

# Planning Statement

## Land at Sandbach Heath

On behalf of Bloor Homes Ltd

Date: January 2024 | Pegasus Ref: P20-3452\_ROO4v4\_MAN\_PL\_KR\_ST

---



Document Management.

Version	Date	Author	Checked/ Approved by:	Reason for revision
ROO1v1	December 2024	KR	ST	Comments
ROO1v2	January 2025	KR	ST	Client Review
ROO1v3	January 2025	KR	ST	KC Review
ROO1v4	January 2025	KR	ST	



# Contents.

1. Executive Summary.....	5
2. Introduction.....	9
About the Applicant.....	9
Application Documents.....	9
Report Structure.....	11
3. Site Overview.....	12
The Application Site.....	12
Parcel B.....	12
Parcel C.....	13
Parcel D.....	14
Surrounding Area.....	15
Planning History.....	15
14/1946C.....	15
14/5586C.....	17
Pre-Application Discussions.....	17
EIA Screening.....	18
Re-Screening.....	18
Community Involvement.....	18
Liaison with North West Academies.....	19
Liaison with Leonard Cheshire.....	19
4. The Proposal.....	20
Use and Layout.....	20
Scale, Siting and Appearance.....	20
Access.....	21
Open Space.....	22
Landscaping.....	23
Additional Land within Bloor's Control.....	23
5. Planning Policy and Guidance.....	24
Adopted Local Planning Policy and Guidance.....	24
Local Plan Strategy (LPS) (July 2017).....	24
Site Allocations and Development Policies Document (SADPD) (December 2022).....	26
Sandbach Neighbourhood Plan (SNP) (2022).....	27
Supplementary Planning Documents.....	28
Emerging Local Planning Policy.....	29
National Planning Policy and Guidance.....	29
National Planning Policy Framework (NPPF).....	29
Planning Practice Guidance (PPG).....	32
6. Planning Assessment: Principle of Development.....	33
Changes to the NPPF.....	33



Principle of Development .....	38
Policy H1 New Housing .....	41
Policy PG 9 Settlement Boundaries and PC 3 Settlement Boundary .....	42
Policy PG 6 Open Countryside .....	44
Policy PC1 Local Green Gaps .....	45
Policy PG 1 Overall Development Strategy .....	46
Policy PG 2 Settlement Hierarchy .....	47
Policy PG 7 Spatial Distribution of Development .....	48
Conclusion on Principle of Development .....	55
Deliverability.....	56
Suitable .....	57
Available .....	57
Achievable.....	58
Conclusion.....	58
7. Design .....	59
High-Quality and Sustainable Homes .....	59
Layout.....	60
Access to Open Space .....	60
Safety .....	61
Conclusion.....	61
8. Housing .....	63
Housing Delivery on Site.....	63
Affordable Housing Provision .....	63
M4 (2) and M4 (3) Housing .....	65
Adopted Housing Policies .....	66
Residential/Housing Mix – LPS Policy SC 4, SADPD Policy HOU 1 & SNP Policy HOU3 .....	66
Policy SC 5 Affordable Homes .....	67
Policy HOU 3 Self and Custom Build Dwellings .....	67
Policy HOU 8 Space, Accessibility and Wheelchair Housing Standards .....	68
Policy HOU 12 Amenity .....	68
Policy HOU 13 Residential Standards .....	69
Policy HOU 14 Housing Density .....	69
Policy H2 Design and Layout .....	69
Policy H4 Housing an Ageing Population .....	69
Conclusion.....	70
9. Highways.....	71
Access Arrangements.....	71
Site Access .....	71
Amendment to Speed Limit.....	72
Bus Diversion.....	72
Pedestrian Crossing .....	72
Pedestrianisation of Colley Lane .....	73
Links to Public Rights of Way .....	73
Parking Arrangements.....	73
Junction Capacity .....	73





Accessibility .....	74
Conclusion .....	75
10. Landscape, Ecology and Trees .....	76
Landscape .....	76
Landscape and Visual Assessment .....	76
Proposed Landscaping .....	77
Ecology .....	78
Trees .....	79
11. Flood Risk and Drainage .....	81
12. Other Technical Matters .....	87
Ground Conditions .....	87
Heritage .....	87
Archaeology .....	88
Built Heritage .....	88
Agricultural Land Classification .....	90
Noise .....	91
Air Quality .....	91
Sports Needs .....	92
Health and Well-Being .....	93
Energy and Sustainability .....	94
Developer Contributions .....	96
13. Conclusion and Planning Balance .....	97
Planning Balance .....	97
Compliance with Key Policies .....	99
Conclusion .....	100

## Appendices contents.

**Appendix 1** –Hallam Land Management Ltd. Appellant – and – (1) Secretary of State for Communities and Local Government (2) Eastleigh Borough Council Court of Appeal decision

**Appendix 2** – Barnwell Manor Wind Energy Limited Appellant – And – (1) East Northamptonshire District Council (2) English Heritage (3) National Trust (4) The Secretary Of State For Communities And Local Government [2014] EWCA Civ 137

**Appendix 3** – Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP v Cheshire East Borough Council (Appellant) Decision [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

**Appendix 4** – Cheshire East Constraints Plan

# 1. Executive Summary.

- 1.1. This Planning Statement has been prepared by Pegasus Group, on behalf of the Applicant (Bloor Homes Ltd) in support of an outline planning application for a residential development comprising 325 dwellings at land at Sandbach Heath ('the Application Site').
- 1.2. The Site is located within the designated open countryside and outside of the defined settlement boundaries and is therefore contrary to Local Plan Strategy Policies PG 1, PG 6 and PG 7, Site Allocations DPD Policy PG 9 and Sandbach Neighbourhood Plan Policy PC3.
- 1.3. However, paragraph 11 of NPPF 2024 states that where there are no relevant development plan policies or the policies for the supply of land which are most important for determining the applications are out of date, permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits. There are no relevant footnote 7 policies (see NPPF 11).
- 1.4. Paragraph 78 of the NPPF states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old (and have not been reviewed).
- 1.5. The Cheshire East Local Plan Strategy was adopted in 2017 and this plan is now more than 5 years old. The adopted strategic policies within this plan, including Policy PG6 are out of date and therefore Cheshire East must identify a supply of deliverable sites, in line with their local housing need figure in NPPF (Dec 2024) which is 2,461 homes annually for Cheshire East. This is a significant increase from 977 d/pa (under NPPF Dec 2023).
- 1.6. Based on the delivery of 2,461 homes annually, including a 5% buffer in line with paragraph 78 of the NPPF, Cheshire East are not currently able to demonstrate a 5-year supply of housing. The LPA can demonstrate (at best) only deliver a 4.58-year supply of housing (on the basis of the LPA's supply at March 2023, looked at uncritically). The Applicant reserves the right to argue that the supply is (in fact) materially lower than this.
- 1.7. The site is a deliverable site, which is suitable, available and achievable for residential development. Bloor Homes are committed to delivering new homes on this site and would accept a condition on any outline approval which would shorten the time limit for which a Reserved Matters application must be submitted to demonstrate their commitment to delivering new homes.
- 1.8. From the outline application being approved, new homes could be built and occupied on site within 2 years and between 140 and 210 dwellings delivered within a 5-year window.
- 1.9. The policies within the Local Plan Strategy which refer to housing numbers, the location and distribution of development, which are the most important in terms of the determination of the principle of development (including Policies PG1, PG6, PG7, PG9 of the Development Plan and Policy PC3 of the Sandbach Neighbourhood Plan), are therefore out of date, under the revised NPPF. (Dec 2024). Indeed, such policies are out of date and inconsistent with the NPPF because the effect of the settlement boundaries is to constrain housing development to an area which has been established to meet an out of date (and materially lower) annual housing requirement (1800 d/pa in the CELPS). Greenfield housing sites

outside settlement boundaries and outside the Green Belt are required (in the first instance) for the LPA to meet the minimum requirement of a 5YHLS (against a minimum housing requirement).

- 1.10. This development would make a significant contribution to the Council's supply of market and affordable housing. This is a suitable, available and deliverable Site, which would contribute towards achieving a five-year supply of housing. In line with paragraph 11 and footnote 8 of the NPPF, permission should be granted. There are no relevant Footnote 7 policies, and the adverse impacts do not significantly and demonstrably outweigh the benefits (to which significant weight should attach).
- 1.11. The proposal will also make a valuable contribution to the delivery of affordable homes and new homes which comply with the M4(2) M4(3) standards, which should be attributed significant weight.
- 1.12. The Site will deliver levels of open space which is significantly over and above guideline levels within the LPS and the Cheshire East Design Guide. The proposal seeks to deliver 8.8 hectares of open space which is 6.7 hectares more than the required amount. This includes the delivery of a 3.8-hectare community park which can be used for the benefit of existing and proposed residents. The level of open space proposed, coupled up with the provision of high-quality housing, weigh heavily in favour of the proposal being approved.
- 1.13. Bloor Homes propose to deliver all homes to the Future Homes Standard which will incorporate solar PV panels, heat pumps, and advanced insulation. The new homes will be constructed using eco-friendly materials which prioritise water efficiency. Bloor's delivery of energy efficient homes should be given significant weight when determining the acceptability of the proposal.
- 1.14. The proposed development will deliver significant economic, social and environmental benefits, including:

#### **Economic**

- During the Construction Phase – Direct and indirect construction related employment and generation of GVA during the construction phase;
- During the Operational Phase – Increased supply of labour from new homes, generation of additional household spend and first occupation expenditure, increased Council Tax income, improved energy efficiency and supporting the climate change agenda;

#### **Social**

- Provision of significant amounts of public open space, comprising of play areas, parks, informal areas of open space, public footpaths, for the benefit of existing and future residents;
- Provision of open space adjacent to the Leonard Cheshire to provide open space for the use of the residents and to protect their amenity and outlook;

- Support the existing services and facilities within Sandbach and Cheshire East by providing both additional patronage and funding to support their operation and function;
- Creation of new recreational routes to improve accessibility to the wider open countryside;
- Improve accessibility to sustainable modes of transport, through improvements to public transport and the enhancement of footpath/cycleways;
- The proceeds of the sale will be used by the charities for their respective charitable purposes.

### **Environmental**

- Retention of all trees and hedgerows within and around the Site where possible, including all TPOs. Where any trees, hedgerows or vegetation is required to be removed, this will be compensated through new planting;
- Creation of new areas of open space within the Site which are available to existing and proposed residents. The open space will comprise of a mix of play areas, parks, informal areas of open space and connections to the open countryside;
- 10% BNG of biodiversity of the existing Site to provide new habitats and species to the Site;
- Bloor Homes use eco-friendly materials and prioritise water efficiency throughout the build;
- Homes are designed to maximise natural light and ventilation, enhancing comfort and well-being. By placing sustainability at the core of our design, we are building homes that not only provide modern comforts but also contribute to a cleaner, greener future for all; and
- Electric vehicle charging points will be available throughout the community.

- 1.15. Although Bloor control the land, the land is owned by 8 national charities. Should planning permission be granted for residential development and acquired by Bloor, the proceeds of the sale will be used by the charities for their respective charitable purposes.
- 1.16. In addition to this, as noted in the earlier sections of this report, this proposal provides the opportunity to expand the public service infrastructure within Sandbach, which paragraph 101 of the NPPF confirms should be given significant weight. A bus turning circle is proposed to provide improved and more accessible bus services for existing and future residents.
- 1.17. The proposal accords with other relevant policies within the Cheshire East's Development Plan Documents.
- 1.18. There are no technical constraints to delivering homes on this Site, which cannot be addressed by conditions and/or s106 agreement, and the proposals are acceptable from a technical perspective.

- 1.19. The development proposals comprise a sustainable form of development and accordingly, and in line with paragraph 11 of the NPPF, permission should be granted.

## 2. Introduction.

- 2.1. This Planning Statement has been prepared by Pegasus Group, on behalf of the Applicant (Bloor Homes Ltd) in support of an outline planning application for a residential development comprising 325 dwellings on land at Sandbach Heath ('the Application Site').
- 2.2. The application seeks consent for the following ('the proposed development');

***'Outline application, with all matters reserved except for access, for development comprising up to 325 residential dwellings (Use Class C3), creation of a community park located between Manor Road and the A533 The Hill and other open space and landscaping, associated infrastructure, including earthworks and drainage'.***

- 2.3. Having regard to Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004, this statement considers the application's conformity with the development, relevant national policy and guidance, as well as other material considerations.

### About the Applicant.

- 2.4. Bloor Homes Ltd (Bloor) wish to bring forward the proposed development on the Application Site.
- 2.5. Bloor was established in 1969 by Chair and founder, John Bloor OBE. Bloor remains a privately owned business with a proud history of building quality homes. From the regional base in Holmes Chapel, Bloor remains committed to delivering homes and communities with a focus on quality, design and place making, ensuring that high standards are maintained more than 55 years later.
- 2.6. The dedicated team, from planners and designers to tradespeople and customer service professionals, is committed to creating well-designed, high-quality homes that they would be proud for their own families to live in. This commitment has earned them a 5-star Home Builders Federation rating for six consecutive years, and over 97% of its homeowners would recommend Bloor to family and friends.
- 2.7. Bloor is committed to working with Cheshire East Borough Council and the local community to bring forward much needed family and affordable housing which delivers social, environmental and economic benefits for the local area.

### Application Documents.

- 2.8. In addition to this Planning Statement, the following documents have been submitted in support of this application:
- Application Forms and Certificates;
  - Design and Access Statement (prepared by Pegasus Group);
  - Transport Assessment (prepared by Curtins);
  - Interim Travel Plan (prepared by Curtins);

- Noise Impact Assessment (prepared by JPM Acoustics);
- Flood Risk Assessment (prepared by Betts);
- Ordinary Watercourse Hydraulic Assessment (prepared by Betts);
- Drainage Management Strategy (prepared by Betts);
- Desk Top Contamination Report (prepared by Coopers);
- Energy Strategy Statement (prepared by Briary);
- Economic Benefits Statement (prepared by Pegasus Group);
- Health Impact Assessment (prepared by Pegasus Group);
- Preliminary Ecological Appraisal (prepared by Tyler Grange);
- Statutory Biodiversity Metric Calculation Tool (prepared by Tyler Grange);
- Preliminary Arboricultural Impact Assessment (prepared by Tyler Grange);
- Statement of Community Involvement (prepared by Lexington);
- Sports Needs Assessment (prepared KKP);
- Agricultural Land Classification Report (prepared by ADAS);
- Air Quality Assessment (prepared by Wardell Armstrong);
- LVA (prepared by Pegasus Group);
- Heritage and Archaeology Statement (prepared by Pegasus Group); and
- EIA Screening Report (prepared by Pegasus Group);
- EIA Screening Update Letter (prepared by Pegasus Group).

2.9. A schedule of application drawings is set out below in Table 1 which accompany this application:

**Table 1 – Schedule of Application Drawings**

Drawing Name	Drawing Reference
Site Location Plan	P20-3452_DE_UDM_002C
Illustrative Masterplan	P20-3452_DE_UDM_005_001 – Masterplan
Parameters Plan	P20-3452_DE_UDM_020_Parameter Plan

Illustrative Landscape Plan	P2O-3452_EN_0001B_Landscape Masterplan
-----------------------------	--

## Report Structure

2.10. This Planning Statement is structured as follows:

- Section 3 contains a description of the Site and surrounding area, as well as confirming the planning history of the Site, pre-application discussions which have taken place with the Council to date, EIA screening and involvement with the community;
- Section 4 sets out what is proposed as part of this application, with details of the key elements and features of the proposal;
- Section 5 sets out the relevant national and local planning policies of relevance to the proposal;
- Section 6 provides an assessment of the acceptability of the principle of development and the policies of relevance in determining the application;
- Section 7 goes on to describe how the design of the scheme has evolved;
- Section 8 sets out policies specific to the delivery of housing within the Development Plan Documents (DPD's) and how the proposal complies with these policies;
- Section 9 provides further details on the highways proposals and what works have been completed to date to confirm the acceptability of the proposals from a highway perspective;
- Section 10 contains details of landscape proposals and details of ecology/BNG/trees;
- Section 11 sets out flood risk and drainage consideration, including a consideration of a flood risk sequential assessment;
- Section 12 provides an overview of all other technical considerations, including: heritage, ALC, ground conditions, noise, air quality, education, developer contributions, sport's needs, energy etc;
- Section 13 provides a conclusion and a summary of how the planning balance should be applied when taking into consideration all the factors noted in the earlier sections.

2.11. This Planning Statement will assess in detail all the planning aspects associated with the proposals for the Application Site. It will demonstrate that the proposals will achieve a high quality, well-designed scheme of up to 325 homes, including a significant amount of public open space and other associated infrastructure.

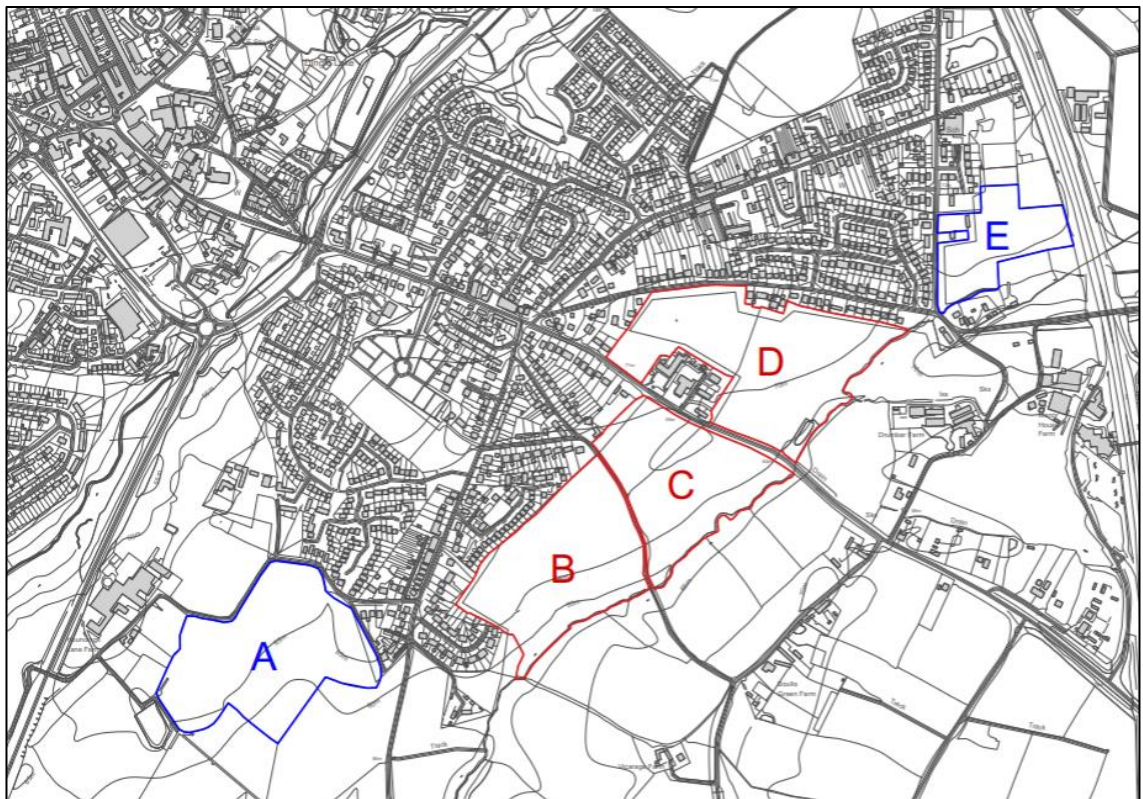


### 3. Site Overview.

#### The Application Site.

- 3.1. The Application Site (the Site) is located to the east of Sandbach in an area known as Sandbach Heath, within the administrative area of Cheshire East Borough Council (the Council).
- 3.2. The Site comprises 19.28 hectares of open countryside/agricultural land which abuts the south eastern edge of Sandbach, in the Sandbach Heath area (the area outlined in red on the Site Location Plan).
- 3.3. Bloor controls five parcels of land, which are shown in the image below and on the submitted Site location plan. This application seeks development on Parcels B, C and D. There are no current proposals relating to Parcels A and E.

**Figure 1 – Site Location Plan**



- 3.4. Below, we provide a brief description of each of the parcels.

#### **Parcel B**

- 3.5. Parcel B measures 6.17 hectares and is located to the south east of Rose Way. The parcel is made up of one agricultural field parcel and slopes gently to the south. The parcel is in agricultural use.

- 3.6. The parcel is bound by the existing built-up area of Sandbach to the north/ northwest/ southwest. The western edge of the parcel abuts the residential dwellings located along Rose Way and Coldmoss Drive. Colley Lane forms the eastern boundary, which comprises a single lane road, linking to Hassall Road to the north west and Vicarage Lane to the south east. The southern boundary comprises a dense hedgerow/tree line with agricultural fields beyond this.
- 3.7. The existing access into the parcel is taken from Colley Lane which forms the eastern boundary of the Site. Off Coldmoss Drive to the western of the parcel, there is a turning head which could be converted into an emergency access into the Site. There is a currently a wall and vegetation along the Site boundary in this location which is preventing access into the Site.
- 3.8. There are no trees or hedgerows within the parcel however there is vegetation around the perimeter of the Site.
- 3.9. Along the southern boundary, a watercourse runs in a south westerly direction. This runs into the Wheelock River, which is located approximately 300m to the south west of the Site. The river is recognised as an area of Local Ecological Value. There are no other ponds or watercourses within or adjacent to the parcel.
- 3.10. The parcel is entirely within Flood Zone 1 from fluvial flooding, which poses the lowest risk of flooding. There are some areas of surface water flooding, but this is limited to the along the north/western boundary (along the residential edge) and along the southern boundary (with the watercourse). Development is excluded from the areas which are at risk of surface water flooding.
- 3.11. There are no designated heritage assets, within or adjacent to the parcel nor is it within close proximity to a Conservation Area. The parcel is not located adjacent to or in close proximity to any SSSIs or Special Areas of Conservation. The parcel is not subject to any national or local landscape designations.
- 3.12. There are no public rights of way running through the parcel however the parcel has potential to connect to the open countryside by existing public rights of way. The southern tip of the parcel connects to Sandbach Footpath 20 (FP20) to the west and Betchton Footpath 2 (FP2) to the east.

### **Parcel C**

- 3.13. Parcel C measures 5.29 hectares and is located to the south of the A533 'The Hill'. The parcel comprises one agricultural field which slopes upwards slightly from the southern corner towards the north western corner of the Site.
- 3.14. The parcel is bound by the A533 'The Hill' to the north/east. The A533 links to High Street within the centre of Sandbach. To the north/west is the existing built-up area of Sandbach and the residential properties located on 'The Hill' and Colley Lane. The north/west boundary of the parcel comprises Colley Lane, which is a single land road, linking to Hassall Road to the north west of the Site and Vicarage Lane to the south of the parcel. The south/east boundary is defined by vegetation along the route of a watercourse. Beyond this, is an agricultural field parcel.
- 3.15. The current access into the parcel is obtained from Colley Lane.

- 3.16. The southern boundary of the parcel is made up of dense vegetation, including some large trees. There are some large trees within the south western and north eastern boundaries. There are also some large trees located centrally within the parcel.
- 3.17. At the south of the Site is a watercourse which runs in a south westerly direction. This runs into the Wheelock River, located approx. 600m to the south west of the Site, which is a recognised as an Area of Local Ecological Value. There are no other ponds or watercourses within or adjacent to the parcel.
- 3.18. The parcel is entirely within Flood Zone 1 for fluvial flooding, which poses the lowest risk of flooding. There are areas of surface water flooding, which is located along the southern/western boundary associated with the watercourse. There is a small area of surface water flooding in the north western corner of the parcel however no development is proposed within areas of surface water flooding and therefore the sequential test is not required.
- 3.19. There are two listed buildings to the north of the Site, which comprise of Grade II Oakley House and Grade II Coach House of Oakley House. On the opposite side of the Hill, facing the Site, is the Grade II The Hill. The scheme has been designed to take into account these heritage assets and is discussed later on in this report.
- 3.20. The parcel is not located adjacent to or in close proximity to any SSSIs or Special Areas of Conservation. The parcel is not subject to any national or local landscape designations. It is not a Valued Landscape afforded any protection by the NPPF. There are no public rights of way running through the parcel, or immediately adjacent to the parcel. Overhead telephone cables cross diagonally through the parcel. It is anticipated that these will be re-routed as part of any development proposals.

#### **Parcel D**

- 3.21. Parcel D measures 7.82 hectares and is located to the north of the A533 'The Hill'. The parcel comprises two agricultural fields which are divided by a hedgerow. The Site is relatively flat.
- 3.22. The existing main built-up area extends to the full extent of the northern/western boundary, mostly located along Manor Road. The parcel is bound by the A533 'The Hill' to the south, which links up to High Street – the main shopping street in Sandbach Town Centre. The eastern boundary is defined by existing vegetation with agricultural fields beyond. Drummer Farm is located approximately 80m to the east of the Site, with several large agricultural barns and buildings.
- 3.23. The parcel surrounds the Leonard Cheshire and the 'Mansion Apartments', which is a lodging centre. Development would be designed sensitively to respect the existing buildings. The Hill is a Grade II listed building which is within this cluster of buildings.
- 3.24. Existing access into the parcel is taken from The Hill to the north west of the Leonard Cheshire.
- 3.25. The eastern boundary of the parcel is defined by established vegetation. There are also several large trees located within the centre of the parcel. There are trees located around the Disability Centre/Apartments.

- 3.26. Along the eastern boundary a watercourse runs in a south westerly direction. This runs into the Wheelock River, located approximately 850m to the south. The river is recognised as an area of Local Ecological Value. A small pond is located in the south eastern corner of the parcel, adjacent to the watercourse.
- 3.27. The parcel is not located adjacent to or in close proximity to any SSSIs or Special Areas of Conservation. The parcel is not subject to any national or local landscape designations. There are no public rights of way running through the parcel, or immediately adjacent to the parcel.
- 3.28. For the balance of the Planning Statement, we will refer to all three parcels as the Site.

## **Surrounding Area**

- 3.29. Sandbach Heath benefits from several services and facilities to serve the day-to-day needs of residents. Within walking distance of the Site, is St John's Primary School, playground, church, playing fields, convenience stores, takeaway, hairdressers, car garage etc.
- 3.30. The Site is well related to Sandbach Town Centre and the services and facilities within it. The Town Centre benefits from an extensive range of services and facilities owing to its role as a Key Service Centre, serving both the residents of Sandbach and the wider rural area. Services include supermarkets, doctor's surgery, shops, cafes, bars, restaurants, pubs, takeaways, hairdressers/barbers, pharmacy, banks, churches, community centres.
- 3.31. The Town Centre is within a 20-minute walk from the majority of the areas within the Site and is therefore considered to be well connected to existing services and facilities (both on foot and by bicycle).
- 3.32. Sandbach train station is located 1.6km from the town centre and 3.5km from Sandbach Heath. This rail station provides 2 trains per hour to the heart of Manchester, one of which runs via Manchester International Airport and Crewe.
- 3.33. Sandbach Heath is served by a number of buses which offer regular services to Leighton Hospital (Crewe) and Alsager. Additional bus services run from Sandbach Town Centre. These regular bus services interconnect with Crewe (20 minutes), Nantwich (30 minutes), Congleton (25 minutes), Macclesfield (60 minutes), Northwich (40 minutes) and Chester (90 minutes).
- 3.34. Sandbach is located adjacent to the M6 motorway and in particular, Junction 17. This junction is an all-ways junction providing excellent connectivity to the north and south of the country.

## **Planning History**

- 3.35. A review of the Council's public access system has revealed the following applications which are of relevance to the Site.

**14/1946C**

3.36. An outline application was submitted in April 2014 for residential development comprising 75 dwellings and associated vehicular and pedestrian access, open space and landscaping. This application was refused at committee on the 25<sup>th</sup> June 2014 on the following grounds:

- *The proposed residential development is unsustainable because it is located in Open Countryside, Contrary to Policies PS8 and H6 of the Congleton Borough Local Plan First Review 2005, Policy PG 5 of the emerging Cheshire East Local Plan Strategy – Submission Version and the principles of the National Planning Policy Framework, which seek to ensure development is directed to the right location and Open Countryside is protected from inappropriate development and maintained for future generations enjoyment and use. As such it creates harm to the interests of acknowledged importance. The Local Planning Authority can demonstrate a 5-year supply of housing land in accordance with the National Planning Policy Framework and consequently, there are no material circumstances to indicate that permission should be granted contrary to the development plan, to the emerging Development Strategy and the principles of the National Planning Policy Framework.*
- *The proposal would result in loss of the best and most versatile agricultural land and given that the Authority can demonstrate a housing land supply in excess of 5 years, the applicant has failed to demonstrate that there is a need for the development, which could not be accommodated elsewhere. The use of the best and most versatile agricultural land is inefficient and contrary to Policy SE2 of the emerging Cheshire East Local Plan Strategy – Submission Version and the provisions of the National Planning Policy Framework.*

3.37. The application went to appeal and was dismissed on the 28<sup>th</sup> June 2016. The main issues which the Inspector considered were:

*The main issue is whether, having regard to the requirements of local and national planning policy for the delivery of housing; the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings, with regard to outlook, privacy, light and noise; and the effect of the proposed development on Best and Most Versatile agricultural land, the proposal represents a sustainable form of development.*

3.38. In terms of the first reason for refusal cited on the decision notice, the Inspector found that although the appeal proposal conflicts with policies PS8 and H6 of the Local Plan, and policies H5 and PC3 of the Sandbach Neighbourhood Plan (SNP), having regard to the requirements of local and national planning policy for the delivery of housing, the weight to be attributed to this conflict is tempered by the lack of a five year supply of deliverable housing sites and, thus, the appeal site is an appropriate location for the development proposed.

3.39. The Inspector also found that the loss of a limited amount of BMV land does not weigh heavily against the scheme.

3.40. Although the Inspector did not concur with the reasons for refusal, which were cited by the Council in their decision notice, the Inspector concluded that based on the submitted layout plan, the appeal proposal is likely to have an adverse impact upon outlook and privacy for No 84 The Hill and other neighbouring properties on Manor Road, The Hill and Hill House. Significant weight was afforded to this and particularly to the residents of the Leonard Cheshire. In the Inspector's opinion, a 75 dwelling residential scheme wrapping around Hill House (the Leonard Cheshire) is likely to appear oppressive upon residents'



outlook, both from the main house and the outlying bungalow. On this basis, the appeal was refused.

- 3.41. This appeal decision has been given significant consideration when masterplanning the Site to ensure to protect the amenity of the residents of the Leonard Cheshire and those living on the Hill. The concerns raised in this appeal have, therefore, been addressed.

#### **14/5586C**

- 3.42. An outline application was submitted in December 2013 for residential development comprising 75 dwellings and associated vehicular and pedestrian access, open space and landscaping (resubmission of LPA ref: 14/1946C).
- 3.43. This is a resubmission of application 14/1946C with no changes to the proposed layout. This application was refused on two grounds:
- *The Local Planning Authority considers that having regard to the context of developments in the Sandbach area and the scale of the proposed development that it would be premature following the publication consultation draft of the Sandbach Neighbourhood plan. As such allowing this development would prejudice the outcome of the neighbourhood plan-making process and would be contrary to guidance contained at Paragraph 216 of the NPPF and guidance contained within the NPPG.*
  - *Whilst it is acknowledged that there is a presumption in favour of sustainable development in the planning balance, it is considered that the development is unsustainable because of the conflict with the draft Sandbach Neighbourhood plan and because of the unacceptable environmental and economic impact of the scheme in terms of loss of best and most versatile agricultural land and open countryside. These factors significantly and demonstrably outweigh the social benefits in terms of its contribution to boosting housing land supply, including the contribution to affordable housing. As such the proposal is contrary to Policies PS8 and H6 of the adopted Congleton Borough Local Plan First Review 2005 and Policies PG 5 and SE 2 of the Cheshire East Local Plan Strategy – Submission Version and the provisions of the NPPF.*

### **Pre-Application Discussions**

- 3.44. A pre-application request was submitted to the Council on 3<sup>rd</sup> October setting out the development proposals.
- 3.45. On the 21<sup>st</sup> November, we provided details of the engagement strategy which took place during the month of December 2024. We provide further details on this below and within the Statement of Community Involvement.
- 3.46. A number of meetings and discussions have taken place between our highways consultant: Curtins and Cheshire East Highways Department (Neil Jones and Paul Griffiths). The scope of the surveys, the proposed access points and the impact of the development on the local highway network have been discussed and further details of these discussions can be found within the accompanying Transport Assessment.

- 3.47. On the 9<sup>th</sup> January 2025, a teams meeting was held with Rob Law, Peter Hooley, Neil Jones, Paul Wakefield, Adrian Crowther, Daniel Evans. The meeting was a high-level meeting provide the opportunity for the Council and Bloor to ask questions and to discuss what proposals are coming forward.

## **EIA Screening**

- 3.48. An EIA Screening was submitted to the Council on the 20<sup>th</sup> November 2024 and validated the same day (reference 24/4693/EIA).
- 3.49. Within the Screening Report, we confirmed that the environmental effects associated with the proposals are unlikely to be significant and well understood, standard mitigation measures can be adopted. As such, it was concluded that the development is not considered to constitute EIA development as defined by the EIA regulations.
- 3.50. A number of responses were received from statutory consultees.
- 3.51. A response to the screening was provided by the LLFA which set out what the Flood Risk Assessment and Drainage Strategy should include. The reports have noted these comments and where possible, provide the elements requested.
- 3.52. Regulatory Services and Health have also provided a response on amenity, air quality and contaminated land, which confirmed that the proposed development would not fall under EIA development for amenity, air quality or contaminated land.
- 3.53. Comments provided by Cheshire East's Regulatory Services confirmed that the proposed development would not result in the significant production of noise, odour, vibration, light pollution, air pollution, or other nuisances, and would not result in the significant production of waste, soil contamination which could cause risks to human health.
- 3.54. A screening opinion has not yet been received however as confirmed within our Screening Report, the development is not considered to constitute EIA development as defined by the EIA regulations.

## **Re-Screening**

- 3.55. The above EIA screening request screened for the development of 320 dwellings. However since this time, the development framework plan has been updated and now an outline application for 325 dwellings has been submitted.
- 3.56. To encompass this minor change, the screening report has been updated to reflect a development of 325 dwellings, which has been submitted alongside this application.
- 3.57. As noted within the report, there are no changes to the previous outcomes and conclusions and the proposal is deemed to be a non-EIA development.

## **Community Involvement**

- 3.58. A Statement of Community Involvement has been prepared by Lexington and has submitted as part of the application documents. This document sets out the community

engagement which has taken place to date to inform local residents and stakeholders of the proposed development and summarises the responses and feedback received.

3.59. The consultation took place between Wednesday 4th December and Wednesday 18th December 2024. However some engagement did take place beyond this time period.

3.60. To summarise, we have carried out the following engagement:

- A leaflet drop to over 500 residents to inform local residents of the proposed development and details of where to provide comments and feedback;
- A consultation website which provides further details of the proposals, the opportunity to provide comments and feedback and register for a new home;
- Social media adverts; and
- A press release, which was issued on the 4<sup>th</sup> December to inform local people about the public consultation event.

3.61. We have also met with Leonard Cheshire, North West Academies (NWA) on behalf of St Johns CE Primary School and Sandbach Heath Ward Councillor, Sam Corcoran, to inform them of our proposals, provide the opportunity to comment and where possible, incorporate their comments within our proposals (in the light of the previous Appeal decision).

#### **Liaison with North West Academies**

3.62. Bloor have been liaising with St John's CE Primary School and NWA and met with them virtually on the 13th December 2024 to notify them of the proposals. NWA took responsibility of managing the school on the 1st January 2025.

3.63. A letter of support for the proposed development has been provided by the CEO of the NWA, which can be found within the Statement of Community Involvement. The letter confirms that new developments brings people and prosperity to areas and the CEO is pleased to see that Bloor are an organisation that considers the needs of the locality when building. The letter goes on to state 'I can only believe that this will be beneficial, particularly for those who choose to purchase a home and attend St. John's CE Academy'.

#### **Liaison with Leonard Cheshire**

3.64. A meeting was held virtually with the Estates Surveyor of Leonard Cheshire on 21st November 2024 to presents the proposals and seek feedback from the Leonard Cheshire. During the meeting, the representative from Leonard Cheshire confirmed that they were glad to see that the Leonard Cheshire has been carefully considered as part of the evolution of the masterplan and nothing that was proposed was of concern to her.

3.65. Further details of the public consultation can be found within the Statement of Community Involvement.



## 4. The Proposal.

4.1. This application seeks outline permission for;

***'Outline application, with all matters reserved except for access, for development comprising up to 325 residential dwellings (Use Class C3), creation of a community park located between Manor Road and the A533 The Hill and other open space and landscaping, associated infrastructure, including earthworks and drainage'.***

4.2. The application is in outline with all matters reserved save for access. Access means the points of access and not the internal road layout. The proposal therefore seeks permission for the principle of development and the detail of access.

### Use and Layout

4.3. The development proposals seek outline planning permission, except for access, for the development of 325 new homes (Use Class C3). The proposals will comprise both market and affordable dwellings, providing a range of homes of size and tenure to address the varied needs of Cheshire East.

4.4. The development will be split over 3no. parcels which are divided by The Hill and Coley Lane.

4.5. In respect of layout and as explained in full detail within the submitted Design and Access Statement, a legible network of streets is proposed with a clear and distinct movement hierarchy.

4.6. The development blocks have been designed to ensure that the new homes will front each edge to create active and lively streetscapes and frontages.

4.7. The new homes are proposed to front out onto public areas of open space, which promotes social cohesion and a reduction in crime. Design is, however, a reserved matter.

### Scale, Siting and Appearance

4.8. The development proposals have been designed to respect the existing character of the area, the existing style/density of homes in this area and the neighbouring uses.

4.9. The development parcels will be limited to the east of Parcel D and Parcel B and C.

4.10. The amenity, privacy and outlook of the residents of the Leonard Cheshire, have been taken into consideration through the design evolution of the masterplan. In particular, new homes are not proposed to be located in and around the area of the Leonard Cheshire. Instead, in this area, a significant area of public open space is proposed which local people and residents of the care home will be able to access. Further details on this are provided below.

4.11. By locating open space in and around the Leonard Cheshire, it will ensure that the amenity and quality of life of those residents living in the home, who spend more time within their bedrooms, is not impacted as a result of this development. It will also provide a significant community resource to existing and proposed residents (in perpetuity).

- 4.12. It is expected that the Site will deliver a mixture of one-, two-, three- and four-bedroom family dwellings, although the exact mix and tenure of the dwellings will be decided at the reserved matters stage. However, the Council's adopted policies relating to affordable housing and accessible and adaptable homes provision will be adhered to.
- 4.13. In terms of appearance, this will be decided at the reserved matters stage however a high quality, desirable and unique street scene will be created which reflects the existing character and design of the existing dwellings in Sandbach.
- 4.14. The accompanying Design and Access Statement provides full details of the design rationale for the scheme and how the scheme has evolved. The design and density have been informed by the surrounding existing character and context. The Design and Access Statement clearly sets out how the development complies with the requirements of the Cheshire East Design Guide.

## **Access**

- 4.15. In terms of access arrangements, vehicular access into the Site will be via a northern and southern access point off the A533 'The Hill'. A new internal road is proposed which will cross over Colley Lane to provide access into the southernmost parcel.
- 4.16. A vehicular access point is proposed in the south western corner of the Site, off Coldmoss Drive, however this will be limited to an emergency vehicular access and will not be used by other vehicular traffic.
- 4.17. A loop has been created within the Site for the use of bus services. This will allow bus services to be extended to this part of Sandbach Heath and provide a suitable and safe location for buses to turn around. By having a suitable location for bus services to turn, it will ensure that the services are genuinely achievable and accessible for residents.
- 4.18. The exit from the Site will be via a bus gate. This egress will only be for the use of bus services as opposed to other vehicular traffic. More information on how the bus gate will operate and the design can be found within the Transport Assessment. The improvement to bus services, through the loop through the Site will ensure that all existing and future residents living in this area have good access to bus services within walking distance.
- 4.19. The Site will provide a number of pedestrian and cycle access points into the Site, including two northern pedestrian access points off the Hill, an access point off Manor Road, a southern access point from the Hill into the middle parcel and a connection to the existing public right of way in the south western corner of the Site. This will improve residents' accessibility on foot in the local area and moving in and around the Site.
- 4.20. A formal pedestrian crossing is proposed to cross the A533 The Hill to provide access into the northern and middle parcel of development. Details of what this may look like can be found within the Transport Assessment.
- 4.21. A series of new footpaths and cycle ways are proposed in and around the Site, located within areas of open space to enhance existing and future residents' access to open space and walking routes.

- 4.22. It is proposed to downgrade part of Colley Lane, to the south of the existing residential dwellings, to ensure that vehicular traffic does not utilise Colley Lane to access the Site, but still ensure that this is available for residents living along Colley Lane and for pedestrian and cycle access.

As noted in the previous section, the access arrangements of the Site have been discussed with Cheshire East Highways department who raised no concerns or objections to the access arrangements.

## Open Space

- 4.23. Access to open space has formed a key consideration in the design evolution of the masterplan to ensure that a high-quality development is proposed.
- 4.24. A significant amount of public open space is proposed throughout all three parcels, equating to 8.8 hectares of open space in total. This is split as follows across the three parcels proposed for residential development:
- Parcel B – 1.5 hectares;
  - Parcel C – 2.2 hectares; and
  - Parcel D – 5.1 hectares (which includes the new Community Park).
- 4.25. This is significantly greater than the standards noted within the adopted DPD (2017), the Green Space Strategy and the Design Code, which would require circa 2.11 ha of open space to be provided based on 325 dwellings. This provision should therefore be considered as a considerable public benefit derived from this proposal and afforded significant weight.
- 4.26. The most notable area of open space is located to the west of Parcel D, which is proposed as a new park. This 3.8-hectare park will provide a new area of open space for the enjoyment of existing and future residents and will be designed to deliver the open space needs and requirements of Sandbach. Precise details as to what this area would comprise will be provided as part of the Reserved Matters application. However, the current vision and masterplan for this area includes all of the following, which Bloor Homes are willing to commit to:
- Formal parkland areas with publicly access routes through this part of the Site;
  - A new children's play area (LEAP);
  - The preservation of protected trees under TPO ref Sandbach – Manor Road No.3, Tree Preservation Order 2015) (ref: 70–251);
  - New tree planting; and
  - The potential for other elements of open space (if required).
- 4.27. Two play areas (LAPs) are proposed within the other two parcels to ensure that there is access to areas of open space in close proximity to all areas of development.

- 4.28. A series of new footpaths and cycle ways are proposed in and around the Site, located within areas of open space to enhance existing and future residents' access to open space and walking routes.
- 4.29. The community park and all open space proposed within the development would be managed and maintained by a private management company, once Bloor have completed on site. We can confirm this is achievable and viable without placing an undue burden on the new residents of the proposal. It follows that the s.106 planning obligation will deliver a very substantial area of public open space, to be secured in perpetuity and maintained without public finance.

## **Landscaping**

- 4.30. An illustrative masterplan and Landscape and Visual Impact Assessment (LVIA) has been proposed in support of this application. The finer details on the proposed landscaping scheme will be confirmed as part of the reserved matters application.
- 4.31. However, all existing TPOs within the Site have been retained and incorporated into the design of the scheme. All existing trees and hedgerows have been retained where possible and have been incorporated into the open space/landscaping on Site.
- 4.32. Additional native tree planting and landscaping will be developed as part of the Reserved Matters, but any loss of existing trees, hedgerows and shrubs will be duly compensated for as part of the landscaping scheme to ensure there is an overall enhancement in terms of new landscape habitats created.

## **Additional Land within Bloor's Control**

- 4.33. As shown on the Site Location Plan, Parcels A and E are within the control of Bloor but this application does not propose to deliver any development on them.
- 4.34. If the land within these parcels is required as the application progresses and there is a demonstrable need, this land is available, and Bloor are open to discussions on the use of these parcels for any necessary community or environmental enhancements in line with CIL regulations<sup>1</sup>.

---

<sup>1</sup> Community Infrastructure Levy regulations

## 5. Planning Policy and Guidance.

- 5.1. The plan led approach at Section 70 (2) of the Town and Country Planning Act (1990) and Section 38(6) of the Planning and Compulsory Purchase Act 2004 necessitates that development proposals are determined in accordance with the statutory Development Plan unless material considerations indicate otherwise.
- 5.2. An important material consideration in the determination of planning application is that of Government planning policy and guidance, which takes the form of the National Planning Policy Framework (NPPF) and Planning Policy Guidance (PPG) respectively.

### Adopted Local Planning Policy and Guidance

- 5.3. The adopted Development Plan for Cheshire East Borough Council comprises:
- Local Plan Strategy (LPS) (July 2017);
  - Site Allocations and Development Policies Document (SADPD) (December 2022);
  - Saved Policies from the Cheshire Waste Local Plan (July 2007);
  - Saved Policies from the Cheshire Minerals Local Plan (June 1999); and
  - Sandbach Neighbourhood Plan (SNP) (March 2022).

#### Local Plan Strategy (LPS) (July 2017)

- 5.4. The Local Plan Strategy sets out the strategic priorities for the development of the area, along with planning policies and proposals to make sure development addresses the economic, environmental and social needs of the area.
- 5.5. The Site is located on the edge of Sandbach, which is identified as a Key Service Centre within the LPS and as such, the vitality and growth of this town contributes to the prosperity of the borough as a whole.
- 5.6. The Site's designation, as illustrated on the Policies Map, is shown to be within the Open Countryside, which is designated under Policy PG 6. This policy states;

*The Open Countryside is defined as the area outside of any settlement with a defined settlement boundary.*

*Within the Open Countryside only development that is essential for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted.*

*Exceptions may be made:*

- i. *where there is the opportunity for limited infilling in villages; the infill of a small gap with one or two dwellings in an otherwise built-up frontage elsewhere; affordable housing, in accordance with the criteria contained in Policy SC 6 'Rural Exceptions*

*Housing for Local Needs' or where the dwelling is exceptional in design and sustainable development terms;*

- ii. for the re-use of existing rural buildings where the building is permanent, substantial and would not require extensive alteration, rebuilding or extension*
- iii. for the replacement of existing buildings (including dwellings) by new buildings not materially larger than the buildings they replace;*
- iv. for extensions to existing dwellings where the extension is not disproportionate to the original dwelling;*
- v. for development that is essential for the expansion or redevelopment of an existing business;*
- vi. For development that is essential for the conservation and enhancement of a heritage asset.*

5.7. Other policies of relevance within the LPS are provided in the list below.

- Policy MP 1 Presumption in Favour of Sustainable Development
- Policy PG 1 Overall Development Strategy;
- Policy PG 2 Settlement Hierarchy;
- Policy PG 7 Spatial Distribution of Development;
- Policy SD 1 Sustainable Development in Cheshire East;
- Policy SD 2 Sustainable Development Principles;
- Policy IN 2 Developer Contributions;
- Policy EG 1 Economic Prosperity;
- Policy SC 2 Indoor and Outdoor Sports Facilities;
- Policy SC 3 Health and Well-Being;
- Policy SC 4 Residential Mix;
- Policy SC 5 Affordable Homes;
- Policy SE 1 Design;
- Policy SE 3 Biodiversity and Geodiversity;
- Policy SE 4 The Landscape;
- Policy SE 5 Trees, Hedgerows and Woodland;
- Policy SE 6 Green Infrastructure;

- Policy SE 7 The Historic Environment;
- Policy SE 8 Renewable and Local Carbon Energy;
- Policy SE 12 Pollution, Contamination and Land Instability;
- Policy SE 13 Flood Risk and Water Management; and
- Policy CO 1 Sustainable Travel and Transport.

#### **Site Allocations and Development Policies Document (SADPD) (December 2022)**

- 5.8. The Site Allocations and Development Policies Document (SADPD) is the second part of the Council's Local Plan providing further detailed planning policies and Site allocations to support the strategic policies and Sites contained in the Local Plan.
- 5.9. Within this plan, the Site is washed over by Policy GEN5 Aerodrome Safeguarding Policy. This area covers the majority of the borough of Cheshire East.
- 5.10. The far north eastern edge of the northern parcel and the south western corner of the southern parcel are within the buffer zone of an ecological network and stepping stone, designated under Policy ENV1 Ecological Network. Both are outside of the red line boundary and the Site falls within the edge of the buffer zone.
- 5.11. Other policies of relevance within the SADPD are provided in the list below.
- Policy PG 9 Settlement Boundaries;
  - Policy GEN 1 Design Principles;
  - Policy GEN 5 Aerodrome Safeguarding;
  - Policy ENV 1 Ecological Network;
  - Policy ENV 2 Ecological Implementation;
  - Policy ENV 3 Landscape Character;
  - Policy ENV 5 Landscaping;
  - Policy ENV6 Trees, Hedgerows and woodland implementation;
  - Policy ENV7 Climate Change;
  - Policy ENV 12 Air Quality;
  - Policy ENV 15 New Development and Existing Uses;
  - Policy ENV 16 Surface Water Management and Flood Risk;
  - Policy HER 1 Heritage Assets;
  - Policy HER 4 Listed Buildings;

- Policy HER 8 Archaeology;
- Policy RUR 5 Best and most versatile agricultural land;
- Policy HOU 1 Housing Mix;
- Policy HOU 3 Self and Custom build dwellings;
- Policy HOU 8 Space, accessibility, and wheelchair housing standards;
- Policy HOU 12 Amenity;
- Policy HOU 13 Residential Standards;
- Policy HOU 14 Housing Density;
- Policy INF 1 Cycleways, bridleways and footpaths;
- Policy INF 3 Highway safety and access;
- Policy INF 9 Utilities;
- Policy REC 2 Indoor Sport and Recreation Implementation;

#### **Sandbach Neighbourhood Plan (SNP) (2022)**

- 5.12. The original Sandbach Neighbourhood Plan was officially 'made' by Cheshire East Council in April 2016 following a referendum in March 2016. It therefore predated the CELPS (2017). Modifications were made in March 2022 and therefore the original NDP is now revoked and the Sandbach NDP (Modification) is now adopted.
- 5.13. As demonstrated on Figure 2a Visions and Proposals Map, the site sits outside of the settlement boundary.
- 5.14. Figure 3 within the NDP sets out Local Green Gaps and Gateways in and around the settlement. The Hill, which runs through the centre of two of the parcels is designated as a gateway (G4) but is not located within a Local Green Gap.
- 5.15. Relevant policies to the proposal within the NDP are listed below.
- Policy PC1 Local Green Gaps
  - Policy PC2 Landscape Character;
  - Policy PC3 Settlement Boundary;
  - Policy PC4 Biodiversity and Geodiversity;
  - Policy PC5 Footpaths and Cycleways;
  - Policy HC1 Historic Environment;
  - Policy H1 New Housing;



- Policy H2 Design and Layout;
- Policy H3 Housing Mix and Type;
- Policy IFT1 Sustainable Transport, Safety and Accessibility;
- Policy IFT2 Parking;
- Policy IFC1 Contributions to Local Infrastructure;
- Policy CW2 Sport and Leisure Facilities;
- Policy CW2 Health; and
- Policy CC1 Adapting to Climate Change

5.16. As confirmed by paragraph 4.39 of the Examiners Report to the Modified Neighbourhood Plan:

***‘The Review Plan does not include specific site allocations for new housing development. Policy H1 is aligned with the housing requirement of the Development Plan and anticipates housing will be delivered through existing commitments and sites allocated within the Local Plan.’***

5.17. As such, paragraph 14(b) of the Framework is not triggered by the Sandbach Neighbourhood Plan and therefore any conflicts with the Policies contained within it need to be considered in the context of paragraph 11d of the framework where the presumption in favour of development is triggered. In this case, the presumption is triggered because the Council are unable to demonstrate a 5-year supply of housing, which we address in more detail in the following section and the site does not suffer from any paragraph 11, footnote 7 assets that would result in a strong reason for refusal. Indeed, other than the site falling outside of the settlement boundary of Sandbach and being located within the open countryside, the site is largely free from constraints and those that do exist (such as protected trees and surface water flood risk areas) have been sensitively designed into the landscape-led proposal and the provision of generous areas of public open space and enhanced landscaped boundaries.

## Supplementary Planning Documents

5.18. The following adopted SPDs are not part of the statutory development plan but form material considerations when making planning decisions. The weight to be given to the older SPDs will depend on their consistency with more recent policies in the development plan and NPPF.

- Ecology and Biodiversity Net Gain SPD (July 2024);
- Environmental Protection (March 2024);
- Developer Contributions (March 2024);
- SUDS SPD (February 2024);

- Housing SPD (July 2022)
- Cheshire East Borough Design Guide (May 2017);
- Tres and Development (October 2006);
- Affordable Housing and Mixed Communities (April 2006);
- Designing Out Crime (January 2006); and
- Sustainable Development (April 2005).

## **Emerging Local Planning Policy**

- 5.19. Cheshire East Borough Council are currently in the process of preparing a new Local Plan. Although the current Local Plan covers the period 2010 to 2030, there have been significant changes to national planning policy to take account for and a need to review plans regularly. In particular, the housing requirement has increased significantly from 1800 d/pa to ~2,500 d/pa.
- 5.20. The Council consulted on an issues paper between April and July 2024, as well as holding a Call for Sites exercise. This Site was submitted to the Call for Sites and representations were made to the issues paper with reference to this Site.
- 5.21. At present, it is estimated that the Council will consult on a pre-submission draft of the Local Plan in 2026, with a submission in spring 2027 and adoption in 2028.
- 5.22. Given the very early stages of the New Local Plan, there are no current policies to consider and any that are issued in advance of this application being determined are unlikely to be afforded any significant weight due to the fact that any consultation and subsequent examination process is unlikely to have concluded in time.

## **National Planning Policy and Guidance**

- 5.23. Below, we set out the national planning policy guidance which forms a material consideration in the determination of this planning application.

### **National Planning Policy Framework (NPPF)**

- 5.24. A revised version of the National Planning Policy Framework (NPPF) was recently published (on the 12<sup>th</sup> December 2024) which sets out the Government's planning policies for England and how these are expected to be applied.
- 5.25. The key changes version, in comparison to the previous revision (published in December 2023) is the strengthening the drive to meet housing and other development needs.
- 5.26. As set out in paragraph 48, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Given the adoption date of the above plans and the publication date of the revised NPPF, it is a very significant material consideration in terms of this planning

application. The NPPF (Dec 2024) applies from the date of its publication in decision-making (NPPF 231).

- 5.27. Section 2 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes. As noted in paragraph 8, achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways: economic, social and environmental objectives.
- 5.28. As set out in paragraph 11, for decision taking, this means approving planning applications that are in accordance with an up-to-date plan without delay, or where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date, granting permission unless:
- ***i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or***
  - ***ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.***
- 5.29. We set out our position in relation to the above paragraph 11 test in the subsequent section but in summary, we conclude that the adopted Local Plan is no longer up to date by virtue of its age (a review is required by Reg 10A LPR (2012) and NPPF 34), a significant increase in the amount of housing that needs to be delivered now in Cheshire East and on an annual basis going forward and a subsequent lack of a 5-year housing land supply. Accordingly, the spatial distribution of housing, settlement boundaries and restrictive approach to housing outside settlement boundaries in the Open Countryside is also out of date. Further, the failure to review the Plan to meet the up-to-date OAN for market and affordable housing means that the Plan is inconsistent with the NPPF, such that limited weight should apply to policies constraining the delivery of housing on accessible sites, adjacent to sustainable settlements. Moreover, we go on to conclude that there are no strong policy reasons identified by the NPPF for refusing the development and any impacts arising from the development do not significantly and demonstrably outweigh the benefits.
- 5.30. Section 4 of the NPPF provides further policies on the determination of planning applications. It outlines that local planning authorities should approach decisions on proposed development in a positive and creative way. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.
- 5.31. Section 5 sets out the Government's objective to significantly boost the supply of homes. To do this, it is important that a sufficient amount and variety of land can come forward where it is needed. Meeting the 5YHLS in accordance with the new Standard Method is the minimum requirement of national policy, set against a minimum housing requirement (NPPF 61 and 78).

- 5.32. Paragraph 73 states that Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes, and are often built out relatively quickly
- 5.33. Paragraph 78 states that local planning authorities should identify and update a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement as set out in adopted strategic policies or against their local housing need where strategic policies are more than five years old. The supply of specific deliverable sites should in addition include a buffer of 5% (in this LPA) to ensure choice and competition in the market for land.
- 5.34. The local housing need figure for Cheshire East is now confirmed as being **2,461 dwellings per annum**, which is significantly higher than the 1,800 per annum requirement set in the LPS (a 37% increase).
- 5.35. Section 8 promotes healthy and safe communities, which as set out in paragraph 96, planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, are safe and accessible and enable and support healthy lives. Paragraph 105 states that planning decisions should protect and enhance public rights of way and access.
- 5.36. Section 9 seeks to promote sustainable transport in connection with the development proposals. Paragraph 109 states that transport issues should be considered from the earliest stages of development proposals, using a vision-led approach to identify transport solutions that deliver well-designed, sustainable and popular place. Paragraph 116 confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios. The application is supported by a detailed Transport Assessment, Travel Plan and Design and Access Statement that demonstrates the Site is in a sustainable location and the development will include safe and effective access points for a range of transport modes without leading to severe impacts.
- 5.37. Section 12 seeks to achieve well designed places. Paragraph 131 confirms that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Again, the supporting Design and Access Statement and Health Impact Assessment highlight how good design will be achieved within the development.
- 5.38. Section 14 relates to meeting the challenge of climate change, flooding, and coastal change. Paragraph 170 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere.
- 5.39. Paragraph 173 states that a sequential risk-based approach should be taken to individual applications in areas known to be at risk now or in future from any form of flooding. Given that no development is proposed within any areas of flooding, a sequential assessment would not be required in this case.

- 5.40. Consistent with the relevant statutory tests, conserving and enhancing the historic environment is set out in Section 16 and when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (paragraph 207). Where the proposed development will lead to substantial harm of a designated heritage assets, LPAs should refuse consent. In this regard, a detailed Heritage Impact Assessment has been provided and concludes there is less than substantial harm on any nearby heritage assets. Within this statement, we highlight how the public benefits from this proposal outweigh those harms.

#### **Planning Practice Guidance (PPG)**

- 5.41. To accompany the NPPF, the Government has also published guidance on how to interpret and apply national planning policy. This is contained in the Planning Practice Guidance (PPG), which is a live document that the Government updates periodically.
- 5.42. The topics of relevance include:
- Air Quality;
  - Biodiversity Net Gain;
  - Climate Change;
  - Design;
  - Housing;
  - Flood Risk and Coastal Change;
  - Healthy and Safe Communities;
  - Natural Environment;
  - Noise;
  - Open space, sports and recreation facilities, public rights of way and local green space;
  - Renewable and low carbon energy;
  - Transport; and
  - Water supply, wastewater, and water quality.

## 6. Planning Assessment: Principle of Development

- 6.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the determination of planning applications to be made in accordance with the development plan unless material considerations indicate otherwise.
- 6.2. Whilst the NPPF does not change the statutory status of the Development Plan as the starting point in decision making, the NPPF constitutes an important material consideration in determining planning applications. It forms the Government's view of what sustainable development means in practice for the planning system as highlighted in the preceding section.

### Changes to the NPPF

- 6.3. As noted in the planning policy section of this statement, the NPPF was recently updated in December 2024. The revised NPPF has made some significant changes to national policy which apply to decision taking from the date of publication (NPPF para 231) which need to be filtered down into local planning policy and the approach to decision taking.
- 6.4. One of the most significant changes was the focus on housing. The reform aims to boost housebuilding in England to deliver 370,000 homes a year, with 1.5 million homes to be delivered during this Parliament. Housing delivery is a key priority of the Government who have made it clear that it needs to also be a key priority for local planning authorities. Indeed, in Angela Raynor's Ministerial Statement entitled 'Building the Homes We Need' (July 2024) the Government recognises that:

***'We are in the middle of the most acute housing crisis in living memory. Home ownership is out of reach for too many; the shortage of houses drives high rents; and too many are left without access to a safe and secure home'.***

- 6.5. The changes proposed within the NPPF seek to fix the foundations of the housing and planning system to improve affordability and build 1.5 million homes over the next 5 years.
- 6.6. Below is set out key and relevant sections of the NPPF which must be duly considered when assessing the acceptability of the development proposals and how these will impact upon the application of local policies and where they may be deemed to be out-of-date.
- 6.7. Firstly, paragraph 11 confirms the approach which should be taken to decision making. This paragraph states –

*'Plans and decisions should apply a presumption in favour of sustainable development. For decision making, this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay; or*

*d) where there are no relevant development plan policies, or the policies for the supply of land which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination’.*

6.8. In particular, it is important to note the approach to be taken when the policies for the supply of land, which are the most important for determining the application, are out-of-date. This paragraph is particularly relevant to this proposal.

6.9. The Cheshire East Local Plan Strategy was adopted in 2017 and sets out the development strategy, where development will be distributed (in terms of settlements and specific sites) and how much development should come forward over the plan period.

6.10. In terms of policies for the supply of land, paragraph 78 of the NPPF confirms;

***‘Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old’***

6.11. The Cheshire East Borough Council Housing Monitoring Report (February 2024) provides details on the supply of housing land in the Borough. Based on a base date of the 31<sup>st</sup> March 2023, and the local housing need figure at February 2024, the report confirms that the Council are able to demonstrate an **11.7 years supply of housing**, which is based on a requirement of 1,014 dwellings per annum requirement (see Table 1 below).

**Table 2 – Cheshire East Five Year Supply Position (Base Date 31<sup>st</sup> March 2023).**

Table 7.1 Five-year housing land supply			
Status of site	Allocated sites	Other sites	Total dwellings
Sites under construction	3,679	1,940	5,619
Sites with full planning permission	1,606	1,465	3,071
Sites with outline planning permission (<10 dwellings)	5	46	51
Sites with outline planning permission (>9 dwellings)	1,107	295	1,402
Sites approved subject to S106 (<10 dwellings)	8	2	17
Sites approved subject to S106 (>09 dwellings)	156	250	399
Allocated sites and locations without planning permission	1,036		1,036
Sites identified in the published BLR (without planning permission)			0
Small sites windfall allowance			250
<b>TOTAL</b>	<b>11,845</b>		

- 6.12. The strategic policies within the Local Plan Strategy are more than five years old, given it was adopted in 2017. As per the Cheshire East Monitoring Report (February 2024), the five-year housing land supply position was calculated on the basis of the local housing need figure at that time, as opposed to the housing need figure provided within the Local Plan.
- 6.13. The recent changes to the NPPF means that the local housing need figure has been revised and updated. Under the NPPF, the revised annual local housing need figure for Cheshire East is **2,461 homes annually**. This is an additional 661 homes, over and above the target set out within Policy PG 1 and 1,484 new homes over and above the Standard Method within the previous draft of the NPPF. As such, the housing land supply position needs to be updated, on the basis of the revised figure, which we set out below (on the basis of the LPA's supply, applied uncritically).
- 6.14. In addition, the revised NPPF confirms that the five-year housing land supply should also include an additional 5% buffer to ensure choice and competition in the market for land.
- 6.15. As shown in Table 3 above, the housing land supply position has changed significantly as a result of the changes within the revised NPPF and Cheshire East Borough Council are not able to demonstrate a 5-year supply of housing. At present, and without any review of the sites which have been identified within the stated supply, the Council have a **4.58-year supply** of housing and therefore cannot demonstrate a five-year supply of housing.
- 6.16. The associated **shortfall is large at 1,075 homes**.

**Table 3 – Five Year Supply Position Based on Revised Local Housing Need Figure**

A – Basic Requirement over 5 years	The borough's housing requirement of 2,461 homes per annum as required by revised NPPF	12,305
B – +5% buffer	As required by paragraph 78 of NPPF	615
C – Total Requirement over 5 years		12,920
D – No of Homes identified in years 0–5	Via commitments, allocations and SHLAA Sites (taken from 2023 Monitoring Report)	11,845
E – Annual over 5 years	C divided by 5	2,584
F – Years of Supply	D divided by E	<b><u>4.58</u></b>
G – Shortfall in dwellings	C minus D	<b>1,075</b>



- 6.17. It follows that the Council are now failing the minimum requirement of national policy to deliver a 5 YHLS against a minimum housing requirement. This is a situation which needs to be remedied urgently.
- 6.18. At this stage, it follows that:
- The most important policies relating to housing delivery and settlement boundaries are out of date (including policies PG1, PG6, PG 7) and a reduction in weight is to be afforded to them;
  - The tilted balance is engaged;
  - Significant weight should attach to the need for market housing in the application of the tilted balance.
- 6.19. The approach to taken in determining the weight to be afforded to restrictive policies in the Development Plan is explained at paragraphs 47 and 48 of the Hallam Land, Court of Appeal decision (ref: [2018] EWCA Civ 1808) (see **Appendix 1**), which state:
- '47. The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local planning authority is unable to demonstrate five years' supply of housing land, the policy leaves to the decision-maker's planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth.*
- 48. Relevant authority in this court, and at first instance, does not support the proposition that, for the purposes of the appropriate balancing exercise under the policy in paragraph 14 of the NPPF, the decision-maker's weighting of restrictive local plan policies, or of the proposal's conflict with such policies, will always require an exact quantification of the shortfall in the supply of housing land. This is not surprising. If the court had ever said there was such a requirement, it would have been reading into the NPPF more than the Government has chosen to put there, and more than is necessarily implied in the policies it contains.'*
- 6.20. In terms of the Council's claimed supply, from a high-level review it does not appear entirely robust, and **it is likely that the Council's claimed five-year supply is materially less than 4.58 years and the already large shortfall of 1,075 dwellings is likely to be greater.**
- 6.21. **Please note that we have not scrutinised in any detailed the Council's claimed supply of housing and reserve the right to do so as the application progresses.** Our intention is to provide further information on this matter in due course. However, even without such

scrutiny of the claimed supply, the Council's claimed supply still results in a large unmet need that will require remedy through the approval of additional planning permissions. This is particularly so in light of the fact that there is no published emerging Local Plan and the advancement of such to examination and adoption is likely to take at least 4 years (noting the previous Local Plan Strategy was in production for at least 7 years).

- 6.22. We go on to address the nature and history of the restrictive policies in the Development Plan within the following section. However, in the context of paragraph 11, part d) i and footnote 7 of the NPPF, we can confirm there are no protected areas/assets within the Site boundary that would be unduly impacted and provide a strong reason for refusal as a result of the proposed development. Indeed, the Site boundary **does not** include any of the following designations cited in footnote 7:
- Protected European and national habitats,
  - Sites of Specific Scientific Interest,
  - National Landscape designations,
  - Irreplaceable habitats (such as ancient woodland or veteran trees),
  - Green Belt,
  - Local Green Spaces, or
  - Heritage Assets.
- 6.23. This Site is also entirely within Flood Zone 1.
- 6.24. Similarly, there are very limited assets of particular importance which would be impacted in the surrounding area and therefore result in the strong reason for the refusal of the development proposed. It follows that the tilted balance is not displaced by footnote 7 policies.
- 6.25. Although there are a number of listed buildings which can be seen from the Site, as noted in the heritage assessment, any harm arising from the proposals would be from the loss of the rural wider setting of the Grade II Listed The Hill; Oakley House; and Coach House is minor and could only be considered less than substantial harm in NPPF terms at the low end of the scale. No harm would arise to any other designated heritage asset via a change to setting. The proposals might thereby be considered to engage policy 215 of the NPPF, in which the public benefits should be considered in weighing the harm, which is only at the low end of less than substantial. Even giving great weight to the assets' conservation, consistent with the statutory tests and Barnwell Manor<sup>2</sup> (see NPPF 212), any such heritage harm is clearly outweighed by the benefits of the proposal. The scheme complies with NPPF 215 and the tilted balance is not displaced by any heritage policy.
- 6.26. With regards to part d) ii of paragraph 11, as will be demonstrated throughout this statement, there are no adverse impacts arising from the development which would significantly and demonstrably outweigh the benefits, when assessed against the policies

---

<sup>2</sup> [2014] EWCA Civ 137 (**Appendix 2**)

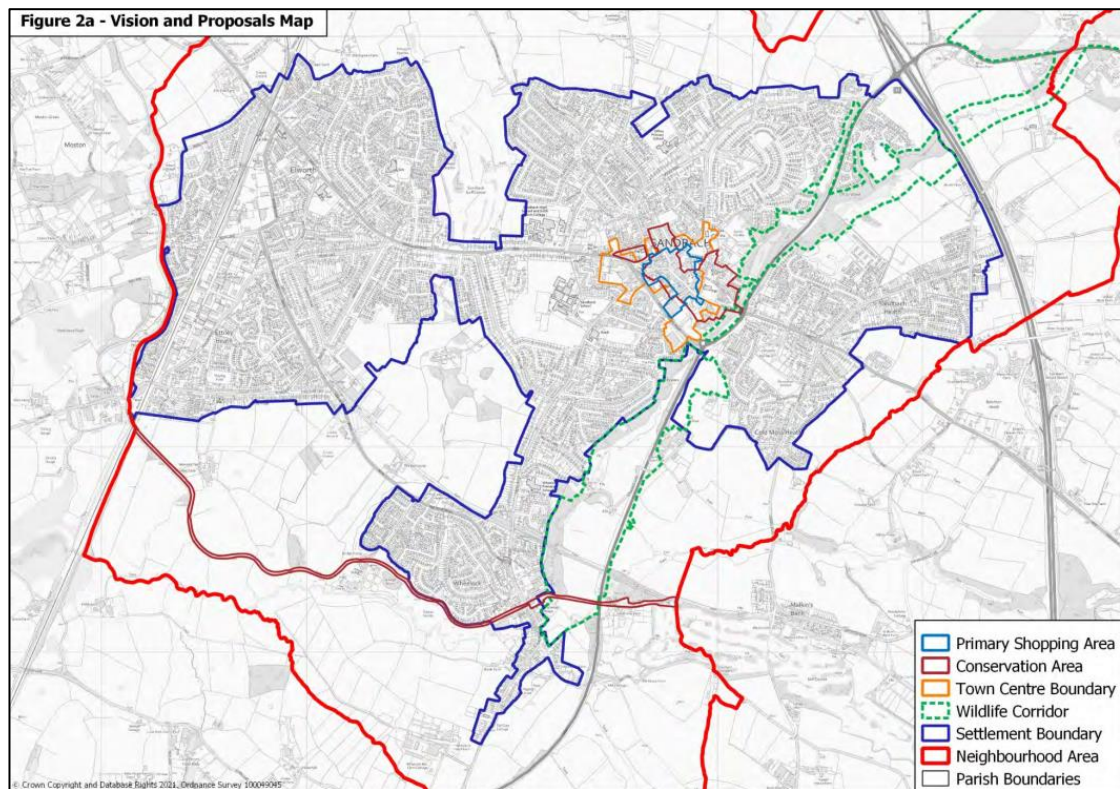
within the NPPF as a whole. There are significant benefits to the proposed development, not least the provision of 325 new market and affordable homes which will help to address the shortfall in the Council's housing land supply and their socio-economic benefits. The benefits of the proposal are set out throughout this planning statement and clearly outweigh any adverse impacts.

- 6.27. Accordingly, whilst it is acknowledged that the proposal is contrary to the development plan, the policies within the Local Plan Strategy which refer to housing numbers, the location and distribution of development outside settlement boundaries and the open countryside, which are the most important in terms of the determination of the principle of development, are considered to be out of date, inconsistent with the NPPF and of limited weight in the application of the tilted balance (in the light of the new NPPF) .

## **Principle of Development**

- 6.28. Below, we set out the relevant policies, relating to the principle of development within the adopted Development Plan and assess how these should be considered under the changes to the NPPF.
- 6.29. The application site is located outside the defined settlement boundary of Sandbach and is located within the Open Countryside.
- 6.30. The latest settlement boundary for Sandbach has been defined by the Site Allocations DPD (Adopted December 2022). This is illustrated on the online policies map and is replicated in Figure 2a of the updated Sandbach Neighbourhood Plan (made in March 2022).
- 6.31. The settlement boundary identified by the Neighbourhood Plan reflects the existing urban area of Sandbach, land that was allocated for development in the LPS (i.e. Site the Junction 17 site – LPS53) and undeveloped land associated with planning commitments that were identified at the time of the LPS being adopted (as illustrated on Figure 15.63 – copied below).

**Figure 2 – Extract from Sandbach NP to Show Settlement Boundaries**



- 6.32. As previously noted, and confirmed by the Examiner, the Neighbourhood Plan does not include any allocations itself.
- 6.33. What is clear is that whilst the latest settlement boundary for Sandbach was defined in 2022, it has essentially been defined based on the housing requirements and spatial distribution of growth identified as part of the 2017 LPS.
- 6.34. The housing requirement in the CELPS (2017) is out of date and inconsistent with the LHN figure in the new NPPF (supra). Limited weight should attach to it. The settlement boundary has been drawn tightly around the existing urban area and allocations and commitment accounted for in the CELPS (2017). Outside the settlement boundary, restrictive Open Countryside policies apply. The settlement boundary therefore defines an area: (i) inside of which housing is (in principle) acceptable to meet the out of date and constrained housing requirement in CELPS (2017) and (ii) an area outside of which housing is (in principle) not acceptable for market and affordable housing because it is not needed to meet the out-of-date housing requirement.
- 6.35. It follows that the settlement boundary is out of date and needs to flex to allow the development of accessible sites, adjacent to sustainable settlements.

- 6.36. Within the Supreme Court Judgement between Richborough Estates and Cheshire East Borough Council<sup>3</sup>, dated May 2017 (see **Appendix 3**), this position is made clear<sup>4</sup>. Where an authority cannot meet the 5-year housing land supply. The following paragraphs 55, 56 and 59 of the judgement are particularly pertinent:

*'55. It has to be borne in mind also that paragraph 14 [now #11] is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgement, unrelated of course to paragraph 49 [now fn.8] which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgement, not dependent on issues of legal interpretation.*

*56. If that is the right reading of paragraph 14 [now #11] in general, it should also apply to housing policies deemed "out-of-date" under paragraph 49 [now fn.8], which must accordingly be read in that light. It also shows why it is not necessary to label other policies as "out-of-date" merely in order to determine the weight to be given to them under paragraph 14. As the Court of Appeal recognised, that will remain a matter of planning judgement for the decision-maker. **Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the "tilted balance".***

*59...The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47 [which related to the boosting housing supply now captured by #61 of the current Framework]. **If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14.** [now #11].*

- 6.37. In this case, the Council cannot demonstrate a five-year housing land supply and no land use planning harm flows per se from the location of the site on one side of a settlement boundary compared to another. Our position, therefore, is that reduced and limited weight must be applied to the defined settlement boundary of Sandbach when applying the tilted balance which is triggered.

---

<sup>3</sup> [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

<sup>4</sup> This judgement was considered in the context of the 2012 NPPF. As such, reference to paragraph 14 of the Framework relates to the current paragraph 11 and reference to paragraph 49 relates to the consideration of housing policies in the context of the 5-year housing land supply position (now addressed in footnote 8 of the current Framework).



- 6.38. This is not to say that no weight should be afforded to the settlement boundary. A planning judgement needs to be applied based on the individual case and site. For instance, we accept alternative weighting could be applied to the purpose of the settlement boundary policies in other locations where this coincides with other relevant planning policies that may seek to restrict development for other reasons (i.e. for specific landscape and amenity reasons).
- 6.39. For instance, where the settlement boundary also assists in demarking the boundary for an identified Local Green Gap (as defined by the Neighbourhood Plan), it is evident that the settlement boundary has been drawn to omit an existing undeveloped gap between the developed parts of the settlement, which the local community have identified for additional protection to prevent the the merger of certain parts of the settlement and to retain the settlement's historic open character and distinctiveness in those locations. As such, whilst the weight applied to the settlement boundary would still reduce and be afforded limited weight due to the shortfall in housing supply/lack of a 5 year housing supply, its weight in conjunction with the Local Green Gap policy could potentially still be afforded appropriate due weight as part of the tilted balance, particularly if a proposed development was deemed to fundamentally undermine the purpose and contribution of the identified Local Green Gap.
- 6.40. What is clear however, is that a rigid application of such policies should not be applied where such policies apply an obvious constraint on the delivery of housing development where there is an unmet need. This is expressed in the Richborough judgement at paragraphs 79, 83 and 84 which state:

***'79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.'***

***83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.'***

***84. If the policies for the supply of housing are not to be considered as being up to date, they retain their statutory force, but the focus shifts to other material considerations. That is the point at which the wider view of the development plan policies has to be taken.'***

- 6.41. The above judgements inform our assessment of the policies below.

#### **Policy H1 New Housing**

- 6.42. SNP Policy H1 New Housing states development outside the settlement boundary in open countryside will be supported which accords with Neighbourhood Plan Policies:

- PC1 – This policy relates to local areas of separation which do not impact on the application site. Indeed, the proposal would not close an important gap that is identified around other parts of the settlement.
- PC3 – This policy relates to the settlement boundary set within the Neighbourhood Plan (which reflects that in the subsequently adopted SADPD). We address this policy below, but we have noted at the outset that we conflict with it.
- PC4 – This policy relates to geodiversity and biodiversity, which we address in subsequent sections, but we can confirm at this stage that none of the application site is affected by the Local Nature Conservation Areas identified in Figure 4 of the Neighbourhood Plan.
- PC5 – This policy relates to footpaths and cycleways which we address in following sections, but we can confirm the proposal is not in conflict with this policy and the development will enhance connectivity to existing PROW and through the site for pedestrians and cyclists.
- Local Plan Policy PG6 – Open Countryside, which we address below and confirm we are in conflict with this policy.

6.43. Overall, we accept that we are in conflict with this policy (Policy H1) but only in the context of the site being located outside the settlement boundary and not being in accordance with the restrictive uses/types of development in the open countryside. Indeed, it is important to note that the open countryside policy is only applicable to locations outside of the settlement boundary, which further demonstrates why Policy H1 must be regarded as being out of date. For reasons explained above and addressed in more detail below, these components of Policy H1 can no longer be regarded as being up to date. Rather, they are out of date and the weight to be afforded to them is significantly diminished and limited weight should be afforded to them.

#### **Policy PG 9 Settlement Boundaries and PC 3 Settlement Boundary**

- 6.44. Policy PG 9 Settlement Boundaries of the SADPD sets settlement boundaries for Principal Towns, Key Service Centres and Local Centres. As per the policies map, the Site sits outside of the settlement boundary. This policy goes on to state that where a neighbourhood plan defines a settlement boundary for a Principal Town, Key Service Centre or Local Service Centre, the Council will apply the most recent settlement boundary, where relevant.
- 6.45. Policy PC3 of the Sandbach Neighbourhood Plan states that new development involving housing, commercial and community development will be supported in principle within the settlement boundary. Development located outside the settlement boundary will be restricted to that which accords with Policy PG6 of the adopted Cheshire East Local Plan, with the exception of additional land allocated to meet development needs identified through the Cheshire East Local Plan located outside the settlement boundary (i.e. the Junction 17 allocation – LPS Policy 53).
- 6.46. The proposal is contrary to Policy PG 9 of SADPD and Policy PC3 of the Neighbourhood Plan simply because it sits outside of the settlement boundary.
- 6.47. The Council are now in a position where they are unable to demonstrate a five-year supply of housing, as a result to the uplift in the local housing need figure for Cheshire East (supra).

As per paragraph 11 and footnote 8, the policies most relevant to determining the application (Policies PG 1, PG 6 and PG 7) which relate to providing a deliverable supply of housing sites, are considered to be out of date. Rather, they are out of date and of limited weight, in the application of the tilted balance in line with the aforementioned judgements (i.e. Hallam / Richborough) and for the following reasons.

- The extent of the housing shortfall is significant and over 1,000 units and is likely to grow.
- The prospect of this shortfall being addressed will not be remedied through an emerging local plan in a short period of time. Indeed, a review of the Local Plan has only recently commenced and is at least 4 years away. It cannot be relied upon to make up the existing 5-year land supply deficit.
- Whilst defined in 2022, the settlement boundary for Sandbach is entirely informed by the housing needs set out in the adopted Local Plan Strategy, which was adopted in 2017 based on an annual housing requirement of 1,800 dwellings, which has now significantly increased to 2,461 dwellings (a 37% increase).
- There are limited further opportunities to further increase the housing supply in Sandbach within the defined settlement boundary.

- 6.48. Whilst the settlement boundaries were updated and amended as part of the preparation of the SADPD, the housing requirement did not change as part of this Development Plan Document. Rather, the settlement boundaries were amended to reflect land already allocated and committed at the time of adopting the LPS. It must therefore follow that the settlement boundaries are out of date. The restriction of housing in the open countryside is just the logical corollary of the absence of need for housing outside the settlement boundary because it was being met inside it. It follows that the housing requirement, spatial distribution of housing, settlement boundaries and policies of restriction outside settlement boundaries are out of date and of limited weight as they are constraining the ability of the LPA to deliver a 5YHLS on accessible sites adjacent to sustainable settlements such as Sandbach.
- 6.49. The current and existing settlement boundaries restrict where deliverable housing sites may be brought forward and therefore in order to bring forward more deliverable housing sites that are capable of providing a five-year housing land supply, land outside of the settlement boundary will need to be brought forward as there is insufficient land within the existing urban areas within the borough to accommodate the Council's housing need moving forward.
- 6.50. Policies PG 9 and PC3 and the settlement boundaries can therefore be deemed to be out of date and development outside of these boundaries is required to provide a sufficient supply of deliverable housing sites. Any conflict with such policies should be afforded limited weight in the tilted balance.
- 6.51. Finally, and as noted above under our analysis of Policy PG 6, the settlement boundaries for this part of Sandbach were not drawn to distinguish a particularly sensitive landscape or define an important gap between settlements (which we address in more detail below). Nor were they drawn to reflect the accessibility of sites. Rather, it is a spatial planning policy based on needs and demands calculated in 2017.



## **Policy PG 6 Open Countryside**

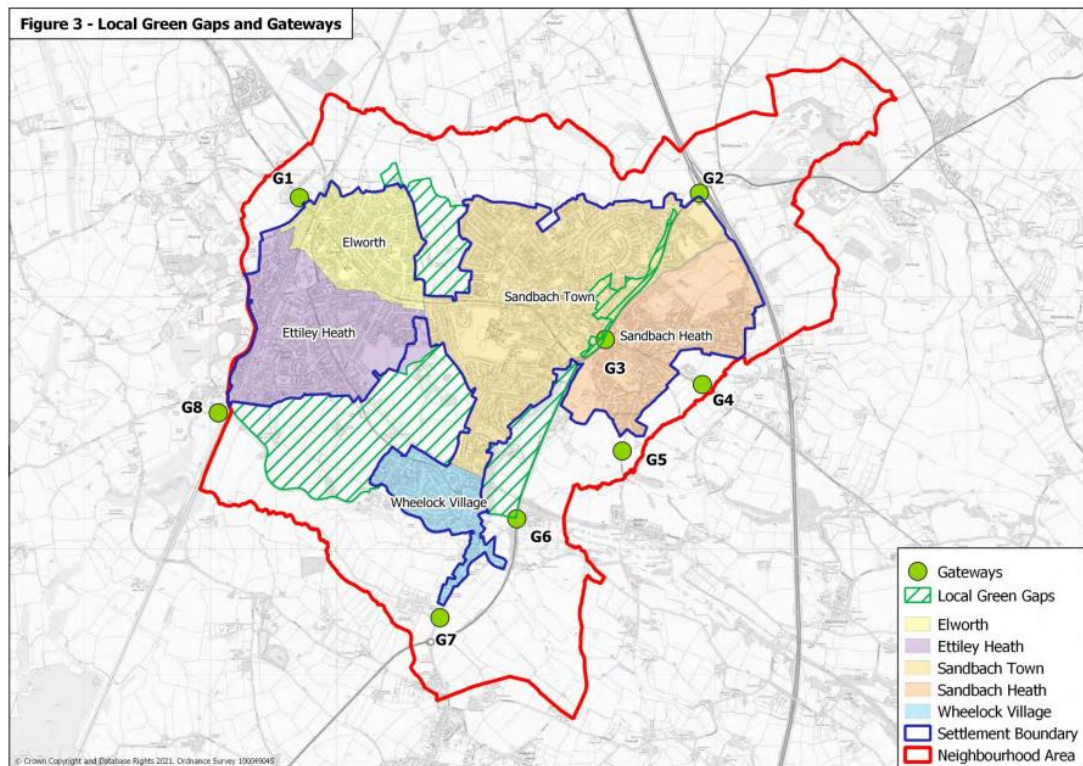
- 6.52. As set out within the earlier sections of this statement, the Site is located within the Open Countryside which is designated under Policy PG 6 of the LPS.
- 6.53. This policy states that the Open Countryside is defined as an area outside of any settlement within a defined settlement boundary.
- 6.54. Within the Open Countryside, only development that is essential for the for the purposes of agriculture, forestry, outdoor recreation, public infrastructure, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted.
- 6.55. There are some exceptions, of where development which may be permitted, which includes: limited infilling in villages, re-use of existing rural buildings, replacement of existing buildings, extensions to existing buildings, development for the expansion or development of an existing building and development essential to the conservation and enhancement of a heritage asset.
- 6.56. The proposed development would not fall into the category of acceptable development in the Open Countryside or an exception and therefore as a starting point, the proposal is contrary to Policy PG 6.
- 6.57. Having said that, in line with paragraphs 11 and 48 of the NPPF, the policies which are most important for determining the applications are out of date. Although this policy does not set out specific housing numbers or allocations for development, it does seek to prohibit residential development within all areas outside of the settlement boundaries.
- 6.58. Given the settlement boundaries were drawn as part of the Local Plan Strategy (which was adopted in 2017 and over 5 years ago) and the Council are now in a position where they are unable to demonstrate a five year supply of housing, locations in and around Principal Towns and Key Services Centres, which are designated as Open Countryside locations will need to be reviewed to enable new sites to be identified to address the housing land supply position. Land within the Open Countryside (which applies to this Site and land around Sandbach) is considered to be a more suitable location than Green Belt, which covers much of the northern part of Cheshire East. This matter is also relevant to policies PG 9 and PC 3 which refer to settlement boundaries, which will discuss in the sections below.
- 6.59. Given the recent changes to the NPPF and the local housing need figures for Cheshire East, this policy is out of date, as it relates to the Council's ability to demonstrate a five-year supply of deliverable housing sites and therefore cannot be considered as part of this development proposal. For the reasons given above, the policy should be afforded limited weight in the application of the tilted balance.
- 6.60. Part 4 of the policy confirms that the retention of gaps between settlements is important to maintain the definition and separation of existing communities and the individual character of settlements. In this regard, the site is not located in a Strategic Gap such as that which exists between Crewe and Nantwich and is identified under Policy PG5 (which does not apply in this case) nor is it within a Local Green Gap identified by the Neighbourhood Plan.

- 6.61. More generally, whilst the proposal would extend the development limits of Sandbach, it does so in a considered way, and it is evident from the proposed masterplan and supporting LVIA and DAS (including historic map progression) that the proposal represents a logical extension that rounds off the settlement to the east. A high-quality interface with the adjacent open countryside will be created, along with a significant amount of public open space. The next closest settlements to the southeast of Sandbach include the small hamlet of Hassell Green (circa 1km away) and then the town of Alsager (circa 4km away) both of which are located to the east of the M6 and will remain entirely separated from the development.
- 6.62. Whilst part 5 of the Policy states that particular attention should be paid to the design and landscape character so the appearance and distinctiveness of the Cheshire East countryside. This has been accounted for in the supporting LVA and DAS, with the LVA concluding that the development would provide a well-designed environment which would relate well to its surroundings providing an appropriate transition from the existing urban edge to the wider countryside to the south east.
- 6.63. To be clear, the settlement boundaries policies are not landscape-based policies and have not been drawn or written to confirm where would be suitable/unsuitable places for development. Instead, there are specific policies with the DPD which set out valued landscapes (i.e. the Local Landscape Designations initially referred to in Part 3 of Policy SE 4 – The Landscape and formally listed under part 2 of Policy ENV3 – Landscape Character of the SADPD and illustrated on the policies map). These policies and areas within the borough are deemed to be of particular importance in terms of their unique landscape character and do not relate to this application site. It is therefore clear, that the settlement boundaries identified around Sandbach are not there to protect the landscape unconditionally. Indeed, such an approach would be inconsistent with the NPPF which superseded PPS 7 and does not seek to protect the countryside for its own sake (see NPPF 187(a) and (b)).

#### **Policy PC1 Local Green Gaps**

- 6.64. Whilst not directly relevant to the application site, it is pertinent at this point to refer to SNP Policy PC1 which refers to Local Green Gaps.
- 6.65. The Site is not located within any designated green gaps, which are designated under the Cheshire East DPD and similarly, the Site is not located within any locally designated green gaps in and around Sandbach.
- 6.66. Figure 3 below is taken from the SNP and shows 4no. Local Green Gaps which have been designated in and around Sandbach. As per Policy PC1, these gaps maintain an established pattern of development and the distinctive identities of Sandbach, Elworth, Ettiley Heath, Wheelock and Sandbach Heath.

**Figure 3 – Local Green Gaps and Gateways Plan from SNP**



- 6.67. This proposal seeks to direct development away from the locally designated green gaps and the most sensitive locations in and around Sandbach and therefore is compliant with Policy PC1.
- 6.68. Gateway 4 is demarked on the road/entrance to the settlement that sits between Parcels C and D. However, the policy itself does not make specific reference to these Gateway locations. Nonetheless, we have accounted for the fact that the proposal will create a new urban edge to the settlement in this location and the accompanying landscaped-led masterplan (that has been informed by the Landscape and Visual Assessment) has been designed to ensure that a high-quality gateway to the settlement will be provided through:
- The offsetting the development parcels from the road and an outward facing development,
  - The provision of enhanced landscape buffers that will contain the development on its eastern edge; and
  - The provision of the large community park on Parcel D, which will be accessible and visible from the road will create a positive and high-quality environment that is sympathetic to the surrounding listed buildings and existing residential properties in this location.

#### **Policy PG 1 Overall Development Strategy**

- 6.69. Policy PG1 of the LPS states that sufficient land will be provided to accommodate the full, objectively assessed needs for the borough of a minimum of 36,000 homes between 2010

and 2030. This will be delivered at an average rate of 1,800 net additional dwellings per year.

- 6.70. In light of the recent publication of the NPPF 2024, this policy is out of date and significantly below the current OAN of 2461 d/pa (minimum). The Local Plan is more than 5 years old and therefore the new, revised standard method within the NPPF 2024 must be relied upon to set the housing need targets for the borough.
- 6.71. The Standard Method within the NPPF 2024 sets an annual requirement of 2,461 homes to be delivered each year. This is an additional 661 homes, over and above the target set out within Policy PG 1 and 1,484 new homes, over and above the Standard Method within the previous draft of the NPPF.
- 6.72. As demonstrated in the earlier paragraphs within this section, the Council are unable to demonstrate a five-year supply of housing in line with the new local housing need figure and therefore the housing numbers provided within this policy are considered to be out of date.
- 6.73. To provide a five-year supply, new housing sites, such as this Site, need to be identified and brought forward in a timely manner to ensure that the Council are able to maintain a five-year supply of housing.
- 6.74. This Site is being promoted by Bloor Homes, one of the UK's leading housebuilders with a regional office in Holmes Chapel, Cheshire East. Bloor specialise in high quality residential development and is committed to bringing this Site forward in a timely manner. Should the application be successful, they would be looking to submit a Reserved Matters application as soon as possible to enable early delivery on Site. As such, this Site would make a valuable contribution to the Council's five-year supply of housing and providing housing in line with the local housing need.
- 6.75. In the context of this proposal, Bloor Homes can confirm:
- A willingness to commit to a shorter period of time to prepare a Reserved Matters application that can be secured by condition (i.e. within 1-2 years);
  - It is anticipated that 70 dwellings per annum (including affordable housing) could be achieved once the development has commenced.
  - Based on the delivery timescales to start on site (as set out in Table 5 further on this section), at least 140 dwellings and possibly up to 210 dwellings could be delivered on the site within a 5-year window from the point of approving the outline application.

### **Policy PG 2 Settlement Hierarchy**

- 6.76. Policy PG 2 Settlement Hierarchy of the LPS sets out the settlement hierarchy for Cheshire East. Sandbach is identified as a Key Service Centre, which is one tier below the Principal Towns of Macclesfield and Crewe.
- 6.77. The policy notes that Key Service Centres should be of a scale, location and nature that recognises and reinforces the distinctiveness of each individual town.

- 6.78. The proposal complies with this policy by directing development to the settlements which are higher up in the settlement hierarchy and have the facilities and capacity to accommodate growth. The settlement hierarchy is considered to be up to date.
- 6.79. This policy does not specify housing numbers but merely characterises settlements within the borough into a hierarchy, with the larger settlements at the top. The hierarchy sets out which settlements within the borough have the most services and facilities and therefore which may be more suitable to accommodate growth. It does not provide any specific numbers or figures and therefore this policy is not considered to be out of date.
- 6.80. Bloor is supportive of the settlement hierarchy and the recognition that Sandbach is a Key Service Centre which is capable of delivering new homes for the borough.
- 6.81. Sandbach is a sustainable settlement which is capable and suitable for accommodating growth. It is a notable settlement within Cheshire East with a sizeable population, which provides a wide range of services and opportunities for employment, retail and education for new residents.
- 6.82. This proposal would be directing development to a Key Service Centre, which is recognised within the Local Plan as suitable for accommodating growth. As such, the proposal would comply with Policy PG 2.

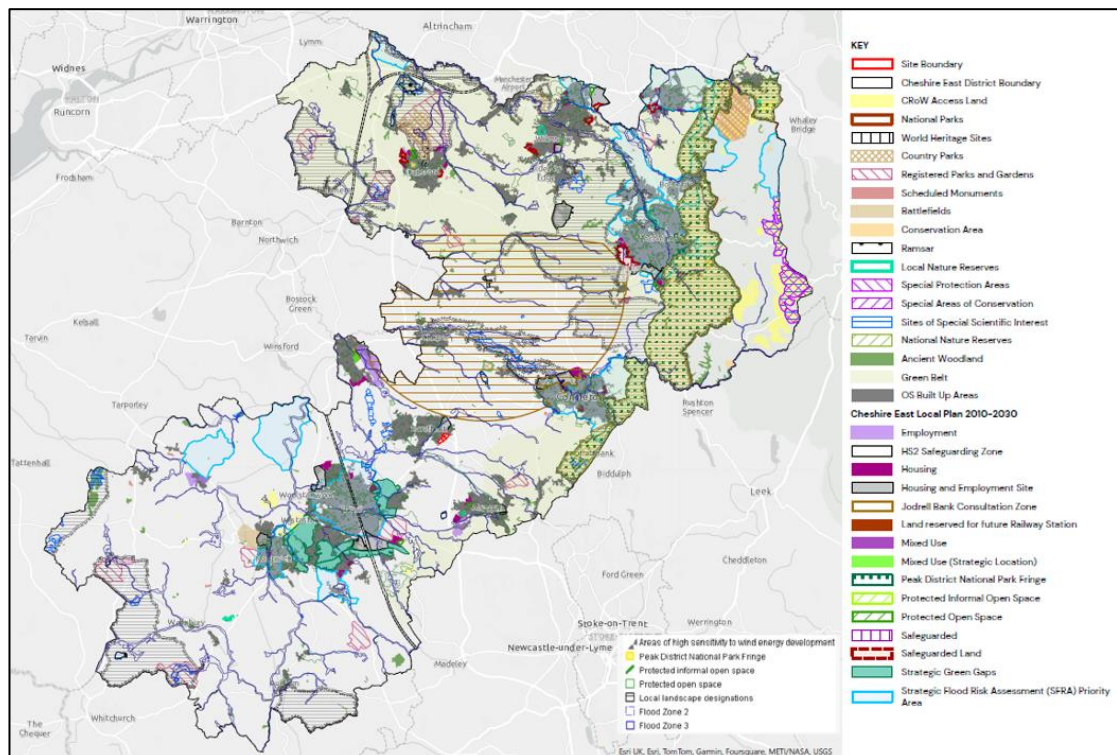
#### **Policy PG 7 Spatial Distribution of Development**

- 6.83. Policy PG7 Spatial Distribution of Development of the LPS sets out where new homes and employment land will be delivered over the plan period.
- 6.84. This Policy is considered to be out of date as the housing numbers proposed are out-of-date and do not reflect the level of growth required to be delivered in Cheshire East in line with the NPPF.
- 6.85. Although this policy is out of date, it provides a useful starting point as which locations and settlements the Council may consider appropriate for development and what level of development each of the settlements may be required to accommodate.
- 6.86. Within the adopted Local Plan, Key Service Centres were allocated to deliver 17,600 of the 36,000 dwellings over the plan period, which equates to 49% of the total housing requirement. On this basis, it can therefore be assumed that as part of future housing numbers, around half of the housing requirement must be delivered within Key Service Centres.
- 6.87. Of the 17,600 dwellings which was allocated to be delivered in Key Service Centres, 2,750 of these were directed towards Sandbach, which equates to 16% of the total growth for Key Service Centres. All of these have been delivered.
- 6.88. Of all the Key Service Centres, only Congleton was allocated more growth (24%) which suggests that both Congleton and Sandbach are the settlements which can accommodate and are the most suitable and sustainable settlements for future growth. The Congleton Relief Road was the principal catalyst for this growth and moving forward and looking at future growth, Congleton is unlikely to be able to accommodate as much growth as it did in the LPS. Sandbach however is capable and suitable of accommodate a significant proportion of the growth attributed to Key Service Centres.

- 6.89. Looking forward to the delivery of future housing numbers, when you consider this based on the housing numbers set within the revised Standard Method, Cheshire East will be required to deliver 2,461 dwellings per annum. As per the requirements of paragraph 78 of the NPPF, a 5% buffer must be applied to this to ensure choice and competition in the market for land. As such, Cheshire East, under the revised local housing need figure will be required to deliver 2,584 dwellings per annum and 51,680 dwellings over a 20-year plan period.
- 6.90. Based on the distribution within the adopted Local Plan, Key Service Centres will be required to deliver 1,266 dwellings per annum, which over a plan period of 20 years, would be 25,320 dwellings.
- 6.91. If you assume Sandbach would deliver 16% of this growth, albeit we would argue Sandbach should and can accommodate more growth than other Key Service Centres (some of which are constrained by Green Belt), this will equate to 4,051 dwellings over a 20-year plan period and 203 dwellings per annum.
- 6.92. There is no denying that Cheshire East have (recently) a good track record over the past few years of housing delivery, once sites have been allocated. However, based on the current local housing need figure, the Council are now only able to demonstrate a 4.58-year supply of housing and therefore to achieve the numbers set out above, the Council will need to be looking for greenfield sites in and around the borough which are suitable to accommodate these increased housing numbers and looking for the most suitable locations to accommodate this growth.
- 6.93. When looking at the suitability of Key Service Centres and their ability to accommodate growth, as shown in the Figure 2 below which has been appended at **Appendix 4**, there are many different constraints in and around Cheshire East which would suggest that in the first instance, sites are identified outside of these areas.



**Figure 4 – High Level Map to Show Constraints in Cheshire East**



6.94. Some of these constraints include:

- **Green Belt** – The northern part of Cheshire East (including the former Macclesfield Borough Council area) is covered by Green Belt and the southern fringes of the Borough are also impacted by Green Belt. This impinges on the ability of Macclesfield, Wilmslow, Handforth, Knutsford and Alsager to meet the increase in housing needs in line with paragraph 11 of the Framework.
- **Jodrell Bank Consultation** – This covers land in and around Holmes Chapel, the north western edge of Congleton and towards the south west of Macclesfield.
- **Peak District National Park Fringe** – This covers land to the far east of the settlement and the east of Macclesfield, east of Bollington, and south east of Congleton;
- **Local Landscape Designations** – This covers areas to the north of Knutsford, north of Wilmslow, west of Handforth, east of Alderley Edge, north west of Macclesfield and areas to the far south of the borough, albeit they don't affect Key Service Centres in this location.
- **14 Priority Zones in Level 1 Strategic Flood Risk Assessment** – There are 14 priority zones identified within the Council's SFRA where flood risk has the potential to be significant. These are focused around: Crewe, Congleton, Poynton, Macclesfield, Calveley, Nantwich, Wyndbury, Church Minshull, Little Bollington, Bollington, Prestbury, Kettleshulme, Handforth and Pott Shrigley.

- **Strategic Green Gaps** – These are located in and around Crewe, Haslington, Nantwich, Shavington and Willaston.

- 6.95. As such, when considering where may be a suitable place for future growth and development, areas with these constraints would likely be excluded in the first instance. Sandbach is comparatively unconstrained by a significant degree. Sandbach is also a sustainable settlement, with good access to sustainable modes of transport and the motorway network. Sandbach (in general) and this site (in particular) are well placed to address the urgent shortfall in 5YHLS, especially given constraints elsewhere.
- 6.96. As will be demonstrated throughout this statement, there are no site-specific constraints which would prevent residential development coming forward on Site. The Site is located in a sustainable location, which is within walking distance of the services and facilities within the town centre, as well as access to sustainable modes of transport and the national highway network. As such, this Site should be considered favourably as a suitable Site to address the housing needs of Cheshire East, especially in light of the revised local housing need figure for Cheshire East.
- 6.97. Housing delivery in Sandbach has been good over recent years, which demonstrates there is a very strong demand for new housing in this area, when it is consented. In terms of the housing numbers which were allocated to be delivered within Sandbach within Policy PG7, as confirmed within the Housing Completions and Supply Report (base date 31<sup>st</sup> March 2024), Sandbach to date has already delivered over and above its requirement of 2,750. Between 2010 and 2024, 2,975 dwellings were delivered in Sandbach. This would indicate that the proposed development could make a very meaningful contribution towards meeting the Council's shortfall in its five-year housing land supply within a short period of time, on the basis the Site is solely controlled by Bloor Homes, who are keen to progress Reserved Matters applications shortly after grant of outline planning permission. and Bloor Homes would commit to an early start date.
- 6.98. Policy PG7 is out of date in terms of housing numbers. However, in line with this policy, the proposal would provide housing within a Key Service Centre which is a suitable and sustainable settlement to accommodate future growth.

#### **Policy SD 1 Sustainable Development in Cheshire East**

- 6.99. Policy SD 1 of the LPS states that in order to achieve sustainable development in Cheshire East, the following considerations to development will apply. The Policy sets out 17 aims and objectives to achieve sustainable development. Below, we briefly set out how this policy would address some of the aims within this policy, which are of relevance to this proposal.

**Table 4 – Compliance of the Development with Policy SD1**

Policy SD1 Requirement	Development's Compliance
Contribute to creating a strong, responsive and competitive economy for Cheshire East	The proposal will generate significant economic benefits including; increased supply of labour, additional household expenditure in Cheshire East, increased Council Tax income, improved energy efficiency, direct and in-direct construction



	related employment and contribution of construction phase to economic input.
Prioritise investment and growth within the Principal Towns and Key Service Centres	This proposal will see the development of a Site adjacent to the Key Service Centre (Sandbach). It will bring much needed homes, to serve the varied needs of Sandbach and Cheshire East and will bring significant economic investment to the community.
Contribute to the creation of sustainable communities	The proposal will provide a sustainable extension to the existing settlement of Sandbach. The Site will link up to existing public rights of way and provide new walking routes and areas of public of space for the enjoyment of existing and future residents.
Provide appropriate infrastructure to meet the needs of the local community including education; health and social care; transport; communication technology; landscaping and open space; sport and leisure; community facilities; water; waste water; and energy	<p>Bloor Homes is committed to ensure that the scheme provides the necessary infrastructure to make the development acceptable and to not impact negatively on the existing services and facilities within Sandbach. As part of the determination of the application, Cheshire East Council will provide details of the financial contributions to infrastructure, including education, health, social care, transport, landscaping, sports and leisure etc and Bloor Homes will provide those financial contributions.</p> <p>The development will provide open space, which is over and above the standards set with the Local Plan and SPDs to the benefits of existing and future residents.</p>
Provide access to local jobs, services and facilities, reflecting the community's needs	The proposal will result in the creation of new direct and indirect jobs during the construction phase. The proposal will also deliver new areas of open space and recreation for the benefit of the local community. The new homes will support and provide additional patronage for the businesses in and around Sandbach.
Ensure that development is accessible by public transport, walking and cycling	The Site proposes a bus link through the Site, which will significantly improve both future and existing resident access to public transport. Financial contributions will be made to improving bus services and providing better and more regular services. Within the Site, a series of footpaths and cycleways are proposed which will link up to existing public rights of way. This will ensure that the development is accessible for all and prioritises access to sustainable modes of transport.
Provide safe access and sufficient car parking in accordance with adopted highway standards	<p>Two access points are proposed to the north and south of the Hill to access the development. These have been designed to ensure safe and secure into the Site.</p> <p>A separate vehicular access is proposed into the Site, off Cold Moss Drive, to the south west of the Site, but this will be limited to the use of emergency vehicles.</p> <p>A bus loop is proposed through the middle parcel of the Site. The bus will enter the Site, via the existing access point into the Site</p>

	and will access at a further exit point off the Hill. This will be solely for the use of bus services.
Provide a locally distinct, high quality, sustainable, well designed and durable environment	The proposed development proposes to take care of Sandbach's charm and character and creating new homes which have been beautifully designed to achieve low carbon living as part of a truly sustainable community.
Use appropriate technologies to reduce carbon emissions and create a low carbon economy	<p>The new housing will be designed to achieve low carbon living, with no fossil fuel heating systems installed.</p> <p>Homes will be equipped with solar PV panels, heat pumps, and advanced insulation. With high airtightness and efficient heating controls, new homes will also feature wastewater heat recovery and low-energy LED lighting throughout.</p> <p>This will support the creation of a low carbon economy.</p>
Incorporate sustainable design and construction methods;	Bloor Homes use eco-friendly materials and prioritise water efficiency throughout the build. The energy statement provides further details what methods will be utilised.
Contribute to protecting and enhancing the natural, built, historic and cultural environment	The development has been designed to be landscape led which responds sensitively to the characteristics of the Site, the surrounding area and neighbouring uses.
Make efficient use of land, protect the best and most versatile agricultural land and make best use of previously developed land where possible	As shown on the high-level Agricultural Land Classification map North West Region, the ALC land around Cheshire East comprises of predominantly Grade 3, Grade 2 and some areas of Grade 4 (towards the peak district). The proposal will develop Grade 3 agricultural land which is good to moderate. There is insufficient brownfield land within Sandbach and Cheshire East to accommodate the Borough's housing needs and therefore greenfield land will need to be relied upon to deliver new homes.
Prioritise the most accessible and sustainable locations	<p>The development is proposed in an extremely sustainable location which is adjacent to Sandbach Heath and well related to the town centre of Sandbach.</p> <p>Sandbach Heath benefits from several services and facilities within walking distance of the Site, including a primary school, convenience store and bus stops.</p>

- 6.100. As such, the policy is considered to constitute sustainable development and is compliant with Policy SD 1.
- 6.101. The NPPF provides further guidance on what is considered to be sustainable development. As noted in Section 2, achieving sustainable development means the planning system has three overarching objectives which are interdependent and need to be pursued in mutually

supportive ways. Below, we set out the economic, social and environmental objectives which this development will deliver.

- **Economic** – The proposal will deliver significant economic benefits both during the construction and operational phase of the development. The benefits include, but are not limited to:
  - **Construction Phase** – Direct and indirect construction related employment and generation of GVA during the construction phase; and
  - **Operational Phase** – Increased supply of labour from new homes, generation of additional household spend and first occupation expenditure, increased Council Tax income, improved energy efficiency and supporting the climate change agenda.

6.102. An Economic Benefits report has been submitted as part of this application which provides a full summary of the economic benefits of the proposed development.

- **Social** – The proposal will perform a social role by generating the following community benefits:
  - The provision of a range of market and affordable housing to address the varied needs of Sandbach and Cheshire East;
  - Provision of significant amounts of public open space, comprising of play areas, parks, informal areas of open space, public footpaths, for the benefit of existing and future residents;
  - Provision of open space adjacent to the Leonard Cheshire to provide open space for the use of the residents and to protect their amenity and outlook;
  - Support the existing services and facilities within Sandbach and Cheshire East by providing both additional patronage and funding to support their operation and function;
  - Creation of new recreational routes to improve accessibility to the wider open countryside;
  - Improve accessibility to sustainable modes of transport, through improvements to public transport and the enhancement of footpath/cycleways;
  - Proceeds of the sale of the land will be used by the charities for their respective charitable purposes.
- **Environmental** – The proposal will deliver significant environmental benefits including;
  - Retention of all trees and hedgerows within and around the Site where possible, including all TPOs. Where any trees, hedgerows or vegetation is required to be removed, this will be compensated through new planting;

- Creation of new areas of open space within the Site which are available to existing and proposed residents. The open space will comprise of a mix of play areas, parks, informal areas of open space and connections to the open countryside;
- 10% BNG of biodiversity of the existing Site to provide new habitats and species to the Site;
- New housing which has been designed to achieve low carbon living, with no fossil fuel heating systems installed. Homes will be equipped with solar PV panels, heat pumps, and advanced insulation. With high airtightness and efficient heating controls, new homes will also feature wastewater heat recovery and low-energy LED lighting throughout.
- Bloor Homes use eco-friendly materials and prioritise water efficiency throughout the build;
- Homes are designed to maximise natural light and ventilation, enhancing comfort and well-being. By placing sustainability at the core of our design, we are building homes that not only provide modern comforts but also contribute to a cleaner, greener future for all; and
- Electric vehicle charging points will be available throughout the community.

6.103. As per the guidance provided within the NPPF, the proposal is considered to constitute sustainable development. As per paragraph 10 of the NPPF, there is a presumption in favour of sustainable development. As noted in the earlier paragraphs of this section, paragraph 11 confirms decisions should apply a presumption in the favour of sustainable development.

#### **Conclusion on Principle of Development**

6.104. As noted in the earlier paragraphs, although the proposal does not comply with Policy PG 1 and PG 6 of the LPS, PG 9 of the SADPD and PC 3 of the SNP, the relevant policies for determining the application are considered to be out of date and of limited weight in the light of the recent updates to the NPPF. Any conflict with them does not significantly and demonstrably outweigh the benefits of the proposal.

6.105. On balance, the proposal constitutes sustainable development, and is proposed in a suitable location, with good access to existing services and facilities and adjacent to the existing built-up area of Sandbach.

6.106. Coupled with the increase in local housing need requirement for Cheshire East, as noted in the revised NPPF and the need for more new homes in Cheshire East, the balance weighs heavily in the application being approved.

6.107. The NPPF places significant weight on the need to maintain a healthy five-year supply of housing. Paragraph 61 of the NPPF confirms that to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. This proposal makes a valuable contribution towards maintaining a five-

year supply of housing for Cheshire East and therefore **significant weight should be attributed to this when weighing up the planning balance.**

6.108. Similarly, the NPPF places significant weight on the need to support economic growth. As set out above and within the Economic Benefits Statement, there are significant economic benefits which weigh in favour of the proposal being approved, including increased supply of labour from new homes, generation of additional household spend and first occupation expenditure, increased Council Tax income, improved energy efficiency and supporting the climate change agenda. In line with paragraph 85 of the NPPF, significant weight should be attributed to proposals such as this which support economic growth.

## Deliverability

6.109. As per paragraph 72 of the NPPF, sites within the Council's five-year supply of housing need to demonstrate that they are deliverable. Annex 2 of the NPPF defines deliverable as;

*'To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years'.*

6.110. As set out below and as per the definition set out above, this site is a deliverable housing site which has a realistic prospect of housing being delivered within five years. Below, we provide realistic and achievable timeframes to demonstrate when new homes could start to be delivered on site.

6.111. From the point of the outline application being approved, and the S106 application being signed, the following timeline could be achieved:

- 3 months to prepare and submit a Reserved Matters Application;
- 3 months for the determination of the Reserved Matters Application and receipt of Decision Notice;
- 6 months to discharge conditions and complete purchase of the land;
- 1 year from the initial start on site to the first legal completion.

**Table 5 – Development Timescales**

	Year 1												Year 2											
<b>Prepare and Submit RM Application</b>																								
<b>Determination of RM and Receipt of DN</b>																								
<b>Discharge Conditions and Complete Purchase of Land</b>																								
<b>Start on Site</b>																								
<b>Construction of New Infrastructure and Homes</b>																								
<b>First Legal Completion</b>																								

- 6.112. As you can see, from the outline applications being approved, within 2 years of this timeframe, new homes would be built and occupied on site.
- 6.113. Bloor are based locally within Cheshire East, are well funded and will be the end developer with no impediments in bringing the site forward. They are committed to bringing forward this development and delivering it in a timely manner to ensure that provides the much-needed market and affordable housing to meet the needs of both Sandbach and Cheshire East.
- 6.114. Indeed, Bloor would accept a condition on any outline approval which shorten the time limit for which a Reserved Matters application must be submitted to further demonstrate the commitment to delivering new homes on this site and as noted above, the timescales
- 6.115. Bloor are willing to commit the completion of between **140 to 210 dwellings within a 5-year window** from the outline planning permission being granted.
- 6.116. Below, we set out why this site is considered to be deliverable.

#### **Suitable**

- 6.117. As demonstrated throughout this Statement and within the suite of application documents, this Site is suitable to accommodate residential development for the following reasons:
- It is well located in terms of transport infrastructure (connections to the M6 motorway, bus services, train station) and local services and facilities within Sandbach Heath and Sandbach;
  - It is make a significant contribution to the Council's five-year housing land supply;
  - The Site will improve connectivity and access to open space and the open countryside, whilst protecting and connecting to public rights of way;
  - The Site is not subject to any site-specific constraints which would prevent the development of the site.

#### **Available**

- 6.118. There are no legal covenants or ownership impediments which would prevent the land coming forward for development within the next five years.
- 6.119. The Site is controlled by Bloor Homes who will deliver the proposed new homes onsite. Bloor is an experienced, local housebuilder with a wealth of experience in developing high quality homes.
- 6.120. The Site has been masterplanned in collaboration with Bloor, who will construct the site, to ensure that the development is located in the most appropriate manner to deliver a high quality, sustainable, and deliverable development.
- 6.121. Upon receipt of successful planning permission on this scheme, a Reserved Matters application would be submitted in a timely manner. To provide further comfort that the Site would deliver within 5 years, Bloor would be open to a planning condition which shortened the time in which a Reserved Matters application would need to be submitted.

- 6.122. Bloor are committed to delivering this site in a timely manner which is demonstrated through their track record of the efficient delivery of high-quality housing schemes in the Cheshire East and the north west.

#### **Achievable**

- 6.123. The Site comprises greenfield land and is not subject to any known remediation or preparation costs.
- 6.124. Bloor have reviewed the economic viability of the site and the proposals in terms of land values, market attractiveness/demand sales rates and development costs and can confirm that the proposals are economically viable and capable of delivering the required infrastructure.
- 6.125. As demonstrated through the suite of technical reports which has been submitted in support of this application, the proposed 325 dwellings are achievable and deliverable. Any necessary mitigation measures have been considered and can be incorporated whilst ensuring the proposals are still deliverable.

#### **Conclusion**

- 6.126. In line with paragraph 72 and Annex 2 of the NPPF, the Site is deliverable for housing as it is available now, is in a suitable location for development, and is achievable with a realistic prospect that housing will be delivered on the site within five years.

## 7. Design

- 7.1. As noted in Section 12 of the NPPF, the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.
- 7.2. As noted specifically in paragraph 139 of the NPPF, **significant weight** should be given to development which reflects local design policies and government guidance on design, taking into account local design guidance.
- 7.3. There are a number of policies within the Development Plan documents which set out the standards of design which is expected within Cheshire East. Below, we set out the relevant design policies within the Local Plan and how the proposal complies with the relevant policies.
- 7.4. Policy SE 1 of the LPS states that development proposals should make a positive contribution to their surroundings and sets out 5 ways in which the design of development proposals can make a positive contribution to their surroundings. This includes sense of place, managing design quality, sustainable urban, architectural and landscape design, liveability/workability and designing in safety.
- 7.5. Policy GEN 1 of the SADPD lines up with the requirements of LPS Policies SE 1 and SD 2 which seeks to ensure that developments make a strong contribution to their surroundings.
- 7.6. Policy H2 Design and Layout of the SNP states new developments will be expected to meet high standards of design.
- 7.7. A detailed and thorough Design and Access Statement has been prepared and submitted as part of this application which sets out how the proposal will make a positive contribution to the surrounding area, reflects the existing characteristic of this locality and Sandbach and is in line with the guidelines and requirements of the Cheshire East Design Guide.
- 7.8. In summary, the proposal will deliver a high-quality development which will have a positive impact on both the existing residential areas and the open countryside.

### **High-Quality and Sustainable Homes**

- 7.9. The proposed development will deliver 325 new homes over 3 parcels. Bloor Homes propose to deliver the highest quality and standard of new homes to address the varied needs of Sandbach and the borough.
- 7.10. Bloor Homes have extensive experience in delivering high quality developments that integrate seamlessly into existing communities. This Site is no different. Through exceptional masterplanning, and careful/thoughtful design, the development will integrate seamlessly into the existing community. The development has been designed to ensure that it both respects and complements the character of the surrounding area.
- 7.11. The exact house types will be decided as part of a future Reserved Matters application however the new homes will take into account the existing architecture in the local vicinity



to ensure that the development is in keeping with the existing character and design of the area to maintain a sense of place.

- 7.12. All homes will be delivered in line with the new Future Homes Standard, meaning the homes within this development will not only be beautifully designed, but will be capable of achieving low carbon living for a truly sustainable community.
- 7.13. All of the homes which will be delivered will use sustainable materials to reduce energy loss by installing the latest technologies to enhance insulation, air tightness and heat recovery. Our development will significantly reduce environmental impact by ensuring each homes meets ambitious energy performance standards, with a 75–80% improvement in efficiency.

### **Layout**

- 7.14. Although the exact positioning of the new homes will be decided as part of future Reserved Matters applications, the illustrative masterplan which is proposed as part of this application has been designed to create active frontages and a strong sense of enclosure, with building scale and massing to reinforce key arrival points, junctions, streets and connections.
- 7.15. Pedestrian and cyclist connectivity and movement has been prioritised within the development to facilitate access in and around the Site by sustainable modes of transport.
- 7.16. To protect the residential amenity of existing residential properties in the area, the development has been appropriately sited and designed to avoid outlook and privacy issues. This was particularly important in and around the Leonard Cheshire, to protect the amenity and quality of life of existing residents.

### **Access to Open Space**

- 7.17. What sets this proposal apart from many other, is the significant amount of open space that will be delivered on Site, which will benefit both existing and future residents and provide better access for local people to the open countryside and public open space. The Site will deliver new areas of accessible, safe and multi-functional greenspaces, which will provide both recreational and environmental benefits.
- 7.18. A significant amount of public open space is proposed throughout all three parcels, with equates to 8.8 hectares of open space in total. This is split as follows across the three parcels proposed for residential development:
  - Parcel B – 1.5 hectares;
  - Parcel C – 2.2 hectares; and
  - Parcel D – 5.1 hectares.
- 7.19. This is significantly greater than the standards noted within the adopted DPD (2017), the Green Space Strategy and the Design Code, which would require circa 2.11 ha of open space to be provided based on 325 dwellings. This development would deliver approximately 6 hectares of open space over and above the guideline requirements which would deliver significant design improvements and benefits to the local area.

- 7.20. The most notable area of open space is located to the west of Parcel D, which is proposed to comprise of a new park. This 3.8-hectare park will provide a new area of open space for the enjoyment of existing and future residents and will be designed to deliver the open space needs and requirements of Sandbach. Precise details as to what this area would comprise of will be provided as part of the Reserved Matters application. However, the current vision and masterplan for this area includes all of the following, which Bloor Homes are willing to commit to:
- Formal parkland areas with publicly access routes through this part of the Site;
  - A new children's play area (LEAP);
  - The preservation of protected trees under TPO ref Sandbach – Manor Road No.3, Tree Preservation Order 2015) (ref: 70–251);
  - New tree planting; and
  - The potential for other elements of open space (if required).
- 7.21. Two play areas (LAPs) are proposed within the other two parcels to ensure that there is access to areas of open space in close proximity to all areas of development.
- 7.22. A series of new footpaths and cycle ways are proposed in and around the Site, located within areas of open space to enhance existing and future residents' access to open space and walking routes. These routes will encourage the use of sustainable transport, informal recreation and access to key services/facilities and the open countryside.
- 7.23. The accessibility to public open space, including parks, play areas, public rights of way which this Site will deliver ensures the highest quality design and standard of living for new residents which will also benefit existing residents.

### **Safety**

- 7.24. Designing in safety has also been a key consideration in how the masterplan has developed. This will be considered further as part of future Reserved Matters applications however safety has informed the design evolution of the masterplan.
- 7.25. Key areas of public open space, including LEAP, LAPs and Sandbach Heath Park have been designed to ensure that they are overlooked by both the proposed dwellings and existing dwellings, to ensure promote safety and security within the Site, in line with 'designing out crime' principles.
- 7.26. Corner turning dwellings will be positioned on corners to address the two aspects facing the street. This avoids blank facades and recreating natural surveillance to the street which is in line with designing out principles.

### **Conclusion**

- 7.27. Paragraph 139 of the NPPF clearly states that significant weight should be given to development which reflects local design policies and government guidance on design, taking into account local design guidance.

- 7.28. As demonstrated through this Planning Statement and the Design and Access Statement, the development upholds the principles of the DPD and the Cheshire East Design Guide in delivering a high-quality development which sets new dwellings in and amongst significant amounts of open space and to respect the character and setting of the existing residential properties.
- 7.29. As such, when considering the planning balance, **significant weight** should be attributed to this development and its compliance with local design policies.

## 8. Housing

### Housing Delivery on Site

- 8.1. The Site will deliver much needed market and affordable housing which will meet the needs of both the residents of Sandbach and Cheshire East, to address the Council's five-year housing land supply.

#### Affordable Housing Provision

- 8.2. The delivery of affordable housing is particularly important and should be given significant weight in the determination of the application.
- 8.3. There is a significant extant need for affordable housing across Cheshire East, including Sandbach. Gross affordable housing completions since the start of the plan period, are reported annually in the Council's Authority Monitoring Report.
- 8.4. The Cheshire East Local Plan Authority Monitoring Report (AMR) 2022/23 (the most recent monitoring report) shows the consistent delivery of affordable housing over the last 5 years. Table 11.21 below is taken from the AMR 2022/23 and demonstrates a strong record of affordable housing delivery in the past 5 years (613 dpa).

**Table 6 – Provision of Affordable Homes in Cheshire East**

**Table 11.21 Provision of affordable homes**

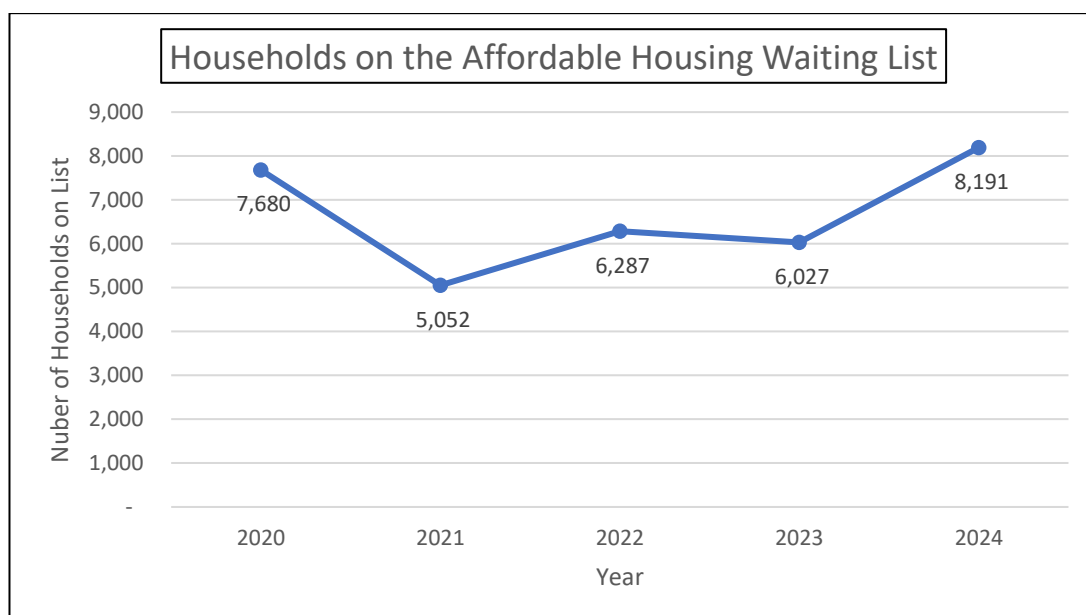
2018/19	2019/20	2020/21	2021/22	2022/23
729	706	461	668	502

- 8.5. In 2022/23, 502 dwellings delivered were affordable, which is 20% of the total number of dwellings delivered on all sites
- 8.6. This represents a strong record of affordable housing delivery and clearly demonstrates that where residential proposals are granted and sites are allocated within Cheshire East, affordable housing will come forward. However, the number of households on the waiting list has remained largely constant as shown in the graph below (perhaps most likely due to the fact that house prices continued to rise after the adoption of the Local Plan and the high increases we have seen in inflation over recent years which has placed considerable pressure of household budgets).<sup>5</sup>

---

5

**Figure 6 – Households on the affordable housing waiting list<sup>6</sup>**



- 8.7. As of 31st March 2024, there were 8,191 households on the Cheshire East's affordable housing waiting list for rented affordable housing. This is a significant rise from 2023, when there was 6,027. Although there has been a steady delivery of affordable housing delivery, there waiting list has remained consistently high over the past 5 years and even peaked in the last year.
- 8.8. It should be noted that the number of households on the Council's affordable housing waiting list represents only part of the need for affordable housing, as it relates only to rental accommodation. It does not take into account the need for other types of affordable housing, such as shared ownership.
- 8.9. Although it is a little outdated, a report was prepared and published in March 2021 in support of the update to the SNP. The Sandbach Housing Needs Report 2021, which was prepared by the Cheshire Community Action Group<sup>7</sup>, confirms that the area fell short of achieving 30% affordable housing target with 19% new builds being affordable tenures since 2010.
- 8.10. In terms of affordability, Sandbach North is the least affordable area of the Town with average property priced at 8 times the average income (in line with Cheshire East). In this area average income households would struggle to afford an average or even lower quartile (lowest 25%) priced property other than terraced housing. The most affordable area was Sandbach Heath with average property priced at 5.7 times the average income. In this area, average income households would be able to afford most average or lower quartile priced properties apart from detached. The Site would deliver housing in an area which is more

<sup>6</sup> Source: DLUHC Live Table 600: Local Authority Waiting Lists  
([https://assets.publishing.service.gov.uk/media/65733c1f049516000d49bf14/LT600\\_accessible.ods](https://assets.publishing.service.gov.uk/media/65733c1f049516000d49bf14/LT600_accessible.ods))

<sup>7</sup> <http://www.sandbachneighbourhoodplan.org.uk/wp-content/uploads/2021/06/Sandbach-Housing-Needs-Report-FINAL-SUBMISSION-VERSION-1.pdf>

affordable and in line with the needs and requirements of those living and wish to live in Sandbach.

- 8.11. Furthermore, the need for affordable housing, and the weight to be attached to it, should only be increased in light of the Government's recent statements and its clear ambition to significantly increase housebuilding, and in particular, the supply of affordable housing. The Written Ministerial Statement of 30th July 2024 (Building the Homes We Need) states:

*'We are in the middle of the most acute housing crisis in living memory. Home ownership is out of reach for too many; the shortage of houses drives high rents; and too many are left without access to a safe and secure home'.*

- 8.12. The letter from the Deputy Prime Minister to local authorities: "Playing your part in building the homes we need" (31st July 2024) also refers to the depth of the housing crisis, including homeless children in temporary accommodation; waiting lists for social housing getting longer and longer; and younger residents priced out of home ownership. The letter states:

*"it falls to you and your authorities not only to plan for the houses we need, but also to deliver the affordable and social housing that can provide working families with a route to a secure home."*

- 8.13. This makes it clear that the delivery of housing and in particular, affordable housing, should be a top priority for Local Planning Authorities and that they should take action to secure delivery of these much-needed homes. The Government also commits to future investment in social and affordable housing in order to

*"...help deliver the biggest increase in affordable housebuilding in a generation".*

- 8.14. The proposal would make a valuable contribution to meeting the identified need for affordable housing. In the context of the identified need and the Government's recent statements in relation to affordable housing, the delivery of 98 affordable homes on this allocated site should be afforded very substantial positive weight in the determination of this application.

#### **M4 (2) and M4 (3) Housing**

- 8.15. As well as affordable housing, there is a significant extant need for housing for people with disabilities across Cheshire East, including Sandbach

- 8.16. A document, entitled, the Cheshire East Residential Mix Assessment (June 2019) was commissioned and informed policies as part of the SADPD. This document confirms that there were around 50,700 households living in Cheshire East in 2018 with one or more persons with a limiting long-term illness or disability, which included around 16,100 households where their health problems affected their housing needs.

- 8.17. In 2018, it is estimated that there were around 1,280 households needing to move to a more suitable home due to a disability or another long-term health problem. These households would represent an existing need for M4(2) housing, however some of these households would be wheelchair users needing M4(3) housing. A further 1,350 households needed adaptations to their current home.

- 8.18. When considering the needs of household's resident in 2018 together with the projected household growth and changing demographics (in particular the ageing population), there will be a total of 25,330 households either needing adaptations to their existing housing or suitable new housing to be provided. This is in addition to 1,280 households needing to move in 2018.
- 8.19. Although this information is 7 years old, it demonstrated that there is a clear growing need for housing for people with disabilities and housing which is adaptable to respond varying needs.
- 8.20. The proposal would make a valuable contribution to meeting the identified need for housing for people with disabilities. In the context of the identified need, the delivery of 98 dwellings (30%) to comply with M4 (2) standards, and 20 dwellings (6%) which will comply with the requirements of M4 (3) (2) (a) standards should be afforded very substantial positive weight in the determination of this application.

## Adopted Housing Policies

- 8.21. Within this section, we set out the specific policies which refer to the delivery of housing and what standards and requirements would apply. Given that this application is proposed in outline, there are certain details which will be agreed as part of a future reserved matters application. Where this is the case, we note this under the specific policy.

### Residential/Housing Mix – LPS Policy SC 4, SADPD Policy HOU 1 & SNP Policy HOU3

- 8.22. Policy SC 4 of the LPS sets the general principle that new residential development should maintain, provide or contribute to a mix of housing tenures, types and sizes to help support the creation of mixed, balanced and inclusive communities.
- 8.23. Policy HOU1 in the SADPD takes this further and states that in line with Local Plan Policy SC 4, housing developments should deliver a range and mix of house types, sizes and tenures which are spread through the Site and that reflect and respond to the identified housing needs and demands. The Policy refer to Table 8.1 of the SADPD (copied below) provides indicative house type, tenures and sizes as a starting point for analysis.

**Table 7 – Table 8.1 of SADPD**

	Market housing	Intermediate housing	Affordable housing for rent
1 bedroom	5%	14%	26%
2 bedroom	23%	53%	42%
3 bedroom	53%	28%	20%
4 bedroom	15%	4%	10%
5+ bedroom	3%	1%	3%

- 8.24. The policy however is explicit and states that the housing mix on Site should respond to an assessment of local housing market and characteristics and articulated through a Housing

Mix Statement to be submitted at the time of submitting a detailed or Reserved Matters application.

- 8.25. In the meantime, a local needs assessment was carried out in 2021 as part of the modified Neighbourhood Plan and seemingly informed SNP Policy H3. This policy also states that new residential developments should demonstrate how they have been designed to meet the most up to date assessment of local housing need, provide a mix to meet this identified need. It is noted that this Policy seeks to deliver primarily; one-, two- and three-bedroom housing, single storey housing and nursing and care homes for sheltered accommodation. It goes on to state larger housing types will only be acceptable if they form part of a wider mix of house types and justified with appropriate evidence to meet an up-to-date specific housing need.
- 8.26. In this instance, the proposed mix of the 325 dwellings, will be a varied mix, which will be based on up-to-date information at the time of the submission of a Reserved Matters application and formulated in collaboration with the LPA. It is likely that larger family homes will form part of this mix, as this dwellings of this type are likely to be required as well as smaller family homes including 1-, 2- and 3-bedroom homes.
- 8.27. In line with the requirements of Policy HOU 1, as part of a future Reserved Matters application, a housing mix statement will be provided which will set out what the final housing mix on Site and for each phase of the development. This will be based upon the identified local housing need and demand at the time of the submission of the Reserved Matters application.
- 8.28. At this stage, the proposal does comply with the above housing mix policies and further details will be provided as part of future Reserved Matter M applications.

#### **Policy SC 5 Affordable Homes**

- 8.29. Part 1 of Policy SC 5 of the LPS requires developments of 15 or more dwellings in Key Service centres to provide at least 30% of all units to be affordable.
- 8.30. Bloor is committed to the delivery of affordable homes. In line with this policy, the proposed development will deliver 98 dwellings (30% of the total number of dwellings) as affordable dwellings. It is anticipated that the tenure split will be agreed through a s106 agreement with the Local Planning Authority, and it is not anticipated at this stage that a viability assessment will be necessary in line with Part 7 of the Policy.
- 8.31. The location, size, and design of the affordable dwellings will be confirmed as part of the Reserved Matters stage, in line with the identified housing needs of the borough at the time and therefore parts 3-5 of Policy SC5 will be addressed at a later date.
- 8.32. However, we can confirm at this stage that they will be provided in site (in line with part 8 of the Policy) and dispersed through the overall site and each phase of development. They will also adopted the same high-quality design Bloor Homes afford to their market dwellings and therefore will be indistinguishable.
- 8.33. The proposal is therefore considered to comply with the requirements of Policy SC 5.

#### **Policy HOU 3 Self and Custom Build Dwellings**



- 8.34. SADPD Policy HOU 3 states that on all housing developments, which provide 30 or more homes, a proportion of serviced plots should be provided, where there is evidence of unmet demand.
- 8.35. In line with the requirements of this policy, when a Reserved Matters application is submitted, the need and demand for serviced plots for self-build will be reviewed and if there is a need and demand, a proportion of serviced plots would be negotiated with the Council.

#### **Policy HOU 8 Space, Accessibility and Wheelchair Housing Standards**

- 8.36. Policy HOU 8 of the SADPD states that major developments, at least 30% of dwellings in housing developments should comply with requirement M4 (2) Category 2 of the Building Regulations regarding accessible and adaptable dwellings; and at least 6% of dwellings in housing developments should comply with requirement M4 (3)(2)(a) Category 3 of the Building Regulations regarding wheelchair adaptable dwellings.
- 8.37. In compliance with this policy, 98 dwellings (30%) will comply with M4 (2) standards, and 20 dwellings (6%) will comply with the requirements of M4 (3) (2) (a) standards.
- 8.38. The future Reserved Matters application will confirm which homes will be built to these standards and where they will be located.
- 8.39. All new homes will meet the Nationally Described Space Standards (NDSS) in line with the requirements of this policy.
- 8.40. The proposed development complies with Policy HOU 8 and through the Reserved Matters application, will demonstrate further compliance.

#### **Policy HOU 12 Amenity**

- 8.41. Policy HOU 12 of the SADPD refers to residential standards set out in Table 8.2, the Cheshire East Borough Design Guide SPD and other relevant policies when considering if the development proposals will cause unacceptable harm to the amenities of adjoining or nearby occupiers of residential properties, sensitive uses or future occupiers.
- 8.42. The development has been designed with neighbouring residential properties and sensitive uses in mind and the proposal will ensure that the amenity of such receptors will be protected.
- 8.43. As noted in the earlier sections of this report, Leonard Cheshire is located in the centre of the northmost parcel. The amenity and sensitivity of this use and residents within the home and have given due consideration and care when designing the scheme. To area to the north and south of the home will be retained as open space to ensure that the outlook for the residents of Leonard Cheshire is not impacted as a result of the proposed development. Given the circumstances under which the residents live within the home, a significant amount of time may be spent indoors and, in their rooms, and therefore development has been directed away from this sensitive location.
- 8.44. The development is proposed to be set back from existing dwellings along Rose Way, Manor Road and Coldmoss Drive and from the listed buildings along the A533, to ensure there would be no loss of privacy for the existing residents.

- 8.45. Details of distances between the existing and proposed properties will be confirmed through the Reserved Matters application however through the evolution and development of the scheme, the amenity of the nearby residential receptors will be protected.
- 8.46. The proposed development complies with Policy HOU 12 and through the Reserved Matters application, will demonstrate further compliance.

#### **Policy HOU 13 Residential Standards**

- 8.47. Policy HOU 13 of the SADPD confirms that proposals for new housing developments should generally meet the standards set out in Table 8.2 which confirms the spaces required between buildings.
- 8.48. The exact positioning of each individual dwelling within the development parcel will be confirmed as part of a future Reserved Matters application, where compliance with the standards, as set out within Table 8.2, will be established.
- 8.49. As such, compliance with Policy HOU 13 will be demonstrated through a Reserved Matters Application.

#### **Policy HOU 14 Housing Density**

- 8.50. SADPD Policy HOU 14 states that residential proposals will be expected to achieve a net density of at least 30 dwellings per hectare.
- 8.51. The development has a net developable area of 10.1 hectares and therefore the development would achieve a density of 32.2 dph which is in line with the requirements of Policy HOU 14. With this density proposed, it will provide more opportunities for open space, footpaths/cycleways and sufficient distances between dwellings.
- 8.52. The proposal is therefore compliant with Policy HOU 14.

#### **Policy H2 Design and Layout**

- 8.53. SNP Policy H2 states that to ensure buildings, characteristic features and materials are representative of the local character of Sandbach, the design, layout and landscaping of all new developments should demonstrate consideration of the Cheshire East Design Guide and the National Design Code.
- 8.54. A Design and Access Statement has been submitted as part of this application and provides more information on the design evolution of the scheme and details of the layout and how this responds to the existing character of the area.
- 8.55. The finer details of the design of the scheme will be agreed as part of a future Reserved Matters application, where the mix, type, design of the individual houses will be agreed.

#### **Policy H4 Housing an Ageing Population**

- 8.56. SNP Policy H4 states that to meet the needs of an ageing population, developments will be supported that provide suitable, accessible houses for older people. Housing should be a suitable mix of tenures, including private, housing association, self-build, co-housing,

together with an element of affordable housing based upon the most up to date assessment of local housing need.

- 8.57. In line with the requirements of Policies with the Cheshire East DPD, the proposal will provide 98 affordable dwellings, 98 M4(2) dwellings and 20 M4 (3) dwellings which will provide accommodation which will address the needs of an ageing population and provide housing that is adaptable to their needs.
- 8.58. The final mix and style of housing delivered will be agreed as part of a future Reserved Matters application which will be based upon the most up to date assessment of local housing need.

### **Conclusion**

- 8.59. As noted in the preceding paragraphs within this section, the proposed development will comply with the relevant policies within the DPD and SNP and in particular, those which relate to the delivery of affordable housing, M4 (2) and M4 (3) standards and national space standards. As such, **significant weight** should be attributed to this weighing up the planning balance.

## 9. Highways

- 9.1. Policy CO 1 Sustainable Travel and Transport of the LPS states that to deliver the council objectives of delivering a safe, sustainable, high quality, integrated transport system that encourages a modal shift away from car travel to public transport, cycling and walking.
- 9.2. Policy INF 1 Cycleways, bridleways and footpaths of the SADPD states that development proposals should seek to contribute positively to the Cheshire Cycling Strategy, the Cheshire East Rights of Way Improvement Plan Strategy and the walking, cycling and public transport objectives of the Cheshire East Local Transport Plan.
- 9.3. Policy INF 3 Highway safety and access of the SADPD states that development proposals should provide safe access to and from the Site for all highways users and incorporate safe internal movements in the Site to meet the requirements of servicing and emergency vehicles.
- 9.4. Policy IFT 1 Sustainable Transport, Safety and Accessibility of the SNP states that in order to improve transport and safety, where appropriate, applicants for new development must demonstrate: safe walking and cycling routes in the immediate area, how the proposals link to public transport, the impacts of traffic from the development and how the impacts will be mitigated, compliance with parking standards, the location is appropriate in relation to the existing highway network, accessibility to a range of sustainable modes of transport and consideration of the needs of those with disabilities.
- 9.5. Policy IFT2 Parking of the SNP states that new developments must have adequate parking facilities where practicable to avoid or minimise on street parking.
- 9.6. Policy PC5 Footpaths and Cycleways of the SNP states that developments will be expected to establish publicly accessible links from development sites to the wider footpath and cycleways network and green spaces wherever possible.
- 9.7. Curtins have been prepared a Transport Assessment and an Interim Travel Plan in support of the development proposals which demonstrate the acceptability of the proposals. Below, we provide a summary of the key highways considerations.

### Access Arrangements

#### Site Access

- 9.8. Access to Parcel C (and subsequently Parcel B) would be obtained off A533 The Hill. Similarly, access to Parcel D would also be obtained off A533 The Hill, however this would be adequately spaced from the Parcel C access, with the Parcel D access located c. 90m to the east of the Parcel C access.
- 9.9. The A533 The Hill carriageway is proposed to be slightly widened into the existing adopted extents and the development parcels to facilitate continuous 3m ahead lanes and 3m shared/footway cycleways where suitable – in addition to the proposed access arrangements.

- 9.10. Both accesses would take the form of priority junctions with right turn pockets (with capacity to accommodate c. 6 passenger car units (PCUs)) along the main road, as shown in Drawing 086549- CUR-XX-00-D-TP-75004 to the rear of the Transport Assessment.
- 9.11. The access would comprise a 6m width which is sufficient for two-way traffic in accordance with MfS guidance. Furthermore, improvements would be made to existing footway provision along the A533, which currently comprises a c. 0.5–1m-wide footway along both sides of the carriageway.
- 9.12. There is also the potential for an emergency access to the south of Parcel B, to link with Coldmoss Drive. Access for general traffic along this route would be restricted by use of droppable bollards however it is envisaged that this southern link could be designated as shared use for pedestrians and cyclists.

#### **Amendment to Speed Limit**

- 9.13. The A533 The Hill is National Speed Limit up to the entrance to the Mansion Apartments where it drops to 30 mph. As part of the development, it is proposed to move the existing location of the National Speed Limit to the east of the Parcel C/D extents. This would include a 'Gateway Feature' to demonstrate to drivers that they are entering a residential area, and speeds should be reduced to a 30mph limit.
- 9.14. The exact design of the Gateway will be discussed with Highways at the detailed design/Section 278 stage, but it is noted there is space within the development boundary/ adopted extents to facilitate a speed calming feature.
- 9.15. Visibility at the access junctions have been provided based on MfS guidance, which suggests that visibility splays of 2.4m x 43m for a 30mph road can be achieved.

#### **Bus Diversion**

- 9.16. The scheme has been designed to accommodate a bus diversion through the Site, via the proposed access into Parcel C. The proposed Site access has been designed to accommodate a 12m standard rigid bus to enter Parcel C via the proposed Site access, travel in a clockwise direction and then exit further to the west via a dedicated egress for buses.
- 9.17. This exit will be solely for buses to exit the Site, and it is envisaged that it would be controlled via a bus gate. The exact design and management of this exit would be fixed as part of discussions with the highway's authority.

#### **Pedestrian Crossing**

- 9.18. It is proposed that to the west of the Parcel C access, the southern side of the A533 adjacent to the red line boundary of Parcel C is upgraded to comprise a 3m-wide shared footway / cycleway prior to tying into existing infrastructure to the west of the parcel. Whereas to the east of the Parcel C access, the 3m shared footway / cycleway would continue for c. 40m where a Toucan crossing is proposed, to tie into the proposed infrastructure adjacent to Parcel D. The 3m-wide shared footway / cycleway would also be implemented on the northern side of the A533 to the west of the Parcel D access and continue for c. 50m until it ties into the proposed Toucan crossing.

- 9.19. This crossing will facilitate access across the A533 The Hill, between the development parcels and into Sandbach Town Centre.
- 9.20. There would also be an uncontrolled crossing across both access points, with dropped kerbs and tactile paving.

#### **Pedestrianisation of Colley Lane**

- 9.21. Based on feedback obtained from Cheshire East Highways Department during scoping discussions, the section of adopted highway between the Parcel B to Parcel C crossroad and the Colley Lane / Cross Lane junction could be downgraded to limit vehicular traffic. This would continue to facilitate pedestrian/cycle movements, but any vehicles travelling to/from Colley Lane would be re-routed through Parcel C and subsequently onto the A533 The Hill.
- 9.22. This has not been included within the red line as these works would comprise off Site highways works which could be dealt with via S278 works. This will be discussed in further detail as the application progresses.

#### **Links to Public Rights of Way**

- 9.23. The proposed development will not only provide additional footpath and cycling routes but will link up to existing public rights of way. In the south western corner of the site, a new public footpath is proposed to link up to an existing public right of way to establish publicly accessible links from the development site to the wider footpath network, in line with SNP Policy PC 5.
- 9.24. Links to existing roads and routes are also proposed off Parcel C and D to ensure all development parcels are publicly accessible to the wider network.

#### **Parking Arrangements**

- 9.25. Parking standards for Cheshire East are outlined in Appendix C of the Cheshire East Local Plan Strategy. Sandbach is designated as a Key Service Centre, whereby the parking standards are set at 1 space per dwelling for 1-bedroom dwellings and 2 spaces per dwelling for 2 and 3+ bedroom dwellings.
- 9.26. It is proposed to provide parking in accordance with the standards set within the Cheshire East Local Plan Strategy.
- 9.27. Furthermore, each dwelling would also be equipped with electric vehicle charging points to encourage the uptake of low-emission vehicles in favour of standard petrol and diesel vehicles.

#### **Junction Capacity**

- 9.28. The submitted Transport Assessment demonstrates that the majority of junctions on the local highway network operate well during peak hours, in both the future year assessment scenarios, with and without the development in place.

- 9.29. In terms of the A533 The Hill / A534 Old Mill Road / High Street signalised junction, Curtins has obtained data from CEC demonstrating junction improvement works at the A533 The Hill / A534 Old Mill Road / High Street signalised junction to mitigate any impact on this junction. The data received from CEC highways presents a mitigation scheme which provides a significant improvement from the existing situation. CEC have highlighted that a contribution from Bloor could address any impact arising from this scheme on this junction. This can be secured by a s.106 contribution.
- 9.30. Curtins is in discussions with CEC to determine the extents of mitigation improvement works required by the proposed development in order to deliver these improvements associated with CEC.

## Accessibility

- 9.31. The Site can be accessed by sustainable modes of transport. The surrounding area comprises local services that can be accessed via foot and cycle and there are also public transport opportunities within walking distance of the Site.
- 9.32. From an 800m catchment from the centre of the Site facilities such as a hot food takeaway and a Co-Op convenience store can be accessed.
- 9.33. From a 2,000m catchment from the Site, the majority of Sandbach and Sandbach Heath can be accessed, which includes access to; St John's C of E Primary School, vehicle garages, convenience stores, a dental surgery, playgrounds and playing fields, public houses, places of worship, restaurants and cafés, high street banks, Sandbach Market, Sandbach Library, a post office, larger supermarkets such as Waitrose and ALDI, a B&M Home Store, nurseries, Sandbach School, Sandbach High School and Sixth Form College, and Offley Primary Academy.
- 9.34. The majority of these facilities are accessible via existing pedestrian infrastructure that is generally well lit with footways in good condition. It is noted however that footway provision along the A533, Colley Lane, and Manor Road in the vicinity of the Site is limited, as such improvements are proposed to upgrade the infrastructure adjacent to the Site to provide a continuous link between future residents of the Site and the local amenities.
- 9.35. The bus stops along the A533, Hassall Road, and Manor Road can also be accessed within an 800m walking distance from the Site. The 317 service can be accessed from these bus stops which provides access to Alsager, Rode Heath, Sandbach, Ettiley Heath and Leighton Hospital.
- 9.36. Although Sandbach rail station is not within walking distance of the Site, it can be accessed via bus (via the 317 service) or a 4km cycle. Northern trains stopping at Sandbach rail station run between Crewe and Manchester, stopping at Holmes Chapel, Alderley Edge, and Wilmslow in the vicinity of the Site.
- 9.37. Improvements to accessibility will be made as part of the development proposals, including improved accessibility to pedestrian and cyclist footpaths and cycleways, the potential for a bus link through the Site, widening of existing footways and improved access to public open space.



## Conclusion

- 9.38. As concluded within the Transport Assessment, the proposed development is in accordance with Paragraph 116 of the NPPF, as it would not have an unacceptable impact on highway safety, nor would there be a severe residual cumulative impact on the surrounding highway network.
- 9.39. As set out above, the proposal accords with the relevant policies within the LPS, SADPD and SNP and therefore is acceptable from a highways perspective.
- 9.40. Paragraph 101 of the NPPF goes further to states that significant weight should be placed on the importance of new, expanded or upgraded public service infrastructure. As noted within this section, a bus diversion is proposed within the Site to improve the accessibility of bus services for existing and proposed residents which would upgrade and expand the existing provision. In line with paragraph 101, **significant weight should be attributed to this when weighing up the planning balance.**

## 10. Landscape, Ecology and Trees

### Landscape

- 10.1. Policy SE 4 The Landscape of the LPS recognises that the high quality of the built environment and natural environment is recognised as a significant characteristic of the borough. The policy goes on to state that all development should conserve the landscape character and quality and should where possible, enhance and effectively manage the historic, natural and man-made landscape features that contribute to local distinctiveness of both rural and urban landscapes.
- 10.2. Policy SE 6 Green Infrastructure of the LPS states Cheshire East aims to deliver a good quality, and accessible network of green spaces for people to enjoy, providing for healthy recreation and biodiversity and continuing to provide a range of social, economic and health benefits.
- 10.3. Policy ENV 5 Landscaping of the SADPD states that where appropriate, development proposals must include and implement a landscape scheme that; responds sympathetically to topography, landscape features and existing green and blue infrastructure networks to help integrate the new development into the existing landscape, enhances the quality, setting and layout design of the development, achieves an appropriate balance between the open space and built form of development, provides effective screening to neighbouring uses where appropriate, utilises plant species that are in sympathy with the character of the area, makes satisfactory provision for the maintenance and aftercare of the scheme and reflects the outcome of any ecological assessment.
- 10.4. Policy PC 2 Landscape Character of the SNP states that new developments must, where appropriate, respect the landscape character of Sandbach. To ensure that development enhances the landscape character of the area, applicants should submit proportionate information detailing the proposal's impact on the landscape character of the area, detailing how the characteristics of the landscape have informed the design process.

### Landscape and Visual Assessment

- 10.5. A Landscape and Visual Assessment has been prepared by Pegasus Group in support of the application which considers the site and its surrounding context in both landscape and visual terms, to assess the potential effects of the development proposals upon landscape features, landscape character and visual amenity.
- 10.6. The site is not covered by any designation at a national, regional or local level that recognises a specific landscape importance. The site is not a valued landscape and is not protected by the NPPF (see NPPF 187(a)).

### Landscape Features

- 10.7. The proposed development actively retains and augments existing landscape features where possible, such as the existing boundary vegetation surrounding the site and existing mature trees within the site area.

- 10.8. Changes to landform and topography would be minimal due to the existing gentle gradients and the retention of key areas of vegetation. The scheme has been carefully designed to accommodate key existing vegetation including the trees subject to Tree Preservation Orders. The landscape proposals also include a notable package of planting works including street trees, a new park and recreation areas.

### **Landscape Character**

- 10.9. Major/moderate effects are restricted to the site and the immediately surrounding landscape and townscape. These effects would largely be due to a notable change of character of the site area from agricultural land and associated vegetation to a residential development. Such impacts are, however, the inevitable consequence of developing greenfield sites, which are required if the LPA is to address the absence of a 5YHLS.
- 10.10. The proposal is accompanied by a strong landscape package which uses and supplements the existing landscape features and retains a notable portion of the land to provide a new park for future and existing residents including users of the adjacent Leonard Cheshire.

### **Visual Effects**

- 10.11. The proposed layout has sought to integrate and minimise harmful visual effects through the retention of existing vegetation and the introduction of further planting along the boundaries and within the development, as well as creating suitable offsets from key edges to the development.
- 10.12. As a result of the localised visual envelope to the north and west and the enclosure provided by existing vegetation, which is located along the east of the site, a limited number of adverse visual effects would occur. Whilst views to the south appear extensive, the vegetation and built form within the landscape serves to limit the visibility towards the site. Furthermore, the majority of these views are at a distance where the site area appears as small portion of the overall view. It should also be noted that views from the south towards the proposed development are viewed in context with the settlement of Sandbach.
- 10.13. The main receptors where effects would occur are users of local footpaths, existing residents in close proximity to the site and the local road network which travels between the various development parcels.

### **Conclusion**

- 10.14. The total extent of the landscape and visual effects would be localised and limited in nature. The development would provide a well-designed environment which would relate well to its surroundings providing an appropriate transition from the existing urban edge to the wider countryside to the south east and new facilities for local residents.
- 10.15. Overall, from a landscape and visual perspective, the proposed development responds sympathetically to the style and pattern of the surrounding residential context. Therefore, on balance, the development can be accommodated without undue harm and even some benefits to the character and visual amenity of the landscape.

### **Proposed Landscaping**

- 10.16. As well as an LVIA, we have prepared an illustrative masterplan in support of the application which provides an indication of how the Site could be landscaped to deliver a good quality open spaces and landscaping for people to enjoy. As this is an outline application, with all matters reserved except access, full landscaping details will be provided as part of the future reserved matters application.
- 10.17. Nevertheless, as shown on the illustrative landscape masterplan, a landscaping scheme has been designed which shows how a scheme could be brought forward which responds to the existing landscape features and topography to ensure that the new development integrates into the existing landscape.
- 10.18. The landscaping proposed demonstrates how the proposed development would provide effective screening for neighbouring uses and uses plant species which are akin to the character of the area whilst enhancing the biodiversity of the Site.
- 10.19. The extensive provision of open space will ensure the scheme both respects the existing residential area and blend into the adjacent countryside.
- 10.20. As such, the proposal is considered to comply with Policies SE 4, SE 6, ENV 5 and PC 2.

## Ecology

- 10.21. Policy SE 3 of the LPS states that all development must aim to positively contribute to the conservation and enhancement of biodiversity and geodiversity and should not negatively affect these interests.
- 10.22. Policy ENV 2 of the SADPD states that development proposals should provide for a net gain in biodiversity in line with the expectations of national policy and be supported by a biodiversity metric calculation.
- 10.23. Policy PC 4 Biodiversity and Geodiversity of the SNP states that development proposals should demonstrate a net gain in biodiversity using appropriate evaluation methodologies and avoidance/mitigation strategies.
- 10.24. A Preliminary Ecological Appraisal has been prepared in support of the application. The report confirms that there are 8 local wildlife sites within proximity of the Site. There are no anticipated impacts arising from the operational phase of the development. In terms of the construction phase, any impacts arising in terms of noise or air pollution will be controlled through best practice prevention measures, which can be implemented via a CEMP secured via a planning condition.
- 10.25. The two RAMSAR sites within proximity of the Site are considered sufficiently distant to avoid adverse impacts during the operational phase of the development. However, impacts throughout the construction phase, such as air pollution and noise can be controlled through best practice pollution prevention measures, which can be implemented via CEMP secured via a planning condition
- 10.26. The development will primarily affect habitats of negligible ecological importance. Loss of habitats of local ecological importance, will be compensated for by replacement tree planting. With the enhancements and habitat creation, including native species planting,

habitats of ecological importance on Site can be enhanced, providing additional opportunities for biodiversity within the Site.

- 10.27. Additional surveys are recommended, including badger surveys, nocturnal bat activity surveys, breeding bird surveys, watervole surveys and GCN eDNA surveys. These will be completed as the application progresses.
- 10.28. Neighbourhood Plan Policy PC 4 highlights 12no. sites which are located in and around Sandbach which are considered to have the greatest ecological value and therefore the greatest natural assets to the community.
- 10.29. None of these sites, of ecological significance, are located within the Site or would be impacted as a result of the proposed development.
- 10.30. In line with national legislation brought in, in February 2024, the scheme will be required to demonstrate a 10% net gain in biodiversity.
- 10.31. A Statutory Biodiversity Metric Calculation Tool has been prepared and submitted as part of the application documentation. The metric confirms that the development proposals would result in a net gain of 4.08 habitat units (+10.48% net gain), and 3.61 hedgerow units (+13.39% net gain). This has been achieved through the introduction of areas of grassland and mixed scrub planting along with the planting of scattered native trees, partnered with the retention of scattered trees, hedgerows and native hedgerow planting throughout the Site.
- 10.32. The proposals are therefore compliant with the requirements of Policies SE 3, ENV 2 and PC4.

## **Trees**

- 10.33. Policy SE 5 Trees, Hedgerows and Woodland of the LPS states that development proposals which will result in the loss of, or threat to, the continued health and life expectancy of trees, hedgerows or woodlands that provide a significant contribution to the amenity, biodiversity, landscape character or historic character of the surrounding area, will not normally be permitted, except where there are clear overriding reasons for allowing the development and there are no suitable alternatives.
- 10.34. Policy ENV 6 Trees, Hedgerows and Woodland Implementation of the SADPD states that development proposals should seek to retain and protect trees, woodlands, and hedgerows.
- 10.35. The development proposals are supported by a Preliminary Arboricultural Impact Assessment (prepared by Tyler Grange).
- 10.36. A total of 56no. individual trees, 16no. tree groups and 24no. hedgerows were identified during the tree survey of the Site and the immediate vicinity. The majority of the trees on Site are of high (Category A) to moderate (Category B) tree stock.
- 10.37. Within the individual trees and groups of trees, there 7 with a Tree Preservation Order. These include: G4, G5, T4, T7, T10, and T11. There are no ancient woodlands, conservation areas or woodland habitats.

- 10.38. To facilitate the development, two individual trees and sections of nine hedgerows would require removal to facilitate the proposed development. These include:
- T39 (Category B) – This tree is an early mature Lime, which has established in a hedgerow. This tree is required to be removed to accommodate the proposed access.
  - T41 (Category C) – This is a semi-mature Lime, which has established in a hedgerow. The tree is required to be removed to accommodate the proposed access.
  - H23 and H24 (Category B) – These are small sections of established hedgerows to facilitate vehicular and pedestrian access points across the Site.
  - H1, H6, H9, H15, H16, H17, H18 (Category C) – These are small sections of established hedgerows to facilitate vehicular and pedestrian access points across the Site.
- 10.39. All the trees on the Site have been carefully considered as part of the design process and where possible retained and incorporated into the scheme. No TPOs or Category A trees would be removed to facilitate the development, and the tree/hedgerow removal has been kept to a minimum.
- 10.40. The proposal would therefore comply with Policies SE 5 and ENV 6.

## 11. Flood Risk and Drainage

- 11.1. Within this section, we set out the flood risk associated with the Site and proposed drainage strategies to manage the proposed development on Site.
- 11.2. Policy SE 13 Flood Risk and Water Management of the LPS states that developments must integrate measures for sustainable water management to reduce flood risk, avoid adverse impact on water quality and quantity within the borough and provide opportunities to enhance biodiversity, health and recreation.
- 11.3. Policy ENV 16 Surface Water Management and Flood Risk of the SADPD states that in order to manage surface water drainage effectively and reduce the risk of flooding elsewhere, in accordance with Policy SE 13, it should be demonstrated that surface water flooding can be appropriately managed and development proposals should manage and discharge surface water through a sustainable drainage system (SuDS).
- 11.4. The development proposals are supported by the following documents:
  - Flood Risk Assessment, prepared by Betts;
  - Ordinary Watercourse Hydraulic Assessment, prepared by Betts and
  - Drainage Management Strategy, prepared by Betts.
- 11.5. Below, is a summary of the documents noted above which will demonstrate how the proposal complies with the requirements of Policies SE 13 and ENV 16.  
  
**Flood Risk Assessment and Ordinary Watercourse Hydraulic Assessment**
- 11.6. The Site is located within Flood Zone 1 and the Planning Practice Guidance confirms that 'more vulnerable' development is appropriate within Flood Zone 1, providing there is no increase in flood risk elsewhere due to the proposals.
- 11.7. Consultation with the Environment Agency, United Utilities, and Cheshire East Council has not identified any historical flooding to the Site or the wider area.
- 11.8. The LLFA provided comments as part of the EIA screening request and noted what would be required to be submitted as part of a Flood Risk Assessment. All elements and components requested have been incorporated into the Flood Risk Assessment.
- 11.9. All sources of flood risk have been reviewed and considered both to and resulting from the proposed development Site. The nearest Main River to the Site is River Wheelock, which presents little risk given its distance from the Site. An Ordinary Watercourse flows along the southern boundary of the Site.
- 11.10. The fluvial flood risk from the Ordinary Watercourse has been assessed through the construction of a new 1D–2D hydro–dynamic model. The model was simulated for a range of return periods including the 1 in 30 year, 1 in 100 year, 1 in 100 year plus 52% climate change and 1 in 1000–year event.



- 11.11. In the 1 in 30 year and 1 in 100-year event flows next to Parcels B, C and D were shown to remain in-channel, in the 1 in 100 year plus climate change event and 1 in 1000-year event there is predicted to be a limited amount of onsite flooding adjacent to Colley Lane bridge at Parcel C. The risk from this source is identified to be low.
- 11.12. The majority of the Site is within an area of very low surface water flood risk however, there are isolated areas of low to high surface water flood risk within the Site. There is a flow route to the north of Parcel B, in proximity of existing residential dwellings and hedgerows. No development is proposed in areas of medium and high surface water flood risk. The proposal complies with NPPF 173. This is discussed in further detail in subsequent paragraphs within this section.
- 11.13. Potential flood risk from surface water will be managed, post-development through the implementation of a sustainable surface water management regime. This is set out within the Drainage Management Strategy report, which is summarised below.

#### **Drainage Management Strategy**

- 11.14. As per the requirements of Policy ENV 16, the drainage management strategy has been prepared to consider the most appropriate sustainable drainage options for the proposals in line with the Non-Statutory SuDS Standards.
- 11.15. Based on the underlying ground conditions identified, the use of infiltration is unlikely to be a suitable surface water management option. Should infiltration be unviable following testing, the proposals are to discharge surface water run-off generated by the proposals into the Ordinary Watercourse along the southern boundary of each development parcel.
- 11.16. The SuDS options on Site will comprise required onsite attenuation and will be provided by a combination of more traditional methods (cellular storage where required) and a detention basin. The specific means are to be determined during the detailed design stage.
- 11.17. The surface water scheme for the development will be designed to cater for the surface water run-off generated in the events up to and including the 1 in 100yr return period event with 45% allowance.
- 11.18. Foul water generated by the development will be discharged into the public foul water sewer which crosses through all development parcels.
- 11.19. A number of recommendations have been suggested within the report, which would be incorporated into the scheme and set out as part of a future Reserved Matters application.
- 11.20. As part of the EIA screening request, the LLFA provided commentary as to what would be required within the Drainage Management Strategy. The LLFA requested full hydraulic design, pipe sizes and hydraulic model results for all storm events. As this is an outline application, and this application principally seeks approval for the principle and level of development, these details are not available at this stage, and this is something that will be provided as a future reserved matters application. It is not commensurate to provide a full detailed design until the more detailed phase, but these details will be provided at this point.
- 11.21. The Flood Risk Assessment, Ordinary Watercourse Hydraulic Assessment and Drainage Management Strategy demonstrate that the proposed development would integrate

measures for sustainable water management to reduce flood risk and not cause the risk of flooding elsewhere. As such, the proposal is compliant with Policies SE 13 and ENV 16.

- 11.22. We now go on to discuss relevant policies, with regard to flood risk, contained within the NPPF, including the preparation of a Flood Risk Sequential Assessment.

## Flood Risk Sequential Assessment

- 11.23. The recently published version of the NPPF (2024) confirms what is required in terms of sequential assessments.

- 11.24. Paragraph 173 of the NPPF states that a sequential risk-based approach should be also taken to individual applications in areas known to be at risk now or in the future from any form of flooding.

- 11.25. Paragraph 174 goes on to state:

*'Within this context the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.'*

- 11.26. In light of this, we have referred to the Council's updated Strategic Flood Risk Assessment (2024) (SFRA). Based on the mapping provided within the 2024 SFRA, the Site's characteristics in terms of Flood Risk comprise of the following:

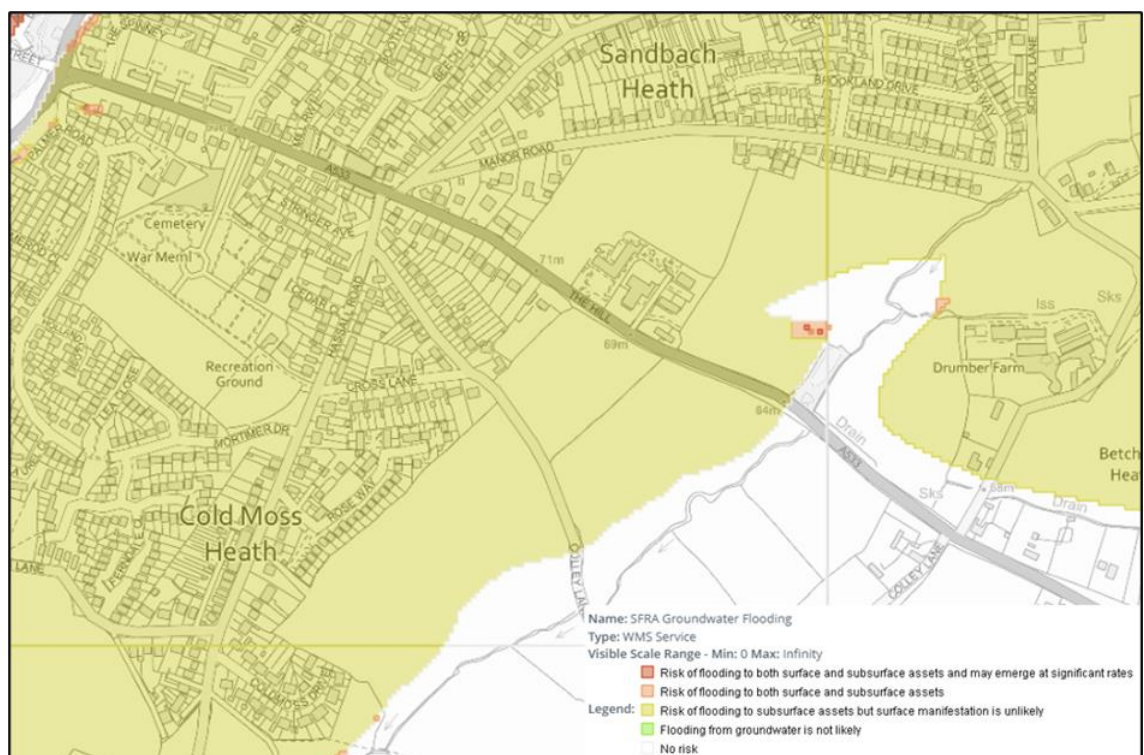
- Fluvial/Rivers and Seas – Flood Zone 1 (low risk);
- Pluvial/Surface Water – Surface Water Flooding along the edge of the existing urban edge with Rose Way and along field parcel boundaries. There are small pools of surface water flooding within some of the field parcels as illustrated in Figure 5 below.
- Groundwater – As illustrated in Figure 6 below, the majority of the Site is shown to have ground water level depths sitting between 0.5m and 5m below the surface in the 100-year return period flood event, which is provided the description of **'risk of flooding to subsurface assets, but surface manifestation of groundwater is unlikely'**. A portion of the Site's eastern boundary is at no risk and a very small area to the east of the Leonard Cheshire has a risk of groundwater flooding to both surface and subsurface assets with the possibility of groundwater emerging at the surface locally and a risk of groundwater flooding to both surface and subsurface assets. For this small area, it is describes as **Groundwater may emerge at significant rates and has the capacity to flow overland and/or pond within any topographic low spots**.

- 11.27. Moreover, the Site is not located within one of the 14 Priority Areas identifies across the Borough within the 2024 SFRA as an area that is required to undergo more detailed investigations including the modelling of climate change.

**Figure 7 – Surface Water Flooding Map**



**Figure 8 – Groundwater Flooding Map**



11.28. On pages 63 and 64 of 2024 SFRA, the following is set out in terms of defining low, medium and high-risk flood areas.

11.29. **'Areas of low flood risk'** include:

- Areas within Flood Zone 1 (rivers),
- Areas within the low-risk surface water flood event extent of the Risk of Flooding from Surface Water map,
- Areas not at additional risk from climate change.

11.30. **'Areas of medium flood risk'** include:

- Areas within Flood Zone 2 (rivers),
- Areas within the medium risk surface water flood event extent of the Risk of Flooding from Surface Water map,
- Areas at risk from Flood Zone 2 plus climate change,

11.31. **'Areas of high flood risk'** include:

- Areas within Flood Zone 3 (rivers),
- Areas within the high-risk surface water flood event extent of the Risk of Flooding from Surface Water map,
- Areas at risk from Flood Zone 3 plus climate change.

11.32. It then goes on to confirm that **'Sources of flooding other than fluvial and surface water also need to be considered'** but does not place this type of flood risk into a particular flood risk category. As such, the potential for ground water flooding is therefore considered in the round alongside fluvial and ground water flood risk and an overall view on flood risk is to be reached in the context of the proposal.

11.33. This approach aligns with Policy SE13 of the LPS, and the additional flood risk consideration set out in the supporting paragraphs to the policy, noting paragraph 13.145 in particular which highlights the potential risks from surface water flooding issues.

11.34. Turning to the consideration of the sequential assessment for this Site, Paragraph 175 of the NPPF goes on to state:

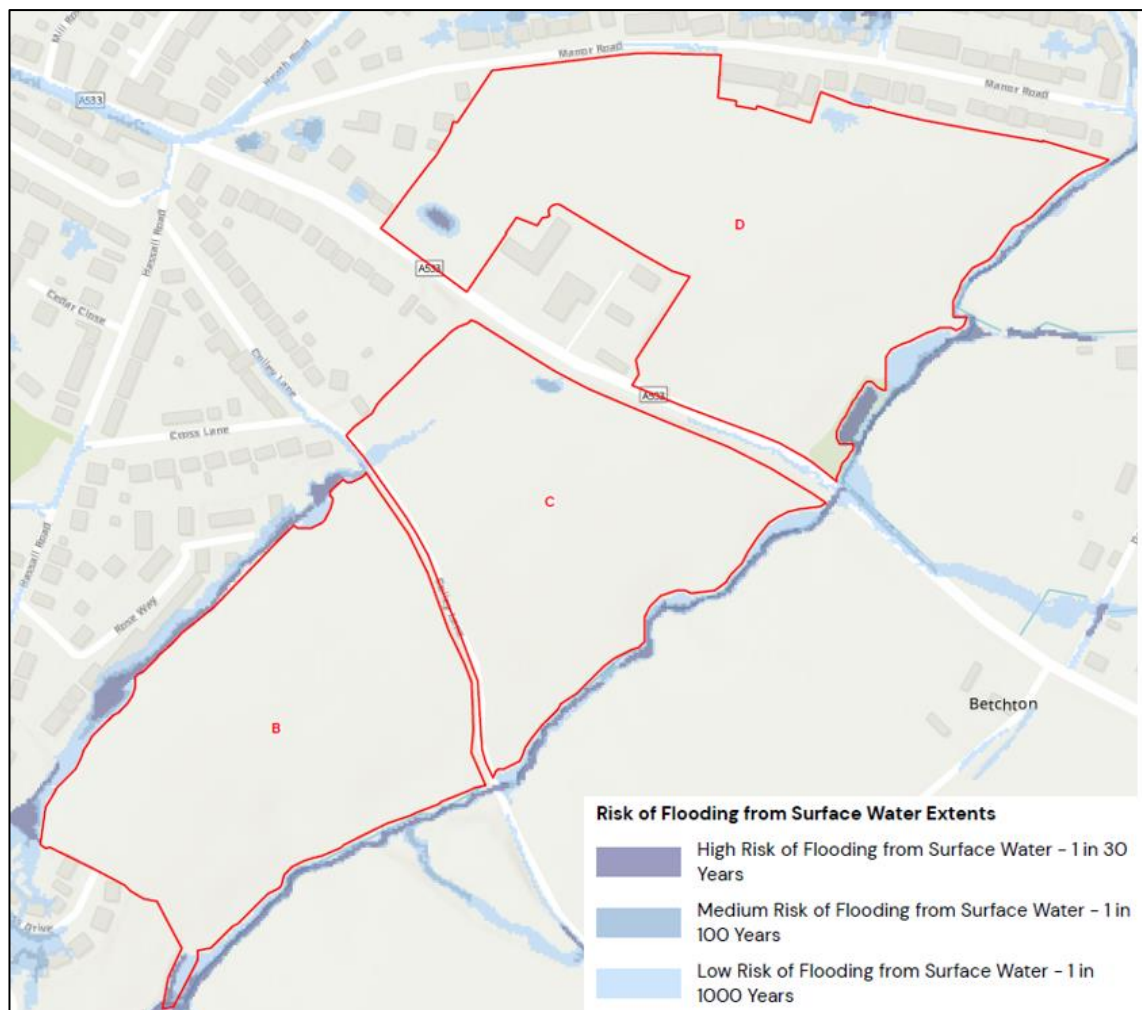
*'The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk).'*

11.35. **As we will set out below, as per the requirements of paragraph 175, a sequential test is not required in this instance as no built development within the site boundary would be located on an area at risk of flooding.**



- 11.36. In terms of fluvial flooding, the entire Site is located within Flood Zone 1, which is the lowest risk of flooding and therefore not at risk of flooding from fluvial sources.
- 11.37. In terms of surface water flooding, the masterplan has been designed to ensure that development is excluded from any areas which are at risk of surface water flooding. As shown in Figure 7, the red line boundary of the Site has been pulled in from the eastern and western edges to avoid the areas of surface water flooding. Where there is a small amount of pooling from surface water flooding within the red line, these areas will remain undeveloped, in line with the requirements of the NPPF.

**Figure 9 – Surface Water Flooding and Red Line Boundary Plan**



- 11.38. In terms of groundwater flooding, as shown in Figure 6, the Site is located within an area which is at risk of flooding to subsurface assets, but surface manifestation is unlikely. The application does not propose the development of any subsurface assets. The Site is not subject to groundwater flooding which is at risk of both surface and subsurface asset flooding or flooding of this nature which may emerge at significant rates.
- 11.39. As such, in line with paragraph 175 of the NPPF, the sequential test is passed and there is not a need to assess alternative sites in this instance.

## 12. Other Technical Matters

- 12.1. Below, we detail other technical matters which must be considered as part of the determination of the application.

### Ground Conditions

- 12.2. Policy SE 12 Pollution, Contamination and Land Instability of the LPS states that the Council will seek to ensure that all development is located and designed so as not to result in a harmful or cumulative impact upon air quality, surface water and groundwater, noise, smell, dust, vibration, soil contamination, light pollution or any other pollution which would unacceptably affect the natural and built environment, or detrimentally affect amenity or cause harm.
- 12.3. A desk top study report has been prepared by Coopers (Chester) Ltd in support of the development of the Site, to investigate the potential ground conditions and contaminated land requirements associated with the development of the Site for residential uses.
- 12.4. The Site is a greenfield site with little history other than farming uses and therefore the risk from contamination is low.
- 12.5. Further investigation however is recommended to confirm the extends of made ground associated with former bonds, former and existing buildings and a small area of concrete hardstanding located in Parcel D.
- 12.6. Given the historical uses, findings of the site walkover, and sensitive proposed end use an intrusive investigation will be required to disclose the potential presence of contaminants, hazardous ground gases, and geotechnical considerations for the development at Reserved Matters stage.
- 12.7. In line with Policy SE 12, the development of the Site will ensure that all due consideration has been given to ensure that the development does not unacceptably affect the natural and built environment or detrimentally affect amenity or cause harm.

### Heritage

- 12.8. Policy SE 7 The Historic Environment of the LPS states that proposals for development shall be assessed and the historic built environment actively managed in order to contribute to the significance of heritage assets and local distinctiveness. Where a development proposal is likely to affect a designated heritage asset (including its setting) the significance of the heritage asset, including any contribution made by its setting, must be described and reported as part of the application.
- 12.9. Policy HER 1 Heritage Assets of the SADPD confirms that all proposals affecting heritage assets and their settings must be accompanied by proportionate information that assesses and describes their impact on the asset's significance.
- 12.10. Policy HER 4 Listed Buildings of the SADPD states that where a proposal would lead to less than substantial harm to the significance of a listed building, the harm will be weighed against the public benefits of the proposal.

- 12.11. Policy HER 8 Archaeology of the SADPD states that applications must be accompanied by an appropriate archaeological assessment, which includes information on the significance of the heritage asset, including the extent, character and condition of the archaeological resource.
- 12.12. Policy HC1 Historic Environment of the SNP states the heritage significance of the character and setting of Sandbach's historic environment will be conserved and enhanced. Protection will be given to the character, setting and special features of listed buildings, conservation areas, scheduled monuments and locally listed heritage assets.
- 12.13. A Heritage Statement DBA has been prepared by Pegasus Group in support of the development proposals which assesses both archaeology and built heritage.

### **Archaeology**

- 12.14. In terms of Archaeology, only Parcel 3 of the Application Site has any recorded archaeology in the form of former field boundaries and the potential ploughed out Bronze Age ring ditch.
- 12.15. Except for the cottages that occupied the southwestern corner of Parcel 3 (HER 15999), historic sources, including maps indicate that the Site was likely in agricultural use since the medieval period to today and witnessed some changes to field boundaries.
- 12.16. These changes in Parcel 3 might have related to the creation of a parkland, but historic mapping or accounts do not confirm this. The potential for previously unidentified archaeological remains from these periods is considered to be low, and in the event that previously unidentified remains from these periods are identified within the Site they are unlikely to be of greater than local significance.

### **Built Heritage**

- 12.17. The Site does not contain any built heritage assets and only has to the potential to affect Listed Buildings from a change to their setting.
- 12.18. Whilst the Site has some historic connection through ownership with Listed Buildings this is only truly understood from archival sources, but the Site does allow for incidental views towards and from the Grade II Listed The Hill, and the Grade II Listed Oakley House and Coach House, and forms part of the rural character that is a long-established part of their wider setting.
- 12.19. The assessment has identified that it is only these Listed Buildings that would be affected by the proposals, from the loss of part of their rural, and possibly parkland setting to The Hill.
- 12.20. However, the proposed development Framework Plan demonstrates that areas of open character would be retained in Parcel 3, together with a sense of their rural or parkland setting. The Framework Plan also demonstrates that opportunities to introduce new views or public experiences of the Listed Buildings can be provided from within the site parcels and are positive elements of the proposed plan.
- 12.21. With regard to Locally Listed Buildings, as identified by the Historic Environment Record, it is considered that no buildings would be affected by the proposals, due to distances from the Application Site and intervening topography.



- 12.22. Overall, any harm arising from the proposals would be from the loss of the rural wider setting of the Grade II Listed The Hill; Oakley House; and Coach House is minor and could only be considered less than substantial harm in NPPF terms at the low end of the scale. No harm would arise to any other designated heritage asset via a change to setting.
- 12.23. Paragraph 215 of the NPPF states;
- 'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use'.*
- 12.24. As noted at paragraph 8.12 of the Heritage DBA, which has been submitted in support of the application;
- 'Any harm arising from the proposals would be from the loss of the rural wider setting of the Grade II Listed The Hill; Oakley House, and Coach House is minor and could only be considered less than substantial harm in NPPF terms at the low end of the scale. No harm would arise to any other designated heritage assets via a change to setting'.*
- 12.25. In line with the requirements of paragraph 215 of the NPPF, below we set out the significant public benefits of the scheme which would outweigh any minor harm to the rural wider setting of the Grade II Listed The Hill; Oakley House, and Coach House. These include:
- The delivery of 325 dwellings, which would make a significant contribution to the Council's five-year housing land supply. Cheshire East are currently unable to demonstrate a five-year housing land supply and therefore this site would seek to address this issue;
  - The delivery of 98 much needed affordable dwellings, to meet the increasing need and demand within Cheshire East;
  - The delivery of 98 homes to M4(2) standard and 20 homes to M4(3) standard to meet the needs of those living with disabilities;
  - The delivery of a new community park (circa 3.8 hectares) within the heart of Sandbach Heath which will benefit both existing and future residents;
  - The delivery of an additional 5 hectares of open space throughout the site, which comprise of LAP's, recreational routes, informal open space etc;
  - New recreational routes to provide enhanced access to the open countryside and existing public rights of way within the area;
  - 10% net gain on the existing biodiversity value found on the site prior to development;
  - New eco-friendly and energy efficient homes, which will be built to future home standards;
  - Economic Benefits, including direct and indirect construction related employment and generation of GVA during the construction phase; and during the operational phase; increased supply of labour from new homes, generation of additional

household spend and first occupation expenditure, increased Council Tax income, improved energy efficiency and supporting the climate change agenda.

- 12.26. The benefits noted above and those noted within the Economic Benefits Statement confirm that the benefits significantly outweigh any minor impacts resulting in less than substantial harm from the loss of the rural wider setting of the Grade II Listed The Hill; Oakley House, and Coach House.
- 12.27. The proposed development is therefore considered to comply with paragraph 215 of the NPPF and Policies SE 7, HER 1, HER 4, HER 8 and HC1 of the DPD

## **Agricultural Land Classification**

- 12.28. Policy RUR 5 of the SADPD states that where proposals involve the loss of best and most versatile agricultural land to development, the Council may require detailed field assessments in accordance with technical advice or information from Natural England, and it must be demonstrated that:
  - i. the benefits of development clearly outweigh the impacts of the loss of the economic and other benefits of the land; and
  - ii. every effort has been made to mitigate the overall impact of the development on best and most versatile agricultural land.
- 12.29. An Agricultural Land Classification Report was prepared by ADAS in support of this application. As shown on the plan contained within Appendix 2 of the report, the Site comprises a mix of Grade 2 and Grade 3a agricultural land. The Grade 2 agricultural land forms the western side of Parcel D which is undeveloped as part of these proposals. As such, it is only land of Grade 3a which is sought to be developed as part of this application.
- 12.30. The high-level North West Regional Agricultural Land Classification Map indicates the vast majority of land within Cheshire East is Grade 3 agricultural land (it does not divide it down into 3a and 3b) with some pockets of Grade 2 land.
- 12.31. This application seeks to prevent development occurring on the Grade 2 land. Although development is sought on Grade 3a agricultural land, which is classified as the best and most versatile, if any development is to be brought forward in Cheshire East, the development of Grade 3 land will be required.
- 12.32. The development of agricultural land was discussed as part of the appeal 14/1946C which was dismissed in June 2016. This application solely related to the development of the Grade 2 agricultural land. The Inspector concluded that there is no inherent conflict between the appeal scheme and the loss of, in relative terms, a limited amount of BMV land and that the loss of a limited amount of BMV land does not weigh heavily against the scheme. This scheme, and the development of Grade 3a agricultural land, should be considered in the context of this appeal decision.
- 12.33. The development of agricultural land should also be considered in the context of the need to deliver housing for Cheshire East. The Council will need to identify suitable, achievable and deliverable sites in the borough to deliver their five-year supply.

- 12.34. The need to deliver new housing and the economic, social and environmental benefits it will bring, outweigh the minimal impacts of the loss of a small amount of best and most versatile agricultural land.
- 12.35. As such, the proposal complies with the requirements of Policy RUR 5.

## Noise

- 12.36. Policy SE 12 Pollution, Contamination and Land Instability of the LPS states the council will seek to ensure all development is located and designed so as not to result in a harmful or cumulative impact upon noise which would unacceptably affect the natural and built environment or detrimentally affect amenity or cause harm.
- 12.37. JPM Acoustics have prepared a Noise Impact Assessment in support of the proposed development.
- 12.38. With respect to noise levels within private garden spaces, the assessment indicates that with consideration to the eventual layout of dwellings the recommended upper guideline threshold should be achievable in all garden spaces.
- 12.39. In terms of the habitable internal noise levels, guideline amounts will be achieved at the worst affected properties, with windows open, through the provision of suitable glazing and ventilation acoustic performances.
- 12.40. As such, the report concludes the proposed development would not cause harmful or cumulative impact in terms of noise and therefore is compliant with Policy SE 12.

## Air Quality

- 12.41. Policy ENV 12 Air Quality of the SADPD states that proposals that are likely to have an impact on local air quality will be required to provide an air quality assessment (AQA). Where the AQA shows that the construction or operational characteristics of the development would cause harm to air quality, including cumulatively with other planned or committed development, planning permission will be refused unless measures are adopted to acceptably mitigate the impact.
- 12.42. An Air Quality Assessment has been prepared by Wardell Armstrong in support of the proposals which has considered the dust and particulate matter during the construction phase and road traffic emissions during the operational phase.
- 12.43. During the construction phase, the risk of dust soiling effects is classed as high for earthworks, construction, and trackout and is classed as negligible for demolition; the risk of human health effects is classed as low for earthworks, construction and trackout, and negligible for demolition. Mitigation measures are proposed within the report to further reduce any potential impacts based on best practice guidance.
- 12.44. The assessment of the operational phase has concluded that the development will result in concentrations of NO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> remaining below the air quality objectives/target values, both without and with the development for the proposed 2029 Opening/Future Year.

- 12.45. The impact of the development is predicted to be negligible at all 23 existing and 4 proposed sensitive receptors that were assessed. Air quality effects are therefore considered to not be significant.
- 12.46. As confirmed within the report, and in line with Policy ENV12, the proposed development will not lead to an unacceptable risk from air pollution or to any breach in national objectives.

## Sports Needs

- 12.47. LPS Policy SC 1 states that the Council will seek to protect and enhance existing leisure and recreation facilities.
- 12.48. LPS Policy SC 2 states that in order to provide appropriate sports facilities for the communities of Cheshire East, the Council will make sure that major residential development contribute, through land assembly and/or financial contributions, to new or improved sports facilities where development will increase demand and/or there is a recognised shortage in the locality that would be exacerbated by the increase in demand arising from the development.
- 12.49. SNP Policy CW2 states that developments which enhance existing sports and leisure facilities by way of increasing their utilisation or capacity for improved levels of public access will be strongly supported.
- 12.50. Playing Pitch and Outdoor Sport Strategy (PPOSS) was adopted in March 2024 and noted that a sports needs assessment should be carried out for large scale developments.
- 12.51. A Playing Pitch and Outdoor Sports Needs Assessment has been prepared by KKP and submitted in support of the development proposals.
- 12.52. The report identifies that no new facilities are required to support the growth, with demand levels not equating to a whole pitch for any of the relevant sports.
- 12.53. Instead, the report provides an indication of what offsite contributions can be made and which existing sites and sports they should be directed towards, to ensure that the demand levels can be adequately met. Table 5 (Table 4.1 in the Sports Needs Assessment Report) below summarises which sports would require financial contributions.

**Table 8 – Summary of Potential Investment in Sports Facilities**

Sport	Investment Site/s	Investment action
Football	Sandbach Community Football Centre	Contribution towards a 11v11 size 3G pitch (if this cannot be achieved at the Site, an appropriate alternative should be sought).
Rugby union	Sandbach Rugby Club	Contribution towards pitch and ancillary facility improvements.
Hockey	Alsager Sports Hub	Contribution towards hockey pitch resurfacing.
Cricket	Alsager Cricket Club	Contribution towards pitch improvements
	Elworth Cricket Club	Contribution towards clubhouse improvements.

	Rode Park Cricket Club	Contribution towards clubhouse improvements and practice net development.
--	------------------------	---

- 12.54. To enable an appropriate level of investment, through the use of the Sport's England Playing Pitch Calculator, the amount of contribution that should be made has been identified. As shown in Table X below (Table 4.2 from the Sports Needs Assessment Report), this equates to £556,089 across all the relevant sports.

**Table 9 – Summary of Contributions**

Sport	Capital cost	Lifecycle cost <sup>8</sup>	Changing room cost
Football	£76,641	£144,285	£123,544
Rugby union	£8,277	£22,965	£19,690
Hockey	£10,057	£3,915	£4,155
Cricket	£29,106	£80,340	£33,114
<b>Total</b>	<b>£124,081</b>	<b>£251,505</b>	<b>£180,503</b>

- 12.55. Using the above, the table below identifies the level of contribution that should ideally be directed to each site.

**Table 10 – Contributions by Site**

Sport	Investment Site/s	Level of contribution
Football	Sandbach Community Football Centre	£344,470
Rugby union	Sandbach Rugby Club	£50,932
Hockey	Alsager Sports Hub	£18,127
Cricket	Weston Cricket Club	£47,520
	Haslington Cricket Club	£47,520
	Eric Swan Sports Ground	£47,520
<b>Total</b>		<b>£556,089</b>

- 12.56. The report concludes that for the remaining sports, whilst some growth will emanate from the development, it is likely to be minimal, with existing supply able to accommodate the level of increased demand without any investment. As such, not additional provision of contributions would be required.
- 12.57. The financial contributions are subject to the review and agreement of Cheshire East Borough Council. Any financial contribution sought for sports would be delivered via a S106 agreement with the Council.
- 12.58. The proposal is therefore compliant with Policy SC 1, SC 2 and CW2.

## Health and Well-Being

- 12.59. Policy SC 3 Health and Well-Being of the LPS states that the Council and its partners will create and safeguard opportunities for safe, healthy, fulfilling and active lifestyles. This

<sup>8</sup> Over a 15-year period, as advised by Sport England.

policy states that Impact Assessments will be required on all major development proposals which will involve a review of the possible health impacts of a policy or proposal.

- 12.60. The policy goes on to state that new developments should provide opportunities for healthy living and improve health and well-being through the encouragement of walking and cycling, good housing design (including the minimisation of social isolation and creation of inclusive communities), access to services, sufficient open space and other green infrastructure, and sports facilities and opportunity for recreation and sound safety standards.
- 12.61. Policy CW2 Health of the SNP states developer contributions will be secured through planning obligations or in accordance with the most up to date funding mechanisms on developer contributions and infrastructure adopted by Cheshire East Council.
- 12.62. As per the requirements of Policy SC 3, a Health Impact Assessment (HIA), prepared by Pegasus Group, has been prepared and submitted in support of the proposed development.
- 12.63. The HIA has examined the demographic and health profile in the Cheshire East Local Authority area. It helps to show how the proposed development can positively affect and contribute to areas of need in the area.
- 12.64. During construction, the proposed development will not cause harmful or cumulative impact in terms of noise and any potential impacts will be minimised by the use of best practice construction measures and appropriate management.
- 12.65. Once complete and fully operational, the proposed development will have a positive effect on the health of the future residents of the new dwellings, visitors, and existing residents in nearby residential areas through considered design. The capacity within secondary schools and post-16 provision close to the Site will be discussed with the Council and if required, a financial contribution will be provided towards any education provision which may be required.
- 12.66. Taking into account the findings of the HIA and suggested mitigation measures, the overall health impact of the proposed development is expected to be positive which is in line with the requirements of Policies SC 3 and CW2.

## **Energy and Sustainability**

- 12.67. Policy SE 8 Renewable and Local Carbon Energy of the LPS supports the development of renewable and low carbon energy schemes. Weight will be given to the wider environmental, economic and social benefits arising from renewable and low carbon energy schemes.
- 12.68. Policy EN 7 of the SADPD states that development proposals should incorporate measures that can adapt and/or demonstrate resilience to climate change and mitigate its impacts.
- 12.69. Policy CC1 Adapting to Climate Change of the SNP states that new development proposals must demonstrate how design, construction, landform, layout, orientation, use of materials and other elements minimise the use of energy and clear water, whilst delivering a design that is climate change resilient.

- 12.70. Briary Energy have prepared an Energy Strategy Statement in support of this application which examines the feasibility of suitable low to zero carbon (LZC) sources, high efficiency alternative systems and low carbon energy efficiency measures.
- 12.71. Provisional SAP assessment of the house types proposed demonstrates that baseline Part L compliant emissions for the development will be 339,723.61 kgCO<sub>2</sub> per annum, with an energy demand of 1,381,041.45 kWh per annum.
- 12.72. Energy demand reduction has been prioritised as part of the widely supported 'fabric first' approach. The benefits to the resident of this approach have been discussed in detail, which include an improvement in thermal comfort, lower energy bills, reducing the risk of fuel poverty and minimal maintenance requirements. These benefits are realised alongside the crucial aspect of the long-term reduction in energy demand that is built into the lifetime of the dwellings.
- 12.73. Applying this approach through a combination of the fabric specification proposed, detailing to avoid thermal bridging, reducing air leakage and employing passive and active design measures, the dwellings will secure a saving in CO<sub>2</sub> emissions of 59,509.00 kgCO<sub>2</sub>/year, equating to an energy demand reduction of 280,223.00 kWh/year.
- 12.74. The development at Sandbach represents an energy reduction of 74.78%. This represents a carbon reduction of 84.07% over the Part L1 compliant figure.
- 12.75. The key features of Bloor Homes include:
- Homes will be equipped with solar PV panels, heat pumps, and advanced insulation. With high airtightness and efficient heating controls, they'll also feature wastewater heat recovery and low-energy LED lighting throughout;
  - The use of eco-friendly materials and prioritise water efficiency throughout the build;
  - Homes are designed to maximise natural light and ventilation, enhancing comfort and well-being. By placing sustainability at the core of the design, we are building homes that not only provide modern comforts but also contribute to a cleaner, greener future for all; and
  - EV charging points.
- 12.76. The measures proposed, in line with the requirements of Policies SE 8 and CC 1, will deliver renewable and low carbon energy sources and deliver homes that are climate change resilient.
- 12.77. Paragraph 168 of the NPPF confirms significant weight should be given to the benefits associated with renewable and low carbon energy generation and proposals contribution to a net zero future. As demonstrated within the submitted energy report and within the paragraphs noted above, Bloor proposes to deliver all new homes onsite to a future homes standard. The delivery of these new eco-friendly and energy efficient homes which will contribute towards a net zero future and therefore **significant weight should be attributed to this.**



## Developer Contributions

- 12.78. LPS Policy IN 2 states that developer contributions will be sought to make sure that the necessary physical, social, public realm, economic and green infrastructure is in place to deliver development. Development proposals will be expected to provide a contribution to towards the cost of infrastructure.
- 12.79. SNP Policy IFC 1 states policies in this plan require contributions to community infrastructure, subject to development scheme viability, they will be made through planning obligations or in accordance with the most up to date funding mechanisms for developer contributions and infrastructure adopted by Cheshire East Council
- 12.80. Bloor are committed to delivering a high-quality scheme which makes all the necessary contributions to ensure that any impact of the development is mitigated. The necessary developer contributions will be confirmed during the determination period of the application and through consultation with statutory consultees.
- 12.81. In line with Policy IN2 and IFC1, Bloor, in liaison with the LPA, will ensure all necessary contributions are in place to deliver the development and mitigate any impact.

## 13. Conclusion and Planning Balance

### Planning Balance

- 13.1. This Planning Statement has been prepared on behalf of the Applicant (Bloor Homes Ltd) in support of the outline of an outline planning application, including access, for a residential development comprising of 325 dwellings at land at Sandbach Heath.
- 13.2. The Site is located within the designated open countryside and outside of the defined settlement boundaries and is therefore considered to be contrary to Local Plan Strategy Policies PG 1, PG 6 and PG 7, Site Allocations DPD Policy PG 9 and Sandbach Neighbourhood Plan Policy PC3.
- 13.3. Having said that, in line with paragraph 11 of NPPF 2024, where there are no relevant development plan policies or the policies for the supply of land which are most important for determining the applications are out of date, permission should be granted unless the application of policies in the NPPF, that protect areas or assets of particular importance, provides a strong reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Neither of which apply to this proposal.
- 13.4. Paragraph 78 of the NPPF clearly states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.
- 13.5. The Cheshire East LPS was adopted 2017 and sets out the development strategy and the level of development. This plan is now more than 5 years old and therefore the adopted strategic policies within this plan, including Policy PG6 are out of date. As such, Cheshire East must identify a supply of deliverable sites, in line with their local housing need figure.
- 13.6. The NPPF 2024 updated all local housing need figures and under this revised plan, Cheshire East are required to deliver 2,461 homes annually, which is an additional 661 homes over and above Policy PG1 of the LPS. Based on the delivery of 2,461 homes annually, Cheshire East are not currently able to demonstrate a 5-year supply of housing and can only deliver a **4.58-year supply of housing**.
- 13.7. Paragraph 11 and footnote 8 of the NPPF, for decision taking this means where the policies which are most important for determining the application of out-of-date (and footnote 8 clarifies that this includes for applications involving the provision of housing, situations where, the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with an appropriate buffer), that permission should be granted.
- 13.8. In light of the above, the policies within the Local Plan Strategy which refer to housing numbers, the location and distribution of development, which are the most important in terms of the determination of the principle of development, are considered to be out of date, under the revised NPPF and of limited weight in the application of the tilted balance.

- 13.9. Significant weight should be attributed to the contribution that this development would make to the Council's supply of housing. This is a suitable, available and deliverable Site, which would contribute towards achieving a five-year supply of housing. In line with paragraph 11 and footnote 8, permission should be granted.
- 13.10. There are significant number of other factors which must be accounted for when considering if the application should be granted, which we detail below.
- 13.11. The proposal would make a valuable contribution to the delivery of affordable homes, which will meet the needs and requirements of residents living within Sandbach and the wider borough. In line with LPS Policy SC 5, the proposed development will deliver 98 new homes (30% of the total number of homes) as affordable. The tenure, size and type of affordable homes will be confirmed through a future Reserved Matters application, in line with the identified needs at the time.
- 13.12. As well as affordable homes, 30% of all new homes on the Site will comply with the M4(2) standards and 6% will comply with M4(3) standards. The exact location and types of home will be discussed as part of future applications, but significant weight should be attributed to the scheme providing homes which are affordable and to a standard which is accessible and adaptable.
- 13.13. As confirmed within the earlier sections of the report, the Site will deliver levels of open space which are significantly over and above guideline levels within the LPS and the Cheshire East Design Guide. For a development of 325 dwellings, there would be a requirement to deliver 2.1 hectares of open space however this proposal seeks to deliver 8.8 hectares of open space which is 6.7 hectares more than the required amount. The open space will be delivered across all 3 parcels and comprise of a varied mix of spaces, including parks, public footpaths, a LEAP and LAPs.
- 13.14. The level of open space proposed, coupled up with the provision of high-quality housing, weigh heavily in favour of the proposal being approved. The scheme has been designed to incorporate and reflect the standards and requirements of the DPD and the Cheshire East Design Guide which as per paragraph 101 of the NPPF, significant weight should be given to development which reflects local design policies and local design guidance.
- 13.15. Paragraph 168 of the NPPF confirms that significant weight should be given to the benefits associated with low carbon energy generation and the contribution to a net zero future. Bloor Homes are committed and deliver eco-friendly and energy efficient homes, which are to Future Homes Standards. All new homes delivered with solar PV panels, heat pumps, and advanced insulation. The properties will include high airtightness and efficient heating controls as well as wastewater heat recovery and low-energy LED lighting throughout. The new homes will be constructed using eco-friendly materials which prioritise water efficiency. Bloor's delivery of energy efficient homes should be given significant weight when determining the acceptability of the proposal.
- 13.16. The proposed development will deliver significant economic, social and environmental benefits, which are per paragraph 85 of the NPPF, significant weight should be placed on the need to support economic growth. The benefits include;
- **Economic Benefits** – direct and indirect construction related employment and generation of GVA during the construction phase; and during the operational phase; increased supply of labour from new homes, generation of additional household

spend and first occupation expenditure, increased Council Tax income, improved energy efficiency and supporting the climate change agenda.

- **Social Benefits** – open space for the use and benefit of the Leonard Cheshire residents, support for the existing services and facilities in Cheshire East, new recreational routes and improved accessibility to sustainable modes of transport.
- **Environmental Benefits** – 10% BNG, new housing designed to achieve low carbon living, electric vehicle charging points, retention of trees and hedgerows, additional planting, creation of new areas of open space.

- 13.17. Although Bloor control the land, the land is owned by 8 national charities. Should planning permission be granted for residential development and acquired by Bloor, the proceeds of the sale will be used by the charities for their respective charitable purposes.
- 13.18. The development will make financial contributions to the Council through S106 agreements and CIL payments in line with the Council's guidelines and standards. The financial contributions will mitigate any impact arising from the development and to ensure that sufficient services, facilities and infrastructure is in place for existing and future residents.
- 13.19. In addition to this, as noted in the earlier sections of this report, this proposal provides the opportunity to expand the public service infrastructure within Sandbach, which paragraph 101 confirms should be given significant weight. A bus turning circle is proposed to provide improved and more accessible bus services for existing and future residents.

## Compliance with Key Policies

- 13.20. There are a significant number of benefits of the scheme as noted throughout this Planning Statement, but it is worth setting how the proposal will comply with key policies within DPD;
- A deliver 325 new dwellings, which will make a significant contribution to the Council's five-year supply of housing, which is currently below five years. The Site will deliver a density of 32.2 dwellings per hectare which complies with the requirement of at least 30 dwellings per hectare (Policy HOU 14);
  - The delivery of 8.8 hectares of open space, which is 6.1 hectares more than the guideline amounts (Policy SE 6, Cheshire East Design Guide and Green Space Strategy);
  - The Site will deliver 98 affordable dwellings, which is 30% of the total number of dwellings (Policy SC5);
  - The Site will deliver at least 30% of the total number of dwellings compliant with M4(2) Category 2 of the Building Regulations and at least 6% of all dwellings will comply with requirement M4 (3) (2) (a) standards (Policy HOU 8);
  - All new homes will meet the Nationally Described Space Standards (NDSS) (Policy HOU 8);
  - Compliant with Policy EN 7, all new homes will include:

- Homes will be equipped with solar PV panels, heat pumps, and advanced insulation. With high airtightness and efficient heating controls, they'll also feature wastewater heat recovery and low-energy LED lighting throughout;
- The use of eco-friendly materials and prioritise water efficiency throughout the build;
- Homes are designed to maximise natural light and ventilation, enhancing comfort and well-being. By placing sustainability at the core of the design, we are building homes that not only provide modern comforts but also contribute to a cleaner, greener future for all; and
- EV charging points.
- 10% BNG on Site, which is in line with both national legislation and the requirements of Policy SE 3; and
- The Site will deliver financial contributions to make sure that necessary physical, social, public realm, economic and green infrastructure is in place (Policy IN2) and contributions to indoor sport and recreation, where required (Policy REC 2).

## Conclusion

- 13.21. In summary, given that the Council are unable to demonstrate a five-year supply of housing as a result of increased local housing need figures and an out-of-date local plan, the relevant policies for determining the application are out of date.
- 13.22. The proposal will deliver 325 much needed market and affordable housing which will make a valuable contribution to the Council's five-year housing supply and will deliver a significant number of economic, social and environmental benefits.
- 13.23. The proposal accords with other relevant policies within the DPD, which are not outdated and the benefits of approving the application significantly outweigh any impact.
- 13.24. There are no technical constraints to delivering homes on this Site and the proposals are acceptable from a technical perspective.
- 13.25. The development proposals comprise a sustainable form of development and accordingly, and in line with paragraph 11 of the NPPF, permission should be granted.



**Appendix 1 –Hallam Land Management Ltd. Appellant – and – (1)  
Secretary of State for Communities and Local Government (2)  
Eastleigh Borough Council Court of Appeal decision**

**[2018] EWCA Civ 1808**



Neutral Citation Number: [2018] EWCA Civ 1808

Case No: C1/2017/3339

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE ADMINISTRATIVE COURT**  
**PLANNING COURT**  
**MR JUSTICE SUPPERSTONE**  
**[2017] EWHC 2865 (Admin)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 31 July 2018

**Before:**

**Lord Justice Davis**  
**Lord Justice Lindblom**  
**and**  
**Lord Justice Hickinbottom**

-----  
**Between:**

**Hallam Land Management Ltd.**

**Appellant**

**- and -**

**(1) Secretary of State for Communities and  
Local Government**

**(2) Eastleigh Borough Council**

**Respondents**

**Mr Thomas Hill Q.C. and Ms Philippa Jackson** (instructed by **Irwin Mitchell LLP**)  
for the **Appellant**

**Mr Zack Simons** (instructed by **the Government Legal Department**)  
for the **First Respondent**

**Mr Paul Stinchcombe Q.C. and Mr Ned Helme** (instructed by **Eastleigh Borough Council**)  
for the **Second Respondent**

Hearing date: 3 May 2018

-----



**Judgment Approved by the court  
for handing down  
(subject to editorial corrections)**

## **Lord Justice Lindblom:**

### *Introduction*

1. In deciding an appeal against the refusal of planning permission for housing development, how far does the decision-maker have to go in calculating the extent of any shortfall in the five-year supply of housing land? That is the central question in this appeal.
2. With permission granted by Lewison L.J. on 6 March 2018, the appellant, Hallam Land Management Ltd., appeals against the order of Supperstone J., dated 16 November 2017, dismissing its application under section 288 of the Town and Country Planning Act 1990 by which it had challenged the decision of the first respondent, the Secretary of State for Communities and Local Government, in a decision letter dated 9 November 2016, dismissing an appeal under section 78 of the 1990 Act. The section 78 appeal was against the refusal by the second respondent, Eastleigh Borough Council, of outline planning permission for a development of up to 225 dwellings, a 60-bed care home and 40 care units, the provision of public open space and woodland, and improvements to Hamble Station, on land to the west of Hamble Lane, in Hamble.
3. The site of the proposed development is about 23 hectares of pasture, on the Hamble Peninsula, between the Hamble River and Southampton Water. It is not within any settlement, nor allocated for development in the Eastleigh Borough Local Plan Review (2001-2011), adopted in 2006. The settlements of Bursledon, Netley and Hamble lie, respectively, to the north, the west and the south. Because it is in the “countryside”, the site is protected by policy 1.CO of the local plan. And because it lies within the Bursledon, Hamble, Netley Abbey Local Gap, it also has the protection of policy 3.CO.
4. An inquiry into the section 78 appeal was held by an inspector appointed by the Secretary of State on four days in June 2015. On 24 June 2015, the second day of the inquiry, the appeal was recovered by the Secretary of State, because it involved a proposal 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”. In his report, dated 26 August 2015, the inspector recommended that the appeal be dismissed. The Secretary of State subsequently received a large number of further representations, some of them in response to letters he sent to the parties on 15 April 2016 and 29 June 2016. In those representations the Secretary of State received the parties’ comments on two decisions of inspectors on appeals in which the supply of housing land in the council’s area had been assessed – first, an appeal relating to a proposed development of up to 335 dwellings on land at Bubb Lane, Hedge End, which was dismissed on 24 May 2016, and secondly, an appeal relating to a proposed development of up to 100 dwellings on land at Botley Road, West End, which was allowed on 7 October 2016. In his decision letter on Hallam Land’s appeal the Secretary of State largely agreed with the inspector’s conclusions and accepted his recommendation.
5. The challenge to the Secretary of State’s decision was made on four grounds. The first and second grounds went to his failure – unlawfully, it was said – to ascertain the extent of the shortfall against the five-year housing land supply in the council’s area, and to provide adequate reasons for his relevant conclusions. The third and fourth grounds asserted that his decision was inconsistent with the conclusions on housing land supply and the weight to be

given to policy 3.CO in an inspector's report, dated 25 August 2016, in an appeal relating to a proposed development of up to 680 dwellings on land at Winchester Road, Boorley Green. Supperstone J. rejected all four grounds.

*The issues in the appeal*

6. The appeal before us raises two main issues:

- (1) given that the council could not demonstrate the requisite five-year supply of housing land under government policy in the first National Planning Policy Framework ("NPPF"), published in March 2012, whether the Secretary of State established the shortfall with sufficient precision, and whether his relevant reasons were adequate; and
- (2) whether the Secretary of State erred in law in deciding Hallam Land's appeal without having regard to the inspector's report on the Boorley Green appeal.

7. These issues raise no question of law that has not already been amply dealt with in a series of cases on the meaning of relevant policies in the NPPF, and on the importance of consistency in planning decision-making.

*NPPF policy*

8. We are not concerned in this appeal with the policies in the revised NPPF, which was published on 24 July 2018. I shall refer only to the policies in the first NPPF, as if they were still extant.

9. Paragraph 47 of the NPPF states:

"To boost significantly the supply of housing, local planning authorities should:

...

- identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements ...

...".

Paragraph 49 states:

"Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

Paragraph 14 contains the Government's policy for the "presumption in favour of sustainable development". It explains that:

"...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and

- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.”

*The inspector's report*

10. In his report the inspector noted, under the heading “The Case for the Council”, that the council “acknowledge that they are not currently able to demonstrate a 5 year housing supply, as required by NPPF para 47” (paragraph 22). It was the council’s case, however, that “the proposal is contrary to development plan policies which are not out of date, and is not the sustainable form of development for which there is a presumption in favour”, and that “[even] if the presumption in NPPF para 14 was engaged, the negative aspects of the scheme, including the landscape impact and the loss of openness, would significantly and demonstrably outweigh the benefits” (paragraph 41).
11. Summarizing the case for Hallam Land, under the heading “The Case for the Appellants”, he referred (in paragraph 62) to the uncontested evidence of its planning witness, Mr Usher:

“62. The need for housing is demonstrated in Mr Usher’s proof... , which has not been challenged by the Council, and which reflects the conclusions of the Local Plan Examination that the draft is unsound for failing to make adequate provision. The Council accept that they cannot demonstrate a five year supply, the level being shown by the appellants to be 2.92 years, or 1.78 years if the need for affordable housing is included.”

Because the council would “not be able to meet its housing land requirements without the loss of significant areas of countryside...”, it was “inevitable that there will be a change to the open and undeveloped character of such land”. This was “not, of itself, an adequate ground to resist the development when there is no 5 year land supply, nor an up to date development plan” (paragraph 65).
12. In his conclusions the inspector identified the “main issues” as being “i) the effect of the development on the character and appearance of the countryside and its role in separating settlements, and ii) whether any harm would be outweighed by the potential benefits of the development, including a supply of market and affordable housing, and the improvement of station facilities” (paragraph 88).
13. He said that “[the] proposal would not fall within any of the specified uses in Local Plan policy 1.CO ...”. He concluded that there was “no doubt that a development of this scale would diminish the Local Gap both physically and, to some degree, visually, contrary to policy 3.CO ...”, and that “[in] these respects it would not comply with the development plan” (paragraph 90). He went on to find that “there are grounds to conclude that policy 1.CO may be regarded as out of date, but that there is not justification for giving any substantial reduction to the weight applied to policy 3.CO” (paragraph 96).
14. Under the heading “The Benefits of the Proposal” he noted that Hallam Land had particularly emphasized “the supply of market and affordable housing to meet an acknowledged need, and

the provision of facilities for Hamble Station” (paragraph 107). He continued (in paragraph 108):

“108. The Council acknowledge that they are not able to demonstrate more than a four and a half years supply of deliverable housing land, and it is the appellants’ view that the actual level is significantly less. It is not necessary for this report to carry out a detailed analysis of the housing land supply position, which is better left to the Local Plan examination, where all the evidence is available to the inspector. However, it can be said that there is a material shortfall against the five year supply required by NPPF para 47, and that there is evidence of an existing need for affordable housing. In these circumstances, the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme. It is also the case that the new dwellings would meet sustainable construction and accommodation standards, and be of a mix to satisfy a wide range of housing needs. In these respects, the development would help meet the NPPF objectives of boosting significantly the supply of housing, and delivering a wide choice of high quality homes. ...”.

He accepted that “[the] choice of accommodation would also be boosted by the provision of 100 care and extra care spaces”, and that “such accommodation would be likely to release a supply of existing, under-used homes to meet the general housing demand” (paragraph 109).

15. Bringing his conclusions together under the heading “Sustainability and Overall Conclusions”, the inspector said (in paragraph 116):

“116. When assessed against the criteria in para 7 of the NPPF, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space, although, in the latter case, at the expense of the loss of the rural character of the public footpath crossing the site. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. There would be the environmental and community benefits arising out of the station improvements (but having regard to the Council’s alternative scheme), any spin-off advantages for traffic and pollution levels, from the off-site highway works, and the environmental and ecological aspects of the landscaping proposals.”

He accepted that “[on] balance, this is a reasonably sustainable location in terms of accessibility” (paragraph 117). His final conclusion, however, went against the proposal. He found that “the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity” would be contrary to policy 3.CO of the local plan and corresponding policies in the NPPF; that “[the] countervailing benefits of the scheme, as well as compliance with other development plan policies ... would not outweigh the harm that this loss of separation would cause”; and that “[taken] as a whole, the proposal does not amount to the form of sustainable development for which there is a presumption in favour” (paragraph 118).

### *The decision in the Bubb Lane appeal*

16. The inspector in the Bubb Lane appeal concluded (in paragraph 45 of his decision letter):

“45. The evidence before me does not support EBC’s view that it is ‘a whisker’ away from demonstrating a five year supply of deliverable housing land. Notwithstanding EBC’s considerable efforts to improve housing provision, something in the order of a four year supply at the time of this Inquiry indicates that EBC has a considerable way to go to demonstrating a five year supply of deliverable sites. There is no convincing evidence that measures currently taken have been effective in increasing the rate of housing delivery. The scale of the shortfall is a significant material consideration in determining this appeal. The contribution that the appeal scheme would make to the housing supply, and particularly to affordable housing provision in the area in accordance with EBLP Policy 74.H, would be a significant benefit of allowing the appeal.”

Under the heading “Planning balance”, the inspector concluded that “some weight can be given to the conflict with EBLP Policy 2.CO, arising from the harm that would result from the proposal to the separation of settlements ...”, but that “this weight is limited because of the significant shortfall in housing supply, and the lack of convincing evidence that EBC’s efforts to address this are proving effective” (paragraph 52). He went on to say that, “[given] the current scale of the housing shortfall, the provision of additional market and affordable housing would be a significant benefit of the proposal” (paragraph 55). But he concluded, finally that “[in] my judgement, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the *Framework* taken as a whole” (paragraph 57).

#### *The decision in the Botley Road appeal*

17. In the decision letter on the Botley Road appeal, the inspector stated these conclusions on “Housing land supply” (in paragraphs 18 and 19 of his decision letter):

“18. In conclusion, the final calculation taking a requirement figure of 1,120dpa, or 5,602 dwellings over the 5 year period, there is a 4.25 years’ supply of housing land. Even on the Council’s most favourable calculations, taking the Council’s approach to the buffer and with its suggested contributions from all the disputed sites, the supply would still only be 4.71 years, but the evidence indicates that this is unlikely to be achievable.

19. There is therefore a significant shortfall in the amount of deliverable housing land, amounting to some 833 dwellings. The Leader of the Council gave evidence of the impressive efforts the Council had made to underpin housebuilding confidence following the recession, but this does not seem to have been translated into the provision of enough housing land. Net completions for the two years 2014/15 and 2015/16 amounted to less than one year’s requirement. Referring to recent outline approvals, the Council said that it was making progress towards improving housing supply; recent permissions might enable it to exceed the OAN to a degree this year. Even if that happens, it is still well short of the requirement for the year. There is a significant shortfall to be made up, and the evidence that the gap might be closing quickly enough is far from convincing. The Council is not, as it claims, on the cusp of achieving a 5 year supply of deliverable housing land.”

Under the heading “Effect on the countryside and the strategic gap”, he noted (in paragraph 27) that “planning permission has been granted for a number of sites which have included dwellings in the strategic gaps”, and went on to say:

“27. ... But the Council’s argument that present needs can be met substantially within the land outside the gaps is wholly unconvincing; even with the permissions on gap land, there is still no 5 year housing land supply and without them, even on the Council’s unduly optimistic housing land supply calculations, there would only be 3.4 years’ supply of housing land. On the contrary, the evidence is that the gaps are a factor in limiting the choice of sites available for the provision of housing, and that breaches of the strategic gap policy have proved necessary and will prove necessary to cater to meet current housing needs.”

In his “Conclusion” the inspector said (in paragraph 52):

“52. There is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites. There is also severe under-delivery of affordable housing. The scheme would deliver up to 100 dwellings including up to 35% affordable homes and, although it is in the countryside and in a defined strategic gap, would cause little practical harm. In a situation where there is a pressing need for housing and affordable housing, and where both saved Policies 1.CO and 2.CO are out of date, the adverse impacts of the scheme to the landscape, the countryside and the strategic gap, and the other impacts of the scheme discussed above, would be slight and would not significantly and demonstrably outweigh the benefits. Indeed, even if saved Policy 2.CO were not accepted as being a policy relevant to the supply of housing, and not out-of-date, the considerable benefits of the scheme, weighed against the limited harm, would indicate a decision other than in accordance with that policy.”

### *The post-inquiry representations*

18. The further representations made by Hallam Land and by the council after the inquiry largely concerned the status of policies 1.CO and 3.CO of the local plan for the purposes of NPPF policy, in the light of this court’s decision in *Suffolk Coastal District Council v Hopkins Homes Ltd.* [2016] EWCA Civ 168, which was handed down on 17 March 2016, and the weight to be given to those policies in the absence of a five-year supply of housing land.
19. In its further representations dated 15 April 2016, in response to the Secretary of State’s letter of the same date, the council asserted that it was now “able to demonstrate a 4.93 year supply” of housing land (paragraph 2.7.2(1)), and that “the action which has been taken to address the shortfall has been both considerable and effective” (paragraph 2.7.2(2)). In further representations dated 5 May 2016, Hallam Land rejected the council’s suggestion that it now had a housing land supply of 4.93 years (paragraph 5). On 11 May 2016 the council submitted additional representations, referring to the planning permissions it had granted for housing development since the inquiry (paragraph 2.8 and Appendix 5), and contending that Hallam Land had failed to recognize “the wide range of measures being taken by the Council to boost housing supply” (paragraph 2.9). Hallam Land responded to those representations with further representations of its own, dated 24 May 2016, and took issue again with the council’s argument that there was now a housing land supply of 4.93 years. That figure was “not based upon an up to date SHMA”, was “not tested”, and was “not reflective of unmet need in adjacent areas” (paragraph 8). Its case, it said, “had always been that there remains a substantial shortfall” and it “[continued] to rely upon its evidence and submissions as



submitted to the inquiry” (paragraph 10). The council was “still unable to demonstrate a 5YHLS, even against its own target (which is not accepted to be correct)”. Also on 24 May 2016, the council sent the inspector’s decision letter in the Bubb Lane appeal to the Secretary of State, drawing his attention to it as a relevant decision.

20. On 17 June 2016 the council made yet further representations, “in order that the decision can be taken upon the best and most up-to-date information ...” (paragraph 1.1). It now resiled from its previous concession that policy 3.CO was a policy “for the supply of housing”, and, in the absence of a five-year supply of housing land, “out of date” (paragraphs 2.4 and 3.1 to 3.5). It said it would shortly provide “an updated position in respect of its housing land supply reflecting further (recent) changes of circumstance, including its agreement for the purposes of another inquiry [in the Botley Road appeal] (and in the light of the conclusions of the Bubb Lane Inspector) that the full objectively assessed needs for Eastleigh should be taken to be 630 dwellings per annum” (paragraph 4.1). The council provided its promised “Update on Housing Land Supply” on 23 June 2016. This referred to the conclusion of the inspector in the Bubb Lane appeal that “the OAN for Eastleigh was 630dpa”, which had now been reflected in the statement of common ground for the imminent inquiry into the Botley Road appeal (paragraphs 2.1 and 2.2). The council’s evidence for that inquiry explained that “on its preferred approach [it] is able to demonstrate a 4.86 year supply” (paragraph 2.3). Its position therefore remained that although it could not demonstrate a five-year supply of deliverable housing sites, it was “very close to being able to do so” (paragraph 2.4).
21. In representations dated 19 July 2016, in response to the Secretary of State’s letter of 29 June 2016, Hallam Land attacked the council’s “volte face” on the status of policy 3.CO (paragraphs 4 to 12). It also made clear that it did not accept the council’s “latest attempt to revise its case on the extent of its 5YHLS ...”, and that it maintained the position it had taken in the representations it had submitted in May 2016 (paragraph 13).
22. In a letter dated 13 October 2016 to Mr Barber, the Secretary of State’s decision officer, Barton Willmore, on behalf of Hallam Land, asked him to draw to the Secretary of State’s attention the inspector’s decision in the Botley Road appeal, “in order that he is fully appraised of the recent approach of one of his senior Planning Inspectors ... in relation to a series of identical issues which he will now be considering when making a decision ...” in this case. Barton Willmore pointed out that the inspector had rejected “the proposition that [the council] can meet its housing land requirements without impinging upon land which is designated as gap”, and had concluded that policy 2.CO “is a relevant policy for the supply of housing”. They argued that an “identical conclusion” must follow for policy 3.CO in this case. They referred to “the principle often expounded by the Courts that it is desirable that there be consistency in planning decision-making”. It was therefore “highly important”, they said, that the Botley Road decision, “relating to a virtually identical issue”, was “formally before the Secretary of State” in this appeal. They also emphasized the fact that the inspector’s decision letter dealt directly with the issue of housing land supply, “exposing a significant shortfall in deliverable housing land, amounting to some 833 dwellings”. They quoted paragraph 27 of the decision letter in full, and also the inspector’s conclusion in paragraph 52 that “there is a significant shortfall in the supply of deliverable housing land for the next 5 years and no convincing evidence that the gap is diminishing to the extent that it will be made up within a reasonable time by identified deliverable sites”.
23. The council did not respond to those representations, but in an e-mail to the Secretary of State dated 3 November 2016, drew his attention to the inspector’s decision in an appeal relating to proposed housing development on a site at Hamble Lane – the Botley Road appeal – and, in

particular, what he had said about policy 2.CO, “which also applies to Saved Policy 3.CO”. But it said it did not intend to provide further submissions on this point, and was drawing the inspector’s decision to the attention of the Secretary of State “in the interests of full disclosure”.

*The Secretary of State’s decision letter*

24. In his decision letter the Secretary of State said that he agreed with the inspector’s conclusions, “except where stated”, and his recommendation (paragraph 3).

25. He referred to the representations he had received after the inquiry, including those made in response to his letters of 15 April 2016 and 29 June 2016, in the light of the judgment of this court in *Hopkins Homes Ltd.*. He confirmed that those representations had been circulated to the parties (paragraphs 5 and 6). He then referred (in paragraph 7) to the further representations he had received in October and November 2016:

“7. The Secretary of State has also received representations from Barton Willmore dated 13 October 2016, and from Eastleigh Borough Council dated 3 November to which he has given careful consideration. The Secretary of State has also received other representations, set out at Annex A, to which he has given careful consideration. He is satisfied that the issues raised do not affect his decision, and no other new issues were raised to warrant further investigation or necessitate additional referrals back to the parties.”

He said that, “[in] reaching his decision”, he had “taken account of all the representations and responses referred to in paragraphs 5-7” (paragraph 8).

26. When he came to “The Policy Context” he concluded that policies 1.CO and 3.CO of the local plan were both “out-of-date” (paragraphs 14 to 16). But he went on to qualify this conclusion (in paragraph 17):

“17. The Secretary of State has considered carefully the Inspector’s analysis at IR93-100 on the matter of whether Policy 3.CO would be out of date through no longer meeting the development needs of the Borough, and whether there is justification for reducing the weight applied to that policy. The Secretary of State acknowledges that its weight should be reduced because he has found it to be out-of-date, but taking into account its consistency with the Framework, its role in protecting the Local Gap and the limited shortfall in housing land supply, he concludes that he should still afford significant weight to Policy 3.CO.”

27. As for “The Benefits of the Proposal”, he said this (in paragraph 19):

“19. The Secretary of State notes the Inspector’s comment (IR108) that at the time of inquiry the Council were not able to demonstrate more than a four and a half years supply of deliverable housing land, and that there is evidence of an existing need for affordable housing. Whilst the Secretary of State notes that the Council are now of the view that they are able to demonstrate a 4.86 year supply, he agrees with the Inspector that the provision of up to 225 homes, 35% of which would be affordable, would be a significant advantage arising out of the scheme, and it would help meet the objectives of the Framework by boosting significantly the supply of housing and delivering a wide

choice of high quality homes. The Secretary of State notes too that the choice of accommodation would also be boosted by the provision of 100 care and extra care spaces (IR109).”

28. On the proposal’s “Sustainability” he said (in paragraph 25):

“25. In terms of sustainability, the Secretary of State agrees with the Inspector’s conclusion (IR116) that, when assessed against the policies in the ... Framework taken as a whole, the supply of market and affordable housing, along with care facilities, would make a significant contribution to meeting the social role of sustainability, complemented by the provision of public open space (although he acknowledges that the latter is at the expense of the loss of the rural character of the public footpath crossing the site). Furthermore, he agrees that the additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall. In addition, he recognises, like the Inspector, the environmental and community benefits arising out of the station improvements identified at paragraphs 20-21 above. For the reasons given by the Inspector at IR117, the Secretary of State concludes that, on balance, this is a reasonably sustainable location in terms of accessibility.”

29. Under the heading “Planning balance and overall conclusion” the Secretary of State said (in paragraphs 29 to 36):

“29. For the reasons given above, the Secretary of State concludes that the proposal is not in accordance with the development plan policies 1.CO and 3.CO and is not in accordance with the development plan as a whole. He has gone on to consider whether material considerations indicate that the proposal should be determined other than in accordance with the development plan.

30. The Secretary of State notes that in their letter of 23 June 2016, the Council updated their position on the supply of deliverable housing land, now claiming to be able to demonstrate a 4.86 year supply. In the absence of a 5-year housing land supply, and having concluded that policies 1.CO and 3.CO are relevant policies for the supply of housing, the presumption in favour of sustainable development is engaged, meaning that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits.

31. He considers that the provision of market and affordable housing in an area with an acknowledged shortfall, along with care facilities in this case carries substantial weight in favour of the development. The additional population and employment opportunities would assist the economic life of the area, as would the supply of homes in an area with an acknowledged shortfall, to which he gives moderate weight. The environmental and community benefits arising out of the station improvements carry moderate weight in favour of the proposal.

32. Set against the identified positive aspects is the environmental and social damage which would arise out of the loss of the gap between the surrounding settlements, involving the physical intrusion into an area of countryside, and contributing to the coalescence of those settlements, and loss of independent identity. The Secretary of State considers that this would be contrary to those policies of the Framework which apply the principle of recognising the different roles and character of different areas, and this

carries significant weight against the proposal. He further considers that the loss of “best and most versatile” agricultural land carries moderate weight against the proposal.

33. The Secretary of State also considers that the appeal site performs a function which is specific to its location and which would be permanently undermined by the development.
34. The Secretary of State considers overall that the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits.
35. The Secretary of State has taken into account the wide range of judgments and appeal decisions referred to in the inquiry and the post-inquiry representations but, having considered all the matters raised, he concludes that none is of such weight as to alter the balance of his conclusions.
36. Overall he concludes that there are no material considerations which indicate that he should determine the case other than in accordance with the development plan. The Secretary of State therefore concludes that your client's appeal should be dismissed.”

He therefore agreed with the inspector's recommendation and dismissed the appeal (paragraph 37).

#### *The Boorley Green appeal decision*

30. In a decision letter dated 30 November 2016, about three weeks after he had issued his decision on Hallam Land's appeal, the Secretary of State allowed the Boorley Green appeal. The inquiry into that appeal had taken place in May 2016. The inspector's report, though dated 25 August 2016, was released only with the Secretary of State's decision letter, in the normal way. Like the site in Hallam Land's appeal, the Boorley Green site is in the “countryside”, protected by policy 1.CO of the local plan, and also within an area protected under policy 3.CO, the Botley-Boorley Green Local Gap.
31. The inspector in the Boorley Green appeal concluded that the supply of housing land in the council's area was “very close to 4 years”, observing that this was consistent with the conclusion reached on this question by the inspector in the Bubb Lane appeal – that there was “something in the order of a four year supply” (paragraph 12.16 of the Boorley Green inspector's report). He found that “the HLS is around 4 years”. He said that, at this level, it “falls well short of that required and has done for many years ...” (paragraph 12.45). He concluded that “the benefits of housing and AH, particularly where the supply is significantly below 5 years and the history of delivery is poor, warrant considerable weight ...” (paragraph 12.47). He described the shortfalls in land for housing and affordable housing as “substantial” (paragraph 12.55).
32. In his decision letter, under the heading “Housing supply”, the Secretary of State said (in paragraph 17):
  - “17. The Secretary of State has given very careful consideration to the Inspector's analysis of the 5 year housing land supply position at IR12.10-12.20. He notes that it is common ground that the Council cannot demonstrate the 5 year housing land supply

expected at paragraph 47 of the Framework (IR12.10); and agrees with the Inspector's conclusions at IR12.21 that, on the basis of the information presented at the Inquiry and assuming that this decision is issued within the statutory timetable set, the housing land supply should be regarded as standing at around 4 years. The Secretary of State also agrees with the Inspector's conclusion at IR12.22 that considerable weight should be attributed to the benefits to which the scheme would bring through delivering affordable housing."

33. Under the heading "Planning balance and overall conclusion", the Secretary of State concluded that "[the] proposal would make a significant contribution in terms of helping to make up the deficit against the 5 year housing land supply and the need for affordable housing" (paragraph 24). Agreeing with the inspector's recommendation, he allowed the appeal.

*Did the Secretary of State establish the extent of the shortfall against the five-year supply of housing land with sufficient precision, and were his reasons adequate?*

34. Before Supperstone J., and again before us, Mr Thomas Hill Q.C., for Hallam Land, argued that, in any case where there is a dispute as to the five-year supply of housing land, the Secretary of State, or his inspector, is obliged to establish the level of supply and the extent of any shortfall. This, Mr Hill submitted, was because the local planning authority's failure to demonstrate a five-year supply of housing land will bring into play the balancing exercise provided for in paragraph 14 of the NPPF, and the extent of the shortfall, if there is one, will influence the weight given by the decision-maker to the benefits of the proposed development, and to its conflict with the relevant restrictive policies of the development plan. He sought to strengthen this submission with observations made by judges at first instance – in particular, *Phides Estates (Overseas) Ltd. v Secretary of State for Communities and Local Government* [2015] EWHC 827 (Admin) (at paragraph 60), *Shropshire Council v Secretary of State for Communities and Local Government* [2016] EWHC 2733 (Admin) (at paragraph 28), and *Jelson Ltd. v Secretary of State for Communities and Local Government* [2016] EWHC 2979 (Admin) (at paragraph 13).
35. In this case, Mr Hill submitted, the Secretary of State had failed to make the planning judgments he needed to make. He noted, in paragraph 19 of his decision letter, that the council was "now of the view that [it was] able to demonstrate a 4.86 year supply". But he did not say whether he accepted that this figure was accurate. Nor did he deal with the material before him, including the decision letters in the Bubb Lane and Botley Road appeals, showing that the council was now able to demonstrate only a supply of 4.25 years or even less than that. This could not sensibly be described as a "limited shortfall" – the expression the Secretary of State used in paragraph 17. In fact, Mr Hill submitted, the Secretary of State had failed to reach any conclusion on this question. His decision was vitiated by that failure.
36. Supperstone J. rejected those submissions. He did not accept that one can find in the authorities relied upon by Mr Hill the principle that the decision-maker is required "to determine a workable [five-year housing land supply] or range" in every case. He accepted the argument of Mr Zack Simons, for the Secretary of State, and Mr Paul Stinchcombe Q.C., for the council, that in a case such as this, where there was "inadequate housing supply on either [side's] figures", the Secretary of State was "not required to fix a figure for the extent of that inadequacy" (paragraph 22). He went on to say that "[in] making judgments on the issues of housing requirements and housing supply the decision maker was not required to fix a figure

for the precise extent of the Council's housing shortfall". In his view the "key question" was "whether the housing supply is above or below five years". This was what Lord Carnwath had called the "important question" in paragraph 59 of his judgment in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (paragraph 23). The tenor of relevant decisions at first instance was to the same effect – for example, the observation of Gilbert J. in *South Oxfordshire District Council v Secretary of State for Communities and Local Government* [2016] EWHC 1173 (Admin), at paragraph 102, that it is "not necessary to conduct a full analysis of requirements and supply in every case", and "[whether] one has to do so depends on the circumstances".

37. On the basis of the inspector's conclusion in paragraph 108 of his report, having regard to "the updated material before him from the Bubb Lane [decision letter] and the Botley Road [decision letter]", and Hallam Land having provided "no further evidence" on housing land supply since the inquiry, the Secretary of State was, said Supperstone J., "entitled to note the agreed shortfall, describe it as "limited" (DL17), and agree with his Inspector that the scheme's contribution to the Council's housing shortage would be "significant" (DL19)". Nothing more was required (paragraph 29).
38. In his submissions to us, Mr Hill argued that the authorities on which Supperstone J. had based his conclusions did not deny the need for a decision-maker to establish the extent of a shortfall against the five-year supply of housing land when conducting the balancing exercise under paragraph 14 of the NPPF. Relevant parts of the judgment of the Court of Appeal in *Hopkins Homes Ltd.* – particularly paragraph 47 – which were effectively endorsed by Lord Carnwath in the Supreme Court, indicate that there is such a requirement. Detailed analysis may not always be necessary. A range or an approximate figure may be enough. But, submitted Mr Hill, the judge's view that the crucial question is simply whether the supply of housing land exceeds or falls below five years was unduly simplistic. In this case there were several factors that made it imperative for the Secretary of State to define the shortfall: in particular, the size of the development – more than 150 dwellings – which had led to the appeal being recovered by the Secretary of State; the significance of the shortfall for the weighting of policies in the development plan that went against the proposal, which could be decisive, especially policy 3.CO of the local plan; and the fact that there were other relevant and recent appeal decisions in which the scale of the shortfall had been considered, and on which the parties had made representations. In the circumstances, Mr Hill submitted, it was not enough for the Secretary of State merely to describe the shortfall as "limited", without resolving what it actually was by the time he made his decision.
39. Mr Hill also submitted that, in any event, the Secretary of State had failed to explain how and why he had reached a markedly different conclusion on housing land supply from the conclusions recently reached by the inspectors in the Bubb Lane and Botley Road appeals – in spite of the further representations he had received from Hallam Land in the light of them. Those two decisions were clearly relevant in this case. Yet the Secretary of State did not even refer to them in his decision letter. He said he had given "careful consideration" to the representations made after the inquiry, but in this important respect it is not clear that he had in fact done so. In both cases the decision-maker had identified a considerable shortfall against the required five-year supply materially greater than the council had conceded here. In the Bubb Lane appeal the inspector had found "something in the order of a four year supply" (paragraph 45) and had described the shortfall as "significant" (paragraph 52). In the Botley Road appeal the supply was found to be 4.25 years. And the inspector there had also described the shortfall – which amounted to "some 833 dwellings" – as "significant" (paragraphs 18, 19 and 52).

40. Those conclusions, and those descriptions of the shortfall, Mr Hill submitted, simply cannot be reconciled with the figure of 4.86 years' supply put forward by the council in its "Update on Housing Land Supply" of 23 June 2016. An explanation of some kind was clearly called for in the Secretary of State's decision letter. None was provided. Even if he did not have to resolve the precise level of the shortfall, the Secretary of State had fallen short of his duty to provide intelligible and adequate reasons for his conclusion on an issue crucial to the outcome of the appeal (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] 1 W.L.R. 1953, at paragraph 36). In the circumstances it was not enough for him simply to refer to the shortfall as "limited", without more.
41. Mr Simons and Mr Stinchcombe supported the judge's analysis. They submitted that it is not always, or generally, a decision-maker's task to determine the precise level of housing land supply. The critical question will always be whether or not a five-year supply of housing land has been demonstrated. Under NPPF policy, the degree of detail required in ascertaining housing need and supply is left largely to the decision-maker's planning judgment in the circumstances of the case before him – as Gilbert J. emphasized in *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 649 (Admin) (at paragraphs 43 to 45), and in *South Oxfordshire District Council* (at paragraph 102). Mr Stinchcombe pointed to the recent decision of this court in *Jelson Ltd. v Secretary of State for Communities and Local Government* [2018] EWCA Civ 24 as lending support to this submission (see, in particular, paragraph 25). Mr Simons recalled Sir David Keene's warning in *City and District Council of St Albans v Hunston Properties Ltd.* [2013] EWCA Civ 1610 (at paragraph 26) about section 78 appeals descending into the kind of exercise appropriate only for the process of plan preparation.
42. In this case, Mr Simons and Mr Stinchcombe submitted, by the time the Secretary of State came to make his decision in November 2016, the evidence given by Hallam Land at the inquiry in June 2015 in contending for a housing land supply of between 1.78 and 2.92 years was stale. The Secretary of State did not have to go beyond his conclusions that the shortfall was now "limited", and that the provision of market and affordable housing in an area with an "acknowledged" shortfall merited "substantial weight". These conclusions were, in themselves, fully justified. The existence of a shortfall in housing land supply was not a "principal controversial issue" in this appeal, even if it was in the Bubb Lane and Botley Road appeals. The parties had drawn the Secretary of State's attention to the inspectors' decisions in those appeals. But that did not make it necessary for him to deal with those decisions in the reasons he gave for concluding as he did on the evidence in this case. The reasons he gave were sufficient to explain the decision he made.
43. Mr Hill's argument was persuasively presented, but I accept it only in part.
44. The Secretary of State's decision here was taken in the light of the judgment of this court in *Hopkins Homes Ltd.*, but before the Supreme Court had dismissed the subsequent appeals – though on the basis of a narrower reading of the policy in paragraph 49 of the NPPF. As this case shows, however, nothing turns on the difference between the so-called "wider" interpretation of paragraph 49, in which the phrase "policies for the supply of housing" embraces local plan policies that create and constrain the supply, and the "narrow" interpretation, which excludes policies that operate to constrain the supply but does not prevent the decision-maker from giving such policies reduced weight under the policy in paragraph 14 of the NPPF when five years' supply is not demonstrated. Either way, the consequences will, in the end, be the same. The weight given to a policy ultimately depends not on its status but



on its effect – whether it enables the requisite five-year supply to be realized or acts contrary to that objective. Policies in a local plan are liable to carry less weight in the making of a decision on a proposal for housing development if – and because – their effect is to prevent a five-year supply of housing land (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at paragraphs 59 and 61, followed in this court in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, at paragraph 22).

45. None of that is controversial here, nor should it be. As Lord Carnwath said in *Hopkins Homes Ltd.* (at paragraph 54), “the primary purpose of paragraph 49 [of the NPPF] is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14”. And he went on to say (in paragraph 59) that the “important question” is “not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47”. If the local planning authority fails to demonstrate that supply, “it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies”. In such a case “[the] shortfall is enough to trigger the operation of the second part of paragraph 14”. As Lord Carnwath emphasized (in paragraph 61), a restrictive policy may not itself be “out of date” under paragraph 49, “but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles”.
46. As this court said in *Hopkins Homes Ltd.* (in paragraph 47), the policies in paragraphs 14 and 49 of the NPPF do not prescribe how much weight is to be given to relevant policies of the development plan in the determination of a planning application or appeal. Weight is always a matter for the decision-maker (see the speech of Lord Hoffmann in *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 W.L.R. 759, at p.780F-H) (paragraph 46). It will “vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy – such as the protection of a “green wedge” or of a gap between settlements”. The decision-maker must judge “how much weight should be given to conflict with policies for the supply of housing that are out-of-date”. This is “not a matter of law; it is a matter of planning judgment” (see the first instance judgments in *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin) (at paragraphs 70 to 75), *Phides* (at paragraphs 71 and 74), and *Woodcock Holdings Ltd. v Secretary of State for Communities and Local Government and Mid-Sussex District Council* [2015] EWHC 1173 (Admin) (at paragraphs 87, 105, 108 and 115)).
47. The NPPF does not state that the decision-maker must reduce the weight to be given to restrictive policies according to some notional scale derived from the extent of the shortfall against the five-year supply of housing land. The policy in paragraph 14 of the NPPF requires the appropriate balance to be struck, and a balance can only be struck if the considerations on either side of it are given due weight. But in a case where the local planning authority is unable to demonstrate five years’ supply of housing land, the policy leaves to the decision-maker’s planning judgment the weight he gives to relevant restrictive policies. Logically, however, one would expect the weight given to such policies to be less if the shortfall in the housing land supply is large, and more if it is small. Other considerations will be relevant too: the nature of the restrictive policies themselves, the interests they are intended to protect, whether they find support in policies of the NPPF, the implications of their being breached, and so forth.

48. Relevant authority in this court, and at first instance, does not support the proposition that, for the purposes of the appropriate balancing exercise under the policy in paragraph 14 of the NPPF, the decision-maker's weighting of restrictive local plan policies, or of the proposal's conflict with such policies, will always require an exact quantification of the shortfall in the supply of housing land. This is not surprising. If the court had ever said there was such a requirement, it would have been reading into the NPPF more than the Government has chosen to put there, and more than is necessarily implied in the policies it contains.
49. Several decisions at first instance were cited in argument before Supperstone J., including those in *Jelson Ltd.* (at paragraphs 2 and 13) – upheld on appeal, *Shropshire Council* (at paragraph 28), *South Oxfordshire District Council* (at paragraph 102), *Dartford Borough Council* (at paragraphs 44 and 45), *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2015] EWHC 1879 (Admin) (at paragraphs 42(ii) and 48) – upheld on appeal, and *Phides* (at paragraph 60). Mr Simons also referred to *Eastleigh Borough Council v Secretary of State for Communities and Local Government* [2014] EWHC 4225 (Admin) (at paragraphs 17 and 18). It is not necessary to explore the facts of these cases, or to set out the relevant observations of the judges who decided them. In summary, however, three main points emerge.
50. First, the relationship between housing need and housing supply in planning decision-making is ultimately a matter of planning judgment, exercised in the light of the material presented to the decision-maker, and in accordance with the policies in paragraphs 47 and 49 of the NPPF and the corresponding guidance in the Planning Practice Guidance (“the PPG”). The Government has chosen to express its policy in the way that it has – sometimes broadly, sometimes with more elaboration, sometimes with the aid of definitions or footnotes, sometimes not (see *Oadby and Wigston Borough Council v Secretary of State for Communities and Local Government* [2016] EWCA Civ 1040, at paragraph 33; *Jelson Ltd.*, at paragraphs 24 and 25; and *St Modwen Developments Ltd. v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, at paragraphs 36 and 37). It is not the role of the court to add to or refine the policies of the NPPF, but only to interpret them when called upon to do so, to supervise their application within the constraints of lawfulness, and thus to ensure that unlawfully taken decisions do not survive challenge.
51. Secondly, the policies in paragraphs 14 and 49 of the NPPF do not specify the weight to be given to the benefit, in a particular proposal, of reducing or overcoming a shortfall against the requirement for a five-year supply of housing land. This is a matter for the decision-maker's planning judgment, and the court will not interfere with that planning judgment except on public law grounds. But the weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet.
52. Thirdly, the NPPF does not stipulate the degree of precision required in calculating the supply of housing land when an application or appeal is being determined. This too is left to the decision-maker. It will not be the same in every case. The parties will sometimes be able to agree whether or not there is a five-year supply, and if there is a shortfall, what that shortfall actually is. Often there will be disagreement, which the decision-maker will have to resolve with as much certainty as the decision requires. In some cases the parties will not be able to agree whether there is a shortfall. And in others it will be agreed that a shortfall exists, but its extent will be in dispute. Typically, however, the question for the decision-maker will not be simply whether or not a five-year supply of housing land has been demonstrated. If there is a

shortfall, he will generally have to gauge, at least in broad terms, how large it is. No hard and fast rule applies. But it seems implicit in the policies in paragraphs 47, 49 and 14 of the NPPF that the decision-maker, doing the best he can with the material before him, must be able to judge what weight should be given both to the benefits of housing development that will reduce a shortfall in the five-year supply and to any conflict with relevant “non-housing policies” in the development plan that impede the supply. Otherwise, he will not be able to perform the task referred to by Lord Carnwath in *Hopkins Homes Ltd.*. It is for this reason that he will normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.

53. With those three points in mind, I do not think that in this case the Secretary of State could fairly be criticized, in principle, for not having expressed a conclusion on the shortfall in the supply of housing land with great arithmetical precision. He was entitled to confine himself to an approximate figure or range – if that is what he did. Government policy in the NPPF did not require him to do more than that. There was nothing in the circumstances of this case that made it unreasonable for him in the “Wednesbury” sense, or otherwise unlawful, not to establish a mathematically exact figure for the shortfall. It would not have been an error of law or inappropriate for him to do so, but if, as a matter of planning judgment, he chose not to do it there was nothing legally wrong with that.
54. But what was his conclusion on housing land supply? He obviously accepted, as the council had acknowledged, that the requisite five-year supply had not been demonstrated. In paragraph 30 of his decision letter he referred to the “absence of a 5-year housing land supply”. And in the same paragraph he made it plain that he was applying “the presumption in favour of sustainable development”, which, as he said, meant “that permission should be granted unless any adverse impacts of doing so significantly and demonstrably outweigh the benefits”. He went on, in the following paragraphs, to apply that presumption, in accordance with the policy in paragraph 14 of the NPPF. In the course of that balancing exercise, he referred, in paragraph 31, to the “acknowledged shortfall”, which went into the balance on the positive side. All of this is clear.
55. Not so clear, however, is whether the Secretary of State reached any concluded view on the scale of the “acknowledged shortfall”. His reference in paragraph 17 to “the limited shortfall in housing land supply” suggests he had not found it possible to accept Hallam Land’s case at the inquiry, as recorded by the inspector in paragraph 62 of his report, that the supply of housing land was as low as “2.92 years, or 1.78 years if the need for affordable housing is included”, or even the “material shortfall” to which the inspector had referred in paragraph 108, in the light of the council’s concession that it was “not able to demonstrate more than a four and a half years supply of deliverable housing land”. A “limited shortfall” could hardly be equated to a “material shortfall”. It would have been a more apt description of the shortfall the council had now acknowledged in conceding, or contending, that it was able to demonstrate a supply of 4.86 years – the figure to which the Secretary of State referred in paragraphs 19 and 30 of his decision letter.
56. On a fair reading of the decision letter as a whole, I do not think one can be sure that the Secretary of State did fix upon a precise figure for the housing land supply. It may be that, in truth, he went no further than to conclude that the supply remained below five years. He certainly did not adopt the figures put forward by Hallam Land at the inquiry, nor did he even mention those figures. And he neither adopted nor rejected the council’s position at the inquiry. Instead, he took care to say, in paragraph 19 of his decision letter, that he “notes” the inspector’s comment that at the time of the inquiry the council was not able to demonstrate

more than four and a half years' supply. He was equally careful not to adopt or reject the figure that was now put forward by the council – a supply of 4.86 years. In paragraph 19, again, he said merely that he “notes” the council was now of the view that it was “able to demonstrate a 4.86 year supply”. In paragraph 30, once again, he used the word “notes” when referring to the position the council had taken in its letter of 23 June 2016 – “now claiming to be able to demonstrate a 4.86 year supply”. He was not, I think, unequivocally endorsing that figure, but rather was relying on it as proof of “the absence of a 5-year housing land supply”.

57. The Secretary of State's conclusions on housing land supply are not said to be irrational on their face – nor could they be. If one leaves aside for the moment the decisions in the Bubb Lane and Botley Road appeals and what had been said about those decisions in the parties' further representations, they make sense. To describe the shortfall in housing land supply as “limited”, as the Secretary of State did in paragraph 17, seems reasonable if he was assuming – though without positively finding – that the housing land supply now stood at or about 4.86 years. And there is nothing necessarily inconsistent between that conclusion and his later conclusions: in paragraph 19, that the amount of new housing proposed was a “significant advantage”; in paragraph 30, that the “presumption in favour of sustainable development” fell to be applied in this case; and, in paragraph 31, that the provision of housing in an area with an “acknowledged shortfall” carried “substantial weight in favour of the development”.
58. All of this is logical, as far as it goes. It may reflect an assumption on the part of the Secretary of State that he could rely on the figure of 4.86 years for the housing land supply, or at least on a range of between four and half and 4.86 years, and that this was sufficient to found his conclusions on the weight to be given to the benefits of the housing development proposed and to its conflict with restrictive policies in the local plan.
59. This reading of the decision letter may be overly generous to the Secretary of State, because it resolves in his favour the doubt as to what figure, or range, he was actually prepared to accept for the present supply of housing land in the council's area. Assuming it to be correct, however, he can be acquitted of any misunderstanding or unlawful misapplication of NPPF policy. If he did adopt, or at least assume, a figure of 4.86 years' supply of housing land, or even a range of between four and half and 4.86 years, his approach could not, I think, be stigmatized as unlawful in either of those two respects. It could not be said, at least in the circumstances of this case, that he erred in law in failing to calculate exactly what the shortfall was. In principle, he was entitled to conclude that no greater precision was required than that the level of housing land supply fell within a clearly identified range below the requisite five years, and that, in the balancing exercise provided for in paragraph 14 of the NPPF, realistic conclusions could therefore be reached on the weight to be given to the benefits of the development and its conflict with relevant policies of the local plan. Such conclusions would not, I think, exceed a reasonable and lawful planning judgment.
60. However, even if that assumption is made in favour of the Secretary of State, there is in my view a fatal defect in his decision in his failure to engage with the conclusions on housing land supply in the recent decisions in the Bubb Lane and Botley Road appeals. Here, it seems to me, Mr Hill's argument is demonstrably well founded.
61. At least by the time the parties in this appeal were given the opportunity to make further representations, an important issue between them, and arguably the focal issue, was the extent of the shortfall in housing land supply. This was, or at least had now become, a “principal controversial issue” in the sense to which Lord Brown of Eaton-under-Heywood referred in *South Bucks District Council v Porter* (at paragraph 36 of his speech). A related issue was the

weight to be given to restrictive policies in the local plan – in particular, policy 3.CO. These were, in my view, clearly issues that required to be properly dealt with in the Secretary of State's decision letter, in the light of the representations the parties had made about them, so as to leave no room for doubt that the substance of those representations had been understood and properly dealt with. This being so, it was in my view incumbent on the Secretary of State to provide intelligible and adequate reasons to explain the conclusions he had reached on those issues, having regard to the parties' representations.

62. There is no explicit consideration of the inspectors' decisions in the Bubb Lane and Botley Road appeals in the Secretary of State's decision letter, nor any reference to them at all, despite the fact that they had been brought to his attention and their implications addressed in the further representations made to him after the inquiry. The inspectors' conclusions on housing land supply in those two decisions, and the consequences of those conclusions for the weight to be given to local plan policies, clearly were material considerations in this appeal. They would, in my view, qualify as material considerations on the basis of the case law relating to consistency in decision-making (see the judgment of Mann L.J. in *North Wiltshire District Council v Secretary of State for the Environment* (1993) 65 P. & C.R. 137, at p.145, most recently followed by this court in *DLA Delivery Ltd. v Baroness Cumberlege of Newick and Secretary of State for Communities and Local Government* [2018] EWCA Civ 1305, at paragraphs 29, and 42 to 56). But leaving aside the principle of consistency, they would have been, it seems to me, material considerations if only on the basis that they represented an up to date independent assessment of housing land supply in the council's area, which had been squarely put before the Secretary of State. Yet he said nothing at all about them. Nor is there any explicit reference to the relevant content of the representations the parties had made. It is clear that the reference in paragraph 19 of the decision letter to the council's view that it was now able to demonstrate 4.86 years' supply of housing land was taken from the "Update on Housing Land Supply" that it produced on 23 June 2016. But he did not refer to the very firm and thoroughly reasoned conclusions of the inspector in the Botley Road appeal, which were reached in the light of that evidence.
63. So it is not clear whether the Secretary of State confronted the conclusions of the inspectors in the Bubb Lane and Botley Road appeals, and in particular the latter. Had he done so, he would have appreciated that the conclusions they had reached on the scale of the shortfall in housing land supply could not reasonably be reconciled with his description of that shortfall, in paragraph 17 of his decision letter, as "limited". The language used by those two inspectors was distinctly different from that expression, and incompatible with it unless some cogent explanation were given. No such explanation was given. In both decision letters the shortfall was characterized as "significant", which plainly it was. This was more akin to saying that it was a "material shortfall", as the inspector in Hallam Land's appeal had himself described it in paragraph 108 of his decision letter. Neither description – a "significant" shortfall or a "material" one – can be squared with the Secretary of State's use of the adjective "limited". They are, on any view, quite different concepts.
64. Quite apart from the language they used to describe it, the inspectors' findings and conclusions as to the extent of the shortfall – only "something in the order of four year supply" in the Bubb Lane appeal and only "4.25 years' supply" in the Botley Road appeal – were also substantially different from the extent of the shortfall apparently accepted or assumed by the Secretary of State in his decision in this case, which was as high as 4.86 years' supply on the basis of evidence from the council that had been before the inspector in the Botley Road appeal and rejected by him.

65. One is left with genuine – not merely forensic – confusion on this important point, and the uncomfortable impression that the Secretary of State did not come to grips with the inspectors’ conclusions on housing land supply in those two very recent appeal decisions. This impression is not dispelled by his statement in paragraph 7 of the decision letter that he had given “careful consideration” to the relevant representations.
66. The significance of the parties’ dispute over the extent of the shortfall in housing land supply was not confined to that issue alone. It also bore on the question of how much weight should be given to restrictive policies in the local plan – in particular, policy 3.CO – for the purposes of the balancing exercise required by the policy in paragraph 14 of the NPPF. A factor to which the Secretary of State attached some importance in determining that “significant weight” should be given to policy 3.CO was that the shortfall in housing land supply was, as he said in paragraph 17 of the decision letter, only “limited”. This was an important issue in itself, and potentially decisive in the planning balance.
67. In the circumstances I am driven to the conclusion that the Secretary of State’s reasons were in this respect deficient, when considered in the light of the familiar principle in *South Bucks District Council v Porter*, and that Hallam Land was substantially prejudiced by the failure to provide intelligible and adequate reasons. The parties, and in particular Hallam Land, whose section 78 appeal was being dismissed after a protracted exchange of post-inquiry representations, were entitled to know why the Secretary of State had concluded as he did not only on the question of housing land supply but also on its consequences, in spite of two very fresh appeal decisions in which the question of supply had been decided in a materially different way. This was a matter on which proper reasons were undoubtedly called for, but were not given. In the absence of those reasons, one cannot be sure that the Secretary of State had come to his conclusion lawfully, having regard to all material considerations. It follows, in my view, that in failing to provide such reasons the Secretary of State erred in law and his decision is liable to be quashed for that error. I can see no basis on which the court, in the circumstances, could properly withhold an order to quash his decision. To do so, we would have to speculate as to the outcome of Hallam Land’s section 78 appeal on the assumption that the Secretary of State had regard to all material considerations, including the decisions in the Bubb Lane and Botley Road appeals.
68. Having come to that conclusion, I can take the other main issue more shortly.

*Should the Secretary of State have had regard to the inspector’s report on the Boorley Green appeal?*

69. The argument here is that the Secretary of State’s conclusion in this case that the shortfall in housing land supply was “limited” is impossible to reconcile with the conclusion in his decision letter in the Boorley Green appeal, issued about three weeks later, that the supply of housing land in the council’s area was “around four years”. This offended the principle that there is a public interest in planning decisions in like cases being consistent, and that, in cases of inconsistency, the decision-maker should explain that inconsistency (see the judgment of Mann L.J. in *North Wiltshire District Council*). Where relevant matters arose after the close of an inquiry, such as an inspector reporting to him on an appeal raising closely similar planning issues in the same area as the appeal in hand, it was incumbent on the Secretary of State to take reasonable steps to inform himself of those matters, and so avoid inconsistent decisions. The inspector’s report in the Boorley Green appeal fell into that category. By the time the Secretary

of State eventually came to make his decision on Hallam Land's appeal, he had had that report for almost three months.

70. Supperstone J. rejected this argument, on the simple basis that the Secretary of State's decision in the Boorley Green appeal had not yet been made when the decision in this case was issued, and "accordingly, it cannot have been a material consideration to which the principle of consistency can apply". Although the inspector's report on the Boorley Green appeal had been submitted to the Secretary of State before he made his decision in this case, "the principle of consistency in decision taking has no application to Inspectors' reports which are not decisions" (paragraph 33 of the judgment). The proposition that the Secretary of State must always have imputed knowledge of an inspector's report in an undetermined appeal was incorrect (paragraph 35). So was the submission that it was irrational, and a breach of the principle recognized by the House of Lords in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1976] 3 W.L.R. 641 that a decision-maker must take reasonable steps to acquaint himself of relevant matters, for the Secretary of State not to take into account an unpublished inspector's report in another appeal that was yet to be decided on its own, different facts (paragraph 38).
71. The judge also accepted the submission of Mr Simons and Mr Stinchcombe that there was, in fact, no material inconsistency between the two decisions. In both cases the Secretary of State had found that there was less than the requisite five-year supply of housing land, and that the consequences provided for by NPPF policy must follow. In his decision on the Boorley Green appeal the Secretary of State did not adopt the inspector's description of the shortfall as "significant". His conclusion in that case that the housing land supply "should be regarded as standing at around four years" was consistent with his corresponding conclusions in his decision in this case. And in both cases, given the shortfall, he gave significant weight to the provision of housing: "substantial weight" in this case, "considerable weight" in the Boorley Green case (paragraph 39). The Secretary of State's application of policy 3.CO of the local plan in this appeal, the weight he gave to that policy, and his relevant reasons did not betray an inconsistent approach with his inspector's or his own in the Boorley Green appeal (paragraphs 40 to 46).
72. I agree with the judge's approach to this issue, and the conclusions he reached upon it, essentially for the reasons he gave.
73. The principle of consistency in planning decision-making is not a principle of law. It is a principle of good practice, which the courts have traditionally supported and the Court of Appeal has recently confirmed in *DLA Delivery Ltd.*.
74. The principle applies to decisions of planning decision-makers, and is exercised with a view to the public interest in planning decisions in like cases being consistent, or if inconsistency arises, a clear explanation for it being given in the second of the two decisions concerned (see *DLA Delivery Ltd.*, at paragraphs 28 to 30, 46 and 47). It does not apply, in the case of decisions on planning appeals made by the Secretary of State, to inspectors' reports that have been submitted to the Secretary of State but on which his decision is still to be made at the time of the decision subject to challenge in the case before the court. The purpose and status of such a report is, essentially, that of advice given to the Secretary of State by his appointed inspector, which will inform the decision itself, but which the Secretary of State is not bound to follow and is free to reject, so long as he gives adequate reasons for doing so. It is an intermediate stage in the process of decision-making. The assessment and conclusions contained in the report do not constitute the Secretary of State's decision, nor do they form any



part of that decision unless and until they are incorporated into it, whether in whole or in part. Usually, as in the Boorley Green appeal, the inspector's report is not published until the Secretary of State has made his decision. On occasions, however, it may be released by the Secretary of State with a view to inviting further representations or evidence from the parties to deal with a particular issue raised in it.

75. It would be a radical and unjustified extension to the principle of consistency to embrace within it unpublished inspectors' reports, whose conclusions and recommendations the Secretary of State may in due course choose to accept or reject. Indeed, this would not be an extension of the principle of consistency but a distortion of it, because the basis for it would not be consistency between one decision and another, but consistency between a decision and a non-decision, a decision yet to be made. That is not a principle the court has ever recognized, nor even, in truth, a meaningful principle at all.

76. In my view, therefore, this part of the appeal is mistaken, and I would reject it.

### *Conclusion*

77. For the reasons I have given, I would allow this appeal on the first issue alone and on the basis I have indicated.

### **Lord Justice Hickinbottom**

78. For the reasons given by Lindblom L.J., with which I entirely agree, I agree that the appeal is allowed on the first issue alone.

### **Lord Justice Davis**

79. I also agree that the appeal should be allowed.

80. I would like to make some observations of my own on the first issue.

81. Clearly a determination of whether or not there is a shortfall in the 5 year housing supply in any particular case is a key issue. For if there is then the "tilted balance" for the purposes of paragraph 14 of the NPPF comes into play.

82. Here, it was common ground that there was such a shortfall. That being so, I have the greatest difficulty in seeing how an overall planning judgment thereafter could properly be made without having at least some appreciation of the extent of the shortfall. That is not to say that the extent of the shortfall will itself be a key consideration. It may or not be: that is itself a planning judgment, to be assessed in the light of the various policies and other relevant considerations. But it ordinarily will be a relevant and material consideration, requiring to be evaluated.

83. The reason is obvious and involves no excessive legalism at all. The extent (be it relatively large or relatively small) of any such shortfall will bear directly on the weight to be given to the benefits or disbenefits of the proposed development. That is borne out by the observations of Lindblom LJ in the Court of Appeal in paragraph 47 of *Hopkins Homes*. I agree also with

the observations of Lang J in paragraphs 27 and 28 of her judgment in the *Shropshire Council* case and in particular with her statements that "...Inspectors generally will be required to make judgments about housing need and supply. However these will not involve the kind of detailed analysis which would be appropriate at a "Development Plan inquiry" and that "the extent of any shortfall may well be relevant to the balancing exercise required under NPPF 14." I do not regard the decisions of Gilbert J, cited above, when properly analysed, as contrary to this approach.

84. Thus exact quantification of the shortfall, even if that were feasible at that stage, as though some local plan process was involved, is not necessarily called for: nor did Mr Hill QC so argue. An evaluation of some "broad magnitude" (in the phrase of Lindblom LJ in his judgment) may for this purpose be legitimate. But, as I see it, at least some assessment of the extent of the shortfall should ordinarily be made; for without it the overall weighing process will be undermined. And even if some exception may in some cases be admitted (as connoted by the use by Lang J in *Shropshire Council* of the word "generally") that will, by definition, connote some degree of exceptionality: and there is no exceptionality in the present case.
85. In this case (and in striking contrast to the Bubb Lane and Botley Road cases) a sufficient evaluation of the extent of the shortfall did not happen. Instead, the Secretary of State, having "noted" the council's updated figure of 4.86 year supply and without any express reference to the Bubb Lane and Botley Road cases, simply announced a bald conclusion that there was a "limited" shortfall in the housing land supply. Broad statements elsewhere in the decision letter to the effect that "the Secretary of State has taken into account" the post-inquiry representations do not overcome the defect of a demonstrable lack of engagement with the actual extent of the shortfall: thereby resulting in an absence of a reasoned conclusion on this material issue. Moreover, such a conclusion departs – again, for no stated reason – from the inspector's statement in paragraph 108 of his report that "it can be said that there is a material shortfall against the five year supply...".
86. Although it was submitted on behalf of the council that the result would still inevitably have been the same, even had the extent of the shortfall been properly addressed, I cannot accept that that is necessarily so. So the matter must be the subject of further consideration.
87. Thus I too would allow the appeal on this basis. I would reject the appellant's arguments on the second issue, for the reasons given by Lindblom LJ.

**Appendix 2 – Barnwell Manor Wind Energy Limited Appellant – And – (1)  
East Northamptonshire District Council (2) English Heritage (3)  
National Trust (4) The Secretary Of State For Communities And Local  
Government**

**[2014] EWCA Civ 137**



Neutral Citation Number: [2014] EWCA Civ 137

Case No: C1/2013/0843

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**THE HON. MRS JUSTICE LANG**  
**CO/4231/2012**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18/02/2014

**Before:**

**LORD JUSTICE MAURICE KAY**  
**VICE PRESIDENT OF THE COURT OF APPEAL, CIVIL DIVISION**  
**LORD JUSTICE SULLIVAN**  
and  
**LADY JUSTICE RAFFERTY**

-----  
**Between:**

**BARNWELL MANOR WIND ENERGY LIMITED**  
**- and -**

**Appellant**

**(1) EAST NORTHAMPTONSHIRE DISTRICT**  
**COUNCIL**

**Respondents**

**(2) ENGLISH HERITAGE**

**(3) NATIONAL TRUST**

**(4) THE SECRETARY OF STATE FOR COMMUNITIES**  
**AND LOCAL GOVERNMENT**

-----  
-----

**Gordon Nardell QC and Justine Thornton** (instructed by **Eversheds LLP**) for the **Appellant**  
**Morag Ellis QC and Robin Green** (instructed by **Sharpe Pritchard**) for the **First, Second and**  
**Third Respondents**

**The Fourth Respondent did not appear and was not represented**

Hearing date: 23<sup>rd</sup> January 2014  
-----

**Approved Judgment**

## **Lord Justice Sullivan:**

### **Introduction**

1. This is an appeal against the order dated 11<sup>th</sup> March 2013 of Lang J quashing the decision dated 12<sup>th</sup> March 2012 of a Planning Inspector appointed by the Secretary of State granting planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire. The background to the appeal is set out in Lang J's judgment: [2013] EWHC 473 (Admin).

### **Section 66**

2. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") imposes a "General duty as respects listed buildings in exercise of planning functions." Subsection (1) provides:

"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

### **Planning Policy**

3. When the permission was granted the Government's planning policies on the conservation of the historic environment were contained in Planning Policy Statement 5 (PPS5). In PPS5 those parts of the historic environment that have significance because of their historic, archaeological, architectural or artistic interest are called heritage assets. Listed buildings, Scheduled Ancient Monuments and Registered Parks and Gardens are called "designated heritage assets." Guidance to help practitioners implement the policies in PPS5 was contained in "PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide" ("the Practice Guide"). For present purposes, Policies HE9 and HE10 in PPS5 are of particular relevance. Policy HE9.1 advised that:

"There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be.... Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, including scheduled monuments ....grade I and II\* listed buildings and grade I and II\* registered parks and gardens....should be wholly exceptional."

Policy HE9.4 advised that:

"Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should:

- (i) weigh the public benefit of the proposal (for example, that it helps to secure the optimum viable use of the heritage asset in the interests of its long-term conservation) against the harm; and
- (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.”

Policy HE10.1 advised decision-makers that when considering applications for development that do not preserve those elements of the setting of a heritage asset, they:

“should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval.”

### **The Inspector’s decision**

- 4. The Inspector concluded that the wind farm would fall within and affect the setting of a wide range of heritage assets [22]<sup>1</sup>. For the purposes of this appeal the parties’ submissions largely focussed on one of the most significant of those assets: a site owned by the National Trust, Lyveden New Bield. Lyveden New Bield is covered by a range of heritage designations: Grade I listed building, inclusion in the Register of Parks and Gardens of Special Historic Interest at Grade I, and Scheduled Ancient Monument [44].
- 5. It was common ground between the parties at the inquiry that the group of designated heritage assets at Lyveden New Bield was probably the finest surviving example of an Elizabethan Garden, and that as a group the heritage asset at Lyveden New Bield had a cultural value of national, if not international significance. The Inspector agreed, and found that:

“...this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude.” [45]

- 6. The closest turbine in the wind farm site (following the deletion of one turbine) to Lyveden New Bield was around 1.3 km from the boundary of the Registered Park and 1.7 km from the New Bield itself. The Inspector found that:

“The wind turbines proposed would be visible from all around the site, to varying degrees, because of the presence of trees. Their visible presence would have a clear influence on the surroundings in which the heritage assets are experienced and

---

<sup>1</sup> [ ] refers to paragraph numbers in the Inspector’s decision.

as such they would fall within, and affect, the setting of the group.” [46]

This conclusion led the Inspector to identify the central question, as follows:

“Bearing in mind PPS5 Policy HE7, the central question is the extent to which that visible presence would affect the significance of the heritage assets concerned.” [46]

7. The Inspector answered that question in relation to Lyveden New Bield in paragraphs 47-51 of his decision letter.

“47. While records of Sir Thomas Tresham’s intentions for the site are relatively, and unusually, copious, it is not altogether clear to what extent the gardens and the garden lodge were completed and whether the designer considered views out of the garden to be of any particular significance. As a consequence, notwithstanding planting programmes that the National Trust have undertaken in recent times, the experience of Lyveden New Bield as a place, and as a planned landscape, with earthworks, moats and buildings within it, today, requires imagination and interpretation.

48. At the times of my visits, there were limited numbers of visitors and few vehicles entering and leaving the site. I can imagine that at busy times, the situation might be somewhat different but the relative absence of man-made features in views across and out of the gardens compartments, from the prospect mounds especially, and from within the garden lodge, give the place a sense of isolation that makes the use of one’s imagination to interpret Sir Thomas Tresham’s design intentions somewhat easier.

49. The visible, and sometimes moving, presence of the proposed wind turbine array would introduce a man-made feature, of significant scale, into the experience of the place. The array would act as a distraction that would make it more difficult to understand the place, and the intentions underpinning its design. That would cause harm to the setting of the group of designated heritage assets within it.

50. However, while the array would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the moated orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres, the turbines would not be so close, or fill the field of view to the extent, that they would dominate the

outlook from the site. Moreover, the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter). Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

51. On that basis, the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield and Lyveden Old Bield, or their relationship to each other. As a consequence, the effect on the setting of these designated heritage assets, while clearly detrimental, would not reach the level of substantial harm.”

8. The Inspector carried out “The Balancing Exercise” in paragraphs 85 and 86 of his decision letter.

“85. The proposal would harm the setting of a number of designated heritage assets. However, the harm would in all cases be less than substantial and reduced by its temporary nature and reversibility. The proposal would also cause harm to the landscape but this would be ameliorated by a number of factors. Read in isolation though, all this means that the proposal would fail to accord with [conservation policies in the East Midlands Regional Plan (EMRP)]. On the other hand, having regard to advice in PPS22, the benefits that would accrue from the wind farm in the 25 year period of its operation attract significant weight in favour of the proposal. The 10 MW that it could provide would contribute towards the 2020 regional target for renewable energy, as required by EMRP Policy 40 and Appendix 5, and the wider UK national requirement.

86. PPS5 Policies HE9.4 and HE10.1 require the identified harm to the setting of designated heritage assets to be balanced against the benefits that the proposal would provide. Application of the development plan as a whole would also require that harm, and the harm to the landscape, to be weighed against the benefits. Key principle (i) of PPS22 says that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily. I take that as a clear expression that the threshold of acceptability for a proposal like



the one at issue in this appeal is not such that all harm must be avoided. In my view, the significant benefits of the proposal in terms of the energy it would produce from a renewable source outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape.”

### **Lang J’s Judgment**

9. Before Lang J the First, Second and Third Respondents (“the Respondents”) challenged the Inspector’s decision on three grounds. In summary, they submitted that the Inspector had failed to:

- (1) have special regard to the desirability of preserving the settings of listed buildings, including Lyveden New Bield;
- (2) correctly interpret and apply the policies in PPS5; and
- (3) give adequate reasons for his decision.

The Secretary of State, the Fourth Respondent, had conceded prior to the hearing that the Inspector’s decision should be quashed on ground (3), and took no part in the proceedings before Lang J and in this Court.

10. Lang J concluded that all three grounds of challenge were made out. [72]<sup>2</sup> In respect of ground (1) she concluded that:

“In order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the “desirability of preserving... the setting” of listed buildings when weighing this factor in the balance with other ‘material considerations’ which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann’s statement in *Tesco Stores v Secretary of State for the Environment & Ors* [1995] 1 WLR 759, at 780F-H that the weight to be given to a material consideration was a question of planning judgment for the planning authority” [39]

Applying that interpretation of section 66(1) she concluded that:

“....the Inspector did not at any stage in the balancing exercise accord “special weight”, or considerable importance to “the desirability of preserving the setting”. He treated the “harm” to the setting and the wider benefit of the wind farm proposal as if those two factors were of equal importance. Indeed, he downplayed “the desirability of preserving the setting” by

---

<sup>2</sup> [ ] refers to paragraph numbers in the judgment.

adopting key principle (i) of PPS22, as a “clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided” (paragraph 86). In so doing, he applied the policy without giving effect to the section 66(1) duty, which applies to all listed buildings, whether the “harm” has been assessed as substantial or less than substantial.” [46]

11. In respect of ground (2) Lang J concluded that the policy guidance in PPS5 and the Practice Guide required the Inspector to assess the contribution that the setting made to the significance of the heritage assets, including Lyveden New Bield, and the effect of the proposed wind turbines on both the significance of the heritage asset and the ability to appreciate that significance. Having analysed the Inspector’s decision, she found that the Inspector’s assessment had been too narrow. He had failed to assess the contribution that the setting of Lyveden New Bield made to its significance as a heritage asset and the extent to which the wind turbines would enhance or detract from that significance, and had wrongly limited his assessment to one factor: the ability of the public to understand the asset based on the ability of “the reasonable observer” to distinguish between the “modern addition” to the landscape and the “historic landscape.” [55] - [65]
12. In respect of ground (3) Lang J found that the question whether Sir Thomas Tresham intended that the views from the garden and the garden lodge should be of significance was a controversial and important issue at the inquiry which the Inspector should have resolved before proceeding to assess the level of harm.[68] However, the Inspector’s reasoning on this issue was unclear. Having said in paragraph 47 of his decision that it was “not altogether clear ...whether the designer considered views out of the garden to be of any significance”, he had concluded in paragraph 50 that “the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter).” It was not clear whether this was a conclusion that there were no planned views (as submitted by the Appellant) or a conclusion that there were such views but the turbine array would not intrude into them. [70] – [71].

### **The Grounds of Appeal**

13. On behalf of the Appellant, Mr. Nardell QC challenged Lang J’s conclusions in respect of all three grounds. At the forefront of his appeal was the submission that Lang J had erred in concluding that section 66(1) required the Inspector, when carrying out the balancing exercise, to give “considerable weight” to the desirability of preserving the settings of the many listed buildings, including Lyveden New Bield. He submitted that section 66(1) did not require the decision-maker to give any particular weight to that factor. It required the decision-maker to ask the right question – would there be some harm to the setting of the listed building – and if the answer to that question was “yes” – to refuse planning permission unless that harm was outweighed by the advantages of the proposed development. When carrying out that balancing exercise the weight to be given to the harm to the setting of the listed

building on the one hand and the advantages of the proposal on the other was entirely a matter of planning judgment for the decision-maker.

14. Turning to the policy ground, he submitted that Lang J had erred by taking an over-rigid approach to PPS5 and the Practice Guide which were not intended to be prescriptive. Given the way in which those objecting to the proposed wind farm had put their case at the inquiry, the Inspector had been entitled to focus on the extent to which the presence of the turbines in views to and from the listed buildings, including Lyveden New Bield, would affect the ability of the public to appreciate the heritage assets.
15. In response to the reasons ground, he submitted that the question whether any significant view from the lodge or garden at Lyveden New Bield was planned or intended was a subsidiary, and not a “principal important controversial”, issue. In any event, he submitted that on a natural reading of paragraph 50 of the decision letter the Inspector had simply found that the turbines would not intrude into such significant views, if any, as were obviously planned or intended, so it had been unnecessary for him to resolve the issue that he had left open in paragraph 47 of the decision.

## **Discussion**

### Ground 1

16. What was Parliament’s intention in imposing both the section 66 duty and the parallel duty under section 72(1) of the Listed Buildings Act to pay “special attention ..... to the desirability of preserving or enhancing the character or appearance” of conservation areas? It is common ground that, despite the slight difference in wording, the nature of the duty is the same under both enactments. It is also common ground that “preserving” in both enactments means doing no harm: see South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141, per Lord Bridge at page 150.
17. Was it Parliament’s intention that the decision-maker should consider very carefully whether a proposed development would harm the setting of the listed building (or the character or appearance of the conservation area), and if the conclusion was that there would be some harm, then consider whether that harm was outweighed by the advantages of the proposal, giving that harm such weight as the decision-maker thought appropriate; or was it Parliament’s intention that when deciding whether the harm to the setting of the listed building was outweighed by the advantages of the proposal, the decision-maker should give particular weight to the desirability of avoiding such harm?
18. Lang J analysed the authorities in paragraphs [34] – [39] of her judgment. In chronological order they are: The Bath Society v Secretary of State for the Environment [1991] 1 WLR 1303; South Lakeland (see paragraph 16 above); Heatherington (UK) Ltd. v Secretary of State for the Environment (1995) 69 P & CR 374; and Tesco Stores Ltd. v Secretary of State for the Environment [1995] 1 WLR 759. Bath and South Lakeland were concerned with (what is now) the duty under

section 72. Heatherington is the only case in which the section 66 duty was considered. Tesco was not a section 66 or section 72 case, it was concerned with the duty to have regard to “other material considerations” under section 70(2) of the Town and Country Planning Act 1990 (“the Planning Act”).

19. When summarising his conclusions in Bath about the proper approach which should be adopted to an application for planning permission in a conservation area, Glidewell LJ distinguished between the general duty under (what is now) section 70(2) of the Planning Act, and the duty under (what is now) section 72(1) of the Listed Buildings Act. Within a conservation area the decision-maker has two statutory duties to perform, but the requirement in section 72(1) to pay “special attention” should be the first consideration for the decision-maker (p. 1318 F-H). Glidewell LJ continued:

“Since, however, it is a consideration to which special attention is to be paid as a matter of statutory duty, it must be regarded as having considerable importance and weight..... As I have said, the conclusion that the development will neither enhance nor preserve will be a consideration of considerable importance and weight. This does not necessarily mean that the application for permission must be refused, but it does in my view mean that the development should only be permitted if the decision-maker concludes that it carries some advantage or benefit which outweighs the failure to satisfy the section [72(1)] test and such detriment as may inevitably follow from that.”

20. In South Lakeland the issue was whether the concept of “preserving” in what is now section 72(1) meant “positively preserving” or merely doing no harm. The House of Lords concluded that the latter interpretation was correct, but at page 146E-G of his speech (with which the other members of the House agreed) Lord Bridge described the statutory intention in these terms:

“There is no dispute that the intention of section [72(1)] is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria.”

21. In Heatherington, the principal issue was the interrelationship between the duty imposed by section 66(1) and the newly imposed duty under section 54A of the Planning Act (since repealed and replaced by the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004). However, Mr. David Keene QC (as he then was), when referring to the section 66(1) duty, applied Glidewell LJ's dicta in the Bath case (above), and said that the statutory objective "remains one to which considerable weight should be attached" (p. 383).
22. Mr. Nardell submitted, correctly, that the Inspector's error in the Bath case was that he had failed to carry out the necessary balancing exercise. In the present case the Inspector had expressly carried out the balancing exercise, and decided that the advantages of the proposed wind farm outweighed the less than substantial harm to the setting of the heritage assets. Mr. Nardell submitted that there was nothing in Glidewell LJ's judgment which supported the proposition that the Court could go behind the Inspector's conclusion. I accept that (subject to grounds 2 and 3, see paragraph 29 et seq below) the Inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell LJ's judgment is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give "considerable importance and weight."
23. That conclusion is reinforced by the passage in the speech of Lord Bridge in South Lakeland to which I have referred (paragraph 20 above). It is true, as Mr. Nardell submits, that the ratio of that decision is that "preserve" means "do no harm". However, Lord Bridge's explanation of the statutory purpose is highly persuasive, and his observation that there will be a "strong presumption" against granting permission for development that would harm the character or appearance of a conservation area is consistent with Glidewell LJ's conclusion in Bath. There is a "strong presumption" against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight."
24. While I would accept Mr. Nardell's submission that Heatherington does not take the matter any further, it does not cast any doubt on the proposition that emerges from the Bath and South Lakeland cases: that Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise.
25. In support of his submission that, provided he asked the right question – was the harm to the settings of the listed buildings outweighed by the advantages of the proposed development – the Inspector was free to give what weight he chose to that harm, Mr. Nardell relied on the statement in the speech of Lord Hoffmann in Tesco that the

weight to be given to a material consideration is entirely a matter for the local planning authority (or in this case, the Inspector):

“If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State.” (p.780H).

26. As a general proposition, the principle is not in doubt, but Tesco was concerned with the application of section 70(2) of the Planning Act. It was not a case under section 66(1) or 72(1) of the Listed Buildings Act. The proposition that decision-makers may be required by either statute or planning policy to give particular weight to certain material considerations was not disputed by Mr. Nardell. There are many examples of planning policies, both national and local, which require decision-makers when exercising their planning judgment to give particular weight to certain material considerations. No such policies were in issue in the Tesco case, but an example can be seen in this case. In paragraph 16 of his decision letter the Inspector referred to Planning Policy Statement 22 Renewable Energy (PPS22) which says that the wider environmental and economic benefits of all proposals for renewable energy, whatever their scale, are material considerations which should be given “significant weight”. In this case, the requirement to give “considerable importance and weight” to the policy objective of preserving the setting of listed buildings has been imposed by Parliament. Section 70(3) of the Planning Act provides that section 70(1), which confers the power to grant planning permission, has effect subject to, inter alia, sections 66 and 72 of the Listed Buildings Act. Section 70(2) requires the decision-maker to have regard to “material considerations” when granting planning permission, but Parliament has made the power to grant permission having regard to material considerations expressly subject to the section 66(1) duty.
27. Mr. Nardell also referred us to the decisions of Ouseley J and this Court in Garner v Elmbridge Borough Council [2011] EWCA Civ 891, but the issue in that case was whether the local planning authority had been entitled to conclude that no harm would be caused to the setting of another heritage asset of the highest significance, Hampton Court Palace. Such was the weight given to the desirability of preserving the setting of the Palace that it was common ground that it would not be acceptable to grant planning permission for a redevelopment scheme which would have harmed the setting of the Palace on the basis that such harm would be outweighed by some other planning advantage: see paragraph 14 of my judgment. Far from assisting Mr. Nardell’s case, Garner is an example of the practical application of the advice in policy HE9.1: that substantial harm to designated heritage assets of the highest significance should not merely be exceptional, but “wholly exceptional”.
28. It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE9.4 and HE 10.1 should ignore the overarching statutory duty imposed by section 66(1), which properly understood (see Bath, South Somerset and Heatherington) requires considerable weight to be given by decision-makers to the desirability of preserving the setting of

all listed buildings, including Grade II listed buildings. That general duty applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer have to be “wholly exceptional”), but it does not follow that the “strong presumption” against the grant of planning permission has been entirely removed.

29. For these reasons, I agree with Lang J’s conclusion that Parliament’s intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the Inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The Appellant’s Skeleton Argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the Inspector’s planning judgment. In his oral submissions Mr. Nardell contended that the Inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the “significant weight” which the Inspector expressly gave in paragraph 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the Inspector set out the duty in paragraph 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.

## Ground 2

30. Grounds 2 and 3 are interlinked. The Respondents contend that the Inspector either misapplied the relevant policy guidance, or if he correctly applied it, failed to give adequate reasons for his conclusion that the harm to the setting of the listed buildings, including Lyveden New Bield, would in all cases be less than substantial. I begin with the policy challenge in ground 2. Lang J set out the policy guidance relating to setting in PPS5 and the Practice Guide in paragraphs 62-64 of her judgment. The contribution made by the setting of Lyveden New Bield to its significance as a heritage asset was undoubtedly a “principal controversial” issue at the inquiry. In paragraph 4.5.1 of his Proof of Evidence on behalf of the Local Planning Authority Mr. Mills, its Senior Conservation Officer, said:

“To make an assessment of the indirect impact of development or change upon an asset it is first necessary to make a judgment about the contribution made by its setting.”

Having carried out a detailed assessment of that contribution he concluded in paragraph 4.5.17:

“In summary, what Tresham created at the site was a designed experience that was intimately linked to the surrounding landscape. The presence of the four prospect mounts along with the raised terrace provide a clear indication of the relationship of the site with the surrounding landscape.”

Only then did he assess the impact of the proposed development on the setting by way of “a discussion as to the impact of the proposal on how the site is accessed and experienced by visitors.”

31. In its written representations to the inquiry English Heritage said of the significance and setting of Lyveden New Bield:

“The aesthetic value of the Lyveden Heritage Assets partly derives from the extraordinary symbolism and quality of the New Bield and the theatrical design of the park and garden. However, it also derives from their visual association with each other and with their setting. The New Bield is a striking presence when viewed on the skyline from a distance. The New Bield and Lyveden park and garden are wonderfully complemented by their undeveloped setting of woodland, pasture and arable land.”

In paragraph 8.23 English Heritage said:

“The New Bield and Lyveden park and garden were designed to be prominent and admired in their rural setting, isolated from competing structures. The character and setting of the Lyveden Heritage Assets makes a crucial contribution to their significance individually and as a group.”

32. In its written representations to the inquiry the National Trust said that each arm of the cruciform New Bield “was intended to offer extensive views in *all directions* over the surrounding parks and the Tresham estate beyond” (paragraph 11). The National Trust’s evidence was that “one if not *the Principal designed view from* within the lodge was from the withdrawing rooms which linked to the important Great Chamber and Great Hall on the upper two levels of the west arm of the lodge” (paragraph 12). The Trust contended that this vista survived today, and was directly aligned with the proposed wind farm site (emphasis in both paragraphs as in the original).



33. In his proof of evidence, the planning witness for the Stop Barnwell Manor Wind Farm Group said that:
- “....the views of Lyveden New Bield from the east, south-east and south, both as an individual structure and as a group with its adjoining historic garden and listed cottage, are views of a very high order. The proposed turbines, by virtue of their monumental scale, modern mechanical appearance, and motion of the blades, would be wholly alien in this scene and would draw the eye away from the New Bield, destroying its dominating presence in the landscape.”
34. This evidence was disputed by the Appellant’s conservation witness, and the Appellant rightly contends that a section 288 appeal is not an opportunity to re-argue the planning merits. I have set out these extracts from the objectors’ evidence at the inquiry because they demonstrate that the objectors were contending that the undeveloped setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset; that the New Bield (the lodge) had been designed to be a striking and dominant presence when viewed in its rural setting; and that the lodge had been designed so as to afford extensive views in all directions over that rural setting. Did the Inspector resolve these issues in his decision, and if so, how?
35. I endorse Lang J’s conclusion that the Inspector did not assess the contribution made by the setting of Lyveden New Bield, by virtue of its being undeveloped, to the significance of Lyveden New Bield as a heritage asset. The Inspector did not grapple with (or if he did consider it, gave no reasons for rejecting) the objectors’ case that the setting of Lyveden New Bield was of crucial importance to its significance as a heritage asset because Lyveden New Bield was designed to have a dominating presence in the surrounding rural landscape, and to afford extensive views in all directions over that landscape; and that these qualities would be seriously harmed by the visual impact of a modern man-made feature of significant scale in that setting.
36. The Inspector’s reason for concluding in paragraph 51 of the decision that the presence of the wind turbine array, while clearly having a detrimental effect on the setting of Lyveden New Bield, would not reach the level of substantial harm, was that it would not be so distracting that it would not prevent, or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield or Lyveden Old Bield or their relationship to each other.
37. That is, at best, only a partial answer to the objectors’ case. As the Practice Guide makes clear, the ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset. The contribution that setting makes does not depend on there being an ability to access or experience the setting: see in particular paragraphs 117 and 122 of the Practice Guide, cited in paragraph 64 of Lang J’s judgment.

38. The Inspector said that his conclusion in paragraph 51 of the decision letter that the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield had been reached on the basis of his conclusions in paragraph 50. In that paragraph, having said that the wind turbine array “would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres”, the Inspector gave three reasons which formed the basis of his conclusion in paragraph 51.
39. Those three reasons were:
- (a) The turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site.
  - (b) The turbine array would not intrude on any obviously intended, planned view out of the garden or the garden lodge (which has windows all around its cruciform perimeter).
  - (c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.
40. Taking those reasons in turn, reason (a) does not engage with the objectors’ contention that the setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset because Lyveden New Bield was designed to be the dominant feature in the surrounding rural landscape. A finding that the “readily visible” turbine array would not dominate the outlook from the site puts the boot on the wrong foot. If this aspect of the objectors’ case was not rejected (and there is no reasoned conclusion to that effect) the question was not whether the turbine array would dominate the outlook from Lyveden New Bield, but whether Lyveden New Bield would continue to be dominant within its rural setting.
41. Mr. Nardell’s submission to this Court was not that the Inspector had found that there were no planned views (cf. the submission recorded in paragraph 70 of Lang J’s judgment), but that the Inspector had concluded that the turbine array would not intrude into obviously intended or planned views if any. That submission is difficult to understand given the Inspector’s conclusion that the turbine array would be “readily visible” from the garden lodge, from the prospect mounds, and from various other places around the site. Unless the Inspector had concluded that there were no intended or planned views from the garden or the garden lodge, and he did not reach that conclusion (see paragraph 47 of the decision letter), it is difficult to see how he could have reached the conclusion that the “readily visible” turbine array would not “intrude” on any obviously intended or planned views from the garden lodge. I am inclined to agree with Mr. Nardell’s alternative submission that the Inspector’s conclusion that while “readily visible” from the garden lodge, the turbine array would not “intrude” on any obviously intended or planned view from it, is best understood

by reference to his third conclusion in paragraph 50. While visible in views from the garden lodge the turbine array would not intrude upon, in the sense of doing substantial harm to, those views, for the reasons given in the last sentence of paragraph 50.

42. I confess that, notwithstanding Mr. Nardell's assistance, I found some difficulty, not in understanding the final sentence of paragraph 50 – plainly any reasonable observer would know that the turbine array was a modern addition to the landscape and was separate from the planned historic landscape at Lyveden New Bield – but in understanding how it could rationally justify the conclusion that the detrimental effect of the turbine array on the setting of Lyveden New Bield would not reach the level of substantial harm. The Inspector's application of the "reasonable observer" test was not confined to the effect of the turbine array on the setting of Lyveden New Bield. As Lang J pointed out in paragraph 57 of her judgment, in other paragraphs of his decision letter the Inspector emphasised one particular factor, namely the ability of members of the public to understand and distinguish between a modern wind turbine array and a heritage asset, as his reason for concluding either that the proposed wind turbines would have no impact on the settings of other heritage assets of national significance [28] – [31]; or a harmful impact that was "much less than substantial" on the setting of a Grade 1 listed church in a conservation area [36].
43. Matters of planning judgment are, of course, for the Inspector. No one would quarrel with his conclusion that "any reasonable observer" would understand the differing functions of a wind turbine and a church and a country house or a settlement [30]; would not be confused about the origins or purpose of a settlement and a church and a wind turbine array [36]; and would know that a wind turbine array was a modern addition to the landscape [50]; but no matter how non-prescriptive the approach to the policy guidance in PPS5 and the Practice Guide, that guidance nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the "reasonable observer" test adopted by the Inspector in this decision.
44. If that test was to be the principal basis for deciding whether harm to the setting of a designated heritage asset was substantial, it is difficult to envisage any circumstances, other than those cases where the proposed turbine array would be in the immediate vicinity of the heritage asset, in which it could be said that any harm to the setting of a heritage asset would be substantial: the reasonable observer would always be able to understand the differing functions of the heritage asset and the turbine array, and would always know that the latter was a modern addition to the landscape. Indeed, applying the Inspector's approach, the more obviously modern, large scale and functional the imposition on the landscape forming part of the setting of a heritage asset, the less harm there would be to that setting because the "reasonable observer" would be less likely to be confused about the origins and purpose of the new and the old. If the "reasonable observer" test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion

that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paragraphs 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the Inspector had given proper effect to the section 66(1) duty.

Conclusion

45. For the reasons set out above, which largely echo those given by Lang J in her judgment, I would dismiss this appeal.

**Lady Justice Rafferty:**

46. I agree.

**The Vice President:**

47. I also agree.

**Appendix 3 – Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant) Decision**

**[2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)**



**Easter Term  
[2017] UKSC 37**

*On appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and  
[2015] EWHC 410 (Admin)*

## **JUDGMENT**

**Suffolk Coastal District Council (Appellant) v  
Hopkins Homes Ltd and another (Respondents)  
Richborough Estates Partnership LLP and another  
(Respondents) v Cheshire East Borough Council  
(Appellant)**

**before**

**Lord Neuberger, President  
Lord Clarke  
Lord Carnwath  
Lord Hodge  
Lord Gill**

**JUDGMENT GIVEN ON**

**10 May 2017**

**Heard on 22 and 23 February 2017**

*Appellants (Cheshire and  
Suffolk)*

Martin Kingston QC  
Hugh Richards  
Jonathan Clay  
Dr Ashley Bowes  
(Instructed by Sharpe  
Pritchard LLP)

*Respondent (Hopkins)*

Christopher Lockhart-  
Mummery QC  
Zack Simons

(Instructed by DLA Piper  
UK LLP (Birmingham))

*Respondent (Richborough)*

Christopher Young  
James Corbet Burcher  
(Instructed by Town Legal  
LLP)

*Respondent (SSCLG)*

Hereward Phillpot QC  
Richard Honey  
(Instructed by The  
Government Legal  
Department)

**LORD CARNWATH: (with whom Lord Neuberger, Lord Clarke, Lord Hodge and Lord Gill agree)**

***Introduction***

1. The appeals relate to the proper interpretation of paragraph 49 of the National Planning Policy Framework (“NPPF”), which is in these terms:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

2. The Court of Appeal observed that the interpretation of this paragraph had been considered by the Administrative Court on seven separate occasions between October 2013 and April 2015 with varying results. The court had been urged by all counsel “to bring much needed clarity to the meaning of the policy”. Notwithstanding the clarification provided by the impressive judgment of the court (given by Lindblom LJ), controversy remains. The appeals provide the opportunity for this court not only to consider the narrow issues of interpretation of para 49, but to look more broadly at issues concerning the legal status of the NPPF and its relationship with the statutory development plan.

3. Both appeals relate to applications for housing development, one at Yoxford in the administrative area of the Suffolk Coastal District Council (“the Yoxford site”), and the other near Willaston in the area of Cheshire East Borough Council (“the Willaston site”). In the first the council’s refusal of permission was upheld by the inspector on appeal, but his refusal was quashed in the High Court (Supperstone J), and that decision was confirmed by the Court of Appeal. In the second, the council failed to determine the application, and the appeal was allowed by the inspector. The council’s challenge succeeded in the High Court (Lang J), but that decision was reversed by the Court of Appeal, the judgment of the court being given by Lindblom LJ. Both councils appeal to this court.



### *The statutory provisions*

4. The relevant statutory provisions are found in the Town and Country Planning Act 1990 (“the 1990 Act”) and the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”).

### *Plan-making*

5. Part 2 of the 2004 Act deals with “local development”. Each local planning authority in England is required to “keep under review the matters which may be expected to affect the development of their area or the planning of its development” (2004 Act section 13), and to prepare a “local development scheme”, which (inter alia) specifies the local development documents which are to be “development plan documents” (section 15). The authority’s local development documents “must (taken as a whole) set out the authority’s policies (however expressed) relating to the development and use of land in their area” (section 17). “Local development documents” are defined by regulations made under section 17(7). In short they are documents which contain statements as to the development and use of land which the authority wishes to encourage, the allocation of sites for particular types of development, and development management and site allocations policies intended to guide determination of planning applications. Together they comprise the “development plan” or “local plan” for the area (Town and Country Planning (Local Planning) (England) Regulations (SI 2012/767) regulations 5 and 6).

6. In preparing such documents, the authority must have regard (inter alia) to “national policies and advice contained in guidance issued by the Secretary of State” (section 19(2)). Every development plan document must be submitted to the Secretary of State for “independent examination”, one of the purposes being to determine whether it complies with the relevant statutory requirements, including section 19 (section 20(1)(5)(a)). The Secretary of State may, if he thinks that a local development document is “unsatisfactory”, direct the local planning authority to modify the document (section 21). Section 39 gives statutory force to the concept of “sustainable development” (undefined). Any person or body exercising any function under Part 2 in relation to local development documents must exercise it “with the objective of contributing to the achievement of sustainable development”, and for that purpose must have regard to “national policies and advice contained in guidance issued by the Secretary of State ...” An adopted plan may be challenged on legal grounds by application to the High Court made within six weeks of the date of adoption, but not otherwise (section 113). Schedule 8 contained transitional provisions providing generally for a transitional period of three years, after which the plans produced under the previous system ceased to

have effect subject to the power of the Secretary of State to “save” specified policies by direction.

### *Planning applications*

7. Provision is made in the 1990 and 2004 Acts for the development plan to be taken into account in the handling of planning applications:

#### *1990 Act section 70(2)*

“In dealing with such an application the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.”

#### *2004 Act section 38(6)*

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

Unlike the development plan provisions, these sections contain no specific requirement to have regard to national policy statements issued by the Secretary of State, although it is common ground that such policy statements may where relevant amount to “material considerations”.

8. The principle that the decision-maker should have regard to the development plan so far as material and “any other material considerations” has been part of the planning law since the Town and Country Planning Act 1947. The additional weight given to the development plan by section 38(6) reproduces the effect of a provision first seen in the Planning and Compensation Act 1991 section

54A. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 WLR 1447, the equivalent provision (section 18A of the Town and Country Planning (Scotland) Act 1972) was described by Lord Hope (p 1450B) as designed to “enhance the status” of the development plan in the exercise of the planning authority’s judgment. Lord Clyde spoke of it as creating “a presumption” that the development plan is to govern the decision, subject to “material considerations”, as for example where “a particular policy in the plan can be seen to be outdated and superseded by more recent guidance”. However, the section had not touched the well-established distinction between the respective roles of the decision-maker and the court:

“It has introduced a requirement with which the decision-maker must comply, namely the recognition of the priority to be given to the development plan. It has thus introduced a potential ground on which the decision-maker could be faulted were he to fail to give effect to that requirement. But beyond that it still leaves the assessment of the facts and the weighing of the considerations in the hands of the decision-maker ...” (p 1458)

9. An appeal against a refusal of planning permission lies to the Secretary of State, who is subject to the same duty in respect of the development plan (1990 Act sections 78, 79(4)). Regulations under section 79(6) and Schedule 6 now provide for most categories of appeals, including those here in issue, to be determined, not by the Secretary of State, but by an “appointed person” (normally referred to as a planning inspector). The decision on appeal may be challenged on legal grounds in the High Court (section 288).

### ***The National Planning Policy Framework***

10. The Framework (or “NPPF”) was published on 27 March 2012. One purpose, in the words of the foreword, was to “(replace) over a thousand pages of national policy with around 50, written simply and clearly”, thus “allowing people and communities back into planning”. The “Introduction” explains its status under the planning law:

“Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in the preparation of local and

neighbourhood plans, and is a material consideration in planning decisions. ...”

11. NPPF is divided into three main parts: “Achieving sustainable development” (paragraphs 6 to 149), “Plan-making” (paragraphs 150 to 185) and “Decision-taking” (paragraphs 186 to 207). Paragraph 7 refers to the “three dimensions to sustainable development: economic, social and environmental”. Paragraph 11 begins a group of paragraphs under the heading “the presumption in favour of sustainable development”. Paragraph 12 makes clear that the NPPF “does not change the statutory status of the development plan as the starting point for decision making”. Paragraph 13 describes the NPPF as “guidance for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications”.

12. Paragraph 14, which is important in the present appeals, deals with the “presumption in favour of sustainable development”, which is said to be “at the heart of” the NPPF and which should be seen as “a golden thread running through both plan-making and decision-taking”. It continues:

**“For plan-making** this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.

For **decision-taking** this means:

- approving development proposals that accord with the development plan without delay; and

- where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
  - specific policies in this Framework indicate development should be restricted.”

We were told that the penultimate point (“any adverse impacts ...”) is referred to by practitioners as “the tilted balance”. I am content for convenience to adopt that rubric.

13. Footnote 9 (in the same terms for both parts) gives examples of the “specific policies” referred to:

“For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.”

14. These are said to be examples. Thus the list is not exhaustive. Further, although the footnote refers in terms only to policies in the Framework itself, it is clear in my view that the list is to be read as including the related development plan policies. Paragraph 14 cannot, and is clearly not intended to, detract from the priority given by statute to the development plan, as emphasised in the preceding paragraphs. Indeed, some of the references only make sense on that basis. For example, the reference to “Local Green Space” needs to be read with paragraph 76 dealing with that subject, which envisages local communities being able “through local and neighbourhood plans” to identify for “special protection green areas of particular importance to them”, and so “rule out new development other than in very special circumstances ...”

15. Section 6 (paragraphs 47 to 55) is entitled “Delivering a wide choice of high quality homes”. Paragraph 47 states the primary objective of the section:

“To boost significantly the supply of housing, local planning authorities should:

- use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in [the NPPF], including identifying key sites which are critical to the delivery of the housing strategy over the plan period;
- identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements with an additional buffer of 5% ... to ensure choice and competition in the market for land. ...;
- identify a supply of specific, developable sites or broad locations for growth, for years six to ten and, where possible, for years 11-15;
- for market and affordable housing, illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing describing how they will maintain delivery of a five-year supply of housing land to meet their housing target; and
- set out their own approach to housing density to reflect local circumstances.”

16. This group of provisions provides the context for paragraph 49, central to these appeals and quoted at the beginning of this judgment; and in particular for the advice that “relevant policies for the supply of housing” should not be considered “up-to-date”, unless the authority can demonstrate a five-year supply of deliverable housing sites.

17. Section 12 is headed “Conserving and enhancing the historic environment” (paragraphs 126 to 141). It includes policies for “designated” and “non-designated” heritage assets, as defined in the glossary. The former cover such assets as World Heritage Sites, Scheduled Monuments and others designated under relevant legislation. A non-designated asset is one “identified as having a degree of

significance meriting consideration in planning decisions because of its heritage interest”. Paragraph 135 states:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgment will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”

“Significance” in this context is defined by the glossary in Annex 2 as meaning “the value of a heritage asset to this and future generations because of its heritage interest”, which may be derived “not only from a heritage asset’s physical presence, but also from its setting”.

18. Annex 1 (“Implementation”) states that policies in the Framework “are material considerations which local planning authorities should take into account from the day of its publication” (paragraph 212); and that, where necessary, plans, should be revised as quickly as possible to take account of the policies “through a partial review or by preparing a new plan” (paragraph 213). However, it also provides that for a transitional period of a year decision-takers “may continue to give full weight to relevant policies adopted since 2004, even if there is a limited degree of conflict with this Framework” (paragraph 214); but that thereafter

“... due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in [the NPPF], the greater the weight that may be given).” (paragraph 215)

### ***NPPF - Legal status and Interpretation***

19. The court heard some discussion about the source of the Secretary of State’s power to issue national policy guidance of this kind. The agreed Statement of Facts quoted without comment a statement by Laws LJ (*R (West Berkshire District Council) v Secretary of State for Communities and Local Government* [2016] EWCA Civ 441; [2016] 1 WLR 3923, para 12) that the Secretary of State’s power to formulate and adopt national planning policy is not given by statute, but is “an exercise of the Crown’s common law powers conferred by the royal prerogative.” In the event, following a query from the court, this explanation was not supported by any of the parties at the hearing. Instead it was suggested that his powers

derived, expressly or by implication, from the planning Acts which give him overall responsibility for oversight of the planning system (see *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, paras 140-143 per Lord Clyde). This is reflected both in specific requirements (such as in section 19(2) of the 2004 Act relating to plan-preparation) and more generally in his power to intervene in many aspects of the planning process, including (by way of call-in) the determination of appeals.

20. In my view this is clearly correct. The modern system of town and country planning is the creature of statute (see *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 140-141). Even if there had been a pre-existing prerogative power relating to the same subject-matter, it would have been superseded (see *R (Miller) v Secretary of State for Exiting the European Union (Birnie intervening)* [2017] 2 WLR 583, para 48). (It may be of interest to note that the great *Case of Proclamations* (1610) 12 Co Rep 74, which was one of the earliest judicial affirmations of the limits of the prerogative (see *Miller* para 44) was in one sense a planning case; the court rejected the proposition that “the King by his proclamation may prohibit new buildings in and about London ...”.)

21. Although planning inspectors, as persons appointed by the Secretary of State to determine appeals, are not acting as his delegates in any legal sense, but are required to exercise their own independent judgement, they are doing so within the framework of national policy as set by government. It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than “guidance” and as such a “material consideration” for the purposes of section 70(2) of the 1990 Act (see *R (Cala Homes (South) Ltd) v Secretary of State for Communities and Local Government* [2011] EWHC 97 (Admin); [2011] 1 P & CR 22, para 50 per Lindblom J). It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.

### *Law and policy*

22. The correct approach to the interpretation of a statutory development plan was discussed by this court in *Tesco Stores Ltd v Dundee City Council (ASDA Stores Ltd intervening)* [2012] UKSC 13; 2012 SLT 739. Lord Reed rejected a submission that the meaning of the development plan was a matter to be determined solely by the planning authority, subject to rationality. He said:



“The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others ... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.” (para 18)

He added, however, that such statements should not be construed as if they were statutory or contractual provisions:

“Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann) ...” (para 19)

23. In the present appeal these statements were rightly taken as the starting point for consideration of the issues in the case. It was also common ground that policies in the Framework should be approached in the same way as those in a development plan. However, some concerns were expressed by the experienced counsel before us about the over-legalisation of the planning process, as illustrated by the proliferation of case law on paragraph 49 itself (see paras 27ff below). This is particularly unfortunate for what was intended as a simplification of national policy guidance, designed for the lay-reader. Some further comment from this court may therefore be appropriate.

24. In the first place, it is important that the role of the court is not overstated. Lord Reed's application of the principles in the particular case (para 18) needs to be read in the context of the relatively specific policy there under consideration. Policy 45 of the local plan provided that new retail developments outside locations already identified in the plan would only be acceptable in accordance with five defined criteria, one of which depended on the absence of any "suitable site" within or linked to the existing centres (para 5). The short point was the meaning of the word "suitable" (para 13): suitable for the development proposed by the applicant, or for meeting the retail deficiencies in the area? It was that question which Lord Reed identified as one of textual interpretation, "logically prior" to the exercise of planning judgment (para 21). As he recognised (see para 19), some policies in the development plan may be expressed in much broader terms, and may not require, nor lend themselves to, the same level of legal analysis.

25. It must be remembered that, whether in a development plan or in a non-statutory statement such as the NPPF, these are statements of policy, not statutory texts, and must be read in that light. Even where there are disputes over interpretation, they may well not be determinative of the outcome. (As will appear, the present can be seen as such a case.) Furthermore, the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly. With the support and guidance of the Planning Inspectorate, they have primary responsibility for resolving disputes between planning authorities, developers and others, over the practical application of the policies, national or local. As I observed in the Court of Appeal (*Wychavon District Council v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692; [2009] PTSR 19, para 43) their position is in some ways analogous to that of expert tribunals, in respect of which the courts have cautioned against undue intervention by the courts in policy judgments within their areas of specialist competence (see *Secretary of State for the Home Department v AH (Sudan)* [2007] UKHL 49; [2008] 1 AC 678, para 30 per Lady Hale.)

26. Recourse to the courts may sometimes be needed to resolve distinct issues of law, or to ensure consistency of interpretation in relation to specific policies, as in the *Tesco* case. In that exercise the specialist judges of the Planning Court have an important role. However, the judges are entitled to look to applicants, seeking to rely on matters of planning policy in applications to quash planning decisions (at local or appellate level), to distinguish clearly between issues of interpretation of policy, appropriate for judicial analysis, and issues of judgement in the application of that policy; and not to elide the two.

## *The two appeals*

### *Evolving judicial guidance*

27. To understand the reasoning of the two inspectors in the instant cases, it is necessary to set it in the context of the evolving High Court jurisprudence. The decisions in the two appeals were given in July and August 2014 respectively, after inquiries which ended in both cases in June. It is not entirely clear what information was available to the inspectors as to the current state of the High Court jurisprudence on this topic. The Yoxford inspector referred only to *William Davis v Secretary of State for Communities and Local Government* [2013] EWHC 3058 (Admin) (Lang J, 11 October 2013). This seems to have been the first case in which this issue had arisen. One of the grounds of refusal was based on a policy E20 the effect of which was generally to exclude development in a so-called “green wedge” area defined on the proposals map. Lang J recorded an argument for the developer that the policy should have been regarded as a “relevant policy for the supply of housing” under paragraph 49 because “the restriction on development potentially affects housing development”. The judge rejected this argument summarily, saying “policy E20 does not relate to the *supply* of housing and therefore is not covered by paragraph 49” (her emphasis).

28. By the time the two inquiries in the present case ended (June 2014), and at the time of the decisions, it seems that the most recent judicial guidance then available on the interpretation of paragraph 49 was that of Ouseley J in *South Northamptonshire Council v Secretary of State for Communities and Local Government and Barwood Land* [2014] EWHC 573 (Admin) (10 March 2014) (“the *Barwood Land* case”). Ouseley J favoured a wider reading which “examines the degree to which a particular policy generally affects housing numbers, distribution and location in a significant manner”. He thought that the language could not sensibly be given a very narrow meaning because

“This would mean that policies for the provision of housing which were regarded as out of date, nonetheless would be given weight, indirectly but effectively through the operation of their counterpart provisions in policies restrictive of where development should go ...”

He contrasted general policies, such as those protecting “the countryside”, with policies designed to protect specific areas or features “such as gaps between settlements, the particular character of villages or a specific landscape designation, all of which could sensibly exist regardless of the distribution and location of housing or other development.”

29. At that time, it seems to have been assumed that if a policy were deemed to be “out-of-date” under paragraph 49, it was in practice to be given minimal weight, in effect “disapplied” (see eg *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), para 72 per Lewis J). In other words, it was treated for the purposes of paragraph 14 as non-policy, in the same way as if the development plan were “absent” or “silent”. On that view, it was clearly important to establish which policies were or were not to be treated as out-of-date in that sense. Later cases (after the date of the present decisions) introduced a greater degree of flexibility, by suggesting that paragraph 14 did not take away the ordinary discretion of the decision-maker to determine the weight to be given even to an “out-of-date” policy; depending, for example, on the extent of the shortfall and the prospect of development coming forward to make it up (see eg *Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin), para 71 per Lindblom J). As will be seen, this idea was further developed in Lindblom LJ’s judgment in the present case.

#### *The Yoxford site*

30. In September 2013 Suffolk Coastal District Council refused planning permission for a development of 26 houses on land at Old High Road in Yoxford. The applicant, Hopkins Homes Ltd (“Hopkins”), appealed to an inspector appointed by the Secretary of State. He dismissed the appeal in a decision letter dated 15 July 2014, following an inquiry which began in February and ended in June 2014.

31. The statutory development plan for the area comprised the Suffolk Coastal District Local Plan (“SCDLP”) adopted in July 2013, and certain “saved” policies from the previous local plan (“the old Local Plan”) adopted in December 1994. Chapter 3 SCDLP set out a number of “strategic policies”, including:

- i) Under the heading “Housing”, Policy SP2 (“Housing numbers and Distribution”) proposed as its “core strategy” to make provision for 7,900 new homes across the district in the period 2010-2027. In addition, “an early review” to be commenced by 2015 was to identify “the full, objectively assessed housing needs” for the district, with proposals to ensure that these were met so far as consistent with the NPPF. A table showed the proposed locations across the district to make up the total of 7,900 homes.
- ii) Under the heading “The Spatial Strategy”, Policy SP19 (“Settlement Policy”) identified Yoxford as one of a number of Key Service Centres,

which provide “an extensive range of specified facilities”, and where “modest estate-scale development” may be appropriate “within the defined physical limits” (under policy SP27 - “Key and Local Service Centres”). Outside these settlements (under policy SP 29 - “The Countryside”) there was to be “no development other than in special circumstances”.

iii) The commentary to SP19 (para 4.05) explained that “physical limits boundaries” or “village envelopes” would be drawn up for the larger settlements, but that these limits are “a policy tool” and that where allocations are proposed outside the envelopes, the envelopes would be redrawn to include them.

32. In his report on the examination of the draft SCDLP, the inspector had commented on the adequacy of the housing provision (paras 31-51). He had noted how the proposed figure of 7,590 homes fell short of what was later agreed to be the requirement for the plan period of 11,000 extra homes. He had considered whether to suspend the examination to enable the council to assess the options. He decided not to do so, recognising that there were other sites which might come forward to boost supply, and the advantages of enabling these to be considered “in the context of an up-to-date suite of local development management policies that are consistent with the Framework ...”

33. The “saved” policies from the old plan included:

AP4 (“Parks and gardens of historic or landscape interest”)

“The District Council will encourage the preservation and/or enhancement of parks and gardens of historic and landscape interest and their surroundings. Planning permission for any proposed development will not be granted if it would have a materially adverse impact on their character, features or immediate setting.”

AP13 (“Special Landscape Areas”)

“The valleys and tributaries of (named rivers) and the Parks and Gardens of Historic or Landscape Interest are designated as Special Landscape Areas and shown on the Proposals Map. The District Council will ensure that no development will take place which would be to the material detriment of, or materially detract from, the special landscape quality.”

The appeal site formed part of an area of Historic Parkland (related to an 18th century house known as “Grove Park”) identified by the council in its Supplementary Planning Guidance 6 “Historic Parks and Gardens” (SPG) dated December 1995.

34. In his decision-letter on the planning appeal, the inspector identified the main issues as including: consideration of a five years’ supply of housing land, the principle of development outside the defined village, and the effects of the proposal on the local historic parkland and landscape (para 4). He referred to paragraphs 14 and 49 of the NPPF, which he approached on the basis that it was “very unlikely that a five years’ supply of housing land could now be demonstrated” (paras 5-6). There had been a debate before him whether the recent adoption of the local plan meant that its policies are “automatically up-to-date”, but he read the comments of the examining Inspector on the need for an early review of housing delivery as indicating the advantages of “considering development in the light of other up-to date policies”, whilst accepting that pending the review “relevant policies for the supply of housing may be considered not to be up-to-date” (para 7).

35. He then considered which policies were “relevant policies for the supply of housing” within the meaning of paragraph 49 (paras 8-9). Policy SP2 “which sets out housing provision for the District” was one such policy and “cannot be considered as up-to-date”. Policy SP15 relating to landscape and townscape “and not specifically to the supply of housing” was not a relevant policy “and so is up-to-date”. For the same reason, policy SP19, which set the settlement hierarchy and showed percentages of total proposed housing for “broad categories of settlements”, but did not suggest figures or percentages for individual settlements, was also seen as up-to-date; as was SP27, which related specifically to Key and Local Service Centres, and sought, among other things, to reinforce their individual character.

36. Of the saved policy AP4 he noted “a degree of conflict” with paragraph 215 of the Framework “due to the absence of a balancing judgement in Policy AP4”, but thought its “broad aim” consistent with the aims of the Framework. He said: “these matters reduce the weight that I attach to Policy AP4, although I shall attach some weight to it”. Similarly, he thought Policy AP13 consistent with the aims of the Framework to “recognise the intrinsic quality of the countryside and promote policies for the conservation and enhancement of the natural environment” (para 10).

37. In relation to the proposal for development outside the defined village limits, he observed that the appeal site was outside the physical limits boundary “as defined in the very recently adopted Local Plan”. He regarded the policy

directing development to within the physical limits of the settlement to be “in accordance with one of the core principles of the Framework, recognising the intrinsic character and beauty of the countryside”. On this aspect he concluded:

“I consider that the appeal site occupies an important position adjacent to the settlement, where Old High Road marks the end of the village and the start to the open countryside. The proposed development would be unacceptable in principle, contrary to the provisions of Policies SP27 and SP29 and contrary to one of the core principles of the Framework.”  
(paras 13-14)

38. As to its location within a historic parkland, he discussed the quality of the landscape and the impact of the proposal, and concluded:

“20. In relation to the built character and layout of Yoxford and its setting, Old High Road forms a strong and definite boundary to the built development of the village here. I do not agree that the proposal forms an appropriate development site in this respect, but would be seen as an ad-hoc expansion across what would otherwise be seen as the village/countryside boundary and the development site would not be contained to the west by any existing logical boundary.

21. In respect of these matters, the historic parkland forms a non-designated heritage asset, as defined in the Framework and I conclude that the proposal would have an unacceptable effect on the significance of this asset. In relation to local policies, I find that the proposal would be in conflict with the aims of Policies AP4 and AP13 of the old Local Plan ...”

39. Finally, under the heading “The planning balance”, he acknowledged the advantage that the proposal would bring “additional homes, including some affordable, within a District where the supply of homes is a concern”, but said:

“However, I have found significant conflict with policies in the recently adopted Local Plan. I have also found conflict with some saved policies of the old Local Plan and I have sought to balance these negative aspects of the proposal against its benefits. In doing so, I consider that the unacceptable effects of the development are not outweighed

by any benefits and means that it cannot be considered as a sustainable form of development, taking account of its three dimensions as set out at paragraph 7 of the Framework. Therefore, the proposal conflicts with the aims of the Framework.” (paras 31-32)

40. Hopkins challenged the decision in the High Court on the grounds that the inspector had misdirected himself in three respects: in short, as to the interpretation of NPPF paragraph 49; as to the status of the limits boundary to Yoxford; and as to the status of Policy AP4. The Secretary of State conceded that the inspector had misapplied the policy in paragraph 49. Supperstone J referred to the approach of Ouseley J in the *Barwood Land* case, with which he agreed, preferring it to that of Lang J in the *William Davis* case. He accepted the submission for Hopkins that the inspector had erred in thinking that paragraph 49 only applied to “policies dealing with the positive provision of housing”, with the result that his decision had to be quashed (paras 33, 38-41). He held in addition that this inspector had wrongly proceeded on the basis that the village boundary had been defined in the recent local plan, rather than in the earlier plan (para 46); and that he had failed properly to assess the significance of the heritage asset as required by paragraph 135 of the Framework (para 53). On 30 January 2015 Supperstone J quashed the decision. The council’s appeal to the Court of Appeal failed. It now appeals to this court.

#### *The Willaston site*

41. The Crewe and Nantwich Replacement Local Plan, adopted on 17 February 2005 (“the adopted RLP”) sought to address the development needs of the Crewe and Nantwich area for the period from 1996 to 2011. Under the 2004 Act, it should have been replaced by a Local Development Framework by 2008. This did not happen. As a consequence, the policies were saved by the Secretary of State by Direction (dated 14 February 2008).

42. Crewe is identified as a location for new housing growth in the emerging Local Plan, which is the subject of an ongoing examination in public and subject to objections, as are some of the proposed housing allocations. At the time of the public inquiry in June 2014, the emerging Local Plan was understood to be over two years from being adopted. Richborough Estates Partnership LLP (“Richborough”) in August 2013 applied to Cheshire East Borough Council for permission for a development of up to 170 houses on land north of Moorfields in Willaston. The council having failed to determine the application within the prescribed period, Richborough appealed. Willaston is a settlement within the defined urban area of Crewe, but for the most part is physically separate from the town. As a consequence there is open land between Willaston and the main built up area of Crewe, within which open land the appeal site lies.



43. In the appeal Cheshire East relied on the adopted RLP, in particular policies NE.2, NE.4, and RES.5:

i) Policy NE.2 (“Open Countryside”) seeks to protect the open countryside from new build development for its own sake, permitting only a very limited amount of small scale development mainly for agricultural, forestry or recreational purposes.

ii) Policy NE.4 (“Green Gap”) relates to areas of open land around Crewe (including the area of the appeal site) identified as needing additional protection “in order to maintain the definition and separation of existing communities”. The policy provides that permission will not be granted for new development, including housing, save for limited exceptions. It has the same inner boundary as NE.2.

iii) Policy RES.5 (“Housing in the open countryside”) permits only very limited forms of residential development in the open countryside, such as agricultural workers’ dwellings.

44. In his decision letter dated 1 August 2014 the inspector allowed the appeal and granted planning permission for up to 146 dwellings. He concluded that Cheshire East was unable to demonstrate the minimum five year supply of housing land required under paragraph 47 of the NPPF. The council appears to have accepted at the inquiry that policy NE.2 was a policy “for the supply of housing”. The inspector thought that the same considerations applied to the other two policies relied on by the council, all of which were therefore relevant policies within paragraph 49, although he acknowledged that policy NE.4 also performed strategic functions in maintaining the separation and definition of settlements and in landscape protection. He noted also that two of the housing sites in the emerging local plan were in designated “green gaps”, which led him to give policy NE.4 reduced weight (paras 31-35).

45. He concluded on this aspect (para 94):

“94. I have concluded that there is not a demonstrable five-year supply of deliverable housing sites (issue (i)). In the light of that, the weight of policies in the extant RLP relevant to the supply of housing is reduced (issue (ii)). That applies in particular to policies NE.2, NE.4 and RES.5 in so far as their extent derives from settlement boundaries that in turn reflect out-of-date housing requirements, though policy NE.4 also

has a wider purpose in maintaining gaps between settlements.”

46. He considered the application of the Green Gap policy, concluding that there would be “no significant harm to the wider functions of the gap in maintaining the definition and separation of these two settlements” (para 95). His overall conclusion was as follows:

“101. I conclude that the proposed development would be sustainable overall, and that the adverse effects of it would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. There are no specific policies in the NPPF that indicate that this development should be restricted. In such circumstances, and where relevant development plan policies are out-of-date, the NPPF indicates that permission should be granted unless material considerations indicate otherwise. There are no further material considerations that do so.”

47. The council’s challenge succeeded before Lang J, who quashed the inspector’s decision by an order dated 25 February 2015. In short, she concluded that the inspector had erred in treating policy NE.4 as a relevant policy under paragraph 49, and in seeking “to divide the policy, so as to apply it in part only” (para 63). Richborough’s appeal was allowed by the Court of Appeal with the result that the permission was restored. The council appeals to this court.

### ***The Court of Appeal’s interpretation***

48. Giving the judgment of the court, Lindblom LJ referred to the relevant parts of the NPPF and (at para 21) the three competing interpretations of paragraph 49:

- i) *Narrow*: limited to policies dealing only with the numbers and distribution of new housing, and excluding any other policies of the development plan dealing generally with the disposition or restriction of new development in the authority’s area.
- ii) *Wider*: including both policies providing positively for the supply of new housing and other policies, or “counterpart” policies, whose effect is to restrain the supply by restricting housing development in certain parts of the authority’s area.

iii) *Intermediate*: as under (ii), but excluding policies designed to protect specific areas or features, such as gaps between settlements, the particular character of villages or a specific landscape designation (as suggested by Ouseley J in the *Barwood Land* case).

49. He discussed the connection between paragraph 49 and the presumption in favour of sustainable development in paragraph 14, which lay in the concept of relevant policies being not “up-to-date” under paragraph 49, and therefore “out-of-date” for the purposes of paragraph 14 (para 30). He explained the court’s reasons for preferring the wider view of paragraph 49. He read the words “for the supply of housing” as meaning “affecting the supply of housing”, which he regarded as not only the “literal interpretation” of the policy, but “the only interpretation consistent with the obvious purpose of the policy when read in its context”. He continued:

“33. Our interpretation of the policy does not confine the concept of ‘policies for the supply of housing’ merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed - including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it - that policies of both kinds make the supply what it is.” (para 33)

50. The court rejected the “narrow” interpretation, advocated by the councils, which it thought “plainly wrong”:

“It is both unrealistic and inconsistent with the context in which the policy takes its place. It ignores the fact that in every development plan there will be policies that complement or support each other. Some will promote development of one type or another in a particular location, or by allocating sites for particular land uses, including the development of housing. Others will reinforce the policies of

promotion or the site allocations by restricting development in parts of the plan area, either in a general way - for example, by preventing development in the countryside or outside defined settlement boundaries - or with a more specific planning purpose - such as protecting the character of the landscape or maintaining the separation between settlements.” (para 34)

51. Whether a particular policy of a plan was a relevant policy in that sense was a matter for the decision-maker, not the court (para 45). Furthermore

“46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make ‘out-of-date’ policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ... Neither of those paragraphs of the NPPF says that a development plan policy for the supply of housing that is ‘out-of-date’ should be given no weight, or minimal weight, or, indeed, any specific amount of weight. They do not say that such a policy should simply be ignored or disapplied ...”

52. In relation to the Yoxford site, the court agreed with Supperstone J that the inspector had wrongly applied the erroneous “narrow” interpretation. Policies SP 19, 27 and 29, were all relevant policies in that they all “affect the supply of housing land in a real way by restraining it” (paras 51-52). The court also agreed with the judge that the inspector had been mistaken in assuming that the physical limits of the village had been established in the 2013 plan (para 58); and also that he had misapplied paragraph 135 relating to heritage assets (para 65). In that respect there could be no criticism of his treatment of the impact of the development on the local landscape, but what was lacking was

“... a distinct and clearly reasoned assessment of the effect the development would have upon the significance of the parkland as a ‘heritage asset’, and, crucially, the ‘balanced judgment’ called for by paragraph 135, ‘having regard to the scale of any harm or loss and the significance of the heritage asset’.” (para 65)

53. In respect of the Willaston site, the court disagreed with Lang J’s conclusion that policy NE.4 was not a relevant policy for the supply of housing.

The inspector had made no error of law in that respect, and his decision should be restored (paras 69-71).

## ***Discussion***

### *Interpretation of paragraph 14*

54. The argument, here and below, has concentrated on the meaning of paragraph 49, rather than paragraph 14 and the interaction between the two. However, since the primary purpose of paragraph 49 is simply to act as a trigger to the operation of the “tilted balance” under paragraph 14, it is important to understand how that is intended to work in practice. The general effect is reasonably clear. In the absence of relevant or up-to-date development plan policies, the balance is tilted in favour of the grant of permission, except where the benefits are “significantly and demonstrably” outweighed by the adverse effects, or where “specific policies” indicate otherwise. (See also the helpful discussion by Lindblom J in *Bloor Homes East Midlands Ltd v Secretary of State for Communities and Local Government* [2014] EWHC 754 (Admin), paras 42ff)

55. It has to be borne in mind also that paragraph 14 is not concerned solely with housing policy. It needs to work for other forms of development covered by the development plan, for example employment or transport. Thus, for example, there may be a relevant policy for the supply of employment land, but it may become out-of-date, perhaps because of the arrival of a major new source of employment in the area. Whether that is so, and with what consequence, is a matter of planning judgement, unrelated of course to paragraph 49 which deals only with housing supply. This may in turn have an effect on other related policies, for example for transport. The pressure for new land may mean in turn that other competing policies will need to be given less weight in accordance with the tilted balance. But again that is a matter of pure planning judgement, not dependent on issues of legal interpretation.

56. If that is the right reading of paragraph 14 in general, it should also apply to housing policies deemed “out-of-date” under paragraph 49, which must accordingly be read in that light. It also shows why it is not necessary to label other policies as “out-of-date” merely in order to determine the weight to be given to them under paragraph 14. As the Court of Appeal recognised, that will remain a matter of planning judgement for the decision-maker. Restrictive policies in the development plan (specific or not) are relevant, but their weight will need to be judged against the needs for development of different kinds (and housing in particular), subject where applicable to the “tilted balance”.

## Paragraph 49

57. Unaided by the legal arguments, I would have regarded the meaning of paragraph 49 itself, taken in context, as reasonably clear, and not susceptible to much legal analysis. It comes within a group of paragraphs dealing with delivery of housing. The context is given by paragraph 47 which sets the objective of boosting the supply of housing. In that context the words “policies for the supply of housing” appear to do no more than indicate the category of policies with which we are concerned, in other words “housing supply policies”. The word “for” simply indicates the purpose of the policies in question, so distinguishing them from other familiar categories, such as policies for the supply of employment land, or for the protection of the countryside. I do not see any justification for substituting the word “affecting”, which has a different emphasis. It is true that other groups of policies, positive or restrictive, may interact with the housing policies, and so *affect* their operation. But that does not make them policies *for* the supply of housing in the ordinary sense of that expression.

58. In so far as the paragraph 47 objectives are not met by the housing supply policies as they stand, it is quite natural to describe those policies as “out-of-date” to that extent. As already discussed, other categories of policies, for example those for employment land or transport, may also be found to be out-of-date for other reasons, so as to trigger the paragraph 14 presumption. The only difference is that in those cases there is no equivalent test to that of the five-year supply for housing. In neither case is there any reason to treat the shortfall in the particular policies as rendering out-of-date other parts of the plan which serve a different purpose.

59. This may be regarded as adopting the “narrow” meaning, contrary to the conclusion of the Court of Appeal. However, this should not be seen as leading, as the lower courts seem to have thought, to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression. The important question is not how to define individual policies, but whether the result is a five-year supply in accordance with the objectives set by paragraph 47. If there is a failure in that respect, it matters not whether the failure is because of the inadequacies of the policies specifically concerned with housing provision, or because of the over-restrictive nature of other non-housing policies. The shortfall is enough to trigger the operation of the second part of paragraph 14. As the Court of Appeal recognised, it is that paragraph, not paragraph 49, which provides the substantive advice by reference to which the development plan policies and other material considerations relevant to the application are expected to be assessed.

60. The Court of Appeal was therefore right to look for an approach which shifted the emphasis to the exercise of planning judgement under paragraph 14. However, it was wrong, with respect, to think that to do so it was necessary to

adopt a reading of paragraph 49 which not only changes its language, but in doing so creates a form of non-statutory fiction. On that reading, a non-housing policy which may objectively be entirely up-to-date, in the sense of being recently adopted and in itself consistent with the Framework, may have to be treated as notionally “out-of-date” solely for the purpose of the operation of paragraph 14.

61. There is nothing in the statute which enables the Secretary of State to create such a fiction, nor to distort what would otherwise be the ordinary consideration of the policies in the statutory development plan; nor is there anything in the NPPF which suggests an intention to do so. Such an approach seems particularly inappropriate as applied to fundamental policies like those in relation to the Green Belt or Areas of Outstanding Natural Beauty. No-one would naturally describe a recently approved Green Belt policy in a local plan as “out of date”, merely because the housing policies in another part of the plan fail to meet the NPPF objectives. Nor does it serve any purpose to do so, given that it is to be brought back into paragraph 14 as a specific policy under footnote 9. It is not “out of date”, but the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision-maker in accordance with ordinary principles.

### *The two appeals*

62. Against this background I can deal relatively shortly with the two individual appeals. On both I arrive ultimately at the same conclusion as the Court of Appeal.

63. It is convenient to begin with the Willaston appeal, where the issues are relatively straightforward. On any view, quite apart from paragraph 49, the current statutory development plan was out of date, in that its period extended only to 2011. On my understanding of paragraph 49, the council and the inspector both erred in treating policy NE.2 (“Countryside”) as “a policy for the supply of housing”. But that did not detract materially from the force of his reasoning (see the summary in paras 44-45 above). He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from “settlement boundaries that in turn reflect out-of-date housing requirements” (para 94). He recognised that policy NE.4 had a more specific purpose in maintaining the gap between settlements, but he considered that the proposal would not cause significant harm in this context (para 95). His final conclusion (para 101) reflected the language of paragraph 14 (the tilted balance). There is no reason to question the validity of the permission.

64. The Yoxford appeal provides an interesting contrast, in that there was an up-to-date development plan, adopted in the previous year; but its housing supply

policies failed to meet the objectives set by paragraph 47 of the NPPF. The inspector rightly recognised that they should be regarded as “out-of-date” for the purposes of paragraph 14. At the same time, it provides a useful illustration of the unreality of attempting to distinguish between policies for the supply of housing and policies for other purposes. Had it mattered, I would have been inclined to place in the housing category policy SP2, the principal policy for housing allocations. SP 19 (settlement policy) would be more difficult to place, since, though not specifically related to housing, it was seen (as the commentary indicated) as a “planning tool” designed to differentiate between developed areas and the countryside.

65. Understandably, in the light of the judicial guidance then available to him, the inspector thought it necessary to make the distinction, and to reflect it in the planning balance. He categorised both SP 19 and SP 27 as non-housing policies, and for that reason to be regarded as “up-to-date” (see para 35 above). Under the Court of Appeal’s interpretation this was an erroneous approach, because each of these policies “affected” the supply of housing, and should have been considered out-of-date for that reason. On my preferred approach his categorisation was not so much erroneous in itself, as inappropriate and unnecessary. It only gave rise to an error in law in so far as it may have distorted his approach to the application of paragraph 14.

66. As to that I agree with the courts below that his approach (through no fault of his own) was open to criticism. Having found that the settlement policy was up-to-date, and that the boundary had been approved in the recent plan, he seems to have attached particular weight to the fact that it had been defined in “the very recently adopted Local Plan” (para 37 above). I would not criticise him for failing to record that it had been carried forward from the previous plan. In some circumstances that could be a sign of robustness in the policy. But in this case it was clear from the plan itself that the settlement boundary was, to an extent at least, no more than the counterpart of the housing policies, and that, under the paragraph 14 balance, its weight might need to be reduced if the housing objectives were to be fulfilled. He should not have allowed its supposed status as an “up-to-date” policy under paragraph 49 to give it added weight. It is true that he also considered the merits of the site (quite apart from the plan) as providing a “strong and definite boundary” to the village (para 20). But I am not persuaded that this is sufficient to make it clear that the decision would have been the same in any event.

67. I do not, however, agree with the Court of Appeal’s criticisms of his treatment of the Heritage Asset policy. Paragraph 10 of his letter (summarised at para 36 above) is in my view a faithful application of the guidance in paragraph 215 of the Framework. That does not, and could not, suggest that even “saved” development plan policies are simply replaced by the policies in the Framework.



What it does is to indicate that the weight to be given to the saved policies should be assessed by reference to their degree of consistency with the Framework. That is what the inspector did. Having done so he was entitled to be guided by the policies as stated in the saved plans, and not treat them as replaced by paragraph 135.

68. In any event, in so far as there needs to be a “balanced judgement”, which the Court of Appeal regarded as “crucial” (para 65), that seems to me provided by the last section of his letter, headed appropriately “the planning balance”. Overall the letter seems to me an admirably clear and carefully constructed appraisal of the relevant planning issues, in the light of the judicial guidance then available. It is with some reluctance therefore that I feel bound to agree with the Court of Appeal that the decision must be quashed, albeit on narrower grounds. The result, is that the order of Supperstone J will be affirmed, and the planning appeal will fall to be re-determined.

### ***Conclusion***

69. For these reasons I would dismiss both appeals.

### **LORD GILL: (with whom Lord Neuberger, Lord Clarke and Lord Hodge agree)**

70. I agree with Lord Carnwath’s conclusions on the decision that is appealed against and with his views as to the disposal of these appeals. I only add some comments on the approach that should be taken in the application of the National Planning Policy Framework (the Framework) in planning applications for housing development.

71. These appeals raise a question as to the respective roles of the courts and of the planning authorities and the inspectors in relation to guidance of this kind; and a specific question of interpretation arising from paragraph 49 of the Framework.

72. In *Tesco Stores Ltd v Dundee City Council*, (*ASDA Stores Ltd intervening*) ([2012] UKSC 13) Lord Reed considered the former question in relation to development plan policies. He expressed the view, as a general principle of administrative law, that policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context (at para 18). The proper context, in my view, is provided by the over-riding objectives of the development plan and the specific objectives to which the policy statement in question is directed. Taking a similar approach to that of Lord Reed, I consider that

it is the proper role of the courts to interpret a policy where the meaning of it is contested, while that of the planning authority is to apply the policy to the facts of the individual case.

73. In my opinion, the same distinction falls to be made in relation to guidance documents such as the Framework. In both cases the issue of interpretation is the same. It is about the meaning of words. That is a question for the courts. The application of the guidance, as so interpreted, to the individual case is exclusively a planning judgment for the planning authority and the inspectors.

74. The guidance given by the Framework is not to be interpreted as if it were a statute. Its purpose is to express general principles on which decision-makers are to proceed in pursuit of sustainable development (paras 6-10) and to apply those principles by more specific prescriptions such as those that are in issue in these appeals.

75. In my view, such prescriptions must always be interpreted in the overall context of the guidance document. That context involves the broad purpose of the guidance and the particular planning problems to which it is directed. Where the guidance relates to decision-making in planning applications, it must be interpreted in all cases in the context of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, to which the guidance is subordinate. While the Secretary of State must observe these statutory requirements, he may reasonably and appropriately give guidance to decision-makers who have to apply them where the planning system is failing to satisfy an unmet need. He may do so by highlighting material considerations to which greater or less weight may be given with the over-riding objective of the guidance in mind. It is common ground that such guidance constitutes a material consideration (Framework, para 2).

76. In relation to housing, the objective of the Framework is clear. Section 6, “Delivering a wide choice of high quality homes”, deals with the national problem of the unmet demand for housing. The purpose of paragraph 47 is “to boost significantly the supply of housing”. To that end it requires planning authorities (a) to ensure *inter alia* that plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies set out in the Framework, including the identification of key sites that are critical to the delivery of the housing strategy over the plan period; (b) to identify and update annually a supply of specific deliverable sites sufficient to provide five years’ worth of housing against their housing requirements, with an additional buffer of 5% to ensure choice and competition in the market for the land; and (c) in the longer term to identify a supply of specific, developable sites or broad locations for growth for years six to ten and, where possible, for years 11-15.

77. The importance that the guidance places on boosting the supply of housing is further demonstrated in the same paragraph by the requirements that for market and affordable housing planning authorities should illustrate the expected rate of housing delivery through a housing trajectory for the plan period and set out a housing implementation strategy for the full range of housing, describing how they will maintain delivery of a five-years supply of housing land to meet their housing target; and that they should set out their own approach to housing density to reflect local circumstances. The message to planning authorities is unmistakeable.

78. These requirements, and the insistence on the provision of “deliverable” sites sufficient to provide the five years’ worth of housing, reflect the futility of authorities’ relying in development plans on the allocation of sites that have no realistic prospect of being developed within the five-year period.

79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.

80. This is the background to the interpretation of paragraph 49. The paragraph applies where the planning authority has failed to demonstrate a five-years supply of deliverable sites and is therefore failing properly to contribute to the national housing requirement. In my view, paragraph 49 derives its content from paragraph 47 and must be applied in decision-making by reference to the general prescriptions of paragraph 14.

81. To some extent the issue in these cases has been obscured by the doctrinal controversy which has preoccupied the courts hitherto between the narrow and the wider interpretation of the words “relevant policies for the supply of housing”. I think that the controversy results from too narrow a focus on the wording of that paragraph. I agree with the view taken by Lindblom LJ in his lucid judgement that the task of the court is not to try to reconcile the various first instance judgments on the point, but to interpret the policy of paragraph 49 correctly (at para 23). In interpreting that paragraph, in my opinion, the court must read it in the policy context to which I have referred, having in view the planning objective that the Framework seeks to achieve.

82. I regret to say that I do not agree with the interpretation of the words “relevant policies for the supply of housing” that Lindblom LJ has favoured. In my view, the straightforward interpretation is that these words refer to the policies by

which acceptable housing sites are to be identified and the five-years supply target is to be achieved. That is the narrow view. The real issue is what follows from that.

83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.

84. If the policies for the supply of housing are not to be considered as being up to date, they retain their statutory force, but the focus shifts to other material considerations. That is the point at which the wider view of the development plan policies has to be taken.

85. Paragraph 49 merely prescribes how the relevant policies for the supply of housing are to be treated where the planning authority has failed to deliver the supply. The decision-maker must next turn to the general provisions in the second branch of paragraph 14. That takes as the starting point the presumption in favour of sustainable development, that being the “golden thread” that runs through the Framework in respect of both the drafting of plans and the making of decisions on individual applications. The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts. The first is that the adverse impacts of a grant of permission, such as encroachment on the greenbelt, will “significantly and demonstrably” outweigh the benefits of the proposal. Whether the adverse impacts of a grant of permission will have that effect is a matter to be “assessed against the policies in the Framework, taken as a whole”. That clearly implies that the assessment is not confined to environmental or amenity considerations. The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to “specific policies in the Framework” cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers. Green belt policies are an obvious example.

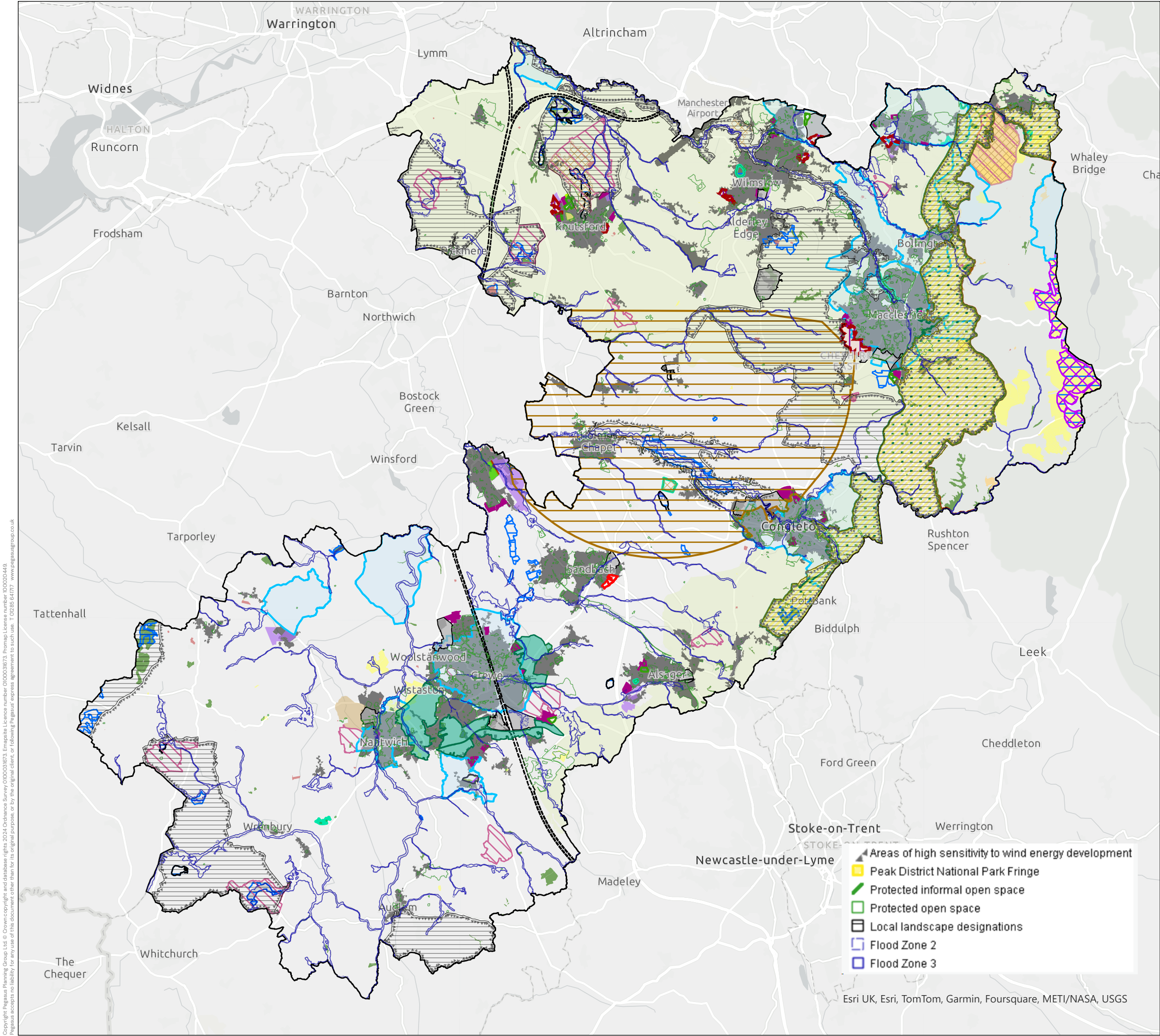
86. Although my interpretation of the guidance differs from that of the Court of Appeal, I have come to the same conclusions in relation to the disposal of these cases. I agree with Lord Carnwath that in the Willaston decision, notwithstanding an erroneous interpretation of policy NE.2 as being a policy for the supply of housing, the Inspector got the substance of the matter right and accurately applied

paragraph 14. I agree too with Lord Carnwath, for the reasons that he gives (at para 68), that in the Yoxford decision the Inspector made a material, but understandable, error. I would therefore dismiss both appeals.



## Appendix 4 – Cheshire East Constraints Plan





**KEY**

Site Boundary

Cheshire East District Boundary

CROW Access Land

National Parks

World Heritage Sites

Country Parks

Registered Parks and Gardens

Scheduled Monuments

Battlefields

Conservation Area

Ramsar

Local Nature Reserves

Special Protection Areas

Special Areas of Conservation

Sites of Special Scientific Interest

National Nature Reserves

Ancient Woodland

Green Belt

OS Built Up Areas

**Cheshire East Local Plan 2010–2030**

Employment

HS2 Safeguarding Zone

Housing

Housing and Employment Site

Jodrell Bank Consultation Zone

Land reserved for future Railway Station

Mixed Use

Mixed Use (Strategic Location)

Peak District National Park Fringe

Protected Informal Open Space

Protected Open Space

Safeguarded

Safeguarded Land

Strategic Green Gaps

Strategic Flood Risk Assessment (SFRA) Priority Area

REV	DATE	DESCRIPTION
-----	------	-------------

**CONSTRAINTS PLAN**

LAND EAST OF SANDBACH, CHESHIRE

J.S.BLOOR (SERVICES) LIMITED

DATE	SCALE	TEAM/DRAWN	APPROVED
20/11/2024	1:190,000@A3	EN/EH	KR

SHEET	REV	N	O	4KM
-	A			

DRAWING NUMBER  
P20\_3452\_EN\_13

**PEGASUS**  
GROUP

Copyright Pegasus Planning Group Ltd. © Crown copyright and database rights 2024. Ordnance Survey 010003873. Enmapate Licence number 010003873. Promap Licence number 100020443. Pegasus accepts no liability for any use of this document other than for its original purpose, or by the original client, or following Pegasus' express agreement to such use. T 01285 641077 www.pegasusgroup.co.uk

- Areas of high sensitivity to wind energy development
- Peak District National Park Fringe
- Protected informal open space
- Protected open space
- Local landscape designations
- Flood Zone 2
- Flood Zone 3

Esri UK, Esri, TomTom, Garmin, Foursquare, METI/NASA, USGS

Town & Country Planning Act 1990 (as amended)  
Planning and Compulsory Purchase Act 2004

**Manchester**

Queens House, Queen Street,  
Manchester, M2 5HT  
T 0161 3933399  
E [Manchester@pegasusgroup.co.uk](mailto:Manchester@pegasusgroup.co.uk)  
Offices throughout the UK.

# Expertly Done.

DESIGN | ECONOMICS | ENVIRONMENT | HERITAGE | LAND & PROPERTY | PLANNING | TRANSPORT & INFRASTRUCTURE

Pegasus Group is a trading name of Pegasus Planning Group Limited (07277000) registered in England and Wales.

Registered office: 33 Sheep Street, Cirencester, GL7 1RQ  
We are ISO certified 9001, 14001, 45001



[Pegasus\\_Group](#)



[pegasusgroup](#)



[Pegasus\\_Group](#)

**PEGASUSGROUP.CO.UK**