Ministry of Housing, Communities & Local Government

Our ref: APP/A0665/W/14/2212671

[redacted]

4 November 2019

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY DARNHALL ESTATE
LAND OFF DARNHALL SCHOOL LANE, WINSFORD, CHESHIRE
APPLICATION REF: 13/03127/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report of Melvyn Middleton BA (Econ), DipTP, Dip Mgmt, MRTPI, who held a public local inquiry on 27-30 November 2018 into your client's appeal against the decision of Cheshire West and Chester Council to refuse your client's application for planning permission for a high quality residential development with associated open space, access and infrastructure, in accordance with application ref: 13/03127/OUT, dated 12 July 2013.

2. On 25 February 2014, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

3. The Secretary of State initially issued his decision in respect of the above appeal by way of his letter dated 7 July 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 10 August 2017. The appeal has therefore been redetermined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 2016 decision letter.

Inspector's recommendation and summary of the decision

4. The Inspector recommended that the appeal be allowed and planning permission granted.

5. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions, and disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing, Communities & Local Government
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Planning Casework Unit
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Matters arising since the close of the inquiry

6. On 4 July 2019 the Secretary of State wrote to the main parties to afford them an opportunity to comment on the publication of the Cheshire West and Chester Local Plan Part 2 (CW&CLP P2) Inspector's Report and Schedule of Main Modifications. A list of representations received in response to this letter is at Annex A. These representations were circulated to the main parties on 19 and 29 July 2019. The Secretary of State's conclusions on these representations are set out in this Decision Letter below.

Policy and statutory considerations

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

8. In this case, the adopted development plan for the area comprises the Cheshire West and Chester Local Plan P1 (CW&CLP P1) Strategic Policies to 2030 (adopted 29 January 2015); the Cheshire West and Chester Local Plan P2 (the P2 plan) (adopted 18 July 2019); and the made Winsford Neighbourhood Plan (November 2014). The Secretary of State considers that relevant development plan policies include those set out at IR28-33 and P2 plan Policies W1, GBC 2 and DM19.

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as supplementary planning guidance on affordable housing, developer contributions and landscape character. The revised National Planning Policy Framework was published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the 2019 Framework.

Main issues

Development plan

10. The Secretary of State has had regard to the Inspector's conclusions on the VRBLP at IR378-382. At the time of the inquiry, the Inspector undertook a planning balance based on a finding that saved policy GS5 of the VRBLP in terms of its settlement limits was out of date such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework ("tilted balance").

11. Matters regarding the VRBLP have now moved on as the P2 Plan has been adopted which includes allocations, boundaries and detailed polices replacing those parts of the VRBLP that were saved. The Secretary of State considers that the most important policies for the purposes of this appeal are STRAT 1, STRAT 2, STRAT 6, STRAT 9, Policies H1 and H2 of the WNP, and P2 plan Policies W1 and GBC 2.

12. The appellant does not argue that Policies STRAT 1 or STRAT 2 are out of date (IR48). The Secretary of State considers that STRAT 1's aim of enabling development that improve and meets the economic, social and environmental objectives of the Borough in line with the presumption in favour of sustainable development is consistent with the Framework, and thus concludes that the policy is not out of date. He further considers that Policy STRAT 2's objective of setting minimum housing and employment

development targets and requiring development to be brought forward in line with the settlement hierarchy is consistent with the Framework, and thus concludes that the policy is not out of date. For the reasons given at IR384 he agrees that while STRAT 9 is not fully consistent with the wording of the Framework, it is not out of date and is capable of attracting weight for the reasons set out below.

13. The Secretary of State considers that the P2 Plan policies W1 and GBC 2 have been found compliant with the Framework by the Plan Inspector, and for that reason the Secretary of State concludes they are not out of date. He further notes that there is no contention that the WNP is out-of-date. As such he concludes that these policies when taken as a whole are not out of date, and that thus the development plan is not out-of-date.

Five year housing land supply

14. For the reasons given at IR325-6, the Secretary of State agrees with the Inspector that there is no evidence for disagreeing with the housing land supply details set out in the Housing Statement of Common Ground. He has had regard to the report of the Inspector into LLP Part 2, and the representations of the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019 as to whether the report on the plan confirms that the Council can demonstrate a 5 year housing land supply. However, he considers that the focus of the local plan examination was not to reach a judgment on housing land supply, that the plan Inspector did not have access to the Housing Land Monitor Review and was not considering the definition of deliverable as set out in 2019 Framework. As such has based their conclusions on the recommendation of the appeal Inspector, who heard the evidence, including more recent changes, cross examined at Inquiry at greater length than the plan Inspector, and subsequent representations from the parties.

15. The Secretary of State has gone on to consider the issue of supply. In doing so he has had regard to his guidance on deliverability issued 22 July 2019. For the reasons given at IR341-344 the Secretary of State agrees with the Inspector's conclusions on preliminary points. The Secretary of State has had regard to representations on behalf of the appellant dated 26 July 2019, with regards to evidence of deliverability.

16. For the reasons set out at IR345, the Secretary of State agrees that 167 dwellings should be deducted from the five year supply figure to account for potential future demolitions. He has gone on to deduct a further 430 dwellings, namely student accommodation, for the reasons set out at IR346-350.

17. For the reasons given at IR360-364 the considers that there is clear evidence to conclude that the disputed sites as set out in paragraph 3.9 of the Statement of Common Ground are deliverable.

18. He has gone on to consider the deliverability of six non allocated sites without planning permission that are disputed. The Secretary of State disagrees with the reasons given at IR 365 to 367, and does not consider that the sites, amounting to 222 dwellings, are deliverable since they do not fall within category a or b of the Framework's definition of deliverable, and he does not consider that there is clear evidence of deliverability within five years as required by the Framework, given the outstanding issues of the need for legal agreements and agreements on reserved matters.

19. The Secretary of State has gone on to consider the Inspector's analysis of build-out rates and lead in time at IR368-70. For the reasons given he agrees that supply should be

reduced by 505 dwellings. For the reasons given at IR371-372, he agrees that 115 dwellings should be removed from the supply figure for windfalls.

20. For the reasons given above, he thus concludes that 1,439 dwellings should be deducted from the supply figures. He thus agrees that supply is 5,838.

21. He has gone on to consider the housing requirement. The Secretary of State has noted the Inspector's analysis at IR327 – 335 and conclusions that the surplus to date should be deducted from the minimum target across the remainder of the plan period when calculating the ongoing annual requirement, based on the facts of this case. He has had further regard to the representations from the Council of 16 July 2019 and from the appellant of 18 July and 26 July 2019. While he accepts that the method of dealing with past oversupply is disputed, whether the requirement is 5,150, as stated by the Council, or 5,775, as stated by the appellant, in any case the Secretary of State concludes that the Council can demonstrate a 5 year housing land supply.

Settlement boundaries, impact on countryside & countryside policies

22. At the time of the Inquiry the Inspector considered all the relevant development policies relating to settlement boundaries and countryside protection. However, since then the Council has adopted the P2 plan, which sets out new settlement boundaries in policy W1. The proposal sits outside these development boundaries.

23. For the reasons given at IR383 the Secretary of State agrees that the proposal is in clear breach of policy STRAT9. For the reasons given at IR384 he agrees that while not fully consistent with the wording of the Framework, the policy is not out of date and is capable of attracting weight depending on the circumstances of the case. The Secretary of State recognises that the Council has breached the settlement boundaries in previous grants of planning permission to ensure that there is a sufficient supply of housing land. Nonetheless, those cases would have been decided on their individual merits and in a different planning context. In any case, the settlement boundaries that were breached in those instances were those set out in VRBLP, not those established by SW&CLP P2. However, for the reasons given at IR385 he agrees that it should be given reduced weight given to the site's position adjacent to a new urban area proposed under STRAT 2. The Secretary of State has had regard to the Inspector's conclusion (IR388-389) that as the impact of the proposal on the landscape would not be significant, and thus the conflict with policy Strat 9 is limited. Although the Secretary of State agrees that the proposal would not have a significant impact on the landscape, given the loss of open countryside and the clear conflict with STRAT 9 and its aim of protecting the intrinsic character and beauty of the Cheshire countryside, as underpinned by the boundary policy W1 in the CW&CWLP P2, he concludes that this should attract significant weight.

24. For the reasons given at IR390 the Secretary of State agrees that the proposal would conflict with Policy STRAT 1 by virtue of not minimising the loss of greenfield land. He further agrees however that in respect of the other elements of the policy, except as set out below, the proposal is either neutral or contributes towards their requirements, for the reasons given at IR391. The Secretary of State that there are other sites that have been allocated or granted planning permission prior to the adoption of P2 which also do not encourage the redevelopment of previously developed land (PDL) (IR391), but that does not diminish the harm that arises in this case. The Secretary of State has judged the appeal on its own merits in the context of an up-to-date plan and a five year housing supply. As such while the extent of the conflict with policy STRAT 1 is limited, he gives moderate weight to this conflict.

The Winsford Neighbourhood Plan (WNP)

25. The Secretary of State has had regard to the Inspector's analysis at IR395-398. The Secretary of State agrees for the reasons given that Policy H1 is a policy that guides and regulates whether new development in and around Winsford should be located. He further concludes, in agreement with the Inspector at IR398 that as the appeal proposal is not one of those proposed for residential development in the WNP it is contrary to Policy H1 and contrary to the WNP as a whole. While he agrees that there is support from the proposal from Policy H2 (IR398), that the proposal does not conflict with the seven themes of the plan (IR397), and the fact that housing requirement Policy H1 is expected to meet is a minimum requirement, he does not agree that Policy H1 should be given no more than moderate weight. He considers that as the Council can demonstrate a five year housing land supply H1 is not restricting housing delivery, and he affords this conflict significant weight.

Housing

26. For the reasons set out at IR392 the Secretary of State agrees that it would be premature to suggest that the requirement from the Station Quarter cannot be delivered over the next eleven years. He further agrees (IR393) that Policy STRAT 6 does not give support to the proposal, but there is also no conflict with it.

Economic benefits

27. For the reasons set out at IR403-407, the Secretary of State agrees that the economic impacts from the provision of market housing are a benefit of significant weight. He further agrees (IR406) that the impact on agricultural land does not weigh against the proposal.

Social benefits

28. The Secretary of State agrees that the social benefits of the provision of affordable housing should be given substantial weight, for the reasons set out at IR408-411. He further agrees, for the reasons set out at IR412-414, that the social benefits of the self-build element of the scheme should attract substantial weight. He also agrees with the Inspector (IR415) that the local training, employment and procurement elements should attract significant weight in favour of the proposal.

Environmental

29. The Secretary of State notes the Inspector's findings at IR 417-420 that that the negative environmental impacts of the proposal are counterbalanced by the ecological and

recreational benefits, and as such neutral in the planning balance. However, given his findings on the conflict with STRAT 9 above he concludes that the environmental harms outweigh the benefits.

Planning conditions

30. The Secretary of State has given consideration to the Inspector's analysis at IR317-318 the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

31. Having had regard to the Inspector's analysis at IR319-322, the planning obligation dated 6 December 2018, the Unilateral Undertaking dated 17 December 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR322 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with policies STRAT 1, STRAT 9 or WNP Policy H1 and outside the settlement boundary established by policy W1 of the P2 plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. Having regard to his conclusions on the development plan and housing land supply above, he concludes that the presumption in favour of sustainable development is thus not engaged.

33. In favour of the proposal he finds the economic benefits from the provision of housing, to which he attaches significant weight. He accords further substantial weight to the social benefits of the provision of affordable housing, local procurement, training and employment.

34. Against this he attaches moderate weight to the conflict with policy STRAT 1. He attaches significant weight to the impact on the loss of countryside contrary to policy STRAT 9. He finds that the conflict with WNP Policy H1 should attract significant weight.

35. As such the Secretary of State concludes that there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

36. The Secretary of State therefore concludes that the appeal should be dismissed, and planning permission refused.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission.

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. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

39. A copy of this letter has been sent to Cheshire West and Chester Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by the Secretary of State to sign in that behalf

Annex A – Schedule of representations

Representations received in response to the Secretary of State's reference back letter of 4 July 2019

Party	Date
Cheshire West and Chester Council	16 and 23 July 2019
Avison Young	18 and 26 July 2019
Robin Wood Associates (The Darnall Fighting Fund)	17 July 2019
Winsford Town Council	25 July 2019

The Planning Inspectorate

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

by Melvyn Middleton BA(Econ), DipTP, Dip Mgmt, MRTPI

an Inspector appointed by the Secretary of State

Date: 16 April 2019

Town and Country Planning Act 1990

Cheshire West and Chester Council

Appeal by

Darnhall Estate

Land off Darnhall School Lane, Winsford, Cheshire

File Ref: APP/A0665/W/14/2212671

LIST OF ABREVIATIONS

Abbreviation	Reference
AH	Affordable Housing
AM	Andy Mojer
AMR	Annual Monitoring Report
Ap.	Appendix
BF	Beth Fletcher
BP	Ben Pycroft
CD	Core Document
CW&C	Cheshire West and Chester
C2s	Extra Care Residential Institutions
DP	Development Plan
ds.	Dwellings
dpa.	Dwellings per annum
Framework	National Planning Policy Framework
GCN	Great Crested Newt
ha	hectares
HELAA	Housing and Economic Land Availability Assessment
HESA	Housing Education Statistics Authority
HLM	Housing Land Monitor
HLS	Housing Land Supply
HSoCG	Housing Statement of Common Ground
ID	Inquiry Document
JillS	Jill Stephens
JonS	Jon Suckley
JS	James Stacey
k.	Kilometre
LP	Local Plan
m.	Metre
NP	Neighbourhood Plan
NPPG	National Planning Policy Guidance
OR	Original Report
Pg.	Page
Para.	Paragraph
Pdl	Previously developed land
PSoCG	Planning Statement of Common Ground
PoE	Proof of Evidence
P1	Part 1
P2	Part 2
Re	Re-examination
S	Section
SHMA	Strategic Housing Market Area
SMEs	Small and Medium Sized Employers
SoS	Secretary of State
Sqm.	Square metre
SR	Supplementary Report
VRBLP	Vale Royal Borough Local Plan
WNP	Winsford Neighbourhood Plan
Xic	Examination in Chief
Xx	Cross-examination

File Ref: APP/A0665/W/14/2212671
Land off Darnhall School Lane, Winsford, 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 Darnhall Estate against the decision of Cheshire West & Chester Council.
- The application Ref 13/03127/OUT, dated 12 July 2013, was refused by notice dated 26 November 2013.
- The development proposed is a high-quality residential development with associated open space, access and infrastructure.
- This report supersedes that issued on 7 July 2016. That decision on the appeal was quashed by order of the High Court.

Summary of Recommendation: That the appeal is allowed, and outline planning permission be granted.

BACKGROUND

1. The original inquiry into this appeal opened on 10 June 2014 and closed on 11 June 2014. Following the inquiry, the Inspector's original report (OR) and recommendation to allow the appeal were submitted to the Secretary of State (SoS).

2. By letter dated 14 April 2015 the SoS decided to reopen the inquiry as he had received representations that material considerations had changed. In essence the Council considered by then that it could demonstrate more than a five-year supply of housing land. Additionally, the Cheshire West and Chester (CW&C) Local Plan (LP) Part One (P1) Strategic Policies had been adopted in January 2015 and the Winsford Neighbourhood Plan (WNP) had been made in November 2014.

3. The matters upon which the SoS wished to be further informed related to

   a) the extent to which the appeal proposal complied with the Development Plan (DP);

   and

   b) whether the proposal amounted to sustainable development, having regard to national policy, including whether there is a demonstrable 5-year supply of deliverable housing sites.

4. The inquiry reopened on 15 September 2015 and closed on 18 September 2015. The Appellant proposed a revision to the housing offer in advance of the reopened inquiry. The new proposal was that 40% of the dwellings would be affordable, that 10% of the housing would be self-build and that the remaining 50% of the housing, the 'unrestricted' open market element, would be developed by local house builders. The proposal considered at the original inquiry was for 30% affordable housing (OR37 & 149). The Appellant also proposed a revised condition entitled 'Training and Employment' and new conditions entitled 'Self-build Housing', 'Local Builders' and 'Local Procurement'. The Inspector referred to these other 'non-housing' benefits as 'novel' elements.

5. A supplementary report (SR) dealing solely with the additional matters raised by the SoS and the Appellant, along with a further recommendation on the appeal, were subsequently submitted to the SoS.

6. The Inspector once again recommended that the appeal be allowed, and outline planning permission granted subject to conditions. For the reasons set out in SR 248-259 the Inspector found that the proposal overall would be contrary to the DP (SR 260). For the reasons set out in SR 211-246, he also found that there was a housing land supply of 5.12 years (SR 246) and therefore that the DP's policies for the supply of housing were up to date (SR 247).

7. He then went on to look at whether the proposal would amount to sustainable development. He found that there would be significant economic benefits and very substantial social benefits from the development and that they clearly outweighed the moderate environmental harm that he had identified. The Inspector went on to point out that the DP should not be set aside lightly and that a failure to comply with the DP could give an indication that the development would not be sustainable overall.

8. In concluding, he said that it was a matter of balancing the harm, conflict with the DP and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of new homes. He found that there were substantial economic and social benefits arising from the proposal, particularly the significant proportion of affordable homes and the other 'novel' elements of the housing offer (SR 115&119). In his opinion, the conflict with the DP, the starting point for decision making, and the adverse impacts on the countryside were outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes and the other benefits then being offered. He therefore recommended that the appeal be allowed, and outline planning permission be granted subject to conditions.

9. The SoS disagreed with the Inspector's recommendation. That was largely because he considered the conditions entitled 'Training and Employment', 'Self Build Housing', 'Local Builders' and 'Local Procurement' would not satisfy all the relevant policy tests in paragraph 203 of the then National Planning Policy Framework (Framework) 2012 and the National Planning Practice Guidance (NPPG), and therefore should not be attached to any planning permission (SoS 16-22).

10. The SoS considered that this reduced the economic and social benefits of the development identified by the Inspector in his SR. In the SoS's opinion the situation effectively reverted to the position at the time of the original inquiry as set out in the OR where the Inspector concluded that the proposal would result in a number of economic benefits, including the New Homes Bonus Scheme, construction jobs, additional local spend and employment arising from the additional expenditure (OR 147).

11. In concluding the SoS did not consider that the reduced economic and social benefits outweighed the clear conflict with the up to date DP and the moderate harm to the environmental dimension of sustainable development. He therefore dismissed the appeal and refused planning permission (SoS 31).

12. The Appellant appealed to the High Court on twelve grounds. It succeeded in the case of three, all of which related to the claimant's allegation that the SoS had erred in law in wrongly rejecting some of the proposed conditions. These conditions required training and employment measures, local building firms and local procurement to be provided/used as a part of the development.

13. The Court rejected the SoSs claim that the conditions had insufficient precision and/or there would be difficulty of detection and therefore enforcement. In the Court's opinion these conditions did potentially go to the weight to be attached to the economic and social sustainability of the proposal and accordingly would have been material in forming part of the overall planning balance[1].

14. On 7 November 2017 the SoS wrote to the parties to inform them that he needed to reopen the inquiry. In his view the following matters require further consideration.

    a) Having regard to the terms of the Consent Order quashing the SoS's decision (Richard James Verdin (t/a the Darnhall Estate) v Secretary of State for Communities and Local Government and Cheshire West & Chester Borough Council and Winsford Town Council), the implications of this in relation to the evidence that was before the Inspector and before the SoS;

    b) The current state of play with regard to the CW&CLP, part 2 (P2) and any implications for the further consideration of this appeal;

    and

    c) Any other material changes in circumstances, fact or policy, that may have arisen since his decision of 7 July 2016 was issued and which the parties consider to be material to his further consideration of this appeal.

PROCEDURAL MATTERS

15. The resultant inquiry was held on 27-30 November 2018. I carried out an accompanied site visit on 30 November. Unaccompanied site inspections were also carried out by me, on 26 November, when I observed the site and its surroundings from public viewpoints, as well as the extent and nature of the local facilities and on 27-30 November when I visited Winsford Town Centre and other locations in the area referred to in evidence.

16. This report should be read alongside the relevant parts of the SR dated 7 July 2016. The figures in square brackets [ ] in the following paragraphs relate to the various cases advanced at this Inquiry and refer to either the relevant Inquiry Document or Core Document, which contain the source of the material being reported upon and which are set out in the lists at the end of this report. References to paragraphs in the previous Inspector's original report are prefixed "OR", those in his supplementary report are referenced "SR". I shall use the abbreviation "para." for paragraph, "pg." for page, "S." for section "Ap." for appendix, "CD" for core document and "ID" for inquiry document.

[1] High Court Case No: CO/4195/2016, para 81 [CD 16/1].

17. This further report addresses the implications of the Consent Order and provides an update on the DP and its relevant planning policies as well as other material changes in circumstances, fact or policy that have arisen since the SoS made his decision. It also sets out the updated cases of the parties and my conclusions and recommendations in relation to the redetermination of the appeal. Lists of appearances, inquiry documents and recommended conditions for the reopened inquiry are appended.

18. An updated Planning Statement of Common Ground (PSoCG) [ID 1], dated 19 November 2018, was agreed between the Council and the Appellant. This document updates those submitted in advance of the original inquiry (OR7) and the supplementary inquiry (SoCG2). The updated PSOCG again records that the appeal site is situated in a sustainable and accessible location. It also confirms that the development would not result in any adverse technical impacts that cannot be mitigated against through the implementation of conventional mitigation measures. These could all be made the subject of conditions.

19. The relevant DP policies and the current status of the emerging CW&CLP P2 are set out and agreed, together with the economic, social and environmental benefits of the scheme. The document concludes by setting out six areas where the parties disagree. These include the weight to be given to some policies and whether the proposal accords with the DP when read as a whole, the five-year housing land supply position, whether the appeal proposals constitute sustainable development and the weight to be attributable to the 'novel' elements referred to by the previous Inspector and the mechanisms by which they could be secured.

20. A Supplementary SofCG on five-year housing land supply (HSoCG) was submitted on 23 November 2018 [ID 2]. Within this document, certain matters in relation to housing land supply are outlined and with an indication as to whether they are individually agreed or in dispute. I will refer to these later.

21. An updated transport assessment [CD 5/11] was submitted to the Council by the Appellant on 31 August 2018. It demonstrates that the conclusions of the original assessments remain valid. The Highways Authority has raised no objections to this or the details of the proposed means of access, which is not a reserved matter.

22. In November 2017 the Council requested an updated ecology report. This was submitted on 12 October 2018 (Appendix 4 to SoCG). Among other matters it identified that Great Crested Newts (GCNs) were foraging on the site and breeding in ponds close to the site. A mitigation strategy is proposed to compensate for the loss of GCN habitat within the site. This includes:

    a) Provision of 2.4 hectares (ha.) of high-quality terrestrial habitat for GCNs immediately off-site to the west, including long-term management and safety;

    b) Provision of four new ponds for GCNs immediately off-site to the west (within range of other identified breeding ponds), including long-term management and safety;

    and

    c) Enhancements to three ponds off-site which were recorded as containing GCNs but could be improved to enhance their value to GCNs and improve their breeding opportunities.

23. If the appeal is allowed and the development implemented, a traditional Natural England European Protected Species licence would be required before the works are implemented.

THE SITE AND SURROUNDINGS

24. The appeal site, extending to about 6.5ha, comprises three fields divided and bounded by hedgerows. Within the hedges are several mature trees. The site slopes slightly down from north-east to south-west, with an overall fall of about 3 to 4metres (m.) across the site.

25. A bridleway, which also acts as an access track to Beech House Farm, runs along the south-western boundary of the site, beyond which is undulating open countryside. To the north-west are further larger fields, with similar topography to the appeal site, stretching towards schools and other development at Hebden Green, on the western edge of Winsford. To the north-east the site is contiguous with the large housing areas of south-west Winsford, the cul-de-sac of large dwellings in Peacock Avenue being immediately adjacent. Darnhall School Lane bounds the site to the south-east, with further housing estates on the opposite side of the road. Beyond the southern tip of the site, where the bridleway meets Darnhall School Lane, lies Knobs Cottage and two former small farmsteads, one of which is now used as a livery. They are collectively known as School Green. Further south is agricultural land and woodland separating Winsford from the small village of Darnhall which lies about 1.0kilometre (km.) beyond the edge of the built-up area of the town.

26. The appeal site is some 1.5km. to the south-west of Winsford Town Centre. Within about 1km. of the site is a small convenience store in Vauxhall Way, the primary school on Darnhall School Lane and bus routes which pass along Glebe Green Road, Swanlow Way and Darnhall School Lane.

27. One field, which is about 2.0ha. (31% of the site area) in extent, is located within the township of Winsford, which has a made Neighbourhood Plan (NP). The other two fields, which are about 4.42ha. (69% of the site area) in extent, are located within the parish of Darnhall.

PLANNING POLICY

28. The development plan now comprises the CW&CLP P1, the WNP (in as much as its area affects the appeal site) and the saved policies of the Vale Royal Borough Local Plan (VRBLP) [CD 13/2]. The Council approved the CW&CLP P1 Strategic Policies [CD13/1] for adoption in January 2015. This followed its examination in 2013/14 and the publication of the Examining Inspector's Report on 15 December 2014 [CD13/3a]. The Inspector agreed a minimum net housing requirement for the plan period of 22,000 new dwellings (Policy STRAT 2) or 1,100 dwellings per annum (dpa). The parties agree that 9 of its policies are relevant to the determination of the appeal.

29. Policy STRAT 1 (Sustainable Development) seeks to enable development that improves and meets the economic social and environmental objectives of the Borough in line with the presumption in favour of sustainable development. As

well as setting minimum housing and employment development targets, Policy STRAT 2 (Strategic Development) requires development to be brought forward in line with a settlement hierarchy. Most of the new development is to be located within or on the edge of one of four towns, of which Winsford is one. Several key sites were identified, leaving further sites to be identified through the CW&CLP P2 and/or NPs.

30. Policy STRAT 6 (Winsford) says that the town will be a focus for development in the east of the Borough and that development proposals will help to support the continued regeneration of the town. Additionally, it indicates that at least 3,500 dwellings will be provided in the town.

31. Policy STRAT 9 (Green Belt and Countryside) seeks to protect the intrinsic character and beauty of the Cheshire countryside by restricting development to that which requires a countryside location and cannot be accommodated within identified settlements. It lists the types of development that will be permitted in the countryside. These include replacement and reused buildings and developments which have an operational need for a countryside location that is of an appropriate scale and does not harm the character of the countryside.

32. Other policies of the adopted plan relevant to the appeal are STRAT 10 (Transport and Accessibility), SOC 1 (Delivering Affordable Housing), SOC 3 (Housing mix and type), SOC 6 (Open space, sport and recreation), ENV 2 (Landscape), ENV 4 (Biodiversity) and ENV 6 (Design and Sustainable Construction).

33. The WNP [CD15/1] was made on 19 November 2014 following a referendum on 23 October 2014. These events followed its examination in May 2014 and the report of the Examiner dated 30 July 2014 [CD 15/2]. The housing policies of the WNP, amongst other things, indicate that permission will be granted for residential development on 24 sites set out in a table (totalling some 3,362 homes) and on previously developed land (Pdl) (Policies H1 and H2). Only a part of the appeal site is within the WNP area, but it is not allocated for development in the plan.

34. Some of the policies of the VRBLP remain saved following the adoption of the CW&CLP P1. Of particular relevance to the appeal is Policy GS5 (Open Countryside) [OR 17] which along with the VRBLP Proposals Map defines the extent of open countryside where Policy STRAT 9 of the CW&CLP and Policy GS5 of the VRBLP apply.

35. Policies BE1 (Safeguarding and improving the quality of the Environment), BE4 (Planning Obligations), BE21 (Renewable Energy), RT3 (Recreation and open space in New Developments), NE7 (Protection and Enhancement of Landscape Features) and NE8 (Provision and Enhancement of Landscape in New Development) are also considered to be relevant [OR 17 & 18. SoCG pg.10].

36. The Council has prepared the CW&CLP P2. This includes allocations, settlement boundaries and detailed policies. The P2 plan will eventually replace those parts of the VRBLP which are still saved. It was submitted for examination on 12 March 2018 and examined in September. Main Modifications have still to be published and the plan's adoption is not anticipated before the summer of 2019.

37. Relevant policies include Draft Policy W1(Winsford settlement area), against which there are unresolved objections concerning the land allocations and the location of the settlement boundary. Draft Policy DM20 (Mix and Type of New Housing Development) also has outstanding objections.

38. Draft Policy GBC2 (Protection of Landscape) is intended to replace VRBLP Policy GS5. Draft Policy DM19 (Proposals for residential development) includes assessment criteria for housing development in the countryside.

39. Supplementary planning guidance on affordable housing, developer contributions and landscape character are still in place [OR 21].

40. The Framework remains as the main expression of the Government's policies on achieving sustainable development. The document was revised in July 2018 and updated in February 2019. The revisions have resulted in a change of emphasis in some parts of the document. The supporting NPPG is continuously reviewed and updated. I will deal with the relevant changes later in this report.

OTHER AGREED FACTS

41. The main parties agree that the Appeal site is in a sustainable and accessible location. The centre of Winsford, where there are a wide range of shops and services is located approximately 1.5km. to the north east of the site.

42. The site has good accessibility for pedestrians and cyclists. There is an uncontrolled crossing point on Darnhall School Lane to the north east of the site that includes dropped crossings and tactile paving. This crossing links the pedestrian routes out of the site into the wider pedestrian network on both sides of Darnhall School Lane and beyond. In terms of cycle provision, regional cycle route 75 is carriageway based within the locality, with cyclists using lightly trafficked routes to the north and south of the appeal site.

43. The site is well connected by local public transport. The closest bus stops to the site are situated on Glebe Green Drive and are about 380 metres from the site's Darnhall School Lane frontage and around 540 metres from the middle of the site. There is a half hourly bus service in both directions to Crewe and Northwich, the latter via Winsford Town Centre.

44. Winsford railway station is within a 5km. cycle ride of the appeal site. The station is situated on the Birmingham to Liverpool line and provides services that stop at key destinations including Crewe, Stafford and Wolverhampton. The station offers potential opportunities for future residents to undertake employment related trips via rail.

45. In March 2017 the Council revised its open space standards. It is agreed that the required provision can be accommodated on the site. Indicative proposals are shown in Appendix 3 to the PSoCG. These substantially exceed the requirements.

46. The parties agree that the mitigation proposals to compensate for the loss of GCN Habitat meet the three derogation tests.

47. The Appellant and the Council agree that the appeal proposals will deliver the following benefits:

Economic Benefits

a) The creation of up to 370 temporary jobs in the construction sector, or up to 75 full time equivalent jobs over a 5-year period;

b) The creation of up to 184 additional households that would generate additional household spending in the local economy;

c) The support of around 22 additional permanent jobs in the local economy due to additional local expenditure;

Social Benefits

d) The proposals will deliver a choice and mix of up to 184 high quality dwellings, which comprises 2, 3, 4 and 5-bedroom dwellings in the form of mews, semidetached and detached properties;

e) The development would be implemented in a timely manner through a reduced time-limit condition for the submission of reserved matters that would also require the development to be started within 2 years from the date of the outline planning permission or 1 year from the date of the approval of the Phase 1 reserved matters, whichever is the later;

f) Up to 74 affordable housing units (40%) in the tenure mix that the Council has requested (50% intermediate housing and 50% social rented). That provision is 10% higher than the percentage that the Council seeks, and it is agreed that significant weight should be given to this in the re-determination of the appeal;

g) On site open space provision (including formal and informal public open spaces). The Indicative On-site Open Space Plan demonstrates that 12,281 square metres (sqm.) of on-site open space could be provided. This significantly exceeds the Council's adopted open space standards. These require only 5,080.40sqm. of on-site open space. The open space provision would take the form of high-quality linked open spaces that are easily accessible to both the proposed residents and the local community;

h) A financial contribution based on the Sports England Playing Pitch New Development Calculator would be provided towards the provision of off-site outdoor sports facilities and playing pitches, as well as a maintenance contribution;

i) A Parks and Recreation contribution of £828 per dwelling which could result in a maximum contribution of £152,352;

j) A 'Play Youth' contribution of £117.30 per dwelling which could result in a maximum contribution of £21,583.20 for a Non-equipped Area of Play for children of an older age;

Environmental Benefits

k) The site is situated in a sustainable and accessible location and the scheme is accessible in respect of bus, walking and cycling provision;

l) Accessible new spaces will be created which will be accessible to the local community;

m) New footpath and cycle links and enhanced connections to the wider public footpath network to include pedestrian and cycle movements;

and

n) The appeal proposals would conserve the natural environment and sufficient appropriate mitigation would be provided to ensure that there would be no detrimental impact on protected species. Furthermore, the creation and long-term management of four new ponds and associated terrestrial habitat off-site, to offset the loss of two small ponds of low biodiversity value on site, would result in enhanced habitat available to the local amphibian population.

MATTERS OF DISAGREEMENT

48. The matters of disagreement between the Council and the Appellant are:

a) The weight to be attributed to Policies GS9 of the VRBLP and STRAT9 of CW&CLP P1;

b) Whether the appeal proposals accord with the DP, when read as a whole;

c) The Council's deliverable 5-year housing land supply (HLS) position;

d) Whether the appeal proposals constitute sustainable development;

e) The weight to be attributed to the proposals for self-build housing, involvement of a small and medium sized employer (SME) local builder and the benefits to the local employment strategy and the local procurement strategy;

and

f) The mechanisms to secure the proposals for self-build housing, an SME local builder, the local employment strategy and the local procurement strategy.

THE CASE FOR DARNHALL ESTATE[2]

Introduction

49. The Appellant's case is not predicated on identifying a shortfall in the 5-years HLS. It relies on the fact that it is a proposal for housing on the edge of one of the four main towns in the Borough, where there is a minimum housing requirement of 3,500 and a pressing need for more affordable housing. This proposal is an innovative way to deliver both in a positive way that will assist in diversifying the housing offer at Winsford. All of this is within the context of the Government seeking to boost significantly the supply of housing.

50. Numerous appeal decisions show that there is no need to demonstrate a shortfall in HLS to secure a planning permission. These are set out in CDs/17. However,

[2] References to the Framework refer to the revised Framework July 2018 as the cases for Darnhall Estate and Cheshire West and Chester Council predates the updated Framework February 2019.

the Appellant believes that there is a shortfall in the 5 years supply. It considers the Council's supply figure to be inappropriately inflated for a variety of different reasons. A shortfall is of course both an additional material consideration which weighs heavily in favour of the proposal. And it is a route to triggering the tilted balance.

Five-year housing land supply

51. The parties disagree as to whether the Council can demonstrate a five-year HLS. The reasons relate to both the housing requirement for the 5-year period and the supply.

52. Ben Pycroft (BP)'s proof of evidence (PoE) at paragraphs 4.10 to 4.15 explains that the Council is not able to demonstrate a five-year supply in accordance with paragraph 74 of Framework 2018. The Council's figure should be *"produced through engagement with developers and others who have an impact on delivery and been considered by the Secretary of State."* The Council has not engaged in any such engagement with developers or others.

53. The Council has also failed to follow the guidance in the NPPG. This explains the need for LPAs to engage with stakeholders when preparing their five-year supply position statements at paragraphs 3-030, 3-047, 3-050 and 3-051. This has not happened at CW&C.

Past surplus

54. The Council's position is that there has been a surplus in delivery of some 2,192 dwellings since 2010. That figure is arrived at by comparing the requirement for the first 8 years of the plan period (2010-2018), which is a figure of 8,800 (8 x 1,100) with the supply over the same period, which the Council say is 10,992. Hence the Council say there is an oversupply of 2,192. This then leads the Council to claim that the annual requirement for calculating the 5-years supply is only 917 dwellings per annum. This removed 915 dwellings from the requirement over the 5-year period.

55. The Appellant asserts that one takes the annual figure of 1,100 dwellings per annum (agreed with the Council)[3] multiplied by 5 to arrive at the base requirement (before adding the agreed 5% buffer). Past surpluses should not be used to discount the future requirement. The Council's approach (the residual method) forms no part of present national policy or guidance. Indeed, it would seem a very odd approach to take in the light of the Framework's priority to boost significantly the supply of new homes[4], and especially when the Council's housing requirement is set at a minimum. If any 'carry forward' of historic over-supply was intended, the Government would have said so and used similar wording to that set out in paragraph 3-044 of the NPPG, which confirms that when there is a shortfall, it should be added to the five-year requirement.

56. The Council's suggestion that this approach gives rise to a "free-for-all"[5] is unconvincing. Each proposal that comes forward is judged on its merits. Whilst

[3] BP PoE paragraph 6.1 and BF PoE paragraph 6.4.
[4] Framework 2018, paragraph 59.
[5] Council's closing submission, paragraph 51.

the residual approach may have been appropriate Government Policy before 2,000, in the context of the current housing crisis and the acceptance that as a nation we are not building enough homes[6], it is no longer appropriate.

57. The Council's approach contrasts with its approach in is Annual Monitoring Report (AMR). The current AMR says that the annual net requirement remains at 1,100. Monitoring indicator STRAT 2(A) also measures annual net completions against a target of 1,100 net dwellings and indicator STRAT 2(B) measures net completions against a target of 5,500 dwellings over a five-year period. Neither measure makes provision for a requirement reduction based on over-supply [CD13.4, pages 37-39].

58. Beth Fletcher (BF) in cross examination (Xx) on Day 2 accepted that a delivery of 24,000, an amount over the minimum 22,000 set out in STRAT 2, would not be unsustainable. Added to which, the affordable housing needs have not been addressed over the past eight years.

59. The Council has referred to the Cotswold Local Plan Inspector's Report [CD18/10] . However, as BF explained in re-examination, 80% of the Cotswold District is restricted by being within an Area of Outstanding Natural Beauty (AONB). Providing a surplus there would be potentially problematic. CW&C has Green Belt. However, it amounts to nothing like such a high proportion of the Borough as to constrain the opportunity for exceeding the plan target, which is actually what the CW&CLP allows.

Communal Establishment and student accommodation completions

60. Since the Council engaged in this exercise of seeking to reduce their annual requirement to 917 dpa, the Appellant is bound to point out that what the Council has included in their surplus figure of 2,192 dwellings are 630 student units and 230 units in extra care residential institutions (C2). To be clear this is related to the Appellant's criticism of the Council's inclusion of such forms of development in their future 5-year supply calculation. But it is equally relevant to a claimed surplus, because the surplus itself is comprised of units derived from these forms of supply. The difference here being that the student accommodation and C2 uses form part of the completions, not the commitments.

61. This issue only arises if the Council's residual method is adopted and the surplus against the annual requirement in past years is deducted from the annual requirement. The need to consider the C2 issue here and the student accommodation point below (in terms of the housing requirement) is unnecessary on the Appellant's approach. But if the Council's approach is adopted, then completions were in fact 10,132 (860 lower) and the surplus should be reduced to 1,332. The difference between the parties relates to C2 (230) completions and student accommodation (630) completions.

62. 230 completions in respect of C2 communal care for the period 2010 to 2018 were wrongly included in the Council's completion figures. Paragraph 3.4 of the Housing Land Monitor (HLM) [CD13/5] states:

> *"The proposed revisions to the Framework suggest the inclusion of communal accommodation in the calculation of the housing delivery test. This type of*

[6] Housing White Paper, Foreword by the SoS (Feb 2017)

accommodation will be monitored through the Housing Land Monitor (HLM) process but will continue to be excluded from the housing completions and forecasting figures in accordance with the Local Plan (Part One)."

63. This was accepted by the Council's witness BF on Day 2 of the inquiry, albeit her view was that it had not been included in the first place. The Appellant does not think that is right. BP shows the sources of these in table 8.3 of his Proof of Evidence (PoE) on page 22. The difference between BF and BP is that some permissions have been included which the Council thought were C3 (dwellings) but in fact are C2. As such the Council's completions figure drops by 30 units to 10,762.

64. The Appellant's position is that 630 completions in respect of student accommodation should also be removed from the Council's surplus figure. These are shown on BP's Table 8.2 in his main PoE.

65. Much of what BP says about student accommodation being inappropriately included, in the Council's 5 Year Supply calculation, applies equally to the inappropriateness of including student accommodation in the Council's completion data: BP's PoE section 13 (pages 39 - 47).

66. The NPPG says that this is important to the requirement. Paragraph 3-042 of the Housing Land Availability Assessments NPPG (updated) in relation to 'How should local planning authorities deal with student housing' confirms that:

    "all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double counting."

67. The Council has not undertaken any such assessment to calculate the amount of accommodation that would be released into the housing market following completion of new student accommodation, as required by the NPPG. As such the Council has provided no evidence to the inquiry to demonstrate that any would be. The student accommodation completion figures should not form part of the completion data for the housing requirement in CW&C until such time as the Council can show development is releasing dwellings back into the housing market.

68. The issue of student accommodation was covered in the Tattenhall recovered appeal decisions[7]. The Inspector's conclusions in relation to student accommodation are detailed in paragraphs 300-304 of the report to the SofS (pages 73 and 74) [CD 17/3]. In those decisions the Inspector found that as the Council had provided no evidence that the student units would release housing, currently occupied by students, into the market, the student units should be removed from the supply.

69. For the reasons BP explains in his detailed analysis of this issue (PoE chapter 13), students seem to be occupying an ever-increasing amount of homes in Chester, especially in the Garden Quarter where the Council have resorted to banning the

[7] APP/A0665/A/12/2185667, APP/A0665/A/12/2188464 and APP/A0665/A/12/2180958 [CDs 17/3, 17/4 and 17/5].

conversion of houses to HMO through issuing Development Management Orders. BP's evidence shows the number of Class N properties in the Council Tax base data has been consistently rising (PoE Table 13.2, page 44). The evidence shows that a lack of student accommodation in Chester, which the University itself has noted[8], is being met by more homes being converted into student Houses in Multiple Occupation, not less. The University has in fact noted students securing lodgings as far away as Liverpool, Manchester and Wrexham: (BP PoE, para 13.22). The number of full-time students at the university has increased significantly in recent years (see Table on page 3 of BP's Rebuttal PoE). As Inspector Dakeyne observed, many students will come into Chester from elsewhere or will be merely freeing up a bedroom in a family home. BP addresses all of these issues in detail. Full time student numbers at the University are increasing. Consequently, the Council will find it very difficult to find evidence that the new accommodation is releasing housing back into the housing market.

70. Students are part of the wider population. Nevertheless, their housing needs are not to be treated as part of the housing requirement unless they are expressly dealt with at the time of the Local Plan. The extent to which they are included in the resident population can vary between different towns and cities. When assessing overall housing needs it is necessary to look at the extent to which they form part of the census population and also if their numbers are likely to change. CW&C did look at this issue but its consultants (Nevin Leather Associates) advised that student numbers would remain static (see BP PoE, para 13.10, page 41). That being so, the fact that full time student numbers have increased means that one cannot simply take purpose-built student accommodation off the completion figures when it is plainly addressing an unforeseen increase in student numbers.

71. The 630 student accommodation completions are recorded in the Council's completion data to arrive at their surplus. The Appellant removes the related 630 completions to arrive at its total completions figure of 10,132.

Supply

72. The parties disagree as to whether the Council can demonstrate a supply of housing to meet the five-year requirement. The main point of contention is whether the Council has the requisite clear evidence that the sites it includes are deliverable within the five-year period, and what exactly is required by clear evidence.

73. In relation to supply, Framework 2018 at paragraph 67 states:

> *"Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. Planning policies should identify a supply of:*
>
> *i) Specific, deliverable sites for years one to five of the plan period and*

[8] Nevin Leather Associates report 2012 [BP Ap.2C].

ii) Specific, deliverable sites or broad locations for growth, for years 6-10 and

iii) Where possible, for years 11-15 of the plan".

74. Paragraph 73 of Framework 2018 also states that local planning authorities should identify and update annually a supply of specific *"deliverable"* sites. Paragraphs 67 and 73 of Framework 2018 state that sites should be *'deliverable'*. *'Deliverable'* is now defined within the glossary as:

> *"To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years."*

75. The above definition in the glossary can be split into two parts.

    a) those sites that require the appellant/developer/promoter to adduce clear evidence to remove them from being considered deliverable. These sites, of under 10 units or those benefitting from a detailed permission, benefit from what might be called a presumption of deliverability.

    b) Secondly, for sites with outline permission, permission in principle, allocated in the development plan or identified on the brownfield register, the Council must provide clear evidence that housing completions will begin on site within five years. This list does not benefit from a deliverable presumption and such sites should not be included in the five-year supply until the Council provides the necessary clear evidence.

76. The definition was changed to remove, from active consideration, sites which do not have detailed planning permission. Other sites from the closed list can be included, but there is a need for clear evidence on delivery from such sites. The new definition is much more realistic than the previous one because there is often little prospect or certainty of an outline planning permission delivering completions within five years. That is because the conditions imposed on outline permissions often allow five years or more even for just a material commencement (i.e. no actual completions or delivery). Reserved matters can often take a long time to agree, often out-with the five-year period. Added to this, reserved matters applications can be refused and the yield from sites can often be changed.

77. Regarding allocations, where there is no outline permission, the prospect of delivery within five years is even less likely. One does not know when the application will be submitted, how long the negotiation of the planning permission will take and what the conditions will say about the amount of time, which will be

allowed for the submission of reserved matters, other conditions etc. Sites which are not even allocated and have no permission should not be in the supply at all.

78. The NPPG was updated on 13th September 2018. Paragraph 3-036" *what constitutes a deliverable site in the context of housing policy?"* provides examples of what form clear evidence may take and whilst not a closed list, it is indicative of the level and strength of evidence required by the Council.

79. The Appellant's case in relation to "*clear evidence*" is that the Council cannot demonstrate this for the vast majority of the sites with outline planning permission. Most fall far short of the required evidential hurdle and in consequence they should be removed from the supply. The *"Council has not come close to discharging the burden to provide the clear evidence that is needed for it to be able to rely upon such sites"* which was the approach taken by the Inspector in the Woolpit decision at para 68, [CD 17/12].

80. The disputed elements within the Council's supply cover six categories. Three relate specifically to individual sites. The quantum and sites in dispute are all set out in the HSoCG. In total there are 1,854 dwellings in dispute in terms of the 5-year supply.

81. The Appellant's position in relation to the three categories of site is that none should be included within the Council's housing land supply. That is because none of them can be considered to be deliverable within the relevant 5-year period under the new Framework definition.

82. Sites under categories II (non-allocated sites without permission) and III (small windfall allowances) are not sites where the Council can demonstrate clear evidence that completions can be delivered on-site within five years.

83. For the avoidance of any doubt, the concept of a small site windfall allowance is not covered by the second sentence of the definition of deliverable. Sites that are not major development (i.e. sites of 9 units or less) can be included in the supply, but only if they have planning permission. Windfalls do not fall within that category.

84. A roundtable session was held on day 1 of the inquiry in respect of HLS. At no point in respect of any disputed site in categories I and III did the Council provide any documentary evidence, of the type suggested by the NPPG or at all, to support the deliverability of each site in these three categories. The Council offered oral evidence on some matters, but they produced not a single letter, email or SoCG to support it.

85. The Council offers no SoCG signed by a developer or anything similar. The Council does not have the necessary evidence suggested in the NPPG to support delivery on sites without detailed permission. At the same time, it relies upon evidence obtained after the base date, so its own case is not predicated on that being a hindrance. In reality the Council will not be able to obtain the necessary evidence until the next Annual Monitoring Report (AMR) and Housing Land Monitor (HLM). The new policy and guidance in the Framework and NPPG respectively require certainty in evidence. The Council simply does not have that evidence at the moment.

Allocated sites or sites with outline permission – (300 dwellings).

86. The Appellant now disputes 300 dwellings across six sites. The starting point for these disputed sites (outlined in chapter 14 of BP's PoE) is that they are not to be considered deliverable unless the Council adduces clear evidence. They are one of the four categories detailed in the closed list in Annex 2 of Framework 2018.

87. The Appellant's submissions in respect of all six sites is that the Council has not adduced sufficient evidence in relation to any of the sites to provide the clear evidence required. Their approach was strikingly similar to that of Welwyn Hatfield Borough Council at the recent Woolmer Green inquiry[9], with only verbal updates forthcoming, entirely unsupported by any documentary evidence. The inspector at that inquiry found the Council's evidence fell "*well short*"[8] of what was required. One has to ask why these verbal updates which BF provided were only verbal. One must assume if the relevant developer had been contacted, then they were simply not willing to commit what they were saying to writing.

88. Ledsham Garden Village (28 units) – no documentary evidence was forthcoming from the Council and reliance was placed by BF on '*intelligence*' received from a housebuilder, however this "*intelligence*" was not put before the inquiry in part or at all in any form which could be read, examined, scrutinised or tested in any way whatsoever. To a lawyer such evidence is usually dismissed as pure hearsay. These 28 units are in phase 6 of the development, the outline permission for which included a condition (condition 2) that states that all reserved matters do not need to be made until 24th July 2025, extendable by a further 8 years.

89. Rossfield Road Phase 5 (70 units) – There was no evidence before the inquiry regarding when reserved matters would be submitted, what they will include or when commencement would take place. Outline permission was granted just three days before the base date and as such completions should be expected post the 5-year period.

90. Lyndale Farm (24 units) – There has been no application for reserved matters and the submission of the construction management plan is a fairly simple act from the developer and is not clear evidence of the strength suggested in the NPPG.

91. Former Delamere Forest School (16 units) – Despite an application for reserved matters having been made, this was after the base date and is pending determination.

92. Land at Oakmere Road (24 units) – There has been no application for reserved matters and no clear evidence submitted by the Council to show that this site is deliverable.

93. Land at Wrexham Road (138 dwellings) – The site does not have planning permission but is allocated in the LP. The first application was made in June 2017 and a further full application and an outline application were made in December 2017. None have yet been determined. The phasing plan considers a construction period of over 14 years. The Council's verbal evidence was simply

[9] APP/C1950/W/17/3190821 and as set out in the PoE of BP at 4.35-4.38, and [CD 17/12].

that a case officer had been assigned and it would be taken to the committee "*next year*" but that it had been pushed back to "*deal with and sort issues*"[10]. Again, this is wholly insufficient.

Non-allocated sites without planning permission – 282 units

94. As explained in BP's PoE (pg19), the base date is a cut-off date. Whilst the previous NPPG indicated that sites without planning permission should automatically be considered deliverable, this is no longer the case. These sites are not contained within the closed list within the definition of *'deliverable'* and as such have a lower planning status than the previous category.

95. The Council has provided nothing by way of *'clear evidence'* for these sites, which are for reasons explained above problematic as a category anyway. Without planning permission, it is difficult to know when they will be delivered as one cannot even have sight of the conditions which will determine the timescale by which the permission is to lawfully come forward. None of these sites can be included in the supply.

96. The largest site within this category and touched upon during the round table session is Winnington Business Park (88 Units). It took the Council a year to determine the outline application, approval of which occurred after the base date[11].

97. An application for reserved matters is required to be made before a period of three years after the decision date has elapsed. This could be as late as 20th July 2021. That is just for the submission of the reserved matters. Lawfully, material commencement need not take place until after 2023. There is no evidence as to when completions will begin.

Small Windfall Allowances – 230 units

98. Paragraph 70 of the Framework 2018 provides:

    "Where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends".

99. Section 17 of BP's PoE deals in detail with the issue of windfall allowance. The Council's approach to this issue is simply to rely on past trends to support its windfall allowance. Past trends reveal that 122 dwellings could be expected to be delivered each year on small windfall sites (i.e. 610 dwellings over the five-year period). However, 620 dwellings on small sites with planning permission are already included in the supply. Therefore, by including a further 230 dwellings (i.e. 115 dwellings per year in years 4 and 5), this would mean delivery well in excess of past trends.

100. The Council includes all small sites without applying a lapse rate at all. That is not remotely credible because small sites lapse all the time. Additionally, some

[10] BF on day 1 of the inquiry.
[11] Decision Notice issued on 20th July 2018

small site permissions, such as a house or a bungalow proposed in the applicants own back garden (often known as retirement houses) can be repeatedly renewed because the applicant is not yet ready to move out of the main house. Such sites may be saved by modest implementation (i.e. they are not part of a non-implementation allowance). They are instead part of a non-delivery allowance. It is wholly unrealistic to assume that all of the 610 dwellings on the small sites will come forward in the 5-year period and then to add on top of that an extra 230 units from additional small sites. The past trend data does not support what the Council are doing and yet that is what the Framework requires.

101. The Inspector's decision in the appeal at Longden Road, Shrewsbury[12], in circumstances such as this was that the windfall allowance should be removed, and the same approach is encouraged to be followed here.

Demolitions and losses – 167 units

102. The Local Plan Part 1 is explicit in recognizing that the 1,100 dwellings to be achieved each year must be a net figure[13] and that therefore a gross delivery figure, which is higher, needs to be achieved. The Local Plan at para 5.21 actually refers to a gross figure of 1,150. The 1,100 needs to be achieved after having made an allowance for demolitions and losses.

103. BP has not simply stuck to the 1,150-gross figure in the plan. He has looked at the actual level of demolitions and losses which have taken place. This is lower than the evidence of 50 dpa which the Local Plan Inspector had before him. BP has therefore accepted that the trend in demolitions and losses has reduced since then. The 50 dpa figure was trend based at the time of the Local Plan. And the figure of 39 dpa now relied upon is similarly so.

104. The HLM report[14] details the demolitions and losses on an annual basis. This sums to 315 for the previous 8-year period, an average of 39 per annum. The figure included for the 5-year period by BP is 195 (39 p/a x 5 years), carrying forward the actual average of 39 dpa demolitions from the previous 8 years into the future 5-year period. BP's figure of 39 is therefore entirely trend based.

105. The table at Appendix 4 of the HLM does not record demolitions or losses as high as this. It simply identifies 28 demolitions which are expected to take place within the next 5-year period, and which are included within the Council's supply figure. As such, whilst BP's evidence of past trends suggests demolitions of 39 units p/a, giving rise to a total of 195 to be included over the five-year period, he gives credit for the 28 included in the Council's figures: 195 minus 28 = 167. Consequently 167 units should be deducted from the Council's five-year supply figure.

106. This same argument was advanced by BP at the Tattenhall appeals and was endorsed by the Inspector. There was nothing within the subsequent SoS report that suggested any departure from that Inspector's conclusions on the matter of demolitions.

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[12] APP/L3245/W/15/3011886 at paragraph 40 (BP PoE paragraph 17.16).
[13] Local Plan Part 1, paragraph 5.21, last sentence of the paragraph.
[14] HLM report appendix 2, at page 24 and table 4.2 on page 10.

Student accommodation – 430 units

107. As recorded above, BP's PoE at chapter 13 deals with this issue in detail (pages 39 to 47). Student accommodation can only be included within the Council's supply if they are able to demonstrate the amount of housing released into the market. They are not able to do that, not least because the Council have not undertaken any exercise to show this. They have no evidence that a single dwelling will be released into the market, as a result of the student accommodation to be built.

108. In reality this may be difficult to achieve anyway. The number of full-time students increased by 2,265 between 2010/11 and 2016/17 (26.8%), (see the table on page 3 of BP Rebuttal PoE). In the most recent year for which there is data (2016/2017) there was an increase of 610 units. For full-time student numbers to have grown by over a quarter in that period is a very large increase.

109. There has been a corresponding decrease in the number of part time students. However, such students' accommodation needs are very often different. They often live at home and combine their academic studies with a job or other commitments, such as caring. Full time students in contrast are much more likely to need accommodation. The University of Chester itself is aware of this as set out in the Nevin Leather Associates report of January 2012. This states that

> *"part-time students tend to remain in their existing homes, and many travel from outside of the City to study. The great majority of part-time students are unlikely to change their living arrangements in order to study"* (BP Rebuttal PoE, page 3, para 2.9).

110. The University of Chester is not the only further educational institution in Chester. Many solicitors train for their Legal Practice Course in Chester. The College of Law is now known as the University of Law in Chester. There are other FE institutions in the Borough as well. All of this adds to the increasing presence of students in the Garden Quarter (Chester) of which the Council is only too aware because some existing permanent residents are unhappy about this, hence the Council has been forced to restrict the conversion of houses to HMOs.

111. The Council tried to downplay the growth in full-time students by seeking to show that the University is located in a variety of different locations. However, the University's own documents show that around 60% of its students are based in Chester[15].

112. Much emphasis was placed at the Inquiry on the new campus at Shrewsbury, which being in Shropshire is outside of the Borough. This is however a new and very small part of the University. The in-take last years was around 170 students, which was said to be its biggest intake (BP Examination in Chief (XiC)). On that basis the earlier years must be smaller. It is but a small satellite campus. This position was endorsed by Inspector Dakeyne in the previous decision for this appeal and in the Tattenhall appeals decisions. The evidence presented to them was that student numbers would increase at the University such that the new accommodation, that is being built, would simply absorb the

[15] Background of Assessing demand for purpose-built student accommodation in Chester, University of Chester, August 2014: BP PoE, Ap EP 2D (pg2 first para)

additional numbers of students or those who at the moment are unable to find accommodation in Chester. For those reasons, the Appellant removes all 430 units in relation to student accommodation from the Council's supply.

Build rates and lead times – 505 units

113. The Appellant's challenge to the Council's suggested build rates and lead-in times results in a deduction of 505 dwellings from the Council's supply (S16 of the PoE of BP (pg.64 onwards)). To be clear all the Appellant has done is rely on the rates the Council itself has suggested in the HLM, or on empirical evidence.

114. In relation to the Ledsham Garden Village site, BP has applied a build rate based on the empirical evidence as to what was the actual build out rate achieved on an earlier phase on the site i.e. 66dpa. This is important because Ellesmere Port is not a strong housing market and local factors are relevant to what sales rates can be achieved there. The Council officers seek to distance themselves from the tangible, empirical evidence and instead base their projection on supposed intelligence from the housebuilder. There is no proof that the 140dpa. in years 3 and 4, are achievable on the site. BP applied the same consistent approach for the site at Grange Farm. Again, the Council provided no evidence to the Inquiry in any written or tangible form.

115. In relation to the former British Gas and Part of the former Gulf Oil sites, the Council has provided no evidence as to how their delivery rate has been calculated, save that they have departed from the standard method and assumptions for calculating this, as contained within their Housing and Economic Land Availability Assessment (HELAA) 2017 [CD13/6]. BP has applied the standard method and HELAA assumptions in his calculation.

116. In all cases, in relation to the build-out rates, the Council has failed to provide any documentary evidence to support their case or justify why it departs from its own standard method and assumptions. The 'email' highlighted by BF in relation to the Station Quarter, which suffers from ground conditions problems and fractious land ownership, was not provided to the inquiry.

Conclusion on Five Year Supply

117. The Council's approach suggests a five-year requirement figure of 4,815 dwellings, which is an annualized figure of 963 dpa. The Council's final supply figure is 7,277. This gives rise to a supply of 7.56 years [16].

118. The Appellant's approach is different. The Council's requirement for the 5-year period from the base date of 1st April 2018 is 5,500 (5 x 1,100 annual requirement). A 5% buffer is then applied (275 units), which means that a supply of 5,775 dwellings must be demonstrated. That gives rise to an annualized figure of 1,155 dwellings[17].

119. The Appellant's supply figure is 5,423[18] following removal of 1,854 units from the Council's supply. On that basis, the Council are unable to demonstrate a

[16] SCG on 5YS, dated 23 November 2018, third table under para. 3.15 on page 7, lines F- I.
[17] SCG on 5YS, dated 23 November 2018, first table under para 3.15 on page 7.
[18] SCG on 5YS, dated 23 November 2018, second table under para 3.15 on page 7, line G.

deliverable 5-year supply of housing land, having just a 4.69 years supply[19]. The inspector at Nether Peover, highlighted the fact that because the 5-years supply is a minimum requirement, then even a shortfall of 150 homes in Cheshire West should be seen as significant (BP PoE, Ap EP 1D, para 35). That approach seems particularly apposite when one is talking about a minimum on a minimum (i.e. a minimum 5-years supply requirement, based on a minimum LP requirement of "at least 22,000"). In the conjoined Tattenhall inquiry, the Inspector found a very modest shortfall.

120. As such, footnote 7 of the Framework 2018 is brought into play and the tilted balance in paragraph 11d is triggered in favour of the application. This is a second route to the tilted balance in addition to the fact that Policy GS5 is out of date.

The Statutory Development Plan

121. The starting point for the determination of this appeal is the DP. That is now,

a) CW&CLP P1, adopted on 29th January 2015;

b) The WNP, made on 19th November 2014;

and

c) The saved policies of the VRBLP First Review Alteration, adopted in June 2006, (specifically Policy GS5).

122. The primacy of the DP in decision making is reiterated at paragraphs 12 and 47 of the Framework. With regards to the specific weight to be attached to existing DP policies, paragraphs 212 and 213 state that due weight is to be given to relevant policies according to their degree of consistency with the Framework from the day of its publication.

123. The Framework (2018) states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework (para 213). The closer a policy in a plan is to the policies in the Framework, the greater the weight that may be given. However, Lord Carnworth in his Supreme Court judgement reminds us that both a policy from a plan which is beyond its end date and a policy based on out of date housing requirements are out-of-date [CD 16/8].

124. As such, it follows and is accepted that should any of these policies be found to be *'out of date'*, then the titled balance within paragraph 11d) of the Framework 2018 would be applicable.

Conflict with the DP

125. It is important to note that it is a plan-led system not a plan-dictated system. A DP provides the opportunity to set spatial strategies, set minimum housing targets, remove land from the Green Belt and to allocate sites (which is especially important for large sites where developers need certainty). However,

[19] It is right to record that these figures do vary from the proofs of evidence as both parties have sought to adjust their figures following discussion on the HSoCG. It is the figures in the HSoCG of 23 November 2018 which are to be relied upon.

plans are not the last word on everything that should come forward. That would be a misunderstanding of what is meant by a plan led system. The second sentence of paragraph 12 of the Framework (2018) needs to be read in that context. Critically, the last sentence of that paragraph reverts back to the statutory test.

126. A plan-led system is also not a system where only allocated sites are required or receive permission. The Planning Inspectorate granted planning permission for 30,000 dwellings in 2017. Many will have been on unallocated sites. Without these important sites coming forward, the housing crisis would be even worse than it is already. Planning applications and appeals on non-allocated sites are vitally important to the system.

127. CW&CLP P1 Policies STRAT 9 and H1 and VRBLP Policy GS5 were considered by Inspector Dakeyne to be the dominant policies, as per paragraph 11d) of the Framework 2018, for the purposes of determining this appeal. This is agreed by both parties having been accepted by Jill Stephens (JillS) on day 3 of the inquiry.

Cheshire West and Chester Local Plan (Part One)

128. The proposal is largely consistent with the CW&CLP P1[20]. This includes the fact that the proposal is consistent with Policy STRAT 6 which is the policy for Winsford. The conflict with the LP is predominantly focused on Policy STRAT 9[21]. This restricts development to that which requires a countryside location and cannot be accommodated within identified settlements.

129. The opening line of the policy sets out that its aim is to protect the intrinsic character and beauty of the Cheshire countryside. This policy goes beyond and is more restrictive to development than the Framework, as JillS accepted in Xx. Although the policy was found to be sound at examination, the Framework 2018, which postdates Policy STRAT 9, at paragraph 170 b) does not go as far as stating that the intrinsic character and beauty of the countryside is to be *'protected'* as Policy STRAT 9 does. A less restrictive bar is set, in that it should be *'recognised'*.

130. This is an important distinction and a deliberate drafting difference within the Framework 2018. As such and in accordance with paragraph 213, Policy STRAT 9 is not consistent with the Framework 2018 and is out of date, triggering the titled balance within paragraph 11d).

131. The importance of the distinction between recognised and protected is well explained and was addressed by the Inspector in an appeal decision for a site at Cornerways, High Street, Twyning, Tewkesbury at para. 7-17 [CD17/43]. However, the later Court case of Cawrey Limited[22] does suggest that even under the Framework, the countryside does enjoy a degree of protection. Nevertheless, that is not the same as giving it outright protection.

132. The fact that the policy is not consistent with the Framework, diminishes the weight that can be given to it, reducing in parallel the magnitude of any conflict

[20] PoE of JonS.
[21] CD 13.1 pg.41.
[22] Cawrey Limited v SSCLG (2016) EWHC 1198 [CD11/3].

with it. The Council says that the conflict should be given full weight, but for a policy that is not consistent with the Framework, this cannot be the case. It must only attract reduced weight. However, to be clear, Jon Suckley (JonS) in his PoE has looked at the planning balance in circumstances where this argument is not accepted.

133. Policy STRAT 1 concerns sustainable development. In para. 3.5 of her PoE, JillS states that the proposal should support sustainable development principles set out within the policy: one such principle being to minimise the loss of greenfield land[23]. However, this is not an embargo against the loss of any greenfield land and as such the loss of greenfield land would not be contrary to this policy. If that was what was intended the drafting would have said so.

134. Policy STRAT 1 does not include a checklist of rules, mandating that all items be 'ticked off', but instead contains more flexible 'principles'. The PoE of JonS, at chapter 7, deals entirely with the topic of sustainable development, concluding at para.7.23 on pg.32 that the proposal will deliver benefits in all three objectives of sustainable development in accordance with Framework 2018 para.8. The section below, in relation to sustainable development, outlines the same and why there is no conflict with Policy STRAT 1.

Winsford Neighbourhood Plan ("WNP")

135. The WNP was made over four years ago. Only about 2 ha of the application site, the northern most field, falls within the remit of the WNP, equating to roughly 50 homes. The remainder of the site, approximately 4.5 ha cannot be said to be in conflict with the WNP in any shape or form as it is not within the WNP area.

136. Similarly, any conflict suggested with Policy H1 of the WNP cannot be levelled against the application as a whole, it can only exist against 31% of it, which in turn must reduce the weight of any conflict, if found. However, more importantly Policy H1 of the WNP does not contain a cap on development. This was accepted by the Council's witnesses repeatedly throughout the Inquiry. The examiner's report [CD 15/2] also confirmed this at paras 3.13 and 3.18.

137. Consequently, the housing requirement and allocation within the WNP is not a preventative ceiling to additional development. JillS accepted on Day 3 of the Inquiry that the wording within Policy H1 permits additional development over and above that allocated.

138. When the WNP was still in draft, but at the same committee as the Appellant's proposal, the Council itself granted planning permission for sites outside of the Policy H1 allocations and settlement boundaries, most notably at Swanlow Lane[24].

139. The Council's case focuses on the need to limit development in Winsford to the allocations made in the WNP. However, the allocations (3,362) do not add up to the LP's requirement (Policy STRAT 6). This requires at least 3,500. More housing is consequently needed at Winsford than just the WNP allocations.

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[23] STRAT 1, bullet 6.
[24] JonS at para 13.16.

140. Mr Wood and the Council suggest that the WNP examiner rejected the site. However, this was not a LP examination. One needs to read the relevant paragraphs of Dr Mynors report accurately [CD 15/2], with care and in context. The Examiner was careful to say that he was not assessing the suitability of any particular site (para 3.29) and he made clear that he had a limited role as an Examiner (para 3.54). Whilst he had no reason to disagree with the Town Council's reasons for rejecting the site, he was plainly very mindful (and recorded the fact) that the Appellant was expecting to receive planning permission and the Borough Council were not opposing the site (para 3.50). He also made the very important point that sites can come forward, which are not in the plan, based on other material considerations (para 3.47).

141. One also needs to look at the context of the WNP itself. It was actually prepared against an intended housing figure for the Borough of just 21,000 new homes (see para 2.1.19 of the WNP). One thousand homes less than the LP actually requires.

142. Furthermore, a full investigation of the plan's housing allocations (which did not take place at the second inquiry) has revealed that 1,224 of the dwellings in the plan had permission before the plan was made. Additionally, there are delivery problems at the main location for development at the Station Quarter. That context is important because it suggests that despite the WNP having been made 4 years ago, it is not actually providing much assistance in meeting Cheshire West's housing needs. The lack of delivery at Winsford compared to Chester and Northwich suggests that there are real problems with delivery at Winsford.

143. The Council's case has evolved into suggesting that the proposal conflicts with the themes of the WNP. However, it is genuinely difficult to see how the proposal offends these when the proposal is similar to other housing proposals at Winsford. For example, the proposal will bring in new households and they will support the town centre, just as the allocations will do (see Theme 1, on pg.17 of the WNP). Added to which, the proposal will in fact assist in promoting some of the objectives of the WNP, such as the objective to create a variety of employment opportunities where initiatives to develop skills are proposed (WNP pg43). The training and employment obligation or condition, proposed by the Appellant will plainly do just that. In line with observations from the Inspector, the Appellant has sought to make that more localised with 20% of those employed needing to come from Winsford or the surrounding parishes.

144. The suggestion that the proposal is not in a gateway location was also easily dismissed by JonS in both Xx with regard to site W5 and in re-examination with regard to site O3. If anything, the appeal site offers more of an opportunity to create a gateway than either of these sites.

145. The Borough Council is careful to suggest that it was the view of the Town Council that the proposal offended the vision of the WNP. In truth, there is no conflict with the vision.

146. The Crane case suggests that the WNP needs to be read as a whole[25]. However, the Tesco case decided that all policies in the DP need to be read in their proper context[26]. This was reiterated and made clear by Lord Carnwath at para 63 in the Suffolk Coastal/Richborough Estates case[27]. The fact the WNP Examiner made clear that the allocations were not to be seen as a cap is a critical part of the context here. It would therefore be wrong to read into this plan, any suggestion that other sites cannot come forward.

147. In any event, the WNP was made on 19th November 2014 and allocated 3,362 homes (WNP page 46). However, following this on 25th January 2015, the CW&CLP P1 was adopted, and its policies take precedent[28]. This included the aim of 3,500 new homes being delivered at Winsford over the plan period.

148. For the reasons outlined above, the WNP is not delivering new homes in the numbers required. It allocates less than the Local Plan, which post-dated it and windfalls have not taken it above that. All the more serious because the Local Plan figure for the town is expressed as a minimum. Over one third of the dwellings in the plan already had planning permission by the time the WNP was made. A second third, at the main development location in the town (the Station Quarter), are simply not coming forward.

Vale Royal Borough Local Plan saved policies

149. Policy GS5 is the only saved policy of this plan that the proposal is stated as being in conflict with [CD 13/2]. It relates to development within the open countryside (pg 18). The policy is out of date because it is from a plan which only addressed development needs up until March 2016. More importantly it is based upon strategic housing and employment policies which are plainly out of date. This matter was considered in paragraph 63 of the Judgment discussed above[26].

150. The Daventry case[29], relied upon by the Council, relates to the guidance in the old Framework. It relates to a situation where the Inspector simply accepted that the policy was out of date without considering the extent to which the housing requirement in that plan was based on out of date housing requirements. That is what the Inspector did in the Cheshire East/Richborough appeal. The Supreme Court supported his approach. That case post-dates the Daventry case on which the Council rely.

151. Policy GS5 is retained simply as a 'stop gap' to prevent a 'policy vacuum' from occurring if it were to be removed. It will be removed when the CW&CLP P2 comes forward. The settlement boundaries proposed in P2 of the LP do not match those within GS5, further evidencing the out-datedness of GS5. The Council cannot suggest the policy has little relevance in the light of Policy STRAT 9. The fact is the Council need Policy GS5 to show where the settlement boundary is located. In granting permission for lots of sites beyond the Policy

[25] Crane v SSCLG (2015) EWHC 425 [CD16/3].
[26] Tesco Stores v Dundee (2012) UKSC.
[27] Suffolk Coastal DC v Hopkins Homes: Richborough Estates v Cheshire East Council (2017) UKSC 37 [CD16/8].
[28] Section 38(5) TCPA and NPPG Neighbourhood Planning, Paragraph: 084 Reference ID: 41- 084-20180222
[29] Daventry BC v SSCLG & Gladman Developments (2016) EWCA 1646 [ID 38]

GS5 boundary in Winsford, the Council have plainly not seen that boundary as a hindrance and must have given it reduced weight.

152. The Council's professional planning officers in their report to committee on 21 November 2013 [CD2/2] gave Policy GS5 reduced weight, correctly so, and stated it to be more restrictive than the Framework 2012, as was then.

153. The settlement boundaries contained within Policy GS5 have not prevented the Council from themselves granting planning permission for sites that sit outside of them and so it cannot be said to preclude such development. JillS accepted as much in Xx on day 3.

154. The Council made clear on Day 1 of the inquiry that Policy GS5 is to be viewed as an important policy. It is nevertheless plainly out of date. Consequently, the tilted balance is triggered through this alone, regardless of the 5-year supply issue.

Development plan conclusions

155. In relation to the policies most important for determining the application;

a) Whilst there is conflict with Policy STRAT 9 of the CW&CLP P1, this policy cannot be afforded full weight as it is more restrictive than the Framework 2018. In particular, it is not consistent with para 213. As such, the impact of any conflict with Policy STRAT 9 is reduced. Even if it is given full weight, it does not stand in the way of granting planning permission as Inspector Dakeyne's recommendation made clear.

b) Policy STRAT 1 of the CW&CLP P1 does not contain a mandated checklist of obligatory requirements. It is a flexible list of principles or desires. Loss of greenfield land is not embargoed within STRAT 1 and the proposal delivers on all three sustainable development objectives (see para. 204 below). The appeal proposal as such does not conflict with this policy.

c) Policy H1 of the WNP, does not set a maximum figure or a cap on development, this was outlined by Dr Mynors at the examination and is accepted by all parties. There is no conflict with this policy. However, even if there is, this policy does not stand in the way of granting planning permission as Inspector Dakeyne's recommendation made clear.

d) Finally, saved policy GS5 of the VRBLP is out of date. It is based on out of date housing requirements. Being out of date it triggers the tilted balance within paragraph 11d) of the Framework 2018 and permission should as such be granted unless any adverse impacts of doing so would significantly or demonstrably outweigh the benefits, when assessed against the policies in the Framework 2018 taken as a whole.

The benefits of the proposal

156. There are multiple benefits. These include the delivery of new homes to address the shortfall in the 5-year supply, the delivery of much needed affordable housing (AH), the provision of self-build housing, and the economic benefits of the proposal.

157. These are not to be treated as neutral. The point is well explained by the Inspector in the very recent appeal at Land East of Park Lane, Coalpit Heath [CD 17/13], who said at para 61 that:

> *"There are three different components of the housing that would be delivered: market housing, affordable housing and custom-build housing. They are all important and substantial weight should be attached to each component for the reasons raised in evidence by the appellants, which was not substantively challenged by the Council, albeit they all form part of the overall housing requirement and supply."*

Small and Medium Sized Local House Builders

158. The proposal will deliver up to 92 market homes at a time when the Government has enshrined its objective of *"significantly boosting"* the supply of homes within national policy[30].

159. The benefit of these market homes is substantial, simply on the basis of a national housing crisis, but is increased on the Appellant's case where the Council cannot demonstrate a five-year supply of housing land. However, the Appellant's case does not live or die by the presence or not of a five-year supply, as many appeal decisions have seen permission granted in circumstances where the Council can demonstrate a 5-year supply of housing land[31].

160. The critical feature in terms of market housing is that the proposal is to be built specifically by small and medium sized builders from Cheshire. The Government's desire to support local housebuilders who mare Small and Medium Sized Employer(s) (SME) is well documented [CD 12/10]. There is an increasing awareness of the important role that they can play in helping to address the national housing crisis, the government has encapsulated this within national policy at paragraph 68 of the Framework 2018. This accords with the aims and desires of Government, something not lost on the Inspector at the Lydney appeal[32].

161. Further, the Lyons Review [CD 9/12] has identified the over reliance placed on large-volume, national house builders as one of the two main contributory causes for the housing crisis.

162. The Appellant has provided four letters from local SME building firms; Apex, Cruden, Garratt and Moorcroft. These explain the difficulties faced by such SME firms when competing against national housebuilders and outline the lack of suitable sites locally. All four express their interest in the appeal site and the proposal. These are real words from local, real builder SMEs, the exact businesses that the local approach of this proposal aims to assist. For these reasons the local SME builders' provision, to be secured through a legal agreement, should attract significant weight.

163. The Appellant also plans to implement a local training and employment strategy, to be approved by the Council prior to the commencement of

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[30] Framework 2018 paragraph 59
[31] Appendix 18 to the PofE of JonS
[32] APP/P1284/13/OUT Land off Driffield Road, Allaston Road, Lydney, Gloucester

development, delivering localised benefits to the peoples of Winsford in the form of new skills, qualifications and careers. It should attract significant weight.

164. A very similar 'local approach' to the one offered here was put forward by the Appellants in the Lydney appeal. The SoS ultimately concluded that the benefits of this were significant enough to outweigh the conflicts with the development plan.

165. Following the concerns that the SoS had about the conditions used previously, the Appellant has sought to promote these local aspects of the proposal by way of a planning obligation. That was the successful approach taken by the appellant in the Lydney case.

166. The Appellant was content with conditions last time, as it would be this time as well. The Council officers prefer them as they believe conditions are easier to enforce in the event of a breach. However, having seen the Lydney decision approved on the basis of ensuring its 'Local Approach' was made legal through a planning obligation, the Appellant is reluctant to not make that the preferred mechanism now in this case.

167. Given the obligation (or condition) for the market housing to be built by a local SME builder(s), there is no real need to have a local procurement obligation (or condition). They will inevitably obtain a high percentage of their employees and material from the local area. That is why the Appellant agreed to its removal from the list of draft conditions.

Affordable Housing (AH)

168. At the heart of the Framework, is the government's objective to significantly boost the supply of homes of the right size, type and tenure (para 59 and 61). The Appellant contends that there is incontrovertible evidence of the need for significantly more new housing nationally, particularly affordable housing, given the existence and extent of the national housing crisis.

169. JonS's evidence at S8 suggests that many of the affordability indicators are now worse than in 2015. Affordability has worsened and so have housing waiting lists. Consequently, he rightly describes a graver more serious problem meriting an enhanced weight to this crucial benefit. The Council considers this to be part of a wider problem. However, the lack of a 5-year supply is a local manifestation of a more systemic problem. As the Inspector set out in the Ludlow case at para 40 page 9:

> *"whilst the LPA is able to demonstrate a deliverable five-year supply of housing sites based upon its requirements set out in Policy CS1, this is not a limit: there is an acute housing shortage in England. It is recognised in National policy that the government anticipates a significant boost to the supply of housing. In this respect, the provision of any extra housing to this national shortfall is a benefit in favour of the proposal, including both market and affordable housing"* [CD17/33].

170. The proposal will make a substantial contribution towards meeting the general housing needs in the area in accordance with the requirement placed upon local planning authorities to provide for the full objectively assessed housing needs of the area. The 2013 SHMA [CD13/8] sets out a requirement for 714 affordable houses per annum.

171. The problems of unmet housing need and delivery problems do not just beset market housing or general housing need. There is a particular problem in this Borough with affordable housing and Custom/Self-Build housing. As Cllr Hooton (Chairman of Planning – Winsford Town Council) explained, social housing has posed problems for Winsford over the years. He advised that the Town Council want to see more social housing from the Council and social landlords. The affordable houses proposed will be transferred to and managed by a Registered Social Landlord exactly how Cllr Hooton wishes.

172. The Council wish to portray the position of affordable housing delivery as being "*admirable*". However, the LP target is less than half the annual need arising in the District. The LP is failing at the outset to meet the full needs of household's requiring assistance with their housing choices. Whilst obviously now forming part of the DP, this requirement was not what JonS was comparing when assessing net annual affordable housing delivery against annual needs.

173. Comparing net annual AH delivery against the annual requirement in the Strategic Housing Market Area (SHMA), covering exactly the 5-year period, the delivery record is much less rosy. As JonS's evidence shows with this comparison (JonS Figure 4.7 page 37 of PoE) there is an accumulated shortfall of -1,503 dwellings over the first 5-year period. These households have not had their housing needs met. These households are being failed by this Council.

174. Given that the backlog is increasing, there can be no net 'social progress' in addressing AH needs in the District. Subsequently, it is highly questionable how the Council can be content with this, regardless as to how well it is performing against the pragmatically founded LP target. Any additional AH contribution must be especially beneficial in at least mitigating the continuing harm. In this context JonS considered the delivery of AH to be abysmal[33]. JonS agreed in Xx that delivery compared to the LP target was better but that is not the true picture of AH provision and need in CW&C.

175. A major part of the Appellant's case is the fact that the proposal involves the delivery of up to 74 affordable homes, equivalent to 40% affordable housing. The affordable housing offer at 40% is numerically 10% more than required by Policy SOC1. This equates to an extra 18 affordable homes or 32% more than would have been delivered by a policy compliant proposal. Furthermore, in the event that the Custom and Self-Build housing is not provided, that 10% would revert to AHs so that the AH offer would total 50% of the entire dwellings on the site. It was agreed in Xx of JillS that in this scenario the appropriate weight to be given in the planning balance would be very substantial.

176. The appropriate weight to be given to AH in the overall planning balance is of fundamental importance and has been a matter which the SoS and Inspectors have regularly considered. In JonS's opinion it should attract nothing less than very substantial weight. This contrasts with the substantial weight awarded by the Council, which appears to be a deliberate ploy on its part to downplay the vast array of worsening market indicators. These justify JonS's position of ascribing a greater degree of weight than was given in 2015. To merely accept the same weight would fail to take account of significant changes in local circumstances.

[33] See Section xiv of JonS's Executive Summary

177. The delivery of new housing contributes to the social and economic roles of sustainable development (SD). It delivers major benefits in line with the Framework's policy. Those merits are brought into stark reality by the evidence of JonS, and especially the 6,204 households falling into need. JonS explained that in spite of stricter registration criteria there remains a high number of households needing assistance with their housing needs. As the Inspector asserted at para 8.122 in the Pulley Lane, Droitwich Spa appeal [CD17/8]

"*Needless to say, these socially disadvantaged people were unrepresented at the Inquiry".*

178. As is evident from JonS's evidence, the need for accelerated AH provision pervades national and local policy. The estimated AH needs are considerable, with the 2013 SHMA setting out a requirement of some 714 affordable dwellings per annum.

179. As JonS explains, there is an accumulated shortfall of some 1,503 dwellings since 2013/14 (JonS figure 4.7 page 37 of PoE). Not an insignificant figure equating to almost half the growth in the waiting list between April 2015 and April 2018 (Change of 3,414 more households). The growth in the housing register has been staggering. It was previously acknowledged that the housing register had been artificially reduced in 2014 from 19,000 households to 2,790 households in 2015 (JonS figure 4.1 and para 4.7 page 32 of PoE). Despite the stricter qualification criteria introduced by changes allowed in the Localism Act 2011, the housing register has increased by over 3,400 households in the space of just 3 years. This is more than 3 households per day registering or re-registering (JonS XIC). There are now 6,204 households on the register as at 1st April 2018. Yet the Council make no reference to the worsening of the housing register.

180. The hugely important benefits of living in a home such as: secure tenure, ability to set down roots, ability to plan for families and to be close to relatives and support groups is immeasurable and has no doubt manifested itself into the *"grief and hardship"* referred to by Mr Boles back in 2013.

181. The Appellant contends that there is a vast array of indicators which have also not been fully considered by the Council. These indicators are illustrated by JonS in his PoE[34].

182. There can be no doubt that there is an acute need for AH in CW&C. The proposals will deliver a substantial number of AH, for which there is a significant demonstrable need and in a sustainable location. This should be considered in the context of significant under-delivery against the SHMA requirement, with JonS ascribing very substantial weight to the delivery of much needed AH. The need for AH at Winsford is also very evident. This point was echoed by Mr. Tony Hooton (see para 315 below).

183. Finally, Table 4.7, as contained within the PoE of JonS[35], highlights the underperformance of the Council when it comes to the provision of AH since

[34] JonS pgs. 31-34, 36, 37 & 51.
[35] Ibid at paragraph 4.22 page 37.

2013/14. In none of the previous five years has the Council achieved its identified AH need of 714 dpa[36]. The closest it has got was in 2017/18, with 552, still some 162d short. In the previous 5 years, the Council has achieved 2,067 net AH completions, 1,503 less than the required 3,570. It has delivered less than 58% of that which was required. This shortfall affects real people, in real need. Given the above, the AH provision must attract nothing less than very substantial weight.

Self-build

184. The Housing White Paper (CD12/7) is clear that:

"The government wants to support the growth of custom build homes".

185. As recently as 16 October 2018, during a debate on housing and homeownership in the House of Commons (Appendix AM2), the Housing Minister Kit Malthouse reaffirmed the Government's commitment to self-build and custom build, stating that:

"We are very keen to encourage self-build".

186. The revised Framework sets out at Paragraph 60 that in determining the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. It goes on at Paragraph 61 to say that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in policy, including *"people wishing to commission or build their own homes"* with footnote 26 of the Framework detailing that:

"Under Section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and Custom-Build properties could provide market or affordable housing".

187. The Council does not dispute that there are 309 households on their self-build register seeking a self-build or custom housebuilding serviced plot, nor do they appear to dispute that the Self-Build and Custom Housebuilding Act 2015 requires them to grant enough suitable development permissions to meet identified demand.

188. What has become apparent however is that the Council has no idea whether it is granting sufficient permissions to meet demand. As JillS conceded in Xx she does not know how many self-build plots the Council has granted planning permission for in the plan period. Furthermore, JillS was unable to point to any other site in Winsford that provides a self-build plot.

189. In the re-examination (re) of JillS, the Council sought to contend that because Winsford urban area is nil-rated for CIL then the chances of learning about self-build from CIL exemptions in Winsford was not possible. However,

[36] Taken from the 2013 SHMA.

this merely seeks to distract from the fact that the Council simply do not know how many self-build plots there are in CW&C and have no idea whether they have granted sufficient suitable development permissions to meet demand on their register.

190. It is important to remember that the Self-Build register, whilst being an important tool in helping to gauge local demand, cannot predict longer term demand for plots and is therefore only a part of the picture in robustly assessing demand.

191. The Framework is clear that:

> *"Local authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance within NPPG)"*[37].

192. It signposts the reader to the housing and economic development needs guidance, which states that:

> *"In order to obtain a robust assessment of demand for this type of housing in their area, local planning authorities should assess and review the data held on their register. They should also supplement the data from the registers with secondary data sources such as: building plot search websites, 'Need-a-Plot' information available from the Self Build Portal, and enquiries for building plots from local estate agents."*[38]

193. Appendix AM3 to Andy Mojer's (AM's) Self-Build and Custom Build Statement [ID9 Ap.13] contains secondary data supplied by Build Store who hold the UK's largest database of self-build building plot opportunities. This data shows that there were 443 registrants on their Custom Build Register wishing to create their own home within a 10-mile radius of the appeal site.

194. In addition to this, the Build Store secondary data shows that there were 1,209 Plot Search subscribers within a 10-mile radius of the appeal site. These are people who are actively looking for a plot to build or commission their own home within this area.

195. This is precisely the type of secondary data source that the NPPG expects to be used to supplement the Council's own self-build register, in order to obtain a robust assessment of demand in the area. The Council have failed to do this and in doing so cannot consider the data on their self-build register alone to form a robust assessment of demand within CW&C.

196. The fact that the Council have failed to robustly assess demand in line with the requirements of the NPPG calls into questions their contention that the 18 self-build plots on the appeal site would fail to come forward due to a lack of demand.

197. Emerging CW&CLP P2 Policy DM20 is intended to require residential development proposals to demonstrate how development proposals will address

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[37] Paragraph: 011 Reference ID: 57011-2016040127.
[38] Paragraph: 020 Reference ID: 2a-020-20180913.

demand for self-build and custom build housing. But it sets no targets and allocates no sites.

198. It follows that it must be noted that neither adopted nor emerging policy expressly define a target for self-build and custom house building in CW&C. Additionally, the Council does not appear to have any particular mechanism (such as a percentage requirement to provide self-build plots on qualifying sites for example) for securing delivery.

199. Without sites such as the appeal site, which could deliver 10% of its units as serviced self-build and custom housebuilding plots, it is unclear how the Council intends to address demand for self-build and custom housebuilding within CW&C.

200. The Council's contention that there is insufficient demand and therefore the benefit of the self-build plots would fail to materialise as a deliverable benefit was mitigated during the inquiry by the introduction of a fall-back position. Should the self-build units remain undelivered within five years, then they would revert to affordable housing plots, thus increasing the overall affordable housing offer to 50%. The appellant contends that this should be afforded nothing less than very substantial weight. As JillS conceded in Xx, the fall-back position means that in either eventuality a material benefit of substantial weight would be delivered through the appeal proposals.

201. The appellant's position remains that there is sufficient demand for the 18 self-build plots despite the introduction of a fall-back position. When considered against the scale of unmet demand and the lack of a suitable strategy from the Council to address demand, the provision of 18 self-build and custom build plots through the appeal proposals should be afforded nothing less than substantial weight in the planning balance.

202. Full details of the self-build evidence is provided in the evidence of AM [ID9 Ap.13] and supplemented by evidence from JonS.

Local Training and Employment

203. The proposed condition is very similar but more specific than the condition the Council itself imposed on the Ledsham Road permission. The Appellant's suggested condition is much superior in its clarity and intention. The purpose is to ensure that some of the work carried out in building the site is done by people local to both Winsford and Cheshire West. There is clear evidence of multiple deprivation in Winsford and one might have expected the Council to welcome such a condition. There are no enforcement problems. The Appellant will ask the house builders and their contractors to keep a record of the people they employ, and each contractor will plainly be made aware of the condition. The Appellant's Estate office will itself keep all of the records.

Sustainable development

204. The proposal would deliver sustainable development, offering a wide range of benefits within all three objectives of sustainable development[39], on a site that is

[39] NPPF 2018 paragraph 8.

accepted as being in a sustainable location. Whilst this is dealt with in detail in chapter 7 of the PoE of JonS, the key benefits would be:

Economic

a) House building, with specific support for a local SME building firm with exclusive access for them to a major housing site;

b) Additional employment opportunities within both Cheshire West and Winsford in particular;

c) A commitment to the training of local people to work on the site;

d) Additional expenditure by the new households in the local economy;

Social

e) The delivery of a choice and mix of housing in a sustainable location, including: market housing, affordable housing and self-build on the one site;

f) An affordable housing provision of 40% against a Council requirement of 'up to 30%';

g) On site open space provision of at least 8,000sqm. against a Council minimum of 5,000sqm;

h) Financial contributions towards a new playing pitch, parks and recreation and play for youth;

Environmental

i) The site is located in a sustainable and accessible location in respect of bus, cycling and walking provision;

and

j) An enhanced habitat will be made available on site with the creation and long-term management of four ponds for the use of GCNs.

The Planning Balance

The Tilted Balance

205. The titled balance applies because Policies GS5 and STRAT 9 are out of date. It would also apply if there was not a 5-year supply of housing land. The proposal plainly satisfies the test in Framework, para 11(d) (ii). The adverse impacts come nowhere close to outweighing the benefits, which are many and attract much weight. There are no 11(d)(ii) policies which apply here.

Section 38(6) PCPA Balance

206. If the titled balance does not apply, then it is the conventional status test which applies. The Appellant does not consider that this proposal conflicts with the DP, save for Policy STRAT 9 of the CW&CLP P1, which should be afforded reduced weight in any event, owing to its inconsistency with para 213 of the Framework 2018.

207. However, in the alternative and should further conflict with the DP be found, including with regard to Policy H1 of the WNP, then the benefits which are termed other material considerations far outweigh the conflict found with the DP. This is the exact route to approval taken by Inspector Dakeyne and which can properly be taken again if required, based on the considerations and sustainable development outlined above.

Overall Conclusion

208. There is a real need for this type of development in England and Cheshire West, to assist in addressing the housing crisis. It is a proposal entirely aligned with Government policy. It is a proposal comprised solely of plots for self-build, custom build, small and medium sized local builders and affordable housing. The SoS should properly take these into account. His failure to do so last time was unlawful. Giving them little weight, as the Council suggests, would be wholly contrary to the thrust of Government policy, statement and emphasis. It would send precisely the wrong message to the house building and self-build sectors.

209. The WNP does not allocate the level of housing necessary to meet the Council's minimum requirement for the town as set out in the LP. It allocated land for 3,362 new homes, whereas the Local Plan requires a minimum of 3,500 new homes. Being later in time it is the LP figure which takes precedence[40]. Being a minimum, the Local Plan figure for Winsford is to be exceeded. That is what the plan intends. But to be clear, at para 3.13 pg 25 the WNP Examiner was plain that the housing allocations in the WNP were not to be seen as a cap [CD 15/2]. There are clearly delivery problems with the main site at the Station Quarter where over 1,000 homes are allocated. Not a single house has been completed in that area and the vast majority of the sites (nearly 800d) do not have planning permission.

210. The Appellant believes the Council is not able to demonstrate a 5-year supply of housing land. But to be clear, a shortfall in the 5-year supply is not a requirement to grant planning permission, as evidence by the SoS's own decisions at Hook Norton in Cherwell [CD17/42], and Watery Lane in Lichfield [CD17/39]. The former was also contrary to a newly made NP. The latter was contrary to a whole host of LP policies. The SoS also took that view in CW&C at Sealand Road, Chester [CD17/1]. There are a host of other appeal decisions in which this has also been the case, such as sites at Upper Chapel, Launceston [CD 17/23], Foldgate Lane, Ludlow [CD17/33], Drakes Broughton, Worcestershire [CD17/35] and Whitworth Way, Wilstead in Bedfordshire [CD17/45]. Additionally, in this Borough at Fountain Lane, Davenham [CD17/41] and Hill Top Farm, Northwich [CD17/40]. However, if there is a shortfall, it is another route to the tilted balance and also a major material consideration weighing in favour of the proposal.

211. In the light of the evidence of BP, AM, JS and JonS, the Appellant once again invites an Inspector to recommend approval of the proposal (as has been the

[40] Section 38(5) of the Planning and Compulsory Purchase Act 2004: *"(5) If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan".*

case twice before) and invites the SoS to grant planning permission in a manner which is consistent with his own decision at Lydney.

THE CASE FOR CHESHIRE WEST AND CHESTER COUNCIL[2]

Introduction

212. The Appellant has persistently referred to large numbers of other appeal decisions both of Inspectors and the SoS, pointed to the language used, particularly as regards the weighting of various factors used in that case, and invited others to agree that such language would be appropriate in this case. That is a simplistic and inappropriate approach.

213. It is the most basic principle of decision making that all cases must be addressed on their own merits. A decision maker's choice of language and of adjective to describe weighting is a classic example of a case-specific and a fact-specific assessment. For example, the Inspector's and the Secretary of State's findings about the weighting to be given to the "*local approach*" and to the completion of the scheme by small or medium builders in the Lydney appeal [CD 17/2] was no more than a product of the facts at play in that case. To lift the language from the decision letter, deprive it of context and then seek to insert it into the balancing exercise at play in this case is to make a basic and fundamental error.

Five-year housing land supply

214. The Council's position remains that there is a five-year supply of deliverable housing land. It is common ground that the five-year supply position is to be tested borough-wide and that the requirement figure for the Winsford area is not to be used to calculate the five-year supply.

215. It is notable that the Appellant's very best case only reduces the Council's supply to 4.69 years[41]. The Appellant only has to be slightly wrong in order for the Council to have a five-year supply. Indeed, if BP's approach to the requirement calculation is wrong, then even if he is right on every single point that he takes in relation to the supply side of the calculation, the Council would still have a 5-year supply[42].

The Housing Requirement

216. Part 1 of the LP provides that at least 22,000 net new dwellings should be provided over the twenty-year plan period. That is an annual rate of at least 1,100 dwellings. The dispute in calculating the requirement is limited to the question of whether past annual delivery over 1,100 dwellings per annum should be discounted from the minimum requirement calculated for future years. Provision could not sensibly be tested by reference to an unspecified, but higher, figure.

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[41] See the summary table on page 72 of BP's proof.
[42] Council 5-year requirement = 4814, Appellant supply = 5423, giving a supply of 5.63 years.

217. Even if some student accommodation completions were to be deducted from the Council's figure for completions, in the eight years of the plan period so far (10,992 units), provision well above the minimum requirement has been made. The minimum requirement to be met over the rest of the plan period can only be the 22,000 figure minus completions so far. On the Council's completions, that means that at least 22,000 – 10,992 = 11,008 units have to be provided over the remaining 12 years of the plan (at least 917.3 net new units per annum).

218. The five-year requirement should be a product of that residual figure. To do otherwise risks imposing a requirement figure upon the Council, which, if in relation to which there is not a five-year supply, imposes the tilted planning balance and a finding that important policies are not up to date, even though housing provision is well on track to meet needs over the plan period and is meeting needs in the plan period to date. Such an approach makes no sense.

219. It is no answer to say that the Framework, in all of its versions, implores us to boost significantly the supply of housing. The way in which the Framework sees that objective, as set out in para. 59, is by identifying and meeting needs as para 73 requires. The Council is doing so. Furthermore, as was pointed out in cross-examination of BS, CW&C is an authority where the plan's annual requirement figure of 1,100 net new dwellings was not a reduction from the OAN figure but is the full OAN.

220. Further, as BF sets out, to keep providing at a rate of 1,100 dwellings per annum, regardless of the plan's performance to date, risks having to provide houses in places which conflict with the plan's strategy and which therefore risks being unsustainable.

221. The Appellant refers to two decision letters which it says support its case. They are both markedly different from the position in this Borough:

a) In the Doncaster [CD 17/16] case, the Council was using a requirement figure from its SHMA, with a base date of 2015/2016 (para.8), which had been exceeded in the first year of the relevant period (para.37). That was hardly a firm foundation against which to test housing provision and it is not surprising that the Inspector took the approach she did in that case in those circumstances;

and

b) In the Wendover appeal [CD 17/15], the Council seems to have been making its case by reference to alleged oversupply which took into account delivery in years prior to the requirement's base date (para.118), which is odd to say the least, as BP accepted in cross-examination. Further, in asserting that delivery at higher rates would not be problematic (para.119), the Inspector does not address (and may not have had to address) the point made by BF about the risks of unsustainable development at much higher rates than the plan period minimum rate.

222. Instead, the Council can draw firm support from the report of the Cotswold LP Inspector [CD 18/10]. He concluded in that case at para 187 that:

> *"An approach that fails to take account of completions during the plan period would result in additional land being made available for development that is not required to meet identified needs. In a high demand area such as*

Cotswold district such land would no doubt be developed. This would lead to the unnecessary loss of greenfield sites and be likely to lead to increased commuting out of the district."

223. This appeal is a manifestation of the risk that greenfield land could be unnecessarily lost if the housing land requirement is not calculated on a residual basis. There is every sense in using the residual basis to calculate the requirement here and no sense in using a flat annual rate, whatever past performance. With the agreed 5% buffer, the five-year requirement in this case is 4,814 units, net.

Supply issues

224. The Appellant complains about the way in which the Council's five-year supply assessment is carried out, particularly as regards consultation. However, there is no merit in its criticism, for the following reasons:

a) The Appellant points to NPPG[43] paragraph 3-030-20180913 *"How can an authority demonstrate a 5-year supply of deliverable housing sites?"*. That paragraph refers to consultation in the context of plan preparation and, even then, only refers to consultation as regards the assumptions being used. As is clear from the evidence, the Council has consulted upon the assumptions which are used in the absence of site-specific evidence, both in the SHMA and Housing and HELAA processes;

b) The Appellant also refers to NPPG paragraph 3-047-*20180913 "How can authorities review their five-year supply annually?"*. Again, the reference to consultation is in the context of formulating assumptions;

and

c) Paragraph 3-051-20180913 of the NPPG *"What engagement should the authority undertake to prepare an annual position statement?"* is wholly about the requirements relating to annual position statements. It is irrelevant.

225. The Council's forecasting has proven to be remarkably cautious. The graph/bar chart on page 34 in Appendix 3 of the 2018 Housing Land Monitor [CD 13/5] shows that for the numerous forecasting exercises made for a number of future years, only one forecast for one specific year proved too high. Every other forecast made produced a figure which is lower than the figure for completions, which was subsequently achieved for that year. This Council does not make over-optimistic and unrealistic forecasts for delivery.

226. The revised Framework does change the definition *of "deliverable"*, as regards the evidential requirements for demonstrating whether sites are deliverable or not. The Council does not accept that sites without planning permission, a plan allocation or sites which are not included in the brownfield register can never be included in a five-year supply. The basic definition of *"deliverable"* is still set out in the first part of the definition, and refers to sites which are available now, offer a suitable location for housing now, and which are achievable, with a realistic prospect that housing will be delivered on the site within 5 years.

[43] All of the NPPG paragraphs referred to in this paragraph can be found in CD12/2.

227. The rest of the definition sets out where the evidential burden lies for various sites. To read the rest of the definition as two *"closed lists"* as the Inspector did in para 30 of the Woolmer Green decision [CD 17/11], reads too much into the paragraph. If the SoS really meant to exclude greenfield sites (or brownfield sites which are not on the brownfield register) with no permission and no allocation from the possible five-year supply (even if, for example, they had a resolution to grant full planning permission), he could be expected to have said so in plain terms.

228. It is notable that the recent consultation on amendments to the Framework states that the SoS is contemplating clarifying the guidance on what weight can be given to sites with different levels of planning certainty[44]. That part of the consultation does not suggest that the SoS intends there to be a *"bright line"* between sites which can be included in the five-year supply and those which can never be included. The purpose of the two lists is to explain when sites need to be shown to be undeliverable and when they need to be shown to be deliverable. They are not exhaustive lists of the only types of site which can be included in the supply calculations.

229. Further, the Appellant is far too demanding as regards the *"clear evidence"* of delivery that the Framework and NPPG expects to see before a site can be included in the five-year supply. The NPPG at 3-036-20180913 [CD 12/2] sets out three bullets listing the types of material which could contribute towards demonstrating clear evidence *"may include"* and then gives two *"examples"*. It is self-evident that this paragraph does not provide an exhaustive list of the type of *"clear evidence"* which may be expected. Yet the Appellant's repeated position, during the round table discussion on supply, was to use these examples as though they were the only types of evidence which could be used. BP even went so far at one point as to claim that a site should be excluded from the supply simply because it was not the subject of a SoCG between the developer and the Council.

230. The Appellant also takes a point about post-base date information. The Council is not guilty of trying to shift a base date. No category shifting of sites is going on. No site which was not in the supply as of 1st April 2018 is now being included through the partial review of supply or BF's evidence. Where new information is being referred to, it is for the purpose of testing the judgments formed about a site and its categorisation at the base date and for showing that those judgments are correct. Inspector Dakeyne understood and properly concluded upon this issue in para 220 of his supplementary report on this appeal [CD 2/7], where he stated:

> *"So far as post-base date information is concerned, it is appropriate to take into account information received after 1 April 2015 if it affects events prior to, or predictions as to delivery beyond, that date. Moreover, I agree that information that supports a pre-base date judgement should not normally be ignored* [SR131]. *However, generally sites should not be added or taken out post-base date. They will be picked up in the next HLM equivalent."*

231. That is the precise and sole purpose for which post-base date information is being used by the Council now, as it was in 2015. The irony, of course, is that

[44] "Technical Consultation on Updates to National Guidance" Page 15, para 38 [CD 12/14].

the Appellant condemns the Council for not immediately responding to the Framework revision in July and the NPPG revisions in September with a whole new set of evidence to prove deliverability of sites at the base date. However, had it done so, the Appellant would have said that such information was an illegitimate attempt to use post-base date information.

232. Finally, the Appellant points to the risk of developers with sites in the five-year supply *"talking up"* forecast delivery in order to promote their sites at the expense of competitors' sites. There are two simple answers to that point:

a) The point can be met with the equal and opposite point that the Appellant has a very direct interest in *"talking down"* sites in the supply in order to promote its own position, so the point goes nowhere;

and

b) Rather more constructively, such a risk of sites being talked up has not manifested itself, given how cautiously robust the Council's forecasting has proven to be, as set out above.

Specific Categories of Site

Communal Establishments

233. There is no issue in this regard. Only C3 uses are counted towards the five-year supply. C2 uses appear in the monitoring information as DHCLG requires the information, but those units do not figure in completions against the five-year requirement or forward-looking supply calculations.

Demolitions and other losses

234. Every element of the Council's housing land supply assessment is done on a net basis. Paragraph 5.21 of the LP points out that an assessment needs to be done on a net basis. It is. Completions are assessed net. Every known site in the housing land supply is looked at net. Even the modest small sites windfall allowance for years 4 and 5 is done on a net basis. It is even the case that the future forecasts take into account future losses from residential use, which are not connected to a scheme creating new dwellings: see, for example, site HOO/0061, 5 Derby Place, Chester, on the sixth page of the tables in Appendix 4 of the HLM [CD 13/5], where net housing losses without any new housing creation are allowed for. The Council again points to Inspector Dakeyne's conclusions in paras 225 and 226 of his SR [CD 2/7], where he accepted the Council's submissions. There is no reason to take a different view at this Inquiry.

235. The Nether Peover Inspector at para 19 of his decision letter[45] expressly said he was discounting from a net figure. The purpose of a net figure is to account for demolitions and losses. One discounts from a gross figure of losses and demolitions to get to the net figure in the first place. To discount from a net figure to allow for demolitions is to perform the discounting process twice. Whilst the Inspector's decision at Hill Top Farm [CD 17/40] is not explicit, he does not appear to have discounted any figure from the Council's supply to allow for

[45] BP's App EP1D.

demolition or losses, because he noted that monitoring and forecasting was all done on a net basis.

236. There is no reason to discount from the Council's supply figure on this issue.

Student Accommodation

237. This is an issue which has been gone over on a number of previous occasions. The Council recognises that Inspectors have found for Appellants on this point, notably at Tattenhall [CD 17/3] and previously in this case. However, events have moved on since this issue was last considered by Inspectors.

238. CW&CLP P1 took into account the housing need generated by students in self-contained student accommodation. That is made clear by note ED112 which was submitted to the LP [CD 13/10][46]. A need which is accounted for in requirement ought to be taken into account when provided, as a contribution to supply. BP agreed with that principle. The two sides of the requirement and supply calculation need to be conducted on the same basis.

239. The nub of the Appellant's point is that self-contained student accommodation is not freeing up general market housing in Chester because the University is expanding to a degree which was unforeseen when CW&CLP P1's housing requirement was devised.

240. Whatever the position in front of previous Inspectors, the evidence at this inquiry does not support that contention. The Higher Education Statistics Authority (HESA) figures, to which the Appellant has had access via the weblink referred to in BF's evidence (but has not challenged) show that, overall, student numbers have not increased and the rise in full time students has been much more modest than predicted in the 2013 and 2014 reports appended to BP's evidence. The Appellant has totally failed to consider whether the evidence relied upon at previous inquiries is still up to date. It manifestly is not.

241. Further, on the evidence, it is impossible to conclude that any increase in full-time student numbers across the whole university manifests itself in increased need in Chester. The University of Chester has multiple sites – in Chester, Rease Heath (near Nantwich and out of the Borough), Warrington and Shrewsbury. The University cannot or will not release figures broken down by site. BP's assertion that the Shrewsbury campus is small turned out to be an erroneous reliance upon the entry into studies by one cohort of students in one year. Without more information about the number of years of study pursued by students and whether there are undergraduate courses, post-graduate courses or both available, makes his reliance on that simple figure meaningless.

242. The HESA data and the points about the existence of the Rease Heath, Warrington and Shrewsbury sites are new ones, to which the Council has not drawn attention before. There is thus a justifiable reason for the Council inviting a different conclusion on this issue now. The facts have changed, with important consequences.

243. Further, the NPPG makes it clear that all types of student accommodation can count: see NPPG ref 3-042-20180913 [CD 12/2]. The Council only includes self-

[46] See, especially, the table summarising the position.

contained accommodation and so takes a cautious approach. Further still, if it is not accepted that self-contained student accommodation can be counted towards meeting requirements, then BF has provided unchallenged evidence of the average student household size. By reference to table 6.2 on page 19 of BF's evidence, 442 units should be included in supply on the basis that all of those units go to meet identified needs. But, at the very least, 137 units should be included, as she sets out.

244. No deduction should be made to the supply or past completion figures on this issue.

Sites with Outline Planning Permission or subject of a development plan allocation

245. The November 2018 partial HLM review [ID 17] led to a narrowing of issues in relation to this category. The remaining sites that are in issue are listed in para. 3.09 of the HSoCG. Six sites that account for 300 dwellings are disputed.

246. These sites were discussed at the round table session. In very large measure, the Appellant's position is explained by what it regards as being necessary if the Council is to provide *"clear evidence"* of deliverability in five years. The Council's position is summarised in the entries in the tables at Appendix 1 of the November partial HLM review for all of these sites, save for Wrexham Road, which is dealt with in Table 2 in Appendix 2. In each case, for the reasons set out in the tables and expanded upon by BF, in the round table session, the Council's contribution to supply from these sites is supported by clear evidence on a site by site basis.

Non-Allocated Sites without planning permission

247. Again, the partial HLM review of November 2018 has narrowed the issues. The remaining sites that are at issue are listed in para. 3.11 of the HSoCG. Six sites that account for 222 dwellings are disputed.

248. The Council's position on each site is set out in table 3 of Appendix 3 of the November 2018 partial HLM review. In each case, there are sound reasons amounting to *"clear evidence"* for their inclusion. The Appellant's point largely rests on its contention that such sites can never be included in a five-year supply calculation, a point which is rejected for the reasons set out earlier.

Build-Out Rates and Lead-In Times

249. There are 5 disputed sites in this category, which are listed in para. 3.12 of the HSoCG. 505 dwellings are disputed. All of these sites were discussed at the round table session and the Council's position on the first, third and fourth of these sites are summarised on page 22 of BF's evidence at table 7.3.

250. This issue is not one where the Framework definition of deliverability puts the burden on any particular person. Site specific evidence of build out rates and lead in times are used when available. For Roften Works, standard lead-in times have been used by the Council. Further, BP's calculation for delivery at Ledsham Garden Village is unreliable because it applies, in part, to a build out rate for a part of a year and he turns that into an annual figure for the purpose of calculating average delivery, thus underplaying the delivery from the site. The Council's position on these sites is robust.

Small Sites Allowance

251. The Council only uses an allowance for small sites, namely those below 5 units in size, and then only in years 4 and 5. Small site delivery in years 1, 2 and 3 is forecast on a site by site basis, making a further allowance for a lapse rate unnecessary. Small sites have an estimated contribution of 115 units in each year, making a total contribution to supply of 230 units in years 4 and 5.

252. BF's evidence explains that such small sites have consistently been shown to be a reliable source of completions. The rate of completions has generally increased as time progresses: see para 6.47 of her evidence. The 115-unit rate of delivery in years 4 and 5 accords well with the rate of completions from this source in recent years: see table 5.1 in the 2017-2018 HLM [CD 13/5]. Comparing forecast delivery to past-completions means that it is, again, unnecessary to make a further allowance for a lapse rate as the completions are the reality of what number of units has been delivered from this source over time. Again, there is no reason to deduct from supply on this issue.

Housing Land Supply – Conclusion

253. The requirement figure for the five-year period is 4,814 units[47]. The Council's deliverable supply, taking the Framework revisions into account, stands at 7,277 units[48]. The supply is 7.56 years. As a result, the housing land supply position in CW&C does not engage the tilted planning balance.

Development Plan policies, the weight to be afforded to them and whether the appeal would accord with the Development Plan

Local Plan Policies

254. It is common ground that the proposals breach both Policy GS5 and Policy STRAT 9. Saved VRLP Policy GS5, has to be addressed in the light of Policy STRAT 9 of the CW&CLP P1. Policy GS5 performed two functions: it provided settlement boundary limits for, among other places, Winsford, and then applied a development control test to proposals for development beyond those settlement limits. The policy, along with its boundaries, has been saved.

255. CW&CLP P1 Policy STRAT 9 provides a new development management test, and is applied, at present, to the saved Policy GS5 boundaries. Policy GS5 was saved because, without it, Policy STRAT 9 would have no territorial application in the former Vale Royal part of the Borough[49]. The development management test in Policy STRAT 9 is more up to date than that in Policy GS5, has been found sound, and is to be preferred. The position is that Policy STRAT 9's test is to be preferred to that in Policy GS5 and Policy STRAT 9's test applies beyond the Policy GS5 boundaries, at least until CW&CLP P2 is adopted.

256. The Appellant's contention that Policy STRAT 9 only deserves modest weight because it is out of date by reason of being inconsistent with the Framework is not correct. Policy STRAT 9 was found sound in accordance with the 2012

[47] November 2018 partial HLM Review table 5.1, page 10.
[48] Ibid table 5.2 pages 10-11.
[49] And the same difficulty would have arisen in the former areas of Chester City Council and Ellesmere Port and Neston Borough Council.

version of the Framework. Nothing has changed in the 2018 Framework to mean that a formerly sound policy became out of date in July 2018. In para 161 of the Examination report, the Local Plan Examiner did take into account a contention that Policy STRAT 9 was inconsistent with the Framework because it referred to protecting the countryside [CD13/3a]. The Inspector still found the policy sound. Furthermore, Inspector Dakeyne found Policy STRAT 9 to be up to date and did not reduce the weight he would otherwise have given it (see SR para252 [CD 2/7]). The decision-making test in Policy STRAT 9 deserves full weight.

257. The Appellant makes the point that the boundaries to which Policy GS5 apply are out of date because they come from a time-expired Local Plan and planning permission has been granted for housing on land beyond those settlement limits. This is an argument which has been put to and comprehensively rejected by the Court of Appeal[50]. In that case, Gladman argued that as a five-year supply had been achieved by granting planning permission beyond settlement limits, those limits were out of date because development in accordance with them could not meet up to date needs, and that, in other words, the plan was *"broken"* in that regard. The Court held that the mere age of a policy does not deprive it of the statutory priority given to it by section 38(6) of the Planning and Compulsory Purchase Act 2004[51].

258. Further, because the Framework attaches importance to plan-led development, significant weight should be given to the general public interest in having plan-led planning decisions, even if particular policies in a DP might be old. There may still be a considerable benefit in directing decision-making according to a coherent set of plan policies, even though they are old, rather than having no coherent plan-led approach at all [para 40(iv)]. The Court expressly rejected the argument that the plan, or its settlement limits were *"broken"*, holding at paras 43 and 44 that such grants of permission were simply an illustration of section 38(6) at work. It characterised the argument as *"unsustainable"*. The argument put to JillS on this issue at this inquiry is just a repetition of Gladman's rejected case. It must fail for the same reasons as it failed in Daventry.

259. Inspector Dakeyne picked up on the point about the reasons for Policy GS5 being saved and its relationship to Policy STRAT 9. He observed that the decision-making test in GS5 had been effectively superseded by that in Policy STRAT 9. That meant that Policy GS5 should not be afforded full weight in terms of its general application [CD 2/7][52]. However, he also recognised that the position of GS5 as regards Winsford was different. He noted the allocation of sites for some 3,360 units in the NP and that Pdl sites have been and will be found in accordance with its policies H1 and H2. He also noted that, although CW&CLP P2 will have to define new settlement boundaries, the NP allocations will form the main basis for the settlement boundary. As a result, sites which are not allocated by the NP and which lie beyond the GS5 boundaries do not comply with STRAT 9[53].

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[50] Daventry BC v SoSCLG and Gladman Developments Limited (2016) EWCA Civ 1646 (ID 38).
[51] Judgment para 40(i).
[52] SR pg 47 para 251.
[53] Ibid pg 48 para 255.

260. That conclusion led to Inspector Dakeyne affording *"considerable weight"* to Policy GS5 *"in the context of Winsford"*[54]. The Council supports those conclusions and the reasoning which led to them. Indeed, the Council's position has, if anything strengthened since the 2015 inquiry because the Council is not proposing to amend the settlement boundary in P2 of the LP so as to include the appeal site. It is plain that the NP allocations have, as Inspector Dakeyne foresaw, been the dominant factor in the approach to the proposed settlement boundaries at Winsford.

261. Furthermore, Inspector Dakeyne is not alone as an Inspector in concluding that more weight can be afforded to Policies GS5 and STRAT 9 than the Appellant considers. The same conclusions were reached by the Inspectors in appeals at:

Shepherds Fold Drive, Winsford [CD 11/1][55];

Hill Top Farm [CD 17/40][56];

Fountain Lane, Davenham [CD 17/41][57];

and

West Winds, Winsford [CD 11/2][58].

262. Policy STRAT 1 embodies the requirement to provide sustainable development. It seeks to minimise the loss of greenfield land. Inspector Dakeyne was right to find that the appeal scheme involves *a "degree of conflict"* with Policy STRAT 1 because of the loss of a greenfield site[59] :- a conclusion which led him clearly to find that there was a breach of the policy overall [CD 11/1][60].

263. The Appellant relies upon the housing requirement figures for the Borough, as set out in Policy STRAT 2 and for the Winsford area, as set out in Policy STRAT 6, being minima as a reason to support the appeal scheme. But the plan has to be read as a whole. The plan does not advocate a free-for-all on housing numbers. Although the simple fact of provision over the minimum figures does not constitute harm, the plan's requirement figures are applied in relation to settlement boundaries. The Appellant's argument logically leads to the conclusion that a breach of Policies STRAT 9 and GS5 can be overlooked or downplayed. It cannot. Providing development within settlement limits, unless it falls within one of the types of acceptable development listed in Policy STRAT 9, is as much a component of the plan's strategy as the fact that the requirements figures are minima. The two issues go together.

264. Policy STRAT 6 sets out the indicative minimum requirement for the Winsford area. In re-examination (Re) of JonS, the point was made that the NP over-relied upon the Station Quarter. A mathematical exercise was undertaken, comparing the WNP allocations with those in CW&CLP P1. The exercise was a false one, because the policy provides approximate figures for the number of dwellings to

[54] Ibid pg 49 para 260.
[55] Paras 14 to 17.
[56] Para 8.
[57] Paras 18 and 25.
[58] Paras 15 to 23.
[59] Ibid page 48 para 253.
[60] Ibid page 52 para 282.

be provided at the Station Quarter of *"in the region of 1000 new dwellings"* and the reference to the 775 units to be provided in the plan period must be seen in that context. The LP cannot be interpreted in a way which properly admits to such mathematical precision. There is no reason to think that the allocations in Policy H1 of the WNP are inappropriately high.

Winsford Neighbourhood Plan

265. The WNP has been made. It is part of the DP. The appeal site was put forward as an allocation for the WNP by the Appellant in the preparation and examination processes for that plan but was rejected. It was rejected because the Town Council did not think that the allocation would accord with the plan's vision[61] – an argument which the Examiner regarded as a sound reason [CD 15/2][62].

266. The WNP says that it seeks to actively plan where development should go[63]. For housing development, the plan contains a clear strategy of locating development close to the town centre, creating a new quarter around the railway station and creating positive new "gateways" at key arrival points into the town [CD 15/1][64]. Developing the appeal site would not accord with any element of that vision.

267. The Appellant points to the key themes set out in the plan [CD 15/1][65]. As to those themes which are relevant to the appeal scheme[66]:

a) The Appellant says that the first theme would be served by the development providing new high-quality buildings. That point does not serve to justify a contention that the appeal site is a location for development which accords with the plan. Any development anywhere would be expected to be high quality;

b) The Appellant contends that the third theme would be served by residents of the scheme contributing to spend in the town centre. The same could be said of any site within reasonable proximity of the town centre and, again, this point cannot support the appeal site as a location for development within (or adjacent to) Winsford;

c) The reference in theme 4 to strengthening the employment base is obviously referring to employment development, not the employment provided by the construction of a housing estate. In any event, and once again, it does not support the appeal site in locational terms;

d) The reference to sustainable growth in theme 5 only makes sense if it is read alongside the plan's vision for locating development, as set out above, which the appeal site does nothing to support;

e) Theme 6 is about improving social, community and leisure facilities. The Appellant refers to the contributions to be made by the planning obligation. As those contributions comply with the requirements of Regulation 122 of the

[61] Para 3.52.
[62] Para 3.54.
[63] Page 4 para 1.1.3 and page 20 para 4.1.1.
[64] Page 44, shaded box in left hand column.
[65] Page 17: themes 1 to 7.
[66] Theme 2 is not really relevant to the appeal scheme.

CIL Regulations, they are necessary to make the development acceptable in planning terms by satisfactorily mitigating impacts which would otherwise occur. In any event, this matter does not point to the appeal site being acceptable as a location for development;

and

f) Theme 7 seeks the improvement of movement around the town and the region. The only improvements which the appeal scheme would bring would be to a short length of footway and the provision of cycling access into the site. These are very modest matters and do not support the appeal site as a location.

Overall, the appeal site draws no support as a location for development within Winsford from the themes of the plan.

268. Policy H1 (pg. 44) allocates sites to meet the vast majority of the need with which the plan deals [CD 15/1]. The appeal site is not allocated for development by that policy. The Appellant argues that the site's non-allocation does not weigh against the appeal proposal, as the housing requirement to which the plan relates is not a maximum or ceiling figure. However, as Inspector Dakeyne concluded [CD 2/7][67], *"such an interpretation would mean that policy H1 served no purpose in guiding and regulating development."* Further, the policy can derive no support from Policy H2 (pg. 46), which adopts a permissive approach to development on PDL land [CD 15/1].

269. Policy H1 of the WNP also requires proposals to accord with other policies of the NP and the LP. Development of the appeal site would not accord with Policies GS5 and STRAT 9, as is agreed. The appeal scheme conflicts with Policy H1 of the WNP, as Inspector Dakeyne accepted [CD 2/7][68]. The policies of the NP have not changed since Inspector Dakeyne reported and there is no justification for reaching a different conclusion on that matter now.

270. There is no policy of the WNP which provides support for the development of the appeal site in locational or any other terms. JonS could point to none in Xx. The appeal scheme would accord with CW&CLP P1 Policy SOC1 on affordable housing, as is set out in a little more detail below.

Breach of the Development Plan taken as a whole?

271. The Council's position is that VRBLP Saved Policy GS5, CW&CLP P1 Policies STRAT 1 and STRAT 9 and Policies H1 and H2 of the WNP are the dominant policies of the DP for the purposes of determining this appeal. Inspector Dakeyne also accepted that Policies GS5, STRAT 9 and H1 were the dominant policies for development outside of the settlement limits CD 2/7][69]. The Council contends that the breach of those policies of the DP which are breached in this case amounts to a breach of the DP overall. Again, Inspector Dakeyne agreed[70]. There is no reason to reach a different conclusion now. The appeal scheme is in conflict with the DP when taken as a whole.

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[67] Supp report pg 48 para 256.
[68] Supp report pg 49 para 260 and pg 52 para 282.
[69] Supp report pg 49 para 260.
[70] Ibid pg 49 paras 260 and 282.

272. None of the relevant DP policies, still less those which could be called the most important for determining the appeal, are out of date for reasons relating to a lack of consistency with the Framework. The second possible route into the tilted planning balance does not apply in this case. Given the housing land supply position, there is thus no route into the tilted planning balance available to the Appellant.

273. It follows that a decision in accordance with the DP would be a decision to dismiss the appeal. The issue is therefore whether there are material considerations which indicate that a decision otherwise than in accordance with the DP should be taken in this case.

Scheme Benefits

Market Housing

274. The appeal scheme would contribute more market housing. hat is a social benefit deserving of weight, but the weight is tempered by the presence of a five-year supply across the Borough. As set out earlier, the requirement of the Framework to boost significantly the supply of housing is one which is to be met by identifying and meeting the need for housing. As far as market housing is concerned, that is being done.

Affordable Housing

275. The appeal scheme would contribute affordable housing at a rate of 40%, as opposed to a policy requirement of a target of up to 30% on qualifying sites. JillS agrees that this is a social benefit which can be afforded substantial weight[71]. The issue is therefore limited to whether the word "very" should be added before the word "substantial", as JonS contends.

276. It should not. The position on affordable housing is not as bad as JonS would have us believe. Indeed, his written evidence calls the Council's delivery record as regards affordable housing *"abysmal"*, which is not fair, as he accepted in Xx.

277. The Council points to the following matters on affordable housing. If it were to be (wrongly) assumed that every site was a qualifying site for affordable housing provision and every site provided at the full 30% rate (which would never happen), then the delivery of 22,000 dwellings over the plan period would lead to the delivery of 6,600 affordable units. In fact, the Council has delivered 3,139 affordable units over the eight years of the 20-year plan period to date[72]. That is a useful benchmark for assessing its performance, especially given the unrealistic assumptions in the calculation.

278. JS points out that the Council has not delivered 714 units in any one year since 2013/2014, which is the base date for the affordable housing need figure for five years, assuming the backlog is eradicated in five years. However, the Council has never been required to provide that amount, as can be seen from an analysis of the LP Inspector's report [CD 13/3a]:

[71] Her oral evidence in chief.
[72] JillS proof, table on pg 21.

a) The content of para 23 of the report shows that the Inspector was alive to the need for the LP to meet the full OAN for market and affordable housing;

b) At para 31, he noted that affordable housing need contributed to the reasons for uplifting the objectively assessed need above purely demographically generated need;

c) At para 36 and footnote 2, he noted that the SHMA gave the annual figure of 714 units per annum for affordable housing need if the backlog were to be cleared over 5 years;

d) He concluded, at para 39, that an OAN above 1,100 dwellings per annum would require higher job growth, population growth and in-migration than the demography would suggest;

e) His judgment at para 46 was that an OAN of 1,100 dwellings per annum was optimistic and aspirational and would have a "significant positive effect upon the provision of affordable housing";

f) The requirement was 22,000 dwellings over the plan period, or 1,100 per annum (para 144);

and

g) The OAN constituted the full need for housing in the plan period (para 145).

279. Therefore, the Local Plan Inspector never concluded and never said that the LP had to deliver 714 affordable homes in each of the first five years from the SHMA base date. If, using a requirement for 1,100 dwellings per annum, 714 affordable homes per year would have to be provided, then 65% of all dwellings in the first five years of the plan would have to be affordable. That is plainly unrealistic. Alternatively, if 30% of dwellings were to be affordable, then providing 714 affordable homes each year would require 1,900 new homes to be delivered each year. That is plainly not realistic either.

280. In fact, JonS's own evidence shows that the Council's Borough-wide affordable housing delivery has been admirable. That is shown by the revised version of figure 4.6 of BS's evidence. Policy SOC1 of the CW&CLP applies the up to 30% target as a proportion of new homes permitted on qualifying sites. Using that approach, the new column in the revised figure 4.6 shows that the Council has been delivering at a rate of 26% across all sites, not just those on which affordable homes could be required by Policy SOC1. If student completions need to be removed, as BP insists, then the performance would rise to 27.9%.

281. The picture becomes even more favourable to the Council once the Winsford area is considered. Figure 4.9 of JS's proof tests delivery in Winsford against the need for 98 units. That 98 figure is the Winsford component of the Borough-wide 714 need figure. Even if the Council's performance were tested against that 98 figure, the Council has delivered just 25 units short of the 495 units that would have been required over the first five years of the Local Plan period. Again, that is not evidence of a Council which is seriously failing to deliver affordable homes.

282. Further, table D6 on pg.102 of the 2013 SHMA shows that the Winsford urban area has the lowest mean average house prices in the Borough [CD 13/8]. The

Council has also secured and accepted funding for affordable housing delivery on three Council-owned sites in Winsford at the 30% rate.

283. Ascribing substantial weight to the affordable housing provision on the appeal site is reasonable and generous to the Appellant's case.

Self-build and custom build

284. Since Inspector Dakeyne reported, the facts have changed on this issue. We now have available the statutory register which records the level of interest for self and custom-build in the Borough. The register is appended to JonS's supplementary proof. The register is important evidence of the level and type of interest, to which the NPPG refers.

285. As part of the register compilation process, the Council asks people to state any preferences they have for location and for site size. The register provides scant evidence of demand for self and custom build in Winsford and for such building on larger sites such as the appeal site. Indeed, when those two factors are combined, there is not a single person on the register who wants to self or custom build in Winsford on a larger site. The evidence of the register points unequivocally to the conclusion that the 18 plots on the appeal site would not be taken up for self or custom build housing.

286. The Appellant points to other sources of evidence, but:

a) The SHMA survey simply records aspirations for self-build. It does nothing to check the realism of those aspirations or the degree of commitment to self or custom build;

b) AM's report refers to alleged survey evidence *"consistently"* showing[73] that 1 in 50 of the population want to purchase a self or custom-built home, but the footnote designed to support this point refers only to one survey, with no details of its sample size, methodology, questions or degree of checking whether those aspirations are realistic;

c) The information garnered from the Custom Build register and Plot Search subscription database[74] is useless. Without knowing how one gets to become a subscriber, what, if any steps are taken to keep registrations/subscriptions up to date (by, for example, filleting out people who have lost interest or achieved their aim) and what testing, if any, is done to test the realism of their ambitions, one cannot sensibly ascribe any weight to the information set out in the email;

and

d) The letters and emails at JonS's Appendix 12, supplemented by him with a further clip of letters/responses when he gave evidence in chief, contain scant evidence of realistic support for self-build in Winsford and certainly not to the level of 18 plots on the appeal site.

287. JonS emphasised his client's commitment to promote self and custom-build housing. If that is so, it is all the more noteworthy that there is such a paucity of

[73] JonS at App 13
[74] Email from Tom Connor on 8 November 2018, Appendix 3 to AM's report

evidence of demand for self and custom build on the appeal site, given that the Appellant has had over 3 years to gather such evidence since the self and custom-build offer was first put before the SoS in August 2015.

288. The Appellant points to the absence of registered CIL exemptions as evidence of the lack of delivery of self-build. As JonS accepted, there is nothing to indicate on the face of a planning application whether it is or is not a self or custom-build proposal. It is no surprise that there is an absence of CIL exemptions in Winsford – there is no CIL in Winsford, as parts only of the Borough are levied for CIL for viability reasons. Self-evidently, self and custom-build can never show up in CIL exemption certificates in Winsford.

289. On the evidence, there is little to no prospect of the self and custom-build offer being taken up on the appeal site and no significant weight can be afforded to it in the decision-making process.

The use of small and medium size builders for the construction of the market housing

290. This is another point that the Appellant raised in 2015 for the first time. The point is inspired by the outcome of the Lydney appeal [CD 17/2]. However, the facts there were very different. The evidence at Lydney was that the action of a large housebuilder was keeping local small and medium size builders out of the market and the Inspector, saw the ability to develop that site by smaller builders as the key to unlocking housing delivery in Lydney[75].

291. The only evidence, to support that contention here, are the very late letters from three of the building companies who are apparently interested in developing the site. It was obviously not possible to ask about these letters at the inquiry, but the letters contain short, bald assertions about competition from large builders. Only one of them actually says that the competition causes difficulties, but even then, no details of the alleged difficulties are given. None of them, perhaps for understandable reasons, claims that such competition is threatening their business. Indeed, their earlier letters all boast of their success and track record.

292. There is still, despite those letters, no evidence that the position in Winsford is remotely similar to that in Lydney and no real evidence that local SME builders cannot already access the market in the Borough in general or in Winsford in particular (as opposed to facing competition). The second letter from Cruden, submitted during the inquiry, was said to provide evidence on this issue, but does not.

293. Again, no significant weight can be ascribed to this benefit.

Training and Employment

294. There is little evidence to support affording significant weight to this aspect of the Appellant's package of benefits. Winsford does not suffer from levels of deprivation or lack of skills which are close to those in Ellesmere Port, as the

[75] See the Appellant's case, reported at paras 2.2(a), 2.9, 2.62, 2.63, 2.64 and 2.70 of the Inspector's report and his conclusion at para 6.87. This was accepted by the Secretary of State at para 22 of the decision letter.

October 2018 claimant count information provided by the Appellant during the Inquiry shows. The weight to be afforded to training in relation to a 2,000-unit scheme in Ellesmere Port is not equivalent or even close to the weight to be afforded to this benefit in the context of a scheme of up to 184 units in Winsford. The condition is necessarily woolly to avoid offending against European Union freedom of movement. That means that the obligation to aim to encourage local employment can be afforded little weight.

Economic Benefits

295. These have been appropriately weighed by JillS. They are not site specific and do not provide a justification for developing the appeal site. The same benefits would come from developing a site of the same size anywhere in the Borough or in Winsford.

Ecological improvements

296. There would be minor positive ecological impacts through the creation of new GCN habitat [CD 5/12 at pg 24].

Other matters of mitigation (not benefits)

297. A number of matters set out by JonS are either statements of mitigation of harm to acceptable levels (such as matters to be dealt with through the planning obligation) or a statement that harm does not arise (such as the site being in flood zone 1, the absence of contamination, the lack of noise or air quality impacts and the lack of impacts upon the significance of heritage assets). These are not properly classified as benefits, as JonS accepted in cross-examination.

Scheme harm

298. The appeal scheme would cause harm. Chief amongst that is the harm caused by the breach of the DP which, of itself, is harm to be afforded significant weight. That is because of the general principle that weight is to be given to the need to determine proposals in accordance with the DP unless material considerations indicate otherwise. But it also has a case specific dimension because of the terms of Policy STRAT 1. Compliance with Policy STRAT 1 of the CW&CLP is a part of the assessment of overall sustainability.

299. In a plan-led system, the DP is not to be lightly set aside. Inspector Dakeyne in his SR at para 283 accepted that to allow the appeal would be to undermine the credibility of the plan-led system, and he weighed that matter in the balance [CD 2/7].

300. The Council also asks the Inspector and SoS to take full account of that part of the breach of the DP that in this case springs from the breach of the WNP. It would be unfortunate, to say the least, if local people were to be encouraged to prepare neighbourhood plans as a means of shaping the places where they live, only to see them not being upheld in an appeal.

301. There is also the harm caused by the loss of greenfield land to development. There does not need to be a specific landscape and visual case to make good that contention because Policy STRAT 9 operates by regulating development types and does not require a specific assessment of a proposal's effect upon the countryside. Additionally, Policy STRAT 1 expressly makes the minimisation of

the loss of greenfield land per se one of the sustainability principles used to determine planning applications.

The Planning Balance.

302. The Council's evidence shows why the appeal scheme would cause a serious and damaging breach of the DP, which deserves substantial weight. The benefits of the appeal scheme have been overplayed, especially those relating to local labour and training, self-build and the use of small and medium sized builders.

303. The material considerations in favour of the appeal scheme are insufficient to outweigh the breach of the DP and the identified harm caused by the scheme. It is accepted that the Council is inviting the Inspector and SoS to depart from the ultimate recommendation of Inspector Dakeyne, but the evidence and arguments relating to the scheme benefits are different now to what they were in 2015. There are sound reasons for reaching a different ultimate conclusion.

304. Furthermore, there would be a loss of a greenfield site in a location, beyond the settlement limits and in breach of the DP (both as regards its LP and WNP components). This would be in circumstances where the Council is meeting market housing needs and broadly making the level of contribution to easing affordability. It has also identified a deliverable housing supply which is well in excess of five years. This is a serious matter and weighs heavily against the grant of consent. Development in such circumstances would not be sustainable development overall.

305. If, for some reason, it were thought that the tilted planning balance was engaged in this case, then although the requirements of para 14 of the revised Framework cannot now be met (as the WNP is more than two years old and the transitional arrangement in respect of para 14(a) of the Framework has now ended), that does not mean that the application of the tilted planning balance cannot lead to the dismissal of the appeal. All that para 14 of the Framework does is to indicate that the SoS is likely to conclude that the harm caused by the breach of a NP would significantly and demonstrably outweigh the benefits of providing housing in breach of it. Para 14 does not say that the SoS will only ever find the tilted planning balance determinative against the proposal if the four criteria are met. Further, para 14 only weighs the breach of a NP against a proposal. In this case, the breach is accompanied by a serious breach of the LP.

The Case for Interested Parties

Councillor Stephen Burns

306. Councillor Burns represents a part of Winsford on CW&C Council. The WNP was overwhelmingly endorsed in a referendum after being passed by an examiner. It is about meeting the town's employment and leisure needs as well as housing. Local residents decided through consultation where they did and did not want residential and other new development. The site of this appeal was not selected, and it is opposed by Darnhall Parish Council and Winsford Town Council.

307. The WNP has balanced development across the town, including 3,500 residential properties by 2030. This development is therefore not needed. There has already been three major developments in the part of Winsford where the

appeal development is proposed. The local ward (Swanlow and Dene Ward) has already contributed more than its fair share and fulfilled its obligation. However, the application site is outside of the NP area and the development would reduce open countryside around Winsford and unnecessarily reduce biodiversity.

308. In response to questions, he accepted that the WNP had no cap on the amount of residential development, that ground and ownership constraints had meant that development in the Station Quarter had not yet come forward and that Winsford was lagging behind the other three main towns in its rate of housing delivery.

Robin Wood

309. Mr Wood lives next to the site and is Chairman of Darnhall Fighting Fund, a local resident's group that opposes the proposal. He pointed out that the proposal would have a disruptive impact on the community of Darnhall which comprises less than 90 dwellings. He considers the application to have been previously rejected on planning grounds and that the three grounds upheld at the Judicial Review were not planning grounds.

310. The application is in conflict with the WNP, which seeks to focus new development close to the centre of the town and within the Station Quarter. The plan is well on track for securing the completion of 3,500 new homes by 2030. Grants from Homes England are enabling at least 30% of the properties on three sites to be provided as affordable homes. The appeal site was considered unsuitable for inclusion in the WNP at various stages during its preparation and also during the preparation of the CW&CLP P1.

311. The Darnhall Neighbourhood Plan is now emerging and approaching draft form. CW&CLP P1 supports the retention of Darnhall as open countryside and the area has exceptional biodiversity. In answering questions, he agreed that WNP set no cap or upper limit for residential development.

Councillor Brian Clarke

312. Councillor Clarke represents a part of Winsford on CW&C Council. He was also chairman of the Winsford Neighbourhood Steering Group until the NP referendum. The development sites that emerged from the WNP were the result of a long period of community consultation. The chosen sites were picked because they were central to the plan and had good accessibility to shops, schools, employment and the railway station.

313. The plan also took into account a desire for Winsford not to grow into the neighbouring parishes and for them to maintain their individual identity. Allowing this appeal would be an affront to democracy and the principles of neighbourhood planning. The need for additional affordable housing is already being addressed.

Councillor Tony Hooton

314. Councillor Hooton is a member of Winsford Town Council. CW&CLP P1 required Winsford to allocate sites for the development of 3,500 houses by 2030. WNP identified sites upon which this could take place. However, whilst work has started on many of these, a number have not yet started. Government grant has recently been awarded to accelerate the construction of social housing at Winsford.

315. The Town Council welcomes the provision of affordable housing and the use of local builders and training opportunities but in this case, it does not consider that they outweigh the requirements of the WNP. He considers the amount of proposed new dwellings (3,500) to be a guide rather than a definitive number and points to the emergence of windfall sites from time to time to boost numbers.

Written Representations

316. In December 2017 the Council notified seventeen statutory consultees and about ninety local residents that the inquiry was to be reopened and advising them that they could make comments at the Planning Inspectorate's Appeals Casework Portal. A notice was subsequently posted at the site providing the same information and advising members of the public when the inquiry was to be reopened. Three written responses were received, one from the community Fire Protection Officer asking for access and facilities (including water for fire-fighting) on the site, one from Robin Wood who appeared and presented his case to the Inquiry [IR 309-311] and one from John and Gillian Higgs. They reiterated points that had been made in their previous representations, including concerns about wildlife, support for the adopted DP, which does not support the proposal and the continued opposition from local residents to the proposal.

Conditions and Obligations

317. The Appellant submitted a set of conditions shortly before the inquiry reopened [ID 40]. They are based on the conditions discussed at the original inquiry [OR122-126, 164-166] and at the supplementary inquiry [SR 204-208]. The Council was not in full agreement. These conditions were discussed further during this inquiry and further modified [ID 41]. At the conclusion of the inquiry further discussion led to the Appellant agreeing to the removal of the Local Procurement condition and changes to the other three Local Approach conditions. The finally agreed conditions are contained in ID 42 and appended to this report. However, to all intents and purposes they are the same as the conditions recommended in the OR together with the additional conditions recommended in the SR, with the following changes.

a) The time limits for the submission of reserved matters and the commencement of development in conditions 2 and 3 have been reduced;

b) Conditions 4 and 20 have been amended to include a reference to the additional access plan submitted by the Appellant;

c) The pre-commencement requirement in conditions 8 and 21 was changed to an occupation requirement;

d) Conditions 11, 17, 22, 23 and 24 have been amended to reflect the introduction of phasing into the proposed scheme;

e) Condition 12 has been amended to reflect the fact that because of the passage of time, an updated ecological assessment was required. Development should accord with the submitted updated assessment;

f) Additional conditions (now 13 and 14) have been inserted to deal with the presence of Great Crested Newts on the site. As a result, former condition 13 is now condition 15, 14 is now 16 etc;

g) Former condition 19 has been deleted because the highway improvement referred to has already been completed by another developer. As a result, former condition 20 is now condition 21, 21 is now 22 etc.

h) Condition 3 to the SR (Self-build Housing) has been extended to allow for the non-commencement of any of the self-build dwellings within five years of the grant of planning permission. In such circumstances the Appellant would now be required to submit a scheme for the construction of affordable dwellings on these plots.

i) It is agreed that the use of local builders, in the construction of the market housing, together with self-builders, would be likely to result in the objectives of the former SR condition 5 (Local Procurement) being met without the need for a condition. Former SR condition 5 has therefore been removed.

j) A new condition (No. 8) has replaced the provision in the S106 Agreement to secure the provision of on-site open space.

318. The Appellant now considers that the matters addressed by SR additional conditions 2, 3, 4 and 5 could be more appropriately covered in a legal agreement. The Council wished them to remain as conditions only.

319. The Appellant has nevertheless submitted a signed planning obligation by way of a Unilateral Undertaking under S106 to this Inquiry. This obligation commits the Appellant, if planning permission is granted, to restricting the construction of all dwellings that are not affordable housing units or self-build units to a builder or company that:

a) has its main office or registered office within CW&C, Cheshire East or Warrington Borough

and

b) has built a total of not more than 500 residential units in any one year within the 5 years prior to development commencing.

320. The owner also undertakes not to commence development until details of a Training Employment Management Plan has been submitted to and approved in writing by the Council. The plan will aim to promote training and employment opportunities during the construction phase for local people. A target of not less than 50% of the workforce being resident within CW&C and 20% in Winsford or adjacent parishes is set.

321. Finally, a scheme for the provision of self-build plots that would be approved under condition 6 is to be submitted to and approved in writing by the Council. The undertaking provides that if any of the 18 self-build plots have not commenced development within five years of the date of the planning permission, those plots that remain will be provided as additional affordable housing units.

322. The S106 obligation referred to in the original report [OR120-121,163] and the supplementary report [SR 203] has been revised. A new agreement covering only financial contributions to off-site leisure facilities has been signed by both parties.

CONCLUSIONS

323. The numbers in square brackets [IR…] refer back to earlier paragraphs which are relevant to my conclusions.

Main Considerations

324. The main considerations arising from the reopened inquiry are:

a) Whether or not the Council can still demonstrate that there is a 5-year supply of deliverable housing sites;

b) Whether the proposal is in accordance with the DP;

c) Whether all of the DP's policies for the supply of housing are still up-to-date, having regard to paragraph 213 of the Framework and legal judgements;

d) Whether the emerging CW&CLP P2 has any implications for the determination of the appeal;

e) The implications of the consent order for the conditions that related to the revised housing offer;

and

f) Whether the proposal would accord with the presumption in favour of sustainable development, having regard to its accordance with the development plan and the economic, social and environmental dimensions of sustainable development.

Five Year Housing Land Supply

Agreed Matters

325. The HSoCG agrees the following in relation to housing land supply:

a) a base date of 1 April 2018;

b) a 5-year period of 1 April 2018 to 31 March 2023;

c) an overall housing requirement of a minimum of 22,000 dwellings (net) 2010-30 or 1,100pa;

d) the buffer to be applied in accordance with paragraph 73 of the Framework is 5%.

326. I see no reason to come to a different view on these matters based on the evidence before me.

Requirement

327. The adopted CW&CLP sets out the minimum housing requirement per annum as 1,100 dwellings (net) in policy STRAT 2. The Council argues that since there was a surplus amounting to some 2,192ds. between 2010 and 2018 (about 25%), these should be subtracted from the total requirement for the reminder of the plan period. Rounding the figures to the nearest decimal place and including a 5% buffer results in a 5-year requirement of 4,816ds or 963pa [IR 54 & 219].

328. The Appellant disagrees and considers the requirement to be 5,775ds. (1,100x5+5%) [IR 55]. The Appellant also considers that the Council's completion figures are inflated by some 860 units through the inappropriate inclusion of some student self-contained accommodation and some C2 units [IR 60]. I deal with the student accommodation aspect later when considering supply from these sources [IR 350]. The C2 aspect is discussed in the next section [IR 336-338].

329. The Council argues that not to include such an over-provision risks a finding that there is not a five-years supply, even though the Council has created circumstances through which the annual requirement has been repeatedly exceeded since 2014. If the cumulative experience of the past eight years continues, then an overall supply during the plan period, which is noticeably above the minimum requirement (about 25%), is very likely. If the removal of the over-provision results in a finding that there is not a five-year supply, then the tilted balance would be triggered and relevant policies for the supply of housing found out of date in circumstances where such an outcome is not justified [IR 220].

330. The Appellant's response is that the Council's approach has no basis in current Government policy. If it was the Government's intention for past surpluses to be deducted from the requirement then it would have said so in the NPPG. It points out that each proposal should be judged on its merits and that in the context of the current housing crisis, government policy is to boost the supply of housing. It also refers to the Council's different approach in its AMR, which states that the net requirement in that document is 1,100 and that net completions were measured against that target [IR55-57].

331. The Framework is silent on the matter and although one of the Government's priorities is clearly to boost the supply of housing, that is written in the Framework in the context of ensuring that a sufficient amount and variety of land can come forward where it is needed. CW&C has clearly met that objective through its DP and the implementation of its planning management policies, otherwise it would not have significantly exceeded its annual target in all of the years since 2014. This is how the system is intended to work [IR 221 & 222].

332. The Appellant referred me to two appeal decisions at the Inquiry [CDs 17/15 & 17/16] and one subsequently [ID 47], where Inspectors had found that it was not appropriate to discount historic over-provision from the future requirement. The Council referred me to a contrary finding by an Inspector assessing the five-year requirement at a LP Examination [CD 18/10]. In the Doncaster case the surplus only related to the first year of the relevant period, which is hardly an indication of a trend of surpluses and in the Wendover case the over-supply included delivery in the years prior to the requirement's base date. The historic over-provision would have been accounted for when establishing the OAN. Neither of these scenarios reflect the position in CW&C, where there has been a surplus in every year since 2014, resulting in a net surplus of 2,192 (25%) over the first eight years of the plan period, according to the Council's calculation [CD 13/5 pg.15, IR 210 & 223].

333. The Highnam Inspector was referred to the Doncaster and Wendover decisions and noted that they "*did not support an approach whereby an over-supply could be used to reduce the annualised target in later years of the plan*

period", noting that "*this would run counter to the requirement to significantly boost the supply of housing".* His assessment was brief, and no reasons are given so it is not possible to judge the extent to which the situation was similar to the two other appeals referred to or to that at CW&C. Although agreeing with the Inspector's conclusions on the annual requirement, the SoS is silent on the discounting of past historic over-supply [ID 47].

334. I have already pointed out the problems of comparing the Doncaster and Wendover cases with CW&C [IR 332]. The evidence suggests that CW&C has already significantly boosted the supply of homes such that a sufficient amount and variety of land can come forward where it is needed. If it had not, then the large surplus would not have accumulated. I also note that the HMA, of which Tewekesbury District is a part, contains other local planning authorities and that there was past under delivery in that HMA when considered as a whole. The LP Examining Inspector considered that in the case of CW&C "*the HMA corresponds with the Borough boundary"* [ID 47, IR 221 & CD 13/3a para24].

335. In the Cotswold case the Inspector pointed out that *"an approach that fails to take account of completions during the plan period would result in additional land being made available for development to meet identified needs. This would lead to the unnecessary loss of greenfield sites"*. I agree with this conclusion and reject the Appellant's assertion that the Area of Outstanding Natural Beauty within Cotswold District was a factor. 20% of Cotswold District is a large area of land within which additional dwellings could have been located if the Inspector felt that there was a justifiable case to provide for them. I therefore conclude that the surplus to date should be deducted from the minimum target across the remainder of the plan period when calculating the on-going annual requirement for the five-year land supply [IR 59 & 224].

Communal Establishments

336. The Appellant alleges that 230 completions in respect of C2 communal care facilities were wrongly included in the Council's completion figures. As the Appellant points out, in its HLM report 2017-18 at para 3.4, the Council refers to the suggestion in the Framework revisions that communal accommodation be included in the calculation of the housing delivery test. However, it goes on to explain that whilst this type of accommodation will continue to be monitored through the HLM process, it will continue to be excluded from the housing completions figures. At paragraph 4.4 the document lists the sources of completions that the Council uses for the purpose of the five-year land supply. C2 accommodation is not listed [IR 60-64 & 234].

337. Of the two sites completed in 2018 and referred to in BP's evidence in his table 8.3, only 87 Heath Lane is listed as wholly C2. Without a forensic analysis of the entire completions table it is not possible to conclusively determine whether or not this site and the others listed as completed in previous years, have been inappropriately counted in the completions data, despite what is said in paragraph 4.3. The potential need for such an exercise should have been discussed during the round-table session and if necessary, the parties should have got together to check the arithmetic. That did not happen.

338. In cross examination BF explained that the C2 accommodation was included in the appendix to the HLM for information purposes but was not counted in the overall completions total. I have no reason to disbelieve her. In consequence I

have not discounted any non-student accommodation from the requirement [IR 63 & 234].

339. I have nevertheless found that 630 student units should be removed from the surplus [see IR 350]. Recalculating the figures, this would give a five-year requirement of about 5,150ds or 1018pa.

Supply

340. At 1 April 2018, the Council considered that it could demonstrate a 5-year supply of 7,277ds, a surplus of 2,462ds, whereas the Appellant claims that the 5-year supply should be no more than 5,423ds, a shortfall of 362ds. on its calculation of the net requirement [HSoCG pg.7]. These numbers translate into supplies of 7.56 years and 4.69 years respectively. The differences in supply stem from the contributions from the following sources – demolitions; communal establishments; student accommodation; sites with outline planning permission; sites allocated in the DP; non-allocated sites without planning permission; lead-in times and build-out rates and the windfall sites allowance. I will deal with each in turn.

Preliminary Points

341. The Appellant is critical of the consultation process that the Council undertook when assessing the five-year land supply, referring to a number of paragraphs in the Framework and NPPG that discuss consultation. However, the NPPG is only general advice and for the most part the paragraphs referenced are referring to annual position statements (3-051), the formulation of assumptions (3-047) and the demonstration of a five-year supply through the plan examination process (3-030), rather than the annual up-dating of the five-year supply calculation [IR 53, & 225].

342. Nevertheless, para 3-030 does discuss the transparency of judgements about the deliverability of sites and refers to the provision of robust up-to-date evidence and the consideration of the involvement of people with an interest in delivery in the process. Whilst para 3-030 discusses the work undertaken to establish a five-year supply at the plan making stage, it is clearly relevant at the annual review stage and particularly in the context of individual site delivery. Whilst benchmarks concerning delivery at different types of site can be established through consultation at the plan making stage, the assumptions nevertheless require periodic review and not all sites perform to the norm. In this context it is not unreasonable to expect some research, with or without consultation, on the progress of sites where large numbers of dwellings are involved. The recent changes to the definition of *"deliverable"* in the Framework makes such research more important. I refer to this later [IR 53 & 226].

343. In dealing with the various sources of supply I have considered the information and evidence put before me at face value. I note the numerous references by the Appellant to Inspector's assessments of five-year land supplies, when determining appeals in CW&C and elsewhere (CDs 17). However, for the most part the time period is not the same, the Framework and NPPG have both been reviewed and changed, the locational circumstances are mostly different and the evidence before other Inspectors may not have been the same as that before me. The Appellant refers to the Framework's assertion that every case should be determined on its own individual merits and that is what I have done when

assessing the five-year land supply put before this Inquiry. I have considered the 5-year supply evidence on its own merits whilst having due regard to what previous Inspectors have said [IR 56, 120, 212 & 213].

344. There is a dispute about the introduction of post-base date information by the Council in its review of the April 2018 assessment for the purpose of this Inquiry [ID 17]. Whilst I agree that it is not appropriate to introduce new sites at this stage, their insertion should await the next full review, it is nevertheless appropriate to take into account information received after 1 April 2018 if it affects sites that were in the last full assessment. Subsequent information that supports a pre-base date judgement should not normally be ignored [IR 85, 130 & 131].

Demolitions and other losses

345. The 1,100dpa. requirement in Policy STRAT 2 is a net figure. At the time of the Examination, losses of around 50dpa. were estimated and a gross figure of 1150dpa. established. The estimate was based on trends at the time the LP was prepared. More recent analysis undertaken by the Appellant and using the demolitions in the Council's HLM reports 2011-18 suggests that a figure of 39dpa. is more appropriate. The Council says that the calculations in its supply figures are based on a net assessment, with the actual number of housing losses, be they from housing development sites or other known sources, subtracted from the completions data. However, other than the 28ds. referred to by the Appellant and as identified in Ap.4, there is no evidence in the HLM that the Council actually knows how many losses there are likely to be during the next five years. Unlike Ap.2 Completions, which clearly identifies housing losses on a site by site basis, Ap.4 Housing delivery and forecasting, appears to do no such thing. Indeed, it is far from clear how the Council would know which properties are likely to be lost from residential use going forward unless their demolition was a part of an approved scheme. The Appellant has discounted the 28ds. that it identified in Ap.4 and suggested that the Council's five-year supply figure should be reduced by 167ds. to account for potential future demolitions. For the reasons discussed above I agree. [IR 102-106 & 235-236].

Student Accommodation

346. CW&CLP P1 assessed the anticipated student population expected to be residing in the District when the FOAHN was established. The accommodation needs of students was included within the overall housing target with the exception of those living in halls of residence (CD13.10). If the number of resident students overall, including those living in halls of residence, has remained approximately the same since 2011, then this is a reasonable approach to take [IR 238].

347. However, this does not appear to have happened. Whilst overall student numbers seem to have changed little (+75), the number of full-time students at the University of Chester appears to have grown (by about 25%), whilst there has been a similar numerical decline in part-time student numbers. It is a well-recognised fact, supported by research on behalf of the University of Chester[8] (pg.8) in this instance, that part-time students are more likely to be from the local area and to live at home than are full-time students, many of which will have moved from other parts of the country and require accommodation. If this has happened on a significant scale (the Appellant suggests an increase of 2,265

full-time students since 2010), then account of it should be taken in the calculations [IR 69, 108-109 & 238-40].

348. To count purpose built self-contained student accommodation, as a part of the supply, when such accommodation is likely to be meeting the needs of a growing number of full-time students, rather than the more constant numbers that were planned for, is not appropriate. In these circumstances, the dedicated student schemes [SR 144], whilst increasing the overall housing stock with self-contained units, would be unlikely to release accommodation into the wider housing market, such as freeing up some of that currently occupied by students in the Garden Quarter of Chester. Most of the units would be soaked up by some of the increasing numbers of students. Other students may also need to occupy open market homes such as HMOs [IR 107-111 & 243].

349. The Council refers to the multiplicity of University sites, some of which are outside of the district and to the opening of a new campus at Shrewsbury but there is no comprehensive assessment of the changes in student numbers and their locations since 2010. Given the attention paid to this at the previous Inquiries into this appeal and also at the Inquiries into the Nether Peover and Tattenhall Appeals and the findings of previous Inspectors against the Council, in this regard, I find this surprising. In the circumstances I agree with the Appellant that all of the 430 student units in the Council's supply should be removed [IR 107-112,238, 241 & 242].

350. 630 student units are included in the pre-2018 completion figures and have contributed to the surplus. Without a demonstration on the part of the Council that these were adding to overall housing supply, as envisaged in the LP and not simply meeting the needs of a growing student population, then they should also be discounted [IR 60-61 & 244].

Individual sites

351. In July 2018 the definition of *"deliverable"* contained in Annex 2 Glossary to the Framework was amended[76]. This had the effect of categorising sites from the perspective of demonstrating deliverability. Sites that are not major development and sites with detailed planning permission should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years. Other sites, including sites with outline planning permission, should only be considered deliverable where there is clear evidence that housing completions will begin within five years [IR 74, 75, 227, 229 & Framework Pg.66].

352. The implication of this change is to shift the requirement to demonstrate deliverability or not from the Appellant to the Council in the case of the other sites, whilst the onus is now firmly on the Appellant to demonstrate that sites with detailed planning permission will not be delivering houses to the extent advanced by the Council. The Appellant has not challenged the Council's assessment of sites with planning permission, although it does challenge the validity of the windfall allowance, which largely relates to small sites without planning permission. It has however extensively challenged the second category

[76] A further updating to assist with clarity was published in February 2019

of sites on the basis that the Council has not submitted sufficient evidence [IR 76-83].

353. The Council considers the Appellant to be too demanding in its search for *"clear evidence"* and points out that the three bullets in the NPPG that set out the types of material, which could contribute towards demonstrating clear evidence, are only examples and that the list is not exhaustive. I tend to agree. Additionally, as the Council pointed out in pre-Inquiry correspondence, there was only a limited amount of time between the publication of the changes in the Framework and the need to submit proofs of evidence. Again, I agree [IR 227 & 228].

354. In an ideal scenario the Appellant may be correct but the circumstances of the Council's review of the 2018 HLM were far from ideal. Whilst the Framework definition of deliverability undoubtedly changed in July, the advice in the PPG as to the sort of information that could be used to demonstrate deliverability was not published until September, a matter of weeks before proofs of evidence had to be submitted at the end of October. Discussions on the SOCG, prior to its submission, should also have been held before then. To expect the Council to have undertaken a comprehensive update of its information base for this appeal is not realistic. There was not sufficient time to undertake a forensic analysis of every site in the supply that does not have a detailed planning permission to the extent of consulting every builder and developer involved. Such an exercise is in any event a matter for the annual review, not a planning appeal. That will have to await the full review in 2019. Despite its case alleging insufficient evidence, the Appellant seems to acknowledge this. I have therefore taken a pragmatic approach to the analysis of the evidence that the Council has been able to assemble in the limited time available [IR 85].

355. The appellant makes the point that developers and builders can inflate the forecast contributions from their existing sites to stymie new development and refers to appeal decisions where this has been given some weight by Inspectors [BP 11.22-11.29]. However, as a corollary the Council argues that the appellant has, more than likely, downplayed the delivery from the sites that it has assessed. Both lines of argument are based on speculation rather than evidence. I therefore give the propositions little weight and deal with the disputed sites on the basis of all of the available factual evidence that is before me [IR232].

356. In considering individual sites, although the evidence about some of the principles at play was tested at the Inquiry, forensic examination of each and every site was not conducted. I have therefore based my findings on the documentary evidence provided to me by the 5-year land supply witnesses, BF and BP, including the tables within the HSoCG, together with some supplementary information contained in the Closing Submissions. However, whilst the Appellant's Closing Submissions do refer specifically to some sites, those from the Council do not [IR 88-93].

Sites with outline planning permission or allocated in the DP

357. A discussion between the parties, following the publication of the November 2018 partial HLMR [ID 17], led to a narrowing of the sites in dispute in this category. It was agreed that over 400ds. on ten sites would not be completed during the five-year period. The remaining six disputed sites, amounting to 300ds, are set out in para 3.9 of the HSoCG [IR 86 & 245].

358. The Appellant's complaint about the inclusion of these sites stems from its interpretation of the meaning of *"clear evidence"* of deliverability. In its opinion the Council has not provided sufficient information in relation to any of these sites to demonstrate the *"clear evidence"* that is now required. In effect the Council's case is based on a site-by-site update of the 2017-18 HLM contained in CD 13/5, with additional verbal updates presented to the Inquiry. The Appellant considers that they should all be supported by comprehensive documentary evidence laid before the Inquiry. I discussed the feasibility of the Council providing such evidence in the timescale in para 354 [87, 246].

359. The revisions to the Framework (13/09/2018) suggest that for these sites, evidence to demonstrate that housing completions will begin on site within five-years could include any progress being made towards the submission of an application, site assessment work or relevant information about site viability, ownership constraints or infrastructure provision.

360. In this context, Table 1 in the November 2018 HLM review indicates that all the sites have developers. There is also other information commensurate with that suggested in the NPPG in Appendix one to HLM review. Ledsham Garden Village is an ongoing site with five phases now having full planning permission and where 90 dwellings were completed in an earlier phase in 2017-18[77]. Buildings have been demolished and the sites are being cleared at Rossfield Road and Delamere Forest School; some conditions have been discharged at Lyndale Farm and a full application has been submitted at Wrexham Road [IR 88-93 & 246].

361. Four of the six sites involve the completion of fewer than 30 dwellings. In the circumstances of, a combination of a developer, clearance/site works and/or movement towards detailed planning permissions/discharge of conditions, my experience suggests that it is more than likely that such modest estimations of completions are likely to be achieved in the five-year period. The two larger sites at Rossfield Road and Wrexham Road again seem very likely to be delivered, given the face value of the information submitted. I therefore consider that further changes to this category are not justified.

362. In coming to this conclusion, I am also aware that following the discussion with the Appellant, more than half of the numbers in this category were removed by the Council. I am also aware of the excellent track record achieved by the Council in predicting future housing delivery. Since the CW&CLP base date (2010), with the exception of only one year (2012/13), when there was a small shortfall of completions when compared to the housing delivery forecasts, the Council's forecasts have under-estimated the subsequent completions. This does not suggest that the Council has been traditionally over-optimistic when making its housing completion forecasts [IR 225 & 246].

363. I note the Appellant's point about the timeliness of some conditions and that if reserved matters applications are submitted at the last possible moment and then development does not commence until that time period is about to expire, then there will be few if any completions on such sites where the combined time periods are in the region or four years or more. However, the purpose of time limits in conditions is not to establish a mechanism through which to forecast

[77] HLM 2017-18Appendix Two, Completions Report.

housing delivery. They are a vehicle to enable a review of (the) permission(s) already granted if circumstances have changed. My experience suggests that in situations where land with planning permission has been acquired by a builder/developer, as is the case here, rather than being owned by a land-owner or site promoter then conditions are discharged and works commenced on site at a date that is far sooner than the time limits in conditions [IR 86-93].

364. The Appellant refers to a case at Woolmer Green where an Inspector considered the Council's evidence to be *"well short"* of what was required. However, I do not have the evidence that led to that conclusion before me [IR 87 & 227].

Non-allocated sites without planning permission

365. There are six sites remaining that account for 222ds. remaining in dispute in this category. The Appellant's case rests on the contention that such sites can never be included in a five-year land supply calculation. However, nowhere in the definition of *"deliverable"* in the Glossary to the Framework or in the NPPG does it say that the sites referred to are an exclusive list. Nevertheless, I agree with the Appellant, that given the status of such sites in the planning system, there needs to be a credible justification for any such sites to be included. [IR 94, 95, 247 & 250].

366. The sites are contained in table 3 to Appendix 3 of the 2018 HLM review [ID 17]. Although not allocated or having outline planning permission at the time of the 2018 HLM there were applications, which have since been granted or approved subject to a legal agreement, submitted by builders at Trafford Street, Hartford Manor, Knutsford Road and Chester Road. None of these sites will provide more than the 42ds. at Hartford Manor. Given the progress that appears to have been made on all of these sites during the past year it seems to me very likely that they will all deliver dwellings in the five-year period.

367. Winnington Business Park is larger than the others (88d). The site appears to have made good progress since the outline application was received in April 2017, that application being approved, subject to a legal agreement in March 2018 and a decision issued in July 2018. A demolition application has been subsequently submitted and approved, along with an outline application for other parts of the site. Although there is now little more than four years to go, there appears to be no significant obstacles to overcome before housing delivery can commence. In the circumstance a forecast of 88 ds by March 2023 does not appear unattainable. The remaining site at Newhall Road is only expected to deliver 12ds. There is already a resolution to grant planning permission, a builder is driving the scheme and the building on the site is no longer in use. The construction of 12ds on this site in over four years does not seem an unreasonable expectation in my view. The Appellant once again refers to the time periods in conditions for the submission of reserved matters and commencement on site, the latter being potentially after 2023. However, there is no evidence to suggest that after the good progress to date, work to secure the implementation of 88 ds on this site by 2023 is about to stop. I therefore prefer the Council's assessment and consider the inclusion of the six non-allocated sites as of April 2018 to have been justified by the subsequent events [IR 96 & 97].

Build out rates and lead in time

368. The Appellant challenges the delivery rates applied to five sites (505ds.), based on the interpretation of the Council's standard build-out rates and lead in times [IR 113, 298]. It alleges that the Council has inflated its delivery rate assumptions. A comparison of the assumptions in table 2.9 of the HELAA (2017)[78] with the Council's forecasts (pg.6 of HDoCG) suggests in broad terms that this is correct [114 & 250].

369. Table 7.3 of BF PoE suggests that at Ledsham Garden Village, Station Quarter and Grange Farm the inflated figures are a response to delivery forecasts from developers. However, there are no copies of the correspondence with developers to confirm what they are saying and why. More fundamentally there is no independent assessment by the Council analysing why it should take on board the opinions of developers in preference to its own standard assessment. The delivery rate assumptions are presumably based on historic analysis of the performance at many sites, from which average rates will have been arrived at. Some of the sites that were assessed, will have performed better than the average whilst others will have performed worse than it. Even if the opinions of individual builders are correct and their sites perform better than the average, there will no doubt be other sites that do not. Unless the Council undertakes a forensic analysis of every site, which it has not done, then there is no justification for departing from its overall assumptions unless very special circumstances can be demonstrated.

370. The Appellant claims that the proposed delivery at Ledsham Garden Village is greater than what was actually achieved on an earlier phase. The evidence indicates that 41 dwellings were completed in 2016-2017 and 90 in 2017-18. To add these together and then divide by two to achieve an annual delivery rate of 66dpa as BP has done is far too simplistic. Building work only began in 2016 and there was not a full year's output during 2016-17. 2017-18 is only one year so a judgement as to whether or not the 90 dwellings constructed in that year was typical and likely to be repeated is not easy to make. Output from sites often peak in the first full year, if market conditions remain the same, so that the Council's estimate of that number being sustained for a further five years seems high, especially when it is wishing to count an additional 28d on a later phase into the supply. With two developers, the delivery rate assumptions would suggest an annual output from this site of not much above 70. The evidence does not suggest a different position with regard to Rossfield Road and Roften Works. I therefore accept the Appellant's analysis and reduce the supply by 505ds.

Small sites windfall allowance

371. The Framework says that an allowance can be made for windfall sites if there is compelling evidence. The Council's historic analysis of completions shows that there has been numerous completions delivered on sites with a capacity below five units on a consistent basis. On the basis of this evidence, the Council therefore makes an allowance for windfall dwellings in years four and five. It recognises that some windfall sites will have been granted planning permission

[78] CD 13.6.

before the base date and uses this information to assess the number of windfalls likely to be delivered in the first three years [IR 98, 251 & 252].

372. Whilst the Appellant notes that completions from this source have been steadily increasing since 2010 (as they have from the other sources), it points out that the 122dpa average from past trends would lead to the delivery of 610ds. over a five-year period. It then goes on to point out that the Council has assumed that 620d with planning permission would contribute to this source of supply in years one to three. It claims that the Council has not applied any lapse rate to these permissions. Whilst the Council acknowledges that some planning permissions will not be implemented, it is not clear how this has been discounted in years one to three. The number of dwellings completed on small sites increased from 70 in 2010-11 to 174 in 2017-18. If the 2017-18 output were to be delivered over the five-year period, then 870ds could be delivered from this source. The Council has assumed 830. To achieve this, dwellings on small sites would have to be delivered at a rate so far not experienced other than in 2017-18. I consider this to be too optimistic. There is not the evidence to enable me to make a different assessment and nor should I in any event. I have therefore taken the mid-point (115d) between the two parties' cases and subtracted that from the Council's figure [IR 99-101 & 252].

Housing land supply conclusions

373. Housing land supply assessment is not an exact science. It relies on objective judgement and some assumptions based on the available evidence. What is certain is that the assessed delivery from individual sites is unlikely to be correct. All one can hope for is that the over-estimations are corrected by under-estimations to a similar amount.

374. The Framework and the NPPGs guidance on this matter were changed some months after the Council undertook its 2018 HLM. The new guidance requires a better demonstration on the part of Councils of the deliverability of certain types of site. Whilst the Council has submitted additional evidence to address the changes, that evidence falls short of what might be expected in a full HLS assessment. However, that is not due to be undertaken before April 2019. Whilst not to the Appellant's satisfaction, I nevertheless consider the evidence that the Council submitted both in written form and verbally at the Inquiry does not lead to a conclusion that its assessment of dwellings to be delivered from sites with outline planning permission or allocated and non-allocated sites is fundamentally wrong. I have therefore not changed these assessments.

375. I have however, accepted the Appellants arguments with regard to demolitions, student accommodation, build-out rates and lead in times and in part the small site allowance. I have deducted 1,217d from the Council's supply. This gives a supply of 6,060 to meet a requirement of 5,150 or a supply of 5.41 years.

Development Plan

376. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the DP unless material considerations indicate otherwise. The statutory DP for the area still consists of the CW&CLP P1, adopted on 29 January 2015, the WNP, made on 19 November 2014 and the saved policies of the VRBLP First Review

Alteration, adopted in June 2006 (in the context of this appeal, specifically Policy GS5) [IR 122-124].

377. Para. 5.3 of the SoCG sets out the agreed relevant policies. The parties agree that the proposal breaches both Policies STRAT 9 and GS5, the latter being addressed in the context of STRAT 9. The Council also considers the proposal to be contrary to STRAT 1 of CW&CLP and to Policies H1 and H2 of the WNP. It also considers all of the above policies to be the dominant ones for determining the appeal. Inspector Dakeyne in his SR only considered STRAT 9, GS5 and H1 to be the dominant policies but also agreed with the Council that the proposal was contrary to STRAT 1 [IR 127, 155, 255 & 259, (SR 218)].

VRBLP

378. Of the VRBLP policies that have been saved, only GS5 has been referred to in substance. That policy seeks to protect the character and appearance of the countryside and to prevent new building therein, unless provided for through other policies. It also defines open countryside as all parts of the Borough which lie outside of defined settlement boundaries [ID 24]. In the context of this appeal, the countryside protection policies have been superseded by those in CW&CLP P1 Policy STRAT 9. Only the settlement limits are relevant because they define the area within which Policy STRAT 9 applies [IR 34, 149, 255 & 259].

379. However, these settlement limits are out of date but have not been replaced. They were defined in the context of the housing requirements established for the VRBLP before 2006. This plan had an end date in 2016. Not only is the boundary seeking to accommodate development needs from a previous plan period, those development needs have been superseded by new ones and the actual period for which the boundaries were meant to represent the land release requirement has now been over for nearly three years. During this period planning permission has been granted for residential development, outside of the settlement boundaries on a number of occasions. Even as early as 2013 and whilst the VRBLP as a whole was still a part of the DP for the area, the Council's officers gave GS5 reduced weight in the decision-making process. [149, 151, 152, 155 & 257].

380. Nevertheless, the Council still considers Policy GS5 to be one of the dominant policies for determining the appeal. Para. 11d of the Framework says that where policies which are most important for determining the application are out of date, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. I therefore conclude that what has become known as the tilted balance applies [IR 155d & 260].

381. Whilst Inspector Dakeyne did not come to this conclusion, indeed he afforded Policy GS5 "*Considerable weight in the context of Winsford*" that decision was arrived at in November 2015 when the VRBLP was still extant and the WNP had recently been made [IR 261, 260 & 261].

382. The Council refers to the findings of the Daventry BC v Gladman (2016) Court of Appeal decision to support its contention that GS5, in the context of its settlement boundaries, is up-to-date. However, that decision has been superseded by the Richborough Estates v Cheshire East DC (2017) case, where at para. 63 Lord Carnwath said in similar circumstances of an extant LP that "*on*

any view, quite apart from para. 49, the statutory development plan was out of date". He went on to confirm 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"* [IR 123, 150, 257 & 258].

CW&CLP

383. The appeal site is beyond the settlement limits of Winsford as defined by VRBLP Policy GS5. Until the CW&CLP P2 is adopted, these limits define the area to which Policy STRAT 9 applies. The proposal does not comprise one of the types of development that is acceptable in principle in the countryside under Policy STRAT 9 so there is a clear breach of the policy [IR 31, 126 & 255].

384. However, as the Appellant points out, the policy *"aims to protect the intrinsic character and beauty of the Cheshire countryside"* whereas the revised Framework at para. 170. which gives more clarification as to the government's position on this issue, seeks to only protect valued landscapes and only to recognise the intrinsic character and beauty of the countryside, not to protect it. Despite the interpretation of previous Inspectors, in the context of a now revised Framework, Policy STRAT 9 is not fully consistent with the wording of the Framework. Nevertheless, the Framework does recognise the overall intrinsic character and beauty of the countryside and the Cawrey judgement[79] confirms that the loss of undesignated countryside is capable of being harmful and attracting weight in the planning balance. In my judgement Policy STRAT 9 is consequently not out of date and is capable of attracting weight, depending upon the circumstances of the case. However, such weight cannot now be the full weight that Inspector Dakeyne gave to the Policy [IR 128-131, 255, & 256].

385. Whilst arguing that full weight should be given to the breach of STRAT 9, because the proposal is outside of the settlement limits, the Council has breached these same settlement limits on numerous occasions itself, granting planning permissions in order to maintain a five-year supply of housing land. In the context of the current settlement limits, Policy STRAT 9 is a policy for the supply of housing and in the context of a site immediately adjacent to one of the four urban areas where Policy STRAT 2 proposes to locate the majority of new development, it should also be given reduced weight in that context [IR 130].

386. I note that the Council, whilst referring to Inspector Dakeyne's SR, says that CW&CLP P2 will be defining new settlement boundaries and that the WNP allocations will form the main basis for the new boundary around Winsford. It also points out that the proposed boundary does not include the appeal site. However, this aspect of that plan is subject to outstanding objections so, at this point in time, it cannot be used in support of additional weight for the breach of Policy STRAT 9 [IR 36, 255, & 259-261].

387. Furthermore, a comparison of the boundaries shown in the VRBLP [ID 24] and that proposed in CW&CLP P2 [ID 25], with the WNP allocations (CD 5/1 pgs30-31) suggests that other land not allocated through that plan has been included in the proposed amendment to the Winsford settlement area on the Policies Map. There are also examples of development and the settlement boundary extending into adjacent parishes, such as further along School Green Lane from the appeal

[79] Cawrey Limited v SoS and Hinckley and Bosworth BC [2016] EWHC 1198

site. Repeating those at the appeal site would not be a new departure [IR 151 & 260].

388. By virtue of being outside of the settlement envelope the proposal is contrary to STRAT 9. However, the Council has not advanced an argument that the proposal would be harmful to the character and appearance of the countryside itself, only that by being within the Policy STRAT 9 considerations, it must in principle be contrary to that policy. Indeed, the Council's officers, when recommending members to approve the application that is now the subject of this appeal, back in 2013, said that

> *"the site is contained on two sides with residential development to the north and a main road along the eastern boundary, with the impact on landscape character not considered to be significant. The site is relatively well contained visually within the local landscape, with the topography and woodland vegetation to the south and west restricting long-distance views*" (CD 2/2 para. 7.32).

389. These observations are as relevant today as they were six years ago. There is also extensive residential development across the main road referred to and some further residential development in the form of individual dwellings and out-buildings on either side of the eastern end of the lane that abuts the southern boundary (SV). The proposed development would undoubtedly result in the loss of open countryside but its impact on the wider countryside and its landscape would be minimal. I therefore give the infringements against Policy SRAT 9 only minor weight [CD 2.2].

390. Policy STRAT 1 requires development to support eight sustainable development principles, following which it will be approved without delay, unless material considerations indicate otherwise. The sixth criterion requires proposals to minimise the loss of greenfield land. The Council quite rightly refers to the proposal's conflict with this but not to any of the others. Inspector Dakeyne found that *"a degree of conflict was involved"*. There is clearly conflict but with regard to the other seven criteria, the proposal is either neutral or contributes towards their requirements [IR 29, 133, 134, 155b, 262].

391. In particular the "Local Approach", which could be secured by conditions or a legal agreement, would help to support regeneration in one of the most deprived areas of the Borough and the parties agree that the new housing would have good accessibility to local shops, community facilities and a primary school. In the context of Winsford it has good connections to public transport. It is agreed that there would be improvements to biodiversity, particularly as a result of the measures proposed to improve the habitat and breeding ponds used by GCNs, a protected species. The proposal would not encourage the use and redevelopment of Pdl but then many of the sites proposed for housing development in the LP or granted planning permission by the Council would not. In the overall circumstances I can only give limited weight to the harm to Policy STRAT 1 [IR 158-170, 184-207 & 284-297].

392. Policy STRAT 2 sets a minimum target of 22,000d for the borough. Policy STRAT 6 Winsford requires provision to be made for at least 3,500 of these new dwellings at Winsford by 2030. The WNP makes provision for 3,362 and I was told that no further sites around Winsford have been identified in the CW&CLP P2. However, I agree with Inspector Dakeyne that the development of Pdl and other

windfalls over the next 11 years would be likely to more than make up for this shortfall of identified numbers. The Appellant refers to issues that are alleged to be undermining the delivery of land within the Station Quarter and suggests that this could lead to an overall under-provision at Winsford. However, the Station Quarter is only meant to deliver 775d during the plan period (about 22%). I have not been referred to any development phasing plan at Winsford and given that more than half the plan period has yet to come, I consider it premature to be suggesting that the requirement from the Station Quarter cannot be delivered over the next eleven years [IR 29, 30, 128, 139, 142, 147, 148, 263, 264 & 308].

393. In my judgement the Policy STRAT 6 requirement is likely to be achieved without the development of the appeal site. Whilst the policy does not offer any support for the appeal proposal, given that it sets a minimum requirement and there is no evidence to suggest that that number is already likely to be unsustainably exceeded, the proposal does not conflict with it either [IR 238 & 264].

394. Policy SOC 1 Delivering affordable housing seeks to maximise the provision of such accommodation on all larger schemes. A target of 30% is set. The proposal would achieve at least 40%, with a further 10% being set aside for self or custom-build housing in the first instance. The scheme clearly accords with this policy, even the Council considering that the benefit deserves substantial weight [IR 32, 175 & 280].

WNP

395. The Appellant points out that only about 2h of the appeal site (30%) falls within the remit of the WNP and that in any event 70% of the proposal cannot be considered to be in conflict with that plan. However, the development as a whole would be a clear extension to the town of Winsford, even though a part would be within another parish. Indeed, the Appellant put the site forward as a potential allocation for the WNP. The proposal would clearly be meeting the needs of Winsford, rather than the small village of Darnhall, in whose parish some of the site is located. Darnhall village is some distance from the appeal site. In addition, the high proportion of affordable housing and the "Local Approach" benefits are clearly there in a Winsford context and do not relate to Darnhall. I therefore consider the proposal as a whole would respect the objectives and policies of the WNP. [IR 135, 136 & 265].

396. The Council and some of the third parties suggests that the plan has a clear strategy for locating housing development, close to the town centre and the railway station as well as creating positive new "gateways" at key arrival points. However, whilst some of these may be contributing to the underlying themes of the plan, there are a number of sites proposed for development that clearly do not meet these descriptions. The appeal site could be considered to be a gateway, albeit only to a minor extent but nevertheless to a greater extent than some of the sites that are expected to deliver Winsford's contribution to the overall housing requirement [IR 147, 266 & 268].

397. The Council suggests that the proposal conflicts with the themes of the plan. There are seven of these. I agree with the Appellant (Para.s 143 &144) that it is difficult to see how the proposal actually offends any of them. However, at the same time many other sites proposed for development in Winsford would

contribute towards the delivery of the vision. Consequently, for the most part the Appellant's contribution to the vision through the seven themes is little different to many of the sites that are proposed for development or indeed others that are coming or could come forward. The training and employment proposals would nevertheless create a variety of employment opportunities, including skills training, which is an employment objective [IR 145, 203 & 267].

398. Policy H1 supports residential development on a range of sites at Winsford that in total would achieve the construction of around 3,362d. As discussed above I consider that to comply with the requirements of CW&CLP Policy STRAT 6. The appeal site is not one of the listed sites. Whilst there is no ceiling on development, I agree with Inspector Dakeyne's conclusion that to see Policy H1 other than as a policy that guides and regulates where new development in and around Winsford should be located would be to suggest that it serves no real purpose. The policy makes proposals as to where residential development in Winsford should be located up until 2030. The appeal proposal is not one of these and so it is contrary to the policy and contrary to the WNP. The policy also requires proposals to accord with other policies of the NP and LP. In this context there is clear support from Policy H3, which seeks to secure a sustainable and mixed community with different dwelling types, a range of tenures and including affordable housing. Consequently, in the overall circumstances of the minimal requirement that Policy H1 is expected to meet and the absence of significant conflict with the vision themes and objectives of the plan, I give Policy H1 no more than moderate weight [IR 33, 136, 268 & 269].

Development Plan Conclusions

399. The proposal would be in compliance with a number of relevant DP policies. These are set out in full in the PSoCG and include those used to assess the proposal against specific matters such as transport (STRAT 10), affordable housing (SOC 1), housing mix (SOC 3) and the environment (ENV 2, ENV 4 and ENV 6). I have found GS5 to be out of date and no real conflict with STRAT 2 because in the context of its minimum 21,000d target, an additional 184d would not be significant [PSoCG & IR 32 & 318].

400. Nevertheless, there would be minor conflict with CW&CLP P1 Policy STRAT 9 and to a limited extent with Policy STRAT 1. There would also be limited conflict with Policy H1 of the WNP, an additional 184d representing about a 6% increase in the context of its target of 3,400d. The housing supply policies STRAT 9 and H1 are the dominant policies for assessing proposals for development inside and immediately outside of the Winsford settlement boundary. The proposal does support Policy SOC1's objective of maximising the provision of affordable housing and given the circumstances, [see IR 408-411] this weighs in the proposal's favour. However, approving proposals that are contrary to dominant policies in the DP, particularly one that is within a NP, should not be undertaken lightly. To do so would undermine the public's trust and confidence in the DP system. I conclude that on balance the proposal would be contrary to the DP overall but only to a minor extent [IR 155 & 271].

CW&CLP P2

401. Apart from establishing new settlement boundaries, this plan when adopted should have no real bearing on the outcome of this appeal as it does not propose any land allocations at or adjacent to Winsford. The plan was submitted for

examination on 12 March 2018 and hearings closed on 27 September 2018. Agreement to Main Modifications are expected soon, with adoption anticipated later in 2019. There are outstanding objections to Policy W1, which establishes the new Winsford settlement boundary. Other objections relate to the plan's alleged failure to provide sufficient land allocations at Winsford through this policy. There are also outstanding objections to Policy DM 20, which relates to the mix and type of housing [PSoCG paras. 5.6-5.9 & IR 36-38].

402. The Appellant accepts that once this plan has been adopted, its route to the tilted balance will fall away and that in that context CW&CLP Policy STRAT 9 will be up-to-date [IR 151]

Sustainable development

Economic

403. The economic benefits set out in OR147 and SR 261-263 still apply. In addition, the housing offer whereby up to 92 new homes would be built by local SMEs, supports the Government's objective of boosting that sector. It would also add value to the local economy as would the self–build plots and elements of the proposed local training, employment and procurement proposals [SR80 & IR 205 & 295].

404. The weight to be given, to the benefit of the additional market housing, needs to be seen in the context of the Council's response to the need to boost significantly the supply of housing. That is what has been achieved by continuing to provide a 5-year supply of housing land [IR 174] and enabling a significant surplus in housing supply over requirement since 2014 [IR 380, 419]. Such a situation cannot justify giving the provision of more market housing significant weight, especially when the LP Inspector clearly said that an OAN of more than 1,100dpa. would require higher job growth than the forecasts suggest are likely to be achieved and necessitating more population growth from in-migration[80]. If job-growth doesn't match the growth in the economically active population then there would likely be an increase in out-commuting, which is not a sustainable outcome [IR 158, 159, 274 & 290-293].

405. However, the market housing would be delivered by SMEs so that in that context it should attract some weight. As Inspector Dakeyne said:

"this, along with the other elements of the housing offer, means that the economic benefits of the appeal proposal are likely to be able to be distinguished from many other housing proposals in the Borough or indeed other proposals on non-allocated sites on the edge of Winsford"

[SR 174, 175, 282 & IR 158-167, 278d & 290-293].

406. The agricultural land position has not changed since the original inquiry and should not weigh against the proposal [OR148].

407. Overall there are significant economic benefits from the proposal [SR 264 & IR 278d].

[80] CD 13/3 pgs. 9&10

Social

408. The proposal would deliver 40% of the dwellings as affordable housing, 10% more than the requirement. The facts surrounding the extent of the need for affordable housing are again in dispute. Notwithstanding that the Council accepts that the need for affordable housing in CW&C is such that the provision of 40%, which is 10% above the LP target of 30%, should be afforded substantial weight. The dispute is over the attachment of the pronoun "very" [IR 175, 182, 275 & 283].

409. Affordability appears to have got worse in CW&C and the numbers on its housing register have more than doubled since it was reviewed in 2014. At the same time, affordable homes have continually been lost from the stock as a result of the "right to buy". Nevertheless, in the context of the LP target of 30%, on past performance the Council appears to be capable of meeting this and achieving the delivery of 6,600 affordable units over the plan period [169, 172, 173, 188, 276 & 277].

410. The unachieved provision of 714dpa. and the corresponding shortfall of 1,503d, referred to by the Appellant, are in the context of the backlog being resolved within five-years. That was never going to be achieved, without a substantial increase in public funds, because it would involve 65% of all dwellings constructed over the five-year period being affordable. As the LP Inspector observed, the figure would still be reduced if the backlog was cleared over a longer period, such as the plan period. However, meeting all of the existing and future affordable housing needs by 2030 from the private sector contribution even if it were always 30%, is likely to be an impossible task [IR173, 174, 176, 178, 179 & 278-280].

411. Nevertheless, because of public investment, the evidence suggests that provision has fared better in Winsford, over the plan period to date, than in the Borough as a whole. Additionally, and despite this and its overall opposition to the proposal, the Town Council in its evidence considers that there is a need for more affordable homes and would welcome the provision on this site. Furthermore, the backlog represents people in housing need now, some of them acutely and so it should not be easily glossed over. I agree that at least substantial weight should be given to the provision of affordable housing on the site [IR 171, 177, 180, 182, 183, 281-283 & 315].

412. The self–build plots would help meet the government's objective expressed in the Housing White Paper and now included in the revised Framework, to support the growth of self and custom build homes. Whilst maintaining a register of those seeking to acquire serviced plots under Section 1 of the Self-Build and Custom Housebuilding Act 2015, to date there are no specific development permissions in CW&C to meet the identified demand. As identified through the Council's self-build register that amounts to 309 households. In Xx the Council confirmed that it did not know how many self-build plots it had granted planning permission for during the plan period. The extent to which the Council has supplemented this data with secondary information, as recommended by the Framework, was also not clear but despite Build Store's database identifying 443 registrants within ten miles of the appeal site, the Council maintained that there is no demand at all in Winsford for such housing on a large site [IR 184-196 & 284-288].

413. I do not share the Council's pessimism about the need for self and custom-build housing at Winsford. Its stance is largely based on conjecture rather than hard evidence and I also note that despite government advice, emerging Policy DM20 of the CW&CLP P2 sets no targets for self and custom-build housing nor allocates any specific sites. The twenty-six plots on adjacent Peacock Avenue, which were developed in such a way some years ago, suggests that such a development can be achieved at Winsford in the right circumstances. Furthermore, to counter the Council's pessimism during the Inquiry, the Appellant agreed to a fall-back position, whereby, if any of the eighteen self-build plots do not commence development within five years of the date of the planning permission, additional affordable housing plots will be built on those sites. [SR80, IR 197-202 & 289].

414. The self-build element would carry some social benefits in helping to respond to the needs of a particular group, identified by the SHMA [SR80] and the Government, who wish to build their own homes. The proposals do not follow the approach advocated by Policy SOC3 of the CW&CLP as a Community Land Trust is not involved[81]. Therefore, there are questions over the affordability of the plots [SR183]. That said the proposed condition that requires the submission of a scheme for the delivery of the self-build plots, would allow an input by the Council into the open market value of the plots. There would thus be social benefits from this element of the scheme. I consider that the self-build element of the scheme should attract substantial weight [IR 184-186].

415. The local training, employment and procurement elements would bring some social benefits to the Borough as a whole and Winsford in particular. There are relatively high levels of deprivation and joblessness, including in the ward adjacent to the appeal site, at Winsford. These considerations deserve significant weight [OR77 & IR203].

416. Overall there are substantial social benefits from the proposal [SR 273].

Environmental

417. There would be less than moderate harm from the loss of open fields but at some point in time there will be a requirement for some greenfield land to be developed around Winsford. The Council does not refer to any specific landscape, visual or ecological harm. The discovery of Great Crested Newts, which are a protected species, foraging on the site has resulted in proposals for off-site mitigation. It is agreed that the proposed improvements go beyond what is necessary to mitigate against the potential harm to the protected species on the site and that there would be minor overall benefits to its habitat and breeding opportunities. There is an acceptance that there would be other minor ecological improvements as a result of the scheme [IR 22, 23, 46, 47n, 204j, 296 & 301].

418. About 8,000 sqm of public open space would be landscaped. This is 3,000 sqm more than the revised standard now requires and would be of minor benefit to the wider community [IR22, 45, 47g & 204g].

419. It is agreed that the site is in an accessible location with sustainable access to bus, cycling and walking facilities. However, such advantages could be a part of

[81] CD 13/1 pg. 71

the credentials of many sites and attract no weight to support the proposal [IR 47k & 204j].

420. Overall I consider the impact on the environmental dimension of sustainable development, from the loss of three open fields, would be counter balanced by the ecological and recreational benefits that would occur so that the harm would be neutralised.

Sustainability Conclusions

421. The Framework considers the three overarching objectives of sustainability to be interdependent and says that they should be pursued in mutually supportive ways. In this case the proposal would achieve significant economic benefit and substantial social benefits along with having a better than neutral impact upon the environment[82]. However, that is not the end of the matter. The conflict with the up to date development plan is a key component of the final balancing exercise. I deal with this in my overall conclusions. In this respect Policy STRAT 1 of the CW&CLP indicates that sustainable development would not be achieved if a proposal would fundamentally conflict with the LP [IR 298-301].

Conditions and obligations

422. As referred to above, following discussions with the Council, the Appellant submitted a set of agreed conditions shortly before the inquiry reopened. I discussed some of these further during the inquiry when further minor modifications were agreed. Before the inquiry concluded it was further agreed that if a local builder was employed to build the market housing and 10% of the dwellings were constructed through self-build, then it was more than likely that the levels of local procurement sought in the draft condition would be achieved without the need for the condition. The procurement condition was therefore removed. With this exception, to all intents and purposes the conditions are the same as the conditions recommended in the OR together with the additional conditions recommended in the SR, with the changes outlined in IR 317. The finally agreed conditions and the ones that I recommend to the SoS are listed at the end of this report.

423. I have considered the need for these conditions in the context of the six tests contained in paragraph 206 of the Framework and the advice contained in the NPPG. The conditions are necessary in order to ensure that the development is of a high standard, creates acceptable living conditions for existing and future residents within the development and area as a whole, is safe and sustainable, minimises the impact on the environment and complies with the other relevant DP Policies.

424. The SoS previously considered that the Training and Employment, Self-Build Housing and Local Builders conditions did not enable these considerations to outweigh his reasons for dismissing the appeal. The High Court found that the SoS had given inadequate reasoning for the rejection of the Training and Employment Measures and the Local Builders condition. It found that the SoS's reasoning that the Self Build Housing condition should not be attached to any permission was sufficient to support that conclusion.

[82] CD 12/1 Pg. 5

425. The Appellant now considers that the matters addressed by the conditions in ID 42 could be more appropriately covered in a legal agreement. It cites an example from Gloucestershire[83] where the SoS has granted planning permission for a residential development with a similar Agreement to secure similar benefits. The Council wished them all to remain as conditions only.

426. I am of the opinion that all of the conditions as now proposed meet the tests in the NPPG and its guidance suggests that that conditions are to be preferred to planning obligations if they meet the tests. Nevertheless, if the SoS agrees with my overall conclusion, it is a matter for him whether or not he imposes conditions to secure the implementation of the "local approach" matters or accepts the Unilateral Undertaking as a substitute means of securing the implementation of the benefits. If the former, then it may be necessary to ask the Appellant to withdraw its Unilateral Undertaking.

The Planning Balance

427. I have found VRBLP Policy GS5, considered to be one of the dominant policies for determining the application, to be out of date. At paragraph 11d the Framework says that where policies, which are the most important for determining the application, are out of date, 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.

428. I have found that the development is sustainable development in the overall context of the Framework, with substantial weight being given to the benefits from the social dimension and significant weight given to the economic dimension. The adverse impacts from the loss of the green fields and on the confidence in the DP are not so great as to demonstrably outweigh the benefits. I consequently find that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole and that planning permission should be granted.

429. If the SoS disagrees with my finding and considers that VRBLP Policy GS5 is not out of date and the tilted balance is not applied I would nevertheless, like Inspector Dakeyne, recommend in favour of allowing the appeal. In this instance it is a matter of balancing the harm, conflict with the DP and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of the new homes.

430. To a limited extent, the proposal is contrary to CW&CLP Policy STRAT 1. T here is also a degree of conflict with CW&CLP Policy STRAT 9 and Policy H1 of the WNP. Although a number of development plan policies support the proposal, particularly CW&CLP Policy SOC1, overall, I consider the proposal to be contrary to the DP when read as a whole but only to a minor extent. That conflict is by and large a technical one and a number of the relevant policies, particularly those of the WNP are not explicit in forming a basis to resist the development. Other than the loss of three green fields that do not easily relate to the wider

[83] Appeal ref: APP/P1615/A/3013622 Land off Driffield Road, Allaston Road and Court Road, Lydney, Gloucestershire (CD 17/2).

landscape, I have only identified minor harm from the development in the context of the principles of sustainability. Nevertheless, the DP is not to be set aside lightly. A failure to comply with the DP, particularly in the context of Policy STRAT 1, could also give an indication that the development would not be sustainable overall.

431. Unless fully justified, permission would undermine the credibility of the plan-led system and the status of NPs promoted by the Framework, even though paragraph 198 of the Framework should not be interpreted as giving NPs enhanced status over other components of the DP. There are adverse impacts through the loss of open countryside and conflict with the DP overall. Together I conclude that these represent moderate harm. The Council has not alleged any other harm and agrees that the other material impacts could be made acceptable by the use of conditions. In this case there are substantial economic and social benefits arising, particularly the significant proportion of affordable homes and the other "Local Approach" benefits of the housing offer. Whilst this type of offer could be repeated, the circumstances are unlikely to be commonplace because of the position of the Appellant as landowner as set out in detail in the 'Local Approach'.

432. Development that conflicts with the DP should be refused unless other material considerations indicate otherwise. But it does not necessarily follow that a proposal which conflicts with the DP cannot comprise sustainable development as illustrated by many appeal decisions[84]. I conclude that the conflict with the DP, the starting point for decision making, including the relatively minor adverse impacts on the countryside are outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes and the self-build housing.

433. In arriving at this conclusion, I have taken into account that the Council, putting to one side the conflict with the DP and including the in-principle objection to the loss of countryside, have not suggested that the grant of planning permission will result in any site specific adverse impacts or that the site is not in a sustainable and accessible location. For these reasons, the proposal would accord with the presumption in favour of sustainable development, having regard to the DP and the economic, social and environmental dimensions of sustainable development considered in the round.

Recommendation

434. I recommend that the appeal be allowed, and outline planning permission be granted subject to the conditions set out in the next section. This recommendation is consistent with that contained in Inspector Dakeyne's two reports [OR168].

[84] For example those referred to in IR65 & IR159

Recommended conditions in the event that permission is granted

Reserved Matters

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase of the development shall be submitted to, and approved in writing by, the local planning authority before any development of that relevant phase begins and the development of each phase shall be carried out in accordance with the details approved under that phase.

2. Application for approval of the reserved matters for Phase 1 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of one year from the date of this permission. Application for approval of the reserved matters for the Phase 2 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of two years from the date of this permission. Application(s) for the approval of reserved matters for each subsequent phase of development must be submitted to the local planning authority not later than the expiration of three years beginning with the date of this permission.

3. The development hereby permitted shall be begun either before the expiration of two years from the date of this permission or before the expiration of one year from the date of approval of the last of the reserved matters to be approved, whichever is the later.

4. All reserved matters applications shall accord with principles set out in the following:

a) Parameters Plan HP/WIN/PP01 Rev B dated 4 July 2014;
b) Boundary Treatment Proposals Plan 1789/P07a dated September 2013;
c) Design and Access Statement dated July 2013;
d) Access Plan (Drawing No. CBO-0149-006).

5. No more than 184 dwellings shall be erected on the site.

Phasing

6. A Phasing Plan for the whole development shall be submitted to, and approved in writing by, the local planning authority as part of the first application for reserved matters within the application site. Full details of the phasing of the construction of the development hereby approved, including highway and pedestrian routings, shall be submitted as part of the Phasing Plan. The development shall be carried out in accordance with the Phasing Plan approved under this condition.

7. The details for each phase of the development required under condition no 1 of this permission shall include:

a) samples or the manufacturer’s specification of the external materials to be used in the construction of the dwellings;

b) soft and hard landscaping works, including details of retained trees and hedges, areas to be landscaped including the numbers, size, locations and species of trees and shrubs to be planted, boundary treatments, hard surfaces, and an implementation programme;
c) existing levels and proposed finished floor (slab) and site (garden) levels;
d) street furniture/structures including proposed substations or other utility structures;
e) external lighting;
f) on-site open space/play space provision. The total amount of on-site open space shall amount to no less than 5,000 square metres;
g) parking for cars and cycles;
h) roads, footways and cycleways;
and,
i) provision for waste and recycling in connection with the dwellings.

The details for each phase shall include a implementation programme for the works.

Open Space

8. No dwelling in any phase of development shall be occupied until details of the management and maintenance regime for the open space within that phase, including any landscaping and planting buffers, shall be submitted to, and approved in writing by, the local planning authority. Following implementation in accordance with condition 7, the open space shall be managed and maintained in accordance with the approved details.

Trees, Hedges and Landscaping

9. Any trees or shrubs, forming part of the soft landscaping works, which die, become diseased or are damaged within the first five years after planting shall be replaced with a tree or shrub of the same species and size in the following planting season.

10. No trees or hedges shall be cut down, uprooted or destroyed nor shall any retained tree be topped or lopped unless the works are in accordance with the Management Recommendations within the Tree Quality Survey Report dated 9 July 2013 (Report No 1789_R05b_JB_JTF) or have been approved in writing by the local planning authority under condition 7 of this permission. Any lopping or topping shall be carried out in accordance with "British Standard BS3998:2010 recommendations for Tree Work". If any retained tree or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and the specification of the replacement tree or hedge shall be approved in writing by the local planning authority.

11. No works in any phase, including ground preparation, shall commence on the site until all existing trees and hedges to be retained in that phase, in accordance with condition 6, are fully safeguarded by protective fencing and ground protection in accordance with specifications to be submitted to, and approved in writing by, the local planning authority, following the provisions of "British Standard 5837: 2012 Trees in relation to design, demolition and construction". Such measures shall be retained for the duration of the construction works.

Biodiversity

12. The development shall be implemented in accordance with the mitigation measures detailed in the Tyler Grange Updated Ecological Assessment Report of 12 October 2018 and Drawing 11391/P09d.

13. Prior to the commencement of development, a detailed method statement of works with regards to Great Crested Newts shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved method statement.

14. The development shall be delivered in accordance with the Great Crested Newt mitigation and compensation proposals as detailed in Section 5 of the Tyler Grange Updated Ecological Assessment Report of 12h October 2018 and Drawing 11391/P09d hereby approved.

15. Prior to the commencement of development, details of the off-site pond creation, including a methodology and timetable, shall be submitted to, and approved in writing by, the local planning authority. The works shall be carried out in accordance with approved details, methodology and timetable.

16. A habitat creation and management plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The plan shall include:

a) Description and evaluation of the features to be created and managed;
b) Ecological trends and constraints on site that may influence management;
c) Aims and objectives of management;
d) Appropriate management options for achieving aims and objectives;
e) Prescriptions for management actions;
f) Preparation of a work schedule (including a project register, an annual work plan and the means by which the plan will be rolled forward annually); and
g) Personnel responsible for implementation of the plan.

17. No on-site hedgerow/scrub/tree shall be removed between the 1 March and 31 August inclusive, unless the site is surveyed for breeding birds, and a scheme to protect breeding birds is submitted to and approved in writing by the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.

18. Prior to the commencement of each phase of the development a scheme and timetable for the provision of bat and bird boxes, including the numbers and locations for that phase of development, shall be submitted to and approved in writing by the local planning authority. The bat and bird boxes shall be installed in accordance with the approved scheme and timetable. Thereafter the bat and bird boxes shall be retained.

Construction Management

19. No development shall take place in any phase until a Construction Method Statement for that phase has been submitted to, and approved in writing by, the

local planning authority. The approved Statement shall be adhered to throughout the construction period for that phase. The Statement shall provide for:

a) details of access, including routing of construction traffic, and temporary pedestrian routes;
b) hours of construction and construction deliveries;
c) the parking of vehicles of site operatives and visitors;
d) loading and unloading of plant and materials;
e) storage of plant and materials used in constructing the development;
f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
g) wheel washing facilities;
h) measures to control the emission of dust and dirt during construction; and
i) a scheme for recycling/disposing of waste resulting from construction works.

Access and Highways

20. The proposed vehicular access, footways and dropped crossing on Darnhall School Lane as detailed on the Proposed Access Plan (Drawing Ref CBO-0149-006 dated 26 April 2013) shall be completed to binder-course level prior to the commencement of the construction of any dwellings on the site.

21. No dwelling shall be occupied until the part of the highway or footway which provides access to it has been constructed in accordance with the approved details up to binder-course level. The surface course shall then be completed within the approved timetable for the relevant phase as approved under condition 7.

Travel Plan

22. Prior to the occupation of each phase of the development, a travel plan for that phase shall be submitted to, and approved in writing by, the local planning authority. The submitted travel plan shall include the objectives, measures and targets set out in the Travel Plan Framework dated 8 July 2013. The approved travel plan shall be operated from first occupation.

Archaeological Work

23. Prior to the commencement of the development of each phase, a programme of archaeological work in accordance with a written methodology of investigation for that phase shall be submitted to, and approved in writing by, the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

Drainage

24. No development shall take place in any phase until a scheme for the disposal of surface water and foul drainage for that phase has been submitted to, and approved in writing by, the local planning authority. The scheme shall be carried out in accordance with the approved details.

Affordable Housing

25. Prior to the commencement of each phase of development a scheme for the provision of affordable housing in that phase shall be submitted to, and approved in writing by, the local planning authority. The affordable housing shall be 40% of the total number of dwellings to be provided on site, be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

a) The numbers, tenure and location on the site of the affordable housing provision to be made;
b) The type and mix of affordable dwellings;
c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
d) The arrangements for the transfer or management of the affordable housing;
e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
and
f) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

All parts of the approved scheme for the provision of affordable housing shall be implemented in full.

Local Approach Conditions

Training and Employment

26. The development hereby permitted shall not commence until details of a Training and Employment Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall aim to promote training and employment opportunities during the construction phase for local people by undertaking to meet a target of not less than 50% of the total workforce on the site being resident within the Cheshire West and Chester Council area, of which not less than 20% is within the town of Winsford and the adjacent parishes:

Self-Build Housing

27. Prior to the commencement of the self-build phase of the development, as approved under condition 6, a scheme for the provision of self-build plots shall be submitted to, and approved in writing by the local planning authority. The self-build plots shall be 10% of the total number of the dwellings to be provided on the site and will not be an affordable unit. The self-build plots shall be provided in accordance with the approved scheme. The scheme shall specify:

(i) The number, location and size of the plots that would be reserved for self-build;
(ii) That the dwelling that is built is first occupied by the person or family that purchases the plot;

(iii) The period that the person or family that purchases the plot shall remain in occupation;
(iv) The roads and services to be provided to service each self-build plot and the phasing thereof;
and,
(v) A programme for the marketing of the self-build plots specifying the open market values at which they will be offered.

All parts of the approved scheme for the provision of the self-build plots shall be implemented in full.

28. Details of the self-build units shall be provided to the Council for approval in line with the reserved matters timeframes. In the event that none or any number of the 18 self-build plots are not commencement within 5 years of the date of this planning permission, those plots that remain will be provided as additional affordable housing dwellings over and above the 40% specified in condition 25 above. Within 6 years of the date of this planning permission, a scheme for the provision of these additional affordable housing dwellings shall be submitted to, and approved in writing by, the local planning authority. This affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

a) The numbers, tenure and location on the site of the affordable housing provision to be made;

b) The type and mix of affordable dwellings;

c) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

d) The arrangements for the transfer or management of the affordable housing;

e) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing;
and,
f) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

Local Builders

29. No dwelling which is not an affordable or a self-build unit shall be constructed other than by a builder or company that:

a) Has its main office or registered office within the Cheshire West and Chester, Chester East or Warrington Borough Council's areas at the date of this permission;
and
b) Builds a total of not more than 500 residential units in any one year in the last 5 years prior to development commencing.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter of Counsel	instructed by Pamela Chesterman, Solicitor Legal Manager, CW&CC
He called	
Beth Fletcher BSc, MSc	Senior Planning Officer, CW&CC
Jill Stephens BA, Dip TP MRTPI	Senior Planning Officer, CW&CC

FOR THE APPELLANT:

Christopher Young, Queens Counsel	Instructed by Gary Halman of GVA HOW Planning
He called	
Ben Pycroft BA, Dip TP MRTPI	Emery Planning
James Stacey, BA, Dip TP, MRTPI	Tetlow King Planning
Jon Suckley, MTCP, MRTPI	GVA How Planning

INTERESTED PERSONS:

Councillor Stephen Burns	Councillor CW&CC
Robin Wood	Chairman Darnhall Fighting Fund and local resident
Brian Clark	Councillor CW&CC, Chair of Winsford Neighbourhood Steering Group
Tony Hooton	Councillor, Winsford Town Council

DOCUMENTS

DOCUMENTS SUBMITTED BEFORE THE INQUIRY

1 2018 Planning Statement of Common Ground
2 Statement of Common Ground on Five Year Housing Land Supply
3 Proof of Evidence of Beth Fletcher with Appendices
4 Proof of Evidence of Jill Stephens with Appendices
5 Proof of Evidence of Ben Pycroft with Appendices
6 Supplemental Affordable Housing Evidence of James Stacey with Appendices
7 Rebuttal Affordable Housing Evidence of James Stacey
8 Proof of Evidence of Jon Suckley
9 Appendices to the Proof of Evidence of Jon Suckley
10 Rebuttal Proofs of Evidence of Ben Pycroft and Jon Suckley

DOCUMENTS SUBMITTED AT THE INQUIRY

11 Opening Statement of the Appellant
12 Opening Statement of the Local Planning Authority
13 Statement from Councillor Stephen Burns
14 Statement from Robin Wood
15 Statement from Councillor Brian Clarke
16 Statement from Councillor Tony Hooton
17 Housing Land Monitor Report 2017-18
18 Extracts from CE&C Economic Dashboard, submitted by the Appellant
19 CW&C Inequalities Report, submitted by the Appellant
20 WNP Sustainability Appraisal Scoping Report, submitted by the Appellant
21 Winsford, Index of Multiple Deprivation 2015, submitted by the Appellant
22 Plan of Electoral Wards in Winsford, submitted by the Appellant
23 Schedule of WNP Allocations and relevant planning history, submitted by the Appellant
24 Plan showing WNP boundary and VRBLP Town Policy Boundary for Winsford, submitted by the Council
25 Plan showing CW&CLP P2 proposals for a revised Winsford Settlement Area Boundary, submitted by the Council
26 Comparison of housing completions and annual delivery forecasts 2010/11-2017/18, submitted by the Council
27 Housing Completions in CW&C 2013/14-2017/18, submitted by the Appellant
28 CW&C Affordable Housing Completions 2010/11-2017/18, submitted by the Appellant
29 CW&C Report to Cabinet on the Accelerated Construction Fund (grant for Affordable Housing), submitted by the Council
30 Letter from "Cruden" to the Appellant expressing support for the use of local SME builders in the proposal's construction
31 Letter from "J Garratt" to the Appellant expressing support for the use of local SME builders in the proposal's construction
32 Letter from "Moorcroft" to the Appellant expressing support for the use of local SME builders in the proposal's construction
33 CW&C Self-build Register, submitted by the Council
34 Schedule of Planning Applications for the development of dwellings at Peacock Avenue, submitted by the Appellant

35 Schedule of Planning Applications for the development of dwellings at Harewood Close, submitted by the Appellant
36 Appeal decision ref: App/A0665/A/13/2209026, Land South of Ledsham Road, Little Sutton, Ellesmere Port, Cheshire, submitted by the Appellant
37 SoCG between CW&CC and Redrow Homes, App/A0665/A/13/2209026, Land South of Ledsham Road, Little Sutton, Ellesmere Port, submitted by the Appellant
38 Gladman Developments and Daventry District Council and SoS, Court of Appeal ref: C1/2015/4315, submitted by the Council
39 Amstel Group Corporation and SoS and North Norfolk District Council, Royal courts of Justice ref: CO/3750/2017, submitted by the Council
40 Draft conditions as agreed in principle by the parties prior to the commencement of the Inquiry
41 Draft conditions as agreed and amended during the Inquiry with tracked changes
42 Conditions as amended and agreed at the close of the Inquiry with tracked changes
43 Closing submissions of the Local Planning Authority
44 Closing submissions of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY

45 Revised Planning Obligation by way of Agreement under S106 of the T&CPA 1990, (Financial contributions towards off-site leisure provision), submitted by the Appellant
46 Planning Obligation by way of Unilateral Obligation under S106 of the T&CPA 1990, (Local Approach), submitted by the Appellant
47 Appeal decision: App/A0665/W/14/2212671, Land south of Oakridge, Highnam, Gloucestershire, with supporting letter from the Appellant
48 Letters of 07 January 2019, to the main parties, informing them that the Inquiry is closed
49 Correspondence with the main parties about conditions and obligations
50 Correspondence with the main parties about pooled contributions, as set out in Regulation 123 of the CIL Regulations, in the context of the S106 Agreement
51 CW&C, Land at Darnhall School Lane, Winsford, Statement of compliance with CIL, submitted by the Council
52 Correspondence with the main parties about revisions to the NPPF

CORE DOCUMENTS

Core Document Reference	File Reference	Title	Document Reference
		Planning Application Form	
CD1/1	CD1 – CD3	Planning Application Form	-
		Decision Notice and Reporting	
CD2/1	CD1 – CD3	CWaC Decision Notice	13/03127/OUT
CD2/2		Officers Report for 13/03127/OUT to CWaC Strategic Planning Board (November 2013)	-
CD2/3		Planning Committee Transcript (January 2014)	-
CD2/4		Officers Report for 13/03127/OUT to CWaC Strategic Planning Board (18 June 2015)	-
CD2/5		CWaC Strategic Planning Board Minutes (18 June 2015	-
CD2/6		Officers Report for 13/03127/OUT to Planning Committee (4 September 2018)	-
CD2/7		Planning Inspectorate reference APP/A0665/A/2212671: SoS Decision Letter and Inspector's Reports (7 July 2016)	-
		Site Location Plan	
CD3/1	CD1 – CD3	Site Location Plan	HP/WIN/LP/01
		Original Submission Plans	
CD4/1	CD4 File 1	Access Plan [replicated by CBO-0149-010]	CBO-0149-006
CD4/2		Illustrative Sketch Masterplan	HP/WIN/SKMP01
CD4/3		Parameters Plan [Superseded by HP/WIN/PP01 Rev B]	HP/WIN/PP01
CD4/4		Topographical Land Survey	S13-199
		Original Submission Documents	
CD4/5	CD4 File 1	Application Covering Letter	-
CD4/6		Supporting Planning Statement (including Affordable Housing Statement and Section 106 Heads of Terms)	-
CD4/7		Statement of Community Involvement	-
CD4/8		Transport Assessment	-
CD4/9		Travel Plan Framework	-
CD4/10		Ecological Assessment [Superseded by August Version]	-
CD4/11		Landscape and Visual Impact Assessment	-
CD4/12		Tree Quality Survey, Root Protection Areas and Development Implications	-
CD4/13	CD4 File 2	Air Quality Assessment	-
CD4/14		Noise Impact Assessment	-
CD4/15	CD4 File 2	Flood Risk and Surface Water Drainage Assessment	-
CD4/16		Archaeological Desk-Based Assessment	-
CD4/17		Phase 1 Geo-Environmental Ground Investigation	-
CD4/18	CD4 File 3	Agricultural Land Classification Assessment	-
CD4/19		Proposed Waste Management Strategy	-
CD4/20		Outline Utilities Strategy	-
CD4/21		Socio-Economic Impact Assessment	-

Core Document Reference	File Reference	Title	Document Reference
		Additional Plans and Documents	
CD5/1	CD5	Proposed Highway Improvements: Swanlow Lane/ Townfields Road Signals Plan	CBO-0149-009
CD5/2		Walking & Cycling Catchment and Site Accessibility	Figure A
CD5/3		Boundary Treatment Proposals Plan	1789/P07a
CD5/4		Parameters Plan	HP/WIN/PP01 Rev B
CD5/5		EIA Screening Report, Covering Letter and Email	-
CD5/6		Ecological Assessment – 13 August 2013	-
CD5/7		CWaC EIA Screening Opinion Letter	-
CD5/8		National Planning Casework Unit EIA Letter	-
CD5/9		Addendum to Ecological Assessment	-
CD5/10		Technical Note: Review of Swanlow Lane / Townfields Road Signal Junction Improvement	-
		2018 Additional Plans and Documents	
CD5/11	CD5	Updated Transport Assessment	-
CD5/12		Updated Ecology Note	-
CD5/13		Indicative On-site Open Space Plan	HP/WIN/IOSP/01
CD5/14		Phasing Plan	HP/WIN/IPP/0
		Design and Access Statement	
CD6/1	CD6 – CD10	Design and Access Statement	-
		Correspondence (with DCLG/ PINS/ CwaC)	
CD7/1	CD6 – CD10	Communities and Local Government Letter to Reopen Inquiry 14 April 2015	-
CD7/2		Letter J Stephens 21 March 2014	-
		Statement of Common Ground	
CD8/1	CD6 – CD10	Copy Statement of Common Ground 2015	-
		Grounds of Appeal	
CD9/1	CD6 – CD10	Grounds of Appeal	-
		Statement of Case	
CD10/1a	CD6 – CD10	Statement of Case (January 2014)	-
CD10/1b		Statement of Case (July 2015))	
CD10/2		Statement of Case (December 2017)	-
CD10/3		CwaC Statement of Case (December 2017)	-
		Additional Council Core Documents	
CD11/1	CD11	Appeal decisions: APP/A0665/A/15/3129628. Land adjacent to Shepherds Fold Drive, Winsford	-
CD11/2	CD11	Appeal decisions: APP/A0665/W/16/3151068. West Winds, Chester Lane, Winsford.	-
CD11/3		High Court Decision: Cawrey Limited v SoSCLG (2016) EWHC 1198	-
CD11/4		High Court Decision: De Souza v SoSCLG EWHC 2245	-
CD11/5		Land Allocations Background Paper (2017)	-
CD11/6		Brownfield Register	-

Core Document Reference	File Reference	Title	Document Reference
CD11/7		Appeal decision Land South of Watlington Road, Benson	-
CD11/8		CWaC Self-build Register	-
		National Planning Policy and Ministerial Statements	
CD12/1	CD12 File 1	National Planning Policy Framework (July 2018)	-
CD12/2		National Planning Practice Guidance: Housing and economic land availability assessment (September 2018)	-
CD12/3		(Superseded) National Planning Practice Guidance: Delivering a wide choice of quality homes (March 2012)	-
CD12/4		Sajid Javid's speech to the Federation of Master Builders 12 December 2017	-
CD12/5		Autumn Budget (November 2017 by Philip Hammond MP)	-
CD12/6	CD12 File 2	House of Commons Briefing Paper: Self-Build and Custom Build Housing (March 2017)	-
CD12/7		Housing White Paper – Fixing our Broken Housing Market (February 2017)	-
CD12/8		Support for small scale developers, custom and self-builders – Housing and Growth Ministerial Statement by The Minister of State for Housing and Planning (Brandon Lewis on 28 November 2014)	-
CD12/9		Lyons Housing Review: Mobilising across the nation to build the homes our children need (October 2014)	-
CD12/10		Announcement – Government investment to build thousands of new homes (Eric Pickles on 26 June 2014)	-
CD12/11		Laying the Foundations: A Housing Strategy for England (November 2011)	-
CD12/12		Homes England Strategic Plan 2018/19 – 2022/23	-
CD12/13		Housing delivery test measurement rule book (July 2018)	-
CD12/14		Technical consultation on updates to national planning policy guidance (26 October 2018)	-
		Local Plan Policy and Guidance	
CD13/1	CD13 File 1	Cheshire West and Chester Local Plan (Part One) (adopted January 2015)	-
CD13/2	CD13 File 1	Vale Royal Borough Local Plan – Policies saved after 29 Jan 2015	-
CD13/3a		Inspector's Report On The Examination Into The Cheshire West And Chester Local Plan (Part One) Strategic Policies (15 December 2014)	-
CD13/3b		Inspector's Report On The Examination Into The Cheshire West And Chester Local Plan (Part One) Strategic Policies (15 December 2014) - Appendices Main Modifications	
CD13/4		Council's Annual Monitoring Report 2018	-
CD13/5	CD13 File 2	Housing Land Monitor 2017-18	-

Core Document Reference	File Reference	Title	Document Reference
CD13/6		Housing and Economic Land Availability Assessment (2017)	-
CD13/7		Council Plan (2016-2020)	-
CD13/8		Strategic Housing Market Assessment (2013)	-
CD13/9		Cheshire West and Chester response to Inspector's Matters, Issues and Questions – Matter 8: the supply and delivery of housing land	-
CD13/10		ED112: Council note to the Inspector on communal establishments and housing requirement	-
		Emerging Development Plan Background Documents	
CD14/1	CD14 – CD16	Local Plan (Part Two) Land Allocations and Detailed Policies – Submission Plan	-
CD14/2		Cheshire West and Chester response to Inspector's Matters, Issues and Questions – Matter 3: the supply and delivery of housing	-
		Neighbourhood Guidance	
CD15/1	CD14 – CD16	Winsford Neighbourhood Plan (Made 19 November 2014)	-
CD15/2		Winsford Neighbourhood Plan Examiner's Report (30 July 2014)	-
		Court Cases	
CD16/1	CD14 – CD16	Verdin (T/A The Darnhall Estate) v The Secretary of State for Communities and Local Government and Others (Neutral Citation Number: [2017] EWHC 2079 (admin))	-
CD16/2		Woodcock Holdings Ltd v The Secretary of State for Communities and Local Government (Neutral Citation Number: [2015] EWHC 1173 (Admin))	-
CD16/3		Ivan Crane vs Secretary of State and Harborough District Council (Neutral Citation Number: [2015] EWHC 425 (Admin))	-
CD16/4	CD14 – CD16	R (Cherkley Campaign Limited) v Mole Valley District Council (Neutral Citation Number: [2014] EWCA Civ 567)	-
CD16/5	CD14 – CD16	Coleman v Secretary of State (Neutral Citation Number: [2013] EWHC 1138 (Admin))	-
CD16/6		R v Rochdale MBC ex parte Milne (Neutral Citation Number: [2000] EWHC 650 (Admin))	-
CD16/7		Allaston Developments Limited v Secretary of State and Others (Claim No. CO/476/2016)	-
CD16/8		Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) (Neutral Citation Number: [2017] UKSC 37)	-

Core Document Reference	File Reference	Title	Document Reference
		Appeal Decisions	
CD17/1	CD17 File 1	Planning Inspectorate appeal reference APP/A0665/V/15/3013622: Land At Clifton Drive, Sealand Road, Chester; Secretary of State Decision (27 February 2018)	-
CD17/2		Planning Inspectorate appeal reference APP/P1615/A/14/2218921RD: Land Off Driffield Road, Allaston Road, and Court Road, Lydney, Gloucestershire; Secretary of State Decision (7 November 2017)	-
CD17/3		Planning Inspectorate appeal reference APP/A0665/A/12/2188464: Land Opposite Brook Hall Cottages, Chester Road, Tattenhall; Secretary of State Decision (21 April 2017)	-
CD17/4	CD17 File 2	Planning Inspectorate appeal reference APP/A0665/A/12/2185667: Land To The Rear Of 15-38 Greenlands, Tattenhall, Cheshire; Secretary of State Decision (21 April 2017)	-
CD17/5		Planning Inspectorate appeal reference APP/A0665/A/12/2180958: Land Adjacent To Adari, Chester Road, Tattenhall, Cheshire; Secretary of State Decision (21 April 2017)	-
CD17/6	CD17 File 3	Planning Inspectorate appeal reference APP/F2415/A/14/2213765: Land Off Dunton Road, Broughton Astley, Leicestershire; Secretary of State Decision (20 March 2015)	-
CD17/7		Planning Inspectorate appeal reference APP/K2420/A/13/2208318: At Land Surrounding Sketchley House, Watling Street, Burbage, Leicestershire; Secretary of State Decision (18 November 2014)	-
CD17/8	CD17 File 3	Planning Inspectorate appeal reference APP/H1840/A/13/2199426: Pulley Lane, Droitwich Spa; Secretary of State Decision (2 July 2014)	-
CD17/9		Planning Inspectorate appeal reference APP/F2415/A/12/2183653: Site At Land South Of Hallbrook Primary School, Crowfoot Way, Broughton Astley, Leicestershire; Secretary of State Decision (17 April 2014)	-
CD17/10		Planning Inspectorate appeal reference APP/P3040/A/07/2050213: Land at Gotham Road, East Leake, Nottinghamshire, LE12 6JG; Secretary of State Decision (3 March 2008)	-
CD17/11		Planning Inspectorate appeal reference APP/C1950/W/17/3190821: Entech House, London Road, Woolmer Green SG3 6JE; Inspector Appeal Decision (26 October 2018)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/12		Planning Inspectorate appeal reference APP/W3520/W/18/3194926: Land on East Side of Green Road, Woolpit, Suffolk IP30 9RF; Inspector Appeal Decision (28 September 2018)	-
CD17/13		Planning Inspectorate appeal reference APP/P0119/W/17/3191477: Land east of Park Lane, Coalpit Heath, South Gloucestershire; Inspector Appeal Decision (6 September 2018)	-
CD17/14		Planning Inspectorate appeal reference APP/N1730/W/17/3185513: Broden Stables, Redlands Lane, Crondall, Farnham GU10 5RF; Inspector Appeal Decision (23 August 2018)	-
CD17/15		Planning Inspectorate appeal reference APP/J0405/W/16/3158833: Land north of Aylesbury Road, Wendover, Buckinghamshire; Inspector Appeal Decision (9 October 2017)	-
CD17/16		Planning Inspectorate appeal reference APP/F4410/W/16/3158500: Land off Westminster Drive, Dunsville, Doncaster, South Yorkshire DN7 4QF; Inspector Appeal Decision (12 July 2017)	-
CD17/17		Planning Inspectorate appeal reference APP/V4250/A/14/2226998: Land South West of Bee Lane, Atherton, Wigan; Inspector Appeal Decision (17 July 2015)	-
CD17/18	CD17 File 3	Planning Inspectorate appeal reference APP/A0665/W/14/3001859: Land off Boundary Park, Parkgate, Neston, Cheshire CH64 6TN; Inspector Appeal Decision (7 July 2015)	-
CD17/19		Planning Inspectorate appeal reference APP/Y2810/A/14/2225722: Salisbury Landscapes Ltd, Boughton Road, Moulton, Northampton; Inspector Appeal Decision (18 June 2015)	-
CD17/20		Planning Inspectorate appeal reference APP/A2470/A/14/2222210: Greetham Garden Centre, Oakham Road, Greetham, Oakham; Inspector Appeal Decision (26 May 2015)	-
CD17/21		Planning Inspectorate appeal reference APP/N1350/A/14/2217552: Land off Sadberge Road, Middleton St George, Darlington; Inspector Appeal Decision (12 January 2015)	-
CD17/22		Planning Inspectorate appeal reference APP/Z2830/A/14/2216712: Land off Grays Lane, Paulerspury, Towcester NN12 7NW; Inspector Appeal Decision (9 January 2015)	-
CD17/23		Planning Inspectorate appeal reference APP/D0840/A/13/2209757: Land north of Upper Chapel, Launceston; Inspector Appeal Decision (11 April 2014)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/24		Planning Inspectorate appeal reference APP/F2360/W/18/3198822: Land off Brindle Road, Bamber Bridge, Preston, PR5 6YP; Inspector Appeal Decision (31 August 2018)	-
CD17/25		Planning Inspectorate appeal reference APP/X0415/W/18/3202026: Land to the rear of the Old Red Lion, High Street, Great Missenden, HP16 0AU; Inspector Appeal Decision (4 September 2018)	-
CD17/26	CD17 File 4	Planning Inspectorate appeal reference APP/U3935/W/17/3192234: Land at Hill Cottage, Ermin Street/Blunsdon Hill, Broad Blunsdon, Swindon; Inspector Appeal Decision (18 October 2018)	-
CD17/27		Planning Inspectorate appeal reference APP/C1760/W/17/3170081: Abbotsford, Braishfield Road, Romsey, Hampshire SO51 0PB; Inspector Appeal Decision (24 November 2017)	-
CD17/28		Planning Inspectorate appeal reference APP/F1610/W/16/3165805: Land at The Leasows, Chipping Campden GL55 6EB; Inspector Appeal Decision (2 November 2017)	-
CD17/29	CD17 File 4	Planning Inspectorate appeal reference APP/D0840/W/16/3142806: Land off Tregenna Lane, Camborne TR14 7QU; Inspector Appeal Decision (09 February 2017)	-
CD17/30		Planning Inspectorate appeal reference APP/R3705/W/16/3155070: Land North of Manor Barns, Newton Lane, Austrey, Warwickshire CV9 3EP; Inspector Appeal Decision (14 November 2016)	-
CD17/31		Planning Inspectorate appeal reference APP/W3005/W/16/3150467: Land between Pleasley Road and North of Mansfield Road, Skegby, Sutton in Ashfield, NG17 3BS; Inspector Appeal Decision (5 October 2016)	-
CD17/32		Planning Inspectorate appeal reference APP/C1625/W/15/3133335: Land rear of Canonbury Street, Berkeley, Gloucestershire; Inspector Appeal Decision (21 November 2016)	-
CD17/33		Planning Inspectorate appeal reference APP/L3245/W/15/3137161: Land at Foldgate Lane, Ludlow, Shropshire; Inspector Appeal Decision (10 November 2016)	-
CD17/34		Planning Inspectorate appeal reference APP/A0665/W/15/3140241: Land at Park Farm, Rudheath, Northwich, Cheshire CW9 7HF; Inspector Appeal Decision (12 May 2016)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/35		Planning Inspectorate appeal reference APP/H1840/W/15/3008340: Land off Worcester Road, Drakes Broughton, Worcestershire; Inspector Appeal Decision (14 January 2016)	-
CD17/36		Planning Inspectorate appeal reference APP/H1840/W/15/3005494: Walcot Meadow, Walcot Lane, Drakes Broughton, Pershore, Worcestershire; Inspector Appeal Decision (4 August 2015)	-
CD17/37		Planning Inspectorate appeal reference APP/A0665/A/14/2227851: Land to the rear of 32 and 32A High Street, Tarporley, Cheshire; Inspector Appeal Decision (25 February 2016)	-
CD17/38		Planning Inspectorate appeal reference APP/K3415/A/14/2225799: At Land To The North Of Dark Lane, Alrewas, Burton Upon Trent, Staffordshire; Secretary of State Decision (13 February 2017)	-
CD17/39	CD17 File 4	Planning Inspectorate appeal reference APP/K3415/A/14/2224354: Land And Buildings Off Watery Lane, Curborough, Lichfield WS13 8ES; Secretary of State Decision (13 February 2017)	-
CD17/40		Planning Inspectorate appeal reference APP/A0665/W/14/3000528: Land at Hill Top Farm, By-Pass Road, Northwich, Cheshire CW9 8JU; Inspector Appeal Decision (3 September 2015)	-
CD17/41		Planning Inspectorate appeal reference APP/A0665/A/14/2226994: Land at Fountain Lane, Davenham, Cheshire; Inspector Appeal Decision (3 September 2015)	-
CD17/42		Planning Inspectorate appeal reference APP/C3105/A/14/2226552: Land At Sibford Road, Hook Norton, Banbury, Oxfordshire; Secretary of State Decision (7 September 2015)	-
CD17/43		Planning Inspectorate appeal reference APP/G1630/W/14/3001706: Land adjacent to Cornerways, High Street, Twyning, Tewkesbury GL20 6DE; Inspector Appeal Decision (13 July 2015)	-
CD17/44		Planning Inspectorate appeal reference APP/A0665/A/14/2214400: Land at Well Meadow, Well Street, Malpas, Cheshire, STY14 8DE; Secretary of State decision (7 January 2015)	-

Core Document Reference	File Reference	Title	Document Reference
CD17/45		Planning Inspectorate appeal reference APP/K0235/W/16/3147287: Land to the south and west of Whitworth Way, Wilstead, Bedfordshire; ; Inspector Appeal Decision (29 March 2017)	-
CD17/46		Planning Inspectorate appeal reference APP/X1545/W/15/3009772: Southminster Road, Burnham-On-Crouch, Essex; Secretary of State Decision (20 April 2017)	-
		Other Documents	
CD18/1	CD18	Federation of Master Builders, House Builders Survey (September 2018)	-
CD18/2		House Builder Federation, Reversing the Decline and Small House Builders Report (March 2017)	-
CD18/3		Torbay Local Plan 2012 to 2030	-
CD18/4		Federation of Master Builders, Improving public procurement for construction SME(June 2013)	-
CD18/5		Planning for Custom Build Housing – A Practice Guide, National Self Build Association (November 2012)	-
CD18/6	CD18	The City of London Corporation, Local Procurement Charter For City Developers (February 2011)	-
CD18/7		HOW Planning Representations to CwaC Local Plan (Part Two) 29 January 2018	-
CD18/8		An introduction to the Home Building Fund	-
CD18/9		HBF Chairman's Update – November 2017	-
CD18/10		Report to Cotswold District Council	-

Ministry of Housing, Communities & Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.