Department for Communities and Local Government

Mr Robert Barber
Pegasus Group
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Our Ref: APP/H2835/A/14/2213617

19 March 2015

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY J M BEATTY, I S CLARK AND REDROW HOMES SOUTH MIDLANDS:-
LAND AT STATION ROAD, EARLS BARTON NN6 0NT
APPLICATION REF: WP/2013/0457/OM

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Keith Manning BSc (Hons) BTP MRTPI, who held a public local inquiry from 12 - 14 August 2014 into your client's appeal against the refusal of Wellingborough Council ('the Council') to grant outline planning permission for: up to 85 dwellings, public open space and associated infrastructure, with all other matters reserved save for access, in accordance with application ref**:** WP/2013/0457/OM, dated 2 September 2013.

2. On 15 August 2014 the 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, because the appeal involves a proposal for residential development of over 10 units in an area where a qualifying body has submitted a neighbourhood plan proposal to the local planning authority.

Inspector's recommendation and summary of the decision

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

Matters arising after the close of the inquiry

4. The Secretary of State received representations from the appellant in a letter dated 18 November 2014. Nigel Ozier on behalf of the Council responded to that letter in a letter dated 15 December, as did James Wilson, the Earls Barton Neighbourhood Plan project manager. The appellant responded to Mr Ozier's representations in a

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letter dated 6 January 2015. Subsequently, the Secretary of State received a letter from the appellant dated 27 February about the Earls Barton Neighbourhood Plan and was copied into a letter from the appellant to the Council, also concerning the Neighbourhood Plan. The Secretary of State received another letter from the appellant dated 13 March, also about the Neighbourhood Plan, and was copied into another letter from the appellant to the Council about the Plan. The Secretary of State has carefully considered all these representations, but as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Copies of these representations can be made available on written request to the address at the foot of the first page of this letter.

Policy considerations

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the North Northamptonshire Joint Core Strategy 2008 and saved policies in the Wellingborough Local Plan 1999, altered 2004. The Secretary of State considers that the Core Strategy and Local Plan policies most relevant to this case are those identified at IR13-17.

6. Material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (The Framework), the associated planning practice guidance (PPG), the Community Infrastructure Levy (CIL) Regulations 2012 as amended and the Written Ministerial Statement on Neighbourhood Planning of 10 July 2014.

7. The Secretary of State notes that the Council and its strategic planning partners are currently preparing a new local plan for Wellingborough in two parts, the North Northamptonshire Joint Core Strategy (JCS) and The Plan for the Borough of Wellingborough (PBW). However, as proposals are still in preparation and so liable to change, he agrees with the Inspector that only limited weight can be accorded to the JCS (IR149) and very limited weight can be accorded to the PBW (IR19).

8. Another material consideration in this case is the Earls Barton Neighbourhood Plan which was submitted to the Council on 26 June 2014. This has passed a legal check to ensure it complies with the relevant legislative provisions and the publicity period for representations under Regulation 16 expired on 29 August 2014 (IR20). IR21 identified the most relevant policy in the Neighbourhood Plan are being Policy EB.GD2. The Plan is due to be considered by an Independent Examiner during 2015. The Secretary of State has been made aware by correspondence from the appellant referred to at DL 4 above, that the Examiner has requested that the information with respect to the housing site selection process and Strategic Environmental Assessment matters are made available for a further six week consultation. The Secretary of State has had regard to the planning history and nearby proposals as set out in IR 24-27, the supporting information referred to at IR28 and the agreed matters at IR 29 in the determination of this appeal.

Main issues

Accordance with the development plan

9. For the reasons at IR146-148, the Secretary of State agrees with the Inspector that the proposed development would, in development plan terms be contrary to the basic intentions of the existing development plan. For the reasons at IR 151-155, the

Secretary of State agrees that it is necessary to consider whether material considerations have the potential to outweigh this conflict with the development plan and he deals with these below.

Housing land supply

10. For the reasons at IR156-177, the Secretary of State agrees with the Inspector that the Council cannot currently demonstrate a five year housing land supply (IR175). In reaching this view the Secretary of State has taken into account the representations referred to at paragraph 4 above, but these have not swayed his conclusion. It follows that the relevant policies for the supply of housing cannot be considered up to date in this case and the provisions of paragraph 49 of the Framework lead to the engagement of the presumption in favour of sustainable development.

Earls Barton Neighbourhood Plan

11. The Secretary of States agrees with the Inspector's factual assessment of the Neighbourhood Plan at IR192-199. On that basis, the Secretary of State agrees that the proposed development, being in what would be classed as open countryside outside the village boundary and in the southern part of the village where the boundary is tightly drawn, would conflict to a significant degree with the provisions of the emerging Neighbourhood Plan

12. The Secretary of State recognises that the Earls Barton Neighbourhood Plan has not yet been examined, put to referendum and made part of the development plan. Nevertheless, as the Inspector recognises, there would be clear conflict with the terms and intentions of the emerging Neighbourhood Plan, which would be undermined in terms of the spatial pattern of development hoped for by the community (IR204). The Secretary of State takes the view that it is appropriate to give significant weight to the conflict with the emerging Neighbourhood Plan. He reaches this view, having regard to Framework paragraph 216 and the stage of the preparation of the neighbourhood plan, the content of the consultation statement, the fact that there are outstanding objections including from the Appellant, the quality and effectiveness of the consultations carried out prior to the submission of the plan to the local planning authority and the evidence of local support. The Secretary of State has had regard to the fact that the neighbourhood planning process, which is explicitly encouraged in the Framework, has been wholeheartedly embraced by the Earls Barton community. The community through the Neighbourhood Plan supports the location of significant development in what it considers, by a majority verdict amongst those participating in the consultation stage, to be the right part of the village, namely 'The Grange'

13. For the reasons at IR182-189 and in light of the PPG the Secretary of State agrees with the Inspector that the appeal proposal should not be rejected on grounds of prematurity (IR190). However he also agrees that questions remain as to whether the proposal would conflict with and harmfully undermine the emerging Neighbourhood Plan's intentions and, if so, whether the weight to be accorded to those negative characteristics would be sufficient to justify refusal (IR191).

14. For the reasons at IR201 the Secretary of State also agrees with the Inspector that the provisions of the appellant's Unilateral Undertaking are such that the proposal would not harmfully undermine the intentions of Neighbourhood Plan policy DB.DC1.

15. Turning to the spatial pattern of development envisaged in the Neighbourhood Plan and the issues considered at IR 202, the Secretary of State is of the view that the

appeal proposals would harmfully undermine the intentions of the Neighbourhood Plan. He has carefully considered the Inspector's views at IR 202 about the proposals consolidating the existing southern projection of the village to the south but remains of the view that the proposals represent a clear conflict with the terms and intentions of the Neighbourhood Plan, supported by the community on consultation to date, that any expansion other than in the limited circumstances set out in Policy EB.GD2, which are not met in this case, be confined to a single site to the north of the village centre. He does however, agree that the Neighbourhood Plan vision of maintaining the existing compactness of the village, so as to facilitate easy walking and cycling, would not be fundamentally compromised (IR 202). Furthermore, the Secretary of State notes that there has been no objection from the highways authority and the Council itself does not pursue its original highways objection, which was in any event concerned with the amenity of residents in the vicinity of Station Road and not wider network issues (IR203).

Traffic and infrastructure

16. The Secretary of State agrees with the Inspector's assessment of traffic considerations at IR206-210. For the reasons given he does not consider that traffic concerns should weigh in the balance.

17. For the reasons at IR207 and below in relation to the Planning Obligation, the Secretary of State agrees with the Inspector that the extra pressure on infrastructure and services would be adequately mitigated and should not weigh against the proposal.

Countryside and visual amenity

18. The Secretary of State considers that the development would erode the open countryside abutting the village boundary and he disagrees with the Inspector's judgment at IR212 that the proposal would not lead to an impression of sprawling, uncontrolled development. The Secretary of State considers that the development, although modest in overall scale, would give precisely that impression in common with many green field development proposals that have not been taken forward through the development plan-led process.

19. The Secretary of State accepts that there is no evidence of an unusually high value in the visual amenity of the countryside as experienced from the public footpath that traverses the site (IR212). However, he considers that the right of way in this case does have visual amenity value arising from the easy access it affords to the countryside.

20. With regard to residential amenity, the Secretary of State agrees with the Inspector's assessment at IR213-214. For the reasons given he does not consider that amenity concerns should weigh against the proposal providing a condition concerning boundary treatment were to be imposed.

Agricultural land value

21. The Inspector does not consider that the loss of agricultural land should weigh significantly against the proposal (IR212) for the reasons at IR9. There it is stated that the precise agricultural quality of the site is unknown, but that mapping shows it to be on the approximated boundary between grades 2 and 3. As 'best and most versatile agricultural land' referred to at paragraph 112 of the Framework encompasses grade 3A. Therefore, notwithstanding the Inspector's note about drainage the Secretary of State considers that there is a strong possibility of some

loss of grade 3A land which the Framework seeks to protect. The Secretary of State gives this potential loss some weight in the planning balance.

Conditions

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions at IR131-138. He considers that conditions 1 - 10 as set out in an Annex of the IR meet the tests of paragraph 206 in the Framework (IR93). However, for the reasons set out in this decision letter, he does not consider that these conditions overcome his reasons for dismissing the appeal.

Section 106 Planning Obligations

23. The Secretary of State agrees with the Inspector's assessment at IR139-143 of the Section 106 Unilateral undertaking dated 13 August 2014 (IR6). For the reasons given he agrees that, with the exception of the public arts contribution (IR140), the contributions offered would be CIL compliant and accord with the tests in paragraph 204 of the Framework. However, for the reasons set out in this decision letter, he does not consider that the Undertaking is sufficient to overcome his reasons for dismissing the appeal.

Overall balance and conclusion

24. The Secretary of State agrees with the Inspector's overview of housing land supply and strategic planning matters at IR218 - 230, except that for the reasons set out at paragraph 11 above regarding the spatial pattern of development hoped for by the community, he does not agree that it would be an arbitrary distinction to distinguish at any strategic level between the northern and southern parts of the village. As the relevant housing policies in the adopted development plan are out of date, the presumption in favour of sustainable development at paragraph 14 of the Framework means that the appeal should be allowed 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 (IR174).

25. The Secretary of State agrees with the Inspector that the economic and social benefits of the proposal should be accorded substantial weight for the reasons given at IR232. He agrees that little weight can be ascribed to the relevant but out of date policies of the adopted development plan or its current review (IR233).

26. The Secretary of State agrees with the Inspector's observations about the emerging Neighbourhood Plan at IR234 notwithstanding that there is on going consultation on matters relating to site selection and Strategic Environment Assessment. There is clear conflict between the appeal proposal with the provisions of the emerging Neighbourhood Plan, the appeal site being outside the defined village boundary and not in accordance with the criteria in Neighbourhood Plan policy EB GD2 on exception sites outside this boundary.

27. Moreover, for the reasons given at paragraph 18-21 above, the Secretary of State does not agree with the Inspector's view at IR231 and 237 that there is a lack of demonstrable environmental harm. He gives significant weight to the combined harm from the impression of sprawl, the reduction in visual amenity arising from urbanisation of the public footpath through the appeal site and the strong possibility of the loss of some best and most versatile agricultural land.

28. Though the benefits in this case are substantial, the Secretary of State concludes that the adverse impacts in regard to conflict with the submitted Neighbourhood Plan and

in consequence the harm to the perceived effectiveness of the neighbourhood planning process, together with the adverse environmental impacts, would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

Formal decision

29. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation and hereby dismisses your client's appeal and refuses outline planning permission for: up to 85 dwellings, public open space and associated infrastructure, with all other matters reserved save for access, in accordance with application ref: WP/2013/0457/OM, dated 2 September 2013.

Right to challenge the decision

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

31. A copy of this letter has been sent to Wellingborough Borough Council. A notification e-mail or letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Julian Pitt

JULIAN PITT
Authorised by Secretary of State to sign in that behalf

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Keith Manning BSc (Hons) BTP MRTPI

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

Date: 6 November 2014

TOWN AND COUNTRY PLANNING ACT 1990

BOROUGH COUNCIL OF WELLINGBOROUGH

APPEAL BY

J M BEATTY, I S CLARK AND REDROW HOMES SOUTH MIDLANDS

Inquiry opened on 12 August 2014

Station Road, Earls Barton NN6 0NT

File Ref: APP/H2835/A/14/2213617

Abbreviations used in Report

PSoCG	Planning Statement of Common Ground
HTSoCG	Highways and Transportation Statement of Common Ground
CSS	(Joint North Northamptonshire) Core Spatial Strategy
WLP	Wellingborough Borough Council Local Plan (saved policies)
SUE	Sustainable urban extension
RS	Regional Strategy
PPG	(the online) Planning Practice Guidance
NCC	Northamptonshire County Council
EBNP	Earls Barton Neighbourhood Plan
SHLAA	Strategic Housing Land Availability Assessment
JPU	(North Northamptonshire) Joint Planning Unit
IHS	Interim Housing Statement (for North Northamptonshire)
HMA	Housing Market Area
OAN	Objectively assessed need(s)
FRA	Flood risk assessment
SUE(s)	Sustainable Urban Extension(s)

File Ref: APP/H2835/A/14/2213617
Land off Station Road and Allebone Road, Earls Barton, Northamptonshire NN6 0NT

- 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 J M Beatty, I S Clark & Redrow Homes South Midlands against the decision of the Borough Council of Wellingborough.
- The application Ref WP/2013/0457/OM, dated 2 September 2013, was refused by notice dated 29 January 2014.
- The development proposed is up to 85 dwellings, public open space and associated infrastructure.

Summary of Recommendation: The appeal be allowed and planning permission granted subject to conditions

Procedural Matters

1. The Inquiry sat for three days and I undertook an accompanied site visit on the final day, 14 August 2014.

2. By letter dated 15 August 2014, the Secretary of State recovered the appeal for his own determination because it is in respect of more than 10 dwellings in an area where a neighbourhood plan has been submitted to the local planning authority.

3. The appeal is in respect of an outline application with all matters reserved save for access.

4. The application was refused by the Council for four reasons. However, the Council subsequently decided not to pursue the third reason for refusal in respect of the amenity impact of additional traffic. The fourth reason for refusal concerned the lack of a planning obligation to mitigate the impact of the proposed development on infrastructure provision. This was addressed in principle by the submission of a unilateral undertaking by the appellants.

5. The reference to policy H2 of the Wellingborough Borough Council Local Plan (the WLP) in the first reason for refusal was confirmed to be an error. It is not a policy of the development plan that is relevant to the proposal.[1]

6. The unilateral undertaking, dated 13 August 2014[2], was submitted at the Inquiry and provides for financial contributions relevant to the provision of bus services, education, fire and rescue services, highways, travel plan monitoring, libraries, pitch sports, waste collection/recycling, environmental improvements and public art, car parking and primary health care. It also provides for 30% of the proposed housing to be affordable.

[1] PSoCG para.5.6
[2] Doc 30

The Site and Surroundings

7. The site is more fully described in the PSoCG but in brief detail comprises a pasture adjacent to the southernmost part of the built-up area of Earls Barton, to the east of Station Road, behind a ribbon of varied house types with long rear gardens. A public footpath traverses the site from Station Road to Allebone Road, a short residential spur off Dowthorpe Hill. The plots associated with houses on Allebone Road and Dowthorpe Hill are more modest in size, fairly typical of modern suburban development. The 2.92 hectare site slopes gently from north to south and adjoins open agricultural land to the east and more dispersed and spacious residential curtilages to the south, notably that associated with 169 Station Road. It is generally bounded by hedgerows.

8. The principal access would be onto Station Road between Nos. 145 and 153 and a secondary vehicular access would be to Dowthorpe Hill via a continuation of Allebone Road. These roads are generally free of parking restrictions and Station Road is characterised by regular on-street parking to serve residential properties and, periodically, events at the local bowls and tennis club.

9. The land is currently in agricultural use as grazing land and its precise quality is unknown, the generalised classification map submitted to the Inquiry[3] showing it to be on the approximated boundary between grades 2 and 3. Consequently, it is impossible to be certain on the basis of the available evidence whether or not the site falls into the best and most versatile category for the purposes of the Framework. However, the site is noticeably wet underfoot, probably as a result of groundwater springs which are characteristic of the locality, which may inhibit its potential.

10. Earls Barton is a large village with a historic centre and numerous modern housing developments dating from the latter half of the twentieth century and the present century, including one under construction nearby at Compton Way (accessed via Thorpe Road off the west side of Station Road to the south of the proposed site access).

11. According to the PSoCG the village comprises around 2,350 properties and is home to around 5,400 residents, currently skewed demographically towards the 60 plus age groups. It has a range of shops (including a pharmacy and post office, a butcher's shop and a convenience store), restaurants, a library and a range of local sports facilities. It has two GP surgeries and a dentist, a primary school and significant local employment opportunities, albeit most residents commute to Wellingborough, Northampton and even London.

[3] Doc 32

Planning Policy

12. Relevant planning policy includes the Framework, which is a material consideration, and the development plan. The existing development plan comprises the Joint Core Spatial Strategy for North Northamptonshire (the CSS), which was adopted in 2008, together with saved policies of the WLP, originally adopted in 1997. Emerging local policy takes the form of a review of the CSS and includes also a draft neighbourhood plan for Earls Barton.

Existing development plan

13. The development plan policies considered by the parties to be most relevant to the principle of the proposed development are policies 1, 6, 9, 10 and 13 of the CSS[4] and saved policies G4, G6, H4 and H9 of the WLP.[5]

14. The CSS was prepared in the context of, and to accord with, the revoked RS. CSS policy 1 seeks to focus development within the urban core of North Northamptonshire, namely the three 'Growth Towns' of Corby, Kettering and Wellingborough. The policy provides that for much of the remaining rural area, including that around Earls Barton, most development is to be confined within defined village boundaries. Policy 6 seeks to match development to the delivery of relevant infrastructure and policy 9 seeks to distribute development with a quantified (at least 30%) emphasis on accessible previously developed land in the urban areas followed by sustainable urban extensions (SUEs) at the Growth Towns. It also anticipates that smaller scale SUEs at 'Smaller Towns' and 'Rural Service Centres' may be brought forward through site-specific Development Plan Documents, but no such category of settlement is identified in policy 10 of the CSS within the administrative area of the Borough of Wellingborough. This is simply divided into the Growth Town of Wellingborough and 'Wellingborough Rural', within which latter area the village of Earls Barton is located. Policy 13 of the CSS sets out general principles for sustainable development.

15. Saved policy G4 of the WLP categorises Earls Barton as a 'Limited Development Village' and aims to confine most development within the village policy lines defined on the proposals map. It also aims to avoid adverse impact of developments, individually or cumulatively, on the size form and setting of the villages or their environs. The appeal site is outside the defined village policy line for Earls Barton. For the purposes of development plan policy it is therefore classified as being within the open countryside. Saved policy G6 presents six criteria which must all be met if development in the open countryside is to be permitted and the proposed development does not do so.

16. Saved policy H4 resists residential development, specifically, in the open countryside other than within prescribed circumstances, including accordance with saved policy H9. The prescribed circumstances in that

[4] CD-C1
[5] CD-C2

policy are presented as four criteria which must all be met and the proposed development does not do so.

17. At the time the PSoCG was agreed and signed off[6] by the main parties, it was common ground that the Council could not demonstrate a five year supply of housing as required by the Framework. It was therefore common ground that policy 10 of the CSS must be considered out of date by virtue of paragraph 49 of the Framework because, amongst other things it relates to the supply of housing. It was also common ground, as set out in the in the PSoCG, that policy 1 of the CSS and policies G4, G6, H4 and H9 of the WLP impact on the supply of housing land albeit the focus of the WLP policies is primarily to protect the wider countryside. Insofar as policy 6 of the CSS aims to ensure mitigation of development impacts, policy 9 aims to promote a sustainable pattern of development and protect the countryside and policy 13 aims to promote sustainable development in general; I do not consider their intentions, in principle, to be inconsistent with those of the Framework.

18. The PSoCG notes that the Council is in the process of updating its land supply and that the position should be "clearer" at the time of the Inquiry.[7]

Emerging development plan policy

19. Although the CSS is being reviewed, insufficient progress has been made for it to merit significant weight;[8] and the weight that can be accorded to an emerging 'Borough of Wellingborough Local Plan' to supplement the CSS is similarly very limited, as this is only at the 'scoping' stage.[9]

20. The Earls Barton Neighbourhood Plan [10] (the EBNP) has recently been submitted to the Council under Regulation 15 of the Neighbourhood Planning (General Regulations) 2012 and the publicity period for representations under Regulation 16 expired on 29 August 2014. (PPG advises that, until this point is reached, refusal on the grounds of prematurity will seldom be justified.)

21. Amongst other things the submitted EBNP, which looks ahead to 2031, proposes to allocate a large site for mixed use development, including 280 dwellings, on land to the north of the village centre between 'the Grange' and the Earls Barton Industrial Estate and defines the proposed village boundary. The submitted policy EB.GD2 sets out criteria against which development proposals outside but abutting the village boundary will be assessed. The appeal site is effectively outside, but does abut, the proposed boundary.

22. The EBNP will be subject to independent examination.

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[6] 2nd June 2014
[7] PSoCG para. 6.3
[8] PSoCG para. 5.3
[9] ibid. para. 5.4
[10] Appendix 4 to evidence of Philip Smith – *Earls Barton Neighbourhood Plan 2011-2031* (June 2014)

Supplementary guidance

23. Relevant supplementary guidance includes *Affordable Housing Supplementary Guidance XI*,[11] adopted in 2004, and *Wellingborough Planning Contributions Guide*,[12] adopted in 2009.

Planning History and nearby proposals

24. The previous planning history of the appeal site is set out in Section 3 of the PSoCG commencing with a refusal of housing development in the 1960s, something which was repeated in the 1980s and culminated, prior to the present application refused subject to appeal, in a withdrawn application in 2013.

25. Given that the Council does not now pursue the third and fourth reasons for its refusal, only the first two reasons merit reproduction at this juncture:

1) "The proposed residential development represents unacceptable development in the open countryside. The sustainable pattern of development promoted by the development plan is considered in this instance to sufficiently outweigh the benefits that may be associated with increased housing supply. The proposal is contrary to Policies 1, 9 and 10 of the North Northamptonshire Core spatial strategy and saved policies G4, G6, H2, (H2 confirmed to be an erroneous reference – see 'Procedural Matters' above) *H4 and H9 of the Wellingborough Local Plan."*

2) "The proposal conflicts with the emerging Earls Barton Neighbourhood Plan. It is therefore inconsistent with one of the core planning principles of the National Planning Policy Framework which seeks to ensure that planning should be genuinely plan-led, empowering local people to shape their surroundings with succinct local and neighbourhood plans setting out a positive vision for the future of the area."

26. The Council's original decision was made at a committee meeting on 29 January 2014.[13] At the same meeting decisions were made on two other applications in Earls Barton. An application for 39 dwellings[14] nearby to the south west of the appeal site, to the rear of 1 – 27 Thorpe Road, off Station Road, was refused. A much larger scheme of development at 'The Grange' site, to the north of the village centre, between existing development and the A4500, was resolved to be approved (in outline form) subject to conditions and a suitable planning obligation.[15] This proposed development would include up to 280 dwellings, public open space, and associated infrastructure, employment land and remodelling and enlargement of existing sports field including change of use from agriculture to sports playing fields, car parking and associated facilities.

[11] CD-G1
[12] CD-G2
[13] The minutes of the Planning Committee are in CD-B3 (Tab 5.1 in Appeal Documents Volume 1: Officer's reports and site location plans are at Tab 5.3)
[14] Application Ref WP/2013/0398/OM
[15] Application Ref WP/2013/0510/OM

27. The late letters list at the committee meeting included, in respect of the appeal site, Counsel's advice to the appellants[16] to the effect that this was not a situation akin to that considered by the court in the *Hunston* case[17], where there was a policy vacuum, but rather one where there remains an extant core strategy with a definitive housing requirement (against which it is accepted by the Council that a five year housing land supply cannot be demonstrated). In that context, it is suggested, reliance cannot legitimately be placed upon the *JPU's Interim Statement on Housing Requirements in the North Northamptonshire Housing Market Area* (the IHS)[18] for this purpose. It simply does not meet the statutory requirements that would render it capable of assuming the status of a development plan document that ought properly be used to define housing requirements. The existing CSS should therefore stand (and be used for calculating the five year requirement) until formally replaced, it is opined. This particular background information from the Council's determination process is relevant to my conclusions on housing land supply.

The Proposals

28. Although the application is in outline, considerable supporting information to explain and illustrate the intended manner of development of the site has been submitted. The general arrangement of the proposed development anticipated is shown on Drawing LLC937_96, which the parties agree to be purely illustrative. The intention is to construct as many as 85 dwellings within the body of the site, retaining hedgerows and hedgerow trees at the perimeter and providing for an area of public open space along its eastern margin and similarly in the south west corner where a surface water attenuation feature would be situated. The route of the existing public footpath would be retained as a pedestrian route supplemented by a new footpath link from the head of each of two primary vehicular routes from Station Road and Allebone Road, both of which would terminate at what are illustratively shown as "Grasscrete agricultural access" points to the farmland to the east.

Agreed Matters

29. The PSoCG (CD-L1) and HTSoCG (CD-L2) set out in detail what is agreed as common ground. The following points agreed by the main parties are salient:

- The site is within Flood Zone 1.
- Earls Barton forms a sustainable local service centre as defined in Policy 1 of the CSS.
- The application was supported by a comprehensive suite of technical reports and other relevant documentation as detailed in paragraph 4.3 of the PSoCG.

[16] Tab 5.3 in Appeal Documents Volume 1
[17] City and District Council of St Albans v Hunston Properties Limited and the Secretary of State [2013] EWCA Civ 1610 (CD-N1)
[18] CD-D4

- Additional reports in the form of a revised flood risk assessment (i.e. 'Revision B') and a Transport Assessment and Travel Plan were prepared by Transport Planning Associates on behalf of the appellants and submitted to the Council on 18 November 2013.
- A special meeting of the Council's planning committee was convened on 29 January 2014 to consider three residential applications (404 dwellings in total) in Earls Barton, all recommended for approval. An outline application for 280 dwellings was approved on land to the north side of the village. The application subject to appeal and a further application for 39 dwellings on land to the rear of Thorpe Road were both refused.
- Statutory consultee responses indicate no technical reasons for refusal.
- NCC, the highways authority, is satisfied with the proposed access arrangements and with the traffic management measures provided for in the unilateral undertaking, at the junction of Station Road and West Street.
- Most of the facilities within the central area of Earls Barton are within 10 minutes' walk or thereabouts from the site and the nearest bus stop on West Street is at a similar distance.[19] There are a number of bus services of varying frequency and utility.[20] Wellingborough Station is the nearest railway station, approximately 7 kilometres away but with inter-city connections.
- 30 mph speed limits on Station Road and Dowthorpe Hill are appropriate to the conditions and local junctions have spare capacity and there have been no accidents recorded on Station Road south of its junction with Dowthorpe Hill within the five year period up to and including 30 April 2013.
- With the Compton Way development and anticipated growth factored in, the proposed development would not give rise to unacceptable impact on local junction capacity and operation.

The Case for J M Beatty, I S Clark & Redrow Homes South Midlands

The salient material points are:

30. The proposed scheme of development was the subject of extensive pre-application discussions with the relevant officers of the Council and technical consultees. All potential 'technical' objections were resolved and the application was recommended for approval together with applications for 280 dwellings and 39 dwellings to the north and south of Earls Barton centre respectively, a potential addition of around 400 dwellings to the village.

31. Independent consultants and NCC concluded that there would be no unacceptable traffic impact on Station Road from the two proposals in the southern part of the village. The Council has since resolved not to pursue its original highways objection. Nor does it pursue its objection to the lack

[19] HTSoCG Table 2.1 and paragraph 2.13
[20] ibid. paragraphs 2.14 – 2.17 and Table 2.2

of a S106 planning obligation, as this is overcome by the unilateral undertaking submitted. It now relies solely on alleged unsustainability due to lack of accordance with the spatial distribution promoted by the development plan and conflict with the emerging EBNP.

32. Contrary to the Council's assertion, the proposal does not represent unacceptable development in the countryside because:

- The site is identified as suitable in the 2013 SHLAA.
- Earls Barton is acknowledged to be the second most sustainable settlement in the borough. (Wellingborough itself being the foremost such settlement.)
- There are no technical objections.
- The Council (at the time of determination) acknowledged a housing land supply of only 1.53 years
- Undue weight has since been placed on the January 2014 Interim Housing Statement (IHS)[21] prepared by the North Northamptonshire Joint Planning Unit (JPU) for the North Northamptonshire HMA.
- The Council will continue to underperform in the delivery of housing required by the CSS.
- Undue weight has also been accorded to the EBNP as the development plan for the borough is not up to date and hence there is no robust, objective assessment of the housing requirement for the settlement and the rejected 'Southern Option' (Option 3) consulted upon for the purposes of the neighbourhood planning exercise was misleadingly represented as 'major growth'.

33. The Council's position is incoherent because it does not dispute the sustainability of Earls Barton as a settlement but, whilst alleging harm to the urban focus strategy of the CSS from the development subject to appeal, it approved a much larger development outside the village (policy) boundary on the other side of Earls Barton. It now seeks to claim a five year land supply but manipulates the figures to, in effect, count five years and eight months whilst relying on unprecedented rates of delivery on major sites and utilising unproven needs figures from the JPU outside the formal policy making process. Its case is invented as a consequence of failing to follow officer advice.

34. Unsurprisingly, no technical case against the development is advanced by the Council because there are no physical impediments and the site has little environmental value. In the context of sustainability the environmental and infrastructure issues are fully and properly addressed.

35. The Council relies erroneously on the judgement in *William Davis v Secretary of State*[22] in looking at the question of sustainability. The correct approach in any event is that endorsed in *Dartford Borough Council v*

[21] CD-D4
[22] [2013] EWHC 3058

Secretary of State.[23] What is required in the context of the Framework is to assess, taking into account the economic, social and environmental contributors to sustainability, whether the positive aspects outweigh the negative or vice versa. A positive balance renders development sustainable for the purposes of the Framework, as confirmed by appeal decisions including those of the Secretary of State.[24]

36. If the correct approach is applied the decision taking approach of paragraph 14 of the Framework is relevant for three reasons: First, the relevant policies in the CSS relating to the supply of housing and the disaggregation of the supply under policy 10 of the CSS are not up-to-date. Secondly, the village boundary for Earls Barton is out of date and there is no five year land supply, however calculated. It was accepted by the Council's witness that relevant policies were out-of-date and the CSS distributional principles upon which the Council seeks to rely are not supported by specific figures that can be relied upon.

37. In the light of the above, permission should be granted unless the adverse consequences of doing so would significantly and demonstrably outweigh the benefits of the proposed development.

38. Not only do the Council not have a development plan housing requirement to rely upon, they cannot rely upon the distributional aims of the plan as between the urban and rural area either; as the distinction between policies concerning supply and the distribution of that supply is in this context artificial and contrary to the principles established in *South Northamptonshire v Secretary of State*[25] as they are clearly counterparts, whilst the strategic aim of urban focus is the most broad brush of approaches. There is no quantitative policy requirement for the rural area against which an appropriate scale of development for Earls Barton can be measured. In any event, even if all the sites currently proposed for housing in Earls Barton were to be developed the overwhelming majority of new residential development would be in Wellingborough and the evidence of Mr Turner demonstrates that there would be no prejudice to the approved SUEs to that town.

39. The total quantum of housing permitted and proposed in Earls Barton is within the range of possibility contemplated by the JPU in considering scenarios for the purposes of the forthcoming review of the CSS.[26] In any event the Council has granted permission for 280 dwellings at Earls Barton and its officers had no difficulty in recommending the approval in total of around 400 dwellings. The reality is that the 85 dwellings proposed on the appeal site would make no material difference to the urban focus policy.

40. Moreover, the urban focus contentions of the Council have to be set in the context of the fact that Earls Barton is acknowledged to be the second most sustainable settlement in the borough as consistently demonstrated by analysis and reinforced by the Inspector who determined the Compton

[23] [2014] EWHC 2636
[24] Docs 13 and 12 respectively
[25] [2014] EWHC 573
[26] Evidence of Mr Barber – Appendix 5.6

Way appeal in August 2012.[27] In any proper apportionment of development to the rural area Earls Barton must feature large. The Council has failed to demonstrate any harm in respect of the intended distribution of development and there is no evidence to support any cumulative harm to Earls Barton from the three developments that were all recommended for approval. The officers concluded that, with appropriate contributions, the infrastructure of the settlement would absorb all of the development proposed and that the scale of growth would not be inconsistent with the role of Earls Barton as top of the settlement hierarchy in the rural area.

41. The Inspector who determined the Compton Way appeal found the village boundary to be out of date, especially in circumstances of housing land shortfall. The boundaries are no longer relevant or reliable, being counterpart to out of date housing land supply policies. Violating those lines by granting the 280 dwelling permission in the north of the village would not have been necessary if they were and the EBNP itself seeks to update the village boundary in recognition of these factors. Paragraph 14 of the Framework is undoubtedly engaged by the out of date nature of the relevant policies including the village boundary definition.

42. The Council does not pretend to have anything approaching a five year land supply in the context of the CSS. Moreover it has persistently failed to deliver its housing requirements. The Inspector's endorsement of the IHS at Kettering[28] cannot be relied upon because it is unclear whether proper and comprehensive submissions were made as to the weight that can properly be attached to it in the context of the role which is being ascribed to it. It is not policy or a replacement for the CSS. It is not a local development plan document in the sense intended by Regulation 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012. A housing requirement figure is effectively a prescribed feature of such documents by virtue of Regulation 5(1)(a)(i).

43. These points were raised in objection to the IHS but not addressed by the legal advice to the Joint Planning Committee obtained in respect of the document[29] or by the Inspector at Kettering. Caution must be exercised because the IHS does not accord with the methodology prescribed in paragraph 159 of the Framework as confirmed to be the correct approach in *Gallagher Homes v Solihull MBC*[30] in that it is not based on a SHMA and does not take account of affordable housing requirements. It appears incomplete submissions were put to the Inspector in the Kettering appeal and these considerations must temper the weight to be accorded to the IHS. Nevertheless, the appellants have engaged with the Council's suggestion that they can demonstrate a five year supply against the IHS requirement.

44. The Council can only demonstrate such a supply, even on a theoretical basis, by taking an artificial base date of 2015 from which to run forward

[27] CD-M1
[28] Appendix 7 to evidence of Philip Smith
[29] CD-D3
[30] [2014] EWHC 1283

its calculation, thereby building in to the estimated supply many months of estimated completions over and above the five full years of supply from 2015. Comparison of the outturn of the last year's completions[31] with those forecast[32] demonstrates that the Council over-estimated by some 20%. The Council's position is not helped by the Bannold Road (Waterbeach) appeal decision[33] of 25 June 2014, because there was no dispute to be resolved in that case, or by other miscellaneous justifications based on superseded or revoked advice from previous regimes of land supply calculation. Nor does the consistency of JPU practice in this regard make it right. The Cody Road (Waterbeach) appeal decision[34] of the same date is directly on the point that the calculation should be on the basis of completions that have actually been secured and on a strictly five year supply without the addition of several months of estimated completions.

45. Moreover, the Council's claimed 5.2 year supply is based on unrealistic assumptions regarding trajectories and the assessment of June 2014[35] is now demonstrably unrealistic and significantly eroded. The margin for error is non-existent as only 122 dwellings have to fall out and a five year supply could not be demonstrated.

46. Both the Framework and the PPG make it clear that the onus is on local planning authorities to demonstrate a five year housing land supply. The trajectory in this case, quite apart from issues of deliverability, involves assumptions regarding the commercial sustainability of projected delivery rates and the Council has not commissioned market evidence to support its assumptions.

47. There is substantial agreement generally as to the sites that potentially contribute to the 5 year supply albeit there is some questioning of when commencement will actually occur. However, the major area of dispute involves the likely rate of delivery on the two SUEs of Wellingborough East and Wellingborough North. Aside from the question of when schemes might actually start to deliver completions, there is a significant question regarding the rates of delivery assumed on these large sites and the Council produces no evidence to substantiate its assumptions.

48. The evidence suggests that, despite planning permissions having been granted, expectations of when development might commence have been unrealistic. For example Wellingborough East has not commenced in the summer of 2014 as previously indicated. The correspondence produced by the Council does not address the central proposition of Mr Turner's evidence that the complexity and market circumstances of the large SUEs makes for appropriate caution in assuming early delivery of significant quantities of housing. Wellingborough East, for example, awaits public funding and detailed design work in respect of crucial infrastructure in the form of a bridge over the mainline railway that separates it from the town. Mr Turner's suggestion, from the standpoint of an objective informed

[31] CD-G3
[32] CD-F2
[33] Doc 6
[34] Appendix 3.4 to evidence of Robert Barber
[35] CD-G2

observer, that, realistically, completions will not start to occur until 2017/18 is entirely apposite. It is the only authoritative independent evidence available.

49. As far as Wellingborough North is concerned the realities are that a land sale will not be completed until autumn 2014, to a land trader, who will then need to sell on to a builder, who will then submit reserved matters for approval as the essential prelude to any commencement. The Council's assumption of 100 completions in 2015/16 is unrealistic.

50. Moreover, the delivery rates assumed by the Council, once development has commenced, are entirely unrealistic as the evidence of Mr Turner demonstrates. The Council's contention that the market around Wellingborough can support aggregate completions in excess of 400 per annum is not borne out by experience elsewhere, including at Cambourne the new settlement being developed close to Cambridge where, in the strongest of markets, the delivery rate was unable to approach that assumed by the Council, albeit that assumption is informed by dialogue with involved developers. Only that assumption is presently capable of delivering a five year supply.

51. It is common ground that only limited weight can be given to the emerging EBNP having regard to paragraph 216 of the Framework. The appellants are objecting to the plan on the basis of fundamental principles regarding inconsistency with the Framework and the absence of a governing strategic policy, including the matter of the appropriate housing figure and the village boundary, and it is likely that others will too. Nothing regarding the appropriate weight to be accorded to the plan changes after 29 August 2014 (the end of the Council's Regulation 16 consultation period). All that will change is that the full range of objections will be known. The EBNP is not at an advanced stage.

52. *BDW Trading Ltd v Cheshire West and Chester BC*[36] does not help the Council because the judgement does not go the point regarding the EBNP as to whether the basic conditions are met. The judgement was concerned with mechanisms concerning how residential development was to be delivered in the village of Tattenhall, not the overall quantum of such development. The appellants will submit, particularly in respect of policies EB.GD1 and EB.GD2 of the EBNP that their effect would be akin to an overall cap on development and effectively a settlement boundary, both features that the Examiner of the Tattenhall Neighbourhood Plan rightly rejected. The judgement is not a licence to ignore national policy but confirms that there is a duty to assess consistency with such policy, especially on housing provision where, as here, the plan seeks to include a housing constraint policy in the form of a settlement boundary.

53. It is unsurprising in view of the scale of this proposal and the stage which the EBPN has reached that no point against the proposed development subject to this appeal is taken on the grounds of prematurity. The appellants will in any event be contesting the EBNP in respect of failure to meet basic conditions and have already demonstrated that to

[36] [2014] EHWC 1470

reject sites in the south of the village on highways and transport grounds would be to do so on a false premise.

54. The correct approach to the EBNP is to afford it little weight until it has been properly and independently scrutinised.

55. In conclusion, the Council officers were correct to recommend approval of the application. They knew of the IHS at the time but that did not persuade them that the Council had a five year land supply or that the proposals should be refused. The site is perfectly suitable and sustainable and the alleged harm to the strategic intention of urban focus is unsubstantiated. Even on the basis of the IHS the Council cannot demonstrate a five year housing land supply. Paragraph 14 of the Framework is engaged and there is no evidence to suggest that the benefits of the scheme are significantly and demonstrably outweighed by adverse impacts. Permission should therefore be granted.

The Case for the Borough Council of Wellingborough

The salient material points are:

56. The Council accepts[37] that, at the time it determined the application, it did not have a five year housing land supply land (when measured against CSS requirements). Subsequently deploying the IHS, however, it does.

57. In any event the adverse impacts of the proposed development outweigh the benefits for the purposes of paragraph 14 of the Framework. In particular it would lead to an unsustainable pattern of development contrary to the policy intentions of the CSS and the WLP. There is conflict with the objectives of policies 1 and 9 of the CSS and the Framework's intentions in respect of sustainable development.

58. The EBNP has been sufficiently consulted upon to merit weight as a significant material consideration and the proposed development would cause significant harm to the principles upon which it is based. Government policy places significant weight on local decision making and the people of Earls Barton have not only embraced the opportunity for this afforded by neighbourhood planning but have, moreover, recognised the need for additional housing in their community as part of the need for such in the borough as a whole.

59. The appeal is an attempt to force through a proposal which conflicts with the strategy of the development plan and is contrary to the clearly expressed wishes of local people.

60. The Council considers the determinative issues to be as follows:-

- Is there a five year supply of deliverable housing land?
- Are the proposals in conflict with the strategy for housing distribution and does that matter?

[37] April 2014 Rule 6 Statement – para. 4.1

- What weight should be attached to the conflict with the EBNP?

61. Prior to the Inquiry the parties agreed that the IHS figures should be the basis for measuring five year supply.[38] The appellants have since sought to resile from that position.

62. The CSS housing requirement does not represent the OAN because it is derived from (revoked) RSS policy to create a nodal growth point. The Inspector who determined an appeal[39] in Broughton, in the adjacent borough of Kettering, rejected it in favour of the more contemporary IHS as this was based on up to date forecast needs. The Council relies on the clear agreement of the appellants to use the IHS figures in preference to the CCS figures.

63. The Bannold Road (Waterbeach) decision[40] does help the Council because it expresses a professional consensus as to the approach regarding base dates. The Cody Road (Waterbeach) decision[41] does not help the appellants because the Inspector explained that he was making it on the evidence presented but they are unable to identify that evidence or say whether the material discussed at this Inquiry was shown to the Inspector.

64. The consensus is enlarged by the evidence of Mr Smith and the consistent approach adopted by the JPU since 2008 and is reinforced by the CLG publications *Regional Spatial Strategy and Local Development Framework Core Output Indicators – Update 2/2008*[42] and advice on *Demonstrating a 5 year supply of deliverable sites*.[43]

65. Bovis, Northants LLP, Network Rail, the Independent Landowners Group and the Council, all of whom are directly involved in the SUEs to Wellingborough and therefore have a special degree of knowledge, disagree with the position expressed by Mr Turner regarding commencement and delivery of housing in the schemes. His evidence is unduly pessimistic and therefore unreliable.

66. It is only possible to form a reliable judgement about the matters addressed by Mr Turner by knowing the detail of the commercial, physical and legal profile of the sites in question. The Council on, the other hand, has sought information from those with a sound platform from which to express a view, namely the owners and promoters of the sites. A view of the evidence as a whole is required taking into account that these bodies refute the views expressed by Mr Turner and Bovis in particular can be assumed to be authoritative on the matter of viability and deliverability, or else the company would not be prepared to commit £11m of its own resources to fund the infrastructure to unlock the land. All these public

[38] PSoCG para. 5.15 and Doc 10 para.2.1
[39] Appendix 6 to the evidence of Philip Smith
[40] Doc 6
[41] Appendix 3.4 to evidence of Robert Barber
[42] Appendix 6 to supplementary proof of evidence of Philip Smith
[43] Appendix 7 to supplementary proof of evidence of Philip Smith

and private bodies speak with a single voice to support the early delivery of the schemes.

67. Mr Turner's concerns about viability are misplaced and this on his own admission[44] leads to a faster rate of delivery than he has allowed for. Mr Smith provided an overall conclusion on the five year land supply using his own judgement regarding the delivery rates suggested by the developers of Wellingborough East, applying a discount and including nothing for C2 elderly persons' accommodation. The 5.2 year land supply should therefore be seen as conservative.

68. The fact of the matter is that the appellants have agreed to use the IHS figures for the purposes of the appeal and that is for the good reason that the CSS figures do not represent the OAN for the area. The assessment period should be 2015-2020 and Mr Turner's evidence should be rejected as unduly pessimistic. The net result is a 5.2 year land supply.

69. If there is a five year land supply for the purposes of the Framework then straightforward conflict with the development plan and the absence of material considerations indicating a contrary outcome lead to rejection of the appeal. S38(6) of the Planning and Compulsory Purchase Act 2004 requires that to be so. If there is not, a planning judgement is required pursuant to paragraph 49 of the Framework, and that is very much a matter for the decision maker. Moreover, the central strategy of the plan, as expressed through the policies governing the distribution of housing, is rooted in the achievement of sustainable development and consequently should be judged beyond the reach of the approach ushered in by paragraph 49.

70. If that proposition is accepted then the distributional strategy of the plan remains in play notwithstanding any absence of a five year housing land supply, inviting a judgement as to whether or to what extent the proposed development conflicts with the strategy. Mr Turner's suggestion that circa 80 dwellings in the context of circa 6,000 in the SUEs would not undermine the strategy is too simplistic.

71. Paragraph 3.85 (the explanatory prelude to CSS policy 9 concerning distribution of development in general) contemplates harmful diversion of investment away from the SUEs, a concern raised by the proposal at issue. This concern is underlined by the evidence of the appellants which seeks to cast doubt on the viability and deliverability of the SUEs. Despite the challenges posed by infrastructure costs and market confidence the judgement of Bovis and others is that the SUEs should be backed and promoted. To deflect the market away from the large sites around Wellingborough by granting consent for small sites in the rural area harmfully undermines the distributional policies of the CSS.

72. There is a pro-rata number implicit in the distributional policies for the split between the urban and rural area that has already been exceeded by 17%. The grant of consent on the appeal site would lift that number to 37%. This is clear evidence that the market is being redirected to the

[44] Evidence of John Turner para. 7.4

rural area by this and similar applications. Continuation of this tendency will weaken the market to the detriment of the SUEs and the CSS strategy.

73. For this reason it cannot be simply assumed that the proposal represents sustainable development but the lack of sustainability goes beyond strategic planning and encompasses the implications for the services and infrastructure of Earls Barton of this level of new development. Circa 400 dwellings have been approved in Earls Barton since 2011 and the Thorpe Road appeal is likely to succeed if this one does suggesting that circa 120 should be added to existing commitments and the appellant's planning witness conceded that the question of whether existing services and facilities could cope with this level of additional development had not been considered. Third party representation is to the effect that this was a serious issue, the financial and physical constraints on school expansion in particular.

74. This matters because it bears on the broad and multifaceted question of whether or not the proposed development is sustainable. The prejudice to the plan strategy, the diversion of market pressure to the rural area, the threat to the early and successful development of the SUEs and the real prospect that the proposed development will apply unacceptable stress to the existing services and facilities at Earls Barton are all part of a cumulative judgement about sustainability and, when looked at in the round in this way, such adverse effects negate the claim that the proposed development is sustainable and acceptance under the auspices of paragraph 14 of the Framework is excluded regardless of whether or not there is a five year housing land supply.

75. It also matters that the proposal conflicts with the emerging EBNP. The assumption that the policy imperative to boost the supply of housing land should override the emerging plan is a "brutalist" approach and is wrong. The EBNP should be given elevated status. It is a well-crafted document reflecting a high degree of local participation which articulates the wishes of the community. It is a central ambition of the Localism agenda to devolve power to this local level and to allow people a real, rather than illusory, impact on decisions which affect their locality. The EBNP is a high quality piece of work which is entitled to be treated with great weight in the decision making process, especially as, after 29 August 2014, it will have completed its consultation process.

76. The appellants think it is enough simply to object to the EBNP to reduce the weight it should be accorded and that it should follow rather than precede an adopted local plan in order to meet the Basic Conditions. The judgement in *BDW Trading Ltd v Cheshire West and Chester BC* contradicts that approach. Paragraphs 76-89 in particular reveal the new era in which planning now operates. A neighbourhood plan at an advanced stage of preparation is a serious and weighty consideration and in this case justifies, of itself, the rejection of the proposal at issue.

The Cases for Interested Parties

The salient material points are:

Councillor Gough (in Doc 18)

77. The community of Earls Barton is accepting of development in the right place where it is sustainable, but reject it where it is contrary to its wishes, where it is not sustainable and ultimately at odds with development plans designed to support growth. Five of the core principles of the Framework are relevant in this case. These are that planning should:-

- *Be genuinely plan-led, empowering local people…….*

This is what we have embraced with the preparation of the EBNP. Overwhelmingly people considered that the OAN for housing in the village should be met in the north of Earls Barton. We have supported growth in a way that this proposal does not. The Council's planning committee supported the vision of the neighbourhood plan by approving 280 dwellings on the site to the north whilst rejecting this and the Thorpe Road proposal to the south. This is exactly why the neighbourhood planning mechanism has been created.

- *Not simply be about scrutiny, but instead be a creative exercise……..*

We are creating a positive vision for the growth of Earls Barton, not simply scrutinising proposals with a view to rejecting them, or forcing through developments regardless of negative effects.

- *Proactively drive and support sustainable economic development……*

This is where we look to the borough as a whole. We have an adequate (five year) supply of deliverable housing sites. Earls Barton has made a clear contribution but the key sites are Wellingborough East and Wellingborough North. The latter has undergone a long genesis but crucially the bridge over the railway has money allocated from Central Government and is to be built over Easter next year. This will resolve the land supply and make this development and appeal pointless from that perspective.

- *Take account of the different roles and characters of different areas……*

The CSS does this and policy 9 aims to strictly control development in the open countryside outside the SUEs. Earls Barton already has circa 400 houses approved as opposed to the 250 required from 2011 – 2031 under the Rural Housing Targets for the borough. Allowing this appeal would be contrary to the urban focus of the CSS and thus would not be plan-led.

- *Take account of and support local strategies …….*

The proposed development fails to do this other than through the standard form of planning obligation. The main priority as regards transport is to prevent further increases in parking and congestion in the centre of Earls Barton. This proposal would be counter to that aim as the main access route would be through the centre. Secondly, the community has embraced development in the right place which helps to grow both sports and community facilities in the village.

In conclusion, our opposition to this proposal as a village and as a borough is not because we are anti-development but because we embrace the tenets of localism so as to give people affected a say in where it should be located, in contrast to a system run for the benefit of developers contemptuous of the views of local people.

James Wilson for Earls Barton Neighbourhood Plan (in Doc 19)

78. Following the Localism Act 2011 the Parish Council took the proactive decision to plan for the future growth of the village through the preparation of the EBNP.

79. Prior to this the proposed level of growth for Earls Barton and other villages in the rural area was modest as required by the CSS (policies 1, 9 and 10) which directs growth principally towards the urban core of North Northamptonshire.

80. The EBNP is now at Regulation 16 stage (finished 29 August 2014) but prior to that went through a series of consultation stages as detailed in the EBNP *Consultation Statement*.[45] This ensured that the views of the community were taken into consideration.

81. The CSS has been under review since 2009 and the changes brought about by the Framework and the revocation of RSS have required the EBNP team to work very closely with the Council and the JPU to determine an appropriate level of growth for Earls Barton over the next 20 years. It undertook a housing needs survey, a report to set out how the housing target was determined and the Council published an interim report on rural housing targets for the principal villages. Consequently there is a robust and credible housing target for Earls Barton for the plan period to 2031, the Council's methodology producing a minimum housing target of 250 dwellings, considerably in excess of previous requirements.

82. However, the EBNP recognises that additional benefits can be delivered through development and has responded to the community's desire to focus growth around a comprehensively planned village extension to the north, at 'the Grange' site. This was the preferred option for 88% of respondents.

83. Consequently, the site is proposed to be allocated in the EBNP and the application for a 280 dwelling development there has been supported, with permission having been granted by the Council. The comprehensive scheme additionally provides for playing fields and other recreational space, changing rooms, allotments and additional employment land. None of these benefits for the community can be provided at the appeal site.

84. Taking account of completions and current commitments the EBNP identifies that around 400[46] new dwellings will be delivered over the plan period a circa 17% increase in the housing stock of the village. Beyond this level of growth the sustainability of the settlement, the characteristics of how it functions and the attributes that make it a desirable place to live

[45] CD-H1
[46] The precise figure is 397

and work will be eroded, impacting adversely on existing and future residents.

85. Only recently can the Council demonstrate a five year land supply including the SUEs being facilitated at Wellingborough through public infrastructure funding. Earls Barton accounts for nearly 10% of the five year supply. The supply does not disaggregate between urban and rural areas but the Parish Council and the EBNP team does not think it equitable that further consents should be granted in villages such as Earls Barton. It would be counter to the existing and emerging CSS policies on the distribution of development and raises significant issues in respect of sustainability which cannot be mitigated.

86. In brief these concern:-

- The capacity of the two schools in the village, which are on constrained sites, potentially causing movement away from the village for education to the detriment of sustainable travel habits and community cohesion;
- The capacity of social infrastructure to accommodate growth of the village beyond that anticipated by the EBNP. The appeal site cannot deliver benefits on the scale of the Grange site;
- Exacerbation of existing parking problems on Station Road and in the village centre where the parking pressures are demonstrated by the EBNP *On Street Parking Survey.*[47] The proposed development on the appeal site will make the existing situation worse, impacting on highway safety.

87. For the above reasons the Neighbourhood Plan Project Group and Parish Council consider the appeal should be dismissed.

Rosemary Smart for Earls Barton Parish Council (in Doc 24)

88. The Parish Council embraced the bottom up ethos of the Localism Act and became the first parish in Wellingborough to begin the neighbourhood plan process.

89. We do not see the EBNP as a shield to prevent development but rather a means of discharging our responsibility to accommodate a fair share of necessary growth. We engaged with David Wilson homes to bring forward the preferred option for the growth of Earls Barton at 'the Grange' site. With that development plus the Compton Way development in the south of the village that is currently underway, Earls Barton has already been committed to more than its fair share. The local infrastructure has not kept up with the development that has already taken place.

90. The schools should be able to cope, with some limited extension, with the pupils from Compton Way and 'The Grange'. Further development, such as that proposed at the appeal site, would likely exceed the practical capabilities of the schools to accommodate additional pupils leading to travel elsewhere.

[47] Doc 21

91. The frustrations of the congestion in the centre and to the south of the village created the preference of the community for the northern location of 'the Grange' as this can be accessed from a main road on the village outskirts, largely avoiding the centre.

92. The community benefits offered by the Grange make it a better option than other available sites.

93. The people of Earls Barton are not NIMBYs, we have worked hard to get the right development in the right place but recognise the limited capacity of a village that we know and care about to absorb further development.

94. For these reasons the appeal should be dismissed.

Bridget Chapman on behalf of the Save Earls Barton Group (in Doc 25)

95. The appellants in this case will claim that the proposed development is sustainable development, looking at it in isolation. But the bigger picture is important.

96. The housing needs of the village have been more than met by the EBNP and other committed development totalling circa 400 dwellings.

97. There will be too much pressure on social infrastructure. The primary schools are physically very limited and if pupils have to travel elsewhere to school this will not be sustainable. There is no secondary school in the village, so pupils of that age already have to travel.

98. Community groups struggle to find premises and there is no large community centre (A site proposed for one in the past has since been developed for housing).

99. The site is 800m from the village centre and its facilities, including schools, and people are likely therefore to drive there according to the NCC policy on schools admissions. The slope up to the village centre makes this more likely.

100. There are fewer employment opportunities in the village than in the past and again this necessitates travel, detracting from the goal of sustainability. The SUEs at Wellingborough are much better placed in this respect.

101. Granting permission on the appeal site will set a precedent for further unsustainable development on fields around the village.

102. The ministerial foreword to the Framework says sustainability is about ensuring better lives for ourselves does not mean worse lives for future generations and that sustainable planning should be a collective enterprise with decisions taken by local communities and not bodies remote from them. Through the EBNP, the local people have identified the most sustainable sites for development and therefore the appeal should be dismissed.

Janice Higgs (in Doc 26)

103. Documents supporting the application cause concern in respect of the likely content of reserved matters applications, including; relationship to existing properties around the site and the amenity of their occupiers; the relationship between the various house types within the site, both physically and socially; boundary treatment; noise levels, both ambient and potentially from the development itself, notably from parking; the layout suggests that further development is contemplated areas; traffic will impact on surrounding properties through noise, dirt, fumes and headlight intrusion; the revised layout opens the way to rat-running through the site; and the site is poorly drained because of the springs.

104. The EBNP has been carefully formulated with local support. This proposed development contradicts the intentions of that plan and would lead to more development than the village should reasonably be expected to cope with. The appeal should be dismissed.

Nick Chapman on behalf of the Save Earls Barton Group (in Doc 27)

105. 'Save Earls Barton' was prompted by spontaneous reaction against this proposal and has since worked closely with the Parish Council, the EBNP team and locally elected borough councillors.

106. The appellants are attempting to ride roughshod over the wishes of the community, which is clearly not of the NIMBY persuasion.

107. Weight should be given to the EBNP even though it has not yet been examined. The housing proposed goes beyond what is needed in the village and if allowed could set a precedent for further development. The way the housing requirement is set for the whole borough leaves villages such as Earls Barton vulnerable to predatory over-development.

108. The real issue on traffic is the cumulative effect of all the development proposed, not the single increment of additional traffic from the appeal site. More substantial urbanising measures to cope with traffic in the village centre will become inevitable.

109. The misery of construction traffic (from Compton Way) will be prolonged by several years.

110. Station Road calms itself because of the parked cars but too much additional traffic will negate the safety advantage of that if pressures to remove on-street parking gave rise to higher speeds.

111. The community genuinely feels that this development is in the wrong part of the village for these and the reasons previously expressed by others. In the spirit of Localism, its views should be respected and the appeal should be dismissed.

Arnold Orton (in Doc 28)

112. This proposal could set a precedent for others if allowed and the casualty will be the quality of life local people enjoy. The large development to the north of the village should satisfy needs. Respecting the wishes of the

local community is the right and democratic approach. The appeal should be dismissed.

Councillor Morrell

113. The development to the north favoured by the community is sufficient and avoids the problem of more traffic through the village. The proposed development would represent over-development of the village and the appeal should be dismissed.

Councillor Bell (supplemented by Doc 29)

114. The Council is aggressively pursuing growth through the implementation of the SUEs to Wellingborough. At Wellingborough East a ransom strip has been compulsorily acquired and the railway bridge is funded and is to go ahead.

115. Neighbourhood plans are being prepared for a number of communities and Earls Barton, through its neighbourhood plan, has shown its willingness to accommodate development. The corollary is that the rural area of the borough should be protected from too much development.

116. The Compton Way development is causing chaos and Station Road is especially bad on schooldays.

117. Constant infills are not what the village needs. Various permissions have been granted including for 280 dwellings at 'the Grange' site. More are not needed and there is concern that the S106 monies will not go to the local schools.

118. The bundle of documents submitted gives some detail of what is happening in the borough in terms of the encouragement and implementation of development in the right places, principally Wellingborough East and Wellingborough North.

Mrs Sharron Bond

119. The proximity of the access road will impact on residential amenity at 145 Station Road by reason of emissions, noise and general disturbance. The village is catering for enough development through the neighbourhood plan and there is a risk of this opening the way to further unwanted development.

Mrs Sara Pateman

120. The proximity of the access road will impact on residential amenity at 153 Station Road by reason of noise and disturbance and visually. The junction will be hazardous and congestion will slow down the response time of two fire crew members living at the property and elsewhere in the vicinity when they are on call.

Mr Duncan Gandy

121. With reference to the HTSoCG at paragraph 7.1 it is noted that there are objections from local traders to proposed waiting restrictions on Station Road.

Mr Colin Wells

122. Was Compton Way development factored in and was the traffic count supplemented by background growth and the additional traffic from this development?

Mr George Blackwell

123. The highway authority has given insufficient attention to the impact of traffic in the village centre.

Written Representations

The appeal notification letter has prompted a number of written representations, the salient points of which are as follows:

Councillor Gough

124. The issues raised by this appeal justify its recovery by the Secretary of State.

Chris Heaton-Harris MP

125. There is widespread concern about this appeal and the proposal is objectionable on the grounds of traffic and highway safety, flood risk, overdevelopment vis-à-vis infrastructure, conflict with the development plan and the emerging EBNP (which residents have invested much time, effort and belief in) and the land supply is such that the development is not needed.

Save Earls Barton Village

126. The community has participated in the EBNP process and has decided that the most sustainable location for development is to the north, at 'the Grange' site, where major expansion is proposed. The wishes of the local community should be respected.

Earls Barton Parish Council

127. This location is not favoured by the local community as is clear from the emerging EBNP. It will generate unsustainable levels of traffic and it will impact adversely on quality of life in the village. It is contrary to the development plan and contrary to the intentions of the Framework. Services in the village will be overstretched as a consequence of the additional houses.

Earls Barton Neighbourhood Plan Project Group

128. The proposal would be contrary to the intentions of the EBNP which enjoys widespread support in the community, following several rounds of consultation. It is contrary to the existing development plan. 'The Grange' site now has permission including for 280 houses and this is already more than required. Amenity and highway safety will be harmed owing to the exacerbation of existing poor conditions on Station Road. There will be a cumulative adverse impact on services and facilities in the village, notably healthcare and primary education. The proposal cannot contribute to the enhancement of community facilities in the way in which the

comprehensive development at 'The Grange' will. It would be contrary to the spirit of Localism.

Local Residents

129. Numerous local residents have written to object to the proposal. Their principal reasons for objection may be summarised as follows:

- The village is becoming overdeveloped with harmful excessive pressure on local services such as schools and doctors' surgeries and is losing its identity
- Additional traffic on Dowthorpe Hill and more particularly Station Road, which is being subject to a number of developments and proposals, will lead to congestion and diminished highway safety and is also harmful to amenity
- The impact of existing and construction traffic is harmful to amenity and this will continue that for a long time to come
- The proposal is contrary to the development plan and the wishes of the local community which, through the EBNP has expressed a strong preference for the Grange site, to the north of the village centre, which is now consented. It is contrary to the spirit of Localism and would negate the work put into the neighbourhood plan.
- There will be a loss of countryside and agricultural land on a greenfield site which is outside the established village boundary. Priority should be given to brownfield sites.
- The site is subject to water logging
- There will be adverse impacts on the residential amenity of adjacent residents
- Access by foot to the village centre is uphill, which will discourage walking and the use of cars will add to parking problems in the centre
- There is adequate housing land in the district
- The village is self-evidently accepting of new development but this represents a further increment which should not be accepted
- The proposed development is unplanned, speculative, opportunist and unsustainable

Representations at application stage

130. The representations submitted at the application stage, including numerous objections from local residents, are summarised in the officer's report[48] and the principal themes emerging from those are consistent with those summarised above.

[48] CD-B2 previously submitted as Grounds of Appeal Volume 1 Document 5 Agenda Item 3 – Report to Planning Committee of 29 January 2014 pages 24 – 51 re Application Ref WP/2013/0457/OM

Conditions and the Planning Obligation

Conditions

131. A number of suggested conditions (SC) were agreed between the Council and the appellant.[49] Discussion of these at the Inquiry was inclusive of third parties present.

132. They are all necessary in principle and, subject to minor drafting and other changes, appropriate having regard to the Framework and PPG. In addition it was agreed that, owing to the proximity of the proposed development site to the existing residential area as a whole and certain individual properties in particular, notably those adjacent to the proposed access off Station Road, further conditions governing methods of working during construction and the permanent treatment of the site boundary thereafter would be necessary.

133. SC1-3 would best be drafted in the model form, with the incorporation of biodiversity enhancement requirements incorporated in a subsequent condition (SC7) concerning landscape management. A departure from the standard requirement of three years for the submission of reserved matters is justified by the need for the site to make an early contribution to the available stock of new houses and the parties suggest two years. I have no reason to recommend departure from that suggestion.

134. SC4 would be necessary to define the permission. Only two plans are appropriately specified for the purposes of the outline permission sought, the site plan LLC937-100 and the plan referenced PL01 Rev D, the latter defining the means of access from Station Road and Allebone Road.

135. SC5 is a standard form of condition to cater for the possibility of some archaeological potential as a consequence of current knowledge arising from the submitted desk-based assessment.[50]

136. SC6 would provide for the approval of a scheme of sustainable surface water drainage for the site which pays special attention to the locally characteristic springs in the context of the submitted FRA, as revised.[51] SC7 is based on a standard form of condition which would provide for the long term maintenance and management of the landscaping to be provided for the site pursuant to its approval as a reserved matter. As I have indicated, I consider, with the agreement of the parties, it is the standard approach in this condition which should be adapted for biodiversity advantage given the relevance of management and maintenance to that objective.

137. SC8 concerns sustainable transport and for precision should refer to the submitted travel plan[52] and the measures specified therein. As certain

[49] Appendix to PSoCG, replicating those recommended at pages 49-50 of Report to Planning Committee of 29 January 2014
[50] CD-A9
[51] CD-A16
[52] CD-A15

measures are on-going it would be inappropriate to require full implementation prior to first occupation.

138. The net result of my consideration of potential conditions is the schedule of recommended conditions annexed to this report for use by the Secretary of State should he be minded to allow the appeal.

Planning Obligation

139. I have considered the unilateral undertaking submitted during the course of, and discussed at, the Inquiry in the context of paragraph 204 of the Framework, the associated advice in PPG, and the requirements of the Community Infrastructure Levy Regulations 2010 (CIL Regulations). The essential purpose of the undertaking is to mitigate the local impacts of the proposed development on infrastructure and public services and provide for the 30% affordable housing. Policy 15 of the CSS aims for that proportion to be negotiated in accordance with thresholds set in saved policy H8 of the WLP and inclusion of the commitment in the undertaking is therefore consistent with the intentions of the development plan and is a benefit to which significant weight should be attached.

140. Financial contributions to the various services are calculated by reference to supplementary guidance under the auspices of relevant development plan policy and I was not presented with any evidence to suggest that the various bases for calculation had been in any way misapplied. (The undertaking is hand corrected where the distinction between contributions in respect of all dwellings and contributions in respect of open market dwellings only is relevant in terms of the relevant supplementary guidance, i.e. education and libraries). Insofar as PPG specifically advises against public art contributions, no weight should be placed on the potential inclusion of monies for such a purpose in the more broadly based contributions for environmental improvement in the locality of the site. The Travel Plan for the development would be secured by the proposed planning condition but, insofar as finance to monitor its implementation must be provided for, appropriate provision in the unilateral undertaking is also necessary.

141. The Council indicated that it was content with the scope and content of the undertaking and accepted in the course of discussion that a last–minute request by NHS England (Hertfordshire & South Midlands Team)[53] to facilitate expenditure of the Primary Health Care Contribution anywhere in the Borough (as opposed to restricting it to the extension of the existing Earls Barton Medical centre as the undertaking provides) would raise judgemental issues of whether there was sufficient proximity to ensure that the statutory test of a direct relationship to the development would be complied with.

142. As it is, it is not necessary to form a view on that matter for present purposes. The undertaking is what it is and provides for mitigation of impact on health services in the locality through specific provision for extension of its medical centre, the execution of which, through the

[53] Doc 31

Council, would be at the option of the beneficiary recipient. The inability to deploy the funds more flexibly within the Borough as NHS England now requests should not weigh against the proposal because the lack of a direct relationship to healthcare needs generated by it would in my view militate strongly against the necessary compliance with the statutory test to which I have referred.

143. For the above reasons I consider the unilateral undertaking submitted to be compliant with relevant national and local policy and the CIL Regulations. Subject only to my comments in respect of public art, weight may therefore be accorded to it.

Conclusions

References are made, where appropriate, to preceding parts of the report by indicating the relevant paragraph number thus [0].

144. My conclusions follow consideration of all the evidence and representations received, both written and oral. They are also informed by my visit to the site and the surrounding area. The main considerations on which, in my view, the decision should turn, are as follows:

i. Whether the proposed development accords with the intentions of the development plan;

ii. Whether there are material considerations which, potentially, could outweigh any conflict with the intentions of the development plan;

iii. Whether the Council has an adequate supply of housing land;

iv. Whether the proposed development would conflict with and harmfully undermine the intentions of the emerging neighbourhood plan for Earls Barton;

v. Whether there are any other matters, including those raised by third party objectors, which would affect the conclusions to be drawn regarding any of these considerations; and

vi. Whether, on balance, the proposed development represents sustainable development for the purposes of the National Planning Policy Framework.

145. I canvassed these questions at the Inquiry and the parties were in broad agreement that they encompassed the relevant considerations. They provide a suitable structure within which to consider the matter subsequently cited by the Secretary of State in recovering the appeal, namely the submission of the Earls Barton Neighbourhood Plan.

Accordance with development plan

146. It is plain that the proposed development would conflict with the development plan. The officer's report on the application[54] succinctly puts it thus..... "The proposal is not small scale in nature, is on greenfield land,

[54] At page 40

is not principally required to meet local needs and is not solely for affordable housing purposes. It is therefore contrary to policies 1, 9 and 10 of the CSS and saved policies G4, G6, H2, H4 and H9 of Wellingborough Local Plan."

147. Save for the erroneous reference to WLP policy H2 [5], I have no reason to disagree with that analysis. Earls Barton is not within the *urban core* as defined and is not identified as either a *Rural Service Centre* or a *Local Service Centre* for the purposes of policy 1 of the CSS. It is therefore within *"the remaining rural area"* referred to in the policy and the appeal site lies outside the *village policy line* (i.e. the boundary defined on the proposals map) for the settlement which, for the purposes of policy G4 of the WLP is defined as a *"limited development village"*. For policy purposes it is therefore within the open countryside and it meets none of the criteria of WLP policy G6. Nor does it satisfy the criteria set out in policies H4 and H9. Policy 9 of the CSS directs development in general to the urban areas and identified SUEs, prioritising the use of brownfield sites; whilst policy 10 focuses housing growth primarily at three growth towns including Wellingborough complemented by modest growth at named Smaller Towns and Rural service Centres. The borough of Wellingborough is simply divided between the *Growth Town* of Wellingborough and the *Rural Area*.[55]

148. For these reasons I conclude that the proposed development would, as a matter of principle, be contrary to the basic intentions of the existing development plan.

149. Although considerable work has been undertaken in respect of its evidence base[56], it is common ground that only limited weight may be accorded to the review of the CSS.[57] I have no reason to disagree.

150. The EBNP does not yet form part of the development plan. I return to this below as a topic in its own right.

Material considerations

151. Although there is clear conflict with the intentions of the development plan, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that this appeal be determined in accordance with the development plan unless material considerations indicate otherwise.

152. National policy in the form of the Framework, and guidance in the form of the PPG are self-evidently material considerations of significant weight. Therefore, whilst the development plan, including its housing figures, spatial strategy and demarcations between settlements and the countryside is, and must remain, the starting point, its influence on the outcome of this appeal is necessarily tempered by these considerations, and others, including the Government's growth agenda. Equally, due weight must be accorded to other strands of Government policy including,

[55] CSS Policy 10 -Table 5
[56] Notably CD-D1 – CD-D6
[57] PSoCG paragraph 5.5

notably in this case, the recent Ministerial Statement concerning neighbourhood planning.[58]

153. The weighing of material considerations in the context of the policies set out in the Framework and the guidance of the PPG is fundamental to determining whether or not the proposed development should proceed, the planning balance addressing the economic, social and environmental dimensions of sustainable development, the presumption in favour of which is set out in paragraph 14 of the Framework.

154. Whether or not that presumption is engaged, in a case such as this where there is clear conflict with the development plan, depends on whether or not relevant policies are out-of-date. For housing developments that assessment encompasses the important consideration of whether or not the local planning authority can demonstrate a five-year supply of deliverable housing sites.[59]

155. For these reasons I conclude, because the land availability situation is in dispute, that there are material considerations which have the potential to outweigh the conflict with the development plan I have identified. Whether or not they should do so is a matter I return to in the planning balance following my assessment of the full range of main considerations, including the housing land situation.

Housing land supply

156. PPG advises that… *"Up-to-date housing requirements and the deliverability of sites to meet a five year supply will have been thoroughly considered and examined prior to adoption* [of a development plan]*, in a way that cannot be replicated in the course of determining individual applications and appeals."*

157. Equally, the PPG goes on to advise that… *"Demonstration of a five year supply is a key material consideration when determining housing applications and appeals. As set out in the National Planning Policy Framework, a five year supply is also central to demonstrating that relevant policies for the supply of housing are up-to-date in applying the presumption in favour of sustainable development."*

158. The position regarding the five year supply was confused from the outset. The officer's report of 29 January 2014 based its analysis on the provisions of the adopted CSS (i.e. policy 10) in the absence of any replacement plan at a suitably advanced stage and concluded that the housing supply position in the borough was "acute".[60] This approach appears consistent with the advice proffered by the appellants' legal adviser [27] at around that time and indeed the justification for recommending approval of all three applications [26] in Earls Barton at that time was largely derived from the calculation of only 1.53 years' supply against the existing CSS requirement. In the event, only the largest of the three, the 280 houses at

[58] Statement by Nick Boles MP: 10 July 2014
[59] Framework paragraph 49
[60] 1.53 years supply according to the Annual monitoring Report 2012

'The Grange' site was approved, and will result in a significant increment of housing in Earls Barton (albeit in the context of a comprehensive mix of associated development) in its own right. Had all three been approved as recommended, the total increment would have amounted to 404 dwellings. This is in addition to the 65 houses allowed on appeal at the Compton Way site (to the west of Station Road) which is currently being developed by Redrow.

159. The appellants argued at the Inquiry [40] that the IHS [27] subsequently relied upon by the Council was not a legitimate basis for calculating the five year supply, picking up on the approach of the Inspectors who determined the Compton Way appeal in 2012[61][39] and more particularly an appeal in Irchester in June 2013.[62] The inspector in the latter case commented, at paragraph 44… *"The adopted CSS, in contrast, remains in force as part of the statutory development plan, and as such it must be the starting point for my decision, as a matter of law. The adopted plan was examined and found sound only five years ago, which is not a long time in the context of the timescales needed for plan making. I accept that some of the relevant circumstances have now changed, but that does not mean that the adopted plan should be disregarded altogether. Nor does it necessarily mean that the underlying housing needs on which the plan was based have disappeared. Those propositions remain to be tested in the context of the emerging draft plan. Nothing has yet taken the place of the adopted CSS, and in the meantime that plan remains the only authoritative basis on which to assess the district's housing requirements."* He went on to conclude, at paragraph 45, that, for the purposes of the appeal he was determining… *"the 5-year land supply should be calculated on the requirements of the adopted CSS. On that basis, the district has, at best, a supply of 1.3 years……"*

160. Despite the lead given by these decisions, the appellants had previously accepted[63], albeit subject to reservations regarding lack of independent testing etc., that the IHS adopted by the North Northamptonshire joint Planning Committee in January 2014 *"is an approach from which the 5 Year Land Supply can be calculated"*. In doing so they appear to have had in mind the conclusions of the Inspector who determined an appeal in Kettering in April 2014[64] who, after some discussion of the merits of the IHS in paragraphs 17-22 of his decision, concluded that… *"The IHS is an evidence base and is not a new plan or policy, and could be subject to alteration following an independent public examination of the emerging CSR* [Core Strategy Review]*. Nevertheless, irrespective of the progress with the CSR, the IHS appears to me to be a cogent, robust and up-to-date evidence base which represents an objective assessment of the housing needs of the area. It provides a prudent basis for planning for housing provision in the area and, therefore, carries substantial weight in my decision as a significant material consideration which outweighs the out-of-date CSS housing figures."*

[61] APP/H2835/A/12/2168915 (CD-M1)
[62] APP/H2835/A/12/2182431 (CD-M3)
[63] PSoCG paragraph 5.15
[64] APP/L2820/A/13/2204628 (CD-M4)

161. It is not for me to determine the legal position regarding the continued use of the CSS as the basis for a five year supply calculation, or indeed to independently examine the IHS, albeit I note that the appellants caution, in respect of the latter [41], that the methodology does not accord with that prescribed in paragraph 159 of the Framework. Nor is it for me to comment on the alternative approaches seemingly taken by my colleagues in the Irchester and Kettering appeals; the latter was more recent and benefited from the existence of the IHS, imperfect though that may be, and the inspectors concluded on the basis of the evidence before them.

162. It does seem to me, however, that attempting to calculate the housing requirement on the basis of more recent projections pertinent to the locality is more in tune with the intentions of current national policy than slavish adherence to an inherited planned growth requirement derived from a RS that has been revoked in favour of a locally determined approach centred on objectively assessed needs. On that basis, the IHS as a material consideration tempering the ambitious targets embodied in the CSS would be an appropriate means of moving forward from the starting point that the latter necessarily constitutes. In drawing that conclusion, I am supported by the Secretary of State's endorsement of the Inspector's conclusion that a locally commissioned study was the "best available and most recent evidence on housing land needs" (in advance of the emerging local plan) in an appeal decision at Broughton Astley in April 2014.[65]

163. Moreover, for reasons I outline below, the lesser requirement implicit in such an approach is a more realistic proposition in that a more significantly more demanding requirement translated into an on-going deliverable five year supply at the present time appears well-nigh unachievable in the foreseeable future as far as the latter is concerned.

164. In any event, such a choice is not necessary for the purposes of this appeal decision, as I am not persuaded, on the evidence, that the Council can <u>currently</u> demonstrate a five year supply of housing sites that are deliverable in the sense intended by the Framework, even on the basis of the IHS.

165. Housing land availability for the purpose of applying national policy is frequently portrayed by participants in appeal proceedings as an absolute; i.e. simply a matter of fact. In my experience it is not. It necessarily involves informed judgements about the prospects for a multiplicity of sites and that judgemental factor becomes critical in situations where, as here, reliance is placed primarily on a small number of large allocations controlled by a limited number of developers who, not unreasonably, seek to develop and release units to the market in the most advantageous fashion. The judgement becomes yet more critical when such sites require much to be done in terms of infrastructure and land assembly.

166. The footnote to paragraph 47 defines deliverability for the purposes of five year supply and the starting assumption is that sites with planning permission are deliverable unless there is clear evidence that schemes will

[65] APP/F2415/A/12/2183653 - Decision letter paragraph 12 re IR15-25 (evidence of Philip Smith Appendix 8)

not be implemented within five years. This can only mean fully built out as permitted, because "implementation" of permission in a legal sense requires simply a material start that effectively secures permission indefinitely.

167. The Council's latest five year assessment,[66] appropriately based on the 'Sedgefield Method' and adding a 20% buffer to the 2015 – 2020 requirement, deploys the reduced need figure in the IHS (apportioned pro-rata between districts for practicality according to the existing CSS) of 4,500 dwellings over the period 2011-2021 and assumes the 2011-2015 shortfall of 884 units is met by 2020. The net result is portrayed as an identified supply of 4,287 deliverable sites equating to 5.7 years' supply.[67] The figures as presented mask the underlying arithmetical result that the five year requirement (if the shortfall is made up) including the 20% buffer equates to an annual delivery rate of 752 dwellings per annum (a figure far in excess of 474 units completed in 2007/8[68], the best the borough as a whole has ever achieved since 2001/2) starting forthwith in April 2015. In reality any increase in delivery is likely to be gradual but to meet the requirement this demands compensatory increase in subsequent years and the trajectory in Figure 1[69] indicates around 900 completions per annum from 2016/17, almost double the figure achieved in 2007/8. Even with the permissions granted for the SUEs of Wellingborough North and Wellingborough East, such a steep increase in year on year delivery in a free market appears, on the face of it, excessively optimistic.

168. The Council's expectation has since been revised downwards[70] to 3,912 albeit the net outcome is a claimed 5.2 year supply in the context of the IHS [68] and I have no evidence as to the addition that the inclusion of C2 elderly persons' accommodation, as per the PPG, might make. While I accept that the trajectory represents the judgement of the Council's planning witness at the inquiry and deploys estimated delivery by developers and landowners involved in both the Wellingborough East and Wellingborough North SUEs, I am conscious that these are simply planning assumptions on their part, which do not yet amount to a firm programme of construction such as might be expected in the context of fully assembled, consented and serviced sites. In no sense do they amount to a commitment to delivery at such a pace, albeit I would expect developers to be keen to reflect the government's ambition to boost delivery by progressing schemes when market conditions are favourable, certainly to the extent they deem it prudent to do so with a view to maintaining hoped for purchase prices.

169. I am of course also conscious that major public funding has been committed to unlock Wellingborough East by facilitating the imminent construction of a new road bridge over the Midland Mainline Railway at Stanton Cross in the context of the Growth Deal negotiated between the

[66] CD–G3 Table 5
[67] Ibid. Table 8
[68] Doc 10
[69] Ibid.
[70] Supplementary evidence of Philip Smith paragraph 2.27

Northamptonshire Enterprise Partnership and Central Government[71] and in that context have no reason to doubt the long term viability of the scheme as economic conditions for house builders improve.

170. Nevertheless, and with all those factors in mind, experience informs me that, whilst allocations and permissions do tend to be developed out, ultimately, this is rarely in accordance with initial hopes and indeed expectations because development is a practical process beset by many and varied unforeseen causes of delay. I therefore consider that the smooth acceleration of delivery in the SUEs from hereon to achieve the projected levels should be viewed with suitable caution.

171. Such caution is borne out by the only systematic commercially oriented expert evidence before me, namely that of Mr Turner. This was much assailed at the inquiry, notably through a flurry of 'eleventh hour' correspondence[72] between the Council and various representatives of developers and landowners involved in the SUEs, contesting individual points of information and propositions in Mr Turner's evidence. However, the central proposition of the evidence, which draws on wide, commercially based, experience of the development process and includes empirical observation of the rate of development experienced at the Cambourne new settlement near Cambridge [50] and elsewhere in the region, remains, in my judgement, sound.

172. PPG pertinently advises that the only satisfactory vehicle for a thorough assessment and independent testing of land supply is the examination of the development plan [156] and spurious precision is inappropriate and in any event unnecessary for present purposes given the force of the evidence against the postulated delivery rate assumed for the SUEs over the next five years or so. Cambourne, the physical and planning circumstances of which I am familiar with, is amongst the better performers (in terms of output) in the Eastern Region large sites analysis cited by Mr Turner[73], averaging less than 200 completed units per annum in its first five years, albeit rising to an average of 243 over its first seven years including a peak of 620 in 2003/4. Even the top performer in the analysis, the new town expansion programme for Orton (Peterborough) only managed 425 units per annum in the 1980s.

173. Mr Turner suggests that he has overall taken a conservative view of what he regards to be inflated expectations of delivery on the part of the Council, but even supposing he has taken an unduly pessimistic view, as the Council asserts, the difference between the postulated trajectories for Wellingborough East and North combined over the five year period is substantially in excess of 1,000 units.[74]

174. Having considered all the evidence in the round, I do not consider Mr Turner's proposition in this respect to be unduly pessimistic but rather it introduces an important element of realism into the emerging picture. On

[71] Ibid. Appendices 8 and 10
[72] Docs 2-3
[73] Evidence of Mr Turner Appendix 3
[74] Evidence of Mr Turner, paragraph 4.1.7

that basis alone, the Council's claimed supply of deliverable sites can be conservatively reduced by, say, 1,000 units and that reduces the ultimate claimed 5.2 year supply from 3,912 to 2,912, which would equate to around 3.58 years' supply, albeit the figure advocated by the 'Shared Appellant Statement' [75] is between around 3.29 and 3.45 years, subsequently tempered to 3.96 years for the period 2014/15 – 2018/19 (and 4.27 years supply for the period 2015/16 – 2019/20)[76]. Applying the reduction to the 4,287 units of supply originally suggested by the Council in June 2014[77] results in a supply of circa 4.4 years.

175. For these reasons I conclude that, on any commercially realistic assessment, the Council cannot currently demonstrate a five year land supply. The best that can be said is that, with a fair wind behind the development of its major sites, supplemented by the existing range of smaller sites developed according to established expectations, the supply might arguably be around 4.5 years but it could very well prove to be nearer 4 years' supply.

176. This may of course change over time as new permissions increase the range of possibility and progress and as momentum builds demonstrably on the SUEs. But, for present purposes, I am unable to conclude that the Council has the requisite 5 years' supply of demonstrably deliverable sites, even when assessed in the context of the untested IHS. More work is clearly needed, ultimately in the context of an independently examined development plan which tests both the objectively assessed needs for housing land and the associated trajectory of delivery. However, the perhaps rather casual assumption on the part of the Council that the nascent SUEs, in particular, will be delivered at the pace at which landowners and involved developers apparently hope and suggest needs to be supported by a great deal more hard and systematic evidence; if the reasonable proposition that experience with large sites elsewhere in the region points to limitations on what may practically be achievable in terms of pace of delivery is to be negated.

177. I acknowledge that this places the Council on the horns of a dilemma in that strenuous efforts to open up supply may yet struggle to keep pace with, let alone address the ongoing and cumulative consequences of past under-delivery, but the IHS nevertheless serves for the time being as a locally determined 'requirement' rather than a requirement handed down through the now defunct RS. (Although it must also be viewed in the context of the national priority to boost significantly the supply of housing.[78]) Moreover, on the basis of the extant CSS figure based on the RS requirement it is clear that the Council would have little prospect of ever demonstrating a five year supply in the foreseeable future.

178. Either way, the Council does not currently have an adequate supply of housing land for the purposes of relevant policy and the provisions of

[75] Doc 10
[76] Philip Smith supplementary proof of evidence Appendix 11
[77] CD-G3 Tables 7 & 8
[78] Framework paragraph 47

paragraph 49 of the Framework lead to engagement of the presumption in favour of sustainable development set out in paragraph 14.

Earls Barton Neighbourhood Plan

179. I am very clear that the community of Earls Barton has enthusiastically embraced the opportunity to positively shape its surroundings through the preparation of the EBNP. It is a recurrent theme throughout much of what I was told at the inquiry by local residents and their representatives [77-84, 88-93, 96,102,104,107,112, 115,119 and 125-129].

180. The EBNP has been submitted to the Council and (at the time of writing) awaits examination.

181. It is common ground between the Council and the appellants that the weight to be attributed to the EBNP is a matter of planning judgement (for the Secretary of State.)[79]

182. On the face of it, given the Council's first reason for refusal, the advice of the PPG and the timing of the inquiry, shortly before the end of the local planning authority publicity period (i.e. 29 August 2014) it is perhaps surprising that 'prematurity' as such was not raised by any party. [53]

183. The PPG advice on prematurity in respect of any part of the development plan is that, other than in circumstances where a proposed development is clearly unsustainable according to the basic tenets of the Framework,[80] prematurity is not likely to be a justifiable ground for refusal. Such circumstances can include situations where the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are *"central to an emerging Local Plan or Neighbourhood Planning"* <u>and</u> *"the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area."*

184. Prematurity guidelines in respect of Neighbourhood Planning, specifically, are now set out in PPG. This advises that refusal of planning permission on the grounds of prematurity will seldom be justified before the end of the local planning authority publicity period.

185. In all cases it is for the local planning authority to indicate clearly how the grant of planning permission for the development concerned would prejudice the outcome of the plan-making process.

186. It was never likely that this appeal would be determined before 29 August 2014, even before recovery. Nevertheless, it is plain in the circumstances that prematurity in respect of the EBNP would be difficult to substantiate. Leaving aside any arguments regarding sustainability, my reasons for saying this are set out below.

[79] PSoCG paragraph 5.20
[80] i.e. as set out in its paragraph 14

187. The preparatory work on the EBNP identified a need for a minimum of 250 additional houses in Earls Barton in the period to 2031 [81]. In January 2014 the Council granted permission for 280 dwellings on 'The Grange' site whilst at the same time refusing the application subject to this appeal and a smaller proposal at Thorpe Road [26]. At that time the EBNP had not been issued by the Parish Council, let alone submitted to the Borough Council.[81] The instant appeal and the Thorpe Road proposal represent increments of up to 85 and 39 dwellings respectively. These latter proposals are not comparable in scale to the comprehensive development proposed at The Grange. By allowing the development at 'The Grange' at that time the Council effectively ensured that the lion's share of new housing permissions would be in the northern part of the settlement, whatever the final outcome of the EBNP. The decision which was central to the emerging EBNP was therefore taken well before it could be considered to have been at an advanced stage, albeit I am conscious that substantial expansion of the settlement to the north side of the village centre was the preference expressed by 88% of the respondents in pre-submission consultation referred to by the EBNP project manager [82].

188. The EBNP project manager points out [84] that the neighbourhood plan anticipates, inclusive of current commitments, an increase in the village housing stock of circa 400 units over the plan period, an expansion of around 17% on the present housing stock of 2,350 (or thereabouts).[82] It follows that, if the instant appeal proposal were to be allowed, the total expansion would be over 20%, and around 22% if Thorpe Road were to be allowed. If the Compton Way site (65 dwellings) currently under development is factored into that scenario, a more even division between new housing development north (280) and south (65 + 85 + 39 = 189) of the village centre, albeit still skewed in favour of the north, emerges. However, in total, the percentage increase in the number of houses in the village would still in my estimation be of a similar order of magnitude as currently committed.

189. In any event the appeal proposal would not, in my estimation, represent a quantum leap in, or contribute to, unprecedented acceleration in the expansion of the settlement. According to the EBNP[83]…… *"A total housing target of 397* [circa 400, as above] *including completions and existing commitments will result in a 17% increase in the size of the village which is similar, in absolute housing completions, to the previous 20 year period. While accommodating significant objectively assessed housing need, the plan also seeks to balance the effects of growth and maintain the rural character of the village which many residents cherish"*. (The emphasis is mine.)

190. Against that background I do not consider the application subject to appeal susceptible to rejection on the grounds of prematurity, especially in view of the granting of 'The Grange' permission and, on analysis,

[81] PSoCG paragraph 5.20
[82] PSoCG paragraph 2.7
[83] June 2014 – Appendix 4 to proof of Evidence of Philip Smith (page 12 of plan, final paragraph)

therefore, the appellants' claim that the absence of an explicit prematurity objection is "unsurprising" [53] in my view holds good in the very particular circumstances of this case.

191. If the proposal subject to appeal is not premature vis-à-vis the emerging EBNP, the questions remain as to whether it would conflict with and harmfully undermine its intentions and, if so, whether the weight to be accorded to those negative characteristics would be sufficient to justify refusal.

192. The Council, supported by the local community, contends that it would conflict with the emerging EBNP and is therefore inconsistent with the first core planning principle listed in the Framework. Certainly, this is a clear principle including the promotion of participatory planning at the neighbourhood level and there can be no doubting the force of the Government's intentions in that respect. The Ministerial Statement of 10 July 2014[84] is abundantly clear on the point.

193. The merits of the EBNP as submitted[85], including whether or not it meets the 'basic conditions' [53], are not a matter for me. It will be independently examined in due course. Its current provisions most relevant to the appeal proposal are very straightforward:

194. First, it includes a proposals map defining a village boundary which (save for the access strip between Nos. 145 and 153 station Road) excludes the appeal site and is tightly drawn around the southern part of the village (excluding also the Compton way site under development and the Thorpe Road proposal). 'The Grange' site, on the other hand, is allocated for mixed use development and is included within a revised (from that shown in the WLP) village boundary corresponding to the A4500. Hence virtually all new development is envisaged north of the village centre.

195. Secondly, the objectives of the plan make it clear, inter alia, that the growth of the village is to be focused around the Grange, where land for 280 dwellings is intended to be allocated as part of the mixed use concept for the area.

196. Thirdly, policy EB.G1 puts this intention into effect contingent upon a range of criteria.

197. Fourth, policy EB. GD1 permits infill within the village boundary. The appeal proposal is plainly not such a form of development.

198. Fifth, policy EB.GD2 allows for small scale local needs affordable housing development on sites outside but abutting the village boundary. Although the appeal proposal abuts the boundary, it is not small scale according to the definition in the policy (up to 10 dwellings) and is for open market housing (albeit 30% affordable).

199. Finally, policy DB.DC1 provides that new development (through s106 and CIL monies) should mitigate its impact on services and infrastructure,

[84] Hansard 10 July 2014 Column 25WS
[85] June 2014 – Appendix 4 to proof of Evidence of Philip Smith

contributing towards new local facilities where additional needs will be generated. (The unilateral undertaking submitted in this case aims to mitigate the impact of the proposed development to the extent permissible.)

200. On the basis of the above, it is plain that the proposed development at issue, being in what would be classed as open countryside outside the village boundary and in the southern part of the village where the boundary is tightly drawn, would conflict with the provisions of the emerging EBNP, simply on account of being an open market housing development of large scale in the open countryside outside the defined boundary.

201. Insofar as it seeks to mitigate its impact through the provisions of the unilateral undertaking I do not consider it would harmfully undermine the intentions of the policy DB.DC1 of the plan in a substantial way, given that additional facilities on a significant scale are integral to the development now allowed at 'The Grange', which is clearly expected to deliver in that respect according to policy EB.G1. It would simply be additional housing with proportionate and directly related mitigation.

202. In terms of the spatial pattern of development envisaged in the EBNP, which is to concentrate significant new development exclusively to the north of the village centre on one comprehensively developed site, then arguably the proposed development, especially when considered cumulatively with the development taking place at Compton Way and the Thorpe Road proposal, could be said to harmfully undermine the intentions of the EBNP. However, Compton Way is now a reality and the development of the appeal site, which is contained on three sides by existing residential development, would not fundamentally alter the overall shape of the village as the great majority of its existing built up area is to the north of Dowthorpe Hill. Insofar as the development would essentially consolidate the existing southern projection of the village to the south of that location, I do not consider the EBPN vision of maintaining the existing compactness of the village, so as to facilitate easy walking and cycling (and minimise impact on existing residential areas) would be fundamentally compromised.

203. All in all, the main harm relative to the intentions of the EBPN would be that it represents a departure from its intention, supported by the community, that expansion be confined to a single site to the north of the village centre. While I understand that many local residents see this as a means of limiting traffic impact on that centre [91], the fact remains that there is no objection from the highways authority and the Council itself does not pursue its original highways objection, which was in any event concerned with the amenity of residents in the vicinity of Station Road and not wider network issues.

204. In summary, whilst there would be clear conflict with the terms and intentions of the EBNP, which would be undermined to a limited extent in terms of the spatial pattern of development hoped for by the community, this is not yet part of the development plan and therefore does not form the starting point for determining the appeal in the way it would if formally

adopted. Nor, in all the particular circumstances, can the proposal be described as premature relative to the EBNP, certainly given the existence of the permission at the Grange, as this already delivers the whole thrust of the plan as far as intended additional development is concerned and shapes the future of the settlement in a very substantial way.

205. The key question regarding the EBNP therefore concerns the weight that should be accorded to the conflict with this emerging statement of local preference in the context of broader planning objectives. That is a matter to which I return in determining what I consider to be the appropriate planning balance.

Other Matters

206. The officer's report of January 2014 indicates that there are no so-called 'technical' objections to the proposal provided suitable conditions are imposed on any outline permission granted. I have considered the wide range of material comments from third parties but have no reason to disagree with that analysis.

207. Leaving aside the disappointment expressed by local residents that the proposed development conflicts with the provisions of the emerging EBNP, a major theme is the potential impact of further traffic on Station Road, which is currently subject to on-street parking pressures, including residents' parking in some cases and periodic episodes of parking associated with a tennis and bowls club with pedestrian access from it. The situation is perceived to be exacerbated at present by the construction traffic from the Compton Way development and concern is expressed that in the longer term traffic from this development and that proposed by the appellants will combine with existing traffic to cause congestion on Station Road and add to parking pressures in the village centre.

208. I have visited Station Road and the village centre as both a pedestrian and a motorist and, whilst I can understand the perception of increased pressure, the reality is little different from many areas of residential development and central areas in villages that have been expanded by essentially suburban development, throughout the country. I am satisfied that both Station Road and Dowthorpe Hill can satisfactorily accommodate the additional traffic, albeit I acknowledge that construction traffic would continue to be an aggravating factor for some time to come if the development were to proceed, a factor which can be mitigated to a degree through the imposition of a suitable planning condition [132].

209. Dowthorpe Hill is for the most part a free flowing residential distributor with relatively limited on-street parking apparent, whereas Station Road is noticeably affected by parking, albeit this of itself has the effect of limiting traffic speeds. Save for a minor area of parking restriction on Station Road in the vicinity of its junction with West Street, and some realignment of highway markings to ease flow past on-street parking in the vicinity of 31-51 Station Road;[86] the highways authority sees no need for additional measures of that nature in the context of the development being

[86] HTSoCG Appendix C Drawing PL04

supported by a travel plan and the improvement of bus services at peak times between the two principal employment areas of Brackmills in Northampton and Park Farm in Wellingborough (provided for in the unilateral undertaking).

210. The Transport Assessment, which factors in anticipated growth and the Compton Way development, indicates that the development is reasonably accessible by modes of transport other than the private car and well within acceptable limits as far as traffic generation is concerned. It concludes[87] that the proposal would not give rise to residual cumulative impacts that are severe in the sense intended by paragraph 32 of the Framework and I was presented with no cogent expert evidence to suggest otherwise. Section 7 of the HTSoCG sets out in full the required mitigation measures.

211. Another primary concern of local residents was the belief that, by accepting major development at the Grange in the context of the EBNP, the community was making its contribution and that enlargement beyond that increment of housing would represent overdevelopment of the village, with consequential unacceptable pressure on services and facilities including schools and medical services. While I am not unsympathetic to the suggestion that the social infrastructure of the settlement could potentially come under further strain as a consequence of additional development, this is nearly always the case in circumstances where significant new development is to be accommodated. Services are generally equipped to cope with established demand rather than unanticipated extra demand. Reasonable anticipation in this context is a significant advantage of plan–led development but equally the use of planning obligations and, increasingly, CIL contributions is an important means of mitigating the impact of extra demand whether plan-led or not. In this case, with the exception of the NHS [141, 142], the Council did not indicate that there was any concern from the relevant service providers regarding the mitigating contributions proposed in the unilateral undertaking. In all the circumstances, the extra pressure on infrastructure and services, which would be adequately but not excessively mitigated, should not weigh against the proposal.

212. Concern is expressed regarding loss of open countryside. This is is implicit in the proposal for greenfield development outside the village boundary but the site is relatively well contained and the proposed development, in the context of the existing development adjoining, would have little impact on the character and appearance of the wider countryside. Although outside the village boundary it would maintain the compactness of the settlement and would not lead to an impression of sporadic or sprawling uncontrolled development. The public footpath through the field from Allebone Road to Station Road would clearly offer a different experience to users once incorporated in a housing development as a through route and, while I can appreciate the sense of loss by current users, I have no evidence of unusual value in its present form. The agricultural value of the land is indeterminate but, for reasons previously

[87] Transport Assessment paragraph 8.11

given, I do not think its loss as such should weigh significantly against the proposal in this instance [9].

213. Residential amenity is another concern raised. The concerns have two principal dimensions. First the impact of additional traffic on residents of Station Road, in particular, and secondly the impact of the development on existing residential properties bordering the site, not least Nos. 145 and 153 Station Road to either side of the principal access.

214. Regarding the first matter: While I have sympathy with local residents at the prospect of prolonged interaction with construction traffic, I am satisfied that, once constructed, the perception of additional traffic on the surrounding roads, including Station Road, bearing in mind their existing characteristics and circumstances, would be quite within normal expectations and would not give rise to unacceptable impacts on residential amenity. In respect of the second matter, I am conscious that, for the majority of the site boundary the length of existing gardens would afford adequate protection to neighbouring residents and that elsewhere, including in the vicinity of Allebone Road, the observance of normal standards of amenity can be ensured by the Council at the reserved matters stage. There is adequate room at the principal access point to ensure that the living conditions of occupiers of 145 and 153 Station Road can be safeguarded by a suitable form of boundary treatment, a measure that elsewhere around the site can be used in conjunction with suitable layout design. Nevertheless, it is important that such treatment is deployed to maximum advantage in this context and hence the additional condition discussed concerning boundary treatment [132] would in my view be essential.

215. A range of other concerns regarding matters such as drainage, impact on wildlife and sustainable transport would necessarily also be addressed through the imposition of conditions and in some instances the planning obligation.

216. A significant concern voiced by residents is that, in the context of the national policy imperative to significantly boost the supply of housing, allowing this development contrary to the existing development plan and the emerging EBNP would set a precedent that would make it difficult to resist further incursions into the countryside around Earls Barton. That is not a matter for me in the sense that I am obliged to consider the appeal on its own merits in the light of relevant prevailing policy and other material considerations. Progress towards and ultimate adoption of an up-to-date development plan will of course change the context for future decision taking, but I must take the situation as I find it now.

217. I have taken these and all other material concerns raised by third parties into account in the context of the above main considerations and for the purposes of considering, in the balance set out below, whether the development represents sustainable development for the purposes of the Framework.

The planning balance: Whether the proposal represents sustainable development for the purposes of the Framework

218. The CSS embodies a spatial strategy to deliver a sustainable pattern of development over the period to 2021 which, for Wellingborough, aims to concentrate development in and around the town itself, supplemented by some development in its rural hinterland including Earls Barton. This spatial strategy is reflected in the IHS albeit this is not part of any development plan and in that sense can be accorded limited weight only as a material consideration.

219. The introduction to the IHS, at paragraph 5, explains the approach to spatial distribution of housing in the following terms…… *"The distribution of the housing requirement identified in Part A between the districts is based on the adopted CSS. In other words it is the same spatial strategy, only delivered over a longer period of time. This is a pragmatic response to current market conditions, proceeding with growth and infrastructure provision under a planned approach but at a more measured pace than previously envisaged".*

220. It does seem to me reasonable, in the light of all the particular circumstances here to use and, the RS having been abolished, place some weight upon as a material consideration, the IHS as an interim tool for establishing a housing requirement based on locally determined objectively assessed needs [162]. However, it plainly cannot be used as a substitute for an up-to-date development plan. To do so would be to subvert the intentions and the safeguards of the plan-led system.

221. A spatial strategy for the area reflecting current conditions and national policy imperatives would be the very bedrock of any replacement development plan but, as yet, the latter is not in imminent prospect and it is common ground that the emerging review of the CSS can therefore be accorded only limited weight.

222. In the meantime it is clear, following paragraph 49 of the Framework, that if, as I have concluded, there is not a five year housing land supply, the presumption in favour of sustainable development set out in paragraph 14 is engaged because the policies for the supply of housing land are inherently outdated. Moreover, in principle, counterpart policies such as settlement boundaries are outdated.

223. Arguably, a lesser housing requirement based on objectively assessed needs, as is the case here, relaxes the temporal pressure on such manifestations of the inherited spatial strategy as the adopted settlement boundaries. However, to rigidly adhere to them in such circumstances would be to apply an unduly selective approach to established policies subject to review through the development plan process, because it is entirely conceivable that such a review could vary in detail from old established policy objectives for specific local areas. For this reason I am persuaded by the appellant's argument that the village policy lines, as an expression of that broad spatial strategy, are out-of-date. Indeed, were it appropriate to firmly adhere to them as the up-to-date expression of how development should take place in Earls Barton, the Council would have had considerable difficulty in justifying the permission at 'The Grange'.

224. That said, the overall thrust of the CSS spatial strategy, insofar as it aims to locate the lion's share of new development in and around the eminently

sustainable settlement of Wellingborough, is not inconsistent with the intentions of the Framework which aims to focus development in locations which are or can be made sustainable. It therefore merits weight in principle notwithstanding that individual CSS policies concerning housing land and counterpart elements of the development plan shaping individual settlements are out-of-date.

225. However, importantly for the purposes of this appeal, there is no credible evidence to suggest that, as a settlement within the rural part of the borough, Earls Barton is an inherently unsustainable location for significant development. Indeed, all the relevant evidence points the other way. The officer's reports considered in January categorised 'The Grange' site unequivocally as being in "a highly sustainable location"[88] and while the reports were not so unequivocal in respect of the appeal site and the Thorpe Road site in that respect, they recommended approval nonetheless.

226. In any event, it seems to me an arbitrary distinction in principle to distinguish at any strategic level between the northern and southern parts of the village which are broadly comparable distances from its centre, which is served by all three of the bus routes passing through.[89] Although access to the A4500 by private transport is more direct from 'The Grange', without passing through the village centre, access to the A45 from that site can nevertheless be achieved via High Street and Doddington Road. The settlement as a whole is positioned between the A45 and A4500 approximately mid-way between Northampton to the west and Wellingborough to the east and for rail connections relies on those two towns.

227. Moreover, I am supported in my conclusion that there is nothing inherently unsustainable about Earls Barton as a location for development by the common sense conclusion of the Inspector[90] who determined the Compton Way appeal that it was in effect the second most sustainable settlement in the Wellingborough district i.e. the most sustainable settlement in the rural area according to the evidence base for the CSS review.

228. Given the above analysis, the fact that I am not persuaded on the evidence that the officer's positive January 2014 recommendations in respect of all three proposals in Earl's Barton may reasonably be differentiated in terms of harm to the overall spatial strategy for the area and the Council's actual decision to approve the 280 dwelling development at 'The Grange', the clear implication in the Council's first reason for refusal [25] that the proposed development would significantly contribute to an unsustainable pattern of development does not withstand scrutiny.

229. I accept that the quantum of development now proposed for Earls Barton inclusive of the Compton Way development, 'The Grange' permission, the appeal proposal and the Thorpe Road proposal could lead to the original percentage split of the planned new housing development between

[88] CD-B3 (Tab 5.3 in Appeal Documents Volume 1:page 18 – Conclusion second paragraph)
[89] HTSoCG Fig 2.3
[90] APP/H2835/A/12/2168915 paragraph 13 (CD-M1)

Wellingborough and its rural hinterland being exceeded [72]; but in reality the established critical mass of Wellingborough, which will be significantly enhanced by the eventual delivery of the SUEs in particular will, as the appellants effectively point out [36-40], maintain its unrivalled supremacy within the urban core of North Northamptonshire relative to its rural hinterland including Earls Barton. Furthermore there is no cogent, commercially informed evidence to suggest that a further increment of 85 houses at the appeal site, in addition to the circa 400 currently committed in Earls Barton, would, in practice, jeopardise the progress of the SUEs by diversion of demand.

230. In the meantime, because paragraph 14 of the Framework is engaged, a more complex assessment of the multifaceted question of sustainability is called for which goes beyond simple locational criteria to weigh the adverse impacts of development against the benefits.

231. Environmentally, subject to appropriate mitigation through conditions and the unilateral undertaking, the proposed development, which is in a broadly sustainable location, would not be harmful and there are no specific environmentally derived policies in the Framework that would indicate that development should be restricted. That aspect of the balance is therefore broadly neutral in effect.

232. Economically and socially there are considerable benefits in terms of economic stimulus relevant to the Government's growth agenda and the proposed development would serve, in short order, the national priority to boost significantly the supply of housing, enhancing local supply and choice and delivering affordable as well as market housing. These are benefits to which substantial weight should be accorded.

233. The adverse effects are primarily focused on policy, procedure and perception. The proposed development is not plan-led in the sense intended by the first core principle of the Framework and there is, moreover, conflict with the intentions of the existing development plan as I have explained. However, the fact that it is not up-to-date in relevant respects significantly diminishes the weight that should otherwise be accorded to it. Little weight can be accorded to its forthcoming review as this is at such an early stage of preparation. Paragraph 14 of the Framework clearly intends that decisions should not be inhibited by the lack of an up-to-date local planning context.

234. The emerging EBNP is a more complex consideration in this context because it has progressed to the stage of submission, the Council's publicity period is ended and there is clear conflict with its provisions, the appeal site being outside the defined village boundary in the southern part of the village. The neighbourhood planning process, which is explicitly encouraged in the Framework, has been wholeheartedly embraced by the Earls Barton community to locate significant development in what it considers, by a majority verdict amongst those participating, to be the right part of the village, namely 'The Grange'.

235. It is perhaps ironic that the enthusiastically welcomed grant of permission for it renders conventional arguments about prematurity, which might otherwise be engaged at this juncture, given the PPG advice in respect of

neighbourhood plans, inappropriate. The Grange development will shape the future of the village in a manner which the appeal proposal, by comparison, would not. Unsurprisingly, no prematurity point is taken by the Council or the EBNP project group.

236. Independent examination of the EBNP has yet to take place and only limited weight should therefore be placed on its policies and provisions. And yet, given the importance placed on the neighbourhood planning process by the Framework and subsequent Ministerial communication of intent for the planning system, the fact of obvious conflict with the nascent EBNP and the likely concern in the community that broader imperatives could override its emerging intentions, the conflict with the EBNP and the potential disappointment of its supporters cannot simply be disregarded as immaterial. In the context of Framework intentions, I consider the perceived effectiveness of the neighbourhood planning process to be a material consideration which merits significant weight.

237. Nevertheless, given the lack of demonstrable environmental harm and the substantial weight I consider should be accorded to the economic and social benefits I have identified in the context of the Framework, in particular the imperative to stimulate house building, I consider the adverse impact on the perceived effectiveness of the neighbourhood planning process in Earls Barton, and the actual conflict with the submitted draft plan, to be insufficient to significantly and demonstrably outweigh those benefits.

238. I therefore conclude, on balance, and having had regard to all the material considerations put to me, that the proposed development represents sustainable development for the purposes of the National Planning Policy Framework and should, accordingly, be permitted in accordance with the approach set out in paragraph 14 of the Framework.

Recommendation

239. For the above reasons, and having taken into account all other matters raised including the various and numerous appeal decisions and legal rulings referred to in the parties submissions, I recommend that the appeal be allowed and planning permission granted, subject to the conditions set out in the attached annex.

Keith Manning

Inspector

Annex: Schedule of Recommended Conditions

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

2) Application for the approval of the reserved matters shall be made to the local planning authority not later than two years from the date of this permission.

3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the approved plans referenced LLC937-100 and PL01 Rev D and no more than 85 dwellings shall be constructed on the site.

5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable to be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

6) No development shall commence until the applicant or developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority, and no development shall take place except in accordance with the approved scheme details.

7) No development shall take place until a scheme for the provision, implementation, ownership and maintenance of surface water drainage arrangements for the site, based upon sustainable drainage principles and in accordance with the measures recommended by the submitted Flood Risk Assessment Revision B undertaken by Transport Planning Associates, taking account of the natural fresh water springs on and in the vicinity of the site, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and shall be retained thereafter.

8) A landscape management plan, including long term design objectives, biodiversity enhancement measures, management responsibilities and maintenance schedules for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the first occupation of any dwelling. The landscape management plan shall be carried out as approved.

9) No development shall take place until a scheme detailing the sustainable transport measures outlined in the submitted travel plan prepared by Transport Planning Associates and dated August 2013 has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details.

10) No development shall take place until a construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The statement shall provide for:

i) the parking of vehicles of site operatives and visitors
ii) the routeing of construction traffic throughout the construction process and the mechanism for securing adherence to approved routes
iii) loading and unloading of plant and materials
iv) storage of plant and materials used in constructing the development
v) the erection and maintenance of security fencing
vi) wheel washing facilities
vii) measures to control the emission of dust and dirt during construction
viii) a scheme for recycling/disposing of waste resulting from the construction works
ix) hours of working

* * *

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Anthony Crean QC

He called

Philip Smith BA (Hons) DipTRP MRTPI	Director, Brian Barber Associates

FOR THE APPELLANT:

Ian Dove QC

He called

John Turner BSc (Hons) MRICS	Turner Morum Chartered Surveyors
Julian Clarke MCIHT	Director, Transport Planning Associates
Robert Barber BA (Hons) MRTPI	Director, Pegasus group Ltd

INTERESTED PERSONS:

Rosemary Smart	Clerk to Earls Barton Parish Council
Mrs Janice Higgs	Local resident
Mr James Wilson MRTPI	Project Manager, Earls Barton Neighbourhood Plan
Councillor Robert Gough	Borough Council
Councillor Peter Morrell	Borough and Parish Council
Mr Nick Chapman	Save Earls Barton
Mrs Bridget Chapman	Save Earls Barton
Mr Arnold & Mrs Heather Orton	Local residents
Councillor Paul Bell	Leader, Borough Council
Mrs Sharron Bond	Local resident
Mrs Sara Pateman	Local resident
Mr Duncan Gandy	Local resident
Mr Colin Wells	Local resident
Mr George Blackwell	Local resident

DOCUMENTS

Documents submitted at the Inquiry	
1	Council's notification letter
2	Email trail finishing Amanda Stone to Julie Thomas 12/08/14 @ 08:45
3	Email trail finishing John Lougher to Julie Thomas 11/08/14 @ 11:34
4	Email trail finishing John Lougher to John Turner 11/08/14 @ 14:00
5	Letter from Northants LLP to Julie Thomas 06/08/14
6	Appeal decision APP/W0530/A/2209166
7	High Court Judgement *William Davis Limited and North West Leicestershire District Council* [2013] EWHC 3058
8	High Court Judgement *Bloor Homes East Midlands Limited and Hinckley and Bosworth Borough Council* [2014] EWHC 754
9	High Court Judgement *BDW Trading Limited and Cheshire West & Chester Borough Council* [2014] EWHC 1470
10	'Shared Appellant Statement' for instant appeal and APP/H2835/A/14/2212956
11	High Court Judgement *Dartford Borough Council and Landhold Capital Limited* [2014] EWHC 2636
12	Secretary of State's appeal decision APP/H1840/A/13/2199085
13	Appeal decision APP/G1630/A/13/2209001
14	High Court Judgement *Gallagher Homes Limited and Solihull Metropolitan Borough Council* [2014] EWHC 1283
15	The Town and Country Planning (Local Planning) (England) Regulations 2012
16	Opening submissions on behalf of the appellants
17	Opening submission on behalf of the Council
18	Statement by Councillor Robert Gough
19	Statement by James Wilson – Project manager Earls Barton Neighbourhood Plan
20	Decision Notice: Borough Council of Wellingborough Ref WP/2013/0398/OM
21	Earls Barton Neighbourhood Plan On Street Parking Survey
22	Extract from PPG and comment from Nick Boles MP re prematurity as a ground for refusal of planning permission
23	Regulation 16 notification of publicity (dated 14 July 2014) of the Earls Barton Neighbourhood Development Plan
24	Statement by Rosemary Smart on behalf of Earls Barton Parish Council
25	Statement by Bridget Chapman on behalf of the Save Earls Barton Group
26	Statement by Janice Higgs
27	Statement by Nick Chapman on behalf of the Save Earls Barton Group
28	Statement by Arnold Orton on behalf of self and Mrs Heather Orton
29	Bundle of documents submitted by Councillor Paul Bell
30	S106 Unilateral Undertaking dated 13 August 2014
31	Email trail finishing Annely Robinson to Olawale Duyile 13/08/14
32	Extract from Agricultural Land Classification Provisional (England)
33	Email trail finishing Simon Aley to Karen Lee 06/08/14
34	Closing submissions on behalf of the Council
35	Closing submissions on behalf of the appellants

CORE DOCUMENTS

A. Planning Application Documents

Reference	Document
CD – A1	Application Form
CD – A2	Planning Statement
CD – A3	Design and Access Statement
CD – A4	Landscape and Visual Impact Assessment
CD – A5	Landscape Strategy
CD – A6	Arboricultural Assessment
CD – A7	Ecological Appraisal
CD – A8	Statement of Community Involvement
CD – A9	Archaeological Desk-Based Assessment
CD – A10	Sustainability Statement
CD – A11	Noise Assessment
CD – A12	Affordable Housing Statement REV A
CD – A13	S106 Draft Heads of Terms
CD – A14	Transport Assessment
CD – A15	Travel Plan
CD – A16	Flood Risk Assessment Revision B; Flood Risk Assessment
CD – A17	Utilities Assessment
CD – A18	Desk Study and Ground Investigation
CD – A19	Location Plan LLC937_100
CD – A20	Framework Plan LLC937_96

B. Decision Notice and Committee Documents

Reference	Document
CD – B1	Decision Notice Dated 29.01.2014
CD – B2	Report of the Head of Planning and Local Development 29.01.2014; Late letters list
CD – B3	Minutes of the meeting of the Planning Committee 29.01.2014

C. Adopted Development Plan

Reference	Document
CD – C1	North Northamptonshire Joint Core Strategy Policy CSS1; CSS6; CSS9; CSS10; CSS13 (2008)
CD – C2	Saved Policies of the Borough Council of Wellingborough: G4 and G6; H2; H4; H9 (1997)

D. Emerging Development Plan

Reference	Document
CD – D1	Rural Housing Allocation Methodology and Site Selection (BCW, 2010)
CD – D2	Rural Settlement Hierarchy (BCW, 2010)
CD – D3	Site Specific Proposals DPD Preferred Options (BCW, 2010)
CD – D4	Interim Housing Statement January 2014 (NNJPU)
CD – D5	Interim Housing Statement Committee Report 9.1.14
CD – D6	North Northamptonshire Settlement Hierarchy Background Paper (July 2012)

E. Northamptonshire County Council

Reference	Document
CD – E1	Creating Sustainable Communities: Planning Obligations Framework and Guidance (2011)
CD – E2	Current Landscape Character Strategy and Guidelines (2005)
CD – E3	Green Infrastructure: Making the Connections (2006)
CD – E4	Interim Third Local Transport Plan 2011/12 (2011)
CD – E5	Northamptonshire Place and Movement Guide (2008)
CD – E6	Northamptonshire Transport Strategy for Growth (2007)
CD – E7	Public Transport Guidelines for New Developments (2006)
CD – E8	Planning Out Crime in Northamptonshire (2004)

F. North Northamptonshire JPU documents

Reference	Document
CD – F1	Development Contributions SPD Consultation Draft (2010)
CD – F2	North Northamptonshire SHLAA 2013
CD – F3	North Northamptonshire AMR 2012-13
CD – F4	North Northamptonshire AMR 2011-12

G. Borough Council of Wellingborough SPDs and SPGs

Reference	Document
CD – G1	Affordable Housing SPG (2004)
CD – G2	Planning Contributions Guide for Local Infrastructure (2009)
CD – G3	Borough Council of Wellingborough Five Year Supply of Deliverable Housing (June 2014)
CD – G4	Borough Council of Wellingborough Housing Trajectory for 2014/15

H. Emerging Earls Barton Neighbourhood Plan documents

Reference	Document
CD – H1	Earls Barton Neighbourhood Plan Consultation Statement (December 2013)
CD – H2	Draft Earls Barton Neighbourhood Plan (March 2014)
CD – H3	Submission Earls Barton Neighbourhood Plan (June 2014)

I. National Guidance and Policy for Planning

Reference	Document
CD – I1	Character Map of England (Natural England)
CD – I2	Guidelines for Landscape and Visual Impact Assessment (Landscape Institute and IEMA, 2013) *Please note date change*
CD – I3	Landscape Character Assessment – Guidance for England and Scotland (Countryside Agency, 2002)
CD – I4	National Planning Policy Framework (DCLG, 2012) and online National Planning Practice Guidance
CD – I5	Neighbourhood Planning (General) Regulations 2012
CD – I6	Laying the Foundations: A Housing Strategy for England (DCLG, 2011)
CD – I7	Planning for Growth: ministerial statement by Greg Clark MP, 23rd March 2011
CD – I8	East Midlands Regional Landscape Character Assessment (East Midlands Landscape Partnership (April 2010)
CD – I9	National Character Area Profile 89 – Northamptonshire Vales (Natural England, February 2014)

J. Planning Obligations Correspondence

Reference	Document
CD – J1	Housing Officer dated 4.10.13
CD – J2	NCC Highways Principal Engineer dated 20.11.13
CD – J3	NHS Premises Officer dated 21.10.13
CD – J4	Draft Section 106 Unilateral Undertaking *to follow*

K. National Transport Policy and Guidance

Reference	Document
CD – K1	Manual for Streets (2007)
CD – K2	Manual for Streets 2 – Wider Application of the Principles (2011)
CD – K3	Design Manual for Roads and Bridges (2008)
CD – K4	Making Residential Travel Plans Work (2005)

L. Planning Appeal Documents

Reference	Document
CD – L1	Statement of Common Ground - Planning
CD – L2	Statement of Common Ground – Transport

M. Relevant Appeal Decisions

Reference	Document	
CD – M1	Earls Barton decision Compton Way Inspector P N Jarratt	(APP/H2835/A/12/2168915) 1/8/2012
CD – M2	Finedon decision Land rear of 31 Station Road Inspector A U Ghafoor	(APP/H2835/A/13/2206814) 25/2/14
CD – M3	Irchester decision Land west of High St. / Land off Alfred St. Inspector John Felgate	(APP/H2835/A/12/2182431) 5/6/13
CD – M4	Kettering decision Land rear of 18 & 20 Glebe Avenue Inspector Anthony Lyman	(APP/L2820/A/13/2204628) 10/4/14
CD – M5	Tarporley decision Land off Nantwich Road Secretary of State recovered appeal	(APP/A0665/A/11/2167430) 29/8/13

N. Legal Authorities

Reference	Document
CD – N1	Court of Appeal decision – Hunston ([2013] EWCA Civ 1610)

Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;
The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

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

SECTION 3: INSPECTION OF DOCUMENTS

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