



Department for  
Communities and  
Local Government

Mr Jon Suckley  
How Planning  
Colchester House  
38-40 Peter Street  
Manchester M2 5GP

Our Ref: APP/A0665/A/14/2212671

7 July 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY DARNHALL ESTATE:  
LAND OFF DARNHALL SCHOOL LANE, WINSFORD CHESHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report and supplementary report of the Inspector, Mark Dakeyne BA (Hons) MRTPI, who held a public local inquiry on 10 and 11 June 2014, and a reopened inquiry on 15-18 September 2015, into your client's appeal against the decision of Cheshire West and Chester Council (the Council) to refuse planning permission for residential development in accordance with application ref: 13/03127/OUT, dated 12 July 2013, on land off Darnhall School Lane, Winsford, Cheshire.
2. The appeals were recovered for the Secretary of State's determination on 25 February 2014, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because they involve proposals for residential development of over 150 units which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed and outline planning permission granted, subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. Copies of the Inspector's original report (OR) into the 2014 inquiry and his supplementary report (SR) into the 2015 inquiry are enclosed. All references to paragraph numbers, unless otherwise stated, are to those reports.

**Procedural matters**

4. By letter dated 14 April 2015 the Secretary of State announced that he had decided to reopen the inquiry as he had received representations that material considerations had changed. The matters upon which the Secretary of State wished to be informed for the purposes of his consideration of the appeal related to (1) the extent to which the proposal complies with the development plan; and (2) whether the proposal would

amount to sustainable development having regard to national policy, including whether there is a demonstrable 5 year supply of deliverable housing sites.

5. At both the original and reopened inquiries, applications for costs were made by the appellant against the Council. These applications are subject to separate costs decision letters.
6. The Secretary of State notes that the appellant proposed a revision to the housing offer in advance of the reopened inquiry, to the effect that: 40% of the dwellings would be affordable (as opposed to 30% in the proposal considered at the original inquiry). The appellant also proposed a revised condition entitled *Training and Employment* and new conditions entitled *Self-build housing, Local Builders and Local procurement* (SR4, SR205-207 and SR Appendix C). The Secretary of State notes that the revised offer was publicised in advance of the inquiry (SR4). He has taken the revised offer into account in his determination of the appeal and considers that no party would be prejudiced by his doing so.
7. The Secretary of State also notes that a new Statement of Common Ground, updating that submitted in advance of the original inquiry, was agreed between the Council and the appellant (SR5).
8. The Secretary of State received a representation from J. Verdin of Darnhall Estates dated 22 January 2016. The Secretary of State has given careful consideration to this representation but, as he does not consider that it raises new issues that would affect his decision or require him to refer back to parties, he has not circulated it. This representation is not attached but will be made available on written request to the address at the foot of the first page of this letter.
9. On 16 March 2016 the Secretary of State wrote to the Council in relation to the Community Infrastructure Levy (CIL) Regulations 2010, Regulation 123(3) (limitations on the use of planning obligations in the determination of planning applications and appeals). On 22 March 2016, the Council replied that a CIL compliance statement was provided as part of the appeal and that as of that date four Section 106 contributions in relation to playing pitch provision for Winsford had been sought through the 'Cheshire West and Chester playing pitch strategy for Winsford', and that the contribution sought as part of this appeal would form part of this provision, bringing the total to the permitted maximum of five.

### **Policy considerations**

10. In deciding these appeals, 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 this case, the development plan consists of the Chester West and Chester Local Plan (Part One) Strategic Policies (CWACLP) adopted in January 2015; the Winsford Neighbourhood Plan (WNP) made in November 2014; and the remaining saved policies of the Vale Royal Borough Local Plan (VRBLP). The Secretary of State agrees with the Inspector that the most relevant policies are those referred to at SR7-10.
11. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (The Framework) and the associated Planning Guidance; the *Community Infrastructure Levy (CIL) Regulations 2010* as amended; and the Council's supplementary planning guidance on affordable housing, developer contributions, and landscape character (SR13).

12. The Secretary of State notes that the Council is preparing a Local Plan (Part Two) Land Allocations and Detailed Policies which will set out allocations, settlement boundaries and detailed policies, but that to date no draft plan documents have been published (SR12). Given the very early stage the Local Plan (Part Two) has reached and with regard to Framework paragraph 216 the Secretary of State does not consider that any weight can be attached to it.

### **Main issues**

13. The Secretary of State considers the main issues to be:

- Whether the proposal accords with the development plan
- Whether there is a 5 year land supply; and
- Whether the proposal achieves the economic, social and environmental dimensions of sustainable development.

### *Development plan*

14. For the reasons given by the Inspector at SR248-259, the Secretary of State agrees that there would be compliance with a number of relevant policies of the development plan which are set out in full in the Statement of Common Ground, including those CWACLP policies used to assess the proposal against specific matters such as transport (STRAT 10), affordable housing (SOC 1), housing mix (SOC 3) and environment (ENV 2, ENV 4 and ENV 6); but that there would be conflict with Policy GS5 of the VRBLP, Policy STRAT 9 of the CWACLP and to a lesser extent Policy STRAT 1 of the CWACLP (SR260). He also agrees that Policy GS5 still has considerable weight in the context of Winsford (SR260); that there would also be conflict with Policy H1 of the WNP (SR260); and that housing supply policies GS5, STRAT 9 and H1 are the dominant policies for assessing proposals for development outside the Winsford settlement boundary (SR260). Overall, for the reasons in SR248-259, he agrees with the Inspector that the proposal would be contrary to the development plan (SR260).

### *Five year housing land supply*

15. The Secretary of State has given careful consideration to the Inspector's conclusions on the five year housing land supply, including his conclusion that a 20% buffer should be applied (SR211-217). For the reasons in SR211-246, he agrees with the Inspector that there is a supply of 5.12 years (SR246) and therefore that the development plan's policies for the supply of housing are up to date (SR247).

### *Sustainable development - Economic role*

16. The Secretary of State agrees with the Inspector that the economic benefits set out in OR147 still apply (SR261). The appellant's revised offer, as mentioned in paragraph 6 above, would be secured by planning conditions at Appendix C to the SR. The Secretary of State has considered these proposed conditions against paragraph 203 of the Framework and the Guidance.

17. In the Secretary of State's judgement, the condition entitled 'Training and Employment' would not be necessary to make the application acceptable in planning terms. Though the requirements could be defined further in the Training and Management Plan, he considers that this condition as drafted is not sufficiently precise and would be difficult to enforce, partly because it would be difficult to detect a breach.

18. In the Secretary of State's judgement, the condition entitled 'Self Build Housing' is not necessary to make the scheme acceptable in planning terms. Moreover, though it does support SOC 3 of the CWACLP, there are still concerns raised by the Council (SR183) as to the effect on affordability which leads the Secretary of State to find that this condition is not reasonable in all other respects.
19. In the Secretary of State's judgement, the condition entitled 'Local Builders' would not be necessary to make the development acceptable in planning terms and would not be strictly relevant to planning policy. Dependent on the builders or companies available through the build-out of the development the condition would be difficult to enforce, neither would it be precise, or reasonable in all other respects, so cannot be imposed.
20. In the Secretary of State's judgement, the condition entitled 'Local procurement' would not be necessary to make the development acceptable in planning terms. Neither is it strictly related to planning. The condition would be difficult to enforce, in part because it could prove difficult to detect a breach. The Secretary of State also considers that it is unclear what the position is in relation to the availability of businesses within the specified area to meet the criteria and therefore whether this condition would be reasonable in all other respects.
21. For the reasons given in paragraphs 16-20 above the Secretary of State finds these conditions would not satisfy all the relevant policy tests in paragraph 203 of the Framework and the Guidance, and therefore should not be attached to any planning permission. This reduces the economic benefits of the development identified by the Inspector in his SR. Consequently the Secretary of State does not agree with the Inspector that the appellant's revision to the housing offer, whereby up to 92 new homes would be built by small and medium sized local house builders 'takes up the weight a notch'. Nor does the Secretary of State agree with the Inspector that the economic benefits of the appeal proposal are likely to be able to be distinguished from many other housing proposals in the Borough including other proposals on non-allocated sites on the edge of Winsford (SR262). Rather, the Secretary of State considers that the situation effectively reverts to the position at the time of the original inquiry as set out in the OR where the Inspector concluded that the proposal would result in a number of economic benefits, including the New Homes Bonus Scheme, construction jobs, additional local spend and employment arising from the additional expenditure (OR147).
22. The Secretary of State agrees that the agricultural land position has not changed since the original inquiry (SR263). Overall, the Secretary of State notes that the Inspector finds significant economic benefits (SR264). However, for the reasons given above, he considers that the economic benefits are less significant than the Inspector concludes and they attract just about moderate weight in the planning balance.

#### *Sustainable development - Social role*

23. The Secretary of State agrees with the Inspector that, for the reasons given at SR265-269, substantial weight should be given to the provision of affordable housing on the site. The Inspector apportions weight to the social benefits outlined at SR270-271. However, for the reasons given above the Secretary of State finds that the conditions that would incorporate the provisions for training and employment, self-build housing, local builders or local procurement should not be attached to a planning permission. This reduces the social benefits of the development identified by the Inspector in the SR. However the Secretary of State agrees that the other social dimensions of the

proposal set out at OR150-152 have not materially changed (SR272). Overall, the Secretary of State considers that the social benefits fall short of 'very substantial', as the Inspector suggests at SR273, but nevertheless attract substantial weight in the planning balance.

#### *Sustainable development - Environmental role*

24. For the reasons given at SR274 the Secretary of State agrees that circumstances have not materially changed since the OR and that overall there would be some moderate harm to the environmental dimension of sustainable development due to the loss of open fields (SR275).

#### *Conclusions on sustainability*

25. The Secretary of State has carefully considered the Inspector's conclusions on the three dimensions of sustainable development set out at paragraph 7 of the Framework. As outlined above, the Secretary of State has found that there are social and economic benefits of the proposal but also environmental harm. He has weighed these factors in the overall planning balance below. He agrees with the Inspector that the conflict with the up to date development plan is also a key component of the final balancing exercise (SR276).

#### **Obligations**

26. The Secretary of State has carefully considered the s.106 Planning Obligations, the Inspector's analysis at OR163 and SR277, national policy set out at paragraph 204 of the Framework; the relevant planning guidance; the CIL Regulations 2010 as amended; and the post inquiry correspondence referred to in paragraph 9 above. He is satisfied that the Obligations accord with paragraph 204 of the framework and CIL regulation 122. However, he does not consider that they would overcome his reasons for dismissing this appeal.

#### **Conditions**

27. The Secretary of State has had regard to national policy set out at paragraphs 203 and 206 of the Framework, the Planning Guidance, the proposed conditions at pages 35-39 of the OR, the amended and new conditions at SR pages 57-58, and the Inspector's comments on them at SR278-281. With the exception of the affordable housing condition, for the reasons at paragraphs 16-20 above he does not consider that the other conditions at SR Appendix C should attract any weight in the planning balance. He is satisfied that the conditions on other matters at pages 35-39 of the OR are reasonable and necessary and meet the tests of paragraph 206 of the Framework and comply with the Guidance. However, in view of his planning balance below, he does not consider that these conditions overcome his reasons for dismissing the appeal.

#### **Planning balance and overall conclusions**

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. For the reasons signposted by paragraph 14 above, the Secretary of State finds that the proposal conflicts with the development plan overall. He has therefore gone on to consider whether there are any material considerations sufficient to outweigh the conflict with the development plan.

29. As discussed in consideration of the development plan at paragraph 14 above, and in line with the Inspector, the Secretary of State finds conflict with the WNP. Paragraph

198 of the Framework states that where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted and conflict with WNP policy H1 means that the proposal cannot be said to comply with the neighbourhood plan overall.

30. The Secretary of State gives substantial weight to the social benefits of the scheme, including the affordable housing, and moderate weight to the economic benefits. However, he does not consider that the benefits outweigh the clear conflict with the up to date development plan and the moderate harm to the environmental dimension of sustainable development from the adverse impact from the loss of open fields.

#### **Formal decision**

31. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for residential development on land off Darnhall School Lane, Winsford, Cheshire in accordance with application ref: 13/03127/OUT, dated 12 July 2013.

#### **Right to challenge the decision**

32. 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.
33. A copy of this letter has been sent to Cheshire West and Chester Council. Notification has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 11 August 2014

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Town and Country Planning Act

Cheshire West and Chester Council

Appeal by

Darnhall Estate

Land off Darnhall School Lane, Winsford, Cheshire

Inquiry held on 10 and 11 June 2014

Land off Darnhall School Lane, Winsford, Cheshire

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

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**File Ref: APP/A0665/A/14/2212671**

**Land off Darnhall School Lane, Winsford, Cheshire**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Darnhall Estate against the decision of Cheshire West and Chester Council.
- The application Ref 13/03127/OUT, dated 12 July 2013, was refused by notice dated 26 November 2013.
- The proposal is for residential development.

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

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**Procedural Matters**

1. At the Inquiry an application for costs was made by Darnhall Estate against Cheshire West and Chester Council (CWAC). This application is the subject of a separate report.
2. The inquiry sat for two days – 10 and 11 June 2014 – and was closed on 11 June 2014. I made an accompanied visit to the site and the surrounding area on the morning of 12 June 2014.
3. The application was submitted in outline, with only the means of access from Darnhall School Lane to be determined at this stage. All other matters are reserved for future consideration. The description of development set out in the banner above was agreed as appropriate at the start of the inquiry.
4. The appeal was recovered for decision by the Secretary of State (SoS) for Communities and Local Government on 25 February 2014. The reason for recovery is that the appeal involves proposals for residential development of over 150 units or on sites of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
5. The Council refused planning permission for one reason as set out in its decision notice date 26 November 2013:  
*'Guidance provided by the former Office of the Deputy Prime Minister entitled 'Planning System: General Principles', advises that, in some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity, where a Development Plan Document is being prepared or is under review, but has not yet been adopted. The Winsford Neighbourhood Plan is at publication stage and is due for examination. In the light of this, approval of this proposal is considered premature.'*
6. However, by letter dated 21 March 2014, the Council indicated that, having given very careful consideration to the contents of the Government's Planning Practice Guidance (PPG) published in March 2014, and in particular the guidance about the issue of prematurity, the Council would not be presenting evidence in support of the reason for refusal at the inquiry. This position was confirmed at the start of the inquiry.
7. A Statement of Common Ground (SOCG) was submitted in advance of the inquiry and refers to the Council's position as set out in paragraph 6 above. The SOCG also records that the appellant and the Council agree that the site is in a

sustainable and accessible location, constitutes sustainable development and would not result in any adverse impacts. In addition the SOCG confirms that the Council cannot demonstrate a 5 year supply of deliverable housing land.

8. A completed obligation under Section 106 of the Planning Act (S106) was submitted before the close of the inquiry<sup>1</sup>. The obligation facilitates the provision, management and maintenance of play areas on the appeal site and the payment of a contribution to be used towards playing fields in Winsford.
9. This report contains a description of the site and surroundings, an explanation of the proposal, identification of the relevant planning policies, the cases of the parties and my conclusions and recommendation. Lists of appearances, inquiry documents and recommended conditions are appended.

### **The Site and Surroundings**

10. The appeal site, extending to about 6.5 hectares, comprises three fields divided and bounded by hedgerows. Within the hedges are a number of mature trees. The site slopes slightly down from north-east to south-west with an overall fall of some 3 to 4m.
11. A bridleway which also acts as an access track to Beech House Farm runs along the south-west boundary of the site beyond which is undulating open countryside. To the north-west are further larger fields with similar topography to the appeal site stretching towards schools and other development at Hebden Green on the western edge of Winsford. To the north-east the site is contiguous with the large housing areas of south-west Winsford, the cul-de-sac of large dwellings in Peacock Avenue being immediately adjacent. Darnhall School Lane bounds the site to the south-east with further housing estates on the opposite side of the road. Beyond the southern tip of the site, where the bridleway meets Darnhall School Lane, lies Knobs Cottage and two former small farmsteads, one of which is used as a livery, collectively known as School Green. Further south is agricultural land and woodland separating Winsford from the small village of Darnhall which lies about a mile beyond the built-up area of the town.
12. The appeal site is some 2.2km to the south-west of Winsford Town Centre. Within about 1km of the site is a small convenience store in Vauxhall Way, the primary school on Darnhall School Lane, and bus routes which pass along Glebe Green Road, Swanlow Way and Darnhall School Lane.

### **The Proposals**

13. The outline application indicates that up to 184 dwellings would be built on the site. Vehicular access would be from a simple priority junction off Darnhall School Lane with a 6m wide access road with 10m radii and 2m footways to both sides<sup>2</sup>. The provision of the footways and the need for visibility splays would necessitate the removal of the majority of the tall hedgerow which bounds the site frontage with Darnhall School Lane. The footway to the north-east of the access would be continued to meet the existing footway on Darnhall School Lane to the south-west of Peacock Avenue.

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<sup>1</sup> CWAC2

<sup>2</sup> Plan2

14. In addition, a secondary pedestrian access would be formed some 60m to the north-east of the main vehicular access. This would also serve as a cycleway and emergency vehicle access. Dropped kerb crossings would be provided on either side of Darnhall School Lane some 40m to the north-east of the secondary access. Apart from these localised works, off-site highway improvements would be undertaken at the traffic light controlled junction of Swanlow Lane and Townfields Street between the site and the town centre. These works would allow a two lane approach from Swanlow Lane South<sup>3</sup>.
15. The illustrative plans accompanying the application<sup>4</sup> show roads and areas of open space, incorporating some of the existing lengths of hedgerows and footway links, separating clusters of housing. Landscape buffers are indicated to the Darnhall School Lane boundary and adjacent to some sections of the boundary with the Peacock Avenue properties. A Neighbourhood Equipped Area for Play (NEAP) is shown central to the site with a Local Equipped Area for Play (LEAP) at the western corner.

### **Planning Policy**

16. The development plan now comprises the saved policies of the Vale Royal Borough Local Plan (VRBLP)<sup>5</sup> following the revocation of the Regional Strategy for the North-West (RS) and the Cheshire Structure Plan (SP) in May 2013. Policies GS1 and H1 of the VRBLP relating to the supply of housing and selection of sites were not saved as part of the saving SoS direction dated 20 March 2009 and expired on 16 June 2009.
17. The VRBLP shows the appeal site as lying beyond the settlement limits of Winsford in open countryside. In this respect the following saved policies of the VRBLP are relevant to the appeal. Policy GS5 indicates that the character and appearance of open countryside will be protected and that new buildings will not be allowed in the open countryside unless permitted through other policies of the plan. Policy GS2 deals with the location of new development in the Borough, stating that it will be concentrated in or on the edge of Northwich and in Winsford, including a number of larger villages in the area around the two towns. The saved housing policies of the VRBLP deal with housing allocations (H2), phasing (H3), development hierarchy (H4), windfall sites (H5), density (H12), mixed communities (H13) and affordable housing (H14).
18. Other policies of the VRBLP which are relevant deal with development control considerations (BE1), renewable energy requirements (BE21), transport infrastructure (T1), transport assessments (T2), pedestrians and walking (T8), cycling (T9), car parking (T13), recreation and open space in new developments (RT3), protection and enhancement of landscape features (NE7), trees and woodland (NE9) and agricultural land (RE1).
19. The VRBLP is to be replaced by the emerging CWAC Local Plan (CWACLP). The CWACLP was submitted for examination on 23 December 2013. Hearings to examine the document took place between 17 June and 4 July 2014. The CWACLP proposes 22,000 dwellings in the plan period of 2010 to 2030 with the

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<sup>3</sup> Plan7

<sup>4</sup> Plan4, Plan5 and Plan6

<sup>5</sup> Adopted Local Plan First Review Alteration – June 2006

majority of development located within or on the edge of the city of Chester and the towns of Ellesmere Port, Northwich and Winsford (Policy STRAT 2). Policy STRAT 6 indicates that Winsford should provide for around 3,500 dwellings. Other policies of the CWACLP relevant to the appeal are STRAT 1 (sustainable development) and STRAT 9 (Green Belt and countryside). It is relevant that representations on the above policies were considered at the hearings.

20. The emerging WNP has also been submitted for examination following a local authority publicity period between July and September 2013. A hearing took place on 30 May 2014 and the Examiner's Report was still awaited at the time of writing this report, although there was an indication at the inquiry that it would be published on 28 June 2014. The hearing commenced on 15 January 2014 but was adjourned that day to await the outcome of a legal challenge to the Tattenhall Neighbourhood Plan (TNP). The judgement of the High Court on 9 May 2014 dismissed the claims made against the TNP.
21. There are also other local policy documents of relevance to the appeal, namely Supplementary Planning Document (SPD) 1 on affordable housing, SPD2 dealing with developer contributions and SPD5 on landscape character. Supplementary Planning Guidance 1 relates to outdoor space standards for new dwellings. There is also SPD2 Managing Housing Supply but it has not been relied upon by any party and is out-of-date as it relied on SP figures, which were applied as a 'cap'<sup>6</sup>.
22. The National Planning Policy Framework (the Framework) was published in March 2012 and sets out the Government's policies to achieve sustainable development. The Government's PPG is also of relevance.

### **The Case for Darnhall Estate**

*The material points are<sup>7</sup>:*

23. It is an application to which CWAC Council takes no objection. The application was recommended for approval by the professional planning officers of the Council. The single reason for refusal has now been withdrawn. It is agreed with the Council that the development is sustainable development and that the presumption in favour of sustainable development applies<sup>8</sup>.
24. The Council does not point to conflict with any development plan policies. As such the proposal accords with the development plan and, in line with the presumption in favour of sustainable development, it should be granted without delay<sup>9</sup>.
25. It is important to record, for those involved in making this decision and who were not present at the inquiry, that the number of local people attending was very small. It was far less than one would normally anticipate and only three local residents spoke against the proposal.

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<sup>6</sup> APP2 – Appendix 9 – Appeal decision ref: APP/A0665/A/2159006 dated 20 February 2012 deals with the relevance of SPD2

<sup>7</sup> Summarised from the appellant's closing submissions DE7

<sup>8</sup> SOCG paragraphs 4.14 and 6.8

<sup>9</sup> Paragraph 14 of the Framework

### *The Development Plan*

26. The starting point for the determination of the appeal is the development plan. There is no up-to-date development plan for the area. All that remains are the saved policies of the VRBLP. This was adopted 8 years ago. It is significantly out-of-date. A replacement Local Plan (LP) should have been adopted many years ago. The serious problems with the VRBLP manifest themselves in various ways.
27. The key policy in terms of the housing requirements (H1) has not been saved. It expired some 5 years ago when the SoS did not save the policy. The key policy on selection of sites and identification of sufficient land to meet development needs was set out in Policy GS1. But this too expired and was likewise not saved by the SoS. The remaining housing policies (see paragraph 17) are also out-of-date.
28. Of the other policies, GS5 relates to the settlement boundary and the designation of the land beyond the boundary as open countryside. It remains in place but is not consistent with the Framework. The problem with such policies is that they are unduly restrictive and cannot be said to be consistent with Framework and the cost/benefit analysis contained therein. That cost/benefit analysis seeks not simply to prohibit development but to consider whether it can be judged sustainable development, as properly explained and understood in the Framework, including the economic and social benefits of new development<sup>10</sup>. It follows that the adopted VRBLP is of little value in terms of the determination of the present appeal.

### *Other Material Considerations*

#### *The Framework*

29. The Framework is plainly a very important material consideration, especially in circumstances where the adopted LP is out-of-date and it is too early to give significant weight to the emerging LP. The Framework sets a new course for planning. One that recognises the benefits of new development in terms of the economic and social dimensions of sustainable development. Without sufficient new housing being built, house prices rise and it becomes increasingly difficult for some people, especially young people, to afford their own home, which is an objective of the Framework. The previous Planning Minister referred to a housing crisis in this country and the misery that it inflicts on millions of our fellow citizens.
30. At the heart of the Framework is the presumption in favour of sustainable development. The policy for decision making requires that development proposals which accord with the development plan should be approved without delay. As the Council present no evidence against this proposal it follows that it is plainly in accordance with the development plan and that the proposal should be granted without delay.

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<sup>10</sup> Supporting Evidence Background Document B7 - Colman v SSCLG\_[2013] EWHC 1138 (Admin)

31. It is accepted that the VRBLP is out-of-date in many regards and that might lead one to consider that the first point in paragraph 14 about decision-taking does not apply. But there is nothing that says this only applies to development plans which are up-to-date. It is submitted that it is only if there is any conflict with the development plan that one needs to consider the issue of whether relevant policies are out-of-date. Plainly that is the case as regards the housing policies of the development plan. Therefore, if this part of the Framework is engaged because of any alleged conflict with the development plan then the test is whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The Council accepts that the grant of permission would not result in any adverse impacts<sup>11</sup>.
32. It is necessary to establish whether the development is sustainable development in accordance with the policies in the Framework<sup>12</sup>. Again this is agreed with the Council who accept it is sustainable development. The presumption clearly applies in this case. With no alleged conflict with the development plan the test is plainly one of granting planning permission without delay.
33. In the event that the SoS identifies any conflict with the development plan, as noted above, the test becomes one of needing to identify harm which significantly and demonstrably outweighs the benefits. This is because the policies of the development plan are clearly out of date, especially as regards the housing requirement which is to be set in the emerging LP. It is therefore necessary to consider the benefits of the proposal which are investment in the local area through the New Homes Bonus Scheme; jobs created in the construction phase; additional spending in the local economy; new jobs arising from the expenditure; delivery of a choice and mix of housing in a sustainable and accessible location; a significant contribution (30%) to the Council's affordable housing needs; on-site open space including equipped play areas; a financial contribution towards off-site sport and recreation; and a development set in high quality landscaping with ecological mitigation and enhancement.
34. The Framework requires that Councils demonstrate at all times a 5 year supply of housing land. The Council accept that it cannot demonstrate even this minimum requirement. On the latest figures published by the Council<sup>13</sup>, against a five year requirement of 12,706 dwellings it has a deliverable supply of only 8,272 (3.26 years). In other words a shortfall of 4,434 dwellings. This is appropriately described as huge and a really serious problem. It is a matter to which significant weight should be attached. It also means that the housing policies of the development plan are automatically out of date (paragraph 49 of the Framework).
35. This immediate shortfall of nearly 4,500 dwellings is based on the Council's preferred housing requirement figure from the revoked Regional Strategy of 1,350. But based on a recent Court of Appeal judgement<sup>14</sup> it is clear that the assessment of the 5 year supply should be made against the full objectively

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<sup>11</sup> SOCG

<sup>12</sup> William Davis and Jelson v SSCLG [2013] EWHC 3058

<sup>13</sup> APP2 Appendix 13 – CWAC Member Briefing – Five Year Housing Land Supply Updated 20 December 2013

<sup>14</sup> Supporting Evidence Background Document B6 - St Albans v SSCLG and Hunston Properties\_[2013] EWCA Civ 1610 (Admin)

assessed needs which brings into play higher annual requirements such as 1,700 homes per annum<sup>15</sup>.

36. The fact that this development will deliver up to 184 dwellings on an “oven ready” site which is free from infrastructure constraints is a matter to which significant weight should be attached. But it is not necessary for the purpose of the appellant’s case at this inquiry to make that argument. Appellants often seek to challenge Councils over the extent of the requirement and the shortfall. But in this case that has not proved necessary. The shortfall is so huge, against even the Council’s own preferred figures on the requirement and the supply, that the appellant has not felt it necessary to examine the issue further. The appellant is happy for its case on housing land supply to be recorded as demonstrating a present shortfall of nearly 4,500 homes based on the Council’s own figures.
37. There plainly is a need for far more housing land in CWAC. That is mirrored by the huge need for more affordable housing in the area. Councils are required to address the full objectively assessed need for affordable housing alongside market housing. The Council’s own 2013 Strategic Housing Market Assessment (SHMA) identified a need for 714 affordable dwellings per year over the coming five years. The number on the Housing Register had grown to 19,025 in 2013. Consultants<sup>16</sup> for the appellant have calculated that there is an identified shortfall of over 4,000 affordable dwellings against the requirements of the 2009 version of the SHMA. The scale of the problem is appropriately described as immense. 30% of the development will be affordable housing. This has been agreed with the Council. That means up to 56 new affordable housing units.
38. The five year supply of housing land is not to be seen as a ceiling in any event<sup>17</sup> in circumstances as here where the proposal is sustainable development. But a shortfall is a matter to which significant weight should be attached, especially in CWAC where the absence of an up-to-date local plan can be seen as a major contributing factor to the problem.

#### *The Emerging Local Plan*

39. The Council did not progress a Core Strategy (CS), let alone an Allocations DPD during the 8 years in which the LDF system was in place. Even since 2009 when the combined authority was established there seems to have been little appetite for having a LP to guide development.
40. Even now in 2014, and over 5 years after the Secretary of State’s Saving Direction, the Council still have no adopted LP. All that has been achieved is the submission of the emerging LP, to which there is very substantial objection. That objection relates particularly to the housing requirement figure of just 22,000 for the whole of the amalgamated authority. Those objecting have highlighted the fact that the full objectively assessed need for the Borough over the next 20 years is much higher. The figures extend up to a near doubling of the Council’s proposed figure (38,000).

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<sup>15</sup> APP2 Appendix 2 – A Review of CWAC Housing Strategy May 2014 PBA

<sup>16</sup> APP2 Appendix 3 – Affordable Housing Statement May 2014 – Tetlow King Planning

<sup>17</sup> Paragraph 51 of DE1

41. The figures put forward by the objectors to the plan are based on the guidance in the PPG which is explicit about identifying full, objectively assessed need, including addressing the needs of the labour force and considering market signals such as those relating to affordability and house prices, both of which are major issues in CWAC. The PBA report<sup>18</sup> highlights some of the flaws in the Council's report, including a failure to address market indicators, over optimistic labour force assumptions about the contribution of older people, non-alignment of the housing target with local economic aspirations and a failure to address the actual Housing Market Areas (HMA) and consider the need from adjoining HMA. The PBA report concludes that the objectively assessed need in CWAC is 34,000 dwellings.
42. The Council accepts that only limited weight can be given to the CWACLP. No one at the inquiry has suggested a contrary view.

#### *The Emerging WNP*

43. The emerging WNP has been raised as a material consideration by objectors. But the majority of the site is outside the area of this emerging Neighbourhood Plan (NP). Only about 50 of the proposed housing units fall within the administrative area of the WNP. The boundary of the WNP has been defined as part of the NP process and the majority of the development is unaffected by its content.
44. As there no longer an RS or SP for the area and with the expiry of the relevant policy in the VBRLP, there is no current housing requirement for the Borough. That also has the consequence of there being no up-to-date housing requirement figure for Winsford. Under the new local plan system, local plans have become the new strategic plans against which neighbourhood plans must be aligned. It is therefore genuinely difficult to see how a NP can proceed before the housing requirement in the LP has been established. The WNP cannot be *"in general conformity with the strategic policies contained in the development plan for the area of the authority"* for the simple reason that there are none.
45. There have been suggestions that neighbourhood plans can progress to the stage of being made even in the absence of an up-to-date LP because they can be in general conformity with an adopted LP. That looks immediately unconvincing in circumstances where there is no policy setting out the housing requirement. Yet whether that situation is judged appropriate in other locations, it plainly does not apply in Winsford. That is because the WNP has specifically and explicitly sought to align itself with the housing requirement in the CWACLP as set out in the Foreword to the WNP.
46. Given these circumstances, the difficulty of the WNP proceeding before the adoption of the CWACLP is a matter which was aired by the appellant before the WNP Examiner. His report on the WNP was due to be issued at the end of June 2014. Leaving aside the legality of this issue there is a very practical problem of how the WNP can accommodate housing numbers in excess of the development which the Borough Council informed the Town Council it must accommodate.
47. Paragraph 184 of the Framework makes clear that neighbourhood plans should not promote less development than set out in the LP. Until the housing

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<sup>18</sup> See Footnote 15

requirement in the LP is set this cannot be known. The figure for Winsford also cannot be known. The adoption of the WNP before the LP would therefore be contrary to the Framework. It would therefore be in conflict with the basic conditions for the NP. This issue was explored in the Examination into the Dawlish NP<sup>19</sup>.

48. That figure has changed already from 3,150 to 3,500. In light of the position with the emerging LP it is anticipated that it may well change again and could be considerably higher given that Winsford is a regeneration priority and less constrained than some of the other towns in CWAC. Moreover, the ability of the sites selected for development in the emerging WNP to deliver the anticipated yield has yet to be proven. Both of these issues point to the fact that there is a real need for flexibility in identification of the housing requirement for Winsford. Spurious precision at this stage would plainly be inappropriate. The Sustainability Appraisal makes clear that the WNP should have a degree of flexibility. With no reserve sites that would be impossible unless the housing allocations are not treated as a ceiling. All parties agree that 3500 dwellings is not a ceiling.
49. The appellant did have grave concerns that the sum total of the housing allocation in the WNP would be seen as a cap or ceiling on the amount of development which could be accommodated at Winsford for the next 20 years. Both the Town and Borough Councils made clear to the Examiner that the present figure in the WNP is not to be viewed as a ceiling or cap. Councillor Burns was able to confirm the position adopted by both Councils as both a Borough Councillor and a Town Councillor. Councillor Clarke, the Chair of the WNP Steering Group on behalf of Winsford Town Council, also made clear that the Plan was never meant to be a restrictive policy. He anticipates that other applications will come forward in the form of windfalls. That is precisely how the appeal application should be characterised.
50. The fact is that the housing allocations in the plan are not all that will come forward and the Town Council acknowledges the need for flexibility which is both appropriate and necessary. Confirmation that the figure of 3,500 is not to be seen as a ceiling is similarly appropriate and necessary. This is because if a NP is to have credibility as the document guiding development for the next 20 years, it needs to incorporate a degree of flexibility. That is particularly important in circumstances where the NP does not contain reserve sites. There are no reserve sites in the WNP and as such the recognition that the housing figure is not to be seen as a ceiling is very necessary.
51. Proof that sites outwith the emerging WNP can and should come forward is evidenced by the grant of permission for housing on a greenfield site at Swanlow Lane/Welsh Lane. This housing development of a similar size to the appeal site was granted at the same committee meeting that considered the appeal site. Work on the WNP was well advanced at that stage. It is therefore untenable to suggest that the emerging WNP prevents other development from coming forward on sites not allocated in the Plan. But in truth no-one has suggested that.

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<sup>19</sup> APP2 Appendix 17 – Dawlish Parish NP Examiner's Report

52. The WNP is therefore a material consideration relevant to the 50 houses which are located within the administrative boundary of the emerging NP. But it is not one that prevents new housing development on sites which are not allocated for development. It follows that if a site is to be refused permission then there would need to be some site-specific reason such as flooding or highway capacity problems which mean the development should be refused. The Council is not suggesting there are any such reasons in respect of the appeal site. In fact the position is quite the contrary. The Council explicitly agrees that the grant of planning permission would not result in any adverse impacts.
53. It is accepted that the situation would be different if the appeal site was allocated for another purpose. But the appeal site is not allocated for any other purpose under the WNP. As an urban extension to the town it is eminently suitable for housing.

#### *Prematurity*

54. This point is no longer pursued by the Borough Council but is put forward by the local residents. The Borough Council did initially raise a concern that the proposal was premature to the WNP. This was its single reason for refusal that triggered this appeal. But the Council has now withdrawn its objection to the proposal. The Council cited the new guidance in the PPG as the reason for the withdrawal. The refusal of the application was against the advice of the professional officers of the Council. The reason for refusal provided no detail about how the WNP would be prejudiced. The guidance on proposals needing to be so substantial, or its cumulative effect so significant that it would pre-determine decisions about the scale, location or phasing of new development is not new. It was contained in the previous guidance - Planning System: General Principles.
55. The Council made no claim that the appeal proposal would pre-determine the emerging CWACLP. As far as the WNP is concerned it is important to recognise that only the land within the administrative area of the WNP can be relevant to the question of prejudice to that plan. That means that the prematurity case is limited to the effect of the 50 units within the neighbourhood planning area. Given the scale of the WNP, which seeks to accommodate 3,500 new homes in a town of 34,000 people, the idea that 50 houses will prejudice the plan is untenable. It could not have that effect. Such a proposition would plainly be absurd and would lack any credibility. The Council has plainly recognised this, as did the officers in their report to the Members. It should never have been raised by the Council in the first place.
56. The Council raises no concern about cumulative impact. There is no evidence of cumulative impact taking place. Only two applications have been referred to in terms of housing sites not allocated for development. The appeal site is one (184 units) and the Welsh Lane site is the other with 116 dwellings. The total of 300 is less than 10% of the total allocations and could hardly be said to amount to a combined impact which is so significant as to prejudice the WNP. As for the location, development on the western part of the town is proposed through allocations totalling over 1,000 houses, together with employment development as well. If restricting development in the west of Winsford is an aspiration in the WNP, then it is not evident from the allocations.

57. What is new about the guidance is that it sets a high threshold for judging whether prematurity should justify the refusal of planning permission, even if a case of prejudice can be made out in terms of the development being so substantial or its cumulative effect so significant. Given that there is no credible case on prejudice to the emerging WNP, this new test hardly alters matters. But what it does mean is that in considering the issue of prematurity, the objectors would need to show any such prejudice to the WNP significantly and demonstrably outweighs the benefits.
58. The benefits of this proposal are set out above. They are significant especially in the context of a serious shortfall in the 5 year supply of housing land and a pressing need for affordable housing. When the LPA identifies no adverse impact there is only one answer to that question.
59. Councillor Burns made clear his view that granting the appeal would not hinder the progress of the WNP and that the NP will progress to being made regardless of the appeal outcome. There would be no reason for it not to progress since it identifies a variety of sites which local people wish to see developed.
60. Councillor Clarke did express a concern about whether the WNP would pass the referendum. That is not a matter which can be pre-judged. Moreover, the suggestion that allowing the appeal might deter people from voting has no evidential basis. The residents' group might not vote, but they only number about 80 people in total in a town of 34,000 people. It is a vanishingly small percentage. It is also representative of most greenfield developments, where a local action group led by the people most affected by the development is inevitable. Moreover, of the 80 or so people, some of them are not actually able to vote in the referendum because they do not live in the WNP area. They live in the village of Darnhall which is physically far removed from the appeal site.
61. But the need for the WNP to pass the referendum does recognise that the NP is not adopted and therefore it is not possible to identify any conflict with the WNP as an adopted development plan.

*The timing of the WNP and the appeal decision*

62. It is recognised that, by the time the SoS issues his decision in this case, the WNP may have been made. The appellant has anticipated this may be the case.
63. Adoption of the WNP presents no obstacle to the grant of permission in this case. Firstly, there is no ceiling to the housing requirement in the plan. Secondly, as Councillor Clarke made clear the WNP is not meant to be restrictive. Thirdly, the Council points to no conflict with the WNP or any of its policies. Fourthly, the land is not allocated for any purpose. Finally, none of the objectors could point to any specific policy of the WNP which the proposal is said to conflict with. For example there is no conflict with Policy H1. There is no material conflict with the WNP and as such there is no breach of paragraph 198 of the Framework.
64. It was alleged that there is conflict with the themes of the WNP, such as housing at gateway sites on the entrance to the town. But that aspiration is not a bar on other development coming forward. It was also pointed out that the plan seeks to limit development in the west of the town. But the reason for this aspiration is not explained further. There is a narrow gap with Middlewich to the east, but the reason to limit development to the west is rather opaque. Moreover this

aspiration is not evidenced by the allocations themselves, two large ones being located on the west of the town. As Mr Halman was able to confirm, the allocations seeking to direct development towards the town centre and to assist in regeneration form only part of the plan. The WNP itself makes clear that other peripheral sites are also needed. As Mr Halman made clear, the proposal actually fits well with many of the themes and objectives in the WNP and other housing could also be accommodated within the strategic vision.

65. The decision in respect of a proposal at Broughton Astley has been raised at the inquiry<sup>20</sup>. But there are very significant and important differences with the situation which pertained in that instance. The Broughton Astley NP (BANP) was brought forward after the recent adoption of a CS. There is no adopted CS or LP for Cheshire West. The housing requirement for Broughton Astley was therefore established through the CS. It required at least 400 houses at Broughton Astley. The figure for Winsford has not yet been identified and as such it is not possible for the WNP to adhere to paragraph 184 of the Framework and the requirement that the NP should not promote less development than set out in the Local Plan. The BANP actually sought to deliver more housing than that set out in the CS. It allocates around 500 new houses.
66. There is no evidence before this inquiry that the BANP was not to be seen as a ceiling, whereas the housing requirement in the WNP is expressly not to be seen as a ceiling for very understandable reasons. Given that the BANP allocated significantly more housing than the CS required, it is understandable that the SoS was not looking to grant permission for any more. The BANP also had a reserve site to accommodate additional housing, whereas the WNP has none.
67. The SoS observed that the appeal site at Broughton Astley had been expressly rejected through the NP process. The evidence before this inquiry does not demonstrate that the appeal site was expressly considered and rejected in the same way. Broughton Astley is a village and the appeal proposal would have been a significant addition to the allocations in the plan and to the size of that village. In contrast the addition of 50 units to the town of Winsford, with a population of 34,000, would be completely inconsequential. The two allocated housing sites in the BANP had been granted planning permission by the time the Secretary of State had issued his decision. That led him to conclude that those sites were at a broadly similar stage to the appeal site in terms of progression towards delivery. In contrast, most of the allocated sites in the WNP have not been granted planning permission and so the delivery problem of a shortfall of nearly 4,500 houses remains.
68. The SoS identified the fact that the allocated sites at Broughton Astley in the BANP were significantly better located than the appeal site in terms of walking distance to facilities at the village centre. The point the SoS was making is well illustrated by the plan of Broughton Astley<sup>21</sup>. The two housing sites in Broughton Astley are close to the village centre, whereas the appeal site is located at a much greater distance. The same does not apply in Winsford. Most of the housing sites are on the periphery of the town and the main site on the west of the town (O1) is a similar distance from the town centre as the appeal site.

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<sup>20</sup> LR3

<sup>21</sup> DE6

69. At Broughton Astley the Council was opposed to the appeal proposal. That is not the case with regard to the present appeal at Winsford. The Council at Broughton Astley had concerns about the impact on the character and appearance of the surrounding area. That is not a concern expressed by the Council at this appeal.
70. There are no real similarities between the situations at Winsford and Broughton Astley. Indeed, seeking to refuse permission for the appeal scheme would be particularly unfortunate in circumstances where the LP housing requirement is not yet set, unlike at Broughton Astley. The consequence of refusing the appeal proposal could give the impression that the shutters have come down at Winsford just at the time when significantly more housing may well be required because of the need to elevate the LP requirement and the serious constraints around Chester and parts of Northwich arising from the extent of the Green Belt in the Borough.

#### *Other Concerns*

#### *Sustainability*

71. It is important to record that the Council regards the development to be sustainable. It is difficult to see how the development fails to accord with the economic and social dimensions of sustainable development. The development will deliver much needed housing and affordable housing in an authority area where there has been a persistent record of under delivery of housing. Residents from the development will also bring additional expenditure to the town to the benefit of the town centre. A commitment to using local employment is also being made which can be secured by means of a condition.
72. Reference to emerging CWACLP Policy STRAT 1 is misplaced. It can be given only limited weight. It is a policy to which there are outstanding objections. But even if regard is to be had to STRAT 1, it is completely misplaced to believe there is conflict with the policy. The proposal sits well with the criteria in the policy. The proposal does address the emphasis on renewable energy with a condition recommended requiring 10% of energy from this source. The flood risk assessment addresses the risk associated with climate change. The proposal is not for mixed use, but nor are most of the housing allocations in the WNP. The WNP seeks to allocate employment sites and housing sites and they are separate in almost all instances.
73. The site is located 800m from Darnhall Primary School and there are other local shops and facilities within 1.6km. The town centre is a little further in distance at just over 2km. But here again it is important to record that the appellant and the Council agree that the site is in a sustainable and accessible location with good access to significant shops, services, amenities and existing public transport links. There is, in fact, a regular 30 minutes bus service to the town centre with bus stops located less than 400m from the edge of the site. The site is on the periphery of Winsford but it is a sustainable urban extension and located in one of the main towns in the Borough where there is a wide range of shops, services and facilities, with access by car, bus, on foot and bicycle.
74. The proposal gives rise to no conflict with heritage assets. There are no concerns on the part of the Council in terms of ecology, subject to mitigation. Built development will be created. But what it replaces is land which is subject to

modern farming which can also have a detrimental impact on ecology. One benefit is the open space areas which will be taken out of agricultural use.

75. There is harm to the natural environment of the site because greenfield land is being lost in the open countryside. But the land is not subject to any specific designations and loss of such land is a necessary sacrifice to meet housing need when the harm is limited. It is not a site of ecological importance, it is not in a landscape protection area and it is not in the Green Belt. The last matter is a major issue in the context of CWAC given the Green Belt around Chester and parts of Northwich. The site does not involve despoiled land or previously-developed land. That is accepted. But nor are nearly all the proposed allocations in the WNP. Nor indeed is the site which was granted permission at Welsh Lane.
76. The land does not involve the loss of high grade agricultural land. The land is mostly grade 3b with some grade 4 and is not Best and Most Versatile Agricultural Land.
77. The site is located close to one of the most deprived wards in the Borough. Market housing in such a location plainly has a positive benefit to the impression of the area.

#### *Adverse Impacts*

78. Concerns about whether the proposal would be a high quality development need to recognise that it is an outline application. There is no reason to believe that high quality design cannot be achieved on the site. The proposal seeks to make efficient use of the land. But it is a proposal for upto 184 dwellings rather than permission for 184 and any concerns about density can be addressed at the reserved matters stage.
79. There is no evidence that the proposal would undermine the development of allocations in the WNP. Indeed there is clear evidence to the contrary. The Station Quarter is a greenfield site and a planning application has recently been submitted apparently undeterred by the present appeal proposal.
80. In relation to precedent no other applications have been submitted. The wider area of land being promoted through the CWACLP process is not a matter before the SoS in this appeal. Each application must be considered on its own merits.

#### *Response to letter from MP<sup>22</sup>*

81. The letter from Stephen O'Brien is supportive of the local residents opposed to the proposal. Such letters of support are commonplace at nearly every planning appeal. It is not uncommon for an MP to ask for an appeal decision to be recovered by the Secretary of State. In the recent cases in Cherwell, the MP requested four such applications be recovered. Thereupon the SoS granted permission for all four.
82. The letter was written in June, but whilst referring to CWAC, it does not refer to the fact that the Council has now withdrawn its sole reason for refusal. It is surprising that the letter makes no mention of the huge shortfall in new homes against the minimum 5 year requirement which amounts to nearly 4,500 homes.

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<sup>22</sup> LR1

It also makes no mention of the fact that there are nearly 20,000 people on the housing register, or of the huge backlog of affordable housing that has accumulated since the timing of the Council's last SMHA in 2009. The letter would have far greater value if these matters had been acknowledged.

83. It is clear from Westminster debate<sup>23</sup> that many MPs from Shire Counties do not agree with Government Ministers. But the housing crisis in this country is a reality and if the problems here in CWAC are not even acknowledged then letters of this kind do not offer a balanced view of the issues. It is also not clear what evidence was relied upon when it was suggested that the site is not sustainable, but plainly it was a statement made without reference to the fact the Council has agreed that the site is in a sustainable and accessible location. The reference to emerging law is unclear.

### *Conclusion*

84. The proposal is for sustainable development. The Council raises no objection to the proposal which is of course a highly unusual situation. The Council is unable to identify any conflict with the policies or content of either the VRBLP or the emerging WNP. For the reasons given above and as set in the written and oral evidence, the SoS is invited to allow the appeal.

## **The Case for Interested Parties**

### **The Residents Group<sup>24</sup>**

*The material points are<sup>25</sup>:*

85. The Group are not against development in Winsford. The proposals in the WNP for 3,300 new homes are wholeheartedly supported. But the WNP is the right vehicle to identify and establish where development should go. This application was unanimously rejected by Darnhall Parish Council, Winsford Town Council and the CWAC Strategic Planning Committee based on valid and legal planning reasons put forward by the local residents group, assisted by a planning consultancy. None of the members of the Councils that considered the application are directly affected by the development. There are three main areas of concern – prematurity, sustainability and adverse impacts.

### *Prematurity*

86. At the time the decision was made prematurity should not have been the sole reason for refusal. In the light of progress of both the WNP and the CWACLIP it needs to be addressed.
87. It is recognised that for an application to be refused on prematurity grounds the adverse impacts have to significantly and demonstrably outweigh the benefits. In addition, in accordance with the PPG, the development has to be so substantial or its cumulative effect so significant that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or

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<sup>23</sup> APP2 Appendix 14 – House of Commons debate on planning and housing supply – 24 October 2013

<sup>24</sup> The Darnhall Fighting Fund Group

<sup>25</sup> Summarised from the statements (LR4, LR5, LR6 and LR7) and oral evidence

phasing of new development that are central to an emerging LP or NP. Furthermore, the emerging plan has to be at an advanced stage.

88. The WNP was subject to a local authority publicity period between July and September 2013. It has been subject to examination by an independent Inspector. The report was due to be submitted on 28 June 2014. The WNP should be able to go forward to referendum in the Autumn. It is at an advanced stage of preparation and, therefore, meets the PPG in this regard.
89. The judgement on the legal challenge to the TNP pointed to the ability to give weight to a NP, even though the LP is not yet adopted, provided that the NP is in accordance with the emerging principles and seeks to meet the identified housing need. The WNP does this and so weight can be given to it.
90. In terms of whether the development would be so substantial or significant as to undermine the Plan, the WNP has identified sites for over 3,300 homes but the appeal site is not one of them. More significantly, the WNP sets out two options for growth. Option A was to create positive gateways, focusing development on improving those to the south-east and north-west. Option B was to maximise support for the town centre by concentrating as much development as possible in the middle of the town, developing around the railway station and reducing development on the western edge of the town. The appeal site was not included with either option. Option B was chosen because it performs better in terms of sustainability and was strongly supported through the public consultation process. As well as not being an allocated site, the appeal proposal is contrary to the objectives and strategy of the WNP by providing housing where it should not go.
91. When it suits the appellant, it is argued that the scale of development is not significant enough to cause harm to emerging plans. But in terms of addressing housing land supply, the scheme does become more significant. Similarly, the appellant states that, as the majority of the site lies outside the area of the WNP, it will only have a small impact on it. Yet, it is claimed that the development will function as part of Winsford and not as part of Darnhall, a Tier 4 settlement<sup>26</sup>. Regardless of the boundary issues the development will impact on the WNP by virtue of its proximity to the built-up area.
92. It is noted that the Inspector in the recent appeal decision in Moulton<sup>27</sup> makes it clear that changes to the planning system to give communities more say on developments in their areas carry with them the responsibility to ensure that local plans are prepared expeditiously to make provision for the future needs of their areas. This reflects one of the core planning principles in the Framework, that planning should be genuinely plan-led, empowering local people to shape their surroundings. Furthermore, neighbourhoods should develop plans that support strategic development needs, including housing and employment, and that they should plan positively to support local development.
93. Winsford has done all of the above through its NP. The delay in adoption comes from challenges from developers, not from any delay in the process. The WNP is

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<sup>26</sup> Policy H4 of the VRBLP

<sup>27</sup> Supporting Evidence Background Document C9 – Appeal Decision Ref: APP/A0665/A/13/2198931 dated 30 December 2013

at an advanced stage and so weight can be attached to it. The proposal is contrary to the strategy of the WNP and would harm the fundamental objectives of strengthening the town centre and providing development in sustainable locations. A refusal on prematurity grounds can be justified.

94. Finally, in relation to prematurity, the examination into the CWACLP began on 17 June 2014. A number of representations have been made by developers seeking to promote sites in Winsford. The appeal site is the first phase of a 950 house scheme which is being put forward and by anyone's definition is significant. Some of the other sites put forward are better related to services than the appeal site and will be examined as part of the LP process. Allowing the development could prejudice consideration of all sites being promoted as a whole. It would follow that the remainder of the site would also be suitable regardless of whether there are other sites which are more sustainable or better placed to meet any additional need.

### *Sustainability*

95. Winsford has an unfortunate history of poorly planned, inappropriate and often unsustainable development. The WNP offers local people the chance to have a say in the development of the town and achieve a clear strategic plan to meet long-term housing, infrastructure and environmental needs.
96. It is accepted that there is no 5 year supply for CWAC and weight should be attached to the provision of housing. However, it also has to be demonstrated that the development is sustainable. The Sustainability Appraisal for the WNP found that locating development on the edge of the settlement, particularly on the western side, was not a sustainable approach.
97. In terms of the 3 strands to sustainable development:

*Economic* - the proposal would provide jobs and generate more spend in the area. However, the extent of this depends on local services, infrastructure and employment being developed alongside the scheme and there is no commitment to do this. In addition it is not providing housing in the right place, especially as the WNP identifies available, viable sites. The weight to be attached to releasing the appeal site should be diminished.

*Social* – the provision of housing, including affordable housing, would contribute to an identified local need. However, the proposal is not providing homes that are accessible to local services or a mix of uses. In terms of accessibility, Manual for Streets (MfS) defines a walkable neighbourhood as being characterised by having a range of facilities within 10 minutes or up to 800m walking distance from residential areas which can be comfortably accessed on foot. The site is just over 2km from the town centre. The local shops do not have the product range or size to cater for top-up shopping needs. The doctors' surgery is 1780m walk from the site entrance. A significant proportion of the site is beyond the 400m identified as an acceptable distance for bus stops. The facilities are dispersed, not in a local centre. Linked trips to local schools, the convenience store and the medical centre would not be possible. There is no continuous footpath on the north-west side of Darnhall School Lane to connect the site with the primary school and no safe crossing points in the vicinity of the development. The development would not encourage walking but car usage. Play and open

space is in very short supply in the area.

*Environmental* – the proposal would result in the loss of greenfield land. The small areas of open space would not compensate for the loss of open countryside. The proposal would not recognise the intrinsic character and beauty of the countryside or contribute to protecting and enhancing valued landscapes. There is no commitment to mitigate against climate change or implement energy efficient measures.

98. In relation to STRAT 1 of the emerging CWACLP, evidence on climate change is lacking; the proposal is not for a mixed use development; the site is on the edge of the settlement accessed by a minor lane; the natural environment would not be protected or enhanced; the development is not on previously-developed land or a sustainable location; greenfield and agricultural land would be lost; and the proposal would not support regeneration in deprived areas and could prevent an identified regeneration site coming forward. The proposal would not support the measures of sustainability as outlined in the Framework and STRAT 1.
99. The significant weight to be attached to the provision of housing does not override all other considerations. The proposal does not comprise sustainable development and therefore does not accord with the Framework. This is confirmed by the assessment work conducted for the WNP which demonstrates that the site is not as sustainable as other locations which is why it is not allocated in the WNP. The fact that the majority of the site is outside the WNP area needs to be considered in the context that the development has to be considered as a whole and that it clearly forms an extension to the urban area of Winsford. The development would affect the overall shape of Winsford and has a direct impact on the WNP attempt to guide the spatial future of the town.

#### *Adverse Impacts*

100. The adverse impacts include that on the open countryside. The countryside around Winsford is a finite resource. Development, once permitted, would be there in perpetuity. If there is to be development in open countryside a strategic decision should be taken on which areas should be released rather than it be determined by opportunistic applications.
101. The fact that development is not in a sustainable location and does not offer any energy efficient measures have to be considered as adverse impacts in the balancing exercise.
102. The development would impact on regeneration objectives and the aims of the WNP to strengthen the town centre, particularly the Station Quarter Urban Extension. This development is very important as it would bring about much needed improvements to the town centre and community services, leisure and education enhancements, as well as 1,000 new homes. An application has been submitted for the first phase of the development so there is a commitment to the development coming forward.
103. Consideration also has to be given to the impact on local consultation. The WNP has identified the most sustainable sites for development. By not having regard to the WNP, the decision would undermine the democratic process.

104. There is a need for Winsford to adapt to all the new housing that has been permitted. Although more than 1,100 homes have been permitted in the last 4 years, no corresponding schools, community facilities or shops have been permitted and the proposal adds nothing in this respect.
105. The scale and form of development should have regard to Policy BE1 of the VRBLP as was the case in the Moulton appeal decision<sup>28</sup>. In particular the proposal should take full account of the characteristics of the development site and its surroundings. The density would be very much higher than surrounding development and would not reflect its location. The net developable area (5.1 ha) would result in a density of 36 dwellings per hectare which would be equivalent to a town centre site and would not be appropriate for this location. The provision of open space in excess of the Council's requirement would further increase the density of the housing areas. The density should reflect that on a similar site in Swanlow Lane where approval has been given for 115 dwellings on a developable area of 4.68 ha (25 dwellings per ha). If the density of Peacock Avenue was applied 43 houses would be proposed. A lower density should be applied. The high density is a significant adverse impact.
106. In summary the adverse impacts would outweigh the benefits.

### *Conclusions*

107. The WNP is at an advanced stage and allows 3,300 dwellings. A number of developers have sought additional or alternative sites in Winsford. The Examiner's report should be awaited before any decision is made on this application.
108. The proposal is the first phase of a much larger urban village of upto 1,400 dwellings that the appellant is pursuing outside the boundary of the settlement which would prejudice both the emerging WNP and CWACLP. Although the Inspector can only consider what is in front of him, the proposal contradicts the fundamental aims and objectives of the WNP. The development would undermine the plan-making process by predetermining decisions about scale, location and phasing.
109. The location is not sustainable and neither is the development. The adverse impacts outweigh the benefits. The lack of a 5 year housing supply has normally trumped neighbourhood plans. However, the recent Broughton Astley decision has indicated that a NP can take precedence over 5 year land supply. In that case the adverse impacts, particularly in terms of conflict with the BANP, significantly and demonstrably outweighed the benefits.
110. Winsford has embraced its requirement for more housing. This is a decision for localism versus opportunistic landowners and developers. The benefits are negligible. The appeal should be dismissed.

### **David Cade**

111. Mr Cade read out the letter from the local MP<sup>29</sup>. The MP opposed the application at each stage of the planning process and has also objected to the new

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<sup>28</sup> See Footnote 23

<sup>29</sup> LR1

application for the appeal site. The development of agricultural land is not sustainable. Winsford has already met the challenge to find suitable sites for housing development to meet its needs. This is a speculative and premature development.

112. The decision should be guided by the Ministerial pronouncements on the issue of prematurity and emerging local plans and the need to commit to expensive increases in community infrastructure before any residential build. All financial risk should fall on the developer. The people of Winsford deserve support for their commitment to the community. Allowing the appeal would put that in jeopardy.

### **Councillor Armstrong**

113. As a Ward Councillor and member of the CWAC Strategic Planning and Planning Committees the need to agree to unpopular developments is accepted, particularly since the publication of the Framework. The Planning Committee refused planning permission on 3 June 2014 for a piecemeal development of 28 dwellings which was contiguous with the village of Tattenhall when significant weight was given to the NP. It is accepted that this was on the basis of a policy which limits developments to 30 dwellings where there was the prospect of an additional phase coming forward of another 28 dwellings.

114. There are two neighbourhood plan pilots in CWAC, Tattenhall and Winsford. In Winsford the community has been very responsible in proposing 3,500 dwellings. It seems wrong to allow the development when the WNP is close to being agreed.

### **Councillor Burns**

115. Councillor Burns is a Ward Town and Borough Councillor. The impression is that the development would be "plonked" on the site. It would be on the edge of the community and add nothing to the balanced approach of the WNP, which allocates land in all three Wards. This is why it was rejected unanimously across the political divide. It would ride roughshod over the WNP process and the ability of local people to decide where development should go and be premature.
116. It is accepted that the housing requirement is still to be settled and subject to objections by developers and landowners. Winsford is one of four larger towns, although smaller than some, but does not have the constraint of Green Belt. More development may come to settlements including Winsford. Although there are no reserved sites, there is no ceiling on housing within the WNP but development is still dependent on infrastructure. The fact that the WNP will still progress and should be made by the end of 2014 does not make the development right.

### **Councillor Clark**

117. Councillor Clark is the Chair of the WNP Steering Group and CWAC Planning Committee. He represents the ward on the eastern side of Winsford but is speaking as a resident of the town and through his role on the Steering Group. Allowing the appeal would undermine confidence in the neighbourhood planning process and would be likely to reduce the vote and ownership of the WNP.
118. It is accepted that the WNP does not mean that no other applications can come forward but they need to fit with the objectives of the document. Some of the

sites in the WNP may be favoured by the community, others will be less popular. However, it is important to get the WNP in place and go to a referendum. Whilst the majority of Winsford residents are not affected by the development, the communities' perception of the impact on the process may affect whether people vote in an area with a traditionally low turnout. The WNP is an important pilot in a large town where people should be able to decide their own destiny.

### Written Representations

119. Written representations were made by **Stephen O'Brien MP, Winsford Town Council, Darnhall Parish Council, local residents** and **local councillors** at application and appeal stages<sup>30</sup>. All raised objections to the proposal. Many of the points have been covered in the cases of the Residents' Group, MP and Councillors set out above. The following additional material points were also raised:

- Winsford has met and exceeded its housing need and there is no housing shortage in the District as there is a 5 year housing supply;
- The site is not previously-developed land or a windfall site;
- The starting point is the VRBLP policies which reflect the site's location in open countryside and its use as farmland;
- There would be loss of public views across open countryside;
- There is a lack of infrastructure and services for the development;
- There is insufficient school provision. Darnhall Primary has not been operating at two form level for many years. The school is on a split site, with buildings in a poor state of repair and provides a resource for some pupils with significant behavioural problems. If pupil admission numbers were to exceed 30 then additional classrooms would be required. The site is not within the Winsford Schools Catchment;
- The development would be out of scale with the village of Darnhall, a small parish and a Tier 4 settlement and would not reflect the character of the rural area;
- There would be a negative impact on wildlife, habitats, trees and hedges, including Ancient Hedgerows. The ecological surveys are insufficient;
- The lane is too narrow to serve the development. It is used as a rat-run with significant traffic flows. The access would be in a dangerous location. Those pedestrians crossing the road near Peacock Avenue and Darnhall Primary School would be at risk;
- Fire and rescue requirements have not been addressed;
- The smaller houses proposed would not match those locally;
- There are subsidence issues in the area;

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<sup>30</sup> 58 responses and a petition of 503 signatures at application stage, 45 responses at appeal stage

- There is no evidence that access is available to Ash Brook for surface water run-off.

## Obligations

120. The planning obligation referred to in paragraph 8 of this report has been supported by a statement by the Council<sup>31</sup>. The Council considers that the obligation meets the tests set out in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 204 of the Framework. In particular the increase in residents in this location would justify the on-site open space and play provision which is in line with SPD3. The contribution to formal playing pitch provision is also CIL compliant as it will meet the need arising from the development in accordance with SPD3.
121. The Council has not produced a charging schedule in relation to CIL so cannot achieve payments through that method. The Section 106 agreement makes the development acceptable through the provision of facilities and contributions which cannot be secured through conditions.

## Conditions

122. A list of conditions agreed between the Council and appellant were attached to the SOCG<sup>32</sup>. Some of these and other potential conditions which arose during proceedings were discussed at the inquiry, in the event that the appeal is allowed.
123. It was considered that a condition ensuring that the development accords with the principles set out in the accompanying Design and Access Statement<sup>33</sup> and illustrative plans<sup>34</sup> is necessary to ensure that the approach to design and landscaping is followed through. A number of conditions put forward deal with reserved matters but it is acknowledged that the submission of such information needs to be linked to the detailed proposals for the various phases.
124. The condition requiring 30% affordable housing on a windfall site is supported by Policy H14 of the VRBLP and SPD1.
125. The tree report<sup>35</sup> deals with recommendations for tree works and there is a need to link this to a condition on tree retention and protection. There is a need to avoid duplication with those conditions dealing with ecological mitigation, construction management and drainage. Highway works, including the off-site improvements in Swanlow Lane, need to be completed at various stages of the development to ensure a safe access and sufficient capacity in the highway network<sup>36</sup>.
126. The appellant put forward an additional condition relating to a training and employment management plan<sup>37</sup> (paragraph 71 refers). It was noted that similar

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<sup>31</sup> CWAC1

<sup>32</sup> Appendix 6

<sup>33</sup> DOC19

<sup>34</sup> Plans4-6

<sup>35</sup> DOC9

<sup>36</sup> DOC3 & 4

<sup>37</sup> DE2

conditions had been imposed elsewhere at appeal, including within CWAC, where it was considered that such a condition met the tests. Discussion took place on limiting the development to 184 dwellings given that the impacts were considered on that basis. The recommendations of the Travel Plan Framework<sup>38</sup> ought to be carried forward as a condition. However, it was not felt necessary to implement the findings of the Ground Investigation and Noise Impact Assessments in view of the controls offered by other legislation and the characteristics of the site and the development. Waste and recycling provision could be incorporated into details of the layout submitted as a reserved matter.

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<sup>38</sup> DOC5

## Conclusions

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

### **Main Considerations**

127. I have identified the main considerations in this case to be:

(i) Whether the proposal is so substantial or its cumulative effect would be so significant that granting planning permission would undermine the plan-making process by pre-determining decisions about the scale, location or phasing of new development that are central to the emerging WNP; and,

(ii) Whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

### **Prematurity**

#### *Government Policy and Guidance*

128. The Framework<sup>39</sup> advises that decision-takers may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework.

129. The PPG indicates that arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

(a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging NP; and,

(b) the emerging plan is at an advanced stage but it is not yet formally part of the development plan for the area. Refusal of planning permission on grounds of prematurity will seldom be justified in the case of a NP, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

#### *Progress of the WNP*

130. The WNP has been through its publicity period [20, 88] so the test in relation to the progress of the NP is met.

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<sup>39</sup> Paragraph 216 to Annex 1

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### *Scale and Location*

131. The WNP includes proposed housing sites allocating a total of some 3,300 dwellings [90]. Policy H1 of the WNP says that permission will be granted for residential development on those sites subject to satisfying the requirements of other policies of the CWACLP and the WNP. The appeal site is not one of the sites identified in Table 5.1 or Figure 5.9 of the WNP [90]. That said the policies of the WNP do not prevent housing elsewhere in the town or put a ceiling on the number of houses that should be developed in Winsford [48, 116, 118].
132. The housing provision of almost 3,500 homes derives from the emerging CWACLP as the WNP is explicit in aligning itself with that emerging document [19, 45]. This has to be the correct approach in the absence of any other up-to-date development plan and housing supply policies [16]. Both the total housing numbers (22,000) and the allocation for Winsford in the CWACLP are subject to objections [19, 40]. This appeal is not the forum for deciding whether the CWACLP housing numbers are sound. However, based on the evidence put in front of me it is likely that the full objectively assessed need will be greater than that currently set out in the emerging LP [41]. Due to the lack of Green Belt and other constraints around the town it is likely that housing numbers in Winsford would be increased more than in Chester or Northwich for example [75]. In this respect it is important that the WNP allows flexibility in considering sites that come forward that are not specifically allocated by Policy H1. An example of this is the recent permission for a non-allocated site in Swanlow Lane [51].
133. The WNP considers two options for growth with Option B (Maximise support of the town centre) chosen over Option A (Create positive gateways) in the publication version of the Plan as it performs better in terms of sustainability and when tested against the key themes, including those relating to improving the town centre [90]. This approach has led to most housing sites chosen being within the central or eastern sectors of Winsford. There are some sites allocated on the periphery of the town but I note that those towards or on the western edge of the town [56] are already commitments (O1 and O2) or are former school sites (O3 and O4) and are close to employment. The Station Quarter (S1-S5) is a comprehensive urban extension near the railway station, includes a neighbourhood centre, a primary school and other uses and proposes a large area of open space adjacent to the open water of the Flashes<sup>40</sup> [102].
134. There is some merit in the argument that the appeal proposal does not fit in with the overall themes and objectives of the WNP given that it is at the south-west extremity of the town in an area where there are no other allocations. That said my attention has not been drawn to any policies in the WNP that it would conflict with [63]. There is no substantiated evidence that it would prejudice other sites coming forward [79], including the Station Quarter where a recent planning application shows intent to progress the scheme [79, 102]. The appeal site is not allocated for any other purpose in the WNP [63]. The WNP is intended to be flexible, there is no ceiling on housing numbers and there is a likelihood that more than 3,500 dwellings will need to be permitted in Winsford under the CWACLP.

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<sup>40</sup> APP4 – Supporting Evidence A14 – Winsford Neighbourhood Plan

135. The proposal for up to 184 dwellings is significant, particularly for those who live close to the site. But it only represents some 5% of the total housing requirement for a town with a population of 34,000. I would not describe it as substantial in that context. In considering the scale of the development in relation to the WNP, I note the appellant's point about the Winsford Administrative Boundary and the scope of the WNP [55]. However, in terms of impact on the WNP it is the whole of the development which would abut the town, not just the 50 or so dwellings which lie in the Winsford Town Council area. Concerns were raised about the larger site put forward as part of the CWACLP examination [94, 108]. However, this appeal is limited to consideration of a small component of the larger site. The decision on this appeal should not be seen as any indication as to the acceptability or otherwise of the larger site.

#### *Cumulative Effect*

136. The only other proposal brought to my attention that has come forward on a non-allocated site is that in Swanlow Lane [56]. Taken with the appeal site that would result in some 300 dwellings or less than 10% of the minimum requirement. I do not consider that the cumulative effect of the two sites would be so significant as to undermine the plan-making process of the emerging WNP.

#### *Other Considerations in relation to Prematurity*

137. The Broughton Astley decision relates to a different set of circumstances to those faced in this appeal. In terms of the most pertinent of these, the CS had recently been adopted as had the NP; the NP provided more than the CS housing figure and included a reserve site; the settlement was smaller; sustainability issues appeared to be different; and there were issues about character and appearance [65-69].

138. It is acknowledged that interested parties consider that granting planning permission could be perceived as undermining confidence in the NP process [108, 112, 118]. However, there is no evidence that such a perception would become a reality. There was no suggestion from the Residents' Group and Councillors who spoke passionately in support of the WNP that it would not go to referendum or not be made [59, 60] should planning permission be granted.

#### *Conclusions on Prematurity and the WNP*

139. In conclusion the proposal is not so substantial or its cumulative effect so significant that granting planning permission would undermine the plan-making process by pre-determining decisions about the scale, location or phasing of new development that are central to the emerging WNP. In arriving at this conclusion it is of significance that CWAC Council decided that it could not substantiate the reason for refusal [5]. Moreover, in terms of the weight to be given to the emerging WNP, whilst well advanced, there are unresolved objections to the CWACLP relating to the scale of development that needs to come to Winsford and the quantum of housing allocations should be seen in that context.

140. The WNP may be made and brought into force before this appeal is determined. However, for the reasons set out in paragraph 135 above this is not a situation where it is likely that the proposal would materially conflict with the final version of the WNP and that planning permission should not normally be granted.

### *The CWACLP*

141. Finally on the issue of prematurity, although the CWACLP was at examination stage at the time of the inquiry there are unresolved objections to relevant housing supply policies. In addition there are questions as to whether these policies are consistent with the Framework's requirement that a LP meets full, objectively assessed needs for market and affordable housing. Therefore, the weight to be given to the emerging CWACLP, so far as the appeal proposal is concerned, is limited [42]. Despite concerns expressed about the larger site being considered through the LP process [94], the appeal proposal itself is not so substantial or its cumulative effect so significant, that permission would undermine the LP plan making process.

### ***Adverse Impacts and Benefits***

142. At the heart of the Framework is the presumption in favour of sustainable development. For decision making this means, unless material considerations indicate otherwise: approving development proposals that accord with the development plan without delay; and where relevant development plan policies are out-of-date, granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or specific policies in the Framework indicate that development should be restricted<sup>41</sup>.

### *The Development Plan*

143. The appeal site would be beyond the settlement limits of Winsford as defined in the VRBLP and would conflict with Policy GS5 in that it would result in new buildings in the open countryside which are not permitted by other policies of the Plan. In addition the development would not be in Winsford and, therefore, would conflict with Policy GS2 [17]. For these reasons the proposal would not accord with the development plan. The fact that the proposal complies with some of the non site specific policies of the VRBLP does not mean that it complies with the development plan as a whole.

144. However, the VRBLP is clearly out-of-date in that key housing policies have not been saved [16, 27]. This manifests itself in the development plan not allocating sufficient sites to meet any of the range of possible housing supply requirements, be it those identified by the Council from the revoked RS, the emerging LP or the figures but forward to the examination into the CWACLP [35]. This has led to a sustained shortfall in housing supply such that CWAC cannot meet its 5 year supply of housing land by some distance [34]. The housing supply position reinforces the clear position that the policies for the supply of housing should not be considered up-to-date. As a result Policies GS5 and GS2 of the VRBLP should also be considered to be out-of-date because the defined settlement boundaries do not allow sufficient land for housing in the area as a whole and in Winsford itself. Moreover, Policy GS5 is more restrictive than the policies of the Framework and, therefore, is not consistent with it [28].

145. Therefore, given that the site is not one where specific policies of the Framework indicate that development should be restricted, such as Green Belt, the test is

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<sup>41</sup> Paragraph 14 of the Framework

whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

146. I have already concluded that the appeal proposal does not result in the adverse impacts related to prematurity set out in paragraph 129 above. I will deal with the adverse impacts and benefits primarily under the dimensions of sustainable development.

#### *Economic Role*

147. The proposal would result in a number of economic benefits, including the New Homes Bonus Scheme, construction jobs, additional local spend and employment arising from the additional expenditure [33].
148. The proposal would not lead to the loss of the best and most versatile agricultural land as the majority of the site is Grade 3b [76] so there would be no conflict with Policy RE1 of the VRBLP.

#### *Social Role*

149. The proposal would add to the supply of housing for which there is an acute need given the significant shortfall against the 5 year supply requirement [34]. There would be scope for a range of housing types and sizes. In addition, in providing 30% affordable housing, the development would contribute to the substantial need for dwellings within the reach of those who cannot afford market homes [37]. No party disputes the benefits that would arise from the provision of housing, including the affordable element [97]. The significant element of market housing would have some benefits for the creation of mixed communities near to a deprived ward [77].
150. Local services such as Darnhall Primary School and the small convenience store in Vauxhall Way are within walking distance of the site [12, 73]. The bus services, less than 400m from the edge of the site, provide a reasonably regular service to Winsford Town Centre, Crewe and Northwich. Although there is a limited range of facilities within 10 minute walk [97], some are available and it would be possible to link walking to the school and shop. The town centre and other facilities such as the doctors' surgery are further away so that they unlikely to be accessed by foot but distances by public transport, cycle or car are not great.
151. The concerns about the capacity of Darnhall Primary School and its physical limitations [119] have not been supported by the local education authority (LEA) which indicates that there is spare capacity in both this school and the local academy in the catchment to accommodate the calculated child yield<sup>42</sup>. No contributions have been sought by the LEA.
152. The proposal makes provision for open space and play areas in accordance with the Council's requirements set out in Policy RT3 of the VRBLP and SPD [21]. There was little information before me about the provision for open space and outdoor sport and recreation in the wider area but there would be a contribution to playing fields which is agreed by the Council [7].

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<sup>42</sup> GEN1 – LEA response to planning application

### *Environmental Role*

153. There would be some harm to the character and appearance of the area from the loss of hedgerow bounded fields to development [75, 100]. That said the site has no attributes that make it particularly valuable apart from its countryside character. The wider area of open countryside beyond the bridleway, with its undulating fields interspersed by copses, has more intrinsic beauty. Public views of the open site are limited by the high hedge to the south-east boundary with Darnhall School Lane and the housing in Peacock Avenue. When seeing the site from the public bridleway to the south-west, the development would be seen against a backdrop of existing housing. From the open space on Peacock Avenue there would be a clear change from fields to built-development but longer-distance views towards the sandstone ridge would remain over the houses. The proposal would not extend the built-up area any further south than the existing housing estates on the south-east side of Darnhall School Lane. In this regard the development is clearly physically related to Winsford and not the small village of Darnhall [11], despite being partly within the rural parish.
154. The proposal to retain the hedgerows and trees to three of the site boundaries and significant sections of hedges and trees within the development, apart from those parts that would be lost where intersected by roads and footways, together with new buffer planting, would help to create an attractive setting for the development and ensure compliance with Policy NE7 of the VRBLP. The hedge to the road frontage would be replaced by a new hedge behind the visibility splays. The design principles seek to reflect the site's location adjacent to countryside whilst making effective use of the site. As the proposal is in outline the density is not set. The density would comply with Policy H12 of the VRBLP. Controls over layout and appearance at reserved matters stage would enable the Council to ensure a density that would be appropriate for the site [78, 105]. Whilst acknowledging the loss of open fields, the harm to character and appearance would be moderate.
155. The site is improved grassland, much of which is used for horse grazing. In retaining the majority of trees and hedges, providing additional planting and creating ponds beyond the appeal site to offset the loss of the two within the development, there would be no material detriment to wildlife and nature conservation interests [74]. Measures can be incorporated within the scheme to implement biodiversity measures.
156. The site is within Flood Zone 1 where there is a low probability of flooding. Attenuated surface water run-off at greenfield rates can go to the tributary of Ash Brook which is within the control of the appellant. The ground investigation report does not reveal any subsidence risks<sup>43</sup>.
157. The development would incorporate renewable energy requirements in accordance with Policy BE21 of the VRBLP which can be secured by condition [18, 72, 97].

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<sup>43</sup> DOC14

### *Other Impacts*

158. The proposed access to the site would have good visibility, including across the wide bend to the south by School Green. Darnhall School Lane up to School Green is not characteristic of a rural lane being around 6m wide and appears to be operating well within capacity. The new footway to the site frontage would link up the existing pavement to the south-west of Peacock Avenue. The footway on the north-west side of Darnhall School Lane is not continuous and terminates to the north-east of Peacock Avenue. Nevertheless new dropped kerbs would be provided close to the north-east corner of the site. I noted that, with the removal of the frontage hedgerow, there would be good visibility for pedestrians at this point to allow crossing to the south-east side of the road. From this location the pavement is continuous up to the primary school, albeit narrowing by the cottage of McCarran Gate, just to the south of the school.
159. I observed backing up from the Swanlow Lane/Townfields Drive junction during the peak morning period but the improvements would increase capacity [14].
160. The proposal would be acceptable in relation to highway safety and has had regard to Policies T1, T2, T8 and T9 of the VRBLP.

### *Conclusions on Adverse Impacts and Benefits*

161. There are economic benefits from the proposal and no adverse impacts in relation to this role. The main facilities of the town are not easily accessible by foot but some services are close at hand. In any event the benefit to be derived from the provision of housing, including affordable units, is substantial such that there is an overall social benefit from the proposal. There is moderate harm to the character and appearance of the area but no other environmental concerns of substance. The proposal would achieve sustainable development having regard to the three dimensions identified in the Framework. Highway safety is a neutral consideration. The adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. The presumption in favour of sustainable development applies. Other material considerations do not indicate that planning permission should not be granted.
162. The proposal would meet the criteria of Policy BE1 of the VRBLP insofar as they are relevant to an outline planning application. Policy STRAT 1 of the CWACL P is subject to unresolved objections so has limited weight. Nevertheless the criteria relating to climate change, location relative to facilities, the natural environment and supporting regeneration in deprived areas are met. The proposal is not for mixed use or on previously-developed land but these criteria cannot be a bar on development given the development needs of the area, as reflected in the WNP allocations [71-77, 98]. The site is not as sustainable as locations identified for development in the WNP but that does not make it unacceptable in the planning balance [99].

### ***Obligations***

163. The obligations relating to on-site open space and an off-site contribution to playing fields are supported by SPD3 [120]. The obligations within the S106 agreement are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale

and kind to the development. Therefore, they meet the tests within CIL Regulation 122 and should be taken into account in the decision.

### **Conditions**

164. I have considered the suggested conditions against the tests set out in the Framework and the PPG. I consider that the conditions dealing with reserved matters; phasing; affordable housing; tree works, retention and protection; ecological mitigation; construction management; drainage; and highway works are necessary for the reasons given in paragraphs 123-125 and elsewhere in the report [154-159] should planning permission be granted. In relation to affordable housing I have not included reference to a specific split in tenure as needs may change over the implementation period of the development.
165. The condition relating to training and development would contribute to reducing social exclusion and achieving sustainable development. It would be reasonable to limit the development to no more than 184 dwellings as the assessments that accompanied the application were based on that number of units. The Travel Plan recommendations should be given effect by a condition [126].
166. I have amended the wording of conditions so that they meet the tests and have combined some of those suggested to avoid repetition.

### **Overall Conclusions**

167. The proposal would not undermine the plan-making process to the extent that prematurity justifies refusal of planning permission. The adverse impacts are limited and would not significantly and demonstrably outweigh the benefits. Granting planning permission for the development will be perceived by some as undermining the genuinely plan-led system promoted by the Framework which is intended to empower local people, particularly that related to the NP process. But the plan-led system has to be considered in the context of national policy as a whole, including the obligation to keep plans up-to-date. In the light of all the evidence the proposal accords with the presumption in favour of sustainable development.

### **Recommendation**

168. I recommend that the appeal be allowed and planning permission be granted subject to the conditions set out in Appendix C.

*Mark Dakayne*

INSPECTOR



## **APPENDIX B: PLANS AND DOCUMENTS**

### **APPLICATION PLANS AND DOCUMENTS**

- Plan1 Location Plan HP/WIN/LP/01 dated 17 April 2013
- Plan2 Access Plan CBO-0149-006 dated 26 April 2013
- Plan3 Topographical Land Survey S13-199 dated March 2013
- Plan4 Illustrative Sketch Masterplan HP/WIN/SKMP01 dated 7 May 2012
- Plan5 Parameters Plan HP/WIN/PP01 Rev B dated 4 July 2014
- Plan6 Boundary Treatment Proposals Plan 1789/P07a dated September 2013
- Plan7 Proposed Highway Improvement: Swanlow Lane/Townfields Road Signals Plan CBO-0149-009 dated 13 November 2013
- DOC1 Supporting Planning Statement
- DOC2 Statement of Community Involvement
- DOC3 Transport Assessment
- DOC4 Technical Note: Review of Swanlow Lane/Townfields Road Signal Junction Improvement
- DOC5 Travel Plan Framework
- DOC6 Ecological Assessment (August 2013)
- DOC7 Addendum to Ecological Assessment dated 17 September 2013
- DOC8 Landscape and Visual Impact Assessment
- DOC9 Tree Quality Survey, Root Protection Areas and Development Implications
- DOC10 Air Quality Assessment
- DOC11 Noise Impact Assessment
- DOC12 Flood Risk and Surface Water Drainage Assessment
- DOC13 Archaeological Desk-Based Assessment
- DOC14 Geo-Environmental Ground Investigation
- DOC15 Agricultural Land Classification
- DOC16 Proposed Waste Management Strategy
- DOC17 Outline Utilities Strategy
- DOC18 Socio-Economic Impact Assessment
- DOC19 Design and Access Statement

### **OTHER DOCUMENTS SUBMITTED BEFORE THE INQUIRY**

#### **GENERAL DOCUMENTS**

- GEN1 Questionnaire
- GEN2 Notification about receipt of appeal (13 February 2014)
- GEN3 Letters of representation in response to appeal notification
- GEN4 Notification of inquiry arrangements (20 May 2014)
- SOCG Statement of Common Ground dated April 2014

#### **APPELLANT'S DOCUMENTS**

- APP1 Statement of Case
- APP2 Proof of Evidence of Gary Halman and Appendices 1 to 19
- APP3 Summary of Proof of Evidence

APP4 Supporting Evidence Background Documents A1-A21, Legal Opinion B1-B13, Appeal Decisions C1-26, Reporting and Decision D1-D2, Other Documents E1-E12

## **DOCUMENTS SUBMITTED AT THE INQUIRY**

### **GENERAL DOCUMENT**

ATT1 Attendance Lists for Days 1 and 2

### **APPELLANT'S DOCUMENTS**

- DE1 Appeal Decision Ref: APP/D0840/A/13/2209757 dated 11 April 2014 relating to Launceston, Cornwall as an addition to Mr Halman's Appendix 11
- DE2 Additional Draft Condition – Local Training and Employment
- DE3 Draft S106 obligation
- DE4 Opening Statement
- DE5 Examination into the CWAC Local Plan Part One: Strategic Policies: Matters and Issues identified by the Inspector
- DE6 Proposals Map for Broughton Astley Neighbourhood Plan
- DE7 Closing Submissions
- DE8 Costs Application
- DE9 Response to Council on costs application

### **LPA DOCUMENTS**

- CWAC1 Response to Pre-Inquiry Note including CIL Compliance Statement
- CWAC2 S106 obligation dated 11 June 2014
- CWAC3 Location Plan for Gladstone Street site, Winsford
- CWAC4 Location Plan for Swanlow Lane site, Winsford
- CWAC5 Response to costs application

### **LOCAL RESIDENTS' DOCUMENTS**

- LR1 Letter from Stephen O'Brien MP dated 10 June 2014
- LR2 Darnhall Fighting Fund Group Constitution
- LR3 SoS appeal decision ref: APP/F2415/A/12/2183653 dated 17 April 2014
- LR4 Statement of Robin Wood
- LR5 Statement of Richard Strachan including photographs of local shops
- LR6 Statement of Stephen Ireland
- LR7 Closing statement

## **APPENDIX C: Recommended Conditions**

### *Reserved Matters*

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") for each phase of the development shall be submitted to, and approved in writing by, the local planning authority before any development of that relevant phase begins and the development of each phase shall be carried out in accordance with the details approved under that phase.
2. Application for approval of the reserved matters for Phase 1 of the development as approved under condition 6 of this permission shall be made to the local planning authority before the expiration of three years from the date of this permission. Application(s) for the approval of reserved matters for each subsequent phase of development must be submitted to the local planning authority not later than the expiration of five years beginning with the date of this permission.
3. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
4. All reserved matters applications shall accord with principles set out in the following:
  - (i) Illustrative Sketch Masterplan HP/WIN/SKMP01 dated 7 May 2012
  - (ii) Parameters Plan HP/WIN/PP01 Rev B dated 4 July 2014
  - (iii) Boundary Treatment Proposals Plan 1789/P07a dated September 2013
  - (iv) Design and Access Statement dated July 2013.
5. No more than 184 dwellings shall be erected on the site.

### *Phasing*

6. A Phasing Plan for the whole development shall be submitted to, and approved in writing by, the local planning authority as part of the first application for reserved matters within the application site. Full details of the phasing of the construction of the development hereby approved, including highway and pedestrian routings, shall be submitted as part of the Phasing Plan. The development shall be carried out in accordance with the Phasing Plan approved under this condition.
7. The details for each phase of the development required under condition no 1 of this permission shall include:
  - (i) samples or the manufacturer's specification of the external materials to be used in the construction of the dwellings;
  - (ii) soft and hard landscaping works, including details of retained trees and hedges, areas to be landscaped including the numbers, size, locations and species of trees and shrubs to be planted; boundary treatments; hard

surfaces; and an implementation programme;

- (iii) existing levels and proposed finished floor (slab) and site (garden) levels;
- (iv) street furniture/structures including proposed substations or other utility structures;
- (v) external lighting;
- (vi) on-site open space/play space provision;
- (vii) parking for cars and cycles;
- (viii) roads, footways and cycleways; and,
- (xi) provision for waste and recycling in connection with the dwellings.

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

### *Open Space*

8. Prior to the commencement of development within each phase, details of the management and maintenance regime for the open space within that phase, including any landscaping and planting buffers, shall be submitted to, and approved in writing by, the local planning authority. Following implementation in accordance with condition 7, the open space shall be managed and maintained in accordance with the approved details.

### *Trees, Hedges and Landscaping*

9. Any trees or shrubs, forming part of the soft landscaping works, which die, become diseased or are damaged within the first five years after planting shall be replaced with a tree or shrub of the same species and size in the following planting season.
10. No trees or hedges shall be cut down, uprooted or destroyed nor shall any retained tree be topped or lopped unless the works are in accordance the Management Recommendations with Tree Quality Survey Report dated 9 July 2013 (Report No 1789\_R05b\_JB\_JTF) or have been approved in writing by the local planning authority under condition 7 of this permission. Any lopping or topping shall be carried out in accordance with "British Standard BS3998: 2010 Recommendations for Tree Work". If any retained tree or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and the specification of the replacement tree or hedge shall be approved in writing by the local planning authority.
11. No works, including ground preparation, shall commence on the site until all existing trees and hedges to be retained in accordance with condition 6 are fully safeguarded by protective fencing and ground protection in accordance with specifications to be submitted to, and approved in writing by, the local planning authority, following the provisions of "British Standard 5837: 2012 Trees in relation to design, demolition and construction". Such measures shall be retained for the duration of the construction works.

### *Biodiversity*

12. The development shall be implemented in accordance with the mitigation measures contained within the Ecological Assessment dated 13 August 2013

(Ref: 1789\_R03e\_SH\_JTF) and the Addendum to the Ecological Assessment dated 17 September 2013 (Ref: 1789\_R07b\_SH\_CGS\_JTF).

13. Prior to the commencement of development details of the off-site pond creation, including a methodology and timetable, shall be submitted to, and approved in writing by, the local planning authority. The works shall be carried out in accordance with approved details, methodology and timetable.
14. A habitat creation and management plan shall be submitted to, and approved in writing by, the local planning authority prior to the commencement of the development. The plan shall include:
  - (i) Description and evaluation of the features to be created and managed;
  - (ii) Ecological trends and constraints on site that may influence management;
  - (iii) Aims and objectives of management;
  - (iv) Appropriate management options for achieving aims and objectives;
  - (v) Prescriptions for management actions;
  - (vi) Preparation of a work schedule (including a project register, an annual work plan and the means by which the plan will be rolled forward annually);
  - (vii) Personnel responsible for implementation of the plan.
15. No on-site hedgerow/scrub/tree shall be removed between the 1 March and 31 August inclusive, unless the site is surveyed for breeding birds, and a scheme to protect breeding birds is submitted to, and approved in writing by, the local planning authority. The development shall thereafter only be carried out in accordance with the approved scheme.
16. Prior to the commencement of each phase of the development a scheme and timetable for the provision of bat and bird boxes, including the numbers and locations for that phase of development shall be submitted to, and approved in writing by, the local planning authority. The bat and bird boxes shall be installed in accordance with the approved scheme and timetable. Thereafter the bat and bird boxes shall be retained.

### *Construction Management*

17. No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - (i) details of access, including routing of construction traffic, and temporary pedestrian routes;
  - (ii) hours of construction and construction deliveries;
  - (iii) the parking of vehicles of site operatives and visitors;
  - (iv) loading and unloading of plant and materials;
  - (v) storage of plant and materials used in constructing the development;
  - (vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - (vii) wheel washing facilities;
  - (viii) measures to control the emission of dust and dirt during construction;and,
  - (ix) a scheme for recycling/disposing of waste resulting from construction

works.

### *Access and Highways*

18. The proposed vehicular access, footways and dropped crossing on Darnhall School Lane as detailed on the Proposed Access Plan Drawing Ref CBO-0149-006 dated 26 April 2013 shall be completed to binder-course level prior to the commencement of the construction of any dwellings on the site.
19. The improvement to the Swanlow Lane/Townfields Road junction as detailed on the Proposed Highway Improvements: Swanlow Lane/Townfields Road Signals Plan Drawing Ref CBO-0149-000 dated 13 November 2013 shall be completed before the occupation of the 50th dwelling on the site.
20. No dwelling shall be occupied until the part of the highway or footway which provides access to it has been constructed in accordance with the approved details up to binder-course level. The surface course shall then be completed within the approved timetable for the relevant phase as approved under condition 7.

### *Travel Plan*

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

### *Archaeological Work*

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

### *Drainage*

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

### *Affordable Housing*

24. Prior to the commencement of the development a scheme for the provision of affordable housing shall be submitted to, and approved in writing by, the local planning authority. The affordable housing shall be 30% of the total number of dwellings to be provided on site, be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

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

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

#### *Renewable Energy*

25. No development, hereby permitted, shall commence until a scheme to demonstrate how not less than 10% of the total energy consumption of the development shall be provided by means of renewable energy or that alternative measures shall achieve at least 10% less energy consumption than similar development constructed in accordance with the current Building Regulations has been submitted to, and approved in writing by, the local planning authority. The development shall be completed wholly in accordance with the approved details.

#### *Training and Employment*

26. The development hereby permitted shall not commence until details of a Training and Employment Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall aim to promote training and employment opportunities during the construction phase for local people. The development shall be carried out in accordance with the approved plan.

### **End of Schedule of Conditions**

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# Supplementary Report to the Secretary of State for Communities and Local Government

by Mark Dakeyne BA (Hons) MRTPI

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

Date: 17 November 2015

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Town and Country Planning Act 1990

Cheshire West and Chester Council

Appeal by

Darnhall Estate

Land off Darnhall School Lane, Winsford, Cheshire

Reopened inquiry held on 15, 16, 17 and 18 September 2015

Land off Darnhall School Lane, Winsford, Cheshire

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

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**File Ref: APP/A0665/A/14/2212671**

**Land off Darnhall School Lane, Winsford, Cheshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Darnhall Estate against the decision of Cheshire West and Chester Council.
- The application Ref 13/03127/OUT, dated 12 July 2013, was refused by notice dated 26 November 2013.
- The proposal is for residential development.

**Summary of Recommendation: That the appeal be allowed.**

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**Procedural Matters**

1. The original inquiry into this appeal opened on 10 June 2014 and closed on 11 June 2014. Following the inquiry, my report and recommendation on the appeal were submitted to the Secretary of State (SoS).
2. By letter dated 14 April 2015 the SoS decided to reopen the inquiry as he had received representations that material considerations had changed. The matters upon which the SoS wishes to be informed relate to (1) the extent to which the appeal proposal complies with the development plan; and (2) whether the proposal would amount to sustainable development having regard to national policy, including whether there is a demonstrable 5 year supply of deliverable housing sites.
3. The inquiry reopened on 15 September 2015 and closed on 18 September 2015, sitting for an additional four days. This supplementary report deals solely with the matters raised in relation to the reopened inquiry and should be read alongside my original report<sup>1</sup>. At the reopened inquiry an application for costs was made by Darnhall Estate against Cheshire West and Chester Council (CWAC). This application is subject to a separate report.
4. The appellant proposed a revision to the housing offer in advance of the reopened inquiry. The proposal is now that 40% of the dwellings would be affordable, that 10% of the housing would be self-build and that the remaining 50% of the housing, the 'unrestricted' open market element, would be developed by local house builders. The proposal considered at the original inquiry was for 30% affordable housing [OR37 & 149]. The amended offer was publicised by letter from HOW Planning dated 20 August 2015 sent to all those notified of the appeal.
5. A new Statement of Common Ground (SOCG)<sup>2</sup> dated 18 September 2015 was agreed between CWAC and the appellant. The SOCG consolidated a number of separate SOCG prepared in advance of, and during, the reopened inquiry into a single document. It updates the SOCG submitted in advance of the original inquiry [OR7]. SOCG2 again records that the appeal site is situated in a sustainable and accessible location and that the development would not result in any adverse impacts. It also agrees certain matters in relation to housing land supply which I will refer to later.

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<sup>1</sup> Paragraphs in the original report referred to in this supplementary report will be prefixed by *OR* followed by the original paragraph number e.g. [OR96]

<sup>2</sup> Document SOCG2

6. This supplementary report provides an update on the relevant planning policies and sets out the cases of the parties and my conclusions and recommendations in relation to the reopened inquiry. Lists of appearances, inquiry documents and recommended conditions for the reopened inquiry are appended.

### **Update on Planning Policies and Guidance**

7. The Council approved the CWAC Local Plan (Part One) Strategic Policies (CWACLP) for adoption in January 2015. This followed its examination in 2013/14 and the publication of the Examining Inspector's Report on 15 December 2014<sup>3</sup>. The Inspector agreed a minimum net housing requirement for the plan period of 22,000 new dwellings (Policy STRAT 2) or 1,100 dwellings per annum (dpa).
8. Policy STRAT 6 of the CWACLP deals with Winsford and indicates that at least 3,500 dwellings will be provided in the town. Other policies of the adopted plan relevant to the appeal are STRAT 1 (Sustainable Development), STRAT 9 (Green Belt and Countryside), STRAT 10 (Transport and Accessibility), SOC 1 (Delivering Affordable Housing), SOC 3 (Housing mix and type), SOC 6 (Open space, sport and recreation), ENV 2 (Landscape), ENV 4 (Biodiversity) and ENV 6 (Design and Sustainable Construction).
9. The Winsford Neighbourhood Plan (WNP) was made on 19 November 2014 following a referendum on 23 October 2014. This followed its examination in May 2014 and the report of the Examiner dated 30 July 2014<sup>4</sup>. The housing policies of the WNP, amongst other things, indicate that permission will be granted for residential development on 24 sites set out in a table (totalling some 3,362 homes) and on previously developed land (PDL) (Policies H1 and H2). The appeal site is not allocated by the WNP.
10. Some of the policies of the Vale Royal Borough Local Plan (VRBLP) remain saved following the adoption of the CWACLP. Of particular relevance to the appeal is Policy GS5 (Open Countryside) [OR17] which along with the VRBLP Proposals Map defines the extent of open countryside where Policy STRAT 9 of the CWACLP and Policy GS5 apply. Policies BE1, H2, T13, RT3, NE7 and NE9 are also still saved [OR17 & 18].
11. The development plan so far as it applies to the appeal site therefore now comprises the CWACLP, the WNP and the saved policies of the VRBLP.
12. The Council is also preparing a Local Plan (Part 2) which will include allocations, settlement boundaries and detailed policies. The Part 2 plan will eventually replace those parts of the VRBLP which are saved. However, to date no Local Plan (Part 2) documents have been published.
13. Supplementary planning guidance on affordable housing, developer contributions<sup>5</sup> and landscape character is still in place [OR21].
14. The National Planning Policy Framework (the Framework) remains as the main expression of the Government's policies on achieving sustainable development (OR22). The supporting Planning Practice Guidance (PPG) has been subject to some

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<sup>3</sup> See Document APP9 F2

<sup>4</sup> See Document APP9 F9

<sup>5</sup> SPD3 (incorrectly referred to as SPD2 at OR21)

revisions since the original inquiry. I will deal with those of relevance later in this report.

## **The Case for Darnhall Estate**

*The material points are<sup>6</sup>:*

### *Introduction*

15. This is a new form of development proposal. It is a genuine local development by a major local landowner with the emphasis on meeting local affordable housing needs (40%), restricting the market housing element to local small and medium size Cheshire house builders (50%) and providing the remainder as self-build housing on a mainstream housing site (10%). It is also a significant proposal for up to 184 new homes on the edge of one of the four main towns in CWAC.
16. No one doubts the needs to support the growth of Winsford, which is one of the four main towns in the amalgamated CWAC, and the only one located entirely away from Green Belt. Chester is entirely constrained by Green Belt. Northwich is encompassed by Green Belt on its north side, with brine issues in various locations. Ellesmere Port is also enveloped in Green Belt and land prices are challenging. Main town growth in CWAC will come at Winsford. Yet the WNP only plans for 3,500 houses out of the 22,000 proposed in the CWACLP.
17. For a town which needs and welcomes growth to regenerate and rejuvenate, recognising it lacks critical mass to make its town centre work effectively, it is unsurprising that the town centre has numerous vacant units.

### *Five Year Housing Land Supply*

#### *(i) General Points*

18. A major material consideration weighing in favour of the proposal is the shortfall in the 5 year supply of housing land. The Council has not had a 5 year supply of housing land for a long time. The Council lost a series of appeals in 2013 based on a fallacious belief that it could demonstrate a 5 year supply of housing land. That was of course before the CWACLP was adopted. The Objectively Assessed Need (OAN) is now settled as is the 1,100 a year net requirement in the adopted development plan at least for the time being.
19. But even after the CWACLP was adopted, the Council has still continued to lose appeals. The first appeal post adoption was at Nether Peover where the Council lost the argument over whether it could demonstrate a 5 year supply of housing land. Whilst the Council won an appeal for a site at Malpas, winning the 5 year supply case, the appellant only challenged the method adopted by the Council to the housing land supply. It did not question any of the 600 or so sites in the supply.
20. The Council has also lost two more appeals since the Nether Peover appeal at Fountain Lane and Hill Top Farm. Although both Inspectors found there to be a 5 year supply of housing land, it is critical to understand the circumstances in which that arose:

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<sup>6</sup> Based on the appellant's closing submissions DE26 but re-ordered to align with the main considerations and my conclusions

- The evidence on 5 year supply had been tested at inquiries earlier in the year
- When the decisions were due out, PINS asked the Council for copies of the HLM
- The HLM was submitted to PINS by the Council (as requested)
- The appellants were then given the options of having the inquiries re-opened or submitting full written comments within 10 days
- Both appellants went for the second option to avoid even more delay
- The Council had added new sites including many without planning permission
- It altered both lead-in time and built rates on a number of sites
- The appellants were given very limited time to respond and were not able to present any oral evidence
- There was no opportunity for any cross examination of any of the new information in the HLM.

21. The appellants were in no position to challenge the decisions over 5 year supply as they won the appeals. As is well known, with planning appeals, the winning party cannot challenge the decision<sup>7</sup>. Having won the appeal both appellants clearly have no reason to do so. But that does not mean that they are bound to accept the conclusion of the Inspectors or the procedure adopted in that case where PINS appears to invite reliance on the HLM of its own volition.
22. This appeal is very different. The appellant specifically requested, for about 6 months, that the appeal be re-opened to consider the Council's claim of a 5 year supply of housing land. Moreover, the appellant has now had more time to examine the new HLM and investigate the evidence (or lack of it) behind it.
23. Criticisms that the appellant has adopted new concerns about the Council's evidence on 5 year supply are hollow. The appellant is entitled to investigate and challenge whatever he wishes at whatever stage. Some parts of the Council's new 5 year supply position have changed, such as the heavy reliance placed on purpose built student accommodation, and different build-out rates and lead-in times. The complaint that concerns about the University accommodation and localised delivery rates have not been raised before get the Council nowhere. The Council has to meet the evidence and provide its own evidence to support its assertions.
24. Furthermore, the time and effort needed for any appellant to investigate 5 year supply in an amalgamated authority area (three times the size of a normal Borough or District Council area) is enormous. The Council have officers dedicated to this issue. The appellant must try and match that. Yet the appellant does not hold the data or know its provenance. A major challenge with CWAC is to understand the basis for things like lead-in times, when it is not set out as a result of a transparent and consensual process such as with a SHLAA Panel. So as more is learnt about what the Council has done, the appellant is better able to investigate and question. But as the Nether Peover decision makes clear, the appellant does not have to go to the nth degree to show a shortfall. In forthcoming cases, such as the re-opening of the SoS recovered Tattenhall appeal in November 2015, it may be possible to

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<sup>7</sup> See Document DE28

demonstrate an even greater shortfall. Next summer a new HLM will be published and the process starts all over again. But until the Council start to engage in a proper consultation exercise on the content of the HLM before it is published, this problem will keep emerging in the weeks and months after the HLM is published.

25. There has been an attempt at consultation on the methodology for lead-in times and build rates after the HLM was published. But that was peculiarly short, intended only to be during the holiday month of August and end on the Bank Holiday. The email to consultees was only sent out to one person instead of hundreds. Whilst that can be excused as a computer error, the choice of the consultation period, its shortness and its timing cannot. Someone selected those dates. That consultation exercise might have ended in time for responses to be used at this appeal. That is no longer the case. And in any event the final report supporting the assumptions HLM will not be published until 2016. That is all well and good but the horse that is the HLM has already bolted.
26. There is no need to rehearse the evidence on every category. Supply from a lot of the Ellesmere Port sites has already been rejected by Inspectors and appear in the 519 units cited below. No better measure is there than the Van Leer site to show just how unrealistic the Council are being about supply. It is to be noted that the Council has even relied on delivery on sites such as Cromwell Road in Ellesmere Port where the developer's agents themselves are warning that the timing of delivery is completely speculative.
27. The appellant was criticised for not increasing the yield or supply from any site. That seems rather implausible in circumstances where the Council has made various assumptions which the appellant considers to be over optimistic. But in any event the appellant has accepted nearly 7,000 units will come forward in the next 5 years. Given the past track record of the Council, it is hard to see how he can be accused of failing to offer the Council some generosity towards its supply. Also it would not say much of the Council's evidence if they look to the appellant for the answer as to where they might increase their supply yet further above their figure of 10,139 in the next 5 years.
28. On the 3<sup>rd</sup> day of the inquiry the appellant put in a note highlighting the sites which the Hill Top Inspector had removed from the supply<sup>8</sup>. Strictly speaking new information after the base date should be discarded. Moreover, the appellant made clear it would not alter his view on these sites. That removes another 500 from the Council's supply.
29. The Council's recent delivery record has been to average 933 dpa and the longer term trend has been very close to that at 927 dpa. On the Council's evidence that is now expected to grow to 2,028 dpa based on 10,139 or 2,030 dpa based on 10,151. The Council is claiming that it will deliver in the next 5 years almost as many as they delivered in the previous 12. This is said to be due entirely to a different planning regime. But even with that explanation for the past delivery rate, the simple fact is the Council has never achieved anything like 2,000 new homes a year. It is a giant leap of faith. And all the more so when it did not achieve that level during the unsustainable credit fuelled economic bubble of the mid 2000's managing at its highest 1,336 in 2005/6. The 1,571 last year included over 500 affordable units, the

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<sup>8</sup> Document DE21

majority of which were funded by HCA funding, which has been halved for the next round of spending.

30. Past performance is not a measure in Footnote 11 of the Framework. But it is a good way of providing a reality check to the assertions being made by the Council. Past performance was seen as the best measure by the Inspector in a case in Brixham, Devon in 2011<sup>9</sup> and relied upon by an Inspector in a recent post Framework appeal decision in Offenham, Worcestershire<sup>10</sup>.
31. The appellant's supply figure is 6,941 in the next 5 years which is 1,388 per year. That aligns with the very top end of what the Council achieved in the height of the boom, and may not be a figure it can achieve consistently in the future when the high point of the HCA funding falls away.
32. Taking a view down the middle is rejected by both sides. Footnote 11 does not advocate that. It is wholly inappropriate. But even if one wishes to get a feel for the position of both parties, it is not that the appellant is just 662 below the 5 year supply target figure and the Council is about 2,500 above it (2,700 on the approach of excluding the buffer from the shortfall). It is that the appellant has accepted nearly 7,000 of the units coming forward in the next 5 years from the Council's supply (6,941). This is despite the Council having a track record of delivering only about 930 units a year over the long term and the short term. It is about the robustness of the evidence supporting the sites in dispute. Either party would have ground to complain if that is not followed through. The difficulty in a SoS case is that the Inspector cannot just take such a view and evade the legal challenge by granting permission to the party who might feel aggrieved by the decision on 5 year supply. It is respectfully submitted that the SoS needs to be given a realistic view about the actual supply which will come forward in the next 5 years for one main reason - the SoS may make his decision either way, in which case he needs to know clearly whether or not there is a 5 year supply based on robust evidence.
33. Lest there be any doubt, the appellant confirms that a shortfall of just ½ a year (or about 500 units) is both significant and serious. That was the view of the Inspector in the appeal into housing on land at Brereton Heath, Cheshire<sup>11</sup>. A shortfall of much less was also considered serious in the Nether Peover decision. Any shortfall is a problem.

*(ii) The Requirement*

34. The Amber Valley LP Inspector letter<sup>12</sup> is very clear about where the evidence lies in respect of this issue referring to the Droitwich Spa SoS decisions<sup>13</sup> as the model for adding the buffer to the sum of the 5 year requirement and the shortfall. It is respectfully submitted that it would assist greatly if the SoS would confirm the position which is adopted by many inspectors for reasons of logic which some explain very clearly. This gives rise to the 5 year target figure of 7,603 and hence a shortfall of 662.

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<sup>9</sup> Document APP8 Appendix EP4

<sup>10</sup> Document APP9 F41

<sup>11</sup> Document APP9 F30

<sup>12</sup> Document DE17

<sup>13</sup> Document APP9 F24

*(iii) Demolitions (191)*

35. This is a well trodden path. The Council's housing requirement is a net figure based on a past trend which accounts for demolitions. The Council wishes to ignore that trend. It only takes account of foreseeable demolitions, despite the past trend. The Council cannot simply ignore a past trend because it is inconvenient to them. What it is entitled to do is revise the 50 a year if the 5 year trend changes. That would be a legitimate evidence based approach to the argument that is being made. But to change from a past trend basis (which the CWACLP Examining Inspector wanted addressed in the plan) and move to a future prediction is wholly unreasonable. The simple fact is that whilst the Council can see 59 demolitions in its future supply now in 2015, there is no basis for saying it will have remained that number by March 2020. Demolitions for clearance, CPO and the creation of C2 care homes on sites which were C3 may all occur in the next 5 years.

*(iv) Student Accommodation (511)*

36. The concern about the Council's reliance on this as a source of supply is obvious. The Council presented evidence to the LP Inspector suggesting that student accommodation should form part of the housing requirement. But the evidence relied upon at the time was explicit in suggesting there would be no growth in student numbers<sup>14</sup>. But that is plainly not the case. The latest evidence from the University of Chester shows that in one year 2012/13 – 2013/14 student numbers at the Chester Campus rose by 561. And that the predicted increase from 2013/14 to 2016/17 is 2,429<sup>15</sup>. That is a number which would swallow up all the new student accommodation that is being provided in Chester. To rely upon that as a source of supply to meet the housing need of CWAC would be completely inappropriate and illogical.
37. The University might hope that all of its students will be housed in this new accommodation. But the demand for purpose built student accommodation is estimated to be 3,754 beds in 2016/17. Again the numbers exceed the new accommodation being provided.
38. The fact that the Council did not make this clear is surprising having been aware of the Inspector's conclusions in the appeal case from earlier this year relating to land adjacent to Telford's Warehouse, Chester<sup>16</sup>. Indeed, the Inspector records the very argument which the Council now seeks to rely upon - that new student accommodation would free up homes in the Garden Quarter and other parts of Chester. The Inspector rejected that argument.
39. That it would be unsafe to rely on student accommodation forming part of the supply when there is evidence in the growth of student numbers was also the conclusion of another Inspector in the Pinhoe appeal near Exeter<sup>17</sup>. The Inspector's conclusion was upheld in the High Court when unsuccessfully challenged by the LPA. Given the evidence in this case, it would be very odd if the conclusion was different. Again what matters is the evidence.

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<sup>14</sup> Document APP8 Appendix EP12C (page 128 para 23)

<sup>15</sup> Document APP8 Appendix EP12N (page 334)

<sup>16</sup> Document APP9 F50

<sup>17</sup> Document APP9 F49

40. To be clear the appellant is not saying that as a matter of principle student accommodation cannot contribute to the supply side of future housing delivery. What has been made clear is that it needs to be supported by evidence showing for amongst other things that new student accommodation in Chester would release housing onto the market.
41. The Hill Top Farm Inspector clearly did not engage with this argument. He seems largely to have just referred to the PPG. But that is explicit about the fact that it can be relied upon based on the accommodation it releases in the housing market. This is not just about the requirement. Crucially this is in the chapter in the PPG on land availability (i.e. supply). It is not the chapter on the housing requirement or calculating OAN.
42. To be clear the ability to safely rely on new student accommodation as part of the 5 year supply is more complicated than just the issue of growth at the University which was not known about at the time of the CWACLP examination. There are other important factors like trying to identify where students who take up these units have come from. Some may be already living in their parent's house either in Chester or in a wider area beyond. If they move into any such unit of accommodation then they will not be freeing up any new houses. Moreover, if 5 or 6 students live in a house in the Garden Quarter it takes 5 or 6 bed sit units to release just one house. Even for that to happen one would need evidence that such houses were being freed up because of new student accommodation. The Inspector considering the student accommodation scheme at Telford's Warehouse was sceptical that students would wish to do that. The University of Chester's own evidence shows the majority of 2<sup>nd</sup> and 3<sup>rd</sup> year students do not want to live in purpose built accommodation. The desire for students to live in shared accommodation after their first year is a common experience.
43. If in a few years time the Council can show that, despite the increase in student numbers and despite the students' own appetites for the freedom of living in houses together, there are houses which were in HMO occupation by students which are now being used as general housing then the Council will be able to prove the point. At the moment it is far too speculative a proposition, regardless of whether students in non-communal establishments form part of the Council's OAN housing requirement.
44. The evidence sent to the Leader of the Council from a local estate agent is speculative<sup>18</sup>. But more importantly the claims made in the recent letter are dramatically undermined by the research showing only 11 bedrooms in houses available<sup>19</sup>. This is just one agent. But the claim that there are 150 rooms left is not evident from the very small numbers that this agent has available and there is nothing to prove the 150 mentioned in the letter. It is noted that the author of the letter is working closely with the Council on certain projects. That being the case one has to wonder why the 150 is not evidenced in any way. The Council is aware of the need for evidence to support such claims. But it would need to be consistent and convincing evidence. The appellant's evidence immediately casts doubt on what is being said. The students were not even back. Whilst many may have sorted out their accommodation needs a long time ago, that assertion cannot be made in respect of everyone.

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<sup>18</sup> Document CWAC7 Appendix 8

<sup>19</sup> Document DE20

45. The neighbouring authority of Cheshire East went down this path, getting very excited about the fact that the PPG allowed it to rely on student accommodation on the supply side. But after evidence at several inquiries in the summer of 2014, the Council withdrew the argument.

*(v) Lead-in Times and Delivery Rates (1,083)*

46. The lead-in times and delivery rates on all sites are of course pivotal to the question of how much delivery will be achieved within the next 5 years. Even a minor adjustment to either lead-in times or delivery rates can have a huge impact across so many sites. Yet, without any obvious or open consultation, the Council has decided to increase its delivery rates and lead-in times on various sites. This is said to be a product of speaking to developers. But as far as robust evidence is concerned, the documents that are available:

- do not demonstrate how the 36 dpa figure delivery rate has been calculated, i.e. which sites it is based upon and over which periods;
- do not explain what account has been taken of local variations in delivery rates (although it would appear none);
- do not explain what account has been taken of the difference in delivery rates on greenfield and PDL sites (which is a major issue in the Borough);
- do not explain what account has been taken of the level of competition anticipated or exhibited in the sites relied upon to arrive at the 36 dpa, including the proximity of sites to one another;
- These are all issues where the development industry can greatly assist the Council in its task of trying to identify robust evidence to support its assumptions. Yet because that consultation has not happened before the HLM was published, the basis of the Council's figures is not known.

47. The appellant has done his best to try and identify the sources of information, including meeting with the Council. It seems that the Council may have relied on two sites controlled by Redrow to arrive at the 36 dpa across the whole Borough. But that is not explained in the documentation and the extent to which other house builders have been consulted and had their views taken into account is unknown.

48. Faced with this considerable difficulty, in circumstances where the Council has now unilaterally decided to depart from the previous agreed rates in the 2013 SHLAA, the appellant has been forced to carry out his own investigations. The appellant has identified, for example, an annual delivery rate of 25 dpa at Winsford, which actually aligns with the Council's previous position. The appellant is criticised for the size of the data set. But in making that criticism, it is worth bearing in mind that the appellant has been entirely transparent about the source of the information and why it is thought to be helpful. The Council by contrast offers nothing to support the 36 dpa, let alone make any attempt to differentiate between the rates achieved in CWAC which exhibits a huge variation between areas of high affluence and very high house prices (around Chester) and areas of social deprivation and a housing market which appears to only operate with the benefit of public subsidy (Ellesmere Port).

49. The Council has spoken to the individual sites' owners/ developers or their agents. The need for caution here is obvious. The Inspector in the Ottery St Mary and Engine Common decisions<sup>20</sup> explains the problem in succinct terms. The whole problem is avoided by having a SHLAA or equivalent panel, and for that group to come to an agreed position where no developer is then putting forward information on delivery rates which has the potential to stymie others. The HLM was issued without reference to any such group, let alone achieving a mutually agreeable set of lead-in times and delivery rates.
50. In terms of clear and transparent evidence, the appellant's is by far the superior. Preferring the appellant's evidence on this issue alone reduces the Council's supply by over 1,000 dwellings. (1,083).

*(vi) Sites with planning permission but which are not available (262)*

51. The evidence about sites that are not available has been presented many times. The number deducted is 262. Three sites were accepted by the Hill Top Farm Inspector: S Cooper & Sons (72 units); Research Labs (20 units); and Malvern House (10 units). All of these sites have occupiers with no relocation plans. That means they are not available now to form part of the deliverable supply. It is a complete distortion of the language to imagine such sites are available. If the Council know something which the appellant does not, that may be because they are not at liberty to disclose it. But in the forum of a public inquiry, it would be inappropriate to rely on an assumption that Council know more than the appellant to reject the appellant's evidence.
52. If relocation does take place, then that is the time at which it can be recorded in the next HLM. The appellant was even willing to consider sites where there was a grant of planning permission for a relocation site, even before the relocation takes place, despite the fact it may not then take place for many years. But again, unless there is clear evidence of such a relocation taking place, or clear evidence of the business closing down, then to assume that the sites of operating businesses are available now for housing is absurd.
53. The Premier House site in Chester was rejected by the Hill Top Farm Inspector<sup>21</sup>. But it is important to note that the Council also lost the argument at the Nether Peover appeal<sup>22</sup>. The new evidence submitted in the very late rebuttal does not overcome the problem which the Council faced in the previous two appeal decisions. That for all claims (for 6 months now) of an intention to change the phasing programme, there has been no change in the legal position, which is now surprising. Relying on intentions and agents' claims of when things will happen is rather less reliable than tangible empirical evidence, past observed trends and legal documents.

*(vii) Sites without planning permission (698)*

54. It is accepted by both parties that following *Wain Homes v SSCLG and Others* [2013] EWHC 597 (Admin) it is clear that, when a housing site has planning permission granted by the LPA, the onus is on the appellant to prove it is not deliverable. That onus swaps for sites without planning permission, where it is for the Council to show

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<sup>20</sup> Document APP9 F34 & F35

<sup>21</sup> Document CWAC7 Appendix R1 (para 26)

<sup>22</sup> Document APP9 F39 (para 22)

why a site should be included – there is no dispute about this. The grant of permission is clearly pivotal to a test which requires sites to be available now. The ‘available now’ test may seem odd, but that is the policy. The PPG suggests sites without permission can meet the test. It is a moot point whether the guidance is consistent with the policy and a matter which is heading to the High Court<sup>23</sup>. But for now, given what it does say in the PPG, the appellant does not automatically exclude sites without permission. Instead it is for the Council to provide evidence to support its case. It is not just any evidence though which will meet the requirements of the PPG. The PPG requires the evidence to be robust. Moreover, the Framework requires that there is evidence that not only is the site available (problematic if it has no permission), but also achievable with a realistic prospect of housing being delivered on the site within 5 years and also it must be viable.

55. For example the Greyhound Stadium in Ellesmere Port, a PDL site, has no developer interest. The only application for the site was made in 2005 but then withdrawn. The Council believes the site will deliver in just 6 months time. There is absolutely no evidential basis for that conclusion, let alone robust evidence.
56. The demand for robust evidence is important here. The Council wants to rely on sites such as this to stop other sites such as the appeal site coming forward and being built on for housing. The 5 year supply requirement is a minimum level and so, as the two most recent Inspectors’ decisions in CWAC make clear, appeals for housing should still be allowed. But if the Council are successful in stopping new sites coming forward like this, it will have thwarted the supply of new houses. The evidence to justify sites should be clear and robust. It should not be based on the hope that PDL sites will come forward when, as here, that has not happened for a decade.
57. The Council suggests that sites in its ownership are different and it knows when they will come forward, like Handley Hill Primary School in Winsford, Castleleigh Centre, Northwich and the car park off Church Street, Winsford. But the delivery of these sites has been promised for years. Indeed, they featured in the 2010 SHLAA issued over 5 years ago. The sites have not been disposed of and Council witnesses have previously accepted that the sites are being held back by the Council from disposal. If a site has been promised 5 years ago and has still not been delivered with no evidence of even an intended disposal by the owner, then there is no evidence to support the deliverability of the site let alone whether it is available now.
58. It should be clear by this stage which way the evidence leans in this case. The Council’s assumptions on delivery are woefully inappropriate. It is not that there is any robust evidence in respect of the three sites above. It is that there is no evidence at all about being available now. This is a feature of much of the Council’s evidence. What this inquiry has not been troubled with is all the thousands of units on hundreds of sites which the appellant does not question. But it is important not to lose sight of how much of the Council’s supply is accepted.

*(viii) Strategic Sites (266)*

59. Only 58 units have been deducted in this category for Rilshaw Lane to reflect the delay created by the refusal of permission by the Council. The Council cannot sensibly say that such action will have no effect on the timetable. The Council

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<sup>23</sup> Document DE16

decided not to defend the reasons for refusal at the appeal. But that was after it had created the delay from the date of the refusal in November 2014 to the public inquiry heard in June 2015 (with a decision still pending in September). That is very nearly a year delay. A resubmission was made and a resolution granted but the obligation under Section 106 of the Planning Act (S106) for that scheme has still not been signed so the delay is the same.

60. A further 208 units are deducted because of the similar problems arising from a refusal of a site which has also come forward in a way which the Council perceive to be unacceptable piecemeal development contrary to the development plan at Wrexham Road, Chester. There the deduction is for 208 units, because unlike at Rilshaw Lane there is no evidence that the developers are willing to progress to appeal or a second application.

*(ix) Conclusions on housing land supply*

61. Of course a 5 year supply shortfall is still identified even if the Inspector does not accept all of the appellant's evidence on the matter. Relying on post-base date evidence the Council will no doubt point to Leaf Lane Primary (22) and the Former British Legion (44), which both now have permission. The Cheshire Warehousing Site (64) was one which the Hill Top Farm Inspector thought was likely to deliver. The same applies to a limited amount of delivery at Wrexham Road.

62. It may seem to some decision makers that one needs to be generous to the Council as 5 year supply is not an exact science and it now has a plan in place. But the Council had been granting planning permission in large numbers well before the plan was adopted. What the Council, and some decision makers fail to appreciate, is that it is not being kind at all. It is actually part of the problem for the housing crisis in this country, that decision makers have been giving Councils the benefit of the doubt for a very long time. And that is partly what is fuelling the nationwide failure to deliver. Of course when non-delivery takes place, it is the development industry that is blamed with claims of land banking etc. But for whatever the reason, decision makers need to be realistic about what can be delivered rather than eternally optimistic. For such an approach is anything but kind for those who year after year are unable to get on the property ladder, while house prices soar to the widespread enjoyment of homeowners across the country. As the Governor of the Bank of England made clear it is a chronic lack of supply. That is the problem in the UK housing market.

63. The appellant's position is there is no 5 year supply of housing land. That being the case the presumption in favour of sustainable development is engaged and the Council accepts that the housing policies of the CWACLP and the counterpart policies such as STRAT 9 and GS5 are out of date. All the housing policies of the WNP are also out of date, although for the reasons outlined, the appellant does not believe there is any conflict with the WNP in any event.

64. The SoS will be well aware of his own concession about the status of paragraph 198 of the Framework. It is not a trump card. That would be to ignore the legislation<sup>24</sup>.

65. If the Council proves there is a 5 year supply, then the position is that the presumption in favour of sustainable development does not apply. The normal

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<sup>24</sup> See Document APP9 F15 (para 24)

balancing exercise required under Section 38(6) takes place. But it should be noted that the SoS decision at Melton, East Riding confirms that, in accordance with paragraph 49 of the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development<sup>25</sup>.

*The development plan*

*(i) VRBLP and CWACLP*

66. The starting point for the determination of this appeal is the development plan. It will be recalled that at the original inquiry the Council did not object to the proposal. Neither officers nor members could point to any conflict with any policy of the development plan. There were plenty of saved environmental policies to choose from even then. In particular the Council did not believe there was a conflict with Policy GS5 of the VRBLP. That policy has been saved and has been incorporated into the CWACLP but, as was explained, it is merely as a stop gap provision because the CWACLP does not define up-to-date settlement boundaries. For the same reasons the Council itself gave in 2014, the policy is not to be given full weight.
67. There is a great deal of conformity between the proposal and the recently adopted CWACLP. STRAT 6 is the specific policy for this town and it supports new housing of 'at least 3,500' dwellings. The Council is quite wrong to suggest that this policy has no relevance with a site outside the settlement boundary. All the new allocations are outside the GS5 boundary which is the only one that exists for the time being. Moreover, STRAT 6 must be read alongside STRAT 2 which expressly seeks to locate the majority of new development 'within or on the edge' of the main towns'. This proposal is therefore entirely in line with the development strategy for the Borough. STRAT 2 also sets the housing requirement as 'at least' 22,000 making all the arguments from the Council and the WNP Steering Group very hollow when they suggest Winsford has its quota now for the period to 2030.
68. It is accepted there is a conflict with STRAT 9 of the CWACLP and to a certain extent STRAT 1 because there is a loss of a greenfield site. But it is necessary to look at the extent of the harm. That is very simple in this case. The Council is not alleging any visual and landscape harm or objections on ecological and heritage impacts or flooding and drainage matters. Therefore the harm to this piece of countryside is not tangible, merely policy harm. Yet the Framework is very different from previous policy. As is made clear in the Core Principles, whilst the Green Belt is to be protected, the countryside is to be recognised. There is quite a difference between protecting something and recognising it. The unquestioned protection of the countryside as stated in previous national policy is no longer applicable. Appeal decisions such as Hill Top Farm and Fountain Lane illustrate that point perfectly.
69. The Council accepts that the proposal is in a sustainable location, with no loss of the best and most versatile agricultural land and no identified harm to the natural or historic environment and as such the proposal accords with many other of the relevant considerations listed in STRAT 1. In fact very unusually, just as it was last year, there is no harm identified by the Council in respect of any site specific issues. It makes a conclusion that this is sustainable development very simple.

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<sup>25</sup> Document DE12 (para 10)

70. The Council wishes to emphasize that you should look for the dominant policy in a development plan. If that is the case then surely the dominant policy is STRAT 2 which seeks to locate the uncapped housing in the Borough within and on the edge of main towns such as Winsford. But in truth, one has to look at the development plan as a whole and overall this proposal is in conformity with the CWACLP to a very significant degree precisely because new housing is directed to Winsford, other main towns especially Chester are constrained by Green Belt, and the housing requirement is not a ceiling.

(ii) WNP

71. To ensure that the WNP is in line with the Framework, it does not seek to introduce a maximum housing requirement figure. Moreover, the WNP Examiner was very clear that it should not do so. His recommendations on the wording of Policy H1 make clear that the housing requirement was only an approximate figure: *'Implementing those two recommendations will, incidentally, help to make it plain that the Plan is not imposing a cap or limit on the amount of development. Thus the Plan will not be not [sic] saying that the two categories of development referred to in Policy H1 are the only ones that will be permitted<sup>26</sup>.'*

72. It was for this very reason that the appellant did not challenge the WNP. Indeed many Neighbourhood Plans (NPs) would avoid the risk of challenge if they were worded in this way. It is the only sensible way to ensure that the WNP is consistent with the recently adopted CWACLP which sets the housing requirement as a minimum for both the Borough as a whole and for each of the main towns. This approach would also be consistent with recent appeal decisions in the Borough which have been permitted despite the Council being able to show a 5 year housing land supply. More importantly the SoS position has been made clear in the Brickyard Lane, Melton decision<sup>27</sup> in which the 5 year supply was not seen as a ceiling with the real emphasis being on whether a proposal amounts to sustainable development.

73. The Council and objectors have sought to make contrived arguments that the proposal is in clear conflict with the WNP. It is not. Policy H1 lists the sites which are proposed for new housing development but no part of the policy is expressed to suggest it results in a cap or embargo on other sites coming forward. Policy H2 is again no impediment to the development of the site. It is a policy encouraging PDL. But that has to be read in the context of the fact there is very little PDL in the new/partially expanded town of Winsford and nearly all the sites proposed for development are on greenfield land around the edge of the town.

74. The Council tried to rely on the reasoned explanation for the policy to say that it prevented non-allocated greenfield sites from coming forward. It does no such thing. It highlights the relationship between PDL and greenfield sites and simply makes clear PDL sites should be developed. The approach to both of these policies proffered by the Council would require one to ignore completely the Examiner's very clear conclusion on whether the WNP could be used to stop other sites coming forward in this main town of the Borough.

75. The WNP is no impediment to the development of the site. The vision and themes support the site, not hinder it. That vision is clear about the need for more housing

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<sup>26</sup> Document APP9 F9 Paras 3.12, 3.13 and 3.18

<sup>27</sup> Document DE12 (para 10 in particular)

to support the town and especially the town centre. The site is located on the side of town where there is little incentive to travel to nearby Northwich with its superior town centre offer. The housing needs to provide a sustainable and varied community which it will do with its 50% market housing built by local builders; 20% share ownership; 20% social rented; and 10% self build or custom built properties.

76. Even if there was any conflict with the WNP the degree of conflict could only ever be absolutely minimal. The WNP seeks to allocate sites for over 3,500 new homes. Yet the amount of the development within the WNP area is just 50 dwellings. That is because most of the site is outside the WNP. The suggestion that this proposal will make people think it was not worth making the WNP completely overstates the case to the point where it lacks credibility. Winsford is a large town and a focus for growth. Any conflict with the WNP could only be vanishingly small. It amounts to an additional 1/70<sup>th</sup> of an increase over the existing WNP allocations.
77. If Ministers are going to refuse any scheme even on the edge of main towns, where there are no landscape, visual, ecological objections etc from the Council, simply to promote the idea of NPs being an embargo on development, then that is to ignore the legislation and the fact that almost every appeal allowed in England relates to a proposal which is contrary to a development plan. There is a need to look at the merits of a proposal despite the development plan. Identifying harm is all the more difficult when the relevant plans encourage development, impose no ceiling on the supply of housing, and the proposal comes with a raft of other benefits and measures many of which Ministers are actively seeking to encourage.
78. That is not to say that anything goes around Winsford. The Council is perfectly able to object to any new proposal on the basis of inappropriate scale, landscape impact, visual impact or harm to heritage or the character of the settlement. But that is not this case. And that is why those who see NPs as an embargo on development not identified in the plan misunderstand Section 38(6).
79. What the Vision is very clear about is that 'the growing population will support a vibrant town centre, good local facilities, local schools and a diverse leisure town and cultural offer.' To do that Winsford needs real growth in the population. Using the WNP as a Nimby's charter, to prevent development near existing housing is the antithesis of the aims and themes of the WNP.

## *Benefits*

### *(i) The Local Approach*

80. The scheme will deliver:
- Up to 92 new homes built only by small and medium sized building firms who are local to Cheshire, that is firms restricted to those building no more than 500 units in any one year anywhere in the country and who have a registered office in Cheshire. Local firms have already written letters expressing an interest in building homes on the site. This requirement is agreed as a condition.
  - Up to 74 affordable housing units (40%) in the tenure mix which the Council has requested, 50% intermediate housing and 50% social rented. That is provision 10% higher than the percentage which the Council seeks in a Borough where a significant amount of the new housing sites in Ellesmere Port are failing to provide any affordable housing at all. Yet the Council's affordable housing target is only 330 a year in the CWACLP, despite the fact the Council's latest SHMA

identifies the annual need in the Borough as being 714 a year because of a huge accumulated backlog of 4,000 affordable homes. It will benefit local people. This 40% affordable housing provision is agreed as a condition.

- 18 fully serviced self-build plots to be provided with services to the boundary of the site all of which is being provided by the appellant. The Darnhall Estate has been involved in the town for a long time, as evidenced by local facilities such as the Verdin school. The Estate is willing to put in all the infrastructure (roads and services) to the new build plots under the terms of the self-build scheme. The provision will be in line with the Policy SOC3 of the CWACLP. The appellant is unaware of any other development proposal in CWAC where this is being delivered despite the fact that the Council's own SMHA identified 3,858 people in CWAC who would consider self-build plots. The 10% self-build plots are secured by an agreed condition. The concern expressed about the price of the plots is something expressly addressed in the scheme which needs to be agreed by the Council.
- 1.24 hectares (ha) of new public open space for the benefit of all in the area.
- Local Procurement Requirement - a condition which requires the developers to ensure that 20% of the total cost of the development is procured from businesses in CWAC.

81. The nature of the development is precisely in line with what Government Ministers have been seeking to encourage. It would be extraordinary if, after the election, this local proposal was refused by the SoS.

82. If Ministers look at nothing else in terms of the documentation in this inquiry, they are invited to consider the 'Local Approach' document which supports the proposal<sup>28</sup>, including letters of support for the self-build plots and from local building and construction firms.

*(ii) Affordable Housing*

83. A major part of this proposal is the delivery of 40% affordable housing. That is above the policy level required. As such, in contrast to some locations in the Borough, this site is able to not only support the full policy expectation but to exceed it by 10% or up to an additional 18 dwellings.

84. There is a housing crisis in this country in the words of the Planning Minister of the time in 2013. He also made clear that the planning system bears a tremendous responsibility for creating that crisis and that this state of affairs is causing misery to millions of our fellow citizens. The extent of the crisis is revealed in the speeches and reports on the housing crisis set out in the appellant's documents. The content of these were unopposed by the Council. Each one warrants careful consideration:

- Transcript from the Queen's Speech – 4 June 2014
- Prime Minister, David Cameron (Interview on BBC News) 20 May 2014
- George Osborne (Speech at Mansion House) – 12 June 2014
- Former Business Secretary Vince Cable (Interview) – 20 May 2014

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<sup>28</sup> Documents APP6 appendix 5, DE14 and DE15

- Mark Carney (Interview on Channel 4 News) – 18 May 2014
- Mark Carney (Speech at Mansion House) – 12 June 2014
- Sir John Cunliffe (Deputy Governor Speech) – 1 May 2014
- OECD Report (extracts from the Guardian) - 6 May 2014
- European Commission (Press Release) – 2 June 2014
- International Monetary Fund (IMF) (Press Release) – 6 June 2014
- Homes For Britain letter (Joint letter to The Times) - 7 February 2015

85. There is a wealth of evidence from figures at the highest levels of Government, the Bank of England and internationally with the European Commission and the IMF which demonstrate that there is a clear and pressing requirement to build more homes to meet the significant level of unmet need, particularly for homes that are affordable. Evidence suggests that failure to do so will present a risk to the future economic stability of the United Kingdom.
86. As noted above throughout May and June 2014 there was a seemingly endless stream of speeches, interviews and reports demonstrating just how severe the housing crisis is within the UK and how important it is to take action to increase housing supply. The first signs of recent growing concern by the Bank of England were in a speech on 1 May 2014 by Sir Jon Cunliffe, Deputy Governor of Financial Stability. He highlighted *'the history of our housing market over the past 25 years as being one in which the supply of housing in the type and place that people want has not kept up with demand'*.
87. On 6 May 2014, the OECD called for action to address the fact that in the UK *'house prices...significantly exceed long term averages relative to rents and households incomes'*.
88. On 18 May 2014, Mark Carney, Governor of the Bank of England, was interviewed by Sky News about the housing crisis in the UK. Mr. Carney warned that the British housing market has *'deep, deep structural problems'* and warned that rising house prices represented the biggest current risk to the economy. Mr. Carney said that *'the issue around the housing market in the UK...is there are not sufficient (numbers of) houses (being) built'*.
89. Asked to respond to Mr. Carney's comments in a separate Sky interview, the Prime Minister agreed that Mr. Carney *'is absolutely right when he says fundamentally we need to build more houses in Britain'*.
90. On 20 May 2014, Mr. Cameron was asked to similarly respond on BBC Radio 4 in which he confirmed his agreement with Mr. Carney that the housing market was the biggest risk to financial stability. He further commented that *'as a government we have radically changed the planning system because we know that more houses have to be built....I want to see more people buy and own their homes'*. The same news item noted that the Office for National Statistics had reported that UK prices rose by 8% in the year to the end of March 2014.
91. Similarly asked to respond to Mr. Carney's comments on the 20 May 2014, the Guardian reported that the then Business Secretary, Vince Cable, told ITV News that Britain needs to build 300,000 houses a year, including some on green belt land, or

risk pushing up house price inflation to dangerous levels. Dr Cable commented that *'what's happening is worrying for many families, particularly low income and middle income families who can no longer get into the housing market.... In the short run the problem is that housing inflation is getting to dangerous levels and building new houses is necessary. Very large numbers of middle income families and indeed quite prosperous families can no longer get into the housing market'*.

92. On 2 June 2014 the European Commission adopted a series of economic policy recommendations based upon detailed analysis of each country's situation and provided guidance on how to boost growth, increase competitiveness and create jobs in 2014-2015. The Paper for the UK specifies that *'the risks in the housing sector relate to a continuing structural under-supply of housing; the relatively slow response of supply to increases in demand results in high house prices, and in household indebtedness'*.
93. On 4 June 2014 the Government used the Queen's Speech to reiterate its pledge to boost housing supply with Her Majesty the Queen announcing that *'my Government will increase housing supply and homeownership...'*. A spokesman for DCLG subsequently added that *'everyone needs the security and stability of a decent, affordable home, and more people who aspire to own their own home should have the opportunity to do so'*.
94. The IMF added its weight on 6 June 2014 when it advocated that *'imbalances in the housing market should be addressed through supply-side remedies' and that "fundamentally, house prices are rising because demand outstrips supply'*. The IMF emphasises that *'the UK has a secular problem with inadequate housing supply'*.
95. On 12 June 2014 the Chancellor of the Exchequer George Osborne delivered his annual Mansion House speech. Key quotes from Mr. Osborne's speech include:
  - As well as being the biggest investment of a lifetime *'a home is also a place to live and build our lives – and we want all families to be able to afford security, comfort and peace of mind. That means homes have to be affordable – whether you are renting or buying. The only way that can be achieved over the long term is by building more, so supply better matches demand'*.
  - Mr. Osborne notes the juxtaposition between *'British people wanting our homes to go up in value, but also remain affordable; and we want more homes built, just not next to us'* immediately prior to observing that *'you can see why no one has managed yet to solve the problems of Britain's housing market'*.
  - As a consequence *'we see the social injustice of millions of families denied good homes'*.
  - Mr. Osborne identifies that the Government has taken new steps to protect financial stability, strengthen the new role of the Bank of England and complete the range of tools at their disposal. This addresses the economic problem of how to stop rising house prices leading to an unsustainable rise in household indebtedness and threatening the wider economy, *'but it does not address the social problem of how we stop young families being priced out of the housing market altogether'*.
  - The long term solution is that *'we need to see a lot more homes being built in Britain. The growing demand for housing has to be met by growing supply.... I will not stand by and allow this generation, many of whom have been fortunate*

*enough to own their own home, to say to the next generation; we're pulling up the property ladder behind us. So we will build the houses Britain needs so that more families can have the economic security that comes with home ownership'.*

96. The Governor of the Bank of England, Mark Carney, also made reference to this matter in his speech at the same event stating that *'the underlying dynamic of the housing market reflects a chronic shortage of housing supply, which the Bank of England can't tackle directly. Since we are not able to build a single house, I welcome the Chancellor's announcement tonight of measures to increase housing supply'*.
97. As Mr Carney observed in that speech, house prices rose by 10% between 2013 and 2014. Of course some welcome the constrained supply and the fact it has led to an increase in house prices. Housing in the UK is a market like any other. At its core lies a simple balance between demand and supply. The huge reduction in supply over recent decades, since the time when 300,000 houses (and more) was built in the UK in the 1960's has been dramatic. Over the last 30 years supply has been at around half that level<sup>29</sup>.
98. Furthermore, the reports by KPMG and Shelter (April 2014) confirm that each year fewer homes are being built than needed, adding to a shortage that has been growing for decades. The reports make clear that without action there will be escalating social and economic consequences.
99. Also worthy of careful consideration is the content of the national and regional reports on these issues<sup>30</sup>, namely the Sustainable Community Strategy 2010-2016, Homelessness Review (2014), Draft Homelessness Strategy 2015-2020, Cheshire Sub-Regional Housing Strategy 2009-2012, Draft Housing Strategy 2014, Council Strategy 2011-2015, Cheshire and Warrington Local Investment Plan for Housing 2011-2015, Strategic Housing and Spatial Planning Business Plan 2011-2012 and Home Truths North West 2014/15. Their contents are uncontested and uncontroversial. But they remain critically important.
100. The supporting case on affordable housing is compelling and the appellant's evidence on the definition to be given to the current state of affordable housing in CWAC as 'acute' is uncontested presumably on the basis of evidence in respect of the past completions and the inability in the future to deliver sufficient quantities of affordable housing to meet the identified needs of the Borough.
101. The SHMA identifies the need for 714 net affordable dpa for CWAC i.e. nearly two thirds the annual requirement of 1110 dpa. It is also significantly higher than the average affordable housing completions between 2008 and 2015 of 314 dpa. Even this does not represent a true picture of the level of affordable housing delivery, as 1,418 social rented properties were lost through Right to Buy Sales between 2000 and 2015.
102. The most recent evidence shows that there are 2,665 households on the Council's Housing Register. Those are people and families in need of housing right now. Of the 1700 household preferences on the register almost 12% of those have a need for housing in Winsford/Darnhall. Taking 12% as an indication of need this equates to a

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<sup>29</sup> See Document AAP7 (page 12)

<sup>30</sup> See Document APP7 (Sections 3 & 4)

requirement to house some 340 households in Winsford/Darnhall. The Winsford Urban Area also has the second highest level of need of the 16 sub areas identified in the SHMA – significantly larger than the need in larger places such as Chester – and representing almost 14% of the overall net annual affordable need across the entire Borough. The requirement is for some 98 dpa. Over a 5 year period this equates to 490 affordable housing dwellings. The proposed 74 affordable dwellings will clearly go some way to assisting those households in need of an affordable home in the local area.

103. It is acknowledged that the evidence explores the backlog or shortfall of delivery against the annual requirements in the 2009 SHMA and 2013 SHMA. The shortfall in the 2009 SHMA is accommodated in the 2013 SHMA so the shortfall should actually be measured against the 2013 SHMA. The shortfall of 1225 dwellings has been used by the appellant in the affordable housing 5 year land supply assessment<sup>31</sup> which uses the 5 year time horizon of newly arising need of 805 dwellings. Again this is acknowledged as exceeding the time period of the SHMA yet as previously stated it is the only figure for newly arising need before the inquiry. Based on the annual requirements and future supply the Council can only deliver 1.57 years affordable housing supply.
104. Both committee reports failed to give sufficient weight to the benefits of delivering affordable housing. Whilst the original report recommended approval and judged the site to be sustainable, the revised report to committee in June 2015 manifestly fails to apply sufficient weight to the benefits. In contrast the appellant's case is that the package of benefits is compelling. Affordable housing is the centrepiece of that package. The Council finally agreed that 'substantial weight' should be given to the affordable housing and 'additional weight' should be given to the additional 10% although declined to say what the weight should be.
105. There are significant benefits arising from the development, namely:
- Delivery of 40% affordable housing, when there is an acute need for affordable housing and to which it is agreed weight should be attached.
  - The weight to be given to a site which can deliver affordable homes should be significantly enhanced in circumstances where other sites in the CWAC are unable to do so.
  - Significantly the appellant is able to achieve the 40% affordable housing in excess of the LP policy, resulting in the provision of up to 74 much needed affordable homes in Winsford/Darnhall.
106. It is submitted that in circumstances where an appellant is willing to offer 40% in an area where there are known viability issues, then it is a matter to which very substantial weight should be attached. The appellant is very conscious that the provision of affordable housing is a matter to which the SoS has consistently attached substantial weight. In the report on the Droitwich appeals<sup>32</sup> it was made abundantly clear that *'affordability is at crisis point'* and emphasised the social element to this when recognising that *'these are real people in real need now'*. It was also acknowledged that *'this is a disaster of catastrophic proportions'*.

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<sup>31</sup> Document DE22 Revised Figure 4.13

<sup>32</sup> Document APP9 F24

107. Without adequate provision of affordable housing, the acute housing needs will be incapable of being met. There will be a failure to meet the requirements of paragraph 50 of the Framework to create inclusive and mixed communities.
108. The delivery of affordable housing in the Borough has been disappointing with delivery only once in the period 2008/9 to 2014/15 achieving anything above the 330 dwellings per annum envisaged in the development plan. This has created an accumulated shortfall of 4,896 affordable dwellings against objectively assessed needs in the 2009 and 2013 SHMA's. This is very serious.
109. Despite initially claiming a delivery of 851 affordable dwellings in 2014/15 the actual figure was 279 dwellings fewer. Significantly the cumulative shortfall would have been much worse had the Council not achieved an unusually high and unprecedented delivery of 572 dwellings. These circumstances arose because of the cyclical nature of the Home and Communities Agency (HCA) funding regime, the completion of a significant number of extra care units and the delivery of the entire HCA programme for Cosmopolitan as a result of earlier financial difficulties. These were exceptional circumstances and unlikely to continue in the future due to a reduced HCA programme in 2015-2020.
110. A serious and dramatic step change in affordable housing delivery is required in order to address both the current and future need for affordable housing.
111. The affordable housing needs in CWAC are acute and continuing to increase with the SHMA and LP recognising that affordable housing in the Borough is in high demand. A step change in delivery is required in line with the provisions of paragraph 47 of the Framework if the Council is to get anywhere near the identified need for 714 net affordable dwellings per annum identified in the SHMA.
112. The number of households on the Housing Register has declined from a peak of 19,000 households but this is due to the narrowing qualifying criteria<sup>33</sup>. The national figures are quite alarming with almost 500,000 households struck off the waiting list. It is vital that there is a step change in the delivery of affordable housing in the Borough. It is a national problem, but CWAC is part of the problem and the failure to ensure a 5 year supply of housing land is plainly a cause of the problem.
113. The Framework is clear that planning should be a proactive process to deliver the homes that the country clearly needs with paragraph 17 stating the importance of making every effort to respond positively to growth which meets identified needs taking into account market signals such as land prices and affordability.
114. The social need for affordable housing is a material planning consideration and making social progress in tackling such needs is an important element of the golden thread of sustainable development running through the Framework.
115. There can be no doubt that there is an acute need for affordable housing in the Borough. Nor can there be any doubt that the proposals will deliver a substantial number of affordable homes for which there is a significant demonstrable need, in the face of such significant under-delivery. There has been no attempt to challenge the description of the housing need in CWAC as being acute.

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<sup>33</sup> Document APP9 F82 & F83 – Inside Housing magazine

116. Overall the affordable housing benefits of the proposal are very considerable. The weight to be given to a site which can deliver affordable housing should be significantly enhanced in circumstances where other sites in the CWAC are unable to do so. The proposal exceeds the requirement for 30% AH by 10% or up to an additional 18 dwellings and 74 in total, which in the context of the CWAC is significant. It will be secured via the agreed condition to include provision for a mix of tenures, providing 50% social rented and 50% intermediate housing comprising homes for sale and rent.
117. The key point is that neither the CWACLP nor the WNP addresses the affordable housing needs. The 30% policy provision on new housing schemes was set on the basis of viability concerns. The appellant here is the landowner. The land owes the Estate nothing. There is no minimum land value here to be achieved.

#### *Overall Conclusion*

118. The proposal is for sustainable development. Recent decisions confirm that this is a route to a planning permission regardless of the position in respect of whether is a 5 year supply. The Council raised no objection to the proposal in 2014. In 2015 there remain no site specific objections, only conflict with policy.
119. The proposal is novel. It comprises entirely of housing to be built by small and medium sized local building firms who support the proposal, self-build plots and 40% affordable housing. The Council has very little to say about this which is surprising when affordable housing is such a priority in the Borough and the Council concede there is unmet need which the CWACLP will not address. The CWACLP actually seeks to support self build schemes, despite there being no evidence of any others schemes being progressed. The Council's claim that these proposals are necessary to make the development acceptable, and must therefore have been previously unacceptable, forgets the fact that in 2014 the Council had no objection at all to the proposal, presenting no evidence to the inquiry. Any appellant can take a scheme and alter the housing offer.
120. Crucially neither the CWACLP nor the WNP seek to limit development. This is something which neither the Council nor Mr Wood seem to appreciate. Some local people close to the site have appeared at the inquiry during the week, albeit in small numbers on days 2, 3 and 4. But this proposal is clearly not causing any concern to the vast majority of the 30,000 residents of the town.
121. What the WNP seeks to do is identify the sites for development. Those sites are considered to be sustainable. Many are on the edge of the town, just like the sites at Over close to the appeal site. The WNP has no policies to support small and local builders, self build or above LP levels of affordable housing. Therefore the CWAC and Town Councils have no basis to require any of these, save for the encouragement which the LP gives to self build.
122. For the reasons given above and as set out in the written and oral evidence, the SoS is invited to allow the appeal.

## The Case for the Council

*The material points are*<sup>34</sup>

123. The CWAC decided to become involved in the reopened inquiry as a result of three significant changes in circumstances:
- Changes to the deliverable supply of housing land which the Council submits now comfortably exceeds 5 years;
  - The adoption of the CWACLP which gives the Council an up to date set of policies which have been found sound and thus compliant with the Framework; and,
  - The making of the WNP after its successful examination and support at referendum, with 69% of the vote being to make the plan.

*Preliminary Point*

124. The appellant has referred to other appeal decisions both of Inspectors and the SoS. However, pointing to the language used, particularly in the weighting of various factors, would be a simplistic and inappropriate approach. All cases must be addressed on their own merits. A decision maker's choice of language and adjective to describe weighting depends on case and fact specific assessment. For example the language in para 8.124 of the Droitwich Spa report<sup>35</sup> to the SoS cannot be divorced from the Inspector's findings about the state of housing land supply set out in para 8.56. The same point applies to the description of the Council's misplaced optimism as regards housing delivery in the cases in Yate and Ottery St Mary<sup>36</sup>. It is simply wrong to lift that language out of context and try to deploy it here. The Inspector and SoS should use their own chosen language to describe and weigh the various factors at play in this case, based on their conclusions which are specific to the case.

*Five Year Housing Land Supply*

*(i) General Points*

125. Policies for the supply of housing are up to date as there is a 5 year supply of deliverable housing land. The Council's judgment on 5 year supply issues has been supported in two recent appeals, land at Hill Top Farm, Northwich and Fountain Lane, Davenham<sup>37</sup>. Both decisions addressed the 2015 HLM and evidence prepared and given by Mr Pycroft. The Fountain Lane Inspector concluded on the balance of probabilities that the Council had a 5 year supply, without addressing the issues between the parties in detail. The Inspector in the Hill Top Farm case provided a much more detailed analysis and said that he had 'no difficulty' in concluding that the Council had a 5 year supply<sup>38</sup>. These two appeals did not have the 2015 HLM content tested through cross examination because the HLM was published after the close of each inquiry and provided at the request of PINS. Neither party sought to

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<sup>34</sup> Based on the Council's closing submissions CWAC12 but re-ordered to align with the main considerations and my conclusions

<sup>35</sup> Document APP9 F24

<sup>36</sup> Document APP9 F34 and F35

<sup>37</sup> Document CWAC7 Appendices R1 and R2

<sup>38</sup> Para 39 of Document CWAC7 Appendix R1

have the inquiries re-opened. The issues were determined by way of written representations.

126. The SoS decision at Malpas<sup>39</sup> that there was a 5 year supply, and the Inspector's decision at Nether Peover<sup>40</sup> that there was not a 5 year supply are now of historic interest. Neither considers the period 1 April 2015 to 31 March 2020. Neither considers the same evidence that is before this inquiry. Further, the Nether Peover Inspector considered all of the sites put before him. He concluded that the shortfall was 155 dwellings. He did not conclude that it was at least that number.
127. In terms of the extensive evidence put before the inquiry to justify the parties contentions on each site, the Inspector and the SoS have the A3 tables<sup>41</sup> which set out in one place the disputed sites, the numerical extent of the difference between the parties and a summary of each party's reasons for taking the view that they do on each site. It is not intended to repeat that evidence. Instead these submissions will concentrate on points of principle which inform the Council's case on 5 year supply.
128. The appellant's attempt to portray the Council's supply figure as wholly unrealistic is rather undermined by the modest difference between the parties' figures. The dispute is between a figure of 6.83 years and 4.56 years. That is hardly a yawning chasm of difference.
129. The appellant criticises the lack of involvement of others by way of consultation, workshops and the like in the preparation of the HLM. There is no basis for that criticism, other than to assert that the requirement for the annual monitoring exercise to be robust would require such steps to be taken. But there is nothing explicit that can be pointed to in the Framework, PPG or elsewhere to make good the point.
130. The HLM has to be produced in a timely as well as robust fashion. If consultation on methodology etc. had to be undertaken, then the process of monitoring would be so onerous, time consuming and cumbersome that the HLM would not appear in a timely fashion. The error in consultation by e-mail on the Housing and Economic Land Availability Assessment Methodology in August 2015<sup>42</sup> has nothing to do with the robustness of the 2015 HLM.
131. The appropriateness of using post-base date information depends upon the type of information and the purpose for which it is used. The Council keep completions to the pre-base date period. But that does not mean that all information from later than 1 April 2015 should be ignored. All of the inputs from stakeholders about the information to go into the monitor cannot be received prior to 1 April 2015. Some of the information will be about events prior to that date or about expectations for the period after the base date which will have been received after the base date. Further, it would be wholly unrealistic to ignore, for example, evidence of the grant of planning permission after the publication of the monitor if the purpose was simply to show that the Council's pre-publication judgment about the site's likelihood of development had been supported by later events.

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<sup>39</sup> Document APP9 F25

<sup>40</sup> Document APP9 F39

<sup>41</sup> Within SOCG2

<sup>42</sup> See Documents DE18 and DE19

132. The point that people involved in providing information to the Council have incentives to increase forecast contributions from sites can be turned back on the appellant. If a person consulted on a site has a reason to inflate their supply to thwart rivals, then the appellant must have an incentive to downplay the likely delivery from sites in order to maximise the chances of promoting the appeal site. Indeed, the appellant's assessment is entirely about knocking supply off the Council's figure. Every single judgment where there are differences with the Council serves to reduce supply. There is no attempt to see if the Council has underplayed delivery. To go down the appellant's line of argument about overplaying supply tips us into a pit of mutually destructive cynicism.
133. In contrast the Council's assessment on a number of sites is more cautious than that being put forward by the relevant landowner or developer. For example, the judgments about the Peel Holdings sites in Ellesmere Port are more cautious both as regards annual delivery and the start date than stated by Peel. This is clear evidence that the Council neither seeks to inflate supply whenever there is an opportunity to do so nor simply uncritically swallow whatever it is told. This is a very useful indicator that the Council's evidence and judgment can be trusted.
134. The appellant also assesses supply based on past performance pointing to a pre-Framework decision at Brixham<sup>43</sup>. The Framework and PPG do not advocate looking at the adequacy of supply by that method. The reasons for that are obvious and two are of particular relevance here:
- The policy context in the past was clearly different. In the area of what is now CWAC, two of the three authorities which formerly existed had policies of housing restraint for part of that past period and the high RSS requirement figure did not actually exist in the years to which it was subsequently retrospectively imposed; and,
  - The Framework has effected a radical change in policy. It would be expected that future supply will be markedly higher than past supply to reflect the Framework.

*(ii) Requirement*

135. There is only one issue as regards the requirement\_aspect of the assessment of the adequacy of supply. That relates to whether the 20% buffer ought to apply to the backlog. The issue was not explored in the oral evidence in any detail because it is agreed that there are Inspector and SoS decisions which pull in both directions. The issue only makes a difference of 167 units (20% of the backlog of 836 units) in any event. Despite the relative unimportance in this case, the point is of importance generally and it would greatly assist if the SoS could provide a definitive and fully reasoned conclusion on this issue to settle it once and for all.
136. The appellant's case is that the 5 year requirement, with the buffer added to the backlog as well as the base requirement, stands at 7,603 units with a supply of 6,941 units. That is a shortfall of 662 units.

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<sup>43</sup> Document APP8 Appendix EP4 (paragraph 63)

*(iii) Demolitions*

137. The Council's case is that no deduction for demolitions is warranted. The appellant points to the text at paragraph 5.21 of the CWACLP. That text simply states that the 1,100 annual requirement is a net figure and that if recent trends continue up to approximately 50 dwellings per annum could be lost to other uses or to demolition so that the gross provision of housing would need to be 1,150 dpa.
138. That is not a justification for adding to the Council's figures. The Council's monitoring of past events is carried out in net terms. All of the Council's forecasting of future supply is done in net terms. Even the modest small sites windfall allowance in Years 4 and 5 is calculated by reference to past net rates of supply from windfalls. There is no scope for unknown demolitions to come into play in any way which affects deliverable future supply. If demolition or losses to other uses occur, that will be picked up in monitoring and the next HLM will adjust completions and past supply accordingly. If the Council learns of future proposed demolitions or losses, then that will be taken into account when predicting net supply for the future. There is no mechanism by which unforeseen demolitions and losses can undermine monitoring or forecasting.
139. The Nether Peover Inspector expressly said he was discounting from a net figure<sup>44</sup>. Losses and demolitions are discounted from a gross figure to get to the net figure in the first place. To discount from a net figure to allow for demolitions is to perform the discounting process twice. Whilst the Hill Top Farm decision is not explicit, it does not appear that the Inspector discounted any figure from the Council's supply to allow for demolition or losses because he noted that monitoring and forecasting was all done on a net basis<sup>45</sup>.
140. Further, the annual rate of demolitions and losses used by the appellant is 50 dpa. That is the maximum figure which the CWACLP at para 5.21 says could potentially occur. The point is pushed to favour the appellant to the maximum possible extent. There is no justification for deducting future demolitions. As a result 191 units should be added to the appellant's claimed supply.

*(iv) Student Accommodation*

141. In the past, the point has been about whether units of accommodation are self-contained as put before the Hill Top Farm and Fountain Lane Inspectors. The former found for the Council. The appellant now takes the point that the PPG says that all forms of student accommodation can count towards requirement but only to the extent that the accommodation frees up market housing. The appellant applies that guidance and removes three schemes of self-contained student accommodation because it is said that there is no evidence that such provision will free up market housing. This is done on the basis of increasing numbers of students in Chester.
142. The point is devoid of merit because it goes behind the agreement on the requirement which is based on an assessment of OAN. The Council has explained that the need for two kinds of student accommodation was used in arriving at the OAN and requirement figures - self-contained student accommodation and Housing in Multiple Occupation (HMOs) operated by private landlords. Communal

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<sup>44</sup> Para 19 of Document APP9 F39

<sup>45</sup> Para 21 of Document CWAC7 Appendix R1

establishments which were not self-contained, such as Halls of Residence, were not accounted for in the OAN and requirement<sup>46</sup>.

143. The types of accommodation which fed into the assessment of OAN and requirement are taken into account by the Council when assessing what supply counts towards meeting that requirement. It could not sensibly be otherwise. The question of whether the expected student numbers at Chester have changed is a point which affects the requirement side. It cannot mean that the provision of the accommodation somehow no longer counts towards meeting the requirement. In any event the CWACLP requirement figure was devised before the PPG was issued and that part of the PPG referred to by the appellant expressly refers to requirement, not supply.
144. The appellant accepts that each of the three student accommodation projects in dispute comprises self-contained accommodation where all of the facilities for daily living are behind a lockable door. They are all within the types of development which contributed towards the requirement figure. Their supply counts towards meeting that requirement. No deduction should be made and 511 units should be added to the appellant's supply figure.
145. If the Council is right on both demolitions and students then, based on the appellant's supply figure, the Council would have a 5 year supply without it having to succeed on any other supply issue.

*(v) Lead-in Times and Delivery Rates*

146. The Council has been transparent about lead-in times and build-out rates. They are set out in the HLM at 3.11 onwards, including the table. If there is no site specific evidence, then the rates from the SHLAA, which were arrived at through the Housing Partnership Group (HPG), are used. If site specific evidence exists and it relates to a site that is disputed, then it will be evaluated by the Inspector and the SoS. The use of a settlement specific build-out rate has an insecure evidence base. The rate for Winsford, for example, is based on delivery rates from just 3 sites over a two year period and, even then, not all of the sites were delivering during each of the two years. Nor is there any robust basis for routinely halving delivery in Year 1 of a site's development.

*(vi) Sites with planning permission*

147. The assessment of a site's availability will be guided by the application of Footnote 11 of the Framework. That footnote has led to litigation.
148. Deliverability is presumed to exist until permission expires unless there is clear evidence that schemes will not be implemented within 5 years, with three examples of how that can occur being given in the footnote. The only sensible way to read that part of the footnote is that in order to show the deliverability of a site with permission, its availability now is not required to be proved. If that were so, it would make no sense to refer to the prospect of implementation within 5 years, as opposed to the ability to implement the permission immediately. The Government response to the DCLG Select Committee Report<sup>47</sup> reinforces its view that all sites with planning

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<sup>46</sup> See Appendix 11 to LPA3 – Note ED112 – Communal Establishments – CWACLP Examination Document

<sup>47</sup> Paragraph 19 of Appendix R9 to Document CWAC7

permission should count towards supply unless it is 'very clear' that the site will not be delivered. This view was referred to by the Fountain Lane Inspector in para 23 of his decision<sup>48</sup>.

149. The points of difference between the parties in the A3 schedule in SOCG2 are accounted for to a large degree by the issues of principle that have been addressed, together with site specific differences in evidence which can be assessed by the Inspector and SoS. Some sites in the schedule have been addressed before by the Nether Peover and Hill Top Farm Inspectors. On some sites the Council has previously succeeded, on some it lost and in relation to some the Hill Top Farm Inspector chose to reach a judgment on a mid-point between the parties which neither party argued for<sup>49</sup>. In relation to some sites where the Council has previously lost, new material is before this inquiry which was not before earlier Inspectors.

*(vii) Sites without planning permission*

150. Planning permission is not a necessary pre-requisite for a site being deliverable<sup>50</sup>. The Wainhomes case provides useful guidance on how the question of 'available now' is to be approached when the site or sites in question do not have planning permission.

151. The general definition of deliverability is that the site has to be available now, offer a suitable location now and be achievable with a realistic prospect of delivery within 5 years and that the site is viable. That definition applies in an unqualified way to sites without planning permission and the Council bears the burden of proving deliverability of such sites. There should be robust and up to date evidence. There is no prescribed detail as to what robust means. The judgment is left to the decision maker, but it is submitted that the appellant's application of the term is far too exacting in two ways:

- a high level of confidence of delivery, verging on certainty, such as the signed up interest of a housebuilder or the existence of planning permission. Such exactitude dismisses important evidence of deliverability such as Council ownership, a site's inclusion in a programme of disposal and development, with Housing Revenue Account funding and serious interest from Registered Social Landlords; and,
- a tendency to dismiss or diminish the weight to be given to site specific evidence. For example the initial claim of a 'total lack' of evidence of deliverability as regards the Ellesmere Port sites owned by Peel, when what was really meant was that there was evidence, but that there was disagreement about the robustness of it.

152. So far as sites without planning permission are concerned there are a relatively large number of small sites in that category. But it is important to note that of the Council's claimed supply, sites without planning permission only amount to 1,131 units<sup>51</sup> which is only about 11% of the claimed supply. The Council is plainly not

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<sup>48</sup> See Appendix R2 of Document CWAC7

<sup>49</sup> See Appendix R1 of Document CWAC7 (para 39)

<sup>50</sup> Document APP4 B9 - Wainhomes (South West) Limited v SoSCLG and others [2013] EWHC 597 (Admin)

<sup>51</sup> See Document APP8 page 18

taking an overly optimistic approach to the contribution from this source as a proportion of supply.

*(viii) Strategic Sites*

153. In terms of the strategic sites, the appellant has removed the site at Wrexham Road in Chester on the basis that the Council has refused an application for one part of the site in the absence of a development brief. That is no reason to dismiss the prospect of the site making any delivery at all in the 5 year period. The CWACLP Examiner's report noted the merit of the site, the lack of constraints to its delivery, the interest in developing it, the lack of ownership problems and the prospect of it making a significant contribution to delivery<sup>52</sup>. The same erroneous reason has been used to radically reduce delivery at Rilshaw Lane in Winsford, when the Council did not oppose the grant of permission at the inquiry in June 2015, merely asking for a condition requiring a development brief to be attached to any permission which is issued.

*(ix) Conclusions on housing land supply*

154. The Hill Top Farm Inspector concluded that there was no difficulty in establishing that the Council has a 5 year supply. The Inspector and SoS are invited to conclude that the Council can demonstrate a supply of over 5 years and up to about 6.83 years.

*Policies for the Supply of Housing and the Development Plan*

155. Saved Policy GS5 of the VRBLP, Policy STRAT 9 of the CWACLP and Policy H1 of the WNP are policies for the supply of housing.
156. If there is no 5 year supply, then the decision making test in para 14 of the Framework would be triggered and the Council would have to show that the harm caused by the appeal scheme would significantly and demonstrably outweigh the benefits of the proposal. The Council considers that to be the case.
157. If there is a 5 year supply, that is the end of the appellant's case about the application of para 14 of the Framework. The appellant did not argue that the development plan was absent or silent as far as para 14 was concerned other than if there was a lack of a 5 year supply.
158. If there is a 5 year supply then Policies GS5 of the VRBLP, STRAT 9 of the CWACLP and Policy H1 of the WNP are all up to date.
159. The presence of a 5 year supply is not, of itself, grounds for refusing planning permission. The two recent appeal decisions at Hill Top Farm and Fountain Lane demonstrate that, as do plenty of other appeal decisions.
160. However, in terms of the policies cited by the Council in now opposing the proposal, it is submitted that all three would be breached, together with Policy STRAT 1 of the CWACLP. Policies GS5 and STRAT 9 are intimately connected. Policy GS5 of the VRBLP sets out the settlement boundaries and prescribes a decision making test for proposals to develop land outside the settlement boundaries and in the countryside. However, the relevance of GS5 now, post the adoption of the CWACLP is that it is the source of the settlement boundary. STRAT 9 does not define the settlement

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<sup>52</sup> See Document LPA3 Appendix 2 (para 89 in particular)

boundary. GS5 was saved by way of Main Modification 8 to the CWACLP because without that happening, there would have been no settlement boundaries to which STRAT 9 could be applied. So, the appellant's evidence that the decision making test in GS5 is out of date is misplaced and irrelevant. STRAT 9 contains the decision making test.

161. Policy STRAT 9 of the CWACLP is a policy to protect the countryside. It does so, not by requiring a case-specific assessment of the effect of the scheme upon the countryside's character and beauty, but by prescribing a list of types of development which are acceptable, in principle, in the countryside. The appeal scheme is not of a type within the list and so breaches the policy. That conclusion is inescapable and was clearly and correctly found to be the case by both the Fountain Lane and Hill Top Farm Inspectors.
162. As for Policy H1 of the WNP, the appeal scheme is clearly in breach of that policy. The policy ought to be interpreted by reference to its own terms and the rest of the plan. Policy H1 tells us, in explicit terms, that permission will be granted for residential development of land listed in the table 5.1 and as set out in section 6 of the plan. That is a reference to the housing allocations in the plan. The appeal site is not amongst them. Secondly, it permits housing development as provided for in Policy H2, which supports the development of PDL. In either case, the proposal has to accord with other relevant policies of the development plan. If a scheme is not within either class, it is plainly not supported by Policy H1.
163. The argument that, as Policy H1 is silent as regards other proposals, then they are not contrary to the policy is erroneous. If that is right, Policy H1 would serve no purpose in trying to guide the location of development. The WNP seeks to guide the location of development as well to provide an appropriate minimum amount of development, accepting that the plan does not set a cap on development. The plan's strategy for shaping the location and amount of development is clear from Policy H1 itself, para 1.1.3 and para 4.1.1 and the statement on page 44 that the aspiration is to see new housing located close to the town centre, around a new Station Quarter and at new gateways into the town.
164. The conclusion that the proposal is contrary to the WNP should be reached by reference to the content of the plan not by reference to the content of the Examiner's report. Even if it was, such an approach would not support the conclusion for which the appellant contends. The report notes that the plan would not limit numbers of houses to be provided or the types of residential development, but does not say that the plan in general or Policy H1 in particular does not regulate the location of development. Indeed, the merits of alternatives to the housing allocations, including the appeal site, were expressly considered. The Examiner supports the Town Council's reasons for excluding them as not complying with the Council's vision<sup>53</sup>.
165. The appeal scheme, by proposing development not of a type or in a location supported by Policy H1 of the WNP and its overall vision, is clearly in breach of that policy.
166. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires a planning application or appeal to be determined in accordance with the development plan

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<sup>53</sup> See Document APP9 F9 (paras 3.50 to 3.54)

unless material considerations indicate otherwise. That decision is not reached by reference to considering whether individual policies are breached. Indeed, it is accepted that the question is not answered by considering whether the proposal would be in breach of one component of the development plan. Instead, the task is to assess compliance with the development plan as whole, i.e. the saved VRBLP policies, the CWACLP and the WNP taken together.

167. The task is to be approached not by looking at all conceivably relevant policies and treating them as equally important, but by considering which are the most important policies engaged by a particular decision making exercise<sup>54</sup>. In the Cummins case Ouseley J said: *'It may be necessary for a Council in a case where policies pull in different directions to decide which is the dominant policy: whether one policy compared to another is directly as opposed to tangentially relevant, or should be seen as the one to which the greater weight is required to be given.'*
168. The Fountain Lane Inspector clearly found that the breach of Policies GS5 and STRAT9 amounted to non-compliance with the development plan<sup>55</sup>. He treated GS5 and STRAT9 as the dominant policies engaged by the appeal. The Hill Top Farm Inspector presented no explicit finding on this point but appears to have agreed<sup>56</sup>. The same conclusion can be reached with this appeal.
169. In this case there is a further reason to reach the same conclusion about development plan compliance. That is the breach of Policy H1 of the WNP.
170. The next question is what weight to attach to the breach of the development plan. There are, in this case, four reasons why breach of the development plan should be afforded weight:
- Section 38(6) is the statutory expression of the plan-led system. The development plan is not a material consideration like any others. It has a special status and weight. There can therefore be no such thing as a technical breach of the development plan;
  - Although the Framework is important, it does not displace section 38(6) and it is particularly important to note that the policies of the CWACLP and of the WNP were examined in the light of the Framework. The CWACLP was found sound and so consistent with national policy in the Framework and the WNP was found to meet the basic conditions which require consideration to be given to national policy;
  - The up to date CWACLP expressly makes compliance with that plan's policies part of the consideration of whether development is sustainable overall. The terms of Policy STRAT1 require a development proposal's overall sustainability to be tested by reference to whether it complies with the plan's policies and with the principles listed in the policy; and,

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<sup>54</sup> See Document CWAC14 (para 164)

<sup>55</sup> See Appendix R2 of Document CWAC7 (para 56)

<sup>56</sup> See Appendix R1 of Document CWAC7 (para 68)

- There is recent case law which reminds us of the weight to be given to the question of development plan compliance. In *Bloor Homes East*<sup>57</sup> case Lindblom J held that development which was not in accordance with the development plan could still be permitted if the relevant material considerations which indicated that a decision otherwise than in accordance with the plan '*were strong enough to outweigh the statutory presumption in favour of the plan*'.

171. In other words the development plan is not to be set aside lightly.

172. The reasons are boosted in this case. The CWACLP and the WNP have been formulated to shape development. Mr Wood eloquently explained that the WNP promoters would feel as though they had been wasting their time if their plan was set aside in order to allow this scheme to go ahead when it had been ruled out of allocation in the plan formulation process and when that decision had been supported at the examination stage. The Framework's statements<sup>58</sup> that neighbourhood plans provide direct power to develop a shared vision; are a set of powerful tools to local people to ensure they get the right types of development; that, where non-strategic issues are concerned, neighbourhood plans can shape and direct sustainable development; and that development in breach of a neighbourhood plan which is in force should not normally be permitted would look rather hollow.

#### *Other Material Considerations*

173. The appellant's material considerations which it is said would justify the development are as follows.

174. First, there is the provision of additional market housing. That is a consideration deserving of weight, but its positive weight as a reason to justify development in breach of the development plan must be lessened if, as the Council contends, there is a 5 year supply. That is because the Framework's exhortation to 'boost significantly' the supply of housing does not exist in the abstract as some kind of 'Get Out Of Jail Free' card to avoid any adverse consequences of being in breach of the development plan. Para 47 of the Framework tells us that to boost significantly the supply of housing Council's should, amongst other things, identify and meet their full objectively assessed needs for housing, which is agreed at 1,100 units net for the plan period and also provide the appropriate buffer, in this case 20%. If the Council is doing both of those things by meeting its housing requirement, then it is doing what the Government requires in order to boost significantly the housing supply.

175. Further, although the economic and social benefits of providing housing on the appeal site are accepted, many of those benefits justify providing housing somewhere in the Borough or, in the case of benefits related to Winsford, providing it in or near Winsford. The arguments do not amount to a site specific justification for breaching settlement limits.

176. It is accepted that there are some environmental benefits to be considered, such as ecological improvement through pond provision, but there is also the environmental harm inherent in turning greenfield land into a housing estate.

177. The appellant points to affordable housing provision. The many documents referred to all make the same points. There is plainly an unmet need. However, the Council

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<sup>57</sup> See Document CWAC13 (para 57)

<sup>58</sup> Paras 183-185 and 198

contends that the appellant misuses the 714 dpa figure. The evidence compares that figure to the provision of affordable housing envisaged over the Local Plan period. That is a wrong approach for two reasons:

- The 714 dpa figure is not for the plan period, but one which includes the removal of the backlog over a 5 year period<sup>59</sup>; and,
- The 5 year period over which the backlog was to be reduced and for which the 714 figure was devised ends in 2017/2018<sup>60</sup>.

178. There is a second notable error. The appellant aggregates the under provision of affordable housing derived from the 2009 SHMA need figure and the under provision derived from the 2013 SHMA need figure<sup>61</sup>. That double counts need, because it is agreed that the 2013 SHMA was a new freestanding assessment of the need which existed at that date, including the backlog which had accrued to date. If that point is allowed for, the under provision of affordable housing, whilst still extant, is nowhere near as dire as the table suggests. The under provision is clearly overstated. The error was not corrected in the addendum to the evidence<sup>62</sup>.
179. The appellant also compared the demand for affordable housing in Winsford and Darnhall derived from the CWAC Housing Register<sup>63</sup> and the provision of affordable housing at a 30% rate in the WNP area. That is a false exercise, because of the ability of people to express multiple choices of location. The 1700 plus expressions of interest in the town and parish will involve multiple counting to an unknown degree. It was an exercise which compared incomparables.
180. The provision of affordable housing will occur at levels below 30%. But that is not a failure of Policy SOC1 of the CWACLP. It is because the policy seeks to negotiate up to a 30% target, subject to issues such as viability. The policy has an expectation built into it that provision below 30%, perhaps even 0%, will occur at times.
181. The Council accepts that the provision of affordable housing at a 30% rate should attract significant weight and that provision at 40% would attract additional weight still. However, the Council's judgement that this and the other benefits do not outweigh the harm caused by the breach of the development plan is one that is properly open to it on the evidence.
182. The appellant now offers self-build units, local procurement and local construction by Small and Medium Enterprises (SMEs). It only did so in August 2015. These are put forward as weighty benefits which can be secured by condition. It was said that each of the relevant conditions would pass the tests for a condition, including that each was necessary. That meant in turn that planning permission ought to be refused without those conditions. That had the rather interesting result that Mr Halman had to accept that prior to August 2015, when these topics were first raised, the appeal scheme was unacceptable. If these benefits really were so weighty and necessary, one can only wonder why they did not previously form part of the appeal scheme.

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<sup>59</sup> See 2013 Strategic Housing Market Assessment (SHMA) – Document APP4 A11 – Table D1, Steps 4.2 and 4.3 and paras D.37 and D.38

<sup>60</sup> See Table 4.21 of the SHMA

<sup>61</sup> See Document APP7 Figure 4.12

<sup>62</sup> See Document DE22

<sup>63</sup> See Document DE11

183. Each of these matters is a benefit which can point to national policy support. However, the self-build element still has serious issues attached to it. Policy SOC3 of the CWACLP refers to working with organisations such as Community Land Trusts to help bring forward schemes for self-build groups and individuals. The supporting text to the policy explains that that is because such bodies can acquire land cheaply. The mechanism for provision of the self-build units would appear to do nothing for the affordability of that as a method of construction (a separate issue from the affordability of the dwelling in perpetuity). That is because the land for the self-build units would include the necessary services and then be sold at market value. There is no evidence to show that take up of self-build land at market value would be at all likely. The only evidence of demand for self-build is the reference to the SHMA survey which records people's interest in self-building as, it appears, a matter of principle without a real consideration of costs. There would, on the conditions offered, be no mechanism to prevent the self-build plots lying undeveloped whilst the rest of the development went ahead.

*The presumption in favour of sustainable development*

184. This issue draws the threads set out above together.
185. None of the benefits which the appellant claims are disputed. Some of them cannot be weighed as heavily as the appellant contends, for the reasons set out earlier. Some of them are generic and provide no justification for breaching the development plan. The weight to be afforded to them is tempered by the presence of the 5 year supply and the fact that this means that the Council is boosting significantly the supply of housing. The benefits fall into each of the social, economic and environmental aspects of sustainability.
186. But the proposal would cause harm. Chief amongst that is the breach of the development plan which, of itself, is harm to be afforded significant weight. That is because of the general principle that weight is to be given to the need to determine proposals in accordance with the development plan unless material considerations indicate otherwise. But it also has a case specific dimension because of the terms of Policy STRAT 1. That policy of Part 1 of the Local Plan makes compliance with development plan's policies part of the assessment of overall sustainability, as the inquiry's second main consideration makes clear.
187. There is also the harm caused by the loss of greenfield land to development. There does not need to be a landscape and visual case to make good that contention because (i) Policy STRAT 9 operates by regulating development types and does not require a specific assessment of a proposal's effect upon the countryside and (ii) STRAT 1 expressly makes the minimisation of the loss of greenfield land, per se, one of the sustainability principles used to determine planning applications.
188. Despite the important benefits of the scheme, the Council submits that the application of section 38(6) of the 2004 Act shows that the proposal does not accord with the development plan, that the material considerations in favour of the appeal do not outweigh that development plan conflict and that, viewed in the round, the appeal scheme is not sustainable development.
189. Even if there is not a 5 year supply, the relevant policies for the supply of housing are out of date and the special decision making test is triggered, which the Council does not accept is the case, then it is submitted that it would still be open to the SoS

to conclude that the harm in this case significantly and demonstrably outweighs the benefits.

190. The Council asks that the appeal be dismissed.

### **The Case for Interested Parties**

#### **Councillor Stephen Burns**

191. The WNP has been made. What weight should be attached to it? Neighbourhood Plans are an integral part of Government policy. The WNP was consulted upon for 15 months. The WNP was examined by an independent Inspector and put to a referendum with a vote 2 to 1 in favour.

192. The WNP makes provision for 3500 dwellings through a series of allocations and is well placed to meet the development plan requirement through a proportionate sustainable house building programme. This is not a fixed amount but a realistic vision for Winsford given the town's infrastructure and services.

193. The appeal proposal would cause damage by developing non-allocated greenfield land which does not form part of the vision for the town.

#### **Robin Wood<sup>64</sup>**

194. Mr Wood lives next to the site and is Chair of the local residents group so has a strong personal interest in the development. But he has also been involved in the WNP including being Chair of the 'Vote Yes' campaign. The WNP was drawn up over a period of 3½ years with extensive consultations and a vote in favour.

195. The WNP is particularly important to Winsford which has been without a town plan since the 1950's. The town has suffered from speculative housing around the edge of the town with little investment in the middle, a doughnut effect. Residents have ended up working, spending their money and educating their children away from the town. The town centre has been dying. There have been few employment, leisure and educational opportunities for the young. The WNP proposes to address these issues with a visionary plan for employment, retail, leisure, education, infrastructure and, of course, housing.

196. The appeal site was promoted by the appellant and considered by the Examiner into the WNP. But it and four other sites were not included in the WNP. The Examiner noted that 'the Town Council had produced convincing reasons as to why it has preferred to include other sites in pursuing its chosen vision.' The site, as a greenfield extension to the urban area, performs less favourably in sustainability terms than those allocated in the WNP.

197. The appeal site was also not allocated as a strategic site in the CWACLP. The Examining Inspector noted that Winsford had a potential housing land supply of 3,685 dwellings compared with the planned provision of 3,500. He felt that there was potential for additional sites to come forward through the WNP or Local Plan Part 2 given that the town was not constrained by Green Belt. There was no need for additional strategic sites to be allocated.

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<sup>64</sup> Summarised from statements LR8 and LR9 and oral evidence

198. The proposal conflicts with the WNP and the CWACL. It should not be developed now because nothing has changed since the referendum; Winsford is on track to achieve 3,500 houses by 2030; if more homes are required there is already a buffer of sites which fit the WNP vision or they should be built in locations which accord with the plan and suit the town, not where it suits the developer. This buffer is illustrated by the mapping exercise which formed part of the WNP and identified far more land than is needed to provide for new homes and employment to 2030.
199. The proposal has been rejected by Darnhall Parish Council, Winsford Town Council and the CWAC Strategic Planning Committee. All Councillors voted against. Both the previous and the sitting MPs have supported the objections of the community
200. The revisions to the housing offer are because the appellant believes that the concessions are needed to make the development acceptable. But more affordable housing and a local approach do not override the fundamental objections. The appellant has ambitions for a much larger scheme [OR94] as demonstrated by the brochure relating to 42 ha of land at Beech House Farm.
201. The community has embraced neighbourhood planning as evidenced by the cost and enormous effort that has gone into the WNP. The WNP has cross party and wide support. Winsford has stepped up to the mark in providing sustainable sites for 3,500 homes in locations that best support the future prosperity of the 32,000 residents of Winsford. But the appeal site does not fit the strategy. It is vital that the application is rejected. To approve it would be a complete affront to democracy and to the many communities that are working hard to promote localism and control their own destiny.

### Written Representations

202. Written representations have also been made by **Antoinette Sandbach MP, John and Gillian Higgs, Robin Wood/Richard Strachan/Stephen Ireland<sup>65</sup>** and **Winsford Town Council<sup>66</sup>** in advance of the reopened inquiry, additional to those referred to in OR119. The following material points have been made:
- *Development Plan* – The site was considered in the examination of both the WNP and the CWACL but was not included in either. The proposal is contrary to the development plan and no concessions will change this. In a recent decision in Malpas the SoS decided in favour of the NP. Any requirement for more housing should be catered for by modifications to the WNP following consultation with residents.
  - *WNP* – Winsford has suffered from a poor external image and social and economic deprivation for many years. Some four years ago the Town Council decided to embrace localism by developing a neighbourhood plan. The WNP has identified sites for 3,500 homes following much detailed work and community engagement. The appeal site was not identified as a preferred site because other sites had a greater ability to deliver development that would positively impact on Winsford. Despite the passion generated by the neighbourhood plan process there is still cynicism in some quarters about the value of neighbourhood plans. There would

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<sup>65</sup> The written representation is similar to Mr Wood's statements to the inquiry LR8 and LR9

<sup>66</sup> Documents GEN7-GEN10

be considerable harm to the credibility of the process if, at the first real test, this appeal was allowed.

### **Obligations**

203. The S106 obligation referred to in the original report [*OR120-121, 163*] remains in place. It was explained that the limitations on pooled contributions set out in Regulation 123 of the Community Infrastructure Levy (CIL) Regulations would not apply because the obligation was entered into before 6 April 2015.

### **Conditions**

204. It was agreed that it was not necessary to revisit most of the conditions discussed at the original inquiry (*OR122-126, 164-166*). However, there was consideration on conditions that ought to be imposed to give effect to the revised housing offer (*IR4*).

205. The appellant submitted a revised list of conditions incorporating those related to the revised housing offer<sup>67</sup>. That related to affordable housing now refers to 40% provision. Other suggested conditions deal with the local builder element, the self-build housing and a local procurement strategy.

206. It was noted that the definition of a local builder would exclude volume house builders, even if based in Cheshire, as they develop about 1000 homes per annum. Discussion took place about whether the self-build condition needed to require a period of occupation by those who had undertaken the self-build to prevent quick disposal on the open market. The condition relating to local procurement ought to refer to businesses based rather than just those operating in the Borough so that it had a sufficient local dimension.

207. It was also proposed that the condition put forward and discussed at the original inquiry about local training and employment be revised to include a definition of the local workforce (*OR126*).

208. It was noted that the condition included in the original report about energy consumption in the dwellings (condition no 25) needs revisiting in light of the introduction of the new system of national housing standards in March 2015.

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<sup>67</sup> Documents DE24 and DE25

## Conclusions

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

### **Main Considerations**

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

- (1) Whether the development plan's policies for the supply of housing are up-to-date, having regard to whether or not it can be demonstrated that there is a 5 year supply of deliverable housing sites; and,
- (2) Whether the proposal would accord with the presumption in favour of sustainable development having regard to its accordance with the development plan and the economic, social and environmental dimensions of sustainable development.

### **Procedural Matter**

210. The appellant has asked that the revised housing offer is considered by me and the SoS [IR4]. The revised housing offer was publicised in advance of the inquiry. The substance of the proposal, an outline application for residential development, would not change as a result of the offer. The offer was discussed at the inquiry. No party would be prejudiced by me taking the offer into account in this report and recommendation. I recommend that the SoS does likewise in arriving at his decision.

### **Five Year Housing Land Supply**

#### *Agreed Matters*

211. The SOCG2 agrees the following in relation to housing land supply:

- a base date of 1 April 2015;
- a 5 year period of 1 April 2015 to 31 March 2010;
- an annual housing requirement of a minimum of 1,100 dwellings (net) and therefore a base 5 year housing requirement of a minimum of 5,500 dwellings (net);
- a shortfall accumulated between 1 April 2010 and 31 March 2015 of 836 dwellings;
- the shortfall should be addressed in full in the 5 year period (the 'Sedgefield' method); and,
- the buffer to be applied in accordance with paragraph 47 of the Framework is 20%.

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

#### *Requirement*

213. The CWACLP has now been adopted and the minimum housing requirement per annum is 1,100 dwellings (net) [IR7]. Adding the shortfall to the 5 year requirement results in a revised requirement of 6,336 dwellings.

214. The question as to whether the buffer of 20% should be applied to the 5 year requirement plus the shortfall or just the 5 year requirement has been considered in many appeals [IR135]. The buffer is intended to ensure choice and competition in the market for land to help boost the supply of housing where there has been persistent under delivery of housing. As this applies in CWAC it would seem appropriate to apply it to both the requirement and the shortfall. To do so would also increase the chances that the full requirement plus buffer and indeed all the need that exists is met in the next 5 years and that past under delivery is not, in a sense, rewarded.
215. This has been the approach taken in the majority of recent appeal decisions [IR34], including those of the SoS, and by the Inspector in examining whether the CWACLP would provide for a 5 year supply of housing<sup>68</sup>. The Planning Advisory Service guidance on 5 year land supply prefers to apply the buffer to the requirement and the shortfall. The SoS in his decision at Gresty Lane, Crewe<sup>69</sup> took a different approach in applying the buffer before adding the shortfall, indicating that to do otherwise, as recommended by the Inspector, would be double counting. However, the term was not explained.
216. It is important to emphasise that applying the 20% buffer to both the requirement and the shortfall would not increase the overall housing requirement for the plan period. The buffer affects only the supply side and seeks to bring forward more sites to provide a realistic prospect of achieving the delivery against the planned requirement<sup>70</sup>.
217. Therefore, I conclude that the buffer should be added to the requirement and the shortfall. Thus, the 5 year housing requirement comprises 7,603 dwellings [IR34 & 136] which includes the under supply since 1 April 2010 made up in this period and the application of a 20% buffer to both the base requirement and the shortfall.

### *Supply*

218. The Council states that it has a 5 year supply figure of 10,139 dwellings whereas the appellant claims that the 5 year supply is 6,941 dwellings, a shortfall of 662 units<sup>71</sup>. These numbers translate into supplies of 6.67 years and 4.56 years respectively. The differences in supply stem from the contributions from the following sources – demolitions; student accommodation; lead-in times and build-out rates; sites with planning permission; and sites without planning permission, including strategic sites allocated by the CWACLP. I will deal with each in turn.

### *(i) Preliminary Points*

219. However, before doing so I will address some preliminary points. In dealing with the various sources of supply I have considered the information and evidence put before me on face value. For example, I note the criticisms of the HLM preparation [IR24-25]. But it is important that it is produced in a timely manner [IR130]. A more comprehensive assessment, involving consultation, will be produced in 2016

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<sup>68</sup> Document APP9 F2 (para 150)

<sup>69</sup> Document APP9 F26

<sup>70</sup> Para 47 of the Framework

<sup>71</sup> SOCG2

following on from the 3 year cycle of the 2010 and 2013 SHLAA's<sup>72</sup>. The HLM has limitations, some of which are illustrated later in this report, but it appears, to be in principle, the most expedient way for the Council to update housing land supply on an annual basis, given resource and time constraints.

220. So far as post-base date information is concerned, it is appropriate to take into account information received after 1 April 2015 if it affects events prior to, or predictions as to delivery beyond, that date. Moreover, I agree that information that supports a pre-base date judgement should not normally be ignored [IR131]. However, generally sites should not be added or taken out post-base date. They will be picked up in the next HLM equivalent.
221. The appellant argues that past delivery rates should be used as a reality check on the future supply [IR29]. However, this is not a method advocated by the Framework or PPG [IR30 & 134]. The policy position has radically shifted with the introduction of the Framework and the replacement of policies of housing restraint with a requirement to meet full OAN in most circumstances [IR134]. That is what CWAC is striving to do. It is telling that almost 12,500 dwellings now have planning permission compared to some 2,700 in 2010/11<sup>73</sup>.
222. The appellant makes the point that developers and builders can inflate the forecast contributions from their existing sites to stymie new development and refers to appeal decisions where this has been given some weight by Inspectors [IR49]. However, as a corollary the Council argues that the appellant has, more than likely, downplayed the delivery from the sites [IR132]. Both lines of argument are based on speculation rather than evidence. I give the propositions little weight and deal with the disputed sites based on all the available evidence.
223. A number of recent appeal decisions have been put before me, including several from CWAC. Whilst consistency in decision making is important, the evidence in front of each Inspector in terms of housing land supply is different. Therefore, for example, although the Hill Top Farm and Fountain Lane decisions are recent, the 2015 ALM was not thoroughly tested [IR20 & 125] and further information on various components of the supply, such as student housing, has now been presented. The Nether Peover and Malpas decisions were based on an earlier housing land supply period [IR126]. I have considered the 5 year supply evidence on its own merits whilst having due regard to what previous Inspectors have said.
224. With those preliminary points considered I now move onto the contributions from various sources. In considering individual sites, although the evidence about some of the principles at play was tested at the inquiry, forensic examination of each and every site was not conducted. Instead it was agreed that I should generally base my findings on the documentary evidence provided to me by the 5 year land supply witnesses, Mr. Pycroft and Miss Fletcher, including the tables within SOCG2. As such the closing submissions of the main parties do not address the detailed evidence at play on the disputed sites.

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<sup>72</sup> Document DE18

<sup>73</sup> Table 2.1 of Document CWAC7

*(ii) Demolitions*

225. In terms of demolitions, the CWACLP confirms that the requirement is a net figure and refers to recent trends in suggesting that around 50 dpa could be lost through changes of use and demolition [IR35 & 137]. However, the contribution from sites that make up the Council's supply takes into account the loss of dwellings that would arise [IR138]. The windfall allowance also refers to past net rates [IR138]. Sites that come into the supply and are picked up by the HLM or its successor will have their contribution calculated taking into account any loss of existing dwellings that occurs. I was not made aware of any significant proposals for housing clearance but, again, if such proposals were to emerge they would be taken into account on a year by year basis.
226. The appellant has applied a 50 dpa deduction from the supply other than for 59 units which are known about and would be lost as sites in the Council's supply come forward. However, for the reasons given above I consider that this is a less robust method of taking into account dwelling losses. Therefore, 191 units should be added to the appellant's supply [IR140].

*(iii) Student Accommodation*

227. In terms of student accommodation, I take the point that the OAN and the CWACLP requirement took into account the needs of students for self-contained accommodation and HMOs [IR142-143]. That said there has been a material change in circumstances since the OAN and requirement was calculated. At that time the assumption was that student numbers in the Borough and in Chester in particular would remain fairly static. New self-contained student accommodation would potentially match the student numbers and could possibly release housing into the market. However, the lifting of restrictions on student numbers and a subsequent recent and predicted future growth in students in Chester has and will increase the demand for student accommodation [IR36-37].
228. The PPG indicates that dedicated student accommodation may take the pressure off the private rented sector and increase the overall housing stock<sup>74</sup> and that it can be included towards the requirement<sup>75</sup> [IR143]. But whether student housing releases accommodation into the housing market is part of the supply side calculation as shown by where the relevant phrase sits in the PPG [IR41].
229. Many of the new students will come into Chester from elsewhere or will be merely freeing up a bedroom in their family home. In these circumstances, the three dedicated student schemes [IR144], whilst increasing the housing stock with self-contained units, would be unlikely to release accommodation into the housing market such as that occupied in the Garden Quarter of Chester. Most of the units would be soaked up by some of the increasing numbers of students. Other students would need to occupy open market homes such as HMOs. This is similar to the situation faced by the Inspector in the Exeter appeal [IR39]. The Inspector for the Telford's Warehouse scheme did not consider that pressures on the Garden Quarter would be lessened [IR42]. For these reasons I conclude that the 511 units should not be added to the appellant's housing supply figure.

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<sup>74</sup> ID 2a-021-20150326 – Housing and economic development needs assessments

<sup>75</sup> ID 3-038-20140306 - Housing and economic land availability assessment

(iv) *Lead-in Times and Build-Out Rates*

230. The lead-in times set out in the HLM are based on the SHLAA 2013 which were informed by the HPG. They appear to be generally reasonable [IR146]. However, I note that the explanation on page 8 of the HLM refers to the preparation of the site in the first year that completions are estimated to contribute. Therefore, I consider that the appellant's approach of forecasting that completions in Year 1 will be around 50% of the normal annual delivery is reasonable. This affects delivery at a number of sites included within Category 8<sup>76</sup> in the SOCG2.
231. In terms of build-out the Council relies on the rates from the SHLAA unless there is site specific evidence to the contrary [IR146]. The SHLAA applied a general rate of 10 to 20 units per year on sites up to 100 dwellings and 20 to 40 units per year on large sites (over 100 units). However, given the wide variation in the housing market and house prices in the Borough (for example Chester compared to Ellesmere Port) [IR48], the use of different rates of delivery across the area would also be reasonable.
232. Turning to different areas of the Borough for the sites in the Chester area, the delivery rate of 36 dpa for Saighton Camp appear reasonable subject to the 50% reduction in Year 1. For Upton Grange, as the site is under 100 units (up to 90) and delivery on adjoining sites has been about 25 dwellings per annum, the appellant's assumptions of about 25 dpa with a 50% reduction in Year 1 are more robust. So no additional units should be added to the appellant's figure for Chester.
233. For Ellesmere Port the market is more difficult than other areas of the Borough. Some of the sites such as Great Hall Park and the Van Leer site have been around for some time. The appellant applies a build rate of between 20-25 dpa to sites. This reflects the build rates set out in the Council's statement to the CWACLP Examination. As elsewhere delivery would be reduced in most cases by 50% in Year 1. In addition lead-in times are increased for some sites. For example the Cromwell Road site has contamination issues, does not have a developer and is not in a particularly attractive location. Rossfield Park has an undetermined planning application and no developer. House builders involved in adjacent sites are not interested in the site because of modest sales rates in the area and neighbouring uses. The Van Leer site is within an employment area. It has had permission and has been marketed for some time but has no developer. I consider that the more pessimistic lead-in times and build-out rates predicted by the appellant for Ellesmere Port should be followed.
234. In Northwich the market appears to be fairly buoyant and sites such as Dane Valley and Weir Engineering Services have been acquired by volume house-builders. The former site is expected to start in 2016 with a build rates predicted between 40 and 50 units per annum. Applying a build rate of 40 dpa would achieve some 140 units in the 5 year period. Winnington Urban Village, where there are four active volume builders and a good take up of purchase incentives, is progressing well with delivery rates of between 32 and 46 dpa per outlet. The Council's forecast of 35 dpa per flag at Winnington appears realistic notwithstanding the position at the time of the CWACLP examination. The rates applied to the former Marley Tile Works site have been informed by the agent of the owner/developer. However, a more realistic delivery rate would be 35dpa. Other than reducing Year 1 delivery on the sites that

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<sup>76</sup> Lead-in times and build rates

have yet to start and subject to my comments above, I consider that the Council lead-in times and build-out rates are generally reasonable. Some 225 units should be added to the appellant's supply for Northwich.

235. Winsford has had limited house building in recent years and has been historically less attractive to the house builders. That said a number of sites have recently got off the ground. However, I consider that for now a more cautious approach should be taken to building rates than those suggested by the Council, taking into account delivery from a small number of sites that have been developed recently and the rates set out in the last SHLAA [IR48]. An annual delivery rate of 25dpa for larger sites in Winsford would be robust. So the lead-in times and build-out rates put forward by the appellant should be relied upon.
236. So far as sites in key service centres and the rural area are concerned, Farndon is in an attractive part of the Borough. The Brewery House site has a capacity of over 100 units and so a delivery of about 30 dpa would be reasonable but with a 50% reduction in Year 1. This would add 13 dwellings to the appellant's supply. Malpas and Tarporley are also locations which would be attractive to the market. A volume house builder is involved in the Tarporley site. A delivery rate of 30 dpa from each site but with a 50% reduction in Year 1 would be robust. Delivery on each of these sites would align with the SHLAA 2013 rates whilst also taking into account the economic upturn since the CWACLP examination. These two sites would add some 50 dwellings to the appellant's supply. The Roften Works site in Hooton has an outline planning permission but no reserved matters have been submitted. Some decontamination works have been undertaken and a house builder is involved. However, the appellant's lead-in time of about 18 months from September 2015 and build rate of 30 dpa (50% in Year 1) are more realistic.
237. Having regard to my consideration of the evidence on lead-in times and build-out rates some 288 units should be added to the appellant's supply.

*(v) Sites with planning permission*

238. With regard to sites with planning permission and some others with permissions pending or recently expired that the appellant considers are not available, the onus should in most cases be on the appellant to show that they are not deliverable [IR54]. The Government response to the DCLG Select Committee Report reinforces that all sites with planning permission should count towards supply unless there is very clear evidence to the contrary [IR148]. There is advice in the PPG and 2013 SHLAA relating to legal and ownership issues and operational requirements of landowners. Taking this advice into account together with the site specific evidence I comment on the disputed sites as follows:
- *Chapel Lane, Wincham* – part of the site is occupied by a scrap yard but there is an indication that the owner has a site to relocate to. There is a recent Council resolution to grant outline planning permission. Delivery commencing in Year 4 with a build rate of 36 dpa (50% reduction in the first year) would seem reasonable. This would add 54 units to the appellant's supply.
  - *Nat Lane, Winsford* – the site is occupied by a large haulage firm with about 100 employees. Although outline planning permission exists (October 2014) a condition gives 7 years for reserved matters to be submitted. There is no evidence that the occupiers have found an alternative site. The site is not available now despite what is said by the owner's planning agent. My findings are consistent

with the Hill Top Farm Inspector in this respect even though he retained 12 units in the supply [IR51].

- *New Road Business Centre, Winsford* – planning permission now exists for 64 affordable dwellings and a RSL has HCA funding. I consider that delivery of the 64 units within the 5 year period would be achievable and these should be added to the appellant's supply. Circumstances have changed since the Nether Peover appeal as recorded by the Hill Top Farm Inspector.
- *Research Laboratories, Winnington Lane, Winsford* – the planning permission for 20 flats has now expired. Permission was granted for a swimming pool in 2013 to consolidate the leisure use. The site is not available now as found by the Hill Top Farm Inspector [IR51]. The Council appears to accept this position.
- *Winsford Clio Centre* – permission was granted in 2009 for 12 dwellings and renewed in 2012 but will soon expire. The site is occupied by a car sales business. There is no evidence of relocation plans. The site is not available which the Council now appears to accept.
- *Haulage Yard, High Street, Norley* – renewal has been sought for the outline planning permission granted in November 2012. But it is understood that, despite some site clearance and decontamination works, the site remains in haulage yard use. It also appears that the site has been marketed for some time. So the 12 units are unlikely to be deliverable within the 5 year period.
- *Malvern House, Northwich* – the outline planning permission has now expired. Although a new application was submitted in April 2015 it had not been determined by the date of the reopened inquiry. A coach company occupies the site and there is no information about relocation plans. The site is not available now [IR51].
- *Premier House, Hoole, Chester* – the site is to be utilised for a mixed development including offices and 3 blocks of canal-side apartments. Although planning permission exists (April 2014) the construction programme and phasing proposals show delivery over 10 years with the residential units to be delivered in the last three phases of a ten phase scheme. A phasing plan has been approved through a condition giving effect to the phasing set out above. Although the developer has indicated that the residential element will be brought forward no formal proposals to obtain detailed permission for the flats or alter the phasing plan have been submitted. So like the Nether Peover and Hill Top Farm Inspectors, delivery from this site should not be included in the 5 year supply as things currently stand [IR53].
- *Former service station, Rossmore Road West, Ellesmere Port* – the site has had a number of permissions dating back to 2005. The PPG advises that consideration should be given to a history of unimplemented permissions. I have not been made aware that a developer is on board. The Nether Peover Inspector accepted the supply but did not support his judgment with site-specific reasoning. The Hill Top Farm Inspector accepted partial build-out. However, I agree with the appellant that delivery within the 5 year period is unlikely.
- *Phase 5, Rossfield Park, Ellesmere Port* – an outline planning application was submitted in March 2010 and there have been resolutions to grant permission. But permission has not been issued as a S106 has not been completed. Peel Land and Property, the site owners, indicate that a housebuilder has expressed an interest in

the site and that delivery could commence in 2016/17. Taking into account these factors I consider that the Council's delivery assumptions are realistic subject to a 50% reduction in Year 1. This would add 50 units to the appellant's supply.

239. So for sites classified as with planning permission or similar, I consider that 168 dwellings should be added to the appellant's supply.

*(vi) Sites without planning permission*

240. I now move onto sites without planning permission at the base date, including strategic sites allocated in the CWACL. The onus should be on the Council to show robust evidence that they are deliverable [IR54 & 151] as set out in the PPG<sup>77</sup> [IR54]. I note the High Court Challenge [IR54] but for now Government policy does not exclude as a matter of principle such sites from contributing to the 5 year supply. The following sites are in dispute:

- *Woodford Lodge, Winsford* – the site is a former school and playing fields owned by the Council. A developer has been appointed and a development agreement has been drawn up. However, as things stand the SoS for Education needs to consent the sale of the playing fields and planning permission does not exist. So whilst the position may soon change the site should not be considered available now.
- *Greyhound Stadium, Ellesmere Port* – this is also a Council owned site with no active use. A developer is expected on board soon. However, there is no planning permission [IR55]. Whilst identified in the Strategic Housing Framework (SHF) and for HRA funding, on balance the site should be excluded based on current evidence.
- *Car Park, Hunter Street, Chester* – although developer interest has emerged recently the information indicates that the site will accommodate self-contained student accommodation. For the reasons given earlier this should not be counted towards the supply [IR227-229].
- *Former car garage, Lower Bridge Street, Chester* – as the site is likely to be developed for student accommodation, the same reasoning applies as above.
- *Handley Hill Primary School, Winsford; Castleleigh Centre, Northwich; Car Park, Church Street, Winsford; and The Acorns, Ellesmere Port* – although all 4 Council-owned sites are identified in the SHF, no planning permissions or developers are in place. So these sites should not count towards the 5 year supply based on current evidence.
- *Romney Close Garage Site, and Sherborne Road Garage Site, Ellesmere Port* – on the basis that Sanctuary RSL has been appointed on a 'Design and Build' to deliver affordable homes on a cluster of small sites in the town, delivery of 26 dwellings should be included in the 5 year supply.
- *The Meadows and former British Legion, Barnton* – planning permission has now been granted (September 2015) and sale has been agreed with Equity Housing Group/Seddon Construction Ltd. Delivery of 40 dwellings should be included in the 5 year supply.

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<sup>77</sup> ID: 3-031-20140306

- *Former Highfield Hotel, Blacon* – although Sanctuary RSL are again involved there is no planning permission as yet and, unlike the sites referred to above, there is no 'partnership' with the Council.
- *Land off Peter Street, Northwich* – planning permission has recently been refused on highway grounds and the Council now concedes that the site should not be included in the supply.
- *Leaf Lane Infant School, Winsford* – planning permission has now been granted for 22 dwellings (September 2015) to Equity Housing Group/Seddon Construction Ltd to whom conditional sale has been agreed. Delivery of 22 dwellings should be included in the 5 year supply.

241. There are 2 strategic housing sites allocated in the CWACLP. The PPG indicates that such allocations could be included in the supply of deliverable sites<sup>78</sup>. Both have recently had planning permissions for piecemeal development refused [IR59-60]. But the principle of housing on the sites is clearly not in dispute.
242. The LP Inspector noted the merits of the Wrexham Road, Chester site [IR153]. From my own knowledge of the area and having regard to the lack of other sites in Chester because of the Green Belt, there is likely to be a high demand for homes provided here. The lead-in time and build rates for the Chester site are informed by the development consortium but the Council's projections are more cautious. Even applying a further layer of caution as undertaken by the Hill Top Farm Inspector, I consider that some 100 dwellings should be counted towards the 5 year supply.
243. For Rilshaw Lane in Winsford a draft development brief has been prepared and there is a resolution to grant planning permission subject to a S106. Whilst I consider that the 2 year lead-in time is reasonable so the site would commence in 2017/18, a 50% delivery for Year 1 and a 25 dpa build rate should be applied to be consistent with other sites in Winsford. I note that the Council refer to simultaneous delivery of market and affordable units but I have insufficient information about how this will affect build-out rates to increase delivery above 25 dpa. Having regard to the above the Rilshaw Lane allocation should deliver about 12 dwellings more than predicted by the appellant.
244. I have taken a cautious approach to delivery of these sites that do not have planning permission. But the circumstances may well change on some of the sites before the 1 April 2016 and this would be picked up in the next HLM or in the more comprehensive 3 yearly assessment which will inform the Local Plan (Part 2) [IR130]. That said some 200 dwellings should be added to the appellant's supply from sites without planning permission, the majority of these coming from the strategic housing sites.

#### *Conclusions on housing land supply*

245. Arriving at a 5 year housing supply is not an exact science. It relies on judgement and some assumptions based on the available evidence. With the majority of the disputed sites I have adopted the position of the appellant but in some cases the Council's evidence is robust and justifies inclusion in the 5 year supply.

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<sup>78</sup> ID: 3-031-2-140306

246. Taking the appellant's figure of 6,941 dwellings as a starting point I add 191 units from demolitions [IR226]; 288 units from my assessment of in lead-in times and build-out rates [IR237]; 168 dwellings from sites with planning permission [IR239]; and 200 dwellings from sites without planning permission at the base date [IR244]. This leads to a 5 year supply of 7,788 dwellings against a requirement of 7,603 dwellings. The supply exceeds the requirement by some 185 dwellings. The average annual delivery rate over 5 years would need to be 1,557 dpa which is similar to the delivery achieved in 2014/15 [IR29]. I note that delivery in the last year included a large number of units funded by the HCA but having regard to the economic recovery and my analysis of the supply there are good reasons why delivery should meet the requirement. The 7,788 units amounts to a supply of 5.12 years.
247. Therefore, on the first main consideration, as the evidence indicates that a 5 year supply of deliverable housing sites can be demonstrated, the development plan's policies for the supply of housing are up-to-date.

### **Sustainable Development**

#### *The development plan*

248. The starting point for the determination of the appeal is the development plan [IR66]. The appeal should be determined in accordance with the development plan unless material considerations indicate otherwise [IR166].
249. Policies of the development plan relating to the supply of housing are agreed as Policy GS5 of the VRBLP, Policies STRAT 2, STRAT 6 and STRAT 9 of the CWACL P and Policy H1 of the WNP<sup>79</sup>.
250. The appeal site is beyond the settlement limits of Winsford as defined by the VRBLP [OR143]. Policy GS5 of the VRBLP is the source of the settlement boundary so there would be conflict with that policy [IR160]. The Examining Inspector into the CWACL P found it necessary to save the policy so that settlement boundaries would remain prior to the adoption of Part 2 of the Local Plan [IR160]. As there is now a 5 year supply of housing an argument has been put that Policy GS5 can be considered to be up-to-date in the context of para 49 of the Framework [IR158].
251. However, the 5 year supply relies to an extent on sites granted permission by the Council and on appeal that lie outside the GS5 settlement boundaries. The settlement boundaries relate to housing supply policies in the VBRLP which have not been saved [OR144]. Moreover, Policy STRAT 9 of the CWACL P effectively replaces the decision making test within Policy GS5 whose terms are more restrictive than the policies of the Framework [OR144]. For these reasons Policy GS5 should not be afforded full weight in terms of its general application [IR66, IR160]. That said the way that the settlement boundary is applied in Winsford can be distinguished from many other parts of the Borough because of the WNP, as I explain below.
252. Policy STRAT 9 of the CWACL P applies to development outside the settlement boundary. STRAT 9 has been found sound following the post Framework examination of the CWACL P. In view of the presence of a 5 year housing land supply Policy STRAT 9 should be considered up-to-date.

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<sup>79</sup> SOCG2 para 2.10

253. The proposal does not comprise one of the types of development that is acceptable in principle in the countryside under Policy STRAT 9 so there is a breach of the policy as was found in the Hill Top Farm and Fountain Lane decisions where the Inspectors were also considering residential developments outside settlement limits [IR68 & 161]. Consequently there is also a degree of conflict with Policy STRAT 1 of the CWACLP [IR68] because there is the loss of a greenfield site even though the proposal accords with several of the other considerations listed in the policy [IR69].
254. Policy STRAT 2 seeks to locate the majority of development within or on the edge of the main towns whilst Policy STRAT 6 supports new housing in Winsford [IR67] with provision to be made for at least 3500 new dwellings. The possibility that the minimum number might be greater than 3500 homes has not come to fruition following the examination and adoption of the CWACLP [OR132 & 134]. To my mind Policies STRAT 2 and STRAT 6 seek to provide the framework primarily for development plan allocations in Winsford. The detail in terms of sites and settlement boundaries are and will be carried forward by the WNP and the Local Plan (Part 2).
255. The WNP has already allocated sites for some 3,360 dwellings in accordance with the Plan's vision [IR9] through Policy H1. Other sites on PDL are coming forward and will be found in accord with Policies H1 and H2 of the WNP. The town has land for potentially almost 3,700 dwellings [IR197]. The Local Plan (Part 2) may need to find additional allocations and will update the settlement boundaries to take into account all allocations and other factors. But logically the WNP allocations will form the main basis for the new settlement boundaries for Winsford. Sites not allocated in the WNP or beyond the GS5 settlement boundary, such as the appeal site, do not comply with Policy STRAT 9. Policies STRAT 2 and STRAT 6 should not be seen as permitting in principle non-allocated sites on the edge of Winsford despite the reference in Policy STRAT 2 to 'on the edge of the main towns'.
256. Turning now specifically to the WNP, Policy H1 in particular is a policy for the supply of housing and is up to date as there is a 5 year housing land supply [IR158]. Policy H2 supports the development of PDL. As positive policies they say where housing will be permitted or supported rather than where it explicitly will not to be allowed [IR162]. Their purpose is explained elsewhere in the WNP [IR163]. Although Policy H1 should not be seen as a cap on housing development [IR71-73] the effect of Policy H1 in particular is to make provision for housing to a level close to the minimum requirements of Policy STRAT 6 of the CWACLP and to guide the location of development in accordance with the vision of the WNP [IR193]. Some other sites, including the appeal site, were considered but not allocated as they did not comply with the vision for the town [IR164, IR196]. To follow the appellant's interpretation of Policy H1 in particular would mean that it would serve no purpose in guiding and regulating development [IR163]. That said additional sites could come forward that are not allocated or are on PDL but they would need to fit with the WNP vision to comply with the Plan [IR198].
257. The scheme would provide a sustainable and varied community with its mix of housing in line with one of the components of the vision for Winsford and in accordance with Policy H3 of the WNP. The site is located where residents would be less likely to travel to Northwich for shopping in comparison with sites towards the northern edge of the town [IR75]. But these factors are not sufficient to demonstrate that the site fits with the overall vision for the town.

258. For the reasons given in the original report I do not consider that the site should be artificially split such that only 50 or so dwellings are considered in the context of the WNP [IR76]. All of the site abuts Winsford and does not have a physical relationship or much of a functional relationship with the small village of Darnhall, even though most of the site is within Darnhall Parish [OR135]. Darnhall would be highly unlikely to have a requirement for 130 dwellings. Again my considerations do not extend to the larger site identified in the SHLAA and considered in the CWACLP examination [OR135, IR200].
259. In my original report I considered that there was some merit in the argument that the appeal proposal did not fit with the overall themes and objectives of the WNP [OR134]. Following the making of the WNP and the scrutiny given to the policies in the reopened inquiry I consider that the proposal cannot be said to comply with the WNP overall.

#### *Conclusions on the development plan*

260. There would be compliance with a number of relevant policies of the development plan which are set out in full in the SOCG. These include those used to assess the proposal against specific matters such as transport (STRAT 10), affordable housing (SOC 1), housing mix (SOC 3) and environment (ENV 2, ENV 4 and ENV 6). But there would be conflict with Policy GS5 of the VRBLP, Policy STRAT 9 of the CWACLP and to a lesser extent Policy STRAT 1 of the CWACLP. Policy GS5 still has considerable weight in the context of Winsford. There would also be conflict with Policy H1 of the WNP. The housing supply policies GS5, STRAT 9 and H1 are the dominant policies for assessing proposals for development outside the Winsford settlement boundary [IR166-168]. I conclude that the proposal would be contrary to the development plan overall.

#### *Economic Role*

261. The economic benefits set out in OR147 still apply. In addition the housing offer whereby up to 92 new homes would be built by local SMEs supports the Government's objective of boosting that sector of the economy [IR80]. The self – build plots and elements of local training, employment and procurement would also add value to the local economy [IR80].
262. The weight to be given to the benefit of the additional market housing needs to be seen in the context of the Council's response to the need to boost significantly the supply of housing. That is what has been achieved by providing a 5 year supply of housing land [IR174]. That said the fact that the market housing will be delivered by SMEs takes up the weight a notch. This, along with the other elements of the housing offer, means that the economic benefits of the appeal proposal are likely to be able to be distinguished from many other housing proposals in the Borough or indeed other proposals on non-allocated sites on the edge of Winsford [IR175].
263. The agricultural land position has not changed since the original inquiry [OR148].
264. Overall there are significant economic benefits from the proposal.

#### *Social Role*

265. The affordable homes provision is 10% above the policy requirement. I have not been made aware of any other 'private' sites in the Borough where provision is above the target.

266. The need for affordable homes identified in the SHMA of 714 dpa for the first few years of the Plan is almost two thirds of the CWACLP annual requirement of 1,100 dpa [IR101]. Therefore, even provision at 30%, although not being achieved, will compound the backlog. However, many sites have been unable to meet the 30% target because of viability issues in locations such as Ellesmere Port. As a result provision is lagging behind the need identified in both the CWACLP and the SHMA [IR83 & IR108]. Whilst delivery of affordable homes in the Borough in 2014/15 was above the annual 30% target, that provision was an exception due to particular circumstances and is unlikely to be repeated in the future when HCA funding is likely to be more constrained [IR109].
267. It is accepted that the 714 dpa figure is not for whole of the Plan period, only until 2017/18 [IR177]; that the 2013 SHMA took into account the backlog and was not in addition to the 2009 SHMA figure [178]; and that the appellant's analysis of the housing register for Winsford did not sufficiently take into account likely multiple counting of single households [IR179]. But despite these qualifications and a failure to agree on the extent of under provision and the remaining need [IR178], the need should still be described as acute [IR111 & IR115]. Moreover, the need in Winsford appears to be greater than most other parts of the Borough [IR102].
268. The appellant has made a comprehensive case to support the provision for affordable homes [IR83-117]. Reference is made to a series of Government and other high level pronouncements [IR84-98]; national, regional and local reports [IR98-99]; and locally identified housing needs evidenced by the SHMA and Council's Housing Register [IR101-102]. It is noted that the numbers on the housing register have declined considerably due to a tightening of qualifying criteria [IR112] but the needs are still significant. Some 2,665 households remain on the CWAC register [IR101]. At the same time over 1,400 properties have been lost from the affordable housing stock through 'right to buy' since 2000 [IR101].
269. As most of the evidence base is not disputed [IR100] it is not necessary for me to set out the details of the support for the provision of affordable housing in these conclusions. Suffice to say that the significant number of households who are being priced out of the housing market 'are real people in real need now' [IR106]. The Council recognises that significant weight should be attached to the affordable housing provision with additional weight attributed to the provision 10% above the policy requirement [IR181]. The appellant suggests that very substantial weight should be attributed to the benefit [IR106]. I consider that substantial weight should be given to the provision of affordable housing on the site.
270. The self-build element would carry some social benefits in helping to respond to the needs of a particular group identified by the SHMA [IR80] and the Government who wish to build their own homes<sup>80</sup>. The proposals do not follow the approach advocated by Policy SOC3 of the CWACLP as a Community Land Trust is not involved. Therefore there are questions over the affordability of the plots [IR183]. That said the scheme for self-build would allow an input by the Council into the open market value of the plots and the PPG does not refer specifically to affordability in discussing this element of demand<sup>81</sup>.

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<sup>80</sup> Para 50 of the Framework

<sup>81</sup> ID 2a-021-20150326 – Housing and economic development needs assessments

271. The local training, employment and procurement elements would bring some social benefits to the Borough as a whole and Winsford in particular were there are relatively high levels of deprivation and joblessness [IR195 & 202], including in the ward adjacent to the appeal site [OR77]. There would be spin-off benefits for the town centre, local shops and other services in the settlement from the greater trade. These spin-offs bring social as well as economic benefits.
272. The other social dimensions of the proposal set out at OR150-152 have not materially changed.
273. Overall there are very substantial social benefits from the proposal.

#### *Environmental Role*

274. Circumstances have not materially changed since the original inquiry in terms of environmental impacts [OR153-157]. There would be some harm from the loss of open fields [OR153]. But the Council is not claiming any specific landscape, visual or ecological harm [IR68]. Indeed there is an acceptance that the ecological improvements would ensue [IR176]. Moreover, the Framework recognises the intrinsic character and beauty of the countryside but does not specifically refer to its protection [IR68].
275. Overall there would be some moderate harm to the environmental dimension of sustainable development.

#### *Conclusions on the economic, social and environmental roles*

276. The Framework requires that the economic, social and environmental roles of sustainable development should not be assessed in isolation. In this instance the significant economic benefits and the very substantial social benefits of the development clearly outweigh the moderate environmental harm. However, that is not the end of the matter. The conflict with the up to date development plan is a key component of the final balancing exercise which I deal with in my overall conclusions. In this respect Policy STRAT 1 of the CWACLP indicates that sustainable development would not be achieved if a proposal would fundamentally conflict with the Local Plan [IR186]

#### **Obligations**

277. There has not been any change in circumstances affecting the obligations relating to on-site open space and a contribution to off-site playing fields [OR163]. SPD3 remains in place [OR21, OR163] [IR13] and Policy SOC 6 of the CWACLP requires that development incorporates or contributes to the provision of open space, sport and recreation. The obligations remain CIL compliant.

#### **Conditions**

278. There is a need to update the recommended conditions to give effect to the housing offer. The provision of affordable housing above the policy target and the facilitation of self-build are all significant benefits which I have taken into account in the planning balance. Therefore, conditions are necessary to ensure that those elements would be implemented should the development go ahead. As in the original report I have not included reference to a specific split in tenure as needs may change over the implementation period of the development [OR164]. I have amended the self-build condition so that the scheme for the provision of such units includes reference

to the period that houses would need to be occupied by those who carried out the project [IR206].

279. The support for the local economy and SMEs that would be secured by requiring small and medium sized Cheshire-based builders to be involved in the open market housing and a percentage of procurement undertaken locally are needed to ensure that the economic benefits of the scheme would be realised. I have amended the local procurement condition to refer to businesses based in the Borough [IR206]. The revisions to the local labour strategy condition are warranted to provide more precision [IR207].
280. In that condition 25 referred to renewable energy sources rather than the energy performance of the dwellings, I do not consider, on reflection, that the condition needs to be amended or deleted in light of the introduction of the national housing technical standards [IR208].
281. I have amended the detailed wording of the conditions put forward for clarity where necessary without changing the substance.

### ***Planning Balance and Overall Conclusions***

282. The proposal is contrary to Policy STRAT 1 of the CWACLP and Policy GS5 of the VRBLP which is still a 'saved' policy post adoption of the CWACLP, albeit not carrying full weight [IR250]. There is also a degree of conflict with Policy STRAT 9 of the CWACLP and Policy H1 of the WNP. Although a number of development plan policies support the proposal, particularly Policy SOC1 of the CWACLP, and the relevant policies of the WNP are not explicit in forming a basis to resist the development, there is conflict with the development plan overall [IR260]. The development plan is not to be set aside lightly [IR170-171]. A failure to comply with development plan could give an indication that the development would not be sustainable overall [IR276].
283. Permission would undermine the credibility of the plan-led system [IR202] and the status of neighbourhood plans promoted by the Framework [IR172] even though paragraph 198 of the Framework should not be interpreted as giving NPs enhanced status over other components of the development plan [IR64, IR78]. There are adverse impacts through the loss of open countryside which represents moderate harm [OR161]. The Council has not alleged any other harm given that the other material impacts could be made acceptable by the use of conditions.
284. I have concluded that there is now a 5 year supply of housing which is a significant change in circumstances since the original report. As a result the second sentence of paragraph 49 of the Framework does not take effect and relevant policies for the supply of housing can be considered up-to-date. Given that Policies STRAT 1, STRAT 2, STRAT 6 and STRAT 9 of the CWACLP have recently been found sound and have only just been adopted it is unsurprising that they should be considered up-to-date. Similar status can be afforded to Policies H1 and H2 of the WNP.
285. The test within paragraph 14 of the Framework in relation to planning permission being granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits does not now come into play. It is a matter of balancing the harm, conflict with the development plan and the adverse impacts through the loss of countryside, against the economic and social benefits arising from the provision of new homes. In this case there are substantial economic and

social benefits arising, particularly the significant proportion of affordable homes and the other 'novel' elements of the housing offer [IR15, IR119]. Whilst this type of offer could be repeated, the circumstances are unlikely to be commonplace because of the position of the appellant as landowner [IR117] as set out in detail in the 'Local Approach' document [IR82].

286. Development that conflicts with the development plan should be refused unless other material considerations indicate otherwise. But it does not necessarily follow that a proposal which conflicts with the development plan cannot comprise sustainable development as illustrated by many appeal decisions<sup>82</sup>. I conclude that the conflict with the development plan, the starting point for decision making, and the adverse impacts on the countryside are outweighed by other material considerations, namely the significant economic and very substantial social benefits arising from additional housing, particularly the affordable homes.
287. In arriving at this conclusion I have taken into account that the Council, putting to one side the conflict with the development plan and the 'in principle' objection to the loss of countryside, agree that the grant of permission will not result in any specific adverse impacts and that the site is in a sustainable and accessible location [IR5]. For these reasons in terms of the second main consideration, the proposal would accord with the presumption in favour of sustainable development, having regard to the development plan and the economic, social and environmental dimensions of sustainable development considered in the round.

### **Recommendation**

288. I recommend that the appeal be allowed and outline planning permission be granted subject to the conditions set out in Appendix C to the original report, other than conditions 24 and 26 which should be replaced by conditions no 1 to 5 in Appendix C to this report. This recommendation is consistent with that contained in my original report [OR168].

*Mark Dakeyne*

INSPECTOR

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<sup>82</sup> For example those referred to in IR65 & IR159

## APPENDIX A - APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter	Of Counsel, instructed by Vanessa Whiting, Head of Governance, CWAC
He called	
Jill Stephens BA (Hons) Dip TP MRTPI	Senior Planning Officer, CWAC
Beth Fletcher BSc (Hons) MSc	Senior Planning Officer, CWAC

### FOR THE APPELLANT:

Christopher Young	Of Counsel, instructed by Gary Halman of HOW Planning
He called	
James Stacey BA(Hons) Dip TP MRTPI	Director, Tetlow King Planning
Gary Halman BSc FRICS MRTPI	Partner, HOW Planning
Ben Pycroft BA (Hons) Dip TP MRTPI	Associate Director, Emery Planning

### INTERESTED PERSONS

Councillor Stephen Burns	Borough and Parish Councillor
Robin Wood	Local Resident

## **APPENDIX B: PLANS AND DOCUMENTS IN CONNECTION WITH THE REOPENED INQUIRY<sup>83</sup>**

### **DOCUMENTS SUBMITTED BEFORE THE INQUIRY**

#### ***GENERAL DOCUMENTS***

- GEN6 Notification of inquiry arrangements dated 17 August 2015
- GEN7 Letter from John and Gillian Higgs, Local Residents, dated 22 August 2015
- GEN8 E-mail from Robin Wood, Richard Strachan and Stephen Ireland dated 3 September 2015
- GEN9 E-mail from Winsford Town Council dated 8 September 2015
- GEN10 Letter from Antoinette Sandbach MP dated 8 September 2015

#### ***APPELLANT'S DOCUMENTS***

- APP5 Statement of Case dated July 2015
- APP6 Proof of Evidence of Gary Halman and appendices 1 to 9
- APP7 Proof of Evidence of James Stacey and appendices JS1 and JS2
- APP8 Proof of Evidence of Ben Pycroft and appendices EP1 to EP30
- APP9 Documents in Support of Resumed Public Inquiry (F) – Local Plan Policy and Associated Documents F1-F7, Neighbourhood Plan and Associated Documents F8-F9, Court of Appeal Cases F10-F11, High Court Cases F12-F17, SoS and Inspector Appeal Decisions F18-F50, Other Documents F51-F89 (Volumes 3 (Parts 1 & 2, Volume 4, Volume 5)

#### ***LPA DOCUMENTS***

- LPA1 Statement of Case
- LPA2 Proof of Evidence of Jill Stephens and 5 appendices
- LPA3 Proof of Evidence of Beth Fletcher and 11 appendices

### **DOCUMENTS SUBMITTED AT THE INQUIRY**

#### ***GENERAL DOCUMENT***

- ATT2 Attendance Lists for Days 1 to 4

#### ***STATEMENT OF COMMON GROUND***

- SOCG2 (Revised) Statement of Common Ground agreed by the appellants and CWAC dated 18 September 2015 (supersedes SOCG and addendums dated 18 June 2015, 16 July 2015, 14 September 2015 and 17 September 2015 and undated Housing Land Supply SOCG

#### ***APPELLANTS' DOCUMENTS***

- DE10 Opening Statement
- DE11 Freedom of Information response on CWAC Housing Register
- DE12 SoS decision dated 25 June 2015 relating to land to the east and west of Brickyard Lane, Melton Park, East Riding of Yorkshire (ref: APP/E2001/A/13/2200981
- DE13 Agreed Draft Conditions and Informatives
- DE14 Letter dated 17 August 2015 from Quinplex Limited
- DE15 Letter dated 19 August 2015 from My Pad Developments

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<sup>83</sup> Numbered to follow on from the plans and documents submitted in connection with the original inquiry

- DE16 High Court Claim No: CO/3653/2015 – Statement of Facts and Grounds – St Modwen Developments Limited v SoS and others
- DE17 Letter from Examining Inspector into Amber Valley Local Plan (Part 1 – The Core Strategy) to Amber Valley Borough Council dated 10 August 2015
- DE18 CWAC consultation on Housing and Economic Land Availability Assessment Methodology August 2015
- DE19 Letter from Ben Pycroft to CWAC on above Methodology dated 27 August 2015
- DE20 Information about Student House Shares from Matthews of Chester dated 15 September 2015
- DE21 Discounts made from housing land supply by Inspector in appeal decision ref: APP/A0665/W/14/3000528 dated 3 September 2015 relating to Hill Top Farm, Northwich
- DE22 Addendum Evidence of James Stacey in response to updated figures on affordable dwelling completions
- DE23 Note on Trust Homechoice Allocations Policy
- DE24 Agreed Draft Conditions and Informatives including those relating to Revised Housing Offer
- DE25 Amended Draft Conditions for Revised Housing Offer
- DE26 Closing Submissions
- DE27 Wiltshire Council v SoS [2015] EWHC 1261 (Admin)
- DE28 Redditch BC v SoS [2003] EWHC 650 Admin [2003] 2P. & C.R.25

#### ***LPA DOCUMENTS***

- CWAC6 Summary of Proof of Evidence of Jill Stephens
- CWAC7 Rebuttal Proof of Evidence of Beth Fletcher
- CWAC8 Opening Statement
- CWAV9 Extract from PPG on Self Build Exemptions
- CWAC10 Policy SOC3 of the CWACLP
- CWAC11 Affordable Housing Completions 2010/11 to 2014/15
- CWAC12 Closing Submissions
- CWAC13 Bloor Homes East Midlands v SoS [2014] EWHC 754 (Admin)
- CWAC14 R (Cummins) v Camden LBC [2001] EWHC 1116 (Admin)

#### ***LOCAL RESIDENTS DOCUMENTS***

- LR8 Statement from Robin Wood
- LR9 Closing Statement from Robin Wood

**APPENDIX C: Recommended Conditions**  
**(to be substituted for condition nos. 24 to 26 in Appendix C to the original report)**

*Affordable Housing*

1. Prior to the commencement of the development a scheme for the provision of affordable housing shall be submitted to, and approved in writing by, the local planning authority. The affordable housing shall be 40% of the total number of dwellings to be provided on site, be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - a) the numbers, tenure and location on the site of the affordable housing provision to be made;
  - b) The type and mix of affordable dwellings;
  - c) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
  - d) the arrangements for the transfer or management of the affordable housing;
  - e) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and,
  - f) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

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

*Training and Employment*

2. The development hereby permitted shall not commence until details of a Training and Employment Management Plan has been submitted to, and approved in writing by, the local planning authority. The plan shall aim to promote training and employment opportunities during the construction phase for local people by undertaking to meet a target of not less than 50% of the total workforce on the site being resident in the Cheshire West and Chester, Chester East or Warrington Borough Council areas, of which not less than 20% is either:
  - (i) Resident in the Borough of Cheshire West and Chester; or
  - (ii) Resident within a 15 mile radius of the site.

The development shall be carried out in accordance with the approved plan.

*Self-Build Housing*

3. Prior to the commencement of the development, a scheme for the provision of self-build plots shall be submitted to, and approved in writing by, the local planning authority. The self-build plots shall be 10% of the total number of the dwellings to be provided on the site and shall be provided in accordance with the approved scheme. The scheme shall specify:
  - (i) The number, location and size of the plots that would be reserved for self-build;

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

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

#### *Local Builders*

- 4. No dwelling which is not an affordable or self-build unit shall be constructed other than by a builder or company that:
  - (i) has a main office or registered office that was within the Cheshire West and Chester, Chester East or Warrington Borough Council areas at the date of this permission; and,
  - (ii) builds a total of not more than 500 residential units in any one year.

#### *Local Procurement*

- 5. Prior to the commencement of development a Local Procurement Strategy shall be submitted to, and approved in writing by, the local planning authority. The Strategy shall include:
  - (i) Details of the initiatives to ensure that 20% of the gross construction costs of the development are delivered by businesses based in the Borough of Cheshire West and Chester;
  - (ii) The timing and arrangements for the implementation of these initiatives; and,
  - (iii) Suitable mechanisms for monitoring the effectiveness of these initiatives.

All parts of the approved Local Procurement Strategy shall be implemented in full.

### **End of Schedule of Conditions**



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

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

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

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

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

#### **Challenges under Section 288 of the TCP Act**

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

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

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

### **SECTION 3: AWARDS OF COSTS**

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

### **SECTION 4: INSPECTION OF DOCUMENTS**

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