent to Walnut Lane [CD14 para 3.3]. The appellant has also carried out a heritage assessment [CD1]. The proposal would include larger units on generous plots fronting Walnut Lane. These units would lie within or immediately adjacent to the CA and would have a layout and design to complement the surrounding development. The first phase of the development would provide a mix of housing that would reflect the character of the CA. The proposed community green on Chester Road would respond positively to guidance in the Village Design Statement and the CA Appraisal [CD13 & 14].
- 7.33 The significance of the CA is defined by a combination of its evidential, historical, aesthetic and communal values. The Grange farmhouse, within the CA, is a locally listed building and is of significance as a non-designated heritage asset. Subject to appropriate conditions, the proposed development is capable of resulting in a neutral effect on the character, appearance and significance of the CA.
- 7.34 A linear park would allow views through the site towards the open space of the playing fields adjacent to the north east boundary of the site. The proposal would provide formal parking for the local shopping centre. The illustrative masterplan shows a landscaped area of dedicated off-street parking partly in lieu of the loss of 6 parking spaces on Chester Road which serve visitors to the nearby shops and services.
- 7.35 The site has been the subject of a Phase 1 Habitat survey and Phase 2 surveys for bats, barn owls, badgers and reptiles. It is of moderate ecological value, based on its potential to support protected UK, local Biodiversity Action Plan and red data species and the proposal would, in general terms, enhance the biodiversity value of the site. In respect of the three tests of the Conservation of Habitats and Species Regulations 2010 and Article 16 of the Habitats Directive:
- i) the principle of development on the site is justified due to the need for residential development in the borough and, in the circumstances, there is no satisfactory alternative;
 - ii) the development would not be detrimental to the maintenance of the population of bats, subject to a precautionary working method for tree felling and demolition, and the development would be unlikely to have a direct impact or effect on badgers or breeding birds subject to the imposition of appropriate conditions; and
 - iii) the development would not cause unacceptable harm to any statutory or non-statutory designated nature conservation site.
- 7.36 The proposal would therefore comply with the provisions of the Conservation Regulations, the Habitats Directive and LP Saved Policies NE1, NE5, NE7 and NE8. This conclusion is supported by Natural England.
- 7.37 The submitted archaeological survey recommends that a watching brief, to record any findings, is carried out during the course of the development. A programme of archaeological work or mitigation could be satisfactorily secured

by an appropriately worded condition in accordance with the LP. The site comprises Grade 2 and 3a agricultural land. Whilst the LP seeks to protect land in the highest categories, this may be outweighed by other considerations. Here, the benefits in terms of housing supply would outweigh the loss of agricultural land, and this conclusion is supported by Natural England.

- 7.38 The site is not within a flood risk area, as shown on the Environment Agency (EA) flood zone maps, and is not subject to flood risk from any other sources. The development is capable of incorporating SuDS. The EA has confirmed that the proposal would be acceptable in principle and United Utilities has not objected to it, subject to the imposition of various conditions relating to discharge rates and the extension of existing water mains.
- 7.39 The appellant expects to be able to sell 32 open market dwellings per annum. This is however a conservative figure, as Hartford represents a relatively strong market area, even in the present economic climate. The proposed development is expected to generate the need for 55 primary and 39 secondary school places. These secondary school pupils could be accommodated within the surplus places that currently exist at Hartford High School. There are some surplus spaces at the local state primary schools, but a significant number of the places at both Hartford primary schools are occupied by out of catchment pupils.
- 7.40 The past use of the land may have resulted in areas of low level contamination on small parts of the site, but such contamination would not prohibit the development. Risks are limited and could be dealt with by the imposition of appropriate conditions. There would be some potential for impact on residential amenity arising from construction activity, but this could be satisfactorily controlled through the imposition of appropriate conditions.
- 7.41 The visibility splays at the proposed site access and the reconfigured Chester Road and Walnut Lane junction would be appropriate and adequate, and the access arrangements have been agreed with the Council as Highway Authority. The masterplan, first phase layout and pedestrian, cycle and vehicular accesses, as well as the proposed pedestrian crossing, would be appropriate and acceptable and would satisfactorily serve the development.
- 7.42 There would be no material effect on highway and transport safety as a result of the development. The reason for refusal relates specifically to traffic impact at the junctions of: Chester Road with The Green; Chester Road with School Lane; and Chester Road with Bradburns Lane. The remainder of the highway network would be expected to be able to accommodate the additional traffic demands of the developments, either individually or cumulatively with that from development on the School Lane site.

School Lane

- 7.43 The Council, in its SHLAA, has identified the site as being suitable for housing with a capacity of 735 dwellings in years 6 to 16+ [CD17]. It has not raised any reason for refusal relating to the principle of residential development on the site. The site is contained within the general extent of the established urban area of Northwich, but lies outside the present identified settlement boundary. It is however adjacent to a Tier 1 location, and is the highest priority for development.

- 7.44 The site is highly accessible and in close proximity to shops, schools, community facilities and public transport. Day to day facilities in the centre of Hartford are within an acceptable walking distance of the site [G11 fig HCG2]. Hartford's two railway stations are both within easy walking, cycling and driving distance of the site. The site is therefore in a sustainable location, and there is a presumption in favour of sustainable development [CD8 para 19].
- 7.45 The permitted access for the 6m wide field entrance from School Lane would be at a very similar point to that which is the subject of this appeal.
- 7.46 The proposal would accord with the spatial priorities and principles set out in RS Policies RDF 1 and DP1 to 9. The DAS submitted with the planning application demonstrates how, with appropriate conditions, the principles of good design could be embodied in the development of the site.
- 7.47 Saved LP Policy NE12 identifies the site as being within an ASLEV to be protected from unacceptable harm, but it is not allocated as protected open space. The policy however, which seeks to control the extent of development, should now be given limited weight in the context of the Framework and the housing land shortfall. In any event, the proposal would not result in unacceptable harm to the landscape and would not conflict with LP Saved Policy NE12.
- 7.48 The indicative proposal includes a major area of open space alongside the River Weaver which would enhance the use of the river corridor for recreation and improve public access to the corridor. An acceptable landscape interface could be provided between the open space and the built up area of the site to maintain the character of the river valley. The Council's consultees have raised concerns regarding the proposed footpaths and cycleways alongside the River Weaver and through the Marshall's Arm Nature Reserve to the Hartford Campus. Should the appeal be allowed, these matters would be considered further at reserved matters stage.
- 7.49 There are no ecological interests on the site that would prevent the proposal proceeding, and it would in fact enhance the biodiversity value of the site. The site has been the subject of an archaeological investigation, and there is no evidence of any interest that would preclude the granting of planning permission subject to appropriate conditions. There would be some potential for impact on residential amenity arising from construction activity, but this could be satisfactorily controlled through the imposition of appropriate conditions.
- 7.50 The appellant envisages that the sales rate for the site would be a minimum of 64 open market dwellings per annum. The proposed development is expected to generate a need for 63 primary and 45 secondary school places. These secondary school pupils could be accommodated within the surplus places that currently exist at Hartford High School. There are some surplus spaces at the local state primary schools, but a significant number of the places at both Hartford primary schools are occupied by out of catchment pupils.
- 7.51 The illustrative masterplan and pedestrian, cycle and vehicular accesses would be appropriate and acceptable and would satisfactorily serve the development. There is no highway reason as to why a modest number of dwellings cannot be accessed from Douglas Close. Furthermore, there would be no material effect on highway and transport safety as a result of the development. The reason

for refusal relates specifically to traffic impact at the junctions of: Chester Road with The Green; Chester Road with School Lane; and Chester Road with Bradburns Lane. The remainder of the highway network would be expected to be able to accommodate the additional traffic demands of the development, either individually or cumulatively with that from development at Grange Farm.

8. The Cases for the Appellants

The material points are:

Introduction

8.1 These material points address the issues arising with regard to both appeals, where distinctions are drawn between them this is made clear. Where there are particular advantages arising from one or other of the proposals these are identified. The points address the second main consideration first, since there is very little that is contentious in that regard.

8.2 SOCGs have been prepared [G7, G8, G9 & G11]. Their importance was highlighted in the case of Poole (R. on the application of) v. the Secretary of State for Communities and Local Government (2008) EWHC 676 at para 44 when the then Sullivan J. observed:

"The imperative in the rules requiring the principal parties to focus their attention on the issues that are in dispute would be wholly frustrated if appellants and local planning authorities were unable to place any degree of reliance on matters that have been apparently resolved in a statement of agreed facts. It would be entirely unsatisfactory if, having agreed such matters, the principal parties to an Inquiry would still have to prepare their evidence on the basis that the Inspector might wish to pursue a particular line of reasoning that departed from the agreed statement".

The Development Plan and Planning Policy Background

8.3 The only SP Saved Policy that is relevant to the appeal proposals is Policy T7, which identifies maximum parking standards and that new development should make adequate provision for cycle parking [CD11]. No conflict is alleged with that policy.

8.4 With regard to the Development Plan (DP), it is agreed that [G7 & G8]:

- i) the LP Saved Policies relating to housing which provide settlement boundaries should be regarded as out of date.
- ii) the LP seeks to concentrate new housing within and on the edge of Northwich, which the plan confirms includes Hartford;
- iii) the proposals would not have any detrimental impact on the delivery of any regeneration schemes;
- iv) although there have been housing developments in the wider area in recent years, there have been no allocations for housing development in Hartford in either the current LP or its predecessor ;
- v) Hartford is a Tier 1 settlement and part of the Northwich urban area which is a priority for development in RS and, as a Tier 1 settlement in the LP, Hartford is a sustainable location for new housing development;

- vi) apart from the alleged conflict with LP Saved Policy T1, no conflict is alleged with any other relevant policy of the DP;
- vii) in terms of the emerging DP, the proposals should not be regarded as premature and the progression of any neighbourhood plan will need to await the advancement of the CS;
- viii) full weight can be accorded to the relevant RS policies in the determination of these appeals; and
- ix) the proposals accord with the spatial priorities and principles in the RS.

8.5 The DP position is therefore a strong one in support of the grant of planning permission for the appeal proposals. The proposals accord with every relevant element of the strategy of the DP, which includes the most recent and up to date approach with regard to ensuring that housing development takes place in sustainable locations. Neither the Council's nor JAG's evidence identifies any preferable location at Hartford which would produce a more sustainable outcome than either of the appeal proposals. The Council accepts that the appeal proposals can be appropriately characterised as being sustainable development. This is with the single caveat in relation to the alleged conflict with transportation policy with regard to the impact on congestion at the identified junctions.

8.6 With regard to the alleged conflict with LP Saved Policy T1, the policy is agreed to be out of date as not being in conformity with the Framework [Posford XX]. The policy itself is not phrased in terms of "refuse if", but rather "take into account" and "have regard to", and it was agreed that [Posford XX]:

- i) the LTP is fully up to date, and the proposals do not have any conflict with any element of it [CD23];
- ii) the proposals would reduce the need to travel by car and are sustainable in that regard with no conflict with the second criterion of the policy, and the Council has also agreed the draft Travel Plans [G10 & G12];
- iii) TAs have been produced, with no outstanding requests for any further information and no reasons for refusal alleging a lack of information [G1 TA & G5 TA];
- iv) there is no allegation of any impact on local amenity, the environment or safety;
- v) there is no impact with regard to any trunk road or free flow of traffic on it, and it is of note that the criteria for trunk roads is materially different to that for more local roads;
- vi) the Council accepts that the proposals are accessible by a variety of means of transport, and they are therefore sustainable in that regard;
- vii) whilst the policy seeks to minimise the effects of traffic generation, this criteria, which is relied on in the reasons for refusal, conflicts with the Framework and cannot be given any weight; and
- viii) the LP includes a range of other policies relating to transportation issues, such as public transport, walking and cycling, none of which are relied upon [Posford XX].

- 8.7 In these circumstances, it is not possible to allege any conflict with any up to date element of the policy relied on in the reasons for refusal.
- 8.8 The Council has also included both appeal sites in its SHLAA [CD17]. This would have required the specific consideration of the extent to which the proposals would contribute to the creation of mixed and sustainable communities. This should be seen against the background of the range of matters agreed in the SoCGs.

Other Material Considerations

- 8.9 There is a range of other material considerations which support the grant of planning permission in these cases. The most material is the position with regard to housing land availability in terms of shortage of supply [G7 & G8].
- 8.10 With regard to affordable housing, the Council agrees that it has a gross annual shortfall, and that the proposals would make an "important contribution to the supply of housing in the district" [G7 para 7.37 & G8 Para 7.37]. It is also agreed that the proposals would make "a valuable contribution towards meeting housing needs". The proposals would also include a contribution towards open space availability in the area, which is of wider benefit.
- 8.11 The recent appeal decision at Forest Road, Cuddington [CD20] raised a number of relevant issues [G7 para 7.47 & G8 para 7.47] including:
- i) mechanisms to respond to the severe shortfall in housing land are largely absent, and there is no immediate prospect of any Development Plan Document (DPD) providing a context in which to allocate sites;
 - ii) Cuddington is on the edge of Northwich and is thus suitable to accommodate its share of development;
 - iii) there is no compelling evidence that granting permission would undermine the regeneration of Northwich;
 - iv) the provision of affordable housing would make an important contribution to meeting an outstanding and clearly identified need;
 - v) the site is in an inherently sustainable location having access to shops, schools, community facilities and a railway station; and
 - vi) even though the site is in the open countryside in present policy terms, RS Policy RDF 2 does not provide an appropriate policy context to judge the proposal in the light of the severe shortfall in housing.
- 8.12 The Council agrees that all of the above conclusions are similarly applicable to the appeal proposals.
- 8.13 The Council also agrees that the appeal sites are in sustainable locations [G9 & G11]. Some of the matters that have been agreed with the Council in this regard are that:
- i) the sites are within the Hartford and Greenbank ward and within the conurbation that includes Northwich Town Centre [G9 para 1.4 & G11 paras 1.4];

- ii) the sites lie either at the heart of Hartford (Grange Farm) or on Hartford's south east side but bounded by residential development on its north side (School Lane);
- iii) with regard to walk routes, these are predominantly on footways which are generally of an appropriate size and in an appropriate state of repair;
- iv) cyclists use the carriageways, which is appropriate, and they are content to do so in the context of the preferred approach set out in the guidance in Manual for Streets 2 (MfS2);
- v) the sites are close to two railway stations and within reach of them by foot, cycle and car, and the railway stations serve a wide variety of destinations;
- vi) buses serve Hartford, and the sites are in sustainable locations in terms of public transport accessibility;
- vii) the sites are within the statutory school walking distance which the Council considers it reasonable for children to adopt for the purposes of walking to and from school;
- viii) there are no less than 18 educational facilities within the statutory walking distance of sites;
- ix) day to day facilities are within acceptable walking distances of the sites;
- x) taking into account the proximity of day to day facilities, the provision of walking and cycling networks and public transport, the sites are in sustainable locations;
- xi) there are a number of major employment facilities in the surrounding area which are accessible by a variety of means; and
- xii) with the single exception of LP Saved Policy T1, the proposals comply with all other elements of national, regional and local policy.

8.14 It is suggested by JAG that the sites should not be regarded as being in sustainable locations due to the existence of maximum walking distances applicable to either local facilities or public transport options [MK1 secn 5]. The Council however adopts walk distances of, for example, 1.6km to day to day facilities, including primary schools, and distances in the order of 800m for access to bus stops [CD25 & MAV4 para 4.5]. The Institution of Highways and Transportation (IHT) 2000 Guidelines however suggest a preferred maximum of 2km and a suggested acceptable distance of 1km for commuting [MAV4 para 4.6.4].

8.15 The data from Leeds shows the inappropriateness of the JAG suggested maximum walking distances [HE7]. In addition, JAG's approach is not supported by its own school travel document evidence [MK2 & MK4]. This demonstrates that the distances which would be, for all practical purposes, the maximum distances from any house on the appeal sites are already being walked by very many pupils. It also demonstrates that there exists a desire by many more to walk to school if appropriate encouragement was provided. Moreover, the maximum walking distances promoted by JAG are based on old, generic and (for present purposes) out of date guidance.

- 8.16 It is agreed that the large number of educational institutions in Hartford is generating a traffic problem [Posford XX & Kitching XX]. A large number of children are brought into Hartford by car in circumstances where, if they were displaced by more local children, there would be a distinct and beneficial effect.
- 8.17 As all of the schools considered wish to adopt sustainable travel, if resources were available, it is inconceivable that they would not adopt an approach of favouring local catchment children in terms of school places [HE15]. Considering the schools with identified catchments in the Transportation SoCGs, there are currently over 1,000 pupils attending the schools from outside the catchment areas [HE6]. Therefore, in all probability, they predominantly travel to school by car and contribute to the current congestion. The fact that the schools adopt catchments provides the best indication of their approach to identifying areas from which pupils will be favoured.
- 8.18 In terms of the creation of sustainable communities, making housing available in areas where school places are available, or can be made available, for children in locations which are accessible by sustainable modes, has distinct benefits. The benefits arise not only with regard to the adoption of sustainable modes of travel and the relief of congestion, but also with regard to the wider community aspects. There are social and community benefits from adopting sustainable transport measures and having children from the local area attending local schools and residents using local facilities [Axon XC]. This is precisely what the appeal proposals provide the opportunity for.
- 8.19 There is no doubt that the appeal sites offer the opportunity for appropriate access to Hartford's two railway stations on foot [Axon XC]. Moreover, it is agreed that they are highly accessible by cycle [CD5 TA URS Review]. There is no reason why anyone should choose to drive to the stations in circumstances such as these. That some people, no doubt coming from further away, do so is plain from the evidence given with regard to parking related to station use. All that evidence serves to do however is to deny the suggestion that the stations do not offer a popular and relevant service for commuters served by the array of destinations on the relevant railway lines.
- 8.20 A vast range of community facilities and services is available in Hartford [Gilbert XC, Ryan App 1, G7 & G8]. This (coupled with the almost certainly unique range of educational facilities, the availability of two railway stations and bus services that were favourably commented on in the Cuddington decision) makes Hartford an outstandingly sustainable location to provide housing in [CD20]. If locations such as these are not to be regarded as accessible, then it is difficult to imagine any location that might be so regarded. Appropriate encouragement for the adoption of sustainable modes of travel would also be provided by the travel plan prepared for each site. These have had full regard to all relevant guidance and have not attracted any criticism from the Council [G9 & G11].
- 8.21 In relation to the first consideration therefore, the appeal sites offer outstandingly good opportunities to contribute to the provision of much needed housing in highly sustainable locations. They will contribute directly and positively to the achievement of DP, RS and national policy objectives with regard to the provision of homes in locations that will meet the objective of providing sustainable communities.

Highways

8.22 The only element of LP Saved Policy T1 which the Council relies upon is out of date because it is not in accordance with the Framework with regard to highways impact and the refusal of planning permission. The Council's refusal alleges a conflict with the Framework, in that it is said that the impacts of the proposal are in highway terms "severe" [CD8 para 32]. There are a number of matters to note about that as an allegation:

- i) it is clear that, when considering the proposals, the Council tested them against the out of date test set out in LP Saved Policy T1 and not against the requirements of the severe impact test [CD2 paras 6.150 & 6.186 & CD6 paras 6.161 & 6.199];
- ii) the late addition of the reference to the Framework to the reasons for refusal cannot save the Council from having adopted the wrong policy test, and the Council's committee reports do not consider whether the proposals would have a severe impact as set out in the Framework test;
- iii) in any event, and more fundamentally, the Council's highways witness admitted that he could not, and did not in his proof of evidence, ascribe a severe impact to the proposals [Posford XX]. The evidence called does not support the reason for refusal because there is insufficient information to allow a judgment to be made [Posford XX]. There is, as a result, no evidence to rebut the presumption in favour of sustainable development; and
- iv) the Council's failure to provide evidence to support a severe impact is compounded by the complete absence of any cross examination alleging any severe impact or any breach of LP Saved Policy T1 [Axon XX] and is consistent with Council's highways witness' answers in cross examination and the absence of any reference to LP Saved Policy T1 in the Council's highways proof of evidence [Posford Proof & XX].

8.23 The agreed position between the Council and the appellants is that traffic growth in the Hartford area is currently at zero at peak commuter and peak education travel periods and has been so for the last 10 years [G9 & G11]. It is agreed that this is likely to be the case because of the perceived inconvenience for car travel at these times, as evidenced by queue lengths, compared with the alternatives [MAV2 App MA1]. The result of this is a pool of suppressed demand for car travel at these times.

8.24 The Council agrees that there has been traffic growth generally in the last 10 years and development in the area which will have produced traffic [MAV1 secn 5]. The Council then alleges that the appeal developments will result in traffic growth during the peak period with increased congestion. The Council has not however explained why this additional congestion should happen in relation to the appeal developments when it has not happened in relation to other developments in the wider area and as a result of general traffic growth.

8.25 If the appeal developments were to produce traffic growth in the peak period, this would buck the trend of the last 10 years. There is no logical basis as to why this should occur, particularly bearing in mind that the appeal sites are in good sustainable travel locations and offer the opportunity for the displacement of pupils attending local schools from further afield. The

Council's case is therefore illogical, not supported by the evidence and counter intuitive with regard to the travel mode options likely to be taken by occupants of the new developments when faced with the existing congestion.

- 8.26 The appellants have assessed the impact on the agreed trip generation rate for the proposed dwellings. This has been undertaken with regard to the sustainable locations of the sites, the effects of the travel plans and the likely change in driver behaviour [MAV2 App MA7, MAV1 secn 9 & HE10].
- 8.27 There was some attempt at criticism of the appellants' approach, based on judgments made as to the likely effects of the travel plan measures on the trip generation rates. That criticism is entirely unjustified having regard to the guidance. The Government is clear that, to consider the transport assessment and travel plan as an integrated package of information and proposals to deal with the transport impacts of the developments, is the most effective approach [MAV2 App 2 pg 6]. The appellants' assessment therefore accords with the relevant guidance. It also ensures that an approach is not adopted which might, for example, result in highway improvements. These would simply release the currently suppressed demand for travel during the peak commuter and education periods.
- 8.28 The Council's approach, in its committee reports and Inquiry evidence, is to suggest that the potential benefits of a sustainable location, a properly formulated travel plan and the potential impact on driver behaviour should be ignored. JAG adopts a similar approach. Neither the Council nor JAG address the fact that the approach they wish to adopt is contrary to the relevant Government guidance. Each suggests that the benefits of the travel plan and the sustainable location should be entirely discounted and that the impacts of the appeal proposals should be assessed on a gross basis.
- 8.29 JAG's highways witness accepted that such an approach was not in accordance with the approach that his firm espouses generally with regard to the adoption of travel plan type measures [Kitching XX]. For the Council, the position is even starker having regard to its approach to travel plans in its LTP. This is fulsome in its approach to the relevance of travel plans, their importance in the development process, the references to new housing development and travel plans, and the references to travel plans [CD23 pg 40 para 5.3.1, pg 37 & pg 43 & Posford XX].
- 8.30 The Framework makes it clear that travel plans are key to the facilitating of the use of sustainable transport modes [CD8 paras 35 & 36]. This also was not addressed by the Council or JAG. It is difficult to understand how a measure that should be regarded as key should, at the same time, be ignored in the assessment process considering the impact of any development proposal. The professional judgment involved in the assessment is able to be informed by the sort of information contained in the LTP which is local, relevant and relied on by the Council itself in the formulation of its local transport proposals [CD23 pg 40 para 5.3.1].
- 8.31 The Council has acknowledged the suitability and appropriateness of the interim draft travel plans presented with the Unilateral Undertakings [G10 & G12]. JAG however suggests that the travel plans might be lacking in some regard. Its evidence however was entirely silent on any deficiency, and

neither the Council nor JAG could point to any element of good practice guidance that had not been complied with [Kitching XX].

- 8.32 There is compatibility between the outcome of the appellants' exercise on, and the Council's position that there has been no growth in, traffic in the peak commuter and education periods over the last 10 years [HE9 & HE10]. The consequence of this is that it cannot be suggested that the appeal proposals will produce any material, let alone severe, impact on congestion in the peak period.
- 8.33 On the contrary, the likely effect of the appeal proposals is to provide a benefit in those periods. This would be from the opportunity to reduce traffic accessing local educational facilities and the encouragement of sustainable modes of travel, not only by new residents but also existing residents. This would achieve objectives which are entirely consistent with the Framework and wider Government policy objectives related to the links between the adoption of sustainable travel modes and health and wellbeing.
- 8.34 JAG's evidence relied in part on guidance with regard to cycling arising from the Department for Transport (DfT) Local Transport Note 02/08 [MK1 pg 25]. It is however relevant that:
- i) the guidance is not meant to be rigidly applied but taken only as a guide;
 - ii) the preferred way is to create conditions on the carriageway where cyclists are prepared to use it;
 - iii) it points out that many cyclists feel comfortable on roads with no cycle specific infrastructure if traffic speeds are low;
 - iv) the table which Mr Kitching's Proof purports to replicate does not set out any sort of requirement for cycle provision, but is entitled in the Guidance "approximate guide to type of provision".
- 8.35 Road speeds locally, at the relevant time, would be low due to congestion. In such circumstances, there is no reason why the conclusion, that locations in the area such as the stations are highly accessible by cycle, should not be accepted [Posford XC]. Furthermore, the Council's view is that the use of the highways by cyclists is appropriate and acceptable [G11 para 1.11].
- 8.36 The junction between Chester Road, Bradburns Lane and The Green was improved in November 2009 as part of a traffic management scheme instigated by the Council as the Highway Authority [G9 & G11]. One of the consequences was to improve pedestrian facilities, which in turn could reduce traffic capacity when there is significant pedestrian use. The Council agrees it is proper that vulnerable users (pedestrians and cyclists) are considered first, and there is clearly a significant demand for pedestrian use of that crossing facility during the peak hours.
- 8.37 In improving this junction, the Council prioritised the movement of pedestrians and cyclists over the movement of those who have chosen to use their cars to gain access to particular destinations. Such an approach is consistent with the approach in national policy. It is not however consistent with the Council's approach in these appeals, which is to suggest that impacts on peak hour congestion by way of additional delay are unacceptable.

- 8.38 The increases in potential journey time on Chester Road eastbound and The Green, even on the basis of the Council's approach, would be the equivalent of being delayed by a signal at red, as opposed to being able to pass through at green [MAV1 secn 9 & paras 9.34 to 9.49]. It would also be equivalent to the extension of overall queuing time experienced by individual drivers in excess of 1min/veh over the 6mins currently experienced on Chester Road eastbound and The Green [CD6 para 6.184 & CD2 para 6.171]. In the context of overall journey times, such a delay could not possibly be regarded as a severe impact, particularly as the average journey to work time in Great Britain is some 28 min [Axon XC]. Moreover, the appellants' approach to this point was not contested [Axon XX]. The appellants' approach is also consistent with the Council's approach in its consideration of the Winnington Urban Village proposal. At Winnington, the Council considered that the effects, which were calculated to be more substantial than from the appeal proposals, were marginal [Axon XX].
- 8.39 Even if the appellant's evidence, with regard to the likely effects of the proposals (taking into account the sustainable location, the travel plans and changes in driver behaviour) is rejected, this would not result in a conclusion that the proposals would have a severe impact.
- 8.40 Moreover, even if there would be some increased period over which drivers would experience delay, it is not the aim of policy to protect the convenience of commuting car drivers [Axon XC]. That is evidently also the Council's approach in the prioritising of pedestrians over car users at the junction of Chester Road, Bradburns Lane and The Green.
- 8.41 Against that background, and even on the basis of the Council's own estimates of the effect of the proposals, there is therefore no basis for regarding any effect of these proposals as severe. For these reasons, the single reason for refusal in relation to each appeal site should be rejected.

The Planning Balance

- 8.42 The planning balance, with regard to all matters apart from the highway issue, is one which is firmly in favour of the grant of planning permission [G7 para 7.93 & G8 para 7.75]. If the conclusion is reached that there is any force in the Council's remaining reason for refusal, it would be necessary to balance the alleged highway impact against the proposals' development plan policy compliance and any other benefits arising from them. This would be necessary in order to effectively discharge the Framework test, that planning permission should be granted unless adverse impacts would significantly and demonstrably outweigh the benefits [CD8 para 14].
- 8.43 Substantial benefits generally arise from the proposals with regard to the sustainability of their locations and the contribution that they would make to the building of sustainable communities. The following benefits of the individual appeal proposals should also be taken into account in any balancing exercise.
- 8.44 The following benefits arise from the Grange Farm proposal:
- i) the provision of a community green off Chester Road;
 - ii) the provision of accessible on-site open space;

- iii) the provision of apparently much needed off highway parking convenient to the facilities in Hartford; and
- iv) the prospect of the renovation of the dilapidated but locally listed Grange farmhouse and its availability for some community use.

8.45 The following benefits arise from the School Lane proposal:

- i) the provision of a substantial area of accessible open space;
- ii) the substantial contribution to ecological resources and biodiversity in the area;
- iii) the provision of substantial improvements to the accessibility of the River Weaver corridor;
- iv) the opportunity for improved access to the school campus by way of the linked footpath.

8.46 Those individual site benefits are in addition to the benefits from: the provision of housing to meet a very substantial shortfall; the provision of 30% affordable housing, equating to a total of about 196 affordable dwellings; and the benefits of providing housing in a location which is, in policy terms, the preferred location because of its sustainable nature.

8.47 The objections made by local people are in the main related to the likely effect on traffic and a desire to avoid any significant level of new housing development in Hartford. The latter matter is a debate which has already taken place in the context of the formulation of the relevant DP policies and strategies. That debate has effectively settled the issue as to the appropriateness of Hartford for a significant scale of new housing development to meet the needs of the area.

8.48 Local people made reference to the fact that, in accordance with their view of the localism agenda, they should be able to effectively decide the level of housing which was regarded as acceptable in their area. In that regard, it is appropriate to consider the Secretary of State's approach in a decision letter of the 16th July 2012 [SR1 App 4E para 32]:

"However, he is clear that the changes to the planning system giving communities more say over the scale, location and timing of developments in their areas carry with them the responsibility to ensure that local plans are prepared expeditiously to make provision for the future needs of their areas."

8.49 In the area of the appeal sites, there has not been an expeditious provision of local plans and there has been a manifest and longstanding failure to make provision for the future needs of the area. The agreed position at the present time, on the basis of the conclusions reached in the Cuddington appeal, is that mechanisms to respond to the severe shortfall in housing land are largely absent and there is no immediate prospect of any DPD providing a context in which to allocate sites. Against that background, reliance on the localism agenda is entirely inappropriate. The DP has provided the opportunity for full consideration as to the appropriateness of Hartford as a Tier 1 settlement for the provision of housing. That debate has been had with clear conclusions based upon sustainability considerations. In the context of a failing 5 year supply, and no means identified to overcome that failure, the provision of housing at locations such as Hartford, on sites which are highly sustainable, is an entirely appropriate response.

- 8.50 Objections with regard to traffic and the impacts of it are entirely understandable but, in the circumstances of this case, illogical. The provision of housing on the appeal sites will have beneficial effects on the amount of traffic locally, promote a broader community view of sustainable travel to local facilities and encourage healthier lifestyles. The proposals have everything to offer the local community with no disbenefits beyond the community's dislike of additional housing in its area.

Conditions and Undertakings

- 8.51 There exist substantially agreed lists of conditions, with the only outstanding issues having been debated in the context of the conditions session. The terms of the Unilateral Undertakings have been available for full consideration by all parties, and their comments have been taken into account. The undertakings deliver all that is required by way of support for the travel plan initiatives and the necessary contributions to facilities such as education. There is no basis for regarding any aspects of the undertakings as being inappropriate or unacceptable, and the requirements of the Community Infrastructure Levy Regulations have been complied with.

Conclusions

- 8.52 Hartford is a settlement which boasts two railway stations, a wide range of locally accessible facilities and a range of educational establishments of all kinds. It possesses an environment which is entirely appropriate and suitable for the encouragement of sustainable modes of travel. There cannot be many instances of appeal sites coming forward with such obvious wide-ranging and powerful DP support for them.
- 8.53 The benefits of the appeal proposals and their easy fit with policies at local, regional and national level are apparent from the evidence. The only impediment to the grant of planning permission, so far as the Council is concerned, is an alleged impact on peak hour traffic congestion. This is an objection which is advanced in the face of a concession that there has been no peak hour traffic growth in the area for the last 10 years, despite local development and general traffic growth. The Council's position is also completely at odds with its approach to local transport issues set out in its LTP and completely at odds with any proper interpretation of national policy with regard to transportation matters. Its evidence failed to support the reason for refusal as to the severity of the alleged impact.
- 8.54 Other objections from JAG lack any support in policy at any level. Its evidence with regard to sustainable travel was firmly rooted in the past, failed to have regard to local adopted approaches and misinterpreted other guidance [Kitching XX]. JAG's planning objections related to the availability of land for housing and the provision of infrastructure, such as educational facilities, to support the proposal. It failed to have regard to all relevant guidance and to the provision of facilities needed to support the developments brought forward through the Unilateral Undertakings.
- 8.55 In these cases, the Secretary of State has the opportunity to reach conclusions which provide the opportunity to reinforce the appropriateness of the provision of housing in locations which accord with the DP strategy at all levels. The proposals also provide the opportunities to substantially support the provision of sustainable communities. In the circumstances of these cases, there are

not only no good reasons for refusing planning permission but there are a significant number of powerful reasons why the planning permissions should be granted.

- 8.56 Accordingly, recommendations to the Secretary of State to grant planning permission are invited, subject to the substantially agreed conditions and the settled Unilateral Undertakings.

9. The Case for the Council

The material points are:

Introduction

- 9.1 The Council's concerns are the effects of the proposals, individually or cumulatively, upon the junction arrangements at the A559 Chester Road/The Green and the A559 Chester Road/Bradburns Lane/School Lane highway junctions. As The Green operates one way northbound and School Lane operates one way southbound, the junctions operate as one staggered junction.

Agreed Matters

- 9.2 The sole reason for refusal is transportation related, and planning issues are not in dispute. The Secretary of State can therefore note the following main points of agreement between the Appellants and the Council in relation to planning matters [G7 & G8]:
- i) the identification of Hartford as a Tier 1 settlement and a sustainable location for new housing development;
 - ii) the appeal sites themselves are sustainable locations for housing development;
 - iii) there is full compliance with RS Policies DP 1 to DP 9;
 - iv) the Council has 2.9 years supply of deliverable housing land;
 - v) the need for a 20% buffer on top of a five year supply;
 - vi) the triggering of a presumption in favour of sustainable development;
 - vii) the lack of housing land supply means that the fact that the sites are located outside the settlement boundary cannot be of real weight against the proposal;
 - viii) the proposals would accord with the LP Saved Policy H14 requirement to provide 30% affordable housing, and the appeal schemes would therefore make a beneficial contribution towards meeting the affordable housing needs identified in the 2010 update of the Council's SHMA;
 - ix) the appeal sites are deliverable within a short timescale; and
 - x) the only alleged conflict with the DP and national policy relates to transportation matters, as set out below.
- 9.3 In the light of the Transport SoCGs and the Council's evidence, the following transport related issues are not in dispute [G9, G11 & CP1]:
- i) the draft interim Travel Plans are appropriate and suitable;

- ii) the draft interim Travel Plans contain sets of objectives, measures and targets;
- iii) the draft interim Travel Plans, and the Council's response to them, would be informed by the relevant guidance as to their formulation, implementation and enforcement;
- iv) the Travel Plans would be a key tool in facilitating the protection and exploitation of sustainable travel modes;
- v) the only DP policy cited in the remaining reason for refusal for each scheme is LP Saved Policy T1, and as to its detail:
 - a) it pre-dates the Framework and therefore needs to be tested for compliance with it. Insofar as it is inconsistent with the Framework, reduced weight should be afforded to it;
 - b) LP Saved Policy T1 identifies matters to be taken into account, it does not prescribe a development management test;
 - c) in that context, as to criterion (i) of the policy, there is no conflict with the provisions of the LTP;
 - d) as to criterion (ii), the proposal would have regard to the requirement to reduce travel, especially by car;
 - e) as to criterion (iii), a TA was produced with each application, and the Council did not refuse planning permission on the basis of any defect or lack of information in the TAs;
 - f) as to criterion (iv), the Council does not allege any adverse impact upon local amenity, the environment or highway safety;
 - g) criterion (v) is not material to the application, as it applies to ensuring the free flow of road traffic on the trunk road network;
 - h) the proposals would have regard to the need to ensure that they would be accessible by a variety of means of transport and so criterion (vi) is not offended against;
 - i) the application takes into account the need to minimise the effects of traffic generation, and so the issue raised by criterion (vii) is dealt with. It is also accepted that the policy criterion refers to the minimisation of such effects, not their prevention or elimination; and
 - j) the schemes both produce Travel Plans, as required by criterion (viii).
- vi) the proposals therefore comply with all elements of national, regional and local policy on transportation issues, except for the Framework [CD8 para 32];
- vii) as for the Framework, the Council accepts that it has not characterised the effects of the traffic generation of the scheme [CP1];
- viii) the Council does not allege that to allow the appeals would lead to rat-running along inappropriate routes or else that it

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- would cause alternative routes to be used which would have adverse consequences;
 - ix) the only time period of concern to the Council in respect of the traffic effects of the proposal relates to the am peak hour;
 - x) there has been no traffic growth in the am peak hour in Hartford since 2000, but it is not right to say that traffic has reduced since then [Axon XX];
 - xi) if the proposals went ahead, there would be alternatives available to residents of the proposed developments, and the extant population, which would include not using their cars;
 - xii) the developments would, over time, displace children from local schools who presently attend them from outside their catchments;
 - xiii) the draft interim Travel Plans include measures in respect of school travel which are supported by national, regional and local policy and which relate to measures which the schools have themselves said would assist them;
 - xiv) the Travel Plans would have a beneficial effect on the amount of travel which is undertaken by sustainable modes;
 - xv) the LTP provides support for the use of Travel Plans, which is based upon the view of their effectiveness [CD23 para 5.3.1];
 - xvi) the Council does not disagree with the content of the DCLG Guidance on Travel Plans [MAV2 App MA2];
 - xvii) the impacts of proposals should be linked to the out-turns of Travel Plans, and Travel Plans and TAs should be viewed and assessed together;
 - xviii) the agreed traffic generation figures for the developments are set out in the Transport SoCGs, and these are gross figures;
 - xix) the Council pursues no reason for refusal based on air quality impacts or relating to the effects of the proposals' traffic upon the A559 Chester Road/Beach Road gyratory junction; and
 - xx) the Council has also accepted that the body of its committee report applied the wrong test in assessing the transportation impacts [Posford XX].

Traffic

- 9.4 Notwithstanding these agreed matters, it is submitted that planning permission still ought to be refused for each scheme for the following reasons. There is no dispute about the existing conditions at the Chester Road/The Green and the Chester Road/Bradburns Lane/School Lane junctions. Conditions are such that, during the am peak, serious queuing arises at the junctions. The extent of the problem is demonstrated by traffic surveys conducted:
- i) on behalf of the appellants, during the preparation of the two applications and set out in the TAs for the proposals;
 - ii) by the Council, in the past and during its consideration of the applications; and
 - iii) on behalf of JAG, in explaining its objection to the applications.

- 9.5 The Appellants' TAs reveal that, at the eastbound approach of Chester Road to its junction with The Green, average am peak hour queues are as high as 53 vehicles. The maximum queues are as long as 75 vehicles on days when schools are open. Those queues are short-lived, but cause serious inconvenience. These survey results are supported by the TAs' modelling, using the appropriate proprietary software (LINSIG) of the junctions' extant capacity. This modelling shows that there is considerable negative Practical Reserve Capacity for both junctions during the am peak period.
- 9.6 The information set out in the TAs is to the same effect as that set out in the appellants' September 2012 queue length survey results [MAV2 App MA1]. This shows that, in school term time, queues on the eastbound approach along Chester Road build up from around 07.55 and are at their peak between around 08.15 and 08.50. Queue lengths during that period are between 60 and 70 vehicles at the end of the red phase for the signal showing to that traffic and between just under 50 vehicles and around 65 vehicles at the end of the green phase. This demonstrates the small amount of traffic that each cycle of the traffic signals is able to allow to proceed. This queuing occurs despite the proximity of railway services, bus services and the accessibility of local services by foot or cycle.
- 9.7 The TAs were produced on the basis that linked Microprocessor Optimised Vehicle Actuation (MOVA) would be provided at the junctions [CD1 TA paras 10.13 and 10.16 & CD5 TA paras 10.14 & 10.15]. Linked MOVA is no longer to be provided. Furthermore, the TAs and the later Technical Notes were prepared on the basis of incorrect cycle timings at the two junctions [CD1, CD5 & CP1].
- 9.8 The absence of linked MOVA as part of the appeal schemes and the use of incorrect signal timings combine to mean that the impact assessments presented in the two TAs cannot now be relied upon in the decision making process. As a result, all depends upon the correctness of the appellants' evidence that the proposals would not exacerbate delay and queuing in the am peak [Axon XC].
- 9.9 The Appellants do not propose any physical mitigation measures at the junctions. The traffic from the proposals would use the junctions in their current physical condition and without any further amendment to the individual MOVA control in place at each junction.
- 9.10 The Transport SoCGs contain agreed two-way gross trip rates for the two proposals [G9 & G11]. For the am peak hour, the agreed two-way trip rate is 0.636, which does not allow for any behavioural change or for the effects of the Travel Plans.
- 9.11 These trip rates feed into the am peak hour gross development flows set out in each Transport SoCG [G9 App GCG10 & G11 App HCG10]. Each SoCG shows the agreed gross trip rates for the am peak [G9 App GCG10a & G11 App HCG10a]. Each SoCG shows the cumulative gross development demand for the two schemes in combination [G9 App GCG10c & G11 App HCG10c]. As for the trip rates, the flow diagrams assume no behavioural change and no effect from Travel Plans.
- 9.12 The combined gross flows, for both proposals show that, during the am peak hour:

- i) 73 more vehicles would seek to use the junctions eastbound on Chester Road;
- ii) 19 more would use the southbound approach on Bradburns Lane;
- iii) 24 additional vehicles would use the westbound approach on Chester Road;
- iv) 66 extra vehicles would use the northbound approach at The Green, of which 51 would seek to turn right onto Chester Road; and
- v) the total additional flow into the junction would be 182 vehicles.

- 9.13 The appellants discount from these trip rates and the resultant flows by applying two factors. The first factor is a 5% reduction in car borne traffic relating to non-school traffic arising from the developments. This reduction is based on an assumption that the Travel Plans and the sustainable locations have the claimed degree of effect upon the traffic generation derived from typical trip generation rates [HE10].
- 9.14 The second reduction from the gross trip rate and flows relates to school journeys. The appellants assume that 20% of the traffic which would typically be generated by the proposal would be related to school trips. Of those trips, 75% of them are deducted as being trips which would be undertaken by sustainable modes. As a result, overall traffic generation is reduced by 15%. However, the effect of those reduced trips is not generally assigned across the network, but by reference to movements which end up on Chester Road to the east of Bradburns Lane junction or on Bradburns Lane itself [HE10 para 26]. This is on the basis of another assumption, that these locations are the most likely destinations during the am peak.
- 9.15 Using these compound assumptions about school traffic, a comparison shows the following [HE10 figs 2 & 4]:
- i) for the eastbound approach on Chester Road, the gross demand of 73 vehicles would reduce by 21 vehicles, or 28%;
 - ii) for vehicles wishing to turn right out of The Green, the gross figure of 51 reduces by 25 vehicles, a reduction of 49%;
 - iii) for traffic using Bradburns Lane southbound, the gross figure of 19 vehicles is reduced by 7 vehicles, a 36% reduction; and
 - iv) for the westbound approach along Chester Road, the gross demand of 24 vehicles would be reduced by 8 vehicles, a 33% reduction.
- 9.16 This is most counterintuitive. Taking the right turning vehicles out of The Green and ignoring the 5% reduction in non-school traffic for present purposes, the net demand by vehicles wishing to turn right out of The Green would be 26 vehicles (51-25). Of those 26 vehicles, 7 would be school related journeys, because the 21 vehicle reduction for transferred school trips is 75% of the school related journeys. That leaves 19 vehicles which the appellants assume would perform the right turn out of The Green for non-school journeys.

- 9.17 If it is assumed that all of the traffic is generated by the 350 dwelling School Lane proposal, the appellants are asking the Secretary of State to accept that there would be but 19 non-school related journeys involving a northbound approach along The Green and turning right onto Chester Road. This is patently unrealistic given the existence of Northwich, including its town centre, and other areas in the direction that such journeys would take someone. The exercise that the appellants undertake involves the making of assumptions which produce unrealistic outputs, demonstrating that they are forced to make such unrealistic assumptions to arrive at the end result they wish to see.
- 9.18 The end result, after making and applying the assumptions inherent in this exercise, is that the 182 vehicles which enter the cordon around the junctions in the gross demand scenario is reduced to 112 vehicles. That is a reduction of 38% in the flows which would otherwise arise.
- 9.19 In justifying these reductions, the appellants seek to rely, amongst other things, upon the locational characteristics of the site and the effect of the Travel Plans. The difficulty with the locational characteristics of the appeal sites is that the evidence is that, in the Hartford area, surveys have shown that 40% of traffic is school related. This is despite the locational characteristics of those schools and the amount of housing around them. Clearly, the locational characteristics do not presently contribute to reduced car borne traffic, as the rate of school related car traffic at 40% is twice the Borough-wide rate of 20%.

Travel Plans

- 9.20 As for the Travel Plans:

- i) the appellants' position is that a change of culture needs to be brought about by the Travel Plans, but this is not the same as evidence that the Travel Plans would bring about a shift in behaviour of the degree assumed by the appellants;
- ii) the physical measures set out in the Travel Plans would not bring about a change in culture. A number of the local schools already have Travel Plans, and the appellants only point to one school which has said that the moribund state of its Travel Plan is due to resources. The present traffic levels in Hartford, and the conditions to which they give rise, therefore exist in the context of Travel Plans being in place in the locality;
- iii) local residents have explained other factors which have been at play and which serve to explain why Travel Plans have not led to a reduction in school journeys by car;
- iv) the Council's acceptance of the adequacy of the Travel Plans and its lack of dispute with the DCLG guidance on the topic simply means that the Travel Plans are to be assumed to bring with them some beneficial effect. However, that does not mean that the Travel Plans can have the beneficial effect which the appellants assert [MAV2 App MA2];
- v) the appellants repeatedly said that we must not assume that policy will fail [Axon XX]. The Council does not question policy, but contends that the claimed degree of success of the Travel Plans, which accord with policy, will not come about;

- vi) the Department for Communities and Local Government (DCLG) guidance is silent on the degree of benefit which the Travel Plans would produce;
- vii) the DCLG guidance suggests that the TAs and Travel Plans should be seen as a linked package. The TAs' consideration of impact was however prepared on a basis the linked MOVA was to be provided and on the basis of incorrect signal timings. The situations assessed by the TAs and the Travel Plans are therefore materially different;
- viii) whilst the LTP advises that modest travel awareness programmes have reduced car traffic by 9%, there is no detail on whether that is a figure which relates to daily or peak hour flows, and still less am peak flows [CD23 para 5.3.1]. The appellants therefore seek to use the LTP extract to support a weight which it cannot properly bear [Axon XC];
- ix) the appellants could not give any detail about the reductions found in Peterborough in the Demonstration Projects Summary Report and could not say whether the experience there was in relation to a workplace or residential scheme and whether it was comparable to the situation here [Axon XC];
- x) the appellants justify their view on the potential success of the Travel Plans in the context that "traffic in the area has reduced since 2000 despite an increase in population and jobs" [MAV2 App MA7 para 12]. The appellants however accepted that that is not right [Axon XX]. The agreed position is that of no growth, and so if one factor they rely upon is factually incorrect, it undermines the assumptions they have made; and
- xi) the appellants' finishing point is that the net amount of car traffic created by these proposals, and which would use the relevant junctions, would be 38% lower than the gross level of demand to use those junctions [Axon XC]. Even allowing for the other development traffic which would not use the relevant junctions in the am peak, and which does not enter the "cordon", this level of claimed reduction is plainly very high compared to the levels of traffic reduction referred to in the LTP and in the other numerical information referred to by the appellants, to which reference has been made above [CD23 para 5.3.1 & Axon XC].

9.21 For these reasons, the appellants' assumptions about the effects of the Travel Plans and of the sustainable locations of the appeal sites are seriously overstated and are not robust.

Traffic Growth

9.22 The appellants also rely very heavily upon the zero growth that has taken place in Hartford in recent years [Axon XC]. Again, that reliance is misplaced for these reasons:

- i) as the proposals are of a considerable size, it does not follow that the past absence of traffic growth at the junctions means that the developments would create no growth in the future;

- ii) the appellants point to the development which has taken place in the local area since 2000 [MAV1 para 5.3]. A total of 14 housing schemes are listed, but only three of them are in Hartford, comprising a total of 127 dwellings;
- iii) this is important, because the appellants accepted that they could not say what amount of traffic each scheme would contribute to the am peak flows at the junctions with which the Council is concerned [Axon XX];
- iv) there is therefore simply no reasonable basis to conclude that the past lack of traffic growth in Hartford would continue if the appeal schemes went ahead and, to adapt the appellants' terms, there are good reasons to conclude that the developments would create conditions which would serve to "buck the observed trend", because that observed trend arose in a materially different factual context [Axon XX]; and
- v) the appellants position is that "zero growth" is "the nub of the issue" [Axon XX by JAG]. It therefore appears that the appellants consider that traffic growth would not occur whatever the results of the Travel Plans, because the answer to JAG's criticisms of the Travel Plans was for the appellants to revert to reliance upon the past zero growth. It would be unwise for the Secretary of State to place so much reliance upon the zero growth point, when it appears to be the very basis of the case that there would be a nil net detriment if the proposals went ahead.

9.23 The Council accepts that the proposals would lead to the displacement from the local schools of children who live outside the schools' catchments or at a greater distance than the appeal sites. However, the appellants have not quantified that effect.

9.24 Only three local schools have defined catchments. Others are schools of a character where pupils are likely to be drawn from wider catchments than others, such as the private schools and the schools catering for students with special needs of various kinds [HE6]. For those schools with catchments, the admissions criteria show that the preference given to children who live within a school's catchment, or closer to the school than other children, is subordinate to the preference given to "looked after" children, children with medical or social reasons for admission to a particular school and children with siblings already at the preferred school [Gilbert XX].

9.25 If these points are accepted, then the two developments would indeed generate additional traffic which would use the relevant junctions in the am peak. This additional traffic would add to the existing queues and delays at the junctions [CD2 & CD6].

Conclusions

9.26 The Council does not characterise the residual impacts of the scheme as severe. The evidence before the Inquiry would however allow the Secretary of State to conclude that the impacts would be severe when set in the context of the current unsatisfactory peak hour conditions [Posford XC]. Although the committee reports only addressed the applications against LP Saved Policy T1,

the reasons for refusal do address the Framework and demonstrate awareness of the appropriate policy test [CD8 para 32]. The evidence before the Inquiry also allows the decision maker to conclude that the appellants:

- i) overstate the likely effects on car-borne trip rates of the locational characteristics of the site;
- ii) overstate the likely degree of effect of the Travel Plans upon school trips, non-school trips and background traffic levels; and
- iii) that the reliance on past lack of growth in order to justify finding that zero growth would continue if the appeal schemes were to go ahead is misplaced.

9.27 If accepted, these points would allow one to conclude that the proposals would have severe residual transportation effects. If the proposals, either individually or cumulatively, would have severe residual effects on the highway network, then the proposals' disadvantages would significantly and demonstrably outweigh the agreed benefits of the scheme. The presumption in favour of sustainable development would therefore be rebutted.

9.28 The Council asks the Inspector to recommend and the Secretary of State to decide that both appeals be dismissed.

10. The Case for the Hartford Joint Action Group

The material points are:

Introduction

10.1 Traffic and transport issues have dominated this Inquiry, whether in the guise of reasonable walking distances, travel plans or the quality of train and bus services. Inevitably these link to other issues such as: the perceived housing shortage; educational matters; the availability and location of employment; and the environment. There has however been very little mention of sustainability as defined in the Framework [CD8 pg 2]. The three dimensions to sustainable development (economic, social and environmental) are the underpinning principles of Hartford's developing Neighbourhood Plan.

10.2 During the Inquiry, many references have been made to sustainable transport modes, but there has been no evidence of the wider economic, social or environmental benefits arising from the proposals. Were these developments to be approved, they would have a permanent and irreversible detrimental impact on the life of the village and the environment. They would also frustrate the delivery of new homes on previously developed land in Northwich.

Planning

10.3 In the Council's most recent Local Plan consultation, The Preferred Policy Directions, it has set out how much, where and what type of new development could take place in the Borough over the next 20 years. A number of proposals in this document set out a different approach to that of the RS. This is entirely justified, taking proper account of changes to national planning policy, following the publication of the Framework, and taking account of local up-to-date, and therefore more relevant and robust, evidence. The most obvious example of this is the setting of a new local housing target for the

Borough, signalling a move away from the current RS target which is based on out-of-date information.

- 10.4 The target set for Northwich and the surrounding villages is 4,200 new homes over the next 20 years. This equates to 20% of the overall Borough target. Planning permissions already granted by the Council in the Northwich area amount to 2,717 dwellings which is well over the five year target.
- 10.5 Guidelines for meeting the housing requirements in Northwich and the surrounding villages encourage the use of previously developed land, particularly through delivery of major housing led mixed developments. The explanation and related development priorities explain that there is significant brownfield land resource available.

Environment

- 10.6 Mr R Haffenden, a volunteer officer of the Marshall's Arm Nature Reserve Friends Management and Conservation Group, spoke about the work of the group to protect this valuable resource within the village of Hartford. He highlighted the impact that the development on the School Lane site would have on the reserve. He concluded that he wished to ensure that the value of the reserve and its contribution to the health, well being and quality of the local communities and the educational value to students was not degraded. Mrs E Bowden, a keen walker and cyclist, was well placed and just as passionate with regard to her concerns for the Weaver Valley should development take place on the School Lane site.

Employment

- 10.7 The nearby ICI plant at Winnington was the making of Hartford. 90% of the residents worked there and were able to walk or cycle to work. Sadly, those days have gone, and now residents travel far and wide for employment. Quite rightly, the appellants state that our biggest, and most likely only, employer of any size within the village is education.
- 10.8 However, if you are not a teacher or have skills associated with education, this opportunity is not open to you. There are approximately 600 people employed in Hartford's 10 educational establishments, but research has shown that only 20% live in Hartford, which means that 480 people commute to our schools each day. Evidence produced shows that the majority of residents are employed in areas that are not accessible by either the one half hourly bus service or the two rail services. This means that, with the best will in the world, they cannot use the public transport system.

Education

- 10.9 Education is a very serious consideration in this appeal. Hartford is blessed with 10 educational establishments. The diversity of these establishments is unique, but there are only two primary schools, Hartford Manor Community and Hartford Primary, that have catchment areas. This means that the other 8 schools have no restriction on the area that their pupils and students come from, and they thus cover a wide area of not only Northwich and the surrounding areas but all parts of Cheshire.
- 10.10 The appellants predict that all the children in Hartford Manor Community and Hartford Primary Schools who live within the catchment area of these schools

will walk, cycle or scoot to school, no matter how far they live from the school [Axon XC]. If this was to happen, it would however result in such a small reduction in the amount of traffic generated from the remaining 8 schools that it would not be noticeable.

- 10.11 There could also be children from a further 650 homes. The appellants state that the children from the proposed developments will replace children who presently attend the two primary schools, but where will these replaced children be educated [Axon XC]. In the meantime, there is the problem of all the children from the approved planning applications at Winnington (1,200 homes) Sandiway (308 homes) and Wincham (1,050 homes) where there is either no school or capacity. Where will these children be educated? Winnington Urban Village will have a particularly serious impact on Hartford not only from the modest projection of 218 primary school children but also from a further 156 senior students.
- 10.12 All these school children will need to travel to Hartford, further increasing the traffic congestion on Hartford's roads. This was anticipated by the Council in their traffic improvements at the Bradburns Lane and Chester Road junction. The Council's Children and Young Peoples' Service is also adamant that there will be a drastic shortage of places, not only in the Northwich and Rural North Area Partnership Board area but also outside the area.

Cuddington

- 10.13 The appellants have put great store on the Cuddington decision made by Mr Cunningham. There are however a number of differences between the Hartford and Cuddington appeals. Cuddington has just two schools within its boundary, Hartford has 10. Cuddington therefore does not suffer severe traffic congestion at peak times. Cuddington is not confined by the River Weaver and has good access to the A556 and A49 with less congestion on the local road network. Cuddington does have the same local two carriage Chester to Manchester rail link and the half hourly bus route, but residents have to drive to Hartford for the Liverpool to Birmingham train.
- 10.14 The most important difference is that the infrastructure and sustainability of Cuddington could accommodate a development of 150 dwellings. In view of the difference between a 150 dwelling development and one of 650, the large scale appeal developments would have a devastating effect on the existing community and future generations.

Traffic

- 10.15 Through the life of the planning applications, the approach to mitigating the effects of the developments was one of junction capacity improvements at the Chester Road/Bradburns Lane/School Lane and Chester Road/The Green signalised junctions through the introduction of MOVA. [CD1 TA & CD5 TA]. The appellants also considered the existing traffic conditions, including traffic volumes and queuing lengths on the junction approaches.
- 10.16 The appellants state that they have arrived at a position of no growth in traffic in the peak periods through the analysis of traffic count data. Such a statement is however misleading, as the analysis actually shows a position of no growth in the throughput of traffic in the peak periods. This latter position is highly likely to be the case, as with two fully saturated junctions, there will

be a ceiling as to how much traffic can pass through this point on the network in a 60 min peak period.

- 10.17 Indeed, the appellants' evidence confirms that, even with their no growth position, traffic conditions have deteriorated further since the production of the TAs. The appellants' recent queue length surveys are significantly longer than those recorded in the TAs, and correlate well with the photographic evidence provided by JAG [MAV2 App MA1, CD1 TA, CD5 TA & MK1]. This also confirms that, even with no growth in throughput at the junctions in the peak periods, queuing is increasing. There is also anecdotal evidence that rat running is increasing. This has occurred with the development of just 127 new dwellings in 10 years.
- 10.18 JAG agrees with the appellants that there is suppressed demand at the junctions and that, if capacity is increased, the suppressed demand for travel by car would be released. The peak period delay would then return to its current levels almost immediately [MAV1 para 9.55]. JAG maintains its position that this will occur whether capacity is increased or whether capacity headroom is created through the introduction of the Travel Plans.
- 10.19 The appellant has made no attempt to model the existing performance of the junctions, nor the additional 182 vehicle movements, equating to 9.1% of the measured flows, generated by the developments [HE10 para 12]. This additional traffic would have a material impact at the two junctions, and would have a severe impact on an already congested network in peak periods.
- 10.20 For the assessment of the developments at the two junctions to be sufficiently robust and thorough, the following should have been modelled: the 12 October 2011 surveyed flows [HE10 fig 1]; the agreed base case, which includes the traffic associated with the permitted Winnington Urban Village as agreed with the Council [CD1 TA & CD5 TA]; and then the base and development cases, with the additional 182 gross vehicle movements [HE10 fig 2]. The appellants have confirmed that these 182 vehicle movements have been agreed with the Council as the traffic that would result before any allowance is made for driver behavioural change or the effects of the Travel Plans [HE10 para 9].
- 10.21 Such an approach would have provided a transparent assessment of the impact of the developments on the two junctions. It would have identified the impacts of the developments over the agreed baseline conditions and the impact if the Travel Plan benefits failed to materialise. This approach would have also allowed a clear assessment of the benefits of the proposed Travel Plans to be understood. The appellant has chosen not to do this in their evidence.

Site Sustainability

- 10.22 Turning now to the extensive debate on the sustainability credentials of the appeal sites, both have deficiencies that cannot be overcome through the introduction of the Travel Plans. The evidence from JAG, the Council and the appellants' original transport consultant quite rightly referred to the current IHT guidance on appropriate walk distances to local facilities (including bus stops, rail stations and education facilities) [CD1 TA paras 4.5 & CD5 TA para 4.6].

- 10.23 Only the appellants' transport witness chose to ignore this guidance, preferring to base the likelihood on professional judgement of how far residents of the new developments would walk to local facilities and public transport. The appellant's witness was however unable to give a single example of a travel plan he had implemented, or provide an indication of any of the modal splits achieved from any of the travel plans his company had produced [Axon XX Council].
- 10.24 The appellant has also shown a reluctance to make any robust assessments of future travel to employment destinations on foot, by cycle or by public transport. Moreover, the appellant was unable to provide any technical analysis on expected journey to work trips by rail. This was despite their having made a conscious decision to improve cycle parking at both stations. They have also deleted the offer of rail vouchers from the Travel Plans which would have encouraged these types of trips [Axon XX]. Such decisions should be made on robust evidence, not just unquantified judgements, to ensure that the proposals deliver the step-change in sustainable travel that the appellants require to mitigate the impact of their development.
- 10.25 The Leeds data and the 2009/2010 National Travel Survey clearly show that, the further a child has to travel to school, the more likely they will travel by car and the less likely they will walk [HE7]. In Leeds, which the appellants consider is comparable to Hartford, 79.7% of primary school children living within 1km of their school walk to school, with 17.2% travelling by car. However, when travelling between 1 to 2km, these percentages change significantly, with walking falling to 42.6% and car travel increasing to 46.5%. In addition, residents travel to employment outside the immediate area and drop their children off at school on the way to work.
- 10.26 The main catchment school, Hartford Manor Community Primary, falls within 0.5 miles (0.8km) and 1.05 miles (1.7km) of the Grange Farm site. Using the Leeds evidence, the general propensity to walk to the catchment school would be expected to be around 45%, with car travel a similar 45%. This is a sensible indicator, as these percentages correlate with the existing primary school travel plans in the Hartford. Such an approach also follows the general pattern of walking/car travel to primary schools shown in the National Travel Survey data [HE7].
- 10.27 The appellants believe such comparisons to be incorrect, but were then unable to draw on any evidence to prove their statement that 'as all of both sites are within walking, cycling and scooting distance of a full choice of schools, there is no reason for any significant proportion of pupils to make a dedicated car-borne trip to school' [Axon XX & HE7 para 24]. Such a statement disregards the advice contained in the NHS NICE document which states that the choice for children to walk or cycle to school is heavily influenced by complex household routines [CD26 para 3.52 2nd bullet].
- 10.28 Having originally adopted a strategy of capacity improvements at the two junctions, through the introduction of MOVA, the appellants have shifted to an approach that is reliant on the two Travel Plans. Notwithstanding the appellants' failings to accurately model the effects of the MOVA scheme in the TAs, their switch from attempts to enhance the operation and capacity of the junctions is diametrically opposed to their current thinking of all encompassing travel plans for Hartford.

- 10.29 The sustainability credentials of both sites have been significantly embellished. The appellants have also incorrectly appraised the impact of the proposals on the surrounding highway network. The sites do not have excellent accessibility, as concluded by the appellants. Neither site relates well to the public transport corridors that would be required to reduce car trips, particularly commuting trips. All parties agree that bus access to both sites is limited to a daytime provision. JAG considers that this would be of limited attraction for commuting trips from the sites.
- 10.30 The appellant makes no offer to improve bus service frequencies or running times. Furthermore, 50% of the proposed residential units at the Grange Farm site would fall outside the 400m recommended walk catchment to the nearest bus stop. All the proposed residential units at the School Lane site would be between 700m and 1.4km from the nearest bus stop. Given the low frequency of bus services, it is unlikely that future residents would walk further to access services.
- 10.31 Notwithstanding the appellants' reluctance to draw on any empirical evidence when assessing access to these facilities, there is no disagreement as to how far the two appeal sites are from the stations. Only the southern sector of the Grange Farm site falls within the IHT recommended 800m preferred maximum walk distance to Hartford station [MK2 App B & MK4 App B]. Hartford and Greenbank stations are well in excess of the IHT recommended 800m walk distance from the School Lane site.
- 10.32 The combination of an hourly service, coupled with walk times of 16 and 25 mins from the furthest points from the Grange Farm and School Lane sites, would hinder the attractiveness of Hartford station services to a large proportion of residents [MK2 App B & MK4 App B]. Greenbank station would be even less attractive, with a walk time of 25 mins from the most north eastern point on the Grange Farm site. A walk time of nearly 27 mins, using existing pedestrian links to Hartford station, is also expected to discourage all but the most enthusiastic of pedestrians.
- 10.33 The appellants' decision to drop the promotion of MOVA junction capacity improvements at The Green/Bradburns Road/Chester Road junctions confirms the level of existing congestion at these fully saturated junctions. It also confirms that it would not be possible to mitigate the effects of any additional traffic through these junctions. This 11th hour change in approach, to drop the junction improvements and adopt a strategy completely dependent on significant travel behavioural change in respect of all education trips from the appeal sites, was surprising.

Travel Plans

- 10.34 JAG supports the Travel Plans and the improved sustainable transport measures which can be delivered through them. The appellants have also offered to deliver improved school travel plans at various education establishments in Hartford. Whilst laudable, this offer is solely based on conversations with head teachers at these schools. The appellants have not engaged with the Council's School Travel Plan Officer, nor did they source the existing travel plans for the schools to consider what benefits could be delivered.

- 10.35 Furthermore, as a Governor of Hartford Manor Community Primary School, Mrs Hollens has been informed by Mr S Kidwell, the Head Teacher, that he has had just one formal meeting with Mr Axon, which is the interview in his evidence. A further casual meeting took place when Mr Axon was in the area to look at the turning circle. Likewise, a Governor from Hartford Primary School has informed Mrs Hollens that Mrs C Slater, the Head Teacher, has only had one meeting with Mr Axon and is not working with the appellants.
- 10.36 All the schools in Hartford have travel plans in operation, but they have had a very modest effect due to various concerns of parents and their inability to volunteer for walking buses amongst other things. The existing Hartford residents are supportive of travel plans, and would wish to further the ethos of walking, cycling and scooting to school, but they consider that, for safety reasons and time constraints, this is not possible. This was born out in the recent national survey.
- 10.37 Ms C O'Brien explained to the Inquiry the dangers of children cycling to school on the Hartford roads that hold so many obstacles and dangers. There can be no safe cycling routes provided on School Lane, Chester Road, Bradburns Lane or Beach Road which are the main routes to the Hartford schools. Again, the safety of cycling on our roads in peak periods is borne out by another recent national report into the amount of deaths and the dramatic increase in serious injury.
- 10.38 The appellants, using professional judgement, have applied a 5% reduction to all gross traffic flows from the developments, which is said to reflect the sustainable locations and the benefits of the Travel Plans on non-school travellers [HE10 para 13]. The appellants have also assumed that 75% of all the 20% (not just catchment school) education car trips from the site in the am peak period would be made on foot, cycle or scooter.
- 10.39 JAG considers this to be wholly unachievable, as the appellants have no control over where residents may choose to send their children to school. In addition, having identified a need to make such a significant change in education travel behaviour, the Travel Plan targets make no attempt to deliver what the appellants need to achieve. The targets bear little resemblance to the identified 5% and 15% reductions, despite having been written by the same author [Axon XX and HE10]. The targets therefore do not reflect the reductions required to mitigate the development, as well as being virtually impossible to measure.
- 10.40 In addition, the proposed sustainable links from the School Lane site to the Hartford campus sites would not accommodate cyclists [Gilbert XX]. Children scooting to school therefore would also not be able to use this link. This would impact on the appellants' percentage reductions [HE10].
- 10.41 The Unilateral Planning Obligations simply provide for one-off contributions to cycle and scooter parking at the education facilities and make no financial contribution to the improvement of the school travel plans. This lack of on-going financial commitment to the school travel plans leads to questions as to how the travel plan targets will be achieved [HE10].
- 10.42 Furthermore, the timescales for achieving the travel plan targets do not align with the appellants' desire to make a step-change in travel behaviour in Hartford. Applying a single assessment period that could be undertaken just

under 5 years after the first unit is occupied is not appropriate. The proposed 5 year travel plan target time period also comes at a time when the yearly travel plan funding ceases and the development is completed [HE12 paras 4.4 & 4.5 & HE13 paras 4.4 & 4.5]. The time periods suggested in the obligations would effectively allow the appellants to walk away once the developments are complete. No travel plan sanctions or penalties have been identified other than a one-off payment if the targets are not met.

- 10.43 As such, JAG remains to be convinced that such a strategy will mitigate the full effects of the proposals. If this is not achieved, then the developments will be reliant on the private car, which is contrary to the objectives of local and national planning policy.

Conclusions

- 10.44 The Framework states that development proposals should only be refused when the residual cumulative impacts are severe. The appellants' assessment masks the true impact of the development by discounting the volume of traffic that will pass through this known peak period congested location [HE10]. The appellants have also grossly overestimated the likelihood of 'almost all' children walking, cycling or scooting to any of the education facilities they may attend [Axon XX].
- 10.45 As a result, the appellant has not adequately demonstrated the true and severe impact the proposals would have on an already congested highway network. The proposals therefore would not meet the requirements of the Framework.
- 10.46 The Council was correct in concluding that the proposals would have a severe impact on the highway network. The deletion of the MOVA mitigation measures, which were shown to be insufficient to overcome the impact of the development, further reinforces JAG's view that there are no deliverable mitigation measures that would address the congestion issues at the junctions. The proposed Travel Plan measures, whilst laudable, would not mitigate the impact of the 650 residential units. The lack of demand restraint measures in the scheme design or the Travel Plans would not restrain vehicular movements to and from the site in the peak periods to the level required to mitigate the developments on an already congested peak period highway network where there is suppressed demand for car travel [MAV1 para 9.55].
- 10.47 There is no indication in the appellants' evidence that a travel plan would be successful, and there was no proof that their witnesses had experienced a successful plan [Axon XX]. Words noted were probable, guesstimate, in my judgment, assume, benchmark. The other overwhelming word that was continually used was choice. The residents of Hartford would like a choice.
- 10.48 They are not objecting to development within the village, they are objecting to such a large development that would have a severe impact on the highway network that cannot be mitigated with a travel plan. Such a large development, that would increase the population by almost 30%, would not be economically, socially or environmentally sustainable.
- 10.49 Based on this, JAG maintains its original position, that the Council was correct in refusing both planning applications. JAG hopes that the Inspector is minded to recommend the dismissal of both appeals and would respectfully request

that the Secretary of State considers the concerns of the community of Hartford when making his decision on these appeals.

11. Interested Persons

The material points are:

Mr Graham Evans MP

- 11.1 Mr Evans spoke to represent his constituents. He drew attention to the strength of local opposition to the proposals in terms of a petition of some 3,000 signatures and the 100s of letters and telephone calls he had received.
- 11.2 His main concern was the additional strain that the proposals would place on existing infrastructure. In relation to education, although there are excellent establishments in the area and the Council has not objected to the proposal in this regard, they would not be able to accommodate the demand from the new residents. In respect of road infrastructure, it was barely sufficient to cater for the existing situation where a high volume of traffic is school related, particularly in the am peak. There are already a large number of accidents due to frustration, and additional traffic would be dangerous and untenable.
- 11.3 The residents of Hartford are not against development and recognise the housing needs of young people and those who are older and wish to downsize. Moreover, there is a shortfall of housing in this area and the Government is seeking to encourage house building to assist in the economic recovery. To add 650 house to Hartford's congested roads and limited school places would result in untold strain. Insufficient mitigation has been proposed and the proposals would therefore conflict with LP Saved Policy T1. Other Northwich sites, which comprise previously developed land, would be better suited to the proposals.
- 11.4 The nearby Winnington Urban Village proposal is located on the former ICI brownfield site, and it is important that the use of brownfield land continues to take precedence over development on green field sites. The Winnington proposal would have a significant impact on Hartford in terms of road and school capacity, but it is different to the proposal in that it represents the redevelopment of previously developed land.

Cllr P Dolan

- 11.5 Cllr Dolan spoke to represent Northwich Town Council. Brownfield and derelict land, including that related to the former salt mines, should be redeveloped before taking open land, which should be retained for environmental buffers and green gaps. The appeal sites represent the last remaining open spaces within the village boundary of Hartford. The School Lane site is also an ASLEV, and the proposal here would have a detrimental impact on this important part of the wildlife corridor of the River Weaver.
- 11.6 The proposals would not enhance the quality of life in and the community of Hartford. The proposals would also compromise regeneration efforts being made in Northwich and would dash local plans for Hartford. They would make a mockery of localism. In a letter dated 27 March 2012 to Graham Evans MP, Greg Clark MP, the then Minister for Decentralisation and Planning, stated that two of the three objectives of the Government's reforms to planning policy were: to put power in the hands of communities to shape the places in which

they live and to protect and enhance our natural and historic environment. The proposals conflict with both of these objectives.

- 11.7 The proposals would create a doughnut effect in terms of development around the periphery of Northwich. This would compromise the regeneration of Northwich, which has already received over £30m from the Government for the stabilisation of former salt mines to facilitate development.
- 11.8 The rejection of the appeals would meet the priorities of the communities of Hartford and Northwich. This would also support sustainable development within the spirit of the Minister's letter, the Framework, the LP and the emerging neighbourhood plans of Hartford and Northwich Councils. On the other hand, the approval of the proposals would dash these plans and demoralise the communities of Hartford and Northwich. It would make a mockery of the spirit behind the Government's localism and neighbourhood plan strategies and local democracy.

Cllr R Haffenden

- 11.9 Marshall's Arm Local Nature Reserve is a site of biological interest. The access routes shown within the Unilateral Undertaking for the School Lane proposal would be problematic due the need for steps to cross the river valley in the reserve and a locked school gate.
- 11.10 Whilst the Council's ecologist has not objected to the proposal, it would disturb the reserve and designated Site of Biological Importance. The loss of the agricultural land would also impact on food sources available for wildlife in the reserve

Cllr H Manley

- 11.11 Cllr Manley spoke to represent his constituents. The existing congestion in Hartford can add 27mins to a journey. Many residents of Hartford work in the Warrington area, and the use of public transport would be unlikely as it would involve using a number of buses and trains. Existing cycle racks are never used, and it is noticeable that traffic levels increase in poor weather. The Travel Plans are optimistic in terms of their walk distances.

Ms M Morron

- 11.12 Ms Morron is a resident of Lodge Lane and a retired primary school head teacher and spoke to represent the residents of Lodge Lane. Lodge Lane is used as a rat run for vehicles speeding to avoid, and make up for time lost in queuing for, the Hartford junctions. The proposals would make this worse.
- 11.13 Lodge Lane is a route to Hartford Primary School, and children are, and would be even more so, put at risk as a result of this rat running. Indeed, even on the morning of her evidence, cars were seen to be mounting the pavements near Hartford Primary School.
- 11.14 Many of the residents of Hartford chose to live in a village to avoid rush hour standing traffic. The proposal would exacerbate an already intolerable, unsafe and unsustainable situation, and the traffic generated would completely strangle Hartford.

Sir Peter Fahy

11.15 Sir Peter is the Chief Constable of Manchester, the former Chief Constable of Cheshire and is currently a school governor. The existing congestion causes problems for vehicles exiting Walnut Lane. Moreover, some users of the shops on Chester Road, and indeed Hartford railway station, already park in Walnut Lane with little consideration for the residents. The Grange Farm proposal, in using the Walnut lane access onto Chester Road, would exacerbate these problems. The access routes to the main education campus would be difficult as they would cross playing fields, which are muddy in the winter, and would involve negotiating security gates.

11.16 His commute to work in Manchester would involve a walk to Greenbank station, over an hour on the train and a 20min tram journey. This would be unlikely to be the mode of choice for many commuters. Much employment is located in the economic zones of Warrington and Manchester Airport, which are more difficult to access by public transport from Hartford.

Cllr P Herbert

11.17 Cllr Herbert is a member of JAG but spoke as a resident. He is concerned about the impact of the proposals on the Hartford neighbourhood plan and that insufficient consideration had been given to industrial and landscape archaeology. The Council's archaeologist had not addressed these issues, and the mitigation proposed by condition would not be sufficient. Both sites are included in Historical Recorded Event Records. The Grange Farm site has the potential for Romano British remains of regional significance. All remains and potential remains should therefore be left in situ until appropriate supervised technology is available for an appropriate archaeological investigation. On the School Lane site, artefacts from an early form of proto-industrialisation, which preceded industrial societies, have been found on part of the site. This would require more than trial trenching and a watching brief. The open nature of the site also relates to the landscape and industrial archaeology of the Weaver Valley.

11.18 No form of mitigation could alleviate the impact of development on these historic landscapes, and there is much in danger of being lost on both sites as a result of the proposals.

Mr Gardiner

11.19 Mr Gardiner spoke on behalf of Mr V Lakeland and the residents of Woodham Close and Douglas Close. The reporting of the appellants' traffic surveys is deeply flawed, as the absence of a sensor on School Lane should be taken account of. This underplays the traffic flows, and those reported are based on speculation only. The sensors on Chester Road also failed to capture certain traffic flows and no sensors were placed on Beach Road, a major route into Hartford. The period over which the average was calculated also started in the school holidays.

11.20 The Council has classed the access from Whitehall Drive onto School Lane as minor and for 100 houses. 95 houses already use this access, and the additional 20 proposed, if not more, will take the access over its limit. There is

also construction traffic to be considered and a shallow water main. The Whitehall Drive access is therefore not suitable for the School Lane proposal.

- 11.21 There are concerns that Section 106 contributions in relation to the School Lane site have not been paid by the appellant's parent company, Redrow Homes, and this history should be borne in mind. The existing sewerage problems in the area would also be exacerbated by the proposal. There are many brownfield sites needing development in the Northwich area which would not have these impacts; conflict with the previous, current and emerging neighbourhood plans; or bridge the open gap between Hartford and Davenham (Kingsmead).
- 11.22 Insufficient account has been taken of construction parking, and parking by the users of Hartford railway station takes place in Fullerton Road, Walnut Close and The Crescent, with some 4 to 5 cars in The Crescent.

Mr J Szostek

- 11.23 Mr Szostek was formerly the membership secretary of the Hartford Civic Society but spoke to give his personal views. Whilst Hartford is a Tier 1 settlement in the LP, both appeal sites lie outside the defined policy boundary of Hartford. The appeal sites are also not among the five sites in the Northwich area listed in the Council's November 2009 Topic Paper: Strategic Local Sites, which is to replace the use of tiers. They therefore lie, and are likely to continue to lie, outside the Council's intended areas for development.
- 11.24 The strategic importance of regenerating Northwich is reiterated in the Council's August 2013 Preferred Policy Directions document which encourages the use of previously developed land to minimise the loss of greenfield land. The greenfield proposals would damage the brownfield regeneration strategy in Northwich. It would also damage the regeneration of the centre of Northwich. This would be by distancing housing from it, leading to residents shopping elsewhere such as on their journeys home from work, and by reducing its accessibility due to congestion on its periphery at Hartford.
- 11.25 The Framework states that planning should be plan led, empower local people to shape their surroundings and have local and neighbourhood plans to set out a positive vision for the future of the area [CD8 para 17]. At a meeting with Rt Hon Greg Clark MP, he convinced those present of the merit of producing a neighbourhood plan for Hartford, that the provisions of the localism bill would be made to work and that he would call in a percentage of planning decisions. The Hartford Neighbourhood Plan Working Group has been working as fast as the implementation of the legislation has allowed. Hartford was an early producer of its Village Design Statement and will be an early producer of its neighbourhood plan. The development process should be driven by well thought through plans and not the opportunistic proposals that are the subject of these appeals.
- 11.26 To get to work in Warrington should take 35 to 40 mins by car. This is not possible due to the congestion in Hartford. Mr Szostak had changed his working hours by 45 mins to avoid the Hartford congestion. Many others are likely to have made the same choices, leading to the absence of any reported peak time traffic growth.

11.27 To use public transport involves a train south to Crewe, a train north to Warrington and a final shared car journey. This takes between 1 hr 10 and 1 hr 30 mins. The journey using three buses takes 2 hrs. New residents would therefore be likely to use their cars.

11.28 The proposals should be decided upon by the people of Hartford and not opportunistically under the Framework.

Cllr Mrs E Bowden

11.29 Cllr Mrs Bowden is a retired teacher and a member of JAG, but spoke as a resident.

11.30 The School Lane site is situated in close proximity to the Weaver Valley and is part of an Area of ASLEV designated in the LP. The ASLEV is said to form an important gap between Hartford, Leftwich and Kingsmead and have an important role in maintaining views across the Weaver Valley. It is also said to be under particular pressure for housing development.

11.31 The Heritage Lottery funded Saltscap Project includes the natural habitats and heritage attractions of the Weaver Valley. The Council's August 2012 Preferred Policy Directions document identifies leisure and tourism as important sources of future growth in the Borough. The Framework requires: the planning system to enhance the natural and local environment; local planning authorities to protect biodiversity networks, green infrastructure and valued landscapes; and states that policies should provide for local communities to designate local green space and allow them to rule out new development other than in very special circumstances.

11.32 Many surveys report that access to the natural world has psychological, social and economic benefits. This view is also held by the Government's Natural Capital Committee, which reports to the Economic Affairs Committee chaired by the Chancellor of the Exchequer.

11.33 Northwich is crying out for regeneration. Building 350 houses on the School Lane site in the Weaver Valley will not solve the housing needs of the neighbourhood or the country, but it will have a severe and detrimental effect on the landscape and natural habitats. This will have repercussions for the environment, tourism, the economy and the wellbeing of the community. It will negate the investments made in the Saltscap Project and will be a betrayal of future generations.

Mr D Bowden

11.34 Mr Bowden is a retired head teacher and consultant to schools and local authorities, has a Masters Degree in Educational Management and is a member of Sustrans. He spoke as a local resident.

11.35 Successful walking and cycling schemes have usually required significant infrastructure. The key roads in Hartford are not safe and cannot accommodate such infrastructure. Traffic has increased in the village with each new housing development, and the claim that this development will be different is an unsupported assertion

11.36 Hartford residents decide how their children get to school by what means they deem safe and convenient, not by what is set out in a travel plan. The

appellants have seriously underestimated the task of bringing about a sustained cultural change in groups of parents and have not accounted for the fragility of schemes dependent on volunteers. These views result from many years experience of managing change in real schools and real communities

Ms H Clegg

- 11.37 Ms Clegg is a local resident. Parking causes many problems in the village, the two biggest of which are at Hartford railway station and the shops. The station car park is full by 08.30 and parking then spills onto the A559 restricting visibility at the car park and Booth Road junctions and making the Fullerton Road junction difficult to negotiate. Parking then extends to The Crescent causing access difficulties. The car park at Greenbank railway station is also almost always full.
- 11.38 Although the proposal for the Grange Farm site includes a public car park, this would not be sufficient for the new residents wishing to use the shops. This would affect the future viability of the shops.
- 11.39 School journeys also cause congestion chaos in the roads close to the schools, and the proposal would result in parking gridlock. Hartford is a special place and different to many other villages and parking, which is a very big issue, should be considered in any decisions.

Mrs J Pritchett

- 11.40 Mrs J Pritchett is a local resident. There is a need for more smaller and local housing, and indeed the Grange Farm site may be suitable in principle, if community facilities are included. The house types and numbers proposed are however unsuitable for the village, and there are no intended community facilities.
- 11.41 There are many reasons as to why children do not walk to school including safety, convenience, economic circumstances, fashion and habit. The evidence and projection in support of the effects of the travel plans is nothing more than an optimistic hypothetical wish list, and the reasons why children do not walk to school are unlikely to change.
- 11.42 There can be no increase in traffic at the two junctions in Hartford, as they are already saturated and gridlocked. Travellers use alternatives, but these are alternative routes, such as through the side roads of Hartford, and are not by foot, cycle or scooter.
- 11.43 School Lane is used by traffic to and from the A556 Northwich bypass. It is a major corridor for traffic northbound to the educational establishments and railway station in Hartford and southbound for Hartford's commuters to Manchester, Chester and southwards. Recent roadworks on School Lane have made drivers aware of rat runs through Lodge Lane, Landswood Park, Riddings Lane, Park Lane, Abbey Lane, Chantry Avenue and through the Wimpey estate. These side roads are narrow and not meant for heavy traffic or large numbers of cycles.
- 11.44 These routes allow drivers to avoid the centre of Hartford when: travelling west from Hartford to join the A556; travelling from the bypass to the railway station; taking children to Hartford Primary School by car and school bus; and travelling east from Hartford to join the A556. The routes are used in both

directions, and would be available for the future residents of both appeal sites making them even more congested and unsafe.

- 11.45 Despite the appellants' description of the area as the Northwick, Greenbank and Hartford conurbation, Hartford retains its identity. This is in part due to the undeveloped nature of the appeal sites which are the only remaining green areas within the community. If these are lost, the conurbation will indeed be complete.

Mr B Slaney

- 11.46 Mr Slaney is a local resident and a member of the Association of Project Safety and the Association of Project Managers. His children attended schools in the area. Whilst he endorses the admirable objectives of children attending schools near to their homes, this has not always occurred with his children in the past. Sustainable development is more than cycle shelters and scooter pods. A significant ongoing benefit for residents is needed. The proposed green should be provided first and handed over before the houses are built.
- 11.47 Walnut Lane already suffers from parking by customers of the shops, causing problems for larger vehicles on the lane. It is too narrow for the Grange Farm site construction traffic. Vehicles must be let out to leave the lane, and the lane is used for u-turns to enable vehicles to join the queue partway along its length.
- 11.48 Mr Slaney has cycled to work locally in the past, but now works in the Warrington and Manchester area where using public transport to commute is impossible. He uses the bus runs previously described, as the traffic signals at the junction between The Green and Chester Road only pass three vehicles on a green phase in the am peak.
- 11.49 The Walnut Lane conservation area is important, particularly in terms of any proposed hoarding or fencing, and conditions would be necessary to regulate construction parking and bussing to the site. There have been broken promises concerning development in Hartford in the past, and the Council must ensure that it has sufficient teeth if the permissions are granted.

Mr B Ursell

- 11.50 Mr Ursell is a local resident and was formerly the chief executive of two banks and a chairman and director of two property companies, both of which were involved in house building. A large percentage of education places in Hartford are taken by non-Hartford residents. This, together with outward commuter traffic, results in the am peak congestion. It is unrealistic to suggest that the proposal would not have any material impact on an already difficult situation, which will get worse as a result of traffic from the Winnington Urban Village development. Any reduction in primary school journeys would be offset by an increase in senior school and commuter traffic.
- 11.51 Travel to London from Hartford requires the use of the hourly service to Crewe to reach the London connection. The four track line from London reduces to two to the south of Hartford, and local trains to Crewe are frequently delayed to give other services priority. Future additional tracks are unlikely due to the limited width of the Weaver Viaduct. Mr Ursell uses a taxi to Crewe, and many

other commuters drive to Runcorn or Crewe. Commuting to Manchester is not practical due to the hourly service and poor timekeeping.

11.52 The Grange Farm site represents the only opportunity to create a real village centre, with various facilities to reduce travel to Northwich, and is crucial to any village plan. The proposed car park does not do this, and would not alleviate the parking problems at the shops. The proposals do not provide supported housing to alleviate the needs of an ageing population.

11.53 To grant permission on the Grange Farm site would eliminate a significant asset that could be used to enhance Hartford rather than create further problems.

J Krause

11.54 J Krause is a local resident. Walnut Lane would be materially affected by the proposal for the Grange Farm site. The combined entrance to the lane and the site would desecrate the amenity of the lane and its CA, and properties would be blighted by the proposal. Furthermore, the SoCG does not satisfactorily address safety in terms of: the parking of delivery vehicles at the Chester Road shops; young children and cyclists with inadequate road sense; the crossing island on Chester Road, which is designated as a safe route to school. These points are supported by submitted photographs. The photographs also show flooding on Chester Road at the Walnut Lane junction, due to run off from the Grange Farm site, and at The Green traffic junction, evidence of further load on the sewerage system.

11.55 Raw sewage regularly discharges into a ditch running alongside the site which, in the summer months, results in fetid conditions. The introduction of SUDS onto a site comprising clay is also a matter for concern. The site drainage includes a 9" culvert under the Manchester to Chester railway line, which does not appear to have been surveyed. This culvert also takes water from the nearby Fullerton Road estate. The area before the culvert passes under the railway line also regularly ponds, and the site therefore does not have a low risk of flooding as suggested by the appellant. Furthermore, the bog and pond areas have not been the subject of any assessment.

11.56 The ditch running alongside the site takes drainage from the properties in Walnut Close. The existing occupiers have riparian rights to protect the ditch as an integral part of flood protection for the properties, as some of them have flooded in the past.

11.57 The appellant is of the opinion that the proposal would have a neutral effect on the CA and Walnut Lane [SR1 p7.85]. Neutral is however not a sufficiently stringent test, as the test is to enhance and protect. The density of the proposal would in fact skew the setting of the CA.

Dr J Swaffield

11.58 Dr Swaffield is the Chair of the Governors of Cloughwood School and appeared on behalf of the governing body of the school. Peak traffic congestion in Hartford is, in part due to the 10 educational establishments in the village. To this will be added the traffic from the 1,200 dwellings of the Winnington Urban Village development. In addition to this however, the entrances to Hartford Manor Primary and Cloughwood Schools create chaos in and on the single

track drive at the end of Stones Manor Lane. The proposals would further severely aggravate this situation.

11.59 Cloughwood School has moved to a timetable with earlier start and finish times to avoid the congestion, and this is another reason why peak traffic levels in Hartford have not increased in recent years.

11.60 Experience as a governor at previous schools has shown that travel plans rarely achieve the anticipated benefits, and this is repeated in the private sector. They are not a magic one step solution as claimed by the appellants and in Government literature. Their level of success is only revealed long after the developers have left the area.

11.61 The appeals should be dismissed. Our only green lungs should not be destroyed and the character of our village changed for ever.

Mrs C O'Brien

11.62 Mrs O'Brien is a local resident, a committee member of the Weaver Valley Cycling Club, and is heavily involved in the education and promotion of cycling through being the first local Cycling Ambassador and running safe cycling courses at the Grange Junior School amongst other things. In her experience it is difficult to translate cycling and training into action. People will not cycle to school unless it is safe and convenient to do so.

11.63 In Hartford, cycling can only be made safer and more accessible through major changes to road infrastructure. The sustainable transport initiatives in the travel plans are and will be put in place through the Council's cycling strategy without the need for the travel plans. Family car ownership levels have also been underestimated leading to more use of the car than anticipated.

Mr K Sexton

11.64 Mr Sexton is a local resident and is experienced in the implementation of travel plans in large organisations.

11.65 These developments have been proposed at the very time the village plan, which will consider the location and scale of future development, is in preparation. To grant permission would frustrate local democracy, and the substance of the village plan would become peripheral.

11.66 Whilst the Council's refusal reason refers to traffic, the issues of housing need, the availability of brownfield land, prematurity with respect to the emerging core plan, environment and ecology and schooling are also material issues that should have been identified and contribute to the unsustainability of the proposal.

11.67 In view of the Framework test, it is essential that the Inquiry determines the cumulative residual impact and provides a robust interpretation of the adjective severe.

11.68 There is concern that traffic sensors have been deliberately placed to miss traffic that uses alternative routes in Hartford to avoid the congested junctions. Baseline flows should also include those predicted in relation to the Winnington Urban Village.

- 11.69 Additional capacity at the junctions can only be generated by reducing pedestrian crossing time, which would prejudice the safety of those crossing, particularly schoolchildren. Any reduction in in-commuting to local schools would not be significant. Only a limited number of primary school pupils would be generated by the proposed developments. Those at senior levels would be further than the realistic walking distance. Any reduction in school commuting into Hartford would therefore be minor compared to that generated by the proposals.
- 11.70 The definition of the adjective 'severe' is dependent on its surroundings. What may be acceptable in a dense metropolitan setting will almost certainly be unacceptable in a rural setting. The test of severity should also include the extent to which traffic routes change to those which are less acceptable, such as those through housing estates.
- 11.71 Currently the filter lane for right turning vehicles from the A559 into School Lane cannot cope at times with the volume of waiting traffic. This is an accident waiting to happen on this busy 70mph dual carriageway with the junction lying just beyond a visibility restricting bend. The increased traffic generated by the proposals would make this already dangerous situation worse. Due to the prohibited right turn out of School Lane at this junction, residents of the School Lane site would have to travel through the village to join the A559 westbound, adding to congestion in Hartford.
- 11.72 Countywide trade offs are not appropriate in this rural village setting. Hartford has increased dramatically in a short time. It has reached its limit, and a further 28% increase from the proposals would be unsustainable. The main economic benefit would be the windfall gains in land value. There would be no employment opportunities within the proposed developments, and there are limited opportunities in Hartford. This would lead to additional commuting. The natural environments of the Weaver Valley, Marshalls Arm and the Cheshire countryside generally would be adversely affected. The road junctions in Hartford are already at capacity, and additional traffic would have social impacts on the community.
- 11.73 There is a massive disconnect between the intentions of travel plans and their delivery in practice. In the Netherlands, sustainable investment takes place on segregated cycle lanes, particularly for children. Here the travel plans are purely cosmetic. In the UK sustainability is something of a comparative concept, but policy clearly directs development to brownfield land first.
- 11.74 Both the appeal sites are unsustainable in terms of development, which would damage the agricultural land and significant environmental assets. The proposals would also place a significant and unsustainable burden on traffic and the village, and would prejudice the development of brownfield sites.
- 11.75 The traffic that would result from this development would have a significant and severe impact on the already congested village. The mitigation measures proposed would not have any material effect. The resulting cumulative impacts would be severe.

12. Written Representations

- 12.1 Many representations were sent to the Council by members of the public prior to the Council's decisions on the appeals and to the Planning Inspectorate

during the appeals process [G15 & O1]. The vast majority of these were sent in objection to the proposals although some were sent in support. The representations cover similar points to those made during the Inquiry. As they do not raise issues that are materially different to those already recorded, no further summary is therefore necessary.

13. Conditions and Section 106 Agreement

- 13.1 Two sets of conditions, substantially agreed between the two main parties, were submitted during the course of the Inquiry [CWC4 & CWC5]. The Council has suggested that house type details on the plots fronting Walnut Lane and the community green at Grange Farm should subject to further approval by condition, to which the appellant disagrees. This is on the basis that discussion had already been held and the designs amended and that the matter has formed no part of the Council's case. Certified copies of executed Section 106 Unilateral Planning Obligations from the appellants were submitted during the course of the Inquiry. These were replaced with dated certified copies following closure of the Inquiry [HE12 & HE13].
- 13.2 The Obligations would provide for: a 30% element of affordable housing; a scheme for the provision and management of public open space; and one cycle voucher for each dwelling. Financial contributions would be provided towards: cycle and scooter parking at the catchment primary schools; access, car and cycle parking and customer facilities improvements at Hartford and Greenbank railway stations; the construction of two additional classrooms at Hartford Manor Community Primary School; and the provision or improvement of off-site formal playing pitches in the vicinity of the sites. In relation to the Travel Plans, the Obligations would provide for: their implementation; and the appointment and funding of a Travel Plan Co-ordinator; and the payment of sums for the implementation of Travel Plan measures and any payments due from the Travel Plan reserve fund.

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14. Conclusions

Figures in subscript refer to earlier paragraphs in the report

Background

- 14.1 The proposals would provide up to 300 dwellings on the Grange Farm site and up to 350 dwellings on the School Lane site.

Main Considerations

- 14.2 Having heard the evidence, read the written representations and seen the sites and surroundings, I consider the main considerations to be:
- i) the impact of the proposals on the Government's objectives to secure a better balance between housing demand and supply and the creation of high quality, sustainable, mixed and inclusive communities: and
 - ii) the effect of the proposals on the transport network, with particular reference to highway junctions in Hartford.

Planning Policy and Considerations

- 14.3 The development plan comprises the Regional Strategy¹² (RS), the Saved Policies of the Structure Plan¹³ (SP) and the Local Plan¹⁴ (LP). RS Policy DP 1 sets the spatial principles for the region. Policy DP 2 seeks to promote sustainable communities. Policy DP 4 seeks to make the best use of existing resources and infrastructure. Policy DP 5 seeks to manage travel demand, reduce the need to travel and increase accessibility. Policy DP 7 seeks to promote environmental quality, and Policy DP 9 seeks to reduce emissions and reduce climate change. Policies RDF 1 and RDF 2 set out spatial priorities and priorities for rural areas. Policies L 4 and L 5 set out regional housing and affordable housing provision. 4.1, 4.2 & 4.3
- 14.4 The revocation of RSs has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the RS for this area is formally revoked by order, limited weight can be attributed to the proposed revocation in determining these appeals.
- 14.5 The only SP saved policy that is relevant to the appeal proposal is Saved Policy T7 which refers to maximum parking standards and provision for cycle parking. 4.4
- 14.6 The following saved policies of the LP are relevant to the appeals. Saved Policies T1 and T20 relate to transport requirements and travel plans. The element of LP Saved Policy T1 which relates to the minimisation of traffic generation is inconsistent with, and has a more than limited degree of conflict with, the National Planning Policy Framework. The Framework is therefore a material consideration of substantial and sufficient weight to justify recommending otherwise than in accordance with this element of development plan policy which is therefore now out of date. The test to be used, in terms of

¹² The North West of England Plan: Regional Spatial Strategy: 2008

¹³ Cheshire Structure Plan Alteration: 2005

¹⁴ Vale Royal Borough Local Plan First Review Alteration: 2006

the proposals, should thus be the Framework test, that only a severe cumulative impact on the transport grounds would be sufficient in its own right to refuse permission. Any lesser impact could however be included in a planning balance. 4.5, 8.6 & 8.7

- 14.7 Saved Policies GS2 and GS5 relate to new development in the Borough and seek to resist new development in the open countryside. The Framework however requires that policies relevant to the supply of housing should be considered in the context of housing land supply, and this matter is addressed later in these conclusions. Saved Policies H4 and H14 identify Hartford as a Tier 1 settlement and seek 30% affordable housing. Saved Policies NE7 and NE12 refer to the protection of landscape features and Areas of Significant Environmental Value (ASLEVs), and Policy BE4 relates to planning obligations.

4.6, 4.7

- 14.8 The Council's Core Strategy (CS), which is part of the emerging Local Plan, is still at an early stage of preparation and is not expected to be adopted until 2014 at the earliest. In view of this very early stage of preparation, it carries little weight in these appeals. 4.8

- 14.9 The Council's Supplementary Planning Document 1¹⁵ (SPD1) and Conservation Area (CA) Appraisal¹⁶ are relevant to these appeals. The following Council evidence base documents are also relevant to the main considerations in these appeals. They are the Strategic Housing Land Availability Assessment¹⁷ (SHLAA), the Housing Land Monitor¹⁸ and the Strategic Housing Market Assessment¹⁹ (SHMA). These conclusions also pay particular regard to the National Planning Policy Framework, Circular 11/95²⁰ and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. They also have particular regard to Planning for Growth²¹ and The Plan for Growth²². 4.9, 4.10 &

4.11

Housing Demand and Supply

- 14.10 Many of the matters identified below, including the summary, are agreed between the two main parties in the relevant SoCGs.

- 14.11 The Council's latest Housing Land Monitor shows that it has a housing land supply of 2.6 years against the Framework requirement of five years. This latest figure is lower than the 2.9 years agreed between the two main parties, indicating a worsening situation. JAG has suggested that a figure used in the emerging Local Plan consultation for the Northwich area alone, which would show a larger housing land supply, should be used in the consideration of these appeals. The emerging Local Plan should however be given limited weight. The suggested figure would appear to represent a material shift away from current policy. It would also appear to seek to change the role of

¹⁵ Vale Royal Borough Council: Supplementary Planning Document 1: Affordable Housing: September 2007

¹⁶ Vale Royal Borough Council: Hartford (Extended) Conservation Area Appraisal: February 2004

¹⁷ Strategic Housing Land Availability Assessment: 2010 – 2011

¹⁸ Cheshire West and Chester Council: Local Plan: Housing Land Monitor: September 2012 Update

¹⁹ Cheshire West and Chester: Strategic Housing Market Assessment: Update December 2010

²⁰ Circular 11/95: The Use of Conditions in Planning Permissions

²¹ Planning for Growth: Ministerial Statement: 23 March 2011

²² The Plan for Growth: HM Treasury: March 2011

Northwich in supporting growth in the Council's area in conflict with the Council's Issues and Options Paper. 4.10, 7.9, 7.2, 8.54, 8.9, 9.2, 11.3, 10.3 & 10.4

14.12 The figure used in the consultation therefore carries little weight in these appeals. In any event, the Framework does not support the disaggregation of housing land supply figures within Council areas in dealing with shortfall issues, and the LP does not provide any basis for disaggregating figures.

7.8 & 7.11

14.13 JAG has also referred to the number of extant planning permissions in the Northwich area. These would however have been taken into account in the Council's calculation of the housing land supply figure. 10.4

14.14 The Council has a record of persistent under delivery of housing land, and the five year requirement should therefore be increased by 20%. The Council's housing land supply is therefore less than 50% of that required. There is no doubt that this represents a considerable shortfall of deliverable sites, and some evidence that the situation results from the limited allocations made in the LP in the context of wider policy at the time. There is also a shortfall in the provision of affordable housing, and this contributes to a poor housing delivery situation as a whole. 7.25, 7.4, 7.5 & 11.40

14.15 The proposals would deliver up to 650 dwellings, in comparison with the Council's five year shortfall of 3,615 dwellings. Dwellings at Grange Farm would be made available at more than 32 open market per annum plus affordable units and more than 64 per annum plus affordable units at School Lane. These dwellings would make an important contribution to the Council's shortfall, as would each of the proposals in isolation. 7.5, 7.39, 7.50 & 8.21

14.16 Of the 650 dwellings, 195 would be affordable, in comparison with the Council's gross annual shortfall of 1,311 affordable dwellings. Again, the proposals, either in combination or individually, would make a valuable contribution in this regard. 8.10, 8.46 & 8.55

14.17 In terms of the individual sites themselves, Grange Farm was included within the Hartford settlement boundary and allocated as housing land in the 2001 Local Plan. At this time, Hartford was identified as a Tier 1 settlement and a main focus for development due to its sustainable location. 7.24

14.18 At the time of the adoption of the current LP in 2006, the site was not required for housing, in the context of the Structure Plan and Regional Planning Guidance housing requirements. These sought to focus housing development in regeneration areas of market failure. The SP anticipated that the Borough's housing requirement could be largely satisfied by developing on previously developed land. The allocation was thus taken out of the LP and the site taken out of the settlement. Hartford however retained its Tier 1 settlement status.

7.25 & 7.7

14.19 Historically therefore, the allocation of the site appears to have been dependent on housing requirements. It is surprising that it was not included in a Council November 2009 Topic Paper as a strategic local site, but then there is no evidence on the period covered by the paper. It is however included within the SHLAA as a potential 300 dwelling site to be brought forward in between 6 to 15 years time. The current supply shortage and the appeal

proposal could thus be seen to be bringing the SHLAA identified potential forward to meet the current demand. 7.26, 8.8 & 11.23

- 14.20 On School Lane, the site is similarly identified in the SHLAA for 735 dwellings starting in 6 years time, although not in the 2009 Topic Paper. Again however, the proposal could be seen to be bringing forward the potential to meet current demand. The site also lies adjacent to a recently completed, although much smaller, housing development. Both sites therefore are, and have been for some time, on the horizon for housing development. 7.43, 7.45 & 11.23
- 14.21 Many of the objections to the proposals from local residents relate to the fact that the proposals would increase the size of the village by almost 30%. Development would however take place over a number of years. Moreover, the objections run contrary to the trend towards housing growth in this area, including housing on greenfield sites, which the Council wishes to see at between 10 to 30%. 7.9, 8.47, 10.48 & 11.72
- 14.22 The objections also refer to localism. Localism however carries with it the responsibility for the expeditious production of local plans. In these cases, the LP is out of date in relation to housing supply, and the Council has not responded expeditiously following the strategic housing supply changes sought by the 2008 RS. Without an updated local plan, the production of which is in the hands of the Council, the community of Hartford does not have the parameters for its neighbourhood plan. Furthermore, the absence of an updated local plan does not allow the Council to postpone its obligation to identify and maintain an adequate supply of deliverable housing land. 8.48, 8.49, 11.6, 11.8, 11.25, 11.28 & 11.65
- 14.23 The significant demand for housing in the Council's area therefore has to take precedence over the absence of an updated local plan and indeed the absence of a neighbourhood plan. This accords with Planning for Growth, which carries an expectation that local planning authorities will, wherever possible, approve applications where plans are out of date. The document also suggests that they should make every effort to meet the housing needs of their areas.
- 14.24 Whilst this demand, of some 1,317 dwellings per annum, is currently identified in policy terms in the RS, households in the Council's area are forming at a similar rate of 1,140 per annum. The RS requirement is therefore still realistic, and the Council is seeking growth in the Northwich area. The proposals would therefore not be sufficiently large in their policy context to trigger prematurity issues or to prejudice the outcome of the emerging Local Plan process, a matter agreed between the two main parties. Moreover, there is nothing in the Localism Act to suggest that Councils do not need to provide at least five years housing land supply, as expressly re-affirmed in the Framework, based on credible evidence. 7.2, 7.5, 7.6, 7.9, 7.10 & 8.21
- 14.25 It has also been suggested that housing demand could still be accommodated on previously developed land. Sites on such land have been included in the Council's SHLAA process that provides the basis for the housing land supply figure, and the Council agrees that there is now an urgent need to consider a wider range of sites. Furthermore, the Council also agrees that there is now a shortage of previously developed sites within its area. 7.5, 7.7, 10.5, 11.4, 11.21 & 11.66
- 14.26 In summary, the Council's poor housing land supply situation renders the related LP policies out of date. The appeal proposals, either in combination or

individually, are necessary now to meet immediate housing need, and the presumption in favour of sustainable development in the Framework applies. I therefore conclude that the proposals would provide substantial benefits in terms of the Government's objective to secure a better balance between housing demand and supply. I further conclude that they would thus accord with the National Planning Policy Framework in this regard.

High Quality Communities

- 14.27 The Council has identified the Northwich area as a growth point, and indeed the LP seeks to concentrate new housing within and on the edge of the town of Northwich itself. Although it attracts limited weight, the emerging Local Plan has similar aims. 7.7, 7.9 & 8.53
- 14.28 A principal element of the LP is the regeneration of Northwich Town Centre. There is no evidence however that the proposals would have any detrimental impact on the regeneration process. Indeed there is a shortfall of previously developed sites, and none have been developed in Northwich to date. 7.7, 10.2, 11.7 & 11.24
- 14.29 Hartford is a sustainable location and a main focus for development. Both appeal sites adjoin the Hartford settlement. A wide range of day to day facilities and services are available in the village of Hartford within an acceptable walking distance of the furthest points of both sites when assessed against the Council's SPD. There is also an extraordinary range of educational facilities within the statutory school walking distances of the furthest points of both sites. Primary schools are also within an acceptable walking distance when assessed against the Council's SPD. The appeal sites are therefore in sustainable locations in relation to local services. 7.7, 7.13, 7.14, 7.28, 7.44, 8.20, 8.52, 10.9 & 10.32
- 14.30 Hartford is served by a 30 min frequency weekday bus service between Chester and Northwich. Whilst this service frequency is only available during daytime, the service would be generally satisfactory for commuting purposes. The majority of the Grange Farm site is within the Council's suggested acceptable recommended walking distance to the nearest bus stops on this service. 7.15, 7.29, 8.14 & 10.29
- 14.31 Whilst the majority of the School Lane site is further than this recommended distance from the bus stops, the Council agrees that it is highly accessible and in close proximity to public transport. The furthest parts of the site however lie well within the Institution of Highways and Transportation (IHT) 2000 Guidelines for the preferred maximum commuting walking distance from the bus stops. Both sites are therefore highly accessible in terms of the bus network, as agreed by the two main parties. Moreover, Northwich, which is on this bus network, has an important sub-regional employment role. 7.15, 7.16, 7.29, 7.44, 8.14, 10.22, 10.30 & 10.31
- 14.32 The two main parties also agree that Hartford's two railway stations, which offer a variety of destinations, are within comfortable walking distance of the Grange Farm site and within easy walking distance of the School Lane site. Hartford station is well within the IHT preferred maximum from the furthest parts of the Grange Farm site and within this maximum from all of the School Lane site. Greenbank station is within the IHT preferred maximum from the furthest parts of the Grange Farm site, although a small part of the School

Lane site lies outside this maximum. Notwithstanding this last point, both sites are highly accessible by rail. 7.15, 7.28, 7.30, 8.19 & 10.32

- 14.33 There is a shortage of evidence on access from the sites to existing employment opportunities. There is no doubt however that a reasonable proportion of residents of the proposed developments would have to commute by car, particularly to the Warrington area. Sustainable options would though exist in other directions along transport corridors. Whilst these options may not be attractive at the present time, they may become more so in the future, as the improvement in such transportation corridors over time is a reasonable expectation. Car commuting for employment therefore does not weigh heavily against the sustainability of the appeal sites. 10.24, 10.7, 10.8, 11.11, 11.16, 11.26, 11.27, 11.48 & 11.51
- 14.34 Whilst residents of the eastern part of the School Lane site would face a lengthy walk to access public transport for rail commuting along transport corridors, this would not be the case for buses, schools and village services. The distances to the railway stations, which are not unusual and are exceeded in many other developments, do not therefore weigh heavily against sustainability.
- 14.35 The locations of both sites and the proposals for them would therefore be compatible with the creation of sustainable communities, and this would be a substantial benefit in favour of the proposals. A recent appeal decision at nearby Cuddington also supports this view, notwithstanding the smaller scale of the proposal and the need for more use of the car. 7.12, 8.11, 8.12, 8.13, 8.43, 8.44, 8.45, 8.52, 10.1, 10.13 & 10.14
- 14.36 The proposals would also contribute to the creation of mixed and inclusive communities by providing affordable housing and social benefits. The social benefits would include the availability of day to day services within walking distance, a variety of education facilities within the community and the proximity of sustainable commuting opportunities. These benefits would accord with both the social and economic roles of sustainable development as set out in the Framework. 7.6, 7.34, 8.18 & 8.33
- 14.37 I therefore conclude that the proposals, either in combination or individually, would provide substantial benefits in terms of the Government's objective to secure the creation of high quality, sustainable, mixed and inclusive communities. I further conclude that they would thus accord with the National Planning Policy Framework in this regard.

Highways

- 14.38 The two main parties agree that, setting aside the traffic generation element which is out of date, the proposals are compliant with all other elements of LP Saved Policy T1, and there is no convincing evidence to the contrary. 8.6 & 8.7
- 14.39 Hartford currently suffers from congestion at its central junctions, which are situated around a triangle of roads comprising Chester Road, School Lane and The Green. Within this triangle of roads, Chester Road carries two-way traffic in east/west directions, School Lane is one-way southbound and The Green is one-way northbound. Traffic using the Chester Road junction with The Green and the Chester Road junction with School Lane, which includes Bradburns Lane as a northern leg, is controlled by signals. 9.1 & 9.4

- 14.40 Congestion is evident in three peaks: am; school pm, which only occurs in school term time and where the green phase of the signals generally clears any queues; and commuter evening, where some of the junctions are saturated or at capacity at some times in terms of traffic during term time but queues are generally less than 20 vehicles. From the queue counts agreed between the Council and the appellants, in the am peak during term time, the junctions are generally saturated between 08.00 and 09.15. 7.17, 7.18, 8.16 & 11.75
- 14.41 Significant queues of between 90 and 120 vehicles have been recorded on The Green and between 50 and 70 vehicles on Chester Road, in an eastbound direction. Outside term time, any queues have been recorded generally to clear between phases of the signals, indicating that the traffic which results in the saturation is related to education uses. Chester Road, in a westbound direction, and Bradburns Lane exhibit much lower levels of queuing. 7.18, 8.23, 11.50, 11.58 & 11.59
- 14.42 The throughput of vehicles at the junctions has maintained zero growth over a number of years. This has been the case, despite general and development related traffic growth over time. It is likely to be the consequence of the inconvenience resulting from the congestion and is indicative of a suppressed demand for car trips. 7.20, 8.23 & 10.18
- 14.43 The base case peak hour demand flows agreed between the two main parties include an allowance for committed development which includes for development at the Winnington Urban Village. There is no convincing evidence that they are deeply flawed. Daily flows could however vary by as much as 15% from these figures. 7.19, 11.19 & 11.68
- 14.44 Trip generation rates for both proposals are agreed between the two main parties. These rates lead to undisputed flows into the triangle or cordon of junctions previously described. In the am peak, which is the only period where the junctions can be said to be fully saturated, 182 additional vehicle movements would enter the cordon as a result of the agreed trip generation rates for both proposals. This would represent an increase of 9.1% over the existing flows into the cordon, and this increase would lie within the daily variation that could be expected of the base case demand flows. 8.26, 9.10, 9.11, 9.12, 9.18, 10.19 & 11.14
- 14.45 These movements would lengthen the queues on The Green and eastbound on Chester Road, which are by far the longest queues in the cordon over the am peak. The base case demand flow on The Green is 518 vehicles over the am peak. The additional movements would add 66 vehicles to this figure, an increase of 13%. They would also add an average of over 1min to the typical 6min am peak delay at the signals where The Green joins Chester Road. Any additional delay however carries less weight as it is not the aim of policy to protect the convenience of commuting car drivers. That is also the Council's approach in the recent prioritising of pedestrians over car users at the junction of Chester Road, Bradburns Lane and The Green. 7.19, 7.21, 8.36, 8.37, 8.38, 8.40, 9.11, 9.12 & 9.25
- 14.46 The signals however have been recorded to clear their queues on a single green phase up to about 08.00 and after about 09.15. Between these times, the queue reaches recorded maximum lengths of some 90 and 120 vehicles, in relatively sharp peaks. The maximum queue lengths therefore exist for a very

short period of time, and indeed the 66 vehicle increase over the hour would not greatly add to these queue lengths. 7.18 & 8.23

- 14.47 The distribution of dwellings in Hartford is such that the vast majority of the base case vehicles on The Green are likely to be from outside the village. From the traffic counts taken outside term time they are likely to be related to education, but not the catchment primary sector in view of the locations of the two catchment schools in respect of The Green.
- 14.48 The base case demand flow on Chester Road is 573 vehicles over the am peak. The additional movements would add 73 vehicles to this figure, an increase again of 13%. They would also similarly add an average of over 1min to the typical 6min am peak delay at the signals where The Green joins Chester Road. 7.19, 8.38, 8.40, 9.11 & 9.12
- 14.49 The signals however have been recorded to clear their queues on a single green phase up to about 08.15 and after about 09.15. Between these times, the queue reaches recorded maximum lengths of some 50 and 70 vehicles in a sharp peak. The maximum queue lengths therefore exist for a very short period of time, and indeed the 73 vehicle increase over the hour would not greatly add to these queue lengths. Vehicles in the queue are likely to include some catchment primary school trips from the east. 7.18, 8.23, 9.5 & 9.6
- 14.50 Using the agreed trip generation rates and base case flows, the proposals would have an adverse and noticeable impact on queue lengths on The Green and eastbound on Chester Road in the am peak from the School Lane and Grange Farm sites respectively. This impact however could not be characterised as severe due to the number of additional vehicles and queue lengthening compared to the existing situation, the fact that existing queues are very short lived and the small average increase in journey time across the cordon. 10.45, 10.46, 11.67 & 11.70
- 14.51 The appeal sites are well located in relation to the catchment primary and secondary schools. It is therefore likely, particularly in view of the am peak congestion in Hartford, that trips from the proposed dwellings to the schools in the village would tend to switch from car to non-car use. This would be the case; even accepting that cycling to school on Hartford's congested roads would be seen by some as being unsafe. 8.34, 8.35, 11.35, 11.62 & 11.63
- 14.52 Such a switch would be more likely to be the case with the School Lane site, as the proposed route crossing the Marshall's Arm Reserve would be far shorter than the route by road. There is nothing to suggest that concerns in relation to the physical pedestrian crossing of the Marshall's Arm valley and school security could not be overcome. The likelihood of the switch is generally supported by the appellants' data from Leeds. 8.15, 10.25, 10.26 & 11.9
- 14.53 It has been shown that, on average, 20% of am peak time traffic in the Council's area comprises school related trips. This would therefore be a reasonable judgement in respect of the agreed trip generation rates and flows from the appeal sites. For the Grange Farm site, school related am peak traffic would be unlikely to turn right out of Walnut Lane onto the westbound lane of Chester Road. This would be the case because to turn right would result in travel away from the catchment schools, and indeed the full range of Hartford's educational facilities. 9.19

- 14.54 It is therefore correct that any reduction in school traffic from Grange Farm, due to its location, is applied to Chester Road in an eastbound direction, even if for only a short distance in the case of Hartford Primary School. Any reduction would therefore reduce: the 73 vehicles that the agreed trip generation rates would add to the eastbound queue on Chester Road over the am peak; the additional queue length; and the average 1min additional delay. 8.27, 9.14, 9.15, 9.16 & 9.17
- 14.55 A similar situation would occur at the exit of the School Lane site onto School Lane, where school related trips would be likely to turn right, thereby directly adding to flows on The Green. Any such reduction in school traffic from School Lane should therefore be applied to The Green. Any reduction would thus reduce: the 66 vehicles that the agreed trip generation rates would add to the queue on The Green over the am peak; the additional queue length; and the average 1min additional delay.
- 14.56 There are limited surplus places available at the two catchment primary schools, and many pupils at the schools are from outside of the catchment areas. The 55 and 63 potential pupils from the Grange Farm and School Lane sites would take priority over those from outside of the catchments, and this would reduce the number of trips made to the primary schools from outside Hartford. 7.39, 7.50, 8.16 & 8.17
- 14.57 Part of the am peak flow eastbound on Chester Road is likely to contain primary school trips to the catchment schools. Potential pupils from the proposed developments would be able to walk to school and, any that did, would therefore be likely to reduce the 573 base case flow and thus the effect of the proposal on queue lengths and delays. The reduction in the base case flow would take place notwithstanding the suppressed demand because the additional traffic from the proposed developments would maintain the actual flow above the base case, thereby not encouraging the release of the suppressed demand. Flows on The Green would be unlikely to include trips to the schools from outside Hartford due to the locations of the schools in relation to The Green, and any reduction here would be unlikely.
- 14.58 The proposed developments would take place over time, and therefore the effect of sibling priority would reduce, as catchment pupils became available to compete with potential pupils that did not have siblings at the school. 9.23 & 9.24
- 14.59 On the evidence submitted, it is not possible to quantify the reductions in school related traffic that would be likely to occur as a result of the travel choices that pupils from the proposed development would make. It is also not possible to quantify the additional effect that primary school choices would have on incoming school traffic to Hartford. It is however likely, from the above evidence, that future traffic flows would be materially less than those that would follow from the trip rates without any adjustment for the particular circumstances of Hartford. It is also possible that highway congestion around the two primary schools could reduce. 10.10, 11.36, 11.39 & 11.41
- 14.60 In addition to this, there is the evidence that there has been zero growth and therefore suppressed demand in recent years. Whilst the appellants 5% reduction in non-school traffic seeks to continue the existence of suppressed demand into the new developments, there is no justification for the 5% figure used. The continuation of some suppressed demand into the new

developments would however be likely. Any car trip reduction in this regard would also reduce the additional congestion that would result from the proposals, but the quantification of the effect of this suppression is not possible. 8.25 & 8.32

- 14.61 The traffic demand growth from the addition of some 650 dwellings to Hartford would be different to the growth in demand that has taken place over the past 10 years. The capacity at the saturated signalised junctions cannot increase, and zero growth in vehicle throughput at these times would continue. This is not to say however that demand growth would not lengthen queues at the junctions. The fact that zero growth has been recorded at the saturated signalised junctions therefore does not mean that all traffic demand growth would be taken out of the highway network as suppressed demand. 9.22, 10.16, 10.17 & 11.69
- 14.62 The draft Interim Travel Plans, which the Council and the appellants have agreed are acceptable and appropriate, and the arrangements for their implementation would assist in achieving the kinds of reductions described above. This would be the case, even allowing for the concerns that have been raised. The Travel Plans would therefore be a useful tool, would be likely to have a positive impact but could not, in the absence of any reasoned evidence, be relied upon to produce a quantifiable impact. 7.19, 8.27, 8.29, 8.30, 8.31, 9.20, 9.21, 10.23, 10.27, 10.34 - 10.44, 10.47, 11.60, 11.64 & 11.73
- 14.63 To summarise, it has been found that the flows generated by the agreed trip rates would not have a severe effect on the traffic conditions in Hartford. Moreover, the Council agrees that the impact of the proposals would not be severe. The proposals would however have an adverse effect on traffic conditions, but this would lie within the daily variation of flows, be of a very short duration and cause minimal additional average delay. Furthermore, on the basis of the evidence presented, the flows generated by the agreed trip rates would be reduced due to: the proximity of education facilities; a reduction in primary school pupils travelling into Hartford by car; the likelihood of suppressed demand occurring among new residents; and the implementation of Travel Plans. In view of all of these points, the adverse effect on traffic conditions would be limited. 8.22, 8.39, 8.41, 9.26, 10.20 & 10.21
- 14.64 The appellants' original proposals included Microprocessor Optimised Vehicle Actuation (MOVA) improvements at the signal controlled junctions within the cordon. The junctions operate at capacity at times and, at these times, MOVA would not increase the capacity of the junctions. There is therefore no evidence that it would improve the situations described above. 9.7, 9.8, 9.9, 10.15, 10.28 & 10.33
- 14.65 It has been suggested that the signal timings in the Transport Assessments were incorrect. Whilst this may well be the case, it would not affect the conclusions identified, as they are primarily based on base case and demand traffic flows together with observed queue lengths. This point therefore carries little weight in the appeals. 9.8
- 14.66 The arrangements for the junction between Walnut Lane and Chester Road have been agreed with the Council as Highway Authority. There is no reasoned evidence that its use as the access to the Grange Farm site would be unacceptable. The use of an access through Douglas Close for a modest

number of dwellings also has the agreement of the Highway Authority. The number could be controlled by condition and construction impact could be controlled by the implementation of a Construction Management Plan. There is thus no convincing argument against its use. 7.41, 7.51, 11.20, 11.15, 11.22 & 11.47

- 14.67 Notwithstanding the proximity of the sites to local services, the proposals would be likely to result in some additional parking in the centre of the village and at the railway stations. Any such parking however is likely to be limited due to the proximity of the sites; the Grange Farm proposal would include some off-highway public parking; the Council has not objected to the proposals on this basis; the village however is not particularly cramped; and it would be possible for the Highway Authority to implement parking restrictions at any critical locations. Additional parking would therefore be no reason to recommend dismissal of the appeals. 11.37 11.38
- 14.68 The proposals could increase right turning traffic from the A559 into School Lane. Queues may in the future exceed the filter lane provided for this movement, and further work may be required to maintain a satisfactory level of highway safety. The Highway Authority has not however objected to the proposals in this regard, and there is no reason to suggest that improvements could not be undertaken in the future if required. The capacity of the right turning lane would therefore be no reason to recommend dismissal of the appeals. 11.71
- 14.69 The accident records for the area around the appeal sites show no greater than the usual level of road safety concern, and the Council has not identified Hartford as requiring accident reduction measures. In terms of routes to avoid the congested junctions, the Council, as Highway Authority, is content that they would be able to accommodate any additional traffic. In any event, if this was found not to be the case, the Council could implement restrictions to avoid these routes being used. There is therefore no convincing evidence that the proposals would have any material effect on highway safety. 7.22, 7.42, 7.51, 11.12, 11.13, 11.42, 11.43 & 11.44
- 14.70 I therefore conclude that the proposals would not have a severe impact on the transportation network with reference to the highway junctions in Hartford and that this conclusion would be appropriate for each of the proposals in isolation. I further conclude that they thus would not conflict with the National Planning Policy Framework in this regard or any element of Local Plan Saved Policy T1 which is not to be regarded as out of date. The proposals would however have an adverse but limited impact on the network in relation to morning peak queuing on The Green and on Chester Road in an eastbound direction. If considered in isolation, the Grange Farm proposal would have the limited impact in terms of Chester Road and the School Lane proposal in relation to The Green.

Other Considerations

- 14.71 Part of the Grange Farm site is situated within, and part is adjacent to, the Hartford CA. The CA Appraisal identifies these parts of the site as being an important open space in relation to the most significant space in the CA, the Chester Road linear spine. These parts of the site are however only one of four important spaces that relate to the spine, and only limited views of the CA

are available across these parts of the site. The appellant has undertaken a Heritage Assessment which considers the effect of the proposal on the CA. 7.32

- 14.72 The submitted masterplan includes the retention of an area of open space adjacent to the Chester Road spine and the provision of a linear park extending from this to give views of open playing fields beyond the site. Both of these aspects of the masterplan would retain much of the significance of the open space in this part of the CA, and the proposal would thus preserve the character and appearance of the CA in this regard. 7.32 & 11.57
- 14.73 There would though be some loss of the open nature of this part of the CA which contributes to the significance of the CA. In view of the aspects of the masterplan noted above however, the harm from this loss would be less than substantial but would still weigh against the proposal. The proposal would also include the re-use of the derelict Grange farmhouse, a locally listed building of significance as a non-designated heritage asset. 7.33
- 14.74 The proposal would result in less than substantial harm to the open nature of the Grange Farm site that contributes to the significance of the CA. This harm however would not outweigh the following matters: the public benefit that would result from the provision of housing on the site which, should the appeal be allowed, would be likely to take place; and the positive contribution to the significance of the CA which would result from the potential re-use and future conservation of the Grange farmhouse.
- 14.75 The phase of the Grange Farm proposal that would lie nearest Chester Road and the CA would reflect the character of the CA in terms of building design and plot sizes. There was also no objection from the Council at the time of the planning application for the proposal. The built form of the proposal would therefore preserve the character and appearance of the CA. 7.32, 7.33, 11.39, 11.54 & 11.57
- 14.76 The proposals would generate a demand for primary school places that could not be satisfied by surplus places in the catchment schools. The Unilateral Planning Obligations provide contributions towards the construction of additional classrooms at Hartford Manor Community Primary School, and the Council, as Education Authority, has not objected to the proposals. The proposals therefore would not have a harmful effect on the provision of education services in the surrounding area. 7.14 & 11.2
- 14.77 The Council accepts that the displacement of pupils from outside the catchments with pupils from the appeal developments would take place. The Council would however have to decide whether to extend the school or not, given that an extension may result in the continuation of the congestion resulting from out of catchment primary school pupils travelling into Hartford by car. 9.23, 10.11 & 10.12
- 14.78 Should the proposed development at the School Lane site proceed, the significant landscape feature of the well vegetated Weaver Valley would remain. The proposal would also include a landscape buffer zone alongside the river corridor. The site lies within a Council designated ASLEV under LP Saved Policy NE12. The Council considers that the proposal would not have any unacceptably harmful impact on the landscape, and the evidence is that this would be the case. Furthermore, the site is not designated as protected open

space. The School Lane proposal would not therefore have a harmful effect on the surrounding landscape. 7.47, 7.48, 11.5, 11.30 - 11.33

14.79 The Grange Farm site has no landscape or open space designation and, whilst the proposal would significantly change the appearance of the main body of the site, the proposal would not result in any landscape harm. 7.26, 11.45 & 11.61

14.80 It has been suggested that part of the site at Grange Farm should be developed as a village centre, despite there being a good range of facilities already in the village. Whilst a planning application for 350 dwellings on the site in 2000 included a medical centre and a community hall, the subsequent 2001 Local Plan just included a village green, car parking for the local shops and the re-use of the Grange farmhouse. The appeal proposal follows these latter uses. Any development of a new village centre on the site would take place outside the settlement boundary, for which there would be no local or national policy support. The possibility of such a scheme coming forward would therefore be no reason to recommend dismissal of the appeal. 7.23, 7.24, 7.28, 11.52 & 11.53

14.81 The appeal sites comprise improved agricultural land, and neither the Council nor Natural England (NE) have objected to the proposals on ecological grounds. Indeed, the Council believes that the proposals would generally enhance the biodiversity of the sites. At School Lane, the landscape buffer between the housing and the River Weaver corridor would protect the ecology of the river route. At Grange Farm, the site has a moderate ecological value. The proposal however complies with the provisions of the Conservation of Habitats and Species Regulations 2010 and Article 16 of the Habitats Directive, and these conclusions are supported by NE. 7.35

14.82 Both sites are included in historical recorded event records, and the appellants have carried out archaeological assessments. There has been no objection from the Council's archaeologist to the proposals, and there would be no justification to recommend dismissing the appeals on this basis. 7.37, 11.17 & 11.18

14.83 Various issues have been raised in relation to drainage. There is no reason however to believe that any of the site drainage issues could not be overcome during the detailed design of the proposals. Furthermore, the EA have not objected to the proposals. 7.38 & 11.55

14.84 The Grange Farm proposal would result in the loss of some Grade 2 and 3a agricultural land. This loss would not however be sufficient reason to recommend dismissal of the appeal, a conclusion supported by NE. 7.37 & 11.74

Section 106 Unilateral Planning Obligations

14.85 The level of affordable housing to be provided under the obligations would accord with that required by the LP Saved Policy H14. In view of the shortfall in the provision of such housing in the surrounding area, this level of affordable housing would satisfy the tests of the Framework. The Council has no objection to the terms of the obligations. The provision of unilateral obligations instead of agreements between the owners of the sites and the Council, as suggested in the Council's SPD1, does not therefore count against the appeals. The scheme for the provision and management of public open space would accord with LP Saved Policy BE1, and the relevant obligation requirement would also satisfy the tests of the Framework. 7.6

- 14.86 The financial contributions towards cycle and scooter parking and towards public transport facilities would accord with the interests of sustainable travel and with LP Saved Policies T9 and T3. Off site playing pitch provision or improvement would be required due to additional pressure from new residents and the contributions would accord with LP Saved Policy BE1.
- 14.87 There are limited surplus places available in the catchment primary schools. The Council would however have to decide whether to extend the schools or not, given that extensions could result in the continuation of the congestion resulting from out of catchment primary school pupils travelling into Hartford by car. The contributions towards additional classrooms would however strictly be necessary, and they would therefore accord with LP Saved Policy BE4.
- 14.88 Whilst the traffic level generated by the proposals, without any reductions for location and behavioural change, would not be severe, it would be greater than 10% and significant. Travel Plans, and their implementation, would therefore be required in accordance with LP Saved Policy T20. All of these sums secured, would directly relate fairly and reasonably to the proposal in scale and kind, and they would meet the tests set out in Regulation 122 of the CIL Regulations 2010 as amended.

Conditions

- 14.89 Lists of agreed conditions were submitted during the course of the Inquiry. The Council's suggested condition requiring further house type details for the Grange Farm site refers to dwellings within the CA. The approved plans do not show the level of detail necessary to regulate the development in this prominent area and thereby preserve the character and appearance of the CA. The suggested condition would therefore be both reasonable and necessary.
- 14.90 The suggested condition removing permitted development rights on certain of the plots on Phase 1 refers to plots which would lie outside of the CA. The condition is required to preserve the character and appearance of the CA, and the plots referred to in the condition should therefore relate to the prominent area already identified.
- 14.91 I have also incorporated some minor amendments to the various conditions in the interests of precision and enforceability. The conditions would be appropriate, and satisfy the tests of Circular 11/95 and are attached at Appendices A and B.
- 14.92 The condition requiring the Grange Farm site Phase 1 landscaping to be undertaken in accordance with and approved implementation programme would ensure that the community green adjacent to Chester Road was completed in a timely manner. Both sites are sufficiently large to accommodate onsite parking related to construction activities, and site operatives' commuting patterns would be unlikely to impact on the identified peak am period. Conditions requiring workers to be bussed to the sites would therefore be unnecessary. The condition to require the approval of any construction related boundary treatment on the Grange Farm site would allow the Council to regulate the provision on any hoardings in relation to the CA.

15. Summary of Conclusions

- 15.1 In reaching my conclusions, I have taken into account the various development plan and national policies. The Council's poor housing land supply situation renders the related LP policies out of date, and the appeals should therefore be considered in the context of the presumption in favour of sustainable development.
- 15.2 In this regard, I have found that the proposals, either in combination or individually, would provide substantial benefits in terms of the Government's objective to secure a better balance between housing demand and supply and to secure the creation of high quality, sustainable, mixed and inclusive communities.
- 15.3 I have also found that the proposals would not have a severe impact on the transportation network with reference to the highway junctions in Hartford. They would however have an adverse but limited impact on the network in relation to morning peak period. This impact however, in combination or individually, would not significantly and demonstrably outweigh the above benefits such as to justify dismissing the appeals. I have also taken into account all other matters raised, but none carry sufficient weight to alter my conclusions.
- 15.4 I further conclude that the proposals would thus accord with the relevant up to date policies of the Development Plan and the Government's policies as set out in the National Planning Policy Framework.
- 15.5 Should the Secretary of State agree with my recommendations, lists of conditions which would be appropriate and would satisfy the tests of Circular 11/95 are attached at Appendices A and B.

16. Recommendations

- 16.1 I therefore recommend that Appeals A and B, in relation to Land at Grange Farm and Land to the East of School Lane, be allowed subject to the conditions at Appendices A and B.

Stephen Roscoe

INSPECTOR

APPEARANCES

For the Appellant:

Mr M Kingston	QC, Instructed by Ms S Ryan, Turley Associates, 1 New York Street, Manchester M1 4HD
He called	
Mr M Axon BSc(Hons) FCIHT	Director, Vectos, 85 Tottenham Court Road, London W1T 4TQ
Ms S Ryan BA(Hons) MRTPI	Planning Director, Turley Associates
Mr M Gilbert BSc(Hons) MRTPI	Director, The Planning Consultancy, Bridge Farm, Sarn, Malpas, Cheshire SY14 7LN

For the Local Planning Authority:

Mr M Carter	Of Counsel, Instructed by Mr S Goacher, Head of Legal and Democratic Services, Cheshire West and Chester Council
He called	
Mr C Posford MA CMILT MTPS	Technical Director, URS Infrastructure & Environment UK Ltd, Brunel House, 54 Princess Street, Manchester M1 6HS

Joint Action Group:

Mr M Kitching BSc MSc CMILT	Director, SK Transport Planning Limited
Mrs R Hollens	Chair, Joint Action Group

Interested Persons:

Mr Graham Evans MP	Member of Parliament for Weaver Vale
Cllr P Dolan	Member, Cheshire West and Chester Council and Northwich Town Council, representing Northwich Town Council
Cllr R Haffenden	Member, Hartford Parish Council, speaking as a resident

Cllr H Manley	Member, Cheshire West and Chester Council, representing constituents of Hartford and Greenbank
Ms M Morron	Local Resident
Sir Peter Fahy	Local Resident
Cllr P Herbert	Member, Hartford Parish Council, speaking as a resident
Mr Gardiner	Speaking on behalf of Mr V Lakeland, local resident
Mr J Szostek	Local Resident
Cllr Mrs E Bowden	Member, Hartford Parish Council, speaking as a resident
Mr D Bowden	Local Resident
Ms H Clegg	Local Resident
Mrs J Pritchett	Local Resident
Mr B Slaney	Local Resident
Mr B Ursell	Local Resident
J Krause	Local Resident
Dr J Swaffield	Chair of Governors, Cloughwood School
Mrs C O'Brien	Local Resident
Mr K Sexton BSc MSc DHS CEnv FIEMA	Local Resident

DOCUMENTS

General

- G1 Lists of persons attending the Inquiry
- G2 Letter of notification of the Inquiry
- G3 Representations from interested persons
- G4 Appeal Submission: Land at Grange Farm: 10 July 2012
- G5 Appeal Submission: Land to the East of School Lane: 10 July 2012
- G6 Letter recovering the appeals dated 27 July 2012
- G7 Statement of Common Ground: Land at Grange Farm: 26 September 2012

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- G8 Statement of Common Ground: Land East of School Lane: 26 September 2012
- G9 Transportation Statement of Common Ground: Land at Grange Farm: September 2012
- G10 Transportation Statement of Common Ground: Land at Grange Farm: Appendix GGC7: September 2012
- G11 Transportation Statement of Common Ground: Land to the East of School Lane: October 2012
- G12 Transportation Statement of Common Ground: Land to the East of School Lane: Appendix HGC7: September 2012
- G13 Council letter to the appellant dated 30 August 2012 withdrawing refusal reason 2: Land at Grange Farm
- G14 Council letter to the appellant dated 30 August 2012 withdrawing refusal reason 2: Land East of School Lane
- G15 Written Representations Submitted during the Planning Applications Stages
- G16 Hartford Joint Action Group Rule 6(6) Status Letter
- G17 EIA Screening Opinion response from the Council: Land at Grange Farm
- G18 EIA Screening Opinion response from the Council: Land East of School Lane

Core Documents

Land at Grange Farm

- CD1 Application documents comprising:
- Application forms and certificates
 - Materials Board
 - Planning Statement by Turley Associates
 - Design and Access Statement by Planit ie
 - Transport Assessment (TA) by CBO Transport Ltd
 - Transport Assessment Figures and Appendices by CBO Transport Ltd
 - Technical Note 1: Cumulative Traffic Impacts by CBO Transport Ltd
 - Travel Plan Framework by CBO Transport Ltd
 - Consultation Statement by Lexington Communications
 - Archaeology Desktop Assessment by LP Archaeology
 - Flood Risk Assessment by BWB Consulting
 - Energy Statement by Harrow Estates plc
 - Acoustic Assessment Report by Azymuth Acoustics
 - Extended Phase 1 Habitat Survey by Marishal Thomson Group
 - Up-date Phase 1 and Phase 2 Habitat Survey by Ecosulis Ltd
 - Tree Survey by Arbtech Environmental Services
 - Heritage Assessment by Turley Associates
 - Phase 1 Desk Top Report by Betts Associates
 - Bundle of correspondence with the Planning Authority including pre-application screening opinion.
 - Bat Survey by Ecosulis
 - Application drawings

- Amended drawings
 - Technical Note: Impact on Delay based on Sensitivity Traffic Generations & Distributions
 - Technical Note: Cumulative Impact on Delay based on Sensitivity Traffic Generations & Distributions
 - Review of Transport Assessment (by URS)
- CD2 Report to Strategic Planning Committee including late information up-date, (31 May 2012)
- CD3 LPA decision notice (31 May 2012)
- CD4 Grange Farm Development Brief (2000)

Land to the East of School Lane

- CD5 Application documents comprising:
- Planning application forms and certificates of ownership
 - Site location plan @ 1:10,000
 - Topographical survey 0618/Sheet/1250 Rev A
 - Concept masterplan ref: 11-008-PUD-P002 Rev B
 - Planning Statement
 - Design and Access Statement, and the following associated plans:
 - 11-008-PUD-P003 Rev A – Building Heights;
 - 11-008-PUD-P004 – Longitudinal Section;
 - 11-008-PUD-P005 Rev B – Green Infrastructure Network;
 - 11-008-PUD-P006 Rev A – Indicative Phasing; and
 - 11-008-PUD-P007 – Concept Landscape Structure Plan.
 - Illustrative Plans in relation to the proposed access:
 - 11-008-S001 – Indicative Access Design – Plan/Layout;
 - 11-008-S002 – Indicative Access Design – Axonometric Projection; and
 - 11-008-S003 – Indicative Access Design Street Scene Section.
 - Addendum to the Design and Access Statement and the following associated plans:
 - 11-008-P008 – Sample Indicative Layout; and
 - 11-008-P009 – Landscape Sections.
 - Landscape and Visual Impact Assessment, together with Appendix A – figures and the following plans:
 - Figure 10 Rev A – Visual Receptors 1 & 2; and
 - Figure 11 Rev A – Visual Receptors 3 & 4.
 - Transport Documents:
 - Transport Assessment and associated Figures and Appendices (TA);
 - Travel Plan Framework;
 - Technical Note 1 – Cumulative Traffic Impact; and
 - Bundle of highway related correspondence.

- Sustainability Assessment
 - Agricultural Land Assessment
 - Ecological Impact Assessment, and the following related reports:
 - Badger Bait Marking Study; and
 - Report on Bat Activity Surveys.
 - Archaeological Desk Based Assessment, and the following report:
 - Archaeological Monitoring of Metal Detecting Survey.
 - Tree Survey Report, and the following associated plans:
 - Tree Survey Sheets 1-4.
 - Desk Study Report (Geo-Environmental)
 - Flood Risk Assessment
 - Energy Statement
 - Consultation Statement
 - Site Waste Management Plan
 - Bundle of correspondence with the Planning Authority including pre-application screening opinion
 - Review of Transport Assessment (by URS)
- CD6 Report to Strategic Planning Committee including late information up-date, (31 May 2012)
- CD7 LPA decision notice (31 May 2012)

Policy Documents

- CD8 National Planning Policy Framework (March 2012)
- CD9 Relevant extracts of Regional Spatial Strategy (RS) (2008)
- CD10 Relevant extracts of Vale Royal Borough Local Plan First Review Alteration (2006)
- CD11 Relevant extracts of Cheshire 2016: Structure Plan Alteration
- CD12 Vale Royal Borough Council: Supplementary Planning Document 1: Affordable Housing: September 2007
- CD13 Hartford Village Design Statement (2005)
- CD14 Vale Royal Borough Council: Hartford (Extended) Conservation Area Appraisal: February 2004

Other Documents

- CD15 Planning for Growth (Ministerial Statement 23 March 2011)
- CD16 The Plan for Growth (HM Treasury) (March 2011)
- CD17 Relevant Extracts of Strategic Housing Land Availability Assessment: 2010 – 2011
- CD18 Cheshire West and Chester Council: Local Plan: Housing Land Monitor: September 2012 Update
- CD19 Extracts of the Cheshire West and Chester: Strategic Housing Market Assessment: Update December 2010

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- CD20 Forest Road, Cuddington appeal decision (reference APP/A0665/A/11/2159006)
- CD21 The Community Infrastructure Levy (Amendment) Regulations 2011
- CD22 CWaC School Capacity Data
- CD23 Cheshire West and Chester Council: Local Transport Plan: Integrated Transport Strategy: 2011-2026
- CD24 Winnington Urban Village – Committee Report (submitted during the course of the Inquiry and also listed as HE3)
- CD25 Extracts of Chester District Council Sustainable Development SPD (July 2008) (submitted during the course of the Inquiry)
- CD26 Walking and Cycling: Local Measures to Promote Walking and Cycling as Forms of Travel and Recreation (National Institute for Health and Clinical Excellence) (November 2012) (submitted during the course of the Inquiry)

Documents Submitted by the Appellants

- MAV1 Proof of Evidence of Mr M Axon
- MAV2 Appendices to Proof of Evidence of Mr M Axon
- MAV3 Summary Proof of Evidence of Mr M Axon
- MAV4 Rebuttal Proof of Evidence of Mr M Axon
- SR1 Proof of Evidence of Ms S Ryan
- SR2 Summary Proof of Evidence of Ms S Ryan
- MG1 Proof of Evidence of Mr M Gilbert
- MG2 Summary Proof of Evidence of Mr M Gilbert

Submitted During Inquiry

- HE1 List of Appearances
- HE2 Opening Statement
- HE3 Winnington Urban Village Planning Committee Report Ref 06-0740-OUM (Also listed as CD24)
- HE4 Extracts of Chester District Council Sustainable Development SPD (July 2008) (Also listed as CD25)
- HE5 Walking and Cycling: Local Measures to Promote Walking and Cycling as Forms of Travel and Recreation (National Institute for Health and Clinical Excellence) (November 2012) (Also listed as CD26)
- HE6 Replacement Transport Statement of Common Ground Walk to School Tables for both sites and Local Facilities for Land East of School Lane
- HE7 School Travel Distance Note for both sites
- HE8 Axon Appendix MA10
- HE9 Revised Axon Appendix MA7
- HE10 Axon Appendix MA7 Explanatory Note
- HE11 Letter, dated 6 December 2012, from the appellant to the Council advising of a costs application

HE12	Unilateral Planning Obligation by Harrow Estates PLC in relation to Land at Grange Farm
HE13	Unilateral Planning Obligation by Bridgemere Land PLC and The Trustees of the Linson Construction Pension Fund and Redrow Homes and Bridgemere JV Limited
HE14	Letter, dated 6 December 2012, from Redrow to the Planning Inspectorate regarding planning agreement obligations
HE15	The Council's Determined Admission Arrangements for Community and Voluntary Controlled Schools 2013-14
HE16	Land at Grange Farm: Revised Ryan Appendix 5: Green Belt Boundary Plan
HE17	Closing Submissions
HE18	Applications for Costs Against the Council

Documents Submitted by the Council

CP1	Proof of Evidence of Mr C Posford
CP2	Summary Proof of Evidence of Mr C Posford
JG1	Proof of Evidence of Mrs J Gordon: Land at Grange Farm
JG2	Appendices to Proof of Evidence of Mrs J Gordon: Land at Grange Farm
JG3	Proof of Evidence of Mrs J Gordon: Land East of School Lane
JG4	Appendices to Proof of Evidence of Mrs J Gordon: Land East of School Lane

Submitted During Inquiry

CWC1	List of Appearances
CWC2	Opening Statement
CWC3	Rebuttal Proof of Evidence of Mr C Posford (including deletions)
CWC4	Draft Conditions: Land at Grange Farm
CWC5	Draft Conditions: Land East of School Lane
CWC6	Draft Conditions 30 and 32
CWC7	Closing Submissions
CWC8	Response to appellants' costs applications
CWC9	Letter, dated 13 July 2012, from Turley Associates to the Council regarding the second reason for refusal.
CWC10	Letter, dated 13 July 2012, from The Planning Consultancy to the Council regarding the second reason for refusal.

Documents Submitted by the Hartford Joint Action Group

MK1	Proof of Evidence of Mr M Kitching: Land at Grange Farm
MK2	Appendices to Proof of Evidence of Mr M Kitching: Land at Grange Farm
MK3	Proof of Evidence of Mr M Kitching: Land to the East of School Lane
MK4	Appendices to Proof of Evidence of Mr M Kitching: Land to the East of School Lane

RH1 Proof of Evidence of Mrs R Hollens: Land at Grange Farm
RH2 Proof of Evidence of Mrs R Hollens: Land East of School Lane

Submitted During Inquiry

JAG1 Traffic Photos
JAG2 Mr M Kitching: Opening Statement
JAG3 Mrs R Hollens: Opening Statement
JAG4 JAG Membership details
JAG5 Replacement Kitching Proof paras 4.16 - 4.20 with colour photographs
JAG6 Annotated Land East of School Lane Unilateral Planning Obligation Plan D
JAG7 Mr M Kitching: Closing Submissions
JAG8 Mrs R Hollens: Closing Submissions

Other Documents Submitted During Inquiry

O1 Written Representations from Interested Persons

APPENDIX A

LIST OF RECOMMENDED PLANNING CONDITIONS FOR LAND AT GRANGE FARM

- 1) Details of the landscaping for Phase 1 and the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") in respect of each other phase, details of which are to be approved by Condition 5 below, shall be submitted to, and approved in writing by, the local planning authority before any development on that phase begins, and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than 12 months in respect of Phase 1 and not later than three years for subsequent phases from the date of this permission.
- 3) Each phase of the development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved for that phase.
- 4) Phase 1 of the development hereby permitted and applications for the approval of reserved matters shall be in accordance with the parameters set out in the Design and Access Statement (received 12/12/11) and the approved plans and documents listed in Schedule 1.
- 5) No development shall take place until full details of the phasing of the construction of the development hereby permitted, including temporary highway and pedestrian routings, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved phasing details unless otherwise approved in writing by the local planning authority.
- 6) No development shall take place within the site until the appellant, or their agents or successors in title, have secured a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.
- 7) Development in any phase shall not begin until full details of both hard and soft landscape works in respect of that phase have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved. These details shall include:
 - i) proposed finished levels or contours;
 - ii) means of enclosure and boundary treatments;
 - iii) car parking layouts;
 - iv) other vehicle and pedestrian access and circulation areas;
 - v) hard surfacing materials;
 - vi) minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc);
 - vii) bird nesting-box details;
 - viii) street furniture;
 - ix) proposed and existing functional services above and below ground (eg. drainage, power and communication cables, pipelines etc. indicating lines, manholes, supports etc.);

- x) retained historic landscape features and proposals for restoration, where relevant;
 - xi) trees, hedgerows and woodland areas to be retained;
 - xii) a landscape strategy plan to indicate species and landscape themes within the different areas to help create an identity and to include reinforcement of the boundaries; and
 - xiii) in terms of soft landscaping, existing vegetation to be retained or removed, planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants (noting species, plant sizes and proposed numbers or densities where appropriate), an implementation programme and rabbit protection of the proposed planting (including bulbs and proposed grass seed mixes).
- 8) No retained tree, hedgerow or woodland area shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 10 years from the date of occupation of the development or any phase of the development, whichever is the later, other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.
- 9) Retained hedgerows shall be protected during construction through the installation of protective fencing in accordance with a scheme to be submitted to, and approved in writing by, the local planning authority for each phase prior to the commencement of development in that phase. Development shall be implemented in accordance with the approved scheme.
- 10) Development in any phase shall not begin until a scheme, setting out a precautionary method of working with regard to bats and birds, for that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall include methods of working to Grange farmhouse and for the clearance of trees, shrubs and hedgerows. Development shall be carried out in accordance with the approved scheme. No vegetation clearance or building demolition shall be undertaken from 1st March to 31st August (inclusive) unless otherwise approved in writing by the local planning authority.
- 11) Development in any phase shall not begin until an up to date badger survey in relation to that phase has been undertaken and a method statement detailing any mitigation to avoid harmful impacts to badgers has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved method statement.
- 12) No development shall take place until a planting plan and programme for the replanting of fruit trees, to compensate for those lost through redevelopment of the site, have been submitted, to and approved in writing by, the local planning authority. Planting shall be carried out in accordance with the approved plan and programme and be thereafter retained.
- 13) Dwellings in any phase shall not be occupied until a 20 year habitat and landscape management plan (setting out long-term design objectives, management responsibilities and maintenance schedules) for all landscape areas within that phase has been submitted to, and approved in writing by, the local planning authority. The habitat and landscape management plan shall be implemented as approved.

- 14) Development in any phase shall not begin until details of proposed earthworks in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The details shall include the proposed grading and any mounding of land areas, including the levels and contours to be formed, and show the relationship of any proposed mounding to existing vegetation and the surrounding landform. Development shall be carried out in accordance with the approved details.
- 15) Development in any phase shall not begin until details of proposed substations and other utility structures in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Substations or other utility structures shall not be installed until a noise impact assessment of the proposed substation or utility structure has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and noise impact assessment, unless otherwise approved in writing with the local planning authority.
- 16) Development in any phase shall not begin until there has been submitted to, and approved in writing by, the local planning authority a plan indicating the positions, design, materials and type of construction-related and permanent boundary treatment to be erected in respect of that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 17) Development in any phase shall not begin until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples.
- 18) Development in any phase shall not begin until a strategy and scheme detailing all external lighting equipment, including floodlighting, in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The strategy shall include details of both external lighting during construction phases as well as the permanent lighting of the completed development. Any lighting scheme shall be designed in accordance with the Institute of Lighting Professionals 'Guidance for the Reduction of Obtrusive Light'. The scheme shall include full details of: the hours of operation, location, size and design of luminaires and fittings; the type and output of light sources, with lux levels; and isolux drawings to demonstrate the levels of illumination within the site and the amount of overspill of lighting onto vegetated areas and beyond the site boundaries. Development shall be carried out in accordance with the approved strategy and scheme and shall thereafter be retained. No other external lighting equipment within public areas shall then be used within the development, other than as approved by the local planning authority.
- 19) Development in any phase shall not begin until a tree pruning and felling specification in respect of that phase has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved specification.
- 20) Development in any phase shall not begin until a plan and details identifying tree Root Protection Areas (RPAs) in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Where

it is found that there is conflict between identified tree RPAs and the proposed development, the details shall include a construction specification and method statement relating to those areas. Development shall be carried out in accordance with the approved plan and details.

- 21) Notwithstanding Condition 4, no development shall take place until details, and a programme for the installation, of a removable bollard to prevent unauthorised vehicular access on Footpath 5 - Hartford have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details. Notwithstanding Condition 4, the existing surface of Footpath 5 - Hartford, shall be retained with its grass verges.
- 22) Notwithstanding Condition 4, no development shall take place until house type details relating to Plots 1-3 and 52-56 have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.
- 23) Construction work shall not begin on any phase of the development until a scheme for protecting the proposed dwellings from noise has been submitted to, and approved in writing by, the local planning authority in respect of that phase. The scheme shall ensure that the following noise levels are met:
 - i) maximum noise levels within habitable rooms during the day and evening (07.00 to 22.59hrs) of 35dB(A)LAeq,8hrs;
 - ii) maximum noise levels within bedrooms during the night (23.00 to 06.59hrs) of 30dB(A)LAeq,8hrs and 45dB(A)LAmix; and
 - iii) maximum noise levels in gardens during the day and evening (07.00 to 22.59hrs) of 50dB(A)LAeq

In the event that the scheme incorporates acoustic bunds or barriers, it shall include details for the long term maintenance of those barriers to maintain their efficiency and protect residential amenity. All works which form part of the approved scheme shall be completed before the dwellings to which they relate are occupied and shall be thereafter retained.

- 24) Demolition or construction works, including deliveries to or dispatched from the site, shall not take place outside 08.00 to 18.00 hours Mondays to Fridays and 08.00 to 13.00 hours on Saturdays, nor at any time on Sundays or Bank Holidays. There shall be no deliveries by HGVs to the site between the hours of 08.00 to 09.00 and 17.00 to 18.00. Any variation to the above hours of works and deliveries shall be submitted to, and approved in writing by, the local planning authority prior to any such variation being implemented.
- 25) No development shall take place until the following components (a to d) of a structured scheme to deal with the risks associated with actual or potential contamination of the site have each been submitted to, and approved in writing by, the local planning authority, unless another date or stage in development is agreed in writing with the authority:
 - (a) a preliminary risk assessment which identifies all previous uses on or within an influencing distance of the site, potential contaminants associated with those uses, a conceptual model (indicating the sources, pathways and receptors of contamination), actual or potentially unacceptable risks arising from contamination and initial remediation options;

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- (b) a detailed scheme of site investigation based on component (a) from which a detailed assessment of risk to all current and future receptors that may be affected, including those off site, shall be derived;
 - (c) a remediation options appraisal and implementation strategy, based on the detailed results of (b), giving full details of the remediation measures required and how they are to be undertaken; and
 - (d) a verification plan providing details of the data that will be collected in order to demonstrate that the remediation works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The pre-development scheme shall be implemented as approved unless revision is approved by the local planning authority in writing.

In the event that no contamination requiring remediation or verification is found, and this finding is submitted to, and approved in writing by, the local planning authority, components (c) and (d) shall not apply.

- 26) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from a different source, containing a new contaminative substance or affecting a new pathway or receptor), then revised proposals for detailed investigation, risk assessment, remediation and verification shall be submitted to, and approved in writing by, the local planning authority, prior to all but urgent remediation works necessary to secure the area. Development shall be carried out in accordance with the approved revised proposals.
- 27) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from an existing risk assessed source, containing comparable risk assessed substances and affecting an already risk assessed pathway or receptor) that could be addressed by a simple extension of the approved scheme to a larger area, then the local planning authority shall be notified promptly in writing confirming details relating to: the areas affected; the approved investigation; remediation and validation measures to be applied; and the anticipated completion timescale. Development shall be carried out in accordance with the confirmed details.
- 28) In the event that site investigation works identify a need for remediation, as approved by the local planning authority, no part of the development site within the relevant phase of this permission shall be occupied until:
 - i) all components of the pre-approved or revised scheme to deal with the risks associated with actual or potential contamination of the site within that phase have been completed; and
 - ii) written evidence of satisfactory completion and of the suitability of that part of the site for occupation has been submitted to, and approved in writing by, the local planning authority.

- 29) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i) details of construction traffic phasing;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) the loading and unloading of plant and materials;
 - iv) the storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust, dirt, noise, vibration and light during construction;
 - viii) a scheme for the recycling or disposal of waste resulting from construction works;
 - ix) hours of construction;
 - x) details of any piling; and
 - xi) demonstration that the works will be carried out in accordance with guidance provided in BS 5228-1: 2009 "Code of practice for noise and vibration control on construction and open sites – Part 1: Noise".
- 30) Development shall not begin until details of the proposed access, including all associated works within the public highway, as set out on drawing no CBO-0018-002 Rev A, have been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied until that access has been constructed in accordance with the approved details.
- 31) Development in any phase shall not begin until a design and construction specification and scheme, together with a surface course laying programme, for all highways, footways and cycle ways within that phase of the development, as indicated on the approved plans, have been submitted to, and approved in writing by, the local planning authority. No dwelling or building shall be occupied until that part of the highway, footway or cycleway network which provides access to it has been constructed up to base-course level in accordance with the approved specification and scheme. The surface course shall then be completed in accordance with the approved specification, scheme and programme.
- 32) Development in any phase shall not begin until details of cycle storage for each dwelling within that phase of the development have been submitted to, and approved in writing by, the local planning authority. No dwelling shall be occupied until the cycle storage relating to it has been provided in accordance with the approved details. The cycle storage shall thereafter be retained.
- 33) The development shall not be occupied until a controlled crossing facility has been provided on Chester Road in accordance with the details shown on drawing no CBO-0018-002 Rev A.

- 34) Development shall not begin until details of a car parking area, between Grange farmhouse and Chester Road shown illustratively on drawing no. PL1111 M101 Rev A, have been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied until the car parking area has been constructed in accordance with the approved details and made available for public use, including the approved number of spaces for disabled persons. The car parking area shall be retained for public use, unless otherwise approved in writing by the local planning authority.
- 35) Notwithstanding the terms of the Unilateral Planning Obligation dated 11th December 2012, a Travel Plan shall be submitted to, and approved in writing by, the local planning authority prior to the marketing of dwellings within any part of the development hereby permitted. The Travel Plan shall be implemented in accordance with the approved details and timetable set out in that plan prior to the occupation of any dwellings within the site.
- 36) No building hereby permitted shall be occupied until surface water drainage works in relation to that building have been completed in accordance with details that have been submitted to, and approved in writing by, the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable urban drainage system, and the results of the assessment submitted to, and approved in writing by, the local planning authority.
- 37) No development shall take place until a scheme for the management of overland flow, from surcharging of the site's surface water drainage system, during extreme rainfall events has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of the proposed ground and building finished floor levels and details of measures to prevent blockage of the railway culvert flowing from the site, together with any compensatory flood storage required to accommodate a 1 in 100 year flood event. Development shall be carried out in accordance with the approved scheme.
- 38) No development shall take place until a scheme, showing how foul water will be dealt with, has been submitted to, and approved in writing by, the local planning authority. Only foul drainage shall be connected into the public sewerage system, and the scheme shall provide for all tree protection requirements on the development site. No part of the development shall be brought into use until all drainage, relating to that part of the development, has been completed in accordance with the approved scheme.
- 39) Development in any phase containing proposed play areas shall not begin until a scheme for the provision of play areas in respect of that phase, including the management thereof, has been submitted to, and approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until play areas have been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The play areas shall not thereafter be used for any purpose other than a public play area.
- 40) Development in any phase containing proposed public open space shall not begin until a scheme for the provision of public open space in respect of that phase, including the management thereof, has been submitted to, and approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until public open space has been provided in that

phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The approved areas shall not thereafter be used for any purpose other than public open space.

- 41) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 42) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no building, extension or structure, and no wall, fence or other means of enclosure shall be erected on Plots 1-3 and Plots 52-56 of Phase 1, other than those expressly authorised by this permission.
- 43) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no alteration or enlargement shall be made to the dwellings on Plots 1-3 and Plots 52-56 of Phase 1, other than that expressly authorised by this permission.
- 44) Development in any phase shall not begin until a scheme, including a timetable for implementation, to secure at least 10% of the predicted energy supply of the development from decentralised and renewable or low carbon energy sources, as defined in the glossary of the National Planning Policy Framework, in respect of that phase has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.

REASONS FOR CONDITIONS

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| 1, 2, 3 & 5 | To comply with the requirements of Section 92(2) of the Town and Country Planning Act 1990, as amended by S51(2) of the Planning and Compulsory Purchase Act 2004. |
| 4 | For the avoidance of doubt and in the interests of proper planning. |
| 36 & 37 | In the interests of flood protection. |
| 15,21,23,25,26,
27,28,38,39 & 40 | To protect the living conditions of future residents. |
| 24 & 29 | To protect the living conditions of nearby residents. |
| 10, 11 & 13 | In the interests of nature conservation. |
| 6 | To protect the historic environment. |
| 30, 31, 33
& 34 | In the interests of highway safety. |
| 7,8,9,12,14,16,
17,18,19,20,22,
42 & 43 | To protect the character and appearance of the surrounding area. |
| 32, 35, 41 & 44 | In the interests of sustainable development. |

APPENDIX B

LIST OF RECOMMENDED PLANNING CONDITIONS FOR LAND TO THE EAST OF SCHOOL LANE

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called "the reserved matters") in respect of each phase, details of which are to be approved by Condition 5 below, shall be submitted to, and approved in writing by, the local planning authority before any development on that phase begins, and the development shall be carried out as approved.
- 2) Applications for approval of the reserved matters shall be made to the local planning authority not later than 12 months in respect of the first phase and not later than three years for subsequent phases from the date of this permission.
- 3) Each phase of the development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved for that phase.
- 4) The applications for the approval of the reserved matters shall be in accordance with the parameters described and identified in the Design and Access Statement and the Design and Access Statement Addendum for a maximum of 350 dwellings. The development hereby permitted shall also be carried out in accordance with the approved plans listed in Schedule 2.
- 5) No development shall take place until full details of the phasing of the construction of the development hereby permitted, including temporary highway and pedestrian routings, have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved phasing details, unless otherwise approved in writing by the local planning authority.
- 6) No development shall take place within the areas of archaeological interest 078/079, 211/219 and 355/359 as identified on the 'Finds' plan appended to the Archaeological Monitoring of Metal Detecting Survey, until the applicant, or their agents or successors in title, have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to, and approved in writing by, the local planning authority.
- 7) Development in any phase shall not begin until full details of both hard and soft landscape works in respect of that phase have been submitted to, and approved in writing by, the local planning authority and these works shall be carried out as approved. These details shall include:
 - i) proposed finished levels or contours;
 - ii) means of enclosure and boundary treatments;
 - iii) car parking layouts;
 - iv) other vehicle and pedestrian access and circulation areas;
 - v) hard surfacing materials;
 - vi) minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc);
 - vii) bird nesting-box details;

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- viii) street furniture;
 - ix) proposed and existing functional services above and below ground (eg. drainage, power and communication cables, pipelines etc. indicating lines, manholes, supports etc.);
 - x) retained historic landscape features and proposals for restoration, where relevant;
 - xi) trees, hedgerows and woodland areas to be retained;
 - xii) a landscape strategy plan to indicate species and landscape themes within the different areas to help create an identity and to include reinforcement of the boundaries; and
 - xiii) in terms of soft landscaping, existing vegetation to be retained or removed, planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment), schedules of plants (noting species, plant sizes and proposed numbers or densities where appropriate), an implementation programme and rabbit protection of proposed planting (including bulbs and proposed grass seed mixes).
- 8) No retained tree, hedgerow or woodland area shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner within 10 years from the date of occupation of the development or any phase of the development, whichever is the later, other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority.
- 9) Retained hedgerows shall be protected during construction through the installation of protective fencing in accordance with a scheme to be submitted to, and approved in writing by, the local planning authority for each phase prior to the commencement of development in that phase. Development shall be implemented in accordance with the approved scheme.
- 10) No development shall take place until a badger protection strategy, providing for protection to badgers on and adjoining the site, has been submitted to, and approved in writing by, the local planning authority. The strategy shall include a survey and details of phased mitigation measures, which shall be updated and informed by up to date badger surveys prior to the commencement of development on each phase, and shall be implemented as approved.
- 11) No vegetation clearance or building demolition shall be undertaken from 1st March to 31st August (inclusive) unless otherwise approved in writing by the local planning authority.
- 12) Dwellings in any phase shall not be occupied until a 20 year habitat and landscape management plan (including the replacement of inappropriate species planting on the valley floor, long term design objectives, management responsibilities and maintenance schedules) for all landscape areas within that phase has been submitted to, and approved in writing by, the local planning authority. The landscape management plan shall be implemented as approved.
- 13) No development shall take place until details to secure a minimum 15 m Buffer Zone along the edge of the Marshall's Arm Nature Reserve have been submitted to, and approved in writing by, the local planning authority. If private gardens are proposed to be incorporated into the Buffer Zone, then the details shall include a tree management scheme for existing and new tree

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- planting within the Buffer Zone. Development shall be carried out in accordance with the approved details.
- 14) No development shall take place until a scheme to secure the retention and protection of the tree T29, identified in the Tree Survey Report submitted with the planning application, has been submitted to, and approved in writing by, the local planning authority. The scheme shall ensure that the tree will be located in an open or garden area. Development shall be carried out in accordance with the approved scheme.
- 15) Development in any phase shall not begin until details of proposed earthworks in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The details shall include the proposed grading and any mounding of land areas, including the levels and contours to be formed, and show the relationship of any proposed mounding to existing vegetation and the surrounding landform. Development shall be carried out in accordance with the approved details.
- 16) Development in any phase shall not begin until details of proposed substations and other utility structures in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Substations or other utility structures shall not be installed until a noise impact assessment of the proposed substation or utility structure has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and noise impact assessment, unless otherwise approved in writing by the local planning authority.
- 17) Development in any phase shall not begin until there has been submitted to, and approved in writing by, the local planning authority a plan indicating the positions, design, materials and type of construction-related and permanent boundary treatment to be erected in respect of that phase. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
- 18) Development in any phase shall not begin until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted in respect of that phase have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples.
- 19) Development in any phase shall not begin until a strategy and scheme detailing all external lighting equipment, including floodlighting, in respect of that phase have been submitted to, and approved in writing by, the local planning authority. The strategy shall include details of both external lighting during construction phases as well as the permanent lighting of the completed development. Any lighting scheme shall be designed in accordance with the Institute of Lighting Professionals 'Guidance for the Reduction of Obtrusive Light'. The scheme shall include full details of: the hours of operation, location, size, design of luminaries and fittings; the type and output of light sources, with lux levels; and isolux drawings to demonstrate the levels of illumination within the site and the amount of overspill of lighting onto vegetated areas and beyond the site boundaries. Development shall be carried out in accordance with the approved strategy and scheme and shall thereafter be retained. No other external lighting equipment within public

areas shall then be used within the development, other than as approved by the local planning authority.

- 20) Construction work shall not begin on any phase of the development until a scheme for protecting the proposed dwellings from noise has been submitted to, and approved in writing by, the local planning authority in respect of that phase. The scheme shall ensure that the following noise levels are met:
- i) maximum noise levels within habitable rooms during the day and evening (07.00 to 22.59hrs) of 35dB(A)LAeq,8hrs;
 - ii) maximum noise levels within bedrooms during the night (23.00 to 06.59hrs) of 30dB(A)LAeq,8hrs and 45dB(A)LAm_{ax}; and
 - iii) maximum noise levels in gardens during the day and evening (07.00 to 22.59hrs) of 50dB(A)LAeq

In the event that the scheme incorporates acoustic bunds or barriers, it shall include details for the long term maintenance of those barriers to maintain their efficiency and protect residential amenity. All works which form part of the approved scheme shall be completed before the dwellings to which they relate are occupied and shall be thereafter retained.

- 21) Demolition or construction works, including deliveries to or dispatched from the site, shall not take place outside 08.00 to 18.00 hours Mondays to Fridays and 08.00 to 13.00 hours on Saturdays, nor at any time on Sundays or Bank Holidays. There shall be no deliveries by HGVs to the site between the hours of 08.00 to 09.00 and 17.00 to 18.00. Any variation to the above hours of works and deliveries shall be submitted to, and approved in writing by, the local planning authority prior to any such variation being implemented.
- 22) No development shall take place until the following components (a to d) of a structured scheme to deal with the risks associated with actual or potential contamination of the site have each been submitted to, and approved in writing by, the local planning authority, unless another date or stage in development is agreed in writing with the authority:
- (a) a preliminary risk assessment which identifies all previous uses on or within an influencing distance of the site, potential contaminants associated with those uses, a conceptual model (indicating the sources, pathways and receptors of contamination), actual or potentially unacceptable risks arising from contamination and initial remediation options;
 - (b) a detailed scheme of site investigation based on component (a) from which a detailed assessment of risk to all current and future receptors that may be affected, including those off site, shall be derived;
 - (c) a remediation options appraisal and implementation strategy, based on the detailed results of (b), giving full details of the remediation measures required and how they are to be undertaken; and
 - (d) a verification plan providing details of the data that will be collected in order to demonstrate that the remediation works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

The pre-development scheme shall be implemented as approved, unless revision is approved by the local planning authority in writing.

In the event that no contamination requiring remediation or verification is found, and this finding is submitted to, and approved in writing by, the local planning authority, components (c) and (d) shall not apply.

- 23) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from a different source, containing a new contaminative substance or affecting a new pathway or receptor), then revised proposals for detailed investigation, risk assessment, remediation and verification shall be submitted to, and approved in writing by, the local planning authority, prior to all but urgent remediation works necessary to secure the area. Development shall be carried out in accordance with the approved revised proposals.
- 24) If, during site preparation or development works, contamination is encountered or is suspected in areas where it had not been anticipated (being from an existing risk assessed source, containing comparable risk assessed substances and affecting an already risk assessed pathway or receptor) that could be addressed by a simple extension of the approved scheme to a larger area, then the local planning authority shall be notified promptly in writing confirming details relating to: the areas affected; the approved investigation; remediation and validation measures to be applied; and the anticipated completion timescale. Development shall be carried out in accordance with the confirmed details.
- 25) In the event that site investigation works identify a need for remediation, as approved by the local planning authority, no part of the development site within the relevant phase of this permission shall be occupied until:
 - i) all components of the pre-approved or revised scheme to deal with the risks associated with actual or potential contamination of the site within that phase have been completed; and
 - ii) written evidence of satisfactory completion and of the suitability of that part of the site for occupation has been submitted to, and approved in writing by, the local planning authority.
- 26) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) details of construction traffic phasing;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) the loading and unloading of plant and materials;
 - iv) the storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoardings including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust, dirt noise, vibration and light during construction;

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- viii) a scheme for the recycling or disposal of waste resulting from construction works;
 - ix) hours of construction;
 - x) details of any piling; and
 - xi) demonstration that the works will be carried out in accordance with guidance provided in BS 5228-1: 2009 "Code of practice for noise and vibration control on construction and open sites – Part 1: Noise".
 - 27) No construction in relation to the causeway access route shall take place until a wildlife protection plan has been submitted to, and approved in writing by, the local planning authority. The plan shall include:
 - i) a plan showing wildlife protection zones where construction activities will be restricted and where protective measures will be installed or implemented;
 - ii) details of protective measures, both physical measures and sensitive working practices, to avoid impacts during construction;
 - iii) a timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife could be harmed (birds/badgers); and
 - iv) details of replacement planting (trees and shrubs).

All construction activities shall be implemented in accordance with the approved plan and timetable, unless otherwise approved in writing by the local planning authority.
 - 28) No dwelling accessed from School Lane shall be occupied until the access from School Lane has been constructed in accordance with the approved drawing nos. HEY/09 001 P7 and CBO-0019-001 Rev B.
 - 29) No dwelling accessed from Douglas Close shall be occupied until the access from Douglas Close has been constructed in accordance with the approved drawing no CBO-0019-002.
 - 30) Development in any phase shall not begin until a design and construction specification and scheme, together with a surface course laying programme, for all highways, footways and cycleways within that phase of the development, as indicated on the approved plans, has been submitted to, and approved in writing by, the local planning authority. No dwelling or building shall be occupied until that part of the highway, footway or cycleway network which provides access to it has been constructed up to base-course level in accordance with the approved specification and scheme. The surface course shall then be completed in accordance with the approved specification, scheme and programme.
 - 31) Development in any phase shall not begin until details of cycle storage for each dwelling within that phase of the development have been submitted to, and approved in writing by, the local planning authority. No dwelling shall be occupied until the cycle storage relating to it has been provided in accordance with the approved details. The cycle storage shall thereafter be retained.
 - 32) Notwithstanding the terms of the Unilateral Planning Obligation dated 11th December 2012, a Travel Plan shall be submitted to, and approved in writing

- by, the local planning authority prior to the marketing of dwellings within any part of the development hereby approved. The Travel Plan shall be implemented in accordance with the approved details and timetable set out in that plan prior to the occupation of any dwellings within the site.
- 33) The site access, from Douglas Close, shall serve only as an access for motor vehicles to no more than 50 dwellings.
- 34) No building hereby permitted shall be occupied until surface water drainage works in relation to that building have been completed in accordance with details that have been submitted to, and approved in writing by, the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable urban drainage system, and the results of the assessment submitted to, and approved in writing by, the local planning authority.
- 35) No development shall take place until a scheme to ensure that no ground levels would be raised within the 1 in 100 year fluvial floodplain has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 36) No development shall take place until a scheme for the management of surface water from surcharging of the site's surface water drainage system during extreme rainfall events has been submitted to, and approved in writing by, the local planning authority. The scheme shall include details of the proposed ground and building finished floor levels. Development shall be carried out in accordance with the approved scheme.
- 37) No development shall take place until a scheme to dispose of foul sewage has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 38) Development in any phase containing proposed play areas shall not begin until a scheme for the provision of play areas in respect of that phase, including the management thereof, has been submitted to, and approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until play areas have been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The play areas shall not thereafter be used for any purpose other than a public play area.
- 39) Development in any phase containing proposed public open space shall not begin until a scheme for the provision of public open space in respect of that phase, including the management thereof, has been submitted to, and approved in writing by, the local planning authority. Dwellings within that phase shall not be occupied until public open space has been provided in that phase in accordance with the approved scheme, unless otherwise approved in writing by the local planning authority. The approved areas shall not thereafter be used for any purpose other than public open space.
- 40) No building hereby permitted shall be occupied until a scheme for the eradication of Japanese Knotweed has been submitted to, and approved in writing by, the local planning authority. The eradication scheme shall include: surveying and the identification of the extent of the Japanese Knotweed on a plan; a programme for implementation; and arrangements and a programme for the submission and approval in writing, by the local planning authority, of a validation report confirming the nature of the treatment and eradication.

Should a delay of 12 months or more elapse between the submission of the scheme and the commencement of development, a further survey shall be carried out and a revised scheme submitted to, and approved in writing by, the local planning authority before the buildings hereby permitted are occupied.

- 41) The dwellings hereby permitted shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.
- 42) Development in any phase shall not begin until a scheme, including a timetable for implementation, to secure at least 10% of the predicted energy supply of the development from decentralised and renewable or low carbon energy sources, as defined in the glossary of the National Planning Policy Framework, in respect of that phase has been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved scheme.

REASONS FOR CONDITIONS

- | | |
|-------------------------------------|--|
| 1, 2, 3 & 5 | To comply with the requirements of Section 92(2) of the Town and Country Planning Act 1990, as amended by S51(2) of the Planning and Compulsory Purchase Act 2004. |
| 4 | For the avoidance of doubt and in the interests of proper planning. |
| 34, 35 & 36 | In the interests of flood protection. |
| 16,20,22,23,
24,25,37,38
& 39 | To protect the living conditions of future residents. |
| 21 & 26 | To protect the living conditions of nearby residents. |
| 10,11,13,27
& 40 | In the interests of nature conservation. |
| 6 | To protect the historic environment. |
| 28,29,30 & 33 | In the interests of highway safety. |
| 7,8,9,12,14,
15,17,18 & 19 | To protect the character and appearance of the surrounding area. |
| 31,32,41 & 42 | In the interests of sustainable development. |

SCHEDULE 1

APPROVED PLANS AND DOCUMENTS: LAND AT GRANGE FARM

Flood Risk Assessment

Site Location Plan (received 12/12/11)

Proposed Site Access Arrangements– drawing no. CBO-0018-002-A
(received 25/04/12)

Proposed pedestrian, cycle and emergency access CBO-0018-003

First Phase Layout – drawing no. GF-01 Rev B received 16.05.12

Double Garage Type 1 details – drawing no. C-DG01/1/001 Rev E
(received 12/12/11)

Double Garage Type 2 details – drawing no. C-DG02/1/001 Rev D
(received 12/12/11)

Single Garage Details – drawing no. C-SG01/1/001/E (received 12/12/11)

Typical horizontal railing fence details – drawing no. C-SD0926
(received 12/12/11)

Gate with Close Boarded Fence details – drawing no. C-SD0910
(received 12/12/11)

Close Boarded Fencing details – drawing no. C-SD0907 (received 12/12/11)

Free Standing Brick Wall detail – drawing no. C-SD0809 (received 12/12/11)

The Balmoral proposed floorplans & elevations – drawing no. D4H180
(received 26/3/12)

The Blenheim proposed floorplans & elevations - drawing no. D5H223
(received 12/12/11)

The Buckingham proposed floorplans & elevations – drawing no. D5H261
(received 12/12/11)

The Cambridge proposed floorplans & elevations – drawing no. D4H133
(received 12/12/11)

The Highgrove proposed floorplans & elevations – drawing no. D5H276
(received 12/12/11)

The Oxford proposed floorplans & elevations – drawing no. D4H126
(received 12/12/11)

The Richmond proposed floorplans & elevations – drawing no. DH4202
(received 26/3/12)

The Salisbury proposed floorplans & elevations – drawing no. D4H153
(received 12/12/11)

The Sandringham proposed floorplans & elevations – drawing no. D5H248
(received 12/12/11)

The Worcester proposed floorplans & elevations – drawing no. D3H111
(received 12/12/11)

The Broadway Evesham proposed floorplans & elevations – drawing no. D3H081/
D2H068/ D3H078 (received 26/3/12)

The Letchworth proposed floorplans & elevations – drawing no. D3H095
(received 12/12/11)

The Stratford proposed floorplans & elevations – drawing no. D4H114
(received 26/3/12)

The Warwick proposed floorplans & elevations – drawing no. D3H102
(received 26/3/12)

Feature garage floor plans and elevations rev A (26/3/12)

Richborough Estates

SCHEDULE 2

APPROVED PLANS AND DOCUMENTS: LAND TO THE EAST OF SCHOOL LANE

Flood Risk Assessment (received 13/12/11)

Site Location Plan (received 13/12/11)

Concept Masterplan – drawing no. 11-008-PUD-P002 Rev B (received 13/12/11)

School Lane access – drawing nos. HEY/09 001 P7 & CBO-0019-002

Richborough Estates



Department for Communities and Local Government

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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.



Appeal Decision

Inquiry Held on 23-24 July 2019

Site visit made on 25 July 2019

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2019

Appeal Ref: APP/A0665/W/19/3220360

Land at The Hollies, School Lane, Hartford, Northwich

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by J Masters and P Murray of Bridgemere Land plc and Redrow Homes Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 17/01954/FUL, dated 26 April 2017, was refused by notice dated 7 November 2018.
 - The development proposed is residential development comprising 258 No. dwellings, together with roads, drainage and open space etc.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development comprising 258 no. dwellings, together with roads, drainage and open space etc at Land at The Hollies, School Lane, Hartford, Northwich in accordance with the terms of the application, Ref 17/01954/FUL, dated 26 April 2017, subject to the conditions in the attached Annex.

Procedural Matters

2. The number of dwellings referred to in the description of development in the fourth bullet point of the above header is different to the 276 on the original planning application form. However, the proposals were changed prior to the Council making its decision. The Council therefore made its decision based on the reduced number of dwellings referred to in the above header. The reduction from 276 to 258 dwellings is also agreed by the parties in the submitted Statement of Common Ground. I have therefore determined the appeal on that basis.
3. The reference to 'etc' in the description of development in the above header is taken from the original planning application form. However, it was clarified at the Inquiry that the use of that term does not relate to any particular additional aspect of development. I have determined the appeal on that basis.

Main Issue

4. Whether or not the traffic generated by the proposed development would be adequately accommodated on the local highway network taking account of its capacity and levels of congestion.

Reasons

Main issue

5. It is not disputed that there is currently congestion on the local highway network at peak times. That was also the case when a previous appeal for outline planning permission for up to 350 dwellings¹, was allowed relating to land comprising the appeal site and that to its north-west. Another appeal², relating to an outline proposal for, amongst other things, 300 dwellings at another site in Hartford was also allowed at the same time.
6. Only 279 of those dwellings on the first of the above appeal schemes came forward through reserved matters consent, which are now largely complete. The proposed development would therefore represent a net increase of 187 dwelling over the maximum number allowed under that previous outline proposal. It was found in relation to those previous appeals that the proposals would not have a severe impact on the transportation network with reference to the highway junctions in Hartford albeit that there would be an adverse but limited impact in relation to the morning peak queuing on The Green and on Chester Road in an eastbound direction.
7. Whilst the above appeal decisions are material considerations which I have had regard to, it is important to consider the current conditions relating to the capacity of the highway network taking account of new development. In that respect I note that in the intervening period since those appeal decisions, there have been changes in circumstances. This includes significant new housing developments in the area, and improved pedestrian crossing facilities at the junctions of Chester Road with Bradburns Lane and The Green giving greater priority to the pedestrian over the convenience of car users. However, there has also been the partial closure of Warrington and Vale Royal College (Mid Cheshire College of Further Education), likely to have reduced traffic to and from that site.
8. Paragraph 109 of the National Planning Policy Framework (the Framework) states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. This is also reflected in policy TC1 of Hartford's Neighbourhood Plan (HNP). I will consider the matter of highway safety under other matters. In respect of this main issue I have therefore considered whether the residual cumulative impacts on the road network would be severe.
9. The proposed development would inevitably add to the existing traffic flows. However, those flows in the peak periods vary from day to day. The significance of those existing variations, including in relation to where noticeably different outlier flow figures have been identified, is disputed by the parties. The Council claims, with the use of 2013 and 2018 data relating to the Chester Road that typically the daily variation in peak hour traffic flows is less than plus or minus 5%, albeit with there being two occasions where the variation is higher.
10. Furthermore, at the Inquiry, the Council submitted a comparison of daily variation calculations during specific reporting periods in 2018 and 2019

¹ Ref APP/A0665/A/12/2179374

² Ref APP/A0665/A/12/2179410

showing ranges at peak times within those periods to be less than 10% excluding outlier figures on specific days. The noticeably lower peak time flows on those days therefore increase the percentage variations. It was also agreed that there has been no investigation as to the reasons for those outliers or analysis carried out to demonstrate that they are true outliers that should be ignored. Similarly, little justification for ignoring those higher variations relating to the 2013 and 2018 data referred to above has been provided. These factors relating to the variation in existing flows therefore cast some doubt over whether there would be a clearly noticeable increase in daily traffic flows locally as a result of the proposal.

11. I have also had regard to the Council's submissions forecasting the effects of the proposal on total travel time and distance on the local highway network relating to an increase in the number of trips of approximately 0.13%. This shows that there would be additional total travel time and distance added to the network. The Council also points to the likely disproportionately greater effect of the added development traffic on the network compared with existing consented housing sites. However, it is not clear that those effects would cause significant or noticeable displacement of existing trip routes or times of travel across the network. This is also in light of having received little substantive evidence of existing problems associated with displaced traffic.
12. The evidence indicates that there has been some peak hour spreading of traffic flows within the network since 2012, more evident on Chester Road, east of Castle Court. However, taking account of daily traffic flow variations, the general extent of that effect is not clear. Furthermore, on School Lane, peak spreading has not been demonstrated to have occurred to any clear extent since 2012. Given the additional trip times and distance forecast for the network as a result of the proposal, there would be a likelihood of some peak hour spreading. However, in light of those existing situations and due to the uncertainty in respect of the impact of the proposal on traffic flows referred to previously, it is not clear that any such spreading would amount to a significant effect.
13. I have also considered the identified very small projected increases in average journey time and distance travelled of each passenger car unit (PCU). Even taking account of the effects not being evenly distributed across the highway network, such increases would be likely to be imperceptible to drivers, amounting to a small number of seconds and metres respectively, not disputed by the parties. Like my colleague in respect of the previous outline appeal scheme for up to 350 dwellings referred to previously, I acknowledge that this is a matter of driver convenience, where relevant local and national policy concerns the impacts on the highway network. Nevertheless, it is an indicator that attracts some weight in support of my findings above in respect of the impact on the local highway network.
14. Although peak hour spreading and any displacement of trips is not ideal, I therefore consider that this would not be such as to amount to a significantly harmful impact on the local highway network and its ability to meet the needs of its users.
15. The success of the measures relating to the Travel Plan for the outline scheme on the adjacent site to the north-west in minimising additional traffic congestion is disputed. Nevertheless, it is not disputed by the Council that the

proposed Travel Plan would be appropriate and acceptable, the aim being to encourage sustainable travel.

16. In terms of the likelihood of prospective residents using alternative modes of transport to the car, it is common ground between the Council and appellants that the site is fundamentally in a sustainable and accessible location, albeit that the degree to which that is the case is disputed. I have had regard to trips by bus being less likely due to the distance to bus stops, limitations in the frequency of the service and extent to which destinations are accessible by this mode and journey times. Nevertheless, the site is within the defined boundary of the settlement, albeit on its edge. Furthermore, the proposed dwellings would be within walking distance of many of the local facilities and services including shops, community hall, churches and at least two primary schools and one secondary school. Walking to the local schools would therefore be a likely factor in minimising any addition to school-run traffic during periods of existing congestion.
17. I have taken account of claims that the pedestrian route to Hartford Primary School alongside the heavily used School Lane would make walking an unattractive option. However, I have received no substantive survey or documentary evidence to indicate that this is currently preventing such use of that route, including by residents of the new dwellings immediately to the north-west of the site, nor that it would be likely to do so for prospective residents of the proposed development.
18. Notwithstanding the potential for walking and cycling to any employment destinations within the vicinity of the site, the majority of trips to work, due to the distances involved, would be likely to be by car. However, there would remain the potential for some trips to be made by train to larger centres further afield such as Crewe, Liverpool, Chester and Manchester. The distance to the rail stations would make accessibility by foot less likely. Nevertheless, they would be likely to be within the scope of fairly short cycle rides.
19. For the above reasons relating to the general sustainability and accessibility of the site's location, it is likely that alternative travel modes to the car would be a realistic option for a variety of trips made by prospective residents, including at times of peak traffic flows. This would therefore potentially reduce the extent of any effects on the highway network from additional development traffic.
20. I have had regard to another appeal decision referred to by the Council concerning a residential development of up to 650 dwellings in Leckhampton³. In particular this decision highlights the need to consider whether the residual cumulative impacts of development would be severe, taking account of the effect of the condition of the highway network and all development commitments. However, I note that that decision related to a scheme where the effects of displacement were found to be clearly unacceptable. I do not consider that such clarity is demonstrated in this current case to enable me to come to the same conclusions. In any case I have determined this appeal on its merits based on all of the evidence before me.
21. Concerns have been raised by interested persons about when, and the locations at which, traffic surveys have been conducted. However, I have

³ Ref APP/B1605/W/14/3001717

received no substantive evidence to indicate that the surveys carried out have been inappropriately conducted.

22. An objective of the HNP is to prevent the traffic congestion on the highway network becoming significantly more severe where it is currently already identified as severe. That does not mean that no other traffic generating development can be built. Furthermore, policy STRAT 10 of the Cheshire West & Chester Council Local Plan (Part One) Strategic Policies (Local Plan Part One) requires, amongst other things, new development to demonstrate that additional traffic can be accommodated safely and satisfactorily within the existing highway network.
23. In this case, I consider that the proposal, for the above reasons, would not cause severe residual cumulative impacts on the road network. Therefore, the traffic generated by the proposed development would be adequately accommodated on the local highway network taking account of its capacity and levels of congestion. As such, in respect of this issue, the proposal would accord with policy STRAT 10 of the Local Plan Part One, policy TC1 of the HNP, and paragraph 109 of the Framework.

Other matters

24. The proposed development would have the benefit of providing a significant amount of new housing, including needed affordable housing, despite the Council's position in terms of currently meeting its minimum housing land supply and delivery requirements. This is in light of the Government's objective of significantly boosting the supply of homes and that the Local Plan housing targets are a minimum rather than maximum. There would also be economic benefits relating to the provision of jobs relating to the proposal's construction. These benefits together attract a significant amount of additional weight in favour of the proposed development.
25. I have had regard to concerns raised about the effect of the proposed development on the character and appearance of the surrounding area. It would occupy an undeveloped site on the edge of the settlement, albeit within the settlement boundary. It would also be visible to varying degrees from the adjacent Weaver Navigation and associated footpaths running alongside or close to it. However, any such sighting would be screened or softened to varying extents by existing mature vegetation and that proposed.
26. Furthermore, the proposed dwellings would be seen in the context of the existing new housing development immediately to the north-west of the site and their design and density would complement that scheme. It would be closer to the waterway but also, to a significant extent, at a lower level than the existing housing and so, together with intervening vegetation would be unlikely to create a dominating or incongruous form of development within that existing context. Additionally, the proposals would provide a significant amount of additional open space, publicly accessible from both the proposed development and the waterfront, which would also be likely to provide some informal recreational benefits. For these reasons, I consider that the proposal would not cause unacceptable harm to the character and appearance of the surrounding area.
27. In relation to the locally listed Hartford Blue Bridge that carries the A556 over the Weaver Navigation, this is a prominent feature of the local landscape, a

short distance from the southern corner of the site. Despite that proximity, the nearest dwellings would be set away from that corner. Furthermore, whilst the dwellings would be likely to be glimpsed from the bridge, again the intervening vegetation would be likely to significantly screen or soften them. As such, I consider that the integrity of the bridge as a non-designated heritage asset, and its setting, would be maintained.

28. I have had regard to concerns raised about highway safety at the junction of the A556 and School Lane, in particular concerning traffic queuing to turn into the latter. In this respect, the appellant proposes to increase the length of the right turn lane. The Council's highways officer considers this to be appropriate and necessary by way of mitigation, and I have insufficient substantive evidence to demonstrate to the contrary. Such measures could be secured by condition.
29. Concerns have also been raised about highway safety at the junction of Woods Road and School Lane, in particular relating to the visibility of drivers exiting from the former to the latter. That junction already serves the existing substantial housing development served by Woods Road. Although the proposed development would add to the amount traffic using that junction, I have no substantive evidence to indicate that the existing visibility splays would need to be altered as a result, or would be inappropriate to maintain safety. I have also received no substantive evidence to indicate that the additional traffic using Woods Road itself would be likely to pose a risk to highway or pedestrian safety, in terms of volume or speed.
30. In terms of air quality, the appellant has clearly demonstrated through specialist evidence that the proposed development would not be likely to cause the relevant thresholds to be breached. I have received insufficient substantive evidence to the contrary and I also note that the Parish Council withdrew its objection on these grounds prior to the Inquiry in light of additional evidence submitted on this matter.
31. I have had regard to concerns over the impact of the proposed development on local infrastructure, including schools and health facilities. The Council has confirmed since the Inquiry, and following discussion on this matter at the event, that it would not be seeking a financial contribution for the provision of education facilities. This is on the basis that there is currently a sufficient surplus of spaces in the catchment primary school. That position also takes account of the effects of existing planning permissions for housing locally and that a financial contribution for such provision has already been secured in connection with the previous outline planning permission for housing on the wider site. I have no substantive basis to consider differently to the Council on this matter. I have also not received any substantive documentary evidence to indicate that local health facilities would not be able to meet the demands of the proposed development, or that the emergency services and provision of local water supply would be negatively affected. A planning obligation has also been submitted to secure financial contributions towards local playing pitch improvements to mitigate for any additional impact in this respect.
32. I have also received no substantive technical evidence to indicate that the proposed development would be likely to be the cause of any flooding in the area. Furthermore, drainage details for the proposal could be secured by condition to ensure that surface water is appropriately controlled.

33. Concerns have been raised about the loss of habitat on the site. However, measures to protect the ecological and biodiversity interests of the site and its vicinity, including habitats and protected species, and to provide new habitat, can be secured by condition, thereby providing appropriate mitigation in respect of this issue.
34. The proposed development would inevitably generate noise during its construction phase and from the additional traffic on the roads once occupied. However, the former would be a relatively short-term effect that could be controlled to a reasonable extent by a condition to secure appropriate construction working times. In terms of additional traffic noise, I have received no substantive technical evidence to indicate that this would be at such a level as to cause unacceptable harm to the living conditions of local residents.
35. The Canal and River Trust requested a financial contribution towards improvements to the Weaver Navigation Towpath as was the case with the previous outline application for the wider site. However, I have received insufficient justification for an additional contribution over and above that original amount secured.

Conditions and planning obligation

36. The Council has suggested 22 conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Planning Practice Guidance and omitted two and amended some of the wording. I have referred to the condition numbers, cross referenced to the attached annex, in brackets for clarity purposes. There are also several pre-commencement conditions which are deemed necessary and which have been agreed by the appellant.
37. The standard condition to ensure the development is implemented within the standard time period would be necessary (1). For certainty, a condition requiring the development to be carried out in accordance with the approved plans (2) would also be necessary.
38. In the interests of the character and appearance of the surrounding area, conditions would be necessary to secure details of hard and soft landscaping, including a management and maintenance plan (7); any proposed levels changes and earthworks (10); proposed boundary treatments and any external lighting on the dwellings (11); the proposed new pond and ditch, also in the interests of the ecology of the site (17).
39. In the interests of highway safety, conditions would be necessary to secure details of temporary highway and pedestrian routings, off-highway parking for construction related vehicles, and vehicle/wheel washing facilities during the construction phase (3); and proposed highway improvement works at the A556 to increase the length of the right turn lane relating to access to School Lane (6).
40. To protect the living conditions of surrounding residents, a condition would be necessary to ensure appropriate construction working times (4). Furthermore, in the interests of the living conditions of prospective residents of the proposed dwellings, conditions would be necessary to secure details and the provision of proposed children and youth play areas and allotments (8); and public open space (9).

41. For environmental sustainability reasons, and in order to encourage alternative modes of transport to the car, a condition would be necessary to secure provision for cycle storage relating to the proposed dwellings (5).
42. In the interests of securing appropriate drainage for the site, conditions would be necessary to secure details of measures concerning surface and foul water drainage (12 and 13 respectively).
43. In the ecological and biodiversity interests of the site and its vicinity, as well as condition 17 referred to above, conditions would be necessary to protect the "No disturbance" ecological zone (14); Great Crested Newts (15); and bats (16); and to secure a long term Habitat management Plan (18); a Local Wildlife Site Protection Scheme for the construction period (19); and an updated badger survey and any necessary mitigation (20).
44. A Planning Obligation has been submitted making provision for the following:
- 30% affordable housing in accordance with policy SOC1 of the Local Plan Part One.
 - An appropriate financial contribution towards playing pitch improvements at the Moss Farm Leisure Complex, Northwich or within the wider Northwich area, in accordance with policy SOC6 of the Local Plan Part One and policy DM36 of the Cheshire West & Chester Council Local Plan Part Two: Land Allocations and Detailed Policies. This would be necessary in the interests of the living conditions of prospective residents and as sufficient provision for such facilities would not be provided on the site;
 - Implementation of the submitted Travel Plan including the appointment of a Travel Plan Co-ordinator and appropriate provision for financial contributions towards its implementation and the provision of a reserve fund. Furthermore, on first occupation of each dwelling, the occupiers would be provided with a voucher towards the purchase of a cycle or scooter. These measures would be in accordance with policy STRAT 10 of the Local Plan Part One, and necessary in the interests of environmental sustainability, and in order to encourage alternative modes of transport to the car.
45. The Council has submitted a Statement of Compliance with the Community Infrastructure Levy Regulations 2010 (CIL Regulations). Based on that evidence, and relevant development plan policies, I am satisfied that the provisions would meet the tests set out in paragraph 56 of the Framework and Regulation 122(2) of the CIL Regulations.

Conclusion

46. For the above reasons, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR

ANNEX – CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location Plan – 1447-02-02-PL002;
Planning Layout – 1447-02-02-PL001 rev G;
1447-02-02-PL008 Boundary Treatment Layout Rev B;
1447-02-02-PL006 Materials Layout Rev B;
1447-02-02-PL004 Affordable Housing Layout Rev B;
Avon/Avon3 House Type – Five block/four block/three block/two block;
Alton Apartment Block - Alton Apartment Block dwg refs: 201 and 401;
Ludlow House Type - Ludlow-EF_LUDL_SM.3.0;
Warwick House Type - Warwick-EF_WARW_DM.5.0;
Amberley House Type - Amberley-EF_AMBY_DM.6.0;
Stratford House Type- Stratford-EF_STRA_DM.7.0;
Marlow House Type - Marlow-EF_MARO_DM.1.0;
Oxford House Type - Oxford-EF_OXFO_DM.2.0;
Oxford Lifestyle House Type - Oxford Lifestyle – EF_OXFOQ_DM1.0 (re-named, previously Sherbourne House Type);
Cambridge House Type - Cambridge-EF_CAMB_DM.6.0;
Leamington Lifestyle House Type - Leamington Lifestyle-EF_LEAMQ_DM.1.0;
Shaftesbury House Type - Shaftesbury-EF_SHAF_DM.6.0;
Canterbury House Type - Canterbury-EF_CANT_DM.6.0;
Welwyn House type - Welwyn-EF_WELW_DM.6.0;
Harrogate House Type – Harrogate-EF_HARR_DM.6.0;
Sunningdale House Type - Sunningdale-EF_SUND_DM.6.0;
Henley House Type - Henley-EF_HENL_DM.5.0;
Balmoral House Type - Balmoral-EF_BALM_DM.5.0;
Richmond House Type - Richmond-EF_RICH_DM.5.0;
Garages: Double – Type 1 C-DG01 1 001 rev E, Double - Type 2 C-DG02 1 001 rev D, Single - Type 1 C-SG01 1 001 rev E, Double – Type 12;
1447-02-02-PL006 Materials Layout Rev B;
Illustrative Landscape Masterplan rev J - dwg P16-0429_100-J;
Boundary treatments: Brick wall, Post and rail fence, Timber fence and Timber gate.
3. Details of temporary highway vehicle and pedestrian routings, suitable off-highway parking for all construction related vehicles and vehicle cleansing/ wheel washing facilities shall be submitted to and approved in writing by the local Planning Authority prior to the commencement of the development. The development must then be carried out in strict accordance with the agreed details.

4. Construction works, including deliveries to or dispatched from the site, shall not take place outside 08.00 to 18.00 hours Mondays to Fridays and 08.00 to 13.00 hours on Saturdays, nor at any time on Sundays or Bank Holidays. There shall be no deliveries by HGVs to the site between the hours of 08.00 to 09.00 and 17.00 to 18.00. Any variation to the above hours of works and deliveries shall be submitted to, and approved in writing by, the local planning authority prior to any such variation being implemented.
5. Prior to occupation of the development hereby approved details of cycle storage for each dwelling shall be submitted to, and approved in writing by, the local planning authority. No dwelling shall be occupied until the cycle storage relating to it has been provided in accordance with the approved details. The cycle storage shall thereafter be retained.
6. Development shall not begin until details of the proposed highway improvement works at the A556 to increase the length of the right turn lane, as indicated on the Vectos Drawing 141220B_A01, including all associated works within the public highway, have been submitted to, and approved in writing by, the local planning authority. The development shall not be occupied until the agreed highway works have been constructed in accordance with the approved details.
7. Prior to the commencement of above ground development, details of the proposed hard and soft landscaping scheme shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - A 10 year management and maintenance plan
 - Details of the footpath layout within the green areas of the site. These should be minimal and located so as to cause as least disturbance to the retained habitats as possible.

Development and landscaping management and maintenance shall be carried out in accordance with the approved details. Any trees, hedgerow or woodland retained as per the landscaping scheme that, within 10 years of occupation of the proposed development, dies, is removed, or in the opinion of the Local Planning Authority becomes seriously damaged or diseased, shall be replaced in the next planting season with trees/hedgerow of the same approved specification.

8. Prior to the commencement of above ground development, details of the provision for children and youth play and allotments shall be submitted to and approved in writing by the local planning authority. Details shall include an implementation strategy outlining timescales for provision. Development shall be carried out in accordance with the approved details.

9. Prior to the commencement of above ground development, a scheme for the provision of public open space in accordance with the Illustrative Landscape Masterplan rev J, dwg P16-0429_100-J, including management, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed scheme.
10. Prior to the commencement of development details of any levels changes and earthworks shall be submitted to and approved in writing by the local planning authority. These details shall include existing and proposed topographical plans. Development shall be carried out strictly in accordance with the approved details.
11. Prior to occupation of the development hereby approved details of the proposed boundary treatments and any external lighting on the dwellings shall be submitted to and approved in writing by the local planning authority. Boundary treatments and lighting shall be provided in accordance with the approved details prior to the occupation of the dwelling they relate to.
12. Prior to the commencement of development details of surface water drainage shall be submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details.
13. Prior to the commencement of development details of a scheme for the disposal of foul water shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
14. Prior to the commencement of development details of the "No disturbance" ecological zone along the northern woodland boundary edge and the north-eastern field within the site boundary should be submitted to and approved in writing by the local planning authority. Details shall include appropriate fencing and signage. Development shall be carried out in accordance with the approved details.
15. Development shall be carried out in accordance with the recommendations detailed in The Hollies Hartford Great Crested Newt Mitigation Strategy September 2018 version 3.0 report by TEP (ref 6252.008).
16. Prior to the commencement of development, a lighting scheme for the site and Bat box scheme (including on mature trees and boundary dwellings) shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate the recommendations of the Hollies Hartford Bat Activity 2017 and 2018 Report by TEP and The Hollies Ecological Assessment September 2018 Report by TEP. Development shall be carried out in accordance with the agreed schemes.

17. Prior to their provision details of the new pond and ditch proposed, including profiles and planting, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
18. Prior to occupation a long term 25 Year Habitat Management Plan (to begin from occupation of the final dwelling) shall be submitted to and approved in writing by the local planning authority. The approved management plan shall be adhered to for the 25 years following occupation of the final dwelling on site.
19. Prior to the commencement of development, a Local Wildlife Site Protection Scheme for the construction period shall be submitted to and agreed in writing by the local planning authority. This shall include details of protective fencing and silt pollution prevention measures. Development shall be carried out in accordance with the approved scheme.
20. Prior to any clearance works taking place on site an updated Badger survey, including any necessary updated mitigation strategy, shall be submitted to and approved in writing by the local planning authority. If an updated mitigation strategy is required development shall be carried out in accordance with the approved updated mitigation.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Philip Robson of Counsel

Instructed by Chris Tsompani,
solicitor of the Council

He called:

Gary Jones

Senior Technical Leader with Atkins

Also appeared:

Rob Charnley

Planning Project Manager and case
officer

FOR THE APPELLANT:

Paul Tucker QC of Counsel

Instructed by Matthew Gilbert
BSc(Hons) MRTPI, Principal, The
Planning Consultancy

He called:

Mike Axon BEng(Hons), FCIHT, MTPS

Director of Vectos

Matthew Gilbert

Principal of The Planning Consultancy

RULE 6 PARTY:

John Groves

Groves Town Planning on behalf of
Hartford Parish Council

INTERESTED PERSONS:

John Szostek

Hartford resident and Chair of
Hartford Civic Society

Rita Hollens

Councillor of Hartford Parish Council
and local resident

Bruce Ursell

Hartford resident

Sam Naylor

Hartford resident

Janet Begbie

Resident of Castle

Cllr Phil Herbert

Borough Councillor – Hartford and
Green Bank Ward

Karen Banks

Hartford resident

Dr Martin Llewellyn

Chair of Hartford Parish Council –
speaking as a local resident

Steve Farrell	Local resident
Jane Taylor	Local resident
Anonymous	Representative of Badgers Close

INQUIRY DOCUMENTS:

1. Proof of Title documents submitted by appellant.
2. Air quality sheet submitted by appellant.
3. Copy of appeal decision Ref APP/B1605/W/14/3001717 relating to Land at Kidnappers Lane, Leckhampton, Cheltenham.
4. Comparison of Daily Variation Calculations (2 sheets) submitted by Council.
5. Opening submissions on behalf of the appellant.
6. Opening submissions on behalf of the Council.
7. Evidence of Cllr Phil Herbert as read out.
8. Evidence of John Szostek as read out.
9. Evidence of Dr Martin Llewellyn as read out.
10. Evidence of Bruce Ursell as read out.
11. Evidence of Rita Hollens as read out.
12. Copy of working draft of Section 106 Agreement.
13. Anonymous letter submitted via Cllr Herbert.
14. Statement of Compliance with Community Infrastructure Levy Regulations 2010 submitted by Council.
15. Copy of draft conditions suggested by the Council in the event of the appeal being allowed.
16. Copy of Council document: Home to educational establishment transport policy.
17. Copy of Council's Proposals Plan relating to area including appeal site.
18. Letter from The Planning Consultancy dated 24 July 2019 relating to suggested pre-commencement conditions by the Council, in the event of the appeal being allowed.
19. Closing submissions on behalf of the Council.
20. Closing submissions on behalf of the appellant.
21. Copy of track changes version of draft Section 106 Agreement.
22. Clean but unsigned version Section 106 Agreement.



Department for
Communities and
Local Government

Nick Graham
GVA Grimley Ltd
Central Square
Forth Street
Newcastle upon Tyne
NE1 3PJ

Our Ref: APP/P2935/A/14/2212989

15 December 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY BARATT, DAVID WILSON HOMES NORTH EAST AND TEES
VALLEY HOUSING
LAND SOUTH OF A196, STOBHILL, MORPETH, NORTHUMBERLAND
APPLICATION: REF 13/02416/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Pete Drew BSc(Hons), DipTP(Dist), MRTPI, who held a public local inquiry on 22-25 and 29-31 July 2014 into your clients' appeal against a failure by Northumberland County Council (the Council) to give notice within the prescribed period of a decision on an application for planning permission for a development of 396 houses (use class A3), access, landscaping and associated infrastructure on land south of the A196, Stobhill, Morpeth, Northumberland (application ref: 13/02416/FUL dated 9 August 2013).
2. On 17 February 2014, the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 to Schedule 6 to, the Town and Country Planning Act 1990 because the appeal involves proposals for residential development of over 150 units or on a site of over 5ha which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with this recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers are to that report.

Christine Symes
Planning Casework Division
Department for Communities and Local Government
3rd Floor, Fry Building
2 Marsham Street
London, SW1P 4DF

Tel 0303 444 1634
Email pcc@communities.gsi.gov.uk

Procedural matters

4. The Secretary of State notes that the proposed development falls within the description of development at paragraph 10(b) of Schedule 2 of the Town and Country Planning (EIA) Regulations 2011, being an urban development project on a site exceeding 0.5ha (IR19). For the reasons set out in IR19-21, he agrees with the Inspector that the proposal is not EIA development and does not require an Environmental Statement (IR21).
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. However, copies of these representations will be made available on written request.

Policy considerations

6. In deciding the appeal, 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.
7. In this case, the development plan comprises the saved policies in both the Northumberland County and National Park Joint Structure Plan (SP) (2005) and the Castle Morpeth Local Plan (LP) (2003) (IR23-24). The Secretary of State considers the development plan policies of most relevance to the appeal are those set out in IR22-23.
8. Other material considerations which the Secretary of State has taken into account include: The National Planning Policy Framework (the Framework); the Planning Practice Guidance (the Guidance); and the Community Infrastructure Levy (CIL) Regulations.
9. With regard to the emerging development plan, for the reasons set out in IR191-194, and having applied paragraph 216 of the Framework, the Secretary of State agrees with the Inspector that the emerging Northumberland Core Strategy (CS) can be given only limited weight at the present time (IR194); and, for the reasons in IR195, that extremely limited weight can be given to the Morpeth Neighbourhood Plan (NP) (IR195).

Main issues

Prematurity

10. For the reasons set out in 196-203, the Secretary of State considers that the claim by Hepscoff and Morpeth Together that the proposals are premature has not been substantiated (IR204).

Whether relevant policies for the supply of housing are out of date

11. The Secretary of State has carefully considered whether relevant policies for the supply of housing are out of date. For the reasons set out in IR205-220, and in accordance with paragraph 49 of the Framework, he agrees with the Inspector that as the Council cannot demonstrate a 5-year supply of deliverable housing sites, relevant

policies for the supply of housing should not be considered up-to date, and that this includes LP policies C1 and MC1 which relate to settlement boundaries (IR221). The Secretary of State agrees with the Inspector at IR220, however, that those policies remain part of the development plan, albeit he considers that they attract very limited weight in view of the very marked shortfall of housing land supply which the Inspector identifies (IR212) as being as little as 1.66 years supply of housing for the City Region Commuter Area. Having applied paragraph 215 of the Framework, the Secretary of State considers that these LP policies are inconsistent with the housing supply policies in the Framework (paragraph 47).

Character and appearance

12. The Secretary of State has carefully considered the effect that the proposed development would have on the character and appearance of the area (IR222-247). For the reasons given in those paragraphs, he agrees with the Inspector that the development would harm the character of the landscape although, because of its relatively low landscape value, not to a significant extent (IR248). He also agrees with the Inspector's conclusion that the appearance of the area would be harmed to a significant extent, broadly along the A196 corridor that demarcates the northern boundary of the site (IR248). Like the Inspector, the Secretary of State recognises that the only impact would be on views within close proximity of the site and, in that sense, there would only be localised harm within the immediate area of the site, albeit by virtue of the size of the site that area is quite extensive (IR249). The Secretary of State has concluded that policies C1 and MC1 are not up-to-date but he acknowledges that there is tension between the proposed scheme and those policies, which seek to prevent development in the countryside beyond settlement boundaries, and the appeal proposal. He agrees with the Inspector that the proposed development would comply with LP Policies C4 and MC3 (IR250).

Effect on the local road network

13. The Secretary of State notes that the main parties continued discussions right up to and during the inquiry in order to reach agreement on this matter, and he agrees with the Inspector that this positive approach should be recognised (IR251).
14. For the reasons set out in IR251-258, the Secretary of State agrees with the Inspector that there is a high degree of certainty that the Morpeth Northern Bypass (MNB) will proceed and that in this most likely scenario the development, taken with existing commitments, should not be refused planning permission on transport grounds as the impact on the network would not be severe (IR264). He also agrees with the Inspector that there is no policy basis to support the contention that the development would negate the benefit of the MNB (IR264).
15. For the reasons in IR259-263, the Secretary of State agrees with the Inspector that, were the MNB not to proceed, the residual cumulative impacts of the proposed development would also not be severe; and that there are other significant material considerations that weigh heavily in favour of granting planning permission in this highly unlikely scenario (IR264).
16. Overall, the Secretary of State agrees with the Inspector's conclusion that, in terms of the effect on the local road network, the proposed development would not conflict with Development Plan Policy or the Framework (IR264).

Effect on flooding and sewage systems

17. Like the Inspector (IR269 and 277), the Secretary of State attaches great weight to the advice given by the statutory undertakers on these matters. For the reasons set out in IR265-278, he agrees with the Inspector, subject to the conditions set out in Annex A to this letter, that the effect of the proposed development on flooding and the sewage system would be acceptable; and that there are no cogent and compelling reasons to depart from the advice given by the statutory undertakers that cannot be addressed by the imposition of conditions (IR279).

Whether existing schools have the capacity to accommodate children generated by the development

18. For the reasons set out in IR280-289, the Secretary of State agrees with the Inspector's conclusion that there are sufficient spaces in the town's schools to accommodate the children who might come to live on this site if permission were to be granted, and that there is no basis to require contributions towards the provision of additional school accommodation (IR289).

Affordable housing

19. For the reasons set out in IR290-308, the Secretary of State agrees with the Inspector that, despite the weak policy basis to require such provision, the 119 affordable houses would make a positive contribution towards meeting the high demand for affordable homes in Morpeth, and that the proposed mix of properties is aligned with needs (IR309). For the reasons in IR290-308 also, the Secretary of State, like the Inspector, does not accept that only limited weight should be given to the affordable housing provision envisaged in the section 106 agreement and he attaches significant weight to the affordable housing offer (IR309).

Sustainable development

20. The Secretary of State has had regard to the Inspector's consideration of the New Homes Bonus payments and an uplift in Council Tax revenue (IR317). On the basis of the available evidence in this case, the Secretary of State agrees with the Inspector that the New Homes Bonus cannot lawfully be taken into account as a material consideration, as there is not a clear indication that the Council intends to use the receipts in a way which is material to the development being proposed. However, he disagrees with the Inspector's conclusion in IR317 that, pending the outcome of this appeal, the Council could not reasonably make firm plans for what the associated New Homes Bonus receipts might be used for. The Secretary of State considers that it was open to the Council to take a view on how it would use the funds if the appeal were to be allowed.

21. The Secretary of State has given consideration to the Inspector's remarks at IR310-315 which refer to 2 leading High Court judgments (*William Davis* and *Dartford*) and which set out the Inspector's view that paragraph 14 of the Framework requires a 2-stage test whereby the decision maker must assess whether a scheme is sustainable development before applying the presumption in favour of sustainable development (IR312). The Secretary of State observes that that Mrs Justice Patterson in *Dartford Borough Council v. Secretary of State for Communities and Local Government and Landhold Capital Limited* rejected elevating *William Davis* to a formulaic sequential approach to paragraph 14 of the Framework. However, having had regard to the

Framework as a whole, the Secretary of State agrees with the Inspector that the presumption in favour of sustainable development applies in this case, for the reasons given below.

22. For the reasons set out in IR316 and 318-329, the Secretary of State agrees with the Inspector that the proposed development would fulfil the economic role of sustainable development, and would contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place and at the right time to support growth (IR330). He agrees with the Inspector that this is a material consideration to which significant weight should be given in the overall balancing exercise (IR330).
23. For the reasons in IR331, the Secretary of State agrees with the Inspector that the proposed development would fulfil the social role of sustainable development, and he agrees that this is a consideration to which significant weight should also be given.
24. For the reasons in IR332-333, the Secretary of State agrees with the Inspector that, on balance, the proposed development would not fulfil the environmental role of sustainable development, and he agrees that, although in this respect there are some positive and neutral factors, the overall conclusion must be one of modest harm (IR334).
25. Overall, the Secretary of State agrees with the Inspector's conclusion in IR337 that the positive attributes of the development, in terms of economic, social and some limited environmental gains, outweigh the negative environmental impact, and that the proposal would be sustainable development. He has gone on to consider the planning balance below.

Other Matters

26. Like the Inspector, and for the reasons in IR343-344, the Secretary of State finds no basis to conclude that the proposed development would harm neighbours' living conditions (IR344). He also agrees with the Inspector that the potential impact on Stannington Station Road is not an adverse consideration that should weigh against the proposed development (IR347).

Overall planning balance

27. As indicated above, in deciding the appeal, 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. He has concluded at paragraph 11 above that as the Council cannot demonstrate a 5-year supply of deliverable housing sites, relevant policies for the supply of housing should not be considered up-to date, in accordance with paragraph 49 of the Framework. Those policies include LP policies C1 and MC1, to which he has attributed very limited weight having applied paragraph 215 of the Framework. Whilst the Secretary of State has identified some tension between the appeal scheme and policies C1 and MC1 (paragraph 12 above), in view of the very limited weight which he attributes to those policies he does not consider that this tension amounts to a weighty material consideration in his determination of this appeal. As to other relevant policies in the development plan, the Secretary of State has identified no conflicts and, in common with the Inspector (IR339), he considers

that to be a highly significant finding. He has concluded that the scheme is in overall accordance with the development plan.

28. Given his conclusion that policies for the supply of housing are not up-to-date, the Secretary of State considers that paragraph 14 of the Framework falls to be considered. The Secretary of State has already set out his conclusions as to the scheme's sustainability and he has gone on to consider whether any adverse impacts of granting permission would significantly and demonstrably outweigh the scheme's benefits when assessed against the Framework as a whole.
29. The Secretary of State agrees with the Inspector that the proposal would provide a substantial amount of market housing in an area where the lack of a 5-year housing land supply means that housing policies in the Development Plan are out-of-date, and that these factors weigh significantly in favour of allowing the appeal (IR339). He also agrees that significant weight should be given to the economic benefits of the proposal, including direct employment and the multiplier effect in the local economy, and also to the social benefits, which include much needed affordable housing (IR339). Like the Inspector, the Secretary of State considers that, subject to imposition of a planning condition, the proposed development would improve the flooding situation downstream and that, whilst the improvement would be small, it is a positive factor that weighs moderately in favour of the appeal, as does the net benefit to ecology, and the provision of public access to a large proportion of the site (IR339). He also agrees with the Inspector that the Framework requires high quality design and that therefore this attribute of the scheme is not to be counted as an additional benefit (IR339). However, as noted at paragraph 27 above, the Secretary of State has found some tension with LP policies C1 and MC1, so he does not share the Inspector's view (IR339) that there is a complete absence of conflict with Development Plan policy.
30. The Secretary of State agrees with the Inspector that the proposal would harm landscape character, albeit not to a significant extent, and the appearance of the area, to a significant extent, but along a fairly localised stretch of the A196 corridor (IR340). He also agrees that the other factors examined are broadly neutral; and that the development should not be refused on transport grounds (IR340).
31. In conclusion, the Secretary of State agrees with the Inspector that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the clear and multiple benefits of the proposed development (IR340).

Conditions and obligations

32. The Secretary of State has considered the schedule of conditions included within the IR, the Inspector's remarks at IR163-182 and 341, paragraphs 203 and 206 of the Framework and the Guidance. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.
33. The Secretary of State has also considered the documentation on the s106 Agreement, the Inspector's comments on these at IR183 – 188 and 341, paragraphs 203-205 of the Framework and the Guidance. Overall, he shares the Inspector's view that the provisions offered by the Agreement would accord with the tests set out at paragraph 204 of the Framework and Regulation 122 of the CIL Regulations and that no further contributions are justified in relation to school accommodation (IR1341).

Overall Conclusions

34. The Secretary of State has concluded that, notwithstanding the conflicts identified above, the scheme remains in overall accordance with the development plan as a whole. He has also concluded that the material considerations in favour of the development outweigh the identified conflicts with certain policies in the development plan. He has concluded that the scheme amounts to sustainable development and he is satisfied that the adverse impacts of granting planning permission in this case would not significantly and demonstrably outweigh the clear and multiple benefits of the proposed development.

Formal Decision

35. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your clients' appeal and grants planning permission for a development of 396 houses, access, landscaping and associated infrastructure on land south of the A196, Stobhill, Morpeth, Northumberland, in accordance with application ref: 13/02416/FUL, dated 9 August 2013.

36. 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.

37. 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

38. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

39. A copy of this letter has been sent to the Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Christine Symes

Authorised by Secretary of State to sign in that behalf

Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall not be carried out other than in complete accordance with the following approved plans:
 - Site Location Plan GIS21912/01-01;
 - Presentation Layout NE-18-06K;
 - House Type Portfolio NE-18-09B; and,
 - Materials Plan NE-18-15B.
3. No development shall commence until samples of the materials identified on drawing No NE-18-15B, which are to be used on the external elevations of the dwellings hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be constructed other than in accordance with these approved materials.
4. No dwelling hereby approved shall be commenced until details of the provision of refuse and recycling storage for each dwelling, and a programme for implementation, have been submitted to and approved in writing by the Local Planning Authority. The refuse/recycling area shall have a direct and level access from the street to the dwelling and be capable of accommodating the appropriate number of refuse/recycling bins. Thereafter, no dwelling shall be occupied until the refuse and recycling facilities for each individual dwelling has been provided in accordance with the approved details and implementation schedule.
5. Development shall not commence until a detailed scheme for foul flows has been submitted to and approved in writing by the Local Planning Authority, in consultation with Northumbrian Water. The scheme should:
 - specify that foul water from the development hereby approved shall be disposed of via a connection to the 450mm foul sewer within Coopies Field Industrial Estate downstream from manhole 3101; and
 - provide details of the treatment of foul flows from the development hereby approved.

The dwellings hereby approved shall not be occupied until the scheme for the treatment of the foul flows has been completed and commissioned in accordance with the approved details.
6. Development shall not commence until details of the implementation, maintenance and management of a scheme for surface water management using a sustainable urban drainage scheme has been submitted to and approved by the Local Planning Authority. The scheme shall be in broad accordance with drawing No MD0777.00.20 Rev C and designed to dispose and attenuate surface water up to the 1 in 100 year plus climate change event from the development and shall limit discharge from the development to 16l/s or 50% of the green field run off rate,

whichever is less, for all rainfall events. The scheme shall be implemented in accordance with the approved details, which shall include:

- i. a timetable for its implementation; and,
- ii. a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

7. The building envelope of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise, affording an internal level of noise as follows, with windows closed and other means of ventilation provided:
 - 35 dB (A) LAEQ (07.00 to 23.00 hours) in living rooms;
 - 30 dB (A) LAEQ (23.00 to 07.00 hours) in bedrooms; and
 - 45 dB (A) LAFmax not normally exceeded in bedrooms between 23.00 to 07.00 hours.
8. The dwellings of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise in the rear gardens of each dwelling, affording a maximum external level of 55 dB(A) LAeq.
9. Prior to the commencement of development, details of the reflective acoustic barrier proposed in the Revised Noise Impact Assessment (NVA/4210/12/3774 Rev A) (paragraph 5.06) shall be submitted to, and approved in writing by, the Local Planning Authority. The submission should include a plan indicating the location, extent, performance and maintenance of the proposed reflective acoustic barrier. The approved barrier shall be constructed prior to the occupation of the first nearest dwelling which it is designed to protect and shall thereafter be retained and maintained in accordance with the approved details.
10. Prior to the commencement of development, details of protective measures, which should include a suitable gas-resistant, heavy-duty membrane to be incorporated in the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The membrane shall thereafter be incorporated into the development prior to the construction of each of the dwellings hereby approved.
11. If during development contamination not previously considered is identified, then an additional method statement regarding this material shall be submitted to, and approved in writing by, the Local Planning Authority. No dwelling shall be occupied until the method statement has been submitted to, and approved in writing by, the Local Planning Authority, and measures proposed to deal with the contamination have been carried out.
12. No development shall commence until a fully detailed landscaping scheme, showing both hard and soft landscaping proposals (the detailed landscape planting plan must include at least one pond, the planting of locally native trees, shrubs, wildflowers and grasses of local provenance) has been submitted to and approved in writing by the Local Planning Authority. This shall include, where required, the planting of trees and shrubs including a fully detailed planting schedule setting out species, numbers, densities and locations, provision of cross site wildlife corridor linkages and sustainable urban drainage ponds, provision of screen walls or fences, the mounding of earth, the creation of areas of hardstanding, pathways etc, areas to be

seeded with grass and other works or proposals for improving the appearance of the development. The scheme shall be carried out in accordance with the approved drawings not later than the expiry of the next planting season following commencement of the development, or within such other time as may be agreed in writing by the Local Planning Authority. The landscaped areas shall be subsequently maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants, or areas of seeding or turfing comprised in the approved landscaping plans, which fail within a period up to five years from the completion of the development.

13. No development shall commence until a detailed landscape management plan, which shall provide details of the management of all landscaped areas within the site (other than domestic gardens), has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved plan shall be implemented in complete accordance with the approved details.
14. No development shall take place unless in accordance with the mitigation and recommendations detailed within the following ecological reports:
 - 'Stobhill, Morpeth, Northumberland: Initial Ecological Appraisal -Stage 1 Investigations -Draft 3', Quants Environmental Ltd, September 2013;
 - 'Stobhill, Morpeth: Breeding Bird Survey' John Thompson Ecology Services, June 2013; and,
 - 'Stobhill, Morpeth: Bat Survey Report', Quants Environmental Ltd, December 2013.
15. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars, including the Design and Access Statement [NE-18-12C, dated November 2013]; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
 - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with BS 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
 - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with details to be submitted to and approved in writing by the Local Planning Authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.

16. Before development commences a detailed scheme for the provision of the children's play areas on the site shall be submitted to and approved in writing by the Local Planning Authority, including details of the play equipment, surfacing, boundary treatments and a timetable for the construction of the areas. Thereafter, the children's play areas shall be provided in the agreed locations, in accordance with the approved details and the approved timetable.
17. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of:
 - The parking arrangements to enable all vehicles associated with the construction to park within the site at all times;
 - Measures to help control and, where possible, reduce noise, dust and dirt emissions from the site during the construction;
 - Measures to help prevent the deposit of mud and debris on public highways by vehicles associated with the construction travelling from the site;
 - Excavations and earthworks to be carried out near the railway undertaker's boundary, to ensure that that no interference with the integrity of that property/structure can occur;
 - The erection and maintenance of fencing around the site;
 - Compound provision for the storage of plant and materials used during the construction; and,
 - The siting of construction accesses) where applicable.

Thereafter, the development shall be undertaken in accordance with the approved Construction Management Plan.

18. The areas allocated for parking and turning on approved drawing No NE-18-06K shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
19. Before development commences a fully dimensioned layout plan incorporating details in respect of road drainage, street and/or other external lighting, landscaping and boundary treatments (including details of a trespass proof close-boarded fence at least 1.8m in height at the eastern boundary of the development), together with a longitudinal section of the new road and details of construction of the carriageway, footpaths and accesses, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details pursuant to the agreed timetable and thereafter those features approved pursuant to this condition shall be retained and, where appropriate, maintained.
20. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied can be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
21. All road and associated works shall be to a standard eligible for adoption in accordance with the Northumberland County Council Manuals or as agreed in consultation with the Local Planning Authority.

22. No development shall commence until a scheme of highway works along the site frontage onto the A196 has been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The scheme shall provide details for the provision of traffic calming measures and the relocation of the bus stop and its associated shelter on the westbound carriageway, in broad accordance with drawing 0887-SK-005 (Rev. A) prepared by WSP. Thereafter, the scheme shall be implemented prior to the occupation of the first dwelling hereby approved.

23. No development shall commence until additional site layout details in respect of pedestrian accessibility to bus stops, vehicle visibility splays and vehicle tracking, together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The details shall include:

- The location of pedestrian accesses from the development hereby approved to the bus stops on the A 192 and A 196;
- An increase to the radius of the vehicle access junctions from the A196 to 15m;
- The addition of block paving to cul-de-sacs; and,
- Minor adjustments to internal road geometry.

Thereafter, the development shall not be constructed other than in accordance with the approved details, pursuant to the agreed timetable.

24. No later than six months before the occupation of the first dwelling of the development hereby approved, a full travel plan shall be submitted to and approved in writing by the Local Planning Authority. The full travel plan shall be in broad accordance with the WSP Framework Travel Plan dated 13 March 2014. The full travel plan, as approved, shall be implemented in all material respects, including establishment of the long term arrangements for appointment of a travel plan co-ordinator and ensuring that travel surveys are undertaken post occupation to ensure the future success of the travel plan, with such details as agreed to be necessary being submitted to the Council.

Annex B

Late representations received

Correspondent	Date
Dr Stephen Donaldson	14 July 2014
Joao Parreira	25 September 2014
Ian Lavery MP (on behalf of Dr Donaldson)	10 October 2014

Report to the Secretary of State for Communities and Local Government

by Pete Drew BSc (Hons), DipTP (Dist), MRTPI

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

Date: 29 September 2014

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED)

NORTHUMBERLAND COUNTY COUNCIL

APPEAL BY BARRATT, DAVID WILSON HOMES NORTH EAST AND TEES VALLEY
HOUSING

DEVELOPMENT OF 396 HOUSES (USE CLASS C3), ACCESS, LANDSCAPING AND
ASSOCIATED INFRASTRUCTURE

LAND SOUTH OF A196, STOBHILL, MORPETH, NORTHUMBERLAND

Inquiry opened on 22 July 2014

Accompanied site visit convened on 31 July 2014

File Ref: APP/P2935/A/14/2212989

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Abbreviations used in the Inspector's Report

AOD	Above Ordnance Datum
BREEAM	Building Research Establishment Environmental Assessment Methodology
BS	British Standard
CIL	Community Infrastructure Levy
CRCA	City Region Commuter Area
CSH	Code for Sustainable Homes
CS	Core Strategy
DCO	Development Consent Order
DoT	Department of Transport
DP	Development Plan
dpa	dwellings per annum
EA	Environment Agency
EIA	Environmental Impact Assessment
ES	Environmental Statement
FRA	Flood Risk Assessment
FTE	full-time equivalent
GLVIA3	Guidelines for Landscape and Visual Impact Assessment Third Edition
ha	hectares
H & MT	Hepscott & Morpeth Together
IHT	The Institution of Highways & Transportation
LAP	Local Area for Play
LDS	Local Development Scheme
LEA	Local Education Authority
LEAP	Local Equipped Area for Play
LP	Castle Morpeth Local Plan
LPA	Local Planning Authority
l/s	litres per second
LTP	Local Transport Plan 2011-2026
LUC	Land Use Consultants
MNB	Morpeth Northern Bypass
NIMBY	Not in my back yard
NP	Neighbourhood Plan
pa	per annum
PAN	Pupil Admission Numbers
PTAL	Public Transport Accessibility Level
RSS	Regional Spatial Strategy
SoS	Secretary of State for Communities and Local Government
SHLAA	Strategic Housing Land Availability Assessment
SHMA	Strategic Housing Market Assessment
SoCG	Statement of Common Ground
SP	Northumberland County and National Park Joint Structure Plan
SSSI	Site of Special Scientific Interest
Suds	Sustainable urban drainage scheme
TPO	Tree Preservation Order
the Act	the Town and Country Planning Act 1990 (as amended)

the 2004 Act	the Planning and Compulsory Purchase Act 2004 (as amended)
the Council	Northumberland County Council
the Framework	the National Planning Policy Framework
the Guidance	the Planning Practice Guidance
xx	cross-examination

File Ref: APP/P2935/A/14/2212989**Land south of A196, Stobhill, Morpeth, Northumberland**

- The appeal is made under section 78 of the Act against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Barratt, David Wilson Homes North East and Tees Valley Housing against Northumberland County Council.
- The application Ref 13/02416/FUL is dated 9 August 2013.
- The development proposed is development of 396 houses (use class C3), access, landscaping and associated infrastructure.

Summary of Recommendation: That the appeal be allowed and planning permission be granted subject to conditions.**Procedural Matters**

1. The Inquiry sat for 7 days on 22-25 July and 29-31 July 2014. I convened an evening session on 29 July 2014 to enable local residents who, by reason of work, family or other commitments, might not have been able to attend during the day. This was promoted in the local newspaper and was well attended. I made an accompanied site visit on 31 July 2014, which included visits to other housing sites in the town as well as the catchment of the Hepscott Burn.
2. The SoS directed by letter dated 17 February 2014 that he would determine this appeal. The reason that was given for this is that the appeal involves proposals for residential development of over 150 units on a site of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. At its meeting on 20 February 2014 the Council's North Area Planning Committee resolved that, if it had been in a position to do so, it would have refused the planning application for the following reasons:
 - i. *The development would be located in the open countryside, beyond the settlement boundary for Morpeth as defined in the Castle Morpeth Local Plan. The granting of a large scale housing proposal on this site would represent a significant variation to the established, and developing, strategy for Morpeth and would result in the urbanisation of a currently undeveloped greenfield site outside of the established settlement boundary. The harm that the development would cause would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework. Consequently the proposal would not represent sustainable development in the context of the Framework.*
 - ii. *The proposed access arrangements to and from the site from the A196 road, and the internal layout of the site, would lead to conditions prejudicial to highway safety. Insufficient data has been provided to allow for a proper assessment to be made of the impact that the development would have on the local road network and whether the traffic impacts of the development would be severe. No appropriate strategy that considers access to and from the site by sustainable transport modes has been submitted. The development would, therefore, be contrary to one of the Core Planning Principles set out in the Framework and to Local Plan Policy H15.*

4. Attached to the end of this report are 6 lists of documents. The first is a list of documents that were submitted at the Inquiry and in this report I shall refer to them using the shorthand "DS", namely a *Document Submitted* at the Inquiry. The second is a list of documents that were circulated outside of the Inquiry and in this report I shall refer to them using the shorthand "DC", namely a *Document Circulated* outside of the Inquiry. Thirdly the parties established a list of *Core Documents* and in this report I shall refer to them using the shorthand "CD". Amongst the CD is a SoCG [CD39], which was agreed between the main parties, including H & MT, and which, amongst other things, lists the application documents [section 6]. There is also a revised SoCG on Transport [CD40], which was also agreed between the main parties, including H & MT. A Traffic & Highways Statement of Fact, signed by both main parties, was submitted at the Inquiry by way of an update [DS4]. A Landscape SoCG, signed by both main parties, was submitted at the Inquiry [DS5]. The proofs of evidence, appendices, rebuttals, addendums and summaries that have been submitted by the Council, Appellants and H & MT, respectively, are then listed.
5. In advance of closing the Inquiry the prospect that the transcript of a decided but, at that stage, unreported High Court judgment¹ would be released in the very near future, was canvassed. It was agreed that it would be necessary and appropriate to allow all main parties an opportunity to comment on the judgment and a period of 7 days was agreed to be adequate. As it happened the judgment was released on the afternoon of the day that I closed the Inquiry, whilst I was conducting the site visit. Accordingly The Planning Inspectorate wrote to the main parties [DC5] inviting views and I have taken account of the representations that were subsequently made [DC5 and DC6].

The Site and Surroundings

6. The appeal site is located to the south of Morpeth which, the Inquiry was told, is the fourth largest settlement in Northumberland, and lies in the south-east of the County, approximately 15 miles to the north of Newcastle upon Tyne. The appeal site is outside, but adjacent to, the existing urban area of Morpeth. The appeal site abuts residential development on its northern and western boundaries, albeit that this lies on the other side of the main roads that demarcate those boundaries, namely the A196 and A192, respectively. These main roads meet at the Stobhill roundabout, adjacent to the north-west corner of the appeal site, and from there the A192 runs towards Morpeth town centre.
7. The appeal site comprises 17.15ha of undeveloped greenfield land, which is in agricultural, specifically arable, use. The Landscape SoCG records that the appeal site "*...is Grade 3b and 4 and therefore not considered to be Best and Most Versatile*"². The appeal site is essentially one single parcel of land, although a ditch bounded by low hedging, which originates in roughly the centre of the site, dissects part of the field and runs broadly north-east towards the railway line that demarcates the eastern boundary of the site. This railway line is not currently used by passenger trains and the east coast main line runs broadly parallel to, but some distance to the west of, the A192.

¹ That case is now known as *Dartford Borough Council v SSCLG and Landhold Capital Limited* [2014] EWHC 2636 (Admin).

² Source of quote: paragraph 15 of Landscape SoCG, DS5.

8. There are no public rights of way across the appeal site, although there are footways along both main roads. The topography of the appeal site is largely flat although it falls generally in a south-easterly direction, away from the roundabout, from almost 56m AOD to a low point of just over 50m AOD. It is common ground that surface water from the appeal site feeds into the catchment of the Hepscott Burn that runs through the village of Hepscott which lies, at its closest point, approximately 800m to the south-east.
9. The SoCG [CD39] records that there is an established tree-belt approximately 15m in width along the majority (380m of the total boundary of 620m) of the south-east boundary of the appeal site. My inspection revealed that this comprises a mix of semi-mature deciduous and evergreen species, including field maple, ash, beech and conifers. The appeal site is presently served by a field access from the A192 in the southern corner of the site, adjacent to the existing belt of trees. The Landscape SoCG [DS5] records the existence of what it calls species-poor hedgerows to the north, west and south-east of the appeal site. At present those hedgerows are typically up to 2m in height.
10. The Landscape SoCG records that the appeal site "*...is not covered by a landscape or landscape-related designation*"³. The site is not designated by any relevant national designation, such as a Conservation Area. The nearest SSSI is Willow Burn Pasture SSSI, approximately 3km to the east of the site, and there are no designated sites within 2km of the site. The Council has confirmed that the proposed development would not affect the setting of a listed building. However the SoCG confirms that both main roads adjacent to the site, the A196 and A192, are identified as '*landscape corridors*' in the LP.
11. The SoCG [CD39] records that Morpeth railway station is approximately 930m from the appeal site's northern boundary and says that there are 4 bus stops located immediately adjacent to the site. My site inspection confirmed that all of these bus stops, one in each direction on the A192 and A196, are served by shelters. Coopies Lane Industrial Estate, which is the town's main industrial area, is agreed to be "*...immediately to the north-east of the site*"⁴. The edge of Morpeth town centre is located approximately 1.2km to the north of the site's northern boundary, but there are local shops, including a post office, convenience store, pharmacy and newsagent, within the suburb of Stobhill.

Planning History

12. The report to the Council's North Area Planning Committee on 20 February 2014 [CD33] lists the site's planning history. In 1991 an outline planning application [Ref CM/91/D/217] for residential and industrial park development on a 27 ha site was withdrawn. In 1993 an outline planning application [Ref CM/93/D/129] for a supermarket, petrol filling station and athletics arena was refused. Later that same year another outline planning application [Ref CM/93/D/507] for a supermarket and petrol filling station was also refused. In 2009 a planning application [Ref CM/20090291] for a 6,022m² supermarket and petrol filling station in the north-west corner of the site was refused and the SoCG [CD39] confirms that the rationale was one of highway impact.

³ Source of quote: paragraph 16 of Landscape SoCG, DS5.

⁴ Source of quote: paragraph 2.6 of the SoCG, CD39.

13. The SoCG [CD39] continues by saying residential development of the site was considered at the LP Inquiry in 1998. The subsequent Inspector's Report notes that *"...the Council accepts... [the site] ...is sustainable in terms of proximity to services in Morpeth and that it has few landscape features of importance. It is also relatively close to the railway station. The land is of no great significance in agricultural terms - it is not best and most versatile land. Against these matters, there is concern that the site lies entirely in the open countryside and that it is prominent in the landscape with little or no containing features. The Council is concerned that development here could set a precedent for further southward encroachment, whittling away the gap between Morpeth and Hepscott. Nevertheless, in 1974 an Inspector concluded that an appeal concerning development in this location should be allowed albeit that conclusion was overturned by the Secretary of State."*⁵ This last point is plainly relevant to the site's planning history although no copy is available.
14. The Inspector's Report concluded *"It seems to me that, on balance, the land south of Stobhillgate should be given further consideration as a housing allocation for 210 dwellings. ...a compelling argument is that the site is capable of development within the Plan period irrespective of the provision of new roads for access purposes. The uncertainty of timing associated with, for example, the ABR or A1-SENLR would not affect progress with the site. This must be a factor to which serious consideration is given. I appreciate the Council's concern that a precedent might be said to be set for further expansion southwards. However, it was accepted that this was not a concern with the present site. I agree with the Council that there should be no reference to what the site might accommodate beyond the Plan period. There is at present no defensible boundary to the south of the site and the danger of coalescence with Hepscott is a matter which should be treated seriously in the longer term. The danger could be allayed...by the extent of the site being defined by landscaping as part of a planning application, and the Local Plan itself could ensure that further southward extension is prevented."*⁶ It should be recorded that the Council did not accept the Inspector's conclusion in this respect and no part of the appeal site was allocated in the adopted LP.

The Proposals

15. The planning application, dated 9 August 2013, was made in full. It seeks planning permission for the development of 396 houses (use class C3), access, landscaping and associated infrastructure. The SoCG gives the breakdown of the proposed units to be: 10 no 1-bed homes; 128 no 2-bed homes; 136 no 3-bed homes; 108 no 4-bed homes; and 14 no 5-bed homes. Of the total, 30% would be affordable homes, comprising 119 dwellings and of these 22 would be apartments; 23 would be terraced houses; 10 would be detached houses and 64 would be semi-detached houses. The remaining 277 dwellings are broken down as 8 apartments; 28 terraced houses; 151 detached houses and 90 semi-detached houses. The affordable homes would be delivered by Tees Valley Housing, one of the joint Appellants, who are one of the leading social housing providers in this part of the country.

⁵ Source of quote: paragraph 5.17 xxiv) (f), page 95, CD5.

⁶ Source of quote: paragraph 5.17 xxiv) (f), page 96, CD5.

16. The SoCG records that approximately 5.42ha of public open space, comprising areas of landscaping, tree planting, ponds and amenity open space, would be provided as part of the development, which represents 32% of the gross site area. The SoCG also records that there would be approximately 0.26ha (2,600m²) of play space, which would be distributed throughout the site in the form of LAPs, but focussed in the centre in the form of a LEAP.
17. The Presentation Layout [drawing No NE-18-06K] shows 2 vehicle accesses are proposed onto the A196 to the north of the appeal site. These would be linked by what is labelled as the *Main Boulevard Street* that would encircle the central areas of the proposed development, emanating from which would be cul-de-sacs that would serve houses around the periphery of the site. At the heart of the development a *Central Formal Green* is proposed that would be served by footways that permeate and encircle the development. These pass through the landscaped areas that would enhance the existing landscaped features of the site, such as the hedgerow and ditch that runs towards the north-east boundary of the appeal site. There are 2 central courts, proposed to the north and south of the central green, which comprise higher density terraced houses, but the majority of the housing would be more suburban in form.
18. A full schedule of the application documents and plans on which the SoS should determine the proposal is set out in section 6 of the SoCG [CD39]. Given that the Presentation Layout is somewhat unwieldy, by reason of its size, the Design and Access Statement provides a useful overview of the scheme. It includes diagrams showing how the design was arrived at, together with indicative plans showing the main movement corridors within the site and a useful summary of the proposed development.

Environmental Impact Assessment

19. The development falls within the description of development at paragraph 10(b) of Schedule 2 of the Town and Country Planning (EIA) Regulations 2011, being an urban development project on a site exceeding 0.5ha. The Council issued a Screening Opinion, approved on 31 October 2013, which concluded *"...there are no likely significant environmental effects (positive or negative) arising from the development which will require the preparation of an EIA"*⁷.
20. The SoS has reviewed this conclusion and found that there would be some temporary effects in terms of noise and air pollution during construction phase, but this is not likely to be long term. The SoS found that there would be no likely significant long-term impacts in terms of noise, waste, contamination, flooding or complex construction. Any potential environmental impacts, which might include ecological matters, would be subject to mitigation as detailed in the appeal submission and no significant effects are likely. Consequently, whilst there might be some impact on the surrounding area as a result of this development, in combination with other nearby urban extension proposals, the SoS found that this proposal would not be of a scale and nature likely to result in significant environmental impact. On this basis, having taken into account the criteria in Schedule 3 to the Town and Country Planning (EIA) Regulations 2011, the SoS shared the Council's view that the proposed development would not be likely to have a significant effect on the environment.

⁷ Source of quote: Conclusion to Screening Opinion on page 6, CD32.

21. The SoCG [CD39] records the agreement between the main parties that the appeal proposals do not represent EIA development and that the submission of an ES is not required. Paragraph 3.11 of the SoCG says however that H & MT consider that the Screening Opinion undertaken by the Council fails to fully address the negative environmental effects of the development and that they will address the issues arising from this in their proofs of evidence. I have therefore reviewed the totality of the evidence put forward by H & MT to ascertain whether there is anything that would lead me to a different conclusion. However I find no reason to reach a different conclusion from the Council in this matter. I conclude that the proposed development is not EIA development and does not require an ES.

Planning Policy

22. The DP includes the SP, which was adopted in February 2005, and the LP, which was adopted by the former Castle Morpeth Borough Council in February 2003. The only relevant saved SP Policy is S5, which proposes an extension to the Green Belt, but it says that the precise boundary should *be defined in Local Plans*. In the circumstances, as the Committee Report [paragraph 6.2, CD33] acknowledges, its only role is to establish the strategic framework for the preparation of the emerging LP. The introduction to the LP says "*The Plan is set in the context of the Northumberland County Structure Plan which was adopted in May 1996 and which addresses planning issues for the County and the provision of land for housing to the year 2006*" [*my emphasis*]⁸. It says that the LP "*...provides a statutory basis for the control, promotion and co-ordination of development for the period up to 1 July 2006*"⁹. This view is confirmed in the SoCG [CD39], which quotes from the report that was made to the Council's North Area Planning Committee on 20 February 2014 in support of an agreement between the main parties that the LP only provided for the development needs of the former District during the period 1991 to 2006.
23. Nevertheless the saving direction dated 31 August 2007 [CD4] confirms that a significant number of policies in the LP have been saved. The SoCG identifies the following saved policies to be relevant to the determination of the appeal, which will not be recited because they are set out in full in CD3:
- C1 - Settlement Boundaries;
 - C4 - Landscape Corridors;
 - C11 - Protected Species;
 - C13 - Wildlife Corridors;
 - C15 - Trees in the countryside and urban areas;
 - H2 – Phasing;
 - H15 - New Housing Developments;
 - R4 - Children's Play;
 - RE5 - Surface water run-off and flood defences;
 - RE6 - Service Infrastructure;
 - RE8 - Contaminated Land;
 - RE9 - Ground Stability;
 - MC1 - Morpeth: Settlement Boundary; and,
 - MC3ii) - Morpeth: Landscape Corridors.

⁸ Source of quote: Paragraph 2.1.1 of the LP, page 5, CD3.

⁹ Source of quote: Paragraph 2.1.3 of the LP, page 5, CD3.

24. Paragraph 215 of the Framework says due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The SoCG records that all main parties subscribe to the view that the LP cannot be given full weight. I shall outline the position taken by the main parties as to weight in my summary of their cases, below, and express my view on the matter in my conclusions.
25. In February 2013 the Council issued a consultation document setting out the *Preferred Options* for the CS for the County of Northumberland. The Foreword to that document [CD6] explains that in summer 2012 the Council undertook extensive engagement on the CS *Issues and Options* document. This earlier work was taken forward into a further consultation document setting out the CS *Preferred Options for Housing, Employment and Green Belt*, which is dated October 2013 [CD7]. The SoCG records agreement between the main parties that the CS can only be given limited weight in this appeal given that it is at a very early stage of preparation and that it is the subject of unresolved objections [CD39, paragraph 4.13]. H & MT disagree with this view and in the circumstances I express my view on the matter in my conclusions.
26. Paragraph 7.12 of the CS [CD7] says it plans for the provision of 24,310 new dwellings in the County of Northumberland over the 20-year plan period from 2011-2031. Tables 7.1 and 7.2 break this down by area. The requirement for the Central Northumberland Delivery Area, which includes Morpeth, over the plan period, is 6,270 dwellings or 314 dwellings pa. Morpeth is identified in Table 7.2 as a main town within the Delivery Area and the equivalent figures are 1,500 dwellings or 75 dwellings pa¹⁰. The SoCG records the Council's position to be that this scale of housing delivery is necessary to meet the full, objectively assessed housing need. Table 7.4 of the CS identifies the affordable housing target for the Central Northumberland Delivery Area to be 30%. Paragraphs 9.76-9.85 of the CS set out the preferred approach to the settlement of Morpeth and proposes "...that the majority of development should be located to the north of the town... [with additional] housing land for approximately 200 dwellings...to the south..."¹¹.
27. The SoCG observes that the CS proposes an extended Green Belt around Morpeth. However the appeal site is excluded from the proposed Green Belt extension and the SoCG draws attention to the following passage in the CS: *"In relation to the southern boundary, the preferred option would allow for some development during the plan period at South Loansdean and limited long term development potential, during the next plan period, south of the A196. It is considered that the preferred southern boundary would retain the rural character of the rising ground to the south and ensure continued separation between the town and Clifton and Hepscott"*¹². The SoCG records agreement between the main parties that the CS envisages residential development at the

¹⁰ For completeness I should draw attention to footnote (a) to Table 7.2, which refers to working with the Morpeth Neighbourhood Plan Group in relation to how this figure will form part of the housing allocation for that larger area, which includes 4 adjoining parishes.

¹¹ Source of quote: paragraph 9.81, page 87, CD7.

¹² Source of quote: paragraph 8.27, final bullet-point, pages 64/65, CD7.

appeal site during the next plan period, from 2031. H & MT disagree and in the circumstances I express my view on the matter in my conclusions.

28. The SoCG does not deal with the NP, but I consider that it forms part of the emerging DP for the area and so it is a material consideration in this appeal. At present the NP is however at a very early stage in its gestation. An *Issues and Options Consultation Report* [CD8] was the subject of consultation for a 6-week period ending in October 2013. The results of that consultation are being taken forward in the preparation of policies, proposals and allocations. Although the *Issues and Options Consultation Report* anticipated that the draft NP would be the subject of a further round of public consultation in Spring 2014 that does not appear to have happened to date. The Inquiry was told that there would be a public consultation later this year. I express my view on the weight to be attached to the emerging NP in my conclusions.

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29. The Council's putative reasons for refusal form the basis of the position that it adopts in this appeal but it also makes submissions on the application of paragraph 14 of the Framework. This means that its opposition to the appeal is not founded on: its effect on flooding and sewage systems; whether existing schools have the capacity to accommodate children generated by the proposal or contributions are required; whether existing residents' living conditions would be harmed by reason of noise and disturbance; or the weight to be attached to emerging policies and whether it is justifiable to dismiss the appeal on grounds of prematurity. The Council agrees that the need for affordable housing has been addressed by the submitted section 106 agreement.
30. The DP provides the starting point for the determination of this appeal and in this instance the key component is the LP, but it is conceded that this was not intended to regulate housing land supply beyond 2006. The Council agrees, moreover, that it is unable to demonstrate a 5-year housing land supply. It relies on the findings of the Inspector in the recent Loansdean appeal in this regard insofar as the Inspector found that the CRCA is the appropriate area of consideration in this context and that no buffer should be added¹³. The Council therefore accepts, in the context of paragraph 49 of the Framework, that the relevant LP housing policies, including C1 and MC1, are out-of-date and that weight should not attach to them. However it considers that the remaining LP policies are generally compliant with the Framework such that significant weight continues to attach to them. On this basis, as Mr Hollowood conceded in xx, the reference to a policy vacuum is overstated. It is however agreed that limited weight should be attached to the draft CS.

Effect of the proposed development on the area's character and appearance

31. The Council's case is that the appeal site is well-connected to the surrounding countryside, distinct and clearly separate from Morpeth. The development would significantly damage and not improve the transition between the settlement and countryside and would not represent a natural '*rounding off*' of Morpeth into urban fringe land. The development would, on the other hand, result in a substantial, prominent and irreversible urban intrusion into open,

¹³ See paragraphs 11, 12 and 20, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

intact, attractive, productive agricultural countryside and loss to the existing setting of Morpeth. It would also, importantly, impinge significantly and physically into the landscape that separates Morpeth from Hepscott.

32. The Council points to Mr Smith's Photomontage 1 in comparison to the existing photograph at Viewpoint 1A to illustrate the scale of change, its prominence and the serious adverse impact compared with the current character and views of the appeal site, noting that it says the bridge on the A196 over the railway, which represents the eastern end of the site, is 530m away. It says that this view would only be obtained if one assumed that the Road Safety Audit does not, as Mr Craig conceded in xx it might, result in increased hedgerow loss.
33. The Council says it is fundamental to the Appellants' case that the appeal site is part of a swathe of land around south-east Morpeth that should properly be considered to be urban/rural fringe land, as shown on Mr Smith's drawing No S/JNS/3. Mr Hollowood appeared to agree this description in xx after some, perhaps understandable, hesitation. The proposition that the appeal site is part of a swathe of urban fringe land informs and underlies Mr Smith's characterisation of the sensitivity of the local landscape as "*low*"¹⁴. In contrast PDP [CD31, page 14] and Mr Walker agree that it is "*moderate*".
34. The Council says that this plank of the Appellants' case should be rejected on the evidence for 5 reasons. First it is contrary to the Landscape SoCG [DS5, paragraph 17], where the main parties agree the appeal site "*along the north and west boundaries*" is visually influenced by the existing settlement only "*to some degree*". Second it is contrary to the LP Inspector's characterisation of the site as "*entirely in the open countryside*" [CD5, page 95], noting Mr Smith agreed in xx that there was no material change in physical circumstances since that report in relation to the north and west boundaries of the site. Third it finds no support in the Key Land Use Impact Study [CD13, CD14]. Fourth Mr Smith agreed in xx that it finds no substantial support in the Landscape and Visual Impact Appraisal [CD31], submitted on behalf of the Appellants. Fifth the site is in active agricultural use with no particular evidence that its use or enjoyment as a whole is affected by the presence of roads, footpaths and residential development alongside its northern and western boundaries. In the Council's view the appeal site remains a large tract of unspoilt countryside prominent in views along the entire northern and western boundaries of the site and the environs close thereto.
35. The concept of "*containment*" is a second major plank of the Appellants' case. This is contrary to what is seen on the ground and what the LP Inspector observed. The basis of his characterisation of the site as "*prominent in the landscape with little or no containing features*" [CD5, page 95] remains valid in physical terms, as Mr Smith agreed in xx, so far as the site's northern and western boundaries are concerned. Mr Smith further agreed in xx that there are prominent views of the appeal site from Choppington Road, but in reality the Council says they are more widely available and this would be even more so if the appeal site was developed as proposed. It describes Mr Walker's

¹⁴ Note: DS39 says Mr Smith characterises it as 'poor' but Table A14 actually uses the word 'low'; in substance the point of contrast is however still valid.

viewpoints and photographs as a clear and helpful evidence base from which to appreciate the site's appearance and its contribution to the area's character.

36. In the Council's view any attempt to draw parallels between the appeal site and the 'self-containment' that is evident at Loansdean simply serve to underline the prominence, openness and lack of containment of the appeal site. Yet Mr Smith was adamant that the site at Loansdean, where one boundary alongside the A197 is defined by pines, subject of a TPO, and a hedgerow, is as visible as the appeal site, which has 2 boundaries alongside the A192 and A196 separated by hedging and visible in forward views from open space around the roundabout and when travelling south on the A192. The Council anticipates that the site inspection would reveal the fallacy of this comparison. In its view the appeal site lacks precisely that self-containment that the Loansdean Inspector concluded mitigated the modest effect of that development on the character and appearance of that area¹⁵. Endeavours to draw comparison with the sites at St George's Hospital and land south-west of Northgate Hospital fail on the facts. Both are north of Morpeth and closer to services within it; one is part of a wider planned development in conjunction with the proposed MNB and the other is genuinely urban fringe in character.
37. The significance of the adverse impact of the proposed development in terms of landscape character and visual impact is underlined by its being proposed along 2 gateway routes into Morpeth, to use Mr Smith's description. The strategy in the emerging CS is designed precisely to avoid adverse impact on the character of the town "*or its gateways*" [CD7, paragraph 9.82]. Although Mr Hollowood refers to Morpeth extending in plan form further south along the western side of the A192, that housing is claimed to have little influence on the perception of the gateway in fact. Finally and separately, the proposed scheme would impinge physically on the landscape that separates Morpeth from Hepscott by virtue of a large area of open countryside being permanently lost.
38. In the Council's view attempts to draw support from identification of the site in the SHLAA and the terms in which it is described there are entirely without foundation. The SHLAA is about the availability, suitability and deliverability of land, rather than the sustainability of development proposals. The SHLAA is not intended to and has no planning status [CD10, page 3]. The proposed exclusion of the site from the Green Belt is also not an invitation to grant planning permission in the context that, as Mr Hollowood agreed in xx, the proposal is not for "*limited*" development of the site or for its development in the "*long term*", i.e. "*during the next plan period*", and is therefore contrary to the emerging strategy in the CS [CD7, paragraph 8.27].
39. For all of these reasons the Council says that this particular proposal for the development of this site now would conflict with important aspects of the Framework and cause really significant adverse effects on the character and appearance of this part of Morpeth.

The effect of the proposed development on the local road network

40. As Mr Ketley's evidence explains, the fact that Morpeth is a constrained town centre, with several roads and junctions operating under stress and at full

¹⁵ See paragraphs 47 and 86(iii), appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

capacity at peak times, alongside ambitions for significant housing and employment growth, are recognised as key parts of the justification for the MNB. Whereas Mr Hollowood in xx rejected the existence of a serious congestion problem, Mr Craig accepted in xx that there exists congestion in Morpeth that needs to be alleviated. In the context that the Government are willing to commit over £30m of public money to delivering the MNB on the basis of its understanding of highway conditions in the town and their effects, the Council says Mr Craig's view is to be preferred. It does not assist to deny or diminish the existence of the existing problem.

41. After considerable delay the respective highways experts agree that the WSP Paramics base micro simulation model is an acceptable representation of the congestion that is currently observed in Morpeth. The Council attaches particular weight to the AM and PM peak hour figures agreed during the course of the Inquiry; see in particular DS9. Although the results of the model are presented in seconds these are averages and not themselves peak delays and every second's delay represents an hour's delay spread across the network, as Mr Craig agreed in xx. Such congestion is harmful economically, to the local environment and globally in terms of greenhouse gas emissions [Mr Craig xx].
42. The Council considers that there is a high degree of certainty that the MNB will proceed, but of course there remains no guarantee that it will do so, as Mr Hollowood acknowledges¹⁶. The SoS should therefore properly consider the scenario that the MNB might not proceed, as Mr Craig accepted in xx. In that scenario, the proposed development would add 83 seconds, on average, to flows in 2021, which is agreed to represent an increase of 29% [DS18.1]. The output of the model demonstrates that the effect of the recently permitted Loansdean scheme on traffic flows is much less than the appeal site because of that site's location relative to the A1 and the mitigation proposed at Mafeking roundabout and in terms of signal phasing. The effect of the development on congestion in Morpeth in this scenario should, as Mr Jolley explained, properly be considered to be "severe" in terms of paragraph 32 of the Framework.
43. The highway network within Morpeth is recognised to be operating under significant stress due to its operating at or near capacity in key areas and junctions. The proposed development would add significantly to existing congestion. For the reasons Mr Jolley explains in detail it would also diminish the gains that the public investment in the MNB is intended to secure.
44. The agreed data shows, as Mr Craig agreed in xx, that in the 'MNB + Stobhill + Loansdean' scenario, flows in 2021 within the study area are predicted to be at their existing level, even allowing for a relatively modest contribution from the Loansdean development. The Council acknowledges this outcome would not be "severe" in terms of paragraph 32 of the Framework [Mr Jolley xx]. That outcome is only arrived at by negating an important part of the benefit of very substantial public investment by authorising development that does not accord with the planning strategy underlying it¹⁷. Notwithstanding that public investment would avoid an otherwise "severe" effect, the Council considers

¹⁶ Paragraph 8.18 of Mr Hollowood's proof.

¹⁷ Mr Craig agreed in xx the DoT justification was founded on the CS.

that substantial weight should attach to the harm resulting from failure to realise this important part of the gains intended to be secured by the MNB.

Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply

45. Following *Tesco*¹⁸, the proper interpretation of national planning policy is a matter of law. In *William Davis*, the High Court accepted the submission of leading Counsel for the SoS "...that paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development" because "*It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable and non-sustainable development*"¹⁹. The claimant's submission to the contrary in that case was central to their challenge and its rejection is therefore part of the ratio decidendi of the judgment and binding on the decision maker here²⁰.
46. Mr Hollowood has referred to a number of other judgments and says that they conflict with *William Davis* but in the Council's view they do not. *Tewkesbury*²¹ did not raise the issue of whether paragraph 14 of the Framework applied only to sustainable development and neither did *Colman*²². Both of these cases were referred to in *William Davis*²³ and neither was, clearly and rightly, considered by the High Court or leading Counsel to contradict or confound the proper interpretation of paragraph 14 of the Framework. *Stratford*²⁴ pre-dates *William Davis* but does not appear to have been cited. In the Council's view, since Mr Maurici appeared as Counsel for the SoS in both cases this was no error and in any event it says that *Stratford* does not bear on the proper interpretation of paragraph 14 of the Framework.
47. Mr Hollowood also referred to the judgment in *Dartford*²⁵. In the Council's view however *Dartford* confirms that paragraph 14 of the Framework should be applied only to sustainable development. It draws attention to the following passage: "*I agree with Lang J in her conclusion that it would be contrary to the fundamental principles of the NPPF if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development*"²⁶. The Council points to paragraph 55 of the transcript and says it recognises that judgments on sustainability and the application of an "*additional presumption*" at paragraph 14 of the Framework

¹⁸ *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.

¹⁹ Source of quote: paragraph 37 of the judgment of *William Davis Ltd and Jelson Ltd v SSCLG* [2013] EWHC 3058 (Admin).

²⁰ The ratio decidendi is the key legal reason for a judicial decision and as an administrative tribunal the SoS is bound to follow the ratio of a High Court judgment.

²¹ *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin).

²² *Anita Colman v SSCLG* [2013] EWHC 1138 (Admin).

²³ See paragraphs 33 and 35 of *William Davis Ltd*.

²⁴ *Stratford on Avon DC v SSCLG* [2013] EWHC 2074 (Admin).

²⁵ *Dartford Borough Council v SSCLG and Landhold Capital Limited* [2014] EWHC 2636 (Admin).

²⁶ Source of quote: paragraph 54 of the judgment of *Dartford* [DC5].

are discrete²⁷. Accordingly, in the Council's view, there is particular merit in clear separation and identification of these discrete issues in a SoS report.

48. The Council says the rejection, in *Dartford*, of the necessity for a formulaic, sequential or standardised approach to the determination of whether a development is, in fact, sustainable, falls short of a disagreement with the ratio of *William Davis*. It therefore commends the applicability to the current appeal of the *William Davis* approach. It says this is underlined by the terms of the SoCG [CD39, paragraph 5.8], which embodies it. It says that this is further underlined by the approach of the Inspector in the Loansdean decision [DC4], with which the Appellants seek consistency of decision making.
49. Mr Hollowood has also drawn attention to recent appeal decisions. The Council says that the Inspector's reasoning at IR8.20 of the Droitwich Spa appeals²⁸ is, with respect, seriously flawed for 3 reasons. First it is not necessary that paragraph 14 of the Framework should be expressly qualified because it applies only to sustainable development on its face, as per paragraphs 7 and 8 of the Framework. Second the content of the Framework as a whole provides the means by which sustainability is to be assessed. Third it is incorrect to contend that any, let alone 3, judges have disagreed with Lang J such that another interpretation is available. The Council observes that the SoS simply "notes" the arguments at IR8.20 and the observations of the High Court in *Dartford*, rather than expressing agreement with either²⁹. Moreover since the SoS found that the proposed development was sustainable in any event the point did not fall to be determined. Turning to the Tewkesbury appeal³⁰, the Council says the Inspector was incorrect to consider that it was appropriate to treat the factual narrative at paragraph 5 of the *Colman* judgment as if it were part of the Court's decision and to conclude that she was therefore entitled to choose between 2 conflicting authorities because there were none.
50. For all of these reasons the Council says that the SoS should determine the current appeal properly in accordance with the SoCG [CD39, paragraph 5.8] because: (i) this agrees with the approach that Counsel for the SoS advocated to the Court in *William Davis* and with which the Court agreed; (ii) *Dartford* has not subsequently disagreed or disapproved that approach; and (iii) it accurately reflects what the Framework says and what it is about.
51. In that context, the Council accept that the proposed development would be economically sustainable. So far as the social role of sustainable development is concerned, the Council has acknowledged that it does not have a 5-year housing land supply and that development of the appeal site would, as a matter of fact, contribute to boosting housing supply in accordance with paragraph 49 of the Framework. The Council also readily acknowledges that the provision of 119 affordable dwellings in an area of market and affordable housing shortfall serves to fulfil the social role of sustainable development. These roles are satisfied independently of consideration of the site and its location, and the effect of the development. The Council is however concerned about the effect of the development on the character and appearance of the

²⁷ Source of quote: paragraph 55 of the judgment of *Dartford* [DC5].

²⁸ Appeal references APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426.

²⁹ Source of quote: paragraph 12 of the decision letter of the SoS dated 02 July 2014.

³⁰ Appeal Ref APP/G1630/A/13/2209001.

area and the local road network. In its view these concerns prevent the appeal proposal from properly being considered to be sustainable development.

If the development is sustainable, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits

52. The Council says that this is a different and wider-ranging balancing exercise from that involved in consideration of whether the proposal is for sustainable development at all.
53. Dealing initially with adverse impacts the Council says the site would cease to fulfil its current role, and the development would not respect the character of the area or the intrinsic character and beauty of this part of the countryside surrounding Morpeth, contrary to the fifth core planning principle in paragraph 17 of the Framework. The proposition that these impacts are agreed to be, for the most part, localised, as claimed by Mr Hollowood in chief, does not alter their ready public availability and magnitude. The Appellants have referred to increased public accessibility, but little weight attaches to that in the context that the character of the site would be transformed from rural to residential and the increased accessibility reflects or is part of that transformation.
54. The proposal fails to support reductions in greenhouse gas emissions and congestion by supporting a pattern of development that facilitates the use of sustainable modes of transport, contrary to paragraph 30 of the Framework. Mr Craig agreed in xx that proposals that do neither of these things are not to be encouraged. Contrary to Mr Hollowood's evidence in chief, the Council considers that the proposed development's contribution to delays in the "No MNB", as well as the MNB, scenarios has been clearly demonstrated.
55. The Council considers a further disadvantage of the proposal to be that it would not be within acceptable walking distance of local services. It is not readily apparent what bearing the quality of that provision compared with provision elsewhere, as opposed to the distances involved, might have upon the propensity to walk to it. The key points to be drawn from the agreed table [DS18.2] are that the site is some considerable distance from local services and that other permitted developments are very much closer, noting that particular circumstances attach to St George's Hospital and both sites in the vicinity of Northgate Hospital. The site is also not well served by public transport by reference to PTAL and less well-served than, say, Loansdean. It is also not well-served by off-site cycling infrastructure. This is contrary to the eleventh core planning principle in paragraph 17 of the Framework.
56. Turning to benefits the Council accepts that substantial weight should be given to both the contribution that the proposed development would make to housing land supply and the supply of affordable housing. That said the Council draws attention to the fact that it is actively releasing or supporting the release of substantial land for housing in Morpeth. It did not oppose the appeal proposals for 200 dwellings at Loansdean. It has recently granted planning permission for 255 dwellings on land south-west of Northgate Hospital [DS6] even though that land was allocated for employment purposes. It also draws attention to an impending application for 395 dwellings at St George's Hospital which, the Inquiry was advised, can proceed without the MNB. In the Council's view this demonstrates that it is effectively looking for

solutions, not problems, in accordance with paragraph 187 of the Framework. The stance that it has taken in continuing to resist this appeal is not, it says, symptomatic of an attitude contrary to that advice.

57. The Framework does not, however, adopt the provision of housing and affordable housing as an "*overriding objective*" and Mr Hollowood's suggestion that it does³¹ undermines his contribution to a balancing exercise properly in accordance with paragraph 14 of the Framework. The Council accepts that economic benefits would flow from implementation of any planning permission that is granted on this site, although the benefits claimed in terms of new homes bonus and Council Tax should be discounted from this exercise. Mr Hollowood says that important weight attaches to flooding advantages and ecology net gains, but the Council does not agree that these add real force to the case in favour of granting planning permission in this particular case. The Foreword to the Framework makes clear, in effect, that development proposals should routinely feature a high standard of design and it is not considered, in that context, that the proposed design is such as to constitute a benefit.
58. On balance the Council considers that the adverse impacts summarised above are genuinely significant, have been demonstrated, and do significantly outweigh the benefits of the proposed development when viewed in their proper context. For all of these reasons the Council requests the SoS to dismiss this appeal.

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59. The proposed development has generated very strong feelings, which the Appellants acknowledge to be inevitable for a development of this scale and magnitude. However 3 strong points need to be made at the outset:
- i. It is not proper, lawful or appropriate for this Inquiry to seek to change Government policy. The vast majority of objections made at the Inquiry have completely ignored the realities of Government policy, which seeks to significantly boost the supply of housing. The Loansdean Inspector rightly described it as the "*overarching aim*" of the Framework³². The country is currently not building enough houses, which is a significant problem that the Government could not ignore. Since March 2012 the position of the Government has been clear: (i) every effort should be made to identify and then meet the housing needs of an area; (ii) the supply of housing should be boosted significantly; (iii) applications for housing should be considered in the context of the presumption in favour of sustainable development; (iv) LPAs must identify immediately developable sites sufficient to supply all the new homes that are needed over the next 5-years; and, (v) it is necessary to make sure that the reformed planning system provides enough land to build the houses that England's next generation so desperately needs³³.
 - ii. There is a real issue in the UK currently where there is a perception that development is bad and harmful, but the Appellants consider that is

³¹ Paragraph 13.2 of Mr Hollowood's main proof of evidence.

³² Source of quote: paragraph 31, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

³³ References are to: (i) paragraph 17 of the Framework; (ii) paragraph 47 of the Framework; (iii) paragraph 49 of the Framework; and (iv) & (v) Boles speech on housing in January 2013.

simply not true. Development can be and usually is a force for good. The excellent new shopping centre in Morpeth is given by way of example. New housing is equally important and every settlement in the country has evolved and grown over time largely to the benefit of that settlement. Morpeth is the fourth biggest settlement in Northumberland and yet only 14 houses have been built pa in the past 14-years. Simply put that is the reason why there are so many planning applications for housing at the moment. There is a great need because the pent up demand is enormous. The Government's planning policy is making the difference by making it a requirement to meet housing need.

- iii. This Inquiry has heard from the haves, ie those who have a house and live in comfort and security. Understandably and rightly the planning system is directed principally towards those who need houses, not those who currently have them. They have not been heard at this Inquiry but it is necessary to take account of their needs. The accepted evidence at the Loansdean Inquiry was of 18 applicants for every affordable housing unit locally. This cannot be ignored and burying one's head in the sand is not acceptable. Responsible and compassionate people, bodies and organisations need to stop talking and take action. It is necessary to think about those who are in rented accommodation, first time buyers, those starting a family, those who are homeless and those who wish to move closer to their families. Their needs are critical and need remedying the most. Those needs are accepted and recognised by the LPA and the Housing Officer, and should be given priority.
60. The Appellants acknowledge that this is a large development and yet a large development brings large benefits. These include the 396 houses, which will make a significant contribution towards housing need, 119 of which will be affordable houses, which will make a significant contribution towards affordable housing and meeting the compelling need which exists. In this broad context the Appellants address the case under 6 main headings.

The legal and policy parameters that dictate the balancing exercise

61. The first is a legal issue, namely how to apply the contents of paragraph 14 of the Framework to this development³⁴. There are 2 rival interpretations, namely the approach in *William Davis* and that in *Dartford*, and the Appellants reject the Council's attempt to distinguish the cases. The Appellants strongly contend that the *Dartford* approach is correct for the following reasons:
- i. It is far more logical. It is simply inconceivable to create a sequential approach which requires paragraph 14 only to be activated once a judgment has been reached as to whether the development is sustainable. If that was the proper approach it is simply inconceivable that the Framework would not have said that; it would be bizarre.
 - ii. Paragraph 14 of the Framework is explicit that it applies to all development proposals, which are then tested for sustainability; it does not say it applies only to those that pass paragraph 7 of the Framework.

³⁴ Note: since reference has already been made to all judgments and appeal decisions referred to under this head no purpose would be served in repeating those references here.

- iii. The policies of the Framework which paragraph 14 refers to are clearly set out in paragraphs 18 to 219. Paragraphs 7 and 8 are therefore excluded by application of paragraph 14 and are not to be referred to in the balancing exercise.
 - iv. Paragraph 49 only refers to the application of paragraph 14, not 7 or 8.
 - v. The paragraph 7 preliminary stage is redundant in practice. As Mr Ketley accepted in xx everything that is considered in paragraph 7 would be considered under paragraph 14 so why do the same exercise twice?
 - vi. There are 4 High Court cases which endorse the *Dartford* approach, namely *Dartford*, *Stratford*, *Tewkesbury* and *Colman*. That is 4 High Court judgments rejecting the *William Davis* approach, which is a powerful majority in favour of this interpretation.
 - vii. There is the *Tewkesbury* appeal decision, which is an incredibly eloquent and correct interpretation of how paragraph 14 should operate.
 - viii. Finally the SoS decision on the Droitwich Spa appeal, dated 2 July 2014, draws on the Inspector's report which expressly rejects the *William Davis* approach and it is inconceivable that the SoS would not have said in terms if he disagreed with the Inspector's reasoning on this. Instead the SoS specifically draws attention to the *Dartford* case.
62. For these reasons the Appellants strongly endorse the view that the proposal needs to be considered in the context of paragraph 14 of the Framework. In order for the appeal to be dismissed the appropriate test is that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Even adopting the LPA's route Mr Ketley accepted in xx that even in the case of a development which was not sustainable it was still possible to grant planning permission after a balancing exercise, which in the Appellants' view must be the correct approach. It is therefore common ground that on either route there needs to be a balancing exercise. However the easy answer is to find the proposal to be sustainable.
63. In further submissions on this topic [DC6] the Appellants draw attention to what the judge in the *Dartford* case says at paragraphs 52, "*formulaic approach*", and 54, no "*sequential approach*", of the judgment. They point out that the Dartford Core Strategy has a policy that requires consideration of the sustainability of the site for housing development before the weighing of benefits and disbenefits but say that does not disturb the principles established by the judgment. In the Appellants' view the transcript rests on all fours with the submissions made in closing, namely that the test for dismissal is whether the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. In any event the Appellants submit that the proposals are sustainable development.

The factors which are agreed by the principal parties to be in favour of the granting of planning permission

64. Under the second key heading the Appellants identify 9 factors that the principal parties agree to be in favour of granting planning permission:

- i. ***There is a need for housing now to comply with the requirement for a 5-year housing land supply.*** The LPA accepts that (i) the DP is out-of-date; (ii) the policies in the DP relating to housing and settlement boundaries are out-of-date; (iii) the Council has no current 5-year housing land supply; (iv) the same weight should be applied to any deficiency in housing land supply, regardless of quantum [Mr Ketley xx, but endorsed by Mr Hollowood in chief]; (v) on this basis there is not compliance with advice in the Framework, including paragraph 47; and (vi) consequently, as the Council has acknowledged, substantial weight must be given to this factor in favour of granting planning permission. In the Appellants' view the weight to be given to this factor cannot be underestimated. In the context of a national housing crisis it is the overarching requirement of the Framework to significantly boost the supply of housing. This Council has completely failed to meet either that requirement or come forward with a DP to show how they expect to meet this requirement of policy. It must not be forgotten that there remains real uncertainty over new housing supply despite the grant of planning permissions in the recent past. Planning permission for 396 units would make a strong contribution to meeting that requirement.
- ii. ***There is a need for green field sites to come forward to meet that supply.*** The Inspector in the Loansdean appeal stated clearly that the development of greenfield sites was required to enable the 5-year land supply to be met and that there is no requirement in the Framework to prioritise brownfield delivery³⁵. The LPA do not argue with that conclusion and Mr Ketley readily accepted in xx that in order to meet that need there would be a requirement to use greenfield sites. The Loansdean Inspector also contended that there is no reason why development should not come forward in south Morpeth in order to meet housing needs now. The Appellants say that must be correct. Moreover the acceptance of the need for greenfield consents is reflected in the decision the Council has recently made on the Persimmon site [DS6].
- iii. ***There is a need for permissions to be granted now.*** There is no alternative but to grant planning permissions now. The CS is at least 18 months from adoption, possibly longer in view of the need to start again in relation to employment provision in Morpeth in the light of the grant of planning permission on the Persimmon site. There is considerable work still to do on the CS and it is subject to many objections, which should not be underestimated. Housing needs to come forward now and substantial weight should be given to this factor.
- iv. ***There is a need for affordable housing to comply with the requirements of the Framework.*** There is no dispute between all 3 principal parties that there is a significant need for affordable housing in Northumberland. That was also the conclusion of the Inspector in the Loansdean appeal³⁶. That is the strong view of the Council's housing officer [CD33] who supports the proposals and says that Morpeth is an area of high demand, low availability and low turnover of affordable houses. That need is critical. It is a key priority of the CS. Simply put

³⁵ See paragraph 31, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

³⁶ See paragraph 33, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

there is a desperate and urgent need for further affordable housing in Morpeth and the whole of Northumberland. In that context H & MT claim that what will be provided here is not what is required. In the Appellants' view this argument should be set aside. The affordable housing provider that signed up on this scheme as a joint option holder is an approved partner of the Council. Noting that they are currently responsible for over 4,000 homes in the region, the proposition that they do not understand or know the requirements of those who seek affordable housing in this area is simply not credible. It is material that the same argument was made in the Loansdean Inquiry. The Inspector dealt with it succinctly in saying "*I have no reason to doubt that the proposed affordable housing would meet needs as identified by that organisation*"³⁷ [*Appellants' emphasis*]. It is also worth noting that the scheme offers 30% affordable housing despite the absence of a DP policy to require such provision, again as found by the Inspector in the Loansdean decision. His observation that "*...any affordable housing should be supported; the more so when it attracts the interest of an affordable housing provider*"³⁸ is, in the Appellants' view, trite but true.

- v. ***There will be benefits in terms of ecology.*** It is the agreed position of both main parties that the proposed mitigation measures and the creation of new habitats would mean that the environmental impact would be beneficial [CD39, paragraph 5.54, bullet-point 5]. In the Appellants' view this should be given significant weight.
- vi. ***There will be benefits in terms of design.*** The Framework confirms that design is important. The main parties agree that the appeal proposals represent high quality design, which is acceptable in terms of its proposed scale, layout, appearance, access and landscaping [CD39, paragraph 5.35]. It is agreed that the design of the proposed development is a material consideration in favour of the proposals and so it is submitted that significant weight be given to this benefit. Whilst the Council submitted in closing that it is not a benefit, having regard to the SoCG that is not fair. The issue between the parties is whether great weight should be given, not whether it is a material consideration.
- vii. ***There will be benefits in terms of flooding.*** Both main parties, together with the relevant statutory agencies, agree that the appeal proposals will reduce the risk of flooding in the surrounding area. The key point is that surface water run-off from the site will be reduced, in the Appellants' view significantly. There have been strong contrary views expressed at the Inquiry but without any substantive, forensic or qualified evidence in support. In the Appellants' view the reduction in run-off is unquestionably a benefit of the proposal and should be weighed in the balance in favour of the proposed development.
- viii. ***There will be benefits in terms of open space and landscaping.*** The proposals cover an area of 17.15ha of which 5.432ha, or 32%, would be public open space or landscaping. The provision of over 5ha of public open space is a distinct benefit of the scheme compared to the

³⁷ Source of quote: paragraph 34, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

³⁸ Source of quote: paragraph 36, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

current position where there is no public access to the site. This too is a benefit in favour of the proposal. Additionally a huge amount of planting is proposed. On the southern boundary in some places the area designated for landscaping would be as wide as 60m. In the Appellants' view that would be an incredible amount of land devoted to landscaping. On every side of the appeal site extensive planting is proposed, which would be of benefit to the development and the wider locality.

- ix. ***The proposal is sustainable development.*** It is the strong contention of the Appellants that the proposal is a sustainable development for 6 reasons: (i) in terms of economic sustainability the LPA accept that role is met. The development would generate significant economic activity for Morpeth and the whole County. The development would lead to very significant investment, the creation of jobs and the new homes bonus. All lead to a strong conclusion of economic sustainable development; (ii) in terms of social sustainability the LPA accept that the proposal meets that role and that must be right. The proposal would provide a supply of housing and create a high quality built environment that would be accessible to local services. In the Appellants' view it could not be more socially sustainable; (iii) in terms of environmental sustainability only a tiny point is made which alleges that the proposal does not comply in terms of landscape harm. Mr Ketley accepted in xx that there would be no harm to the built or historic environment. In terms of the natural environment there is no harm to flooding, ecology or biodiversity. Accordingly the sole issue is landscape harm; (iv) in that context the Appellants consider that, in undertaking the balancing exercise, that one factor should not lead to a finding that the development is unsustainable. They find the Council's view that it does to be perverse and simply not credible, particularly in view of Mr Walker's position that the harm is principally within 100 m of the site. The landscape harm could not be more local than is the case here and is no greater than on any housing scheme of this size; (v) what is required is a holistic and balanced assessment of all the factors to reach a judgment on sustainability. It cannot be right that one factor alone determines a conclusion of non-compliance. It is punitive in the extreme and turns the gist of the Framework, whose aim is to bring forward sustainable development, into a policy statement of refusal. It would be almost impossible for any large development of this magnitude to get a 100% pass rate, which the Council's approach demands; and (vi) finally one needs to look at the approach the LPA have taken at Loansdean and on the Persimmon site. In neither case has any allegation been made that either development would not be sustainable. The Council did not object to the Loansdean development and the issue was barely mentioned in the Officer's report on Persimmon [DS6]. It is therefore submitted that the Council's position here is contradictory.

The factors which are alleged by the LPA to justify refusal

65. Under the third key heading the Appellants say there are just 2 matters remaining which are alleged to justify refusal. Dealing initially with the harm to landscape caused by the proposal, the Appellants submit that this does not come close to justifying dismissal of this appeal for the following reasons:

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- i. The site currently has no access within it.
 - ii. The site has not got any landscape designations of worth or value on it either which reflects accurately the current value of it. Indeed there are no relevant designations either in close proximity to the site. Amongst other things there is no policy protection in either the LP or the CS for the gap between Morpeth and Hepscoth and this suggests that it is not worthy of retention. The Council's point about its intrinsic character and beauty does not, in the Appellants' view, reflect evidence at the Inquiry.
 - iii. The site falls within a character area which the retained landscape consultants of the LPA, LUC, concluded was the second least valuable in the whole County out of 108 areas. In the Appellants' view that is so telling and material.
 - iv. The site is accepted not to be needed for Green Belt in the CS.
 - v. The site is accepted to be suitable, available and deliverable in the SHLAA. It is unarguable that matters of landscape would have been considered in principle in making the judgment that the development of this site for residential was acceptable. An assessment of landscape impacts is specifically identified in the guidance which the Council assert they have complied with [CD43]. Moreover, on a related point, the SHLAA is also dependent on sustainability criteria and if that were not the case the SHLAA would be a waste of time because it would bring forward unsustainable sites.
 - vi. The site is accepted to be suitable for residential development in the longer term in the CS. Again a judgment in principle must have been reached that development could take place without unacceptable landscape harm.
 - vii. As Mr Walker conceded in xx, the longer distance views of the site post development do not justify dismissal.
 - viii. As Mr Walker also conceded in xx, any residential development of 396 units would materially alter views in the close vicinity of the site.
 - ix. The only impact is on views within the close proximity of the site. One of Mr Walker's views is from around 250m distant, but 5 out of 6 views are all within 100m of the site. On this basis the vast majority of harm to visual impact would be within 100m of the site.
 - x. This means that there is only a localised degree of harm within the immediate area of the site only.
 - xi. That harm must be viewed and accepted in the context that the need for additional housing in Morpeth requires both greenfield sites and sites beyond the settlement boundary, a point accepted by the Loansdean Inspector.
 - xii. The Appellants seek consistency with the Loansdean Inspector who, in their view, correctly concluded that harm did exist but that it was localised and not significant.

- xiii. In considering what would actually be seen post development, the Appellants submit that the design is of a high quality with substantial open space, which would be appropriate and restrained.
 - xiv. Mr Walker also accepted in xx that there was significant room for additional mitigation through landscaping. The boundaries allow very large areas of landscaping and Mr Walker accepted that on every viewpoint the impact would be reduced in time over 15 years.
66. Turning to the harm caused by the increased traffic on the network, the LPA have 2 lines of attack. First if the MNB is not built it says the development would contravene paragraph 32 of the Framework and be severe in terms of impact. Second if the MNB is built then the allegation is that the benefits of the MNB would be lost and that justifies refusal. However the Appellants say there is no policy basis for this last contention in the LP, CS or the Framework.
67. The position of the LPA is that there is a high degree of certainty that the MNB will be built. No evidence has been called to contradict that position. Consequently even on the LPA's case paragraph 32 of the Framework is only contravened in the most unlikely future. It is a scenario which should be dismissed in any event because of 3 factors: (i) its high degree of unlikelihood; (ii) in that scenario the whole development strategy for Morpeth would be up in smoke and need to be revisited; and (iii) if that happens the arguments for this site become completely compelling as the evidence has shown that the only consequence of this development proceeding is a minor and trivial increase in journey times and therefore that only increases the justification for granting planning permission.
68. In the scenario where the MNB is built the Council's allegation is completely woolly because the benefits of the MNB will be lessened. The Appellants rhetorically ask where the policy justification for this ground of objection is. This question was put to Mr Jolley in an attempt to identify any policy basis for the argument but nothing was identified. This underlines that there is no policy justification for this position. There needs to be a distinction between arguments made to obtain funding for the MNB and planning policy which might justify dismissal of this appeal. It is the strongest possible submission of the Appellants that there is no policy justification for this argument. In any event express justification for the MNB is provided by its ability to cater for future growth and development traffic which includes this scheme. Rather than amounting to a breach of the justification for the MNB it is exactly what was envisaged which justified the arguments made by the Council to get funding.
69. In any event the actual delays that are forecast are tiny, less than one minute. The simple position is that the modelling results do not justify refusal for the following reasons:
- i. The only concern relates to one small part of a large network, namely Stobhill roundabout to Telford Bridge. There would be no impact on the rest of the network.
 - ii. The only impact alleged relates to journey time alone. There is no allegation relating to safety, capacity or need for infrastructure changes.

- iii. The current journey from the Stobhill roundabout to Telford Bridge takes less than 4 minutes which on Mr Jolley's own evidence is a reasonable time.
 - iv. The future journey time with both Stobhill and the recently consented Loansdean scheme is almost identical and again on Mr Jolley's own evidence this is a reasonable time.
 - v. What will happen is that a journey into the centre of one of the County's largest towns will take under 4 minutes to travel just over a mile by car. That is a completely reasonable time to travel such a distance in the AM peak hour, which is a period that is commonly recognised to be the worst case scenario for examining delay on any network.
 - vi. In other parts of the North-East that duration of time to travel such a distance during the school run period would be considered heavenly.
 - vii. The significant majority of people who are actually undertaking this journey are those who are either travelling to work or doing the school run. As the Inspector said in the Hartford appeal "*...it is not the aim of policy to protect the convenience of commuting car drivers*"³⁹.
70. In reality there is simply no reasonable objection on this ground to the grant of planning permission, mindful that the test in the Framework is one of "severe" impact. In the Appellants' view this is simply not the case here. The benefits of the MNB upon the whole of the Morpeth network would still be material and significant compared to the proposed levels of traffic forecast in 2021.

Other matters which need to be put into the planning balance

71. Under the fourth key heading the Appellants identify 4 miscellaneous matters which are said to be material to this appeal.
72. The first, which is made by the Council and H & MT, is that the site is not that accessible. However the Appellants' strong contention is that the site is extremely accessible by alternative modes of transport. The LPA agree that the site is: (i) within an acceptable walking distance of the railway station [CD39, paragraph 5.27]; indeed this site is the closest emerging housing site to the railway station which is a huge advantage of this site; (ii) within an acceptable walking distance of schools [CD39, paragraph 5.27]; again the site is the closest to a primary school of all the sites; and (iii) in close proximity to employment opportunities [CD39, paragraph 5.27]; indeed the major employment area at Coopies Lane could not really be closer to this site. The only dispute is therefore in relation to accessibility to bus services and local shopping facilities. However on these 2 matters Mr Jolley readily accepted in xx that they did not justify dismissal of this appeal.
73. In terms of bus services: (i) qualitatively the bus services could not be closer to the site. Every single dwelling would be within 400m of one of the bus stops. There are 4 bus stops on the A192 and A196 which are, at most, 10m from the site; (ii) qualitatively the bus services allow access to Morpeth every

³⁹ Source of quote: paragraph 14.45 of report APP/A0665/A/12/2179410 & 2179374, at Appendix B to Mr Craig's proof of evidence.

20 minutes on Service 2; (iii) qualitatively provide a school run to Chantry Middle School and allow access to Newcastle every hour on the southbound Service 44; (iv) qualitatively allow access to Cramlington every hour on the route 57a; (v) quantitatively the bus stops are served by 5 buses every hour; and (vi) there is no other proposed housing site in Morpeth which has more actual buses or the bus stops in closer proximity. It is a powerful combination and leads to a conclusion the proposal is very accessible by public transport.

74. In terms of accessibility to shops: (i) each proposed dwelling within the site is at worst within 1,200m of Sainsbury's, which is a state of the art local shop. It is an excellent convenience store and larger than ordinary; (ii) additionally there is a Premier shop, a Boots chemist, a Post Office and a corner shop all within an acceptable walking distance; and (iii) on any basis this can be considered to have excellent local provision within 1,200m of the site.
75. For these reasons the Appellants submit that the appeal site is excellent in terms of accessibility. It would enable prospective residents to get to local facilities by car, bus, rail, walking and cycling. On this basis it is said to pass the requirements of paragraph 35 of the Framework, which says that developments should be located to give priority to pedestrians and cycle movements, and have access to high quality public transport facilities. The Appellants reject Mr Jolley's reliance on PTAL in the context of Morpeth.
76. The second, which is made by H & MT, is that the development would cause additional flooding issues. H & MT make extensive and comprehensive allegations of harm in terms of both flooding and foul water, but in the Appellants' view this allegation is completely without foundation. Although the concerns of H & MT are understandable, given what has transpired in the past, the Appellants say the claims are misplaced. Amongst other things it is pointed out that Councillor Ashmore said he is not an expert in flooding.
77. In contrast 6 qualified, professional and reliable organisations and companies have expressed the view that the proposed development would be acceptable:
- i. First there was the professional judgment of M Design who are experts in flooding and hydrology. They are a professional consultancy with vast knowledge and experience. Their flood risk assessment is that the proposed development would be acceptable.
 - ii. The work of M Design was considered by the LPA who also have professional expertise, including a Suds Officer who knows all about Hepscott, who concluded that the development was acceptable. That is the second judgment reached by an expert in flooding that the proposal would be acceptable.
 - iii. Thirdly there was the consultation response of Northumberland Water who have vast experience in foul water by virtue of being the statutory undertaker for this geographical area.
 - iv. Fourth was the consultation responses of the EA who are the Government's statutory body dealing with flooding. They are one of the most knowledgeable and experienced bodies in the world in water and flooding. They were originally concerned about the proposal and so this was no rubber stamping exercise. Further work was done and the EA

were satisfied on this basis that the proposal would be acceptable. That view was reached in December 2013.

- v. The Appellants then asked WSP to review the work undertaken by M Design in relation to flooding, for the purpose of this Inquiry. They came to the issue afresh. They did not carry out a FRA but a review of what was proposed. They concluded that the proposal would actually be beneficial in terms of flooding.
 - vi. Finally the EA were re-consulted and concluded that they had no further comments to make on the additional work undertaken [DS27].
78. Therefore there have been 6 different professional examinations of the effects of the proposed development on flooding and every single qualified and expert person has concluded that the proposal is acceptable, which contrast with the views of Councillor Ashmore. The Appellants regard his strong choice of words directed towards these professional assessments to be unfortunate. The allegation that the professional assessments have been incompetent is refuted. The professionals involved are obliged to reach judgments that are justified and there are consequences if those judgments are wrong.
79. The law on this is clear. A decision maker is obliged to give the views of statutory consultees, such as the EA, great weight. Reference is made to: (i) *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12, specifically paragraph 72 [DS40.2]; and (ii) *Ashdown Forest Economic Development LLP v SSCLG* [2014] EWHC 406, specifically paragraph 110 [DS40.3].
80. Finally the Appellants say that this matter would be addressed in any event at a later date as a result of the 2 relevant and agreed conditions, which deal with surface water and foul water respectively. In the circumstances there is simply no informed basis for refusing planning permission on this basis. Although H & MT allege prejudice on the basis that the Appellants have not called a witness to deal with flooding it is said that no inference should be drawn because this is commonplace where issues are agreed between the main parties and there is no objection by a statutory consultee. By way of example the Appellants have also not called an ecologist.
81. The third, which is made by H & MT, is that there is not enough school capacity. The Council is the LEA for the schools within this administrative area. They can be considered to be '*the horse's mouth*'. The LEA's view is that there are sufficient spaces to accommodate the children who will come to live on this site and that judgment should be given overwhelming weight.
82. In order to make a lawful contribution the SoS needs to be satisfied that such a contribution is necessary. On the position of the LEA there is no requirement or necessity to make such a contribution. The Appellants therefore submit that it would not be lawful to make such a contribution in any event. Consequently, and correctly, no education contribution has been sought or offered.
83. It also shows that the concerns of H & MT are not reflected by the Officers who have the legal requirement to find spaces for children to be educated. That is a statutory requirement and cannot be underestimated. For all of these reasons there is simply no basis to contend that the LEA is wrong.

84. The fourth, which is made by H & MT, is that the development would prejudice the CS and NP. Since there is no contention by the LPA that the proposal would prejudice either the CS or NP, significant weight should be given to that conclusion. As Councillor Tebbutt said in closing, both plans are at an early stage. H & MT have persisted with this argument despite the conclusion of the Loansdean Inspector who concluded, in paragraph 27, that neither plan would be prejudiced by that proposal. In the Appellants' view that finding was correct and should be reiterated in this case. No evidence has actually been shown as to how there would be prejudice. Both plans are at a very early stage and are likely to be subject to significant change prior to adoption.

The position of the rule 6 party and does it influence or change the planning balance

85. Under the fifth key heading the Appellants say that whilst H & MT have very strong views they show a complete inability to adapt or change their evidence in the light of strong judgments that have been reached against them by the Inspector in the Loansdean appeal. That inspector found against H & MT on every single ground and yet they have not sought to amend their evidence to this Inquiry. The simple point is that all the points made by H & MT have been considered by the LPA who have objectively made judgments about those matters and only sought to oppose the development on the grounds of landscape and highways. None of the additional points raised by H & MT lead to a justification to dismiss this appeal.

The conclusion on the planning balance

86. The Appellants submit that it is clear that there are very strong factors which support the grant of planning permission. If the overriding objectives of the Framework are to mean anything and have actual teeth to bring about change in the supply of housing then it requires that this development must be granted planning permission. The only remaining grounds of objection of the LPA are the impact on the landscape and on highways. They inevitably amount to immediate change in the vicinity of the site and an average journey time of 4 minutes in the peak into the town centre post development. The simple truth is that both do not come close to justifying setting aside the overwhelming factors in favour of the proposed development.
87. The planning system demands difficult decisions. Of course it is difficult to grant consent because it will be against the wishes of some but the parameters of policy require now and as a matter of priority, more housing to be provided in this settlement and in the County as a whole. For all of these reasons the SoS is invited to grant planning permission in this case.

The Case for Hepscott & Morpeth Together

88. Hepscott Parish Council and Morpeth Town Council have been working together with others for almost 2 years in preparing a NP. Whilst happy to work together, they have reasonably concluded that they do not want the respective settlements to come too close together. Working with Morpeth Action Group, a community group who submitted a petition signed by 445 people at application stage, the respective Councils have formed an alliance known as H & MT to put forward the concerns of the local community at the Inquiry.

89. As a coalition of residents and elected representatives H & MT are deeply committed to the area, not for political reasons but out of genuinely belonging to, involvement with, caring for and knowledge of their community. H & MT take exception to the suggestion that has been made that local party politics have delayed the objective determination of the application. Whilst being committed to protecting and shaping the environment in which they live H & MT reject any claim that they are unrealistic or NIMBYs. Of the 10 main issues identified for discussion at the Inquiry [DC3] H & MT chose not to address the issue of noise and disturbance in its closing. The order which follows broadly reflects the importance of those issues for local residents.

The effect of the proposed development on the local road network

90. H & MT says that its concerns about congestion have been eloquently confirmed by those members of the public who chose to address the Inquiry. One expert stated that people only remember the worst, but one Mum who addressed the Inquiry reported that her young child had commented about the lack of delay whilst in the car going to school one day. It is the exception that proves the rule. Residents organise their lives around the pattern of traffic in Morpeth and know what the rules and the exceptions are.
91. The average AM peak hour journey time from the Stobhill roundabout to the Telford Bridge has been measured at 221 seconds. This figure does not reflect the experience of residents, especially in school time and in bad weather, both of which take up a significant proportion of the year. H & MT found that a straight run with no delays took 143 seconds at around 2100 hours on an evening where there was almost no other traffic on the road. Small increases in volume and breakdowns etc have severe impacts and cause gridlock, especially since no “rat runs” are available. Accordingly H & MP suggest that it is false to suggest the average peak time journey is only 221 seconds.
92. Witnesses repeatedly refer to the MNB, which is not and may not be approved. The SoS has to decide upon this appeal and, in due course, the MNB. It is perceived that the Appellants wish to take free advantage of major taxpayer funding, although to do so would significantly reduce the immediate benefit of the MNB and reduce its effectiveness within Morpeth over future years. The Appellants find this unimportant, claiming that cutting congestion in Morpeth was only one of the core aims of the MNB. The Appellants say the MNB was meant to benefit the whole town, but the LTP says “*The proposed Morpeth Northern Bypass is critical to the realisation of housing and employment growth ambitions in the North Morpeth Growth Area*”⁴⁰ [H & MP’s emphasis]. It does not say anything about housing growth in the south of Morpeth.
93. The Appellants also consider that congestion is not a serious issue, despite the fact that the DoT’s strategic case for the MNB recognises that “*Morpeth is a small town with a very constrained centre in which several roads and junctions operate at full capacity at peak times*”⁴¹. In addition it is claimed that the LTP identifies that part of the network from the Mafeking Roundabout to Telford

⁴⁰ Source of quote: paragraph 2.61, page 25, CD20.

⁴¹ Source of quote: DoT Assessment of the MNB, at Appendix 2 to Mr Ketley’s Rebuttal Proof.

Bridge to be "*above capacity*"⁴². Telford Bridge junction is said to be the second busiest junction in Northumberland, used by over 23,000 vehicles per day. In the view of H & MT "*above capacity*" is what it says and, wherever vehicles have to queue, environmentally unsustainable pollution is increased.

94. H & MT consider it would be impossible to create cycle lanes in both directions along the A192 due to the constrictions from the railway bridge, over Telford Bridge, through the town centre and beyond to both the Middle and High Schools. Mr Craig acknowledged that these constraints cannot be changed and said that if there is scope the Appellants would investigate the possibility of enhancing these routes. It was said that this could be investigated as part of a Travel Plan, but no money has been requested. Mr Craig admitted that, whatever the Travel Plan says, people would make their own choices regarding which mode of transport is most attractive to them. On a steep hill, such as that which characterises the route from the town centre to the appeal site, it is claimed that this is unlikely to be walking or cycling for any but the fittest or most daring. In addition, the agreed walking distances to the key facilities north of the river, including the Middle and High Schools, are way beyond what is accepted to be a maximum walking distance. All of this suggests that sustainable modes of transport are not attractive and that the most appropriate place for development is to the north of the town. The appeal proposals offer no transport improvements and would cause significant harm.

The effect of the proposed development on flooding and sewage systems

95. This is considered to be of equal importance to the highway issue and indeed more so to those who have been affected by flooding. Paragraph 103 of the Framework says that when determining planning applications LPAs should ensure flood risk is not increased elsewhere. H & MT consider that this has not been robustly demonstrated during the Inquiry. The residents of Hepscott have serious concerns about the increased flood risk which could be caused by the proposed development because they have already been flooded twice, in 2008 and 2012. This was despite supposed remedial work being undertaken by the EA to alleviate flooding in the catchment, which included 3 Suds and nearly 1km of new pipework. The Inquiry has heard of the real misery of flooding from victims, the people who have been flooded, and from a GP who spent years treating them. On this basis the decision maker needs to be very sure that the situation would not be made worse by allowing this appeal.
96. There have been 2 FRAs, the first by M Design and the second by WSP. H & MT assert that its case, that M Design's FRA is flawed, is strengthened by WSP's evidence and there appears to be no evidence that the latter has been accepted by the Council or the EA. In its view the presence of 2 FRAs is

⁴² Source of quote: Appendix 3 to H & MT's proof of evidence on Transport and Highways. It should be noted however that the source of this is said to be Figure 14 at Page 37 of the LTP [CD20], but that does not appear to be correct. It is possible that this extract derives from an earlier version of the LTP, because it is said to show the AM peak in 2008, or from another document that forms part of the evidence base that underpins the LTP; it is not clear. Whilst I have been unable to identify the source, the plan and key does appear to be self-evident for what it says on its face and so I am prepared to accept it at face value. The generic point, which is that the Mafeking Roundabout and Telford Bridge exceed capacity, is evident from other documents before the Inquiry, e.g. see Appendix 1 to Mr Ketley's rebuttal statement.

confusing, often contradictory and has never been explained. Both FRAs have serious flaws that are explained in detail in H & MT's written evidence.

97. The rationale underpinning the holding ponds and Suds is to prevent flooding, but the Appellants' plans and designs have to be robust and, under scrutiny, have to reassure people living downstream. In H & MT's view it is the job of specialists, including the designers, the EA and the Council, to do this. The evidence provided shows that the FRAs, the design and the models on which they are based are not sufficiently robust to do the job that is claimed or required. H & MT point out that none of the evidence presented at the Inquiry was contested and the various flooding experts did not attend. This is despite the identification of various errors and contradictions in the experts' reports. Since the EA and the Council did not identify these problems H & MT say that they failed to robustly examine the Appellants' plans and proposals.
98. H & MT consider that the automatic response appears to be that the specialists are believed, whether they are right or wrong. However if laymen can gather evidence by reading the submitted material in detail, checking facts, lifting manholes and observing water courses, it is rhetorically asked why the experts did not do so? H & MT have outlined their concerns with the flood reports at length. Amongst other things, evidence has been provided that the fireclay topsoil layer is 169 feet below ground, exceedance has not been covered and no solution has been offered to the known flooding of a sewage chamber. The so-called 'Master Plan' was supposed to give full details of Suds, but turned out to be a housing layout with no dimensions or storage capacities shown. Robust scrutiny of this information is, in the opinion of H & MT, crucial to the Inquiry, but appears to have been absent or at least fundamentally flawed.
99. Given the drastic effects of flooding, H & MT consider that these concerns have not been given enough weight. Flooding is not a side-show, despite the position taken by the main parties at the Inquiry, and is not something that can be fixed later. Proposals and plans must be credible in what is a full planning application. The people of Hepscott look to this Inquiry to protect them from more flood misery. H & MT are aware that there is a legal opinion that the views of consultees, such as the EA, should be given great weight and they do not suggest otherwise. However where there is compelling and uncontested evidence that material flaws in the flood information presented went undetected, H & MT consider this too should be given great weight.

The effect of the proposed development on the character and appearance of the area

100. Morpeth is an ancient market town in a rural setting. Part of its charm, for residents and tourists alike, is that Morpeth is well contained and it is possible to approach the town through the countryside and 'come upon' it suddenly, eg on approach from the south along the A192. LP Policies C4 and MC3 recognise the value of these approaches and it is submitted that these policies comply with the Framework and should be given appropriate weight.
101. H & MT believe that the appeal site is not urban fringe land in its 'scruffy' sense but that it is a greenfield site comprising irreplaceable agricultural land. The adjacent edge of the town is green and open in nature, with a playing field, wide green verges, mature hedges and trees. In that context H & MT

believe that the proposed development would constitute an unacceptable urban intrusion into the open countryside.

102. The Appellants argued that the development would not be widely seen and that most of the visual effects would be close to the site. It is acknowledged that this might be where most of the 'visual receptors' are, but the open, green prospect and rural influences are enjoyed by all who live and pass through the area and these would be changed forever. For these reasons H & MT consider that the proposal would give rise to significant harm.
103. The open countryside between Stobhill and Hepscoth provides a green buffer between the respective settlements which is important to the identity of both. Mr Smith, for the Appellants, claimed that it is not the actual distance that counts but one's perception of it. H & MT says paragraph 80 of the Framework contains its only reference to sprawl and encroachment, and that passage uses the words to check, prevent, safeguard and preserve. At no point does it say that it would be appropriate to create the illusion that these actions have taken place. Erosion of the gap by a strategic 30% is highly significant and unacceptable, and approval could set an undesirable precedent. The CS proposes that the appeal site should be safeguarded land for limited development during the next plan period, after 2031, but it is claimed that the Appellants have focussed on the word development and disregarded the rest.

Whether existing schools have the capacity to accommodate children generated by the development or whether contributions are required

104. The provision of school places is a crucial aspect of sustainability, which is material to an assessment of whether the proposal can be considered to be sustainable development. Local residents are only too aware of the problems being experienced in relation to the lack of vacancies in the town's schools.
105. H & MT submit that the position in relation to Morpeth schools is anomalous and that the problems have not been appropriately addressed in planning terms by the Council's Children Services Department. H & MT claim that it is too simplistic to say that there are places available or that they would become available in schools within the Morpeth Schools Partnership. It is also inappropriate to fail to draw attention to the need for money to be spent on improvements and/or expansions to the schools that children from any houses that were built pursuant to any planning permission granted, would attend.
106. The Morpeth Schools Partnership extends as far as Rothbury, but allocating places in First or Middle Schools outside Morpeth to Morpeth children would be unacceptably disruptive and unsustainable. H & MT have shown that the only school within acceptable walking distance of the appeal site is Stobhillgate First School, which is a one-form entry school. As Morpeth grows each First School will inevitably offer places in its reception class to children from within its own catchment. According to the Council's own data Stobhillgate First School already has too many children living within its catchment. Morpeth Middle and High Schools are run by an Academy with its own admissions policy. Unless a child lives in Morpeth in time to secure a place in reception, that child could be refused admission and have to travel elsewhere in order to find a school place. This would be even more complicated for new residents to the town with several children who need admission to different schools. One member of the public who addressed the Inquiry spoke of a family new to Morpeth having to

take one child to school in Ponteland and her other children to schools in different parts of Morpeth.

Whether the need for affordable housing can be addressed by a planning obligation

107. H & MT says the Appellants did not submit details of the precise mix of affordable homes on offer until after H & MT raised its concerns. Despite the information now provided H & MT maintain that the scheme: (i) does not include the appropriate size mix of social rented or intermediate homes; (ii) the price level of intermediate housing is unlikely to be truly affordable; and (iii) the percentage of affordable properties cannot be guaranteed. For these reasons limited weight can be given to provision of affordable housing.
108. Of particular concern to H & MT is the huge under-provision of 1-bedroom properties in both the social rented and intermediate categories, with only 6 such affordable homes being offered in total. This is contrary to the identified need, which is 61% for social rented properties in March 2014, according to the Council's strategic housing data, and 40% for intermediate homes, according to the SHMA update.
109. H & MT has provided evidence of the price of current new build in Morpeth and, by reference to the SHMA, it says that even discounted to 70% of market value, new build properties in Morpeth would be above the entry level price range of those in need of affordable homes, as they represent such a high multiple of earnings. Unless the Appellants offer affordable sales prices equal to or below those shown in the SHMA they would not be available at affordable prices. H & MT also have concerns about the fact that delivery of affordable homes cannot be guaranteed on the grounds of viability. For these reasons it is submitted that only limited weight should be given to the affordable housing provision that is envisaged in the section 106 agreement.

The weight to be attached to emerging planning policies and whether it is justifiable to dismiss the appeal on the grounds of prematurity having regard to advice in the Guidance

110. H & MT said that the LP began the strategy of sustainable expansion of Morpeth targeted to the north of the town, with the plan referring specifically to the majority of development taking place on the St George's Hospital site post 2006. This strategy has been pursued by the Council ever since, as demonstrated by their bid for funding for the MNB and the commitment of its own funds to that project. Working with the Council, the NP is pursuing the same strategy, which cannot therefore be characterised as new or emerging despite the fact that it acknowledges the CS and the NP are at an early stage.
111. The strategy of growth to the north of Morpeth is being implemented now, with the MNB awaiting consent from the SoS and experts referring to the high degree of probability that it will be delivered. The MNB is hugely significant and the growth associated with it will epitomise the sustainable growth that the Framework demands. Furthermore the Inquiry has been told that the planning application for Phase 1 of the site at St George's Hospital, which is not dependent upon the MNB, is to be submitted in mid-August 2014.

112. H & MT consider that approval of the appeal proposal would prevent the eleventh core planning principle in paragraph 17 of the Framework, which seeks to actively manage patterns of growth, to be carried out. Morpeth is a small town and too many developers trying to market new homes at the same time could be damaging and actually result in slow delivery. In addition H & MT refer to the Lock report [CD22], which contends that developing housing to the north and south of Morpeth would have service and infrastructure implications that could make it more difficult to combine efforts and financial contributions to deliver necessary new and upgraded infrastructure. H & MT consider that the need to upgrade the combined sewerage system and the Salisbury Street chamber is only one example of the infrastructure needed.
113. H & MT consider that development must be plan-led rather than developer-led and it considers that the proposed development is contrary to the growth agenda in paragraph 14 of the Framework when seen in the context of the planned growth for Morpeth as a whole. The strategy that has been planned since 2003 would be put in jeopardy if the appeal was allowed and it is submitted that the issue of prematurity has to be seen in that light.

Whether relevant policies for the supply of housing are out-of-date

114. H & MT say they regard this to be least important issue for residents, but I deal with it before the overall balance. Although the SoCG records that all parties agree that the Council does not have a deliverable 5-year housing land supply [CD39, paragraph 5.5], it also shows that for the CRCA the shortfall is 482⁴³. Recent approvals, together with the impending application for St George's Hospital, means that a total of 1,075 new homes are in the pipeline. No contradictory evidence has been provided to the Inquiry despite new approvals being a material factor. Moreover H & MT point out that Morpeth is not the only main settlement in the CRCA. Furthermore the CS identifies 1,500 new homes for Morpeth, but this might be reduced because of the new population projections. Those homes are to be built over the plan period, up to 2031. For these reasons H & MT are not now convinced that there is no 5-year housing land supply or that housing policies in the LP are out-of-date.

Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply

115. H & MT have outlined in their proofs of evidence the reasons why it believes that the proposals do not fulfil any of the 3 roles of sustainable development. The walking distances that have been agreed between the main parties, the lack of cycle ways and the community's evidence of congestion, which is supported by the LTP, are all significant in demonstrating that the site is in an unsustainable location. By reference to paragraph 6 of the Framework, H & MT say that the presumption in favour of sustainable development only applies to development that can be demonstrated to meet paragraphs 18 to 219 of the Framework.

⁴³ In closing H & MT quote a figure of 492 but, by reference to the table at paragraph 5.4 of the SoCG [CD39], the maths for the CRCA appear to be 1,320 less 838, which equals 482. As this actually puts their argument in a better light I have adopted this figure in the above text.

If so, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits

116. H & MT submit that significant harm would be caused to the landscape, the road network and its users, and both the immediate and longer term effectiveness of the MNB as regards its role in reducing congestion in Morpeth. They also have concerns about flooding and sewage overflows and believe that the potential exists for yet more harm to result. In contrast H & MT do not believe that the affordable housing on offer is appropriate enough in terms of the size requirement and cost requirements to outweigh this harm.
117. For all of these reasons, taking account of the detailed evidence that has been put forward in their proofs of evidence, H & MT invite the SoS to dismiss this appeal. In seeking this outcome H & MT stress that local residents are the ones who have to live with the harmful consequences of the proposed development should it go ahead.

The Case made by those who addressed the Inquiry in person

118. Except where referenced below the following persons that addressed the Inquiry did so without making written statements. Accordingly what follows is, in many cases, the only record of what those people said. For this reason the subsequent summaries are quite full in order to fairly represent their evidence.

i) John Lewis

119. Mr Lewis read his statement [DS19] but also drew attention to other letters that he wrote at application and appeal stages [DC2.7]. He supports the reasons given by the Council and H & MT for opposing the scheme. He says that because the site is outside the settlement boundary for Morpeth the proposal was contrary to LP Policies C1 and MC1. He considers that the site and the surrounding countryside make a significant contribution to the setting and special character of Morpeth by reason of its openness on approach along the A196 and A192. This is highly valued by local residents, which is reflected in these approaches being designated as landscape corridors under LP Policies C4 and NC3. In Mr Lewis's view the proposal's scale would have a seriously detrimental impact on the character and appearance of these entrances into Morpeth. The previous applications on the site have been refused on policy grounds and this scheme would be urban sprawl that would erode the green gap and lead to the coalescence of Morpeth with Hepscoth.
120. The latest version of the emerging CS excludes the site from the proposed Green Belt and classifies it as "*white land*", to be considered for development at a future date, but Mr Lewis understands that there are many objections to this. The Civic Society, of which he is a member, together with other local bodies, has always taken the view that the inner boundary of the Green Belt should run along the A196. The Council is alleged to have said that "*...the new settlement boundary to the south would be identified in the NP*". The environmental capacity of Morpeth needs to be fully assessed and taken into account in the NP; development of the appeal site could prejudice this. In Mr Lewis's view until the CS and NP are available the proposal is premature as, if approved, it would have a major impact on the form, infrastructure and shape of Morpeth. The community response to the consultation on the NP supports the view that housing growth should be focussed north of the town.

121. In his experience the A192 and A196 are very busy roads. Given that he has been overtaken by vehicles exceeding the speed limit between the Stobhill roundabout and Hepscott it is no surprise that there have been accidents on this stretch of road, one of which was fatal. At peak times queues can stretch back from the centre to the Stobhill roundabout. The Mafeking roundabout is operating above capacity and congestion is a major problem at Telford Bridge. The proposal would exacerbate these problems and further detract from the quality of life of local residents. Although Mr Lewis understands the Highway Authority says that conditions can resolve any highway safety issues he is unclear how the concerns raised in the Committee report will be addressed. The proposal is also likely to exacerbate the use of the road through Hepscott as a cut-through, which is substandard by reason of bends and gradients.
122. Turning to the issue of flooding, Mr Lewis refers to the report undertaken by Chris Tyler for the Appellants, dated June 2014, and specifically to paragraphs 4.1.2 and 4.1.3 thereof. Mr Lewis considers that if flooding downstream is only reduced marginally in depth and extent, any failure in the system would cause major problems as the scheme relies upon the proposed Suds not failing in any way. It relies on the calculations being correct. The various ponds, swales and pipes would need continuous management and maintenance over the lifetime of the scheme. It also relies on no part of the downstream system becoming impaired, but there are open watercourses and culverts that have caused problems in the past. The Hepscott Flood Risk Study [DS23] found at page 18 that culverts and a ditch are in a poor condition. It also found that water backs up from Hepscott Road Bridge in high flow events. There are numerous interests in the catchment of the Hepscott Burn, including the EA and riparian owners, but a lack of overall co-ordination. On the basis that there is a genuine fear of flooding Mr Lewis considers that the precautionary principle should apply in addition to the identified conflicts with planning policy.

ii) Tom Smith, Morpeth Flood Action Group

123. Mr Smith read Morpeth Flood Action Group's latest statement [DS31], but it should be noted that other documents have been submitted, including a further update [July 2014, DS25]. Mr Smith explained that the Group was opposed to the development due to what it considered to be the inadequate FRA and the similarly flawed Flood Risk Exercise. Flooding is a life changing experience, which can have devastating consequences for those affected. As well as severe impacts on health, the trauma can lead residents to leave the area which, in the case of homeowners, can result in the loss of a lifelong investment in property. Home values fall once property is flooded and house insurance can become unavailable. Such difficulties disproportionately affect older members of the community. Although the Inquiry is held in public, that openness is worthless if matters which are conditioned to be approved are then seen solely by Council officials and the Appellants. The community has vital local knowledge of flooding issues, which such a process would not draw upon. He says that if the appeal is allowed the entire detail of the drainage and flood mitigation measures should be available online to be publicly scrutinised and commented upon before approval is granted.
124. The update [DS25] details how, in the Group's view, the Appellants' drainage consultants have to date shown themselves to be unreliable in assessing flood risk. The micro drainage software employed by the consultants has been

criticised by the EA. The Appellants' consultants, WSP, describe the need to carry out additional 3D computer modelling of proposed flood mitigation measures. Morpeth Flood Action Group considers that is necessary when the FRA is so full of holes. Amongst other things the storage ponds and associated swales are considered to be below the capacity required to meet even the runoff figures proposed and the water level in the ponds would be higher when full than the field which they are supposed to drain. On this basis the proposed mitigation measures would not provide the required downstream flood risk protection because water will not flow uphill and the flood water storage facilities must drain the appeal site by gravity. It is the view of Morpeth Flood Action Group that its minimum capacity should be 26,000m³.

125. Mr Smith said that if planning permission was granted that conditions should cover such matters and restrict the run-off rate to 16l/s, as required by the Council's Suds officer. A Suds maintenance plan should be prepared for approval by the Council. Finally foul sewage from the site must be connected to the town's sewage treatment works, bypassing all existing, overloaded and surcharging sections of the network, including Salisbury Street.

iii) Karen Carins, Councillor and Chair of Stannington Parish Council

126. Mrs Carins read her statement [DS17]. She raised concerns about the impact of the development on the local road network and specifically the prospect of additional vehicles using Stannington Station Road to gain access to the A1. Both ends of Stannington Station Road are only served by 'T' junctions, which become heavily congested at peak times. When the level crossing is closed long tailbacks build up in both directions with disturbance to residents from running engines. It is already a busy main road with 6,500 vehicles passing through but she was concerned that the development could add up to another 1,200 vehicle movements daily. She explained that the 40 mph speed limit is regularly exceeded but there is no traffic calming in place; 70 households and businesses open onto this road but there is not even a continuous pavement.
127. The Stannington Parish NP interactive transport map [DS17] identifies the areas of potential danger hotspots, including where accidents have occurred. The area of most concern in the Parish was Station Road where the conflict between horse riders, pedestrians, cyclists and vehicles is high. Although the MNB is in prospect she was concerned that Stannington Station Road would become the unofficial southern bypass. As its roots lie as a rural access to neighbouring villages it was not even designed for its current role and so if the proposed development goes ahead it represents a threat to the infrastructure, community and road users. This is the basis of the Parish Council's objection.

iv) Councillor Andrew Tebbutt

128. Councillor Tebbutt agreed with the concerns expressed by others and paid tribute to the work of the H & MT team. He was chair of the Policy Committee in 2003 when it considered the LP, which was for the period 1991-2006. At that stage the Committee was thinking well ahead of 2006. After 2003 the Council worked hard on the next plan but the SoS stopped the plan from coming forward due to local Government reorganisation. The Council asked for an exemption to be granted but it was not, which has given rise to the policy vacuum that exists today. However even in 1998 the focus of policy was on

development to the north of the town. The junction at Telford Bridge is the second busiest in the whole County with some 23,000 vehicles per day.

129. Councillor Tebbutt accepted that the Council does not have a 5-year housing land supply but pointed out that the figure of 1,500 dwellings in the CS is for the period up to 2031. This figure includes dwellings already built such as 100 at The Kylins. However there were a lot of dwellings in the pipeline, including 200 at Loansdean, 255 at Northgate [Persimmon], 250 at Northgate [Taylor Wimpey], 350+ at pre-planning stage on land west of Lancaster Park, 390 coming forward in Phase 1 of the St George's Hospital site and at least 200 homes on the County Hall site. On this basis he suggested that there was the potential for approximately 1,750 houses to be provided 16 years before the end of the CS plan period. As such he said this proposal was unnecessary, premature and in the wrong place, and he described the housing land supply situation as a red herring. The NP was frustrated only by the lack of a CS.
130. In terms of any affordable housing that might be provided, Councillor Tebbutt maintained that it would not be affordable for those who need it. A 30% discount, even at £220,000, would leave the cost at £154,000, which in his view was £30,000 above the price that he considered to be affordable. Turning to education the development would generate 12 children per school year which, over a school life of 15 years, would be 180 children. Together with the permitted Loansdean development there would be some 270 extra children that needed to be educated in Morpeth. Although it was said not to be an issue the schools are full and any children in the system cannot be thrown out of the school that they are attending. This might mean children living on the development site might have to be transported to other towns in the area, such as Bedlington. There would also be 36 under 3's on the site when there are no facilities on site and all play groups are a long distance away. Funding for pre-school accommodation is required. By reason of the lack of education contributions and affordable housing he considers the proposal unsustainable.

v) Harry Cone

131. Mr Cone read his statement [DS30]. He said local services, including schools, doctors and dentists are full. He reiterated the concerns expressed by others regarding flooding and said that he had no faith in computer modelling of flood events. He was concerned the Council and the Appellants had not addressed some of the main issues at the Inquiry. He maintained that the roads were not adequate to cope with existing flows let alone those proposed and he criticised the highway modelling in terms of its outputs, which he said were not realistic. He said the MNB would have a minimal effect on approach from the south and given that walking was not a realistic option from the site he said the existing infrastructure could not cope with this scale of development.
132. Mr Cone said that the application flies in complete contempt of emerging plans for the area, including the NP, and that it was premature. He said the Appellants' approach, that the urgent need for housing in Morpeth should outweigh other concerns, was very cavalier and dismisses out of hand the concerns of thousands of residents. He provided a copy of the Morpeth Herald [DS30.2], which referred to a "*Development deluge*". In that context, noting that the Council was considering moving out of Morpeth, he questioned where the demand was for all of the houses currently being proposed. Turning to

business he said some 70% of existing housing lay to the south of the town and due to the traffic problems prospective residents would shop elsewhere.

133. Mr Cone said that the natural southern boundary for the town was the A196 and that development south of that road would constitute sprawl and give rise to coalescence. He said that this was not the first time that development had been put forward on this valuable prime agricultural site. He implored the SoS to dismiss this appeal for the valid reasons being advanced by residents.

vi) Ian Campbell, Neighbourhood Plan advisor and Steering Group member

134. Mr Campbell referred to the Morpeth Herald's lead title "*Development deluge*" [DS30.2] and said that the people of the town had been left bewildered and let down by the planning system. He explained that Morpeth Town Council, together with the adjoining parishes of Pegswood, Hebron, Hepscott and Mitford, were preparing a NP to manage future development and growth. He claimed that decisions made by the LPA and The Planning Inspectorate had undermined these efforts to achieve planned growth. The proposal for 396 dwellings was a large scale residential development and if it came forward in advance of the NP it would frustrate the emerging development strategy.
135. Mr Campbell quoted the first Core Planning Principle from paragraph 17 of the Framework, which says planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and NPs setting out a positive vision for the future of the area. He said the NP group is trying to undertake that exercise in order to maintain the town's strong identity and its vibrant town centre. The NP would become part of the DP and reflect the priorities of the local community over the next 15-20 years. However he acknowledged that because the NP is at too early a stage to be given weight a policy vacuum exists at present. He said that work on the NP was continuing and that a draft would be the subject of public consultation later this year.
136. Mr Campbell said the CS is at an early stage and could be given little weight. Nevertheless he saw the figure of 1,500 dwellings in the CS as indicative of the direction of travel and said that the same principle should be applied in terms of location. Paragraph 9.81 of the CS says the preferred strategy is for housing to the north of the town, including 1,000 dwellings on the St George's Hospital site. He emphasised that this allocation had been carried forward from the adopted LP which, in the supporting text, anticipated development in the period beyond the time horizon of the LP. He saw the St George's Hospital site as a sustainable urban extension in contrast to the recently approved Fairmoor site and the appeal site, both of which he described as piecemeal.
137. Mr Campbell said that whilst the Appellants had made great play of the Framework insofar as it sought to significantly boost the housing supply he said it was merely one amongst equals. He disputed it was an "*overarching aim*"⁴⁴, as the Inspector had described it in the Loansdean decision.

vii) Dr J Meth-Cohn, Chairman, Hepscott Flood Action Group

138. Dr Meth-Cohn explained that Hepscott lies below the confluence of the Catch Burn and the Coal Burn, which serve a number of areas, including the A1 dual

⁴⁴ Source of quote: paragraph 31, of decision APP/P2935/A/12/2170840 etc, DC4.

carriageway, and would, in future, serve the Loansdean scheme. In 2008 a number of properties in Hepscott were flooded, including his own, when water came off the fields in the area, including the appeal site. The Red House Burn overflowed and flooded a number of properties, starting with No 14 The Orchard. He said after 2008 work to alleviate the flooding was undertaken in the area, which included a number of leaky ponds [Suds] and a flood relief pipeline. In 2012 a number of properties in Hepscott were again flooded and at that time the leaky ponds on the Red House Burn did not have flood water in them. He said the EA's relief structure was ineffective as he had monitored it and never saw water coming out of the pipeline, which he felt guilty about.

139. Dr Meth-Cohn said the culvert that served the appeal site did not cross the railway line to Red House Burn and so it would not benefit from the Suds scheme. He said the appeal site, at circa 55m AOD, was at a significantly higher elevation than Hepscott, at around 40m AOD. In this context the main road through the village regularly flooded and he was trying to get the Council to deal with it. Due to climate change he suggested that the position was only going to get worse. He sought a cast iron guarantee that the Suds would be maintained, particularly in the light of the increase in hard surfaced area that was proposed. Moreover he suggested that there was an obvious solution to flooding associated with the Red House Burn, which was to direct the route of the water further along the railway line to connect to an existing ditch to the north-east of the village [DS29]. Either way he emphasised that no increase in water should be directed to Hepscott and he expressed concern about the Loansdean decision which, he claimed, contains no maintenance requirement.

viii) Joan O'Connor

140. Joan O'Connor said she had worked in the new build industry in the local area for around 7 years and that her development had taken 4-years to sell at an average price of £250,000. The affordable housing was, in her experience, made available to people with family or work connections to the local area for a period of 12 weeks. She said that the help-to-buy scheme did not apply to such units. She said on the site she had worked on there had been no need for all the affordable housing; there were only 4 applicants pa. She said the "*Rightmove*" website currently recorded 244 properties on the market in Morpeth of which 171 properties were on the market for less than £250,000, 37 of which were on the market for less than £125,000. Given the lack of work in the area and the absence of business to support the proposed level of housing she said it would take years to sell the dwellings on the appeal site.
141. Joan O'Connor said that education was the driving force for people wanting to live in Morpeth, but that the existing schools in the town were at capacity. She knew a lady with 3 children under 10-years of age who had to take them to 3 different schools, including one in Ponteland. She said that whilst there was a need for extra housing it was not on the scale of that currently being put forward and any proposed should be at the northern end of the town to obtain easier access to existing schools as well as to benefit from the MNB. She said 800 houses were already under construction at Arcot Hall, near Cramlington.

ix) Fred Dye, Councillor, Hepscott Parish Council

142. Mr Dye said that he spoke to an engineer who was worried by the proposal and said there was a need to establish who would be responsible for maintenance

of the Suds and who would pay for maintenance of the Suds. Mr Dye sought an assurance that the annual budget would be ring fenced and adjusted for inflation. He emphasised that the legislation to establish Suds bodies had not yet been passed. His other concern, as a former teacher at King Edward's School, was the level of traffic congestion. The traffic lights that were installed near Telford Bridge had made things worse and so they had to be removed.

x) Derek Thompson, former Chairman, Morpeth Town Council

143. As a resident of Stobhill, Mr Thompson said the A196 defined the boundary to the town and that this natural border should not be crossed in a reckless way. He was concerned that the scheme would result in a loss of agricultural land and hence a reduction in food production. He said there were a large number of applications for housing around Morpeth at the moment. He said that local schools were over-subscribed and that most of these, together with medical facilities, lay to the north of Morpeth, which meant that it was necessary to travel, invariably by car, across the town in order to access them. Housing on these fields would give rise to urban sprawl and there had been no attempt to integrate them into the community. He said that developers had not proposed to alter the geometry of the road network serving the appeal site and that the roads had not been built to serve this number of houses. He claimed that everyone wants to build '*quality*' houses in Morpeth and that these should instead be directed to other towns in south-east Northumberland. In summary he asserted that it was an inappropriate development that should be refused.

xi) Paul Kidd

144. Mr Kidd said he had been resident in Hepscoth for 30-years. He was sceptical of the accuracy of the modelling exercise that had been undertaken. He was told that the output of the highway modelling was that one could drive from Stobhill to the Telford Bridge in 221 seconds, ie 3 minutes and 41 seconds. As a retired Magistrate he claimed this would cause one to break the law as the busy stretch of road included 3 roundabouts and 4 pedestrian crossings.

xii) David Armstrong

145. Mr Armstrong said that he had been a resident of Barmoor Bank for 30 years. He testified that, particularly during periods of inclement weather, queues tail back from the roundabout for approximately one mile. He indicated that if planning permission was granted that the congestion would be horrendous.

xiii) Bob Robertson

146. Mr Robertson re-emphasised the position taken by Morpeth Flood Action Group that there was a need to maintain any Suds. In terms of sewage he suggested that the system is overloaded and cannot cope with the existing flows. Any new development proposed needed to bypass the serious existing overflow.

xiv) Michael Lamb

147. Mr Lamb said he was Morpeth born and bred and that during his lifetime he had seen the level of traffic increase again and again. He attended the first day of the Inquiry and since then the Morpeth Herald had highlighted the housing schemes that have already been approved, including Loansdean and Northgate. With the St George's scheme in prospect it was not necessary in

his view to accept this proposal. On the issue of highways he pointed to the traffic lights at the Telford Bridge junction where the residents said the experts were wrong and so it proved. In the scenario that 1,500 houses are built in the town they cannot be pulled down if the experts' modelling is wrong. He questioned whether residents would be able to get appointments for doctors and dentists if this number of houses were built. He also rhetorically asked whether if some houses were affordable this meant others were unaffordable.

xv) Chris Tuersley

148. Mr Tuersley said he had been a resident of Kirkhill since 1963. His primary concern was the impact of the development on the environment. Although not part of the Green Belt the site was white belt and should not be built upon.

xvi) Dr Anne Colver

149. Dr Colver, a resident of Hepscott, was a GP at the Gas House Lane Surgery until 2011. Her neighbours had been flooded and had gone through a terrible experience. They had to evacuate their dwelling for 6 months and now had to experience the anxiety of whether the same thing might happen again. They would have problems if they wanted to sell their property but in the meantime they had high insurance premiums and a very high excess of around £40,000. In the light of that experience she said that the misery of flooding does not go away. In her view the solution put forward by the Appellants would not be adequate particularly if there was another period of relentless rainfall. She said expert advice should be taken and questioned the need for the houses.

xvii) Jean Douglas

150. Jean Douglas said that she recently moved to Hepscott and that during her attendance at the Inquiry she had been interested to learn how quickly she could travel into Morpeth. Her experience of travelling 3 times a day to drop off at a nursery and a school and then collect her children was different. Although she sailed through in summer at most times she did not get past Sainsbury's before queuing and she was often beaten by children walking. Although she left home by 0815 hours she had still been late for school at 0845 hours. Cars often turn around in the main road at Stobhill. On the approach from Loansdean the queue can be back to the Sun Inn and vehicles often block the Mafeking roundabout. Another 400 houses could give rise to 800 cars. Morpeth could be gridlocked. Moreover cars often use Stannington Station Road to gain access to the A1 and as she already finds it difficult to get onto the main road from Hepscott this situation would worsen. Finally when Hepscott floods the main stream does not cope with the water and it goes back up the drains. Although she has fitted non return valves she considers that she should not have to. Her neighbours have previously been flooded and for this and all other reasons advanced she hopes the SoS dismisses the appeal.

xviii) Sandra Kennedy

151. Sandra Kennedy said she was proud to have been a resident in the Stobhill Manor area of the town for the last 16 years. She endorsed the view of others that the traffic can be horrendous and that it can take 25-30 minutes to get into Morpeth from Stobhill. Her experience is that she drives in first gear from Sainsbury's due to 3 busy junctions along that stretch of road and vehicles can

only get onto the A192 if one lets them in; she described the junctions as accidents waiting to happen. In her experience the pedestrian crossing just to the south of Telford Bridge is used constantly in the peak period by parents with their children on their way to school and then by parents as they walk back home; she considered it was the source of the queuing on the network. At the Mafeking roundabout some drivers travelling north along the A197 avoid the traffic jam by going down the right hand lane and then executing a 360° turn but this exacerbates the waiting time for other drivers. She has had to wait 2 weeks for a doctor's appointment. She does her weekly shop in Morrisons because the Sainsbury's does not stock a full range of goods and prices are circa 30% higher. Although she tries to travel outside of the peak this still means additional trips into the town centre rather than within Stobhill.

xix) Councillor Glen Sanderson

152. Councillor Glen Sanderson is the County Councillor for an area that includes Hepscott and said that he appreciated the openness of the process. During the Council's consideration of the application he attended a site visit at 1400 hours in the vicinity of Collingwood School and was surprised at the amount of traffic using the road at that time. He considered this gave rise to highway safety issues. At a meeting where the application was considered over 100 people expressed genuine concerns about the impact of the development on the future of the town. Their concerns included the effect on the town, on traffic congestion, on schools, on flooding and on the separation between Morpeth and Hepscott, which would be lost as a result of development crossing the existing clear boundary onto green fields. In his view the proposal would have a serious impact on Hepscott, which would lose its identity and no longer be a discrete village. In conclusion he submitted that the proposal was inappropriate and that this was the wrong place for this scale of development.

xx) Councillor Ian Lindley

153. Councillor Ian Lindley is the County Councillor for an area that includes Stobhill. He observed that a punctilious note was being taken and hopes that the SoS listens to the views expressed. In his role as Councillor it was his job to listen to what was being said. He acknowledged that the proposed development had some good points, which included being well designed and with a good percentage of affordable housing. Nevertheless in his 7 years as a Councillor he had never come across an issue such as this where there was no divergence of opinion. In this case he said nobody had approached him to say this would be a good idea. In particular the main concern was the impact of the development on traffic flows by virtue of the appeal site being on the wrong side of town. He recalled that local people had been opposed to the traffic lights that were installed at the junction to the north of Telford Bridge from the start and that the modelling exercise in respect of that scheme had been totally wrong; he is unconvinced by the modelling here too. In his view the appeal should be dismissed for this reason in particular.

xxi) Vivienne Rochester

154. Vivienne Rochester said that she had lived in Morpeth all of her life as had her forebears. She had attended the opening of the Inquiry and got the impression that residents were being portrayed as backward looking and NIMBYs. However most residents simply care very much and very deeply

about Morpeth. She said that there had been quite a bit of house building in the town and nobody had been awkward or a NIMBY. However she said that the town's people don't want the proposed development because it was not right for the town, its people or for future generations. Once built she said that it could not be taken down again and that it would be left for the Council to sort out the problems that the proposed development would cause. People would have to put up with it but she stressed that it was "*our town*".

xxii) Richard Wearmouth

155. Mr Wearmouth is a resident of Barmoor Farm, where his family has resided for 40 years. He said he is a director of a company involved in renewable energy and is Chairman of the local Conservative Party. He had observed the progress of the development proposal, including speaking at County Hall when the application was considered by the Council, as well as attending the Inquiry.
156. There has been a history of traffic problems, which arose largely because the majority of existing houses lie to the south of the river. This was compounded by features of the network, including the Mafeking roundabout and the railway bridge. The NP is attempting to address these problems by siting houses to the north of the town. However these problems would be compounded if this appeal is allowed. In particular secondary schools were all located to the north of the river. Traffic flows change through the seasons because of the weather and he has no confidence that the worst case scenario has been captured. He understood that the worst case baseline was a travel time from Stobhill to Telford Bridge of 11 minutes but that the peak time average was 221 seconds. However when it is raining residents have no alternative but to use their cars and the models have been unable to match the worst case peak journey times. In his view it was only just possible to undertake the journey from Stobhill to Telford Bridge in the model's average journey time.
157. Mr Wearmouth said he hoped the MNB would come forward but that the DCO is still being considered. In his view the MNB would not give rise to much benefit for northbound traffic along the link from Stobhill to Telford Bridge. In the circumstances he questioned what weight the SoS could give to the MNB in reaching a decision. The Council objected to the proposal on the basis of a severe cumulative impact, a conclusion with which he agrees. Moreover the parameters of assessment are a significant factor and in this case the traffic impact assessment has not taken account of the Loansdean decision. In his view this needs to be addressed and in its absence he does not see how it is possible to appreciate the potential for a severe cumulative impact as referred to in the Framework. Although the Appellants have referred to the SHLAA the cumulative impact on the highway network of the various sites identified therein has not been considered. So whilst the parameters of the model appear to have been discussed with the Council as the other emerging sites in the SHLAA have not been considered the appeal should be dismissed.
158. Turning to sustainability it can take him 30 minutes to drive from Barmoor into Morpeth and it would not be significantly less for the proposed estate. Most prospective residents would use their cars to gain access to Morpeth in his view because there are few services and facilities close to the appeal site. Amongst other things the main schools are on the north side of the town. For these reasons he considers that the proposal is not a sustainable development.

159. In terms of the debate between the main parties as to the applicability of PTAL, he noted Mr Hollowood had said PTAL was not used outside of London and BREEAM was not applicable to houses. Having asked one of his colleagues he was told that PTAL was part of the accreditation and that CSH was the relevant national standard, which was the domestic version of BREEAM, and on that basis he said the use of PTAL to assess the appeal site was appropriate.
160. In terms of the impact on the landscape, given the existing development at Barmoor if the proposed development were allowed it was claimed that the time that people would have to enjoy the open countryside would be halved to 14 seconds. The aim of the CS was to stop coalescence. The landscape corridor on the A196 was protected by a saved policy and the proposed development would not just physically impact on that corridor, it would have an impact on the town's setting and context, so as to render the corridor to be useless. On this basis there is a conflict with the policy. He did not agree with the claim that the landscape was not of great value but in any event this was not a reason to permit further damage. In his view the tree belt to the south should be removed because it is incongruous. Although the Appellants sought to use the CS to show that the site is outside of the Green Belt, as it is agreed that the CS can be given little weight the Appellants cannot have it both ways.
161. In terms of flooding Mr Wearmouth said this should have been addressed by the Appellants. During the 33 years that he has been living at Barmoor Farm the flooding on the Catch Burn has got worse possibly due to farming practices and new housing developments. Water has breached both sides of the Catch Burn below the Stobhill Manor development. He said there was a field drain into the Catch Burn at Barmoor Farm that drains the appeal site across the A192. For these reasons he said that it was not rational to grant permission.

Written Representations

162. There were objections by local residents at both application and appeal stages. A total of 11 letters [DC 2.1-2.11] were received in response to the Council's letter of notification [DC 1] and further written submissions [DS17, DS19, DS25, DS30.1, DS31, DS32, DS33, DS34 and DS41] were handed in at the Inquiry, although some people spoke to these. All oppose the development. Generally the same points have been made to those that have been recorded above and these will not be repeated. Additional points include:
- i. An objection to *"...any further building of new houses in Morpeth"*.
 - ii. The development is too large and would be an increase of over 5% in the number of homes in Morpeth, which is currently around 7,000.
 - iii. There are brownfield sites available that should be re-used first.
 - iv. The builders are trying to jump the gun as there is no immediate imperative in terms of housing demand in Morpeth and so the scheme should be rejected until the emerging DP has been adopted.
 - v. Unemployment in the area is 9.6 %.
 - vi. The scheme should not be considered in isolation.
 - vii. The shortest theoretical time to travel between Stobhill roundabout and the Telford Bridge is 128 seconds based on travelling 0.9 miles at a speed of 30 mph allowing for a 10 second period to negotiate Mafeking roundabout and slow down over the bridge towards the roundabout. This has been tested at a time when there were no other vehicles on the road and the actual recorded time was 130 seconds. However this

contrasts with a recorded journey time of 4 minutes and 26 seconds at a peak time when there was slow moving traffic over a distance of circa 150 m. The difference was down to congestion and so it is difficult to reconcile how a figure of 221 seconds has been arrived at by traffic consultants for peak time travel. The relationship between the number of vehicles and recorded traffic flow is far from linear. Moreover it is claimed that 20-30 minutes is the average commuting time for many.

Conditions

163. Paragraph 206 of the Framework says that conditions should only be imposed where they meet 6 tests: (i) necessary; (ii) relevant to planning; (iii) relevant to the development to be permitted; (iv) enforceable; (v) precise; and (vi) reasonable in all other respects. Although the Guidance has cancelled Circular 11/95 *"Use of conditions in planning permissions"* Appendix A thereof, which sets out suggested conditions, remains extant.
164. An Addendum, dated 8 July 2014, to the SoCG [CD39] lists 27 conditions that have been agreed between the main parties including, subject to 13 points which I propose to examine in what follows, H & MT. The first is the standard commencement condition, which is a requirement of the Act. The second identifies the approved plans, which is necessary in the interests of proper planning and for the avoidance of doubt. However it was agreed at the Inquiry that drawing No MD0777.00.20 Rev C, the *"Preliminary Drainage Scheme"*, should be excluded from that list. Among other things the key on that drawing identifies preliminary drainage routes and it is annotated *"Pond locations, sizes and depths to be confirmed following detailed design stage"*. Listing this as an approved plan would not be appropriate in those circumstances as the detail might change. It was further agreed that whilst drawing No NE-18-12A was submitted with the application since this shows *"Indicative Street Elevations"* [*my emphasis*] this should not be included on the list of approved plans.
165. The third and fourth seek to control noise, deliveries to and collections from the appeal site during the construction phase. However in my experience such conditions are likely to duplicate powers that are available to the Council under section 61 of the Control of Pollution Act 1974. On this basis the Council conceded at the Inquiry that these conditions would not be necessary. In reaching my view that such conditions duplicate existing powers I appreciate that the Council's Environmental Health Officer put these conditions forward⁴⁵, but it is unclear whether the Council considered the other powers available.
166. The fifth suggested condition seeks a schedule and samples of the external materials proposed for the dwellings. However drawing No NE-18-15B, which is entitled *"Materials Plan"*, includes a comprehensive schedule of external materials for each house type, including a specification of bricks, render and tiles. Since the schedule has already been provided it was agreed at the Inquiry that the condition could be restricted to require the submission of samples in the interests of the finished appearance of the development. The sixth suggested condition, which seeks details of refuse and recycling facilities, is necessary for the same reason and to ensure provision is made for up to 3 wheelie bins which, the Inquiry was told, each householder might want.

⁴⁵ Memo dated 29 January 2014 submitted as part of the bundle with the questionnaire.

However I recommend that the first trigger is altered to commencement so that the facilities can be properly integrated into the proposed layout.

167. The seventh and eighth conditions relate to foul and surface water drainage, respectively, which are plainly necessary. H & MT argue that the Salisbury Street Chamber should be upgraded but for reasons discussed at length in my conclusions I agree with the Appellants that this has not been shown to be necessary. However it was agreed that suggested condition 7 be modified to make express reference to the need to consult Northumbrian Water. This should give some comfort on this issue because, as the Appellants indicated to the Inquiry, the proposal is wholly dependent on Northumbrian Water being able to accommodate the foul flows generated by the development. H & MT also seek the upgrading of the combined sewerage system in Hepscott but for reasons discussed in my conclusions I agree with the Appellants that this has not been shown to be necessary. There is no proposal to direct foul drainage into this system and so it is clear that such a requirement would be unlawful.
168. Turning to the detail of condition 8, it was agreed at the Inquiry that reference should be made to the *"Preliminary Drainage Scheme"*, given its deletion from condition 2, in a similar way to which there is reference to a preliminary highways drawing in suggested condition 25. H & MT have suggested that the condition should refer to 16l/s *"or 50% of the green field run off rate whichever is less"* and for reasons that I discuss in my conclusions I consider that this additional clause is necessary. Subject to this clause it would not be appropriate to impose a condition to require a full study to be undertaken of the flooding situation in Hepscott because that would not be directly relevant to the development to be permitted. The catchment is much larger and the causes of flooding cannot be attributed solely to the appeal site.
169. Although I have considered the relationship between suggested condition 8 and the Estate Management Plan in the section 106 agreement I consider that these are largely complementary. The condition requires the implementation of the details as approved, including a management and maintenance plan for the lifetime of the development which, for the avoidance of doubt, I consider to be the period during which the approved houses remain standing. Point 16 of the Estate Management Plan requires the maintenance and management of any Suds facility constructed as part of the development. I consider the latter to be the more robust mechanism, which is capable of being enforced by injunctive proceedings in the event of a failure, to maintain the Suds facility. For this reason the equivalent management and maintenance clause in the suggested condition can be deleted because it duplicates the section 106.
170. Suggested condition 9 sets out sound attenuation standards for main habitable rooms in dwellings that front onto the main roads in the interests of prospective residents' living conditions. The standards derive from Table 5 of BS 8233: 1999 *"Sound insulation and noise reduction for buildings – Code of practice"*. In the circumstances, noting that the levels have been modified to some extent from those put forward in the original response from the Council's Environmental Health Officer⁴⁶, I find those suggested to be appropriate.

⁴⁶ Memo dated 29 January 2014 submitted as part of the bundle with the questionnaire.

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171. Suggested condition 10 was put forward by the Council's Environmental Health Officer and its objective, to ensure that the gardens of all plots that front onto the main roads benefit from satisfactory sound attenuation, is not in dispute. The Inquiry was advised however that the dwellings would themselves provide the necessary attenuation and so it is the houses rather than the gardens that are being constructed. I shall revise the suggested wording to make this clear.
172. Suggested condition 11 seeks to deliver a similar objective by requiring details of the proposed reflective acoustic barrier to be agreed. Although there is an implementation clause I propose to add a retention and maintenance clause to ensure that the condition is enforceable. H & MT say that the reflective acoustic barrier should not compromise the landscape corridor. Although this might be a valid observation I find no reason to recommend that the condition should specify this as the Council would approve the scheme concerned. Further, the rationale for this condition relates to prospective residents rather than existing residents. There are a number of controls over any noise disturbance during construction phase, including statute, such as the Environmental Protection Act 1990 and the Control of Pollution Act 1974, and suggested condition No 20. Accordingly there is no reason to require the barrier to be provided before development commences.
173. Suggested conditions 12 and 13 were put forward by the Environmental Health Officer. There is no dispute that they are necessary to prevent any accumulation of oxygen deficient air, having regard to the geoenvironmental report, and establish a procedure in the event that contamination not previously envisaged is identified, respectively. H & MT say in respect of suggested condition 13 that if contamination is found existing residents should be notified. I accept that it might be prudent to do so, but the fact is that the suggested condition requires the Council to approve such details and so they are plainly the appropriate body to take this forward. In the circumstances I am not persuaded that it is appropriate to recommend revised wording in order to address this possibility, but the Council might wish to ensure that, at a minimum, it publishes any submission pursuant to this condition in a timely manner on the internet to facilitate public access and comment.
174. Suggested condition 14 requires details of hard and soft landscaping to be agreed in the interests of visual amenity and to enhance the biodiversity of the site. Suggested condition 15 requires a detailed landscape management plan, for areas other than domestic gardens, to be approved and thereafter implemented. At the Inquiry there was some debate as to whether the Estate Management Plan in the section 106 agreement covered this matter. However I consider that the condition and point 9 of the Estate Management Plan are complementary insofar as the former would establish the basis on which the latter would operate. Conversely if the former was deleted or not otherwise agreed it is unclear what maintenance would need to take place of any structural landscaped areas. Although I have considered point 15 of the Estate Management Plan this too is essentially a management and maintenance clause following implementation of those details which have been approved.
175. H & MT seek a minimum landscaped strip of 15 m in depth along the northern, western and southern boundaries of the site. However I find no reason to incorporate this as a requirement of suggested conditions 14 and 15. Both conditions require the details of such planting to be agreed with the Local

Planning Authority and so it is within the Council's control to require an appropriate belt of planting. The suggested conditions do not need to be made more prescriptive. Turning to tree management I have already identified the relevant provisions above but make clear that it is not within the gift of the SoS to protect the proposed tree planting by imposition of a TPO. If and when the tree planting is undertaken it might be open to the Council to protect it at some future date with a TPO if it was considered to be expedient at that time.

176. Suggested condition 16 requires development to proceed in accordance with the mitigation identified in the submitted ecological appraisal, breeding bird survey and the bat survey reports. This is necessary in the interests of maintaining and enhancing the biodiversity interests of the site. However it was agreed at the Inquiry that suggested condition 17, which restricts the period during which hedges and trees can be removed, duplicates statutory provisions contained in the Wildlife and Countryside Act 1981 (as amended). Indeed the reason for the condition says that all nesting bird species are protected by law, which is plainly a reference to those provisions. Although I recommend deletion of this condition what I propose is to add a reference to recommendations, as well as mitigation, in suggested condition 16 because the recommendations of the ecological report deal comprehensively with this issue.
177. I observed at the Inquiry that suggested condition 18 does not make much sense by requiring development to be in accordance with BS 5837:2012 "*Trees in Relation to Design, Demolition and Construction: Recommendations*". I hope it is fair to say that BS 5837:2012 sets out the approach to undertaking a tree survey, including categorisation and protection during the construction phase. It says, amongst other things, that a tree survey is usually the starting point for informing the layout. However, given that most existing trees are around the perimeter of the site I understand why the Council did not seek to apply this approach in this particular case. Accordingly I believe that the objective underpinning the suggested condition, as revealed by the reason, is to protect those trees that are to be retained during the construction phase. Accordingly I recommend adapting the model condition from the Circular for this purpose. There appeared to be no dissent to this approach at the Inquiry.
178. Suggested condition 19 requires details of the children's play areas to be agreed with the Council, together with implementation in accordance with a timetable to be agreed. Such a condition is necessary to ensure that adequate play areas are provided on site to meet the reasonable needs of prospective occupiers. It was suggested at the Inquiry that this condition results in some duplication with the Estate Management Plan in the section 106 agreement. However I consider that the condition and point 17 of the Estate Management Plan are complementary insofar as the former would agree the details and deliver the play areas whilst the latter would ensure that the areas thereby provided would be maintained and managed. In this case there is no equivalent maintenance and management clause in condition 19 and so the respective provisions sit happily together. In those circumstances I reject the view of H & MT that the condition should cover this matter. The named organisation is specified in the section 106 agreement.
179. Suggested condition 20 requires details of a construction management plan to be submitted and approved in the interests of neighbours' living conditions. Concerns have been expressed that vehicles attending the site outside of

normal operating hours might park on the highway and disturb neighbours. To address this it was agreed that it would be appropriate to add the words "*at all times*" to the end of the first bullet-point.

180. H & MT say that there should be a binding agreement in place to require the developer to repair any damage to the existing highway but I am not persuaded that this would be necessary. If there is damage to the highway and clear evidence that shows that the developer and/or its contractors are responsible then I have no reason to think that established mechanisms do not exist to recover any monies due. Ultimately this would be a civil matter between the respective parties and if it were not covered by insurance then civil proceedings might be in prospect. Condition 24 is also relevant insofar as it requires all works to be eligible for adoption and so there would appear to be some leverage if, for example, the existing site access point[s] had been subject to anything other than reasonable wear and tear.
181. The next suggested condition requires the parking areas to be retained for that purpose, which is necessary in the interests of road safety, but I shall extend this to turning areas and add precision by referring to the approved plan. The provision of such spaces in the first instance would be covered by condition 2. Suggested conditions 22 to 26, inclusive, all relate to various aspects of highway design and are necessary in the interests of highway safety. These conditions reflect, to a significant degree, the Revised SoCG on Transport [CD40]. H & MT say that some of these works should be completed prior to the first occupation of any dwelling. Although condition 25 contains such a clause I have reviewed the other conditions with this in mind and recommend insertion of a clause to require a timetable to be agreed with the Council. Having regard to comments made at the Inquiry by Councillor Tebbutt, I shall also make clear that the bus shelter needs to be moved to serve the bus stop.
182. The final suggested condition requires a travel plan to be submitted within 6 months of the occupation of the first dwelling. H & MT argue that the travel plan should be in place 6 months before any of the properties are lived in; I agree. It is entirely in prospect that the travel plan might require steps to be taken, at a minimum a welcome pack informing prospective occupiers of public transport options in the area, which in my view needs to be delivered to all prospective occupiers. There is a strong argument in my view that the first occupiers are more important because they might, in this respect, set the culture for the whole development. The suggested condition also fails to require anything other than submission of the travel plan, as opposed to its implementation and review, which are all necessary and quite normal requirements of such a condition. A clause to require its approval by the Council is also proportionate and perfectly normal. I comment elsewhere on the reality that this condition is not the appropriate mechanism by which to deliver monies towards off-site cycle lane provision or enhancement.

Section 106 Planning Agreement

183. Paragraph 204 of the Framework says that planning obligations, which would include the section 106 agreement, should only be sought where they meet 3 tests: (i) necessary to make the development acceptable in planning terms; (ii) directly related to the development; and (iii) fairly and reasonably related in scale and kind to the development. The statutory basis for these tests is to be found in Regulation 122 (2) of the CIL Regulations 2010.

184. The Council confirmed at the Inquiry that the section 106 agreement has been drawn up on the basis of the Council's standard template for such agreements. On this basis, noting that it is an agreement rather than an undertaking, I have no reason to doubt its effectiveness in delivering its relevant provisions. The agreement contains 2 key provisions, which I propose to examine in turn.
185. The first relates to the provision of 30% affordable housing, being 119 units. What is labelled the "*Affordable Housing Plan*", which is an integral part of the agreement, identifies the dwellings concerned and this, in turn, enables a breakdown of the units by size to be ascertained. The definitions section of the agreement says that 83 dwellings shall be affordable rented units and 36 dwellings shall be intermediate units, which represents a 70/30 split; those terms are, in turn, defined. The second schedule to the agreement sets out phasing provisions relative to the number of open market dwellings that have been constructed. Although the agreement does not identify which of the affordable housing units are to be affordable rented units and which are to be intermediate units, covenant 2.7 of the second schedule requires such details to be agreed prior to the commencement of the development.
186. The fourth schedule sets out the allocation procedure which, in respect of the affordable rented units, would be through the Northumberland Homefinder Scheme. Turning to shared ownership units, clause 2.3 of the fourth schedule defines what is meant by the term "*Qualifying Person*" and this includes those with local connections, such as by reason of work or family. On this basis it is clear that priority is given, in the first instance, to local people. The identical provisions also apply to discounted market sale units. Although I questioned whether the restriction at clause 3.2.3 of the fourth schedule should contain a date I am content to be guided in this matter by the respective solicitors who drafted the section 106 agreement that this is not necessary [DS16].
187. The second requires an Estate Management Plan to be submitted no later than the date of commencement and says no dwelling can be occupied until it has been approved. The fifth schedule to the section 106 agreement sets out what the Estate Management Plan needs to cover and I have already had cause to touch on some of its provisions in my consideration of suggested conditions. Amongst other things it requires details of how the privately managed communal areas would be managed, including arrangements such as street lighting. It covers the installation and maintenance of street name plates. The second schedule to the agreement requires the development to be operated at all times in accordance with the approved Estate Management Plan.
188. A sum of £1,260 is identified for monitoring compliance with the deed and a sum of £525 is identified in respect of the negotiation, preparation and execution of the deed. Although the basis for these sums is not set out in the Council's evidence they appear to be self-evident and, as such, I have no reason to interfere in the quantum that has been agreed between the parties.

Conclusions

189. My conclusions address the following main considerations:
- i. The weight to be attached to emerging planning policies and whether it is justifiable to dismiss the appeal on the grounds of prematurity having regard to advice in the Guidance.
 - ii. Whether relevant policies for the supply of housing are out-of-date.

- iii. The effect of the proposed development on the character and appearance of the area.
- iv. The effect of the proposed development on the local road network.
- v. The effect of the proposed development on flooding and sewage systems.
- vi. Whether existing schools have the capacity to accommodate children generated by the development or whether contributions are required.
- vii. Whether the need for affordable housing can be addressed by a planning obligation.
- viii. Whether the appeal scheme represents sustainable development, to which the Framework's "*presumption in favour*" should apply.
- ix. If so, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.
- x. The adequacy of the suggested planning conditions and the section 106 agreement.

190. In this section numbers in [square] brackets refer to paragraphs earlier in this report.

Main issue (i): Part one - The weight to be attached to emerging policies

191. I deal with this issue first because it has implications for other main issues. In accordance with paragraph 216 of the Framework, account can be taken of emerging policies. However the weight to be attached to such policies will depend on: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
192. In that context I deal initially with the weight to be attached to the CS. It is common ground between the main parties that the CS can only be given limited weight in this appeal in view of the fact that it is at an early stage of preparation and subject of unresolved objections [25]. The Council's recent decision [DS6] to grant planning permission on an area provisionally allocated for employment uses in the CS tends to reinforce that view [64 iii]. Moreover the evidence of H & MT itself is that "*...there is to be further delay, as the population projections used to date have been found to be overestimated*"⁴⁷. This points to potentially significant changes to both employment and housing allocations in the CS. There might be a need to commission fresh evidence, identify another employment site, or sites, and consult on revised options.
193. The LDS [CD19] says that consultation would take place on the full draft CS in Spring 2014 but that does not appear to have happened. For the reasons set out above the timetable in the LDS, which envisaged adoption of the CS in Spring 2015, appears to be wholly unrealistic. Bearing in mind that the examination itself might result in main modifications, which would need to be

⁴⁷ Source of quote: paragraph 5 of proof of evidence of Councillor Mrs Tebbutt entitled "Policy context".

the subject of further consultation, to anticipate that an examination might be concluded in one season, over winter, appears to be highly optimistic. I agree that adoption of the CS could easily be 18 months, or more, away [64 iii].

194. It is common ground that there are unresolved objections to relevant policies in the CS, although I have few details in terms of substance or quantum. It is also apparent that the preferred approach for the settlement of Morpeth is, to a significant degree, predicated on delivery of the MNB. If that does not happen, which is a matter I deal with elsewhere, the draft strategy in the CS might have to be re-visited. When the consultation on the full draft CS does take place there is the prospect of substantive objections being lodged at that stage. For all of these reasons I find no basis to attach anything more than limited weight to the CS at the present time. There are a number of factors that could lead to significant changes to the CS by the time it is adopted.
195. The LDS [CD19] anticipates that following adoption of the CS, a new LP would be progressed for the whole of the County, excluding the National Park area, which would include detailed land allocations and site specific proposals. The evidence that was given at the Inquiry focussed not on the emerging LP but on the NP. However the NP is at a very early stage of preparation [28]. It is material that Mr Campbell, who is advising the Town Council and others on the NP, said that it is at too early a stage to be given weight [135]. Applying advice in paragraph 216 of the Framework it is clear that extremely limited weight can be given to the NP at the present time because the policies, proposals and allocations have not even been published for consultation [28]. There appears to be no prospect of the NP being adopted prior to the CS.

Main issue (i): Part two - The issue of prematurity

196. The Guidance says: *"...arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both: a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging [LP] or Neighbourhood Planning; and b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area. Refusal of planning permission on grounds of prematurity will seldom be justified where a draft [LP] has yet to be submitted for examination or in the case of a [NP], before the end of the [LPA] publicity period. Where planning permission is refused on grounds of prematurity, the [LPA] will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process"*⁴⁸.
197. The Council has not raised any issue of prematurity [29]. It made its position very clear in its Committee Report and in the SoCG [CD39, paragraphs 5.41 and 5.42, respectively]. H & MT's position, that approval of the appeal could

⁴⁸ Source of quote: paragraph reference 21b-014-20140306.

predetermine both [CS and NP] plan making processes, needs to be examined in the context of this advice. The first point to make is that the Guidance is clear that both a) and b) should normally be met. For the reasons discussed above [192-195] it is clear that neither the CS nor the NP can be said to be at an advanced stage. The CS has not been submitted for examination and I have given reasons why the timetable for examination of the CS in the LDS is not likely to be met. The policies, proposals and allocations in the NP have not yet been published for consultation. It is clear that criterion b) is not met.

198. Turning back to a) the development proposed is not so substantial, and its cumulative effect would not be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of development that are central to the emerging CS. In terms of scale, in the context of the 24,310 dwellings proposed in the CS [26] this scheme for 396 dwellings represents materially less than 2%. In terms of location this proposal is broadly consistent with the identification of Morpeth as a main town that, within the relevant Delivery Area, is envisaged to be the focus for growth. To the extent that phasing is addressed in the CS, I think it is fair to say that the priority is *"...to ensure that a five year supply of deliverable sites is maintained at all times"*⁴⁹. The possibility of any cumulative effect needs to be seen in the context of that objective. For these reasons I consider that criterion a) is plainly not met insofar as it impacts upon the CS.
199. In relation to the NP, advice in the Guidance is clear that *"...plans must be in general conformity with the strategic policies of the Local Plan"*⁵⁰. In this case the NP is working towards conformity with the emerging CS. In terms of scale, in the context of the 1,500 dwellings proposed for Morpeth [26], this scheme for 396 dwellings is significant. However in terms of location the NP rightly recognises that there are a range of factors that are likely to influence the location of housing in the town [CD8, page 47]. These include the MNB and the Loansdean appeal. Of the 5 development options identified in the Lock Report [CD22] the NP fairly says *"...that the analysis was used to present the case in favour of the MNB"*⁵¹. I note that option RES3 in the Lock Report, which extends to 16.34ha, broadly comprises the current appeal site [CD22, page 25 and Option E, Appendix A].
200. In its summary the NP finds *"A much more detailed and scored appraisal of each potential housing site should be carried out at a later stage of the plan, fully taking into account our HTG Guiding Principles"*⁵². Those principles include taking advantage of the opportunities presented by the MNB and prioritising previously-developed land. I comment elsewhere on the former, but in respect of the latter the NP's own analysis does not suggest that 1,500

⁴⁹ Source of quote: paragraph 7.20 of the CS [CD7] under the title *"Phasing of new land for housing development"*.

⁵⁰ Source of quote: paragraph 3-040-20140306 of the Guidance.

⁵¹ Source of quote: point 3, page 47, The Morpeth Neighbourhood Plan Issues and Options Consultation Report, CD8.

⁵² Source of quote: under title *"Morpeth Summary"* on page 48, The Morpeth Neighbourhood Plan Issues and Options Consultation Report, CD8.

houses can be accommodated on such land that is currently deliverable⁵³. The NP fairly observes "...additional greenfield housing allocations are inevitable"⁵⁴.

201. In the circumstances I consider that the location of the identified quantum of dwellings is far from settled in the NP. Indeed I have already noted H & MT's suggestion that the quantum of dwellings might itself need to be revisited in the light of the changing household projections [192]. There is explicit recognition in the NP that Loansdean, and by inference other appeals, will be key to firming up other site allocations. So in terms of location the proposed development is not so substantial, and its cumulative effect would not be so significant, that a grant of permission would undermine the plan-making process by predetermining decisions that are central to the emerging NP.
202. Despite my reservation in terms of scale, particularly when taken with the outcome of the Loansdean appeal and other recent decisions such as DS6, it is clear that the prematurity argument does not justify dismissal of this appeal. In relation to the CS, I have given reasons why criteria a) and b) are not met. In relation to the NP criterion b) is not met and in those circumstances whilst I acknowledge that the scale of what is permitted, both individually and cumulatively, could be said to undermine the plan-making process, this is not a sound basis to find that the prematurity argument should succeed. In reaching this view it is material that the policy test, which is that refusal will seldom be justified at such an early stage in the process, establishes a high threshold. That basic rationale is what led the Inspector to reach a similar conclusion in the Loansdean appeal [see in particular, paragraph 27, DC4].
203. Although I accept that in an ideal world development would, or as H & MT put it "*must*", be plan-led, that is not a reason to impose what would amount to a moratorium on development. That would be completely at odds with the growth agenda set out in the Framework, as evident from the third core planning principle in paragraph 17 thereof. It says planning should proactively drive sustainable economic development to deliver, amongst other things, the homes that the country needs. The fact that the appeal is being pursued in the context of emerging plans cannot, of itself, render the proposal to be premature. A moratorium would be the antithesis of proactive delivery.

Main issue (i): Overall conclusion

204. On the first main issue I conclude that only limited weight can be given to the CS at the present time and that extremely limited weight can be given to the NP because its policies, proposals and allocations have not been published for consultation. In the circumstances I further conclude that H & MT's claim that the proposals are premature have not been made out crucially, in the case of the NP, because it is at such an early stage of preparation.

⁵³ See Table on page 46 and commentary on page 47 of the NP, which identifies previously developed land for 524 dwellings excluding the green field element of Northgate Hospital.

⁵⁴ Source of quote: page 46, The Morpeth Neighbourhood Plan Issues and Options Consultation Report, CD8.

Main issue (ii): Are relevant policies for the supply of housing out-of-date?

205. The Framework says: *"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites"*⁵⁵. For this reason this issue requires a judgment, in the first instance, as to whether the Council has a 5-year housing land supply.

Housing land supply

206. The Council has made its position in this matter very clear [30]. Indeed the SoCG is unambiguous in saying *"The appellant, H & MT and [the Council] agree that [the Council] does not have a deliverable five-year housing land supply"*⁵⁶. Despite this H & MT appears to have changed its position in this matter [114] for reasons that I shall examine in what follows.
207. The Council relies on the findings of the Inspector in the recent Loansdean appeal [30] and when I asked Mr Hollowood about this matter he commended the Inspector's figures to me. However I was asked to take a view on the question of the buffer because, in Mr Hollowood's view, there is a strong argument for a higher, 20%, buffer. Perhaps because of the position that it took in the SoCG, H & MT do not provide detailed evidence on housing land supply that would lead me to dispute what appears to be a consensus between the main parties. My starting point is therefore the Inspector's findings in the Loansdean appeal. He found *"...the housing need for the CRCA is likely to be in the range of 430 to 480 dpa. To that must be added any previous undersupply, and an allowance for a buffer"*⁵⁷. On balance, he found *"...conservatively, undersupply as being in neither positive nor negative figures at present"*⁵⁸.
208. In identifying this range, the Inspector gave reasons for rejecting the RSS assessment, namely that it is of some age and open to doubt and criticism. That broadly reflects the advice in the Guidance, which says⁵⁹ *"Where evidence in Local Plans has become outdated and policies in emerging plans are not yet capable of carrying sufficient weight, information provided in the latest full assessment of housing needs should be considered. But the weight given to these assessments should take account of the fact they have not been tested"*. In that context the Inspector rightly makes the point that it is the job of, in this case, the CS to set out the housing needs for the housing market area. However, with the caveat that the most recent assessment has yet to be tested through the examination process, I attach significant weight to this calculation of housing need, which is now relied upon by both main parties.
209. In this context I turn to consider the one area that is in dispute between the main parties, namely whether the buffer should be increased to 20%. The Guidance says: *"The approach to identifying a record of persistent under delivery of housing involves questions of judgment for the decision maker in*

⁵⁵ Source of quote: paragraph 49 of the Framework.

⁵⁶ Source of quote: paragraph 5.5, SoCG [CD39].

⁵⁷ Source of quote: paragraph 18, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

⁵⁸ Source of quote: paragraph 19, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

⁵⁹ Source of quote: paragraph reference 3-030-20140306.

order to determine whether or not a particular degree of under delivery of housing triggers the requirement to bring forward an additional supply of housing.... The assessment of a local delivery record is likely to be more robust if a longer term view is taken, since this is likely to take account of the peaks and troughs of the housing market cycle" ⁶⁰. The Loansdean Inspector found that *"Supply has been above and below target on occasion, but to reach a position of a net oversupply in the CRCA (albeit over a period from 2004/05) does not seem to me to equate to a persistent issue even if most years recently have shown some undersupply. I therefore conclude, on the basis of the evidence, that a 5% buffer would be appropriate here"* ⁶¹.

210. The Council's most recent publication on the subject says that for both the former Local Authority areas of Castle Morpeth and Tynedale, which together make up the CRCA, the annual housing requirement has not been delivered more often than it was achieved⁶². However in both cases it was achieved in 4 out of the 9 years between 2004 and 2013. Moreover, in aggregate, there was a surplus of 90 units over this period⁶³, which in my view is of sufficient duration to give rise to a robust assessment of the local delivery record. I appreciate this involves an assessment against RSS figures but that was the DP for the majority of the period at issue. So whilst I acknowledge that the Council has, to its credit, seen fit to apply a 20% buffer to encourage choice and competition in the market for land⁶⁴, I find no reason to contradict the very recent assessment of my colleague that a 5% buffer is appropriate.
211. The Inspector in the Loansdean appeal concluded that *"...on the basis of an annual need of 430 to 480 plus a 5% buffer, housing need in the CRCA can be conservatively assessed as being around 2250 to 2525 over 5 years"* ⁶⁵. For the reasons set out above I have no basis upon which to fault this up-to-date assessment of need. Reflecting the position taken by the main parties at the Inquiry, this supplants the agreed position recorded in the SoCG [CD39, table at paragraph 5.4], which was based on the RSS requirement for the CRCA.
212. Turning to supply, one of the figures quoted by the Inspector in the Loansdean appeal⁶⁶ appears to be identical to that set out in the SoCG [CD39, table at paragraph 5.4] insofar as the deliverable supply is quantified to be 838 units. In this case, because that figure is in the SoCG there is no need for me to go behind it, particularly as I note that the basis for that calculation is set out in CD9. What this does mean is that, in contrast to the position in the SoCG, the supply performance against requirement is much lower at between 33% and 37%⁶⁷. The table at paragraph 5.4 of the SoCG records that for the CRCA, based on the RSS figure, there was a 3.17 years supply of housing. Adopting

⁶⁰ Source of quote: paragraph reference 3-035-20140306.

⁶¹ Source of quote: paragraph 20, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

⁶² Table 2, Northumberland Five Year Supply of Deliverable Sites 2013 to 2018, CD9.

⁶³ Table 2 of CD9 says there was an oversupply of 133 units for Tynedale but an undersupply of 43 for Castle Morpeth, which gives rise to an overall oversupply of 90 dwellings.

⁶⁴ Reflecting the advice in paragraph 47, second bullet-point, of the Framework.

⁶⁵ Source of quote: paragraph 21, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

⁶⁶ Paragraph 22, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4], noting that this was said to be the Council's figure and was not agreed in that case.

⁶⁷ Calculated as an expression of supply [838] against the 5-year requirement, 2250 to 2525.

the identical methodology for the revised figures established above leads me to find that there is as little as 1.66 years supply of housing in the CRCA⁶⁸.

213. The basis of the revised position taken by H & MT at the Inquiry was the table at paragraph 5.4 of the SoCG, but it will be evident from what I have set out above that the position is now accepted by the main parties to have changed. In absolute terms the shortfall for the CRCA is, based on the agreed position of both main parties, something of the order of 1,412 to 1,687 units⁶⁹, rather than 482 units [114]. That is why the Loansdean Inspector refers to the need for "*...a significantly increased housing supply for the CRCA, and for Morpeth, [being] required*"⁷⁰. I acknowledge that a number of recent permissions have been granted, including at Loansdean [DC4] and the Persimmon site [DS6], and that other applications are pending, notably Phase 1 of the St George's Hospital site. Although reference has been made to other sites such as County Hall [129] I share the view of the Loansdean Inspector that little weight can be given to this. Amongst other things I note that "*...the county council is still to confirm its decision [to sell-off County Hall and that the decision is unlikely to be made until]...October*"⁷¹. For these reasons I find no basis to conclude this scale of under-provision has been made up. There might be the potential for anything between 1,075 [114] and 1,750 [129] dwellings in the pipeline, but that does not equate to a deliverable supply of the quantum now required.
214. I accept that Morpeth is not the only main settlement in the CRCA but I have not been provided with data for other settlements that would lead me to dispute the figure of 838 dwellings that has been agreed in the SoCG and which can be traced back to the Council's most recent publication [CD9]. Taken at face value, it is not even a figure that H & MT disputed in the SOCG. I fully appreciate and acknowledge that the figure of 1,500 dwellings in the CS might change because of the new population projections, but it is appropriate to proceed on the most up-to-date information available, which is reflected in the assessment of the Loansdean Inspector agreed between the main parties.
215. For these reasons I conclude on the first part of the second issue that, to adopt the language used in the Framework, the LPA cannot demonstrate a five-year supply of deliverable housing sites. I would further observe that whilst the shortfall in the CRCA would appear, on almost any measure, to be severe, reflecting what appears to be a consensus between the main parties it does not actually matter what the scale of the shortfall is [64 i]. This should be given significant weight in the overall balance. Applying advice in paragraph 49 of the Framework, as there is no 5-year housing land supply the relevant policies for the supply of housing should not be considered up-to-date.

⁶⁸ The 3.17 years figure is derived by dividing 1,320 by 5 [years] = 264 pa and then taking the deliverable supply [838] and dividing that by 264 to = 3.17 years supply. The equivalent updated figures are, in a worst case scenario, 2525 divided by 5 [years] = 505 pa and then taking the deliverable supply [838] and dividing that by 505 to = 1.66 years supply. I acknowledge that the other end of the range is 2250 divided 5 [years] = 450 pa and then taking the deliverable supply [838] and dividing that by 450 to = 1.86 years supply.

⁶⁹ This range is established as 2250 less 838 = 1412 and 2525 less 838 = 1687.

⁷⁰ Source of quote: paragraph 17, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

⁷¹ Source of quote: article "*Petition to be handed over on county HQ*", page 4, Morpeth Herald, Thursday July 24 2014 [DS30.2].

Relevant policies for the supply of housing

216. The SoCG helpfully identifies 6 policies in the LP to be relevant policies for the supply of housing, namely C1, H1, H2, H16, MC1 and MH1, but the following sentence says H & MT do not agree policies C1 and MC1 are out of date [CD39, paragraph 5.7]. These policies relate to settlement boundaries. H & MT argue that such policies serve 2 purposes, namely limiting urban development and protecting the countryside; I agree. On this basis their argument is that such policies are not solely about housing and whilst the assessed housing need might change that requires a judgment about where along that boundary it would be most appropriate to sanction a release. H & MT say that the issue of protection of the countryside does not automatically go away.
217. H & MT point to 2 appeal decisions to support this view. The first is the first appeal decision on Loansdean, limited extracts from which are provided⁷². However it is clear that decision was quashed by order of the High Court; the Loansdean decision records "*...the fact that Appeal A is being redetermined means that the previous 'decision' has no status in law. I must determine the case again on the basis of the evidence before me, and the previous decision can play no part in my consideration*"⁷³. So whilst I acknowledge the claim that The Planning Inspectorate only conceded on a technicality [relating to affordable housing] it is clear that Inspector Major approached the decision afresh, de novo. I have no reason to go behind that statement; I have not seen the file or the order of the High Court. Accordingly it would be wrong, as H & MT have, to cherry pick quotations from the first Inspector's decision. It would be wrong in law for me to take account of these limited excerpts.
218. The second appeal is however material. At paragraph 20 the Inspector says, unambiguously, that "*...the settlement boundary policies C1 (generally) and MC1 (around Morpeth) are 'relevant policies for the supply of housing'.* *Indeed, it is acknowledged that the settlement limit has been defined quite tightly around the town and that some appropriate re-configuration would be necessary to accommodate future growth...*" [*my emphasis*]⁷⁴. I appreciate that he goes on to say this does not necessarily condone breaching those boundaries anywhere and that such limits do not just relate to the supply of housing. However the first of these entails a planning judgment about harm and the second must be read in the context of the quote set out above. For my purpose this does not assist H & MT. Indeed it strongly supports the view that LP policies C1 and MC1 are relevant policies for the supply of housing.
219. My view on this point is however categorically confirmed by recent judicial authority to which the Appellants have drawn attention. The judge held "*...the language of [paragraph 49 of the Framework] cannot sensibly be given a very narrow meaning. This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go. Such policies are the obvious counterparts to policies designed to provide for an appropriate*

⁷² Appendix 4 to H & MT's proof of evidence on "*Policy Context*".

⁷³ Source of quote: paragraph 2, appeals APP/P2935/A/12/2170840 & 13/2208237 [DC4].

⁷⁴ Source of quote: paragraph 20, appeal APP/P2935/A/12/2181035, Appendix 5 to H & MT's proof of evidence on "*Policy Context*".

distribution and location of development"⁷⁵. The policy at issue in that case, EV2, had a broad remit and said "*planning permission will not be granted for development in the open countryside...*"⁷⁶. It too was not solely about housing. An earlier judge had already reached the view that Policy EV2 was a relevant policy for the supply of housing⁷⁷. LP Policy C1 is similar insofar as it says "*Development in the open countryside beyond settlement boundaries will not be permitted...*". In that context LP Policy MC1 defines the settlement boundary for Morpeth, the supporting text to which talks about controlling and directing pressure for large housing development. Having regard to judicial authority, the policies are, unquestionably in my view, policies for the supply of housing.

220. My only other observation under this heading is that I take exception to the Appellants' proposition that in the circumstances where paragraph 49 of the Framework applies that policies for the supply of housing should be given no weight. However they are, and remain, part of the DP. In my view the correct formulation is that, applying the test in section 38(6) of the 2004 Act, there is a material consideration, namely the Framework, which outweighs the conflict. It might result in the same outcome but it is the correct approach in my view.

Main issue (ii): Overall conclusion

221. On the second main issue I conclude that since the LPA cannot demonstrate a 5-year supply of deliverable housing sites, all relevant policies for the supply of housing should not be considered up-to-date. Those policies include C1 and MC1, which relate to settlement boundaries, and I have given reasons to reject the contention of H & MT to the contrary.

Main issue (iii): Character and appearance

Background and areas of common ground

222. As part of the evidence base for its emerging DP the Council commissioned LUC to undertake a Landscape Character Assessment of the County, which identified a total of 108 landscape character areas. The appeal site falls within landscape character type 39, "*Coalfield Farmland*", and specifically within sub-type 39c for the Stannington area. In respect of 39c the assessment says "*The character of this landscape is significantly modified and influenced by adjoining urban areas and their associated infrastructure. Several transport corridors run north-south through this landscape, including the A1, East Coast Main Line, A192, and another rail line. Scattered development east of the A1 gives a more urban fringe impression...*"⁷⁸.
223. On the basis of this assessment LUC undertook a Key Land Use Impact Study [CD13]. Part D thereof [CD14] explored the relative value of Northumberland's 108 landscape character areas using a scoring system, from 1 to 5, against a series of criteria, such as rarity. Character area 39c scored 18 and was

⁷⁵ Source of quote: paragraph 47 of *South Northamptonshire Council v SSCLG and Barwood Land and Estates Limited* [2014] EWHC 573 (Admin).

⁷⁶ Source of quote: paragraph 38 of *Barwood Land and Estates Limited*.

⁷⁷ *South Northamptonshire Council v Secretary of State for Communities and Local Government and Robert Plummer* [2013] EWHC 4377 (Admin), which was a challenge to one of my own decisions, to which reference is made in *Barwood Land and Estates Limited*.

⁷⁸ Source of quote: paragraph 4.402, CD15.

amongst the “lowest scoring landscapes”, i.e. those “scoring 20 or less”⁷⁹. The Appellants claim that it was the second least valuable in the whole County out of 108 areas [65 iii] and whilst that is not correct⁸⁰ I agree it was a low score. Mr Walker has referred to Part B of the Land Use Impact Study and whilst this has not been submitted as a Core Document I take his quotes at face value.

224. Part A of the Key Land Use Impact Study provides an analysis of settlements, including Morpeth. Under a title “*Sensitivity of landscape to change*”, it says “*Rising ground to the south of Morpeth and the valley of the Coal Burn to the south-west are considered to be of slightly higher landscape sensitivity as they play an important role in allowing visual separation between Morpeth and settlements further south, including Hepscott...*”⁸¹. The Key to the Settlement Diagrams⁸² identifies the orange shading to be an Area of Higher Landscape Sensitivity. Figure A2.18 identifies land to the south of the appeal site with orange shading and a figure, “4”, which is a reference back to Guideline 4, which says “*Consider potential effects of development south of A196 on views and on the setting of Hepscott*”⁸³ [*my emphasis*]. Even if it might be said that Guideline 3 “*Seek to retain rural character of areas to the east and rising ground to the south*”⁸⁴ should also apply to the relevant orange shaded area on Figure A2.18, it is clear that development south of the A196 was, at the very least, being conceived of between the A196 and the orange shaded area. I consider that is not inconsistent with what the CS says, albeit with the caveat that it talks of *limited long term development potential*, post 2031 [27]. The main parties agree that what they call the indicative illustrative area of higher sensitivity [orange shading] covers only a small proportion of the proposed landscaped area at the south-eastern corner of the appeal site⁸⁵. It is common ground that no housing is proposed in an area of higher landscape sensitivity.
225. The SoCG records⁸⁶ that the appeal site is not designated for its landscape quality in either the adopted LP or the CS and records that, in its Committee Report⁸⁷, the Council accepted the site is little seen from the wider landscape. This conclusion drew, amongst other things, on the submitted PDP Landscape and Visual Impact Appraisal [CD31]. It concluded “...that development would have a **slight/moderate** impact on landscape and a **slight** visual impact away from the immediate surroundings (where impact is predicted to be moderate). The main impact will be along the A192 and A196 road corridors. The visual analysis suggests that the visual impact on the settlement of Hepscott would be minimal due to topography and existing hedgerow screening”⁸⁸ [**original emphasis**]. The main parties agree the PDP Landscape and Visual Impact Appraisal was not intended to be a full landscape and visual

⁷⁹ Source of quotes: paragraphs 3.12 and 3.6, respectively, CD14; this is a weighted score.

⁸⁰ Using the weighted scores character areas 36a [16] and 26a [17], both scored less than 39a [18], so it is in fact the joint third lowest scoring landscape; see Table D3.1, CD14.

⁸¹ Source of quote: paragraph 2.267, CD13.

⁸² Page A-6, CD13.

⁸³ Source of quote: Guideline 4, paragraph 2.269, CD13

⁸⁴ Source of quote: Guideline 3, paragraph 2.269, CD13

⁸⁵ Paragraph 9, DS5.

⁸⁶ Paragraph 5.47, CD39.

⁸⁷ Paragraph 7.40, CD33.

⁸⁸ Source of quote: paragraph 4.402, CD15.

impact appraisal but an initial overview of the scheme's potential effects, which was undertaken in 2012 before detailed proposals were formulated⁸⁹.

226. Finally under this heading I observe that the Landscape SoCG [DS5] records agreement between the main parties on 2 important aspects of visibility. First that significant visual effects from the proposed development would largely be experienced in the areas close to the appeal site because the extent of effects on wider landscape character is limited by the extent of visibility. Second that the existing planting, which forms 70% of the south-eastern boundary of the appeal site, would gradually screen both the proposed housing and the existing settlement edge when viewed from viewpoints to the south.

Effect on wider landscape

227. I deal initially with the penultimate point, namely that significant visual effects would only be experienced in the areas close to the appeal site. During the accompanied site inspection I viewed the appeal site from the footpaths that run broadly east-west (i) to the north of Hepscott Red House and (ii) to the west of Hepscott⁹⁰. In respect of these viewpoints Mr Walker says, in his summary of landscape and visual impact assessment, that less significant change would be evident from these distant views; Table 2 characterises the significance of visual impact when viewed from these points to be negligible or minor adverse. He conceded in xx that the longer distance views of the site post development would not justify dismissal of the appeal [65 vii]; I agree.
228. Whilst the Landscape SoCG refers to views as far south as Barmoor Farm⁹¹ neither main party has identified this as a viewpoint, with the closest being Mr Smith's viewpoint 14, which lies some way to the north of Barmoor Farm. Taking account of the second point in [226], noting the scope for additional planting along the south-east boundary and Mr Smith's Photomontage 14, at most there would be glimpsed views of the proposed development over winter on approach towards the appeal site along the A192 from the south. In these circumstances it is appropriate to focus on views within close proximity of the appeal site. In reaching this view I have taken account of the other viewpoints identified by Mr Smith and Mr Walker in their respective proofs of evidence.

Preliminary area of dispute (i) whether the appeal site is urban fringe

229. In my view the appeal site should properly be considered to be part of the urban-rural fringe, i.e. the zone in which the town and countryside meet. Mr Smith's identification of the extent of what I shall call the urban fringe might be open to debate but I note that other boundaries where such a zone is not identified are largely characterised by physical features on the ground, eg the railway embankment to the east of the industrial estate⁹². H & MT believe that the appeal site is not urban fringe land in its scruffy sense but that it is a green field [101]. I agree on both counts but it does not alter my view that it should be described to be part of the urban fringe: an area where the town strongly influences the character of the countryside in both a visual and aural sense.

⁸⁹ Paragraph 12, DS5; the latter point evident from section 2.0, CD31.

⁹⁰ Viewpoints 07, 08 and 09 at Appendix 3 to Mr Walker's evidence.

⁹¹ Paragraph 19, DS5.

⁹² See S/JNS/3, appended to Mr Smith's proof of evidence.

230. I consider this finding is consistent with 3 documents that have been published or commissioned by the Council. The first is the SHLAA which, in respect of the entry for what is broadly the appeal site, says the site is “...close to busy roundabout” and there are “No significant barriers to the development of this urban fringe site”⁹³. The former might be a statement of the obvious and a relatively minor point but it is recognition of the urban influence on the site. The second is LUC’s broad description of the area to the east of the A1 in character area 39c [222], which it might be said to be too generalised but would apply to this edge of town site. The third is the Council’s report on the Persimmon site, which identifies that site to have “...all of the characteristics associated with urban fringe land”⁹⁴. Although I recognise the rationale that led the Council to make that finding, on approach to the Persimmon site from the town, along the A192, it appears somewhat detached from the urban area. My substantive criticism however is the apparent inconsistency in the Council’s stance between the respective sites: the site is a long way from the edge of Morpeth compared to the appeal site. For these reasons I cannot accept the Council’s submission that the appeal site is a large tract of *unspoilt* countryside [34] that is *distinct and clearly separate* from Morpeth [31].

Preliminary area of dispute (ii) landscape sensitivity

231. Paragraph 5.39 of the GLVIA3 says the sensitivity of the landscape should be assessed by combining judgments of their susceptibility to the type of development proposed and the value attached to the landscape. In terms of value, the Committee report focussed on the landscape being highly valued by local residents⁹⁵, which I do not doubt, but I attach greater weight to the Council’s more objective Landscape Character Assessment. It found the area was influenced by the adjoining urban area and associated infrastructure and was one of the lowest scoring landscapes in the County [222, 223]. Turning to susceptibility the difference between medium and low, according to Table A3 of Mr Smith’s evidence, is whether the landscape has *some ability* or is *generally able* to accommodate development without undue adverse effects respectively. The PDP report [CD31] does not use the term susceptibility and to the extent that Mr Walker’s proof is a critique of the PDP report I do not find it particularly helpful as the situation has moved on significantly. In my view Mr Smith’s analysis is to be preferred because his reasoning can be traced through the various tables in his appendices; there is a full, reasoned explanation for the overall value of sensitivity that is arrived at, in contrast to Mr Walker’s proof.
232. In reaching his view in Table A14 that the landscape is of low sensitivity, Mr Smith acknowledges that the arable field, as a feature of the site and in terms of perception of openness, would have medium sensitivity. By reference to Table A12 those values derive from combining community value with high susceptibility. The overall sensitivity is derived by balancing these more positive factors against other negative factors, including the proximity of the urban edge in terms of noise, movement and verticality of urban forms. On

⁹³ Source of quotes: comments on suitability and deliverability, entry 3188, CD10; entry 3188 relates to a slightly different site area but includes a large part of the appeal site.

⁹⁴ Source of quote: paragraph 7.50, DS6.

⁹⁵ See paragraph 7.41, CD33.

balance, taking into account the low value attached to the landscape by what was the Council's own commissioned study, I accept Mr Smith's reasoning.

233. Dealing with each of the Council's reasons for arguing to the contrary [34] I comment below, dealing with each in turn:

(i) I do not find it contrary to the Landscape SoCG because the term "*to some degree*" is a subjective one; the Appellants might have meant to a significant extent, the Council to a limited extent, the common ground was to some degree. Any alleged conflict is therefore a matter of interpretation.

(ii) I reject the claim that the Inspector characterised the site as "*entirely in the open countryside*". In my view it is clear from the quote in its wider context [13] that he is initially weighing the pros and cons, one of which is that there is concern that it is in the open countryside. The Inspector does not say from where that concern has arisen although a fair reading of the passage suggests to me that it was the Council's concern, but he does not say it is a concern he shares. Instead his own position is made clear over the page, in the original report, which is recited at [14]. In my view it is evident from the fact that the Inspector envisaged that landscaping of any development could be dealt with by planning conditions that this was not a concern he shared.

(iii) I reject the claim that the Key Land Use Impact Study is inconsistent with Mr Smith's position for the reasons outlined previously [224]. The Study conceived of development south of the A196, but not within an area of higher landscape sensitivity. To the extent that paragraph 5.40 of GLVIA3 talks about accommodating development without undue consequences for the achievement of landscape planning policies and strategies it is material that the appeal site is not designated for its landscape quality in either the adopted LP or the CS [225]. The fact that Figure 8.2 of the CS excludes the appeal site from the preferred option Green Belt is not an irrelevant factor, although I acknowledge that Green Belt is not strictly a landscape policy. In drafting the inner boundary it is inconceivable to me that the Council did not take on board the LUC advice that the inner boundary should be drawn quite tightly⁹⁶.

(iv) I appreciate that Mr Smith takes a different approach to PDP but I have touched on one reason for this and noted Mr Walker's substantive criticism of PDP [231]. Amongst other things Mr Walker emphasises that the PDP study was not undertaken in accordance with the current version of GLVIA3. It is common ground that the PDP report was not a full landscape and visual impact appraisal [225]. For these reasons Mr Smith's analysis is to be preferred.

(v) My site inspection confirmed that the appeal site is in active agricultural use and so I accept that in a functional sense such use is unaffected by the presence of roads, footpaths and residential development along its northern and western boundaries. However, noting that there is no lawful public access to the appeal site, this point does not dissuade me of my earlier finding.

Preliminary area of dispute (iii) visual containment

234. Turning to visual containment, Mr Smith points to a combination of the existing landform and vegetation to support his view that the appeal site is visually self-contained. However as he conceded in xx there are few if any containing features along the site's northern and western boundaries. So whilst my earlier comments about the Inspector's report apply [233 ii], I agree that the

⁹⁶ Paragraph 4.32, Part B of LUC report, quoted at paragraph 2.43 of Mr Walker's proof.

appeal site lacks the self-containment that is evident at Loansdean. In the recent appeal the Inspector found the Loansdean site has “...*strong boundaries to the north (Loansdean housing) south (woodland) and east (the main road). The western and south-western corner is slightly more open, but here the land rises, adding a further element of enclosure*”⁹⁷. This might be said to provide some explanation as to why Mr Smith does not identify it as urban-rural fringe.

235. Crucially, in contrast to the position at Loansdean, the A192 and A196 both have views towards the appeal site from public vantage-points, including the vicinity of the roundabout and when travelling south on the A192, that are not significantly screened or filtered by mature, protected trees, as is the case on the A197 at Loansdean. I acknowledge that a new roundabout and access is proposed to serve the Loansdean development [DS20], which would inevitably open up a new vista into that site but, noting the new planting proposed, this does not alter my view that there is a distinction between Loansdean and this site by reason of the former being self-contained and the latter not. However this conclusion needs to be read in the context of my earlier findings [228].

Preliminary area of dispute (iv) effect on gateways

236. A fourth area of dispute between the Appellants and H & MT is the effect of the proposed development on the gateway routes into Morpeth. The first point is that I find no reason to dispute H & MT’s claim that LP Policies C4 and MC3 comply with the Framework and should be given appropriate weight [100], which in my view should be significant weight. However the Council alleges no conflict with these policies. The key tests are set out in LP Policy C4, which says (i) development is encouraged, a relatively weak term, to include a landscaped zone with an average width of not less than 15 m from the edge of the highway and (ii) that no built development will be permitted in that zone. I acknowledge that the CS seeks to maintain the gateways but I have given reasons for attributing it limited weight [194] and so focus on the LP Policies.
237. Dealing with these in reverse order I am satisfied that no built development is proposed within 15 m of the highway. The closest plot, the dwelling on No 21, has its flank wall positioned at approximately 15 m back from the road side of the hedgerow. The Presentation Layout [drawing No NE-18-06K] shows the existing hedgerow would be largely unbroken, save for limited pedestrian access, and would be supplemented by additional planting. Whilst precise details of that planting is not before me, but would be agreed by the Council pursuant to discharge of a condition, there would appear to be scope for the new planting to restrict through views at the pedestrian access points onto this stretch of the A192⁹⁸. At the roundabout another pedestrian access is proposed but at this point the landscaped area would be around 40m deep. Noting that the houses to the west of the A192 are obscured by planting I find no reason why, at the very least, views of the proposed houses would not be filtered over time. I acknowledge, however, this would depend on the mix and extent of the proposed landscaping and the precise maintenance regime of the hedgerow. For these reasons these proposals would deliver the underlying

⁹⁷ Source of quote: paragraph 38, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

⁹⁸ This is most clearly articulated at the southern pedestrian access on the Presentation Layout but I note the second pedestrian access onto the A192 would be staggered.

policy objective of a green corridor on approach to the town along the A192. Once it has matured it would still be possible to approach the town through the countryside from the south along the A192 and '*come upon*' it suddenly [101].

238. Turning to the A196 frontage, the Presentation Layout shows 4 gaps in the existing hedgerow. Two of these would be pedestrian accesses and there would appear to be some scope for planting to filter direct views through these gaps although the narrower width of the landscape zone, notably in the vicinity of plot 4, limits the scope to do this as effectively as on the A192 frontage. The other two gaps would include roads and footways. The eastern road access shows a gap of circa 40m in the existing hedgerow. It is plainly material that Mr Craig agreed in xx that the Road Safety Audit might result in increased hedgerow loss [32]. Although both road entrances show indicative planting, which would suggest that avenues are envisaged, the proposed houses would plainly be visible through the proposed gaps in the hedgerow, which would not be ameliorated by the proposed planting. I consider this point further below. Despite my finding that the housing would be far more visible on the approach along the A196 than it would be on approach from the south, along the A192, I find compliance with LP Policies C4 and MC3. Given the existing junction with Coopies Way, to the east of the railway bridge, which in my view signals the existence of the urban area to drivers on that approach to the town, I consider that it is appropriate that it should be this way around.

Landscape Assessment

239. The landscape appraisal is an assessment of the effect upon the landscape as a resource⁹⁹. This section of my report should be read in conjunction with my earlier comments on landscape sensitivity [231-233]. Mr Walker and Mr Smith agree that the proposed development would have a negative or adverse effect, but they disagree as to whether this would be significant overall. Paragraph 5.56 of GLVIA3 says there are no hard and fast rules about what makes a significant effect. Figure 5.10 of GLVIA3 says loss of uniform, homogenous elements, features, characteristics and qualities, and effects on areas of degraded character and lower-value landscapes would generically be less significant. This is a lower value landscape the character of which is degraded by its urban fringe location and whilst in agricultural use it is essentially one homogenous field. In the circumstances I accept Mr Smith's view that the site's location, including the influence of existing movements, together with the community value of the site, ie the lack of formal landscape designations, and its relatively low landscape value, all point to a less than significant effect. Although I have given reasons why I do not agree with the visual containment point [235] in a broader context I have found that the landscape effects would be localised [228]. In my view that is the point that Mr Smith is making in the context of the landscape assessment distinct from an analysis of visual effects.

Visual Impact Assessment

240. The visual impact appraisal is an assessment of the effect of the proposed development on views and visual amenity¹⁰⁰. This section of my report should be read in conjunction with my earlier comments on visual containment and

⁹⁹ Figure 3.4, GLVIA3.

¹⁰⁰ Figure 3.4, GLVIA3.

effect on gateways [234-238]. Whilst there is broad agreement between Mr Walker and Mr Smith as to relevant viewpoints that would be affected, broadly along the length of the main roads that adjoin the boundaries of the appeal site, I agree with Mr Walker that the impact on the open space to the west¹⁰¹ of Stobhill Roundabout is an important vantage-point and that users of the public open space would have high sensitivity to change because the view would be part of their experience of the outdoor space. This was confirmed during my inspection. This viewpoint is said to be around 250 m from the site.

241. I have already given reasons why I consider the effect on the A192 corridor would, in broad terms, be less than on the A196 corridor [238]. Mr Walker says of his viewpoint 2, in the southern corner of the site, that receptors would include the upper storeys of residential properties, but I am not convinced that is correct. Mr Smith's appendix S/JNS/13 shows that even in winter the hedge on the western boundary of the A196 would largely screen views towards the appeal site. I further consider that residual views, after 15 years, from this vantage-point would reduce over time. There would, of course, be change but it would be less significant than from other viewpoints further to the north.
242. The other key difference between Mr Walker and Mr Smith relates to users of the footway parallel to the A196 over the railway bridge. I agree with Mr Walker that users of the footway would have high sensitivity to change because the view of the appeal site would be part of their experience of the environment along a continuous footway rather than an *isolated raised area*.
243. It is common ground that the proposed development would have significant negative, or adverse, visual effects. In my view these would extend from the A192, in the vicinity of Stobhill Roundabout, but including the area of public open space to the west, along the length of the A196 to, but including, the vicinity of the railway bridge. This frontage is of the order of 530m [32] but with the public open space this significant adverse visual effect could extend to an area approaching 800m in length. It would impact on residents, albeit principally from upper storeys, users of the footway and public open space, and other highway users, albeit that the sensitivity of drivers would be lower because they would be transient. Mr Smith's Photomontage 1 [S/JNS/4] is a fair representation of the scale of change at the Choppington Road junction with the A196 but at other points the built form would be even more exposed by virtue of the proposed gaps between the hedgerow and topography¹⁰². For this reason I cannot agree with Mr Smith's statement that significant visual effects for drivers would be limited to just views from Choppington Road.
244. In reaching this view I have taken account of the proposed mitigation but I have already found that this would be less effective on the A196 frontage [238]. However I would observe that there is greater scope for successful mitigation in the vicinity of the roundabout itself, and the area of public open space to the west, by virtue of the size of the landscaped area proposed on the north-western corner of the appeal site. The indicative landscaping opposite the entrance to Collingwood School on the Presentation Layout is less dense

¹⁰¹ Mr Walker's Viewpoint 5 is wrongly labelled east.

¹⁰² The first point is explored at [238] and the second is a reference to the railway bridge.

and taken with the form of dwellings proposed in that part of the site there would appear to be less scope for mitigation in this area even after 15 years.

Gap between Hepscott and Morpeth

245. I broadly accept the Council's claim that the proposed scheme would impinge physically on the landscape that separates Morpeth from Hepscott by virtue of a large area of open countryside being permanently lost [37]. However I also accept the Appellants' claim that there is no policy protection in either the LP or the CS for the gap between Morpeth and Hepscott, which suggests, at least to this extent, it is not worthy of retention. The CS, together with its evidence base, strongly supports the view that development of the site is envisaged to some extent [224, 233 iii]. The Key land Use Impact Study gives some basis to protect an area to the south of the appeal site, which would maintain a gap between Hepscott and Morpeth. This broadly accords with the inner Green Belt boundary identified in the CS. So although H & MT have referred to paragraph 80 of the Framework [103], this relates to Green Belt land. The appeal site is not Green Belt and neither does the CS propose it as such. In all the circumstances this reference does not assist the argument in any way.
246. I accept that the open countryside between Stobhill and Hepscott provides a green buffer between the respective settlements which is important to the identity of both [103]. However I consider that this scheme, which would unquestionably relate to the town even though it would be in the Parish of Hepscott, would not threaten the identity or character of the village. The belt of landscaping along the south-east boundary of the site, which would be strengthened as part of this scheme, would provide a clear and defensible boundary. My inspection revealed that the view from the footpath that runs to the west of Hepscott¹⁰³, which would not materially change, is of an extensive area of pastoral landscape. Taken with the emerging policy framework, ie the proposed Green Belt, I attach very little weight to the alleged precedent effect.

Other comments on the SHLAA

247. I acknowledge that the Introduction to the SHLAA stresses that it does not determine whether a site should be allocated or granted planning permission. Nevertheless relevant DCLG Practice Guidance¹⁰⁴ sets out factors to be considered when assessing a site's suitability to include policy restrictions and effect upon landscape features. The comments on this site's suitability include reference to its location in the general extent of the Green Belt extension, but I have dealt with this above [245]; there are no comments on the landscape.

Main issue (iii): Overall conclusion

248. On the third main issue I conclude that the proposed development would harm the character of the landscape but, because of its relatively low landscape value, not to a significant extent [239]. However I conclude that the proposed development would harm the appearance of the area to a significant extent, broadly along the A196 corridor that demarcates the northern boundary of the

¹⁰³ See viewpoint 09, Mr Walker's appendices.

¹⁰⁴ Paragraph 38, CD43.

site which, with the open space to the west of Stobhill Roundabout, would be an essentially linear area approaching 800m in length [243].

249. Nevertheless I accept that the only impact would be on views within close proximity, ie predominantly 100m, of the site and in that sense there would only be localised harm within the immediate area of the site, albeit that by virtue of the size of the site that area is quite extensive. Mr Walker conceded in xx that a residential development of 396 units would materially alter views in the close vicinity of any site [65 viii] and inevitably that must be correct.
250. No conflict with LP Policies is alleged in the first deemed reason for refusal [3 i] and whilst it does refer to the settlement boundary for Morpeth, I have found that policies C1 and MC1 are not up-to-date [221]. There is compliance with LP Policies C4 and MC3 [236-238]. Although the first deemed reason for refusal [3 i] alleges a conflict with the Framework that is in the context of the overall balancing exercise, which is a matter that I consider in due course. Nevertheless the harm must be weighed against any benefits of the scheme.

Main issue (iv): The effect of the proposed development on the local road network

The updated position

251. This is an area where the main parties have continued discussions right up to, and during, the Inquiry in order to reach agreement. This positive approach should be recognised. Whereas the second deemed reason for refusal [3 ii] included highway safety the main parties agree that this matter, in terms of access onto the A196 and the internal site layout, is now capable of being addressed by the imposition of planning conditions [CD40, section 3]. Although H & MT do not agree that the proposed access points onto the A196 can be dealt with by conditions [CD40, paragraph 3.2.2] they offered no substantive evidence on this particular issue that would lead me to find otherwise. I consider that as a direct consequence it is important to record that the only conflict with DP policy that was alleged in the deemed reasons for refusal, with LP Policy H15, no longer stands. The relevant highway criteria in that policy, notably v, x and xi, do not relate to the issue that remains between the main parties. My view on this point is consistent with the report to the Council's North Area Planning Committee¹⁰⁵. In my view, whilst this point has not been particularly emphasised, I consider the fact that the Council now alleges no conflict with DP policy is a highly significant and material finding having regard to the statutory test in section 38(6) of the 2004 Act.
252. In terms of the impact of the proposed development on highways and traffic the SoS should note that section 5 of the Highways SoCG [CD40] has been overtaken to the extent that modelling of the network has been agreed and includes traffic arising from the recent Loansdean appeal [DS18.1]. The WSP Paramics base micro simulation model is agreed by the main parties to be an acceptable representation of congestion currently observed in Morpeth [41]. H & MT and others have expressed concerns about whether the outputs from

¹⁰⁵ See paragraphs 7.57-7.59 and contrast with paragraphs 7.60-7.61 [CD33]; paragraphs 7.62-7.63, whilst under the title of sustainable transport modes, are plainly a summary of the position taken on highway matters despite continuing the text under that title.

that model are a fair representation of existing journey times [91, 131, 144, 162], but it is important to recognise that these are averages. The Council's point that every second's delay in the model represents an hour's delay spread across the network [41] is an illustration of how the outputs should be viewed. For this reason, whilst I understand the scepticism with which residents viewed this exercise, particularly it would seem in the light of a failed experiment with traffic lights at the junction north of Telford Bridge, I have been given no good reason to find that I should not base my conclusions on the modelling exercise.

253. The Loansdean Inspector¹⁰⁶ did not have a great deal to say about highway issues but he did envisage that a minimal adjustment to the timing of the signal controlled pedestrian crossing close to Telford Bridge would minimise delay whilst having no perceptible impact on pedestrians¹⁰⁷. H & MT dispute the latter point. It would appear that any adjustment to the timing of the crossing has yet to take place. I too observed the highway network at various times of day during the sitting period of the Inquiry and observed that the crossing was a significant cause of northbound queues, particularly in the AM peak. Among other things I note that the model was adjusted to take account of these signals being called every 45 seconds during part of the AM peak¹⁰⁸. I recognise that my observations were only a snapshot and that the Inquiry sat after the schools had broken up for the summer holidays. I have no reason to doubt that highway conditions would be materially worse on a wet Monday morning in January after the local schools have gone back. Nevertheless, noting the view of one local resident who addressed the Inquiry [151], my limited observations would tend to reinforce the view that the Council might wish to review the timing of that signal controlled pedestrian crossing. I am not persuaded that modest change would deter walking to school. There are however no other obvious "*quick wins*" on the relevant part of the network.

Scenario 1: Where the MNB goes ahead ["the bypass world"]

254. The Council considers that there is a high degree of certainty that the MNB will proceed [42]. Notwithstanding the stance taken by Mr Jolley in his original substitute supplement statement [DS9], that the increase in journey times on the identified parts of the network would be severe, he conceded in xx that this would not be the case in the bypass world [44]. In light of this important concession I shall take it as common ground between the main parties that in the bypass world the proposed development, taken with Loansdean¹⁰⁹, would not breach the test in the third bullet point of paragraph 32 of the Framework. There is no evidence before the Inquiry that would lead me to find otherwise.
255. It is common ground between the main parties that in the bypass world the key journey that has been modelled, from Stobhill roundabout, the junction of the A196 and A192, to Telford Bridge, over the River Wansbeck, would take the same amount of time in 2021 as it does now [DS18]. This is, of course, on the assumption that the appeal was allowed and that all the permitted houses

¹⁰⁶ Recognising the decision was issued at the end of the week before this Inquiry opened.

¹⁰⁷ Paragraph 68, appeals APP/P2935/A/12/2170840 & 13/2208237, DC4.

¹⁰⁸ This was based on observations; see Page 2, DS4.

¹⁰⁹ Contrary to one local resident's claim [157] the revised model takes account of Loansdean and there is no good reason to take account of other sites in the SHLAA in this assessment.

were not only built but actually occupied by that date¹¹⁰. The Council's concern in this scenario is solely one of negating the benefit of the MNB [44]. However the Council has been unable to point to any planning policy to justify this stance and I agree with the Appellants' submission [68] that there is none.

256. The Council's rationale to obtain funding for the MNB is set out in its Best & Final Funding Bid document, which identifies 3 primary objectives for the scheme. The second was to "*Facilitate and provide access to allocated development sites and other strategic locations*"¹¹¹ [*my emphasis*]. The only allocated development sites in the LP are, and remain, to the north of Morpeth and so it is unsurprising that the text then refers to St George's Hospital and the then allocated employment sites. The other strategic locations are outside of Morpeth. The other relevant objective was to improve highway capacity and reduce traffic congestion in and around Morpeth. The supporting text says "*...modelling work demonstrates that the [MNB] would significantly improve the operation of the highway network in Morpeth by adding additional capacity and by facilitating or improving access to significant development in Morpeth*"¹¹². It continues "*The scheme specifically facilitates access to the St George's Hospital site... (this is one of the five alternate development scenario identified for Morpeth in the...DLA report)*"¹¹³. This reference is to CD22 and it is material that it includes a development option, Option E, which includes the appeal site.
257. The DoT Assessment which, having regard to the date of the approval letter, must date from 2011 says "*The core objective of the scheme is to facilitate the desired level of growth (housing and employment)... Unlocking and improving the viability of development land is a major objective...a new core strategy is currently being developed and will be consulted upon shortly with 5 broad development options, all of which are based on the assumption that the road is in place and all dependent on it to some extent*". The summary says "*The overriding objective of this scheme is to facilitate the significant new housing and employment development that is planned, although it will also relieve existing congestion in the constrained centre of Morpeth....If the scheme does not go ahead then the development plans for the area would have to be completely re-thought and reduced in scale*"¹¹⁴ [*my emphasis throughout*].
258. It is clear that a distinction must be drawn between these arguments, made to obtain funding for the MNB, and planning policy which might justify dismissal of this appeal. Moreover the DoT saw the *overriding* objective of the MNB to be to facilitate significant new housing development in Morpeth. Both the Council's funding bid and the DoT assessment proceeded on the basis that the appeal site was an option for the future development of the town; I have given reasons for attaching limited weight to the CS [194]. The DoT identified a second, but on my reading less important, objective to be relieving existing congestion. Although I acknowledge that by 2021, in the bypass world with

¹¹⁰ It is worth making this point noting that the Appellants envisage delivering 65 houses p.a. with a start date in January 2015 [see Appendix IX to Mr Hollowood's proof of evidence] and hence 2021 is the earliest full year in which it is envisaged this scheme might be complete.

¹¹¹ Source of quote: section 1.2, Appendix 1 to Mr Ketley's rebuttal proof of evidence.

¹¹² Source of quote: section 1.2, Appendix 1 to Mr Ketley's rebuttal proof of evidence.

¹¹³ Source of quote: section 1.5, Appendix 1 to Mr Ketley's rebuttal proof of evidence.

¹¹⁴ Source of quotes: pages 1 and 3 [albeit not numbered as such], respectively, in the DoT Assessment of the MNB, Appendix 2 to Mr Ketley's rebuttal proof of evidence.

developments, any gains in journey times arising from construction of the MNB would be lost when compared to the situation today, I consider that is not a fair comparison. The output from the model shows in 2021 if no development was built and the MNB was not constructed, a genuine "*do-nothing*" scenario, journey times for the AM peak would increase by approximately 43%¹¹⁵. In my view that is the correct comparison, which is a world where the bypass has delivered its overriding objective, to facilitate significant new housing, whilst also reducing congestion as it would have existed in 2021 in a "*do-nothing*" world. In that sense what is said to be a very substantial public investment would not be negated and would also deliver on its key underlying objectives.

Scenario 2: Where the MNB does not go ahead ["the no bypass world"]

259. Whilst the Council considers that there is a high degree of certainty that the MNB will proceed, I accept that it is appropriate for the SoS to consider the scenario that the MNB might not proceed [42]. In that scenario the Council points to an increase in journey times of 83 seconds in 2021, which is agreed to represent an increase of 29% [42]. Although that is correct the comparable figure, in the no bypass world with Loansdean and the appeal development, is agreed to be an increase of 79 seconds, which would represent an increase of 25%¹¹⁶. This is comparable to the figures used in my analysis of the bypass world and is the more likely alternative option. There is no evidence before the Inquiry to suggest the Loansdean permission would not be implemented. Indeed it is worth recording that the outputs in the bypass plus development without Loansdean world would unambiguously achieve both DoT objectives¹¹⁷.
260. An increase of 79 seconds, which is just over one minute compared to the 2021 "*do-nothing*" scenario, translates to an average journey time of 6 minutes and 35 seconds to travel from Stobhill Roundabout to Bridge Street. Evidence before the Inquiry suggests that the model predicts that the appeal development would give rise to 218 journeys¹¹⁸ on the network in the AM peak in 2021. The highway experts for the main parties disagree as to whether this should be characterised as *severe* in terms of paragraph 32 of the Framework.
261. The only document that has been drawn to my attention that examines the approach to this test in the Framework is a report to the SoS in respect of 2 schemes for 300 and 350 dwellings at Hartford in Cheshire. The Inspector concluded that whilst there would be additional delay and congestion this would not be *severe*¹¹⁹. In reaching this finding he stated that "*The additional movements would...add an average of over 1 min to the typical 6 min am peak delay at the signals... Any additional delay however carries less weight as it is not the aim of policy to protect the convenience of commuting car drivers*"¹²⁰.

¹¹⁵ From 221 seconds to 316 seconds, i.e. a 95 second increase in journey times from Stobhill Roundabout to Bridge Street which, expressed as a % of the base figure, is a 43 % increase.

¹¹⁶ See third scenario in DS18.1, i.e. with Loansdean journey times.

¹¹⁷ See second scenario in DS18.1, which shows a reduction in journey times in 2021 from 221 to 209 seconds in the bypass world with appeal development but without Loansdean.

¹¹⁸ Calculated as 3740 less 3522, Table 2.1, DS9, which does not include Loansdean.

¹¹⁹ Paragraph 14.70, Report APP/A0665/A/12/2179410 & 2179374, at Appendix B to Mr Craig's proof of evidence.

¹²⁰ Source of quote: paragraph 14.45, Report APP/A0665/A/12/2179410 & 2179374.

262. Dealing initially with the factual matrix, in terms of journey time, I consider it to be broadly comparable to the situation here in the no bypass world [260]. Whilst paragraph 30 of the Framework says encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion, that is a subtly different point and one I consider below in terms of the site's accessibility. Nothing has been drawn to my attention that would lead me to doubt the correctness of my colleague's claim that it is not the aim of policy to protect the convenience of commuting car drivers. Indeed peak hour queues might be the trigger for a modal shift for regular commuters.
263. On this narrow basis I accept that in the no bypass world the proposal, together with Loansdean, would not breach the test in the third bullet point of paragraph 32 of the Framework. However even if this conclusion is open to debate the Appellants have put forward a number of convincing arguments [67]. First the converse of the Council's position, that there is a high degree of certainty that the MNB will proceed, is that this is a scenario with a high degree of unlikelihood. Second I agree that in the no bypass world the whole development strategy for Morpeth would need to be revised. The DLA report acknowledges that the "*...development of the majority of land to the north of Morpeth depends on the [MNB] coming forward*"¹²¹. Quite fairly the NP says "*...the strategy [with its focus on north Morpeth] will clearly be affected if the bypass does not proceed*"¹²²; generic point at [199]. The LTP also recognises that it is critical to housing growth in north Morpeth. Third, in the no bypass world the arguments in favour of the appeal site would be compelling in view of the scale of the need [211]. Although I recognise that some other sites have since come forward, such as the Persimmon site [DS6], the fact is that the appeal site was the largest site identified by DLA to the south of the town.

Main issue (iv): Overall conclusion

264. On the fourth main issue I conclude that there is a high degree of certainty that the MNB will proceed and in this most likely scenario the development, taken with existing commitments, should not be refused planning permission on transport grounds because the impact on the network would not be severe. There is no policy basis to support the contention that this would negate the benefit of the MNB. Although the SoS should consider the alternative scenario that the MNB does not proceed, I have given a reason for finding that the residual cumulative impacts of the proposed development in the no-bypass world would still not be severe. Moreover there are other significant material considerations that weigh heavily in favour of granting planning permission in this highly unlikely scenario. For these reasons I conclude that the proposed development would not conflict with DP Policy or the Framework.

Main issue (v): Effect on flooding and sewage systems

Background to flood risk issue

265. My starting point is to record that the main parties agree that the site is not at risk of flooding and that the proposals would reduce the risk of flooding in the

¹²¹ Conclusions at paragraph 3.04, first bullet-point, CD22.

¹²² Source of quote: page 48, CD8.

surrounding area [CD39, paragraph 5.16]. H & MT and others do not agree with this finding [99, 122, 123, 131, 138, 142, 146, 149, 150, 152 and 161].

266. The position taken by the Council in this matter is based on the advice of its Drainage Officer¹²³ and that received from the EA, who withdrew its initial objection following a revised FRA. The EA said the FRA *"...has confirmed that the whole site currently drains to the small watercourse in the centre of the site. The FRA also demonstrates the greenfield runoff from the site at various storm event return periods using the IoH124 method. They have considered the predicted runoff rate during the 1 in 1 year storm and due to acknowledgement of existing flooding issues downstream, have halved it. They will therefore discharge surface water at a rate of 16.1l/s into the watercourse. This means that for every rainfall event from the 1 in 1 year to the 1 in 100 year event, the development will reduce the existing flows..."* [It recommends the imposition of a condition and says that in order to discharge the condition information should include] *Confirmation of the capacity of the network including ponds and swales...* [and] *...An assessment of the watercourse downstream of the development"*¹²⁴. This advice is unambiguous.
267. The position in respect of flood risk was dealt with in a comprehensive manner in the Council's report to the North Area Planning Committee¹²⁵. Amongst other things the report records that the site is in Flood Zone 1, an area with a low risk of flooding, which is an appropriate location for new housing, such that the proposal was found to accord with LP Policy RE5 and the Framework. Although H & MT say that no sequential test has been carried out this test would not be appropriate for a development on a site with the lowest probability of flooding. H & MT also referred to the *Technical Guidance* in its proof but, as I pointed out [DC3], this was cancelled by the Guidance.
268. The Appellants have referred me to 2 legal authorities [79]. In the first it was held that the decision maker should give the views of statutory consultees *"...great" or "considerable" weight. A departure from those views requires "cogent and compelling reasons"..."*¹²⁶. In the second it was held that the decision maker is *"obliged"*¹²⁷ to give the views of statutory consultees great weight. This is not a legal opinion but, whilst I note that H & MT do not defer from this view [99], is binding authority on this administrative tribunal.

Surface water

269. Having regard to judicial authority [268] I am obliged to give the view of the EA, as the relevant statutory consultee, great weight and rhetorically ask whether there are cogent and compelling reasons to depart from its advice. A large number of points are raised, which I deal with in no particular order:
- i. *The 2 FRAs are contradictory.* The Appellants have explained that the WSP report¹²⁸ was a review of the FRA [77(v)]. I deal with the alleged

¹²³ Appendix 7 to the SoCG [CD39].

¹²⁴ Source of quote: Comment dated 2 December 2013, at Appendix 6 to the SoCG [CD39].

¹²⁵ Paragraphs 7.42-7.51, CD33.

¹²⁶ Source of quote: paragraph 72, *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12.

¹²⁷ Source of quote: paragraph 110, *Ashdown Forest Economic Development LLP v SSCLG* [2014] EWHC 406 [2013] EWHC 12.

¹²⁸ Appendix II to Mr Hollowood's proof of evidence.

contradictions between the FRA and the WSP report below under various headings.

- ii. *There is no evidence the WSP report has been approved.* The EA has confirmed [DS27] that it has received the WSP report, has no additional comments to make and that its earlier comments [266] stand. At the Inquiry the Council did not dispute WSP's claim that it, the Council, has agreed the proposals to be adequate and would not increase flood risk elsewhere.
- iii. *H & MP have no confidence in the WSP report because a reduction of 16mm in Culvert B is barely measurable and within a margin of error.* The EA has confirmed that it is satisfied that flows would be reduced. Given the size of the catchment the quantum of the reduction might be modest, but it is still a reduction and the outflow would be capped in larger storm events. In view of the advice of the EA I can reject the possibility it is within the margin for error.
- iv. *The soil type is identified differently in the FRA and WSP's report and is incorrect.* The FRA says "...the soil types are predominantly heavy clays and as such completely unsuitable for infiltration and soakaways. A site investigation will be carried out to establish actual ground conditions"¹²⁹ [my emphasis]. The WSP report, which is dated June 2014, says "...the catchment consists of Brickfield 3 soils... these soils are described as being slowly permeable seasonally waterlogged fine loamy, fine loamy over clayey and clayey soils... This is confirmed by...borehole NZ28SW13 which shows the upper soil is Fireclay which would be highly impermeable"¹³⁰. H & MT have produced a copy of that borehole record, which shows Fireclay to be at a depth of 169 feet¹³¹; it should be noted that this borehole lies south-east of the appeal site.

Revision D of the FRA was submitted on 29 November 2013 [CD39, page 26], which is after (i) the Archaeological Evaluation; and (ii) the Geoenvironmental Appraisal, which are both dated July 2013. No (i) says 15 trenches were dug across the site and defines what is then referred to as the "*Natural subsoil...*" in the rest of the report to be "...a yellow boulder clay..."¹³². H & MT say that sand was found in 6 trenches and loam in another, but of only one trench, No 15, was it said that the "...*natural subsoil in this trench was orange sand, very different to that seen elsewhere on the site*"¹³³ [my emphasis]. That trench is located close to the drainage outfall; the other references to sand in the Archaeological Evaluation are to narrow bands of sand¹³⁴.

No (ii) provides the results of 18 Trial Pits and 8 Boreholes as well as permeability tests. The Appraisal concludes that there is "...*cultivated topsoil to depths of between 0.20m and 0.5m. This in turn is underlain by stiff and very stiff, medium and high strength glacial till to depths of between 1.0m and 2.80m. Glacial till is absent from the far eastern parts of the site where glaciofluvial sands were encountered below the topsoil... The glacial sand*

¹²⁹ Source of quote: section 3.2, M Design report No: MD0777/rep/001 Rev D.

¹³⁰ Source of quote: paragraph 2.4.5, Appendix H to WSP report at Appendix II to Mr Hollowood's proof of evidence.

¹³¹ Appendix 1 to DS24.1.

¹³² Source of quotes: paragraph 5.2 of Archaeological Evaluation, dated July 2013.

¹³³ Source of quote: paragraph 5.16 of Archaeological Evaluation, dated July 2013.

¹³⁴ See Figure 5 of Archaeological Evaluation, dated July 2013.

*present beneath the topsoil in the eastern parts of the site and below the glacial till elsewhere is typically loose to medium dense comprising a fine to medium sand. The full thickness of this stratum was not proven... Groundwater was encountered within the glacial sand at depths of between approximately 0.8 and 3.0m below ground level"*¹³⁵. The report divides the site into 2 zones, to reflect the areas of glacial till and glacial sands; I estimate the latter, Zone B, to represent approximately 20% of the eastern end of the site¹³⁶. Table 5.3 of the report presents the results of the permeability tests, which are focussed on the areas of sand. Whilst the results varied between boreholes they broadly confirm that the areas of glacial sand are pervious, ie permeable. Finally the Appraisal refers to a sandpit, picked up by H & MT, but drawing No C4975A/03 shows that it lies to the west of the A192 rather than on the appeal site.

The evidence from these site investigations suggests that the majority of the site comprises a layer of clay, which lies below the cultivated topsoil at a typical depth of around 0.4m. Although described as glacial till in the Geoenvironmental Appraisal the detailed records identify the predominant material to be clay and that is consistent with the Archaeological Evaluation. The layer of clay varies in depth between 0.5m and 2.1m, below which there is a layer of sand. However both site investigations reveal the presence of sand, to varying degrees, at the eastern end of the site. The extent of the sand is estimated to be more extensive in the Geoenvironmental Appraisal than the Archaeological Evaluation, but the former was more comprehensive. For completeness the other borehole record provided by Morpeth Flood Action Group lies to the north-east of the railway and in the context of the above the fact that it reveals predominantly sand down to circa 10m is not surprising.

The evidence arising from the site investigations does not appear to have been taken into account in the FRA, which is evident from the indication that investigations "will" be carried out; I find that surprising. Further the FRA's statement that the soil type is predominantly heavy clay might not be strictly correct. In reaching that view I acknowledge WSP's point that the presence of the land drains are indicative of heavier soils, but it is a rather subjective term. I think it is fair to say, however, that the appeal site is predominantly clay, albeit over a deeper layer of sand. Nevertheless the natural deposit of sand at the eastern end of the site does not appear to have been recognised or taken into account in the FRA. The WSP report, insofar as it refers to Fireclay, is not wrong, but to describe it as in the upper soil when it lies at a depth of 169 feet is in my view incorrect. The fact that WSP are drawing on such sources of evidence strongly suggests that they were not aware of, or not provided with, the Archaeological Evaluation or the Geoenvironmental Appraisal. I turn to the consequences of these findings in due course.

- v. *The FRA has not taken account of the drainage on the site.* The FRA says "*As the site is greenfield there is currently no drainage on site*"¹³⁷. However Morpeth Flood Action Group points to evidence of tile drains being present and working. I accept there is a drainage pipe emanating from the existing drainage ditch. I agree that a "*ceramic land drain*" is revealed in Figure 6 of

¹³⁵ Source of quote: section 8.1 of the Geoenvironmental Appraisal, dated July 2013.

¹³⁶ See Drawing No C4975A/04 at Appendix A to the Geoenvironmental Appraisal.

¹³⁷ Source of quote: section 2.4, M Design report No: MD0777/rep/001 Rev D.

the Archaeological Evaluation and I note the reference to land drains elsewhere in the same report¹³⁸. WSP say the FRA's reference to no drainage meant no surface or foul sewerage system. Morpeth Flood Action Group say that the presence of the tile drainage system suggests, if not confirms, that historic soil water levels were so high as to justify improving field drainage to improve yields. I accept that if the foundations are constructed to a minimum depth of 900mm, as recommended in the Geoenvironmental Appraisal¹³⁹, that the land drains might be compromised. WSP say competent designers include details to show that land drains must be maintained if encountered during construction. On balance I do not regard this to be a significant point. As WSP point out the land drains increase the site's current permeability.

- vi. *There is evidence of pooling of surface water on the site, including in aerial and other photographs.* I acknowledge this evidence, including those said to date from June 2014¹⁴⁰. However this might be said to be evidence of the site's impermeability, consistent with the existence of a layer of clay subsoil. The various aerial photographs and maps within the submission of Morpeth Flood Action Group [DS25] tend to show the ponding away from the eastern end of the appeal site, which might be said to be consistent with its geology.
- vii. *The WSP report has not provided detailed drawings or calculations.* The WSP report was a review of the FRA [77(v)]. In any event it was agreed at the Inquiry that it would not be appropriate to approve the Preliminary Drainage Scheme and so the details contained thereon, including the volume of the holding ponds, would need to be agreed following discharge of a condition.
- viii. *The WSP report has failed to realise that the outflow from the appeal site does not cross the railway to join the Red House Burn.* The photographs provided by H & MT¹⁴¹ do not conclusively show that water from the appeal site does not cross the railway to the Red House Burn because there could be a crossing point unrelated to that manhole. No testing, eg using a harmless dye, has been carried out to demonstrate where the flows from the appeal site join the Burn. However this does lead me to question whether the assertions made in the WSP report are correct because, taken at face value, the photographs do appear to show there is no crossing point at point "K"¹⁴². If Councillor Ashmore is correct this would mean that the flows from the site would bypass the EA's flood storage area to the north-east of the railway line, although they would still go via the flood storage area to the south of the railway and potentially utilise the EA relief structures. I return to this point further in due course.
- ix. *WSP has wrongly assumed that flows along the railway would run north.* This comment was made in a late rebuttal statement by Mr Tyler¹⁴³. Councillor Ashmore says by reference to the topographical survey that the railway has a spot height of 51.66m to the north-east of the appeal site and that the drain

¹³⁸ Paragraphs 5.8, 5.10, 5.12 and 5.13 of Archaeological Evaluation, dated July 2013; earlier quote taken from paragraph 5.8 of the same report, which relates to Figure 6.

¹³⁹ Page 19, Geoenvironmental Appraisal, dated July 2013.

¹⁴⁰ Appendix 1 to H & MT's proof of evidence on flooding and sewerage.

¹⁴¹ Appendix 2 to DS24.1.

¹⁴² See diagram at Appendix I to WSP report, at Appendix II to Mr Hollowood's proof of evidence.

¹⁴³ An addition to the main report, also at Appendix II to Mr Hollowood's proof of evidence.

discharge point has a spot height of 50.05m; I agree. Mr Tyler's claim appears to be wrong and all of the flows from the vicinity of the site would flow south.

- x. WSP has calculated the greenfield site runoff rate differently. WSP's report says that the impermeable area is slightly less than that calculated in the FRA and the inference is that this is down to a revision to the Master Plan, although an allowance for future extensions has also been made. The report says "*The Greenfield runoff for a 1 year return period event based on the development impermeable area is 24.2l/s (ReFEH Method)*"¹⁴⁴. This method is claimed by WSP to be more robust. Councillor Ashmore says that as the FRA's equivalent calculation of 32l/s formed the basis of the 16l/s runoff that is advocated by the Council and the EA, should this not mean that the runoff figure should be reduced to 12l/s, ie 50% of the revised calculation? There might be some merit in this argument, but as the EA has confirmed that the WSP report does not change its stance [DS27] on that narrow basis I reject the claim. The 16l/s would still be a reduction, ie two thirds of the more robust calculation.
- xi. No mention of exceedance. The WSP report has addressed this matter and the exceedance pathways can be considered as part of discharge of any condition.
- xii. There is evidence that the loH124 model is inadequate and/or has limitations. I have noted the alleged criticism of this model by Defra/EA, the Journal of Flood Risk Management and Wallingford Hydro Solutions. However this is an area where I can have complete confidence in the advice of the EA because, if the EA thought that the model was inappropriate for any reason, including by reference to the size of the site, I have no doubt that the statutory consultee would have said so in forthright terms.
- xiii. The SAAR rainfall figures are out of date and take no account of changes to weather patterns as revealed by local meteorologists. This is another area where it is reasonable to have confidence in the advice of the EA because if they thought the SAAR database was out of date, or inappropriate for use in this geographical location, I have no doubt that the EA would have said so.
- xiv. The issue of Suds maintenance. In my view this has been satisfactorily dealt with in the section 106 agreement [169]. I acknowledge that the residents have little confidence in Suds because flooding occurred after they were put in on the existing watercourses, but this approach is recognised as good practice.
- xv. The FRA fails to address the flooding of the adjacent railway. H & MT refer to hearsay evidence that the railway acted as a river but I cannot attach much weight to this claim. Network Rail said there should be no increase in average or peak flows of surface water leading to its assets. Although I acknowledge the FRA is in dispute, the EA has accepted that would be the position.
- xvi. The building process would compact the soil and makes it more impermeable and no allowance is made for future extensions etc. I am not convinced there is a great deal in the compaction point, which in any event is likely to be a very short-term phenomenon, if it occurred at all. WSP say that an allowance has been made for future extensions when assessing permeability. No party has suggested a condition is necessary to remove permitted development rights.

¹⁴⁴ Source of quote: paragraph 5.2.4 at Appendix II to Mr Hollowood's proof of evidence

- xvii. Morpeth Flood Action Group considers the floodwater storage ponds should have a capacity of at least 26,000 cubic metres. Although I have given reasons for accepting one premise, that the land drains might be compromised, I attach little weight to this calculation, which appears to be based on an arbitrary assumption about the existing tile drainage system. A second calculation [DS25] uses submitted data to arrive at an estimate of the storage attenuation requirement as 9,419m³, which is greater than that identified [8,591 m³] in the FRA. The basis for this calculation is set out and I attach it moderate weight. It tends to reinforce my view that the Preliminary Drainage Scheme, including the volume of the holding ponds, should not be an approved drawing as the parties previously suggested [164].
- xviii. Freeboard above ground levels. Morpeth Flood Action Group disputes the claim by WSP that the 600mm high freeboard would provide additional storage capability as it is said that this would result in water being above ground level. As I have made clear I do not propose to approve the Preliminary Drainage Scheme. There appears to be scope to re-model and enlarge the storage ponds to increase capacity in the event that there is any substance to this point. I reject the view that this is unconvincing because it would compromise the housing layout. Ponds 1 and 2, in particular, are at the periphery of the site and appear to offer considerable scope for enlargement if this were required. It remains in prospect that if these ponds were deeper that they would breach the layer of clay and thereby allow leakage into the permeable layer of sand. Pond 3 would appear to lie wholly within the area of sand at the eastern end of the site. Whilst it is said that planned water levels might damage the fabric of the proposed properties I have no doubt that the Appellants will ensure this is not the case as this would appear to potentially open them up to a civil liability.
- xix. References to other work that has not been produced. WSP has referred to other work, including 3D computer modelling. It is clear that other work would be required to discharge the suggested condition[s] and is required by the EA.
- xx. Floodwater from external sources. WSP says the swales have been designed to take overland exceedance flows from the surrounding road network. Morpeth Flood Action Group disputes whether this has been included in the calculations in the FRA, but I have no basis to find otherwise.
- xxi. There is a field drain from the appeal site into the Catch Burn at Barmoor Farm. This claim [161] does not sit easily with other evidence before the Inquiry and I attach it limited weight. Nothing that I saw during my inspection of the vicinity of Barmoor Farm convinced me of the veracity of the claim.

Summary of findings on flooding issue

270. I acknowledge first that a significant amount of other material and information has been provided, specifically relating to Hepscott and the downstream system. However, whilst the statutory undertaker has sought an additional assessment of that watercourse, I must focus on the appeal site. Whilst H & MT say the people of Hepscott look to this Inquiry to protect them from more flood misery [99], in the context of this relatively large catchment, my role is very limited. My brief inspection of Red House Burn and Hepscott Burn, in the vicinity of Hepscott village, suggested that there are much more significant reasons for the flooding the village has experienced in recent years than are within my remit to address. On its approach to Culvert B, Red House Burn

appeared to me to be in very poor condition. The road bridge over Hepscott Burn has been likened to a dam and I fully understand why. So whilst I have read the Hepscott Flood Risk Study [DS23] and have sympathy for those who have been flooded it is simply not in my gift to resolve all of these problems.

271. Instead my role is to test the advice of the statutory undertaker and the assumptions that underpin that advice to ensure, as an absolute minimum, that flood risk is not increased elsewhere¹⁴⁵. My review of the material has led me to identify 2 areas of concern. The main one [269 iv] is that both the FRA and WSP's report do not appear to have utilised evidence that the Appellants had themselves commissioned in order to provide more informed studies. The permeability of the existing soil is clearly a material factor in the assessment of the green field runoff calculations. The FRA uses a figure of 0.45¹⁴⁶. Since the Appellants chose not to call a witness to deal with this topic I am unclear what effect this finding might have on that figure. This is a topic that I touched on with both Mr Smith and Councillor Ashmore. There are arguments both ways.
272. On the one hand WSP make the point that if the soil is more permeable than has been assumed, which it appears to be at least on part of the site, there would be an opportunity for infiltration Suds. I have already accepted this to some extent in my earlier comments, eg on the depth of water features. However if the existing runoff in the FRA was based, as appears to be the case, on the site being impermeable when it is less so, that might reduce the current runoff figure. It might mean that the calculation of circa 32l/s, which forms the basis of the reduced flow restriction advocated by the Council and endorsed by the EA, might be wrong; I put it no stronger than that. In considering the respective arguments the latter must be given greater weight if I am to be certain that flood risk would not be increased elsewhere. My view is actually endorsed by the very fact that in their final response WSP consider the possibility that existing flows might be less than 16l/s which, as Councillor Ashmore has observed, is not an argument that he has actually made.
273. Nevertheless I have given reasons for concluding the appeal site is underlain predominantly by a layer of clay [269 iv]. That suggests that any variation from the figure of 32l/s would not be of such magnitude that would lead me to find the issue cannot be dealt with by a condition. H & MT have advocated a clause that would cover this scenario, albeit that it was put forward on the basis of the WSP calculation. That is not the reason I recommend the need for the additional clause. Rather my reasoning is that further work, taking account of the existing site investigations and perhaps more if they are required, might lead to a finding that the existing runoff is materially less than 32l/s. WSP have already quoted a more robust figure of 24l/s and that too appears not to have taken account of the site investigations undertaken. In reaching this view I have considered whether there would be any injustice to the Appellants. However the clause was discussed at the Inquiry. Moreover if the additional work confirms the 32l/s figure then they would be in no worse a position. The extra work, including any investigations, is envisaged anyway.

¹⁴⁵ Paragraph 103 of the Framework which also says that Suds should be given priority.

¹⁴⁶ See Appendix D to M Design report No: MD0777/rep/001 Rev D.

274. The second area of concern is the possibility, again I put it no stronger than that, of the outflow from the site not crossing the railway. However the EA has made clear that in order to discharge the condition that an assessment of the watercourse downstream of the development is required [266]. Whilst I have noted that if this claim is correct the flood storage area to the north-east of the railway would be bypassed, imposition of the revised condition would ensure that the level of runoff from the site would be reduced. Accordingly this is not a consideration that would lead me to revise the suggested condition further.
275. Having reviewed the submissions of H & MT, Morpeth Flood Action Group and other correspondence, and taken account of the views expressed at the Inquiry on this topic, I conclude that there are no cogent and compelling reasons to depart from the advice given by the statutory undertaker. Subject to the slight revision to the suggested planning condition that I have identified I can, to use H & MT's language [95], be very sure that the flooding situation would not be made worse by allowing this appeal, but would instead be improved.

Foul water

276. Northumbrian Water is the statutory undertaker for this area, both supplying water and dealing with the sewerage system. Its position is set out in a letter to the Council dated 21 November 2013. It says that whilst the Sewage Treatment Works at Morpeth is operating at full capacity, construction works are currently taking place that are scheduled to be completed by December 2014. In these circumstances Northumbrian Water put forward a Grampian condition to deal with this issue, to ensure that the development does not commence until the upgrade works have been completed. In addition, as a result of capacity issues in the area, it sought a condition that would see foul flows directed to, or downstream from, a manhole within the Coopies Lane Industrial Estate, to the north-east of the appeal site. Subject to imposition of these conditions it raised no objection to the proposed development. This advice was recited in the report to the North Area Planning Committee and the Council has confirmed that it raises no issue with regard to this issue [29].
277. Having regard to judicial authority [268] I am obliged to give the view of this statutory consultee great weight and rhetorically ask if there are cogent and compelling reasons to depart from this advice. A number of points are raised:
- i. *The issue has not been dealt with in a robust and detailed way and dealing with the matter by condition damages public credibility.* Whilst brief the FRA proposed an on-site pumping station that would connect to the adopted sewer. If the statutory consultee had any concerns about this proposal it would have raised an objection. It is Government policy to impose conditions where the relevant tests are met [163]. The Guidance says "...statutory consultees can suggest conditions to mitigate potential impacts and make a development acceptable in planning terms"¹⁴⁷, which is precisely what has happened. If the details submitted are dealt with in a candid way I fail to see why that damages public credibility when that is the Government's preferred approach.

¹⁴⁷ Source of quote: paragraph 21a-016-20140306 of the Guidance.

- ii. *The Sewage Treatment Works is over capacity and no connection can be made in Stobhillgate.* These points are recognised by the statutory undertaker who, nevertheless, raised no objection subject to conditions.
 - iii. *The connection point lies 400m to the north across a railway line and embankment.* I have no doubt the statutory undertaker recognised these problems in recommending conditions. I fail to see why a pipe crossing the railway in the vicinity of the A196 bridge, which would take pumped sewage to the connection point, would be unfeasible. Alternatively, noting the preliminary route of foul drainage on the Preliminary Drainage Scheme, it is in prospect that a pipe could be laid under the railway. The Network Rail response said "...sewage effluent should be handled in accordance with Local Council and Water Company regulations"¹⁴⁸. Whilst an easement would be required this is anticipated in the response from Network Rail to the extent that it says that approval must be obtained from the Network Rail Asset Protection Team.
 - iv. *It connects to a dual system and travels via Salisbury Street chamber, which has an unresolved sewage surcharge system.* It is clear from the email exchange submitted at the Inquiry¹⁴⁹ that the statutory undertaker is aware of the problem with the Salisbury Street chamber. I have been given no sound reason to conclude that the statutory undertaker did not take this factor into account in making its recommendation that conditions could deal with this issue. The response of the statutory consultee [276] recognises that works are in progress to address known problems with the sewage system.
278. Having reviewed the submissions of H & MT, Morpeth Flood Action Group and all other correspondence, and taken account of the views expressed at the Inquiry on this topic, I conclude that there are no cogent and compelling reasons to depart from the advice given by the statutory undertaker.

Main issue (v): Overall conclusion

279. On the fifth main issue I conclude that, subject to the imposition of largely agreed planning conditions, the effect of the proposed development on flooding and the sewage system would be acceptable. There are no cogent and compelling reasons to depart from the advice given by the statutory undertakers that cannot be addressed by the imposition of conditions.

Main issue (vi): Whether existing schools have the capacity to accommodate children generated by the development or whether contributions are required

280. My starting point under this head is to record that the main parties agree that there is sufficient schools capacity within Morpeth to accommodate the children that would be generated by the proposal and, as such, a contribution is not required [CD39, paragraph 5.20]. H & MT do not agree with this conclusion.
281. The position taken by the Council in this matter is based on the advice of its Early Years and School Organisation Manager, who said "*Our analysis of the partnership forecasting data indicates that there are sufficient places available*

¹⁴⁸ Source of quote: Email dated 9 September 2013 to the Council, which forms part of the bundle attached to the Council's questionnaire response.

¹⁴⁹ Appendix 3 to DS24.1.

*in Morpeth Town to accommodate those children that may be generated by a new-build development of this size. It is possible that there may be a temporary squeeze on capacity at the local school, Stobhillgate First School, however there are places available in other schools within the partnership where pupils can be accommodated"*¹⁵⁰. This advice is unambiguous.

282. The advice was considered by the Council in the report to the North Area Planning Committee. It reported this advice and, amongst other things, it added "*Children's Services have forecast that for every hundred houses built, this would generate approximately 3 children per primary class (21 across 7 year groups) and 2 children per secondary class (14 across 7 year groups). A development of this size would also be built in phases, meaning that ... not all 396 dwellings would be built and occupied over a short period, and the number of children generated by the development would be staggered over a number of years. The admissions policy of the Council also means that local children would get priority and, that once a child enters reception class, then they are virtually guaranteed a place in the middle schools and high school. On the basis of this evidence, therefore, it is considered that the children generated by the development of the new 396 dwellings could be accommodated within the existing schools in the town"*¹⁵¹.
283. H & MT has provided a supplement that sets out current PAN at the town's schools. The information is said to be sourced from the Council or from recent direct enquiries. It was not challenged at the Inquiry and so I have no reason to doubt its accuracy. Amongst other things I note that Mrs Tebbutt, the author of the document, is a County Councillor and an LEA appointed Chair of Governors at one of the town's first schools. For these reasons I acknowledge that she is well placed to make the observations on this topic that she does.
284. Morpeth has a 3 tier school system. King Edwards VI High School and the town's 2 Middle Schools, Newminster and Chantry, are run by an Academy known as Three Rivers Learning Trust. The High School is said to meet its PAN every year and currently appears to exceed it. With the exception of year 6 at Chantry, both Middle Schools roughly appear to meet their PAN. I accept that the position at the nearest first school, Stobhillgate, is not straightforward. The bold data provided might suggest that there are more children living in its catchment than its PAN, but the figures suggest that in 3 out of the 5 classes its PAN is not currently met; in 2 years there is spare capacity for 7 children. This might suggest there is some capacity and in saying this I note that it is accepted that parents are entitled to choose to take their children to other schools in Morpeth, even when the first school is rated as outstanding. The picture at other first schools is, I hope it is fair to say, mixed. Whilst Morpeth First School "*Goosehill*" appears to meet its PAN fairly routinely, there appears to be capacity in Abbeyfields, Lancaster Park and St Robert's RC schools¹⁵².

¹⁵⁰ Source of quote: Email dated 29 October 2013, reproduced at Appendix XI to the proof of evidence of Mr Hollowood.

¹⁵¹ Source of quote: paragraph 7.81, report to the North Area Planning Committee, CD33.

¹⁵² In 2013/14, the academic year for which a full breakdown is given, Abbeyfields had 264 pupils out of a PAN of 300, Lancaster Park had 138 pupils out of a PAN of 150 and St Robert's RC had 130 pupils out of a PAN of 150.

285. The overall picture for first schools that emerges from the full data that has been provided for the academic year 2013-2014 is that across the 5 first schools in Morpeth for which data is provided there were 80 spare places¹⁵³. I acknowledge that this is only a snapshot in time and that the distribution of places is uneven both geographically and across the years. However, based on the limited information before me, I consider that analysis to be of some use.
286. I have no reason to doubt the advice of Children's Services that for every 100 houses there would be 3 children per primary class. So, on this basis the development [around 400 houses] can reasonably be expected to generate [4 x 3] 12 children per class which, across the 5 year life of the first school¹⁵⁴, would generate circa 60 children. Since the data provided identifies around 80 spare places this would tend to support the Council's position. Based on this data not all of the children could be accommodated at Stobhillgate, but that is consistent with the views expressed in the consultation response. The existing spare capacity in the town's first schools appears to be consistent with the admission by H & MT that, as part of the evidence gathering process for the NP, the Council said *"...one existing First School could be closed down and no new (extra) schools would be required in the Plan period"*¹⁵⁵. Although the town might reach a tipping point, given the scale of new developments that appear to be proposed, I am not convinced that point has yet been reached.
287. Turning to the Middle and High Schools, I acknowledge that the unchallenged data would suggest there is little or no capacity at present. However H & MT acknowledge that the Trust's admissions policy says *"...any child who has spent two years in one of the pyramid's First Schools can transfer to the Academy's Middle Schools...[and]...any child in the Academy's Middle Schools is able to transfer to the High School"*¹⁵⁶. I have given reasons for finding that there is adequate capacity in the town's first schools and so based on the current admissions policy that would suggest those children would then, by right, be able to attend the Middle and High Schools. I accept that if a family with an older child took up residence of a house that, because they might not have attended a first school, they might not be able to gain access to the Middle and High Schools. However, it appears to me that any family moving into Morpeth, eg into existing housing, might be in that position, which is a consequence of the Trust's admission policy. Over time that situation should resolve itself because, say 10 years post development, children born and then living in the houses might be expected to be fully integrated into the town's school system. The phasing of the development is also material under this head [282].

¹⁵³ Abbeyfields had [300-264] 36 spare places; Lancaster Park [150-138] 12 spare places; St Robert's RC had [150-130] 20 spare places; Stobhillgate had [150-142] 8 spare places; and Goosehill had [300-296] 4 spare places. Accordingly 36 + 12 + 20 + 8 + 4 = 80 places.

¹⁵⁴ The data presented by H & MT for each first school relates to years 0-4, hence 5 years. Although I have noted that Children's Services refer to "7 year groups" [see quote at 282 above] I assume that this includes pre-school nursery. The report [CD33] is clear that every 100 houses would generate 3 children per primary class and so that is the figure I have used.

¹⁵⁵ Source of quote: paragraph 5.4 of the proof of evidence of Councillor Mrs Tebbutt entitled "Sustainability".

¹⁵⁶ Source of quotes: paragraph 5.5 of proof of evidence of Councillor Mrs Tebbutt entitled "Sustainability"; note quotes recited in reverse order.

288. I have considered whether the data, which suggests that there is no spare capacity in the Middle and High Schools, should lead to a finding that financial contributions might be justified towards expanding these schools. However H & MT acknowledge that these schools have a catchment that is much bigger than Morpeth and extends as far as Rothbury [106], which is around 20 miles away by road, to the north-west of Morpeth. On this basis this does not appear to be a question of the schools having insufficient capacity but rather another aspect of the Trust's policy that it wishes to draw on a wide catchment in order to ensure that it meets its PAN. As H & MT fairly acknowledge *"The quality of the schools means, however, that they are extremely popular and attract children from a wide area beyond the actual catchment. This is in line with government policy about parental choice, so is not something unusual, inappropriate or readily changed"*¹⁵⁷. On that basis it is not surprising the schools are *"often over-subscribed"*¹⁵⁸, but that does not lead me to find they have no capacity to accommodate children generated by the development.
289. I accept the Appellants' submission that the LEA's judgment must be given overwhelming weight [81] and that unless the legal tests are met [183] any such contribution would be unlawful [82]. On the sixth main issue I conclude that there are sufficient spaces in the town's schools to accommodate the children who might come to live on this site if permission were to be granted. Since there is no basis to require contributions towards the provision of additional school accommodation it would be unlawful to seek such monies by virtue of being contrary to the test of necessity that is common to paragraph 204 of the Framework and regulation 122 of the CIL Regulations 2010.

Main issue (vii): Can the need for affordable housing be met by the section 106 agreement?

Background

290. The main parties agree that the 119 affordable homes that would be delivered by the section 106 agreement [185] would help to meet the affordable needs in Morpeth and that the mix of properties is aligned with needs. It is also common ground that this is a benefit of the proposal to which significant weight should be attached [CD39, paragraph 5.45]. H & MT do not agree that the affordable element of the proposal aligns with need [107].
291. The position taken by the Council in this matter takes account of the advice of its Housing Enabler, who said *"Morpeth is an area of high demand, low availability and low turnover of affordable homes. It is a desirable and sustainable location for new affordable homes... One of Strategic Housing's main objectives is the delivery of affordable housing in areas of need and demand. To achieve this objective we expect that 30% of homes on development sites are affordable. This equates to circa 119 affordable homes... The mix and tenure should reflect our current housing needs evidence base. Sources are Homefinder statistics, 2012 Northumberland County Wide Housing Needs Survey and Sub-Area Report... In line with the*

¹⁵⁷ Source of quote: paragraph 5.2 of proof of evidence of Councillor Mrs Tebbutt entitled "Sustainability".

¹⁵⁸ Source of quote: first page of proof of evidence of Councillor Mrs Tebbutt entitled "Schools Information".

*2012 Sub-Area Survey, a suggested mix is 70% affordable homes for rent and 30% intermediate homes... The homes for rent should be predominantly two bedrooms, with a smaller element of one bedroom homes and circa 4 number four bedroom homes. The intermediate housing should be a mix of one and two bedroom homes...*¹⁵⁹. It then goes on to refer to (i) the 2012 Northumberland County Wide Housing Needs Survey; and (ii) the 2012 Northumberland Housing Needs Survey Sub-Area Housing Report. In respect of (i) the Survey shows that 1,910 new affordable homes are required in the County over 5 years, 2012-2017, [382 pa]; and (ii) the Report shows that 670 new affordable homes are required in the CRCA over those 5 years [134 pa].

292. As part of the consultation response the Housing Enabler provided Homefinder information as at July 2013, which recorded 323 out of 367 households on the Morpeth register sought 1 and 2-bed properties. H & MT have provided the same information as at March 2014, which recorded 216 out of 242 households on the Morpeth register sought 1 and 2-bed properties. However the banding priority adds a further layer of complexity to this fluctuating picture and as at March 2014, the most recent data before the Inquiry, 51 out of 54 households in Band 1, the highest level apart from one homeless household, sought 1 and 2-bed accommodation. For Band 2, the next highest, 65 out of 80 households sought 1 and 2-bed accommodation and the remainder 3 and 4-bed dwellings.
293. Tees Valley Housing, the joint Appellant, provided a statement to the Inquiry. It says, following discussions with the Housing Enabler, the affordable housing mix would be: 6 x 1-bed apartments; 16 x 2-bed apartments; 56 x 2-bed houses; 9 x 2-bed bungalows; 28 x 3-bed houses; and 4 x 4-bed houses. So, in percentage terms, this means approximately 73% of the affordable units would be 1 and 2-bed accommodation, with 27% being 3 and 4-bed units. The statement goes on to say *"We are flexible as to which affordable homes are developed as rented and which are developed as Shared Ownership. As agreed with the Housing Strategy Team at the Council this will be agreed in more detail in due course"*¹⁶⁰. This explains why, although there is a 70/30 split proposed in the section 106 [185], there is no detail of which is which.

Analysis of the affordable housing offer against need

294. There is no relevant saved LP policy in respect of affordable housing [CD 39, paragraph 4.10]. The saving direction [CD4] confirms that LP Policies H8 and H9 are saved, but the first relates to one specific site in Morpeth [St George's Hospital] and the second to local needs housing [CD3, page 76]. I have given reasons for attaching limited weight to the emerging CS [194]; CS Policy 3 seeks 30% affordable housing across Northumberland, including the Central Delivery Area [26]. In view of the rather weak policy basis for requiring 30% affordable housing I have no doubt this is a positive attribute of this scheme.
295. Paragraph 7.33 of the supporting text to CS Policy 3 refers to the partial update to the SHMA [CD11] which, together with a Housing Needs Study undertaken in 2012, provides the evidence base for the 30% *"target"*. It says

¹⁵⁹ Source of quote: Comments from Strategic Housing, dated 4 September 2013, at Appendix 8 to the SoCG [CD39].

¹⁶⁰ Source of quote: page 3 of letter dated 27 May 2014, which is reproduced at Appendix VIII to Mr Hollowood's proof of evidence.

that the SHMA update slightly amends the tenure mix to 65% social rent and 35% intermediate housing. This is the first point that is taken by H & MT. However the SHMA update is dated October 2013, which post-dates the consultation response quoted above [291]. The Committee report did not flag this change [CD33, paragraph 7.24]. Accordingly the Appellants proceeded, in my view quite reasonably, on the basis of the advice that had been given by the Housing Enabler, which was correct on the date it was given. In practical terms the difference would not be significant. In my view it is more important to ensure delivery of affordable housing than to ensure a precise tenure mix given that it has, self-evidently, changed on the basis of very recent analysis.

296. My view is supported by the SHMA update insofar as it records that the 2012 Northumberland County Wide Housing Needs Survey “...recommended a mix balance of 67: 33 between social rent and intermediate housing”¹⁶¹. I have not been provided with that document but have no reason to doubt that the 2012 Sub-Area Survey, as referred to in the Housing Enabler’s comments, sought a 70/30 split. The SHMA update says “At County level we recommend a minor rounding to a 65:35 tenure mix balance and believe that a target around this level should now be considered” [*my emphasis*]¹⁶². The clear message is that this is an aggregate figure, at County level; that the target is not prescriptive; and that it is a recommendation from consultants to the Council, noting that the SHMA update is itself a consultation draft. Indeed a key driver for the change appears from paragraph 10.3.5 of the SHMA update to be site viability. Although I acknowledge that Table 16-3 identifies a 65/35 split for the Central Delivery Area, I find no reason to conclude this is set in stone. To the contrary the clear message I take from the SHMA update is the need for a flexible approach based on site viability and the need to review what is delivered. For these reasons I attach limited weight to the discrepancy between the 70/30 split that would be delivered and the 65/35 split sought in the SHMA update. It is also relevant that, in its statement, Tees Valley Housing talks about the 30% intermediate housing as being a minimum. Although not guaranteed it has the prospect of obtaining funding to deliver more intermediate housing.
297. H & MT then point out that the SHMA update says that the targets for future property size in the social rented sector is 75% 1 and 2-bed, and 25% 3 and 4-bed properties [CD11, paragraph 16.1.10]. For intermediate housing the update says the target is 40% 1-bed and 60% 2-bed [CD11, paragraph 16.1.13]. H & MT points to a “discrepancy” between this information and the mix of social rented units sought by the Housing Enabler in the consultation, but it is again material to point out this was sent before the SHMA update.
298. H & MT’s claim that the increased demand for smaller units, which they say is evident from the Homefinder information, might be related to welfare reform appears to have support in the SHMA update. It arrives at the 75% figure for 1 and 2-bed social rented units based on an assumption that welfare reform would free up 3-bed stock [CD11, paragraph 10.4.2]. The next paragraph is however significant in saying “...the need for four bedroom homes is the most difficult to address. These waiting list households must already be occupying a smaller property and therefore currently over-crowded and are a priority needs”

¹⁶¹ Source of quote: paragraph 10.3.6, page 72, SHMA update [CD11].

¹⁶² Source of quote: paragraph 10.3.7, page 72, SHMA update [CD11].

group" [*my emphasis*]¹⁶³. In my view this reveals the need to look not just at the overall figures but, of equal significance, consider need as reflected in the priority given to applicants via the Homefinder assessment. H & MT only have a snapshot; the Housing Enabler is best placed to make that assessment and so the flexibility built into the section 106 agreement is a positive attribute.

299. In this context I turn to consider the offer in terms of mix. What is common between the comments of the Housing Enabler and the SHMA update is that all the intermediate housing should be 1 and 2-bed units and so for the purpose of my analysis I shall assume the 36 intermediate units would be 1 and 2-bed. In order to deliver the social rent split in the SHMA update this should mean that 62, out of 83 rented units, should be 1 and 2-bed properties and hence that, overall, 82% of the affordable units should be 1 and 2-bed dwellings¹⁶⁴. However, as I have noted, the actual split that is offered is 73% 1 and 2-bed units [293]. Perhaps reflecting what the SHMA update says is a priority needs group, the Housing Enabler specifically asked for 4, 4-bed houses. On this basis if one takes them out of the equation it might be said that the mix does not reflect the SHMA update insofar as too many 3-bed houses are proposed and not enough smaller, specifically 1-bed dwellings, appear to be proposed.
300. Although I acknowledge that this analysis is my own, I think it is fair to say that this fairly reflects the complaint made by H & MT in its proof of evidence on affordable housing. In that proof of evidence H & MT have taken a broader view of need by including Band 2R from the Homefinder figures but perhaps their key complaint is that there would be an under provision of 1-bed units compared to need [108]. H & MT hypothesise that this mismatch between what is offered and what is needed has the potential to give rise to a situation where those units cannot be let or sold. It points to recent examples in the County where developers have offered to provide affordable housing in order to secure planning permission but then applied to reduce the affordable offer.
301. In my view these complaints are unfounded for a number of reasons. First the SHMA update is a consultation draft and so the weight to be attached to it is very limited. Second, on its face the SHMA update finds that it would not be appropriate to attempt very prescriptive targets for social rent property size for each Delivery Area¹⁶⁵. Its finding as to future mix, 75/25, assumes that welfare reform frees up 3-bed stock. However Table 8-1 shows that in 2012/13 there were over 1,000 households on the waiting list for 3-bed properties and that even if no new need arose it would take "*Two and a half years to address the 3-bedroom stock requirement*"¹⁶⁶. Moreover the SHMA update area analysis found that "*The main size of property required in the Central Delivery Area by existing households moving is 2 and 3 bedrooms*"¹⁶⁷ [*my emphasis*].
302. Third, I have given reasons why the Housing Enabler is best placed to give advice in this matter and so I attach significant weight to the fact that the

¹⁶³ Source of quote: paragraph 10.4.3, page 72, SHMA update [CD11].

¹⁶⁴ 75% of 83 rented units [offered via s106] = 62, plus the 36, 1 and 2-bed intermediate units = 98 units, expressed as a percentage of 119 [the total affordable offer] = 82%.

¹⁶⁵ Paragraph 16.1.11, CD11.

¹⁶⁶ Paragraph 8.2.5, CD11.

¹⁶⁷ Paragraph 14.2.2, CD11.

Council agree that the mix of properties is aligned with needs [290]. Finally the fact that Tees Valley Housing is a joint Appellant reassures me that the affordable housing offer would be delivered. Moreover its statement says the fact that they are in a 50:50 partnership *"...has meant that our strategy has been able to be more closely aligned to housing need... Tees Valley Housing controls the delivery of the affordable housing"*¹⁶⁸. By virtue of the fact that Tees Valley Housing is a Charitable Registered Provider of Social Housing I attach significant weight to this unambiguous statement.

Other points raised by H & MT on the broad topic of affordable housing

303. H & MT have raised a number of issues relating to matters that in my view have now been overtaken by the terms of the section 106 agreement. This includes questions of definition, such as intermediate homes, but the Council confirmed at the Inquiry that the agreement is based on its standard wording and I am satisfied that there is no discrepancy with the Framework. Amongst other things H & MT also question the phasing of the development but again the section 106 agreement sets this out clearly [185] and it is reasonable. Finally it is said that Tees Valley Housing could decide to use any of the plots for affordable housing but the section 106 plan identifies the affordable units.
304. H & MT identify anomalies between the statement from Tees Valley Housing and the Planning Statement [CD46]; I agree. However it is clear that the former should take priority as it is more up-to-date. I have no reason to doubt that as this is a 50:50 venture that Tees Valley Housing could deliver 119 affordable units and 79 of the lower value open market properties. Even if this might be wrong the terms of the section 106 agreement are clear and so I can be satisfied this would not affect the delivery of the affordable housing units.
305. H & MT say, by reference to recent house price data, that the price level of intermediate housing is unlikely to be truly affordable. However, as H & MT acknowledge, the Appellants have not indicated price levels for any of the proposed homes and so neither they nor I can reach an absolute conclusion as to their affordability. What is clear from the section 106 agreement is that the discounted market sale units would be sold at not more than 70% of the market value. The shared ownership units would also allow local people to obtain a first step on the property ladder whilst paying a rent on the balance.
306. Tees Valley Housing's statement says it *"...has to ensure that any intermediate affordable products such as shared ownership or intermediate rent will be affordable for those who need assistance to get onto the housing ladder. This will ensure that any element of the affordable housing which is of discount market sale housing is at values which are affordable for those in housing need. This is particularly important in areas of high market values such as Morpeth where discount market sale at say 75% of market value will not be affordable for most families in housing need compared to lower value areas"*¹⁶⁹. I have given a reason for attaching this statement significant weight.

¹⁶⁸ Source of quote: page 2 of letter dated 27 May 2014, which is reproduced at Appendix VIII to Mr Hollowood's proof of evidence.

¹⁶⁹ Source of quote: pages 3 and 4 of letter dated 27 May 2014, which is reproduced at Appendix VIII to Mr Hollowood's proof of evidence.

307. In my view the points raised by H & MT under this heading comprise a much wider critique of the country's housing problem than is possible to address in my report. Macro-economic factors such as the Bank of England's base rate, mortgage availability and mortgage multipliers are beyond my remit. What I would observe is that the SHMA update provides some evidence that some of those in need would appear to have the ability to justify, using a 2.9 or 3.5 times multiplier¹⁷⁰, the quantum of loan that might be required. Table 14-5 of the SHMA update records that 7.2% of all concealed households in the Central Delivery Area had an income of over £43,921 in 2012, re-weighted for 2013; a concealed household is someone living within a household who wants their own accommodation. This could for example be a young couple, both working, who live at home with one of the couple's parents. This evidence leads me to doubt H & MT's claim that the cost of intermediate housing would not be truly affordable¹⁷¹. H & MT say they welcome the provision of affordable housing in Morpeth and that many people in the community are thinking of the needs of their children, but its stance on this issue does not sit easily with that claim.
308. More generically the Appellants' remedy to the concerns raised by H & MT about affordability is clear. They say "*...there is a critical imbalance between the supply of and demand for new homes in Morpeth. The significant under-delivery of new homes has resulted in: i) House prices which are already significantly above average and which are growing at a faster than average rate; ii) Rents which are significantly above average; and iii) Very low affordability, which is worsening at a faster than average rate*"¹⁷². The report concludes that as a result working age families and children have been forced to leave town. The long-term solution to issues of affordability is therefore seen to be increased housing supply, both in terms of market and affordable housing. That theme is at the core of the Framework, as is evident from the third bullet-point of paragraph 17 and, amongst others, paragraph 47. I have dealt elsewhere in this report with the broader issue of housing supply [206].

Main issue (vii): Overall conclusion

309. On the seventh main issue I reject the contention of H & MT that only limited weight should be given to the affordable housing provision that is envisaged in the section 106 agreement [109]. In my view, particularly given the weak policy basis for seeking a 30% contribution, the 119 affordable houses, which I am satisfied would be delivered, would make a positive contribution towards meeting the high demand for affordable homes in Morpeth. For the reasons discussed in detail I endorse the consensus between the main parties that the mix of properties is aligned with needs [290]. I am in no doubt that it would be appropriate to attach significant weight to the affordable housing offer.

¹⁷⁰ For single and dual income households, respectively, as per paragraph 5.1.2 of CD11.

¹⁷¹ Using the 3.5 x income multiplier and the minimum concealed household income of £43,921 in this range gives rise to a potential mortgage of £153,723, which is above the prices quoted in Table 3-3 of the SHMA update [CD11], allowing for a 30% discount as set out in paragraph 28 of H & MT's proof of evidence entitled "*Affordable Homes*".

¹⁷² Source of quote: paragraph 2.12 of report entitled *Qualitative Housing Need in Morpeth*, at Appendix VI to Mr Hollowood's proof of evidence.

Main issue (viii): Whether the appeal scheme represents sustainable development, to which the Framework's "presumption in favour" should apply

The legal parameters

310. This is an evolving area of law. Having regard to the distinctions made by Counsel for the Council [46], at the present time I consider there are arguably 2 leading High Court judgments, namely *William Davis* and *Dartford*. Having taken account of the submissions of both main parties [45-51 and 61-63] the key is the consensus between both judges that the presumption in paragraph 14 of the Framework should only apply to sustainable development [45, 47]. Patterson J in *Dartford* employs strong language in rejecting the prospect that the presumption could apply equally to sustainable and non-sustainable forms of development, saying it *would make a nonsense of Government policy* [47]. This is part of the ratio and hence binding on an administrative tribunal [45].
311. In my view paragraph 14 of the Framework explains what the presumption means, including for decision-taking. However in order for the presumption to apply there has to be a sustainable form of development. To take an extreme example if that were not the case, in an area like Northumberland where there is a deficient housing supply, a large housing scheme could come forward on the edge of a small, remote village. Taking the approach advocated by my colleague¹⁷³ one would apply the test in the second bullet-point and consider whether the unsustainable nature of the development outweighed the benefits. With respect that cannot be correct. In my view it would be entirely illogical to apply a presumption in favour of sustainable development to a development that was inherently unsustainable. Paragraphs 6-10, inclusive, which are under a title "*Achieving sustainable development*" in the Framework, would serve no purpose if, in fact, it was a presumption in favour of development¹⁷⁴. This does however mean that an assessment of accessibility is an inherent part of the assessment of whether the proposed development would be sustainable.
312. I have noted the Appellants' arguments against this approach [61]. I agree that life might be simpler if there was not a 2-stage test, which requires an assessment of whether a scheme is sustainable development before applying the presumption, but that is my reading of the Framework. Although paragraph 6 thereof refers to paragraphs 18 to 219 as constituting what sustainable development means in practice it should be noted from the *Contents* that sections 1-13 are all under the title "*Achieving sustainable development*". The economic role, for example, is elaborated upon beginning with section 1, paragraphs 18-22. Paragraphs 6-17 set out the 'big picture' which is the context for the detailed policy that follows. This initial section starts by setting out the Government's view of what the UN Resolution means in England, but continues with a recitation of the statutory approach [paragraphs 11-13] and establishing a set of 12 core planning principles. On the Appellants' approach paragraphs 7 and 8 serve no purpose. Again that cannot be right: they are the key to an understanding of what is sustainable. My view is supported by reference to Patterson J in *Dartford* "...it is clear that

¹⁷³ Paragraph 11, APP/G1630/A/13/2209001.

¹⁷⁴ This is the position taken in paragraph 8.20 of Report APP/H1840/A/13/2199085 etc.

*the Inspector reached an overall conclusion, having evaluated the three aspects of sustainable development, that the positive attributes of the development outweighed the negative. That is what is required to reach an eventual judgment on the sustainability of the development proposal"*¹⁷⁵ [*my emphasis*]. The reference to three aspects of sustainable development can only, in my estimation, be a reference back to paragraph 7 of the Framework.

313. Paragraph 49 of the Framework says if there is not a 5-year supply relevant policies for the supply of housing should not be considered up-to-date. I accept that links back to application of the second bullet-point, for decision taking, of paragraph 14. However the first sentence of paragraph 49 merely says that housing applications should be *considered* in the context of the presumption in favour of sustainable development. Conversely it does not say that the presumption in favour of sustainable development applies to all planning applications for housing. It is necessary to consider whether it does apply and if the development is sustainable, relevant DP policies would be out-of-date. If the development is not sustainable however the presumption would not apply.
314. It is said that the paragraph 7 preliminary stage is redundant in practice but, whilst I note Mr Ketley's concession, I am not convinced that this is correct. I agree with the Council's submission that application of the second bullet-point of paragraph 14, for decision taking, is a different and wider-ranging balancing exercise from that involved in assessing whether a proposal is sustainable development [52]. Finally I note what the SoS said in paragraph 12 of the Droitwich Spa decision letter¹⁷⁶ but the issue simply did not arise on the facts. The SoS was able to point to that part of the Inspector's report in which he gave reasons for finding that the proposed development was sustainable.
315. Before turning to make an assessment of whether the proposed development would be sustainable, whilst I note that paragraph 48 is a summation of the case for the First Defendant, the SoS, it is worth recording that submission. It was said that "*Sustainable development is about seeking an overall net positive contribution to economic, social and environmental gains together*"¹⁷⁷ [*my emphasis*]. Inherent to that view is that development can still be sustainable even where there are some negatives, ie one of the three dimensions is not fully met, as long as the overall position is a net positive. In that case the concern was the social dimension¹⁷⁸, here it is environmental. This was a submission made for the SoS and this is a view that I subscribe to. The conclusion of Patterson J [see quote, 312] fully endorsed that submission.

The economic role of sustainable development

316. The Council accept that the proposed development would be economically sustainable [51]. I accept that the development would generate significant economic activity for Morpeth, lead to significant investment and the creation of jobs [64 ix]. The SoCG records that the main parties agree the proposals would deliver a range of economic benefits and reference is then made to the submitted Economic Statement. When the Council appeared to question the

¹⁷⁵ Source of quote: paragraph 54 of the transcript in *Dartford*, at DC5.

¹⁷⁶ Dated 02 July 2014, Ref APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426.

¹⁷⁷ Source of quote: paragraph 48 of the transcript in *Dartford*, at DC5.

¹⁷⁸ See paragraph 50 of the transcript in *Dartford*, at DC5.

basis of that Statement an explanation was given¹⁷⁹. This was not challenged at the Inquiry. I therefore attach significant weight to the Appellants' estimate that the appeal scheme would generate, amongst other things: 71 construction jobs pa; 107 jobs in the supply chain; £6.5m pa of gross value added, which is a measure of economic output, during construction; 53 additional FTE jobs in the local area; and additional gross expenditure of £7m in shops and services.

317. I have excluded consideration of 2 factors from this list, namely New Homes Bonus payments of circa £4m and an uplift in Council Tax revenue of over £650,000 because the Council challenge whether these should properly be considered to be material considerations. In particular it refers to a Note on the New Homes Bonus Scheme prepared for the House of Commons Library¹⁸⁰. The Government's position is set out in that note and says that in some cases the New Homes Bonus could lawfully be taken into account where there is a direct connection between the intended use of the Bonus and the proposed development. Mr Ketley conceded in answer to my question that this might be applicable in this case. The difficulty is that pending the outcome of this appeal the Council cannot reasonably make firm plans for what that money might be used for because it cannot be certain that it would be received. In all of these circumstances the SoS is invited to conclude that these financial provisions are not a material consideration that should be taken into account in this appeal.
318. H & MT disagree that the appeal proposals are economically sustainable. It says, in short, that it is the wrong type of land in the wrong place and at the wrong time. However whilst I note the eighth core planning principle there is no longer a focus on previously-developed land. It is common ground that the full potential of the former St George's Hospital site can only be realised with the MNB but in any event I have already noted that the NP recognises that the town's development needs cannot be met on previously-developed land [200]. The main parties agree that there is a need for green field sites to come forward to enable the 5-year land supply to be met and that there is a need for planning permissions to be granted now [64 ii, iii]; I agree on both counts. I deal with accessibility below, but note here the site's proximity to the town's industrial estate, which appeared to me to have several sites available and/or in need of redevelopment. With the loss of the allocated employment site at Fairmoor [DS6] that aspect of the CS will need to be re-visited. To say that there might be increased commuting is arguably a reason against housing in Morpeth [full stop]. Such an approach flies in the face of the Framework¹⁸¹.
319. For H & MT the use of land at the right time would seem to involve an embargo on housing development pending progression of the putative DP. However, as I have found, that too conflicts with the Government's approach [203]. Finally in terms of infrastructure, H & MT have advanced various arguments to the effect that the town's infrastructure cannot cope. However I disagree, specifically in terms of roads [264], sewage [278] and schools [289]. A key advantage of the proposed development is that it is not reliant on the MNB. I find no basis to conclude that the construction of the Loansdean-Stobhill Link

¹⁷⁹ See Appendix 1 to Mr Hollowood's Addendum to his Proof of Evidence.

¹⁸⁰ Appendix 4 to the rebuttal Proof of Evidence of Mr Ketley.

¹⁸¹ See amongst other things the Ministerial foreword and, in particular, that development means growth; it says "*We must house a rising population, which is living longer...*".

Road, however desirable, should be a pre-condition for approval of any further development to the south of the town or that contributions should be sought.

Accessibility: is it the right place, including by reference to local services?

320. The revised SOCG records that the Council's position on this issue has changed over time [paragraphs 5.25-5.30, CD39]. In the original, signed SoCG, dated 19 March 2014, the Council agreed that the site was in a sustainable location. This reflected its EIA Screening Opinion which said *"The site is easily accessible using several modes of transport, including bus links and being within a 10 minute walk of the town's railway station. Local education and shopping opportunities are within walking distance of the application site"*¹⁸². The Committee Report also found *"It is accepted that future occupants of the site would have good access to local services and facilities and, in particular, bus and train services that may be reached on foot"*¹⁸³. The Council's position remains that the site is within an acceptable walking distance of Morpeth railway station and schools, including Stobhillgate First School and Nursery¹⁸⁴. It also agrees that it is within close proximity of employment opportunities.
321. The dispute between the main parties is therefore whether the appeal site is well served by regular bus services and within an acceptable walking distance of local shopping facilities. However on these 2 matters Mr Jolley accepted in xx that they did not justify dismissal of this appeal [72]. The agreed table [DS 18.2] shows that there would be 5 bus services per hour passing the site which, relative to other proposed housing developments around the town, is much better than most, equal top with St George's Park. There are bus stops with shelters on both main road frontages of the site [11]. The layout is such that these would be accessible by pleasant footways divorced from the roads. It is conceivable that a bus route could loop around the internal site layout¹⁸⁵. The most regular bus service [No 2] runs every 20 minutes during Monday to Saturday daytime, and every hour in the evening and at weekends¹⁸⁶.
322. During the Inquiry a qualitative point evolved and it was suggested that the Loansdean site was better placed to take advantage of the express bus service that runs direct to Newcastle down the A1. That might be correct¹⁸⁷, but the agreed table [DS 18.2] shows that the appeal site is by far the closest housing site to the railway station. As I found, the train service between Morpeth and Newcastle is fast, just over 20 minutes but less at some times, and regular, with at least one service per hour, including in the evening, with some Sunday services¹⁸⁸. The train service is faster than the express bus service and total journey times, allowing for walking or cycling to the railway station/bus stop, would be comparable. This adds up to the best of both worlds at the appeal

¹⁸² Source of quote: Page 6, EIA Screening Opinion, CD32.

¹⁸³ Source of quote: Paragraph 7.19, CD33.

¹⁸⁴ Mr Jolley's proof makes the point that the railway station is within the preferred maximum walking distance, distinct from acceptable, but paragraph 5.27 of the SoCG says what it says.

¹⁸⁵ I acknowledge that this has not been proposed at this stage but the layout could facilitate this and it could be a future option for some local bus services.

¹⁸⁶ See Table DB2, Mr Craig's proof of evidence.

¹⁸⁷ See comparative timetables at DS22.

¹⁸⁸ See Table 3.3 of the *Sustainable Transport Appraisal* [CD49] and Table DB3, Mr Craig's proof of evidence.

site in the sense that there is excellent access to a fast, frequent train service into Newcastle together with a choice of bus services to a range of destinations [73]. Cycling to and from the railway station is a realistic option via Coopies Lane, a suggested route, or using the on-road cycle lane on the A192¹⁸⁹.

323. Turning to local shopping facilities the agreed table [DS 18.2] shows that in relative terms the appeal site performs relatively poorly, the furthest point in the site being 1,200m from the local convenience store. However it is a big site and my earlier point about off-road footways that permeate the site is relevant [321]. Table 3.2 of the IHT "*Guidelines for Providing for Journeys on Foot*" [CD44] says 1,200m is the preferred maximum in order to walk to such facilities. On this basis this does not count against the proposal. My view is confirmed by the fact that Mr Jolley agrees that the pharmacy and convenience store are within an acceptable walking distance of the centre of the site¹⁹⁰.
324. A qualitative point was also brought out at the Inquiry in relation to the local shopping facilities. However I consider there is nothing in this point. In my view the appeal site would have a good choice of local shopping facilities, including a corner shop, Post Office, Sainsbury's Local and Boots Pharmacy. The distance of 200m for the Loansdean site assumes that the permission is implemented as a food store, but it is an open A1 use or A2/A4/D1 use. The alternative would be further, 1,300m, from that site. Both Northgate and Persimmon rely on the Londis shop at the Jet filling station, although there is a farm shop on the same site. St George's Park would be further, 1,370m, from the nearest convenience store [DS 18.2]. When viewed in this relative context I consider that the local shopping facilities would be comparatively good here. The local shops might be more expensive but that is the price of convenience and such stores might only be used for '*top-up*' shopping, not a weekly shop.
325. H & MT says that the appeal site is poorly related to the upper schools. The main parties have only agreed figures for the middle schools [DS 18.2] which records that all of the proposed housing sites around Morpeth would be more than 2,000m from that school. This is what Table 3.2 of the IHT guidelines says is the preferred maximum walking distance from schools. In a relative sense this does not count against the appeal site. Moreover the evidence is that both middle schools are served by an extension of the No 44 bus service at opening and closing times, allowing direct travel by bus to these schools¹⁹¹.
326. The high school is said to be within 800m of the bus station¹⁹² and so could be accessed by a combination of bus travel and walking. Although direct cycling is conceivable in terms of distance, the topography and absence of safe routes for children might suggest this would be unlikely. The Morpeth NHS centre is located approximately 500m from the bus station¹⁹³ and could be accessed by a combination of bus travel and walking; the walk would be relatively flat. The town centre, with its excellent range of shops and services, is more than 800m from the appeal site, which Table 3.2 of the IHT guidelines says is the

¹⁸⁹ See plan on page 14 of the *Sustainable Transport Appraisal* [CD49], noting that the cycle lane runs for only part of this route on the A192.

¹⁹⁰ Paragraph 2.2.1 of Mr Jolley's Transport Rebuttal Proof.

¹⁹¹ Paragraph 4.5.18 of Mr Craig's proof of evidence.

¹⁹² Paragraph 4.5.19 of Mr Craig's proof of evidence and I accept that it is of this magnitude.

¹⁹³ Paragraph 4.5.20 of Mr Craig's proof of evidence and I accept that it is of this magnitude.

preferred maximum walking distance, but that would appear to apply to all of the housing sites considered¹⁹⁴. The evidence is that there are 5 bus services per hour, Monday to Saturday daytimes, between the appeal site and the town centre and published journey times are less than 10 minutes. In my view this makes it a realistic alternative to reliance on the private car for this journey.

327. For these reasons I consider there are a range of transport modes available to prospective residents in order to gain access to local services and facilities. Although I appreciate that the majority of key services and facilities are on the north side of Morpeth, given the excellent bus service between the appeal site and the bus station/town centre the appeal site would be far from inaccessible.
328. In this context I shall deal briefly with the PTAL analysis. Northumberland is a big rural County. The appeal site is on the edge of the fourth largest town in the County [6], within an acceptable walking distance of a mainline railway station with a good service [322] and served by 5 bus services per hour [321]. In the context of this County there can be few locations available for this scale of new housing with better access to the public transport network. Mr Jolley acknowledged that he has not undertaken a comparative assessment but I suggest that had this been done using the PTAL methodology that over 99% of the County would have very poor accessibility. PTAL was developed by a London Borough for use in London where, in my experience, public transport operates to a much higher quantitative and qualitative standard than other parts of England, particularly outside of the major conurbations.
329. In answer to my question Mr Jolley said that PTAL methodology underpinned the BREEAM assessment. I accept this but Mr Hollowood said that BREEAM was primarily used in relation to the construction of commercial buildings. CSH, which is a BREEAM scheme, is normally used in England to assess residential development¹⁹⁵. CSH rates new-builds for categories of sustainable development, including energy and CO₂ emissions, surface water run-off, water, materials, waste, pollution, health and wellbeing, management and ecology, but would not necessarily cover public transport accessibility. So, whilst I have no reason to doubt that PTAL has been used outside of London, I am far from convinced the exercise undertaken by Mr Jolley is of assistance in this particular appeal. Finally it is worth recording that, in my experience of currently undertaking an examination of a DP in London, the London Plan envisages that "*Suburban*", i.e. relatively low density, housing such as that proposed, is appropriate to come forward in areas with a PTAL rating of 0-1¹⁹⁶. For these reasons I attach very limited weight to this analysis. In the context of Northumberland it does not lead me to find that the appeal site would be poorly related to public transport. Such a finding would be counter-intuitive when the Council acknowledges that the appeal site is within an acceptable

¹⁹⁴ This distance is not agreed on DS18.2 and it is conceivable that part, but by no means all, of St George's Park would be within 800 m of the town centre, plus it is up a steep hill.

¹⁹⁵ It is a Government owned national standard that is based on BRE Global's scheme.

¹⁹⁶ See Table 3.2 of the London Plan, the notes to which define suburban as "*...areas with predominantly lower density development such as, for example, detached and semi-detached houses, predominantly residential, small building footprints and typically buildings of two to three storeys*", which in my view aptly describes what is proposed on the appeal site.

walking distance of one of the only mainline railway stations in the County [322] and served by 5 bus routes per hour serving various destinations [321].

Overall conclusion on the economic dimension of sustainable development

330. For all of these reasons I consider that the proposed development would fulfil the economic role of sustainable development. It would contribute to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type was available in the right place and at the right time, ie now, to support growth. In my view this is a material consideration to which significant weight should be given in the overall balancing exercise.

The social role of sustainable development

331. The Council acknowledges that the proposed development would be sustainable in a social sense insofar that it does not have a 5-year housing land supply and the proposed development would contribute to boosting housing supply [51]. The Council further agrees that the provision of 119 affordable dwellings in an area of affordable housing shortfall serves to fulfil this role [51]. I consider this would help to meet the needs of present and future generations and have given reasons to attach significant weight to the affordable housing offer [309]. The main parties agree that the proposed development would represent high quality design [CD39, paragraph 5.35] and H & MT have not expressly deferred from this view. Although the scheme would comprise a high quality environment it would not be an outstanding or innovative design and so it would not be appropriate to attach great weight to this material consideration. The fourth core planning principle at paragraph 17 of the Framework says that planning should *always seek to secure high quality design* and so it is a required attribute. I have already found that local services would be accessible [327]. For these reasons I consider that the proposed development would fulfil the social role of sustainable development and in my view this is a consideration to which significant weight should also be given.

The environmental role of sustainable development

332. The Council is concerned about the effect of the development on the character and appearance of the area and the local road network [51]. I have given reasons why I do not share its concerns as to the latter [264]. However the agreed evidence shows that in all scenarios the development would add to the length of queues on the network [DS 18.1] and in that sense there would be an increase in congestion and greenhouse gas emissions. To that extent the scheme would not minimise pollution or help the adaptation to climate change, but I have given reasons why the site is well related to public transport [322]. On balance, noting the housing supply situation [215], this is a neutral factor.
333. I acknowledge that there would be no harm to the built or historic environment [64 ix]. However I have given reasons why the proposed development would neither protect nor enhance the natural environment [248]; there would be a loss of a large arable field. The Appellants' *Ecological Appraisal* found however such arable land "...is homogenous in the wider area and is assessed as being of relatively low ecological value"¹⁹⁷. On balance the *Ecological Appraisal*

¹⁹⁷ Source of quote: paragraph 4.1, Conclusions, *Initial Ecological Appraisal*.

concludes “Overall a positive benefit to wildlife is envisaged due to the use of integrated mitigation and habitat design”¹⁹⁸. In the circumstances I agree with Mr Hollowood’s claim that the appeal proposals would deliver net ecological gains in terms of tree and hedgerow planting, creation of water features, including ponds, and other elements of landscaping. This new habitat has the potential to result in medium to long term enhancements to biodiversity, which would outweigh any short-term loss, such as that arising from the loss of habitat suitable for farmland bird species, eg skylark and meadow pipit. There would also be environmental benefits arising from the landscaping and habitat creation by virtue of the provision of a large area of public open space [64 viii].

334. However on balance I consider that the proposed development would not fulfil the environmental role of sustainable development. Although I have identified some positive factors and some neutral factors, the overall conclusion must be one of modest harm, which informs the weight that I attach to this factor.

Main issue (viii): Overall conclusion

335. In the Council’s view the environmental concerns prevent the appeal proposal from being considered to be sustainable development [51]. The Appellants submit that it would be almost impossible for any large development of this magnitude to get a 100% pass rate, which the Council’s approach demands [64 ix]. I agree; the overall position merely needs to be a net positive [312, 315]. Moreover it is instructive to look at the approach the SoS has taken in broadly comparable situations.
336. The Droitwich appeals related to 34.63 and 12.3ha, respectively, of green field land¹⁹⁹. The Inspector deals with the environmental aspects of sustainability in one paragraph [8.22]; indeed it is more accurate to say that he dealt with the environmental *benefits*. The SoS refers to this and the other 2 paragraphs that deal with the other 2 dimensions of sustainable development in finding that Appeal A was sustainable in terms of economic, environmental and social benefits²⁰⁰. I do not have the SoS decision for Hartford but the Inspector recommended approval of both appeals, the second of which was on 34ha of agricultural land, but this did not prevent the Inspector from finding that the development would be sustainable²⁰¹. Given that the DP is out-of-date [221] it is inevitable that housing to meet the need must be allowed on green field sites [318]. The Council has itself adopted this approach in the very recent past and concluded “...that the development [255 dwellings on 9.72 ha of agricultural land] *would be sustainable in terms of its environmental role*”²⁰². In this context I agree that the Council’s position here is contradictory [64 ix].
337. Having evaluated the proposed development against the three dimensions of sustainable development I conclude on the eighth main issue that the positive attributes of the development, in terms of economic, social and some limited environmental gains, outweigh the negative environmental impact. This leads me to find that the proposal would be sustainable development to which the

¹⁹⁸ Source of quote: paragraph 4.2, Recommendations, *Initial Ecological Appraisal*.

¹⁹⁹ See paragraphs 1.9 and 1.13 of Inspector’s report APP/H1840/A/13/2199085 etc.

²⁰⁰ See paragraph 12 of SoS decision APP/H1840/A/13/2199085 etc

²⁰¹ See paragraphs 3.7 and 14.37 of Inspector’s report APP/A0665/A/12/2179410 etc.

²⁰² Source of quote: paragraph 8.3, DS6; other references are to paragraphs 2.1 and 2.2.

Framework's "*presumption in favour*" should apply. This conclusion is broadly consistent with that arrived at by my colleague in the Loansdean appeal²⁰³.

Main issue (ix): The overall planning balance

338. Paragraph 14 of the Framework enjoins the decision maker to grant planning permission, where relevant policies in the DP are out-of-date, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is a loaded dice and by its use of the words '*significantly and demonstrably*' it is clear that any adverse impacts need to outweigh the benefits by an appreciable amount rather than just marginally. The reason for that shift in the planning balance is that an objective of the Framework is to boost significantly the supply of housing by, amongst other things, ensuring that a 5-year supply is in place. The Council has taken issue with my colleague's description of it as an "*overarching aim*"²⁰⁴ but, at a minimum, it is a key policy objective.
339. The proposal would provide a substantial amount of market housing in an area where the lack of a 5-year housing land supply means that housing policies in the DP are out-of-date [215, 221]; these are factors that weigh significantly in favour of allowing the appeal. Significant weight should be given in the overall balancing exercise to the economic benefits of the proposal, including direct employment and the multiplier effect in the local economy [316, 330]. I have also found that significant weight should be given to the social benefits, which include the benefits of much needed affordable housing [309, 331]. Subject to imposition of a planning condition the proposed development would improve the flooding situation downstream [275] and whilst the improvement would be small this is a positive factor to which I attach moderate weight. There would be a net benefit to ecology but given the potential short-term loss of habitat this is a factor to which I attach only moderate weight [333]. The provision of public access to a large proportion of the site is also a factor to which I attach moderate weight [333]. The Framework now requires high quality design and on this basis I consider this attribute of the scheme is not a benefit [331]. The absence of conflict with DP policy is however a highly significant finding [251].
340. Set against these positives is my conclusion on the third main issue that the proposal would harm landscape character, albeit not to a significant extent, and the appearance of the area, to a significant extent, but along a fairly localised stretch of the A196 corridor [248, 249]. The other factors which I have examined are broadly neutral and, in particular, on the fourth main issue I found that there is a high degree of certainty that the MNB will proceed and in this most likely scenario the development, taken with existing commitments, should not be refused on transport grounds because the impact on the network would not be severe [264]. On balance I conclude on the ninth main issue in this appeal that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the clear and multiple benefits of the proposed development [339].

²⁰³ See paragraphs 70-75 of decision APP/P2935/A/12/2170840 etc, DC4.

²⁰⁴ Source of quote: paragraph 31 of decision APP/P2935/A/12/2170840 etc, DC4.

Main issue (x): Conditions and planning agreement

341. Earlier in this report I critically examined the 27 conditions put forward in the Addendum to the SoCG [CD39], which formed the basis of a discussion at the Inquiry and gave reasons for my findings [163-182]. On the tenth main issue, if the SoS were minded to grant permission, I recommend that this be on the basis of the conditions set out in Annex A to this report. For the reasons identified [183-188] the section 106 agreement is compliant with paragraph 204 of the Framework and Regulation 122 of the CIL Regulations 2010. No further contributions are justified in relation to school accommodation [289].

Other matters

342. Ahead of the Inquiry I identified a further main issue [DC3], to be whether the proposed development would harm the living conditions of existing residents by reason of noise and disturbance. This was having regard to paragraph 5.24 of the SoCG [CD39], which records that H & MT believe that the impact of the noise caused by extra traffic generated by the proposal, during and after construction, on existing homes, such as those at Barmoor Bank, to the south of Stobhill roundabout, have not been considered.
343. It is clear to me that the impact of the proposed development on the living conditions of existing residents has been considered by the Council during its consideration of the application. The Council received advice from its Environmental Protection Officer, which included recommendations on construction phase. The report that was made to the Council's North Area Planning Committee on 20 February 2014 included sections entitled "*Impact on neighbouring residential amenity*" and "*Noise issues*". Paragraph 7.64 of the report gave reasons for finding no conflict with relevant LP Policy H15.
344. Even if it might be said that the Committee report was in some way deficient in not making express reference to the impact of traffic noise, in particular on the living conditions of existing properties in the area, I find no basis to conclude that the proposed development would harm neighbours' living conditions. Many of the existing dwellings are set back from the main roads. Although I acknowledge that those at Barmoor Bank front onto the A192 traffic noise is already likely to have an impact on residents' living conditions. It has not been shown that this proposal would increase the volume of traffic passing along this route to the extent that this would be unacceptable in terms of noise and disturbance. In the unlikely event that issues were to arise during construction phase I have already referred to the range of statutory powers that the Council has in order to deal with issues of noise and disturbance to residents [172].
345. At the Inquiry I picked up on a point in the *Sustainable Transport Appraisal* [CD49] insofar as it says "*An on-road cycle lane is provided along the A192 in a southbound direction, between the Mafeking roundabout and the Shields Road junction. It is considered that sufficient road width is available that this could be enhanced by provision of an on-road cycle lane in the northbound direction*"²⁰⁵; I agree. Moreover I consider that there might be scope to extend the on-road cycle lane up to Stobhill roundabout, which could run in both directions along this length of the A192. I explored this point with Mr

²⁰⁵ Source of quote: paragraph 2.1.13 of the *Sustainable Transport Appraisal* [CD49].

Craig who suggested it might be capable of delivery via the travel plan, but in the conditions session the Appellants suggested this was unlikely; I agree.

346. I acknowledge that this was not offered as part of the section 106 agreement because the Council sought no such contribution, which in itself is perhaps surprising, and so the absence of a relevant contribution should not count against the proposed development. However I raise this point because such provision would further enhance the sustainability credentials of the appeal site. In the event that planning permission is granted the Council might wish to consider whether the New Homes Bonus could be used in part, where there was a robust travel plan already in place, to deliver such an enhancement.
347. Local residents and others have raised a number of other points and I do not propose to address all of them. However I will touch briefly on the potential impact on Stannington Station Road. I do respect the Parish Council's concern that the proposal might give rise to increased traffic using that road as an unofficial southern bypass in order to gain access to the A1. However I must be guided in this matter by the expert evidence before the Inquiry, which is that there is no outstanding highway safety issue. Network Rail were consulted and made no adverse comment in relation to the use of the level crossing on the east coast mainline. Accordingly I am satisfied that this is not an adverse consideration that should weigh against the proposed development.

Overall conclusion

348. For the reasons discussed at length above, having regard to all other matters raised, I conclude that the appeal should be allowed.

Recommendation

349. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Annex A.

Pete Drew

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, Counsel

Instructed by Neil Masson, Solicitor,
Northumberland County Council.

He called

Thomas Walker BA Hons, Dip LA, MA, CMLI, AoU
Partner, Gillespies LLP.
Chris Jolley BSc, CEng, MICE
Technical Director, Mott MacDonald.
Mark Ketley BA, Dip TP, MRTPI
Acting Strategic & Urban Development Manager,
Northumberland County Council.

FOR THE APPELLANTS:

Sasha White QC

Instructed by GVA Grimley Ltd.

He called

Jeremy Smith BSc (Hons), Dip LA, CMLI,
Executive Director SLR Consulting Ltd.
Roland Craig BSc, FIHT, MILT, Technical Director
WSP.
Stephen Hollowood BSc (Hons), Dip TP, MRTPI,
MCABE, AoU, Senior Director GVA Grimley Ltd.

FOR HEPSCOTT AND MORPETH TOGETHER:

Councillor Philip Ashmore
Councillor Mrs Joan Tebbutt
Councillor Mrs Alison Byard

Hepscott Parish Council.
Morpeth Town Council.
Morpeth Town Council [who gave no oral
evidence but put questions to one witness].

INTERESTED PERSONS [THOSE WHO ADDRESSED THE INQUIRY IN PERSON]:

John Lewis MRICS MRTPI (Retd)	Hepscott Parish Councillor.
Tom Smith	Morpeth Flood Action Group.
Karen Carins	Stannington Parish Council.
Councillor Andrew Tebbutt	County Councillor.
Harry Cone	Local resident.
Ian Campbell	Neighbourhood Plan advisor.
Richard Wearmouth	Local resident.
Dr J Meth-Cohn	Chairman, Hepscott Flood Action Group.
Joan O'Connor	Local resident.
Fred Dye	Hepscott Parish Councillor.
Derek Thompson	Local resident.
Paul Kidd	Local resident.
David Armstrong	Local resident.
Bob Robertson	Local resident.
Michael Lamb	Local resident.
Chris Tuersley	Local resident.
Dr Anne Colver	Local resident.

Jean Douglas	Local resident.
Sandra Kennedy	Local resident.
Councillor Glen Sanderson	County Councillor.
Councillor Ian Lindley	County Councillor.
Vivienne Rochester	Local resident.

i) DOCUMENTS SUBMITTED AT THE INQUIRY [DS]

- 1 List of appearances on behalf of the Council.
- 2 List of appearances on behalf of H & MT.
- 3 Section 106 agreement dated 18 July 2014.
- 4 Traffic & Highways Statement dated 18 July 2014.
- 5 Landscape Statement of Common Ground.
- 6 Report to North Area Planning Committee on 17 July 2014 in respect of application No 13/02105/OUT on land south west of Northgate Hospital [Persimmon scheme] submitted by the Appellants at the Inquiry.
- 7.1- Bundle of legal authorities comprising: (i) *Anita Colman v SSCLG* [2013]
- 7.4 EWHC 1138 (Admin); (ii) *Stratford on Avon DC v SSCLG* [2013] EWHC 2074 (Admin); (iii) *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin); & (iv) *William Davis Ltd and Jelson Ltd v SSCLG* [2013] EWHC 3058 (Admin).
- 8 Draft costs application submitted by the Appellants during Inquiry opening.
- 9 Substitute Supplement to agreed Traffic & Highways Statement submitted by the Council at the Inquiry.
- 10.1- Appeal decisions [Ref APP/Q3305/A/12/2186794 and
- 10.2 APP/L3815/A/13/2206796] submitted by the Council at the Inquiry.
- 11 Draft timetable submitted by the Council at the Inquiry.
- 12 Opening statement on behalf of the Appellants.
- 13 Opening submissions on behalf of the Council.
- 14 Opening statement on behalf of H & MT.
- 15 Revised timetable submitted by the Appellants at the Inquiry.
- 16 Email dated 22 July 2014 regarding absence of date in clause 3.2.3 of the fourth schedule of the section 106 agreement, submitted by the Council at the Inquiry.
- 17 Statement on behalf of Stannington Parish Council submitted by Councillor Karen Carins at the Inquiry.
- 18.1- (i) Updated journey times; (ii) agreed distances to services and facilities;
- 18.3 and (iii) Site Context Plan, all submitted by the Appellants at the Inquiry.
- 19 Statement of John Lewis MRICS, MRTPI (Retd).
- 20 Loansdean Landscape Masterplan submitted by the Appellants at the Inquiry.
- 21 Excerpts from the Transport Assessment for Northgate Hospital submitted by the Council at the Inquiry.
- 22 Selected bus timetables, comprising express service via Loansdean and equivalent service via appeal site, submitted by the Council at the Inquiry.
- 23 Hepscott Flood Risk Study submitted by Mr Lewis at the Inquiry.
- 24.1- Statements of Councillor Philip Ashmore submitted at the Inquiry entitled
- 24.2 (i) "*Update and response to Applicant's Comments*"; and (ii) "*Summary of Proofs of Evidence*".
- 25 Statement of Tom Smith submitted during the Inquiry entitled "*Morpeth Flood Action Group response to Flood Risk Assessment and Flood Risk Exercise*".
- 26 Plan submitted by Mr Lewis showing his property in relation to the bypass

- culvert and other drainage features in the vicinity of Hepscott.
- 27 Email dated 14 July 2014 from the Environment Agency to WSP.
- 28.1- Summary proofs of evidence submitted by Councillor Joan Tebbutt to the
- 28.4 Inquiry in relation to: (i) Policy Context; (ii) Affordable Homes; (iii) Transport and Highways; and (iv) Sustainability.
- 29 Plan submitted by Dr Meth-Cohn to the Inquiry showing point at which a flood relief pipe running along the railway could link to an existing ditch.
- 30.1- Presentation to Inquiry made by Harry Cone together with a copy of the
- 30.2 Morpeth Herald dated 24 July 2014.
- 31 Further statement of Tom Smith submitted during the Inquiry entitled "*Barratt Stobhill housing development conditions*".
- 32 Letter from "*A concerned old citizen*" submitted at the Inquiry.
- 33 Letter from Stuart J Brock submitted at the Inquiry.
- 34 Letter from Stephen Byard submitted at the Inquiry.
- 35 Permeability note from Councillor Philip Ashmore submitted at the Inquiry.
- 36 Proposed agenda for accompanied site visit, including plan.
- 37.1- Mr Lewis's suggested amendments to agenda for site visit, with attached
- 37.2 plan.
- 38 Closing submissions on behalf of H & MT.
- 39 Closing submissions on behalf of the Council.
- 40.1- Closing submissions on behalf of the Appellants together with transcripts of
- 40.3 (ii) *Shadwell Estates Ltd v Breckland DC* [2013] EWHC 12 and (iii) *Ashdown Forest Economic Development LLP v SSCLG* [2014] EWHC 406 (Admin).
- 41 Letter from Mrs Julia Macphail submitted at the Inquiry.

ii) DOCUMENTS CIRCULATED OUTSIDE OF THE INQUIRY [DC]

- 1 Letters of notification including a list of persons to whom they were circulated.
- 2.1- Bundle of letters from interested parties that were submitted to The
- 2.11 Planning Inspectorate in response to the original letter of notification.
- 3 Inspector's handout circulated in advance of the Inquiry.
- 4 Appeal decision dated 17 July 2014 in respect of Land at South Loansdean, Morpeth [Ref APP/P2935/A/12/2170840 and APP/P2935/A/13/2208237].
- 5 Email dated 1 August 2014 from The Planning Inspectorate to all main parties inviting comments on the judgment in *Dartford Borough Council v SSCLG and Landhold Capital Limited* [2014] EWHC 2636 (Admin).
- 6 Submissions made on behalf of the Appellants on the *Dartford* judgment.
- 7 Submissions made on behalf of the Council on the *Dartford* judgment.

iii) CORE DOCUMENTS [CD]

- CD1 National Planning Policy Framework.
- CD2 Planning Practice Guidance.
- CD3 Castle Morpeth Local Plan (February 2003).
- CD4 Castle Morpeth Local Plan Saving Direction (31 August 2007).
- CD5 Castle Morpeth Borough Council Local Plan Inspector's Report (June 1999).
- CD6 Northumberland Local Development Plan – Core Strategy Preferred Options (February 2013).
- CD7 Northumberland Local Plan – Core Strategy Preferred Options for Housing, Economy and Green Belt (October 2013).

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- CD8 The Morpeth Neighbourhood Plan Issues and Options Consultation Report (September 2013).
 - CD9 Northumberland Five Year Supply of Deliverable Sites 2013 to 2018 (October 2013).
 - CD10 Northumberland Strategic Housing Land Availability Assessment 2013 to 2018 (October 2013).
 - CD11 Northumberland Draft Strategic Housing Market Assessment Update and Delivery Area Report (October 2013).
 - CD12 Northumberland Strategic Land Review (October 2013).
 - CD13 Northumberland Key Land Use Impact Study Part A: Landscape Sensitivity at Settlement Edges (September 2010).
 - CD14 Northumberland Key Land Use Impact Study Part D: Landscapes Potentially Requiring Additional Protection (September 2010).
 - CD15 Northumberland Landscape Character Assessment: Part A, Landscape Classification (LUC, August 2010).
 - CD16 Natural England's National Character Area 12: Mid-Northumberland (2013).
 - CD17 Natural England's National Character Area 13: South East Northumberland Coastal Plan (2013).
 - CD18 Northumberland Local Development Scheme (December 2008).
 - CD19 Local Development Scheme 2013 to 2016 (October 2013).
 - CD20 Local Transport Plan 2011 – 2026 (2011).
 - CD21 Castle Morpeth Borough Council Local Development Framework draft Core Strategy (June 2008).
 - CD22 Sustainable Growth Scenarios for Morpeth (August 2011).
 - CD23 Outline Water Cycle Study (May 2012).
 - CD24 Statement of Community Involvement (7 August 2013).
 - CD25 Statement of Community Involvement: Addendum (November 2013).
 - CD26 Presentation Layout (drawing ref. NE-18-06K).
 - CD27 Transport Assessment (July 2013).
 - CD28 Traffic Modelling Technical Note (11 November 2013).
 - CD29 Traffic Modelling Technical Note Response to Northumberland County Council (5 December 2013).
 - CD30 Framework Travel Plan (13 December 2013).
 - CD31 Landscape and Visual Impact Appraisal (2013).
 - CD32 EIA Screening Opinion (30 October 2013).
 - CD33 Officer Report to the North Area Planning Committee (20 February 2014).
 - CD34 Appellants' Statement of Case (24 January 2014).
 - CD35 Northumberland County Council Statement of Case.
 - CD36 H & MT Statement of Case (21 May 2014).
 - CD37 Statement of Common Ground (19 March 2014).
 - CD38 Statement of Common Ground on Transport Matters (23 May 2014).
 - CD39 Revised Statement of Common Ground, including H & MT comments (11 June 2014).
 - CD40 Revised Statement of Common Ground on Transport, including H & MT comments (17 June 2014).
 - CD41 Guidelines on Landscape and Visual Impact Assessment (GLVIA3, LI and IEMA, March 2013).
 - CD42 Strategic Gap and Green Wedge Policies in Structure Plans (originally ODPM, now DCLG; 2001).
 - CD43 Strategic Housing Land Availability Assessment: Practice Guidance (July 2007).
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- CD44 Guidelines for Journeys on Foot (2000).
- CD45 William Davis Ltd & Anor v Secretary of State for Communities and Local Governments & Anor [2013] EWHC 3058 (Admin) (11 October 2013).
- CD46 Planning Statement (7 August 2013).
- CD47 Economic Statement (7 August 2013).
- CD48 Sustainability Statement (7 August 2013).
- CD49 Sustainable Transport Appraisal (1 November 2013).
- CD50 Response to comments received from Northumberland County Council Highways Department (28 November 2013).
- CD51 Technical Note on Highway Capacity provided to NCC (6 May 2014).

iv) PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF THE APPELLANTS IN ADVANCE OF THE INQUIRY

- 1 Proof of evidence of Stephen Hollowood with 11 appendices with summary, to which I have added the late rebuttal of Mr Tyler [to Appendix II].
- 2 Addendum to the proof of evidence of Stephen Hollowood with one appendix.
- 3 Rebuttal proof of evidence of Stephen Hollowood with 3 appendices.
- 4 Proof of evidence of Roland Craig with Figures DB1-DB10 and 5 appendices, together with summary.
- 5 Addendum to the proof of evidence of Roland Craig with one appendix.
- 6 Proof of evidence of Jeremy Smith with 6 appendices and drawing Nos S/JNS/1-S/JNS/16, together with summary.

v) PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF THE COUNCIL IN ADVANCE OF THE INQUIRY

- 1 Proof of evidence of Mark Ketley with 4 appendices, together with summary.
- 2 Rebuttal proof of evidence of Mark Ketley with 5 appendices.
- 3 Proof of evidence of Thomas Walker with 7 appendices, together with summary.
- 4 Proof of evidence of Chris Jolley with one appendix, together with summary.
- 6 Rebuttal proof of evidence of Chris Jolley with 3 appendices.

vi) PROOFS OF EVIDENCE SUBMITTED ON BEHALF OF HEPSCOTT & MORPETH TOGETHER IN ADVANCE OF THE INQUIRY

- 1 Proof of evidence of Councillor Mrs Tebbutt entitled "*Transport and Highways*", which incorporates 5 appendices.
- 2 Proof of evidence of Councillor Mrs Tebbutt entitled "*Policy Context*", which incorporates 13 appendices.
- 3 Proof of evidence of Councillor Mrs Tebbutt entitled "*Affordable Homes*", which incorporates 6 appendices.
- 4 Proof of evidence of Councillor Mrs Tebbutt entitled "*Sustainability*", which incorporates 12 appendices.
- 5 Proof of evidence of Councillor Ashmore entitled "*Flooding and Sewerage*", which incorporates 3 appendices.
- 6 Proof of evidence of Councillor Mrs Tebbutt entitled "*Schools Information*".

ANNEX A: List of suggested conditions in the event of planning permission being granted

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall not be carried out other than in complete accordance with the following approved plans:
 - Site Location Plan GIS21912/01-01;
 - Presentation Layout NE-18-06K;
 - House Type Portfolio NE-18-09B; and,
 - Materials Plan NE-18-15B.
3. No development shall commence until samples of the materials identified on drawing No NE-18-15B, which are to be used on the external elevations of the dwellings hereby permitted, have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall not be constructed other than in accordance with these approved materials.
4. No dwelling hereby approved shall be commenced until details of the provision of refuse and recycling storage for each dwelling, and a programme for implementation, have been submitted to and approved in writing by the Local Planning Authority. The refuse/recycling area shall have a direct and level access from the street to the dwelling and be capable of accommodating the appropriate number of refuse/recycling bins. Thereafter, no dwelling shall be occupied until the refuse and recycling facilities for each individual dwelling has been provided in accordance with the approved details and implementation schedule.
5. Development shall not commence until a detailed scheme for foul flows has been submitted to and approved in writing by the Local Planning Authority, in consultation with Northumbrian Water. The scheme should:
 - specify that foul water from the development hereby approved shall be disposed of via a connection to the 450mm foul sewer within Coopies Field Industrial Estate downstream from manhole 3101; and
 - provide details of the treatment of foul flows from the development hereby approved.

The dwellings hereby approved shall not be occupied until the scheme for the treatment of the foul flows has been completed and commissioned in accordance with the approved details.
6. Development shall not commence until details of the implementation, maintenance and management of a scheme for surface water management using a sustainable urban drainage scheme has been submitted to and approved by the Local Planning Authority. The scheme shall be in broad accordance with drawing No MD0777.00.20 Rev C and designed to dispose and attenuate surface water up to the 1 in 100 year plus climate change event from the development and shall limit discharge from the development to 16l/s or 50% of the green field run off rate, whichever is less, for all rainfall events. The scheme shall be implemented in accordance with the approved details, which shall include:
 - i. a timetable for its implementation; and,

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- ii. a management and maintenance plan for the lifetime of the development, which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
7. The building envelope of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise, affording an internal level of noise as follows, with windows closed and other means of ventilation provided:
- 35 dB (A) LAEQ (07.00 to 23.00 hours) in living rooms;
 - 30 dB (A) LAEQ (23.00 to 07.00 hours) in bedrooms; and
 - 45 dB (A) LAFmax not normally exceeded in bedrooms between 23.00 to 07.00 hours.
8. The dwellings of all the plot numbers which front onto the A192 and A196 roads shall be constructed so as to provide sound attenuation against external noise in the rear gardens of each dwelling, affording a maximum external level of 55 dB(A) LAeq.
9. Prior to the commencement of development, details of the reflective acoustic barrier proposed in the Revised Noise Impact Assessment (NVA/4210/12/3774 Rev A) (paragraph 5.06) shall be submitted to, and approved in writing by, the Local Planning Authority. The submission should include a plan indicating the location, extent, performance and maintenance of the proposed reflective acoustic barrier. The approved barrier shall be constructed prior to the occupation of the first nearest dwelling which it is designed to protect and shall thereafter be retained and maintained in accordance with the approved details.
10. Prior to the commencement of development, details of protective measures, which should include a suitable gas-resistant, heavy-duty membrane to be incorporated in the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The membrane shall thereafter be incorporated into the development prior to the construction of each of the dwellings hereby approved.
11. If during development contamination not previously considered is identified, then an additional method statement regarding this material shall be submitted to, and approved in writing by, the Local Planning Authority. No dwelling shall be occupied until the method statement has been submitted to, and approved in writing by, the Local Planning Authority, and measures proposed to deal with the contamination have been carried out.
12. No development shall commence until a fully detailed landscaping scheme, showing both hard and soft landscaping proposals (the detailed landscape planting plan must include at least one pond, the planting of locally native trees, shrubs, wildflowers and grasses of local provenance) has been submitted to and approved in writing by the Local Planning Authority. This shall include, where required, the planting of trees and shrubs including a fully detailed planting schedule setting out species, numbers, densities and locations, provision of cross site wildlife corridor linkages and sustainable urban drainage ponds, provision of screen walls or fences, the mounding of earth, the creation of areas of hardstanding, pathways etc, areas to be seeded with grass and other works or proposals for improving the appearance of the development. The scheme

shall be carried out in accordance with the approved drawings not later than the expiry of the next planting season following commencement of the development, or within such other time as may be agreed in writing by the Local Planning Authority. The landscaped areas shall be subsequently maintained to ensure establishment of the approved scheme, including watering, weeding and the replacement of any plants, or areas of seeding or turfing comprised in the approved landscaping plans, which fail within a period up to five years from the completion of the development.

13. No development shall commence until a detailed landscape management plan, which shall provide details of the management of all landscaped areas within the site (other than domestic gardens), has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved plan shall be implemented in complete accordance with the approved details.
14. No development shall take place unless in accordance with the mitigation and recommendations detailed within the following ecological reports:
 - 'Stobhill, Morpeth, Northumberland: Initial Ecological Appraisal -Stage 1 Investigations -Draft 3', Quants Environmental Ltd, September 2013;
 - 'Stobhill, Morpeth: Breeding Bird Survey' John Thompson Ecology Services, June 2013; and,
 - 'Stobhill, Morpeth: Bat Survey Report', Quants Environmental Ltd, December 2013.
15. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars, including the Design and Access Statement [NE-18-12C, dated November 2013]; and paragraphs (i) and (ii) below shall have effect until the expiration of 5 years from the first date of occupation of any dwelling within the site:
 - i. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with BS 3998: 2010 "*Tree Work – Recommendations*" (or any equivalent standard replacing BS 3998: 2010).
 - ii. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
 - iii. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with details to be submitted to and approved in writing by the Local Planning Authority before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the Local Planning Authority.
16. Before development commences a detailed scheme for the provision of the children's play areas on the site shall be submitted to and approved in writing

by the Local Planning Authority, including details of the play equipment, surfacing, boundary treatments and a timetable for the construction of the areas. Thereafter, the children's play areas shall be provided in the agreed locations, in accordance with the approved details and the approved timetable.

17. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include details of:
- The parking arrangements to enable all vehicles associated with the construction to park within the site at all times;
 - Measures to help control and, where possible, reduce noise, dust and dirt emissions from the site during the construction;
 - Measures to help prevent the deposit of mud and debris on public highways by vehicles associated with the construction travelling from the site;
 - Excavations and earthworks to be carried out near the railway undertaker's boundary, to ensure that that no interference with the integrity of that property/structure can occur;
 - The erection and maintenance of fencing around the site;
 - Compound provision for the storage of plant and materials used during the construction; and,
 - The siting of construction accesses) where applicable.

Thereafter, the development shall be undertaken in accordance with the approved Construction Management Plan.

18. The areas allocated for parking and turning on approved drawing No NE-18-06K shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
19. Before development commences a fully dimensioned layout plan incorporating details in respect of road drainage, street and/or other external lighting, landscaping and boundary treatments (including details of a trespass proof close-boarded fence at least 1.8m in height at the eastern boundary of the development), together with a longitudinal section of the new road and details of construction of the carriageway, footpaths and accesses, together with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details pursuant to the agreed timetable and thereafter those features approved pursuant to this condition shall be retained and, where appropriate, maintained.
20. The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied can be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.
21. All road and associated works shall be to a standard eligible for adoption in accordance with the Northumberland County Council Manuals or as agreed in consultation with the Local Planning Authority.

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22. No development shall commence until a scheme of highway works along the site frontage onto the A196 has been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The scheme shall provide details for the provision of traffic calming measures and the relocation of the bus stop and its associated shelter on the westbound carriageway, in broad accordance with drawing 0887-SK-005 (Rev. A) prepared by WSP. Thereafter, the scheme shall be implemented prior to the occupation of the first dwelling hereby approved.
23. No development shall commence until additional site layout details in respect of pedestrian accessibility to bus stops, vehicle visibility splays and vehicle tracking, together with a timetable for implementation, have been submitted to and approved in writing by the Local Planning Authority, in consultation with the Highway Authority. The details shall include:
- The location of pedestrian accesses from the development hereby approved to the bus stops on the A 192 and A 196;
 - An increase to the radius of the vehicle access junctions from the A196 to 15m;
 - The addition of block paving to cul-de-sacs; and,
 - Minor adjustments to internal road geometry.

Thereafter, the development shall not be constructed other than in accordance with the approved details, pursuant to the agreed timetable.

24. No later than six months before the occupation of the first dwelling of the development hereby approved, a full travel plan shall be submitted to and approved in writing by the Local Planning Authority. The full travel plan shall be in broad accordance with the WSP Framework Travel Plan dated 13 March 2014. The full travel plan, as approved, shall be implemented in all material respects, including establishment of the long term arrangements for appointment of a travel plan co-ordinator and ensuring that travel surveys are undertaken post occupation to ensure the future success of the travel plan, with such details as agreed to be necessary being submitted to the Council.



Department for Communities and Local Government

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 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

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.

Appeal Decision

Site visit made on 25 September 2019

by Stephen Wilkinson BA BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

Appeal Ref: APP/C3105/W/19/3229631

OS Parcel 4300 North of Shortlands and South of High Rock, Hook Norton Road, Sibford Ferris, Oxfordshire OX15 5QW

- 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 Land and Partners against the decision of Cherwell District Council.
 - The application Ref 18/1894/OUT, dated 29 October 2018, was refused by notice dated 30 April 2019.
 - The development proposed is outline planning permission with all matters reserved for up to 25 dwellings, associated open space, parking and sustainable drainage.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 5 November 2019.

Decision

1. The appeal is allowed and outline planning permission with all matters reserved for up to 25 dwellings, associated open space and sustainable drainage is granted at OS Parcel 4300 north of Shortlands and south of High Rock, Hook Norton Road, Sibford Ferris, Oxfordshire, OX15 5QW in accordance with the terms of the application, Ref 18/1894/OUT, dated 29 October 2018, subject to the conditions included in the schedule attached to this letter.

Procedural Matters

2. The application has been submitted in outline with all matters reserved and this is the basis on which I considered this appeal. At the start of the Hearing I sought clarification over the proposed 'parameter plan' as two different revisions had been included for my consideration. I accepted the revised plan no. 6426/ASP3/PP Rev D which included a typographical change to the legend and my decision has been made on this basis.
3. A draft agreement made under Section 106 of the Town and Country Planning Act 1990, as amended, agreed by all parties was presented to me during the Hearing. This has been completed and informs my conclusion on the third main issue identified below.
4. In the week following the Hearing the Government issued a National Design Guide. I wrote to the parties seeking their views on whether this Guidance had any bearing on their cases and my findings have taken on board their views.

Main Issues

5. There are three main issues in this Appeal which I define as follows:
- Whether the proposals comply with the housing policies of the development plan
 - The effect of the proposals on the character and appearance of the settlement of Sibford Ferris and the surrounding area, and
 - Whether the proposals include adequate provision for the necessary infrastructure directly required by this development.

The appeal site

6. The appeal site forms part of an arable field, classified as Grade 2, with a site area of about 3.7ha located on the southern edge of Sibford Ferris on the western side of Hook Norton Road. The site slopes down by approximately 10m to Woodway Road, a single track road which forms its western boundary. The site affords good views to the west of the Cotswolds Area of Outstanding Natural Beauty which lies approximately 1.5km away. The appeal site has hedges along each boundary apart from its southern side which is open to the remainder of the arable field.
7. Sibford Ferris is separated from its nearest settlements of Sibford Gower and Burdrop by approximately half a mile across the steep valley of the River Sib. For this appeal I will refer to these settlements, collectively, as the 'Sibfords'. Together they have a population of approximately 1,000 residents. The valley sides are characterised by small wooded copses and paddocks laced with footpaths. The Sibfords have a range of services which include, doctors surgery, primary school, public house, food shop and post office. Sibford School, a private school lies opposite the site on Hook Norton Road. Limited bus services connect the Sibfords to Banbury and Stratford.

Reasons

Policy background

8. The development plan comprises the Cherwell Local Plan 2011-31, Part 1 (2015) (CLPP1) and 'saved' policies Cherwell Local Plan (1996). The Policies cascade from principles of sustainable development included in Policy ESD1 in line with the National Planning Policy Framework (2019) and seek to distribute growth to the most sustainable locations to ensure that amongst other matters, dependence on private transport is reduced.
9. Accordingly, the CLPP1 requires that the district wide housing target of 22,840 is delivered in the main centres of Bicester and Banbury. Outside these two centres the plan allocates 2,350 houses with 1,600 houses proposed for the former RAF base at Upper Heyford. The plan recognises the importance of sustaining rural villages and through Policy Villages 1 (PV1) defines categories of village by criteria which include their population, services/facilities, and accessibility. The focus of this policy is to 'manage' small scale development proposals which come forward within the built up limits of each village through minor development, infilling or conversions.
10. Policy Villages 2 (PV2) provides a rural allocation of sites of 10 or more dwellings at the Category A villages. This policy identifies that 750 houses will

be delivered at Category A villages; this would be in addition to the 'rural allowance' of small site windfalls and planning permissions that existed at 31st March 2014. Underpinning this policy is a recognition of the need to deliver housing growth evenly across the whole District at the larger villages. A range of criteria to guide new development in Category A villages is identified in policy PV2 covering matters such as the environmental qualities of sites, agricultural value, access to services and landscape impacts.

11. At the time of adoption of the CLPP1 the Council anticipated that it would prepare a CLP Part 2 which would have identified housing sites which would have informed policy PV2. This part of the Plan has not progressed because of the inception of the 'growth deal' for Oxfordshire.

Whether the proposal would be in accordance with the housing policies of the development plan

12. There are two issues underpinning the application of adopted policy to this site with the first concerning the total of 750 homes to be delivered at the Category A villages and the second on whether the proposed scheme accords with other housing policies.
13. The Council acknowledges that the 750 housing figure is not a target. A point reinforced by my colleague Inspectors in recent appeal decisions. However, it should be regarded as a benchmark to govern future decisions on applications for housing development otherwise the integrity of the plan would be undermined. The Council can identify 5.2 years housing land supply in excess of the requirement for just 3 years required for the Oxfordshire Districts. Furthermore, it can demonstrate that 168 houses have been delivered against the PV2 target of 750 houses despite the Plan being only 4 years through its 16 years 'life'. The Council's statement identifies that across the District 7,455 houses were completed of which 2,765 are in the rest of the District and a further 6,715 houses are committed of which 1,129 are in the rest of the District.
14. The Council identifies that by 31st March 2019 planning permissions had been granted for over 750 houses on 18 large sites and to date 271 units had been built out on these sites in line with policy PV2. However, none of these have been permitted within the Sibfords. Evidence provided through the Annual Monitoring Report (AMR) acknowledges the accelerating rate of delivery since 2015 and the Council anticipate that the 750 homes will be built out by 2028.
15. During the Hearing both parties made references to a large number of appeal decisions involving similar housing schemes throughout the District. Underpinning many of these decisions is the issue of 'material exceedance', a term used to describe the extent to which decisions to allow development above the figure of 750 houses for the Category A villages would erode the basis of the CLPP1. Whilst I do not have all the evidence before me regarding each of these appeal decisions there was discussion during the Hearing of a recent appeal decision¹, which had been allowed for an additional 84 dwellings at Ambrosden, another Category A village within the District albeit with a much larger population and containing a broader range of services. Again the issue of 'material exceedance' had informed the decision to allow the Appeal.

¹ APP/C3105/W/19/3228169

16. I do not consider 'material exceedance' to be an issue for this appeal given the modest number of units proposed and the categorisation and size of the Sibfords. The Category A status of the village in the plan warrants further investment in housing. Although the plan period is only 4 years old I do not consider that a decision to allow this appeal would undermine the essential thrust of policy PV2 and by extension the local plan.
17. The second issue is the extent to which the proposals are acceptable against other housing policies included in the CHPP1.
18. The principles of sustainable development, identified in the National Planning Policy Framework (2019) (the Framework), underpin policy PSD1 at several levels within the CLPP1. At a strategic level the policy seeks to ensure that development will be concentrated in the main centres, then outside those there is an allowance for development within the rural areas but concentrated within the Category A villages which are defined by their range of services and being located throughout the District would support a balanced pattern of growth. Finally, at another level within each village specific sites have to be 'sustainable' in how they function in their local context with regard to a range of criteria.
19. The Sibfords are identified as a Category A village because of several factors including its population and range of services. These services are spread across each of the 3 settlements. I acknowledge that local connectivity between them via walking and cycling is restricted by the steep sided Sib valley but these services do exist within reasonable proximity of the appeal site. Given the spread of services across each settlement it is unlikely that the development of any site around the Sibfords would readily enable access by sustainable transport modes. This is an argument against the inclusion of the Sibfords as a Category A village but is not a matter before me in this Appeal.
20. Policy PV2 identifies a broad range of criteria which would have informed the CHLPP2 allocations, not all of which are relevant to the issues concerning this appeal. However whilst the site does not comply with several of these I consider that the principle of some form of development on at least part of this site has been accepted. In addition, I accord moderate weight to the inclusion of the part of the appeal site in the Council's Housing and Economic Land Availability (HELAA 2018) for up to 10 houses.
21. The scheme would provide for 35% affordable housing in line with policy. I understand that one of the reasons for the Council's decision resolving to grant permission for a scheme in 2014 was the inclusion of 6 affordable homes to meet local housing need following the Housing Needs Survey in 2010 and the Register of Interest in 2013.
22. Part of the case presented by the Sibford Action Group (SAG) referred to the poor level of service provision in the Sibfords substantiating why further development should not occur. Whilst it is difficult to determine the exact impact that 25 new households would have on local services such as the local shop, it is a fair assumption that this is likely to be positive in supporting it.
23. For the above reasons on this main issue I conclude that the proposals would be in line with adopted housing policies and in line with the Framework. The proposals are in line with policies PSD1, PSV1 and PSV2 of the CHPP1. They are not in conflict with 'saved' policy H18 given the status of the village defined by

PSV1 and PSV2. The scheme would not amount to a material exceedance in breach of policy PV2 and would deliver housing in line with other policies of the Plan.

Character and Appearance

24. Sibford Ferris is a linear village extending northwards along Hook Norton Road before turning east above the Sib valley. The village's linear character means that its rural landscape prevails with the village being a subservient element. For example, the well treed Sib valley restricts views between the Sibfords reducing the impacts of the settlement pattern on landscape. Over the last 20 years new housing has been integrated into the existing settlement pattern in a sensitive way.
25. The appeal site's boundaries are formed by hedges on each side apart from the southern edge which is open to the remainder of the arable field. The site sits on top of a broad ridge above the Sib valley and further away, to the south the Stour valley. When viewed from the south and west across both valleys the appeal site appears as an extension to arable fields. The line of trees on the western edge of the Sibford School is a critical boundary to the edge of the settlement. The site has no statutory or non statutory landscape designations.
26. The adopted policies ESD 13 and ESD15 included in the CLPP1 seek to both protect landscapes and to ensure that new development responds positively to an area's character through creating or reinforcing local distinctiveness. These policies are underpinned by the 'saved' policy C28 of the Cherwell Local Plan (1996) designed to ensure that new development is sympathetic to its rural context and high value landscapes.
27. Where adherence to these policies is not possible proposals will not be permitted if they cause undue visual intrusion into the countryside, impact on its natural landscape and topography and be inconsistent with local character. These policies are consistent with several of the criteria included in policy PV2 which seek amongst other matters, to avoid adverse landscape impacts of new development and to avoid development on the best and most versatile agricultural land.
28. Although the site lies outside the Cotswolds Area of Outstanding Natural Beauty (AONB) its landscape context is shaped by this. Furthermore, the site lies in Character Area 13 of the Oxfordshire Wildlife and Landscape Study defined as an area of 'Rolling Village Pastures' and close to another landscape type, 'Wooded Pasture Valleys and Slopes'. The nature of this rolling landscape interspersed with hedgerows and copses means that views into the site from its immediate boundaries are limited compared to those from further away. For example, the proposed area of housing would be difficult to see from Woodway Road due to the slope the land and height of the hedge.
29. The appeal site would create a new pattern of development as an extension to the southern edge of the village. The indicative drawings identify that development would be set in the north east corner of the site with housing of 2.5 storeys which steps down towards the middle of the site to 1.5 storeys. Within the appeal site the extent of development would be limited and when set against existing development at Margaret Lane House (part of the Sibford School), it would extend the village envelope by only a small area. The

suggested height parameters are important in reducing the visual impacts of the scheme from surrounding receptor points.

30. Whilst there are differences in approach to their respective landscape studies both the Appellants and the SAG identify a range of receptor points from which to gauge the impact of the scheme on landscape and visual character. However neither study include montages of the proposed development or images of what the site could look like after 1 and 15 years – critical points in the ‘life’ of a development.
31. Having visited several of the receptor points and considered the views included in both reports in detail I conclude that potentially the two most sensitive receptor points are from the west from the Cotswolds AONB and from the south. From the former I consider that the integrity of the landscape would not be compromised by this development. This is in part because within the appeal site the dwellings would be set close to existing housing and only marginally extend the pattern of development to just south of Margaret Lane House which forms part of the Sibford School. Furthermore, the line of trees along the boundary of the Sibford School along Hook Norton Road would still be the dominant landscape feature when the site is viewed from the west. For these reasons I consider that the proposals would not have an ‘urbanising effect’ on the site and its surroundings as the Council have stated.
32. From my own observations I find that the appeal site is most prominent when viewed at just over 1km away from the south along D’Arcy Dalton Way. This is particularly important given that at this point the appeal site would not have a natural edge to its southern boundary. However, the scheme does include mitigation along this edge in the form of tree planting. The Appellants Landscape and Visual Appraisal recognises that the proposed scheme would be contained within the existing landscape. The concentration of development at the north east corner of the site and its relative low density would reduce its intrusiveness.
33. The National Design Guide 2019 builds on Chapter 12 of the National Planning Policy Framework (NPPF) 2019 which requires, amongst other matters, that new development reflects its landscape context and setting. Having viewed the site from a number of receptor points I consider that its low density combined with the extent of proposed planting belts would ensure that the proposal could be ‘accommodated’ within its context.
34. On this issue I conclude that the proposals would not cause unacceptable harm to the landscape setting of the Cotswolds AONB and the setting of Sibford Ferris. For these reasons I consider that the proposed scheme would not be in conflict with saved policies C28 of the Cherwell Local Plan (1996) and ESD 13, ESD 15 and PV1 and PV2 of the CHPP1.

Infrastructure provision

35. The completed section 106 agreement includes a range of provisions. These cover the requirement that 35% of the dwellings are ‘affordable’, provision of and commuted payments for local play area and public amenity space within the scheme, maintenance arrangements for onsite trees and boundary hedgerows, and a sustainable drainage system. Other provisions include a contribution to the provision of waste management facilities and community hall facilities and contributions to the local secondary school and the Sibford

School for indoor and outdoor recreation opportunities. The agreement includes provisions made under section 278 for a new pedestrian footway, crossing and access into the site, bus shelter, local play and provisions for a traffic regulation order to ensure lower speed on Hook Norton Road as drivers approach from the south.

36. Overall, the obligations included in the agreement are related to the requirements of development plan policies and are necessary, directly related and fairly and reasonably related in scale and kind to the proposed scheme, in line with paragraphs 56-57 of the National Planning Policy Framework 2019.

Other Matters

37. Interested parties raised issues regarding matters which I address in turn below.

Unsustainability of the Sibfords to take more development

38. The Sibfords are a Category A settlement included in the local plan. Although the Inspector at the local plan inquiry did consider that the hierarchy of settlement types was not set in stone this is a matter for a review of the local plan and not one for me to determine in this appeal. This categorisation of village types was based on the range of factors including local service provision. Whilst I acknowledge that journey times between the Sibfords would be hindered by the quality of the local highway network and the Sib valley, potentially leading to more private transport use than would be normally expected, a range of services consistent with Category A settlements does still operate in the Sibfords for the benefit of residents of the appeal scheme.
39. Many of the decisions of my inspector colleagues to dismiss appeals in other villages within the District can be distinguished from this case for several reasons. In some cases the scale of development was large compared to the size of the original village. For example, in Finmere, the appeal² was dismissed for 47 houses but the range of services was limited as the village had no shop or post office. The Sibfords do have a shop and other services. In other cases the appeal proposals would add to further development given extant permissions as in the cases³ of both Weston on the Green and Chesterton. The Sibfords have not experienced new development since the adoption of the Local Plan.
40. In other appeals other factors such as substantial harm to heritage assets prevailed. For example, in Kirtlington and Cropredy the impact of proposals on the setting of listed buildings and the character and appearance of a conservation area was cited respectively as reasons for dismissal⁴. These are not matters relevant to this appeal.

Traffic generation and congestion

41. The amount of traffic generation arising from the appeal scheme was not identified in the Council's reasons for refusal. Whilst representations from interested parties focused on the extent of additional traffic generation arising from the appeal proposal, I did not receive other evidence to dispute the

² APP/C3105/WW/17/3169168

³ APP/C3105/W/16/3158925 and APP/C3105/W/15/3130576

⁴ APP/C3105/W/14/3001612 and APP3105/WW/17/3187461

Appellants traffic survey which indicated that during the critical morning and evening peaks the amount of traffic generation would be between 10 and 12 vehicles generated an hour by the proposals.

42. I acknowledge the CRAILTUS survey completed in 2009 and its conclusions on the use of private transport in the Sibfords but this matter was considered as part of the local plan which designated the village as a Category A village. Furthermore, although representations from SAG addressed concerns over the levels of congestion in the village caused by the amount of traffic passing through the narrow village roads, compounded by the 'school run' to the Sibford school I saw only limited examples of this during this critical time when I visited the village. Furthermore, during two visits to the village I observed that the amount of traffic on local roads was low. Although I acknowledge that bus services to the village have been reduced since the local plan's adoption in 2015 I still consider that the inclusion of new housing could go some way to sustaining the existing level of service provision.
43. Although the proposals would involve the loss of Grade 2 agricultural, land this has to be balanced against the benefits which the proposals could make to the provision of additional housing.
44. Finally, a further objection referred to concerns over flooding. The site lies in the Flood Zone 1 and a Flood Risk Assessment submitted with the appeal identified that the risk of flooding was low. Furthermore, the scheme does include sustainable urban drainage.

Planning balance and conclusions

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (2019) places considerable emphasis on sustainable development and highlights the delivery of new housing as a national priority.
46. The appeal proposals are consistent with the essential thrust of the housing policies included in the adopted CHLPP1. In particular, they are consistent with ESD1 and in line with policies PV1 and PV2. Set against this is the number of dwellings included in extant permissions in the Category A villages across the District which exceeds the 750 dwellings included in policy PV2. However, I do not consider that the appeal proposals represent a material exceedance to this figure given its modest size and they would not undermine policy PV2 and the basis of the local plan. Furthermore, the scheme includes a quantum of affordable units compliant with policy.
47. In addition, the scheme includes other features including a path across the site improving permeability, allotments and local play facilities. These key into some concerns identified in the non-statutory Sibford Action Plan (2012) and are consistent with adopted policies in the CHPP1. I have already identified the obligations included in the completed section 106 agreement which through contributions would improve local highways, restrict speeds into the village along Hook Norton Road and support active lifestyles through contributions to the facilities of the local secondary school and the Sibford School. In addition, 25 new households would go some way to support local services.

48. Whilst the proposed schemes location on the edge of the village does form a limited extension to its current settlement pattern this must be seen in the context of this site set close to Margaret Lane House. The integrity of the landscape character is not compromised by the scheme. The character of the landscape means that the scheme's visual impacts are reduced. Its most sensitive southern boundary can be adequately mitigated through landscaping. The details of this can be determined at reserved matters stage.
49. Taking into account all these matters I conclude that the appeal is allowed and outline planning permission is granted subject to the conditions included in the attached schedule.

Conditions

50. During the Hearing there was a discussion between the main parties on the draft conditions. Having considered these further, I am making a series of small amendments to ensure full compliance with Planning Practice Guidance. I have imposed a condition specifying the timeframes for the commencement of development and for the submission of outstanding reserved matters as required by Sections 91 and 92 of the Town and Country Planning Act 1990, as amended. A condition is required to ensure that the development is carried out in accordance with the plans and documents submitted with the application to ensure adherence to the principle of the proposed development hereby approved. Other conditions require a Construction Traffic Management Plan and Construction Environmental Management Plan to ensure that the operational works to complete the scheme do not adversely impact on the living conditions of surrounding residential occupiers, avoid potential conflict with highway users and protect the environment and biodiversity.
51. A condition requiring a Landscape and Ecology Management Plan is required to identify the habitats to be created in the scheme including the requirement for bat and bird boxes in line with both local and national policy. A condition requiring an energy statement is required to ensure that the energy consumption is minimised during construction and on completion to deliver a low carbon development in line with both local and national policy. A condition is required to ensure archaeological investigations are completed in advance of works proceeding following advice received from the County Council.
52. Other conditions include a need for detailed drawings of the proposed access from Hook Norton Road to ensure highway safety. A condition is required to address contamination if this is found on site. Finally, a condition is required for a starter pack for new homes advising on sustainable modes of travel to ensure that the use of private transport is reduced.

Stephen Wilkinson

Inspector

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved and submitted plans and documents: Site Location Plan 1; 2500 scale (Promap), Concept Schematic 6426/ASP3/PP – Rev D Parameter Plan and 6426/ASP4/LSP-Rev A-Landscape Strategy Plan, Design and Access Statement; Flood Risk Assessment; Arboricultural Impact Assessment; Ecological Impact Assessment; Archaeological Desk Based Assessment; Flood Risk Assessment and Drainage Strategy report and drawings labelled 3361.101.
- 5) Prior to commencement of the development hereby approved, full details of the means of access between the land and the highway shall be submitted to and approved in writing, by the Local Planning Authority. The access shall be broadly in accordance with the positioning indicated on the approved plan 3361.101-Concept Schematic, 6426/ASP3/PP and include detail of layout and vision splays. Thereafter and prior to the first occupation of any of the development the means of access shall be constructed and retained in accordance with the approved details.
- 6) Prior to the first occupation of the development hereby approved a travel information pack shall be submitted to and approved by the Local Planning Authority. Thereafter and upon occupation the first residents of each dwelling shall be provided with a copy of the approved information pack.
- 7) Prior to commencement of the development hereby approved a Construction Traffic Management Plan (CTMP) shall be submitted to and approved in writing by the local planning authority. Thereafter, the approved CTMP shall be implemented and operated in accordance with the approved details.
- 8) Prior to commencement of the development hereby approved, full details of a surface water drainage scheme for the site detailing all on and off site drainage works required in relation to the development which shall

be broadly in accordance with the drainage proposals set out in the submitted flood risk assessment produced by JNP Group Consulting Engineers and which shall include a sewer modelling assessment shall be submitted to and approved in writing by the local planning authority. The development shall not be carried out other than in accordance with the approved scheme, until such time no discharge of foul or surface water from the site shall be accepted from the site into the public system. The scheme shall also include:

- Discharge rates
 - Discharge volumes
 - SUDS (permeable paving, soakaways, infiltration devices, attenuation pond, swales)
 - Maintenance and management of SUDS features to include a SUDS management and maintenance plan
 - Sizing of features – attenuation volume
 - Infiltration in accordance with BRE 365 (to include comprehensive infiltration testing and annual monitoring recording of ground water levels across the site).
 - Detailed drainage layout with pipe numbers
 - Network drainage calculations
 - Phasing
 - Flood flow routing in exceedance conditions (to include provision of a flood exceedance route plan).
- 9) Prior to the commencement of the development hereby approved, a landscape and ecology management plan (LEMP) showing how all habitats will be created managed and funded and to include details of a bat and birdbox scheme shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall not be carried out other than in strict accordance with the approved LEMP.
- 10) Prior to the commencement of the development hereby approved, including any site clearance, a Construction Environmental Management Plan (CEMP), which shall include details of the measures taken to ensure that construction works do not adversely affect biodiversity, shall be submitted to and approved in writing by the local planning authority. Thereafter, the development shall not be carried out other than in strict accordance with the approved CEMP.
- 11) If during development, contamination not previously identified is found at the site, no further development shall be carried out until full details of a remediation strategy detailing how the contamination shall be dealt with has been submitted to and approved by the Local Planning Authority. Thereafter, the remediation strategy shall be carried out in accordance with the approved details.
- 12) Prior to or as part of the first reserved matters submission, an Energy Statement shall be submitted to and approved in writing by the Local Planning Authority. The Energy Statement should:

- Be structured in accordance with the energy hierarchy in ESD2 of the Cherwell Local Plan 2011-31 Part 1 with information provided on each element of the hierarchy
- Inform and be reflected in the reserved matters
- Include a description of the development, number and type of residential units,
- Demonstrate sustainable construction methods as per Policy ESD3 of the Cherwell Local Plan Part 1 2011-31, and
- Consider the use of renewable energy to supply the development.

Thereafter, the development shall be carried out in strict accordance with the recommendations and measures contained in the approved Energy Statement.

- 13) Prior to or as part of the submission of the first reserved matter a Written Scheme of Archaeological Investigation shall be submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions:
- i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

APPEARANCES

FOR THE APPELLANT:

Jonathan Harbottle	Director, Land and Partners
Alex Dalton	Project Planner, Land and Partners
Tom Hutchison	Projects, Land and Partners
Dan Skinner	Land and Partners
Ben Wright	Director, Aspect Landscape Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Nathanael Stock	Team Leader, Cherwell District Council
Matthew Barratt	Solicitor

INTERESTED PERSONS:

Duncan Chadwick	Partner, David Lock Associates
David Newman	Quartet Design
Ginny Bennett	Parish Councillor, Sibford Ferris
Roger Mallows	Parish Councillor, Sibford Gower
Robin Grimston	Local Resident
John Perriss	Sibford Action Group

Suffolk Coastal District Council v Hopkins Homes Ltd and another Richborough Estates Partnership LLP and another v Cheshire East Borough Council



Positive/Neutral Judicial Consideration

Court

Supreme Court

Judgment Date

10 May 2017

On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin), [2015] EWHC 410 (Admin)

SC

[2017] UKSC 37, 2017 WL 01831307

before Lord Neuberger , President Lord Clarke Lord Carnwath Lord Hodge Lord Gill

Judgment Given On 10 May 2017

Heard on 22 and 23 February 2017

Representation

Appellants (Cheshire and Suffolk) Martin Kingston QC Hugh Richards Jonathan Clay Dr Ashley Bowes (Instructed by Sharpe Pritchard LLP).

Respondent (Hopkins) Christopher Lockhart-Mummery QC Zack Simons (Instructed by DLA Piper UK LLP (Birmingham)).

Respondent (Richborough) Christopher Young James Corbet Burcher (Instructed by Town Legal LLP).

Respondent (SSCLG) Hereward Phillpot QC Richard Honey (Instructed by The Government Legal Department).

Judgment

Lord Carnwath: (with whom Lord Neuberger, Lord Clarke, Lord Hodge and Lord Gill agree)

Introduction

1. The appeals relate to the proper interpretation of paragraph 49 of the National Planning Policy Framework ("NPPF"), which is in these terms:

"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

2. The Court of Appeal observed that the interpretation of this paragraph had been considered by the Administrative Court on seven separate occasions between October 2013 and April 2015 with varying results. The court had been urged by all counsel

"to bring much needed clarity to the meaning of the policy". Notwithstanding the clarification provided by the impressive judgment of the court (given by Lindblom LJ), controversy remains. The appeals provide the opportunity for this court not only to consider the narrow issues of interpretation of para 49, but to look more broadly at issues concerning the legal status of the NPPF and its relationship with the statutory development plan.

3. Both appeals relate to applications for housing development, one at Yoxford in the administrative area of the Suffolk Coastal District Council ("the Yoxford site"), and the other near Willaston in the area of Cheshire East Borough Council ("the Willaston site"). In the first the council's refusal of permission was upheld by the inspector on appeal, but his refusal was quashed in the High Court (Supperstone J), and that decision was confirmed by the Court of Appeal. In the second, the council failed to determine the application, and the appeal was allowed by the inspector. The council's challenge succeeded in the High Court (Lang J), but that decision was reversed by the Court of Appeal, the judgment of the court being given by Lindblom LJ. Both councils appeal to this court.

The statutory provisions

4. The relevant statutory provisions are found in the [Town and Country Planning Act 1990](#) ("the 1990 Act") and the [Planning and Compulsory Purchase Act 2004](#) ("the 2004 Act").

Plan-making

5. [Part 2](#) of the 2004 Act deals with "local development". Each local planning authority in England is required to "keep under review the matters which may be expected to affect the development of their area or the planning of its development" (2004 Act [section 13](#)), and to prepare a "local development scheme", which (inter alia) specifies the local development documents which are to be "development plan documents" ([section 15](#)). The authority's local development documents "must (taken as a whole) set out the authority's policies (however expressed) relating to the development and use of land in their area" ([section 17](#)). "Local development documents" are defined by regulations made under [section 17\(7\)](#) . In short they are documents which contain statements as to the development and use of land which the authority wishes to encourage, the allocation of sites for particular types of development, and development management and site allocations policies intended to guide determination of planning applications. Together they comprise the "development plan" or "local plan" for the area ([Town and Country Planning \(Local Planning\) \(England\) Regulations \(SI 2012/767\) regulations 5 and 6](#)).

6. In preparing such documents, the authority must have regard (inter alia) to "national policies and advice contained in guidance issued by the Secretary of State" ([section 19\(2\)](#)). Every development plan document must be submitted to the Secretary of State for "independent examination", one of the purposes being to determine whether it complies with the relevant statutory requirements, including [section 19](#) ([section 20\(1\)\(5\)\(a\)](#)). The Secretary of State may, if he thinks that a local development document is "unsatisfactory", direct the local planning authority to modify the document ([section 21](#)). [Section 39](#) gives statutory force to the concept of "sustainable development" (undefined). Any person or body exercising any function under [Part 2](#) in relation to local development documents must exercise it "with the objective of contributing to the achievement of sustainable development", and for that purpose must have regard to "national policies and advice contained in guidance issued by the Secretary of State ..." An adopted plan may be challenged on legal grounds by application to the High Court made within six weeks of the date of adoption, but not otherwise ([section 113](#)). [Schedule 8](#) contained transitional provisions providing generally for a transitional period of three years, after which the plans produced under the previous system ceased to have effect subject to the power of the Secretary of State to "save" specified policies by direction.

Planning applications

7. Provision is made in the 1990 and 2004 Acts for the development plan to be taken into account in the handling of planning applications:

1990 Act section 70(2)

"In dealing with such an application the authority shall have regard to –

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations."

2004 Act section 38(6)

"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."

Unlike the development plan provisions, these sections contain no specific requirement to have regard to national policy statements issued by the Secretary of State, although it is common ground that such policy statements may where relevant amount to "material considerations".

8. The principle that the decision-maker should have regard to the development plan so far as material and "any other material considerations" has been part of the planning law since the [Town and Country Planning Act 1947](#). The additional weight given to the development plan by section 38(6) reproduces the effect of a provision first seen in the [Planning and Compensation Act 1991 section 54A](#). In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, the equivalent provision ([section 18A of the Town and Country Planning \(Scotland\) Act 1972](#)) was described by Lord Hope (p 1450B) as designed to "enhance the status" of the development plan in the exercise of the planning authority's judgment. Lord Clyde spoke of it as creating "a presumption" that the development plan is to govern the decision, subject to "material considerations", as for example where "a particular policy in the plan can be seen to be outdated and superseded by more recent guidance". However, the section had not touched the well-established distinction between the respective roles of the decision-maker and the court:

"It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker ..." (p 1458)

9. An appeal against a refusal of planning permission lies to the Secretary of State, who is subject to the same duty in respect of the development plan (1990 Act [sections 78](#), [79\(4\)](#)). Regulations under [section 79\(6\)](#) and [Schedule 6](#) now provide for most categories of appeals, including those here in issue, to be determined, not by the Secretary of State, but by an "appointed person" (normally referred to as a planning inspector). The decision on appeal may be challenged on legal grounds in the High Court ([section 288](#)).

The National Planning Policy Framework

10. The Framework (or "NPPF") was published on 27 March 2012. One purpose, in the words of the foreword, was to "(replace) over a thousand pages of national policy with around 50, written simply and clearly", thus "allowing people and communities back into planning". The "Introduction" explains its status under the planning law:

"Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions. ..."

11. NPPF is divided into three main parts: "Achieving sustainable development" (paragraphs 6 to 149), "Plan-making" (paragraphs 150 to 185) and "Decision-taking" (paragraphs 186 to 207). Paragraph 7 refers to the "three dimensions to sustainable development: economic, social and environmental". Paragraph 11 begins a group of paragraphs under the heading "the presumption in favour of sustainable development". Paragraph 12 makes clear that the NPPF "does not change

the statutory status of the development plan as the starting point for decision making". Paragraph 13 describes the NPPF as "guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications".

12. Paragraph 14, which is important in the present appeals, deals with the "presumption in favour of sustainable development", which is said to be "at the heart of" the NPPF and which should be seen as "a golden thread running through both plan-making and decision-taking". It continues:

" **For plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, 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.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted."

We were told that the penultimate point ("any adverse impacts ...") is referred to by practitioners as "the tilted balance". I am content for convenience to adopt that rubric.

13. Footnote 9 (in the same terms for both parts) gives examples of the "specific policies" referred to:

"For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion."

14. These are said to be examples. Thus the list is not exhaustive. Further, although the footnote refers in terms only to policies in the Framework itself, it is clear in my view that the list is to be read as including the related development plan policies. Paragraph 14 cannot, and is clearly not intended to, detract from the priority given by statute to the development plan, as emphasised in the preceding paragraphs. Indeed, some of the references only make sense on that basis. For example, the reference to "Local Green Space" needs to be read with paragraph 76 dealing with that subject, which envisages local communities being able "through local and neighbourhood plans" to identify for "special protection green areas of particular importance to them", and so "rule out new development other than in very special circumstances ..."

15. [Section 6](#) (paragraphs 47 to 55) is entitled "Delivering a wide choice of high quality homes". Paragraph 47 states the primary objective of the section:

"To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements with an additional buffer of 5% ... to ensure choice and competition in the market for land. ...;
- identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11–15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances."

16. This group of provisions provides the context for paragraph 49, central to these appeals and quoted at the beginning of this judgment; and in particular for the advice that "relevant policies for the supply of housing" should not be considered "up-to-date", unless the authority can demonstrate a five-year supply of deliverable housing sites.

17. [Section 12](#) is headed "Conserving and enhancing the historic environment" (paragraphs 126 to 141). It includes policies for "designated" and "non-designated" heritage assets, as defined in the glossary. The former cover such assets as World Heritage Sites, Scheduled Monuments and others designated under relevant legislation. A non-designated asset is one "identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest". Paragraph 135 states:

"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

"Significance" in this context is defined by the glossary in Annex 2 as meaning "the value of a heritage asset to this and future generations because of its heritage interest", which may be derived "not only from a heritage asset's physical presence, but also from its setting".

18. Annex 1 ("Implementation") states that policies in the Framework "are material considerations which local planning authorities should take into account from the day of its publication" (paragraph 212); and that, where necessary, plans, should be revised as quickly as possible to take account of the policies "through a partial review or by preparing a new plan" (paragraph 213). However, it also provides that for a transitional period of a year decision-takers "may continue to give full weight to relevant policies adopted since 2004, even if there is a limited degree of conflict with this Framework" (paragraph 214); but that thereafter

"... due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in [the NPPF], the greater the weight that may be given)." (paragraph 215)

NPPF — Legal status and Interpretation

19. The court heard some discussion about the source of the Secretary of State's power to issue national policy guidance of this kind. The agreed Statement of Facts quoted without comment a statement by Laws LJ (*R (West Berkshire District Council) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441; [2016] 1 WLR 3923, para 12) that the Secretary of State's power to formulate and adopt national planning policy is not given by statute, but is "an exercise of the Crown's common law powers conferred by the royal prerogative." In the event, following a query from the court, this explanation was not supported by any of the parties at the hearing. Instead it was suggested that his powers derived, expressly or by implication, from the planning Acts which give him overall responsibility for oversight of the planning system (see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, paras 140-143 per Lord Clyde). This is reflected both in specific requirements (such as in section 19(2) of the 2004 Act relating to plan-preparation) and more generally in his power to intervene in many aspects of the planning process, including (by way of call-in) the determination of appeals.

20. In my view this is clearly correct. The modern system of town and country planning is the creature of statute (see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 140-141). Even if there had been a pre-existing prerogative power relating to the same subject-matter, it would have been superseded (see *R (Miller) v Secretary of State for Exiting the European Union (Birnie intervening)* [2017] 2 WLR 583, para 48). (It may be of interest to note that the great *Case of Proclamations* (1610) 12 Co Rep 74, which was one of the earliest judicial affirmations of the limits of the prerogative (see *Miller* para 44) was in one sense a planning case; the court rejected the proposition that "the King by his proclamation may prohibit new buildings in and about London ...".)

21. Although planning inspectors, as persons appointed by the Secretary of State to determine appeals, are not acting as his delegates in any legal sense, but are required to exercise their own independent judgement, they are doing so within the framework of national policy as set by government. It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than "guidance" and as such a "material consideration" for the purposes of section 70(2) of the 1990 Act (see *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin); [2011] 1 P & CR 22, para 50 per Lindblom J). It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.

Law and policy

22. The correct approach to the interpretation of a statutory development plan was discussed by this court in *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739. Lord Reed rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said:

"The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning

of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context." (para 18)

He added, however, that such statements should not be construed as if they were statutory or contractual provisions:

"Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759 , 780 per Lord Hoffmann) ..." (para 19)

23. In the present appeal these statements were rightly taken as the starting point for consideration of the issues in the case. It was also common ground that policies in the Framework should be approached in the same way as those in a development plan. However, some concerns were expressed by the experienced counsel before us about the over-legalisation of the planning process, as illustrated by the proliferation of case law on paragraph 49 itself (see paras 27ff below). This is particularly unfortunate for what was intended as a simplification of national policy guidance, designed for the lay-reader. Some further comment from this court may therefore be appropriate.

24. In the first place, it is important that the role of the court is not overstated. Lord Reed's application of the principles in the particular case (para 18) needs to be read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any "suitable site" within or linked to the existing centres (para 5). The short point was the meaning of the word "suitable" (para 13): suitable for the development proposed by the applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed identified as one of textual interpretation, "logically prior" to the exercise of planning judgment (para 21). As he recognised (see para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.

25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692; [2009] PTSR 19 , para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence (see *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49; [2008] 1 AC 678 , para 30 per Lady Hale.)

26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the *Tesco* case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgement in the application of that policy; and not to elide the two.

The two appeals

Evolving judicial guidance

27. To understand the reasoning of the two inspectors in the instant cases, it is necessary to set it in the context of the evolving High Court jurisprudence. The decisions in the two appeals were given in July and August 2014 respectively, after

inquiries which ended in both cases in June. It is not entirely clear what information was available to the inspectors as to the current state of the High Court jurisprudence on this topic. The Yoxford inspector referred only to *William Davis v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin) (Lang J, 11 October 2013). This seems to have been the first case in which this issue had arisen. One of the grounds of refusal was based on a policy E20 the effect of which was generally to exclude development in a so-called "green wedge" area defined on the proposals map. Lang J recorded an argument for the developer that the policy should have been regarded as a "relevant policy for the supply of housing" under paragraph 49 because "the restriction on development potentially affects housing development". The judge rejected this argument summarily, saying "policy E20 does not relate to the *supply* of housing and therefore is not covered by paragraph 49" (her emphasis).

28. By the time the two inquiries in the present case ended (June 2014), and at the time of the decisions, it seems that the most recent judicial guidance then available on the interpretation of paragraph 49 was that of Ouseley J in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin) (10 March 2014) ("the *Barwood Land* case"). Ouseley J favoured a wider reading which "examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner". He thought that the language could not sensibly be given a very narrow meaning because

"This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go ..."

He contrasted general policies, such as those protecting "the countryside", with policies designed to protect specific areas or features "such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development."

29. At that time, it seems to have been assumed that if a policy were deemed to be "out-of-date" under paragraph 49, it was in practice to be given minimal weight, in effect "disapplied" (see eg *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin) , para 72 per Lewis J). In other words, it was treated for the purposes of paragraph 14 as non-policy, in the same way as if the development plan were "absent" or "silent". On that view, it was clearly important to establish which policies were or were not to be treated as out-of-date in that sense. Later cases (after the date of the present decisions) introduced a greater degree of flexibility, by suggesting that paragraph 14 did not take away the ordinary discretion of the decision-maker to determine the weight to be given even to an "out-of-date" policy; depending, for example, on the extent of the shortfall and the prospect of development coming forward to make it up (see eg *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) , para 71 per Lindblom J). As will be seen, this idea was further developed in Lindblom LJ's judgment in the present case.

The Yoxford site

30. In September 2013 Suffolk Coastal District Council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant, Hopkins Homes Ltd ("Hopkins"), appealed to an inspector appointed by the Secretary of State. He dismissed the appeal in a decision letter dated 15 July 2014, following an inquiry which began in February and ended in June 2014.

31. The statutory development plan for the area comprised the Suffolk Coastal District Local Plan ("SCDLP") adopted in July 2013, and certain "saved" policies from the previous local plan ("the old Local Plan") adopted in December 1994. Chapter 3 SCDLP set out a number of "strategic policies", including:

- i) Under the heading "Housing", Policy SP2 ("Housing numbers and Distribution") proposed as its "core strategy" to make provision for 7,900 new homes across the district in the period 2010–2027. In addition, "an early review" to be commenced by 2015 was to identify "the full, objectively assessed housing needs" for the district, with proposals to ensure that these were met so far as consistent with the NPPF. A table showed the proposed locations across the district to make up the total of 7,900 homes.
- ii) Under the heading "The Spatial Strategy", Policy SP19 ("Settlement Policy") identified Yoxford as one of a number of Key Service Centres, which provide "an extensive range of specified facilities", and where "modest estate-scale development" may be appropriate "within the defined physical limits" (under policy SP27 — "Key and Local Service Centres"). Outside these settlements (under policy SP 29 — "The Countryside") there was to be "no development other than in special circumstances"

iii) The commentary to SP19 (para 4.05) explained that "physical limits boundaries" or "village envelopes" would be drawn up for the larger settlements, but that these limits are "a policy tool" and that where allocations are proposed outside the envelopes, the envelopes would be redrawn to include them.

32. In his report on the examination of the draft SCDLP, the inspector had commented on the adequacy of the housing provision (paras 31-51). He had noted how the proposed figure of 7,590 homes fell short of what was later agreed to be the requirement for the plan period of 11,000 extra homes. He had considered whether to suspend the examination to enable the council to assess the options. He decided not to do so, recognising that there were other sites which might come forward to boost supply, and the advantages of enabling these to be considered "in the context of an up-to-date suite of local development management policies that are consistent with the Framework ..."

33. The "saved" policies from the old plan included:

AP4 ("Parks and gardens of historic or landscape interest")

"The District Council will encourage the preservation and/or enhancement of parks and gardens of historic and landscape interest and their surroundings. Planning permission for any proposed development will not be granted if it would have a materially adverse impact on their character, features or immediate setting."

AP13 ("Special Landscape Areas")

"The valleys and tributaries of (named rivers) and the Parks and Gardens of Historic or Landscape Interest are designated as Special Landscape Areas and shown on the Proposals Map. The District Council will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality."

The appeal site formed part of an area of Historic Parkland (related to an 18th century house known as "Grove Park") identified by the council in its Supplementary Planning Guidance 6 "Historic Parks and Gardens" (SPG) dated December 1995.

34. In his decision-letter on the planning appeal, the inspector identified the main issues as including: consideration of a five years' supply of housing land, the principle of development outside the defined village, and the effects of the proposal on the local historic parkland and landscape (para 4). He referred to paragraphs 14 and 49 of the NPPF, which he approached on the basis that it was "very unlikely that a five years' supply of housing land could now be demonstrated" (paras 5-6). There had been a debate before him whether the recent adoption of the local plan meant that its policies are "automatically up-to-date", but he read the comments of the examining Inspector on the need for an early review of housing delivery as indicating the advantages of "considering development in the light of other up-to date policies", whilst accepting that pending the review "relevant policies for the supply of housing may be considered not to be up-to-date" (para 7).

35. He then considered which policies were "relevant policies for the supply of housing" within the meaning of paragraph 49 (paras 8-9). Policy SP2 "which sets out housing provision for the District" was one such policy and "cannot be considered as up-to-date". Policy SP15 relating to landscape and townscape "and not specifically to the supply of housing" was not a relevant policy "and so is up-to-date". For the same reason, policy SP19, which set the settlement hierarchy and showed percentages of total proposed housing for "broad categories of settlements", but did not suggest figures or percentages for individual settlements, was also seen as up-to-date; as was SP27, which related specifically to Key and Local Service Centres, and sought, among other things, to reinforce their individual character.

36. Of the saved policy AP4 he noted "a degree of conflict" with paragraph 215 of the Framework "due to the absence of a balancing judgement in Policy AP4", but thought its "broad aim" consistent with the aims of the Framework. He said: "these matters reduce the weight that I attach to Policy AP4, although I shall attach some weight to it". Similarly, he thought Policy AP13 consistent with the aims of the Framework to "recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment" (para 10).

37. In relation to the proposal for development outside the defined village limits, he observed that the appeal site was outside the physical limits boundary "as defined in the very recently adopted Local Plan". He regarded the policy directing development to within the physical limits of the settlement to be "in accordance with one of the core principles of the Framework, recognising the intrinsic character and beauty of the countryside". On this aspect he concluded:

"I consider that the appeal site occupies an important position adjacent to the settlement, where Old High Road marks the end of the village and the start to the open countryside. The proposed development would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of the Framework." (paras 13-14)

38. As to its location within a historic parkland, he discussed the quality of the landscape and the impact of the proposal, and concluded:

"20. In relation to the built character and layout of Yoxford and its setting, Old High Road forms a strong and definite boundary to the built development of the village here. I do not agree that the proposal forms an appropriate development site in this respect, but would be seen as an ad-hoc expansion across what would otherwise be seen as the village/countryside boundary and the development site would not be contained to the west by any existing logical boundary.

21. In respect of these matters, the historic parkland forms a non-designated heritage asset, as defined in the Framework and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan ..."

39. Finally, under the heading "The planning balance", he acknowledged the advantage that the proposal would bring "additional homes, including some affordable, within a District where the supply of homes is a concern", but said:

"However, I have found significant conflict with policies in the recently adopted Local Plan. I have also found conflict with some saved policies of the old Local Plan and I have sought to balance these negative aspects of the proposal against its benefits. In doing so, I consider that the unacceptable effects of the development are not outweighed by any benefits and means that it cannot be considered as a sustainable form of development, taking account of its three dimensions as set out at paragraph 7 of the Framework. Therefore, the proposal conflicts with the aims of the Framework." (paras 31-32)

40. Hopkins challenged the decision in the High Court on the grounds that the inspector had misdirected himself in three respects: in short, as to the interpretation of NPPF paragraph 49; as to the status of the limits boundary to Yoxford; and as to the status of Policy AP4. The Secretary of State conceded that the inspector had misapplied the policy in paragraph 49. Supperstone J referred to the approach of Ouseley J in the *Barwood Land* case, with which he agreed, preferring it to that of Lang J in the *William Davis* case. He accepted the submission for Hopkins that the inspector had erred in thinking that paragraph 49 only applied to "policies dealing with the positive provision of housing", with the result that his decision had to be quashed (paras 33, 38-41). He held in addition that this inspector had wrongly proceeded on the basis that the village boundary had been defined in the recent local plan, rather than in the earlier plan (para 46); and that he had failed properly to assess the significance of the heritage asset as required by paragraph 135 of the Framework (para 53). On 30 January 2015 Supperstone J quashed the decision. The council's appeal to the Court of Appeal failed. It now appeals to this court.

The Willaston site

41. The Crewe and Nantwich Replacement Local Plan, adopted on 17 February 2005 ("the adopted RLP") sought to address the development needs of the Crewe and Nantwich area for the period from 1996 to 2011. Under the 2004 Act, it should have been replaced by a Local Development Framework by 2008. This did not happen. As a consequence, the policies were saved by the Secretary of State by Direction (dated 14 February 2008).

42. Crewe is identified as a location for new housing growth in the emerging Local Plan, which is the subject of an ongoing examination in public and subject to objections, as are some of the proposed housing allocations. At the time of the public inquiry in June 2014, the emerging Local Plan was understood to be over two years from being adopted. Richborough Estates Partnership LLP ("Richborough") in August 2013 applied to Cheshire East Borough Council for permission for a development of up to 170 houses on land north of Moorfields in Willaston. The council having failed to determine the application within the prescribed period, Richborough appealed. Willaston is a settlement within the defined urban area of Crewe, but for the most part is physically separate from the town. As a consequence there is open land between Willaston and the main built up area of Crewe, within which open land the appeal site lies.

43. In the appeal Cheshire East relied on the adopted RLP, in particular policies NE.2, NE.4, and RES.5:

- i) Policy NE.2 ("Open Countryside") seeks to protect the open countryside from new build development for its own sake, permitting only a very limited amount of small scale development mainly for agricultural, forestry or recreational purposes.
- ii) Policy NE.4 ("Green Gap") relates to areas of open land around Crewe (including the area of the appeal site) identified as needing additional protection "in order to maintain the definition and separation of existing communities". The policy provides that permission will not be granted for new development, including housing, save for limited exceptions. It has the same inner boundary as NE.2.
- iii) Policy RES.5 ("Housing in the open countryside") permits only very limited forms of residential development in the open countryside, such as agricultural workers' dwellings.

44. In his decision letter dated 1 August 2014 the inspector allowed the appeal and granted planning permission for up to 146 dwellings. He concluded that Cheshire East was unable to demonstrate the minimum five year supply of housing land required under paragraph 47 of the NPPF. The council appears to have accepted at the inquiry that policy NE.2 was a policy "for the supply of housing". The inspector thought that the same considerations applied to the other two policies relied on by the council, all of which were therefore relevant policies within paragraph 49, although he acknowledged that policy NE.4 also performed strategic functions in maintaining the separation and definition of settlements and in landscape protection. He noted also that two of the housing sites in the emerging local plan were in designated "green gaps", which led him to give policy NE.4 reduced weight (paras 31-35).

45. He concluded on this aspect (para 94):

"94. I have concluded that there is not a demonstrable five-year supply of deliverable housing sites (issue (i)). In the light of that, the weight of policies in the extant RLP relevant to the supply of housing is reduced (issue (ii)). That applies in particular to policies NE.2, NE.4 and RES.5 in so far as their extent derives from settlement boundaries that in turn reflect out-of-date housing requirements, though policy NE.4 also has a wider purpose in maintaining gaps between settlements."

46. He considered the application of the Green Gap policy, concluding that there would be "no significant harm to the wider functions of the gap in maintaining the definition and separation of these two settlements" (para 95). His overall conclusion was as follows:

"101. I conclude that the proposed development would be sustainable overall, and that the adverse effects of it would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no specific policies in the NPPF that indicate that this development should be restricted. In such circumstances, and where relevant development plan policies are out-of-date, the NPPF indicates that permission should be granted unless material considerations indicate otherwise. There are no further material considerations that do so."

47. The council's challenge succeeded before Lang J, who quashed the inspector's decision by an order dated 25 February 2015. In short, she concluded that the inspector had erred in treating policy NE.4 as a relevant policy under paragraph 49, and in seeking "to divide the policy, so as to apply it in part only" (para 63). Richborough's appeal was allowed by the Court of Appeal with the result that the permission was restored. The council appeals to this court.

The Court of Appeal's interpretation

48. Giving the judgment of the court, Lindblom LJ referred to the relevant parts of the NPPF and (at para 21) the three competing interpretations of paragraph 49:

- i) *Narrow* : limited to policies dealing only with the numbers and distribution of new housing, and excluding any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority's area.
- ii) *Wider* : including both policies providing positively for the supply of new housing and other policies, or "counterpart" policies, whose effect is to restrain the supply by restricting housing development in certain parts of the authority's area.

iii) *Intermediate* : as under (ii), but excluding policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation (as suggested by Ouseley J in the *Barwood Land* case).

49. He discussed the connection between paragraph 49 and the presumption in favour of sustainable development in paragraph 14, which lay in the concept of relevant policies being not "up-to-date" under paragraph 49, and therefore "out-of-date" for the purposes of paragraph 14 (para 30). He explained the court's reasons for preferring the wider view of paragraph 49. He read the words "for the supply of housing" as meaning "affecting the supply of housing", which he regarded as not only the "literal interpretation" of the policy, but "the only interpretation consistent with the obvious purpose of the policy when read in its context". He continued:

"33. Our interpretation of the policy does not confine the concept of 'policies for the supply of housing' merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed — including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it — that policies of both kinds make the supply what it is." (para 33)

50. The court rejected the "narrow" interpretation, advocated by the councils, which it thought "plainly wrong":

"It is both unrealistic and inconsistent with the context in which the policy takes its place. It ignores the fact that in every development plan there will be policies that complement or support each other. Some will promote development of one type or another in a particular location, or by allocating sites for particular land uses, including the development of housing. Others will reinforce the policies of promotion or the site allocations by restricting development in parts of the plan area, either in a general way — for example, by preventing development in the countryside or outside defined settlement boundaries — or with a more specific planning purpose — such as protecting the character of the landscape or maintaining the separation between settlements." (para 34)

51. Whether a particular policy of a plan was a relevant policy in that sense was a matter for the decision-maker, not the court (para 45). Furthermore

"46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make 'out-of-date' policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is 'out-of-date' should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disappplied ..."

52. In relation to the Yoxford site, the court agreed with Supperstone J that the inspector had wrongly applied the erroneous "narrow" interpretation. Policies SP 19, 27 and 29, were all relevant policies in that they all "affect the supply of housing land in a real way by restraining it" (paras 51-52). The court also agreed with the judge that the inspector had been mistaken in assuming that the physical limits of the village had been established in the 2013 plan (para 58); and also that he had misapplied paragraph 135 relating to heritage assets (para 65). In that respect there could be no criticism of his treatment of the impact of the development on the local landscape, but what was lacking was

"... a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a 'heritage asset', and, crucially, the 'balanced judgment' called for by paragraph 135, 'having regard to the scale of any harm or loss and the significance of the heritage asset'." (para 65)

53. In respect of the Willaston site, the court disagreed with Lang J's conclusion that policy NE.4 was not a relevant policy for the supply of housing. The inspector had made no error of law in that respect, and his decision should be restored (paras 69-71).

Discussion

Interpretation of paragraph 14

54. The argument, here and below, has concentrated on the meaning of paragraph 49, rather than paragraph 14 and the interaction between the two. However, since the primary purpose of paragraph 49 is simply to act as a trigger to the operation of the "tilted balance" under paragraph 14, it is important to understand how that is intended to work in practice. The general effect is reasonably clear. In the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission, except where the benefits are "significantly and demonstrably" outweighed by the adverse effects, or where "specific policies" indicate otherwise. (See also the helpful discussion by Lindblom J in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin) , paras 42ff)

55. It has to be borne in mind also that paragraph 14 is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgement, unrelated of course to paragraph 49 which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgement, not dependent on issues of legal interpretation.

56. If that is the right reading of paragraph 14 in general, it should also apply to housing policies deemed "out-of-date" under paragraph 49, which must accordingly be read in that light. It also shows why it is not necessary to label other policies as "out-of-date" merely in order to determine the weight to be given to them under paragraph 14. As the Court of Appeal recognised, that will remain a matter of planning judgement for the decision-maker. Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the "tilted balance".

Paragraph 49

57. Unaided by the legal arguments, I would have regarded the meaning of paragraph 49 itself, taken in context, as reasonably clear, and not susceptible to much legal analysis. It comes within a group of paragraphs dealing with delivery of housing. The context is given by paragraph 47 which sets the objective of boosting the supply of housing. In that context the words "policies for the supply of housing" appear to do no more than indicate the category of policies with which we are concerned, in other words "housing supply policies". The word "for" simply indicates the purpose of the policies in question, so distinguishing them from other familiar categories, such as policies for the supply of employment land, or for the protection of the countryside. I do not see any justification for substituting the word "affecting", which has a different emphasis. It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so *affect* their operation. But that does not make them policies *for* the supply of housing in the ordinary sense of that expression.

58. In so far as the paragraph 47 objectives are not met by the housing supply policies as they stand, it is quite natural to describe those policies as "out-of-date" to that extent. As already discussed, other categories of policies, for example those for employment land or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing.

In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.

59. This may be regarded as adopting the "narrow" meaning, contrary to the conclusion of the Court of Appeal. However, this should not be seen as leading, as the lower courts seem to have thought, to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression. 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.

60. The Court of Appeal was therefore right to look for an approach which shifted the emphasis to the exercise of planning judgement under paragraph 14. However, it was wrong, with respect, to think that to do so it was necessary to adopt a reading of paragraph 49 which not only changes its language, but in doing so creates a form of non-statutory fiction. On that reading, a non-housing policy which may objectively be entirely up-to-date, in the sense of being recently adopted and in itself consistent with the Framework, may have to be treated as notionally "out-of-date" solely for the purpose of the operation of paragraph 14.

61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as "out of date", merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into paragraph 14 as a specific policy under footnote 9. It is not "out of date", but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles.

The two appeals

62. Against this background I can deal relatively shortly with the two individual appeals. On both I arrive ultimately at the same conclusion as the Court of Appeal.

63. It is convenient to begin with the Willaston appeal, where the issues are relatively straightforward. On any view, quite apart from paragraph 49, the current statutory development plan was out of date, in that its period extended only to 2011. On my understanding of paragraph 49, the council and the inspector both erred in treating policy NE.2 ("Countryside") as "a policy for the supply of housing". But that did not detract materially from the force of his reasoning (see the summary in paras 44-45 above). He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from "settlement boundaries that in turn reflect out-of-date housing requirements" (para 94). He recognised that policy NE.4 had a more specific purpose in maintaining the gap between settlements, but he considered that the proposal would not cause significant harm in this context (para 95). His final conclusion (para 101) reflected the language of paragraph 14 (the tilted balance). There is no reason to question the validity of the permission.

64. The Yoxford appeal provides an interesting contrast, in that there was an up-to-date development plan, adopted in the previous year; but its housing supply policies failed to meet the objectives set by paragraph 47 of the NPPF. The inspector rightly recognised that they should be regarded as "out-of-date" for the purposes of paragraph 14. At the same time, it provides a useful illustration of the unreality of attempting to distinguish between policies for the supply of housing and policies for other purposes. Had it mattered, I would have been inclined to place in the housing category policy SP2, the principal policy for housing allocations. SP 19 (settlement policy) would be more difficult to place, since, though not specifically related to housing, it was seen (as the commentary indicated) as a "planning tool" designed to differentiate between developed areas and the countryside.

65. Understandably, in the light of the judicial guidance then available to him, the inspector thought it necessary to make the distinction, and to reflect it in the planning balance. He categorised both SP 19 and SP 27 as non-housing policies, and for that reason to be regarded as "up-to-date" (see para 35 above). Under the Court of Appeal's interpretation this was an erroneous approach, because each of these policies "affected" the supply of housing, and should have been considered out-of-date for that reason. On my preferred approach his categorisation was not so much erroneous in itself, as inappropriate and unnecessary. It only gave rise to an error in law in so far as it may have distorted his approach to the application of paragraph 14.

66. As to that I agree with the courts below that his approach (through no fault of his own) was open to criticism. Having found that the settlement policy was up-to-date, and that the boundary had been approved in the recent plan, he seems to have attached particular weight to the fact that it had been defined in "the very recently adopted Local Plan" (para 37 above). I would not criticise him for failing to record that it had been carried forward from the previous plan. In some circumstances that could be a sign of robustness in the policy. But in this case it was clear from the plan itself that the settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled. He should not have allowed its supposed status as an "up-to-date" policy under paragraph 49 to give it added weight. It is true that he also considered the merits of the site (quite apart from the plan) as providing a "strong and definite boundary" to the village (para 20). But I am not persuaded that this is sufficient to make it clear that the decision would have been the same in any event.

67. I do not, however, agree with the Court of Appeal's criticisms of his treatment of the Heritage Asset policy. Paragraph 10 of his letter (summarised at para 36 above) is in my view a faithful application of the guidance in paragraph 215 of the Framework. That does not, and could not, suggest that even "saved" development plan policies are simply replaced by the policies in the Framework. What it does is to indicate that the weight to be given to the saved policies should be assessed by reference to their degree of consistency with the Framework. That is what the inspector did. Having done so he was entitled to be guided by the policies as stated in the saved plans, and not treat them as replaced by paragraph 135.

68. In any event, in so far as there needs to be a "balanced judgement", which the Court of Appeal regarded as "crucial" (para 65), that seems to me provided by the last section of his letter, headed appropriately "the planning balance". Overall the letter seems to me an admirably clear and carefully constructed appraisal of the relevant planning issues, in the light of the judicial guidance then available. It is with some reluctance therefore that I feel bound to agree with the Court of Appeal that the decision must be quashed, albeit on narrower grounds. The result, is that the order of Supperstone J will be affirmed, and the planning appeal will fall to be re-determined.

Conclusion

69. For these reasons I would dismiss both appeals.

Lord Gill: (with whom Lord Neuberger, Lord Clarke and Lord Hodge agree)

70. I agree with Lord Carnwath's conclusions on the decision that is appealed against and with his views as to the disposal of these appeals. I only add some comments on the approach that should be taken in the application of the National Planning Policy Framework (the Framework) in planning applications for housing development.

71. These appeals raise a question as to the respective roles of the courts and of the planning authorities and the inspectors in relation to guidance of this kind; and a specific question of interpretation arising from paragraph 49 of the Framework.

72. In *Tesco Stores Ltd v Dundee City Council, (ASDA Stores Ltd intervening)* ([2012] UKSC 13) Lord Reed considered the former question in relation to development plan policies. He expressed the view, as a general principle of administrative law, that policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context (at para 18). The proper context, in my view, is provided by the over-riding objectives of the development plan and the specific objectives to which the policy statement in question is directed. Taking a similar approach to that of Lord Reed, I consider that it is the proper role of the courts to interpret a policy where the meaning of it is contested, while that of the planning authority is to apply the policy to the facts of the individual case.

73. In my opinion, the same distinction falls to be made in relation to guidance documents such as the Framework. In both cases the issue of interpretation is the same. It is about the meaning of words. That is a question for the courts. The application of the guidance, as so interpreted, to the individual case is exclusively a planning judgment for the planning authority and the inspectors.

74. The guidance given by the Framework is not to be interpreted as if it were a statute. Its purpose is to express general principles on which decision-makers are to proceed in pursuit of sustainable development (paras 6-10) and to apply those principles by more specific prescriptions such as those that are in issue in these appeals.

75. In my view, such prescriptions must always be interpreted in the overall context of the guidance document. That context involves the broad purpose of the guidance and the particular planning problems to which it is directed. Where the guidance relates to decision-making in planning applications, it must be interpreted in all cases in the context of [section 70\(2\) of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#), to which the guidance is subordinate. While the Secretary of State must observe these statutory requirements, he may reasonably and appropriately give guidance to decision-makers who have to apply them where the planning system is failing to satisfy an unmet need. He may do so by highlighting material considerations to which greater or less weight may be given with the over-riding objective of the guidance in mind. It is common ground that such guidance constitutes a material consideration (Framework, para 2).

76. In relation to housing, the objective of the Framework is clear. [Section 6](#), "Delivering a wide choice of high quality homes", deals with the national problem of the unmet demand for housing. The purpose of paragraph 47 is "to boost significantly the supply of housing". To that end it requires planning authorities (a) to ensure *inter alia* that plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including the identification of key sites that are critical to the delivery of the housing strategy over the plan period; (b) to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for the land; and (c) in the longer term to identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11–15.

77. The importance that the guidance places on boosting the supply of housing is further demonstrated in the same paragraph by the requirements that for market and affordable housing planning authorities should illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing, describing how they will maintain delivery of a five-years supply of housing land to meet their housing target;

and that they should set out their own approach to housing density to reflect local circumstances. The message to planning authorities is unmistakeable.

78. These requirements, and the insistence on the provision of "deliverable" sites sufficient to provide the five years' worth of housing, reflect the futility of authorities' relying in development plans on the allocation of sites that have no realistic prospect of being developed within the five-year period.

79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.

80. This is the background to the interpretation of paragraph 49. The paragraph applies where the planning authority has failed to demonstrate a five-years supply of deliverable sites and is therefore failing properly to contribute to the national housing requirement. In my view, paragraph 49 derives its content from paragraph 47 and must be applied in decision-making by reference to the general prescriptions of paragraph 14.

81. To some extent the issue in these cases has been obscured by the doctrinal controversy which has preoccupied the courts hitherto between the narrow and the wider interpretation of the words "relevant policies for the supply of housing". I think that the controversy results from too narrow a focus on the wording of that paragraph. I agree with the view taken by Lindblom LJ in his lucid judgement that the task of the court is not to try to reconcile the various first instance judgments on the point, but to interpret the policy of paragraph 49 correctly (at para 23). In interpreting that paragraph, in my opinion, the court must read it in the policy context to which I have referred, having in view the planning objective that the Framework seeks to achieve.

82. I regret to say that I do not agree with the interpretation of the words "relevant policies for the supply of housing" that Lindblom LJ has favoured. In my view, the straightforward interpretation is that these words refer to the policies by which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view. The real issue is what follows from that.

83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.

84. If the policies for the supply of housing are not to be considered as being up to date, they retain their statutory force, but the focus shifts to other material considerations. That is the point at which the wider view of the development plan policies has to be taken.

85. Paragraph 49 merely prescribes how the relevant policies for the supply of housing are to be treated where the planning authority has failed to deliver the supply. The decision-maker must next turn to the general provisions in the second branch of paragraph 14. That takes as the starting point the presumption in favour of sustainable development, that being the "golden thread" that runs through the Framework in respect of both the drafting of plans and the making of decisions on

individual applications. The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts. The first is that the adverse impacts of a grant of permission, such as encroachment on the greenbelt, will "significantly and demonstrably" outweigh the benefits of the proposal. Whether the adverse impacts of a grant of permission will have that effect is a matter to be "assessed against the policies in the Framework, taken as a whole". That clearly implies that the assessment is not confined to environmental or amenity considerations. The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to "specific policies in the Framework" cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers. Green belt policies are an obvious example.

86. Although my interpretation of the guidance differs from that of the Court of Appeal, I have come to the same conclusions in relation to the disposal of these cases. I agree with Lord Carnwath that in the Willaston decision, notwithstanding an erroneous interpretation of policy NE.2 as being a policy for the supply of housing, the Inspector got the substance of the matter right and accurately applied paragraph 14. I agree too with Lord Carnwath, for the reasons that he gives (at para 68), that in the Yoxford decision the Inspector made a material, but understandable, error. I would therefore dismiss both appeals.

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Neutral Citation Number: [2013] EWHC 597 (Admin)

Case No: CO/12207/2012

IN THE MANCHESTER CIVIL JUSTICE CENTRE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester,
Greater Manchester,
M60 9DJ

Date: 25/03/2013

Before:

THE HONOURABLE MR JUSTICE STUART-SMITH

Between:

**WAINHOMES (SOUTH WEST) HOLDINGS
LIMITED**

Claimant

- and -

**(1) THE SECRETARY OF STATE FOR
COMMUNITIES AND LOCAL GOVERNMENT**

Defendant

(1) WILTSHIRE COUNCIL
(2) CHRISTOPHER RALPH CORNELL AND SARAH CECILIA CORNELL

Interested Parties

(Transcript of the Handed Down Judgment of
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David Manley Q.C (instructed by **Ashfords LLP**) for the **Claimant**
Lisa Busch (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing date: 11 March 2013

Judgment
As Approved by the Court

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Mr Justice Stuart-Smith:

Introduction

1. This is a claim under s.288 of the Town and Country Planning Act 1990. The Claimant (“Wainhomes”) challenges a decision dated 5 October 2012 by which inspector Mike Robins dismissed an appeal against the non-determination by Wiltshire Council (“the Council”) of a proposal to build up to 50 houses on land at Widham Farm, Widham Grove, Station Road, Purton, in Wiltshire. The inquiry was undertaken on the appeal of Mr and Mrs Cornell, who are now interested parties in these proceedings, against the Council’s non-determination of their application for planning permission. Wainhomes has an interest in the land the subject of the challenge by reason of an option agreement dated 13 November 2012.
2. The inspector identified as one of the main issues in the case, whether or not there were material considerations that would outweigh the development plan presumption against development in the countryside. Central to that issue was whether or not there was a supply of specific deliverable sites sufficient to provide five years worth of housing against the Council’s relevant housing requirements with an additional buffer of five per cent to ensure choice and competition in the market for land, as required by paragraph 47 of the National Planning Policy Framework (“NPPF”). As discussed in greater detail below, that issue involved consideration of whether the strategic sites included in Wiltshire’s draft Core Strategy and AMR should be included by the inspector when determining the supply of deliverable sites over the next five years. The Council contended that they should be included; the appellants said that they should be excluded. After the hearing of the inquiry two decisions by another inspector (Inspector Papworth) were promulgated in relation to sites in Calne, which is also in Wiltshire. Those decisions decided, in materially identical terms, that strategic sites should be excluded from consideration of the supply of deliverable sites. Those decisions were sent promptly to the inspectorate by those who were at that time advising Mr and Mrs Cornell; but they were not considered by Inspector Robins. When he made his decision on 5 October 2012 he found against the appellants and included the strategic sites. Having done so he concluded that a five year housing supply had been shown.
3. By these proceedings Wainhomes advances five grounds of appeal, namely:
 - i) The inspector failed to have regard to a material consideration namely the two decisions at Calne or give reasons for not following the approach taken in those cases to the five year housing land supply;
 - ii) The inspector failed correctly to interpret the NPPF;
 - iii) The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational;
 - iv) The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding;

- v) The inspector made a mistake or otherwise reached a conclusion based on no evidence.
4. In summary, this judgment concludes that:
- i) Ground 1 of the challenge is established. The inspector failed properly to exercise his discretion in deciding whether or not to admit the Calne decisions for consideration and failed to give proper reasons for his decision;
 - ii) The other grounds of challenge fail because when the Decision Letter is read fairly and with the reasonable latitude appropriate to a review of such decisions, it appears that the inspector made no material error of law, reached conclusions that it was open to him to reach on the material he considered, and gave adequate reasons for his decision.

The applicable principles

5. The principles applicable to a challenge under s.228 of the Town and Country Planning Act 1990 have been set out frequently and repeatedly in many decisions including decisions of the highest authority. It is neither necessary nor desirable to provide a comprehensive review in this case, and I merely highlight principles that are directly in point for this challenge.
6. In *Wiltshire Council v Secretary of State for Communities and Local Government and Robert Hitchins Limited* [2010] EWHC 1009 (Admin) Simon J provided a useful summary of the applicable principles at [7-8] which I gratefully adopt without setting it out again. I bear in mind at all times that:
- a) Where an expert tribunal (such as a planning inspector) is the fact finding body, the *Wednesbury* unreasonable test will be “a difficult obstacle” and poses a “particularly daunting task” for an applicant under s.288;
 - b) A decision letter must be read in good faith and as a whole. It should be construed in a practical manner and not as if it were a contract or statute.
7. The scope and extent of an inspector’s obligation to provide reasons were explained in *South Buckinghamshire DC v Porter (no.2)* [2004] 1 WLR 1953 by Lord Brown of Eaton-Under- Heywood at [36]:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily

be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

8. A decision maker ought to take into account all matters which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. That includes considerations where there is a real possibility that the decision maker would reach a different conclusion if he did take that consideration into account. If a matter is excluded from consideration and it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, a Judge is able to hold that the decision was not validly made. But if the Judge is uncertain whether the matter would have this effect or was of such importance in the decision-making process then he does not have before him the material necessary for him to conclude that the decision was invalid: see *Bolton MBC v SoSE* [1991] P&CR 343, 352-353. This obligation derives from s.70 (2) of the Town and Country Planning Act 1990 which applies to the determination of appeals by virtue of s.79 (4) of the Act: and see *R (on the application of Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370 at [122-127]. *Kides* establishes that the obligation to have regard to material considerations continues up to the time that the decision maker (in this case the inspector) makes his decision.
9. It is common ground that a previous inspector’s planning decision is capable of being a material consideration, though the importance to be attached to a previous decision will depend upon the extent to which the issues in the previous decision and the current decision overlap. In *North Wiltshire DC v SoSE and Clover* [1992] 605 P&CR 137 Mann J addressed the limits of the inspector’s obligation to have regard to previous decisions. At page 145 he said that ‘an inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision’. Mann J provided what he called ‘a practical test for the inspector’ which was to ask ‘whether if I decide this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in a previous case?’ This guidance cannot simply be applied by rote. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise; and this requirement is reflected and reiterated. The development plan may itself be in a state of flux and development. That being so, previous decisions that were made when the planning regime or development plan were significantly different are likely to be of

less materiality than recent decisions made in the same or a closely similar planning context.

10. The Town and Country Planning Appeals (Determination by Inspectors) (Enquiries Procedure) (England) Rules 2000 provides the procedural framework for the conducting of inquiries. They include rules that are intended to ensure that all relevant materials upon which the inspector will make his decision are available both to the inspector and to other parties according to an orderly timetable. The rationale for this procedural framework is self evident: the late submission of additional materials is liable to produce inefficiency, delay, increased expense and, at worst, injustice. However, it is inevitable that there will be occasions when information that is material to an inspector's decision will become available for the first time at a date which prevents compliance with the normal framework and rules. Against that eventuality the inspector has a discretion to admit materials which have not been provided in accordance with the normal procedural timetable. That discretion continues up to the time that he makes his decision. Rule 18 makes express provision for the admission of material after the inquiry has been held and before he has made his decision as follows:

“(2) When making his decision the inspector may disregard any written representations or evidence or any other document received after the close of the inquiry.

(3) If, after the close of an inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first (a) Notifying [in writing] the persons entitled to appear at the inquiry who appeared at the matter in question; and (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. And they shall ensure that such written representations or requests to re-open the inquiry are received by the Secretary of State within three weeks of the date of notification.

(4) An inspector may, as he thinks fit, cause an inquiry to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned within paragraph (3): and where an inquiry is re-opened – (a) The inspector shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited;...”

11. The inspector's power to admit material after an inquiry and the basis upon which he should exercise his discretion when asked to consider further material is the subject of Planning Inspectorate Good Practice Advice Notes. Advice Note 07 says at [67]:

“At any point before deciding the appeal the inspector may exercise his/her powers to seek further information from the

parties if it is considered necessary to enable a properly informed, and reasoned, decision to be made.”

Advice note 10 says (at [7]) that, if new matters arise which are considered likely to be material to the inspector’s consideration of the case, the relevant material should be submitted at the earliest possible stage. At [9] the note says:

“The Secretary of State and Inspectors have discretion as to how to treat new materials submitted with or during the consideration of an appeal. They will apply their discretion on the basis of the relevance of the material to the appeal proposal, whether it simply repeats something that is already before the Inspector (for example, rebuttal evidence which adds nothing to what is already recovered in a proof of evidence) and whether it would be procedurally fair to all parties “including interested persons” if the material were taken into account...”

12. These being principles that are relevant to apply in this case, I turn to consider the grounds of challenge.

Ground 1: The inspector failed to have regard to a material consideration namely the two decisions at Calne or to give reasons for not following the approach taken in those cases to the five year housing land supply

13. It is necessary to examine the factual background in more detail to put this ground of challenge in context. For convenient reference, the relevant passages of the Decision Letter are reproduced at Annexe A and are not set out again in the body of this judgment.

Factual background

14. The NPPF was introduced in March 2012. Under the heading “Delivering a wide choice of high quality homes”, [47] of the NPPF provides:

“To boost significantly the supply of housing, local planning authorities should:

- Use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area as far as is consistent with the policies set out in this framework, including identifying key sites which are critical to the delivery of the housing strategy over the planed periods;
- Identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of five per cent (moved forward

from later in the planned period) to ensure choice and competition in the market for land...”

15. A footnote attached to the word “deliverable” in the second bullet point (“Footnote 11”) defines what that word means in [47] 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 5 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.”

16. It was central to the appellants’ case before the inspector that there was an insufficient supply of deliverable sites and that insufficiency was a material consideration in favour of the appellant’s proposal. The importance of the existence or otherwise of deliverable sites sufficient to provide 5.25 years worth of housing against the identified housing requirements was made clear by Tracy Smith, the Council’s Area Team Leader, who expressly accepted in evidence that if it were to be concluded that there was a shortfall in the 5 year housing land supply and if it were to be concluded (as the inspector did conclude in the Decision Letter) that prematurity was not a legitimate basis on which to reject the appeal then development of the appeal site would be permissible in principle subject to satisfactory s 106 contributions being made. She also accepted that the Council was not suggesting that any more sustainable sites existed within the settlement boundaries of Purton, that the site had no constraints that would preclude its development, and that the development of up to 50 units could not be characterised as “large scale”. Accordingly, given the inspector’s conclusion on prematurity, the sufficiency of the housing land supply was of primary importance.
17. Various different sources of data relating to land supply were available. The appellants favoured the evidence base that had underpinned the dRSS while the Council favoured the approach adopted in the emerging Core Strategy for Wiltshire (“eWCS”). A number of reasons were put forward by the parties in support of their respective positions, which were encapsulated in the witness statements of Mr Stephen Harris, a Chartered Town Planner who gave evidence for the appellants, and Mr Neil Tiley, who gave evidence for the Council and who was the Council’s Manager of Monitoring and Evidence within Economy and Regeneration.
18. The inspector set out the competing positions at [11-14] of the Decision Letter. In summary, both parties accepted that the data and projections found in the adopted development plan were out of date. Revised housing requirements were promoted during the development of the dRSS, which was subject to Examination in Public and revision for the version that was published for consultation in 2008. However, because of the Coalition Government’s antipathy towards RSSs, it was recognised that although the dRSS had reached an advanced stage it was extremely unlikely to be adopted. In response to this state of affairs, the Council reconsidered the housing

requirements for Wiltshire and its reconsideration informed the eWCS. The eWCS had reached the stage of being submitted for Examination in Public but that examination had not taken place. The Council preferred to rely on the eWCS evidence base because extensive consultation had already taken place; but the outcome of the EIP was as yet unknown and uncertain, not least because it was subject to objections to proposed housing numbers and because concerns had been raised which suggested a need for the Council to re-consult.

19. A discrete but important argument related to what sites could properly be regarded as “deliverable” within the meaning of Footnote 11. The Council had included in its calculations 1,657 units from sites identified as “strategic sites” in the eWCS. None of these sites had planning permission. Mr Tiley did not know which, if any, were objected to. Mr Harris gave unchallenged evidence that, to the best of his knowledge, all were subject to objection. Mr Tiley was unable to identify any case in which the Secretary of State had deemed it appropriate to include emerging Core Strategy “strategic sites” in a calculation of the 5 year housing land supply where such sites were subject to objection. At the present hearing, the Court was informed that no such decision of the Secretary of State had been identified but that there are decisions of the Secretary of State going the other way (i.e. excluding strategic sites which were subject to objection from inclusion in the calculation of the 5 year housing land supply). No further details about these decisions have been provided¹.
20. The potential impact of this dispute about strategic sites on the raw figures as found by the inspector emerges clearly from the evidence of Mr Harris for the present proceedings. Inspector Robins included strategic sites in his calculations, which led him to produce a table at [52] of the decision letter as follows:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Assessment (years)
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3
eWCS North and West HMA	15,249	5,083	6292	6.2

In other words, adopting the Appellant’s favoured approach by reference to the dRSS North Wiltshire would support the conclusion that there was a shortfall in supply but adopting the Council’s favoured approach by reference to the eWCS North and West HMA would support the conclusion that there was not.

21. Mr Harris, whose evidence is not contradicted, says that “for North Wiltshire the total supply from [strategic sites] in the next 5 years was 990 dwellings ... and 1,657 dwellings for the North and West HMA ...” The effect of excluding these dwellings

¹ Save possibly for a reference to one decision in the Calne Decision letters: see [26] below.

upon the inspector's table is shown in the right hand column of the adjusted table below:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Inspector Robins' Assessment (years)	Adjusted assessment excluding strategic sites
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3	2.9
eWCS North and West HMA	15,249	5,083	6292	6.2	4.6

In other words, if the strategic sites are excluded there is a much greater shortfall by reference to the dRSS for North Wiltshire and there is also a shortfall by reference to the eWCS North and West HMA.

22. During the inquiry the inspector was referred to three previous decisions which touched on the issue of inclusion or exclusion of strategic sites. The decisions predated the introduction of the NPPF and were referred to at [22-23] of the Decision Letter. The decisions were:

- i) The decision of Inspector Youle relating to land at Meadow Lane, Ruands, in Northamptonshire dated 18 January 2010. At [41] of his decision the inspector referred to "impending consents and DPD allocation" which the Council had brought into account in its calculation of the housing land supply. The inspector said:

"This includes a number of sites which are proposed as housing allocations in the Preferred Options versions of the TTP and the RAP. However, these Plans have not been subject to independent testing through an examination and several of the sites do not appear to have planning permission or to be allocated for housing in the Local Plan. In addition, some sites appear to have constraints which could impede deliverability. Consequently I have not been given sufficient evidence to indicate that these sites can be regarded as being available, suitable and achievable as required by PPS3. Therefore, it has not been demonstrated that a five year supply exists. ";

- ii) The decision of Inspector Graham relating to land at Moat House Farm, Marston Green, in the area of Solihull MBC dated 21 February 2012. At [11] of her decision she addressed the question of Draft Local Plan sites, which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“The draft Local Plan identifies proposed sites for 1,445 net additional dwellings, and the Council maintains that these should be taken into account when calculating the 5 years supply position. However, it is important to bear in my mind that this emerging Local Plan is still only a draft, which has yet to be the subject of further consultation, representations, and Examination in Public. Paragraph 54 of PPS3 explains that to be considered deliverable, sites should be available, suitable and achievable at the point of adoption of the relevant Local Development Document. There can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan, which in any event will not be adopted before 2013. As the situation stands at present, I consider that these sites should not be included when calculating the current five year land supply position”

- iii) The later decision of Inspector Graham relating to land at Park Road, Malmesbury, Wiltshire dated 15 March 2012. At [18] of her decision she accepted that “the Council’s 2010/2011 Annual Monitoring Report (AMR) provides the logical starting point for assessing the supply of deliverable housing sites.” She then considered specific sites, and at [23] she addressed the inclusion of three strategic sites at Chippenham which the Council had brought into account in its calculation of the housing land supply. The inspector said:

“It is fair to note that all three sites have physical, environmental and infrastructure constraints that will need to be addressed. However, the council has liaised with the developers of each, and obtained delivery trajectories which update the information provided in AMR. I see no convincing reason to doubt these revised figures, which indicate that within the five year period an additional 420 dwellings will be provided at the north Chippenham site, and a further 110 at the East Chippenham site. ”

23. Certain points may immediately be noted:

- i) Each inspector was prepared in principle to treat sites which did not yet have planning permission as potentially satisfying the PPS3 requirements;
- ii) The inspectors at Meadow Lane and Moat House Farm identified the fact that the Plans in those cases had not been subjected to Examination in Public as a feature weighing against the inclusion of the sites there listed;
- iii) In the Malmesbury decision, the inspector’s reservations about the status of two of the sites² were resolved by the calling of site specific evidence about

² The reference to “the North Chippenham site, and ... the East Chippenham Site” suggests that they were two of the three strategic sites being considered in [23], with the third site not being named or included. However, it makes no difference to the argument if the North Chippenham and East Chippenham Sites in fact comprised all three sites: whether two or three strategic sites were included by the inspector, they were included after the provision of site-specific evidence.

their availability and deliverability. By contrast, no such evidence had been called in the other two appeals.

24. In the present case it was not suggested before the inspector and is not suggested now that strategic sites which did not yet have planning permission were necessarily to be excluded from the calculation of the housing land supply. The case advanced before the inspector (relying upon the previous decisions from Meadow Lane and Moat House Farm) was that because the eWCS had not been adopted, sites could not be regarded as available by virtue of their inclusion in the eWCS since their deliverability would be assessed through the Core Strategy process³. Inspector Robins dealt with the previous decisions specifically at [22-23] of the Decision Letter. He accepted that he should not prejudge the outcome of the eWCS Examination in Public and that the weight to be ascribed to the eWCS depended upon “the specific stage of preparation of the evidence base and the evidence supporting deliverability.” In contrast to what had happened at Malmesbury, no site specific evidence of deliverability was presented to Inspector Robins. Referring to that decision he said that “the Inspector in that case also accepted the principle of including strategic sites.” It is evident that he saw the Malmesbury decision as supporting the conclusion (which he ultimately reached) that the strategic sites in the present case should be included.
25. Before Inspector Robins made his decision, two potentially relevant events occurred. First, on 3 September 2012 Mr Harris sent to the inspector a copy of a letter to the Council dated 29 August 2012 from Mr Andrew Seaman, the Senior Housing and Planning Inspector who was to conduct the Examination in Public of the eWCS. That letter raised a number of concerns about the eWCS and its prospects when submitted to the EIP. There were concerns relating to the soundness of the evidence base underpinning the housing chapter and the quality of the sustainability appraisal that had been carried out. Mr Seaman noted that the Council was “undertaking further consultation on its proposed pre-submission changes which will include details of the revised Sustainability Appraisal and an opportunity to comment upon the implications of the [NPPF] and Government Policy for Gypsies and Travellers.” He foresaw that the Examination would certainly extend into 2013. This further information was admitted by Inspector Robins. It seems likely that he had it in mind when he said, at [12] of his Decision Letter, that “the Council’s ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.”
26. The second potentially relevant event was that Inspector Papworth made two decisions on 18 September 2012. Each decision related to land at Calne, in Wiltshire. Each considered in some depth (and in identical terms) the principles of development to be applied, at and from [9]. At [13-15] Inspector Papworth considered the housing requirement side of the equation established by [47] of the NPPF. He regarded the Malmesbury decision as “an anomaly” and contrasted it with a decision of the Secretary of State at Salisbury which “expressed a different view on a more advanced core strategy.” Turning to the state of development of the eWCS he said that it was “advanced inasmuch as an Examination is imminent, but in view of the extent of unresolved objections, including to the adequacy of the provisions for housing, there must remain doubts over the outcome and the consistency with Framework policies on increasing the supply of housing.” He held that the assumption that the Regional

³ See Mr Harris’ Witness Statement to the inquiry at [7.24-25]

Strategy will not now be taken further does not materially alter the weight that can be attached to that evidence base relative to that presently informing the emerging Core Strategy”; and he concluded that, having regard to the first bullet point of Framework [47] “it is appropriate to regard the figures derived from the evidence for the Regional Strategy as a robust basis for determining the requirement.”

27. Turning to the supply side of the equation at [16], Inspector Papworth took the view that “to ensure a robust appraisal it is necessary to look further at the list of sites as discussed at the hearing.” It is apparent that site specific evidence had been presented in relation to some but not all sites, and that no site specific evidence had been submitted in relation to strategic sites, because Inspector Papworth said at [17-18]:

“17. Of the large permitted areas, there does appear to be doubt over the delivery of the former Bath and Portland Stoneworks site given its past history, not being in the 2009/10 Annual Monitoring Report, and little evidence that matters have moved on substantially since. Similarly with the Blue Hills Site, this appears to have been subject to persistent delays and to being put back in time in the successive Annual Monitoring Reports. The delivery timescale for land adjacent to the scrap yard at Trowbridge also appears to be receding and reduction here is appropriate.

18. Other sites with permissions that had been previously dismissed have been brought back into the list, but it is apparent that even with the acceptance of these sites in total, a shortfall is possible. The Council has added 183 units in this category where none were previously included. Footnote 11 of the framework does provide for live permissions to be counted unless there is clear evidence that the schemes will not be implemented within 5 years, for example, they will not be viable, there is no longer a demand for the type of units or sites or sites have long term phasing plans. Clearly those where the permission has expired should not be included and where land was bought at or near the height of the market, doubts over viability would be legitimate. The prospect of new permissions on new land being required to replace such stalled schemes was discussed. Windfalls have also been significantly increased and that is provided for in paragraph 48 of the framework subject to certain requirements on historic evidence. There appears to be good reason to reduce the figure on that basis as suggested, *Vision and strategic sites are disputed in their entirety, and given the process to be gone through and the doubts over delivery, a degree of caution is appropriate. The requirement is to identify a supply of specific deliverable sites and to be considered deliverable, sites should be available now. These sites cannot truly be described as being available now.*”
[Emphasis added]

28. Inspector Papworth concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to increase further the shortfall which

he had already found to have existed by reference to the various evidence bases even if those sites were included.

29. On 26 September 2012 Mr Harris had a conversation with someone at the relevant PINS team who advised him to send the Calne decisions together with a brief note. As a result of that conversation he sent the Calne decisions by email times at 10:35 that day. In that email he provided the suggested note in the following terms:

“Following our conversation earlier, I understand that the Council has not commented on the letter from Wiltshire Core Strategy Inspector and therefore you do not require any further comment from the Appellant.

We also discussed two appeal decisions which were issued last week for the two sites in Calne, Wiltshire. As they are in the same policy area of North Wiltshire we consider that they are relevant to our appeal as they deal with similar issues. However we are conscious that the Inquiry closed a number of weeks ago. Therefore you requested that we send the decisions to you and you would decide whether or not they can be taken into account on this appeal.

Both of the attached appeals were heard at the same hearing in July this year. The first (APP/Y3940/A/12/2171106/NWF) was for some 154 dwellings and the second (APP/Y3940/A/12/2169716) was for up to 200 dwellings. Therefore both appeals (some 354 dwellings) would meet the 370 dwellings that remain to be planned for in the emerging Core Strategy for Calne. These decisions conclude that:

- The housing requirement to be used is the RSS Proposed Changes;
- The geographical area to determine the supply is the former North Wiltshire;
- Limited weight can be given to the emerging Core Strategy due to the stage it has reached;
- There are concerns on the deliverability of commitments and emerging allocations;
- The appeals would not result in prematurity against the emerging Core Strategy and neighbourhood plan.

Should you require any further information please do not hesitate to contact me”

30. Receipt of Mr Harris’ email was acknowledged at 15:50 on 26 September 2012. The only additional comment made by the person acknowledging receipt was the accurate

but inconsequential statement that “The Appeals referred to have now been decided and the Decisions issued on 18 September”, which Mr Harris obviously knew already.

31. No further response was sent until 14:11 on Tuesday 2 October 2012 when a Case Officer from the relevant team at PINS emailed Mr Harris above a copy of the email with which he had sent the Calne decisions:

“Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector.”

32. Inspector Robins’ decision was made on 5 October 2012. No reference was made in the Decision Letter to the Calne decisions; nor has any further information or reason been given to explain why Mr Harris’ email of 26 September 2012 and the Calne decision he had attached to it were not considered by the inspector.

33. The relevant passages in the Decision Letter are set out in Annexe A. The following features may conveniently be highlighted here:

- i) The Decision Letter addresses the issue of “deliverable” sites and whether strategic sites should be included specifically at [21-24] and [51-54];
- ii) At [21] the inspector’s acceptance that allocated sites, including those within emerging plans, could be included was subject to two provisos:
 - a) Acceptance would be “subject to the weight that can be given to that plan and its evidence base”; and
 - b) Acceptance would be “subject to ... the submission of information indicating a reasonable likelihood of them progressing within the five year period.”
- iii) At [22] and [24] the inspector accepted that the existence of outstanding objections to sites meant that housing supply from such sites could not be guaranteed; and that he could not prejudge the outcome of the eWCS Examination. He treated these as matters going to the weight that he was able to attach to the Council’s assertion that such allocations should be included;
- iv) At [23] he identified the evidential factors supporting his conclusion that exclusion of all the draft allocations was not appropriate, including that the Malmesbury inspector had “accepted the principle of including strategic sites.”;
- v) He referred to the Moat House Farm and Meadow Lane decisions at [22]. There was no discussion of the basis or reasoning supporting either of those decisions or the Malmesbury decision. In particular, the Decision Letter does not evidence an appreciation that there was site specific evidence in the Malmesbury decision (but not in the other two) or that this might be a significant factor, despite his statement in [21] that acceptance would be subject to the submission of evidence indicating a reasonable likelihood of sites progressing within the five year period;

- vi) He accepted at [24] that, although exclusion of all the draft allocations was not appropriate, “full weight cannot be given to the precise numbers put forward by the Council”; but he concluded that it was “reasonable to include these sites in absence of specific evidence that they cannot be delivered.”;
- vii) At [53], reviewing the contents of his table, he concluded that the Council had shown a 5-year housing supply relative to the dRSS Rest of North Wiltshire figures and the eWCS North and West HMA figures but had failed to demonstrate adequate supply for the dRSS North Wiltshire Area. He concluded that the weight to be given both to the dRSS figures and the eWCS figures was “somewhat lessened”, to a similar degree in each case;
- viii) At [54] he stated that he did not rely upon the exact (or raw) figures in his table, but regarded the figures (taken broadly) to demonstrate a 5 year housing supply except in relation to the former North Wiltshire District, where he considered that the 4.3 years, set against an expectation of 5.25 years, did not represent a serious shortfall. As a result, he did not consider that there was an “overwhelming need for development to meet” the specific demand in the former North Wiltshire District. He therefore considered that a 5-year housing supply had been shown.

Discussion

34. The issue for the inspector was whether the strategic sites were “deliverable” as defined by Footnote 11 so that they fell within the meaning of [47] and should have been included in the assessment of housing land supply. Footnote 11 is not entirely straightforward, but the following points are relevant to its interpretation:
- i) It is common ground that planning permission is not a necessary prerequisite to a site being “deliverable”. This must be so because of the second sentence of Footnote 11 and because it would be quite unrealistic and unworkable to suggest that all of the housing land supply for the following five year period will have achieved planning permission at the start of the period;
 - ii) The parties are agreed that a site which is, for example, occupied by a factory which has not been derequisitioned, or which is contaminated so that housing could not be placed upon it, is not “available now” within the meaning of the first sentence of Footnote 11. However, what is meant by “available now” is not explained in Footnote 11 or elsewhere. It is to be read in the context that there are other requirements, which should be assumed to be distinct from the requirement of being “available now”, though there may be a degree of overlap in their application. This suggests that being available now is not a function of (a) being a suitable location for development now or (b) being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable. Given the presence of those additional requirements, I would accept Ms Busch’s submission for the Secretary of State: “available now” connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent immediate development;

- iii) Questions as to the viability of the proposed development or, for example, whether a developer had been identified or was in a position immediately to start work, would go to the question whether there was a realistic prospect of delivery within five years, but not to the question whether the site was available now. For the same reason, the fact that a site does not “offer a suitable location” does not affect whether or not it is “available now”, suitability of the location being a separate requirement;
 - iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years;
 - v) For similar reasons, where sites are in contemplation because of being included in an emerging policy document such as the eWCS, and the document is still subject to public examination, that must increase the lack of certainty as to outcome. That is implicitly recognised by [216] of NPPF which requires decision-takers to “give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)” and to “the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given)... .” As Inspector Graham pointed out in the Moat House Farm decision, there can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan. The approach taken by the various inspectors whose decisions have been considered in this case (including Inspector Robins at [22]) is therefore correct: the stage of preparation of the evidence base and the progress of the draft document are important considerations going to the prospects of housing being delivered within five years and therefore being “deliverable” within the meaning of Footnote 11.
35. I would accept as a starting point that inclusion of a site in the eWCS or the AMR is some evidence that the site is deliverable, since it should normally be assumed that inclusion in the AMR is the result of the planning authority’s responsible attempt to comply with the requirement of [47] of the NPPF to identify sites that are deliverable. However, the points identified in [34] above lead to the conclusion that inclusion in the eWCS or the AMR is only a starting point. More importantly, in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the

only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority's evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court.

36. The first limb of the challenge under Ground 1 is that the inspector failed to have regard to the two decisions at Calne. While it is common ground that the inspector had a discretion whether to admit or to refuse to admit the late-submitted material, this limb raises the following questions:
 - i) Whether the Calne decisions were material that might have caused him to reach a different conclusion to that he in fact reached without taking them into account; and, if they were
 - ii) Whether the inspector's decision not to consider them was a lawful exercise of his discretion. This second question raises two sub-questions:
 - a) Whether the decision not to consider them could be and was a proper exercise of discretion in the circumstances prevailing; and
 - b) Whether the inspector was obliged to give any or proper reasons for his decision and, if so, whether he did so.
37. The Secretary of State accepts that it would have been open to him to submit evidence providing information about the circumstances in which the inspector decided not to consider the Calne decisions. Ms Busch correctly points out that the submission of such evidence could give rise to a risk of retrospective and unreliable justifications being advanced. That point is well made. However, once the risk is recognised, it can be addressed by the witness and should not be exaggerated; and the decision not to submit evidence covers not merely evidence about any reasoning that may have informed the inspector's decision but also primary factual evidence that may have been relevant. As it is, in the absence of such evidence, nothing is known save that the Calne decisions were submitted and received after the inquiry but nine days before the inspector made his decision on 5 October 2012.
38. Turning to the first question, there can be no real doubt that the Calne decisions were material that might have caused the inspector to reach a different conclusion to that he in fact reached without taking them into account. Ms Busch did not argue the contrary. It is, however, important to identify the features of the Calne decisions that gave them particular significance:

- i) While Inspector Robins already had before him three other decisions that were said to be relevant, they all pre-dated the introduction of the NPPF. The Calne decisions directly addressed the requirements of [47] of the NPPF, as Inspector Robins was required to do. It was therefore a previous decision that was directly in point;
 - ii) Inspector Papworth's Decision Letter identified the possibility of site specific evidence and that there had been none submitted in relation to the strategic sites in his case. His conclusion was that Malmesbury (where there had been site specific evidence) was "an anomaly" and he referred to a decision of the Secretary of State in relation to land at Salisbury going the other way, which does not appear to have featured in the material considered by Inspector Robins in his decision letter;
 - iii) Given its timing and the fact that Calne was also in Wiltshire, Inspector Papworth's decision was doubly relevant. It was relevant geographically since it addressed the same eWCS and other aspects of the Development Plan as applied to the Purton appeal; and it addressed them at the same stage of their progress as applied to the Purton appeal;
 - iv) Inspector Papworth had concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to reduce the number of such sites that should be regarded as deliverable.
39. In these circumstances, there must have been (at least) a real possibility that considering the Calne decisions would have led Inspector Robins to a different conclusion. Although it would have been his decision and he would have been entitled to disagree with Inspector Papworth's conclusion, before doing so he would have been obliged to have regard to the importance of consistency and to give his reasons for departure from Inspector Papworth's decision. Given the features identified above, the result of applying Mann J's practical test would have been that he was disagreeing with a critical aspect of Inspector Papworth's decision, namely the conclusion that, there being no site specific evidence, the stage of progress of the development plan and the Council's evidence base did not justify the inclusion of the strategic sites as deliverable.
40. It would have been obvious to anyone receiving and reading the email (even without reading the attached Calne decisions themselves) that the decisions dealt with the same issues as were central to the Purton inquiry, that the decisions had been issued the previous week (and so could not have been provided earlier), and that, as very recent decisions, they were likely to address the same issues as arose in the Purton inquiry by reference to Wiltshire's Development Plan in its current state of development. Even a cursory review of the Calne decisions would have confirmed that this was so. In particular it would have confirmed that Inspector Papworth had produced a very recent assessment of whether, in the absence of site specific evidence, strategic sites included in the eWCS should be regarded as deliverable within the meaning of [47] of the NPPF.
41. That being so, the principle that a decision maker ought to take into account all matters which might cause him to reach a different conclusion and the obligation to have regard to material considerations up to the time that the decision is made

weighed heavily in favour of Inspector Robins exercising his discretion in favour of admitting the Calne decisions for consideration.

42. In support of her opposition to Ground 1 Ms Busch submitted that the late submission of the Calne decisions was a breach of the 2000 Rules. That submission is rejected. No sensible interpretation of the rules can require the submission of information before it is in existence. Furthermore, Rule 18(2)-(4) of the 2000 Rules expressly contemplates the submission of late information and that it may be admitted by the inspector in accordance with the rules. Reference to The Good Practice Advice Note 10 also weighed in favour of admitting the decisions for consideration. It provided that the inspector would apply his discretion on the basis of:
- i) The relevance of the material to the appeal proposal: the material was highly relevant and potentially decisive in persuading Inspector Robins to find in the appellants' favour on the issue of strategic sites. Had he done so the balance of evidence in favour of a finding that the existence of a 5-year land supply was not shown would shift markedly, as Mr Harris' evidence and the revised tables set out above show;
 - ii) Whether it simply repeats something that is already before the inspector: it did not; and
 - iii) Whether it would have been procedurally fair to all parties if the material were taken into account: even if some modest delay were to be incurred in bringing out the decision (as to which, see below) the admission of the Calne decisions could be handled in a way that was procedurally fair. The Secretary of State has not submitted to the contrary, which is realistic and correct.
43. I would accept that in some cases where information is submitted late there may be a tension between the need for finality and proportionate expense on the one hand and a willingness to admit evidence which has not been submitted in accordance with the normal procedural timetable under the Rules. However, there is no material available to the Court to suggest that there was any significant tension in this case. In particular, there is no evidence to suggest that the Calne decisions, though highly material, would open up any new issues or indicate the need for further evidence or hearings. On the evidence that is available to the Court, it would have been possible for any supplementary submissions to have been made shortly and in writing. It is not realistic to suggest, and it has not been suggested, that it would have been necessary to re-open the inquiry or that significant delay would have been caused by taking the Calne decisions into account. There is therefore no evidential basis upon which it could be said that it was disproportionate or contrary to the wider interests of justice for the Calne decisions to be taken into account.
44. In her oral submissions Ms Busch submitted that there was no obligation upon the inspector to state a reason for his decision not to take the Calne decisions into account because the Rules do not expressly require him to give reasons when exercising his discretion in these circumstances. That submission is rejected. No such implication can be deduced from the silence of the rules. On the contrary, the obligation on a decision maker to give reasons for his decisions (including exercises of discretion) which will or may affect the rights and obligations of parties to legal proceedings over which he is presiding is a general one which covers the exercise of Inspector Robins'

discretion in this case. Reasons were required in accordance with the guidance in *South Buckinghamshire DC*: see [7] above.

45. To the extent that any reason can be said to have been given at all, it was the statement in the email of 2 October 2012: “Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector.” Taken at face value this says that not merely the Calne decisions but Mr Harris’ email were not considered at all by the inspector, but it is plain that the email was read, at least by one or more case-workers. What is neither self-evident nor the subject of evidence is whether the inspector (or anyone to whom he reasonably delegated the task) looked at the Calne decisions themselves before deciding that they would not be taken into account by the inspector for the purposes of reaching his decision.
46. The position confronting the Court when considering this limb of Ground 1 is that there is no evidence to suggest that the inspector (or anyone on his behalf) carried out a reasoned assessment of the materiality of the Calne decisions or whether, applying the approach advocated by Good Practice Advice Note 10 or any other reasonable balancing exercise, the decisions should be admitted and taken into account. For completeness I record that it was not submitted by Ms Busch that he had done so. While she submitted that there was material which could have justified him in reaching a reasoned decision to reject the late submission of the Calne decisions, she did not (and could not in the absence of any reasons being given by the inspector) submit that he in fact did take such a reasoned decision. She concentrated upon the fact that the submission that the information was submitted late and that, as she submitted, no one with knowledge of planning practice would be surprised to see the submission of the Calne decisions rejected on the basis that it was “just too late”.
47. Whether or not competent practitioners in the field would be surprised to see a late submission of information being knocked back on the basis that it is too late should depend upon the circumstances of the particular case, for two reasons. First, lateness is not of itself necessarily or even probably the determinative consideration. Secondly, the determinative considerations should be those that go into the mix of a reasoned assessment which balances those factors that tend in favour admission or rejection on the facts of a particular case. That assessment may be relatively simple or it may be complex; but in either event, the parties concerned are entitled to reasons that are intelligible and adequate to enable the reader to understand why the matter was decided as it was.
48. On the facts of this case, there is no information to support the suggestion that the Calne decisions were received too late to be considered by Inspector Robins and all the available information contradicts the assertion. The decisions were submitted promptly and were received 9 days before he made his decision on 5 October 2012. There is no evidence to suggest that he required that length of time to take them into account, or that his decision had in fact been taken by 29 September 2012, or that 5 October 2012 was an immutable deadline, or that reasonable accommodation could not have been made to ensure procedural fairness if the decisions were taken into account. In the absence of any reason or other material to explain why the date of the receipt of information trumped all other relevant considerations I am driven to the conclusion that the reason given is unsupportable. At its lowest, there was a failure to give adequate reasons so that the reader could know why, if any reasoned balancing exercise was in fact carried out, it led to the exclusion of the Calne decisions.

49. For these reasons, I therefore uphold Ground 1 of the challenge. In summary, his decision to exclude the Calne decisions from consideration should be set aside because:
- i) The inspector failed to exercise his discretion properly. A proper exercise of his discretion would have involved a balancing exercise either in accordance with or similar to that advocated by Good Practice Advice Note 10. Had he carried out such an exercise, he should have concluded that the considerations that weighed in favour of admitting the Calne decisions outweighed those that weighed in favour of excluding them;
 - ii) The reason given by the inspector, namely that the material was submitted too late to be considered by the inspector, was unsustainable;
 - iii) The inspector failed to give adequate reasons for his decision not to take the Calne decisions into account.
50. Given that he did not take the Calne decisions into account, it is somewhat academic to advance as a separate head of challenge that the inspector failed to give reasons for not following the approach taken in them. That said, in accordance with the principles established in *North Wiltshire DC v SoSE and Clover*, if he had taken them into account and decided not to follow them, he should have given his reasons for doing so. This would have been particularly important given the geographical and temporal overlap between the Calne and the Purton decisions.

Ground 2: The inspector failed to correctly interpret the NPPF.

Ground 3: The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational.

Ground 4: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

51. Although these are separate and distinct grounds of challenge, they overlap to the extent that they may be seen as different facets of the same argument, and I shall address them together. These Grounds fall to be considered by reference to the material actually considered by the inspector, without reference to the excluded Calne decisions.
52. Ground 2 is based upon an alleged disparity between the terms of [21] and [24] of the decision letter. In [21] the inspector wrote:

“In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.”

In [24] he wrote:

“While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.”

53. The Claimant submits that this shows that the inspector failed to apply the test required by [47] of NPPF. It is common ground that the correct test for sites not having planning permission, such as the strategic sites, is that set out in the first sentence of Footnote 11. The Claimant submits that the inspector failed to apply that test. It submits that the inspector has applied a presumption in favour of including sites in the absence of specific evidence that they cannot be delivered and that this is only appropriate in the case of sites having planning permission, where the approach is permitted and mandated by the second sentence of Footnote 11.
54. I have discussed Footnote 11 at [34-35] above. I accept that, for sites which fall to be considered under the first sentence of Footnote 11 to be taken as deliverable, it must be shown that they satisfy the requirements there set out. There is no a priori assumption that sites not having planning permission are deliverable. However, the fact that sites have been included in an emerging policy document or evidence base may (and often will) be a starting point. In other words, inclusion may be evidence in support of a conclusion that the sites so included are deliverable. Once that is accepted, there is no reason in principle or on the proper interpretation of Footnote 11 why the fact that sites are included in the eWCS or the AMR may not be taken as sufficient evidence that they are deliverable in the absence of evidence (specific or otherwise) that they are not. The weight to be attached to the evidence that they are deliverable will vary from case to case and is a matter of planning judgment for the inspector: see [35] above. So too will be the weight to be attached to any evidence that they are not. Evidence that they cannot be delivered can in principle be specific (e.g. site specific evidence that a site is contaminated or in delay) or general (e.g. evidence that all sites are subject to objection, though this evidence may be refined to the extent that the objections to particular sites are identified and capable of being considered).
55. Once [24] is read in its entirety and in context, it appears that the inspector was adopting this approach. Having set out the Footnote 11 test at the commencement of [21], he acknowledged the existence of objections at [22] and identified that it was for him to decide what weight he should attach to the sites having been allocated. At [23] he identified as a reason for including the sites that they had been identified by the Council in the course of the development of the eWCS. He acknowledged the weakness inherent in that process at the start of [24] but came to a planning judgment that sufficient weight could be given to the evidence in favour of inclusion so that the sites could be included in the absence of other, specific, evidence that they could not be included. Seen in this light, it is apparent that he did not misinterpret Footnote 11 in the way suggested by the Claimant. While other inspectors may have given different weight to particular aspects of the evidence, that does not cast doubt on the interpretation adopted.
56. Two further questions need to be considered. The first is the significance or otherwise of the cited passage from [21] of the Decision Letter. Bearing in mind the

obligation on the Court to read the Decision Letter in good faith and as a whole, construing it in a practical manner, the cited passage does not subvert the conclusion that the inspector did not misinterpret Footnote 11. If anything it states too demanding a test, since it suggests that the plan and evidence base can never be enough to support a finding that sites are deliverable in the absence of additional information indicating a reasonable likelihood of them progressing within the five year period. However, the passage should not be taken in isolation and, viewed overall, it appears that the inspector applied the correct test.

57. The second question is how an inspector should deal with the fact that, as Inspector Robins acknowledged, the housing supply from the sites could not be guaranteed. The logical consequence of this lack of certainty at first blush appears to be that the raw numbers should be discounted for the probability or certainty that not all included sites are in fact deliverable. Inspector Robins dealt with this in terms of weight, both at [21]-[24] and when tying his findings together at [51-54]. On a fair reading, at [54] he carried out a balancing exercise which started with the express recognition that “the exact numbers cannot be relied upon.” Prudently, in my judgment, he did not try to apply a precise numerical discount to reflect the uncertainty that he had identified. Instead, having acknowledged the uncertainty and after rehearsing the context in which the raw figures were generated, he reached the conclusion that the Council had demonstrated a 5-year housing supply. On a detailed semantic analysis, his reference to 4.3 years set against an expectation of 5.25 years not representing a serious shortfall may be criticised on two grounds. First, it suggests that, despite his balancing exercise, he is still adhering to the raw and exact figure of 4.3 years. Second, it may fairly be pointed out that the issue was whether there was adequate provision and, on the basis of a finding of 4.3 years supply, there was not. However, while it might have been preferable for the inspector to have inserted a qualification to show that he was not “sticking” at 4.3 years, a fair reading of the relevant paragraphs as a whole shows that he did in fact recognise the weakness of the raw figures and was not committed to them; and the thrust of the sentence was that no overwhelming need for development had been shown, which was a conclusion that was open to him on his findings.
58. In summary, I would accept that the inspector could have included an additional sentence or two which would have made [54] more transparent; but in my judgment, fair reflection upon [54] shows that he has carried out a balancing exercise to reflect the lack of certainty he had identified.
59. In support of Ground 3 of the challenge, the Claimant criticises [23] of the Decision Letter. The first criticism, as advanced in the Claimant’s skeleton argument, is that the inspector failed to engage with the issue whether Malmesbury inspector’s approach was still valid in the light of the NFFP and the fact that it was designed to address economic stagnation and boost the housing land supply. At the hearing, however, although the Claimant again pointed out the broad economic purpose of the NPPF, its focus on the Malmesbury decision was different: it is now alleged that the significance of the Malmesbury decision is that there was site specific evidence justifying the inclusion of the sites. That observation is correct, but does not advance the criticism that had been advanced in the Skeleton Argument. In my judgment, while there is no sign that Inspector Robins identified the distinguishing feature that there had been site specific evidence available to the Malmesbury inspector in relation

to strategic sites, that does not vitiate his decision. Furthermore, there is substance in the Secretary of State's submission that the thrust of the second half of [23], including the reference to the Malmesbury decision, was to support the undoubtedly correct view that the weight to be attached to an emerging plan and its evidence base depended upon the stage of progress it had achieved.

60. The Claimant's second criticism under Ground 3 is that [24] is opaque. If the Decision Letter had been a statute, it might have been profitable to observe that it could have been more detailed and precise; but it is not a statute. Having had the opportunity to reflect again upon the Decision Letter as a whole, I conclude that the inspector gave adequate reasons which were well capable of being understood by the parties. His reasons were not irrational, though other inspectors may have given different weight to the materials which he considered. On the contrary, having interpreted Footnote 11 correctly, he was entitled to reach the conclusions he did on the materials he considered and for the reasons he gave. The Court should in those circumstances be slow to interfere and I am not persuaded to do so.
61. Ground 4 is supported by a direct challenge to [54], which is said to be opaque. I reject that criticism. The Claimant points specifically to the words "...within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political boundaries ...". When read fairly and in context those words are identifying the source and provenance of the "exact" figures that the inspector had set out in his table at [52] and which he had just acknowledged could not be relied on as such. Identifying the source and provenance of the figures served a useful and not unduly opaque purpose by giving some qualitative colour to the figures that he was balancing in that paragraph. Once again, the Court should be slow to interfere, and I am not persuaded to do so.
62. For these reasons I reject Grounds 2, 3 and 4 of the challenge. In summary, when read fairly, it appears that the inspector did not misinterpret Footnote 11, his reasons were adequate and rational and, on the basis of the materials that he considered, reflected planning judgments with which the Court should not interfere.

Ground 5: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

63. This challenge relates to [58] of the Decision Letter where the inspector stated that the appropriateness of Purton's settlement boundaries had been considered as part of the eWCS. He therefore concluded that the boundaries were up to date. On the evidence of Mr Harris, this was not based on any evidence and was wrong. It is alleged that this caused him to place more than limited weight on Policy H4 of the Local Plan which provided that New Dwellings in the Countryside outside the Framework boundaries will be permitted in strictly limited circumstances which were not applicable to the Purton proposals.
64. In my judgment there is no substance in this ground of challenge. Although his belief that the settlement boundaries had been considered as part of the eWCS was incorrect, the central fact was that the boundaries remained and were not changed by the eWCS.

He was therefore entitled to conclude that the Policy H4 was not out of date and conformed to the Framework.

65. Ground 5 of the challenge is therefore rejected.

Conclusion

66. For the reasons set out above, Ground 1 of the grounds of challenge is established. Grounds 2, 3, 4, and 5 are rejected.

Annexe A
RELEVANT EXTRACTS FROM DECISION
LETTER
DATED 5 OCTOBER 2012

Background

...

11. In terms of housing supply both main parties accepted that the data and projections found in the adopted development plan are out of date. In this respect revised housing requirements were promoted during the development of the draft Regional Spatial Strategy, (dRSS). This was subject to Examination in Public, incorporation of proposed changes and a version was published for consultation in July 2008. Although reaching an advanced stage, the likelihood of this plan being adopted is considered extremely low in light of the Secretary of State's avowed intention to revoke Regional Strategies, and the enactment of the Localism Act, which prevents further Regional Strategies from being created.

12. In response to the Government's position on Regional Strategies, the Council indicated that they moved to reconsider the housing requirements for Wiltshire to inform an emerging Core Strategy, (eWCS). This document has now reached a relatively advanced stage with a resolution by the Council and its submission for examination. The Council's ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.

13. Notwithstanding this the Council point to an extensive consultation process involved in the development of evidence base and suggest that the eWCS is preferable, both in terms of the housing requirement and the strategic approach to delivery, to either the out of date WSSP or the figures promotes in the dRSS.

14. The appellant raised concerns over the weight that should be afforded to the eWCS in light of the objections to the proposed housing numbers, declaring a preference for the publicly tested dRSS. However, the appellant goes further, suggesting an additional proposition that irrespective of the housing land supply position, the proposal represents a sustainable development. As such it would benefit from the Frameworks' presumption in its favour, in light of a contention that the development plan policies are out of date.

...

Sites

...

19. Thus the appellant suggests a difference between the Council's housing supply and their own of some 4,045 dwellings, made up in part by site specific differences and in part by a disagreement over which elements should be included. Some 80% of the difference relates to the strategic sites, the Vision Sites, windfalls and previously discounted sites.

20. The Council refer to paragraph 47 of the Framework and its footnote regarding the inclusion of strategic sites, specifically allocations in the eWCS.

This paragraph seeks to significantly boost the supply of housing and requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area". It specifically includes "key sites critical to the delivery of the strategy over the plan period".

21. The footnote sets out a definition for specific, deliverable sites: that they should be available now, offer a stable location for development now, and be achievable with a realistic prospect of delivery within five years. While on the face of it the requirement for sites to be available now would appear to preclude sites without permission, the definition continues by addressing permitted sites directly. In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.

22. I accept that where there are outstanding objections to sites, such matters need to be addressed and resolved, however, it is not for me to prejudge the outcome of the eWCS examination. I must decide on what weight I can give to the Council's assertion that these allocations should be included. In doing this it is necessary to separate the weight that can be given to the emerging plan from that associated with the evidence base associated with that plan. While I have been given examples from East Northampton and from Preston where draft allocations have not been included, the relevant weight must be ascribed based on the specific stage of preparation of the evidence base and the evidence supporting deliverability.

23. In this case I consider that exclusion of all the draft allocations is not appropriate. The Council have identified the sites following public consultation and they report that they have been subject to a Sustainability Appraisal. The sites are included within the AMR. While I note the appellant's concern over the recent appeal decision in Malmsbury the Inspector in that case also accepted the principle of including strategic sites. The Council relied on this decision to support their position that the sites were available and deliverable. The appellant referred me to a slightly earlier decision by the same Inspector which discounted draft Local Plan sites, however, it strikes me that this differs in the progress of the emerging plan and the evidence therefore available to the Inspector. The decision clearly refers to the need for consultation and representations on the emerging plan.

24. I accept that until planning permission is secured and the sites are built out, the housing supply from the sites cannot be guaranteed. Nonetheless to exclude such sites risks Councils having to plan to meet housing supply in a dynamic market on the basis of only sites with planning permission or from relatively old plans. This would risk devaluing the process of strategic planning. While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.

25. Turning to Vision Sites similar arguments apply, albeit that they are not formally proposed as allocations. They are included in the AMR and the eWCS sets out a specific policy for their delivery. The Council presented evidence that two sites, Foundary Lane and Hygrade Factory, while not currently having permission, are likely to be delivered within the five year period. While there may be some matters to be resolved on these sites, and the appellant points to part of the Foundary Lane site and the Hygrade site as being still partly occupied, this does not mean they cannot be delivered. On balance I consider that the dwellings associated with these sites can be included.

...

Housing Requirements

39. This is not therefore, as the Council set out, a simple case of “a stark choice” between the dRSS and the eWCS. Although I favour the RSS figures at this stage, which furthermore provide a conservative approach to ensuring adequate provision of housing, I must give some weight to the emerging evidence base in light of its more up to date projections and the extent of more local engagement in assessment of needs.

...

Conclusions on the 5-Year Housing Supply

51. It has been necessary to carefully consider the housing requirement and supply situation in Wiltshire as a result of the changes being introduced at both national and local level. My conclusions are by necessity based on the evidence put before me and can in no way prejudge the outcome of the eWCS Examination in Public which may take place later in this year or early 2013.

52. I consider that the principal assessment should be made between the housing requirement for the RoNW and the housing supply presented by the Council, amended in response to the evidence provided at the Inquiry. This must be further considered in light of the housing demand across North Wiltshire and the emerging strategic approach for the North and West HMA. I have summarised this in the following table:

Plan/Policy	Housing Requirement	5-year Housing Requirement	Housing Supply	Assessment (years)*
dRSS Rest of North Wiltshire	3,024	1,008	1,522	7.5
dRSS North Wiltshire	10,684	3,549	3,052	4.3
eWCS North and West HMA	15,249	5,083	6,292	6.2

*5.25 years required to meet the 5% buffer

53. This indicates that the appellant’s proposition that even using the eWCS figures the Council cannot demonstrate a 5-year housing supply is not well founded. The Council have shown a 5-year housing supply relative to the RoNW

dRSS figures and the eWCS North and West HMA, but have failed to demonstrate adequate supply for the dRSS North Wiltshire area. As set out above, I consider that the weight that can be given to the dRSS figures is somewhat lessened by the length of time since their preparation and examination, but also that the weight I can give to the emerging figures is similarly limited.

54. Nonetheless, although the exact numbers cannot be relied on, I am satisfied that the resulting figures indicate that within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political boundaries, the Council have demonstrated a 5-year housing supply. Furthermore I do not consider that the 4.3 years, set against an expectation of 5.25 years, represent a serious shortfall in the former North Wiltshire District, such that there is an overwhelming need for development to meet the specific demand.

55. In such circumstances I consider that there is sufficient evidence to support that, for this location, a 5-year housing supply has been shown.

...

58. My reading of the previous appeal decision on this site suggests that the boundaries were considered in both the preparation and Examination of the Local Plan in 2006, and while they do not appear to have been assessed against the significant increase in supply sought by the dRSS, they have been against the large increase currently promoted in the eWCS. This process has not led to a redrawing of the boundaries, consequently I do not consider that Policy H4, which they inform, is out of date or fails to conform with the Framework.

Cheshire East Borough Council v Secretary of State for Communities and Local Government, Renew Land Developments Ltd



Positive/Neutral Judicial Consideration

Court

Queen's Bench Division (Administrative Court)

Judgment Date

16 March 2016

Case No: CO/5040/2015

High Court of Justice Queen's Bench Division Planning Court

[2016] EWHC 571 (Admin), 2016 WL 312360

Before: Mr Justice Jay

Date: Wednesday 16th March 2016

Hearing date: 9th March 2016

Representation

John Hunter (instructed by Sharpe Pritchard) for the Claimant.

Richard Honey (instructed by Government Legal Department) for the First Defendant.

Jeremy Cahill QC and James Corbet Burcher (instructed by Irwin Mitchell LLP) for the Second Defendant.

Judgment

Mr Justice Jay:

Introduction

1. This is an application brought by Cheshire East Borough Council (“the Claimant”) under [section 288 of the Town and Country Planning Act 1990](#) for an order quashing the decision of the First Defendant's Inspector given on 7th September 2015 allowing the Interested Party's appeal against the Claimant's refusal of outline planning permission for up to 60 dwellings with associated car parking, roads and landscaped open space on land at Kents Green Farm, Kents Green Lane, Haslington, Crewe (“the Site”).

2. The main issue in this application is whether the Inspector's approach to the issue of “sustainable development” within paragraph 14 of the National Policy Planning Framework (“NPPF”) was legally flawed. As a subsidiary point, the Defendant and the Interested Party contend that, even if it was, this made no difference to the outcome.

Essential Factual Background

3. The Interested Party's application for planning permission was refused by the Claimant on 17th March 2014, on the grounds that it constituted unsustainable development within the open countryside, contrary to two policies within the Crewe

and Nantwich Local Plan (constituting the development plan for these purposes) and to principles in the NPPF intended to protect such areas from inappropriate development. On 19th – 20th May 2015 the Interested Party's appeal was heard by way of public inquiry, and the Inspector's decision letter was issued on 7th September 2015.

4. The main issue in the appeal before the Inspector was whether the Interested Party's proposal would amount to a sustainable form of development in accordance with national and local policy, having particular regard to its location on land allocated as open countryside.

5. The Claimant conceded that it did not have a five year supply of housing land. The effect of paragraph 49 of the NPPF was that local plan policies, promulgated in 2005, were out-of-date. The essence of the Claimant's objection to the development was that it would harm the rural character of the area.

6. The Inspector's reasoning process anterior to his addressing the main issue (and which I do not understand to be controversial) was as follows:

- (i) the development would not comply with the local plan – this was a relevant consideration, even though the relevant policies were out-of-date.
- (ii) the effect of [section 38\(6\) of the Planning and Compulsory Purchase Act](#) was that permission should be refused unless material considerations were found to outweigh the conflict with the development plan.
- (iii) the considerations of the greatest materiality for present purposes comprised those set out in national policy, namely the NPPF.
- (iv) the case effectively hinged on the issue of “sustainable development” within the meaning of paragraph 14 of the NPPF.

7. There was a dispute before the Inspector as to the correct approach to paragraph 14 of the NPPF. The parties before me seek to take forensic points as to exactly how their and their respective opponents' cases were advanced, but in my view that is an arid line of inquiry. It is apparent from the decision letter that the Claimant was contending that “some form of separate assessment of the sustainability of the proposed development is required before deciding whether paragraph 14 is engaged”, whereas the Interested Party was contending that there was no requirement to undertake any such form of free-standing assessment, and that paragraph 14 “itself provides a sufficient basis to decide whether proposed development would be sustainable”. The Inspector noted that the Interested Party's submission had the support of the First Defendant.

8. The Inspector favoured the Interested Party's submissions on this issue. His core reasoning is as follows:

“No prior or parallel assessment is needed, but the sustainability of the proposed development is to be judged by a positively weighted balancing of the benefits and adverse impacts against the policies of the NPPF as a whole. [DL20]

...

For the reasons set out above, I consider that apart from some very limited harm to rural character, the environmental dimension of sustainable development would largely be addressed. When assessed against the policies of the NPPF as a whole, the adverse impacts of the proposed development would not significantly and demonstrably outweigh the benefits. The proposal must therefore be regarded as sustainable development, to which the presumption in favour set by the NPPF would apply. [DL40]

...

For the reasons set out above, I conclude that the proposal would be contrary in principle to LP Policies NE.2 and RES.5, but that the conflict would be outweighed by other material considerations. These are principally the contribution that

the proposal would make to meeting unmet need for market and affordable housing that arises from the borough's lack of an adequate housing supply, and the very limited harm that it would cause, thereby benefitting from the presumption in favour of sustainable development set out by the NPPF. [DL56]"

9. *En route* to the second and third of these conclusions, the Inspector had examined the planning merits of the case within the framework of the three "dimensions" of the concept of sustainable development. He concluded that the economic and social dimensions would clearly be met, and that the harm to the environmental dimension was not considerable (e.g. "some loss of rural character"; "the environmental dimension would largely be addressed"). There is no challenge in these proceedings to these exercises and expressions of planning judgment.

The Legal Framework

10. The concept of "sustainable development" is the bedrock of the NPPF. It is a concept very familiar to those practising and working in this field. I think that it must be obvious from a cursory examination of the concept that it is seeking to secure the attainment of a proper balance between different factors pulling in different directions. In relation to the open countryside, it must also be obvious that the factors potentially telling against development include the ecological, aesthetic and environmental, whereas – in an age of increasing demand for affordable housing – there may be a range of economic, demographic and social factors telling the other way. Thus, or so the framers of the NPPF have conceptualised the matter, development which balances these factors in the right way is "sustainable development".

11. It is unnecessary for present purposes to cite extensively from the NPPF. Although paragraphs 6, 7 and 8 are also relevant, the key provision is paragraph 14, which provides:

"At the heart of the NPPF is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
 - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted."

12. In the text of paragraph 14, there is footnote 10 after the words, "for decision-taking this means" – the footnote states, "unless material considerations indicate otherwise". After the words, "... should be restricted", there is footnote 9 which provides a number of examples, including policies relating to Green Belt.

13. In their skeleton arguments the parties have taken time to remind me of familiar principles of planning law applicable to this [section 288](#) application. I naturally take these into account, but generally refrain from setting them out. However, this abstinence should yield to these three exceptions. First, that the Court should deploy a straightforward and down-to-earth

reading of the Inspector's decision letter "without excessive legalism" (see *Clarke Homes v SSE* [1993] 66 P&CR 263). Secondly, that the proper interpretation of the NPPF is an objective question of law (see *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13). Thirdly, that an application of this type should be refused if, having found legal error by the Inspector, I were satisfied that there is no real possibility that the Inspector's decision might otherwise have been different (see *Tesco Stores v Dundee CC* [2012] UKSC 13).

The Applicant's Case

14. Mr John Hunter's core contention on behalf of the Claimant was that Mr Jeremy Cahill QC for the Interested Party's beguiling submissions drew the Inspector into error. Mr Hunter's submission was that paragraph 14 of the NPPF only applies to development which is assessed to be sustainable, and to allow paragraph 14 to define that question is illogical, because it is circular, a misunderstanding of what the policy says, and accordingly an error of law.

15. In developing that submission, Mr Hunter pointed out that paragraph 6 of the NPPF makes no reference to paragraph 14. Indeed, it provides that the policies in paragraphs 18-219, taken as a whole, constitute the Government's view of what sustainable development in the planning system means. Pressed by me to explain where that leaves paragraph 14, Mr Hunter submitted that it is designed to create an enhanced presumption in favour of development which has already been assessed to be sustainable, and/or exists in order presumptively to trump other material considerations. Mr Hunter also pointed to other provisions in the NPPF, such as paragraphs 64, 87, 109, 112 and 144, which he submitted would be unworkable if the Defendant's and Interested Party's cases were correct.

16. Against that backdrop, Mr Hunter criticised two parts of the Inspector's decision letter. First, the reference to "overall assessment" in the final sentence of paragraph 19 ("... where policies are out-of-date an overall assessment under paragraph 14 is required"), which Mr Hunter submitted was based on a misunderstanding of the decision of Lang J in *Wenman v SSCLG* [2015] EWHC 925 (Admin)). Secondly, the inappropriate deductive reasoning inherent in paragraph 40 of the decision letter; and, in particular, the use of the verb "must".

17. Mr Hunter referred me to a considerable number of first instance decisions in which both the correct and the erroneous approach were, he said, evident. His overarching theme was that the preponderance of authority favoured his argument.

Discussion and Conclusions

18. My point of departure is not an analysis of the first instance decisions to which I was referred but my own approach to paragraphs 6-8 and 14 of the NPPF, assisted as I have been by the submissions of Mr Richard Honey for the First Defendant and Mr Jeremy Cahill QC for the Interested Party.

19. Although there may be cases where sustainable development "jointly and simultaneously" achieves economic, social and environmental gains (as per the optimistic language of paragraph 8 of the NPPF), I have already said that it must be obvious that in most situations there will be somewhat of a trade-off between competing *desiderata* . It follows that a balance must be struck, but on what basis? In my judgment, the answer is to be found in the language of paragraph 14 of the NPPF. Where the second bullet point applies, because the development plan is absent, silent or relevant policies are out-of-date, the proposal under scrutiny will be sustainable development, and therefore should be approved, unless any adverse impacts significantly and demonstrably outweigh the benefits.

20. In the absence of paragraph 14, decision makers would be unable to decide how tensions between the competing *desiderata* should be reconciled. If, for example, the economic and social merits only slightly outweighed the environmental, what then? The answer is not to be found in paragraphs 6-8. The framers of the NPPF rightly thought that guidance in this regard was necessary. The guidance they have provided in the form of paragraph 14 is to say that the proposal should be approved as sustainable development unless the adverse impacts clearly and significantly outweighed the benefits.

21. On this approach, the effect of paragraph 14 is that proposals which would otherwise have been refused because their planning merits were finely balanced should be approved – subject to the first indent of the second bullet point being made out. Another way of putting the matter is that the scales, or the balance, is weighted, loaded or tilted in favour of the proposal. This is what the presumption in favour of sustainable development means: it is a rebuttable presumption, although will only yield in the face of significant and demonstrable adverse impacts.

22. In practice, there will be questions of fact and degree. If, for example, the planning advantages are assessed to be non-existent, the presumption is likely to be easily displaced. The stronger the planning benefits are assessed to be, the more tenaciously the presumption will operate and the harder it will be to displace it.

23. In my judgment, this is not, and cannot be, a question of assessing whether the proposal amounts to sustainable development before applying the presumption within paragraph 14. This is not what paragraph 14 says, and in my view would be unworkable. Rather, paragraph 14 teaches decision makers how to decide whether the proposal, if approved, would constitute sustainable development.

24. I do not fully understand the reference in some of the authorities to sequential decision making or to decisions being made about the sustainability of development somewhere along the notional road. The whole point of paragraph 14 is to lead decision makers along a tightly defined and constrained path, at the end of which the decision must be: is this sustainable development or not? If what is being said in these authorities is that decisions about the *weight* to be given to each of the paragraph 7 NPPF dimensions should be made before paragraph 14 is considered and applied, then I would have no difficulty at all, because these are logically prior planning judgments which fall to be made on all the evidence.

25. Nor do I believe that it is necessarily helpful to say that paragraph 14 does not apply to development which is not sustainable. If, having applied the paragraph 14 algorithm, that is the conclusion which is reached, I have no difficulty with this formulation. However, a decision maker will only know if a proposal is sustainable or not by obeying the processes mandated by the paragraph. An integral part of the process is a positive weighting in favour of sustainable development in the sense that the proposal will be assessed as such unless the planning harm clearly and significantly outweighs the planning gain.

26. In short, paragraph 14 is about process, not outcome. There is no circularity in the foregoing analysis, because if the adverse impacts do significantly and demonstrably outweigh the benefits (when assessed against the rest of the NPPF), then the proposal will not amount to sustainable development, and will be refused. Indeed, Mr Hunter's argument seems to me to place an almost insurmountable hurdle against development being sustainable, because he fails to explain how the concept should be applied outside the scope of paragraph 14. It is a freewheeling exercise of discretion without parameters. Moreover, I agree with Mr Honey that it is difficult to understand on what basis paragraph 14 would have any practical utility if it only applied to cases where the development had already been found to be sustainable, and to my mind Mr Hunter's "enhanced presumption" is a completely incoherent and unworkable concept, also one being nowhere to be found in the policy wording.

27. Further, the possibility of a prior or extrinsic assessment of sustainable development is quite inconsistent with the first bullet-point in paragraph 14. No explanation was provided by Mr Hunter as to how and why the two bullet points might work differently.

28. Mr Honey made the good point that the meaning of sustainable development is not rigidly to be determined solely by reference to the indented methodology. As I have pointed out, it is always subject to material considerations indicating otherwise, thereby introducing an element of flexibility both ways. If, taking just one example, the impact or harm is substantial but not such as significantly and demonstrably to outweigh the benefits, then the decision-taker has sufficient flexibility to refuse permission, provided of course that the other material considerations, if any, are carefully defined and assessed.

29. This point disposes of Mr Hunter's argument based on later provisions of the NPPF, but his argument is also defeated by the application of the second indent in paragraph 14. If, for example, the proposal falls within one of the specific policies restricting development, then the presumption either is very readily rebutted, or its effect is heavily diluted to reflect the precise provisions of the restrictive policy in question.

30. Although I would agree that paragraph 6 of the NPPF does not mention paragraph 14, that latter paragraph is highlighted in the text and, furthermore, must refer back to paragraphs 6-8 on account of the clause, "when assessed against the policies in this Framework taken as a whole". So, paragraph 14 is the driver to correct decision-taking, not paragraphs 6-8.

31. I am not persuaded that it is necessary to conduct an exhaustive analysis of non-binding, first instance authority. I confine myself to two sets of observations.

32. First, my approach is consistent with, if not supported by, the decisions of Hickinbottom J in *Cheshire East BC v SSCLG* [2013] EWHC 892 (Admin) (paragraph 16), *Stratford v SSCLG* [2013] EWHC 2074 (Admin) (paragraph 12), *Exeter CC v SSCLG* [2015] EWHC 1663 (Admin) (paragraph 15) and *Malvern Hills DC v SSCLG* [2015] EWHC 2244 (Admin) (paragraphs 10 and 13); of Lindblom J in *Bloor Homes v SSCLG* [2014] EWHC 754 (Admin) (paragraph 44) and *Crane v SSCLG* [2015] EWHC 425 (Admin) (paragraphs 72-73); of Males J in *Tewkesbury BC v SSCLG* [2013] EWHC 286 (Admin) (paragraph 14); and, of Kenneth Parker J in *Colman v SSCLG* [2013] EWHC 1138 (Admin) (paragraph 52).

33. Secondly, Mr Hunter placed particular reliance on the decision of Lang J in *William Davis Ltd v SSCLG* [2013] EWHC 3058 (Admin). In that case the developer was appealing the Inspector's finding that the proposal was not sustainable development, notwithstanding the presumption. The following two sentences in paragraph 37 of Lang J's judgment have been subjected to much scrutiny:

"I accept Mr Maurici's submission that paragraph 14 NPPF only applies to a scheme which has been found to be sustainable development. It would be contrary to the fundamental principles of NPPF if the presumption in favour of development in paragraph 14 applied equally to sustainable development and non-sustainable development."

34. The only way I can interpret these sentences is that Lang J was holding that the determination of the issue of sustainable development was a matter anterior to, or at least independent from, paragraph 14 of the NPPF. Mr Cahill had submitted to her that sustainable development should not be taken as "a preliminary issue". The final sentence from this citation can be read in two possible ways, although its more comfortable interpretation is that paragraph 14 applies after a planning judgment has

been made. If my interpretation of what Lang J meant is correct, then I must record my respectful disagreement with her. I should add that in my view paragraph 37 was not essential to her decision.

35. William Davis was analysed by Patterson J in *Dartford BC v SSCLG [2015] 1 P&CR 2*. At paragraphs 52 and 54 of her judgment:

“In my judgment, the Claimant's argument depends on elevating the dicta in William Davis into a formulaic approach to be followed in a step by step sequential order in a decision letter. I reject that approach.

...

In my judgment the Claimant's approach is excessively legalistic. When the decision letter is read as a whole it is clear that the Inspector reached an overall conclusion, having evaluated the three aspects of sustainable development, that the positive attributes of the development outweighed the negative. That is what is required to reach an eventual judgment on the sustainability of the development proposal. As was recognised in the case of William Davis at paragraph 38, the ultimate decision on sustainability is one of planning judgment. There is nothing in NPPF, whether at paragraph 7 or paragraph 14 which sets out a sequential approach of the sort that Mr Whale, on behalf of the Claimant, seeks to read into the judgment of Lang J at paragraph 37. I agree with Lang J in her conclusion that it would be contrary to fundamental principles of the NPPF if the presumption in favour of development, in paragraph 14, applied equally to sustainable and non-sustainable development. To do so would make a nonsense of Government policy on sustainable development.”

36. I am not convinced that it would be fruitful for me to seek to reach conclusions about which parts of Lang J's judgment in William Davis Patterson J was assenting to and which parts she was not, at least impliedly. It does seem clear to me that, if Patterson J's analysis of paragraph 14 of the NPPF is the same as mine, then in the penultimate sentence of the foregoing citation she has interpreted Lang J's judgment differently to me.

37. Finally, I should make clear that in my view paragraphs 74 and 79 of Lang J's judgment in *Wenman v SSCLG [2015] EWHC 1663 (Admin)* seem to be (unsurprisingly I might add) to be wholly consistent with her earlier decision in William Davis, save that on this occasion she is making explicit that the free-standing assessment of sustainability being conducted outwith paragraph 14 of the NPPF should be undertaken “at an appropriate stage”. It follows that Lang J and I remain not *ad idem* on this point.

38. Having established the correct legal parameters, I turn now to address the Inspector's decision letter in the instant case.

39. In my judgment, DL20 is clearly correct, neatly and appositely characterising the approach mandated by paragraph 14 of the NPPF. By parity of reasoning, the final sentence of DL19 is correct, because the reference to “an overall assessment” is to one carried out according to the algorithm prescribed in paragraph 14, and not somehow extraneous to it.

40. I entirely reject Mr Hunter's submission that the use of the verb “must” in DL40 betrays an erroneous approach. All that the Inspector is saying is that an application of the presumption in paragraph 14 of the NPPF to the planning judgments he has made on the three dimensions leads inexorably to the conclusion that this is sustainable development. This was because the adverse impacts of the proposed development would not, in his view, significantly and demonstrably outweigh the benefits.

41. Moreover, it is clear from the Inspector's assessment of the weight to be given to each of the three dimensions that he was in fact of the view that the adverse impacts would not be significantly harmful: see DL29–32 and the first sentence of paragraph 40. It follows, in my judgment, that even if the assessment of the sustainability of the proposal should be carried out independently from paragraph 14 of the NPPF, and the tilted balance contained within it, the preponderance of planning considerations favoured this development. Mr Hunter did not explain by what rules and principles the balancing exercise should be performed if paragraph 14 were excluded from account, but it seems to me that he could not do better than a simple balance of probabilities approach, with the onus on the developer to discharge the burden. Ultimately, I think, Mr Hunter accepted this. On the Inspector's express findings, the Interested Party would have been successful even on that approach, applying either the test in *Tesco Stores* or the perhaps slightly narrower test in *Simplex G.E. (Holdings) v SSE* [1989] P&CR 306 .

42. This application under [section 288 of the Town and Country Planning Act 1990](#) must be refused.

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