



Department for
Communities and
Local Government

Our Ref: APP/A0665/V/15/3013622

3 May 2016

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
CALLED IN APPLICATION AT LAND EAST OF CLIFTON DRIVE, CHESTER**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Richard Clegg BA(Hons) DMS MRTPI, who held a public local inquiry for three days from 22 -24 September 2015 into your client's application to Cheshire West & Chester Council ("the Council") for outline planning permission for a residential development for up to 142 homes in accordance with application 13/03615/OUT, dated 16 August 2013.
2. On 26 March 2015, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, Cheshire West & Chester Council, after consideration of his policy on calling-in applications.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the application be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the Inspector's Report (IR) is enclosed, and all references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The Secretary of State is in receipt of post inquiry representations from Andy Scargill, dated 10 January 2016 and from Colin Griffiths of Satnam Planning Services, dated 8 February 2016, which was received too late to be considered by the Inspector. The Secretary of State has given careful consideration to these representations and he is satisfied they do not raise new matters that would affect his decision and he has not considered it necessary to circulate them to other parties. Copies of the representations can be made available on written request to the address at the foot of the first page of this letter.

Policy and statutory considerations

5. In deciding this appeal the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In the case of this appeal, the development plan comprises the Cheshire West and Chester Local Plan (Part One) Strategic Policies (CWCLP CD8.2) and the saved policies of the Chester District Local Plan (CDLP CD8.3 and CD11.41) which have not been replaced by the CWCLP. The Secretary of State agrees with the Inspector that the policies most relevant to this appeal are those referred to at IR18-23.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (The Framework) and the subsequent planning guidance; as well as the Sport England Planning Policy Statement - A Sporting Future for the Playing Fields of England. For the reasons given by the Inspector at IR79, the Secretary of State has also taken into account the Cheshire West & Chester draft Playing Pitch Strategy (PPA).

Main issues

7. The Secretary of State has taken account of the matters already agreed between the parties set out at IR26 and he agrees with the Inspector that the main outstanding issues relevant to this appeal are those listed at IR74.

Promoting healthy communities

8. The Secretary of State agrees with the Inspector's assessment at IR75-82. For the reasons given at IR78 he agrees that the application site is surplus to the University's requirements and that, when considering the University's requirements alone against paragraph 74 of the Framework, the replacement provision would not be equivalent in quantity and he is not persuaded that it would, overall, offer equivalent quality to the playing field which would be lost. However, in agreement with the Inspector, he considers that compliance is only required with one of the tests in paragraph 74 of the Framework and on this narrow basis of consideration of the site's role as University's playing fields, at IR92, that the proposal would be consistent with national policy.
9. However, as highlighted by the Inspector at IR79, the test in paragraph 74 of the Framework does not distinguish between private and public playing fields, nor otherwise seek to constrain the assessment to be undertaken. Accordingly, the Secretary of State agrees with the Inspector's view at IR79 that it is appropriate to have regard to the wider position concerning playing fields in the Chester area. For the reasons given at IR80 the Secretary of State agrees that the omission of discarded playing fields from the PPA does not affect its findings. For the reasons given at IR81 the Secretary of State agrees with the Inspector's finding that there is insufficient provision to meet the demand for match equivalent sessions in the sports which were played at Clifton Drive and he shares his conclusion at IR82 that, when a broader view is taken of the situation in Chester, there is not an excess of pitch provision. Overall, like the Inspector, he concludes that the playing field site at Clifton Drive is not surplus to requirements having had regard to the community of Chester as a whole.
10. In agreement with the Inspector's findings at IR93, the Secretary of State acknowledges that the mitigation package would offer certain benefits to the community; however, he

shares the Inspector's view that this would not represent an equivalent provision to the playing field on Clifton Drive. He therefore agrees with the Inspector's at IR93 that, when consideration is given to playing fields generally in the Chester area, the proposal does not satisfy the tests in paragraphs 74(1) or 74(2) and he agrees with the Inspector, for the reason given, that the test at paragraph 74(3) is not relevant in this case. For these reasons, the Secretary of State agrees with the Inspector's conclusion that the proposal would be partially consistent with Government policies on promoting healthy communities.

11. The Secretary of State has given careful consideration to the Inspector's comment at IR93 that application of the policy tests in the context of the University usage relates to the actual situation concerning the site and that it is acknowledged that the site will not be made available for community use. For the reasons given at IR93 he agrees with the Inspector that with this in mind, and taking account of the community benefits which would result from the proposal, that the partial consistency with national policy should not weigh against the proposal.
12. The Secretary also agrees with the Inspector's opinion (IR94) that the circumstances at E1 and E4 in Sport England's Planning Policy Statement, which would be reasons not to oppose the loss of a playing field, reflect the tests in paragraphs 74(1) and 74(2) of the Framework and, accordingly, he finds that E1 applies in respect of the University's sports requirements, but that neither E1 nor E4 apply when consideration is given to playing fields generally in the Chester area. For the reasons given by the Inspector at IR93, with regard to the actual situation of the application site, the Secretary of State also considers that this partial compliance with the Planning Policy Statement should not weigh against the proposal.

Meeting the challenge of climate change & flooding and coastal change

13. The Secretary of State notes the location of the site within flood zone 3 in respect of tidal flooding and flood zone 2 in respect of fluvial flooding as well as the fact that housing is classified as a more vulnerable form of development in the flood risk vulnerability classification table in planning guidance (IR95). He agrees with the Inspector at IR95 that, for the reasons given, in accordance with paragraphs 101 and 102 of the Framework, that it is necessary to apply the sequential and exception tests to this proposal. He also agrees with the Inspector that Wrexham Road, which lies in a flood zone 1, offers a sequentially preferable site than the application site (IR96).
14. The Secretary of State notes the Inspector's comments at IR97 and he agrees with the Inspector with regards the certain wider sustainability benefits to the community. He also notes that it is common ground between the applicant and the Council that the development would be safe for its lifetime without increasing flood risk elsewhere. He further notes the measures to safeguard future occupants from flooding, specifically the establishment of minimum floor and road levels, and schemes to control the discharge of surface water, manage overland surface water flows, and construct swales could be the subject of conditions, in line with a recommendation from the Environment Agency which does not object to the proposal.
15. However, as alluded to by the Inspector at IR98, the Secretary of State is of the view that paragraph 102 of the Framework indicates that it is only necessary to proceed to this test if it is not possible to locate the development in a zone with a lower probability

of flooding. In agreement with the Inspector, the Secretary of State considers that this is the case and, accordingly, he concludes that the proposal would not be consistent with national policy on flood risk in the Framework. Like the Inspector, the Secretary of State gives this matter significant weight.

A wide choice of high quality homes

16. The Secretary of State notes that the main parties agree that a five year supply of housing land, as required by paragraph 47 of the Framework, can be demonstrated. He is also satisfied that, like the Inspector at IR99, although there is no affordable housing included in the scheme at present this is to ensure viability and the provision in the planning obligation to review viability at reserved matters stage reflects paragraph 205 of the Framework.
17. The Secretary of State also agrees with the Inspector's overall conclusion at IR101 that the proposed development would be consistent with policies requiring the provision of a wide choice of high quality homes, and the contribution of the proposal to boosting housing supply carries important weight.

The Development Plan

18. The Secretary of State has given careful consideration to the Inspector's analysis at IR102-107. For the reasons set out at IR102 he agrees that this is a sustainable location in accordance with Policy STRAT1 of the SWCLP. He further agrees that residential development of this site would assist in providing the dwellings required in Policy STRAT 2 and Policy STRAT 3.
19. The Secretary of State agrees, for the reasons given by the Inspector at IR103, that the proposal is consistent with Policy SOC 3. He also agrees that the development would comply with Policy SOC 1, noting that the planning obligation makes provision for a viability review at reserved matters stage.
20. For the reasons given at IR104 the Secretary of State agrees that the proposal would only be partially consistent with Policy SOC 6 of the CWCLP and national policies concerning the development of playing fields. However, in agreement with the Inspector, the Secretary of State notes his comment that the site will not be made available for community use and he does not consider that, taking this situation into account together with the community sports benefits which would arise, that the partial compliance with policy (insofar as University use of playing fields is concerned) should weigh against the development.
21. For the reasons given by the Inspector at IR105 he also agrees with the Inspector that where flood risk is concerned, because there is a sequentially preferable site, the proposal would conflict with Policy ENV 1 in the CWCLP and the Framework. However, he considers, in agreement with the Inspector that the proposal would comply with Policy ENV 3, ENV21 and Policy STRAT 10.
22. The Secretary of State has noted the Inspector's analysis at IR 106, and agrees that the proposal is below the threshold set out by Policy SR 6 for the provision of space for playing pitches.

23. As such the Secretary of State concludes, for the reasons given, at IR107, that the proposal would comply with most of the relevant policies in the CWCLP and CDLP, but would only partially comply with Policy SOC 6 of the CWCLP and there would be conflict with Policy ENV 1 of the CWCLP. As such he agrees that the development would not be fully consistent with the development plan.

Other matters

24. The Secretary of State agrees with the Inspector at IR108 that the development would support jobs during the construction period, both on the site and in the supply chain and that there would also be spending on local services, initially in connection with the construction activities and subsequently by site residents. Like the Inspector, the Secretary of State considers that these are important benefits of the scheme. For the reasons given by the Inspector at IR108, the Secretary of State also gives limited weight to the benefit provided by the New Homes Bonus.

25. With regards to the potential ecological enhancements, the Secretary of State shares the Inspector's view that the improvements to be provided through the creation of habitat areas and features such as bird and bat boxes are a potential benefit which merits limited weight (IR109).

Conditions and obligations

26. The Secretary of State has also had regard to the submitted planning obligation, the Inspector's comments at IR110-112, national policy set out at paragraphs 203-205 of the Framework, the planning guidance and the CIL Regulations. For the reasons given by the Inspector at IR110-112, the Secretary of State agrees that the obligation tests set out in the Framework, with the exception of the use of the playing field contribution towards facilities at Lache, Queen Elizabeth II playing field, and Cairns Crescent play area, these provisions are capable of being taken into account as material considerations in the determination of this application.

27. The Secretary of State has considered the annex of conditions attached to the IR and the Inspector's reasoning on them in IR113-114. He is satisfied that the conditions proposed at Annex A of the Inspector's report are reasonable and necessary, and would meet the tests of paragraph 206 of the Framework. However, he does not consider that these conditions overcome his reasons for refusing the application.

Planning balance and conclusion

28. The Secretary of State concludes, for the reasons set out above, that the site is in a sustainable location at the edge of the built-up area. Development of this land for housing would comply with most of the relevant policies in the Development Plan and it would be consistent with Government policy in the Framework to provide a wide choice of high quality homes. He agrees with the Inspector that the proposal is only partially consistent with the development plan and national policy concerning the development of playing fields. However, given his conclusions on promoting healthy communities set out above he agrees with the Inspector that this partial compliance with policy should not weigh against the development.

29. Given his conclusions on meeting the challenge of climate change, flooding and coastal change, as set out above, the Secretary of State agrees with the Inspector that the proposal would conflict with Policy ENV 1 and the Framework.

Benefits

30. The Secretary of State agrees with the Inspector at IR116 that the funding for primary school places, alterations to the junction of Clifton Drive with Sealand Road, and the provision of on-site open space, are necessary to mitigate the effects of the proposal or ensure a satisfactory standard of development. As such he concludes that they have a neutral effect in the planning balance. The Secretary of State also agrees that the supply of housing is a matter of important weight, even though the site is not needed to establish a five year supply of housing land. For the reasons set out above he attaches important weight to the support for jobs, the expenditure on local services and the improvements to King George V playing fields. He affords, in agreement with the Inspector, moderate weight to the community use agreement. He gives further limited weight to the installation of bird and bat boxes.

31. As regards to flood risk, for the reasons given at IR117 and above the Secretary of State agrees with the Inspector that significant harm arises from the conflict with the development plan and national policy.

32. Having weighed up all relevant considerations, the Secretary of State concludes that the factors which weigh in favour of the proposed development do not outweigh its shortcomings and the conflict identified with the development plan and national policy. He considers that there are no material considerations of sufficient weight which would justify allowing the appeal.

Public Sector Equality Duty

33. In making this decision, the Secretary of State has had due regard to the requirements of Section 149 of the Public Sector Equality Act 2010, which introduced a public sector equality duty that public bodies must, in the exercise of their functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In this regard, and in coming to his decision, the Secretary of State considers that insofar as ethnic minority groups, single mothers and the elderly may be more likely to be disproportionately in need of affordable housing there would potentially be impact on persons with protected characteristics such as age, disability, or race through the loss of the affordable housing contribution, or any affordable housing arising as a result of the viability review, at the reserved matters stage. However, he considers that this impact is reasonable and proportionate when set against the policy aim of ensuring that vulnerable development is not built in areas subject to flooding.

Formal Decision

34. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby refuses your client's application for outline

planning permission for a residential development of up to 142 homes in accordance with application 13/03615/OUT, dated 16 August 2013.

Right to challenge the decision

35. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
36. A copy of this letter has been sent to the Council. A notification e-mail / letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Phil Barber

Phil Barber

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Richard Clegg BA(Hons) DMS MRTPI

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

Date: 18 January 2016

**TOWN AND COUNTRY PLANNING ACT 1990
CHESHIRE WEST AND CHESTER COUNCIL
CALLED-IN APPLICATION BY
BARK STREET INVESTMENTS LTD**

Inquiry opened on 22 September 2015

Land east of Clifton Drive, Chester, CH1 4LG

File Ref: APP/A0665/V/15/3013622

File Ref: APP/A0665/V/15/3013622

Land east of Clifton Drive, Chester, Cheshire, CH1 4LG

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 26 March 2015.
- The application is made by Bark Street Investments Ltd to Cheshire West & Chester Council.
- The application Ref 13/03615/OUT is dated 16 August 2013.
- The development proposed is described as 'residential development (up to 142 homes) with access to be determined at the outline application stage (re-submission of previous application reference 12/04229/OUT)'.
- The reason given for making the direction was that the Secretary of State decided, in the light of his policy on calling in planning applications, that the application should be called in.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:
 - i) the extent to which the proposed development is consistent with Government policies on *Promoting healthy communities* (NPPF Chapter 8);
 - ii) the extent to which the proposed development is consistent with Government policies on *Meeting the challenge of climate change, flooding and coastal change* (NPPF Chapter 10);
 - iii) the extent to which the proposed development is consistent with Government policies on *Delivering a wide choice of high quality homes* (NPPF Chapter 6);
 - iv) the extent to which the proposed development is consistent with the development plan for the area;and any other matters the Inspector considers relevant.
- The inquiry sat for three days, 22-24 September 2015.
- A programme of site visits was undertaken on 25 September 2015.

Summary of Recommendation: The application be refused.

Procedural Matters

1. The planning application was considered by the Council's Strategic Planning Committee on 16 December 2014. At the meeting, the Committee resolved that the application should be approved, since it was considered that the mitigation package would outweigh the harm caused by the loss of playing fields¹. Due to an objection from Sport England, the application was then referred to the Secretary of State for Communities and Local Government.
2. The application form gives the location of the site as land at Clifton Drive, Sealand Road, Chester. The site is not on Sealand Road, but on the east side of Clifton Drive, and the main parties agreed that it should be identified accordingly. It was also agreed that the proposal is more clearly described simply as residential development for up to 142 homes, and I have considered the application on this basis.
3. The application was submitted in outline form, with approval sought for access at this stage.
4. No proof of evidence was prepared on behalf of the Council, and its representatives attended the inquiry to assist with questions relating to the

¹ The Council's position in respect of the planning application is explained in its statement of case (Document L2), paras 1.12 & 1.17.

matters on which the Secretary of State wishes to be informed, the planning obligation and possible conditions.

5. Sport England served a statement of case in accordance with Rule 6(6) of The Town and Country Planning (Inquiries Procedure) (England) Rules 2000, and it took a full part in the inquiry proceedings.
6. A planning agreement between the Council, the Applicant and other parties with an interest in the appeal site was submitted (Core Document 11.44 – CD11.44). Obligations in the agreement would provide for a highways contribution, a review of viability in respect of affordable housing, an education contribution, a contribution and improvement scheme concerning playing fields, and arrangements for community use of University of Chester sports facilities.
7. At the inquiry, reference was made to the draft Cheshire West & Chester Playing Pitch Strategy Assessment Report (PPA, CD10.24). The final version of the PPA (CD11.45) was published in October 2015. As it was known at the inquiry that publication of the PPA would follow shortly afterwards, I requested that this document be submitted, and the three main parties were each given the opportunity to comment thereon².
8. The Council's letter of notification about the inquiry (in Document G2) referred to a planning appeal and not a planning application. However the previous notification letter had correctly informed interested parties that the planning application had been called-in, and the proposal was identified in accordance with the application form on both occasions. In the circumstances I do not consider that any prejudice was caused by the incorrect reference to an appeal in the second notification letter.
9. This report contains a description of the site and its surroundings, an explanation of the proposal, identification of relevant planning policies, details of agreed matters, and the gist of the submissions made at the inquiry and in writing, followed by my conclusions and recommendation. Lists of appearances and inquiry documents are appended. The written closing submissions on behalf of the Council, Appellant and Sport England are included as inquiry documents: in delivery they were subject to a number of detailed alterations.

The Site and Surroundings

10. The application site is about 1.5km to the west of Chester city centre. It lies within an area of open land between Blacon to the north-west and development along Sealand Road to the south and east. Sealand Road (the A548) is a main route into the city centre from the west. Immediately to the south of the site is housing on Sealand Road, and adjacent to the east is Chester Retail Park. There are other retail premises and a storage facility nearby on the south side of Sealand Road.
11. A watercourse known as Sealand Main Drain flows through the open land to the north of the site, where the Finchetts Gutter flood basin lies, and on the west side of Clifton Drive. An embankment has been formed on the southern side of the watercourse, and the area between here and the watercourse has extensive vegetation cover, through which a footpath runs from Clifton Drive to the nearby

² The responses from the main parties in respect of the PPA are at Documents L3, A10 and S5.

retail park. On the west side of the road is an area of grassland. The predominantly residential area of Blacon sits at the top of the pronounced Blacon escarpment, which rises sharply from the lower-lying land on each side of the watercourse. Clifton Drive climbs up the escarpment to Blacon. Between its junction with Sealand Road and the edge of Blacon this road has no footways.

12. The greater part of the application site comprises playing fields on the east side of Clifton Drive. In addition, the site also includes the southern end of Clifton Drive and a short length of Sealand Road at the junction with Clifton Drive (Plan A). The playing fields are leased to the University of Chester and accommodate three full-sized football pitches, one rugby pitch and one training pitch³. They are not currently in use, and, at the date of my visit in September 2015 were showing signs of lack of maintenance. Access from Clifton Drive is towards the southern end of the frontage, and leads to a rough-surfaced parking area, on which two portable units serve as changing rooms. A tall hedgerow with trees extends along much of the Clifton Drive frontage, and there is also hedgerow cover on the northern boundary. Alongside the eastern and southern boundaries of the site are lines of tall trees. The Sealand Main Drain embankment arcs into the north-west corner of the site.

Planning History

13. The site has been the subject of several planning applications in the past forty years, including a number of proposals for residential development⁴. Between 1981 and 1990 planning permission was refused for three applications for housing, and two subsequent appeals were dismissed. A fourth application was withdrawn in 1990. More recently, planning permission was refused in 2013 for the Applicant's initial proposal for up to 142 dwellings on the site. The reasons for refusal concerned the loss of playing fields and the capacity of the Chester water treatment works. An appeal was dismissed in January 2014: the decision records that the main parties and Welsh Water were agreed that the issue of capacity at the water treatment works could be addressed by means of a condition, and the appeal was dismissed due to the effect of the loss of playing fields (Document A4, Appendix 5). That appeal decision is the subject of a challenge (Document A4, Appendix 6), but proceedings in this action are currently stayed to allow time for the determination of the current application. A planning application has been submitted for residential development of up to 130 dwellings on land to the west side of Clifton Drive. At the date of the inquiry this planning application remained undetermined.

The Proposal

14. The proposal is for the construction of up to 142 dwellings on the application site. Whilst matters of detail other than access are reserved for subsequent consideration, the design and access statement refers to family homes, involving a variety of two, three and four bedroom properties (CD1.2). A layout for the dwellings is shown on the indicative masterplan (Plan B), which also includes areas of open space and a surface water attenuation pond in the north-west corner. It is envisaged that most of the dwellings would be two storeys in height. A number of taller town houses are also proposed, which the indicative height

³ Paragraph 2.9, Document G3.

⁴ Details of the planning history are given in paragraph 5.1 of Document G3.

parameters plan (Plan D) shows on the northern part of the site⁵. Due to the costs associated with development of this site, the proposal does not currently include affordable housing⁶, but viability would be reviewed at reserved matters stage (above, para 6) and, if warranted by the review, arrangements would then be made for such housing. The line of trees along the southern boundary of the site would be removed as part of the development, as would part of the hedgerow along the Clifton Drive frontage.

15. Vehicular access to the proposed housing would be taken from a position slightly further north on Clifton Drive than the existing access (Plan C). Footways would be provided on both sides of Clifton Drive between the new access and Sealand Road, and on the eastern side the footway would continue further along the frontage to the emergency vehicle access. A contribution would be made towards a new length of footway between the north-west corner of the site and Blacon⁷, and an internal link would be provided between the roadside footways.
16. The proposal includes a package of playing field mitigation measures⁸, to be delivered by the planning agreement (above, para 6). Improvements are proposed to the King George V playing field in Blacon, and up to £10,000 of the financial contribution would be directed towards improvement of a pitch at Lache. A community use agreement would make provision for community use of University sports facilities at the main campus on Parkgate Road, the Kingsway site, and the Blacon Avenue site (which adjoins the King George V playing fields). At Blacon Avenue a training pitch would be laid out in addition to the existing Gaelic football pitch and over-marking would provide two football pitches. An additional football pitch and a rugby pitch would be laid out at Kingsway. The existing changing accommodation at Clifton Drive would be made available to the Chester & Wirral Football League (CWFL), and use of the application site would be permitted on an interim basis pending development.

Planning Policy and Guidance

17. The Development Plan comprises the Cheshire West and Chester Local Plan (Part One) Strategic Policies (CWCLP – CD8.2) and the saved policies of the Chester District Local Plan (CDLP – CD8.3 & CD11.41) which have not been replaced by the CWCLP⁹. I have also had regard to national planning policy and guidance, in particular that contained in the National Planning Policy Framework (NPPF), and the Planning Practice Guidance (PPG).

The Cheshire West and Chester Local Plan

18. The following policies of the CWCLP are of particular relevance in this appeal. Policy STRAT 1 explains that the Local Plan seeks to enable development that improves and meets the economic, social and environmental objectives of the

⁵ The layout on the indicative height parameters plan differs from that on the indicative masterplan. The town houses are referred to as 2.5 storeys high in the table on page 10 of the design and access statement and as 3 storeys high on Plan D. This is a matter which would be clarified with the submission of reserved matters.

⁶ A letter dated 1 November 2014 from Jones Lang Lasalle Ltd (CD1.14B), updating its original affordable housing viability study (CD1.13), concludes that no affordable housing can be provided at present.

⁷ The route of this stretch of footway is shown on the plan at CD11.33.

⁸ The sports mitigation package is summarised in section 4 of Document G3, the schedule at CD11.42 provides details of the existing and proposed facilities at the various locations, and Plans H and I show the intended layout at King George V playing field/ Blacon Avenue and Kingsway.

⁹ Appendix A of the CWCLP lists the policies of the CDLP, identifying which have been replaced and which are retained.

Borough in line with the presumption in favour of sustainable development. The policy lists a series of sustainable development principles, including the location of new housing where there is good accessibility to facilities and services and good connections to public transport, and minimising the loss of greenfield land. Proposals which accord with relevant policies in the CWCLP and which support the principles set out in STRAT 1 should be approved without delay unless material considerations indicate otherwise. The strategic development of the Borough is addressed in Policy STRAT 2. Over the period 2010-2030 at least 22,000 new dwellings are to be delivered, and most development is to be located within or on the edge of Chester, Ellesmere Port, Northwich and Winsford. Chester itself is expected to deliver at least 5,200 new dwellings (Policy STRAT 3). To comply with Policy STRAT 10, proposals should demonstrate that, amongst other matters, traffic arising from new development should be accommodated safely and satisfactorily within the highway network, and that appropriate provision is made for access to public transport and other alternatives to use of the car. Where appropriate, proposals will be required to contribute to identified infrastructure priorities (STRAT 11).

19. Policy SOC 1 seeks the provision of affordable housing in the urban areas on sites that have a capacity for 10 or more dwellings or are 0.3ha or more in size. The proportion of affordable housing should be maximised, up to a target of 30%. However, within this target the proportion, type, tenure and size of affordable housing will depend on site specific circumstances and the overall effect on the viability of the scheme. In order to support mixed, balanced and sustainable communities, Policy SOC 3 promotes a mix of housing types, tenures and sizes of market and affordable housing. To meet the health and well-being needs of residents, proposals will be supported which, amongst other matters, promote safe and accessible environments and promote opportunities to widen and strengthen the Borough's cultural, sport, recreation and leisure offer (Policy SOC 5).
20. Policy SOC 6 is concerned with open space, recreation and leisure. The second part of the policy explains that proposals on existing sports facilities should only be permitted where a series of tests are satisfied. In the first instance equivalent or better replacement facilities should be provided (A), or it should have been demonstrated that the site is surplus for its current function (B). Test C requires that the site could not fulfil other unsatisfied open space, sport or recreation needs. Finally, tests D or E should be satisfied. The latter is met where the development would be incidental to the use of the open space, sport or recreation facility. Test D requires that where the open space, sport or recreation facility has been demonstrated to be surplus in accordance with part C, any proposed replacement will remedy a deficiency in another type of open space, sport or recreation facility in the local area. However the part of Policy SOC 6 which is concerned with whether or not a facility is surplus is part B and not part C, and the Council acknowledged that the cross-reference should be to part B¹⁰.
21. The Local Plan will seek to reduce flood risk. Policy ENV 1 specifies that all proposals must follow the sequential approach, directing new development to areas with the lowest risk of flooding, and that where necessary the exception test should be applied. In accordance with Policy ENV 2, proposals should take

¹⁰ See Document L1, para 22.

full account of the characteristics of the site concerned and its relationship with its surroundings. Policy ENV 3 supports the creation, enhancement, protection and management of a network of high quality, multi-functional green infrastructure. Development proposals should safeguard or enhance heritage assets (Policy ENV 5). The policy makes specific reference to Chester where development should ensure that the city's archaeological and historic character is protected or enhanced.

The Chester District Local Plan

22. On the inset map for the urban area (Plan J), the application site is identified as subject to Policy ENV 17, which is concerned with important areas of greenspace. Development should not be permitted on such land unless it is required to meet the essential recreational or community needs of local people, or it is for a small-scale structure which would not have a significant adverse effect on its value. In addition, alternative provision of greenspace should be made, or there should be enhancement of the remainder of the greenspace or an existing greenspace in the immediate local area. The reasoning for the policy explains that in the case of playing fields, which have no value other than for active recreation, Policy SR 2 will apply. That policy has been replaced by Policy SOC 6 of the CWCLP. Policy SR 6 seeks the provision of space for playing pitches in residential developments of at least 200 dwellings and where there is a proven deficiency.
23. Healthy trees and important hedgerows are expected to be integrated into development proposals (Policy ENV 21). Policy ENV 23 requires that amenity open space, play areas, or landscaped areas should be laid out by the developer, with a commuted sum paid in respect of maintenance costs. Where a site is of potential archaeological interest, Policy ENV 32 requires the submission of an archaeological assessment. All developments involving the construction of new public highways should incorporate measures to assist access by pedestrians, cyclists and public transport (Policy TR 20).

Sport England Planning Policy Statement - A Sporting Future for the Playing Fields of England

24. Sport England's Planning Policy Statement (PPS - CD10.2) contains a policy which opposes the granting of planning permission for development which would lead to the loss of, or would prejudice the use of, all or part of a playing field, or land last used as a playing field in a local plan unless one of five circumstances (E1-E5) applies. E1 and E4 are relevant in this case. E1 relates to a demonstration that there is an excess of provision in the catchment, with the site having no special significance for sport, and E4 specifies that there would be replacement playing fields of equivalent or better quality and equivalent or greater quantity, in a suitable location and subject to equivalent or better management arrangements.

Cheshire West & Chester Playing Pitch Strategy Assessment Report

25. In 2013, the Council adopted a *Playing Pitch Strategy, July 2012* (CD9.4), and this document was referred to in the 2014 appeal decision. However, the Council has acknowledged that baseline data is out-of-date¹¹, and a new playing pitch

¹¹ There is an undisputed reference to this effect in para 4.20 of Document S3.

strategy is being prepared. As part of this work, the draft PPA was published shortly before the inquiry, followed by the final version of the report in October 2015 (above, para 7). The PPA presents a supply and demand consideration of playing pitch facilities in the Borough, in accordance with Sport England's Playing Pitch Strategy Guidance – *An approach to developing and delivering a playing pitch strategy* (CD10.15). Assessments are set out on the basis of weekly match sessions. The application site accommodates rugby and football pitches. In the Chester analysis area the PPA records shortages of match equivalent sessions for football in all categories except mini 7v7 pitches: insofar as adult pitches are concerned, a current shortfall of 1 adult match session is identified, with a projected future shortfall of 2.5 match sessions¹². The report comments that the overall shortfall could in part be met by improving pitch quality and securing community use at education sites. There is a shortfall of 3 match equivalent sessions for senior rugby union pitches (one of which is attributed to future demand) in the Chester analysis area¹³. Reference is again made that improving quality would help to provide greater capacity. Insofar as rugby league is concerned, the single pitch at Cheshire County Sports Club is overplayed when American football use is taken into account by 0.5 match sessions per week¹⁴.

Agreed Matters

26. A statement of common ground between the Applicant and the Council (Document G3) includes the following matters:

- A description of the site and its surroundings.
- The planning application proposals.
- The planning history of the site.
- Planning policies.
- The site is within flood zone 3a where there is a high probability of flooding¹⁵. Matters relating to flood risk can be the subject of conditions, and no objection is raised by the Council in respect of flood risk. The development would provide wider sustainability benefits which outweigh flood risk issues.
- There is a five year requirement for land for 7,436 dwellings during the period 2015-2020. The Housing Land Monitor identifies a net deliverable five year supply of land for 10,151 dwellings. The Applicant considers that this is optimistic, but it is agreed that there is a five year supply of housing land.
- The 2013 Strategic Housing Market Assessment shows an annual net affordable housing requirement of 93 dwellings in the Chester urban area¹⁶. There is a demonstrable need for affordable housing, and, in the absence of a viability appraisal, provision of 30% affordable housing on-site would be appropriate. A viability report has been submitted to demonstrate that affordable housing requirements cannot be met (CD1.14B). Viability would be

¹² Tables 2.18 – 2.22, CD11.45.

¹³ Table 5.13, CD11.45.

¹⁴ Section 6.4, CD11.45.

¹⁵ A letter from the Environment Agency, with accompanying maps identifies the site within flood zone 3 in respect of tidal flooding and flood zone 2 in respect of fluvial flooding: Appendix B, CD1.3

¹⁶ Table 4.21, CD9.5.

reviewed at reserved matters stage, and if changes have occurred which create the opportunity for affordable housing this would be provided.

- Under the lease arrangements, the use of the site is restricted to the University. Past use of the site by community groups was in contravention of the lease, and will not be resumed without planning permission being granted for the proposed development¹⁷.
- The mitigation package is of sufficient benefit to outweigh the harm from the loss of private facilities on the application site.
- The site is in a sustainable location, and the development would be within easy reach of shopping and leisure facilities, public transport routes and schools, subject to works proposed for pedestrian movement.
- There is no landscape objection to the development, and any ecological issues are capable of being addressed.
- Drainage matters, including coordination with the phasing of improvements to the Chester water treatment works can be dealt with by conditions.
- Safe and appropriate access can be provided to the site: a planning obligation will provide £60,000 towards the cost of a footway along Clifton Drive to Blacon.
- A financial contribution is required towards the expansion of The Arches Community Primary School in Blacon, but no contribution is required towards secondary education provision.

The Case for the Applicant (Documents A1-A6, A10)

The material points are:

Introduction

27. The Applicant's position on paragraph 14 of the NPPF is that the proposal accords with the Development Plan taken as a whole. Accordingly, it should be approved without delay. However, if it were found that the proposals did not accord with the Development Plan as a whole, this is not a case where the second bullet point applies. This is not a case where the development plan is absent, silent or relevant policies are out-of-date.

The Development Plan

28. Saved CDLP Policy ENV 17 was dealt with in the 2014 appeal decision (para 38). Any conflict with the policy was found to be of little relevance in that case, as the Council and the then Appellant agreed that the site had no other value than for active recreation, in which case the reasoning explains that Policy SR 2 applies. That remains the position. Other CDLP policies which are relevant are complied with.
29. In the CWCLP, STRAT 1 encourages sustainable development. The proposal meets the requirements of this policy as it will provide homes in an accessible and well located area, and will support, through the planning agreement, the

¹⁷ The mitigation package includes use of the site on an interim basis pending development (above, para 15).

development of new facilities in Blacon. Policy STRAT 2 relates to strategic development. The proposal complies with the specified objectives as it will contribute to the 22,000 new dwellings which the Local Plan seeks to provide as a minimum. Policy STRAT 3 relates to development in Chester, and seeks to deliver at least 5,200 new dwellings. The proposal will support this objective on a site that will not cause harm to the setting of the city. The proposal complies with Policy STRAT 10 concerning transport and accessibility, since it would deliver houses in an area which is well connected with public transport, local pedestrian and cycle routes. The application would improve local footpath routes, and it would cause no unacceptable impact on traffic conditions on the local road network. The proposal would provide enhanced access to the sports facilities of the University, and it would satisfy Policy STRAT 11, which seeks to deliver various infrastructure improvements.

30. Policy SOC 6 refers to open space, sport and recreation. The proposal complies with this policy in that:

- i) It would provide for a significant innovative solution for an improvement in accessible sports facilities.
- ii) It would improve access for specialist groups such as the disabled.
- iii) A straight replacement of equivalent provision may well satisfy the policy, but would not bring forward any improvement in sports access in the city.
- iv) The University, which is the current user of the site, has made it clear that the site is surplus to requirements, and the Council considers the site to have no wider community role.
- v) The site is not available to fulfil other sports needs due to its limited use arrangements, and, in any event:
- vi) The planning agreement addresses acknowledged deficiencies in the sports provision in the local area.

31. Policy SOC 1 is concerned with affordable housing, Policy SOC 3 with housing mix, Policy SOC 5 with health and well-being, ENV 1 with flood risk, ENV 2 with landscape character, ENV 4 with biodiversity, and ENV 5 with Archaeology. There is compliance with all of these policies. Policy ENV 3 and Policy ENV 6 are concerned with green infrastructure and design and construction respectively: these subjects can be addressed at reserved matters stage. The proposal complies with the Development Plan as a whole. Even if it were found that there is non-compliance with Policy SOC 6, that should not lead to a conclusion that there is non-compliance with the Development Plan as a whole.

Flooding

32. The application site includes land within flood zones 2 (fluvial) and 3a (tidal). As a matter of policy (NPPF, paras 100-101) the development should pass the sequential test. If it does, the exception test needs to be applied, the development being more vulnerable development in flood zone 3a. The sequential test calls for a search of reasonably available sites which are appropriate for the proposed development. There are only two sites possibly in contention. However the Countess of Chester Health Park site only has a capacity for 90 dwellings, and Wrexham Road, with a capacity of 1264 dwellings,

is to be the subject of comprehensive development, with a masterplan and all the other implications of a strategic site of that scale. Neither would be appropriate for a self-contained residential development of up to 142 dwellings. The flood risk assessment (FRA – CD1.3) and the sequential and exceptions tests report¹⁸ demonstrate that the exception test is satisfied.

Housing

33. Although the Council can demonstrate a five year supply of housing land, that does not work against the NPPF presumption in favour of sustainable development in the context of the need to boost significantly the supply of housing. The housing target of the CWCLP is a minimum. Significant weight should be given to the contribution of housing from the application site, in what is a sustainable location.

Playing fields

34. This site has no sporting function, now or in the future. Refusing planning permission will not change this. The first test of paragraph 74 of the NPPF specifies that playing fields should not be built on unless an assessment clearly shows that they are surplus to requirements. The Applicant has not attempted to re-run the assessment exercise undertaken for the previous proposal. Sport England refers to the PPA, but the purpose of this is to inform a playing pitch strategy, and that does not yet exist. In any event, the PPA does not include the category of disused sites from Sport England's Playing Pitch Strategy Guidance¹⁹, and the application site has been discounted as an element of future supply. The site is now lost for the purpose of the future planning for sports provision, with the consequence that it is surplus to requirements.
35. The real issue is not the quantity of pitches as such, but their exploitation and/ or improvement. For example, there is substantial further capacity at Kingsway. Any deficit can be addressed by the use of Kingsway, let alone the intensification of use at King George V and Blacon. Moreover the Localism Act prescribes a specific exercise for the determination as to whether land such as the application site can perform a role for the community, through being classed as an asset of community value. The Council has accepted that the land did not qualify for this role²⁰. The lease restricts use of the playing field to the University, and when this limitation was realised, clubs using the site were given notice in 2012. A letter from the Vice-Chancellor and Principal states that use by local sports clubs will not recommence, irrespective of the outcome of the application²¹, and it is now surplus to the requirements of the University and redundant. The test in Policy SOC 6 is whether the site is surplus for its current open space sport or recreation function: the site is surplus in these terms.
36. The second test in paragraph 74 of the NPPF relates to whether the loss from the development would be replaced by equivalent or better provision. a materially different concept. This calls for an assessment as to the nature and extent of the loss, which will depend on the extent to which the existing position benefits the community or sports in general, rather than a requirement for a like for like

¹⁸ Appendix 14, Document A4.

¹⁹ The fourth community use category in the box on page 14 of CD10.15.

²⁰ The nomination and the Council's decision are in Appendix 10 of Document A4.

²¹ Appendix 16, Document A4.

replacement. The sports package will provide significant community benefit, compared to the lack of any benefit that the site currently provides, or will provide. Sport England's guidance on community use agreements is that they can constitute an element of replacement provision (CD11.28). The loss in this case is negligible and theoretical in the context of sporting facilities for use by the community.

37. In contrast, the benefits from the proposal would be substantial. At King George V, two useable football pitches would be provided, on a refurbished site. The contribution of at least £165,000 would enable the necessary improvements to be made. Sport England's specification and costs are considered to be excessive. At Blacon, two football pitches and one training pitch would be provided: the preponderance of the evidence is that significant and costly drainage works are not required. At Kingsway, two new pitches would be provided, which would benefit the community through the community use agreement. The CWFL, with its extensive coverage of local sporting interests in this area, supports the application.
38. This application should not be refused on the basis of the desirability of preserving the lawful playing field use, unless the test in *Westminster City Council v British Waterways Board (BWB)* is met (Document A9). The test requires that to justify refusal of permission for use B on the sole ground that use A ought to be preserved, it is necessary at least to show a balance of probability that, if permission is refused for use B, the land in dispute will be effectively put to use A. That test cannot be met. Whilst the previous Inspector found that it was met, that finding was based on factors that no longer apply. First, he assumed that cessation of the use of the appeal site for University sports would be contingent on the completion of the laying out of all three of the proposed pitches at Kingsway. That is no longer the case: University use at the application site has ceased in any event. Second, the Inspector found that the timing of future provision at Kingsway was uncertain, but it is now secured by the planning agreement. Third, he found that in the light of current use, albeit at a relatively low level, the appeal site facilities were not currently surplus to the requirements of the University. However the site is now disused.
39. Insofar as the provision of open space in residential development is concerned, that is dealt with by the Development Plan. CDLP Policy SR 6 contains a threshold of 200 dwellings before a playing pitch provision is required.

Conclusion

40. The application would provide benefits and it complies with the Development Plan. There are 168 sporting clubs in the Borough, and none objects. CWFL supports the package on offer. Moreover the BWB test cannot be met.

The Case for the Council (Documents L1-L3)

The material points are:

Introduction

41. The Council was persuaded, on balance, by the benefits of the mitigation measures package, which includes, amongst other measures, a combination of improvements to provide additional and improved pitches at the University of Chester. The Council's position stems from the resolution to grant permission

subject to planning obligations, and to that extent it is supportive of the application proposals. The Housing Land Monitor 2014-2015 identifies a current housing land supply of 6.83 years²². The provision of planning obligations and contributions towards infrastructure, school provision and improvements relating to sports facilities, improved community use (as mitigation for the loss of playing fields) is considered to meet the tests set out in the NPPF and the Community Infrastructure Levy (CIL) Regulations.

Evidence at the inquiry

42. The Council's consideration of the application in December 2014 and January 2015 did not reach the view that the playing fields were demonstrated to be a surplus, but rather that the Applicant's proposed mitigation package would outweigh the harm caused by their loss. The harm was as identified by Sport England, namely the loss of 5.2ha of land, and it was the loss caused by the physical removal of land which was weighed against the proposed mitigation package.
43. Significant weight was given to the community use aspects of the sports mitigation package. Both the King George V playing field and the Blacon Avenue playing field would be suitable locations in terms of replacement by means of qualitative improvements. The Kingsway campus is less convenient in location but still of benefit to the wider Chester community. Whilst the University's Parkgate Road main campus is outside the Blacon area, it benefits from being close to and more accessible to the town centre.

Flood risk

44. The whole site is covered by tidal flood zone 3a (and fluvial flood zone 2). In relation to the sequential test, there is no reason why sites with planning permission could not be considered available provided they are not yet developed.
45. On the sequential test, it is the Council's position that, in principle, the site at Wrexham Road should be considered to be available. There are issues of land ownership and potential availability, however there is an expectation that parts of it may well come forward in early 2016. There is a requirement for a comprehensive approach, and a commitment to develop the site for housing purposes. There is no reason why slightly larger sites cannot come forward in parcels, as part of a comprehensive approach. That approach is already underway and an outline planning application is expected in early 2016. Insofar as the exception test is concerned, the proposal would provide various benefits, and it would be safe for its lifetime without increasing flood risk elsewhere.

Five year housing land supply

46. In calculating the five year housing requirement, a 20% buffer should be added before the shortfall. This gives a requirement of land for 7,436 dwellings, and the supply of 10,151 dwellings would be sufficient for 6.83 years. If the 20% buffer were added after the shortfall, the supply would reduce to 6.67 years²³.

²² Table 8.1 of CD11.13.

²³ The Council's housing land calculations are set out in CD11.32.

Development Plan policies

47. The conclusions of the viability appraisal have been accepted: consequently although no affordable housing is currently proposed, the development would be consistent with Policy SOC 1 of the CWCLP. The mitigation package proposed would assist in meeting the requirements of Policy SOC 6. Insofar as Policy ENV 1 and flood risk is concerned, there is a question mark in relation to the Wrexham Road site and the sequential test, but the overall balance supports the proposal even if there is conflict with this policy. On the face of it, there is conflict with Policy ENV 17 of the CDLP concerning greenspace, but Policy SR 2 applied to such land which had no other value other than for active recreation and this policy has now been replaced. There is generally compliance with other relevant policies and some would apply more particularly at reserved matters stage.

Conclusions

48. The Council is supportive of the proposal overall given the sports mitigation package. However, it is considered that a case has not been made out in respect of compliance with Policy SOC 6, in particular whether the site is surplus to requirements, and the sequential test in respect of flood risk. Were the view to be taken that the site is surplus to requirements as playing fields, this should not be a reason to then conclude that the planning obligations related to the sports mitigation package either become redundant, or carry no or limited weight. These are separate considerations, and planning obligations, including community use of the University facilities, provide a significant element of the wider sustainability benefits to the community which outweigh the flood risk and contribute to meeting the exception test.

The Case for Sport England (Documents S1-S5)

The material points are:

Policies for promoting healthy communities

49. Insofar as playing fields are concerned, Government policy directed at the process of development management is contained in paragraph 74 of the NPPF. The starting point is a prohibition against building on such areas. The protection afforded by paragraph 74 makes no distinction between playing fields in private ownership and those in public ownership. Similarly, it makes no distinction between land which is in private ownership and available for community use, and such land which is not available for community use. There is nothing within the NPPF which suggests that the level of protection afforded by paragraph 74 is to be diluted simply because a private landowner prohibits community use. The third exception to the prohibition on building on playing fields is not relevant in this case.

50. In considering whether the site is surplus to requirements, the starting point is the position recorded in the previous appeal decision (CD11.1). The Inspector found that no surplus had been shown with regard to either football or rugby pitches within the local area, and his overall conclusion was that the site had not been shown to be surplus to requirements. Since then an application to register the site as an asset of community value has failed, but that has not created a

surplus of playing pitches. The Applicant has performed no assessment of supply and demand since the date of the appeal decision.

51. There is some more up to date data in the PPA. It is clear that the assessment has been based on a thorough review of supply and demand, including an extensive consultation with local sports clubs, and it is considered that the data can be relied upon. Whilst the Applicant refers to the absence of a category of playing field (those that are disused) within the document (which is a category referred to in the methodology at CD10.15), there is no serious criticism of the exercise of data gathering that has been carried out. The conclusions of the PPA are that there is a deficit of pitches for football and rugby in Chester. However, even if the weight attaching to the PPA is limited, then that leaves the findings of the last appeal decision, based on the Playing Pitch Strategy of 2012, that there is no surplus, and no more recent information on which it could be concluded that the position has improved.
52. It is suggested that the first test in paragraph 74 is satisfied due to the failed application for registration as an asset of community value, and the fact that the University has declared the site to be surplus to its sports and recreational needs. However the application for registration as an asset of community value depends on whether or not there is a current community use and if it is realistic to conclude that the current community use will continue. Furthermore such an application depends on whether or not a site was in recent community use, and if so, whether it is realistic to believe that community use could resume within the next five years. Accordingly, any site not in current community use and whose owner states that there will be no community use within the next five years will fail those tests.
53. The effect of the importation of the criteria used in assessing assets of community value into the first test in paragraph 74 of the NPPF would be to equate availability with the question of whether or not a site can be said to be surplus to requirements. However the question of surplus should be concerned with a proper analysis of supply and demand within the local area. Otherwise any owner of playing fields could meet the test by preventing community use now and in the next five years. The same point applies to the fact that the University has declared the site surplus to its requirements. The fact that it no longer requires use of the site for sporting purposes does not generate a surplus of playing fields in the local area.
54. In respect of the second test of paragraph 74, the mitigation package comprises qualitative improvements to existing playing fields, and community use arrangements of University facilities. As such, the quantity of playing fields lost to the scheme is not replaced. The proper approach is to apply the plain meaning of paragraph 74, namely that playing fields lost to development should be replaced by equivalent or better provision in terms of both quantity and quality.
55. The TGMS report commissioned by Sport England²⁴ identified a schedule of works for King George V playing fields improvements based on a thorough examination. Excluding refurbishment of the changing rooms, improvements to the playing field would cost about £198,000, compared with the playing field contribution of £175,000 to be provided by a planning obligation. The University site at Blacon

²⁴ Appendix 5.1 in Document S4.

Avenue is earmarked for re-configuration, namely the marking out of two football pitches on the Gaelic football pitch together with a training pitch. The TGMS report sets out the method and conclusions of a comprehensive site inspection and estimates the cost of improvement work at about £137,000. The Applicant puts the cost at about £77,400 but has not conducted an equivalent examination. Given the estimated cost of works at King George V, it is not considered that any of the playing field contribution would be available to effect improvements at Blacon Avenue.

56. In 2014, the University wrote to the Council (CD2.10) confirming that its use of Sealand Road would come to an end whatever the outcome of this application. The reason given was because of the intention to develop the facilities at Kingsway to such a point where the use at Sealand Road can cease. Pitch improvements to Kingsway will be delivered if this application fails, and that fact must diminish the weight attributed to the claimed benefit of grassed pitch improvements delivered as a consequence of the scheme.
57. It is recognised that formalisation of community use arrangements is a tangible benefit. However the Kingsway site is relatively inaccessible to residents of Blacon. A significant proportion of the hours which would be devoted to community use at the Blacon Avenue and Kingsway sites fall within the weekday evenings, and neither site is floodlit. During much of the football season, available evening hours for the community would involve playing in the dark. On the basis that grass pitches can sustain three match equivalent sessions per week (the national governing body's position), there is no capacity assessment by either the Applicant or University to demonstrate that pitches will be able to sustain significant community use. There is already significant community use of the University's main campus facilities, and the University is committed to community use in any event. Sport England's policy is consistent with the NPPF, and it does not impose any extra burden upon the Applicant.
58. It has not been demonstrated that the additional demand for sports facilities generated by the proposal could be accommodated by existing facilities.

The Development Plan

59. Whilst Policy SOC 6 in the CWCLP is poorly drafted, the protection it gives to existing playing fields mirrors that in national policy. On that basis, a finding of conflict with paragraph 74 of the NPPF means a finding of conflict with Policy SOC 6.

Other matters

60. Mr Graham spoke in favour of the proposals on behalf of the CWFL. He had previously been opposed to the scheme. The factor said to have changed his position was the failure of the application for registration as an asset of community value. However, the failure of that application does not render the scheme compliant with paragraph 74 of the NPPF or Policy SOC 6 of the CWCLP. Moreover Mr Graham has not sought to verify whether or not the claimed scale of benefits can be delivered. The county body with responsibility for the

administration of football is aware of Mr Graham's support for the scheme²⁵, but maintains an objection.

61. The Applicant relies on the decision in the case of Westminster CC v British Waterways Board (Document A9). The judgement held that in a contest between the planning merits of two competing uses, to justify refusal of permission for use B on the sole ground that use A ought to be preserved, it must be necessary at least to show a balance of probability that, if permission is refused for use B, the land in dispute will be effectively put to use A. However it is no part of Sport England's case that planning permission should be refused on the sole ground that the recreational use ought to be preserved. The scheme is in breach of national planning policy and the Development Plan, both of which contain specific provisions directed at the prohibition of building on existing playing fields. Accordingly, it is the particular policy context relevant to this application which supports its refusal.

Conclusion

62. Sport England does not consider matters relating to climate change, flooding, and housing land supply, nor the overall planning balance. Its position is simply that this scheme is in clear breach of national policy, Sport England's policy and Policy SOC 6 in the Development Plan. That conflict with policy should weigh heavily against the grant of planning permission.

The Cases for Interested Parties

The material points are:

i) Miss M Bailey, Ferry Lane Residents Association (CD11.37)

63. The site is part of a flood plain where residential development should not take place. A recent application to develop on the same flood plain was recommended for refusal by Natural Resources Wales. It seems that the water table has changed over the years. Fields now retain water for weeks when it rains, soakaways do not work, nor does controlled release of water from tanks. Work to address flooding on Sealand Road was successful, but ponding has occurred recently at several junctions, and there has been some localised flooding. There is concern about additional pressure from the development of the application site. Run-off after development should be no greater than from the undeveloped site: it is not clear that there are sufficient measures proposed to minimise flood risk.

ii) Mr P Graham, Chester & Wirral Football League (CD11.35)

64. The CWFL has 49 teams for the 2015-16 season, generating 650 fixtures, excluding cup competitions. Fixtures also need to be accommodated for teams in the Chester & District Sunday League and the Chester & District Junior League. One of the main issues facing the league is the availability of suitable venues. In Blacon, Blacon High School has stopped open age access to its pitch because of concern about damage. Use at Queen Elizabeth II playing fields restarted in 2014 following the removal of tree roots, and tree removal is required to provide a long-term solution. Only one of the pitches at King George V playing fields is usable and this is of poor quality. Even with poor quality pitches being shared,

²⁵ In cross-examination, Mr Graham advised that Cheshire FA were aware of his position on the scheme.

one team has had to use a pitch in Upton for its home fixtures. The main concern is the quality, not the quantity of pitches.

65. The Chester & District Football League (CDFL - the former name for the CWFL) had objected to the previous proposal. On being informed that Clifton Drive was no longer available for community use, the CWFL sought to have the site recognised as an asset of community value, but this failed. However the mitigation package would bring benefits. The improvements to King George V playing fields would be a huge boost to Blacon. The changing rooms from the application site are intended to be used at King George V and Lache, and would bring considerable benefits. Access to enhanced facilities at the University's Blacon Avenue and Kingsway sites would also have a positive effect. The facilities would be available at affordable rates and at times when they are needed. The mitigation package should enable clubs to play on better pitches covering a larger part of the city, thereby attracting new members and participants.

iii) Mr A Scargill, Friends of North Chester Green Belt (in Document O1, CD11.39)

66. The application site comprises good quality playing fields within the River Dee basin flood defence scheme and close to the Blacon Escarpment sea cliffs which are considered to be environmentally important. As there is a five year housing land supply, no weight should be given to any application to build on land in flood zone 3. There is often excess water in Sealand Road, although Mr Scargill was not aware of any flooding on the site. There is also concern that the scheme would not include affordable housing. Sport England has calculated that the proposed improvement works in the mitigation package would cost more than the amount offered. Evening use of university facilities would be of little benefit where there is no lighting.

iv) Local residents (CD11.36)

67. Three local residents spoke against the proposal at the inquiry. There is concern about flooding and reference was made to occurrences along Sealand Road. If the proposal raised ground levels, flood risk would increase elsewhere. Traffic levels have increased significantly in the area over recent years, and the proposal could reduce safety on Clifton Drive. There is not thought to be spare capacity in local schools or surgeries. The loss of playing fields is inappropriate, as opportunities are needed for children to take part in sport. Concern was also expressed about the effect on wildlife.

Written Representations

The material points are:

i) Councillor R Jones, Councillor M Nelson (in Document O1)

68. Both councillors object to the loss of playing fields, and query the adequacy of the mitigation measures. They also express concern about flood risk and the lack of affordable housing. The proposal would conflict with local planning policies, and the Borough has a five year housing land supply.

ii) Cheshire Football Association (in Document O1)

69. Development of the playing field would be a huge loss to football in Chester. When the CDFL was prevented from using the pitches on the application site this had a negative effect on teams, with three folding. A number of teams in the area are unable to find pitches due to a lack of supply. The financial contribution and improvements put forward are not significant enough to make a material difference to pitch provision in Blacon. At Kingsway the hours of use of the car park are restricted in the evenings. However if the application is rejected, it is thought likely that access would continue to be prevented to the pitches. The objection would be withdrawn if a replacement 5.2ha playing field were provided, capable of supporting at least five pitches, or if a financial contribution were available to increase the area's playing pitch capacity to meet the loss from the application site.

iii) Chester Community Voice (in Document O1)

70. Flood risk is a concern, and the development would exacerbate traffic problems.

iv) Trustees of the Estate of H C Beddington

71. The estate owns land between Chester Retail Park and Blacon. It objects to the proposal on the ground of flood risk²⁶.

v) Other representations²⁷

72. Twelve individual objections were submitted initially in response to the application, and seven following notification of its call-in. Most objections are from local residents who have expressed concern about flood risk, the loss of the playing fields and the adequacy of mitigation, the lack of affordable housing, traffic conditions, highway safety, and the effect of the proposal on wildlife, the character and appearance of the area, and their living conditions. Objections have been submitted by a few residents living near the Kingsway campus of the University, due to the effect on their living conditions from community use of the playing fields there.

Conditions

73. The main parties submitted an agreed list of suggested conditions (CD11.25). These cover the following matters: requirements for reserved matters applications, the plans for determination, the number and height of dwellings, open space, landscaping, access and off-site highway works, drainage, flood risk mitigation measures, bird and bat boxes, tree retention and protection, construction traffic, a construction method statement, the import of materials, internal roads and parking, an archaeological investigation, a travel plan and noise levels.

²⁶ The representations of the estate are recorded in the committee report, CD3.4.

²⁷ The initial representations are recorded in the committee report, CD3.4. Those submitted following call-in of the application are in Document O1.

Conclusions

References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus [8].

Main Considerations

74. I consider that the matters identified in the call-in letter are the main considerations in this case:

- (i) The extent to which the proposed development is consistent with Government policies on promoting healthy communities.
- (ii) The extent to which the proposed development is consistent with Government policies on meeting the challenge of climate change, flooding and coastal change.
- (iii) The extent to which the proposed development is consistent with Government policies on delivering a wide choice of high quality homes.
- (iv) The extent to which the proposed development is consistent with the Development Plan for the area.

Promoting healthy communities

75. Paragraph 74 in Chapter 8 of the NPPF is of particular relevance in this case. It expressly states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless one of three circumstances obtains. These circumstances are set out in three bullet points, which I shall refer to as paragraphs 74(1)-(3) for clarity, in the way in which they were referred to at the inquiry. Paragraphs 74(1) and 74(2) are concerned with whether the land is surplus to requirements and whether the loss would be replaced by equivalent or better provision: I consider these tests in the following sub-sections of the report. The third circumstance in paragraph 74(3) applies where the proposed development is for alternative sports and recreational provision, and it is not relevant in this case.

Whether the land is surplus to requirements

76. The 2014 appeal decision records that, on that occasion, the then Appellant sought to demonstrate that there was a surplus of pitch provision with reference to the six acres standard and more recent Fields in Trust national benchmark standards for urban areas²⁸. Although the *Planning Statement in respect of Playing Field Loss* submitted as part of the planning application (CD1.4) calculated that a deficit from the loss of the playing field would be offset by the provision of a children's play area, at the inquiry the Applicant made it clear that it is not seeking to re-run the type of assessment exercise previously undertaken [34].

77. The land at Clifton Drive is a playing field site for the University of Chester. In May 2014, the CDFL nominated the site to be listed as an asset of community value, referring to past community use of the playing field, a shortage of pitches,

²⁸ CD11.1, para 17.

and the potential for the site to meet this demand. The Council determined that the site does not have community value as defined in the Localism Act 2011 [34]. To be listed as an asset of community value, a building or land must have or have had in the recent past a use which furthered the social well-being or interests of the local community and there must be a prospect of such a use occurring in the future [52]. Use by local sports clubs ended in 2012, and at the date of the inquiry there was no use at all made of the playing fields [12]. Although there had been community use up to 2012, this has ceased and the Council and Sport England do not dispute that it is the University's intention not to permit community use in the future [35]. Consequently the site could not be listed as an asset of community value. That determination by the Council derives from the availability of the land [53]. Paragraph 74(1) of the NPPF requires an assessment to be undertaken, and although the form of the assessment is not specified, it does not seem to me that simply stating the position on availability establishes whether or not the site in question is surplus to requirements.

78. Use of the pitches at the application site by the University has fallen sharply in recent years. During 2011-12 bookings were made for 294 hours, but by 2014-15 this had fallen to 6 hours²⁹. It has now ceased, with sports activities taking place at the main campus on Parkgate Road and at the Kingsway site. I acknowledge that insofar as the University is concerned, the application site does not form part of its ongoing intentions for sports provision and that it is not needed for its own requirements.
79. The test in paragraph 74(1) of the NPPF does not distinguish between private and public playing fields, nor otherwise seek to constrain the assessment to be undertaken. Accordingly, it is appropriate to have regard to the wider position concerning playing fields in the Chester area. Sport England made reference to the finding in the 2014 appeal decision that it had not been demonstrated that the site was surplus to requirements [51]. That finding drew on the Council's Playing Pitch Strategy 2012. Given the acknowledgement that baseline information for the 2012 is out-of-date [25], I consider that it is more relevant to have regard to the emerging PPA. Although the new exercise had not progressed to a revised playing pitch strategy at the date of the inquiry, the PPA provides details of the supply and demand for pitches throughout the Borough, and as such merits consideration in this case.
80. The document *Playing Pitch Strategy Guidance* (CD10.15), developed by Sport England in partnership with the national governing bodies for football, cricket, rugby and hockey, identifies four community use categories. In gathering information on supply, it advises that all pitches should be assigned to one of these categories. The fourth category – not available as disused – is not included in the PPA [34]. In its present condition, and with University sport taking place elsewhere, the application site would fall within this category. The methodology does not reflect the national guidance in this respect, and the Applicant argues that as a disused site, it has been discounted as an element of future supply. Importantly, though, the omission of disused playing fields from the PPA does not affect its findings since such sites would not form part of the assessment of supply and demand.

²⁹ Details of the University's use of the application site are given in the letter from the Vice-Chancellor and Principal at Appendix 16 of Document A4.

81. The PPA provides the most up-to-date assessment of playing pitches. In the Chester analysis area it records a limited but distinct shortfall in both football and rugby match equivalent sessions [25]. The Applicant argued that there are opportunities to improve supply, but future improvements would not alter the existing position and the test of paragraph 74(1). Of the four locations included in the mitigation package [16], King George V playing fields and the University's Kingsway site are included in the PPA football schedules and the single pitch identified in each case reflects the existing situation. It is true that neither the Parkgate site nor Blacon Avenue is listed, but there are no grass pitches at Parkgate and the pitch at Blacon Avenue is identified as a Gaelic football pitch. However I saw that the Gaelic football pitch is also marked out for rugby, and having regard to the existing shortfall of two match equivalent sessions [25], and sustainable weekly usage³⁰, it could provide capacity to meet the existing shortfall in senior rugby sessions. Nevertheless, in cross-examination, the Applicant's planning witness acknowledged that there was no firm evidence of a surplus of pitches in the area. On the information before me, I consider that overall there is insufficient provision to meet the demand for match equivalent sessions in the sports which were played at Clifton Drive.
82. The University's position is unequivocal: the application site no longer forms part of its resources for sports provision. Notwithstanding the restriction on use of the site by other organisations, this is an insufficient assessment having regard to the policy test in paragraph 74(1). When a broader view is taken of the situation in Chester, there is not an excess of pitch provision, and I do not consider that the playing field site at Clifton Drive is surplus to requirements having regard to the community of Chester as a whole.

Replacement by equivalent or better provision

83. The proposed development of the land at Clifton Drive would result in the loss of a playing field of 5.2ha in size, albeit not in use for this purpose, which accommodates five grass pitches [12]. This is a private facility, which latterly was only available for University use, and which is not intended to be made available for community use in the future other than as an interim measure pending development [16]. Other parties are concerned about the loss of the playing fields. I note that the Cheshire FA regards the removal of the playing field as a huge loss to football in Chester, and it refers to teams folding when community use of the pitches there ceased [69]. As with paragraph 74(1), the NPPF does not distinguish between private and public playing fields in paragraph 74(2), and I consider that it is relevant to consider not only the specific circumstances of the playing field, but also the loss of land for which the planning status is use as playing fields. Indeed, if only the University use of the playing fields were relevant, there would be no need for the mitigation package to include community use of University facilities and improvements to the public King George V playing fields.
84. There are three aspects to the test for replacement provision in paragraph 74(2) of the NPPF: the quantity of the replacement, its quality and the suitability of the location. No new area of playing fields is proposed; an equivalent area of land

³⁰ At the inquiry, Miss Pudge referred to a limit of three sessions on a pitch during a week. Mr Griffiths referred to the three sessions figure as a rule of thumb, and suggested that usage of five or seven sessions a week could be feasible.

would not be provided to replace the 5.2ha which would be lost to residential development. In terms of pitches, a training pitch would be provided at Blacon Avenue, and a rugby pitch and an additional football pitch at Kingsway. However whereas there is at present a separate lacrosse pitch at Kingsway, that facility would be overmarked on one of the football pitches. Although the University refers to the lacrosse pitch as a temporary facility³¹, I note that a list of University sports events included regular fixtures for a men's lacrosse team for the 2012-13 and 2013-14 seasons and for both men's and women's teams during the 2014-15 season³². There would, therefore, be one additional playing area at Kingsway. Similarly the two football pitches proposed at Blacon Avenue would be overmarked on the Gaelic football pitch, and as such represent an alternative use of an existing playing area rather than a wholly separate facility. In quantitative terms, the level of pitch provision proposed does not equate to that which was available at Clifton Drive.

85. The University has decided to cease use of the application site in the academic year 2015-16 and the Applicant's planning witness thought that maintenance had stopped in spring 2015. A letter from the University in 2013 explains that sporting facilities are to be developed at Parkgate and Kingsway (CD2.10), and that provision at those sites, including a third pitch at Kingsway, would replace Clifton Drive. In the PPA the football and rugby pitches are rated as being of poor quality³³, and I have no reason to doubt that additional separate pitches of good quality could be physically provided at Kingsway and Blacon Avenue. In addition the overmarked pitches would provide qualitative improvements at those sites, but there is insufficient evidence to indicate that they would be of equivalent benefit to separate pitches. The University was unable to say whether there would be a lacrosse team for 2015-16³⁴, but there had been men's and women's teams for the previous year, and although the Applicant referred at the inquiry to relatively low usage of the Gaelic football pitch, it was also acknowledged that future usage of this playing area had not been fully assessed³⁵. On the information before me, I am not persuaded that the replacement provision for the University would, overall, offer equivalent quality to the playing field which would be lost.
86. The replacement provision for the University would be in a suitable location. Kingsway is one of the University's three sites in Chester, and although Blacon Avenue is detached from any of the campuses it is an existing facility, and is closer than the application site to the main campus (Plan G).
87. I turn now to consider the quality and location of replacement provision in respect of land with a planning use as playing fields. The planning obligation includes a sum of at least £165,000³⁶ for the improvement of King George V playing field. Although the playing field should accommodate two football pitches, one is currently out of use and the other is rated in the PPA as being in poor condition. Sport England questioned whether the financial contribution

³¹ Letter from the University of 14 September 2015, Appendix 18, Document A6.

³² Appendix 3.1, Document S4.

³³ Tables 2.13 & 5.11, CD11.45.

³⁴ Appendix 18, Document A6.

³⁵ The Applicant's witness in cross-examination.

³⁶ The playing field contribution in the planning agreement is £175,000. Whilst the obligation refers to use of the contribution at King George V playing field, up to £10,000 is identified as a contribution to the enhancement of a pitch at Lache.

committed in the obligation would be sufficient for works at this playing field. A feasibility study undertaken by an agronomist for Sport England has estimated that works to the playing fields themselves would cost about £198,000 [55], and a further report calculates the cost of refurbishing the changing rooms at £351,000³⁷. In contrast, documents submitted by the Applicant give cost estimates of just over £106,000 for work to the playing field and about £41,600 for a portable changing room³⁸. Moreover the changing accommodation from the application site is to be made available to the CWFL, and it is their intention to install one of the units at the playing field [65] (subject to the Council's agreement). Main differences between the cost estimates for the work to the playing field concern soil stripping and re-spreading, earthworks and drainage. I note that Sport England's agronomist undertook a detailed survey of the site, including electromagnetic inductance scans and the excavation of trial pits. Nevertheless the Applicant's report offers a clearer explanation of the estimate. For example, given that soil would be stored on site and would only need to be transported a short distance, the estimate of £8,117 for this work seems more realistic than Sport England's figure of £30,000. In similar vein, a figure of £50,000 is included in the Sport England report for infrastructure as part of a surface bypass drainage scheme, although the necessity for the full extent of this expenditure is uncertain given that the recommendation is qualified by a statement that the scheme could be adjusted depending on budgetary constraints. The Applicant's report includes markedly lower expenditure of £13,250 for drainage infrastructure. It seems to me that the costings put forward by the Applicant are more realistic than those advanced by Sport England, and they indicate that the playing field contribution would enable improvement works to be undertaken at King George V playing field, including, if necessary, the purchase of changing accommodation.

88. A similar exercise has been undertaken in respect of Blacon Avenue, where Sport England's report estimates expenditure of £137,000 is required. I note that a surface bypass drainage scheme is again put forward, although the results from a trial pit indicate drier ground conditions than at King George V. The Applicant disputes the need for the work envisaged in the Sport England report, and the University has stated that the pitch has no known drainage or similar issues³⁹. If certain work is required, the Applicant's report estimates a cost of about £77,400 (but refers to this as a theoretical exercise). The Applicant suggested that, excluding maintenance and contingency figures, the playing field contribution would be sufficient to fund improvement works at Blacon Avenue, if required, in addition to those at King George V. However the planning obligation not only directs that up to £10,000 is to be used towards the enhancement of a pitch at Lache, but that any surplus from expenditure on King George V is to be used for improvements at Queen Elizabeth II playing field and/ or Cairns Crescent play area, both of which are in Blacon. The planning obligation would not provide funding for works at Blacon Avenue, but, having regard to all of the information before me, together with my observations of the playing field, I am not persuaded that the expenditure suggested by Sport England is necessary to enable the scheme proposed for this site to be implemented.

³⁷ Appendices 5.1 & 5.3, Document S4.

³⁸ Appendix 19, Document A6.

³⁹ Appendix 16, Document A4.

89. The works at King George V would represent a significant improvement in the quality of the pitches there. The wider benefits of the other elements of the mitigation package are contingent on the community use agreement relating to the University's sports facilities at Parkgate, Kingsway and Blacon Avenue. There is some existing community use, but I agree with the Applicant and Sport England that establishing formal arrangements is a distinct benefit in qualitative terms. The times when the facilities would be available to the community are specified in the planning obligation. They would be most extensive at weekends when facilities would be available between 0900 and 2100 hours on Saturday and 0900 and 2000 hours on Sunday. During the week, community use would be restricted to the late afternoon and evenings as follows:

Parkgate: 1600 – 1700 hours excluding Wednesday

Kingsway: 1730 – 2100 hours

Blacon Avenue: 1600 – 2100 hours, except for Wednesday which would be 1730 – 2100 hours.

At Kingsway and Blacon Avenue community users would be able to book facilities outside the above core times, subject to there being no University bookings, but the more limited times at Parkgate are themselves subject to no University or other existing commitments⁴⁰. The absence of lighting at Blacon Avenue and Kingsway would impose restrictions on the ability to use those sites for the full extent of the core community hours during the winter months. Moreover at Kingsway, the rear car park, which is adjacent to the playing field (Plan I), is subject to an approved scheme requiring that access be prevented after 1900 hours from Monday to Friday and 1200 hours on Saturday, with no access permitted on Sunday. The condition which required the parking management scheme was imposed to safeguard the living conditions of the occupiers of nearby dwellings, and planning permission was refused in 2011 for a further application for the car park with access permitted until 2130 hours from Monday to Friday⁴¹. There are also parking areas alongside the internal road and on the southern part of the site, but these provide fewer spaces and they are less conveniently placed for access to the playing field and changing rooms. There may be opportunities to park on nearby roads, but these would also be inconvenient for persons intending to make use of the sports facilities at Kingsway. I consider that the benefit of the community use opportunities is markedly reduced by the restricted weekday availability of facilities at Parkgate, the absence of lighting at Kingsway and Blacon Avenue, and the restricted use of the rear car park at Kingsway.

90. King George V and Blacon Avenue are adjacent sites in Blacon, which lies a short distance to the north of the application site [10]. Parkgate is a similar distance from Clifton Drive and it is not far from the city centre (Plan G). Each of these sites is in a suitable location for replacement provision. On the other hand, Kingsway is on the opposite side of Chester and about 3km from the application site. It is not well located in respect of the Sealand Road and Blacon parts of Chester.

⁴⁰ These arrangements are set out in the table of existing and proposed users of sports facilities, agreed by the Applicant, the Council and Sport England (CD11.42).

⁴¹ The refusal notice and report on the planning application are at CD11.19.

91. Although the playing field contribution makes provision for expenditure of up to £10,000 on a pitch at Lache, and, in the event of a surplus from King George V, on improvements at Queen Elizabeth II playing field and/ or Cairns Crescent play area, there is little information about these sites and the works which could be undertaken there. I note that the Council's Community Infrastructure Levy (CIL) Regulations statement (CD11.43) mentions that the inclusion of up to £10,000 for the pitch at Lache was at the request of the Strategic Planning Committee.

Conclusions on the first main consideration

92. The application site is no longer required by the University of Chester, and I accept that it is surplus to the University's requirements. Considering simply the University's requirements, the replacement provision would not be equivalent in quantity and I am not persuaded that it would, overall, offer equivalent quality to the playing field which would be lost. However compliance is only required with one of the tests in paragraph 74(1) of the NPPF, and on the narrow basis of consideration of the site's role as University playing fields, the proposal would be consistent with national policy.

93. When consideration is given to playing fields generally in the Chester area, I do not consider that the proposal would satisfy the tests in either paragraphs 74(1) or 74(2). My findings are that there is not a surplus of pitch provision, and that, whilst acknowledging that the mitigation package would offer certain benefits to the community, this would not represent equivalent provision to the playing field on Clifton Drive. I conclude that the proposal would be partially consistent with Government policies on promoting healthy communities. Whilst application of the policy tests in the context of University usage relates to the actual situation concerning the site, their use in a wider context involves comparison of the intended provision with circumstances concerning a site which it is acknowledged will not be made available for community use. With this in mind, and taking account of the community benefits which would result from the proposal, I do not consider that the partial consistency with national policy should weigh against the proposal.

94. The circumstances at E1 and E4 in Sport England's PPS, which would be reasons not to oppose the loss of a playing field, reflect the tests in paragraphs 74(1) and 74(2) of the NPPF [57]. Accordingly I find that E1 applies in respect of the University's sports requirements, but that neither E1 nor E4 apply when consideration is given to playing fields generally in the Chester area. For the reasons given above (para 93) in relation to the actual situation of the application site, this partial compliance with the PPS should not weigh against the proposal.

Meeting the challenge of climate change, flooding and coastal change

95. The site is within flood zone 3 in respect of tidal flooding from the River Dee and flood zone 2 in respect of fluvial flooding [26, 32]. These are high and medium risk flood areas respectively, and members of the local community have submitted evidence of flood events along Sealand Road [63, 64, 67]. The flood risk vulnerability classification in table 2 of the PPG categorises housing as a more vulnerable form of development. In accordance with paragraphs 101 and 102 of the NPPF and table 3 of the PPG (part 7 – Flood Risk and Coastal Change) it is necessary to apply the sequential and exception tests to this proposal for housing in flood zone 3.

96. Paragraph 101 explains that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. The Applicant's application of the sequential test concluded that there are no sequentially preferable sites within the Chester urban area [32]. For its part the Council made reference to a site at Wrexham Road [45]. This site is in flood zone 1 and is referred to in Policy STRAT 3 of the CWCLP as a location for around 1,300 new homes (1,264 dwellings are referred to in the sequential test exercise). The Applicant's methodology includes a buffer of +/- 10% of the 142 dwellings sought at the appeal site, and the site has been discounted due to its size, with reference also made at the inquiry to multiple ownership and the need for a masterplan. I note that, taking account of matters such as a development brief, planning permissions and the discharge of conditions, an appeal decision issued in September 2015 estimated that about 100 dwellings could come forward on that site within a five year period to March 2020 (CD11.21). That is an estimate which is not far below the Applicant's range of 126 – 154 dwellings. The Council anticipates an outline planning application in 2016, with parts of the site coming forward at an early stage [45]. I would expect the development of a site of this size to come forward in phases, and, given the relatively small difference between the estimated contribution calculated in 2015, and the Applicant's minimum size of 126 dwellings, I consider that a residential development of the approximate size of that sought at Clifton Drive could come forward at Wrexham Road, and that this is a sequentially preferable site.
97. There are two parts to the exception test. I agree that the application would provide certain wider sustainability benefits to the community, including improvements to King George V playing field, community use of University sports facilities, a mix of housing in a sustainable location, economic benefits associated with the construction process, and ecological enhancement within the site. Insofar as the second part of the test is concerned, it is common ground between the Applicant and the Council that the development would be safe for its lifetime without increasing flood risk elsewhere. Measures to safeguard future occupants from flooding, specifically the establishment of minimum floor and road levels, and schemes to control the discharge of surface water, manage overland surface water flows, and construct swales could be the subject of conditions, in line with a recommendation from the Environment Agency which does not object to the proposal (CD6.5). Concern was expressed by a local resident about the implications of raised ground levels [67]: the Environment Agency has explained that the purpose of forming swales would be to compensate for raised levels so that the risk of flooding from overland flows would not increase. In these circumstances, I consider that the sustainability benefits would outweigh the flood risk.
98. I have addressed the exception test so that information on this matter is before the Secretary of State. However paragraph 102 of the NPPF indicates that it is only necessary to proceed to this test if it is not possible to locate the development in a zone with a lower probability of flooding. I consider that this is the case, and accordingly I conclude that the proposal would not be consistent with national policy on flood risk in Chapter 10 of the NPPF. This is a matter to which I give significant weight.

A wide choice of high quality homes

99. The proposal envisages a mix of dwelling sizes, with two, three and four bedroom properties referred to in the design and access statement [14]. Although there is no affordable housing included in the scheme at present, this is to ensure viability [14], and the provision in the planning obligation to review viability at reserved matters stage reflects paragraph 205 of the NPPF, which explains that planning obligations should be sufficiently flexible to prevent planned development being stalled. The details of dwellings would be determined as part of reserved matters, when proposals would be assessed against national and local planning policies requiring a high quality of development.
100. Residential development on the site would contribute to the supply of housing in the Borough. There is agreement between the Applicant and the Council that there is a five year supply of housing land [26]. Whilst there is also agreement that a 20% buffer should be applied due to a backlog in delivery, the parties differ in their approach to its calculation. The Applicant argues that the buffer should be applied to the aggregate of the basic five years requirement and the shortfall, whilst the Council's position is that the buffer should be applied before the shortfall. These different approaches do not result in materially different positions in this case. Using the Council's approach, the supply of land for 10,151 dwellings would be sufficient for 6.83 years, whilst under the Applicant's preferred approach this figure would fall to a slightly shorter period of 6.67 years⁴². The Applicant has also commented that the Council's estimate of supply is optimistic, but no alternative assessment of supply has been submitted, and there is no dispute that the five years supply of housing land required by paragraph 47 of the NPPF is achieved.
101. I conclude that the proposed development would be consistent with policies requiring the provision of a wide choice of high quality homes, and the contribution of the proposal to boosting housing supply carries important weight.

The Development Plan

102. The application site is on the edge of the built-up area of Chester, close to a range of facilities and services and Sealand Road is a bus route with services to the city centre. I agree with the Council and the Applicant that this is a sustainable location for residential development in accordance with Policy STRAT 1 of the CWCLP [26,18]. The sustainable development principles in Policy STRAT 1 include minimising the loss of greenfield land. Policy ENV 17 of the CDLP identifies the playing field as important greenspace, but as the value of this land has been for active recreation [28], the development of such land was to be assessed in accordance with Policy SR 2, and that policy has been replaced by Policy SOC 6 of the CWCLP (below, para 103). The application is generally compliant with the approach to sustainable development set out in Policy STRAT 1. Residential development of the site at Clifton Drive would assist in providing the 22,000 new dwellings required in the Borough (Policy STRAT 2) and the 5,200 new dwellings required in Chester itself (Policy STRAT 3). Both these figures are minima [18].

⁴² Calculations using both approaches are set out in CD11.32.

103. The development is expected to provide a range of dwellings, the details of which would be determined at reserved matters stage. Accordingly it would be consistent with Policy SOC 3 of the CWCLP, which promotes mixed, balanced and sustainable communities. The size of the site and the number of dwellings proposed exceed the thresholds for the provision of affordable housing in Policy SOC 1. However the level of affordable housing will depend on site specific circumstances and the viability of the scheme [19]. An affordable housing viability study update (CD1.14B) makes reference to the costs of flood mitigation, highway and infrastructure works together with a payment due to the University under the terms of the lease, and concludes that no affordable housing can be provided at the present time. The Council does not dispute the conclusion of the viability study, and I have no reason to take a different view. In this circumstance the proposal complies with Policy SOC 1, and the planning obligation makes provision for a viability review at reserved matters stage.
104. The second part of Policy SOC 6 of the CWCLP is concerned with development on existing open space, sport and recreation facilities [20]. Tests A and B reflect paragraphs 74(2) and 74(1) in the NPPF. Although test B refers to an assessment demonstrating that the site is surplus for its current *function*, I do not consider that this necessarily implies any more specific focus than the form of words in paragraph 74(1) which refers to an assessment showing the land to be surplus to requirements. I have found that the playing fields are surplus in respect of their University role (above, para 91), and on that basis the proposal would satisfy test B. However when considered from the wider perspective of playing fields in the Chester area neither test A nor test B would be satisfied (above, para 92). Given the University's position that it would not permit community use in the event of the application being unsuccessful, it is unlikely that the site would be available to fulfil any other open space needs and test C is satisfied. As I have found that the site is surplus as University playing fields, test D should be considered, but there is nothing before me to indicate that the replacement provision is needed to remedy deficiencies in any other type of open space, sport or recreation facility, and I find no conflict with this test. Test E concerning development incidental to the use of the facility is an alternative to D. I consider that the proposal would only be partially consistent with Policy SOC 6, but that, acknowledging the non-availability of the site for community use and the community benefits for sport in the mitigation package, this position should not count against the development.
105. As I consider that Wrexham Road would be a sequentially preferable location for the erection of up to 142 dwellings, the proposal would not be consistent with Policy ENV 1 of the CWCLP concerning flood risk and water management, a matter which carries significant weight. The illustrative masterplan (Plan B) shows areas of open space, with the potential to establish links to the open land to the north. The development would incorporate appropriate green infrastructure, thereby complying with Policy ENV 3 of the CWCLP. Whilst there would be some removal of trees and hedgerows on the western and southern boundaries, they would be retained elsewhere, and would be integrated into the development in accordance with Policy ENV 21 of the CDLP. The development includes alterations to the junction of Clifton Drive and Sealand Road together with footways on both sides of Clifton Drive up to the site access. Additionally, a financial contribution would be provided by the planning obligation to a footpath link to Blacon to the north-west [15]. On the information before me, I am

satisfied that the traffic generated would be accommodated safely and satisfactorily within the highway network, and that there would be compliance with Policy STRAT 10 of the CWCLP. The site is of potential archaeological interest, lying to the west of the historic centre of Chester and within 1km of a former Roman camp. In accordance with Policy ENV 32 of the CDLP an archaeological assessment was submitted (CD1.7). The assessment recommends that a scheme of investigation and mitigation be carried out and this could be the subject of a condition.

106. Sport England is concerned about the potential effect of the demand for sports facilities generated by the proposed housing [58]. In terms of pitch provision Policy SR 6 of the CDLP establishes a threshold of 200 dwellings for the provision of space for playing pitches [22], and the proposal is below that level. Moreover there is no detailed evidence before me to indicate that there would be inadequate capacity in other sports facilities.
107. The proposal would comply with most of the relevant policies in the CWCLP and CDLP. However it would only partially comply with Policy SOC 6 concerning open space, sport and recreation, and there would be conflict with Policy ENV 1 concerning flood risk. Accordingly I conclude that the development of housing on the site at Clifton Drive would not be fully consistent with the Development Plan.

Other matters

108. The Applicant argues that the proposal would generate several economic benefits. The development would support jobs during the construction period, both on the site and in the supply chain. There would also be spending on local services, initially in connection with the construction activities and subsequently by site residents. These are important benefits of the scheme. I acknowledge that the development would result in new homes bonus payments, which the Applicant calculates at about £190,000 per year. However paragraph 21b-011 of the PPG advises that it would not be appropriate to make a decision based on the potential for the development to make money for a local authority, and I give limited weight to this consequence of the proposed development.
109. It is intended that the ecological value of the site would be improved through the creation of habitat areas and features such as bird and bat boxes. This is a potential benefit, details of which are not available at this outline stage. It merits limited weight.

The planning obligation

110. I have already considered the provisions of the planning obligations concerning the highways contribution (para 105), the affordable housing and viability review (para 99), the playing field contribution and improvement scheme (paras 83-91), and the community use of the University's sports facilities (para 89).
111. The obligation would also make provision for a contribution of £314,289 towards additional teaching space at The Arches Community Primary School in Blacon. The catchment primary school, Dee Point, has been full since 2012, and the number of pupils is forecast to exceed the number of places in Blacon primary schools as a whole until 2017 when Dee Point will be expanded to a two

form entry school⁴³. Even with that additional capacity there would only be a modest surplus, which is expected to reduce to 14 spaces by 2020. In contrast, the development is expected to yield 26 children of primary school age. The contribution to provide additional teaching space is necessary to make the development acceptable in planning terms, and is directly related and fairly and reasonably related in scale and kind to it.

112. The Council's CILR statement (CD11.43) explains that where contributions could be pooled, none of the provisions of the matters concerned is subject to five or more obligations. Other than in respect of the use of the playing field contribution towards facilities at Lache, Queen Elizabeth II playing field, and Cairns Crescent play area, on which there is limited information (above, para 91), I am satisfied that the statutory tests in Regulation 122 of the CIL Regulations are met in respect of the provisions of the planning obligations. Accordingly, with the exception of the use of the playing field contribution towards facilities at Lache, Queen Elizabeth II playing field, and Cairns Crescent play area, these provisions are capable of being taken into account as material considerations in the determination of this application.

Conditions

113. I have considered the suggested conditions (CD11.25) in the light of the advice in the PPG and the discussion on conditions at the inquiry. I have already referred to conditions concerning surface water drainage, flood mitigation measures, and an archaeological investigation. If planning permission is granted, it would also be appropriate for conditions on the following matters to be imposed. For the avoidance of doubt and in the interests of proper planning, it is important that the development is carried out in accordance with the specified plans. Equally, conditions should identify details required at reserved matters concerning open space and landscape management, and the internal highway layout: further details are also necessary of the access and off-site highway works.
114. To ensure that the development would be in keeping with its surroundings, the maximum number of dwellings and maximum height of buildings should be specified. For the same reason, trees not specifically required to be removed should be retained and protection measures put in place during the construction period. None of the dwellings should be occupied until the upgrading of the Chester water treatment works has been completed, or alternatively until off-site infrastructure has been provided, to ensure that the development is satisfactorily drained and to avoid pollution. In the interest of biodiversity and in accordance with Policy ENV 4 of the CWCLP, bird and bat boxes should be installed. Restrictions on the hours of construction work, a construction method statement and a scheme for the movement of construction traffic would safeguard the living conditions of neighbours. Similarly, to ensure a satisfactory residential environment, imported materials should be tested for contamination and a scheme to mitigate noise levels from plant on commercial units to the east of the site should be submitted for approval. To encourage the use of alternative means of transport to the private car, a condition requiring the submission of a travel plan would be necessary. A condition concerning the provision of the

⁴³ Details of primary school places in Blacon are given in Planning inquiry note No 1, CD11.29.

internal roads and parking facilities is unnecessary and would be more appropriately imposed on a reserved matters approval.

Overall conclusions

115. The site is in a sustainable location at the edge of the built-up area. Development of this land for housing would comply with most of the relevant policies in the Development Plan and it would be consistent with Government policy in the NPPF to provide a wide choice of high quality homes. However the proposal would only be partially consistent with Development Plan and national policies concerning the development of playing fields, since there is not a surplus of pitch provision in the Chester area and the mitigation package would not represent equivalent provision to the playing field. Nevertheless it is clear that, irrespective of the decision on this planning application, the site will not be made available for community use. Taking this situation together with the community sports benefits which would arise, I do not consider that the partial compliance with policy (insofar as University use of playing fields is concerned) should weigh against the development. Where flood risk is concerned, as I consider that there is a sequentially preferable site, the proposal would conflict with Policy ENV 1 in the CWCLP and the NPPF.
116. Several of the matters put forward by the Applicant as benefits, such as funding for primary school places, alterations to the junction of Clifton Drive with Sealand Road, and the provision of on-site open space, are necessary to mitigate the effects of the proposal or ensure a satisfactory standard of development, and consequently they have a neutral effect in the planning balance. Although the site is not needed to establish a five years supply of housing land, the contribution to supply is a matter of important weight. I also attach important weight to the support for jobs, the expenditure on local services and the improvements to King George V playing fields. The community use agreement carries moderate weight given the restrictions associated with use of the University sports facilities, and the installation of bird and bat boxes would be a limited benefit of the proposal.
117. Notwithstanding that flood mitigation measures could be secured by conditions, the site is in flood zone 3, and there is the prospect that a site to accommodate a similar number of dwellings is available in flood zone 1. The proposal does not, therefore, pass the sequential test, and accordingly I do not consider that it represents a sustainable form of development. The NPPF makes it clear that development should be steered to areas with the lowest probability of flooding. Significant harm arises from this conflict with Development Plan and national policy, and I conclude that this harm is not outweighed by the benefits of the proposal.

Recommendation

118. I recommend that planning permission be refused. Should the Secretary of State reach a different conclusion on the merits of the planning application, I recommend that the conditions in the Annex to this report should be imposed on a grant of planning permission

Richard Clegg

INSPECTOR

ANNEX - SCHEDULE OF SUGGESTED CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three 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 following approved plans: location plan ref B3705 P001 rev A, site access and junction plan ref 0709-07 SK13.
- 5) The number of dwellings to be constructed on the site shall not exceed 142.
- 6) None of the dwellings hereby permitted shall exceed three storeys in height, and no dwelling shall have a ridge height in excess of 17.95 AOD. No dwelling hereby permitted within 30m of the southern boundary of the application site shall exceed two storeys in height, and no dwelling within 30m of the southern boundary shall have a ridge height exceeding 14.95m AOD.
- 7) The layout submitted as part of any reserved matters application shall include details of the following components of a public open space scheme; play equipment within a neighbourhood equipped area of play (NEAP) together with a programme for implementation, levels, drainage, planting, enclosure, street furniture, and surfacing. The scheme shall make provision for a amenity open space provided at a rate of 25m² per dwelling, together with a NEAP of at least 1,000m² for the first 100 dwellings with an additional 10m² for each additional dwelling. The development shall be carried out in accordance with the approved details and the open space shall be retained thereafter.
- 8) A landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, amenity open space and recreational facilities, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the commencement of construction of any dwelling hereby permitted. The landscape management plan shall be carried out as approved. The management plan shall make provision for access to and use of the open space by both residents of the development hereby permitted and for wider public use.
- 9) Notwithstanding the site access details on drawing TPA drawing 0709-07 SK13, no development shall commence until a detailed scheme for the internal highways including roads, footways and cycleways, and with details of how these fit into the surrounding access network, together with full details of the access and off-site highway works have been submitted to and approved in writing by the local planning authority. The scheme shall

- include full design details, specifications, road markings/signage, and a programme for implementation for the following highway works:
- i. Provision of a right-turn filter lane on Sealand Road to access Clifton Drive.
 - ii. Provision of 10m junction radii to the Sealand Road and Clifton Drive junction.
 - iii. Pedestrian and cycleway provision to connect between Sealand Road and the northern corner of the application site.
 - iv. Provision of an uncontrolled pedestrian crossing with a refuge island on Sealand Road.
 - v. Alterations to the bus lane on Sealand Road.
 - vi. Provision of an emergency vehicle and pedestrian/cycle site access to Clifton Drive (as shown for illustrative purposes on indicative masterplan B3705 P002 REV E (AEW)).
 - vii. Provision of 3m wide cycleway/ footpath links to the northern boundary of the site (as shown for illustrative purposes on indicative masterplan B3705 P002 REV E (AEW)).
- 10) None of the dwellings hereby permitted shall be occupied until the access and off-site highway works has been constructed in accordance with the details specified in condition No 9.
 - 11) There shall be no occupation of any dwellings hereby permitted until off-site surface water removal infrastructure work, as identified in Sanderson Associates drawing 6337-007 Highway Analysis, has been completed and such completion approved in writing by the local planning authority in consultation with Welsh Water/ Dwr Cymru; or the upgrading of the Chester wastewater treatment works has been completed and written confirmation of this has been issued by the local planning authority.
 - 12) Floor levels of the buildings hereby permitted shall be a minimum of 5.95m AOD.
 - 13) No development shall take place until a scheme to set road, parking and pedestrian areas at a minimum level of 5.65m AOD has been submitted to and approved in writing by the local planning authority.
 - 14) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with a scheme that has been submitted to and approved in writing by the local planning authority. Before the scheme is submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system. The scheme shall include:
 - i. Details of a surface water regulation system (including the details of any swales as shown on the Indicative Masterplan B3705 P002 Rev E (AEW)).
 - ii. Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, (including management of overland flow from surcharging of the

- site's surface water drainage scheme) and the measures taken to prevent pollution of the receiving groundwater and/or surface waters.
- iii. A programme for implementation.
 - iv. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker.
- 15) No development shall be carried out until a scheme for the provision of a minimum of 25 nesting boxes for birds, and a minimum of 25 boxes for bats, to suit a variety of bird/bat species and including a programme for implementation, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 16) All trees on the site shall be retained unless their removal is specifically included in details that have been submitted to and approved in writing by the local planning authority as part of the reserved matters submissions under condition No 1. The plans and particulars submitted in accordance with condition 1 above shall include a tree survey and arboricultural impact assessment in accordance with BS 5837 2012: Trees in relation to design, demolition and construction – Recommendations the survey and impact assessment shall include:
- i. A plan showing the location of existing trees on the site, showing which trees are to be retained and the crown spread of each retained tree.
 - ii. Details of the species, diameter, and the approximate height, and an assessment of the general state of health and stability of the trees.
 - iii. Details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site.
 - iv. Details of any proposed alterations in ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree or of any tree on land adjacent to the site.
- 17) No site clearance, preparatory work or development shall take place until measures for the protection of retained trees have been implemented in accordance with a scheme prepared in accordance with Clause 7 of British Standard BS5837 - Trees in Relation to Construction - Recommendations for the protection of the retained trees, which includes appropriate working methods, and which has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out as approved and the tree protection measures shall remain in place for the duration of the construction period.
- 18) Full details of arrangements for construction traffic, including temporary highway vehicle and pedestrian routings, times, days and routing of large vehicle movements to and from the site (including details of vehicle movements in connection with the importation of fill material to avoid peak traffic periods), shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The works shall be carried out in accordance with the approved details.
- 19) No development shall commence, including any works of demolition, until a construction method statement has been submitted to, and approved in

writing by, the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:

- i. A construction traffic site access off Clifton Drive.
 - ii. Off-highway parking for construction related vehicles.
 - iii. Loading, unloading and storage arrangements for plant and materials.
 - iv. Construction vehicle cleaning facilities.
 - v. The erection and maintenance of security hoardings.
 - vi. Measures to control the emission of dust, dirt, noise, vibration and light during construction.
 - vii. A waste audit/ scheme for recycling/disposing of waste resulting from construction works.
 - viii. Details of any piling.
- 20) No construction works shall take place outside 0800 hours to 1800 hours Monday to Friday; 0800 hours to 1300 hours on Saturdays or at any time on Sundays or bank holidays. No construction traffic shall be permitted to enter or leave the site outside 0800 hours to 1800 hours Monday to Friday; 0800 hours to 1300 hours on Saturdays or at any time on Sundays or bank holidays.
- 21) Any imported materials, soil or soil forming materials brought into the site for use in soft landscaping areas, filling or construction shall be tested for contamination and suitability for use on site. Proposals for contamination testing shall be submitted to and approved in writing by the local planning authority in advance of any imported materials being brought onto the site. The development shall proceed in accordance with the approved details.
- 22) No development shall commence, including any importation of materials or raising of levels, until a scheme for flood protection during the course of carrying out the development has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be adhered to throughout the construction of the development.
- 23) Before the submission of the first application for approval of the reserved matters under condition No 1, a scheme of archaeological investigation shall be submitted to and approved in writing by the local planning authority. The scheme of archaeological investigation shall make provision for appropriate methods to secure the following: i) any necessary arrangements for preservation in situ of as yet undiscovered remains; ii) re-design and layout of the development to accommodate remains described in i) above; iii) an archaeological programme of work; and iv) financial provision for the above programme. The scheme shall include written detailed methods statement for all new ground works. The approved scheme and programme shall thereafter be implemented, and the development shall be carried out in accordance with the approved scheme and programme.
- 24) No dwelling hereby permitted shall be occupied until a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be developed in accordance with the residential travel plan

(TPA - Report Number: 0709-07/TP/01 – September 2012) and shall include provision for the appointment of a travel plan co-ordinator, an implementation timetable and enforcement mechanism and shall include arrangements for monitoring of progress of the proposals and review thereof. The travel plan shall be implemented and maintained in accordance with the approved timetable and scheme of monitoring and review as long as any part of the development is occupied.

- 25) No development shall take place until a scheme for protecting the occupiers of the dwellings hereby permitted from noise from the neighbouring non-residential premises to the east has been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until all works to protect that dwelling have been completed. The submission for reserved matters approval shall include details of windows, openings and means of ventilation in the dwellings, and ensure the following noise levels are not exceeded and shall apply to all dwellings within the development:
- i. An internal noise level for habitable rooms during the day (0700-2300hrs) of 35dB(A)LAeq,16hrs.
 - ii. An internal noise level for bedrooms during the night (2300-0700hrs) of 30dB(A)LAeq,8hrs and 45dB(A)LAmx.
 - iii. Noise levels within external living areas such as balconies, terraces and gardens during the day (0700-2300hrs) of 50dB(A)LAeq,16hrs.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Mohamed of Counsel	Instructed by Mr Friston.
He called	
Mr P Friston	Principal Planning Officer.
Miss V Jones ⁴⁴	Solicitor.

FOR THE APPLICANT:

Mr C Lockhart-Mummery QC	Instructed by Satnam Planning Services Ltd.
He called	
Mr C Griffiths BA(Hons) MRTPI	Director, Satnam Planning Services Ltd.

FOR SPORT ENGLAND:

Mr I Ponter of Counsel	Instructed by Fieldfisher (solicitors).
He called	
Miss F J Pudge MRTPI	Planning Manager, Sport England.

INTERESTED PERSONS:

Miss M Bailey	Spokesperson for Ferry Lane Residents Association.
Mr P Graham	Honorary League Secretary, Chester and Wirral Football League
Mr M Larmour	Local resident.
Mrs A Mason	Local resident.
Mr I J McMullen	Local resident.
Mr A Scargill BSc	Chair, Friends of North Chester Green Belt.

THE LPA'S DOCUMENTS

- L1 Mr Mohamed's closing submissions.
- L2 The Council's statement of case.
- L3 Letter dated 29 October 2015 from Mr Friston concerning CD11.45.

THE APPLICANT'S DOCUMENTS

- A1 Mr Lockhart-Mummery's closing submissions.
- A2 The Applicant's statement of case.
- A3 Mr Griffiths's proof of evidence.
- A4 Appendices to Document A3.
- A5 Mr Griffiths's rebuttal proof of evidence.
- A6 Appendices to Document A5.
- A7 Judgement in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.
- A8 Judgement in *Tiviot Way Investments Ltd v SSCLG and Stockton-on-Tees BC*

⁴⁴ Miss Jones did not give evidence in support of the Council's case, but contributed to the session on the planning obligation.

- [2015] EWHC 2489 (Admin).
A9 Judgement in Westminster CC v British Waterways Board [1985] AC 676.
A10 Letter dated 22 October 2015 from Mr Griffiths concerning CD11.45.

SPORT ENGLAND'S DOCUMENTS

- S1 Mr Ponter's closing submissions.
S2 Sport England's statement of case.
S3 Miss Pudge's proof of evidence.
S4 Appendices to Document S3.
S5 Letter dated 2 November 2015 from Miss Pudge concerning CD11.45.

OTHER PARTIES' DOCUMENTS

- O1 Correspondence received in response to Document G2.

GENERAL DOCUMENTS

- G1 List of core documents.
G2 Notification of the application call-in and inquiry.
G3 Statement of common ground

PLANS

- A Location plan ref B3705 P001 Rev A.
B Indicative masterplan ref B3705 P002 Rev E.
C Site access and alterations to Sealand Road/ Clifton Drive junction ref 0709-07 SK13.
D Indicative height parameters plan ref B3705 P003 Rev A.
E Indicative site sections ref B3705 P004 Rev B.
F Topographical survey ref B3705 P05.
G Site and proposed alternative facilities.
H Blacon hub site proposals.
I Kingsway hub site proposals.
J Chester District Local Plan – Inset Map for the Urban Area.
K Flood risk map. Submitted by Mr Larmour.



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the 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.