CHESHIRE WEST AND CHESTER COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL

Appeal by Gladman Developments Ltd against the non-determination of a planning application by Cheshire West and Chester Council for

"Outline planning application for the erection of up to 110 residential dwellings (including affordable housing), introduction of structural planting and landscaping, public open space, sustainable urban drainage system and associated works (all matters reserved except for access).(Full Flood Risk Assesment available online)"

At Land At Greenlands Tattenhall Chester

Planning Inspectorate Reference: 6013490

County Council Reference: 25/01764/OUT

Proof of Evidence of Jo Redmond MRTPI

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1.0 Introduction

1.1 I am Jo Redmond, a Member of the Royal Town Planning Institute since 2013. I hold a Masters in Civic Design (MCD) from the University of Liverpool and a BA (Hons) degree in Geography.

1.2 I've worked for Cheshire West and Chester Council for 7 years, and overall I have 19 years of experience working in town planning.

1.3 I am the Councils witness in relation to planning matters at this appeal. The evidence which I provide is true and has been prepared and presented in accordance with the professional standards of my role.

1.4 The purpose of my evidence is to explain the Council's position on the appeal proposal and to assess the development against the Development Plan, the National Planning Policy Framework and other material considerations and to explain the Councils position relation to the proposed development.

1.5 The evidence prepared and provided for this appeal in this proof of evidence is independent, has been prepared by me and is given in accordance with the guidance of my professional institution, the Royal Town Planning Institute.

2.0 Summary of Evidence

2.1 Since the submission of the appeal, further information has been provided and discussions have taken place between the parties. Having regard to the evidence now before the Inquiry, the Council does not oppose the grant of planning permission subject to conditions and the completion of a signed S106 agreement.

2.2 It is the Council's position that the proposed development is acceptable in planning terms. Subject to the imposition of appropriate planning conditions and the completion of a Section 106 Agreement securing the necessary planning obligations, I consider that planning permission should be granted.

2.3 The Council does not oppose the appeal and invites the Inspector to allow the appeal subject to the draft conditions set out in Appendix A and a signed S106 agreement.

2.4 The Council reserves the right to consider and respond to issues raised by the appellant in their submission of their evidence, through rebuttal proofs if necessary, in accordance with the directions raised within the CMC. The Council also reserves the right to consider and respond to any material developments in the emerging Modified Neighbourhood Plan preparation.

3.0 Background and scope of evidence

3.1 I have been instructed to appear as a witness at this Inquiry as I was the planning officer for the application.

3.2 Details of the applications background (including validation, site description, and proposed development) are set out in the agreed Planning SOCG, and details of consultation responses and a commentary on the sites planning history is provided in Appendix A of the Councils Appeal Statement.

3.3 At the time the appeal was lodged, had the application been determined by the Local Planning Authority, planning permission would have been refused for the following reasons:

1. The failure to provide adequate information in respect of the ecological value of the site and proposed mitigation to be secured by the proposals together with a full and competent assessment in respect of measures in respect of biodiversity net gain. As such, the proposal is contrary to Policy N2 of the National Planning Policy Framework, the requirements of Schedule 7A of the Town and Country Planning Act 1990 (as amended) (Environment Act 2021), Conservation of Habitats and Species Regulations 2017 (as amended) and Policies ENV4 of the Cheshire West and Chester Local Plan (Part One) and DM44 of the Cheshire West and Chester Local Plan (Part Two).

2. In the absence of a secured planning obligation under section 106 of the 1990 Act to provide for appropriate contributions, and affordable housing (without adequate justification for its absence), there would be an unacceptable impact on local infrastructure and under provision of affordable homes. The application would be contrary to policy STRAT11 and SOC1 of the Cheshire West and Chester Local Plan (Part One) and the NPPF.

3.4 My evidence is presented under the following sections; information submitted since the Council's Appeal Statement; Planning Policy context; the main issues set out within the Post Conference Notice for the Case Management Conference and The Three Derogation Tests.

4.0 Information submitted since the Council's Appeal Statement

4.1 Since the Appeal Statements submission, the appellant has provided the following ecology reports and documents;

- Ecological Impact Assessment, Version 2.0, Document Reference: 11425.005 (dated 01.10.26)
- Bat Roost Survey Technical Report, Version 2.0, Document Reference: 11425.006 (dated 01.10.26)
- Bat Activity Survey Technical Report, Version 1.0, Document Reference: 11425.004 (dated 30.09.26)
- Biodiversity Net Gain (BNG) Feasibility Report, Version 4.0, Document Reference: 11425.001 (dated 01.10.26)
- Statutory Biodiversity Metric, calculation iteration version 3 (dated 29th September 2026)

- Great Crested Newt District Level Licensing Impact Assessment & Conservation Payment Certificate

4.2 The Councils Biodiversity Officer has reviewed the above documents and a summary of their response is provided in the "main issues" section below (the biodiversity officers latest position is set out in the updated biodiversity comments CD 3.30 and Ecology SOCG.

4.3 Overall, the Biodiversity Officer no longer has an objection to the proposed development and considers that subject to satisfactory consideration of the 'Three Tests' (set out below), the proposals comply with ecological local and national planning policy and national legislation, provided ecology conditions are imposed (included within the draft conditions – Appendix A) and a legal agreement is made to secure a Biodiversity Net Gain (BNG) Regulation and Reporting fee of £15,458.39.

4.4 Whilst the Section 106 Agreement has yet to be completed, the parties have reached agreement on the principal Heads of Terms. The Council is currently drafting the agreement and anticipates issuing a draft to the Appellant shortly. The justification for the planning obligations sought by the Council will be set out in the Councils CIL Compliance Statement.

5.0 Planning policy context

5.1 A full list of the policies relevant to this Appeal are included within the Planning SOCG.

5.2 The policies of the Development Plan most relevant to the determination of this appeal (i.e. the main issues) are set out below.

Cheshire West and Chester Local Plan (Part One) Strategic Policies (LP1) (adopted on 29 January 2015). (CD 6.11)

5.3 Policy STRAT 1 seeks to reduce the need to travel by private car and locate new housing, with good accessibility to existing or proposed local shops, community facilities and primary schools and with good connections to public transport.

5.4 Policy STRAT 2 sets out a hierarchy to establish where development should be directed, notably the city of Chester and the three main towns, followed by rural key service centres and finally local service centres. The site lies adjacent to the settlement boundary for Tattenhall, and it therefore forms part of land that is designated as countryside on the proposals map forming part of the local development plan.

5.5 Policy STRAT8 states that proposals that are in accordance with relevant policies in the Plan and support the sustainable development principles set out in the policy, will be approved without delay, unless material considerations include otherwise.

5.6 Policy STRAT 9 applies and this policy states that to protect the countryside, development outside of settlements will only be approved in limited circumstances,

and new residential development does not feature among the list of developments that will be permitted in the countryside.

5.7 Policy STRAT11 states that development should facilitate the timely provision of additional facilities, services and infrastructure to meet identified need arising from the development in locations that are appropriate and accessible.

5.8 Policy SOC1 requires up to 30% affordable housing on qualifying sites, and that this is provided on-site, well-designed and appropriately integrated unless justified otherwise.

5.9 Policy SOC3 states that in order to support mixed, balanced and sustainable communities, the Council will seek to provide a mix of housing types, tenures and sizes of both market and affordable housing.

5.10 Policy SOC6 states that the Council will seek to protect, manage and enhance existing open spaces, sport and recreation facilities to provide a network of diverse, multi-functional open spaces.

5.11 Policy ENV2 requires that development protects and, where possible, enhances local landscape character and distinctiveness. Proposals must take full account of site characteristics, views to and from the surrounding area, and the need to retain and integrate valued landscape features within the design.

5.12 Policy ENV4 states that the Local Plan will safeguard and enhance biodiversity and geodiversity through the identification and protection of sites and/or features of international, national and local importance. Development should not result in any net loss of natural assets and should seek to provide net gains.

Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (LP2) was adopted on 18 July 2019 (CD 6.12)

5.13 Policy DM19 seeks to restrict residential development in the countryside outside identified settlements. New housing will only be supported where it is necessary to meet minimum housing requirements or falls within specified exceptions, including replacement dwellings, change of use or conversion of a building, affordable housing, essential rural workers' dwellings, new housing supported through a neighbourhood plan, or certain forms of previously developed land redevelopment.

5.14 Policy DM20 states that proposals for residential development must take account of the housing needs of the local area to ensure a range of house types, tenures and sizes are provided across the borough.

5.15 Policy DM23 states that proposals for residential development should meet the affordable housing requirements set out in Local Plan (Part One) policy SOC1 and reiterates that affordable housing should be provided on site.

5.16 Policy DM29 states that development proposals should take every reasonable opportunity to promote and positively contribute to the health of the borough.

5.17 Policy DM35 makes it clear that all new residential development of 11 units or more must make provision for open space.

5.18 Policy DM36 states that developer contributions will be required to enhance existing provision of playing pitches, based on additional demand generated by the new residential development and the sufficiency of existing provision to meet current and projected need.

5.19 Policy DM44 states that development will be supported where there is no net loss of natural assets and wherever possible, it delivers net gains within the borough and commensurate with the size and scale of potential impact, proposals must be designed in line with the mitigation hierarchy, with compensatory measures only considered as a last resort.

5.20 Policy GBC2 of LP2 requires compliance with ENV2 (and STRAT9) and refers to the guidance set out within the Council's Landscape Strategy.

The Tattenhall Neighbourhood Plan (TNP) (Made in June 2014) (CD 6.10)

5.21 Policy 1 states that to enable managed housing growth in the Parish proposals involving up to 30 homes will be allowed within or immediately adjacent to the built-up part of Tattenhall village over the period 2010 to 2030, or smaller scale development of exception sites within the hamlets of Gatesheath and Newton-by-Tattenhall over the period 2010 to 2030. Although Policy 1 was not referenced in the original Appeal Statement, its omission was an oversight. I consider that this a relevant policy to this appeal.

5.22 Policy 2 complements these strategic design policies by providing locally specific criteria that reinforce high-quality and context-sensitive development. In requiring proposals to accord with the Village Design Statement, maintain important views and settlement gaps, respect local landscape character and incorporate locally distinctive materials, Policy 2 adds detailed local design guidance that supports the objectives of Local Plan Policies ENV6 and DM3, and ensures development at the village edge is of an appropriate scale and design in accordance with LP1 Policy STRAT9.

5.23 Policy 4 requires new development to protect and support the village's local facilities by assessing its impact on services such as shops, community buildings, utilities, health services and schools, and by demonstrating how any additional pressure will be addressed. The policy aims to maintain the vitality of Tattenhall by encouraging proposals that enhance or diversify local services, including improvements to utilities.

5.24 Policy 6 states that new development should respect local landscape character by reference to the Village Design Statement.

The emerging Tattenhall and District Modified Neighbourhood Plan (ENP) (submission version) (6.05)

5.25 The ENP is at an advanced stage and, having completed examination and been subject to modifications by the examiner, will now continue to advance to Referendum stage.

5.26 Policy 1 refers to the settlement boundary defined by the Neighbourhood Plan and states that housing proposals of 10 or more dwellings should provide a mix of types, tenures and sizes of homes taking into account identified housing needs, and include the provision of affordable housing.

5.27 Policy 2 states that development will be supported where it safeguards or enhances the local character and historic and natural assets of the surrounding area, incorporates locally distinctive features, does not erode the important undeveloped gaps between Tattenhall, Newton-by-Tattenhall and Gatesheath, accords with the Design Code, respects local landscape quality ensuring that views and vistas identified in Appendix A are maintained wherever possible and takes every opportunity to incorporate features that improve its environmental performance. Where development exceeds 30 dwellings, proposals must be designed as a series of smaller character areas (typically 30–100 dwellings each) which together reflect the overarching character area within which the site is located. Development proposals should also seek to safeguard and enhance trees, woodlands and hedgerows, take into account natural features and development resulting in the loss or deterioration of irreplaceable habitats will only be supported in wholly exceptional circumstances.

5.28 Policy 4 states that proposals for major development will be required, where proportionate to their scale and nature, to identify their likely impact on local infrastructure, services and facilities and to demonstrate how any such impacts will be addressed or mitigated. Account must also be taken of the cumulative impacts arising from the new development combined with other schemes that have planning permission. Where appropriate, mitigation may include on-site provision, financial contributions, or other measures secured through planning obligations.

5.29 Policy 7 refers to the identified site allocations, stating that the Neighbourhood Plan allocates land to the north and south of Frog Lane, for a phased, high-quality, mixed use, residential led development of up to 600 dwellings, as shown on the Policies Map.

6.0 Main issues set out within the Post Conference Notice for the Case Management Conference

a) The effect of the proposal on on-site ecology;

6.1 At appeal submission, key ecological surveys were still missing, despite requests for them earlier in the application process and this was still the case when the Council submitted the Appeal Statement. These surveys have now been provided and have been reviewed by the Council’s Biodiversity Officer.

6.2 The Council's detailed position on ecology and biodiversity matters is set out the Ecology SOCG and within the updated consultation response of the Council's Biodiversity Officer (CD 3.30), (Appendix B to this report) upon which I rely for the purposes of this proof.

6.3 In terms of bats, surveys found no roosting bats on site, with activity limited to along the eastern and southern boundaries, and the scheme will retain and enhance the most valuable bat habitats, particularly the Keys Brook corridor. The Biodiversity

Officer concludes that an offence is unlikely under Regulation 43(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) and therefore a bat licence is unlikely to be required.

6.4 In terms of Great Crested Newts, the site contains one low-suitability pond and lies within a pond-rich landscape, creating a risk of harm to individual GCN, but impacts will be addressed through District Level Licensing, precautionary construction measures, and long-term habitat creation and management which would be secured by condition and biodiversity net gain. Due to the risk of harm to individual GCNs and the loss of GCN terrestrial habitat, an offence is likely under Regulation 43 (1) of the Conservation of Habitats and Species Regulations 2017 (as amended) and therefore a licence is likely to be required under Regulation 55 of the same. The Three Derogation Tests must be considered.

6.5 No badger setts or signs were recorded, though grassland offers foraging potential, and precautionary measures plus a pre-construction survey (which could be conditioned) would ensure protection of any transient badgers.

6.6 No otters or suitable holt features were found along Keys Brook. The Biodiversity Officer concludes that an offence is unlikely under Regulation 43(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) and therefore an otter licence is unlikely to be required.

6.7 No evidence of water voles or suitable habitat features was recorded. The Biodiversity Officer concludes that and offence is unlikely under and Section 16 of the Wildlife and Countryside Act 1981 (as amended) and therefore a water vole licence is unlikely to be required.

6.8 In respect of reptiles, brown hare and polecat, these species are unlikely to be present due to sub-optimal habitat and are therefore unlikely to be affected.

6.9 The site supports habitat suitable for hedgehogs, requiring a hedgehog commuting plan secured by condition.

6.10 Hedgerows and trees provide nesting opportunities for passerines, and bird boxes should be secured by condition.

6.11 In terms of protected habitats, most mature trees and hedgerows would be retained and protected through the Construction Environmental Management Plan, and potential impacts on Keys Brook can be appropriately mitigated.

6.12 The scheme would deliver over 10% BNG, with long-term habitat creation and management secured through conditions and a Section 106 Agreement.

6.13 Significant BNG is to be delivered onsite. This is required to be secured and monitored over a 30-year period. In this case it is proposed that the onsite BNG is secured by condition. Monitoring arrangements must be provided for, and the Council is prepared to monitor the significant onsite habitat creation and management measures over the 30-year management period, subject to a BNG Regulation and Reporting fee of £15,458.39, to be secured via planning obligation.

6.14 The Council's Biodiversity Officer has advised that the proposal would deliver biodiversity enhancements (in accordance with the NPPF), through the installation of bat and bird boxes, hedgehog homes, insect houses and hibernacula. These should be secured by way of planning conditions should the appeal be allowed.

6.15 Overall, and having regard to the advice of the Council's Biodiversity Officer, I am satisfied that the proposed development would not give rise to unacceptable ecological impacts and complies with the relevant biodiversity provisions of the NPPF, Schedule 7A of the Town and Country Planning Act 1990 (as amended) (Environment Act 2021), Conservation of Habitats and Species Regulations 2017 and the Cheshire West and Chester Local Plan (Part One Policy ENV4 and Part Two Policy DM44). Subject to the recommended planning conditions and the biodiversity measures secured through the Section 106 Agreement, no objection is maintained on biodiversity grounds.

6.16 Where a European protected species may be affected for the purpose of preserving public health or public safety, or other imperative reasons of overriding public interest, Regulation 9 (1) and 9 (3) of The Conservation of Habitats and Species Regulations 2017 (as amended) requires all local planning authorities be satisfied that there is no satisfactory alternative and there will be no detriment to the favourable conservation status of the European protected species. This matter is dealt with separately in Section 7.0 below.

b) Whether the proposal would make appropriate provision for affordable housing and local infrastructure;

i) Affordable Housing

6.17 As confirmed in the agreed Planning SOCG, the appellant proposes to deliver 33 affordable dwellings on site which meets the 30% requirement set out within LP1 Policy SOC1. The appellant has not set out where the affordable dwellings would be located around the site, nor have they proposed details of a cascade mechanism or sizes of affordable dwellings.

6.18 As the application is submitted in outline form, with appearance and layout reserved for subsequent approval, the Section 106 Agreement should secure the affordable housing requirement, including the cascade mechanism, broad tenure split and size limit. The precise layout, design and distribution of the affordable housing dwellings across the site can be determined through the reserved matters process. I consider this to be an appropriate and proportionate approach for outline planning applications.

6.19 The advice of the Council's Housing Officer is provided in CD 3.06 and this has formed the basis of the S106 agreement drafting.

6.20 Policy 1 of the submission version of the ENP (submission version) states that housing proposals of 10 or more dwellings should include the provision of on-site affordable housing in accordance with NDMP H08 and that a short eligibility cascade shall also be included within the agreement. The supporting text states that in response to the Regulation 14 consultation CWAC suggested that a "short eligibility cascade" of one

week for social rental and four weeks for Intermediate affordable housing (rental and ownership options at below market value) be added to the policy for inclusion within any S106 agreement.

6.21 The Examiners Report has now been published (CD 6.06) which states that the full eligibility cascade for Rented Affordable Housing and Low Cost ownership should be described in the supporting text. It also modifies the policy wording to state that affordable housing will be subject to a S106 Legal agreement ensuring that it remains an affordable dwelling for local people in perpetuity, where supported by the latest Housing Needs Assessment.

6.22 Whilst the Councils previous position was that the ENP attracted limited weight, the ENP has now completed examination, and the Examiner has concluded that, subject to modifications, it meets the Basic Conditions and should proceed to referendum. Therefore, significant weight is now attached to the Plan's emerging spatial strategy as modified by the Examiner.

6.23 In my opinion, the emerging Neighbourhood Plan Policy 1 is consistent with LP1 Policy SOC1 and LP2 Policy DM23 and subject to satisfactory completion of the S106 agreement securing appropriate affordable housing (including an agreed cascade mechanism), the proposed development complies with Policy SOC1 of LP1, DM23 of LP2, NPPF DM Policy HO8, and Policy 1 of the Made Neighbourhood Plan and Policy 1 of the ENP, in respect of affordable housing provision.

ii) Infrastructure

Public Health

6.24 The development would generate increased demand for and use of local health care services. The NHS Cheshire & Merseyside Group, which is responsible for commissioning primary healthcare services in this vicinity, has assessed the development and has stated that a financial contribution is required to mitigate the impact of the development on services (consultation response provided in CD 3.03). The amount will be calculated at reserved matters stage based on their standard local NHS development formula of £737 per 1 bed unit, £1052 per 2 bed unit, £1473 per 3 bed unit, £1842 per 4 bed unit and £2526 per 5 bed unit. The outline nature of the application prevents the appropriate contribution being confirmed at this stage.

6.25 The contribution can be secured through a Section 106 Agreement. In my opinion, the proposed healthcare contribution is necessary to address the impacts arising from the development and satisfies the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010, in that it is necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

6.26 The appellant has agreed to secure the contribution through a Section 106 Agreement and subject to the satisfactory completion of a S106 agreement securing this contribution, I consider the proposal to accord with policy STRAT11 of LP1, Policy

DM29 of LP2, the NPPF, and Policy 4 of the made Neighbourhood Plan and Policy 4 of the ENP in this regard.

Education

6.27 The proposed development would increase the demand for local education services and the estimated number of school aged children the development is anticipated to generate is on the below basis;

Age range	**2 bedrooms**	**3 bedrooms**	**4 bedrooms**	**5+ bedrooms**
Pre-school (age 0-4)	0.06	0.075	0.085	0.10
Primary (age 5-11)	0.08	0.17	0.27	0.36
Secondary (age 12-16)	0.04	0.15	0.22	0.32
Sixth Form (age 17-19)	0.02	0.06	0.10	0.14

6.28 At the time of the education department commenting on the original application, there was a surplus of 118 Primary School spaces (at Tattenhall Park Primary School) and a surplus of 13 Secondary School spaces (at Tarporley High School).

6.29 The Council's Education Team has assessed the proposal and raises no objection subject to the provision of a financial contribution towards SEND education infrastructure (consultation response provided in CD 3.10) (estimated figure of £170,320.00). Given that the application is submitted in outline form, the precise amount of the contribution would be calculated upon submission of the reserved matters application, having regard to the final dwelling mix and occupancy assumptions. The mechanism for calculating and securing the appropriate contribution would be incorporated within the Section 106 Agreement.

6.30 In my opinion, the proposed education contribution is necessary to mitigate the additional demand for education places generated by the development. The contribution would be directly related to the development and fairly and reasonably related in scale and kind to its impacts. I therefore consider that it satisfies the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

6.31 The appellant has agreed (within the Planning SOCG) to secure the contribution through a Section 106 Agreement and subject to the completion of a S106 agreement securing this contribution, I consider the proposal to accord with the objectives of STRAT11, the NPPF, and Policy 4 of the made Neighbourhood Plan and Policy 4 of the ENP in this regard.

Open Space

6.32 The Council's Green Infrastructure Officer has assessed the proposal against the requirements of the Council's Open Space Study and advises that on-site provision should be made for equipped play space, amenity greenspace and allotments. Having regard to the indicative masterplan (CD 2.02), the Green Infrastructure Officer is satisfied that sufficient land is available within the site to accommodate these requirements, with the detailed design, layout and specification to be determined through the reserved matters process (consultation response provided in CD 3.29).

6.33 In addition to the on-site provision, the development would be required to make financial contributions towards off-site parks and recreation grounds, play space and youth facilities, cricket, hockey and football provision set out below.

- £1,312.64 towards parks and recreation grounds (per dwelling)
- £185.96 towards play space youth (per dwelling)
- £81.23 towards cricket (per dwelling) (capital pitch sum)
- £32.26 towards hockey (per dwelling) (capital pitch sum)
- £425.09 towards football (per dwelling) (maintenance sum 10 years)

6.34 These contributions would be secured through a Section 106 Agreement and are intended to mitigate the additional demand generated by future residents of the development.

6.35 In my opinion, the proposed on-site provision and off-site financial contributions are necessary to address the recreational and open space needs arising from the development. They are directly related to the proposal and fairly and reasonably related in scale and kind to its impacts. I therefore consider that they satisfy the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

6.36 The appellant has agreed to secure the above open space and sports contributions through a Section 106 Agreement and subject to the required financial contributions being secured through the Section 106 Agreement, I am satisfied that the proposal would accord with Policy STRAT11 of LP1, SOC6 of LP1, Policy DM35 of LP2, the NPPF, and Policy 4 of the made Neighbourhood Plan and Policy 4 of the ENP in this regard.

c) Whether the scale and location of proposed development would be acceptable, having regard to the emerging neighbourhood plan

6.37 Policy DM4 of the Framework states in paragraph 1 that that when considering development proposals, relevant policies in emerging development plans may be given weight according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to relevant policies and the degree of compliance of the relevant policies in the emerging plan with the policies for plan-making in this Framework.

6.38 The ENP has completed examination, and the Examiner has concluded that, subject to modifications, it meets the Basic Conditions and should proceed to referendum. Significant weight is therefore attached to the Plan's emerging spatial strategy as modified by the Examiner, including the allocation of land north and south of Frog Lane for approximately 600 dwellings.

6.39 The appeal site was considered through the ENP process but was not selected for allocation with the reasoning given as follows.

Overall, Site 6 was not omitted because of a single overriding constraint. The preferred Hybrid Scenario provided sufficient land to meet and exceed the indicative housing requirement and was considered preferable when the SEA, settlement form, community preference, land availability, opportunities for coordinated mitigation and community benefits, and relevant planning history were considered together..(para 21 CD 6.11).

6.40 The proposal conflicts with the spatial strategy of the ENP and that conflict weighs materially against the proposal.

6.41 NPPF Policy DM4 states that development proposals should not be refused on the grounds of being premature, other than in the limited circumstances where the development proposal is so substantial, or its cumulative effect alongside other development proposals would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

6.42 Having regard to Policy DM4 of the Framework, as set out above, the ENP is at an advanced stage but is not yet formally part of the development plan for the area.

6.43 The concerns that have been raised regarding prematurity and the potential effect that the appeal development (individually and cumulatively with other development proposals), would have in terms of undermining the plan making process by predetermining decisions about scale, location or phasing of new development are considered below.

d) the overall planning balance.

6.44 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that where 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.

6.45 For the purposes of the Local Plan, the proposed housing development is located outside of the Tattenhall settlement boundary. It is therefore in the countryside and is not a type of development which requires a countryside location. As such, the proposal is there is considered to be conflict with Policies STRAT1, STRAT2 and STRAT9 of the Local Plan

6.46 The proposal also represents a clear conflict with Policy 1 of the made Tattenhall Neighbourhood Plan in that it proposes over 30 dwellings.

6.47 The NPPF is a material consideration of critical importance for decision-making on development proposals. It contains national development management policies which should be read alongside the policies in the local development plan. The NPPF (Annex A) makes clear that where policies of the development plan are materially inconsistent with development management policies of the framework then they should be given very limited weight.

6.48 NPPF NDM Policy S3 states that decisions on development proposals should apply a presumption in favour of sustainable development. This means that NPPF Policy S4 should be applied when considering development proposals within settlements, and NDM Policy S5 should be applied when considering development proposals outside of settlements. It also means that, in all locations, development proposals which accord with both an up-to-date development plan and the NDM policies in the NPPF should be approved without delay.

6.49 Policy S5 sets out that certain forms of development should be approved outside of settlements unless the benefits of doing so would be substantially outweighed by any adverse effects, when assessed against the national decision-making policies in the NPPF.

6.50 One of the types of development listed is where it would address an unmet housing need and where the development would be physically well-related to an existing settlement and be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure (S5(1)(j)).

6.51 The Council cannot currently demonstrate a five-year supply of deliverable housing sites (the current housing land supply position is 1.6 years) (CD 6.03). The provision of up to 110 additional dwellings would therefore contribute towards meeting an evidenced unmet housing need. The first requirement of Policy S5(1)(j) is therefore met.

6.52 As set out in Appendix A of the Appeal Statement, I consider that the development would be physically well related to an existing settlement and the proposal would provide future residents with a genuine choice of transport modes, and subject to completion of a S106 agreement, I consider the development would be of a scale which can be accommodated taking into account the existing or proposed availability of infrastructure. Accordingly, the second requirement of S5(1)(j) is met.

6.53 Policy S5 of the NPPF is therefore engaged and this states that the development should be approved, unless the benefits of doing so would be substantially outweighed by any adverse effects when assessed against the national decision-making policies in the Framework.

6.54 Those elements of Local Plan Policies STRAT1, STRAT2 and STRAT9 and of Neighbourhood Plan Policy 1 which seek to restrict or limit residential development outside defined settlement boundaries operate to constrain housing delivery and are materially inconsistent with national planning policy expressed through NPPF Policies S3 and S5. Applying Annex A of the Framework, the degree of conflict between those

policies and the Framework's housing objectives is substantial and, accordingly, they should attract only very limited weight in my opinion.

6.55 Having regard to NPPF Policy DM4, I consider that the policies of the ENP attracts significant weight. This is having regard to its stage of preparation, namely that the Examiner modifications appear to resolve the objections. I do not consider that full weight can be attributed to the ENP, given it has yet to be subject to referendum. The proposed development conflicts with the spatial strategy of the emerging Neighbourhood Plan and that conflict weighs materially against the proposed development.

6.56 Whilst the ENP is at an advanced stage, it does not expressly prohibit housing coming forward on this site and there is no current evidence that the appeal sites development would directly constrain or prevent the allocations proposed in the ENP coming forward. On this basis, I consider that permitting the appeal would not, overall, prejudice the plan making process. There is no substantive evidence that permitting the appeal proposal would predetermine decisions regarding the scale, location or phasing of new development that are central to the ENP.

6.57 In terms of the benefits, the Council's housing land supply deficit is a substantial material consideration. The scheme would deliver up to 110 dwellings, including 30% affordable housing secured through a Section 106 agreement. In this context of the Council's inability to demonstrate a five-year housing land supply and an identified shortfall in affordable housing delivery across the Borough, the proposal would make a significant contribution towards meeting both market and affordable housing needs. NPPF Policy HO7 sets out that substantial weight should be given to the benefits of providing homes which will contribute towards meeting the evidenced accommodation needs of the community, as identified through needs assessments prepared for the area of the local planning authority and other relevant evidence. Therefore, substantial positive weight is afforded to the contribution that the development would make towards meeting identified housing needs.

6.58 The development would generate economic benefits through construction activity and increased local expenditure, which in my view attracts moderate positive weight.

6.59 Other matters, including highway safety, residential amenity, landscape, drainage, ecology, environmental, sustainable construction, heritage archaeological impacts have been assessed and are considered acceptable or capable of being satisfactorily addressed through planning conditions. These matters are therefore afforded neutral weight in the planning balance.

6.60 Taking the above into account as a whole, having regard to NPPF Policy S5(1)(j), the proposal would contribute towards meeting an evidenced unmet housing need, is physically well-related to the settlement of Tattenhall and is of a scale that can be accommodated having regard to existing and proposed infrastructure. The development should therefore be approved unless the benefits of doing so would be substantially outweighed by adverse effects when assessed against the national decision-making policies in the Framework.

6.61 In applying that balance, significant weight is afforded to the adverse effects arising from the conflict with the ENP. However, substantial weight is afforded to the contribution the development would make towards meeting identified housing needs, including affordable housing needs. When assessed against the national decision-making policies in the Framework, the adverse effects identified in this report do not substantially outweigh the benefits of the proposal. Accordingly, this constitutes a significant material planning consideration which, in this instance, justifies a decision being taken otherwise than in accordance with the development plan.

6.62 For the reasons set out in this proof, I conclude that the proposed development is acceptable in planning terms. Subject to the imposition of appropriate planning conditions and the completion of a Section 106 Agreement securing the necessary planning obligations, I consider that planning permission should be granted.

7.0 The Three Derogation Tests

7.1 The Planning Inspectorate is now the competent authority responsible for determining whether the three derogation tests are met in this case. However, for completeness, I set out my opinion below.

7.2 Where a European protected species may be affected for the purpose of preserving public health or public safety, or other imperative reasons of overriding public interest, Regulation 9 (1) and 9 (3) of The Conservation of Habitats and Species Regulations 2017 (as amended) requires all local planning authorities be satisfied that there is no satisfactory alternative and there will be no detriment to the favourable conservation status of the European protected species. These tests are set out as in Regulation 58 (3) and consideration of these tests has been outlined as follows:

7.3 ***Regulation 55 (2) (e) – The development is for 'the purpose of preserving public health or public safety, or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment'***. The provision of 110 dwellings in the Cheshire West and Chester area with an established housing land supply deficit represents an imperative reason of overriding public interest, delivering both social (meeting acute local housing need) and economic (supporting local growth and construction employment) benefits that meet the statutory test.

7.4 ***Regulation 55(9)(a) –'that there is no satisfactory alternative'***. In this case, there is no evidence to suggest that the development could be delivered in a manner that would avoid the harm to protected species and otherwise prevent the need for a derogation licence to be sought. The proposed development is fixed to this location and, having regard to the ecological evidence, the impacts on GCN would need to be addressed through the licensing process. I am therefore not aware of any satisfactory alternative that would enable the development to proceed without the harm to protected species. Accordingly, there is no realistic or deliverable alternative, satisfying this test.

7.5 ***Regulation 55 (9) (b) – 'that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'***. The site has been registered under the

Natural England GCN District Level Licensing scheme and a Natural England signed Impact Assessment and Conservation Payment Certificate (IACPC) has been received to evidence this. The applicant has provided a calculated payment to Natural England which will contribute to the creation and management of high quality GCN breeding ponds within a GCN Strategic Opportunity Area in Cheshire West and Chester. These sites are identified for their key location within recorded GCN populations and the high likelihood of GCN colonisation of a new pond. Subsequently, contribution towards the creation of these ponds will promote the connectivity of GCN populations and provide enhanced breeding opportunities for GCN across the wider landscape. The impacts of this development will therefore be suitably compensated for. GCN are widespread in Cheshire and small numbers are expected to be found on site due to the higher quality of habitat in the wider area and closer to the ponds. With the compensation that will be provisioned through the GCN District Level Licensing scheme and through adherence to best practice measures as conditioned, GCN will be maintained at a Favourable Conservation Status within its natural range.

7.6 The three derogation tests required under the Conservation of Habitats and Species Regulations 2017 (as amended) have been satisfied. The development is justified by imperative reasons of overriding public interest arising from the delivery of 110 dwellings in an area with a housing land supply deficit; there are no satisfactory alternative sites capable of delivering the development; and, through acceptance onto Natural England's Great Crested Newt District Level Licensing scheme and the implementation of appropriate avoidance measures, the proposals will not be detrimental to the maintenance of the species at a favourable conservation status.

7.7 Accordingly in my opinion, the granting of a Natural England Licence is considered to be likely.

8.0 **Conclusion**

8.1 Since the submission of the Council's appeal statement, the position in respect of ecology has changed materially and following the submission of additional ecological information the Councils Biodiversity Officer is now satisfied that ecological impacts can be appropriately addressed through planning conditions and the completion of a legal agreement. Ecology is therefore no longer a matter in dispute between the Councils and the appellant.

8.2 Since the appeal was submitted, the emerging Modified Tattenhall Neighbourhood Plan has also progressed through the Neighbourhood Plan process and now attracts increased weight in the decision-making process. The Council considers that the proposal conflicts with the emerging Neighbourhood Plan's spatial strategy, and significant weight should therefore be afforded to this conflict. However, having regard to the planning balance as a whole, including the Borough's housing land supply position, the delivery of up to 110 dwellings including affordable housing, the economic and social benefits of the scheme, and the absence of any remaining technical objections subject to conditions and the completion of a Section 106 Agreement, I conclude that when assessed against the national decision-making policies in the Framework, the adverse effects identified in this report do not substantially outweigh

the benefits of the proposal. Accordingly, this constitutes a significant material planning consideration which, in my opinion, justifies a decision being taken otherwise than in accordance with the development plan. Accordingly, subject to appropriate planning conditions and the completion of the Section 106 Agreement I consider that planning permission should be granted.