Department for Communities and Local Government

Our ref: APP/A0665/A/12/2185667
Your ref: 8686

Mr Stephen Harris
Emery Planning
2-4 South Park Court
Hobson Street
MACCLESFIELD
SK11 8BS

21 April 2017

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY MR ASHLEY WALL
LAND TO THE REAR OF 15-38 GREENLANDS, TATTENHALL, CHESHIRE
APPLICATION REF: 12/02352/OUT

1. I am directed by the Secretary of State to say that consideration has been given to the report and supplementary report of the Inspector, Christina Downes, BSc Dip TP MRTPI, who held a public local inquiry between 4 and 21 June 2013 and a reopened inquiry on 2-6 November and 10 November 2015 into your client's appeal against the decision of Cheshire West and Chester Council (the Council) to refuse your outline application for planning permission for residential development of up to 137 dwellings, public open space, access and associated works in accordance with application ref: 12/02352/OUT, dated 18 May 2012. These reports also considered two other appeals in Tattenhall.[1] On 11 December 2012 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involved a proposal for residential development on a site over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

2. The Inspector recommended that the appeal be allowed and outline planning permission be granted subject to conditions.

[1] proposed residential development including construction of new access, provision of car parking, open space, ancillary landscaping and associated off-site highway works and ecological mitigation works on land adjacent to Adari, Chester Road, Tattenhall (Ref: APP/A0665/A/12/2180958) and proposed erection of 68 dwellings, including access, layout and landscaping on land opposite Brook Cottages, Chester Road, Tattenhall (Ref: APP/A0665/A/12/2188464). The decision letters for these cases have also been issued on 21 April 2017.

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3. For the reasons given below, the Secretary of State disagrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. Copies of the Inspector's original report (OR) and her supplementary report (SR) are enclosed.

Matters arising since the close of the first inquiry

4. Following the close of the original inquiry, the Secretary of State wrote to the parties to all three appeals on 17 March 2014 to afford them the opportunity to comment on the Planning Practice Guidance. A list of the representations received in response to this letter is at Annex A, and these representations were circulated to the main parties on 13 August 2014.

5. On 19 June 2014 the Secretary of State wrote to the parties to seek views on the made Tattenhall and District Neighbourhood Plan (TDNP) and comments on any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry on 21 June 2013 and which the parties considered relevant to his determination of this appeal. He received responses including from Tattenhall & District Parish Council dated 28 July, the Council dated 31 July, and on behalf of the appellants for all three of the cases under consideration, also dated 31 July 2014. These responses were recirculated for further comment under cover of an email dated 13 August 2014 and further responses were received from yourself and the Council, both dated 26 August 2014. A list of the representations received in response to the letter of 19 June 2014 is at Annex B.

6. On 22 December 2014, the Secretary of State wrote to the parties to afford them the opportunity to comment on the Inspector's Report on the examination into the Cheshire West and Chester Local Plan (Part One): Strategic Policies. These representations were circulated to the main parties on 28 January 2015. A list of the representations received in response is at Annex C.

7. By letter dated 8 July 2015 the Secretary of State decided to re-open the inquiry because there had been a number of material changes in circumstances. The matters upon which the Secretary of State wished to be informed for the purposes of his consideration of the appeal related to:

   - The TNDP, which was made on 4 June 2014.
   - The Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (LP (Part One), which was adopted on 29 January 2015.
   - The appeal decision on 13 Holly Drive, Nether Peover, which was issued on 25 March 2015 (APP/A0665/A/2224763).
   - The judgment in the case of *Woodcock Holdings Ltd v SSCLG and Mid-Sussex DC* [2015] EWHC 1173 (Admin).

8. On 11 August 2016 the Secretary of State wrote to the parties to invite comments on the Council's Housing Land Monitoring report 2015-2016 and the Secretary of State's decision to dismiss the recovered appeal for residential development at Darnhall School Lane, Winsford, (Ref: APP/A0655/A/14/2212671) ("the Darnhall case"). These representations were circulated to the main parties on 21 September 2016. A list of the representations received in response to this letter is at Annex D.

9. Copies of the correspondence referred to above can be obtained upon request to the address at the bottom of the first page of this letter.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case the development plan consists of the saved Chester District Local Plan (CDLP) (adopted 2006), Part 1 of the LP and the TDNP. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at SR9-11.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance') and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. Furthermore, in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, he has paid special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Emerging plan

13. The Secretary of State notes (SR12) that the Council is preparing a Local Plan (Part Two): Land Allocations and Detailed Policies, setting out allocations, settlement boundaries and detailed policies. The preferred options version of the Plan was issued for consultation in the summer 2016. However, having regard to Framework paragraph 216, as the Plan is at an early stage and there are significant unresolved objections, the Secretary of State does not consider than any weight can be attached to it.

Main issues

14. The Secretary of State agrees with the Inspector that the main issues are those set out at OR398 and described under the sub-headings below.

Whether the proposal is needed to meet the housing requirement of the Council's area and to contribute to addressing any short term housing deficit

15. The Secretary of State has given careful consideration to the Inspector's assessment as to whether the proposal is needed to meet the housing requirement of the Council's area and to contribute to addressing it (SR289–361).

Housing requirement

16. The Secretary of State has given careful consideration to the Inspector's analysis of the housing requirement, including the need to include a buffer of 20% to address past under delivery at SR 291–294. He agrees with the Inspector's analysis and conclusions that the number of houses that are required to be provided is **7,603** units, and that the Council needs to be able to demonstrate, as a minimum, that it has a supply of deliverable site to meet this figure (SR294).

Housing Supply

17. The Secretary of State has given careful consideration to the Inspector's assessment of housing supply in SR 295–349. He notes her conclusion at SR347 that there **is a 4.8 year** housing land supply and a shortfall of **279 dwellings**, and accepts the basis upon

which this conclusion has been reached. He has considered the different elements of the housing land supply (HLS); and he agrees with the Inspector's conclusions relating to the contribution to be made to the housing supply from the student accommodation (SR 300–304), residential institutions in Use Class C2 (SR305-309) and losses and housing demolitions (SR310).

Site Availability

18. Having regard to the Inspector's analysis, footnote 11 to paragraph 47 of the Framework, the relevant paragraphs of the Guidance and the parties' representations, the Secretary of State has then gone on to consider the deliverability of disputed sites.

19. Since the closure of the inquiry, the Secretary of State has issued his decision dismissing the Darnhall case (see paragraph 8 above), in which he concluded that the Council could demonstrate a 5 year HLS; and the Council has also published its annual Housing Land Monitor Report (LMR) setting out the position as at 1 April 2016, which identifies a 7.8 years' deliverable HLS across their area. The Secretary of State therefore referred back to the main parties to this inquiry on these issues. The responses to the reference back procedure are listed at Annex D. In their response the objectors sought to rely on and draw support from the Secretary of State's conclusion in relation to the 5 year HLS in the Darnhall appeal, whilst the appellants consider that the Darnhall appeal decision should not have any bearing on the outcome of the Tattenhall appeals – especially as it is currently being challenged in the courts (even though the finding of a 5 year HLS in the Darnhall appeal is not itself subject to challenge). The Secretary of State concludes that the LMR provides a more up-to-date picture on the deliverability of housing sites as intended by paragraph 47 of the Framework. He acknowledges that the figures included in it have not been the subject of independent scrutiny, but he considers that its findings should be taken into account in coming to a judgement on the 5 year HLS for the purposes of this appeal.

20. The Secretary of State agrees with the Inspector's conclusions (SR314-346) that the disputed sites will deliver an additional 392 units to the five-year housing land supply.

21. The Darnhall Inspector's report identifies a number of sites as being deliverable which were not considered during the Tattenhall public inquiries and consequently did not feature in the reports. These are:

    a. Meadows and the former British Legion, Barnston. The LMR states that permission has been granted for 40 units, work is underway and development is programmed for completion by July/August 2017. The Secretary of State considers that the site fulfils the requirements of footnote 11 of paragraph 47 of the Framework, namely that it is available, a suitable location for a developer, there is a realistic prospect that housing will be delivered within the five years, and in particular the site would be viable;

    b. Leaf Lane Infants School, Winsford. The LMR states that the site has been cleared and works have commenced on the construction of 22 dwellings. The Secretary of State considers that this site also fulfils the requirements of footnote 11 of paragraph 47 of the Framework;

    c. Rilshaw Lane, Winsford where the development is expected to deliver an additional 12 units, endorsed by the LMR. Wrexham Road, Chester, where the development is expected to deliver 100 units, is also endorsed by the LMR.

In total, the Secretary of State concludes that the Barnston and Leaf Lane sites are deliverable and would contribute an **additional 62 units** towards the overall 5 year HLS. However, he has omitted the Rilshaw Lane and Wrexham Road sites from the calculation as it is not possible to conclude from the available published information whether they would fulfil the requirements of footnote 11 of paragraph 47 of the Framework.

22. The Secretary of State has also reviewed the status of the Rossfield Park site, Ellesmere Port, where the Tattenhall and Darnhall Inspectors differed on the issue of deliverability. The Tattenhall Inspector concluded that Phase 5 of the site would not be developed, whereas the Darnhall Inspector concluded that it would deliver **50 units**. The LMR identifies that a Section 106 agreement has been signed, with the developer, with a possible 2017/18 start date. The Secretary of State therefore considers that the site fulfils the requirements of footnote 11 of paragraph 47 of the Framework.

23. Furthermore, the Secretary of State has reviewed in the light of the LMR the status of those sites listed in SR311–346 which both Inspectors concluded were not deliverable and, for the reasons given below, concludes that they fulfil the requirements of footnote 11 of paragraph 47 of the Framework:

    a. Premier House, Chester: The LMR states that development has commenced on the scheme and that correspondence with the developer indicates that work on the construction of the **100 units** would commence by December 2017 and be achieved during the 5 year period;

    b. Land North of Cromwell Road, Ellesmere Port. The LMR states that outline permission was granted in 2014 and reserve matters have since been approved to deliver **98 dwellings** in the five year period;

    c. Woodford Lodge, Winsford: The LMR envisages that **264 units** will be built on the site within the five year period;

    d. Greyhound Stadium, Ellesmere Port: a full application to redevelop the site up to 155 dwellings has been approved and the LMR expects **93 dwellings** to be delivered on the site in the five year period.

24. The Secretary of State concludes these sites, plus Rossfield Park, will contribute an **additional 667 units** to the supply of deliverable housing sites in Cheshire West and will offset the shortfall of identified in the Inspector's report and provide an overall supply of **7,991** Units, amounting to a deliverable **5.25 year HLS.**

25. The Secretary of State is therefore satisfied that it would be reasonable to conclude that a 5 year HLS can now be demonstrated, meaning that housing policies are up-to-date and rendering the Inspector's conclusion at SR348 no longer relevant.

Affordable housing

26. The Secretary of State has given careful consideration to the Inspector's assessment of the proposed affordable housing provision at SR350-360. He notes that, in accordance with the Framework, LP Policy SOC1 seeks to maximise the provision of affordable housing on sites up to a target of 30%, while the appeal scheme proposes 35%. Thus, given that there is a considerable unmet need for affordable housing in the Borough and the appeal scheme proposes the delivery of affordable housing above the policy requirement in SOC1, it and would make a valuable contribution towards addressing the shortfall. Accordingly, the Secretary of State agrees with the Inspector at SR361 that the

affordable housing offer in the appeal scheme is a matter of very significant weight in its favour.

Whether the proposal accords with the development plan

27. The Secretary of State has gone on to consider the Inspector's discussion regarding the development plan (SR362-378) in the context of his conclusion that there is a deliverable 5 year HLS.

28. The Secretary of State has had regard to Policy STRAT1, which establishes the presumption in favour of sustainable development and sets out a number of sustainable development principles. Policy STRAT1 identifies that developments should minimise the loss of greenfield land and high grade agricultural land, but as it does not preclude the development of such land, the Secretary of State does not consider that the appeal proposal conflicts with it.

29. As the appeal site lies in the open countryside, outside the main built up part of Tattenhall, as defined in the CDLP and the TDNP, CDLP Policy HO7 precludes the construction of new dwellings in the countryside, apart from agricultural workers dwellings, and this is also reflected in STRAT9 of the LP (Part 1). TDNP Policy 1 limits housing developments within or immediately adjacent to the built up area of Tattenhall to proposals of up to 30 dwellings. The Secretary of State therefore agrees with the Inspector that, for the reasons given at SR364, the appeal scheme would be contrary to saved CDLP Policy H07, Policy STRAT9 of the LP (Part 1) and TDNP Policy 1. For the reasons given at paragraph 25 above, the Secretary of State disagrees with the Inspector's conclusion that these policies should be regarded as being out-of-date and therefore with her conclusion at SR367 that they should be given reduced weight in the overall balance.

30. The Secretary of State has given careful consideration to the Inspector's discussion regarding the spatial strategy and settlement hierarchy in STRAT2 and STRAT8 of the LP (Part 1) (SR368-373). STRAT2 sets out the settlement hierarchy and is a housing distribution policy that imposes no constraint on housing supply. The inspector concludes at SR373 that the appeal proposals, either individually or cumulatively, would not conflict with policy STRAT2. The Secretary of State agrees.

31. STRAT8 establishes the number of dwellings that each key service centre is expected to accommodate, which in the case of Tattenhall is 250 units. As the policy is expressed in terms of the minimum number of dwellings which will be provided in each service centre and is not stated to be a ceiling, the Secretary of State agrees with the Inspector that the appeal proposal does not conflict with that aspect of the policy.

Effect on the landscape and rural setting of Tattenhall

32. The Framework states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. This is reflected in LP Policy ENV2, which seeks to protect and, wherever possible, enhance landscape character and local distinctiveness as identified in the Chester District Landscape Assessment Guidelines. For the reasons given at OR470-488 and SR375, the Secretary of State agrees with the Inspector's conclusion at OR518-519 that, irrespective of whether one or both of the other schemes considered at the inquiry were also to proceed, the scheme under consideration would have a minor adverse impact on the landscape taking account of landscape mitigation, but that the adverse impacts on

the visual amenity of those receptors interacting in various ways with the landscape would be more serious. Overall, the Secretary of State agrees with the Inspector that, in particular, the appeal scheme would have a damaging effect on the visual perception of the landscape to the north and west of Tattenhall, in conflict with LP Policy ENV 2 and the Framework, to which he gives moderate weight.

Effect on the layout and character of Tattenhall and its heritage assets

33. For the reasons given at OR520-541, the Secretary of State agrees with the Inspector's overall conclusion at OR543 that the appeal scheme would have no adverse impact on the layout and character of Tattenhall and its heritage assets.

Whether the development would be accessible to a range of travel modes and promote sustainable travel choices or whether it would generate traffic that would cause unacceptable congestion or undue harm to highway safety

34. LP policies STRAT10 and TDNP5 seek to ensure that the traffic implications of new developments are fully assessed and mitigated and sustainable travel choices are provided. Having carefully considered the Inspector's discussion at OR544-571 and SR379-383, the Secretary of State agrees with her conclusion that the appeal scheme would be accessible to a range of travel modes and promote sustainable travel choices, in accordance with STRAT10, TDNP5 and the Framework (OR571). Furthermore, having regard to the fact that the Framework indicates that development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe, and noting that the Highway Authority has raised no objections, the Secretary of State agrees with the Inspector that the proposal would be compliant with the Framework, LP policy STRAT10 and TDNP5 (SR383).

Effect on nature conservation interests

35. Having carefully considered the Inspector's consideration of the effect on nature conservation interests (OR572-584 and SR378), the Secretary of State agrees with her conclusion at OR585 that the appeal scheme would not have an adverse impact on nature conservation interests and that it would accord with the Framework and saved CDLP Policy ENV27.

Planning conditions and planning obligations

36. The Secretary of State has considered the Inspector's recommended conditions at Annex Four of the OR (pages 182-185) and Annex Three of the SR (pages 111-112), along with her analysis at OR362–387 and SR384-386. He is satisfied that the conditions recommended by the Inspector would comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

37. Having had regard to the Inspector's analysis at SR387-391, the up-to-date planning obligation for this case (SR4), paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State agrees with the Inspector's conclusion (SR387) that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and would be 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. He is also satisfied that, for the reasons given at SR390, the obligation would be compliant with Regulation 123(3), as amended. However, the Secretary of State does not consider that the obligation overcomes his reasons for dismissing this appeal and refusing planning permission.

Human Rights

38. For the reasons given at OR606-607, the Secretary of State agrees with the Inspector that the public benefits in the delivery of housing have to be taken into account and weighed against any individual property owner's rights and that the argument advanced by the objector does not engage the requisite human rights under the provisions cited.

Planning balance and overall conclusion

39. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policy HO7 of the saved CDLP, Policies STRAT9 and ENV2 of the LP (Part One) and Policies 1 and 2 of the TDNP; and is therefore not in accordance with the development plan overall. He also concludes that, as it can be demonstrated that there is a 5 Year HLS, relevant housing supply policies are up-to-date and can be afforded full weight.

40. Furthermore, paragraph 198 of the Framework states that, where a planning application conflicts with a made neighbourhood plan, planning permission should not normally be granted and, accordingly, the Secretary of State gives significant weight to the conflict with the TDNP.

41. Nevertheless, the Secretary of State has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Framework also establishes that the purpose of the planning system is to contribute to the achievement of sustainable development, which includes economic, social and environmental dimensions. In this appeal, there would be significant social benefits arising from the provision of affordable housing; and economic benefits through the increased provision of housing within a sustainable location, including the provision of new infrastructure which would be available to both existing and prospective residents. These factors are accorded significant weight in favour of the scheme, but need to be balanced against the adverse environmental impacts through the loss of open countryside and the damaging effect on the landscape and rural setting of Tattenhall.

42. Overall, the Secretary of State is satisfied that the Council can now demonstrate a 5 year HLS so that, under the terms of the Framework, the LP and the TDNP policies for the supply of housing can be regarded as being up-to-date. Hence, having regard to the conflict with the development plan as a whole and taking account of the policy set out in paragraph 198 of the Framework, the Secretary of State concludes that there are insufficient material considerations to indicate that permission should nonetheless be granted.

Formal decision

43. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for residential development of up to 137 dwellings, public open space, access and associated works in accordance with application ref: 12/02352/OUT, dated 18 May 2012.

Right to challenge the decision

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

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

Yours faithfully

Jean Nowak

Authorised by the Secretary of State to sign in that behalf

Annex A

Representations received in response to the Secretary of State's letter of 17 March 2014

Party	Date
Councillor Mike Jones, Ward Member for Tattenhall Cheshire West & Cheshire Council	28 March 2014
Jean Dutton, Clerk - Tattenhall & District Parish Council	30 March 2014
Sarah Wozencroft, on behalf of Indigo Planning, representing Taylor Wimpey & Ashley Wall	31 March 2014
Shaun Taylor Satplan Ltd	14 April 2014
Stephen Harris Emery Planning Partnership	14 April 2014
Sarah Wozencroft Indigo Planning Ltd	14 April 2014

Annex B

Representations received in response to the Secretary of State's letter of 19 June 2014

Jean Dutton Clerk - Tattenhall & District Parish Council	28 June 2014
Councillor Mike Jones, Ward Member for Tattenhall Cheshire West & Cheshire Council	28 July 2014
Tony Leigh-Smith, Friends of Tattenhall	28 July 2014
Jean Dutton Clerk - Tattenhall & District Parish Council	28 July 2014
Jeremy Owens Spatial Planning and Strategic Transport Manager Cheshire West and Chester Council	31 July 2014
Shaun Taylor Satplan Ltd	31 July 2014
Jeremy Owens Spatial Planning and Strategic Transport Manager Cheshire West and Chester Council	26 August 2014
Doug Hann Indigo Planning Ltd	26 August 2014
Shaun Taylor Satplan Ltd	26 August 2014
Stephen Harris Emery Planning Partnership	26 August 2014

Annex C

Representations received in response to the Secretary of State's letter of 22 December 2014

Tony Leigh-Smith, Friends of Tattenhall	19 January 2015
Councillor Mike Jones Ward Member for Tattenhall Cheshire West & Cheshire Council	23 January 2015
Jean Dutton Clerk - Tattenhall & District Parish Council & the Tattenhall and District Neighbourhood Plan Steering Group	23 January 2015
Jeremy Owens Spatial Planning and Strategic Transport Manager Cheshire West and Chester Council	26 January 2015
Stephen Harris Emery Planning Partnership	26 January 2015
Shaun Taylor Satplan Ltd	26 January 2015
Doug Hann Indigo Planning Ltd	26 January 2015
Jeremy Owens Spatial Planning and Strategic Transport Manager Cheshire West and Chester Council	4 February 2015
Tony Leigh-Smith, Friends of Tattenhall	4 February 2015
Doug Hann Indigo Planning Ltd	4 February 2015
Shaun Taylor Satplan Ltd	4 February 2015
Shaun Taylor Satplan Ltd	13 March 2015

Annex D

Representations received in response to the Secretary of State's letter of 11 August 2016

Fiona Hore Senior Planning Manager Cheshire West & Cheshire Council	Undated
Councillor Mike Jones Ward Member for Tattenhall Cheshire West & Cheshire Council	25 August 2016
Ian Cross Friends of Tattenhall	6 September 2016
Jean Dutton Tattenhall & District Parish Council	6 September 2016
Doug Hann Indigo Planning Ltd	9 September 2016
Stephen Harris Emery Planning	9 September 2016
Antoinette Sandbach MP Member of Parliament for Eddisbury	9 September 2016
Vincent Ryan Barton Willmore	9 September 2016
Fiona Hore Senior Planning Manager Cheshire West & Cheshire Council	20 September 2016
Doug Hann Indigo Planning Ltd	21 September 2016
Stephen Harris Emery Planning	21 September 2016
Vincent Ryan Barton Willmore	21 September 2016
Ian Cross Friends of Tattenhall	26 September 2016

Schedule of other representations

Jeremy Owens Spatial Planning and Strategic Transport Manager Cheshire West and Chester Council	16 May 2014
Jean Dutton, Clerk - Tattenhall & District Parish Council	21 May 2014
Tony Leigh-Smith, Friends of Tattenhall	22 October 2014
Sarah Wozencroft, Indigo Planning Ltd	1 June 2015
Vincent Ryan Barton Willmore	16 November 2016
Vincent Ryan Barton Willmore	21 December 2016

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Christina Downes BSc DipTP MRTPI

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

Date: 13 January 2014

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE WEST AND CHESTER COUNCIL

Appeals made by

TAYLOR WIMPEY UK LTD (APPEAL A)

MR ASHLEY WALL (APPEAL B)

BARRATT HOMES (APPEAL C)

TOWN AND COUNTRY PLANNING ACT 1990

Pre-Inquiry Meeting held on: 28 May 2013
Inquiry held on: 4-7 June, 11-14 June, 18-21 June 2013
Site visits held on: 3 June, 11 July (unaccompanied), 12 July 2013 (unaccompanied and accompanied)

Land adjacent Adari, Chester Road, Tattenhall, Cheshire (APP/A0665/A/12/2180958)
Land to rear of 15-38 Greenlands, Tattenhall, Cheshire (APP/A0665/A/12/2185667)
Land opposite Brook Hall Cottages, Chester Road, Tattenhall, Cheshire (APP/A0665/A/12/2188464)

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ABBREVIATIONS LIST

Term	Acronym
Chester District Local Plan	CDLP
Community Infrastructure Levy	CIL
Design Manual for Roads and Bridges	DMRB
Draft Tattenhall Neighbourhood Development Plan	TNDP
Great Crested Newts	GCN
Guidelines for Landscape and Visual Impact Assessment (Third Edition)	the Purple Book
Housing Land Monitor	HLM
Key Service Centre	KSC
Landscape and Visual Impact Assessment	LVIA
National Planning Policy Framework	the Framework
North West Regional Spatial Strategy	RS
Office of National Statistics	ONS
Statement of Common Ground	SCG
Strategic Housing Land Availability Assessment	SHLAA
Strategic Housing Market Assessment	SHMA
Tattenhall Village Design Statement	VDS
The Continuing Care and Retirement Community at Frog Lane	the Care Community
Zone of Theoretical Visibility	ZTV

Appeal A: File Ref: APP/A0665/A/12/2180958
Land adjacent Adari, Chester Road, Tattenhall, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Taylor Wimpey UK Ltd against Cheshire West and Chester Council.
- The application Ref 12/02032/OUT is dated 30 April 2012.
- The development proposed is residential development including construction of a new access, provision of car parking, open space, ancillary landscaping and associated off-site highway works and ecological mitigation works.

Summary of Recommendation: The appeal be allowed and planning permission granted, subject to the conditions in Annex Three.

Appeal B: File Ref: APP/A0665/A/12/2185667
Land rear of 15-38 Greenlands, Tattenhall, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Ashley Wall against the decision of Cheshire West and Chester Council.
- The application Ref12/02352/OUT, dated 18 May 2012, was refused by notice dated 2 October 2012.
- The development proposed is residential development of up to 137 dwellings, public open space, access and associated works.

Summary of Recommendation: The appeal be allowed and planning permission granted, subject to the conditions in Annex Four.

Appeal C: File Ref: APP/A0665/A/12/2188464
Land opposite Brook Hall Cottages, Chester Road, Tattenhall, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Barratt Homes against the decision of Cheshire West and Chester Council.
- The application Ref 12/03825/FUL, dated 22 August 2012, was refused by notice dated 27 November 2012.
- The development proposed is erection of 68 dwellings including access, layout and landscaping.

Summary of Recommendation: The appeal be allowed and planning permission granted, subject to the conditions in Annex Five.

PROCEDURAL MATTERS

1. The Inquiry sat for a total of 12 days. An evening session was held at the Barbour Institute, Tattenhall on 6 June where local people were invited to give their views. Further opportunities for participation were available during the course of the Inquiry. The proceedings in the Council Chamber were also able to be viewed through a webcast. Whilst the Inquiry was closed on 21 June the three Appellants were given 14 days to submit their fully executed Planning Obligations. This was because the bus service contribution was included as a consequence of evidence to the Inquiry. The additional time was solely for the purpose of signing the documents and there were no objections from any party to what seemed a reasonable and pragmatic approach in the circumstances.

2. The three appeals were conjoined. The issue of housing land supply was heard first by means of a round table session which each of the main parties had agreed to beforehand. This was followed by the evidence of the Council and Councillor Jones, who had been granted Rule 6 Party status. Each of the Appellants then gave their evidence in turn and had agreed that the order would reflect the submission date of the respective appeals. Whilst each Appellant produced evidence in connection with the other appeals they chose not to present it orally or subject it to cross-examination. It was made clear at the end of the Inquiry that there was no in-principle objection from any of the Appellants to the other two appeal schemes.

3. Appeal A was against the failure of the Council to determine the application in the statutory period. The Strategic Planning Committee resolved that it would have refused permission if it had been in a position to do so. This putative reason and the reasons for refusal relating to Appeals B and C are set out in the Planning Statement of Common Ground (SCG) (***Document SCG/1, Paragraphs 1.9, 1.12 and 1.13***). Although these referred to the effect on the prevailing layout and character of the village it was confirmed at the Inquiry that this related to the effect of the developments on the local landscape[1]. In each case they solely concerned landscape issues. The Council advised in respect of the putative reason relating to Appeal A and the reason for refusal relating to Appeal C that there were minor typographical errors. These are also set out in the Planning SCG (***Document SCG/1, Paragraphs 1.10 and 1.14***).

4. Revised plans were submitted at appeal stage as follows:

   4.1. **Appeal A**: Alternative access plans showing a right turning lane from Chester Road into the site or a simple T-junction. A refined parameter plan showing greater detail and an amended distribution of 2 and 2.5 storey development (***Plans B/1-B/3***).

   4.2. **Appeal B**: Since the application was submitted the landowner had entered into an Option Agreement with Wainhomes. As a result there was a new illustrative layout and a revised development parameters plan (***Plans D/1-D/2***).

   4.3. **Appeal C**: An alternative access plan showing a T-junction junction with Chester Road and consequent amendments to the planning proposals on the front part of the site (***Plans F/1-F/6***).

5. The appeals were recovered by the Secretary of State for Communities and Local Government on 11 December 2012 (***Document CD11.2***). The reason for this direction in the case of Appeals A and B was that the appeals involved a proposal for residential development on a site of over 5 ha, 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. Appeal C was recovered because it would be most efficiently and effectively decided in conjunction with the other two. There

[1] The Inspector questioned Mrs Coombs on this matter and she confirmed that the Council offered no evidence on the effect of the developments on Tattenhall itself other than in relation to its landscaped setting.

was also a fourth recovered appeal relating to land to the rear of 2-36 Harding Avenue, Tattenhall, which was to be considered at the Inquiry. This was an outline proposal for up to 70 dwellings by Redrow Homes North West. However following the submission of a further planning application, outline planning permission was granted and the appeal was withdrawn.

6. The Council was asked for a Screening Opinion for each of the appeals and concluded that none were Environmental Impact Assessment development. The proposals were also screened at appeal stage and a similar conclusion was reached (***Document CD 11.3***). As part of the screening process the possibility of cumulative effects were considered and it was concluded that in view of the location and scale of the residential schemes and the context of the receiving environment it was unlikely that significant environmental effects would occur. Nevertheless the issue of cumulative impact was considered in the evidence to these appeals.

MATTERS ARISING FOLLOWING THE CLOSE OF THE INQUIRY

7. Following the close of the Inquiry the draft Tattenhall Neighbourhood Development Plan (TNDP) proceeded through independent Examination and the Examiner's Report was published. This recommended that, subject to minor modifications, the plan should proceed to a Referendum. This happened on 24 October 2013 and received an endorsement from the local community. However Judicial Review proceedings have been commenced by two of the Appellants. Furthermore, a Court Order has been made preventing the Council from making the plan until the final determination of the legal proceedings[2]. The Judicial Review grounds concern alleged procedural irregularities, including the failure of the plan to meet the basic Conditions of Schedule 8 of the Neighbourhood Planning (General) Regulations 2012. Also that Policy 1 was introduced without meaningful evidence and was not properly considered by the Examiner. It is understood that the Court has now given permission to proceed to a full Hearing on all grounds, although it is not known when this will take place (***Documents Doc/4; Doc/6***).

8. The views of the main parties were sought on the above matter as well as two other matters which may be material to the consideration of these appeals. The first is the Secretary of State's decision to allow a residential development on land off Nantwich Road, Tarporley on 29 August 2013. The second was that in August 2013 the Council's Executive decided to approve the publication of the Local Plan (Part One) Strategic Policies for pre-submission consultation. This indicated a supply of 6.97 years of deliverable housing land. These matters occasioned further correspondence from the parties and whether the Inquiry should be re-opened to discuss them (***Documents Doc/2; Doc/3***). However subsequently the Council agreed that it would not rely of its emerging plan for its housing requirement. At the present time it concedes that it is unable to demonstrate a 5 year supply of deliverable housing sites (***Document Doc/7***). It has effectively reverted to the position that it held on this matter at the Inquiry.

9. As the position regarding the TNDP is still not resolved there seemed little point in requesting the Secretary of State to re-open the Inquiry at the moment.

[2] Inspector's Note – Barratt Homes and Wainhomes (Appeals B and C) are the Claimants.

However he will wish to consider the further representations before he makes his decisions, taking account of the circumstances at that time.

THE SITES AND THEIR SURROUNDINGS

10. The appeal sites are all on Grade 3b agricultural land immediately adjacent to the northern and western edge of Tattenhall. Their locations relative to each other, the village and the wider landscape is shown at ***Document CWC/2, JK02***. This is a gently sloping landscape that rises towards the Peckforton Hills in the east. About 30 km away to the west are the Welsh Clwydian Hills. A good overview is provided by the panorama in ***Document AW/12***. This is taken from Beeston Castle which is on a rocky outcrop about 7 km north east of the village. There is also a Google Earth image of the three appeal sites at ***Document AW/1.2, Page 209***. Another aerial photograph is shown on the front of the Conservation Area Appraisal which also indicates the extent of the heritage asset (***Document CWC/5***).

11. The village of Tattenhall has around 850 dwellings and is centred on the church and its conservation area. Along the High Street are a number of shops and facilities, including a general stores and a post office. There is also the community hall known as the Barbour Institute.

12. The A41 is the main road running south from Chester and there are three main junctions with Frog Lane, Chester Road and Rocky Lane. The wider highway network can be seen on plans at ***Document AW/3.1, Page 7***. More specifically roads in and out of the village are shown on Plan 1 to the Highways SCG (***Document SCG/2***). Most are relatively narrow country roads with hedged perimeters. Running in an east-west direction to the north of the village is Newton Lane which is also part of the bridleway network known as Bishop Bennet Way. This route continues in a southerly direction to the west of the village where it joins with Frog Lane. To the east of this section of the bridleway is the old railway line, which occupies an embankment in places.

13. The countryside around Tattenhall provides an attractive rural setting. There are various public footpaths running out of the village and into the surrounding countryside. Most relevant to these appeals is Footpath 8 which runs north from Chester Road towards Newton Lane. This passes Brook Hall which is a large residential property standing in a parkland setting. The public rights of way are shown on the map at ***Document CWC/2, JK02***. There is also a signed walk around the village and its conservation area known as the Millennium Walk. The route is shown in the leaflet attached to ***Document MJ/4, Appendix 5***. National Cycle Route 45 runs through the village along Tattenhall Road and Burwardsley Road. It runs from Chester to Salisbury (***Document SCG/2, Paragraph 23 and Plan 1***).

14. Newton-by-Tattenhall is a small hamlet a short distance to the north of Tattenhall which adjoins the Shropshire Union Canal. Here there is a large marina and a brownfield development site known as The Oak Room. The location of this site relative to the appeal sites is shown on the map at ***Document MJ/4, Appendix 1***. Travelling east along Newton Lane is the Ice Cream Factory, which is a farm and busy visitor attraction.

APPEAL SITE A

15. There is an agreed description in ***Document SCG/3***. A useful aerial photograph is at ***Document TW/2.3.2, Figure 2/4***. Site photographs are at ***Documents TW/2.3.2, Photographs 22, 25-30 and Document CWC/3.6, Plate F***.

16. The site extends to some 6.9 ha and adjoins the western edge of the village. It is divided into two parts, which are separated by Keys Brook. The southern parcel extends to 5.5 ha and adjoins the rear gardens of houses fronting Rookery Drive. It has a narrow hedged frontage onto Chester Road. Beyond this is a narrow field and then a pair of dwellings known as Brook Hall Cottages. There are trees and hedges around the western perimeter and a row of mature oaks which cross the site parallel with Keys Brook. There are two small ponds in the site which are thought to have been former marl pits (***Document CD5.21, Drawing 1***). The land reaches a high point towards its south eastern corner and then slopes down towards Keys Brook (***Document TW/2.3.2, Figure 2/5***). The northern parcel is sloping pasture land and comprises part of the field south of Greaves Farm.

APPEAL SITE B

17. There is an agreed description in ***Document SCG/5***. An aerial photograph showing the nearby public rights of way is at ***Document AW/2.2, Figure 3***. Photographs of the site are at ***Documents AW/2.2, Figures 4-6 and CWC/3.6, Plates L and M***.

18. The site extends to some 6.3 ha and adjoins the northern edge of the village. It comprises gently rising land to the north of the treed corridor of Keys Brook (***Document AW/2.2, Figure 2***). To the south of Keys Brook at this point is a residential estate known as Greenlands which is built on land that rises away from the stream. The western boundary of the site is delineated by a field hedge and in part adjoins the ecological mitigation area of Site A. The northern part of the site comprises post and rail fenced paddocks and beyond these is a private track leading to Greaves Farm. Greaves Farm Cottage has a hedged perimeter and adjoins the north eastern corner of the site. The eastern boundary has a tall hedged frontage to Tattenhall Road. On the opposite side of the road is a pair of red brick semi-detached houses called The Hollies. The Tree Survey at ***Document CD 7.27*** provides useful context.

APPEAL SITE C

19. There is an agreed description in ***Document BH/7***. Site photographs are at ***Document BH/1.3, Photoviewpoints 1-6 and 8 and CDC/3.6, Plate A***.

20. The site extends to about 3.46 ha and adjoins the western edge of the village. It slopes gently down towards Mill Brook which flows alongside its southern boundary (***Document BH/14***). The eastern boundary adjoins Grackle Croft which is a recent development of 14 houses. This is delineated by post and rail fencing beyond which is a landscaping strip with some young trees and an access road. To the south of Grackle Croft are the bungalows and houses of Ravensholme Court. The western boundary is delineated by trees within an unmanaged hedgerow. The northern boundary adjoins Chester Road and there is a managed hedge along this frontage, which is interspersed with trees. There

is an ash tree within the site and further trees and vegetation along the Mill Brook corridor. A plan showing the trees is at ***Document CD10.15***.

THE APPEAL PROPOSALS

APPEAL A

21. This is an outline proposal for up to 110 dwellings with all matters apart from access reserved for future consideration. The drawings to be approved at this stage include a Parameters Plan (***Plan B/3***). It was agreed at the Inquiry that there would be no dwellings above 2 storeys in height. The Parameters Plan shows a building line offset behind the existing residential properties in Rookery Drive along with new garden buffer planting. The line of oak trees that cross the site would be retained. There would be a green edge adjacent to the western boundary and Keys Brook and a new pond for amphibians within this zone. The two existing ponds on the site would be removed. The land to the north of the stream would be an area set aside for amphibian mitigation. This would contain new ponds, although it was made clear that their position would not be fixed at this stage.

22. The scheme would provide a mix of house sizes and types, including 35% affordable homes. There would be public open space within the site of about 1.19 ha, excluding the land to the north of Keys Brook.

23. Access to the site would be from Chester Road. Although a right turn lane has been proposed, the preferred option would be a simple T-junction (***Plan B/2***). The Parameters Plan indicates that development would be set back from this access roughly in line with the rear of the adjoining dwelling Adari. An illustrative layout was provided in the evidence to the Inquiry (***Document TW/2.3.3, Figure 3/1***). This however is not put forward as a plan to be approved at this stage.

APPEAL B

24. This is an outline proposal for up to 137 dwellings with all matters apart from access reserved for future consideration. The drawings to be considered now include a Parameters Plan and a Masterplan (***Documents D/1; D/2***). These plans were submitted at appeal stage following the involvement of Wainhomes who wish to develop the site. The Parameters Plan shows a green edge to the developed area which would be planted with trees and hedgerows. There would also be a central greenspace within the site. The southern part of the site, adjoining Keys Brook, is intended as a linear park. It is proposed to allow public access by means of a footpath link with Tattenhall Road.

25. The development would comprise a mix of dwellings. The Parameters Plan shows a zone in the northern part of the site reserved for single storey development. There would also be a scatter of 2.5 storey houses across the site. The proposal includes a mix of house types with 35% of the new dwellings providing affordable homes.

26. Access would be from the southern end of the site and is shown as a T-junction with Tattenhall Road. Speed calming measures are also indicated on the Masterplan. The existing footway on the western side of Tattenhall Road stops

at the Keys Brook bridge. This would be continued along the site frontage. On the southern side of the access road the footpath would be in front of a newly planted hedge. To the north of the access road it would run within the site to the rear of the boundary hedge. There would also be a link to Tattenhall Road further along the frontage. A new bus stop is proposed either to the south of the new access road or to the north of the aforementioned footpath link.

APPEAL C

27. This is a proposal for full planning permission for 68 dwellings. The access would be by means of a simple priority junction with Chester Road rather than the right turning lane which was proposed at application stage. As a consequence there have been some relatively small modifications to the landscaped area at the front of the site as detailed in ***Document BH/10***. Whilst the housing layout would not change, a new set of planting plans has been provided to reflect the frontage revisions (***Plans F1-F6***). These indicate that a section of the existing roadside hedge and trees would be removed around the new junction. Also a replanted hedge interspersed with native trees is proposed behind the visibility splays and the footpath within the site would continue to its western end and link with Chester Road.

28. The development would comprise a mix of three, four and five bedroom market dwellings. It is also proposed to deliver 28 affordable homes and the Parish Council would be afforded nomination rights for these houses (***Document BH/7, Paragraph 3.2***). There would be a green edge on the western side of the site with hedge and tree planting and the area adjacent to Mill Brook would remain undeveloped. Various open spaces would be provided including a "village green" in the centre of the site and a large green space to the south of Grackle Croft and west of Ravensholme Court (***Plan F/6***). The design concept and the proposed character areas are described in the Design and Access Statement, which also includes visualisations, including of the Chester Road frontage (***Document CD10.4, Sections 8 and 9***).

PLANNING POLICY

THE DEVELOPMENT PLAN

29. The **North West Regional Spatial Strategy** (RS) covered the period from 2003 to 2012. The Order to revoke it came into force on 20 May 2013. All directions under Paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 preserving policies contained in Structure Plans in the area to which the RS related were also revoked. This means that the development plan now solely comprises the saved policies of the **Chester District Local Plan** (CDLP), which was adopted in 2006. It is relevant to note that this was prior to the reorganisation in 2009 when Cheshire West and Chester Council was formed. The relevant policies and the Saving Direction are at ***Documents CD1.4 and CWC/4***.

30. Reference was made during the Inquiry and in representations to many of the saved policies in the CDLP. Whilst these have been taken into account in this Report the following policies are considered to be the most relevant to the determination of these appeals.

30.1.1. **Policy HO 1** which related to the scale of housing provision was not saved.

30.1.2. **Policy HO 3** seeks to negotiate provision for affordable homes on unallocated sites. **Policy HO 7** seeks to limit the construction of new dwellings in the countryside other than for specific purposes such as agriculture.

30.1.3. **Policy GE 1** is a general policy which permits development that accords with other relevant policies unless there is an unacceptable risk of significant adverse impact.

30.1.4. **Policy ENV 2** permits new development that respects its surroundings and contributes positively to the character of the area. It should have particular regard to the prevailing layout, urban grain, landscape, density and mix of uses, scale and height, massing, appearance and materials.

30.1.5. **Policy ENV 24** only allows development in the rural area where it would respect the key features of the landscape and not be detrimental to its character. The supporting text explains that development should respect the key features of the landscape character areas as set out in the *Cheshire District Landscape Assessment and Guidelines*.

30.1.6. **Policy ENV 37** only permits development within a conservation area or its setting if the character or appearance of that area is preserved. **Policy ENV 38** will not grant permission for new development that obstructs important views in and out of a conservation area.

30.1.7. **Policy TR1** permits development that would reduce private car dependency. **Policy TR 19** includes a provision that traffic should be safely accommodated on the highway network.

THE EMERGING DEVELOPMENT PLAN

31. The emerging **Cheshire West and Chester Local Plan** was, at the time of the Inquiry, known as the **Preferred Policy Directions**. This document is currently at a relatively early stage in the adoption process with a consultation exercise having been completed (***Document CD1.6***). It sets out a requirement for no less than 21,000 new homes between 2010 and 2030 and an annual figure of 1,050. It seeks to direct most new homes and jobs to the four main urban areas with managed growth within the rural area primarily focussed on Key Service Centres (KSC), which have an appropriate level of services and facilities to support small-scale development to help sustain local services and meet local needs. Tattenhall is identified as such a centre with a proposed level of new housing provision set at 300 dwellings.

32. As the post-Inquiry correspondence shows, in August 2013 the Council's Executive agreed to approve the next iteration of the emerging local plan, entitled the **Local Plan (Part One) Strategic Policies**, for pre-submission consultation. This indicates a total requirement in the region of 22,000 dwellings with an annual figure of around 1,100. The number of dwellings to be provided in the rural area remains at 4,200 but the provision for Tattenhall has

been reduced to 250 (***Document Doc/2***). These are therefore slightly different figures to those considered at the Inquiry.

33. Since the Inquiry closed the **Tattenhall Neighbourhood Development Plan** (TNDP) has been subject to independent Examination and the Examiner's Report has been published. He recommended to the Council that, subject to some minor modifications, the TNDP should proceed to a Referendum. The Referendum took place on 24 October 2014 but the TNDP has not been adopted pending the outcome of a Judicial Review by two of the Appellants (***Document Doc/6***).

34. The plan includes a number of objectives including that a housing growth strategy should be delivered tailored to the needs and context of Tattenhall. It also seeks sensitive development which protects and enriches the landscape and built setting. The TNDP area includes the hamlets of Gatesheath and Newton-by-Tattenhall. To enable managed housing growth **Policy 1** permits proposals for up to 30 homes within or immediately adjacent to the built up part of Tattenhall village over the period 2010 to 2030. It also allows smaller scale development of exception sites within the two smaller hamlets. **Policy 2** seeks to ensure that development respects local character, reinforces local distinctiveness and accords with the Village Design Statement. It also includes a provision that local landscape quality will be respected and particular views and vistas maintained where possible. **Policy 4** concerns the impact, including cumulative effects, of new development on local facilities and its mitigation. **Policy 5** includes a provision about traffic generation and highway impacts.

OTHER LOCAL GUIDANCE

35. The **Tattenhall Village Design Statement** (VDS) was adopted as supplementary planning guidance by the Council in 2009 (***Document CD3.4***). It was produced by the local community and derives in part from the earlier Parish Plan. It seeks to manage change within Tattenhall and its parish in a way that respects local character and distinctiveness. This includes guidance on design and how development should sit within the existing framework of the parish. The VDS contains a number of policies relating to the landscape and built environment and also mentions views and vistas of importance to the character of the parish (***Document CD3.4, Paragraph 3.2.3***). It also contains a number of aspirations, but these are not included in the adopted part of the document.

36. The purpose of the **Tattenhall Conservation Area Appraisal** was to inform the process of reviewing the boundaries of the 1996 conservation area which commenced in 2008 (***Documents CWC/5; CWC/7***). It sets out the historic background and an analysis of character. It analyses the positive, neutral and negative elements and opportunities for enhancement within the conservation area. It also sets out those areas for extension and those areas for exclusion and the results of the consultation exercise. The document has been prepared to inform the statutory review process but is not a supplementary planning document (***Document INQ/2***).

NATIONAL PLANNING POLICY

37. The National Planning Policy Framework (the Framework) has the presumption in favour of sustainable development at its heart and this has three dimensions:

economic, social and environmental. It is confirmed that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is one such material consideration. Paragraph 215 makes it quite clear that the Framework can override development plan policy that is not consistent with its provisions. Paragraph 216 allows weight to be given to emerging plans commensurate with their stage of preparation, the extent of unresolved objections and the degree of consistency with the Framework.

38. Paragraph 47 seeks to boost significantly the supply of housing. Local planning authorities are required 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 Framework's policies. Paragraph 49 indicates that relevant policies for the supply of housing will not be considered up-to-date if the Council is unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances the presumption in favour of sustainable development applies in accordance with Paragraph 14. This indicates that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole or unless specific Framework policies indicate development should be restricted. One such restriction is contained in Paragraph 119 and relates to development requiring Appropriate Assessment under the Habitats Directive.

39. Paragraph 113 requires local planning authorities to set criteria based policies against which development proposals affecting landscape areas can be judged. Distinctions should be made between international, national and locally designated sites so that protection is commensurate with their status. Paragraph 32 indicates that development should only be prevented on transport grounds where the residual cumulative impacts would be severe.

THE CASES FOR THE MAIN PARTIES ON HOUSING LAND SUPPLY

40. The housing land supply issue was addressed through a round table session on the first day of the Inquiry. This was a topic led approach and the Appellants delivered a single closing submission relating to it. In the circumstances it is considered to be most helpful to record the position of the main parties in a discrete section of the Report.

THE CASE FOR CHESHIRE WEST AND CHESTER COUNCIL

The main points are:

41. The issue of housing land supply is not materially in dispute for present purposes. It is accepted, for the purposes of these appeals, that there is a deliverable supply of housing of 2.6 years, founded upon a base date of September 2012 (***Document CD2.4, Table 5.2***)[3]. It is based on a net 5 year

[3] Inspector's Note – Following the close of the Inquiry the Council asserted a position of 6.97 years of housing land based on its emerging Local Plan. However it subsequently changed its position indicating that the RS requirement should prevail for the time being resulting in a

requirement of 10,970 dwellings drawn from the former RS figure. It allows for backlog to be eradicated over the remainder of the period of the former RS and a 20% buffer. It refers to a deliverable five year supply of 5,764 dwellings, making the 2.6 year supply.

42. The Council does not seek to rely upon the content of the draft March 2013 Land Monitor (***Document CD2.5***). It was necessary to adopt a firm base date for the assessment of the supply against a requirement both of which had been reported to and accepted by the Council and which could then be addressed by all parties in good time for the Inquiry. The Council adopted this position as a result of the questions raised at the pre-Inquiry meeting, which included threats of costs applications if the Council changed its position.

43. The Appellants' critique of the supply set out in the draft Housing Land Monitor (HLM) is not accepted. However it was not considered to be a good use of Inquiry time to debate such matters as the document still does not claim that an adequate deliverable 5 year supply exists. Paragraph 49 of the Framework provides that policies for the supply of housing are out of date if they do not deliver a 5 year supply. The precise shortfall in supply is not material to the application of Paragraph 49 or Paragraph 14 of the Framework. There might be cases where the shortfall in supply is material, but given that even if all three appeals succeed the Council would not have a deliverable five year supply, this is not such a case.

44. In May 2013 the Local Development Framework Panel resolved that it would include a 5% rather than a 20% buffer. On the basis of the draft 2013 Strategic Housing Land Availability Assessment (SHLAA) there is a 4.4 year deliverable housing land supply (***Documents HLS/4; CWC/8b***). However for the reasons already given this supply figure is not being defended in the context of these appeals and, in the circumstances, it would not be appropriate for the Secretary of State to make any findings about the housing land supply information with a March 2013 base date other than to find that the Council still does not claim a 5 year supply.

45. Further, it is accepted that it is not just the policies that make express provision for housing that are out of date. Saved Policy HO 7 in the CDLP restricts development in the open countryside, defined as land outside settlements. It is accepted that greenfield development on land at the edge of settlements will be required to provide a five year supply. The policy is thus out of date insofar as such edge-of-centre sites are concerned. The policy continues to be relevant to isolated sites in the open countryside. The policy implications of this approach are accepted and the decision-taking process set out in Paragraph 14 of the Framework is engaged.

supply is between 2.54 and 2.78 years. The Council also accepts that a 20% buffer is appropriate at the present time (***Documents Doc/3; Doc/7***).

THE CASE FOR COUNCILLOR MIKE JONES

The main points are:

HOUSING BACKLOG

46. The backlog was created by the imposition of a moratorium by the Government in 2004 on the legacy councils, prior to Cheshire West and Chester being formed, due to over delivery of housing (***Document MJ/4, Appendices 6-8***). This led to the Councils being prevented from building homes in the good economic times. When the moratorium was lifted in 2008 it would have taken 2 years before the new Council could have delivered an increase in housing. Any backlog prior to 2010 should therefore be discounted as the ability to deliver housing was taken out of the hands of the previous legacy councils and the new Cheshire West and Chester Council until 2010.

47. The unmet demand was predominately delivered in North Wales. This has resulted in the A483 and the A55 carrying heavy flows of traffic into Chester in the morning and in the reverse direction in the evening. This is further illustrated by the travel to work patterns of the former district councils, which shows the huge differential figure of 7,440 for traffic movements between Chester and North Wales, (***Document CD1.6C, Page 12***). It is inappropriate to build an excessive number of houses in the rural area where infrastructure and jobs are limited. Chester and other towns in the Borough have the infrastructure such as the roads, evening entertainment and sports facilities with capacity and jobs being created in numbers that support the housing growth required in a more sustainable way. It is for this reason that the Council is dealing with the very challenging issue of Green Belt release for housing around Chester in the emerging local plan (***Documents CD1.6B; MJ/4, Appendix 12***).

48. The backlog of housing prior to 2010 should therefore be discounted in calculating the housing numbers.

HOUSING REQUIREMENTS

49. The housing targets in the RS are based on outdated or poorly evidenced information. It is difficult to understand why the similar sized neighbouring authority of Wirral received a target of only 500 dwellings per annum and the larger but comparable Cheshire East received one of 1,150. The RS figures were based on growth assumptions that exceeded the 2002 interim household projections and the even lower 2003 projections published in 2006. The targets in the RS were over inflated and imposed without the support of an evidence base. Backdating the RS target to 2003 also presented difficulties because this was a time when the Government moratorium on housebuilding was being operated (***Document MJ/3, Paragraphs 4.4-4.6***).

50. On 7 August 2013, since the close of the Inquiry, the Council agreed to an annual housing requirement of 1,100 dwellings as set out in its Local Plan Publication Draft (Part 1) Strategic Policies. This document is at public consultation stage. This figure meets in full the objectively assessed housing need for the borough and takes account of the latest demographic projections, the findings of the recently completed Strategic Housing Market Assessment

(SHMA) and the need to support the economic ambitions of the Council and the Local Enterprise Partnership. Based on up to date information in the July 2013 SHLAA there is well over 5 years of housing land to satisfy needs. The Tarporley appeal decision was based on outdated RS figures in contrast to the Council's target which has been derived from relevant and up to date evidence and independently reviewed by its consultants Urban Vision (***Document Doc/2***).

51. The predecessor councils were not able to build due to the moratorium and this was followed by the country entering the worst recession in the house building industry. It is therefore unfair that the Council should be described as having a record of persistent under delivery of housing. It is reasonable that the buffer required by the Framework should be set at 5% (***Document MJ/3, Paragraph 4.11***).

52. The 5% buffer was recently agreed by the Council's Local Development Framework Panel once there was a full understanding of the history causing the perceived under-delivery (***Documents CD/2.9; CWC/8***). Based on the more accurate and up to date evidence base which created a provisional target of 1,100 dwellings per year, the requirement between 2010 and 2013 would be 3,300 dwellings. The 2013 HLM shows provision of 2,130 dwellings during this period (***Document CD2.5, Table 4.2***). This would have resulted in a shortfall of 1,170 dwellings. Over a 5 year period this would be 234 dwellings a year. The total 5 year requirement would therefore be 1,334 dwellings a year. With a 5% buffer this would amount to an annual requirement of 1,401 dwellings per year.

HOUSING SUPPLY

53. Based on the draft 2013 SHLAA the 5 year supply of housing is 8,745 dwellings (***Document CD2.9, Appendix 1, Table 3.3***)[4]. This amounts to a supply of 6.3 years. It should also be noted that the total number of dwellings with planning permission and in some cases awaiting Section 106 agreements is 10,024 of which 3,106 are for delivery during the period 6-20 years.

54. This demonstrates that the Council has a 5 year supply. The applications should therefore be refused as they are not required to contribute to the wider Borough housing supply.

55. The above figure reflects the commitment the Council has made during the recent two years to increase housing supply supporting a range of applications, in a balanced way, across the Borough. Much has been made about the value of the New Homes Bonus to the Council but money has been top sliced by Government largely to fund it. This council is one of the few that has a policy to pass on 20% of the bonus directly to communities to encourage them to accept housing in the same way that the Government is encouraging Councils to deliver housing. This is a proactive policy designed to support growth.

56. This balanced policy approach to supporting development across the Borough does mean that an excessive over delivery for Tattenhall is not required to

[4] Inspector's Note – The latest SHLAA supply figures submitted by Councillor Jones in the post-Inquiry representations, showed a 5 year supply of 8,552 dwellings (***Document Doc/7***).

support the numbers for the whole Borough and therefore removes the justification for these three proposals.

HOUSING SUPPLY IN TATTENHALL

57. The Preferred Policy Directions allocates 300 dwellings to Tattenhall[5] between 2012 and 2030. The community have supported the development of 145 dwellings so far, including 14 at Grackle Croft, 31 at the Oak Room, 95 at the Continuing Care and Retirement Community and 5 others. Furthermore the Council has recently granted permission for 70 dwellings to Redrow. This means that 215 have been approved which is nearly 72% of the 20 year target (***Document MJ/3, Paragraphs 2.3 and 3.9***).

58. The Continuing Care and Retirement Community (the Care Community) in Frog Lane is a substantial £20 million investment covering some 4 Hectares of a disused farm (***Document HLS/3, Appendix 8***). It will be a significant development in terms for Tattenhall and is supported by the local community. The developers provided evidence that the size of development was required to deliver a viable project. The scheme enables elderly couples to remain together in the rural area rather than be split up when one becomes in need of support. This is an important social aspect for families and immediate relatives in rural communities.

59. The development will create approximately 80 full and part time jobs and will provide accommodation in the 95 assisted living units, 14 linked assisted living units, 21 close care houses and 36 care bedrooms. It will have a limited impact on infrastructure such as roads because after 12-18 months residents tend to give up their cars. Also it will have a limited impact on schools and sports facilities in the community and incorporates significant environmental and wildlife areas. Unlike the appeal developments, this scheme therefore complies with the 3 dimensions of sustainability in the Framework.

60. The issue of whether the 95 homes that will be privately purchased or rented should be categorised as C2 or C3 uses was explicitly dealt with in the Committee Report (***Document HLS/3, Appendix 8, Paragraph 6.42-6.44***). As the buildings were designed to be separate they were considered to be C3 and therefore required to provide 20 affordable units. The 95 should therefore be included in the number of units being delivered in Tattenhall against the provisional target of 300 in the Preferred Policy Directions (***Document CD1.6, Page 35***).

61. The Appellants refer to Paragraph 50 of the Framework which requires housing to meet current and future demographic needs and market trends (***Document TW/1.2, Paragraph 4.16***). However no evidence is offered as to what these needs are even though there is recognition of the need to accommodate the increasing number of elderly persons (***Document HLS/3, Appendix 9, Paragraph 1.3***). The schemes of the Appellants fail to demonstrate how they would contribute to satisfying the need they have identified or that they have an understanding of the full housing need for the Tattenhall area.

[5] Inspector's Note – This has changed to 250 dwellings in the latest iteration of the emerging Local Plan.

AFFORDABLE HOUSING PROVISION IN TATTENHALL

62. The total number of affordable units with planning permission in the village of Tattenhall is 65 comprising 20 at the Care Community, 14 at Grackle Croft, 6 at The Oak Room and 25 at the Redrow development. This demonstrates that the community has a positive approach to development, especially in the provision of affordable housing. There is a "local bull's eye" system for the allocations policy.

63. In addition there are 24 more affordable homes with planning permission in Tattenhall Ward resulting in a total of 89 affordable homes with planning permission. The 2010 SHMA showed an annual requirement of 16 affordable dwellings between 2010 and 2015. This was much lower than many nearby wards. Due to the delivery of affordable homes in the village the 2012 SHMA update showed a reduction to 6 per year (***Documents CD2.1, Table D20; CD2.6, Table A19***). The 89 affordable dwellings, all with planning permission, would clearly more than meet this need. On the latest figures it would considerably exceed it and amount to around 15 years supply in the Tattenhall Ward.

64. The map and schedule of proposed developments in the Tattenhall, Tarporley, Farndon and Malpas Wards demonstrate that there will be a substantial over delivery of both market and affordable housing in this rural area (***Document MJ/4, Appendix 16***). If the 3 appeal developments went ahead it would add up to 117 more affordable dwellings, which would amount to about 206 in total. This would be around 34 years supply, taking the requirement of 6 per year, but all to be delivered within 5 years.

THE CUMULATIVE IMPACT OF HOUSING DELIVERY ON TATTENHALL

65. Each Appellant indicated that they would be able to deliver all the dwellings in 5 years, except for 30 on the Appeal B site. Redrow is aiming to deliver up to 70 within 5 years and it is expected that the Care Community will commence on site around October 2013. Also the 31 dwellings at The Oak Room will have commenced work (***Document MJ/4, Appendix 1***). This glut of new developments would have a serious impact on the facilities of Tattenhall in terms of construction traffic on the roads in all parts of the village and an overwhelming influx of people during the next 5 years, saturating the infrastructure such as the doctors, schools and other village facilities. The quantity of development would completely destabilise the affordable homes market and most likely the normal housing market in the area. This is not counting the huge volume of housing applications already agreed or at appeal in the adjacent wards (***Document MJ/4, Appendix 16***).

66. Reference was made to an appeal decision concerning residential development on land off Abbey Road and Middlewich Road, Sandbach. In this application for 280 dwellings the cumulative impact with an adjacent scheme for 269 dwellings is considered (***Document AW/11, paragraphs 22 and 25***). However a total of 549 dwellings is relatively small compared to the size of Sandbach which is a town of about 8,000 dwellings. This means that the increase would be approximately 7%. This is very different to the substantial increase which would occur if the three appeal developments were approved in Tattenhall. When added to the 215 dwellings already approved there would be an increase in housing of over

50% in the area covered by the TNDP. This would be a substantial and unsustainable increase by any measure.

67. It is accepted that the CDLP contains some policies that may be regarded as out of date. It was originally drawn up in the mid 1990's which was not during a period of housing restraint. The decision on these appeals may fall primarily on the Framework. Issues of sustainability and compliance with the Framework as a whole would normally be dealt with during the plan making process. However, in the absence of an up to date local plan the onus falls on the Appellants to demonstrate compliance with the Framework. They have failed to demonstrate that the developments would be sustainable either singly or collectively in terms of Paragraphs 7 and 8 of that document. For example no expansion of jobs has been factored into these developments and no evidence has been provided to support the growth of sustainable employment in the rural area.

68. The huge levels of development witnessed in the late 1960's and early 1970's have had a seriously detrimental impact on the community. This very much aligns with the conversion of an open integrated rural community to an open community but lacking integration directly as a result of too much development occurring too quickly during this period. It subsequently took many decades for the community to recover to the current vibrant open integrated rural community that it is today. This led directly to the refurbishment of the Barbour Institute, improvements in the facilities of the recreation club, and so forth (***Documents MJ/1, Paragraph 2.1; MJ/3, Paragraph 3.5 and Appendices 2 and 3***)[6].

69. It is important to protect the qualities that make Tattenhall special and make it a place where people want to live. The community acknowledges the need for housing growth but it wants to ensure that this is done in a sensitive way so that new developments are modest in size and can be successfully integrated (***Document MJ/1, Paragraphs 4.3-4.6***). The Appellants have not presented any evidence to demonstrate that such a detrimental impact will not re-occur if the community of Tattenhall is subjected to doubling of housing numbers in such a short period of time. This is a very important aspect of the social role as defined in paragraph 7 of the Framework (***Document MJ/3, Paragraphs 3.6-3.13***).

70. The Framework does not advocate growth at any cost and the issue of housing supply should not sweep aside the other requirements of the document. Paragraph 8 makes clear that the 3 dimensions of sustainable development referred to in Paragraph 7 should not be undertaken in isolation, because they are mutually dependant to create sustainable developments (***Document MJ/3, Paragraphs 3.14-3.18***). It would be inappropriate to grant permission for the three appeals due to the failure of the Appellants to comply with Paragraphs 7 and 8 of the Framework. They have not seriously challenged this position. Although they rely on Paragraph 14 of the Framework this is based on the presumption in favour of *sustainable* development. As the appeal schemes do not comply with this requirement Paragraph 14 is not engaged.

[6] Councillor Spencer has lived in the community for over 50 years and explained the changes that he witnessed first hand.

THE CASE FOR THE APPELLANTS

The main points are:

INTRODUCTION

71. A joint approach has been taken on housing land supply because analysis of the issue leads to the single conclusion that there is an identified, significant and urgent need for housing in the Borough. The Council has only 2.1 years' deliverable supply of housing land which is very substantially under the five year requirement mandated by Paragraphs 47 and 49 of the Framework. The position of the Council for the purposes of these appeals is not materially different and it accepts that it can only demonstrate a 2.6 years' deliverable supply of housing land (***Documents CWC/9, Paragraph 6; SCG/1, Paragraph 3.6***). The Council also accepts that there has been a record of persistent under-delivery of housing across the Borough, such that it is necessary to apply the 20% Framework buffer. Furthermore it agrees that there is an urgent need to bring forward appropriate sites which would make a contribution to housing completions within the next 5 years (***Document SCG/1, Paragraph 5.18***).

72. In contrast Councillor Jones is a lone, and contrary voice that contends the Council should not be subject to the 20% Framework buffer and that the Borough has *in excess* of a five-year housing land supply. On any proper analysis the conclusions reached by the Appellants and the Council as to the urgency of the need for housing in the Borough must be accepted[7].

HOUSING REQUIREMENTS

73. It is common ground with the Council that the evidence base which underpinned Policy L4 of the RS and which set a requirement for an average of 1,317 dwellings per annum, remains the only robust analysis of the housing requirement for the Borough (***Document CD1.2, Page 62 and Table 7.1***)[8]. Notwithstanding the revocation of the RS this should be relied upon for the following reasons:

    73.1. It remains the latest figure which has been fully tested through an independent Examination process.

    73.2. As was confirmed in the recent appeal decision relating to residential development east of Daux Avenue, Billingshurst, the revocation of the RS does not undermine the evidence which underpinned its policies (***Document HLS/3, Paragraph 38***). Likewise, in a very recent planning appeal decision for residential development on Land off Broad Lane, Rochdale housing figures within RS Policy L4 were applied as the most

[7] Inspector's Note – The Appellants submitted further representations following the close of the Inquiry objecting to the Council's change of position regarding housing land supply (***Document Doc/3***). However the Council now accepts that it cannot show a 5 year supply, reverting to its position held at the Inquiry. In the circumstances it is considered unnecessary to report these further representations in detail.

[8] Inspector's Note - The requirement is for the three former planning authorities in West Cheshire (Chester, Ellesmere Port and Neston, Vale Royal) which were re-organised in April 2009 to form the unitary authority of Cheshire West and Chester Council.

appropriate basis on which to assess housing need in the Rochdale area (***Document AW/18, Paragraph 26***).

73.3. The RS figure was based on a detailed examination of need in the Borough. The figure was scrutinised during a full Examination process as is demonstrated in the Panel's Report (***Document HLS/7, Paragraphs 6.24-6.42***).

73.4. The RS requirement was not a 'top-down' target or imposed on the Councils against their will. It was the local planning authorities that provided the figures for their areas which made up part of the overall RS requirement. Indeed, these were locally derived figures (***Document HLS/6, Paragraph 1.41***).

74. The housing requirement identified within the Preferred Policy Directions, which proposes a *minimum* requirement of 1,050 dwellings per annum[9] across the Borough, is not robust and cannot be used as a basis on which to judge housing land supply. It should not be relied upon for the following reasons:

74.1. It has not been subject to an independent Examination process.

74.2. It is at a relatively early stage and was the subject of consultation in late 2012. The results of this have yet to be incorporated into a further iteration of the draft plan. Once this is done and the submission document is published there will be a further round of consultation before the Examination. It is now anticipated that adoption will be late 2014 at the earliest (***Document CD1.6, Page 6***).

74.3. There are good reasons to consider that the minimum requirements will be revised upwards:

74.3.1. The proposed figure is based solely on average net completions between 1996 and 2011 (***Document CD1.6, Page 24***). It does not factor in future population growth or economic growth projections.

74.3.2. It is indicated that this level of housing "would begin to address ageing population, affordable housing and labour supply issues" Such an approach does not accord with the Framework's objectives to meet full and objectively assessed needs. It recognises that a minimum requirement of 1,600 dwellings a year would have a high potential to meet such needs. This would better accord with the aspirations of the Framework.

74.3.3. Detailed representations on the proposed figures have been made by a consortium of housebuilders who put forward their own projections of a minimum requirement for the Borough of between 1,600-1,900 dwellings per annum (***Document TW/1.3, Appendix 7, Paragraphs 9.20-9.38 and 9.52***).

[9] Inspector's Note – the latest iteration of the emerging Local Plan suggests a figure in the region of 22,000 dwellings over the plan period or around 1,100 over 5 years.

74.4. The contention that the figure in the Preferred Policy Directions may be reduced based solely on the latest ONS household projections for the area is misconceived:

74.4.1. The ONS projections themselves are only interim projections. The Department of Communities and Local Government published them with a view to consult on them prior to providing more definitive figures in the New Year.

74.4.2. As Paragraph 159 of the Framework confirms, household projections are only one part of the demographic input. The reduction in household projection figures cannot, in isolation, provide the basis on which to reduce the housing requirement. Indeed, the overall Borough population from the 2011 Census is higher than previous 2010 projections, by 2,100 (***Document TW/1.2, Paragraph 6.32***).

75. The key point is that there are many unresolved arguments as to the appropriate housing requirement figure which should be included within the final version of the Local Plan. These arguments will be tested at the Examination and reliance on it at this stage to judge the level of housing land supply would be wholly unjustified.

76. The Council agrees that there has been a record of persistent under delivery of housing in the Borough and that housing requirements should be subject to an additional 20% buffer (***Document HLS/2, Paragraphs 2.7-2.11***). The basis for arguing for a 5% buffer, which concerns the moratorium and the effects of the recent recession does not stand up to scrutiny:

76.1. There is an erroneous perception that the 20% buffer is a punishment for underperforming local planning authorities. The rationale is to ensure that housing delivery is 'boosted significantly' irrespective of the reason why there has previously been unmet need (***Document AW/8, Paragraph 27***). Furthermore, the local planning authorities and the RS Examination Panel were fully aware of the moratorium when setting the appropriate housing requirements and backdating them to 2003 (***Document HLS/7, Paragraph 6.24***).

76.2. The recession was not unique to the Borough and therefore cannot be pleaded as a reason for special treatment. Moreover, it is at least partly because of the recession that there is a need to significantly boost housing delivery (***CD3.9, Paragraph 1***). As such the recession, far from being good reason not to impose 20% buffer, was one of driving forces behind the decision to include it in Government policy.

77. The resolution of the Local Development Framework Panel to adopt the 5% buffer cannot be relied upon. It was passed contrary to Officer's recommendations and contrary to the specific advice from leading Counsel (***Document CWC/8b, Paragraph 76***). It was based on the same flawed reasoning as set out above.

HOUSING BACKLOG

78. It is clear that the Council accepts that the identified shortfall of housing provision against the first 10 years of the RS plan period must be incorporated within the current housing requirements for the Borough (***Document CD2.4, Table 5.2***). This is to ensure that the full, objectively assessed needs for market and affordable housing are addressed. There is a total shortfall of 4,586 dwellings in the RS period to date (***Document CD2.5, Table 4.2; HLS/2, Table 1***). The argument that the shortfall should be restricted to the undersupply since 2010 is predicated on the same reasoning as that relating to a 20% buffer. It suffers from the same weaknesses. The central point is that the housing needs caused by the shortfall in the period 2003-2013 have not simply gone away. The only way that they will be addressed is to incorporate the shortfall within the housing requirements for the Borough.

79. The appropriate way to address these unmet housing needs is to adopt the *Sedgefield* approach, that is to say, adding any shortfall accumulated in the previous plan years into the following five-year period. This approach has been adopted in a number of post-Framework appeal decisions (***Document HLS/3, Appendix 2, Paragraph 41***). Spreading the shortfall over the plan period would not address the extant need with any urgency. It would be the antithesis of the philosophy underlying the Framework.

HOUSING SUPPLY

80. The Framework requires local planning authorities to identify a supply of specific deliverable sites to provide a five years' supply of housing against their housing requirements. It also explains that, to be considered deliverable, sites have to be available now (***Document 1.1, Paragraph 47, Footnote 11***).

81. Both the Appellants and the Council have used the HLM as the source from which to derive a robust figure for the supply of deliverable sites in the Borough. The HLM is specifically designed to be used for development management purposes when calculating the level of housing supply. In particular, its methodology is designed to capture those sites which would be considered 'deliverable' in Framework terms (***Document CD2.5, Paragraphs 1.2, 5.2, 5.3***). The calculations are based on the now approved 2013 HLM because it reflects the most up-to-date, robust information on deliverable sites.

82. Reliance on a draft SHLAA to derive a list of deliverable sites is wholly inappropriate. Unlike the HLM the SHLAA does not seek to identify deliverable sites in Framework terms. It casts its net wider and includes for example expired permissions, pending applications and sites with no planning status whatsoever (***Documents HLS/2, Paragraph 3.6; CD2.9, Appendix 1, Table 3.3***). Furthermore the draft SHLAA is currently undergoing consultation and is the subject of objections. The figure of 8,745 dwellings includes a significant number of dwellings which simply cannot be considered 'deliverable' in Framework terms. Moreover it assumes all those with planning permission will be implemented within 5 years. No reliance can be placed on the 3,106 dwellings which are identified in the SHLAA for delivery during years 6-20 (***Document CD2.9, Appendix 1, Table 3.3***). These are dwellings which, by definition, cannot be counted for the purpose of calculating a 5 year housing supply.

83. One of the few areas of dispute with the Council relates to the extent to which the figures presented in the HLM accurately reflect the actual supply of deliverable sites in the Borough. The Council takes the stance that all sites in the HLM are deliverable in Framework terms but the Appellants contend that the figures need to be further refined to ensure that only those sites which are truly deliverable in Framework terms are taken into account. The result is a reduction in deliverable sites from the 7,527 dwellings identified in the 2013 HLM to 5,325 dwellings which results in a 2.1 year supply of housing land (***Document HLS/2, Paragraphs 3.11-3.17 and Appendices 5-7***). Even on the basis of the supply in the 2013 HLM of 7,527 dwellings the supply would only reach 3 years[10]. On either basis this is a serious and significant shortfall.

84. Even using the figure of 6,918 dwellings from the draft SHLAA, derived from those sites recorded as having planning permission and those awaiting Section 106 Agreements, there would still only be a 2.8 years housing land supply. The degree to which it would not address the 5 year supply is a material consideration. The Council has given no indication as to where or how the shortfall could be addressed and has not sought to suggest that housing on any of the appeal sites would be unnecessary or could be better provided elsewhere.

THE CONTRIBUTION BY TATTENHALL TO MEETING THE BOROUGH'S HOUSING NEEDS

The relevance of a 300 dwelling requirement[11]

85. Having established the Borough-wide housing need it is necessary to consider the extent to which Tattenhall should contribute towards meeting that need. Two points should be made at the outset. The first is that Tattenhall is recognised by all parties as a sustainable settlement, which is capable of accommodating significant levels of housing growth. The second is that in the appeal decision relating to land off Abbey Road and Middlewich Road, Sandbach, the Secretary of State confirmed that it would be wrong to focus on meeting housing land supply on a settlement-by-settlement basis. The focus must be on meeting the Borough-wide needs (***Document AW/11, Paragraph 18***).

86. The Preferred Policy Directions identifies that 300 dwellings are to be provided in Tattenhall during the plan period as part of the 4,200 dwellings to be provided in the rural area generally (***Document CD1.6, Pages 33-34***). This recognises that Tattenhall is capable of absorbing a significant amount of further housing growth. Indeed, it receives the second largest allocation of all KSC. It is clear that the Parish Council recognises that housing growth of this order is appropriate[12]. However the 300 dwellings identified in the Preferred Policy Directions must be treated as a minimum for the following reasons:

[10] Inspector's Note – The HLM deals with the backlog by spreading it over the remaining 8 year RS plan period (***Document CD2.5, Paragraph 5.8***). The Appellants have adopted the Sedgefield approach which reduces the supply from 3.3 years to 3 years in their assessment.
[11] Inspector's Note – the latest iteration of the emerging Local Plan reduces this to 250 dwellings (***Document Doc/2***).
[12] This was agreed in cross-examination of Councillors Weaver and Spencer by Mr Tucker.

86.1. The housing requirement for the Borough within the Preferred Policy Directions is expressed as being a minimum (***Document CD1.6, Page 21, PD02***). As the 300 figure is a component of this, it too must be treated as a minimum otherwise there is an internal inconsistency in the draft which would not survive the Examination process (***Document CD1.6, Page 33, PD04***).

86.2. Treating housing requirements as a minimum rather than a maximum is consistent with the Framework's approach to significantly boosting housing. A policy which incorporated a cap would not ensure that the full, identified housing needs were met because the policy would be adhered to so long as the cap was not exceeded. This would be so even if the housing needs were not being met.

87. Furthermore it more than likely that the minimum figure will be revised upwards during the plan-making process:

87.1. There is good reason to consider that the global housing requirement for the Borough will be increased. If the global figure increases, it follows that each of the component elements are likely to increase by the same, or at least a similar, factor.

87.2. The apportionment of the housing requirement between the urban and rural areas is likely to change. In the current draft only 20% of the housing requirement (4,200 dwellings) is allocated to the rural area, yet the Rural Regeneration Strategy envisages the rural area accommodating nearly double that figure (8,000 dwellings) (***Document TW/1.2, Paragraph 5.58***).

87.3. Within the rural areas it is clear that there has been insufficient allocation of housing to KSC and an over reliance on developments in the rural area outside of them. In order to achieve sustainable development the vast majority of growth in the rural area must be focused on the KSC. The Oak Room development in Newton-by-Tattenhall with its consequent need for a footway about 1 km in length to link it to Tattenhall village illustrates the point (***Document AW/1.2, Appendix 14***).

Existing contribution of Tattenhall to the draft Local Plan requirements

88. It is clear that the calculation made of committed development in Tattenhall is inaccurate.

88.1. The 14 dwellings at Grackle Croft were granted planning permission in December 2009. This was prior to the plan period for the Preferred Policy Directions and so cannot contribute to its housing requirements.

88.2. The 31 dwellings at The Oak Room are within Newton-by-Tattenhall and so well outside of the village of Tattenhall. It would contribute to the housing requirement of the rural areas outside the KSC. Indeed it is noticeable that the emerging Tattenhall Neighbourhood Development Plan (TNDP) clearly distinguishes between the two settlements and describes Newton-by-Tattenhall as a hamlet (***Document MJ/5a, Page 11***).

88.3. The 95 Assisted Living Units at the Frog Lane Care Community should not be counted towards the housing requirements of the Borough, or if it is, it should be limited to a figure of about 25 dwellings, for the following reasons:

88.3.1. The use of the units is likely to be classified as C2 or sui generis use rather than C3 use due to the nature of the proposal as a whole rather than the Assisted Living Units in isolation (***Document HLS/3, Paragraph 2.4***).

88.3.2. The provision of affordable housing on site does not necessarily mean that the use is Class C3. The Officer's Report makes clear that its inclusion and level was driven by pragmatic reasoning (***Document HLS/3, Paragraph 6.43***).

88.3.3. In any event, even if the Assisted Living Units are classified as C3 use, occupation is stringently controlled (***Document HLS/2, Paragraph 4.14***).

88.3.4. Due to the restrictive occupancy conditions the accommodation, including the Assisted Living Units, is designed to address at least Borough-wide, if not regional, need. It would therefore be inappropriate to count the vast majority, if any, of the units towards Tattenhall's housing requirements. At best 20 market units and 5 affordable units could be counted towards Tattenhall's own requirement (***Document HLS/2, Paragraphs 4.15-4.19***).

88.4. There is no evidence at all as to where the sites which have resulted in 5 miscellaneous dwellings are and these should not therefore be included.

89. Accordingly the only committed development in Tattenhall which will definitely contribute towards the housing requirement of the village identified within the CDLP, whatever the final figure may be, is the Redrow, development of up to 70 dwellings and arguably up to 25 units from the Care Community.

AFFORDABLE HOUSING

90. There is a substantial Borough-wide need for affordable housing with a gross requirement for over 1,000 affordable dwellings (***Document CD2.6, Page 74***). There is a very serious imbalance in relation to supply of affordable housing with the average annual affordable housing completions in the Borough over the last 5 years being just over 200 dwellings (***Document CD2.5, Table 4.4***). This is recognised in the evidence base which supports the Preferred Policy Directions (***Document CD1.6, Paragraph 6.6***).

91. This is a relatively expensive area for general market housing and it is becoming increasingly less affordable (***Document CD2.6, Paragraph 2.6***). This increases the importance of ensuring that the need for affording housing is met and depends upon the Council ensuring a good and consistent supply of market housing. Each site would make an important contribution to meeting those needs.

THE CASES FOR THE MAIN PARTIES ON OTHER MATTERS

THE CASE FOR CHESHIRE WEST AND CHESTER COUNCIL

The main points are:

92. Whilst the reasons for refusal in each appeal use slightly different language, essentially the concerns expressed relate to the impact of the proposals on the landscape. This includes the way in which Tattenhall as a settlement presents itself within that landscape. However there is no allegation relating to the impact of any of the developments on the conservation area. It is also not disputed that Tattenhall is a sustainable location for new housing development or that the capacity of the infrastructure would be insufficient to absorb the development, so long as the education and highways issues can be addressed through the Planning Obligations and planning conditions. The reasons for refusal do, however, challenge the sustainability of the schemes themselves insofar as they produce an unacceptable effect on the landscape but not on any other grounds.

GENERAL LANDSCAPE ISSUES

93. A sustained attack was made by all three Appellants on the methodology and judgment of the Council's landscape witness.[13] The Secretary of State will make his own assessment of the adequacy of the former and the value to be ascribed to the latter. However, on any fair or rational assessment of the whole of the landscape evidence presented to the Inquiry this challenge was entirely misguided. The methodology has been carefully and systematically explained in the evidence and there is a clear, methodical, detailed and transparent comparative assessment of all of the schemes. This contrasts with the conflicting, incomplete and far less transparent approaches adopted by the landscape witnesses of each of the Appellants.

94. The landscape reasons given in the reasons for refusal stand on their own merits as well as articulating why there is a breach of development plan policy. Paragraph 109 of the Framework recognises the importance of protecting and enhancing valued landscapes. It is accepted that policies such as ENV 2 and ENV 24 in the CDLP are not criteria based and that this will affect the weight given to them. However no-one has suggested that landscape is not a proper planning issue to be considered.

95. It is notable that each Appellant had produced a Landscape and Visual Impact Assessment (LVIA) to support their applications and that there has been adverse criticism of the landscape and visual effects of each other's schemes (***Documents TW/2.5, Page 9, Paragraph 4; AW/1.2, Appendix 18***).

[13] Mr J King BSc MLD CMLI.

APPROACH TO THE ASSESSMENT OF LANDSCAPE CHARACTER EFFECTS

96. The fact that the affected landscape is not subject to any specific designation or protection would feed into the process of assessing landscape impact. However because a landscape is undesignated does not mean that an adverse effect cannot be a strong reason for refusing planning permission. The 2013 Guidelines for Landscape and Visual Impact Assessment (The Purple Book) explains the various approaches which can be adopted in dealing with, and valuing such landscapes (***Documents CD3.17; CWC/3.1, Paragraphs 2.5.7-2.5.8***).

97. There is little difference in the character of the wider landscape within which the three sites lie although each site obviously has its own particular characteristics and contribution to that area. It is generally agreed that the national and county character types in which the sites are located or adjoin are:

- Shropshire, Cheshire and Staffordshire Plain;
- West Lowland Plain
- WLP2 Hoofield Character Area and the adjoining WLP3 Tattenhall Character Area.

98. The principal features of these areas are set out at ***Document CWC/3.1, Paragraphs 6.2, 8.2, 10.2***. In addition to identifying a number of features associated with field patterns, one common feature is the emphasis on the low woodland cover and the presence of a strong hedgerow pattern. This results in successive hedgerows creating longer distance impressions of a wooded landscape. The influence of views to the Peckforton Hills, Beeston Castle and the Clwydian Hills is also a noted feature. The Landscape Character Area at the national and county level has been considered and the key characteristics have been identified. The study area essentially comprises the Zone of Theoretical Visibility (ZTV) (***Document CWC/11***). A careful analysis has been carried out of the landscape characteristics that would be affected by each proposal.

Assessment of significance

99. A standard approach has been adopted to the assessment of the significance of impact which relates to the sensitivity of the receptor and the magnitude of change. In order to provide a more nuanced assessment of the sensitivity of receptors, magnitude of change and significance of effects the classifications have been subdivided so that instead of a blunt threefold categorisation a more precise indication of where on the scale ranging from low to high the sensitivity, level of change and hence significance lies. Although this scale of assessment requires a little time to get used to it is intended to be helpful, particularly when comparing different sites.

100. The determination of landscape sensitivity was guided by the advice in *Topic Paper 6: Techniques and criteria for Judging Capacity and Sensitivity* (***Document CD 3.16***). The assessment was built up by identifying the natural, cultural, landscape quality/condition and aesthetic factors of the relevant landscape study area to which judgments to assess their sensitivity to change have then been applied (***Document CWC/3.1, Tables 6.1, 8.1 and 10.1***). Account has been taken of the landscape components within the study area that contribute to landscape value (***Document CWC/3.1, Tables 6.2, 8.2 and 10.2***). Whilst there is

obviously a judgment to be made in attributing value, the factors taken into consideration are transparent. The direct effect of the development of the individual sites on the fabric of the landscape has been considered and a judgement applied as to the magnitude of that change (***Document CWC/3.1, Tables 6.3, 8.3 and 10.3***). The indirect or visual effect has then been considered by drawing on the separate visual impact assessment to arrive at an overall level of significance of change.

101. This approach allows the identification of the different elements that have led to the overall assessment of the significance of the landscape and visual changes that would occur if these developments were to be permitted. Although different values may be placed by others on different components of the judgment the approach should be of considerable assistance in allowing the Secretary of State to come to his own judgments.

The relationship between visual effects and landscape effects

102. In addition to looking at the direct effects of a development on the fabric of the landscape there is disagreement between the experts as to whether or how the visual impact of the development proposal should feed into the landscape impact appraisal. The two processes, although separate, are interlinked and any consideration of landscape impact without considering the way in which those changes would be perceived by humans enjoying the landscape would not be sensible. Support for this view can be drawn from both the Purple Book and its 2002 predecessor, the Blue Book (***Documents CD 3.13, Paragraph 2.13; CD3.17, Paragraph 5.2***). The Purple Book refers to the use of the ZTV as the basis for an appropriate study area and there are frequent references to the perceptual aspects that contribute to the character and distinctiveness of landscape (***Document CD/3.17, Paragraphs 5.33, 5.35, 5.44, 5.49***).

103. The evidence considers the material locations from which the changes brought about by the appeal proposals would have an impact. Individual views from private property locations have less weight in considering the overall planning merits of development as no-one has the right to a view. However, taken as a whole they must be relevant to a consideration of landscape changes in the area adjoining a settlement. Views from public rights of way where users are enjoying the landscape are clearly of utmost importance. Views from those local roads that are the “gateways” to the settlement must also be of great significance.

Mitigation strategy

104. In order to keep to the landscape character type and not introduce incongruous form into the local landscape, the mitigation planting for the Appeal A and C proposals would be contained in hedgerow enhancement with the addition of occasional trees or small groups of trees. This seeks to reflect the parkland around Brook Hall in the case of Appeal A. In Appeal B a 200m by 10m belt of new planting is proposed despite the frequent references in the various landscape character assessments to the absence of woodland in the local area. The approach in Appeal C is most consistent with the existing landscape character whilst that in Appeal B makes little attempt to respect existing landscape character.

SITE SPECIFIC CONSIDERATION: LAND ADJ ADARI, CHESTER ROAD (APPEAL A)

105. The proposal involves the construction of up to 110 houses with ridge heights ranging from between about 6.5m and 7.8m between the 28m and 33m contours (***Documents TW/8b; TW/11***). This assumes that the Appellant does not alter the house types and discounts any 2.5 storey dwellings as agreed at the Inquiry. The mitigation planting would follow the boundary of the site which rises from the 27m contour along the north and north western boundary and rises to slightly above the 32.5m contour. The boundary planting, so long as it includes Ash and Black Poplar, might reach 6.5m after 5 years (***Document TW/8c***). The effectiveness of this planting will obviously depend on the height from which the development is viewed as can be seen from the various sections produced (***Documents TW/8c; TW/18***). The effect of landscaping will diminish when viewed from higher ground, especially during the winter months. Also the sections indicate a tree screen but it is not intended that the whole boundary would be treed. Rather trees would be dotted around within the hedgerow. Footpath users would be aware of the presence of this housing development.

106. The main dispute concerns the overall significance of the landscape character change which development of the site would bring about. There is no agreement about what would be seen from particular viewpoints, particularly those along Footpath 8, or the effectiveness of mitigation planting in softening those views. There is also a dispute as to whether this development would improve the appearance of the settlement in the landscape when approached from Chester Road or whether development of the site, with or without the development of Site C, would urbanise the entrance to the village.

The significance of the landscape change

107. Landscape change should primarily be assessed by looking at the impact on the identified study area. Overall it is concluded that the sensitivity of the landscape resource is on the medium side of high. Having analysed the direct landscape effects and the visual effects it is concluded that the significance of the landscape impact is on the moderate side of substantial adverse. In addition a separate detailed visual impact assessment has been carried out with a careful analysis of the views that are currently experienced from various points on Chester Road and Footpath 8 and how those views would be affected by the appeal development (***Document CWC/3.4***).

108. It is accepted that different values may be attributed to the direct effects on the appeal site involved in the replacement ponds and the loss of ridge and furrow. It is also accepted that the proposed changes to the Appellant's parameters plan would lessen the visual impacts, albeit to a relatively minor extent. These changes may affect the precise position on the scale of significance. However they would not address the following important and significant factors identified as being adverse to landscape character and visual impact.

Impact on the user of Footpath 8

(***Documents CWC/3.1, Section 7.2; CWC/3.4, Photoviews 9-13; CWC/3.6, Plates G and H; SCG/6, PM03 and PM04***)

109. Much depends upon the impression and experience of the walk along this footpath. At present it presents an essentially rural walk where the influences of the village edge are intermittent and distant especially when travelling north. Whilst travelling in this direction along the lower part of that route the walker is currently barely conscious of the edge of Tattenhall. With the development the walker would be aware of the buildings to the right even if it is only as a line of roofs after planting has matured. The effect would be especially marked in winter (***Documents TW/2.3.3, Figure 3/2[14]; SCG/6, PM03***). Travelling south the footpath user would already be aware of Grackle Croft and may just be able to pick out development beyond it. However, the introduction of housing onto the appeal site would completely change the character of the walk.

110. As the path climbs higher in a northward direction the potential for mitigation screen planting would diminish. The edge of Tattenhall can be seen from this section of the path but it presents as a narrow band of development at or near the ridge line. Due to the slope of the land across the appeal site the dwellings constructed on the higher contours would be visible behind those on the lower contours. The overall depth of view of the built up edge of Tattenhall would thus be increased resulting in a vertical increase in the spread of development.

The urbanising effect on Chester Road

(***Documents CWC/3.1, Paragraphs 9.3.1-9.3.4; SCG/6, PM01 and PM02; TW/2.3.3, Figure 3/2, Sheet 1***)

111. Rather than providing any significant softening of the existing urban boundary with some form of incremental approach in terms of density of development, the appeal site would bring the line of urban development closer to the viewer entering Tattenhall along the Chester Road. It would increase the impression of a "wall" of built development. It was not suggested by the Appellant that mitigation planting, even when fully mature, would prevent the viewer from being aware of a line of roofs.

112. There would be other effects both in terms of impacts on residential properties and more distant views from Bishop Bennet Way/Newton Lane which should all be considered in assessing the overall impact (***Document CWC/3.1, Paragraph 9.3.5, 9.3.6, 9.4.1-9.4.6***). However, it would be the views from Chester Road and from Footpath 8 that would be the most significant. It is these identified changes that are specifically referred to in the reasons for refusal and represent a significant adverse effect on the identified landscape area.

[14] Inspector's Note – The wireframe diagrams in ***Document TW/2.3.3, Figure 3/2*** were produced by Mrs Randall on the basis of what was considered to be more realistic ridge heights than used in the agreed photomontages in ***Document SCG/6***. This is explained in ***Document TW/2.2, Paragraphs 4.11-4.14***. Subsequently Taylor Wimpey agreed that there would be no 2.5 storey houses on the site.

The Appellant's landscape case

113. There are two Landscape and Visual Impact Assessments (LVIA) in relation to the appeal site which have attributed different values to the existing landscape. (***Documents CD 5.16 and CD 6.17***[15]). These were both based on an apparently arbitrary 1km "sphere of influence" which includes areas from which the appeal site would not be visible. In the first LVIA the site and context was given a low level of sensitivity whilst in the second it was moderate. The magnitude of change was moderate adverse in the first LVIA but was judged to be slightly beneficial in the second, taking account of mitigation. The overall significance in both was judged to be slight adverse.

114. The Appellant's landscape witness[16] assessed the sensitivity of the landscape as medium based on the whole Landscape Character Area. The magnitude of change was assessed as low to negligible partly because the removal of such a small area visually separate from most of that Landscape Character Area would be insignificant. However this would mean that *any* form of development, however visually harmful in the local landscape, would also have to be treated as insignificant if it was visually separate from the majority of its Landscape Character Area and was small in size in comparison to that area.

115. The landscape witness considered that her evidence broadly accorded with the submitted LVIA although she did not go so far as to suggest that the change would be beneficial in landscape terms. Nowhere was there an analysis of changes to the view that was provided in the Council's evidence. Whilst she dismissed the Council's conclusions on visual impact in relation to her own scheme she endorsed its assessment in relation to the Appeal C scheme and suggested that the impact of the Appeal B proposal had been underestimated (***Document TW/2.4, Paragraphs 50, 56, 57***). The Council's assessment on landscape impact is thus to be preferred.

SITE SPECIFIC CONSIDERATION: LAND REAR OF 15-38 GREENLANDS (APPEAL B)

116. The landscape issues in relation to this site are very much addressed in the reason for refusal. The development would extend the built form of the settlement out into the open countryside north of Keys Brook on gently rising ground. The development would be visible over a considerable distance and would present as a long extension to the built up area into the countryside.

117. The viewpoints where the landscape and visual impact of the development would be most significant would be from Footpath 8 where substantial adverse or substantial - (very substantial) adverse impacts would ensue (***Document CWC/3.5, Photoviews 10-14***). There would also be moderate-substantial adverse effects from Tattenhall Road and Bishop Bennet Way/Newton Lane (***Document CWC/3.5, Photoviews 17, 18***). There would be substantial adverse effects from

[15] Inspector's Note – The Core Documents 6 series relate to a subsequent planning application for residential development of Appeal Site A by Taylor Wimpey.
[16] Mrs P Randall BSc(Hons) MALA FLI.

Footpath 11 caused by the impact of extending the settlement boundary into presently open countryside (***Document CWC/3.5, Photoview 19***).

118. From Footpath 8 the view would clearly change from being rural to one looking towards a line of built development. An otherwise unobstructed view across open countryside towards Beeston Castle would be replaced by a view over rooftops to the castle (***Document SCG/6, PM03, PM04***). The intrusive nature of the development into the countryside is also emphasised by its visibility, albeit through glimpses, from Chester Road and Bishop Bennet Way/ Newton Lane (***Document SCG/6, PM01, PM02, PM05***). In summary the development would be visible to a greater or lesser extent from the south-west from the west, from the north and from the east and in each case would present as an elongation of the settlement boundary and a projection into open countryside.

119. The landscape assessment follows the same format as with the Appeal A scheme. However, the balance of the factors making up the assessment of the sensitivity of the landscape is different. Taking account of the physical characteristics of the site, the overall landscape character sensitivity is assessed as (low) - medium (***Document CWC/3.1, Table 10.1***). However the visual sensitivity is assessed as being very high having regard to the impact on views to Beeston Castle and the Peckforton Hills, for example (***Document CWC/3.1, Paragraphs 10.4.2-10.4.5***). Taking all of these factors into account the sensitivity of the landscape is assessed as being (medium) - high (***Document CWC/3.1, Paragraph 10.6***). The magnitude of direct effects is assessed as being medium-high and indirect effects as being generally medium-(high). This would lead to a (moderate) substantial adverse landscape impact (***Document CWC/3.1, Table 10.4***).

120. The Appellant's original LVIA in support of the scheme was rejected by the landscape witness[17] as being confused. The LVIA provided for the appeal is hardly less so (***Document AW/2.2, Appendix 4***). The Study Area is more reasonable in size to that used by the landscape witness in Appeal A (***Document AW/2.2, Appendix 4, Figure 3***). However, the document does not provide any reasoned explanation for the choice of that particular area and at one stage appeared to be confined to that part identified by the photo viewpoints. Whilst the LVIA assesses the landscape as being of medium sensitivity to change there is absolutely no indication in the document as to what criteria are being used to reach that conclusion. It is then concluded that the development of the site would only have a slight adverse significance without going through the stage of assessing the magnitude of impact which when applied to a landscape of medium sensitivity would lead to that result. This is a poor document lacking in substance or analysis.

121. In the assessment of the visual impact on users of the public footpaths the sensitivity of those receptors is correctly judged as high. However there is a single rating of "low" in respect of the magnitude of change. The only given explanation relates to the distance involved and the proposed tree planting at the western and northern site perimeters. The change that would occur to the view is a major underestimate.

[17] Mr P Rech BA(Hons) BPhilLD CMLI.

122. The approach of the landscape witness to landscape mitigation appears to be completely misguided. He has referred to all the correct Landscape Character Area descriptions which apply to this part of Cheshire and which all draw attention to the lack of woodland blocks. However the landscape proposals for this site involve planting an uncharacteristic block of trees 200-300m by 10m. To justify this obviously alien feature in the natural landscape the existence of the disused railway line seems to have provided inspiration. However such a planting block would be entirely out of character and in itself an obviously artificial and incongruous feature which emphasises the element it is intended to screen. The only masterplanning expertise brought to this scheme was to draw the development back from the boundary and introduce a woodland block in an attempt to hide the proposed development behind it. Proposal B would appear as a sprawling incursion into the countryside without any existing natural containment and would not be readily assimilated.

SITE SPECIFIC CONSIDERATION: LAND OPPOSITE BROOK HALL COTTAGES, CHESTER ROAD (APPEAL C)

123. Whether the reason for refusal was the same as had been applied to the Redrow proposal is of no importance. It was explained that the latter would be very well contained by existing boundary landscaping and that the Council had now granted planning permission. The question is whether the development of the appeal site would have an unacceptable detrimental impact on the landscape character of the wider locality. The same methodology was used to assess this site as the other two. The overall landscape character sensitivity was judged to be medium and the visual sensitivity was judged to be high (***Document CWC/3.1, Paragraphs 6.4 and 6.5***). By taking these along with the landscape value there is an overall level of sensitivity for the landscape resource of medium-high (***Document CWC/3.1, Table 6.2 and Paragraph 6.7.1***). The magnitude of direct and indirect landscape effects is assessed as being medium–high leading to a moderate-substantial adverse significance of landscape effect (***Document CWC/3.1, Paragraph 6.8 and Table 6.4***).

124. The changes in landscape character and the visual impact of this development would mainly relate to the urbanising effect of the development on the entrance to Tattenhall along Chester Road (***Documents SCG/6, PM01, PM02; CWC/3.3, Photoviews 7, 8***). There would also be a wider impact on landscape experienced by users of Footpath 8 (***Documents SCG/6, PM03, PM04; CWC/3.3, Photoviews 9, 10***). The original photomontages produced by the landscape witness[18] exaggerated the effect of landscape mitigation but a further set provided for the Inquiry are helpful in understanding the effect that the development would have (***Document BH/15***).

125. The landscape witness did not pretend that the development could be screened from view or that this was the intention of the planting scheme. The existing hedge would be retained or re-created and there would be some reinforcement with tree planting. Over a distance this would have the effect, together with other intervening hedgerows, of softening the appearance of the development. However from Chester Road it is not intended that the development would be

[18] Mr J Berry BA(Hons) DipLA AEIMA CMLI MArborA.

screened from the view of users of that road. This would result in the southern side of Chester Road appearing as a built up area. The Design and Access Statement shows how the developer intends the site to appear and demonstrates the suburban ethos to the design (***Document CD10.4, Page 35***).

126. Views from Footpath 8 show the development effectively on the sky line projecting the urban edge of Tattenhall out into the wider landscape substantially beyond the point where the footpath returns to Chester Road. The development would have a dominant effect on anyone walking in a southerly direction. It would transform a path from where there are only relatively distant glimpses of the village edge into one which leads directly to the built up edge of the village as it extends out to the west. This would completely alter the character of the footpath and in the way in which users experience the landscape. This effect would continue for some distance along the path. The fact that the development would not extend further west than the Frog Lane Care Community further to the south does not help in assessing how the development would be perceived in the landscape by those who are using the footpath.

127. The Appellant's landscape witness had prepared the LVIA accompanying the planning application which appears to accept the relevance of visual effects in the assessment of landscape impact. However it is not clear how they feed into any assessment. His choice of landscape character types against which to assess the landscape changes on the site bore little relationship to the character areas which are identified in the Countryside Agency's character map or the Cheshire Landscape Character Assessment. The only relevant character type was his LCT1. His choice of the extent of a Study Area included areas which could not conceivably be affected by the proposed development of this site.

128. The supposed advantage of providing a softer edge to Tattenhall has to be judged in the light of the way in which the landscaping along Grackle Croft will mature over time if properly enforced (***Document CWC/2.2, Paragraph 2.4***). Ultimately, however, the issue with respect to this site comes down to the judgment as to whether the impacts on Chester Road and Footpath 8 are unacceptable.

CUMULATIVE EFFECTS

129. Cumulatively the effects become significantly more harmful as the impact of one scheme is added to another as is demonstrated in the photomontages (***Document SCG/6***). The Purple Book draws attention to the different types of cumulative effect and the Council's expert evidence is the only evidence which attempts any analysis of those effects (***Documents CD3.17, Section 7; CWC/3.1, Section 11***).

130. If all three schemes were to be permitted then there would be a belt of new housing development stretching almost the full length of the existing western boundary of the village and then beyond to the north. The cumulative impact of the development in emphasising or exaggerating the size of the village when viewed from the west, north and north east is plain from the photomontages. The almost oppressive sequential impact of the three developments on users of Footpath 8 is also apparent from the photomontages.

THE CASE FOR COUNCILLOR MIKE JONES

The main points are:

INTRODUCTION

131. The fact that over 180 residents attended the public evening Inquiry session at Tattenhall demonstrates that the community is at one as a forward thinking community. It supports appropriate development that is proportionate to the size and addresses identified needs in the parish area covered by the TNDP. The common messages that emerged from the community were:

    131.1. The speed and quantity of development in the next 5 years would be too much and too fast.

    131.2. These developments would not integrate into the village but would be bolt-on, urban type developments.

    131.3. The capacity for employment growth in the immediate rural area is limited in relation to the new developments.

    131.4. Residents support growth but this must be proportionate to the size of the village.

    131.5. There is a substantial understanding of, and significant support for, the TNDP.

132. The most important aspect is the support for the TNDP, which is a plan that is in an advanced stage of its development. It is a plan that is about growth but growth that is under the control of the community and proportionate to the size of the community. Landscape issues and the visual impact of development have not been addressed as these matters have been dealt with in detail by the Council.

SUSTAINABILITY REQUIREMENTS OF THE FRAMEWORK

133. The Taylor Review of Rural Economy and Affordable Housing: *Living Working Countryside* (2008) refers to the risk of repeating past mistakes by creating unattractive developments of housing estates encircling rural towns and larger villages and creating dormitory settlements[19]. Tattenhall has produced a strategy as contained in the TNDP to make it clear that we must learn from the mistakes of the past and enable developments that are proportionate and of the style appropriate for a small rural community (***Document MJ/3, Paragraphs 5.6-5.7***).

134. For over 15 years the community of Tattenhall has been actively shaping how the village grows (***Documents MJ/1, Paragraphs 2.4-2.9; MJ/3, Paragraphs 3.5, 3.11-3.13***). It has developed a Parish Plan and reviews its progress regularly (***Document MJ/3, Paragraph 3.9***). There is also a Village Design Statement to inform potential developers and it has been adopted by the Council as a supplementary planning document (***Document CD3.4***). The community has now

[19] See for example Paragraphs 13 and 25 of the Review.

produced the TNDP (***Document MJ/5a***). This is significantly advanced and should be given considerable weight in this appeal as it is in general conformity with both the Preferred Policy Directions and the Framework. The Village Design Statement is part of the TNDP and is referenced under Policy 2. It is not an out of date document as the Appellants have suggested.

135. The TNDP has been developed as a Front Runner chosen and funded by Government as part of their key flagship policy of localism where communities are involved in the planning process. The work has been carried out working closely with the Council and most importantly under the watchful eye of the Department of Communities and Local Government (***Document MJ/1, Paragraphs 3.3-3.4***). It is clear from the advice received that a neighbourhood plan can be made prior to a local plan being completed or before an existing local plan has been replaced.

136. The TNDP is part of a continuation of community involvement in planning following on from the Parish Plan and the Village Design Statement (***Document MJ/1, Paragraphs 3.6-3.10***). It is detailed and has consumed many hours of hard work by a range of people in the community (***Document MJ/1, Paragraphs 3.14-3.16***). It has been through an independent Examination and the Examiner's Report was highly favourable. The TNDP is now to proceed to Referendum (***Document Doc/2***)[20]. The TNDP provides the opportunity for community-led planning to determine how, what and where development should take place as envisaged by both the Localism Act and the Framework. The community has demonstrated a mature understanding of planning issues and this has been gained by the level of engagement in the neighbourhood planning process. The definition of the TNDP area, which treats Tattenhall and the two hamlets as one planning area was approved with no objections (***Document MJ/5d***).

137. Paragraphs 183-185 of the Framework set out the approach to neighbourhood plans. There is no reason why a neighbourhood plan can not be made, ahead of an emerging local plan. There is in any event still a local plan in being, albeit some of the policies may be regarded as out of date. Indeed if such a rule applied as suggested by the Appellants, it would make the system of neighbourhood planning unworkable. Plans of both types gain and lose weight over their individual life and are highly unlikely to be synchronised throughout a Borough such as Cheshire West and Chester. This is also confirmed by the Department of Communities and Local Government (***Document MJ/8b***). The Parish Council has received a letter from the Council informing them that the TNDP is accepted and with the supporting documents, meets the relevant legal and procedural requirements (***Document MJ/6***). The TNDP is in general conformity with the Preferred Policy Directions and the Framework.

138. The Framework clearly states that neighbourhood planning gives communities direct power to develop a shared vision for the neighbourhood and deliver the sustainable development that they need. This is a very important statement as it has to be sustainable in terms of Paragraphs 7 and 8. It also hands power to the community. This power would be removed if planning permission were

[20] Inspector's Note – The Referendum took place on 24 October 2013 and the majority of those who voted agreed that it should be adopted.

granted for these three appeals. This is because the number of houses proposed would sterilise the community's ability to use these powers as the decisions would have been made for them. The Framework reinforces the principle that neighbourhood planning provides powers to the local community to ensure they "*get the right type of planning*". This is the sort of development that satisfies local need and is community-led planning rather than developer-led planning, which would occur if the appeals are successful.

139. The Council has indicated that the TNDP is in compliance with the Preferred Policy Directions and the appropriate existing elements of the current adopted CDLP. The TNDP makes clear that it will meet the housing numbers and deadlines defined by the emerging Local Plan (***Document MJ/5a, Paragraphs 3***). It should be noted that 215 units already have planning permission that is some 75% of the provisional 20 year target, within the first 5 years of the 20 year plan. If these applications are granted permission, it will deliver 177% of the provisional target of 300 within 5 years (***Document CD1.6, Page 35***).

140. The Framework makes clear that a local plan holds the strategic elements and that neighbourhood plans can shape and direct sustainable development in their area. The Council has accepted that the TNDP has demonstrated its general conformity with the strategic policies and so Paragraph 185 of the Framework makes clear that its policies can take *precedence* over existing non-strategic policies in the local plan for the neighbourhood which, in this case, means the area covered by the TNDP. This includes Policy 1 which restricts developments to 30 homes.

141. These are very powerful statements which make localism come alive for communities. The Parish Council was assured by the Rt Hon Greg Clarke that "*the local community is in the driving seat*" (***Document MJ/4, Appendix 10***). This is why, in accordance with Paragraph 216 of the Framework, the draft TNDP should carry significant weight in these appeals.

THE STATUS OF THE NEIGHBOURHOOD PLAN

142. All of the appeal schemes would directly conflict with the TNDP in terms of scale and impact. The Appellants were critical of Policy 1, which places a limit on housing proposals involving up to 30 dwellings. This may not fit the business models of the major developers but there is no reason in law or the Framework that such a figure can not exist. Indeed it is based on the principles of sustainability. The Examiner noted in his Report that its aim was specifically to prevent large suburban housing development on the edge of the village. He considered that the approach was in line with the Framework which requires policies to recognise housing growth but respond to local character and reflect the identity of local surroundings. He did not consider the figure arbitrary but rather evidenced on the local desire to maintain and enhance the distinctive and cherished qualities of Tattenhall and its district (***Document Doc/2***). The figure had come out of consultations going back to 1993 which made clear that small scale developments that respect local character are favoured by the community (***Document MJ/4, Appendix 4***). Small scale developments allow flexibility in delivery and are more likely to employ a local workforce.

143. Policy 2 in the TNDP underlines the need of development to respect its surroundings by a number of means, including reinforcing local distinctiveness,

creating a strong sense of place and respecting local landscape quality. The appeal proposals would fail to accord with these requirements (***Document Doc/2***).

144. During the Inquiry the Appellants indicated that the TNDP was a good plan and one they could work with[21]. At the start of the Inquiry it was suggested no weight should be given to the TNDP. At its close considerable weight was given to the document, even to the extent that it is being treated seriously with a proposed closing statement in its own right by the Appellants.

PREMATURITY

145. As the TNDP is at an advanced stage and in accordance with the planning guidance "*The Planning System: General Principles*" the issue of prematurity is of significant importance. If these appeals are allowed it would fundamentally undermine the TNDP. The size of the proposals, in addition to the developments with planning permission already, would be significant relative to the size of Tattenhall. The village would increase in size by about 50% within 5 years. The three developers have committed to deliver all of the schemes in full, other than 30 dwellings on Appeal site B, within a 5 year time period. It should be noted that there is also a planning application for 75 dwellings by the Bolesworth Estate, which has not been included in the above calculation. Approval of the three appeal schemes would have such a significant effect on the community that it would negate the fundamental purpose of the neighbourhood planning regime as set out in the Framework. Having carried out extensive consultation it can say with authority that the community will not support large scale development as is being proposed (***Document MJ/1, Paragraph 5.2***).

146. Comments have been made that the Examiner of the TNDP may find the plan unsound. However it is understood that this is not an option an examiner has when carrying out a review of a neighbourhood plan. The Basic Conditions Statement sets out the pre-requisites the TNDP should meet and therefore those that will be examined. This does not include a test of soundness .

SITE SPECIFIC OBSERVATIONS

Appeal A: Land adj Adari, Chester Road (up to 110 dwellings)

147. This would be a highly obtrusive, bolt-on estate on a main approach to Tattenhall and extending into the countryside. The site contains a resident population of Great Crested Newts (GCN) and water voles and otters have been identified by a recent survey of Keys Brook by the Cheshire Wildlife Trust (***Document MJ/3, Paragraph 6.4.3***). Paragraph 119 of the Framework indicates that the presumption in favour of sustainable development does not apply to development requiring Appropriate Assessment under the Habitats Directive.

148. In addition the proposal is contrary to a number of saved CDLP policies in view of its effect on the landscape, countryside and wildlife. It would also have an adverse impact on the adjacent conservation area as indicated by the Council's Conservation Officer. This would not be an incremental expansion and the

[21] In cross-examination by Councillor Weaver, Mr Taylor indicated that there was much material that was useful in the TNDP.

proposal would be contrary to the Village Design Statement in this respect. Finally, part of the site is subject to flood risk (***Document MJ/3, Section 6.2***).

Appeal B: Land to the rear of 15-38 Greenlands (up to 137 dwellings)

149. This would lengthen the village away from its facilities and would be a highly visible bolt-on estate that would protrude into countryside and eliminate the current soft edge of the village. There is a nearby resident population of GCN. Otters and water voles have been seen in Keys Brook, so there would be similar concerns under Paragraph 119 of the Framework to Site A and Paragraph 14 would not apply.

150. The proposal would be contrary to a number of saved CDLP policies relating to landscape, countryside and nature conservation. There are also similar comments to Appeal A relating to the Village Design Statement and flood risk (***Document MJ/3, Section 6.4***).

Appeal C: Land opposite Brook Hall Cottages, Chester Road (68 dwellings)

151. This would be another example of a bolt-on development extending in to the countryside. Like Site A, because of the downward slope of the land, the visual impact would be exaggerated. Similar ecological concerns are raised to the other two sites as Mill Brook has also been identified as a likely habitat for otter and water vole by the Cheshire Wildlife Trust. Mill Brook is managed by the Tattenhall Wildlife Trust and has been improved over the years (***Document MJ/3, Paragraph 6.5.3***). The presumption in Paragraph 14 of the Framework would thus not apply. Part of the site is subject to flooding. Similar policy issues are raised as to the other two appeals. This would not be an incremental expansion of the village and so would be contrary to the Village Design Statement. In addition there would be adverse impacts on views of the church which would harm the conservation area (***Document MJ/3, Section 6.5***).

THE APPELLANTS' CASE ON NEIGHBOURHOOD PLANNING AND LOCALISM

152. A joint response was put on this matter by the three Appellants. For this reason it has been reported separately to their main cases.

The main points are:

LOCALISM

153. Whilst questions of local decision taking and plan making, as well as community involvement in planning decisions, are of grave concern to some residents of Tattenhall, they were not of sufficient weight to find their way into any of the reasons for refusal.

154. The recent Administrative Court decision in *Tewkesbury v SSCLG* sets an important context for consideration of the issues that have been raised by Councillor Jones and other third parties (***Document HLS/6, Appendix 1***). Tewkesbury Borough Council applied to quash the Secretary of State's decision to grant planning permission for the development of farmland for provision for 1,000 new dwellings. In that case the Council was unable to demonstrate a five-year housing land supply for which there was a pressing need. The

potential harm that would be caused to the landscape was capable of being outweighed by other material considerations. These conclusions bear a striking resemblance to those that the Appellants consider should be reached by the Secretary of State in the present case.

155. The Council submitted that the Secretary of State had undermined the democratic process whereby it was for it to determine local housing provision as part of its responsibility for establishing a local development plan. It also contended that The Localism Act had brought about a fundamental change in the approach to planning applications. In effect the complaint was that insufficient weight had been given to the emerging local plan policies and too much weight to the 5 yr housing land supply. Reliance was placed on policy and Ministerial Statements relating to localism rather than any specific provisions of the 2011 Act.

156. The key findings in the judgement were as follows:

    156.1. Any contention that the Localism Act laid down as a rule of law a requirement as to the weight to be given to the views of the local authority was rejected (Paragraphs 59 and 69).

    156.2. The Localism Act did not abolish long-standing principles and policies such as the need for a five year housing land supply or the principle of prematurity as the means of resolving the tension between individual planning applications and the more extended timescale needed for the formulation and adoption of local development plans (Paragraphs 59 and 60).

    156.3. There was nothing in the Ministerial Statements that suggests that a fundamentally different approach was required or that certain material considerations should be afforded differing levels of weight (Paragraph 60).

    156.4. When the Secretary of State determines a planning application or appeal the only real relevance of the Localism Act is that it paved the way for the removal of one tier of bureaucracy (Paragraph 60).

    156.5. The core planning principle relating to the role of local authorities and local people must be read in the context of the Framework as a whole including housing land supply issues (Paragraph 62).

    156.6. Local Plans must be in conformity with principles and policies in the Framework (Paragraph 63).

157. The Tewkesbury decision scotches any notion that the views of a local planning authority, and by extension, local communities, should be given any more weight in the planning balance following the Localism Act. It follows that relying on the concept of localism does not advance the third parties' arguments or add more weight to their concerns.

PREMATURITY

The emerging Local Plan

158. The position is agreed with the Council in the Statement of Common Ground (***Document SCG/1, Paragraphs 2.24-2.28***). The Preferred Policy Directions has been out to consultation and the results of that consultation exercise have been considered. Although the emerging Local Plan was expected to be published in May 2013 that target date has now passed. At best it will be submitted for Examination in Autumn 2013 with adoption in 2014[22]. However the Council has agreed that at this stage the plan has limited weight.

159. By application of Paragraph 216 of the Framework it must follow that granting planning permission for the three appeal schemes could not possibly predetermine the scale of development or choice of spatial locations available to the Council (***Document CD3.7, Paragraph 17***). It was accepted that the new Local Plan is at an early stage of preparation and, in particular, that the housing numbers may have to increase before it is adopted[23]. Even if the emerging document was to be given greater weight, it is inconceivable that the scale and location of development in the Borough could be predetermined when the total capacity of all three sites would represent 2.5% of the 5 year requirement for the Borough[24] and when there would still be a significant shortfall in housing land if the schemes were to go ahead. A similar approach was taken in the appeal decision relating to residential development at Cuddington (***Document AW/1.2, Appendix 9, Paragraph 30***).

The draft TNDP[25]

160. The residents of Tattenhall are to be commended for their work on preparing a draft Neighbourhood Development Plan (***Document MJ/5a***). As they now recognise it cannot determine housing numbers[26]. Whilst it contains a great deal of material which may well influence the ultimate design of the new housing proposed, the limitations upon its scope mean that it should not affect the outcome of these appeals.

161. Although the TNDP is progressing towards adoption only minimal or negligible weight can be attached to it at this stage. Whilst local residents should be rightly proud of their efforts so far in producing the TNDP and consider that substantial weight should be accorded to it, their views have not been shared by

[22] Inspector's Note – The current position regarding the Preferred Policy Directions is explained in the Planning Policy section of this Report.
[23] These points were accepted by Councillors Weaver and Jones in cross-examination by Mr Tucker.
[24] This is calculated as the total 5 year housing requirement of 12,488 (see ***Document HLS/8, Paragraph 28***) divided by the 315 dwellings from the appeal sites.
[25] Inspector's Note – This part of the Appellants' case was delivered at the close of the Inquiry and therefore reflects the position at that time. Since then things have moved on with regard to the TNDP but it remains the case that it is still not an adopted document. The Judicial Review means that the comments remain generally relevant.
[26] In cross-examination by Ms Ellis, Councillor Weaver agreed the TNDP cannot set a lower number of houses to that in the local plan.

the Council's officers or Members. Councillor Jones refined his position that the appeal proposals would be premature prior to the adoption of the TNDP to one of prematurity in relation to the emerging Local Plan. He conceded that the future Local Plan may well increase the housing numbers both across the Borough and in Tattenhall.

162. In any event prematurity within the context of the TNDP cannot be supported because:

162.1. The TNDP has been published but the consultation period has not yet ended. It is not possible to know whether there will be any objections to it and still less what the outcome of the Examination will be. In such circumstances *The Planning System: General Principles* advises that refusal on prematurity grounds would seldom be justified (***Document CD3.7, Paragraph 18, bullet 1***). Even the Council has advised that little weight can be given to the TNDP at this stage (***Document CWC/1.1, Paragraph 2.35***).

162.2. In any event when the TNDP is subject to Examination its acceptability will depend upon a number of factors. These include its general compliance with the strategic policies of the draft Local Plan and whether it is appropriate to adopt the TNDP having regard to Paragraph 184 of the Framework[27]. It is common ground that the CDLP is out of date in a number of respects, particularly in relation to the housing figures it contains. There is no post-Framework local plan and the prospect of one being adopted is some way off. It is logically impossible for the TNDP to be in general conformity with the strategic policies of a local plan that has not even been published. For this reason the Council rightly considers that the TNDP cannot be adopted ahead of a new local plan (***Document CWC/1.1, Paragraph 2.35***).

162.3. The Parish Council intends the TNDP to deliver the 300 units in the Preferred Policy Directions. However it recognises that the Local Plan Examination may result in the housing numbers for the Borough and Tattenhall being increased. In that event the Parish Council would have to review the TNDP to accord with that increased number[28]. However there was no explanation as to why it served any useful purpose to promote the TNDP in advance of the adoption of the new Local Plan.

162.4. The alternative is for the TNDP to be tested against the strategic policies of the CDLP (***Document MJ/8b***). However the CDLP has no strategic policies as the TNDP Basic Conditions document recognises (***Document MJ/5c, Page 12***). Anyway it is out of date. It was confirmed that the TNDP was prepared principally to accord with the direction of travel in the emerging Local Plan rather than with the CDLP[29]. It must follow that

[27] Town and County Planning Act 1990, Schedule 4B.
[28] In cross-examination by Mr Holgate, Councillor Spencer agreed that the TNDP would align with the numbers set in the draft Local Plan and may have to be reviewed if the numbers were increased.
[29] In answer to the Inspector's question, Councillor Spencer said that the TDNP sought to conform to the CDLP but also align with the draft Local Plan and its strategy for KSC.

it would be quite impossible for a properly constituted TNDP to be adopted in advance of the new Local Plan, which must seek to meet the objectively assessed housing needs of the Borough and not just Tattenhall (***Document AW/11, Paragraphs13-14***).

162.5. No weight at all can be given to the TNDP's dwelling target and its attempt to place a "ceiling" on the number of dwellings constructed during the plan's lifetime[30]:

162.5.1. There has been no supporting study to assess the capacity of Tattenhall to accommodate further residential development or to consider whether a maximum figure of 300 dwellings is the most sustainable option. This fails one of the Basic Conditions in Schedule 4B to the Town and Country Planning Act 1990 relating to EU obligations (***Document MJ/5c, Page 2***). The SEA Directive is one such EU obligation.

162.5.2. Even if it were legally possible to establish a target for Tattenhall until the emerging Local Plan is adopted there can be no confidence that the Tattenhall figure would remain at 300.

163. In the circumstances the TNDP should be given minimal or negligible weight in the determination of these appeals. Reliance on it does not even begin to lay the necessary foundations for a prematurity argument.

164. It should anyway be noted that the TNDP is not wholly resistant to residential development. Its very title: *Sustainable Growth for the Whole Community* recognises that growth is a necessary component. One of the principal objectives is to deliver a housing growth strategy, albeit tailored to Tattenhall's needs. Two points follow from this. The first is that residential development on the outskirts of the village would not be objectionable in principle. The second is that *appropriate* residential development will be supported.

165. Circular 03/2009 makes clear that local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons which are supported by substantial evidence. The points made by objectors on localism, prematurity and the TNDP are without merit. Reliance on the concept of localism does not alter the planning balance or the judgments that must be undertaken in relation to the three appeals. It does not mean that less weight should be given to meeting the housing needs of the Borough or boosting housing supply as the *Tewkesbury* judgment makes clear.

[30] Inspector's Note – The final version of the TNDP removed the 300 dwelling ceiling from Policy 1 but retained a 30 dwelling limit on individual new developments.

THE CASE FOR TAYLOR WIMPEY UK LTD

The main points are:

THE FRAMEWORK FOR DECISION MAKING

166. This case is one where the Framework can, and should, decisively influence the outcome in favour of development and growth. The development plan is the starting point for consideration. However the RS has been revoked and the CDLP is not up to date and consists of a handful of development management policies which were framed and adopted by a previous local planning authority in very different circumstances from those which now obtain. No policy dealing with housing requirements or delivery survives. The Framework's policies for housing provision generally seek a significant boost in supply and identifying and tracking a five year supply of specific deliverable sites is pivotal to the implementation of such policy. Provision of housing is seen as a sustainable activity in itself (***Document CD1.1, Paragraph 49***). Where there is not a five year supply Government policy goes further, directly addressing the statutory balance and that relevant policies for the supply of housing should not be considered up to date.

167. The Council and three Appellants agree that the three appeals must be considered on the footing that the Council cannot demonstrate a five year supply of deliverable housing sites (***Document SCG/1, Paragraph 3.6***). Therefore this case must be approached on the basis that material policies of the CDLP are out of date, including Policy HO7, which relates to development in the countryside (***Document SCG/1, Paragraphs 2.2, 5.16***). There is thus no dispute that all of the appeals fall to be determined on the basis of the final bullets of Paragraph 14 of the Framework. No planning evidence was called on behalf of the Council to suggest that any other approach to the development plan or the weighing of material considerations could properly be taken. Indeed the Council expressly recognised that it is inevitable that some greenfield sites on the edge of existing sustainable settlements will have to be released if the undersupply of housing is to be addressed and therefore Policy HO7 will be breached in those circumstances. Tattenhall is agreed to be a sustainable settlement that is capable of accommodating an appropriate level of growth.

168. The need for greenfield urban expansion at Tattenhall is consistent with the position taken in the emerging Local Plan, which will supersede the saved policies of the 2006 CDLP. Whilst quantum is a matter of contention, the principle of urban expansion on greenfield land is not. The issues relate to the size of such developments not their necessity in principle[31]. Although little weight can be given to either the draft Local Plan or TNDP at present they both show that the direction of travel is away from saved Policy HO 7 and away from in-principle resistance to residential development within the landscape immediately surrounding Tattenhall (***Documents CD1.6, PD03, PD04; MJ/4, Appendix 9***). That change of policy direction reinforces how far matters have travelled away from the principles underpinning the policies of the 2006 Plan.

[31] This point was agreed by Councillor Spencer in cross examination by Mr Tucker.

169. The decision must therefore be approached on the basis that it is for those who oppose the appeal scheme, alone or in combination with the other two schemes, to show that any adverse impacts would *"significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific policies in this Framework indicate development should be restricted."* This policy is the *"golden thread"* because it sets out what the presumption means in practice. National policy therefore builds in significant weight on the side of housing development because of the serious view which the Government takes of housing shortages. In such circumstances there is no burden on the Appellants to prove that proposals exhibit sustainable characteristics under the dimensions set out in Paragraph 7 of the Framework. Rather policy recognises the inherently unsustainable nature of housing shortages and provides for housing proposals to be regarded as sustainable development and approved in the absence of a clear demonstration of significant harm[32].

170. Only saved Policies GE 1, ENV 2 and ENV24 are cited in the putative reason for refusal. The Council made it clear that the only issues arising under these policies with regard to this scheme alone or in combination with the other two proposals are landscape and visual effects (***Document CWC/19, Paragraph 23***). The only relevant aspect in saved Policy ENV 2 therefore relates to landscape. Saved Policy ENV 24 is solely concerned with landscape. Saved Policy GE1 is wholly parasitic on Policies ENV 2 and ENV 24 and has no independent value when assessing the degree to which the proposals conflict with the CDLP.

171. These policies were framed and adopted against a background of strategic restraint which is at odds with national policy *"to boost significantly"* housing delivery. Neither saved Policy ENV 2 nor saved Policy ENV 24 includes criteria against which to make judgments. They refer generally to *"landscape"* without differentiating between international, national and local designations, as required by the Framework. The landscape in question in these three appeals is undesignated or *"the bottom of the pile"* in terms of planning status. Saved Policies ENV 2 and ENV 24, as well as the general background to the Plan, are not therefore in step with current national policy. They are out of date, at least insofar as applied in this case to landscape which is "*unremarkable"*.[33] It is also highly relevant to note that the Framework does not oppose provision of housing behind existing housing, nor does it state that housing development is objectionable if it can be seen from roads or public footpaths. Such effects are likely to be the result of every new housing scheme which is proposed in the entire country and the only way to avoid them would be to build unsustainably in the middle of open countryside, which the Council rightly rejects as an unsustainable approach. Similarly, there is no objection in principle to building on undesignated greenfield land. Indeed, such policies and approaches would

[32] Mr Matthews indicated in cross-examination by Ms Ellis that such would need to be *"serious substantive harm as opposed to policy harm only … objectively verifiable, obvious and persuasive"*.

[33] Mr Matthews considered in cross-examination by Ms Ellis that to the extent that the Landscape Officer's concerns about the appeal scheme related to the principle of peripheral expansion at Tattenhall, which he had conceived to be a policy issue, he disagreed and considered such a stance was misconceived from a planning perspective.

be entirely at odds with the national policy *"to boost significantly the supply of housing"*.

WHETHER ANY ADVERSE IMPACTS WOULD SIGNIFICANTLY AND DEMONSTRABLY OUTWEIGH THE BENEFITS

The Nature of the Council's Case

172. The exercise of weighing different material considerations is familiar to decision makers. The two sides of the balance have to be considered in relationship to one another but the Council made no effort to assist in this respect and two separate sets of evidence were produced. On the one hand, there was expert planning evidence which was expressly and properly limited to explaining the policy and factual background but did not, as a matter of professional judgment, seek to support the conclusion of Members. The comprehensive committee reports were the result of team working and were endorsed by senior officers.[34] Moreover, the Council's planning witnesses[35] did not change their overall judgment that all the schemes are needed and should receive planning permission, having regard to the tests in Paragraph 14 of the Framework. This judgment had been expressed in each of the individual reports, including that of Redrow, and the report considering the four schemes cumulatively (***Documents CD 4.1; CD4.2; CD4.3; CD4.5; CD4.8***).

173. The Council's landscape witness[36] produced a LVIA but did not consider any of the other material considerations in the case, most notably the Framework. He did not purport to have attempted any kind of balanced planning assessment and recognised that, in these circumstances, he was not able to pass judgment on the adequacy of the putative reason for refusal[37]. His evidence had not been discussed with or shown to members and did not expressly address the stated reason for refusal. He was instructed three months after the decision was taken and provided the freestanding opinion of one individual considering the proposals solely in terms of his own area of expertise. He did not seek to relate his work to the landscape policies of the Framework. He opined that the proposals, alone or in combination, would conflict with saved Policies ENV 2 and ENV 24 but had not in fact assessed matters on the basis set out in that latter policy. No attempt was made to calibrate the significance of the findings by reference to the CDLP or any other reference point[38].

174. This is an important defect because Paragraph 14 of the Framework requires a weighing up of benefits and any disadvantages. The onus is on those who oppose development to justify their stance convincingly. The reason for refusal was compiled by officers doing their best to articulate the members' reasoning but the Minutes do not reveal how, if at all, the members grappled with the balance question (***Document CD4.7***). It is noticeable that the reason for refusal

[34] This was confirmed by Mr Matthews and Mrs Coombs in cross-examination by Ms Ellis and Mr Holgate.
[35] Mr S Matthews BSc(Hons) MA MRTPI and Mrs C Coombs BSc(Hons) DipTP MRTPI.
[36] Mr J King BSc MLD CMLI.
[37] These points were agreed by Mr King in cross-examination by Ms Ellis.
[38] This point was agreed by Mr King in cross-examination by Ms Ellis, Mr Tucker and Mr Holgate.

does not allege that the benefits of housing would be *"significantly outweighed".* This wording suggests that, at best, a simple balancing exercise was undertaken, without paying regard to the *"golden thread"* of the presumption. Whilst it is alleged that the development would not be sustainable, harm to the village and its landscape are not addressed by reference to Framework policies. There is no heritage objection or any evidence of harm to village layout and character[39]. There is a failure to refer to the Framework's value based and hierarchical approach, which fundamentally undermines the reason for refusal (***Document CD1.1, Paragraphs 109, bullet one and 113***). Nevertheless the reason for refusal must be analysed by reference to its component parts, despite the fact that the landscape evidence did not seek directly to support its allegations.

The reason for refusal

"Sprawling incursion into the countryside at a key entrance point"

175. The proposed development area represents a logical rounding off of the north-western side of the village (***Document TW/2.3.2, Figure2/2***). It is demarcated to the north by Keys Brook and by a strong hedgeline to the west. In the heart of the village lie attractive and well loved open spaces which are regarded locally as integral to village character and unavailable for potential housing growth. Travelling westwards along Chester Road, the context is suburban, with various different types and ages of building to the north and south, together with street lights and a footway. Brook Hall Cottages act as a visual stop in views westward from this area (***Document TW/3.2, Paragraphs 4.32 and 4.55***). The proposed site access lies within this part of Chester Road which is already subject to suburban influences (***Document TW/2.3.2, Figure RT6, Photographs 17-19***).

176. The current village has developed down to the 28m contour on the west in the vicinity of the appeal site which lies on the same contours as those occupied by Rookery Drive and Greenlands (***Document TW/2.3.2, Figures 2/5 and 2/7***). Therefore new development would not extend the settlement higher but rather sit in front of existing housing on the same contours. The Council suggested that there would be a reprehensible increase in vertical spread when viewed from the west (***Document CWC/6, Pages 6-8***). However a planned and landscaped extension of the village within existing natural boundaries cannot be characterised as sprawl and this was not a term which the Council's landscape witness used in relation to the appeal site. Furthermore, he had taken no account of mitigation on the western boundary, although he accepted that it would be possible to reinforce the western hedge[40]. A good filtering effect could be achieved within 5 years which provides a further demonstration that the Council's assessment was on a worst case in terms of parameters (***Document TW/8c***). Nevertheless a condition limiting the houses to a maximum of 2 storeys would be acceptable. With regards to materials, the white render which is so evident along Rookery Drive and Greenlands would be avoided in accordance with guidance in the Village Design Statement (***Document CD3.4***). Dwellings would extend further west than they do at present but would be

[39] This was confirmed by Mrs Coombs in answer to the Inspector's question.
[40] Mr King agreed in cross-examination by Mr Holgate that the tree growth rates in ***Document BH/1.3, Appendix 10*** were reasonable and achievable.

contained by the natural boundaries to the north and west, both of which would be secured and managed by virtue of the landscape conditions. Viewed from the west and north, the containment by these boundaries would be significant and there would not be a new component in the view, which currently includes the village edge (***Document TW/2.3.3, Figure 3/2, Sheet 3***).

177. Chester Road is one of 6 entry points to the village and the Council agreed that it was not remarkable or more important than other accesses.[41] Most peak hour traffic travels to or from the A41 and traffic flows on Chester Road are evenly distributed between eastbound and westbound directions (***Document INQ/1, Paragraphs 16-19***).

"Adverse impact at a key entrance point to the village"

178. The Council has not disputed that the appeal site is clearly within the village boundaries, as denoted in particular by the boundary fence to the Brook Hall Cottages and the 30mph sign (***Document TW/3.2, Paragraph 4.33***). The entrance to the village at this point is subject to some criticism by the Council itself in its recently reaffirmed Conservation Area Appraisal (***Document CWC/5, Page 20***). The Council's landscape evidence took no account of this document and there is no indication as to whether the Members paid it any attention in their consideration of the planning application. Existing development at Rookery Drive, Greenlands and Grackle Croft is regarded negatively.

179. The Council made a comparison with Burwardsley Road but at this entrance to the village there is an irregular ribbon of properties (***Document TW/2.3.2, Figure 2/2***). Such a pattern at Chester Road would clearly not be a sustainable approach to meeting housing needs. Nor would it address the problem of the "distinct and imposing lines" of housing formed by Rookery Drive and Grackle Croft. The appeal scheme offers the opportunity to address this problem by adopting a more imaginative approach to layout. The application was submitted in outline but the illustrative layout shows one possibility, with generous open space and planting on the western boundary. It indicates an arrangement of built form which uses small groups of dwellings as opposed to a linear layout (***Document TW/8b***). It has not been suggested that such an approach would be unachievable.

180. Ultimately the acceptability of the result should not to be judged on the basis of comparison with the existing layout of the village. There would be modern development further west along Chester Road than at present. However change does not necessarily equate to harm (***Document CD4.1, Paragraph 2.44***). The Conservation Area boundary is curious at this point, with Brook Cottages and the unremarkable Chester Road carriageway included but the existing modern development at Rookery Drive and Greenlands excluded (***Document TW/3.3, Appendix 1***). This area is already characterised in part by 20th century suburban elements and the introduction of carefully designed 21st century housing would be a logical and natural extension to the village (***Document TW/2.3.2, Figure 2/2***). Development at the density proposed would allow for generous public open space. There would be ecological and landscaping provision on a scale which

[41] Mr King agreed this point in cross-examination by Ms Ellis and Mr Holgate. He clarified that he did not claim that Chester Road at this point is "*the*" rather than "*a*" key entry point.

would be unlikely to emerge from multiple individual peripheral extensions of 30 dwellings on unidentified sites as currently envisaged in the TNDP (***Document MJ/5a, Page 13***).

"Suburbanising effect on this rural area"

181. Whilst access was originally to have been via a right turn arrangement in Chester Road the preferred option is for a simple priority junction which would have negligible impact apart from the removal of about 15m of hedgerow. There was no dispute that this hedgerow is of poor quality, both in terms of landscape and ecology. The Council's landscape witness accepted that his conclusions on impact were erroneous because new houses would not be visible due to the set back from Chester Road[42]. Brook Hall Cottages create a visual stop in these views and houses would all lie east of that marker point, behind the existing hedge. This could be strengthened, supplemented and allowed to grow higher, depending on the amount of filtering in views from Footpath 8 that would be considered desirable. The development and its access would also lie well east of the 30 mph and the "bend" signage which signals the start of the village.

182. A great deal of the Council's landscape analysis, including a disproportionate and therefore unrepresentative number of viewpoints, focussed on views from Footpath 8. There was also a failure properly to acknowledge that the proposals would not introduce a new element into the receiving landscape or a new component in the view. Modern residential development is already present and apparent to varying degrees along the walk. Furthermore, Footpath 8 and Bishop Bennet Way are part of an extensive network of footpaths around villages in the Landscape Character Area. Walking on such paths is a kinetic experience, in which the walker's relationship to settlements is constantly changing. That basic fact would not change with the addition of the appeal development either on its own or together with the other appeal schemes.

The Council's landscape approach in its LVIA

183. The Council claimed that its methodology was logical and transparent even though a speaking note had to be hastily prepared to attempt to rationalise the visual appraisal. However far from being transparent, the methodology was merely a construct which must not be allowed to obscure the subjective nature of many key elements. Its shortcomings detract from its usefulness and therefore the weight to accord it in the planning balance under Paragraph 14 of the Framework.

Threshold of significance

184. Unlike the Appellant's LVIA, the Council's document does not attempt to define which impacts are significant either in terms of the LVIA itself, the reasons for refusal or the Framework (***Document TW/2.3.2, Appendix 7, Table 7.3***). Therefore the only means of calibrating the landscape conclusions, which are inevitably

[42] Mr King agreed in cross-examination that his assessment at ***Document CWC/3.4, Photoview 4*** had been on the basis of a right turn lane. With a simple T-junction he judged a magnitude of change of low-medium and the significance of change as slight-moderate.

subjective, is to consider them in commonsense terms on site. This is particularly so because the results of the visual appraisal are fed in totality into the overall conclusions on landscape impact (***Document CWC/3.1, Table 8.4***). Conversely the Appellant's approach was clear and conventional in terms of the way that the visual experience of the landscape rather than the perceptions of individual viewers were material to the assessment of landscape impact (***Document TW/9, Paragraph 1.6***).

Basis of Assessment

185. In many of the Council's viewpoints distances to the appeal sites were understated (***Document INQ/4***). These errors will tend to have inflated the significance of effects. There were similar errors in relation to the other Appeal sites. Mitigation was ignored in all cases, though it was accepted that the outline schemes should be approached on the basis that well designed developments would emerge from the reserved matters process[43]. The scheme would now include the option of a simple priority access, whereas the Council's assessment was on the basis of a right turn arrangement. Moreover the assessment did not take account of the refined parameters (***Document TW/2.3.3, Figure 3/8***) or the agreement by the Appellant to exclude 2.5 storey high dwellings. From Footpath 8 just south of Key's Brook, vegetation of 6m height would screen all but the roofs of the new two storey houses in 5 years, including those on the highest part of the site (***Document TW/18***).

186. The Council appears to equate visibility of development, even in filtered views, with harm. This approach is wholly unsupportable, especially in the context of Paragraph 14 of the Framework and the agreement that Policy HO7 is out of date. It reveals the disproportionate role of visibility at the heart of the Council's landscape evidence and a disconnect between this and the proper admissions by the Council about the implications of Paragraph 14 of the Framework. There was no challenge to the technical basis of the Appellant's wireframe modelling, which should be preferred to the Council's because they take account of the refined parameters (***Documents TW/2.2, Paragraphs 4.11-4.14; TW/2.3.3, Figure 3/2***). However even the Appellant's modelling does not have regard to the absence of 2.5 storey properties, the simple priority access or mitigation, so even this has exaggerated impacts. The assumed presence of 2.5 storey properties on higher parts of the site was the Council's principal reason for discounting the effects of mitigation planting in the appeal scheme. The other reason concerning the prevailing character of vegetation should be discounted because hedgerows with trees within them are clearly a feature of the area (***Document TW/2.3.2, Figure 2/4***).

187. The LVIA was based on a small study area of undesignated landscape, apparently defined by the happenstance of the particular positions of the three appeal sites. The same methodology for arriving at the significance of landscape impact was applied to each appeal site and the results simply added together to arrive at the significance of cumulative impacts. The analysis at each stage is flawed with the result that the conclusions in relation to the appeal site and the cumulative proposals are similarly flawed :

[43] This point was agreed by Mr King in cross-examination by Ms Ellis.

187.1. Landscape Character Sensitivity includes a judgment as the product of listed factors and the landscape witness's personal comments on them. Nowhere are the sensitivity attributions defined (***Document CWC/3.1, Table 8.1***). The highly subjective nature of this exercise is demonstrated by the "medium sensitivity" attributed to the well defined nature of the settlement edge and its form/ line. When assessing settlement extensions, the way in which the assessor regards the existing shape and edge of the settlement is likely to be fundamental to the outcome. Many of the other conclusions were coloured by the judgment about the settlement edge. It is therefore obvious that such an appraisal is likely to become a self-fulfilling prophecy.

187.2. Landscape Value only considered points within the site itself (***Document CWC/3.1, Table 8.2***). It did not seek to relate their significance to wider matters such as the hierarchy of designations in the Framework or the Landscape Character Areas to which the judgement under Local Plan Policy ENV24 is supposed to relate (***Document CD1/4, Page 53***). There were many other scores of "High", yet the site is "at the bottom of the pile"[44] in terms of landscape value as a matter of policy. Once more, this "reality check" is important in terms of calibration.

187.3. Results are even more inflated in the consideration of Direct Landscape Effects (***Document CWC/3.1, Table 8.3***) where the Magnitude is a subjective judgment related not to the Landscape Character Area as required by the CDLP or even to the Council's Study Area, but solely to the site itself. Such an approach is meaningless and certainly cannot warrant the '(medium)-high' score for direct effects which appears in the conclusion on Landscape Impact (***Document CWC/3.1, Table 8.4***).

188. The Visual Appraisal must be considered both in its own right and as a component of the landscape conclusions.

Private Views

189. Whilst conventionally assessed in LVIAs, the weight to accord to such views must be very limited since there is no right to an unchanged view. Therefore, the evidence and viewpoints relating to this matter deserve only very little, if any, weight (***Documents CWC/3.1, Section 7.4; CWC/10***). There is no residential amenity objection to any scheme. The evident weighting of private views in the visual assessment highlights the disconnect from any planning judgment.

Roads and Public Rights of Way

190. The effect on views from the private road to Greaves Farm should similarly count for little (***Document CWC/3.4, Photoview 16***). The basic nature of the change in the view from Newton Lane/ Bishop Bennet Way would not differ depending upon the viewer's status as road user or footpath user. However the results do differ ranging from 'slight to substantial adverse', depending on the activity of the notional viewer and the number of schemes assumed (***Document CWC/3.4, Photoview 18***). These results demonstrate the absurdity of simply importing the

[44] A term used by Mrs Coombs in answer to a question by Ms Ellis.

results of the visual appraisal into the landscape appraisal. Also having regard to corrected distances and composition of view the inflated nature of the negative judgments.

191. There would be views of all 3 schemes from Footpath 8. These views would vary depending upon the precise position of the walker and the direction that he or she was looking. In many views, for example west towards Brook Hall, its surrounding landscape and the distant Clwydian hills, there would be no change at all. This factor was claimed to have been taken into account. However with an overall score in Viewpoint 09 of substantial adverse for the appeal scheme, and very substantial adverse for all 3 schemes, it is impossible to understand how that factor has contributed to the judgments (***Document CWC/3.4, Photoviews 9a-9c***). The unchanged nature of this walk as a route around the village with housing visible to varying degrees at different stages is a more reasonable and realistic conclusion.

192. The overall conclusion on landscape effects was "minor adverse". Although the methodology of the Appellant's witness was at variance with the LVIA that accompanied the planning application the overall conclusion was similar. The Council's landscape expert arrived at "(moderate)-substantial adverse'. In the light of his concessions on elements of his direct and indirect components as well as the reduced parameters and new access arrangements, this conclusion is inflated. The site-focussed approach to landscape, the over reliance on private views and the generally unreasonable visual judgments combine to reduce either the resulting significance of impacts or the weight to attach to them. The cumulative conclusions are the product of the individual appraisals and the same comments apply to them.

193. The landscape and visual evidence does not establish that the reason for refusal was well founded in relation to the appeal site. It does not demonstrate that the scheme either alone or in combination with the other appeal developments would cause significant adverse effects to matters when judged against the landscape and other policies of the Framework.

OTHER MATTERS

Heritage

194. No built development would fall within the Tattenhall Conservation Area and the site is not visible in any of the important local views identified within the Conservation Area Appraisal (***Document CWC/5, Page 14***). Clearly, had the Council not been satisfied that a suitable scheme could be achieved through reserved matters it could have objected under CDLP and Framework policies concerning heritage. It is not suggested that the removal of a short section of poor hedgerow on Chester Road is of any heritage significance (***Document CWC/3.4, Photoview 05***).

195. The heritage expert in Appeal B[45] criticised the appeal scheme and the Appeal C proposal in terms of their alleged impacts on the conservation area (***Documents AW/1.2, Appendix 17; AW/5.1***). However there are no locally important views out

[45] Dr J Edis BA MA PhD MIFA IHBC.

of the conservation area on the side of the appeal site as he suggests (***Documents AW/1.2, Appendix 17, Paragraph 3.10; Document TW/3.4, Paragraph 1.2***). Nor does he acknowledge the opportunity to enhance the setting on the approach to the village in terms of addressing the current problem of linear modern development on Rookery Drive and Grackle Croft. This omission must devalue his assessment of the effects of the scheme on the western approach. Unlike the Appeal B scheme the Appeal A proposal would offer the opportunity to enhance the setting of the conservation area. In any event the conclusion was that, even with the Appeal A and Appeal C sites taken together, these allegedly adverse effects would fall below the level of substantial harm set out at Paragraph 133 of the Framework as the threshold for refusal on heritage grounds.

196. Non-designated ridge and furrow remains on the southern part of Appeal A site would be removed. A full appraisal by an archaeological expert of the scheme's effects using English Heritage's methodology has been undertaken (***Document TW/3.3, Appendix 4***). The features are found to be of low significance in the Tattenhall area and already degraded through partial loss and severance due to the development of Rookery Drive (***Document TW/2.3.2, Figure 2/7***). Moreover, an area of ridge and furrow to the north would be substantially preserved from modern ploughing in the proposed ecological mitigation area. This benefit was not taken into account by the Appeal B heritage expert and the overall conclusions of the appraisal are not, apparently disputed by him.

197. Brook Hall is a non-designated heritage asset which lies outside the conservation area. There is no evidence to suggest that it is of heritage significance. Its relationship to the non-designated Brook Hall Cottages was severed some time ago and those properties have encroached into surrounding fields. No evidence links Brook Hall to the remnant ridge and furrow. Most importantly the appeal scheme would not affect the unlisted Brook Hall or its setting. Its surrounding landscape influence stops at the hedge to the east of Footpath 8 (***Document TW/3.4, Paragraphs 1.10-1.14***).

198. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. However unlike the closely related duty relating to listed buildings, the duty under Section 72 does not extend to settings of conservation areas. Paragraph 129 of the Framework requires setting to be taken into account when assessing significance. The proposal offers the opportunity to address the matter of the settlement edge which has been identified in the Conservation Area Appraisal as a detractor to its setting. This is an important consideration (***Document INQ/2***). Taking into account the potential approaches to design and materials there is ample evidence to conclude that the conservation area would be preserved and that there is a real opportunity to enhance it.

Sustainable travel

199. The appeal site is highly accessible due to its close proximity to Tattenhall village centre and as a result of the nearby public transport opportunities. The Highways Authority considers the appeal site to be sustainable in transport terms (***Document SCG/2, Paragraphs 21-28***). The site is particularly well located to promote access to local facilities on foot. Tattenhall village centre has a

range of local amenities including a Post Office, a number of shops including a local convenience store, a pharmacy, as well as pubs and restaurants. It lies only 675 m from the centre of the appeal site, which is well within the 'preferred maximum' distance to a town centre of 800m. In addition, the local primary school and the doctor's surgery are only 450 m and 255 m respectively from the centre of the site, well within the 'desirable' distance for such facilities (***Documents SCG/2, Table 1; TW/5.4, Tables 1 and 3; TW/14***).

200. These facilities are directly accessible by footway and a new section would be provided along the front of the site. Dropped kerbs are provided at every junction between the site and the village and together with the relatively flat topography this ensures that the route would be a safe and attractive one for all potential users, including those in wheelchairs. This is of significance because walking is the most important mode of travel at the local level. Future residents of the appeal site will have little need to use a car in order to access the facilities on offer in Tattenhall (***Document TW/5.2, Section 7.2***). The proposal is in accordance with Paragraph 34 of the Framework which seeks to locate development where the need to travel will be minimised. However that document also recognises that the opportunity for maximising sustainable transport modes will vary from urban to rural areas.

201. The existing 41/ 41A bus service which serves Tattenhall will offer a viable alternative to the car when future residents wish to travel further afield, for work, retail or leisure. This service is used for a variety of trips as confirmed by the bus operator (***Document AW/3.3, Page 9***). The level of service is good for a rural village with hourly services to and from Whitchurch and Chester with a journey time of about 33 minutes to the latter (***Document TW/5.2, Section 7.4***). In the rural context the regularity of a bus service is as important as its frequency, as it enables patrons to plan their trips.

202. The proposal would also benefit the bus service by increasing both its attractiveness and viability. There would be a financial contribution to a new bus shelter on Tattenhall Road, as well as the upgrading of the two bus stops on the High Street, as part of the Section 106 Agreement. Also the potential for increased patronage from new residents would only help to support the viability of the current service (***Documents AW/3.3, Page 9; TW/16***). Whilst the Appellants do not consider it necessary in terms of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, should the Secretary of State determine otherwise a substantial financial contribution would be provided for provision of a half hourly service (***Documents INQ/5; TW/5.2, Page 17***).

203. The sustainability of the site in transport terms is a particular benefit of the proposal. The site occupies an inherently sustainable position as an urban extension to a sizeable and vibrant settlement.

Highway and access issues

204. The addition of traffic generated by the appeal site alone would have a minimal impact on the local highway network. The cumulative impact of all three schemes would inevitably be greater. However the Highway Authority is satisfied that, with the exception of the A41/Chester Road junction, there would still be no capacity issues on the local network. This conclusion takes account of other permitted developments in the vicinity. Objectors claim that Chester

Road is the main route in and out of the village. However peak hour counts reveal that Tattenhall Road, which passes Appeal Site B, has similar traffic flows. Other routes such as Burwardsley Road are also well used (***Document SCG/2***).

205. Mitigation works to the A41/Chester Road junction would only be necessary if two or more proposals were allowed. The details of these works have been agreed with the highway authority and a contribution mechanism is included in the Section 106 Agreement (***Documents SCG/2, Paragraphs 41-42, Appendix E and Plan 2; TW/16***).

206. There were local concerns about the accuracy of the data and modelling work on which the Appellants and the highway authority had reached their conclusions in relation to the impact on the local highway network. They sought to argue, amongst other matters, that the impact on the network would be greater than had been predicted. A joint statement between the Appellants' transport consultants and the Highway Authority provided a comprehensive response to these criticisms (***Document INQ/1***). The cumulative impacts of the proposals on the local highway network would not reach the threshold of severity that the Framework indicates is required in order to justify refusing planning permission on transport grounds (***Document CS1.1, Paragraph 32***). After mitigation there may be a modest increase in queuing for a short period during the morning peak but for most of the time there would not be a material impact. Even considering this junction in isolation, such an impact could not be considered severe.

207. There are two options in respect of the access to the appeal site. The preferred option would be a simple priority junction. The alternative would be a priority controlled junction, incorporating a right hand turning lane (***Document TW/5.3, Plans TW/5/4 and TW/5/6***). Both arrangements have been agreed with the Highway Authority (***Document TW/5.3, Appendices 2 and 3***). Both designs could be achieved within the existing limits of the adopted highway without the need to reduce the width of the footpath. Both could also incorporate the provision of a new 1.8m-wide footpath to the east of Chester Road, which is wider than the existing footpath to the west and would be considerably more convenient for pedestrians and wheelchair users.

208. The criticisms of the junction designs by a local objector[46] were misconceived because the guidance to which he refers is taken from the Design Manual for Roads and Bridges (DMRB) and is applicable to trunk roads. This is not of direct relevance to local roads and is of no relevance to this section of Chester Road, which exhibits very different characteristics from those of a trunk road (***Document TW/7***). Either of the access options would be appropriate in this location and neither would cause any highway safety issues. It is clear that a 'safe and suitable' access to the site can be achieved in accordance with Paragraph 32 of the Framework whichever option is implemented.

Ecology

209. An updated ecological survey was undertaken in October 2012. The ecology issues relating particularly to GC can be summarised as follows:

[46] Dr T Dzelzainis.

209.1. The appeal scheme would not only conserve, but actively enhance the ecological interests of the appeal site. This would include providing optimum conditions for GCN.

209.2. There is no basis for the Secretary of State to conclude that Natural England would be unlikely to grant a derogation licence for the scheme (***Document TW/4.3, Appendix 4***).

209.3. The site is mainly semi-improved grassland with species-poor hedgerows along its boundaries. It includes 5 English oaks crossing the development area and these may be considered as veteran trees with high amenity value. There are also oak trees along Keys Brook and along with the western hedgerow these form commuting corridors for bats and nesting opportunities for birds. These features would be retained. There would be loss of a small section of species-poor hedgerow along the site frontage but this would be replaced by higher quality planting (***Documents TW/4.2, Paragraphs 3.10, 3.11, 3.19, 3.32, 3.34, 5.56-5.60; 6.1-6.3 SCG/4, Page 1***)

209.4. Keys Brook is a local wildlife corridor and recent surveys indicate the presence of otter but not water vole. An 8m buffer zone is proposed along the brook and this would protect aquatic species (***Documents TW/4.2, Paragraphs 3.14, 5.53; SCG/4, Page 1***).

209.5. An outlier badger sett is present on the site but there was no sign of recent usage by badgers or foraging activity. In any event the proposed mitigation works would ensure sufficient foraging habitat (***Documents TW/4.2, Paragraph 5.54; SCG/4, Page 1***).

209.6. The fact that there would be an enhancement to the biodiversity value of the appeal site, including additional hedges and ponds, is a demonstrable benefit which must be weighed in favour of the proposal when applying the balancing exercise in Paragraph 14 of the Framework.

GCN mitigation

210. This is the most obvious and tangible ecological benefit of the scheme. Post-mitigation this would result in an improvement of conditions for GCN. The main elements of the mitigation scheme are (***Documents TW/2.3.3, Figure 3/8; TW/4.2, Paragraphs 5.31-5.40***):

210.1. The replacement of two non-breeding ponds with four new breeding-ponds. This would supplement and complement the only breeding pond currently in the vicinity.

210.2. An increase to the viability of the breeding and foraging habitat south of Keys Brook.

210.3. The creation of a dedicated newt-mitigation area north of Keys Brook, complete with hibernacula, three 'newt-friendly' breeding ponds as well as a generally improved habitat.

210.4. The provision of a stepping-stone pond to the south of Keys Brook which would strengthen connectivity between the off-site breeding pond and ponds to the north and enable the newt population to expand its range.

210.5. The provision for the long-term management of the mitigation scheme through funding in the Section 106 Agreement should this become necessary (***Document TW/16***).

211. The Council has agreed that the habitat created would provide "optimum conditions for GCN" and in his subsequent statement to the Inquiry, the Principal Biodiversity Officer[47] confirmed that none of the evidence submitted to the Inquiry changed his view (***Documents SCG/4; INQ/3***). This should be given considerable weight. Not only has he been on the appeal site, but he also works in an area with a prevalence of GCN. He is therefore very familiar with both the species and the practice of Natural England when considering licence applications in relation to them.

212. The concerns raised by the Appeal B ecologist[48] as to the efficacy of the GCN mitigation scheme concerns the possibility of Key's Brook being a barrier to GCN and the presence of ponds containing fish to the north of the appeal site. Neither concern stands up to scrutiny:

212.1. The Appellant's ecologist[49] and the Council's Biodiversity Officer have been on site and reviewed the nature of the Keys Brook as it flows through the appeal site. They have had the opportunity to observe, for instance, the width of the brook, the extent of vegetation, the rate of flow and the existing bridge which would provide a potential crossing point for newts. The professional view of both is that Key's Brook would not be a barrier (***Documents TW/4.4, Page 3; INQ/3***).

212.2. This empirical point is supported by Natural England guidance which recognises that *"fast flowing water bodies"* can form barriers (***Document TW/4.3, Appendix 1, Paragraph 5.8***). Keys Brook does not fall into this category. In any event newts are amphibians and, although not adapted to fast flowing water conditions, they can swim.

212.3. The scheme could be designed to incorporate 'sleeper bridges' to assist GCN crossing the brook if this was considered necessary by Natural England. This is in addition to the bridge currently on site. The concern of the Appeal B ecologist that birds would pick off newts from such surfaces is unfounded. A duck for example would not take a newt because it is protected by a skin which is offensive to the taste. There would be no question of fencing and corralling the newts. They would have one or more crossing points available to them but would not be forced to use them. Moreover, crossings could be designed to include camouflage areas to enable them to cross the short distance under cover (***Document TW/10, Page 1***).

212.4. The presence of fish in ponds to the north of the appeal site does not undermine the mitigation proposals. The new ponds to the north of Keys Brook would be designed in such a way to make them unattractive

[47] Mr A Evans MA BA(Hons) CIEEM, Principal Biodiversity Officer with Cheshire West and Chester Council.
[48] Mr D Pollard BSc(Hons).
[49] Mr F Hesketh BSc(Hons) CMLI CEnv MIEEM MICFor.

to fish and this would also be ensured by management. This would improve the existing situation where there is no management and there is no regulation of fish (***Document TW/4.4, Page 6***).

Habitats Directive, Regulations and the Morge Test

213. The Supreme Court in *R(Morge) v Hampshire County Council [2011]* explained that the duty imposed by Regulation 9(3) of the Habitats Regulations does not require those charged with determining planning applications to evaluate for themselves whether the criteria for granting a derogation licence would be satisfied (***Documents TW/4.3, Appendix 4; TW/22, Paragraph 6***). Such an approach places too high a burden on decision-makers, when the primary responsibility for ensuring compliance with the Habitats Directive falls on Natural England. As was made clear in the judgement, planning permission should ordinarily be granted unless the decision maker concludes that a derogation licence is necessary and unlikely to be granted (***Document TW/22, Paragraphs 7-9***).

214. Applying the *Morge* test, the Secretary of State can be satisfied that it is not unlikely that the appeal scheme would be granted a derogation licence:

    214.1. All of the ecologists agree that there is no 'in principle' objection to development on the site. All accepted that a licence would be achievable in the end saying that the scheme would be licensable, the only area of dispute being as to the details of a mitigation scheme[50].

    214.2. The professional view of both the Council's Biodiversity Officer and the Appellant's ecologist is that the scheme would be licensed.

    214.3. Natural England raised no concern about the prospect of the proposal achieving a derogation licence. Its stance is that translocation of GCN to an adjacent site is "an important and regularly used tool" in development schemes (***Documents TW/4.3, Appendix 3; TW/4.4, Page 3***).

    214.4. The concern expressed by the other ecologists about the likelihood of a licence being granted was predicated on their belief that Key's Brook would form a barrier to GCN movement. This belief is erroneous.

OTHER SITES AND CUMULATIVE IMPACTS

215. There is no objection to the grant of planning permission for the other two appeal schemes as the substantial and pressing unmet need for general and affordable housing is recognised. Both of the other two appeal schemes have undertaken a comparative assessment and concluded that their proposal should be preferred. This is not accepted (***Documents TW/1.4; TW/2.5; TW/5.4; TW/5.6***). The Appellant is keen to have the opportunity to help to meet the housing need at Tattenhall as soon as possible, irrespective of the other schemes.

216. Objectors have suggested that granting permission for all three schemes would lead to an overprovision of new development and incomers to the village.

[50] In answer to the Inspector's questions, Mr Goodwin (ecologist for Appeal C) and Mr Pollard (ecologist for Appeal B) confirmed that they had concerns about the mitigation proposals but did not think that a licence would be unachievable for the appeal site.

However change can easily be confused with harm. References were made to the expansion of the village in the 1960s and 1970s but there was no hard evidence of any enduring harm arising from that expansion. On the contrary, the residents of those schemes are part of the existing vibrant and sustainable community. Many of the objectors live in those estates and clearly take a positive role in contributing to village life rather than harming it. There is no reason at all to suppose that the residents of the appeal schemes would not similarly join in with life in the village. The Chairman and coach of a newly established youth football team wrote with an alternative view of the prospect of new development in the village. This recognised that new residents could add to the vibrancy of the village (***Documents WR/12; WR/13***). Similarly, the West Cheshire and North Wales Chamber of Commerce supported the application.

217. There is no evidential basis for finding that the developments, alone or in combination, could not be properly accommodated by the local infrastructure. Contributions to improve educational provision, to mitigate highway impacts and enhance sustainable highways infrastructure by improving bus shelters would be made by all three Appellants. Subject to compliance with the CIL Regulations, all three schemes would also contribute to one of the local bus service routes to subsidise a half hourly service for a period of five years. It goes without saying that the three schemes together could contribute more to meeting the serious deficiency in general and affordable housing. Moreover, the contribution of the three via the New Homes Bonus would be commensurately greater.

218. Turning to the other sites individually, where it has been necessary to correct any inaccuracies concerning the appeal site in other Appellants' evidence this has generally been done by way of written rebuttal with the exception of ecology, which was dealt with in full in oral evidence at the Inspector's request. Specifically concerning the Appeal C scheme, it is not considered that this would result in the enhancement of biodiversity or deliver significant ecological benefits as claimed by the Appellant (***Document TW/4.4, Page 10***). It is also likely that a licence would be required in respect of the GCN due to the potential of nearby off-site ponds (***Document TW/4.4, Page 11***). Also one of the important views and vistas listed in the TNDP is from the disused railway line towards the village and western edge of the conservation area adjoining Mill Brook. This would be affected by the development of Site C. Finally it is not considered that the Appeal C scheme would improve linkages and connectivity to adjoining residential areas due to issues of land ownership (***Documents TW/3.4, Section 4; TW/2.3.2, Figure 2/3; TW/5.6***).

SCHEME BENEFITS

219. Affordable housing at 35% (up to 38 units) with tenure details to be agreed with the Council on implementation so as to tailor provision to need. The first preference would go to people with a qualifying local connection.

220. The site and its access are well located to the village centre, the primary school and the medical centre, offering excellent opportunities for walking for day to day activities.

221. Development is proposed in front of a line of properties which have been identified as a detractor from the setting of the conservation area and it offers the opportunity to improve that western edge of the settlement by good design.

222. New public open space which would be available for existing as well as new residents of the village to enjoy.

223. The package of ecological mitigation measures proposed would result in a material improvement in the newt habitat and its long term management. This feature offers the potential for community involvement and education in conjunction with the village school.

THE CASE FOR MR ASHLEY WALL

The main points are:

THE FRAMEWORK FOR DECISION MAKING

224. In considering the position of the Council, the following are of the utmost significance when considering the merits of the appeal site:

224.1. The unequivocal recommendation of the Council's Head of Planning was that planning permission should be granted. The professional view of the Case Officer[51] did not change during the Inquiry from that expressed in the Committee Report. Here a planning balance was carefully drawn. It recognized a favourable policy context and that, whilst there would be some inevitable impact from the development of a peripheral greenfield parcel of land, this would be outweighed by the benefits that would arise from the proposal.

224.2. It was agreed that[52]:

224.2.1. Paragraph 14 of the Framework is engaged and any adverse impacts of the appeal scheme would not significantly and demonstrably outweigh the benefits.

224.2.2. The contribution of the site to meeting the deficit in the 5 year supply would be a significant benefit and a key issue in the determination of the scheme.

224.2.3. The appeal site is in a sustainable location and within a sustainable settlement identified as a location for housing growth.

224.2.4. The proposal would make an appropriate contribution to affordable housing for which there is a demonstrable need.

224.2.5. Subject to the imposition of conditions and a satisfactory Planning Obligation there is no technical objection to the proposed development in terms of ecology, residential amenity, open space provision, infrastructure and highways.

[51] Mr S Matthews BSc(Hons) MA MRTPI.
[52] These points are set out in Mr Matthews's Committee Report (***Document CD4.5***). They were reiterated during cross-examination by Mr Tucker.

224.2.6. Emerging policies are in their infancy and can only be afforded limited weight and a refusal on the grounds of prematurity cannot be sustained.

224.2.7. The weight to be afforded to the TNDP is severely limited given that it is parasitic upon the emerging Local Plan.

224.2.8. Whilst there is tension with saved Policy HO 7 of the CDLP, that policy is rendered out of date by reason of the absence of a 5 year supply.

224.2.9. Whilst the appeal site is a greenfield peripheral site there is a manifest need for such sites to meet housing land requirements.

224.2.10. The Council's landscape officer generally agrees with the conclusions of the LVIA.

224.2.11. There would be some harm arising from the proposal and "some degree of conflict" with saved Policy ENV 24 but the proposal would deliver "high quality housing, with good areas of planting to provide an attractive setting".

224.2.12. the landscape in question is undesignated and "not of the highest landscape value" and "unremarkable in terms of its landscape features or quality".

224.2.13. The proposed mitigation would provide an attractive edge to the settlement.

224.2.14. The proposal would be consistent with the Village Design Statement, would not impact upon any key views, would be consistent with the adjacent urban grain of the settlement and in reality ought to be seen as a further phase of development of the modern housing that lies to the south.

224.3. The only basis upon which the Council refused planning permission was that of landscape and visual impact. In respect of all other matters the Council was content that land use harm would not arise.

224.4. The common position of the Council and the Parish Council is that:

224.4.1. Tattenhall is a sustainable settlement which can properly accommodate significant growth over the plan period.

224.4.2. The level of housing need is such that it cannot be accommodated within the settlement boundaries established in the CDLP, which can therefore be taken to be out of date.

224.4.3. There is a need for significant peripheral greenfield development to take place within the Borough in general and adjacent to Tattenhall in particular.

224.4.4. Paragraph 14 of the Framework is engaged. Therefore unless it is concluded that demonstrable and significant adverse effects

arise to outweigh the benefits then planning permission should be granted.

225. The words of the Framework have no doubt been carefully chosen. "Demonstrably" means that harm must be demonstrated on the basis of evidence. Thus inchoate concerns about the intangible effects upon the character of the village, however heartfelt, cannot properly give rise to adverse considerations in land use terms. In reality it is inconceivable if the village is vibrant now that new residents would somehow turn their face against that sense of community rather than participating in and thereby adding to that vibrancy. Objectors contend that whilst the village could absorb 300 new units over 2 decades it could not do so over a shorter timescale. The reasoning, and policy basis for such a contention is however obscure. This is of particular note when the aspiration of national guidance is to boost housing land delivery.

226. What is being proposed is the development of an underused, undesignated, unremarkable parcel of land immediately adjacent to the urban area. It is in a location which is accessible to alternative modes of transport other than the private car. Housing would be provided for which there is an obvious demand in a borough where there is a clear need for such development. The overall balance clearly favours the grant of planning permission.

227. In this case the relevant housing policies of the CDLP are out of date and there is a substantial deficit against the five year housing land supply. Paragraph 14 is therefore effectively engaged by two different routes. It was contended that this was not the case because none of the three appeal schemes comprise 'sustainable development'. However Paragraph 14 does not require an assessment of what is sustainable development as a precondition to its application. In effect where housing supply policy is out of date under Paragraph 49 then national guidance is that permission ought to be granted unless there is a good reason and clear evidence not to.

228. Paragraph 47 is not simply a mechanism to allow the development industry to secure permissions, but is intended to facilitate a boost to housing land supply. That means building housing, which in turn means securing permissions in locations where the market wishes to build. In this case three national house builders are keen to bring forward development in Tattenhall and a fourth already has secured planning permission. If permission is granted then Wainhomes will build out the appeal scheme.

229. The CDLP was adopted in 2006 but prepared well before. Local Government reorganization and the inefficiencies of the 2004 reforms have resulted in a hiatus in the preparation of a replacement to the CDLP. The effect is that the development boundaries, which were fixed to meet development pressures to the end of April 2011, are now manifestly out of date. In this case saved Policy HO 7 is a policy which on any view is out of date and was not relied upon in the reason for refusal. Similarly the Supplementary Planning Document: *Sustainable Development* is out of date particularly in terms of the location of development (***Document AW/1.2, Appendix 10, Paragraph 2.10***).

230. Saved Policy GE 1 sets up a presumption in favour of proposals which accord with all relevant policies of the development plan, unless material considerations indicate otherwise. This adds nothing to the statutory test. Saved Policy ENV 2

is essentially a design policy which is said to be relied upon by the Council solely upon the basis that the appeal site lies beyond the settlement boundary and within the open countryside. It is parasitic upon the only real policy of concern, which is Saved Policy ENV 24. However it was never intended to be the principal development control policy to restrict development in the open countryside as that was the role of saved Policy HO 7.

231. Saved Policy ENV 24 is permissive subject to two elements. The first is respect for the key features of the landscape. There is no allegation that there is any such feature which is not respected by the appeal scheme, over and above the loss of an unremarkable field to development. The second is not impacting upon landscape character. It does not deal with the impact on visual amenity other than as a component of landscape character. There was much debate as to what area of study had been considered by the landscape witnesses. However when judging compliance with the policy the CDLP is unequivocal as to what is to be considered. It is the Chester District Landscape Assessment, which has now been superseded by the Cheshire Landscape Character Assessment (***Document CD3.20***). The reasoned justification to saved Policy ENV 24 makes it clear that the policy is not intended to preclude development in the open countryside but to facilitate it in a manner which respects the character of the area (***Document CD1.4, Page 53***). In this case it is being deployed as a blunt tool to support a reason for refusal which is essentially based upon visual issues because the Council is not able to rely upon the out-dated Policy HO 7.

WHETHER ANY ADVERSE IMPACTS WOULD SIGNIFICANTLY AND DEMONSTRABLY OUTWEIGH THE BENEFITS

The Council's approach to landscape impact

232. The Purple Book places a much stronger emphasis upon judgment rather than the more mechanistic matrix based approach which was adopted by the Council's landscape expert[53] (***Document CD3.17, Paragraphs 1.17, 2.23-2.26***). The danger of the more mechanistic approach is that it becomes an end in itself. Whilst the Council did not accept that the judgments based upon its approach had not been sense checked, it was clear that they had not. In many of the assessments the significance of an effect was asserted to be either "substantial" or "very substantial", which comprised the top tier of the scale. In such circumstances a dramatic or even catastrophic impact upon the landscape might be expected. However such impacts arose in a non-designated landscape across fields, through mature hedgerows at up to half a mile away from proposed residential development, which would occupy only a minority of the view. It might be wondered how the impact of an incinerator next to a long distance footpath in a National Park would be categorized.

233. It was eventually explained that the reason for this extreme characterization of impacts was because the significance of effects was calibrated to match the very limited study area which was being considered. This meant that the Council had used language to characterize the effects which suggested far more significant impacts than would actually occur.

[53] Mr J King BSc MLD CMLI.

234. The other substantial difficulty with the Council's methodology is that it entirely ignored mitigation. There is an obligation upon a local planning authority before refusing planning permission to consider whether any harm could be overcome by condition. With the residential development of a greenfield site this means considering whether landscaping might mitigate any landscape or visual impacts which may arise. Here the Council's expert did not consider the effects of any mitigation at all notwithstanding that some 'in character' mitigation could be achieved. Indeed it was accepted that if the decision maker wished to be assisted by a view as to what the impact would be of the appeal proposal with mitigation, then the only evidence was that of the Appellant[54].

235. The Council initially contended that effective mitigation could not be achieved which would be 'in character' with the landscape. However, in example, it was conceded that the gap on the west side of Tattenhall Road between the linear woodland along Keys Brook and the mature hedgerow, which would need to be replaced or transplanted adjacent to the access, could be closed with further planting in keeping with its surroundings (***Document CWC/3.5, Photoview 17***)[55]. This would achieve clear and significant benefits in ameliorating the impacts of the proposed development, which had not been assessed.

236. The northern and western boundaries of the appeal site are presently devoid of any significant planting. The Council questioned the appropriateness of the creation of forestry glades around these perimeters (***Documents AW/2.2, Appendix 3; AW/14***). However it was also made clear that relatively good mitigation could be achieved on those boundaries by the creation of a new hedgerow together with appropriately located hedgerow trees. The effect could be strengthened by the planting of other trees in the open space adjacent to those boundaries within the site. The description of the Hoofield Landscape Character Area indicates that such features are a characteristic element of this landscape (***Document CD3.20, Page 136***). "In character" mitigation could be readily achieved and has not been assessed by the Council. This is a serious fault in its methodology, which also has the effect of magnifying the significance of assessed effects.

237. The Council suggested that blocks of woodland and linear tree planting would be out of character with the area and therefore would be an unacceptable intrusion into this landscape. This is incorrect:

    237.1. The first edition OS map clearly shows that linear tree planting at the periphery of field boundaries was not merely typical but seems to have been ubiquitous. It also shows numerous stands and copses of trees, including one on the north west of the appeal site itself (***Document AW/18***).

    237.2. The loss of such features in more recent times is not viewed in the Cheshire Landscape Character Assessment generally, or the Western

[54] This point was agreed by Mr King in cross-examination by Mr Tucker.
[55] In cross-examination by Mr Tucker Mr King agreed that trees and hedgerows around brooks were consistent with the landscape character type. He agreed that such "in character" planting could reduce the impact on this part of the site over time. He agreed he had not assessed the effect of such mitigation.

Lowlands in particular, to have been a good thing. Rather it is a matter that has degraded the quality of the landscape (***Documents CD3.20, Page 131; AW/17, Paragraph 2.3***).

237.3. Even now within the Hoofield Landscape Character Area extensive stands of trees, copses and linear planting are evident as is clear in views from Beeston Castle (***Document AW/12***).

237.4. Such features can be clearly seen within the surrounding landscape, for example from Footpath 8 (***Document SCG/6, PM04***).

237.5. Section 197 of the 1990 Town and Country Planning Act imposes an obligation to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation or planting of trees. This does not sit very comfortably with the Council's landscape evidence.

238. It is wrong to contend that the proposals shown for structural landscaping on the illustrative layout would be out of character with the prevailing landscape (***Document AW/2.2, Appendix 2***). On the contrary such landscaping would be consistent with the Hoofield Landscape Character Area characteristics in general and the aspirations to increase tree planting within the Cheshire Landscape Character Assessment. The form of landscaping proposed, particularly the creation of copses and the creation of boundary hedges with hedgerow trees would help to restore the historic pattern of landscaping in this area. Mitigation would have an important effect at the outset of the development from Tattenhall Road to the east, Footpath 8 to the west and Newton Road/ Bishop Bennet Way to the north (***Document AW/2.2, Appendix 4A, Photomontages***).

239. It should be acknowledged however that the mitigation shown on the photomontages was done on a 'broad brush' basis, whereas in reality the planting would have a less regimented and more irregular effect. It would include hedgerow tree planting which would ultimately provide vertical interruption to the otherwise horizontal effect of the hedgerow, thereby giving a filtering effect. Although the mitigation would have less of an effect until it was mature it is important to note that the housing would last for many decades. For most of that time the vegetation would be mature. In addition the Year 0 scenario is unreal for two reasons. First the montages are shown on a winter base where existing vegetation is at its least effective. Second the housing would never be completed all at once. Development would start from the access and progress westwards. It would not therefore be until towards the end of the development period, at around Year 6, that housing would be built adjacent to the landscaping which would have been planted at the outset.

240. The Council has adopted a contrived position which has had the effect of exaggerating the extent of significance of change. The adopted methodology has resulted in excessive impacts whilst ignoring possible mitigation. In addition, when looking at the issue of whether there would be an impact upon landscape, one should not start with a 'study area' and then work out if the study area is affected. Rather one should ask the question in relation to the different geographic layers of the landscape, including the site, its close environs, the Hoofield Landscape Character Area, the West Lowland Plain and so forth. (***Document AW/2.2, Appendix 4***).

241. In taking such a layered approach the conclusions on landscape become rather more straightforward. On a regional or county wide base the effect of the proposal would be non-existent. On the basis of the West Lowland Plain or Hoofield Landscape Character Area the effect would be negligible. On the site itself the impact would obviously be more significant. The real issue is how far beyond the site itself the effects would remain significant. It is only when one focuses on the immediate surroundings in this case that any plausible case can be made for contending that there is a landscape impact. The Council seems to have focused its "study area" on the limited area from which the appeal sites are visible. This demonstrates that the real concern in landscape terms is the visual component of the landscape consideration and therefore this adds nothing to the consideration of visual effects.

242. Other than the loss of a greenfield site there is no loss of any particular landscape feature of note. All three developments as well as the Redrow scheme would be perceived as extensions out into the open countryside from public views. So the only real landscape issues which arise in this case are whether characteristic views of Beeston Castle would be impeded or harmed and whether or not there would be harm to Keys Brook as a 'natural barrier' to the expansion of the settlement.

243. There is visibility of Beeston Castle from huge parts of the Cheshire Plain. It is a remarkably well appointed feature in the landscape which is repeatedly visible. The effect of the development would be that for a very limited length of the relatively long Footpath 8, at a distance of 390 metres, there would be a view of houses in the same field of view as the castle which towers above its surroundings. Housing would be visible at the foot of the view but the majority of the hillside and the castle itself would be uninterrupted (***Documents CWC/3.5, Photoview 12a; SCG/6 PM04***). It is pure speculation that an area of flattened grass at this point on Footpath 8 indicates that the sideways view of the footpath user towards Beeston Castle is important or significant.

244. Keys Brook is only the northern edge of the settlement because of the happenstance of where the last phase of modern development stopped. There is nothing important about the stream being a barrier to expansion any more than Mill Brook, which runs through the middle of the settlement. The real point is whether there is a topographic issue in this case since the development rises from the floor of the Keys Brook. However the effect of the rising valley would be to contain development and this could be mitigated by appropriate planting. It would not rise higher than the adjacent settlement to the south and would be contained by Greaves Farm and other development along Tattenhall Road. On the approach from the north the development would be seen in the context of the existing settlement which presently influences the character of the field itself.

The Council's approach to visual impact

245. The Council recognises the acute shortage of housing and the need for the release of peripheral greenfield sites in sustainable settlements. However its case for rejecting the appeal site is that it would be seen as an extension of the urban area from a limited number of public view points. The "demonstrable and significant adverse impact" that outweighs the presumption in favour of sustainable development is little more than that this urban extension would be

seen. In that respect it is hardly a compelling case to resist the granting of permission.

246. In terms of the locations from which the proposed development would be viewed some semblance of sense has to be applied to assess who would really be affected. The approach to Tattenhall from the north is an important vista for those in vehicles and those walking the long distance from The Oak Room in Newton-by-Tattenhall (***Document AW/1.2, Appendix 14***). However, the appeal site is presently seen in the context of the adjacent settlement, which in this approach comprises modern suburban housing. What would replace it in the view would be better designed and more carefully landscaped modern housing behind an existing mature hedgerow, just a little sooner than housing is presently encountered. Importantly however it would be encountered immediately after housing is first seen now.

247. Those who are travelling along Newton Lane by car might notice housing a little closer to Tattenhall, albeit behind mature landscaping and across the expanse of 700 metres. However this would be a peripheral view and only seen for a proportion of the journey along Newton Lane, between hedgerows. For those not in a car there would still be views of the countryside in the periphery of the direction of travel. If such travellers looked back towards Tattenhall the change at a far distance would be evident. However to allege that it would be significantly adverse is greatly overstated.

248. For those walking the rights of way network to the east there would be a view at a 90° angle to the direction of travel across three fields and across Tattenhall Road at a distance of 0.5 km away. As with most of the other views this is rightly said to be a 'far distant' view in the Council's methodology. More importantly the view would be at the periphery of a walker's vision and one which would be experienced in the context of a walk which runs to the east of Tattenhall. Whilst more of the village would be seen by those who chance to look westwards the walk would remain a rural one. It is very hard to see why the change resulting from this peripheral greenfield extension would be especially harmful.

249. Footpath 8 is a rural north-south walk which lies to the west of the village moving north from Chester Road. Houses at a distance away from the walker at 90 degrees to the direction of travel, filtered by intervening landscaping are evident to the casual walker now. In the future the village would have modern housing for a little longer but this would still be a walk to the west of the village at a distance from housing which would be filtered by intervening vegetation. It would remain a walk which is within, and leading to, the rural area.

250. The council's planning witness described the appeal site as 'unremarkable'. There is no particular reason why development here would give rise to any particular impact not associated with any development adjacent to a sustainable settlement within the Cheshire Plain.

OTHER MATTERS

Heritage

251. The appeal site is nowhere near the most sensitive part of Tattenhall. No suggestion has ever been made by any party that there would be an adverse

impact upon the conservation area or any individual heritage asset directly or indirectly. Whilst a precautionary archaeological condition has been proposed in respect of the site that does not arise as a result of any evidential basis that there may be any such interest on this site.

252. The Conservation Area Appraisal, TNDP and Village Design Statement identify important views around the village (***Documents CD3.12; MJ/5a; CD3.4***). As the appeal turns upon a reason for refusal based on visual impact it is of great importance that the site lies nowhere near any of the identified viewpoints nor impacts upon any of them.

253. Although the Council has sought to identify an impact upon one particular view of Beeston Castle, which lies about 7 km to the east, it was not alleged that this view was culturally important or that any heritage impacts would arise. The test in heritage terms is whether or not there would be an impact upon significance. Any notion that the proposal would have a material impact as a result of an incidental view from a small length of footpath of a castle 7 km away would be untenable. It follows that the Council's case must therefore be that the impact it relies upon in views to Beeston Castle arise purely in a landscape context not a heritage context.

254. Any effect would be a beneficial one arising from the restoration of hedgerows and hedgerow trees along the northern and western edges of the site. These would reflect the borders of the site in the mid nineteenth century as well as typical small areas of copse planting. The cultural heritage picture is therefore one of beneficial impact.

Ecology

255. Subject to the imposition of conditions there would be no impact upon ecology arising from the development of the appeal site. In respect of GCN there is evidence to demonstrate that there would be no population of newts to impact. There are no ponds on the site and appropriate steps could be taken to deal with any newts who might have wandered onto it (***Documents AW/4.2, Section 2; AW/16***). There is no reason why a European Protected Species Licence should not be granted by Natural England and this is agreed by the Council's Biodiversity Officer (***Documents INQ/3; AW/16, Paragraph 7.5***).

256. There is no evidence of water vole or otter from the surveys undertaken in 2012. Bats are likely to commute along the eastern boundary hedgerow and Keys Brook corridor (***Documents CD7.14, Pages 7, 8; AW/16, Paragraph 5.3***). The area to the north of the brook would be managed as a linear park and it is proposed to use bespoke bat friendly down lighting along internal roadways. Substantial planting of hedges, trees and shrubs would take place around the peripheries of the site and the resultant areas managed for ecologically beneficial reasons. Thus the overall effect of the proposal would also be a beneficial one in this regard.

Sustainability

257. The appeal site lies within easy walking distance of the village centre as recognised by the Council and the local highway authority (***Documents CD4.5, Paragraph 6.29; AW/3.1, Pages 17-21***). Moreover with the proposed new bus stop the principal bus route to Chester would stop on the doorstep of the site,

providing ready access to a reliable and convenient service to the largest settlement in the district (***Document AW/3.2***). The proximity of the bus service to the appeal site (especially if it is upgraded to half hourly) provides a meaningful opportunity to work, shop or visit Chester by means of transport other than the private car. The appeal site is highly accessible in the context of a rural settlement where all too often sites lie some distance away from bus services (***Document AW/3.1, Pages 21-23***).

Scheme benefits

258. The delivery of housing in the context of a district wide need, in a sustainable location, where there would be no significant adverse impact, is a significant material consideration which ought to be afforded substantial weight. Similarly the delivery of 35% affordable housing in a district with an acknowledged and ongoing shortfall would be a benefit of significance. Other benefits of the scheme are set out in the evidence (***Document AW/1.1, Paragraph 9.13***). The issue is in reality that the adverse consequences of the proposal would be limited and the beneficial ones are substantial.

OTHER SITES AND CUMULATIVE IMPACTS

259. It is the joint position of the Appellants that the planning balance of each appeal favours the grant of permission. In such circumstances it is considered that the appeal scheme fares best. Wainhomes is the developer who would undertake the appeal scheme and who is keen to get on with the job in order to deliver employment and homes. However if it does become necessary to undertake a comparative analysis, written material has been provided for the Secretary of State to be able to form the view overall of comparative merits. The accessibility on foot, by cycle and by public transport of the 3 sites has been compared and the appeal site ranked best on all counts (***Document AW/3.3***).

260. The mitigation proposed for Appeal site A would include new ponds north of Keys Brook. However Keys Brook would act as a barrier to dispersal especially when it was flowing quickly. Although the field bridge would offer an alternative or new bridges could be provided, these could be subject to predators. Also many of the existing ponds to the north of the stream have predatory fish. It is therefore doubtful that the mitigation would provide long term viability for the population of newts currently on the site. There would be a loss of 2 ponds on the site and these may have the potential for breeding. Although there is an off-site breeding pond this is not on land within the control of the Appellant (***Documents AW/4.1, Paragraphs 6.3, 7.1; AW/4.2, Section 3***). It is not disputed that a licence would be forthcoming but this would require a reappraisal of the mitigation proposals (***Document AW/22***).

261. Both of the other two sites and their accesses would result in an urbanising effect on the character of the western edge of the conservation area. There would be a loss of outward views from its edge and the rural context, including sections of hedgerow, when entering the village, especially along the Appeal C site frontage. There would also be a cumulative impact on the designated heritage asset although this would still fall below the threshold of substantial harm referred to in Paragraph 133 of the Framework. Nevertheless considerable weight should be given to the desirability of preserving or enhancing the character and appearance of the conservation area in the

planning balance (***Documents AW/1.1, Paragraphs 8.31-8.42; AW/1.2, Appendix 17, Paragraphs 3.9-3.12; AW/1.2, Appendix 18, Section 5; AW/5.1, Sections 3 and 4***).

262. Both of the sites would also result in the loss of ridge and furrow, which is a non designated heritage asset. This is an important element of the medieval field system around the village. The appeal site contains no such feature (***Documents AW/1.2, Appendix 17, Paragraphs 3.13-3.3.17; AW/5.1, Section*** 2). Brook Hall is also a non designated heritage asset. It stands in parkland and is connected to the block of ridge and furrow which runs through the appeal sites. Its setting and historic relationship with the conservation area would be affected by both of these developments (***Documents AW/1.2, Appendix 17, Paragraphs 3.18-3.19; AW/5.1, Section 2***). Whilst these are not in-principle objections they should be weighed in the planning balance.

263. It is the firm position of all three Appellants that there is no proper cumulative reason for withholding permission for all three applications. If all three were permitted then they would be cumulatively capable of being served by existing infrastructure and the scale of development would not be out of step with the level of expansion anticipated by the Council and the Parish Council. The decision of Members was taken in the knowledge of there being a number of applications for permission. However there is no reason for refusal on the grounds of the cumulative impacts of the various proposals.

264. It follows that if the appeal proposal is considered to be acceptable on its own merits then the Council would not invite dismissal on the grounds of impact in combination with any of the other schemes. The position is therefore unchanged from that reported to members in the overarching Report to Committee, which considered the range of cumulative impacts and concluded that there was no basis to withhold permission on this basis (***Document CD4.1***). This is a position with which Members can necessarily be inferred to have agreed.

THE CASE FOR BARRATT HOMES

The main points are:

THE FRAMEWORK FOR DECISION MAKING

265. The RS has been revoked and so the relevant development plan policies for the purposes of this appeal are limited to certain saved policies of the Chester District Local Plan (June 2006). The Council has accepted for the purposes of this Inquiry that, because of the lack of a 5 year housing supply, saved Policy HO 7 must be treated as out of date. The Council has also accepted that some greenfield sites on the edge of existing sustainable settlements will have to be released and that Tattenhall qualifies as a KSC and a sustainable settlement capable of accommodating growth (***Documents CWC/1.1, Paragraph 2.19; SCG/1, Paragraphs 4.1-4.3***).

266. The Council further agreed that saved Policy ENV 2 is only relevant in so far as it relates to landscape issues and that it does not rely upon the urban design aspects of the policy in relation to any of the three appeal proposals (***Document CWC/19, Paragraph 22***). It was also accepted that in these appeals saved Policy ENV 2 adds nothing of substance to the Council's reliance upon saved Policy

ENV 24. It is also agreed that saved Policy GE1 would only be breached if the proposal breaches the other two policies in relation to the landscape issues and adds nothing of substance in its own right.

267. The appeal scheme is in detailed form and the Council has made no criticism of the design. As a result, the urban design considerations in saved Policy ENV 2 lend support to the appeal proposal and the Council confirmed that the scheme does accord with its terms in this respect including making positive contributions under each item[56].

268. The Planning Officer's report to Committee on 22 November 2012 carefully appraised the design of the appeal scheme (***Document CD 4.8, Paragraphs 6.52-6.64***). It was confirmed that in this respect the Members did not demur from the following judgements[57]:

    268.1. The proposal would provide large areas of open space and planting to the western and southern boundaries. The landscaped areas would provide an attractive edge to the development and the proposed site layout would sensitively provide for a development with significant areas of open space. The proposal would comply with saved Policies 21, 22 and 23.

    268.2. The site is adjacent to the Conservation Area and the proposal's good design is a key aspect of sustainable development.

    268.3. A detailed Design and Access Statement had been submitted showing how the original vernacular styles within the village had been taken into account in the design.

    268.4. The overall proposal would be a relatively low density at 20 units per hectare and the density of the units would be softened towards the edges of the site adjacent to other fields.

    268.5. The proposal would comply with saved Policies ENV 37 and ENV 38 regarding the preservation of the character and appearance of the Conservation Area and views within, into and out of the Conservation Area.

    268.6. The dwelling on Plot 68 would be a bespoke design reflecting the character of the adjacent Brook Hall Cottages.

    268.7. The overall development meets the Council's standards for separation distances and garden sizes and accords with saved Policy GE 3.

    268.8. The Village Design Statement suggests that there is a need for new development to "*reflect the gradual incremental expansion of the village*". The proposal represents a further phase in the incremental expansion of the village. The site is next to a modern housing

[56] This was confirmed by Mrs Coombs in cross-examination by Mr Holgate.
[57] These points were confirmed by Mrs Coombs in cross-examination by Mr Holgate.

development and it is likely that further housing would not undermine the existing urban grain.

269. The reason for refusal referred to the effect on the prevailing layout and character of the village. However the Council offered no evidence on this matter and confirmed that no design issues were being raised under saved Policy ENV 2. (***Document BH/9***). The appeal scheme scores well in a *Building for Life 12* assessment which provides a framework for the design assessment and has been advocated for use in the draft TNDP. It also accords with many of the objectives of the Village Design Statement (***Documents CD3.4; BH/3.1, Paragraphs 2.17, 7.7 and Section 6; BH/3.2***). There was no substantial challenge to the urban design evidence either from the Council or third parties.

270. Much of Tattenhall has been built within the 30-40m AOD contour band. The appeal site relates to one field parcel which has already been partly developed with the recent Grackle Croft development. This took up 12% of the total field parcel. The appeal scheme would occupy a further 78.5% and the remainder would be used as landscape mitigation and green space. Most of Grackle Croft sits above the 31m AOD contour but only Plot 68 of the appeal development would sit at this level. That dwelling would have a ridge height of only 6.8m and would greatly improve the relationship between the gable and elevation of 20 Grackle Croft and Brook Hall Cottages. The site frontage falls from AOD 31m at the eastern end to below 29m AOD at the western edge and the overall scheme falls to 25m AOD at the south western edge. Nearly half of the site lies below the 29m AOD contour line. The development would lie at similar levels to the Care Community Care at Frog Lane (***Documents AW/2, Appendix 4, Figure 2; BH/14; BH/17, Paragraph 2.1***).

271. There would be two internal open space areas, including a village green. They could be used not only by the residents of the scheme but also residents nearby. The garden areas would be generous and would be beneficial in views westwards from the Grackle Croft properties and their access (***Document BH/15***). The deep set back of units 1 to 5 and 65 to 68 would provide for a country lane frontage, with a 2 m hedge, retention of all but 3 trees, and additional tree planting (***Document BH/17, Paragraph 4.7***). A generous set back would also be provided in the south-eastern part of the scheme next to Ravensholme Court. The designs for the houses, including along Chester Road would appear varied in terms of elevations, roof lines, scale, separation distances and materials. Generous and appropriate planting schemes are provided on the western and southern boundaries.

272. It is accepted that when travelling into the village along Chester Road the upper parts of Units 9, 10 and 11 would be seen in a winter view. However the new planting proposed for the western boundary would provide effective screening at the bend in the road. Taking account of the fall in land levels it is thus correct of the Council to accept that the development would effectively only be seen as frontage development set back from Chester Road.

273. The Council's case thus rests on one saved policy of the development plan, ENV 24. Applying Paragraph 215 of the Framework the amount of weight to be given to that policy depends upon its degree of consistency with that guidance. It is however not a criteria based policy as envisaged in Paragraph 113 of the Framework. In addition there is no distinction made between the hierarchy of

international, national and locally designated sites. That is particularly important here because the land is undesignated. Consequently, the weight to be attached to this policy must be very much reduced.

274. This is a case where the Council accepts that the enhanced presumption based upon Paragraphs 14 and 49 of the Framework applies. This is because the CDLP housing supply policies are out of date along with saved Policy ENV 24. There is no allegation that the proposal is contrary to any policy in the Framework. The Council also accepts that some peripheral expansion is necessary at Tattenhall. Unfortunately though it has provided no assistance whatsoever as to what sort of sites should be released where the adverse effects asserted against the appeal site would not occur. The Council merely said that it had decided to reverse its decision on the Redrow site at Tattenhall by granting an approval on the basis that there would be no adverse landscape or visual impact and that this site could be taken as a reference point[58].

275. The first question under Section 38(6) is whether the proposal accords with the CDLP taken as a whole. Given the limited weight to be attached to saved policy ENV 24 in the context of this appeal and the substantial compliance with several important policies of the plan, it is considered that the proposal does accord with the development plan viewed overall. Secondly, in so far as any breach of ENV 24 is relied upon, the Council's position makes it clear that the proposal must be decided under the principles of the NPPF.

WHETHER ANY ADVERSE IMPACTS WOULD SIGNIFICANTLY AND DEMONSTRABLY OUTWEIGH THE BENEFITS

The Nature of the Council's Case

276. The Council has accepted that there is an enhanced presumption that the appeal be allowed in accordance with Paragraph 14 of the Framework. The various benefits of the scheme have not been disputed by the Council. It was also agreed that the Council needs to show that the landscape and visual impact is sufficient to outweigh all these benefits in combination both significantly and demonstrably. In that particular context it is necessary to take into account the Council's acceptance that some peripheral expansion at Tattenhall is necessary and that housing supply targets are unlikely to be met without the release of sites such as the appeal site.

277. In the light of these agreed matters the Council would need to demonstrate convincingly that very substantial harmful effects would result from the appeal development. At this crucial stage in the decision making process there is a gaping hole in the Council's case. The reason for refusal asserts that the benefits of delivering housing are not considered to outweigh the landscape and visual impact objection. However the Council's landscape witness made it plain

[58] In cross-examination by Mr Holgate, Mrs Coombs said that greenfield land would be needed and that this would be a matter for the emerging Local Plan. She agreed that the Framework required that the matter should be dealt with now in circumstances where there is a housing shortfall. She agreed there was no comparative assessment of the Redrow and appeal schemes and that the explanation as to the acceptability of the former and not the latter was in the Committee Report on Redrow and the reason for refusal of the appeal scheme.

that he had dealt solely with landscape and visual impacts and not with the balance with the benefits of the proposals (***Document CWC/3.1, Paragraph 12.8***). The Council's professional officers stated that in their professional judgment the balance still remains in favour of the grant of planning permission[59]. No evidence has been presented by the Council to support an essential component of the reason for refusal that the landscape and visual harm outweighs the benefits of the proposal.

The effect of the proposal on the landscape and rural setting of Tattenhall

278. Although there has been much debate about the methodology adopted by each of the landscape experts it is important to remember that all of them are agreed that the impacts are localised.

279. It is also important to put the points of difference with the Council into the context which was agreed with its witnesses:

279.1. It is necessary to calibrate the judgments which have been made.

279.2. The fact that the impacts are below the level which would trigger Environmental Impact Assessment, both for individual and cumulative impact, is relevant for calibration.

279.3. The fact that the sites do not involve any designated landscape is also relevant to calibration in accordance with Paragraph 113 of the Framework.

279.4. The impacts of the 70 house development on the Redrow site are acceptable as regards both landscape character and visual impact. That is a further agreed reference point.

279.5. The impacts of the Care Community on the Frog Lane site have been judged by the LPA to be acceptable as regards both visual receptors and landscape character (***Document HLS/3, Appendix 8***).

279.6. Further peripheral expansion of Tattenhall is required, which can only be located on the western, northern and north eastern sides of Tattenhall and which would in each case have some effect on visual receptors located on the footpath network.

279.7. The landscape and visual impacts in the Redrow and Frog Lane developments were found by the Council to be acceptable without needing to weigh housing benefits in the balance.

280. The Council's landscape expert[60] first became involved in December 2012 just after the Members resolved on 19 December 2012 to grant permission on the Redrow site. This was on the basis that, contrary to their earlier reason for refusal, that proposal would involve no unacceptable landscape and visual impacts. The Redrow decision is of particular importance to Appeal C because

[59] In cross-examination by Ms Ellis both Mrs Coombs and Mr Matthews said that they had not changed their view on the overall planning balance in favour of the appeal developments having seen Mr King's landscape evidence.
[60] Mr J King BSc MLD CMLI.

the same reason for refusal was employed (***Document BH/5.1, Paragraph 2.7***). Therefore the decision to refuse the appeal scheme specifically did not allege a sprawling incursion into open countryside or breaches of natural boundaries. In the initial assessment of the four appeal schemes the Council was advised that a refusal of the Redrow scheme on landscape or visual impact grounds would be indefensible.

281. A significant difference between the landscape experts is that in the Council's case a study area for the assessment of the effect on landscape character has been defined by a ZTV. It was accepted that the smaller this is the greater the magnitude of the changes to landscape character. Conversely the Council was critical of the Appellant's expert[61] for having chosen too extensive a study area that went beyond the ZTV, thus understating the magnitude of the effects and their significance.

282. A further significant difference between the experts is the treatment of residential receptors. The Council accepted that there was no residential amenity objection in this case, which includes visual impact at residential receptors. However it insisted that the residential receptors were nonetheless relevant to its landscape assessment. The LVIA Guidelines do suggest that residential receptors may be relevant in some circumstances. However this is not surprising given that they cover a wide range of situations, including Environmental Impact Assessment work. However in the Purple Book it is made plain that private viewpoints, mainly from residential properties, may be relevant in "*residential amenity assessments*" (***Document CD 3.17, Paragraphs 6.17, 6.33 and 6.36***). Such receptors may be relevant when assessing visual effects, but it is not suggested that they are relevant to the assessment of landscape effects (***Document CD3.17, Chapter 5***).

283. The Purple Book indicates that the study area in assessing landscape impacts should encompass the site itself and the full extent of the wider landscape around it which the proposed development may influence in a significant manner. The advice goes on to say that this will usually be based on the extent of Landscape Character Areas likely to be significantly affected either directly or indirectly (***Document CD3.17, Paragraph 5.2***). That is the approach followed by the Appellants' experts. The focus is on the extent of the relevant Landscape Character Areas and it is clear that ordinarily the area of study for landscape effects cannot be confined to a ZTV.

284. The Council's approach treats the "direct" effects as being restricted to the development site itself (***Document CWC/3.1, Paragraph 6.9.3***). However that plainly conflicts with the clear language requiring assessment of direct and indirect effects upon the relevant Landscape Character Areas. Although the Purple Book does refer to the ZTV this is really aimed at a development, such as a wind farm, which may affect a very wide expanse of landscape covering several Landscape Character Areas. It may well be unrealistic for the landscape character assessment in such cases to be based on the full extent of all of the Landscape Character Areas affected. In that instance a ZTV may be used to

[61] Mr J Berry BA(Hons) DipLA AEIMMA CMLI MArborA

reduce the scale of the assessment needed. However as a matter of common sense, the passage quoted is not meant to be used in order to cut down the Landscape Character Area study area for much smaller scale developments such as the appeal proposal.

285. The judgement of the Council's landscape witness that a landscape objection to the Redrow proposal would have been indefensible exposes the flaws in his approach. He had to say that the study area for the Redrow site was small because the site is visually well-contained. He said that it is limited to the site itself (on the northern, eastern and southern boundaries) and the rear facades of the 18 properties in Harding Avenue on the western boundary. In terms of the direct effects on the site itself it was agreed that the Redrow site was no more acceptable than the other 3 appeal sites and that no distinction could be drawn. As for the residential receptors it was accepted that no distinction could be drawn either as regards sensitivity or magnitude of effect comparing the Harding Avenue properties and Grackle Croft[62].

286. On this approach the only distinguishing point was that the ZTV would be so limited in the case of the Redrow site that no other significant indirect effects off the site would arise. However this approach allows no room for treating landscape character as a resource irrespective of whether it is visible from outside the boundaries of a development site. That is a standard consideration in any normal assessment of this kind and the Council's approach is arbitrary.

287. These issues are of real practical importance. The significance of landscape impact involved a number of judgments relating to the sensitivity of the landscape resource and the magnitude of change within the study area, both direct and indirect (***Document CWC/3.1, Tables 6.1, 6.2, 6.3 and Paragraphs 6.5.1-6.5.4, 6.8.3-6.8.5***). It was confirmed that the judgements leading to the Council's conclusion on significance of landscape impact were heavily influenced by:

    287.1. The relatively small size of the study area based on ZTV.

    287.2. The inclusion of visual impacts on *specific receptors* taken from the visual impact assessment in the assessment of landscape character effects leading to double counting.

    287.3. The inclusion of visual impacts on private receptors, including dwellings and private roads, in the assessment of landscape impact.

288. There are three private residential viewpoints which feed into the significance assessment and are judged as having substantial to very substantial adverse impacts (***Document CWC/3.3, Photoviews 1-3***). If these impacts had not been included in the assessment of landscape character, then as was accepted there would have to be some reduction in the scale of the overall significance effect.

289. In the consideration of components contributing to landscape value views to the Clwydian Range were judged as contributing a high value within the restricted study area. There was also high value for hedgerow pattern and hedgerow trees and these contributed to the sensitivity of the landscape affected being treated as "medium to high" (***Document CWC/3.1, Table 6.2 and Paragraph 6.7.1***).

[62] These points were accepted by Mr King in cross-examination by Mr Holgate.

It was accepted that no allowance had been made for the common nature of hedgerows and hedgerow trees or for the fact that the peripheral expansion of settlements would generally involve some loss of such features. It was recognized that many of the views of the Clwydian Range, which is some 30 km distant, could only be obtained in clear conditions. Even then several would be oblique views at best. With the inputs to the exercise weighted in this repeatedly unrealistic way it is not surprising that harm asserted in terms of landscape impact has been exaggerated.

290. The Secretary of State can gain no real help from an assessment of this nature, which suffers from methodological flaws and exaggerated judgments. If that approach were to be repeated regularly by the Council in its development plan work it is difficult to see how it could identify an adequate supply of housing land, whatever the eventual requirement figure. By contrast, the criticisms made of the Appellant's landscape work were marginal in nature and no criticism was made of the study area or methodology (***Document BH/7, Section 5***). It was only after the Council's approach was clarified at the Inquiry and the fundamental flaws exposed, that an unsuccessful reactive attempt was made to advance criticisms of the Appellant's landscape work.

291. The landscape assessment supporting the appeal scheme is sound and reliable and the judgments it contains are properly based and objective. It is to be preferred overall to that of the Council. This is a non-designated landscape on the fringe of a settlement that has no special characteristics. The sensitivity was judged to be "moderate (local)" and the magnitude to be "high in close proximity" and "low (or no change) at greater distances". This led to an overall assessment of a "moderate adverse" significance of effect upon completion and a "minor adverse" residual effect after 15 years (***Document BH/1.1, Tables 2.3, 2.4***).

292. There were several factors which were taken into account in the Appellant's landscape assessment but not that of the Council:

    292.1. The hierarchical principle in Paragraph 113 of the Framework and the non-designated nature of this landscape.

    292.2. Mitigation proposals.

    292.3. The Council's objective of improving the Grackle Croft edge by appropriately designed development.

Visual impact assessment

293. The Council accepted that no significance should be attached to the visual impact on private receptors, including dwellings such as Grackle Croft and Brook Hall Cottages[63]. The visual receptors relied upon in order to support the Council's case were limited to:

- Footpath 8

[63] Mr King agreed in cross-examination by Mr Holgate that in the visual impact analysis a distinction could be drawn between public and private views. He agreed that there were no objections in terms of residential amenity. In ***Document CWC/10*** the private Photoviews are distinguished.

- Chester Road
- Newton Lane
- Bishop Bennet Way north of Russia Hall

294. Newton Lane relates to a short stretch of road about 1.2 km away from the appeal site (***Documents CWC/3.3, Photoview 18; SCG/6, PM05***). This is said by the Council to be a transient view generally screened by intervening vegetation giving rise to either a negligible or slight adverse impact (***Document CWC/3.1, Paragraph 5.2.11***). It is difficult to see why the Appellant's view that the impact would be entirely negligible should not be accepted (***Document BH/17, Paragraph 7.3***).

295. From Bishop Bennet Way the Council suggested that the significance effect would be moderate (substantial) adverse (***Documents CWC/3.1, Paragraph 5.2.10; CWC/3.6, Plate N***). The Council accepted that this view was at a distance of around 900 m from the site with existing development in the backdrop[64]. It is obtainable over a section of only about 15 m on a footpath which, in the relevant study area, lies mainly between tall hedges and is sunken over substantial lengths. The Appellant's landscape judgment that the residual effect would be negligible is sound (***Document BH/17, Paragraph 7.1***).

296. In reality the Council's case therefore rests solely on views from Footpath 8 and Chester Road. Both are transient views over relatively short distances. It is agreed that the only impact on Footpath 8 would be for those walking south over a distance of about 250 m. There would be no effect north of the Council's Viewpoint 12 (***Document CWC/3.3, Viewpoints 9-12***). The Council accepted that the existing edge of the settlement, including Grackle Croft, is currently visible to walkers[65]. If the appeal scheme goes ahead then walkers who are looking ahead, rather than simply enjoying the wider countryside, would have a view of the edge of the settlement as they do now. That is the nature of the experience for a footpath in this location. The view of uniform, high density development would be replaced by high quality, low density development with considerably more visual interest. The views would be filtered by existing and proposed vegetation (***Document BH/17, Paragraphs 6.1-6.5***).

297. The views from Chester Road apply in both directions but are limited to a similarly short distance. Much the same considerations apply as in the case of Footpath 8 except that this experience is largely confined to road users. The footway along Chester Road does not lead to any significant destination. The Council alleges that from certain angles the height of the properties on the appeal site would seem greater than those on Grackle Croft. However that is to some extent simply a matter of perspective and therefore true of almost any peripheral expansion of a settlement. Taking into account those factors which the Council has not assessed, particularly the positive design advantages of the scheme, the impacts would be minor adverse at the outset, becoming minor adverse/negligible after 15 years (***Document BH/17, Section 5***). The point is made that development would extend the boundary of the settlement, but that

[64] This point was agreed by Mr King in cross-examination by Mr Holgate.
[65] These points were agreed by Mr King in cross-examination by Mr Holgate.

has happened already in Grackle Croft and development to the south would happen with the Care Community development (***Document BH/17, Section 3***).

298. There were several factors which were taken into account in the Appellant's visual impact analysis but not that of the Council:

    298.1. The design of the scheme, including all the points accepted by the Council as positive contributions under saved Policy ENV 2 (***Document BH/17, Paragraph 4.6***). The Council simply relied upon the wire frame diagrams.

    298.2. The bespoke design for Plot 68.

299. The appeal proposal, viewed in a proper context, would represent an appropriate extension which would improve substantially this approach to the village in the various ways described above. It should be concluded that neither the landscape nor the visual impacts would be significantly harmful, and certainly not so harmful as to outweigh the substantial benefits of the scheme.

OTHER MATTERS

Heritage

<u>The effect on the form and layout of Tattenhall and its conservation area</u>

300. Although this criticism was stated in the reason for refusal, the Council confirmed that none of its evidence addressed the point. That is hardly surprising in view of the Council's position that the design of the appeal scheme would make a number of positive contributions under saved Policy ENV 2 and indeed saved Policy ENV 37. The treatment of Plot 68 is an example.

301. One of the key constraints on the expansion of the village are the conservation area and listed buildings on the southern and eastern sides, such that further peripheral growth can only be contemplated on the western, northern and north eastern sides. It was agreed that, given the extensive location of footpaths around Tattenhall, growth in any of these three remaining areas would be likely to involve some visual impact for receptors on those footpaths. A significant factor when assessing proposals for housing development on greenfield extensions is whether they will be seen against a backdrop of existing housing. In that context, it was agreed that the analysis in the VDS shows that the identified areas of modern housing have extended on the western, northern and north eastern sides of Tattenhall[66] (***Document CD3.4, Paragraph 3.24***). The location of the Barratt's site is thus consistent with the way in which Tattenhall has evolved.

302. A particularly important characteristic of Tattenhall is the large open spaces lying at the heart of the village (***Document BH/3.2, Page 2***). These are identified in the VDS and in the Conservation Area Appraisal (***Documents CD3.4, Paragraph 2.3.2; CWC/5 Page 16***). There is therefore little scope for significant development within the heart of the village. In order to preserve valued open spaces and views it is necessary for further housing to be located on the edge of the

[66] These points were agreed by Mr King in cross-examination by Mr Holgate.

settlement. There are no significant brownfield sites within Tattenhall (***Documents BH/3.1, Section 3 and Paragraph 7.2; BH/3.2***).

303. The Conservation Area Appraisal is a document to which substantial weight should be attached because the Council accepts that it has been prepared in order to discharge its statutory duties not only under section 69 but also section 71 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (***Documents CWC/5; CWC/***7). This is not merely a Supplementary Planning Document, rather it has statutory status (***Document INQ/2***). The Appraisal refers to specific examples of modern development which have compromised the setting of the conservation area because the properties built present an "instant wall". This is said to be particularly evident along Chester Road where modern housing on Ravensholme Lane and Rookery Drive form distinct and imposing lines. The photograph in that document plainly shows that the statement is referring to Grackle Croft (***Document CWC/5, Page 20***). The Council has agreed that Grackle Croft does not form an attractive boundary (***Document BH/7, Paragraph 4.50***). The Committee Report acknowledged that the appeal proposal, with its landscaped boundaries, would improve it (***Document CD4.8, Paragraph 6.55***).

304. The Conservation Area Appraisal acknowledges the scope for remedying this situation by new peripheral development in surrounding fields, subject to assessing their impact on views of the conservation area and on the contribution they will make to the incremental approach into the village (***Document CWC/5, Page 20***). The document was the subject of public consultation in 2008 and 2013 and has recently been adopted. This is notwithstanding that the landscaping scheme required by the December 2009 permission for the Grackle Croft development has not been properly implemented (***Document CWC/2.2, Paragraph 2.4***). The uniform and monotonous elevations, turning their back on the countryside, call for a good deal more than the limited planting that can be achieved within the minimal strip available for landscaping (***Documents BH/3.1, Page 31; BH/3.2; BH/17, Paragraph 4.5***). The Council has endorsed the positive contributions of the design for the appeal scheme under saved Policies ENV 2 and ENV 37. The Council's landscape expert was not asked to assess the scheme against the objectives of the Conservation Area Appraisal.

305. The proposed Chester Road frontage should not be judged in isolation but in the context of the modern development which lies to the east on both sides of Chester Road. The nine dwellings proposed for the site frontage would include not only the Plot 68 bespoke design, but also units with a variety of roofs, elevations and materials. These would be well set back from the road, behind a green space, with varying and significant separation distances between the dwellings and substantial planting. That represents an incremental approach to density which would improve the entrance into Tattenhall not only as regards Grackle Croft but also the relatively dense developments immediately to the east (***Documents CD10.4, Pages 9, 35; BH3.1, Paragraphs5.3-5.6; BH/14; BH/17, Section 5***). Taking account of the land gradients the development would not be perceived at depth in the Chester Road view. The design would be comparable in effect to the Burwardsley Road approach, commended in the Conservation Area Appraisal (***Document CWC/5, Page 20***).

306. The Council confirmed that the proposal would not adversely affect any of the relevant Tattenhall views identified in the Conservation Area Appraisal, the VDS or the TNDP[67]. Views towards Brook Hall would not be affected and the view from the dismantled railway added to the TNDP is linear and transient. In any event the latter is not a public right of way, has limited public access and is heavily vegetated (***Document BH/6, Paragraph 3.64***). The design and layout is in accordance with the principles set out in the VDS and the TNDP. These documents recommend the use of a *Building for Life 12* Assessment (***Documents BH/3.1, Section 6; MJ/5A, Page 14***). In the circumstances it is concluded that the proposals would not only respect, but also enhance, the form and layout of Tattenhall and its conservation area.

Ecology

307. Extensive survey work has been done to assess the ecological interest of the site and potential impacts that may arise (***Document BH/4.1, Section 5***). Those matters have been the subject of continuing appraisal by the Council's Biodiversity Officer[68]. It was agreed with the Council that there would be no adverse effect upon any ecological interest. The site comprises poor semi-improved grassland with negligible ecological value. The Mill Brook flows along the southern boundary but no evidence was found of water voles. No evidence was found of bats, badgers or GCN on the site. Instead it was agreed that the proposal would achieve enhancement for biodiversity through additional landscape planting and a management scheme. There are no veteran trees within the site (***Documents BH/7, Paragraphs 4.7-4.34; BH/16, Section 5***).

308. It was suggested by one of the other Appellants that the appeal site might face some difficulties in relation to GCN under the Habitats Regulations. However upon a proper review of the appeal scheme it was confirmed that those criticisms were misconceived (***Document AW/4.2, Paragraph 4.1***). It is agreed with the Council that in the case of the appeal scheme no derogation licence would need to be obtained from Natural England at all (***Documents BH/16, Section 6; INQ/3***).

Sustainability

Whether the appeal site is a sustainable location for housing

309. The starting point is the Council's acceptance that Tattenhall is a sustainable location for housing development, given its qualities as a KSC (***Document SCG/1, Paragraphs 4.1-4.3***). Also the Council's recognition that the peripheral expansion of Tattenhall is necessary. In addition the accessibility of each of the appeal sites by non-car modes of travel, accessibility to important services in the village, and accessibility to cycle and bus routes has been explained in the evidence and agreed with the Council (***Documents SCG/2, Paragraphs 21-28; BH/2.1, Pages 4-8; BH/20, Paragraphs 2.5-2.11, Section 6***). Improvements to non-car accessibility would include enhanced 2m wide footways on Chester Road, a segregated footway within the site, dropped crossings and tactile paving, and contributions for the upgrading of bus stops. There would also be the

[67] This was confirmed by Mr King and Mrs Coombs in cross-examination by Mr Holgate.
[68] Mr A Evans MA BA(Hons) CIEEM.

opportunity to improve connectivity and permeability with the wider village through the provision of access points into the adjoining residential area (***Documents BH/2.1, Paragraph 5.6; BH/3.1, Paragraph 3.2.4; BH/21***).

The three dimensions of the Framework

310. The three dimensions to sustainable development are identified in Paragraph 7. The economic and environmental roles have largely been covered by the other Appellants. However reference should be added here to the enhancement of biodiversity referred to above.

311. The social role includes support for "*strong, vibrant and healthy communities by providing the supply of housing required to meet the needs of present and future generations*". The appeal proposal is directly relevant to meeting that need. There has been a persistent failure to deliver sufficient housing and this undermines the social role of sustainable development. The Framework requires the problem to be redressed as soon as possible.

312. Many residents have expressed a concern about the ability of the settlement to absorb more housing. However the necessary infrastructure is assured through the Planning Obligations. Furthermore Tattenhall is a successful, vibrant community and a KSC which is well able to absorb and benefit from well designed housing with a substantial proportion of much needed affordable housing. It is not suggested by the Council that there would be any deficiency in the provision of infrastructure necessary for the village of Tattenhall with the three appeal schemes.

Congestion and highway safety

313. No issues are raised by the Highway Authority in relation to highway safety or congestion as regards all or any of the three schemes. It is now proposed that the appeal site would be served by a simple priority junction with Chester Road and that a right turn lane would not be necessary. The Highway Authority is satisfied that this would operate satisfactorily. Although objectors considered Chester Road is the main route in and out of the village, peak hour counts reveal that Tattenhall Road, which passes Appeal Site B, has similar traffic flows. Other routes such as Burwardsley Road are also well used (***Documents BH/2.1, Section 5.3; BH/19, Section 2; BH/22***).

314. It is proposed to extend the 30mph speed limit on Chester Road to the west of the site. This would help reduce traffic speeds at the entry to the village. The existing street lighting would also be extended although it is not considered that this need go beyond the main access to the site (***Documents BH/2.1, Section 5.4; BH/2.2, Appendix B***). A contribution would also be made to the improvement to the Chester Road and A41 junction (***Document BH/2.1, Paragraph 6.6***).

315. There were various local objections including queries about trip rates, junction modelling and the safety of the proposed priority junction. These concerns are not considered to have merit and provide no basis for all or any of the appeal schemes to be refused permission on the grounds of congestion or highway safety (***Document BH/20***).

Scheme benefits

316. There would be a number of benefits which are set out in the evidence (***Documents CD10.7; BH/5.1, Section*** 6).

317. The scheme would provide 27 affordable housing units or 40% of the total provision. It is agreed with the Council that such housing is very important in rural locations. It contributes to the support of local services, such as schools and shops. It also provides homes for young families or elderly people. It is also agreed that there is a significant shortfall of affordable housing across the borough of more than 1,200 new dwellings per year. The Council concurs that the scheme would make a valuable contribution towards the provision of affordable housing (***Document BH/7, Paragraph 4.40***).

318. In the 2010 SHMA Update the annual affordable housing shortfall for Tattenhall ward was given as 16 and it was 11 in the 2012 Update (***Documents CD2.1, page 74; CD2.6, Page 76***). This was taken by Councillor Jones to support the argument that a need in the village no longer exists. It is the case that ward boundaries were altered in 2010 and whether this affected the numbers is unresolved. However this does not detract from the chronic shortfall across the borough as a whole and there is no sign that this is improving. The problem is all the more serious because of the relatively high level of property prices in the borough and the fact that the provision of affordable housing is generally dependent upon the provision of general market housing. Two Registered Social Landlords who work in the area have written to confirm that the proposed 27 affordable homes are needed in the Tattenhall area (***Document BH 5.2, Appendix 3***).

OTHER SITES AND CUMULATIVE IMPACTS

319. The Appellants have not assessed the cumulative impact of the three appeal schemes, although the Photomontages in ***Document SCG/6*** are agreed. The Council has sought to assess cumulative impact but its conclusions are simply a summation of the individual assessments (***Document CWC/3.1, Section 11***). Given the methodological flaws and unreasonable judgments in that earlier work, no real reliance can be placed upon the judgments relating to the cumulative photomontages. The position of the three Appellants is that when the cumulative effects of the three schemes are properly assessed, in context and with mitigation taken into account, there is no sufficient basis for refusing permission for all three schemes. The contribution of the appeal scheme to cumulative impact really derives from relatively short stretches of Footpath 8 and Chester Road. On a proper assessment its contribution to cumulative impact is not so significant that it could be reasonable to refuse permission.

320. The mitigation scheme for Appeal site A would require translocation of GCN to land north of Keys Brook. There are concerns about this strategy because the stream is likely to act as a barrier due to fast flows in periods of heavy rainfall. This would isolate the newts from the population to the south of the brook. Also some of the ponds north of Keys Brook are stocked with fish which predate on newt larvae. The ponds should remain south of the brook to avoid these problems and avoid splitting the populations. Whilst a derogation licence may be granted, the mitigation proposal would need to be reconsidered.

321. A sequential assessment was made of all potential development sites within and adjacent to the village, including the other two appeal sites and the Redrow site. Of the three appeal sites and the Redrow site, Appeal Site B scored least well due to its location beyond Keys Brook which provides a strong physical boundary to the village. It is also on rising ground and one of the furthest from the village centre. Appeal Site A came next due to its limited connectivity with the village, prominence and inability to provide an effective gateway. It could though improve the existing poor urban fringe (***Document BH/3.1, Section 3***). There are also criticisms of the detail and quality of the Design and Access Statements for the other two appeal proposals which do not demonstrate that the schemes would successfully integrate with the physical and social fabric of the existing village (***Document BH/3.1, Section 4***).

OTHER ORAL REPRESENTATIONS TO THE INQUIRY

322. A large number of people spoke in opposition to the appeal development and most were local residents living in the village. Many produced written statements and other evidence and this is set out in the Documents in Annex Two under the "TP" prefix. The main points have been summarised below but the individual contributions have been adjusted to reduce repetition. Some speakers also submitted written representations to the Inquiry and where a point made orally has been added to in writing this has been included in this section. Some objected to one or other of the individual appeals but many were more generally opposed to the principle of the development of these greenfield sites.

323. It should be noted that these representations, apart from one from Mr Leigh-Smith, were all made in the context of the position of the TNDP at the time of the Inquiry and before it completed the Examination.

The main points are:

324. **Mr G Newman** lives in Greenlands which adjoins the Appeal B site. He spoke about the TDNP, which is one of the government funded Front Runners. It had tremendous support from the village and it would be undermined if the appeal developments were approved. The proposals would be premature in advance of the TNDP Referendum. He made clear that he was not against growth, which had occurred in and around the village. However timing was of key importance in order that new housing could be absorbed properly. There ware 847 properties in the village core and an additional 315 dwellings would have a negative effect on its sustainability. The Appeal B development specifically would urbanise the approach along Tattenhall Road and breach Keys Brook, which provides a significant boundary to the settlement. The new road markings, access road and hedge removal for sightlines would result in significant urbanisation.

325. **Mr Weightman** was also concerned about the irreversible change that this scale of development would have on the village and its impacts on such facilities as the cemetery. There was no urgent need for more housing in Tattenhall and government policy was now in a state of change as was demonstrated by the increased public involvement required for wind farms. A decision should not be made until these matters were clear.

326. **Ms C Vickers** was concerned about the cumulative impact and the consequent increase in the size of the village. She also had concerns about the loss of agricultural land which is important for food production especially as populations rise. She felt that to ignore the TNDP, which was nearly completed, would make a mockery of localism. **Mrs M Stubbs** indicated that she had lived in the area most of her life and remembered the dependence on local food during the war years. She also raised concerns about the loss of farmland that would ensue.

327. **Mr M Cooke** had attended the meetings of the Strategic Planning Committee and listened to the discussions on the planning applications. They had all been unanimously rejected by the Members. He had similar concerns about the TNDP. Mr Cooke also spoke in his capacity as Chair of the Tattenhall Business Alliance and Business Club, which promotes and provides a forum for around 80 businesses employing about 400 people in and around Tattenhall. Of the 22 businesses canvassed it was not considered that further large developments in advance of the TNDP should be approved taking account of other developments that had recently been permitted. They did not wish to see the character of the village endangered as this attracted businesses to the village in the first place. There was especial concern about the effect on traffic movements and making existing congestion worse. What was needed was small scale, low cost housing for employees who could not presently afford to live in the village. Infill or brownfield development was favoured and not large suburban estates. These businesses did not want the rapid growth that would occur if the appeal proposals went ahead. Decisions should be taken within the context of the TNDP by people who understand what made the village such a special place (***Document TP/4***).

328. **Mr M Reece** was involved with the local cricket and tennis clubs. He was mainly concerned about Appeal C and felt it would spoil the attractive approach to the village along Chester Road. He was also concerned about development so close to the sheltered housing in Ravenshome Court especially if any access was to be provided at this point. He considered that the junction of Ravensholme Lane and Chester Road was very dangerous due to limited visibility and that the Appeal A site junction opposite would be dangerous too.

329. **Mrs C Dzelzainis** said that bolt-on estates had been rejected by residents. In the case of Site A there would be a single entrance point and footpath links to existing estates would not be possible. The community was not against growth but it should be gradual to retain a sustainable lifestyle for existing residents in this and surrounding villages. She was concerned about the capacity of the primary school to accommodate more children and feared they would have to travel out of the village. Due to the limited amount of public transport people relied on their cars for shopping and entertainment and the developments would create additional traffic issues. Mrs Dzelzainis also made similar points about the TNDP, community involvement and disenfranchisement. She pointed out that one of the Core Planning Principles in the Framework was for a plan-led system where local people were empowered to shape their surroundings (***Document TP/2***).

330. **Mrs Dzelzainis** also presented orally a submission made on behalf of the Friends of Tattenhall Rookery Drive and the Brook Hall Residents by **Mr P**

Barton MCD BA(Hons) MRTPI (***Document TP/8***). This considered that the TNDP should be attributed substantial weight as a material consideration. This was supported by the way that the Inspector in the Oxfordshire Core Strategy had devolved all housing allocations to the Thame Neighbourhood Development Plan, even though it was at a much less advanced stage than the TNDP. There were no obvious reasons why the TNDP should fail. It suggested a series of phased developments and the avoidance of large bolt-on estates. The appeal proposals would not fit the priorities suggested in the TNDP either individually or together. They could not be considered to be sustainable development. If one or more development were allowed it should be subject to a phasing condition.

331. **Mr F White** talked about Tattenhall being a Front Runner in the neighbourhood planning process. He referred to the huge amount of time and effort taken by the community to prepare it. He expressed concern at the way that developers were pushing through their own agenda for greenfield development which was contrary to local democracy and the plan-led approach. He made similar points about the loss of countryside, urban sprawl and bolt-on estates. He felt that this was a test case to break the stranglehold that developers exert on the planning system (***Document TP/3***). Mr White also considered that the sheer scale of development would swamp the landscape. He believed that a common sense approach to housing projections should be taken. Those houses built in 2010 were already there and those recently approved would be there soon. These should be counted to offset planned housing numbers as they are, or would soon be, a reality.

332. In his written representations Mr White, who lives adjacent to Site A, referred to the bend in Chester Road which made visibility for those turning right out of Ravensholme Lane very difficult. He also said that he and his neighbour had inadequate on-site turning and so had to reverse out of their driveways, which was a dangerous manoeuvre. Taking account of the Rookery Drive junction too the effect of yet another junction in such a short space would be unsafe and unworkable. Mr White was also concerned about the narrow width of the well-used pavement on the western side of Chester Road which brings pedestrians close to moving traffic. The Appeal A scheme proposes no improvements to this footway. Mr White referred to the limited range of village shops and the fact that the bus does not pass the appeal site although it does pass The Oak Room. Mr White also made similar points to other objectors, including about the TNDP and landscape issues (***Document WR/9***).

333. **Mrs C Roberts** pointed out that the Grackle Croft development had not been allowed to take direct access onto Chester Road by the Highway Authority. She failed to understand why such an arrangement was now acceptable in the case of Appeal C. There was a drive to increase tourism and visitor numbers in Cheshire. Sites such as the Ice Cream Farm and the Candle Factory cannot be reached by public transport. Increased visitor numbers would result in a substantial increase in traffic in and around Tattenhall and consequent congestion and delay. These matters needed to be factored in when considering the new developments, which themselves would generate additional traffic (***Document TP/1***).

334. **Mr J Mogg** considered that taking account of recent approved development there would be over 650 new dwellings if the appeal proposals were all to go ahead. There would be adverse impacts on the environment, highways and drainage infrastructure. **Mrs J Chambers** felt that there was no explanation as to how the new houses would be sustainable. There would be an adverse impact on schools, doctors and an environmental impact from new residents commuting to work. She also considered that the TNDP should be adhered to. **Mrs R Bell** had been born in Tattenhall and had seen many changes. However none had been on the scale now being proposed. She pointed out that there was not much local employment and most new residents would commute. There were houses for sale in the village and more would become available when the Care Community was built. She had similar points to others about lack of infrastructure and the TNDP.

335. **Mr P Gadd** referred to the new bus stop proposed on Tattenhall Road. He pointed out that there was a service between Chester and Whitchurch but not in an east to west direction towards Tarporley and Wrexham. For those journeys a car would be the only alternative and the roads to Tarporley in particular were very narrow. He also opined that in bad weather people would not walk between the new developments and the village**. Ms A Puricelli** had a longstanding business in the village. She talked about the quality of life and how development should gradually evolve. **Mr R Ikin** lived nearby and shopped in Tattenhall. He said that the local estate agent had no interest in these developments. Some houses could not be sold due to flooding issues and this was currently a problem.

336. **Mrs L Morris** said that her family had lived in the area for 300 years. Development was needed to grow and survive but in moderation and without ruining the village. The Care Community would enable people to move out of existing houses in the locality. The primary school had no capacity and the secondary school was over subscribed. The A41 junction already had 5-10 minute queues at 0745 hours and the problem would be much worse with the developments. **Mrs V Meeks** said that there were over 200 heavy vehicles a day using the junction of Chester Road and Gatesheath Lane and that these had to exit onto the A41 adding to issues of congestion. **Mr G Reynolds** was also concerned about the effect of overcrowding on Tattenhall Primary School which currently had outstanding Ofsted results. **Mr D Spraggs** was very concerned about cumulative impact and thought that no-one was looking at the overall picture when considering impacts on highways, drainage infrastructure and the environment. The overall effect could not be mitigated and it was the TNDP that would consider the things that matter. It should be given the most weight in the decision on these appeals.

337. **Mr T Leigh-Smith** is the co-ordinator of the Friends of Tattenhall[69]. He said that whilst some new residents would work locally many would commute long distances to the big cities such as Manchester and Liverpool. This would entail

[69] The Friends of Tattenhall is a local community group set up to respond to the development proposals in the village. There are specific groups of "Friends" who look at particular proposals in depth. Their objectives and role is further explained in the written representation of Mr Leigh-Smith at ***Document WR/1***.

use of a car and would result in increases in carbon omissions. This was a very serious issue in view of climate change and people need to live close to their work and dormitory estates were essentially unsustainable. The Rean Meadow development in the village had a similar demographic and economic profile to that expected on the appeal estates. Most properties had 2 cars and occupiers drove to work outside the village. The pattern of commuting would be similar and would be unsustainable. He also raised similar points about localism and the TNDP.

338. In his written representations Mr Leigh-Smith said that he did not know of anyone who cycled regularly to work in Chester although a few did occasionally for recreation. Very few commuted by bus although a small number used it to shop. He also made similar points to others about landscape impact and sustainability (***Document WR/8***).

339. Since the Inquiry closed Mr Leigh-Smith wrote pointing out that the TNDP had advanced further and that the Council had now determined it has a housing land supply of 6.97 years (***Document Doc/2***).

340. **Dr T Dzelzainis PhD ARCS** spoke on behalf of the Friends of Tattenhall Rookery Drive and Brook Hall Residents. His concerns related to the highways implications on Chester Road which was the main route in and out of the village (***Document TP/10***). He especially addressed the Appeal A proposal.

340.1. A41/ Chester Road junction: The modelling had a number of shortcomings and over estimated the capacity of the junction. From observations the peak queues were commonly more than 5 cars rather than the 2 cars predicted by the model. Queues built up because of the difficulty for emerging vehicles due to slow moving lines of traffic on the main road. The junction was also well used by heavy lorries which needed a larger gap in the traffic to safely emerge. The modelling showed that even with the proposed right turn lane in place the junction would operate very close to capacity. It took no account of large vehicles straddling both lanes.

340.2. Further work was done using a 2013 traffic survey input but the provenance of this was unclear. Also the new modelling assumed a fall in through traffic even though this stretch of the A41 had a steady flow between 2000 and 2011. The results depend on the traffic generation and distribution from the development being correct. It was unrealistic to expect that less than half of the generated traffic would pass through this junction given the location of major employment centres.

340.3. Site access design: In the case of Scheme A, the provision of a right turn lane would require third party land not under the Appellant's control. The problem has been addressed by applying substandard geometry including reduced footway widths on the western side of Chester Road. This footway was well used by the community walking to the medical centre, including the elderly and parents with children. It was already substandard in width and encroached by the adjoining hedge. Further narrowing would be dangerous for those using it. The problem of narrow footways led recently to the death of an elderly resident. The Parish Council was currently working on a report about

pavement problems for disabled people in the village. The number of residents who used wheelchairs and mobility scooters was likely to significantly increase when the Care Community was built. The deficiencies in the design of the access would lead to increased danger to pedestrians.

340.4. The currently proposed T-junction would be contrary to DMRB recommendations and not appropriate for a busy rural road providing access for heavy farm vehicles. It was inexplicable that the Highway Authority has agreed to it. Manual for Streets was not applicable and in any event other requirements in that document relating to creating a safe junction such as 20 mph speed limits and 2 m wide footways had been ignored.

341. **Mr D Hughes** is a resident of the village and was Chief Engineer with Cheshire County Council with special responsibility for road safety engineering prior to retirement (***Document TP/7***).

341.1. Suitability of rural roads: Mr Hughes did not agree with the Highway Authority's assessment which was based on theoretical capacity rather than the nature of the routes concerned. New residents would have to travel outside the area for work and he identified rural roads out of the village that are inadequate in terms of width, alignment and forward visibility. These include Frog Lane, Tattenhall Road, Rocky Lane and Bolesworth Road. He believed that increases in traffic would significantly increase the risk of collisions on these routes. He was also concerned about encouraging further use of estate roads such as Greenlands and Rookery Drive which were considered unsuitable for increases in traffic.

341.2. A41 junctions: Mr Hughes had similar concerns about the Chester Road/ A41 junction and its proposed improvement to Dr Dzelzainis. He also referred to other development proposals south of Chester and to the northbound delays and tailbacks already occurring at the new junction of the A41 and A5115 at Broughton. This is a short distance to the north and is complex and confusing and widely accepted as being unfit for purpose. More traffic feeding into this system, including that from the appeal schemes, would increase existing queues and make matters even worse.

341.3. Parking problems in the village: Tattenhall Road is heavily parked along one side at school times and this situation often endures for over 20 minutes and sometimes longer as the playground attracts extended visits. Due to the bend in the road visibility for passing traffic is poor. In order for two vehicles to pass one of them has to mount the footway at a vehicle crossover. This is dangerous and illegal. Many new residents would drive into the village and parking in the centre is already very restricted.

341.4. Public transport and mitigation: The bus service is not good and is only every 2 hours in the Whitchurch direction. Also there is no Sunday service. There is no guarantee the service will continue with cutbacks and its role has been over emphasised. There is insufficient mitigation

in terms of traffic calming or improvement of the substandard footways within the village.

342. **Mr I Cross** spoke on behalf of a group of Greenlands residents. They support the cases put by Councillor Jones, the Borough Council, the Parish Council, the Friends of Tattenhall and other groups who oppose the development. Support should be given to the plan-led approach as set out in the emerging Local Plan and TNDP, advocating modest scale growth as supported by the community. The mistakes of the 1960's and 1970's, with large bolt-on estate development, should not be repeated. These proposals, along with others in the pipeline, would result in the irreversible loss of countryside and creation of "anytown" estates. This would not be a sustainable outcome. Where there are many development proposals in one village the adverse effects referred to in Paragraph 14 of the Framework included the speed of change. There would be rapid and excessive urbanisation that would damage the village character and this would not be sustainable development.

343. Paragraph 17 of the Framework calls for an objective assessment of housing needs. The RS was out of date and the best evidence of current housing need is the emerging Local Plan. People living in Tattenhall generally work elsewhere and there is no main road connection running through the village. It is unlikely that better bus services would ensue because new residents would have planned to use a car. For those without transport there would be difficulty accessing employment and other facilities. The developments would not therefore be sustainable and in terms of transport accessibility the score would be low.

344. Even if some greenfield sites are required, Site B would be inappropriate for development. It is surrounded by countryside on 3 sides and there would be a substantial adverse impact on the surrounding landscape. There would be no links to the other parts of the village other than along Tattenhall Road. The village centre is a considerable distance so car travel would predominate. This would be an obtrusive mini-suburb beyond the natural village boundary. The individual impact and the cumulative impacts with Appeals A and C would be unsupportable (***Document TP/9***). Mr Cross also submitted written representations. Amongst other things he criticised the landscape assessment relating to Appeal B and generally agreed with the Council's evidence on the matter (***Document WR/2***).

345. **Mr I Waddington** spoke on behalf of the friends of Tattenhall. He did not think there had been an adequate assessment of the visual impact of the Appeal A scheme on Chester Road. The stretch of pavement on the western side was frequently used by those walking to the surgery, local houses and as part of the Millennium Walk. It gives a view northwards across open fields and has a high sensitivity to change. It is also the only open aspect on the western side of the village from the Walk. The existing rear gardens along Rookery Drive are seen at a distance of around 172 m and are largely hidden behind the Chester Road hedge. The revised layout is said to represent the likely final scheme but is not to scale (***Document TW/2.3.3, Figure 3/1***). It shows the first house about 35 m from Chester Road and this proximity would make it very

apparent in the view. Further evidence from the Appellant indicated that this would be reduced to 20 m[70]. Added to this there would be many other houses leading to a sprawling incursion into the countryside at this key entry point to the village. The visual impact would be very high but there was no photomontage showing the scheme from this viewpoint. The new layout also showed that dwellings would not be 20 m from the boundary as had been stated before (***Documents TP/5; WR/***7).

346. **Mr M Hudson** spoke mainly on behalf of residents living close to Site C and endorsed the representations of the friends of Tattenhall. Too much emphasis had been placed on the housing shortfall and insufficient attention paid to economic, social and environmental issues. When assessed against the policies of the Framework as a whole it was clear that permission should not be granted and that the developments would not be sustainable. Similar points were made to others about the effects of large housing estates on the village and cumulative impact. The effect of construction on the economic and social fabric of the village was considered to be a material issue.

347. Mr Hudson referred to the large mass of modern housing in Appeal B which would extend along Chester Road into the countryside as a sprawling incursion. This would dominate the edge of the village and result in the loss of views towards the conservation area, of the flagpole atop the church, of the roofscape of The Rookery and the Clwydian Hills. These impacts would be detrimental to the character of the conservation area. A walk to the village centre and back would exceed the 1 km distance recommended in the guidelines. Cycling is likely to be unviable and bus journeys unattractive. Car travel would therefore predominate as is the case with existing residents of the village. In transport terms the scheme would be unsustainable. The representations of Mr Hughes were supported.

348. The landscape montages were highly questionable with fanciful levels of tree growth (***Document BH/1.3***). Apart from the computer generated image in the Design and Access Statement there was no indication of what the development would look like from Chester Road and the absence of connectivity demonstrates the isolation of the proposed development (***Document TP/6***).

349. In his written statement Mr Hudson did not consider that the development would form a gateway to the village (***Document WR/11***). At present Brook Hall Cottages and Grackle Croft mark the transition from country lane to a village environment. However, taking account of the existing open spaces, there is little roadside built form until near the junction of Chester Road with Tattenhall Road. The Appeal C development would have little in common with the incremental approach to development along Burwardsley Road as the Appellant contends. This is generally on the eastern side and secluded behind frontage vegetation. By contrast the depth of the new development would be immediately apparent along the access road and between frontage properties. These would be 9 large unscreened detached houses sharing none of the characteristics of the village properties. Mr Hudson commented that the house

[70] Mr Waddington referred to oral evidence by Mrs Randall and Mrs Gatland.

types indicated that chimneys would not be as apparent as is suggested by the street scene depictions.

WRITTEN REPRESENTATIONS

WRITTEN REPRESENTATIONS TO THE APPEALS

350. There were a number of written objections submitted to the appeal both prior to the Inquiry and during its course (***Documents WR1-WR14***). These have been given the "WR" prefix in Annex B. Many of the points that were made echo those already reported. Tattenhall & District Parish Council wrote following the close of the Inquiry pointing out the position regarding the TNDP following its Examination (***Document Doc/2***). Additional points are as follows:

General

350.1. The main difference between those promoting the schemes and those objecting to them is developer's profit versus community and quality of life.

350.2. If the current proposals are approved it is probable that the fields adjoining those developments would also be approved for development. There would be a loss of valuable agricultural land which is important to food production.

350.3. There are brownfiield sites in Tattenhall which should be developed first. These are currently being discussed and planned with the Parish Council and are supported by the community.

350.4. There are currently many houses at various prices available to buy in the village. Many have been on the market for some time showing an absence of local demand. Also the Care Community would result in more properties becoming available as people move into the new accommodation.

350.5. The houses in Rookery Drive have living rooms at the rear with windows overlooking Site A. Most also have full or partial views of the Clwydian Hills. The Appeal A development would unacceptably diminish the outlook from these properties.

Landscape and urban design

350.6. Most of these issues have been covered either in the evidence of the main parties or the representations already reported. However it perhaps should be emphasised that the landscape around the village is greatly valued by the local community. It was suggested that an additional viewpoint from which the proposed developments should be assessed is the embankment of the old railway line to the west. This is managed as a nature reserve with semi-public access by Tattenhall Wildlife Group.

350.7. Expert evidence in relation to Appeal C was commissioned by local objectors from **Mr T Hollick BA(Hons) DipLD CMLI** (***Document WR/3***). Many of the points have already been reported. He considered that the screening effect of vegetation along Chester Road had been over-

estimated. This would be diminished to accommodate the access works and kept low to provide sightlines. It should be noted that his assessment assumed road widening to accommodate a right turning lane. Mr Hollick considered that much of the proposed planting was suburban in nature and he did not believe that this frontage would be in keeping with the rural approach that currently prevails along Chester Road. He considered that the Grackle Croft boundary, seen at a distance in the approach to the village, has the potential for creating a soft edge if the landscaping is properly implemented.

350.8. Mr Hollick pointed out that there would be little permeability with only one route in and out of the estate. The development would comprise standard house types on regular plots, other than the cluster in the area of Plots 55-63. The only piece of bespoke design would relate to Plot 68. Many of the planted areas and open spaces would not be in private ownership. There are no details as to how they would be maintained. Overall the visual effect would be of an unacceptable urbanisation.

Transport and highways

350.9. Expert evidence in relation to Appeal C was commissioned by local objectors from **Cameron Rose Associates**. This was submitted in relation to a subsequent planning application and although the number of units was similar it should be noted that the proposal included a right turning lane into the site (***Document WR/5***). This report is appended to Document WR/5. In brief it questioned the agreed trip rates, especially in the morning peak, which were considered to be significantly underestimated. In addition it pointed out that no assessment had been made of weekend traffic impact. These factors were considered likely to give rise to amenity impacts although it was concluded that the traffic generated by the Appeal C scheme could be accommodated on the local highway network in terms of traffic engineering. The Report raised concern about the A41 junction and that further mitigation works should be considered.

350.10. Many trips for education, shopping, leisure and entertainment would be made due to the lack of facilities in the village. The bus service is infrequent and the routes are restricted. The narrow country lanes and the busy A41 road mean that cycling would not be a realistic or attractive option for most people. The proposed improvements to bus stops and the like would be unlikely to deter new residents from making the most of their outward journeys by car. This would not comply with saved Policies HO 5 or TR 1 of the CDLP. These are important material considerations relating to sustainability and weighing against any presumption in favour of permitting the developments.

350.11. The A41 has been designated a “red route” by the Highway Authority due to the number of collisions, casualties and fatalities over the last 3 years. The poor safety record of this road has not been taken into account.

Drainage and flooding

350.12. The village is only 390 m above sea level and situated on the flood plains of two brooks. The drainage system could not cope with new development of this scale.

350.13. There is concern about the effect of development on Appeal Site B on flood management. There are existing flooding problems for Greenlands residents from Keys Brook. The development of Site B would cause extra risk of flooding and erosion of the banks of the stream. This is a wildlife corridor and its use as a linear park would conflict with its ecological importance.

350.14. Concerns were also raised about the flood risk from the Appeal C development due to the proximity of Mill Brook. In addition the site was said to stand on clay soil with water retention and drainage problems.

Social infrastructure

350.15. The Rookery Medical Centre would not be able to accommodate this number of new residents.

350.16. Also the village primary school is almost at capacity with no planned expansion. Secondary schools are out of the area. More school buses to Bishop Heber High School would add to congestion. There is no school transport to Christleton High School or Tarporley High School.

Human rights

350.17. The development would be contrary to Article 1 of the First Protocol and Article 8 of the European Convention of Human Rights. Application of the Framework in relation to housing provision is not proportionate where there is evidence that the lack of a 5 year supply is not preventing house building. This includes not building houses already permitted due to lack of demand. In such a case the reduction in weight afforded to saved Policy HO 7 is disproportionate as it is not rationally connected to the aim of encouraging housebuilding. It achieves the wrong balance between Convention rights and the public interest. The evidence shows that in the Borough house building is being discouraged by the economic situation and not because of a lack of housing land. This issue must be determined before applying the Framework otherwise the decision would be unlawful.

351. There were two **letters of representation** on behalf of Tattenhall Junior Football Club. (***Documents WR/12; WR/13***). This is a recently established enterprise which had originated from requests by local parents. Despite generous local donations it had been necessary to seek funding for the club to be sustained in the longer term. The Appeal A Appellants were approached and offered support to allow the purchase of more kit and training equipment. There is now an under 15 team and two more teams at under 8 and under 9 level. About 70 juniors from local families play and train every week. The growth of the village with new homes would allow more teams to be established and a valuable long term resource to be provided for the village.

WRITTEN REPRESENTATIONS TO THE PLANNING APPLICATIONS

352. There were also many written objections to the three proposals at application stage. These raised similar points to those that have been reported in connection with the appeals and are attached to the Questionnaire for each appeal (***Documents CD11.4-CD11.6***). There is also a summary in each of the Committee Reports (***Documents CD4.3; CD4.5; CD4.8***).

EXTERNAL CONSULTEE RESPONSES

APPEAL A - LAND ADJACENT ADARI, CHESTER ROAD, TATTENHALL, CHESHIRE

353. These are attached to the Questionnaire and are also summarised in the Committee Report (***Documents CD4.3; CD11.4***). ***Document CWC/18*** includes comments from Welsh Water.

354. **The Environment Agency** has no objection to the proposal. Development should be confined to those parts of the site in Flood Zone 1 rather than areas adjacent to Keys Brook, which have a higher flood risk. Conditions should be imposed relating to surface water regulation and the management of overland flow. The Framework seeks to ensure that biodiversity interests are conserved and enhanced. A condition should be imposed requiring an ecological survey and risk assessment prior to the submission of detailed plans. This should also demonstrate appropriate mitigation and enhancement measures. A condition should also be imposed to provide an 8 m buffer zone from the top of the bank of Keys Brook in view of its importance as a wildlife corridor.

355. **Welsh Water** has raised no objections subject to a number of conditions about disposal of surface water. There is sufficient capacity at the Tattenhall Waste Water Treatment Works and within the public sewerage network. It is noted that a public sewer crosses the site and that no building would be allowed within 3 m of this facility.

APPEAL B - LAND REAR OF 15-38 GREENLANDS

356. These are attached to the Questionnaire and are also summarised in the Committee Report (***Documents CD4.5; CD11.5***). ***Document CWC/18*** includes comments from Welsh Water.

357. **The Environment Agency** has no objection to the proposal. The area adjacent to Keys Brook is shown to be within Flood Zones 2 and 3. The discharge of surface water is to mimic existing greenfield discharge rates and a sustainable drainage system is recommended. Conditions relating to these matters are proposed. Land alongside Keys Brook has high ecological potential and a condition is suggested to retain an 8 metre wide buffer and improve biodiversity value. A condition is also recommended to ensure that pollution downstream is avoided.

358. **Welsh Water** has raised no objections subject to a number of conditions about disposal of surface water. A condition is also required that a hydraulic modelling assessment of the public sewerage network should be undertaken to assess the capacity of the system and improvement works implemented as

necessary. Conversely an alternative means of sewage disposal should be agreed.

APPEAL C - LAND OPPOSITE BROOK HALL COTTAGES, CHESTER ROAD

359. These are attached to the Questionnaire and are also summarised in the Committee Report (***Documents CD4.8; CD11.6***). ***Document CWC/18*** includes comments from Welsh Water.

360. **The Environment Agency** has no objection in principle. It is noted that the area adjacent to Mill Brook is in Zone 2 and possibly Zone 3. Discharge to Mill Brook should mimic the existing greenfield rate as a minimum. Where possible sustainable drainage systems should be used. Conditions are recommended relating to surface water drainage and contamination of the water environment. There would be opportunities for habitat enhancement along Mill Brook which is an important wildlife corridor with protected species present.

361. **United Utilities** indicated that a water supply could be made available to serve the development. **Welsh Water** has raised no objections subject to a number of conditions about disposal of surface water. A condition is also required that a hydraulic modelling assessment of the public sewerage network should be undertaken to assess the capacity of the system and improvement works implemented as necessary. Conversely an alternative means of sewage disposal should be agreed.

PLANNING CONDITIONS

362. The conditions in relation to each of the appeals were considered at a round table discussion of the Inquiry. Final lists of conditions agreed between the Council and the respective Appellants are at ***Documents TW/15, AW/10 and BH/23***. It was generally agreed that conditions should be consistently worded and consistently applied and the recommended lists in Annexes Three, Four and Five has sought to ensure that this is the case. The wording has also been adjusted in the interests of precision, relevance and enforceability. All conditions have been considered with the advice in Circular 11/95: *The Use of Conditions in Planning Permissions* firmly in mind.

GENERAL COMMENCEMENT CONDITIONS

363. In order to contribute to the housing land supply shortfall in the short term it is reasonable to seek a reduction in the implementation period. In the Appeal B outline scheme there would be an overall implementation period of 2 years, with reserved matters to be submitted within a year. In the Appeal C scheme the implementation period would be a year. In both cases the Appellants were confident that the timescales could be reasonably achieved.

364. In the Appeal A outline scheme the Appellant agreed to a timescale of 3 years for implementation with reserved matters to be submitted within a year. There is no reason to doubt the stated commitment to early delivery but this Appellant did not wish to be tied to a shorter implementation period, which was considered to be an “ad hoc” departure from the normal timescales (***Document TW/19***). In fact this Appellant has agreed to depart from such timescales, which would normally require submission of reserved matters within three years and implementation two years after that. In all cases it is

therefore reasonable to conclude that within the next 5 years a substantial contribution to housing delivery would be made.

365. It was established that none of the appeal developments would be built in phases and so specific conditions dealing with this matter are unnecessary. Although the Appeal A and B proposals were in outline form there was a considerable amount of supporting information. The Appellants were willing for their respective developments to be tied to some of this information which in both cases included a Parameters Plan. This would provide greater certainty for the local community and also provide relevance to the impact assessments. In the case of Appeal A there was an added commitment to not include 2.5 storey development. Whilst a similar undertaking was not made in the case of Appeal C, the Council would have control over the location of these higher houses through the reserved matters and could ensure that they did not occupy prominent positions on the site. Appeal C is a full application and so the detailed plans have been specified for the avoidance of doubt and in the interests of proper planning.

366. Notwithstanding the Parameters Plan a condition was discussed in relation to Appeal A to restrict the distance between new and existing windows to a minimum of 32 m. There was no satisfactory explanation of where this figure was derived from. Whilst I understand that it would provide some comfort to residents in Rookery Drive the appropriateness of such a figure cannot be judged until the layout has been submitted at reserved matters stage. In the circumstances it is difficult to justify imposing such a condition at this stage.

AFFORDABLE HOUSING CONDITION

367. In the case of Appeals A and C affordable housing is provided by condition. The need for affordable housing is considered in my Conclusions but the conditions have been worded to require various details, including the location of the homes on the site and the timing of delivery.

368. The offer is 35% in the case of Appeal A and 40% in Appeal C. The Council explained that in such circumstances it would require a different tenure split with a higher proportion of affordable rented units with the lower provision. It is though appropriate to allow the Council discretion to agree a variation if, for example, needs change or viability becomes an issue.

DRAINAGE CONDITIONS

369. Keys Brook and Mill Brook are designated as Main Rivers by the Environment Agency. Details of surface water discharge are necessary in order to address flood risk and prevent groundwater pollution. It is proposed to dispose of surface water using sustainable drainage techniques. The success of this approach in the longer term is particularly dependent on the effectiveness of the future management regime and conditions to cover these matters are thus necessary. It is noted that in the case of Appeal C the Environment Agency has requested a condition relating to potential contamination in order to prevent pollution to the water environment. However there is no evidence that this is an issue on this greenfield site. A similar condition has not been requested on the other two appeal sites and, on the evidence, it is difficult to conclude that such a condition is necessary in relation to Appeal C.

370. Welsh Water did not require any assessment of the Tattenhall Pumping Station to cope with the foul sewage from these developments. On the other hand they did request an assessment of the capacity of the public sewerage network for Appeal B and C. There does not seem any particular explanation as to why a similar requirement was not made for Appeal A especially as all developments would use the same infrastructure. In the circumstances it seems reasonable to impose a condition relating to this matter on all three of the development schemes.

ENVIRONMENTAL CONDITIONS

371. There is no doubt that construction on this scale would cause disruption and inconvenience to those living, working or visiting Tattenhall over a prolonged period of time. The imposition of a Construction Management Statement would mitigate some of the impacts by applying control over such matters as the hours of work, parking and unloading and dust emission. Wheel washing facilities would prevent mud being deposited on the highway and security fencing would ensure safety. Whilst lorry routeing is notoriously difficult to manage, especially in the case of contractors' vehicles, it should be possible to provide appropriate signage and delivery instructions that encourage heavy vehicles to avoid the most sensitive routes, especially those within the village itself. Whilst the Council has suggested a provision for recycling of waste this is not considered necessary for these greenfield sites. There is also no suggestion that piling techniques would be necessary.

372. It is important for reasons of visual amenity to ensure that retained trees and hedges are protected during construction. The conditions have not been similarly worded because each scheme has a different amount of detail available with the proposals. In the case of Appeal A no Masterplan has been included as an approved drawing and so the tree protection requirements have been included as part of the landscaping scheme to be submitted at reserved matters stage.

MATERIALS

373. In the case of the outline schemes materials are a matter that can be dealt with at reserved matters stage. It does not seem likely that this would lead to a delay in implementation even taking account of the reduced timescales. In any event there is nothing to prevent such information being provided in advance if the developer so wishes. However in the case of Appeal C a condition is required as the choice of materials for the new dwellings will be very important to the success of the scheme in visual terms. Also, in order to achieve an attractive appearance it is necessary to require details of the hard surfacing, including roads and footpaths.

LANDSCAPING CONDITIONS

374. Each of the developments would occupy a sloping site. It is therefore necessary to require details of land levels and ground floor slab levels in order to ensure that the dwellings have a satisfactory relationship with the receiving environment.

375. In the case of Appeal A there is a condition setting out details that will be required when reserved matters relating to landscaping are submitted. This is

partly because there is no Masterplan to be approved at this stage. This condition also requires information relating to the amphibian mitigation areas and buffer zone adjacent to Keys Brook.

376. All of the appeal schemes include a condition requiring details of the long term management and maintenance arrangements for the open spaces and amenity areas. This is necessary to ensure that these areas, which would be outside private ownership, would continue to serve their landscape and ecological functions in perpetuity. In the case of Appeal B I have included reference to the green infrastructure areas which are shown on the Parameters Plan and have an ecological function as well. This means that a separate condition relating to the management of these areas is unnecessary.

377. The question was raised about whether provision could be made for public access to these areas by condition. Whilst this would be more appropriately addressed through a Planning Obligation I am confident that such provision can be made and that the wording of the condition would result in an effective outcome.

378. The Appeal C scheme has detailed information on landscaping and so conditions are only required to secure implementation. Details of the trees to be retained have been submitted but it is necessary to ensure that these are protected during the construction period and for a time thereafter. Such conditions are required to ensure that an appropriate green setting is provided for the built development.

379. In each case a condition was suggested requiring boundary treatments for individual dwellings. Whilst this is reasonable in the case of Appeal C it is a matter that should best be dealt with at reserved matters stage and such a condition is unnecessary in the case of the outline schemes.

ARCHAEOLOGY

380. There were desk based assessments accompanying the Appeals A and C planning applications. These indicated that there is the potential for archaeological remains on these sites although no remains had been found. In the case of Appeal B no archaeological assessment seems to have been submitted. The Council's Archaeologist has recommended that in all three cases a condition is necessary so that further investigations can be carried out along with a watching brief. In the circumstances a precautionary approach is justified, including in the case of Appeal B.

ECOLOGY

381. In all three cases ecological issues were discussed in some detail at the Inquiry. Sites A and B are close to Keys Brook and Site C adjoins Mill Brook. The Environment Agency is concerned to ensure that the ecological value of these watercourses is protected and so conditions have been imposed in the case of Appeals B and C requiring a buffer zone adjacent to the stream and details of its future management and maintenance.

382. A similar requirement in relation to Appeal A is to be provided through landscape reserved matters, as mentioned above. This proposal also includes the ecological mitigation area north of Keys Brook. Conditions are necessary

to ensure that satisfactory mitigation is provided in view of the presence of Protected Species, including GCN. Furthermore it is necessary to ensure that the ecological interest is maintained in the long term through an appropriate management regime. The ecological evidence indicated that in the case of Appeal B there would be a further Protected Species Survey in relation to GCN in preparation for the licence application. This is a necessary requirement and the Appellant was confident that the terms of the condition could be met, taking account of the reduced timescale for implementation of the development.

383. A condition was suggested on Appeal C for details of mitigation to prevent harm to badgers. There is however no evidence of setts on or adjacent to the appeal site and no evidence that the site is of significance for foraging or as a movement corridor (***Document BH/4.1, Page 22; BH/7, Page 8***). Conditions have been imposed in all three cases to provide bird and bat boxes. This is justified as it would encourage the enhancement of biodiversity.

HIGHWAYS

384. In the case of the outline proposals in Appeals A and B access is not a reserved matter. In Appeal A details of the access have been provided on drawing no. 0024_09B, which in any event would be subject to a Highways Agreement under Section 278. However in the case of Appeal B there is no plan showing the details for approval at this stage other than the Masterplan. In the circumstances further details are required. In all cases it is necessary to ensure that the access provisions are implemented at the start so that construction traffic can travel in and out of the site safely. Further provisions are also required to ensure that the surface course is completed for new residents in a timely fashion.

385. As layout is a reserved matter in the case of the outline schemes it is not considered necessary to require details of internal roads and footways at this stage. However in the case of Appeal C specifications are necessary to cover such matters as drainage and gradients. It is also appropriate to require individual dwellings to have a means of access to the public highway. The Appeal C scheme includes the movement of the speed restriction signs further away from the village. It also includes the provision of dropped curbs and tactile paving across Chester Road and at the Ravensholme Lane junction (***Document BH/21***). Whilst these would be matters for the Section 278 Highways Agreement it is reasonable to ensure that they are carried out expeditiously to ensure that new occupiers receive the benefit.

386. In all of the appeals a condition has been imposed to control external lighting to internal roadways and public amenity areas. This is to ensure that the development would not be overly intrusive at the edge of the village. In addition there may be areas close to wildlife corridors where “bat friendly” lighting would be required.

387. The outline schemes include a condition requiring submission of a Travel Plan. This would help encourage new occupiers to undertake journeys by means other than the car and would encourage modal shift.

PLANNING OBLIGATIONS BY AGREEMENT

388. Each of the appeals is supported by a Planning Obligation by agreement with the Council (***Documents TW/16; AW/6; BH/11***). The titles were checked by the Council and found to be acceptable. The Planning Obligations were discussed at a round table session of the Inquiry and I am satisfied that they are now legally correct and fit for purpose.

389. Their main provisions are briefly outlined below and consideration of their relevance and compliance with the CIL Regulations is considered later in my Conclusions. There is a clause in each legal document which states that an obligation need not be complied with if the Secretary of State concludes that it does not comply with the three statutory tests in Regulation 122 of the CIL Regulations, is immaterial as a planning consideration or cannot be given any weight in the determination of the appeal. The Appellants have provided a useful note concerning the obligations and their compliance with the CIL Regulations (***Document INQ/5***).

OBLIGATIONS COMMON TO ALL APPEALS

390. Contributions would be made towards improvements to the junction of Chester Road and the A41. Each is known as the **Apportioned Chester Road Improvements Contribution**. This has been worked out so that the £70,000 contribution would only be triggered if two developments are implemented and it allows for a refund if the third scheme is implemented. Three developments would contribute proportionally less than two developments.

391. The **Tattenhall Road Bus Stop Improvements Contribution** of £7,500 would apply to Appeals A and C. It would be shared on a proportionate basis relative to the number of dwellings. The money would be used to upgrade the existing bus stop south of the Park Avenue junction with a cantilever type bus shelter. The **High Street Bus Stop Improvements Contribution** of £7,300 is for improvements to two bus stops in the High Street and also applies to Appeals A and C. These measures would include raised kerbs, flags and so forth to improve accessibility. However the funding for both of these improvements is already a requirement of the Redrow planning permission and so the payments would only be necessary if that scheme had not been implemented by the time of the first occupation of the appeal developments. The Council could only collect these payments once from the first of the developers to reach the trigger point.

392. **The Bus Service Improvements Contribution** of £550,000 would only be payable on the commencement of development of the third appeal scheme. The sum from each development would be apportioned according to dwelling numbers and the payments would be in instalments over a 5 year period. The contribution would allow an increase in the frequency of the service between Chester and Whitchurch from every hour to every half hour.

393. **The Primary Education Contribution** is calculated on a formula and based on the number of Qualifying Dwellings (***Document CWC/17***). These would exclude retirement dwellings and one bedroom units. The contribution is based on the cost of providing a school place and a child yield calculation. The contribution takes account of the 30 surplus places which currently exist at

Tattenhall Park Primary School. **The Secondary Education Contribution** is derived from a formula on a similar basis. The contributions are payable in two stages and in the case of the outline proposals this is split between first occupation and the occupation of 55 dwellings. In the case of Appeal C the triggers are that 25% would be paid on first occupation and 75% when 34 dwellings are occupied.

OBLIGATION SPECIFIC TO APPEAL A

394. Condition 13 for Appeal A relates to the **Ecological Management Scheme**. It is envisaged that this will be delivered by a Management Company. In the event that this was to fail, there is a provision in the Planning Obligation that the reasonable costs of the Council in complying with the Ecological Management Scheme would be indemnified.

OBLIGATIONS SPECIFIC TO APPEAL B

395. There is an obligation to enter into a Highways Agreement under Section 38 and/ or Section 278 of the Highways Act 1980. This would deliver a **footpath** along the front of the site behind the hedge to link with the existing footway on the western side of Tattenhall Road.

396. **Affordable housing** is dealt with by means of an obligation to provide 35% with a tenure split of 60% affordable rent and 40% shared ownership. There are similar provisions relating to timeframe for provision, location within the site and occupancy criteria as the other two appeal schemes, where the matter has been dealt with by condition.

397. The **Bus Stop Contribution** of £10,000 relates to the provision of a new bus stop on the eastern side of Tattenhall Road opposite the appeal site. This would only be required if considered necessary by the Council. Appeal B also covenants to provide a bus stop on the western side of Tattenhall Road, outside the site.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

398. Taking account of the oral and written evidence and my site observations, the main considerations in this appeal are set out below. In dealing with these matters I have, where appropriate, considered the impact of the individual schemes as well as the cumulative effect.

- **Consideration one**: Whether the proposals are needed to meet the housing requirements of the borough and to contribute to addressing any short term housing deficit.
- **Consideration two**: The development plan and policy context
- **Consideration three**: The effect on the landscape and rural setting of Tattenhall.
- **Consideration four**: The effect on the layout and character of Tattenhall and its heritage assets.
- **Consideration five**: Whether the developments would be accessible to a range of travel modes and would promote sustainable travel choices.
- **Consideration six**: Whether the developments would generate traffic that would cause unacceptable congestion or undue harm to highway safety.
- **Consideration seven**: The effect on nature conservation interests.
- **Consideration eight**: Whether the proposals should be subject to Planning Conditions and Planning Obligations.
- **Other matters**
- **Consideration nine**: Human rights.
- **Consideration ten**: Overall conclusions and planning balance to determine whether the proposals would be a sustainable form of development.

PRELIMINARY MATTERS

399. It was confirmed that the proposals, either in their own right or when taken together, would not be Environmental Impact Assessment development. There were several revised plans submitted at appeal stage. None of these are considered to materially change the nature of the appeal proposals such as to prejudice any interested party [***4; 6***].

400. Following the close of the Inquiry the TNDP has completed its Examination and proceeded to a Referendum. Of those that voted, there was overwhelming support. The Examiner's Report recommended some minor wording changes

which were taken on board as modifications to the plan. However none of these alter the thrust of the policies that were discussed at the Inquiry. The TNDP is however now subject to a Judicial Review and a Court Order prevents the plan from being made until the final determination of these legal proceedings. As the grounds go to the heart of the plan, including Policy 1 which concerns housing numbers, it seems to me that the weight that can be given to the TNDP is limited [***7; 33***].

401. In August 2013, which is also after the Inquiry closed, the Council resolved to consult on its pre-submission version of the Local Plan containing the strategic policies. This replaced the Preferred Policy Directions, which was relied on at the Inquiry. The housing requirement is slightly different, being 22,000 dwellings over the plan period with an annual figure of 1,100. The Preferred Policy Directions referred to a requirement for 21,000 dwellings and an annual figure of 1,050. However in both documents this is not seen as a definitive figure – the Preferred Policy Directions refers to it as a "minimum" and the pre-submission plan refers to it as "in the region of". In the circumstances the differences are of little material importance such that it would be necessary to ask the parties to review their figures. For the avoidance of doubt the parties' cases and my conclusions are therefore on the basis of the Preferred Policy Directions and the evidence I heard at the Inquiry [***8; 31; 32***].

402. Following the close of the Inquiry the Council has changed its position twice regarding its housing land supply position. However it has now agreed that the appropriate starting point is the RS requirement rather than that in its emerging LP. The Council's present position is that it can demonstrate a supply of between 2.54 and 2.78 years. The 2.6 year supply figure promulgated at the Inquiry is within this range and in the circumstances it seems unnecessary for my Report, or the Secretary of State, to take account of the post-Inquiry representations on the matter [***8***].

403. Finally a decision was made in August 2013 to allow an appeal by the Secretary of State for 100 dwellings on land off Nantwich Road, Tarporley. This is within the same Borough and relates to housing land supply issues and development outside the settlement on a Greenfield site. The parties' views have been taken into account on this and the other circumstantial changes referred to in the preceding paragraphs [***8***].

CONSIDERATION ONE: WHETHER THE PROPOSALS ARE NEEDED TO MEET THE HOUSING REQUIREMENTS OF THE BOROUGH AND TO CONTRIBUTE TO ADDRESSING ANY SHORT TERM HOUSING DEFICIT.

HOUSING REQUIREMENTS

404. The Framework makes clear that in order to boost significantly the supply of housing the Council should plan to meet the full and objective needs for market and affordable housing in its area. There is no dispute that the development plan provides no assistance in the consideration of this matter because there is no saved policy dealing with housing provision. The Council and the Appellants agreed that at this moment in time the appropriate figure should be taken from the RS, notwithstanding that the document itself has been revoked. Its evidence base provides the most recent figures to have been tested through independent Examination. These were not adjusted to

take account of constraints and represented the objectively assessed need at the time. The RS advocates provision of 1,317 dwellings a year [***73***].

405. It should be noted that the RS figures addressed the requirement of the three former local planning authorities which, in 2009, were reorganised into the present unitary authority. The information suggests that the figures were derived from the former councils themselves and were not imposed by the then Secretary of State [***73***].

406. It is appreciated that these requirements are not particularly up-to-date and rely on an evidence base derived several years ago. Councillor Jones's criticisms in this regard are noted. However it does not alter the fact that the figures were properly tested at Examination and that the housing requirements were accepted by the Secretary of State when the RS was approved in 2009. The Tarporley appeal decision provides an up-to-date endorsement that these figures remain relevant at the present time [***49; 50; 73***].

407. The only other available housing requirement figure is in the Preferred Policy Directions which advocates, in the latest pre-submission publication, an annual requirement of around 1,100 dwellings. However, as detailed in the next section, the emerging plan is still at an early stage and has yet to be submitted for Examination. There is no guarantee that its housing figures will prevail and it is noted that there are objections to them contending that they are too low. It is acknowledged that the latest household projections indicate a decrease in household formation in the Borough when compared to earlier projections. This is obviously a matter that will need to be considered within the context of housing requirements, including that for affordable housing, and bearing in mind that they are interim figures [***50; 74.3.3***].

408. For all of these reasons the appropriate starting point in this case is a requirement for 1,317 dwellings a year.

THE BACKLOG AND THE BUFFER

409. The housing requirements established in the RS are for the period 2003-2021. The HLM shows that since 2003 there has been a shortfall in actual housing completions of 4,586 dwellings against the RS target. Councillor Jones argues that any backlog should be heavily discounted because of the Government imposed moratorium on housing delivery between 2004 and 2008. He considers that much of the unmet demand was delivered in North Wales and that this is shown by the heavy traffic flows into and out of Chester where many of these people work. Whether this happened or not, the fact is that the then Councils and the Secretary of State would have been fully aware of the moratorium when the RS was approved in 2009. That did not change the requirement for housing to be applied to the period from 2003. The moratorium does not alter the position that there are historic unmet housing needs and these cannot be ignored. In the circumstances it is not accepted that the backlog should only be applied to unmet need since 2010, as suggested by Councillor Jones [***46; 47; 76.1; 78***].

410. If housing is not provided in accordance with objectively assessed requirements it means that people are not able to source the housing that they need. This is not a situation that can be set aside and the moratorium did not

mean that the need had disappeared. What it did mean is that people had to find other less satisfactory and less sustainable housing solutions. This is a situation that should be rectified as soon as possible. The *Sedgefield approach* is to deal with the backlog over the next 5 years as opposed to the *Liverpool approach* which is to spread it over the whole of the remaining RS period. The former seems to me to sit more comfortably with the objective in the Framework to meet objectively assessed needs for housing and deliver a choice of high quality homes [***79***].

411. Paragraph 47 of the Framework indicates that a buffer should be added to the housing requirement to ensure choice and competition in the market for land. This should normally be 5% but where there is a persistent record of under delivery it should be raised to 20%. The first point to make is that this should not be seen as a punishment but rather as a means to ensure that housing is delivered to meet the needs of local communities effectively. The second point to make is that it is not an additional target but rather part of the requirement that is moved forward in the trajectory for earlier delivery [***76.1***].

412. The Council has clearly not been meeting its housing targets over the last 10 years as is demonstrated by the evidence in the latest HLM. Councillor Jones argued that the moratorium followed by the recession means that there are mitigating circumstances and that a 5% buffer would be appropriate. It is noted that the Council has confirmed in post-Inquiry correspondence that at the present time it recognises that a 20% buffer should be applied. The recession is a nation-wide issue and one that started well before the Framework was published. The national policy gives no indication that current economic circumstances can be used to justify under delivery or the application of a lower buffer. Furthermore the moratorium is no reason for not applying a 20% buffer. As was explained earlier the purpose is to help local authorities bring forward sufficient housing land to meet the past, present and future housing needs of their communities [***41; 42; 44; 51; 52; 70; 76***].

413. For all of these reasons the backlog of 4,586 dwellings should be included within the housing requirements for the next 5 years. Furthermore a 20% buffer is justified. In the circumstances the 5 year requirement would be a total of 12,488 dwellings.

HOUSING SUPPLY

414. The Council's assessment at the present time is that there is a deliverable housing land supply of around 2.6 years. The Appellants consider that the situation is slightly worse at 2.1 years. The difference is partly because the Council's figures at the Inquiry were based on the 2012 HLM whereas the Appellants have used the recently published 2013 HLM. The latter records an increased supply of sites, although the Appellants take issue with some of them in terms of delivery. Even on the basis that all are deliverable within the terms of Footnote 11 of the Framework, the Council would only have a 3 year supply of deliverable housing land, applying the Sedgefield approach to the backlog [***41; 42; 43; 80-83***].

415. Councillor Jones considers that housing supply should be based on the 2013 draft SHLAA[71]. However, the SHLAA is not a housing delivery document and it includes sites without applying policy filters. Furthermore the 4.4 years supply that is derived from the draft document also includes a 5% buffer and applies the Liverpool approach to the backlog. Councillor Jones derives an even higher figure of 6.3 years from using the Preferred Policy Directions housing requirement, a 5% buffer and the Liverpool approach to dealing with a backlog based only on the years 2010-2013. Neither is considered to be an arguable position, for the reasons given above [***53; 82***].

416. The Council does not believe that any findings should be made using the 2013 housing data. However it is difficult to ignore the most recent information on housing supply provided by the 2013 HLM. That said, in this case it seems unnecessary to consider the Appellants' criticisms in detail because even at best the Council cannot demonstrate a supply of deliverable sites of more than about 3 years. This seems to me to be sufficiently serious to make it unnecessary to delve deeper into the matter. Indeed that was the approach that was taken at the Inquiry [***44; 83***].

417. The appeal developments, which would result in the provision of up to 316 new dwellings, would make an important contribution to meeting the serious and substantial shortfall, even though it would not eliminate it.

THE CONTRIBUTION OF TATTENHALL TO MEETING HOUSING REQUIREMENTS

418. The only part of the development plan that remains in place is the CDLP. As this preceded the RS there is clearly no statutory policy guidance as to how the shortfall in housing provision should be addressed. The emerging Local Plan has a spatial strategy which seeks to concentrate most new homes and jobs in the four main urban areas, including Chester. However it also indicates that there should be managed growth in the rural area which should be primarily focused on the edge of the smaller towns and villages identified as KSC. Tattenhall is one such centre and there is no dispute that it is a sustainable settlement that is capable of absorbing additional housing growth [***29; 31; 85; 92***].

419. The Preferred Policy Directions sets out the maximum number of dwellings that will be appropriate for each KSC over the plan period and for Tattenhall this is 300 dwellings[72]. The Appellants were critical of this figure for various reasons and think that it is likely to increase before the plan is adopted. However I do not believe that it is either appropriate or necessary to speculate on the likely outcome at this stage as this is a matter that will be fully considered during the course of the Examination. The important point is that Tattenhall's housing allocation should be given very little weight at the present time for the

[71] The post-Inquiry correspondence shows a slightly lower housing supply figure (8,552 dwellings) in the latest version of the SHLAA, which demonstrates that this just provides a snapshot in time.
[72] This has been reduced to 250 dwellings in the pre-submission version of the emerging Local Plan.

same reason that the overall housing requirement figure in the emerging Local Plan should not be relied upon [***31; 32; 86***].

420. Some time was spent at the Inquiry debating the extent to which Tattenhall had already delivered a large proportion of its housing requirement through the planning permissions granted since the start of the plan period in 2010. These include the Care Community, the Redrow housing development and The Oak Room scheme at Newton-by-Tattenhall. Even if Councillor Jones is correct in saying that over 70% of the village's 300 dwelling target has already been met this is not a reason for concluding that the appeal developments are not needed. This is for two reasons. The first is that little weight can be given to the 300 dwelling target for the reasons already given. The second is that there is no endorsement in the Framework for dealing with Borough-wide housing shortfalls on a settlement-by-settlement basis, especially without any development plan strategy to support such an approach. The needs of Tattenhall have to be considered within the context of the serious shortfall of housing land in the Borough as a whole [***57; 85; 88***].

AFFORDABLE HOUSING

421. The 2012 SHMA details that the requirement for affordable housing within the Borough stands at over 1,000 dwellings. By contrast the 2013 HLM indicates that provision has averaged around 200 dwellings over the last 5 years. Unless supply is substantially increased the problem will get progressively worse year-on-year. Tattenhall has a good record of affordable housing delivery. 89 affordable homes have recently been approved in the ward, including Grackle Croft which is a scheme of 14 affordable homes. It is the case that the ward is shown to have an annual requirement for 6 affordable dwellings in the 2012 SHMA. It is evident that affordable homes are allocated on a "bull's eye" basis whereby local people get first preference before those further afield [***63; 90***].

422. Saved Policy HO 3 includes a provision for affordable homes on sites that are not allocated in the plan. There is no specific target for non allocated sites and the policy indicates that this will be subject to negotiation. In the case of Appeals A and C the offer is for 35% affordable homes and in the case of Appeal C it is 40%. On this basis the appeal developments could contribute up to 117 affordable dwellings in total. This would greatly exceed the requirements of the village as recorded in the SHMA. Nevertheless, as with housing supply it is not correct to ignore the wider picture. Housing development is the main means by which affordable housing is provided in the absence of housing subsidy. There is no up-to-date development plan that addresses how the Borough-wide need will otherwise be met. It can therefore be concluded that the affordable housing provision from these schemes would be an important benefit for those people unable to compete in the open market for housing [***30; 64; 91; 219; 258; 317; 368; 396***].

CONCLUSIONS

423. The Council has a substantial and serious housing land supply shortfall. This is based on the housing requirements of the RS, the application of a 20% buffer and applying the Sedgefield approach to dealing with the backlog. Even on the most optimistic assessment of supply as set out in the 2013 HLM there would

only be about 3 years provision. Linked to this is the problem of meeting the Borough's affordable housing needs. The provision of the proposed housing developments would make a significant contribution in this regard.

424. It was confirmed at the Inquiry that all but a few of the Appeal B houses would be capable of delivery over the 5 year period. Each Appellant agreed to accept conditions that reduced implementation timetables below the standard requirement. Indeed in the case of Appeals B and C the period was substantially shorter. This gives confidence that the developers are keen to deliver the new houses expeditiously [***363; 364***].

425. It is therefore concluded that the proposals are needed to meet the housing requirements of the borough and contribute to the short term housing deficit. This is a significant factor in favour of all three of the appeal developments.

CONSIDERATION TWO: THE DEVELOPMENT PLAN AND POLICY CONTEXT

CHESTER DISTRICT LOCAL PLAN (CDLP) AND THE FRAMEWORK

426. The Framework does not change the statutory status of the development plan as the starting point for decision making. However, Paragraph 215 makes clear that development plan policies must be considered according to their degree of consistency with the Framework's policies. Paragraph 49 indicates that where a local authority cannot demonstrate a five year supply of deliverable housing sites its housing supply policies should not be considered up-to-date. In view of the conclusions on the previous issue this provision becomes relevant [***37; 38***].

427. Policy HO 1 in the CDLP, which sets out housing requirements, has not been saved. Saved Policy HO 7 places a blanket restriction on housing outside settlements unless it relates to agriculture. The Council does not dispute that it will need to build on greenfield sites on the edge of settlements in order to meet housing needs. Indeed this was confirmed by the Secretary of State in the Tarporley appeal decision. Whether or not the saved policy would still be relevant to a development proposal in an isolated countryside location, it certainly restricts housing supply in the present case. The Council accepts that saved Policy HO 7 is not up-to-date within the context of these appeals. In the circumstances there is no objection in principle to the appeal developments on the basis that they are outside the settlement boundary [***8; 30; 45; 50; 229***].

428. Paragraph 14 of the Framework makes clear that there is a presumption in favour of sustainable development. This should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking Paragraph 14 establishes what this presumption means. Where relevant policies in the development plan are out-of-date, as is the case here, permission should be granted unless two provisions apply. The second of these refers to the case where specific policies in the Framework indicate that development should be restricted. The appeal sites are not subject to any special designations and are not protected under the Habitats Directives whereby Appropriate Assessment is required. The relevant part of Paragraph 14 is therefore the first provision which states that permission should be granted 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". This is a matter for the overall planning balance but it indicates that a housing shortfall is, in itself, unsustainable [***38; 70; 167; 227***].

429. The Council's reasons, or putative reasons, for refusal rely on three saved policies in the CDLP relating to the issue of landscape. Paragraph 113 of the Framework indicates that landscape policies should differentiate between the hierarchy of designations from international to local. It also advocates criteria based policies against which development proposals may be judged. Saved Policy GE 1 adds nothing in its own right. In terms of landscape, saved Policy ENV 2 contributes little that is not said in saved Policy ENV 24. The latter applies to all landscape and therefore does not adopt a hierarchical approach. The only "criteria" that can be deduced are that the proposal should respect the key features of the landscape and not be detrimental to its character. These are relatively subjective measures and it is not considered that the policy sits very comfortably with the provisions of Paragraph 113 of the Framework. In terms of Paragraph 215 greater weight should be given to Paragraph 113 than to saved Policy ENV 24 [***30; 170; 230; 231; 274***].

EMERGING CHESHIRE WEST AND CHESTER LOCAL PLAN

430. The Council has consulted on its Preferred Policy Directions and since the close of the Inquiry has consulted on its pre-submission strategic policies document and has just submitted it for Examination. The anticipated programme seems to have slipped and adoption is unlikely until sometime later in 2014 at the earliest. The Preferred Policy Directions sets out a sustainable spatial strategy. This seeks to concentrate new homes and jobs into the main urban areas. It also allows for managed growth in the rural area, primarily focused within and on the edges of the smaller towns and villages identified as KSC. The pre-submission document seeks to continue this approach and the appeal proposals would accord with this basic strategy through development on the edge of Tattenhall, which is identified as a KSC [***31; 32; 158***].

431. The Preferred Policy Directions included a minimum housing requirement of 21,000 homes between 2010 and 2030 and a maximum limit on the new homes at Tattenhall of 300 over this period. Although the figures are now slightly different[73], it remains the case that the housing requirement in the emerging Local Plan cannot be relied upon at the present time as it has not been independently tested to see whether it reflects the objectively assessed housing needs of the borough. The same is true of the allocations directed towards the KSC, including Tattenhall. These may well change if the housing target changes or they may change for other reasons, including the capacity of a particular KSC to accommodate growth. The housing figures in the Preferred Policy Directions and the pre-submission plan document have limited weight at this time [***31; 32; 74; 86; 87***].

432. Paragraph 216 of the Framework indicates that the more advanced the stage of preparation of an emerging plan the greater the weight it can be given.

[73] This has changed to 22,000 homes and 250 for Tattenhall in the latest iteration of the emerging Local Plan.

However it also indicates that it will be relevant to consider the significance of unresolved objections. In this case there have been detailed representations by a consortium of housebuilders [***37; 74; 75***].

433. Paragraph 17 of *The Planning System: General Principles* sets out the situations when the refusal of planning permission on prematurity grounds may be justified. However in view of the early stage that the Local Plan has reached it could not be said that the appeal proposals, which would amount to no more than 315 dwellings in total, would be so significant as to predetermine decisions about the scale, location or phasing of new development. On the basis of the current RS requirement and a 20% buffer this would amount to about 2.5% of the total 5 year requirement. As was also explained under Consideration One this quantum of housing would help resolve the housing shortfall from which this Council suffers. In the circumstances and in view of the relatively early stage that has been reached in the adoption process it is difficult to see how a prematurity argument could be supported [***159***].

DRAFT TATTENHALL NEIGHBOURHOOD DEVELOPMENT PLAN (TNDP)

434. Tattenhall is a community chosen as one of the government Front Runners in the promotion of its localism agenda. I heard a great deal about the TNDP and the amount of time, effort and expense that has gone into its production. Local people are justly very proud of their efforts and this came across in many of the oral and written submissions. The TNDP is now relatively well advanced and since the Inquiry closed not only has it been examined but also it has been subject to a Referendum. The Examiner's role is very specific and does not consider the soundness of the plan but rather whether it meets the basic conditions and other relevant legal requirements. These are set down in legislation under Paragraph 8 of Schedule 4B to the Town and Country Planning Act inserted by the Localism Act 2011. One of the basic conditions is that the plan must have regard to national policy and advice and be in general conformity with the strategic policies in the development plan for the area [***33; 131; 135; 136; 156; 324; 326; 330; 331; 334; 337; 339***].

435. The CDLP is relatively old and a number of its policies are out of date, including those relating to housing provision. Furthermore it was adopted in 2006 well before the Framework. In the circumstances there are no strategic policies relevant to this appeal that can be relied upon. For the reasons already given the emerging Local Plan is at a relatively early stage and whilst it does advance a spatial strategy this will be subject to consideration at the future Examination. The housing numbers are contentious and have little weight at the present time. This is a problem for the TNDP because it is moving forward much more quickly than the new Local Plan, which would reasonably expect to be its "parent" given that the strategy in the CLDP is out-of-date and not consistent with the Framework [***137; 139; 140***].

436. Those that are promoting the TNDP recognise this tension and the final document removed the reference to a 300 dwelling ceiling in Policy 1. The plan supports growth and this was a point that was reiterated many times by the Parish Council and local community in their representations. It is also evidenced by the support for projects such as the Care Community, which is a substantial new development along Frog Lane. It is clear from Policy 1 that new housing on land immediately adjacent to the settlement would be

acceptable. Up to this point the appeal proposals, either individually or together, would in principle accord with the provisions of the TNDP [***55; 69; 131; 132; 324; 329; 342; 351***].

437. However the clear message is that the community wants growth to happen in a managed and incremental way. To this end Policy 1 includes a provision which sets a 30 dwelling limit on new development within or adjoining the village. This clear limitation on growth is one of the grounds of challenge in the ongoing Judicial Review. There are also other points such as alleged procedural irregularities in the plan preparation. In the circumstances very limited weight can be placed on the TNDP at the present time [***7; 142; 144; 161***].

438. It is recognised that the above conclusion will not be well received and that many will feel that it is totally contrary to the spirit of localism that the Government endorses. However the future of the TNDP in its present form is far from secure. There is not an up to date statutory Local Plan in terms of the Framework, which requires the Council to prepare a local plan that sets out policies for meeting objectively assessed housing needs. This has not yet been done and it has been concluded on the evidence that such needs are not being met and that there is a serious housing shortfall. Whilst neighbourhood plans can shape and direct sustainable development this is only within the parameters set by the higher level plan. It follows from this that the proposals could not be seen as premature in terms of the TNDP [***138; 141; 145; 162; 326; 330***].

OVERALL CONCLUSIONS

439. The Council is in an unfortunate position because it has no up-to-date statutory policy on which to rely in terms of housing delivery. Its emerging local plan is at a very early stage and can be afforded little weight. A number of the policies in the statutory CDLP are out of date for the purposes of these appeals, including its policies relating to housing supply and some of its landscape policies. In the circumstances the determination of the appeals will be highly dependant on the policies in the Framework. Of particular relevance is Paragraph 14 and its approach to the presumption in favour of sustainable development.

440. Although the TNDP is well advanced it is not known at the present time whether it will be able to be adopted in its present form or not. This uncertainty reduces significantly the weight that can be given to its provisions. In view of these factors there is no argument for dismissing the appeals on the grounds of prematurity.

CONSIDERATION THREE: THE EFFECT ON THE LANDSCAPE AND RURAL SETTING OF TATTENHALL.

POLICY BACKGROUND

441. Each of the reasons or putative reasons for refusal referred to three saved policies in the CDLP. It was concluded in Consideration Two that the provisions of Policy ENV 2 are essentially included in Policy ENV 24 and that Policy GE 1 is a general policy that adds nothing of its own. Policy ENV 24

does not sit squarely with the Framework because it is not criteria based Furthermore, Paragraph 113 advises that distinctions should be made between the hierarchy of international, national and locally designated sites so that protection is commensurate with their status. There was no dispute that this is an undesignated landscape with no special protected status [***30; 39; 94; 96; 170; 171; 230; 266; 273***].

442. However just because an area of landscape is undesignated either nationally or locally does not mean that it has no value. Indeed one of the core planning principles in the Framework is to recognise the intrinsic beauty of the countryside and Paragraph 109 seeks to protect and enhance valued landscapes. It is clear from the representations that the countryside around Tattenhall is greatly valued by the local community. I would not refer to it as the "*bottom of the pile*" as some did during the Inquiry. It is not a remarkable or unique landscape as, for example, one would find within an Area of Outstanding Natural Beauty. However it is pleasant and attractive and provides a rural setting for the village of Tattenhall [***13; 96; 187.2; 350.6***].

443. The supporting text to saved Policy ENV 24 indicates that development in the rural area should respect the key features of landscape character areas as set out in the *Chester District Landscape Assessment and Guidelines*. The appeal sites are within *Landscape Character Type 6: West Lowland Plain* and its subdivision: *WLP2: Hoofield*. There are however other character areas nearby, including *WLP3: Tattenhall*. Features associated with the Hoofield Character Area include a dispersed settlement pattern and a dense network of footpaths. Woodlands are not a feature but the hedgerow pattern with its abundance of individual hedgerow trees often appear to coalesce giving the impression of a well wooded landscape. Beeston Castle is mentioned as a striking landmark as well as the sandstone ridge of the Peckforton Hills. The Tattenhall Character Area records similar hedgerow features and views towards the sandstone ridge as well as towards the Clwydian Hills to the west [***10-13; 30; 97; 98***].

THE COUNCIL'S APPROACH

444. The Council's objection to all three appeal schemes relates solely to the effect on the landscape. Its landscape expert[74] did not however have any input to the reasons for refusal as he was instructed after the Committee had made its decisions. Furthermore, his evidence did not address the allegations in those reasons for refusal. Rather he carried out his own LVIAs which concluded that each scheme would have a significant adverse landscape and visual effect. His evidence did not include any kind of calibration as to the relative importance of these findings or the weight that should be attributed to them in the final balance [***92; 172; 173; 184; 277***].

445. Useful guidance on how to approach the issue of landscape impact is provided by the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment. The most recent iteration is the Third Edition (the Purple Book), which was published in 2013. In terms of methodology and approach this is similar to the Second Edition (the Blue Book), which it has replaced. It does

[74] Mr J King BSc MLD CMLI, Technical Director of Wardell Armstrong LLP.

however place more emphasis on professional judgement and advises against a matrix approach to the assessment of significance. It also provides detailed advice on cumulative assessments. My conclusions have mainly been informed by the more up-to-date guidance in the Purple Book although both were referred to at the Inquiry [***96; 102; 232***].

446. The purpose of a LVIA is two-fold. First it is to consider the effects of a development on the landscape as a resource in its own right. Second it is to consider the effects on people experiencing specific views within the landscape. It provides a tool for assessment but is not an end in itself and, as the Purple Book makes clear, much will depend on the professional judgement of the landscape professional concerned.

The landscape impact assessment

447. The significance of the landscape impact will derive from the sensitivity of the landscape to change and the magnitude of the change resulting from the development. Whilst there will inevitably be differences of opinion in relation to these matters, I have some concerns about the Council's methodology, parts of which were neither transparent nor easy to understand. In particular the following shortcomings have led, in my opinion, to an overstatement of the significance of the alleged landscape impact [***99***].

447.1. In assessing landscape sensitivity the Council adopted the methodology in The Countryside Agency's guidance entitled: *Topic Paper 6: Techniques and Criteria for Judging Capacity and Sensitivity*. However this document aims to provide techniques for judging landscape capacity and sensitivity when undertaking a landscape character assessment. This is a much wider scale exercise than undertaking an LVIA. The document makes clear that the processes are different in the two exercises. Topic Paper 6 combines landscape and visual factors into the same process whereas in an LVIA they are interlinked but separate [***100; 102***].

447.2. Whilst overall visibility and the way the landscape is perceived is a relevant factor when considering landscape impact, the effect on individual visual receptors is a matter for the visual assessment. The Council's visual assessment provides one of the inputs to its landscape assessment. This seems to me to have resulted in a degree of "double counting" so that the visual factors have been overstated in the overall judgement [***102; 184; 287.2***].

447.3. The sensitivity of the landscape resource will depend in part on landscape value. This will not just reflect the value of the key elements and features but also the level of importance in terms of any landscape designations. The non-designated nature of the landscape does not seem to have been adequately reflected in the assessment of landscape value [***187.2; 232***].

447.4. The magnitude of landscape change includes direct effects which are confined to the site itself. Such change would inevitably be considerable as fields are replaced by housing. However such immediate and local consideration would magnify the impact by failing to include any

appreciation of how this would affect the landscape beyond the site boundaries [***187.3; 284***].

447.5. In the landscape assessment it is important to choose an appropriate study area which properly defines the receiving landscape. The Purple Book advises basing this on the site itself and the extent of wider landscape that may be influenced in a significant manner. The advice is that it will usually be based on the extent of the Landscape Character Areas likely to be significantly affected either directly or indirectly. It goes on to say that it may be based on the area from which the development would be visible, the ZTV, or a combination of the two. It became apparent during the Inquiry that the Council's study area was based on the ZTV for each site. This was said to be due to the proximity to more than one Landscape Character Area. Whilst this is not contrary to the guidance in the Purple Book, in this case it does not seem to me appropriate. All of the sites are within the Hoofield Landscape Character Area and in any event the Tattenhall Landscape Character Area has many similar characteristics. Furthermore, the extent of visibility for all three sites is relatively restricted due to the nature of the topography and the intervening vegetation. When considering landscape character the Landscape Character Area seems the most appropriate starting point rather than the somewhat artificial boundaries of the study area chosen by the Council [***98; 102; 187; 233; 281; 283***].

447.6. The Council's assessment took no account of whether adverse impacts on the landscape could be mitigated. The Council's expert started with the assumption that effective landscape mitigation could not be achieved that was in keeping with the landscape character of the area. However there was no analysis of the individual mitigation proposals or whether they would be successful in reducing landscape impacts over time [***104; 185; 234; 292.2***].

The visual impact assessment

448. The ZTV is the appropriate area within which to conduct the visual assessments. Visual receptors are individuals or groups of people. Their sensitivity to change will depend on what they are doing whilst experiencing the view and what value they place on that view. Most of the landscape experts considered that those using the public rights of way, including footpaths and bridleways, would have a high sensitivity to change. I would agree with this because, although in some views the visual receptor is aware of the settlement, most of the relevant footpaths offer a rural walk where the benefits of being in the countryside can be experienced. There was some dispute about the sensitivity of road users but I consider that such visual receptors would have a medium rather than a low sensitivity. Whilst hedgerows provide some screening effect there are views of the adjoining countryside from the local road network relevant to all of the sites. Also road users would comprise passengers as well as drivers and cyclists.

449. The Council's visual assessment included views from private properties. There has been no allegation by the Council that any of the developments would adversely affect the outlook or privacy of adjoining occupiers. There are some local residents who do not agree and this is considered in a later section.

However the Purple Book indicates that "*residential amenity assessments*" are generally separate from the LVIA process. It is the case that no-one has a right to a view over someone else's land. In the circumstances the effect on private viewpoints has very little weight [***92; 103; 189; 282; 288; 293***].

450. The terminology used by the Council for recording the magnitude of change and significance of impacts seems unnecessarily complex. The Purple Book indicates that a maximum of five categories is generally sufficient for describing sensitivity and magnitude of effect. However the use of brackets to convey more subtle connotations was, in my opinion, confusing and difficult to understand. In recording changes and effects the landscape experts used different terminology. I have reached my own judgements and in an effort to keep things simple and be consistent across the three appeals I have adopted the language of the Purple Book. I have described sensitivity to change in terms of high, medium or low; magnitude of change in terms of high, medium, low or negligible; significance of effect in terms of major, moderate, minor or negligible [***99***].

451. During the course of the Inquiry the Appellants for Appeal A questioned the distances between the Council's photo viewpoints and the site boundaries. However, apart from in the longer distance view along Chester Road and the private view along Greaves Lane, the differences were relatively small and not material to the conclusions regarding visual impact. Of more relevance is that the Council did not take account of the fact that in each appeal scheme the developed area would be set back from the boundaries behind landscaped areas of varying widths. This means that there would be further distance between the viewer and the new developed edge, which would reduce the magnitude of change and hence the overall visual impact. The differences were most noticeable in the case of Appeal A and particularly in views from Footpath 8. Also in Appeal B the houses would be set back in the view from Tattenhall Road. This also has a bearing on the Council's landscape assessment as the visual effects have been fed into that exercise [***176; 185; 236; 238***].

452. Finally the same comment about mitigation applies to the visual assessment. The Council did not take it into account in its consideration of the effect on visual receptors.

The cumulative assessment

453. The only assessment of cumulative landscape and visual impacts was that undertaken by the Council. This was basically derived from adding together the outputs from the individual site assessments. It must therefore be concluded that the concerns referred to above would also apply to the Council's conclusions of the cumulative effects [***129; 192***].

454. The Council has provided a set of cumulative photomontages using wireframe models that were prepared by each of the Appellants to show a representation of their scheme. In the case of the outline proposals this accorded with the illustrative layouts but in the case of Appeal C the submitted scheme was able to be more accurately portrayed. The technical production and presentation of these photomontages have been agreed between the Appellants and the Council.

SITE SPECIFIC LANDSCAPE AND VISUAL IMPACTS

455. The following sections set out my conclusions on the landscape and visual impacts arising from the individual appeal developments. This is based on the oral and written evidence to the Inquiry and my own site observations. I undertook extensive site visits which were both accompanied and unaccompanied and saw each site from all of the main viewpoints identified in the various assessments. I also visited other places mentioned by local people, such as the old railway line to the west of Site B. I went to Beeston Castle and was able to see Tattenhall and much of the Cheshire Plain from this elevated vantage point.

456. There is no doubt that even with mitigation the new developments would be seen from public viewpoints within the surrounding countryside and that the replacement of open fields with housing development would result in a fundamental change to the sites in question. The matter to be considered is whether such change would be unduly harmful and, if so, whether adverse effects could be successfully mitigated in the longer term.

Appeal A: Land adjacent Adari, Chester Road

Visual assessment

457. Pursuant to the Council's photomontages a new wireframe model and photomontages were provided by the Appellant's landscape expert[75]. These were said to be based on a more accurate portrayal of the actual house types that would be used on the site and the illustrative layout that was presented at the Inquiry[76]. These photomontages continued to show 2.5 storey dwellings, which it was later agreed would be omitted [***Footnote 13***].

Chester Road

458. When travelling into Tattenhall, the new houses would come into view as the road curves round the bend adjacent to the Brook Hall parkland. At present the settlement edge is apparent with the houses in Grackle Croft to the right, Brook Hall Cottages to the left and the rear of houses in Rookery Drive further behind. The retention and reinforcement of the western boundary hedge would provide screening. There would be intermittent hedgerow trees and I have no reason to doubt that a 6 m high vegetation screen could exist within 5 years. Taking account of the new wireframe modelling and the omission of 2.5 storey dwellings it is still likely that the roofs of the new dwellings would be apparent [***105; 109; 111; 176***].

459. I have no doubt that in this view there would be a significant and harmful visual change, especially during the winter months when the trees along Chester Road are not in leaf. Even though there would be an undeveloped green edge adjacent to the western site boundary, the depth of development would be apparent, especially in closer views, and this would lead to a suburbanised appearance on a main route into the village. On the other hand,

[75] Mrs P Randall BSc(Hons) MALA FLI.
[76] This is shown at ***Document TW/2.3.3, Figure 3/1***. It is an illustrative layout and has not been submitted for approval at this stage.

the footway along the southern side of Chester Road does not lead anywhere and so it is likely that this view would be mainly appreciated by drivers or cyclists. Also, it should be borne in mind that only the view to the left would be affected and taking account of all the other factors mentioned above I would judge that the visual impact would be moderate adverse. This is lower than the Council's assessment but higher than that of the Appellant [***111***].

460. Moving further along Chester Road past Brook Hall Cottages there would be views for pedestrians using the busy stretch of footpath adjacent to Ravensholme Lane on the southern side of Chester Road. From here views into the site would be more direct. The removal of the front hedgerow and provision of the new access and visibility splays would result in a significant change in the foreground view. It is the case that the settlement edge is already clearly apparent in this view and that the new housing would be set well back. However although the frontage itself is relatively narrow the site opens out and new housing would occupy the view at depth. Taking account of the levels it would probably obscure parts of the skyline although views of the countryside rising up to the north-west would still be apparent. There would perhaps be the opportunity for some frontage planting but this would need to take account of highway requirements. In my judgement the sensitivity of receptors and magnitude of change would both be high. Even allowing for an under-estimation of distance and the set-back of the new development edge, I am more inclined towards the Council's assessment of a major adverse visual impact than the minor level of significance proffered by the Appellant [***345***].

461. Travelling north out of Tattenhall past Rookery Drive the visual effect would be of minor significance. Whilst the removal of the frontage hedge would result in some change, the new houses would be set-back behind the Adari bungalow. In addition the proposal for a simple priority junction rather than one with a right turn lane would minimise the amount of change to Chester Road itself at this point. These factors do not seem to have been taken into account in the Council's much higher assessment of the significance of change in this view.

Footpath 8

462. This public right of way is clearly well used and enjoyed by local people and visitors to the area and is a very attractive walk. When travelling along the lower section of the footpath between Keys Brook and Chester Road the new houses would be evident either to the right or left depending on whether the viewer was travelling north or south. At the time of my summer site visit views in this direction were mainly obscured by the tall hedges and mature trees along the field boundary to the east of the footpath. However in the winter the development would be very apparent even though it would be seen as an angled and filtered view. The existing settlement edge is not particularly obvious in this view and, whilst mitigation planting would reduce the overall impact, the roofs would be seen above the hedge line and between gaps in the hedgerow trees [***109***].

463. North of Keys Brook the visual effects would only occur in a southerly direction and the appeal site would come into view from a point south-east of Bailiff's Cottage and Brook Hall. At this point the viewer is looking down towards the far side of the valley but at a distance. The new houses would be seen in front

of the existing settlement edge. However I am not convinced of the Council's concern about vertical spread because the site rises up from Keys Brook in a similar way to the existing settlement. There would be a lateral spread of development closer to the viewer but this would become less apparent as the footpath descends down the slope and the opportunity for mitigation screen planting increases. Also even during the winter months the intervening trees and hedges would filter views towards the site [***105; 110; 176; 191***].

464. Overall the footpath user would experience change over a relatively short section of Footpath 8 and it would not encompass the whole panorama. Views towards the Clwydian Hills to the west, for example, would remain unimpeded and the Peckforton Hills would remain in the background. Despite the presence of the village, this is essentially an attractive rural walk. On the whole there was not a major difference between the parties about the distances from these viewpoints to the site boundary although the Parameters Plan shows an agreed setback of the building area of between 30 m and 80 m. Taking all of this into account my judgement is that there would be a medium magnitude of change and overall the significance of the visual impact would be moderate and adverse. This varies from the assessment of both the Council and Appellant and is somewhere between the two.

Other views

465. Much of Newton Lane/ Bishop Bennet Way is edged by high hedgerows. However there are places where views towards Tattenhall can be obtained including through the field gateway to the west of the junction with Tattenhall Road. In this view the settlement edge is already apparent and partially screened by intervening vegetation. The new houses would therefore not introduce a new urban element. Furthermore, the development would occupy a small proportion of the overall panorama where the eye is particularly drawn to the Peckforton Hills rising up on the skyline. Distances to the developed area would be nearly 1 km and even for more sensitive bridleway users it is considered that the significance of change estimated by the Council is greatly overstated and that the visual impact would be minor adverse [***112***].

466. I was asked to view the site from the gaps between dwellings in Rookery Drive. Glimpses of the site could be seen but the view is very restricted and any visual impact from these public viewpoints would be negligible.

467. The Council has also included private views from the lane leading to Greaves Farm and from the gardens of Brook Hall Cottages. From the latter in particular there would be a significant change in outlook although there is already a view towards the rear elevations of the Rookery Drive houses. I was invited to view the site from the rear garden of 8 Rookery Drive. I can appreciate that the outlook would substantially change for these residents and their neighbours backing on to the site. I was told that these houses have living rooms at the back to enjoy the panorama. However these are all private views and for the reasons already given they do not add to the significance of visual effects that have already been identified [***350.5***].

Landscape assessment

468. The Appellant's landscape expert based her landscape impact assessment on the Hoofield Landscape Character Area and in this case it is considered that it is more appropriate than the Council's approach of using a ZTV. The conclusion is that there would be a medium sensitivity to change. This takes account of the undesignated nature of the landscape and the contribution that the site makes to the Landscape Character Area. Whilst the perception of the landscape contributes to landscape value the analysis does not take account of the impact on visual receptors. I agree with this approach for the reasons already given. The magnitude of change was assessed as being low to negligible, taking account of the position of the site at the edge of the Landscape Character Area and also such factors as the proximity and influence of the settlement edge. Clearly on the site itself the replacement of a pasture field with residential development would result in a significant change. However existing trees and hedges would be largely retained, including the row of oaks that cross the site. There would also be a net gain of ponds as a result of the ecological mitigation. It does not necessarily follow, as asserted by the Council, that any development, however harmful, would receive a favourable outcome if the site is small relative to the overall size of the Landscape Character Area [***114***].

469. In terms of landscape mitigation it is not proposed to insert blocks of woodland planting although there would be some small copses, for example in the north-west corner of the site. In the main however the proposal is to reinforce existing hedgerows and allow them to increase in height. There would also be new native hedgerow trees. It seems to me that this would reflect features in the wider Hoofield Landscape Character Area. Although it may not be as effective in the perception from a few of the elevated parts of Footpath 8, I cannot agree with the Council that mitigation planting could not be successfully employed. Accordingly it is considered that the significance of landscape change would be minor adverse rather than the major significance asserted by the Council [***107; 192***].

Appeal B: Land rear of 15-38 Greenlands

470. The LVIA submitted with the planning application was not endorsed by the Appellants' landscape expert[77] who produced his own LVIA based on the Masterplan that was submitted with the appeal to reflect the aspirations of the developer, Wainhomes. The Appellant also provided some photomontages, which included views at Year 0 and Year 10 to include proposed mitigation planting.

Visual assessment

471. The landscape expert considered that the sensitivity to change of road users would be low. For the reasons given above I consider that a medium

[77] Mr P Rech BA(Hons) BPhilLD CMLI.

sensitivity is more appropriate. This will clearly have an effect on the Appellant's assessment of the impact on these visual receptors.

Footpath 8

472. On the lower part of the public right of way there would be glimpses of the development at a distance although in the summer months, apart from through a small gap, these would be obscured by existing vegetation along the eastern boundary of the Brook Hall parkland. During the winter months there would be more visibility and the lateral spread of development would be apparent. There would be the benefit of distance and the new buildings would only occupy a part of the view. Mitigation planting would provide further filtering of views although the upper parts of the houses would be seen. From here I would agree with the Appellant that the magnitude of change would be low with a minor adverse impact, taking account of distance and the intervening vegetation. The Council's assessment seems too high but in any event there would be the benefit of mitigation planting that would further reduce the initial visual effect [***117; 118***].

473. As the footpath climbs up the side of the valley north of Keys Brook there are views of the site to one side. The greatest magnitude of change would be at around the point where the footpath crosses the stile to the south east of Bailiff's Cottage and Brook Hall. At this point when the viewer looks east the silhouette of Beeston Castle is clearly seen framed by trees and hedgerows within a rural foreground. However there are also buildings in the wider view, including Greaves Farm with its various outbuildings and The Hollies on Tattenhall Road. In addition, the settlement edge is clearly apparent with the Peckforton Hills rising up behind. The proposed development would be seen as a lateral expansion between the existing settlement edge and Greaves Farm and would sit directly in front of Beeston Castle. There is little foundation to support the Council's assertion that this is a cherished view due to the area of flattened grass within this vicinity. However I would assess the magnitude of change as medium initially, but reducing as a result of mitigation planting. The Council's assessment of significance seems to be too high and in my conclusion the visual impact would be moderate adverse [***118; 236; 243; 249***].

474. As the footpath runs north it drops down and the site disappears from view. However on the northern section towards Newton Lane, where it changes to *Footpath 10*, there are distant views of the site looking south. Greaves Farm can be seen at the high point but not the settlement edge due to the topographic changes. The new development would be viewed as a new settlement edge although there would be a considerable distance and the benefit of intervening vegetation. Furthermore the Parameters Plan shows that single storey development is proposed on the northern part of the site. It is appreciated that this is essentially a rural view at present and the Peckforton Hills and Beeston Castle are also apparent. In the summer little would be seen but in winter there would be some change. I cannot agree with the Council that there would be a major visual impact and at highest I consider that the effect would be moderate adverse. There is scope for mitigation planting to reduce this over time [***25; 117; 118***].

Newton Lane and Bishop Bennet Way

475. From here there are occasional views through gaps in the hedgerow or across field gates but on the whole the high hedges obscure the view to the south. For those using the bridleway there would be a higher sensitivity to change and through those gaps the viewer can gain glimpses of the settlement edge and other buildings such as Greaves Farm. The Peckforton Hills particularly draw the eye as they rise up in the background to the view. The proposal would be seen as a band of development stretching across the centre of the view, although the skyline would remain intact [***118; 247***].

476. Taking account of the distance and the intervening vegetation, which even in winter provides a filtered view, I would judge the magnitude of change to be low. For footpath users I would place the visual impact as minor and for road users negligible. This again is lower than the Council's assessment but this has taken no account of mitigation which, over time, would provide an effective screen from this viewpoint [***247***].

Footpath 11

477. This footpath runs in a north-south direction to the east of Tattenhall Road. From here the properties along Tattenhall Road, such as The Hollies and The Cedars can be seen. There is also a substantial screen of trees and hedges. The footpath runs through the fields and when directly in line with the site the intervening distance is over 500 m. It is probable that some of the new houses would be seen from a relatively short section of the footpath and to one side of the view. However the walk would remain essentially rural in nature and views would be heavily filtered by the existing vegetation, even during the winter months. I find it difficult to understand the Council's assessment within this context and its judgement that the effect would be of major significance. In my opinion this is too high and at most there would be a minor adverse impact [***117; 248***].

Tattenhall Road

478. There is a footway that runs along the eastern side of Tattenhall Road as far as The Cedars. As part of The Oak Room development this would be extended to Newton-by-Tattenhall thus providing a pedestrian link between the two villages. The section of Tattenhall Road to the south of the Newton Lane junction is relatively straight with hedgerows on either side. When approaching from the north the settlement comes into view when passing Greaves Farm Cottage and the road descends towards the crossing of Keys Brook. There are several residential properties along this route and the view incorporates the existing settlement beyond the stream. Much of the frontage hedge is intended to be retained although sections would need to be removed to accommodate the new access and footpath link. The Masterplan shows that the new houses would stand back behind a footpath that would run within the site to the rear of the hedgeline at this point. In the circumstances I would judge the magnitude of change to be medium and for the pedestrian the overall visual impact would be moderate adverse [***26; 246; 247***].

479. Travelling out of the village however the existing view is predominantly a rural one and the housing on the left hand side would protrude up the slope and into

the countryside. Although there would still be fields to the east I would assess the magnitude of change as high. For pedestrians there would be a high sensitivity to change and the visual impact would be major or moderate depending on the position of the viewer. For road users there would be a lower sensitivity to change and the visual impact would accordingly be reduced. Although the frontage hedge and trees would be retained it is difficult to understand the Appellant's assessment of a negligible visual effect, even taking account of the low sensitivity that is attributed to a road user.

Other views

480. From Chester Road any view would be at a distance and mainly obscured by the intervening topography and vegetation, especially during the summer months. In winter it is probable that the new houses would be seen but would occupy a small section of the view at an oblique angle. In the circumstances I would be more inclined to accept the Appellant's assessment that the magnitude of change would be low. However for the reasons given above I do not concur with the Appellant's sensitivity rating for road users and therefore my assessment would be that from here the significance of effect would be minor. From this distance the effect of the mitigation planting would probably make little difference as the upper parts of the buildings would still be seen as a lateral spread of development away from the existing settlement edge.

481. I was asked to view the site from the gaps between dwellings in Greenlands. The site could be seen but the view is very restricted and any visual impact on public viewpoints would be negligible. From the Greenlands properties themselves there would be a considerable change in outlook because the present panorama of open fields would be replaced by an outlook towards houses. There are also a number of other views from private properties, including the lane leading up to Greaves Farm, the Hollies and Greaves Farm Cottage. From here the view would be direct and immediate. The Council and the Appellant agree that a substantial adverse visual impact would ensue although the Appellant considers that this would reduce to moderate adverse with mitigation. I broadly agree with these conclusions. However for the reasons already given these private views have little weight in the overall visual assessment.

482. I was also asked to view the site from the small unmade lane to the east of Keys Brook which serves some garages and skirts round the back of Castlefields. From here there would be views towards the site which would change significantly. However this small track did not seem to be a recognised public right of way. If it were then the visual effect would be similar to that attributed to users of Tattenhall Road.

483. Local people mentioned the view from Beeston Castle. On a clear day the view of the Cheshire Plain landscape is spectacular. Tattenhall can be seen at a distance and it may be possible to pick out Site B with the naked eye. However, within the context of the extensive panorama seen from this elevated viewpoint, I was unable to conclude that the proposed development would have a significant or harmful visual effect on its wider surroundings.

Landscape assessment

484. In the Council's assessment the sensitivity of the landscape to change is similar to that for Site A but the balance of factors is different. In the case of Site B the visual sensitivity is particularly high but for the reasons already given this is considered to inflate the outcome. The Council's assessment overall is that the significance of the landscape impact would be on the "*moderate side of substantial adverse*". The Appellant's expert on the other hand considered it to be "*at worst slight adverse*". I found the Appellant's landscape expert's LVIA rather opaque in terms of the landscape assessment. There was little explanation as to what comprised the study area, which seemed to include various landscape character assessments as well as the area from which the site could be seen. There was little reasoning to support the medium score for sensitivity to change and even less to explain how the magnitude of change had been derived. The oral evidence did not provide a great deal of extra assistance, which meant that I was unable to rely on the overall judgement of significance put forward by the Appellant [***119; 120***].

485. It seems to me that my conclusions regarding landscape sensitivity and magnitude of change on Appeal A can broadly be applied to Appeal B. The Appeal B site is also on the edge of the Hoofield Landscape Character Area and the landscape is similarly influenced by the existing settlement edge. It is the case that the site slopes up from the village but I am not convinced that this factor or its position north of Keys Brook is particularly influential in the consideration of landscape character. In this case there are views towards Beeston Castle that are a feature of the Hoofield Landscape Character Area but such views are gained from many vantage points in the wider landscape. The development would interrupt a very small number of views but it would not obscure them [***243***].

486. Mitigation planting is proposed around the northern and western boundaries. Whilst tree studded hedgerows are a characteristic feature of the Hoofield Landscape Character Area, I have some concerns about the type of planting that is envisaged on the Parameters Plan and Masterplan. These show a belt of green infrastructure which would be at least 10 m wide and in many places substantially more. The evidence suggested that this area could be provided with woodland glades of such species as oak, birch and cherry interspersed with open paths. Whilst historically rows of trees may have been prevalent and there are some small copses, woodland stands are not generally a characteristic feature of the Hoofield Landscape Character Area. The Landscape Character Assessment indicates that the hedgerow trees in successive field boundaries appear to coalesce in middle distance views and it is this that gives the impression of a well-wooded landscape [***122; 236; 237***].

487. Nevertheless the Parameters Plan does not refer to "woodland glades or tree belts" and as landscaping is a reserved matter the Council would have control over the planting proposals at reserved matters stage. I am satisfied that satisfactory landscape mitigation could be achieved notwithstanding the detail proffered at the Inquiry. Overall a minor adverse landscape impact, taking account of mitigation, would be a reasonable assessment. As it happens this is similar to the conclusion reached by the Appellant's landscape expert [***236; 238***].

488. The Appellant contended that the visual impact assessment without mitigation is a worse case and unreal scenario. In Year 0 all development would not be present as shown on the photomontages. The new structural planting would go in at an early stage giving time for it to grow and start to mature whilst development is ongoing. As the development is likely to start at the front of the site and work backwards the rear part would not be built until mitigation planting had become effective. This is a reasonable point and it could equally apply to all of the appeal sites [***239***].

Appeal C: Land opposite Brook Hall Cottages, Chester Road

489. The Appellant made reference on a number of occasions to the Redrow site, which had been granted planning permission by the Council following an earlier refusal. The point was made that the two schemes were not materially different and that the reason for refusal had been identical in both cases. Although both sites adjoin the settlement they are on opposite sides of the village. The Redrow scheme was in outline and its site was considered by the Council to be well enclosed with very limited visual links to the adjoining countryside. In the circumstances it does not seem to me to be very useful to consider the landscape issues in relation to Appeal C through comparison with the Redrow site [***123; 280***].

490. A further set of photomontages was submitted by the Appellant at the Inquiry. This was because those submitted with the proof of evidence had wrongly assessed the mitigation at Year 20 rather than Year 15 due to a technical error with the visualisation software. [***124***].

Visual assessment

491. The Appellant's landscape expert[78] considered that the sensitivity to change of road users would be low and of those using the public rights of way would be medium. For the reasons given above I consider that higher sensitivities are more appropriate. This will clearly have an effect on the Appellant's assessment of the impact on these visual receptors.

Chester Road

492. When travelling into Tattenhall the new houses would result in a considerable change at the entrance to the village. However this would be over a relatively short stretch due to the rise and fall of the terrain, the alignment of the road and the hedgerows and trees on either side. The change would not generally be appreciated by pedestrians because the footway on the southern side of the road peters out and does not serve a destination. Walkers would not emerge onto Chester Road from Footpath 8 until close to the eastern end of the site. For road users travelling into the village the main view is of the Brook Hall parkland and its Cheshire railings are a particularly prominent feature. Filtered views of the new houses above the roadside and boundary hedges may be glimpsed before reaching the site. However these are likely to be of secondary interest to drivers or cyclists because the bends in the road require

[78] Mr J Berry BA(Hons) DipLA AEIMMA CMLI MArborA.

concentration on the road ahead rather than on the views to either side [***296; 297***].

493. The site has a relatively long frontage and the roadside hedge is quite low. The Grackle Croft houses project out into the same field parcel and provide an important and rather stark element in the view. At this point it is also apparent that the village is not far away with the houses in Rookery Drive as well as Brook Hall Cottages clearly apparent, especially in the winter months. In the future the Care Community will be visible on the rising land on the other valley slope to the south. The magnitude of change should therefore be considered within this context [***297***].

494. The frontage houses would be well set back behind what is referred to as a "*country lane*". Taking account of the slope of the land down towards Mill Brook, the depth of development would not be particularly apparent. Nevertheless these would be substantial properties and, whilst at a relatively low density, several would be 2.5 storeys high. They would be quite well spaced and the elevational treatment of Plot 68 would reflect Brook Hall Cottages. However it is difficult to escape the conclusion that this would be a significantly urbanised frontage. The scheme would involve the removal of a considerable stretch of the hedgerow and several trees along the Chester Road frontage to provide for the access and pedestrian links [***125; 271; 272; 347-349; 350.7***].

495. Travelling out of the village the road user presently has a rural view of fields, hedges and trees and Brook Hall and its parkland to the right. The magnitude of change would therefore be higher for visual receptors travelling out of the village than into it. I would agree with the Council that it would be medium to high depending on the direction of travel with a consequent visual impact of moderate to major. It is however important to recognise that there is new landscaping proposed, including a section of hedgeline behind the visibility splays. Furthermore, there would also be new tree planting along the frontage. The western site boundary would also be reinforced by additional trees and native plants to provide a further visual buffer and a softer edge to the village on the western approach. This mitigation would reduce the visual impact over time, although in my opinion it would still remain significant and adverse for those travelling along Chester Road. It was stated in evidence that the objective would be to soften but not hide what would be a high quality development. It is appreciated that this would be a transient view but it is nevertheless an important one at the entry to the village. In the circumstances I do not agree with the Appellant's landscape expert that overall the rural approach to the village would be enhanced [***125***].

Footpath 8

496. The views from this footpath would mainly be confined to those travelling in a southerly direction between the Chester Road entrance and the stile to the south east of Bailiff's Cottage and Brook Hall. The views along the section descending towards Keys Brook take in various features, including the Peckforton Hills to the east behind the settlement edge of Rookery Drive. Looking towards the site the view would be filtered by the vegetation along the watercourse as well as the trees along the Chester Road edge of the parkland. In the summer months the new houses would be well screened and only

glimpses would be likely. In the winter months the development would be more visible but still filtered by the branches of the various trees. In these views mitigation planting would play a relatively insignificant role [***296***].

497. From the stretch of footpath south of Keys Brook the new development would occupy the skyline behind the boundary trees and hedgerow. The development would be seen as a lateral extension of the settlement edge. At present Grackle Croft is a feature of the view but it is seen at an angle which reduces its prominence. The change would only occur on the right side of the view and during the summer months the trees and hedgerow would provide a good screen. Even in winter there would be a filtering effect and the mitigation planting, especially along the site frontage, would provide a small amount of amelioration [***126***].

498. The footpath user would experience change over a short section of Footpath 8 and only when walking back towards the settlement. Whilst there are views across to the Clwydian Hills in the far distance I am doubtful that they would be materially impeded by the appeal scheme. I consider that there would be a medium magnitude of change and that the visual impact at the start would be moderate and adverse and over time this may reduce slightly but nevertheless the effect would remain significant. This exceeds the minor adverse impact following mitigation proffered by the Appellant but is lower than the Council's major adverse assessment without mitigation [***289; 296; 347***].

Other views

499. From the section of Bishop Bennet Way running along Newton Lane there would be a negligible visual impact even for the more sensitive users of the public right of way. The view in question is about 1.2 km away with intervening trees and hedgerows and an uneven topography. In my opinion it would be very difficult indeed to pick out the new houses within the panoramic view. A section of Bishop Bennet Way runs in a north to south direction from Chester Road to Frog Lane. The southern section, between Russia Hall and Keys Brook, is heavily overgrown with a dense vegetated boundary. In a couple of places I was able to glimpse the roofs of Grackle Croft and there is a more open view point at the southern end, through a field gateway. There was no specific assessment of the impact on this view although the Appellant did submit photomontages of the scheme with and without mitigation. These confirmed that the new development would be seen but at a considerable distance and within a rural panorama which would occupy the majority of the view. In the circumstances I consider that the magnitude of change would be negligible as would be the significance of impact [***295***].

500. I was also asked by third parties to observe the site from the disused railway line which appears to be a permissive path where the public have limited rights of access. The land was elevated at this point and the land is managed as a nature reserve. There are views through to the settlement edge and Grackle Croft, The Rookery and Ravesholme Court are clearly visible. This view is closer than Bishop Bennet Way but the change has to be appreciated in terms of the panorama as a whole, including the influence of the existing settlement edge. In the circumstances I consider that the magnitude of change would be medium and that the significance of effect would be moderate adverse. The

effect of mitigation planting would however reduce the visual impact over time [***218; 306; 350.6***].

501. From Grackle Croft the only public viewpoint would be between the houses at the junction of the private road and Ravensholme Lane. This view has not been assessed by the Council although the Appellant provided a photomontage which included the effect of landscape mitigation. This view, which presently shows a rural backdrop with the Clwydian Hills in the far distance, would be filled with houses. Even at Year 15 there would be a considerable change, which I would judge as of medium magnitude taking account of the context of housing on either side. To my mind the overall visual impact following mitigation would be moderate adverse.

502. The visual change to those people living in Grackle Croft and the properties backing onto the site in Ravensholme Court would be considerable. I was invited to see the site from the rear garden of one of the latter dwellings and I also visited Grackle Croft. Whilst I can fully appreciate the concerns of these residents I reiterate the point that these are private views and can be given little weight in the overall visual assessment.

503. The Appellant has referred to various features that have been incorporated into the scheme, including the creation of a rural green lane along the site frontage, extensive green spaces within the site and lower development densities towards the western boundary. I have taken them into account in my assessment of the visual effects of the scheme.

<u>Landscape assessment</u>

504. The Council has assessed the sensitivity of the landscape to change as medium-high which is slightly lower than for the other two appeal sites. As with Appeal A the visual element features quite strongly. For the reasons already given this is considered to inflate the sensitivity assessment, which I judge to be medium in common with the Appellants' experts. The overall impact on the landscape is considered by the Council to be moderate-substantial adverse which is slightly lower than in the case of the other two sites. However it is considered too high due to the inclusion of visual factors and the magnified sensitivity rating [***123; 291***].

505. Unlike in the other two appeals the landscape expert for Appeal C was the author of the LVIA accompanying the planning application. His choice of study area relied on "landscape character types". These did not reflect the Landscape Character Areas referred to in the Cheshire Landscape Character Assessment but included a consideration of documents such as the VDS and also the expert's judgement following fieldwork. Several seem far wider than could reasonably be considered to be affected by the development of the site. Whilst this approach may be useful in wind farm development affecting an extensive area of countryside, it is less useful in a case such as this where the landscape is perceived in a more localised manner [***127; 281; 284***].

506. In this case there are views of the Clwydian Hills to factor into the consideration of landscape value and the influence of the settlement edge is particularly stark. This is because the 14 relatively recent houses built at Grackle Croft present a line of development which has very little landscape

amelioration. It is the case that the landscaping scheme for that development has not been carried out as approved but at the site visit I observed a relatively narrow planting area between the post and rail fence and the access road. It does not seem to me that this would be sufficient to allow planting that would provide significant mitigation in terms of softening the effect of that harsh development edge [***289***].

507. The landscape strategy would include the retention and reinforcement of the existing western hedgerow and further native tree planting. This would undoubtedly provide a softer settlement edge than exists at present and would be in keeping with the treed hedgerows that are typical of both the Hoofield and Tattenhall Landscape Character Areas. There would on the other hand be a loss of trees and hedgerow along the site frontage, notwithstanding the replanting behind the visibility splays. My conclusion as to the mitigated landscape impact for this site is similar to the other two sites. This is a small section on the edge of both Landscape Character Areas. The significance of landscape change following mitigation would be minor adverse in my opinion.

CUMULATIVE VISUAL AND LANDSCAPE IMPACTS

508. The only cumulative assessment of landscape effects is that undertaken by the Council. As all of the schemes are to the north or west of the village and in relatively close proximity it is clear that there would be additional impacts arising from two or all three developments if all were built out. As the cumulative assessments flow from the individual assessments they will equally suffer from inflated outcomes for the reasons already given [***187; 192; 319***].

Cumulative visual assessment

509. The Purple Book indicates that cumulative visual effects can occur either when developments are combined in a single view or when they are seen sequentially whilst moving through the landscape. As the Council's assessment has derived the cumulative impacts from adding the relevant individual impacts together it is only the combined effects that increase in terms of significance of effect. The sequential effects are the same as in the individual assessments. Due to their relative locations there would only be a few places where all three developments could be appreciated without the viewer moving his or her head from side to side. More common place would be an appreciation of two schemes together in a single arc of vision [***129***].

<u>Chester Road</u>

510. On the approach to Tattenhall the combined cumulative effects would be experienced along a relatively short stretch of road. Site B may be seen in winter at a distance and to one side. It seems more likely that the road user would be mainly aware of Sites A and C on either side of the road when travelling in this direction. For a short space of time the combined cumulative effect would be major adverse in my judgement. Leaving Tattenhall and travelling north the cumulative effect would be sequential in character and would reflect the individual site assessments.

Footpath 8

511. Combined visual effects would occur on the section of Footpath 8 that runs east of Brook Hall in a southerly direction to Chester Road. From the elevated section of the footpath north of Keys Brook the viewer would be able to see developments on Appeal Sites A and B together and Appeal Sites A and C together. By turning the head all three developments would be apparent. On the lower stretch south of Keys Brook Site B would be more recessive and awareness would be focussed on the other two developments. The effect of individual developments on people walking south along this section of footpath would vary between minor and moderate adverse. However these receptors are likely to see two developments in one field of vision for most of the journey. Whilst it would be over a relatively short stretch of footpath the effect would, in my judgement, be major and adverse [***130***].

Bishop Bennet Way/ Newton Lane

512. Along this route the views southwards are restricted by the roadside hedges. I have commented that due to the distance and intervening vegetation, Site C would be difficult to appreciate. There would be a combined cumulative impact from the Appeal A and B developments. However as I have judged the individual effects of these schemes to be of minor adverse significance the combined effect would be no greater than moderate adverse even for the more sensitive user of the public rights of way. The Council's major adverse impact seems to me over stated.

Cumulative landscape assessment

513. It has been concluded that individually the three appeal schemes would have a minor adverse effect on landscape character. If two or more schemes were to proceed the magnitude of change would clearly increase. However, taking account of the proposed mitigation and the location of the sites adjacent to the settlement edge, the cumulative impact on landscape character would, in my opinion, remain of minor significance.

REASONS FOR REFUSAL

514. As has already been noted above, the Council's landscape witness did not address the reasons or putative reasons for refusal. Although these essentially related to landscape issues, which have been dealt with above, there were some further specific allegations to Appeals A and B which need to be addressed. However these should be considered within the context that saved Policy HO 7, which relates to settlement boundaries, is out of date. There is no dispute that housing development on greenfield land adjacent to Tattenhall would be acceptable. Indeed the TNDP allows for further growth in this way. It is inevitable that the village is going to grow in size but it is relevant to note that there is no additional allegation by the Council relating to cumulative impact.

Appeal A: Land adjacent Adari, Chester Road

515. There are a number of roads leading into Tattenhall, but Chester Road is a busier route than some others such as Frog Lane. It is therefore not unreasonable to describe it as "a key entrance point" to the village. For the

reasons given I consider that the scheme would result in a significant adverse visual impact when approaching along this route. The development would inevitably result in an expansion of the village northwards although it would be well contained by the existing western hedgerow boundary and Keys Brook. For the reasons already given I do not support the Council's concern that there would be a "vertical spread" of development due to the gradients of the land. Indeed the development would sit on the same contours as existing development in Rookery Drive and Greenlands. Taking account also of the benefit derived from mitigation planting and the set back of buildings from the front and side boundaries, this development could not be described as a "sprawling incursion into the countryside" [***176; 177***].

516. The existing settlement edge is defined by the houses along Rookery Drive. This is an estate development that could reasonably be described as "suburban" in character. To the extent that the appeal development would also comprise modern housing it could also be similarly described but it offers the opportunity for a well designed layout and an improved settlement edge. Houses would be well set back from the road frontage and the simple priority junction would result in minimal intervention to the existing road layout. The allegation of "a suburbanising effect on the rural area" does not add anything further in terms of harm from the significant landscape and visual impacts that would arise from the development [***179***].

Appeal B: Land rear of 15-38 Greenlands

517. The reason for refusal refers to the breach of the natural northern boundary of the village, which is considered to be Keys Brook, and the visibility of the site on rising ground. It is the case that the existing settlement does not extend north of Keys Brook but there seems no specific reason other than this is where the estate development along Tattenhall Road stopped. Unlike the other two sites this land rises up from the stream and the consequent visual impacts have been addressed above. Containment would be provided by the existing and proposed boundary landscaping but there would be a lateral spread of development and the adverse impacts arising from that have been dealt with in the visual assessment [***244; 324; 344***].

CONCLUSIONS

518. The above sections have concluded that each of the appeal schemes would have adverse impacts on the landscape in terms of the resource itself, although in each instance this would be relatively minor. This would remain the case if two or more schemes were to proceed, especially taking account of landscape mitigation. The Framework recognises the need to protect and enhance local landscapes and the appeal proposals, both individually and cumulatively, would be contrary to this objective, albeit to a limited degree. In similar terms there would also be some conflict with saved Policies GE 1, ENV 2 and ENV 24 of the CLDP.

519. The adverse impacts on the visual amenity of those receptors interacting in various ways with the landscape would be more serious. Whilst each proposal would differ in terms of the harm it would cause in this respect, I am unable to conclude that one scheme would be more benign than another. Over time mitigation planting would help assimilate each of the developments into the

receiving landscape but it is considered that a residual effect would remain with all of them, which would be adverse and harmful. There would also be cumulative impacts where two or more developments would be seen in one view. These would add to the significance of effect that each scheme would have individually. The Framework seeks to protect and enhance valued landscapes and it is clear from the many local representations to these appeals that the landscape to the north and west of Tattenhall is of great importance to the local community. The deleterious effect on the visual perception and enjoyment of this area of countryside would not comply with the Framework in this respect.

CONSIDERATION FOUR: THE EFFECT ON THE LAYOUT AND CHARACTER OF TATTENHALL AND ITS HERITAGE ASSETS

THE COUNCIL'S POSITION

520. There are allegations in each of the reasons or putative reasons for refusal that there would be an adverse effect on the character of Tattenhall. These are all worded slightly differently and in the case of Appeal C reference is also made to lack of respect for the prevailing layout of the village. The Council offered no evidence on these matters and at the Inquiry it was clarified that its concern solely related to the effect on the landscape and rural setting of the village. Furthermore, the Council raised no objections to the effect on the Tattenhall Conservation Area or that there would be an adverse impact on those views considered to be important in the VDS, Conservation Area Appraisal or TNDP. Nevertheless these were matters of concern to local objectors and the Parish Council and some were raised by the Appellants themselves in relation to each other's schemes [***3; 92; 148; 151; 261; 262; 269; 321; 347***].

INTEGRATION WITH THE EXISTING SETTLEMENT

521. A major objection by local people was that the proposals would fail to integrate with the existing village character but would be large "bolt-on" suburban estates. It is the case that each site adjoins the existing settlement boundary and that apart from the main access points, there would be little opportunity for linkages or connectivity to existing residential areas. Whilst some potential was advanced in relation to Appeal C, the evidence suggests that both Grackle Croft and Ravensholme Court are not part of the adopted highway and do not provide public rights of way. The potential for connections to the adjoining residential area thus seems uncertain in the case of Appeal C [***133; 142; 147; 149; 151; 218; 309; 329-331; 342; 344***].

522. The Council made clear that greenfield expansion would be necessary in order to satisfy future housing needs. The TNDP also envisages growth beyond the existing settlement boundaries. Reference was made in some representations to the availability of brownfield land for development. However apart from the sites that have already been granted planning permission there was little evidence of further deliverable brownfield sites within the village. Indeed the conservation area with its heritage assets and important open spaces make any significant development within the settlement boundary unlikely. Over the years Tattenhall has grown outwards and due to the heritage constraints this has mainly been to the north and west of its historic core. The appeal

developments would continue this pattern of growth [***34; 45; 301; 302; 327; 350.3***].

523. One of the consequences is that much of the existing urban edge comprises rear garden boundaries. In the circumstances it is likely that any new greenfield development would have limited opportunity to make direct connections into existing residential areas. None of the new developments would be close to the historic core of the village and all would be seen against a backdrop of modern housing. The implications of this in terms of the rural setting of the village have been dealt with under Consideration Three.

DESIGN AND LAYOUT OF THE DEVELOPMENTS

524. The Taylor Review referred to the problem of creating unattractive housing estates around rural towns and villages which lead to dormitory settlements. It is the case that each site would be developed by a major housebuilder. There were objections that the developments would be standardised, bland and inappropriate to the village character. However I observed that there is considerable architectural variety in the village. There is no reason why the appeal schemes should not result in attractive additions, which reflect the positive features of its character. Proposals A and B are in outline form but there is nothing in the submitted Parameters Plans or Masterplan to indicate that successful developments could not be achieved. Whilst the Proposal B would include some 2.5 storey houses it would be within the Council's control at reserved matters stage to ensure that such dwellings were appropriately sited and not unduly prominent [***133; 147; 149; 151; 179; 329; 331; 337; 342; 350.8***].

525. The Appeal C scheme includes full details and therefore it is possible to make a more informed judgement about the form, layout and appearance of the development relative to the existing village. The *Building for Life 12* methodology is recommended in the TNDP as a tool to assessing the attractiveness and sustainability of new development. The VDS also includes policies relating to the design, form and character of new development. Overall it can be seen from the Design and Access Statement and the urban design evidence to the Inquiry that the scheme has been planned to respect the existing character and layout of the village. I note third party comments about chimneys and would agree that the detailed drawings of individual house types indicate that these would not be as prevalent as indicated on the street scene depictions [***268-271; 300; 306; 349***].

EFFECT ON THE TATTENHALL CONSERVATION AREA

526. None of the appeal sites are within the Tattenhall Conservation Area which mainly lies to the south east of Ravensholme Lane and Rookery Drive. Its boundaries have recently been rationalised to exclude several modern developments, including the housing to the east of Ravensholme Lane. Due to this intervening development, views of the listed church and the adjoining landscaped open spaces would be preserved. However there is also a small extension to the conservation area that runs along Chester Road and widens out to incorporate Brook Hall Cottages. The frontage to Site A and the eastern section of the frontage to Site C adjoin its boundaries at this point. It is

therefore necessary to consider whether there would be an effect on its setting [***36; 92; 180; 194; 268.2***].

527. The Conservation Area Appraisal refers to the approach along Chester Road and the way it is enclosed by high hedgerows until they become sparser and the rear of houses in Rookery Drive and Ravensholme Lane come into view. It refers to the instant "wall" that these housing developments present and the distinct and imposing lines at this entrance to the village. Such a negative element is considered to contrast with the incremental approach along Burwardsley Road where properties become progressively closer together. The recently built dwellings in Grackle Croft could also be added as they present a bleak line of development at the village edge. The landscaping has not been provided in accordance with the requirements of the planning permission. Whilst the Council is taking action to rectify this, I have some doubt about whether there would be sufficient space for an effective landscaped buffer that would successfully mitigate the adverse impact of this built development on its rural surroundings [***36; 178; 179; 195; 303; 304***].

528. There is the potential to improve this situation by providing better integrated developments with a landscaped edge. In the case of Site A the new dwellings would be well set back from the Chester Road frontage and there would be a belt of screen planting to reinforce the existing hedgerow along the western edge. There is no reason why the settlement edge could not be improved by the Site A development. Site C though has a relatively long frontage to Chester Road. Notwithstanding the proposed planting the new houses, many of which would be two and a half storeys in height, would present an urbanised appearance which would not be in keeping with the present rural approach to the village. I am not convinced that these dwellings, notwithstanding the spaces between them, would result in a gradual transition from countryside to village that could be compared with Burwardsley Road, for example. Plot 68 would provide some mitigation by reflecting the attractive architecture of Brook Hall Cottages. However this would not compensate for the adverse impact on the setting of the conservation area that would be created along this stretch of Chester Road. This would lead to less than substantial harm in terms of the designated heritage asset but would nevertheless be a matter to be considered later in the planning balance [***148; 151; 179; 195; 198; 261; 268.8; 304; 305***].

529. The Conservation Area Appraisal mentions the importance of roadside hedgerows. Whilst there would be some removal in order to accommodate the accesses, both of the Appeal A and C proposals include replanting behind sight lines. There is no suggestion that the existing hedgerows have heritage significance. The provision of a right turn lane at both junctions with Chester Road has been replaced in favour of simple priority junctions. This means that the intervention in terms of changes to the highway would be minimal. It is the case that there would be additional footways created but these are not an uncommon feature in the conservation area. [***181; 261***].

530. No specific mention is made of the significance of Brook Hall Cottages in the Conservation Area Appraisal. These are an attractive pair of red brick properties built originally on land owned by the Brook Hall Estate. The houses have distinctive arched windows and these have been reflected in the house on

Plot 68 of Site C. Brook Hall Cottages are not statutorily listed although they are considered to be of some local interest. Due to the alignment of Chester Road they provide a "visual stop" when exiting the village. Due to the set-back of the houses on Site A this would not be affected by the Appeal A development. There is no evidence of any historic link between the curtilage of the cottages and either Appeal Sites A or C. Neither of the nearby developments, including the limited changes to the highway to accommodate the new accesses, would materially affect the significance or setting of these dwellings [***181; 197; 268.6; 300***].

531. There is no statutory duty relating to the setting of a conservation area although the Framework requires it to be taken into account when considering the effect on the significance of the heritage asset. For the reasons given above Proposal C would cause some harm to the setting of the Tattenhall Conservation Area and there would thus be some conflict with saved Policies ENV 37 and ENV 38. Proposal A would preserve the setting of the conservation area and has the potential to enhance the settlement edge. It would accord with the aforementioned policies [***30.1.6; 198***].

EFFECT ON VIEWS

532. The Conservation Area Appraisal records important views from the conservation area but none would be affected by the appeal developments. The VDS and TNDP refer to other key distinctive views and seek to ensure that the height, massing and appearance of new development do not adversely affect them. Most of these views would remain unaffected by the appeal developments [***35; 194; 195; 224.2.14; 252; 306; 347***].

533. From Chester Road the views across the fields to Brook Hall would not be materially affected by any of the development proposals due to the position of the proposed buildings and the existing alignment of the road. The issue of the effect on views towards Beeston Castle and the Peckforton Hills was considered in the previous section. However there would be no effect from the edge of the conservation area, which defines the important view, due to the position of existing development.

534. The Appeal C development could be seen in the view from the disused railway line towards the village, the Peckforton Hills and the Sandstone Ridge. This is mentioned as an important view in the TNDP although it is relatively well screened in most places by existing vegetation along the railway embankment. The land is managed as a local wildlife reserve and there is limited public access. I have considered the effect on this view in the previous section and concluded that there would be a moderate adverse visual impact, which would be a matter for the final planning balance [***10; 218; 306; 350.6***].

535. The Millennium Walk is a signposted perambulation around the village of roughly a mile's length. It is an attractive amenity which is enjoyed by visitors and residents alike. One section goes along Ravensholme Lane to the junction with Chester Road where it turns south east back towards the village. There are views towards the rising land north of Keys Brook and towards Brook Hall. From the field gate of Site A the new development would be apparent although at present this view also includes houses in Rookery Drive. Other than that

the wider rural views from this walk would not be impinged by the proposed development of Site A [***13; 345***]

CUMULATIVE IMPACT ON VILLAGE CHARACTER

536. The VDS seeks to encourage incremental growth to reflect the way the village has grown in the past. It does not favour prominent development that would visually dominate the village or significantly change its character. Tattenhall is clearly capable of accommodating growth and this is recognised in the emerging Local Plan through its designation as a KSC. The TNDP also welcomes growth, albeit that it seeks to restrict this to small scale developments of up to 30 dwellings. Change is not necessarily harmful and if there is objection to the scale of development on village character it is necessary to identify in what way it would have an unacceptable impact. The effect on infrastructure and community facilities is dealt with elsewhere in the Report. However here I consider the less tangible concern which was expressed time and again by local people and the Parish Council. This related to the effect on the identity and sense of community which was considered to make Tattenhall a special place in which to live [***31-35***].

537. The fear of local people is that these qualities would be lost if such a large influx of new residents arrived in a relatively short space of time. I have a great deal of sympathy with this point of view especially as it would appear that the rapid period of housing growth in the 1960's and 1970's led to a largely dormitory settlement. I was told that it took many years to establish the vibrant and well integrated community that exists today. [***65; 68; 142; 216; 263; 326; 329; 331; 334-336; 342; 346***].

538. However the Council has not refused planning permission for the appeal developments on the grounds of cumulative impact. In reaching that conclusion, the Members would have been aware of other developments that they have approved in and around the village. There is no reason why new residents should not be welcomed into the community. They would make their own contribution to village life and the amenities and services it offers. A small example is the existing local football club, which recognises the benefits of more children to play in the teams and enjoy the sport. Whilst the opposition from some local businesses is noted there is no reason to suppose that newcomers would not support village facilities in the same way as existing residents. It is not disputed that the shops and services of the village are local and do not cater for every need. However they do provide for many day to day requirements and would benefit from the additional revenue that would be injected into the local economy [***327; 351***].

539. The village would undoubtedly change and it would grow significantly in size if all of the developments were to go ahead. It is the case that none of the appeal schemes include new employment uses. The concern of Lord Taylor about the creation of "dormitory" settlements in rural areas is appreciated. However, there is no reason why Tattenhall should suffer in this way to any greater extent than it does already. Some new residents would undoubtedly travel outside the area for work. However some would find jobs locally and others would work from home. There would also be people who would not be employed at all [***133; 337; 341.1; 243***].

540. Taking all of the above factors into account, it is very difficult to conclude, that the identity of the village would be severely harmed or that the special qualities that currently exist would be unacceptably eroded.

EFFECT ON OTHER HERITAGE ASSETS

541. Brook Hall is an attractive country house in an elevated position to the north of the village. It stands within a parkland setting but neither the house nor its grounds are listed as being of architectural or historic importance either statutorily or locally. It is outside the conservation area and even if it is considered to be a non-designated heritage asset it is not considered that either of the Appeal A or C schemes would affect its setting. The eastern boundary of the parkland landscape appears to be the hedgerow to the east of Footpath 8 which is separated from Site A by an intervening field. The southern boundary is defined by the treed frontage of Chester Road [***13; 197; 262***].

542. The Appeal A and C developments would result in the loss of some ridge and furrow earth works, which were part of the medieval field system around the village. Whilst this is a non-designated heritage asset of local interest it is far from intact and has been severed and fragmented by development, such as the construction of Rookery Drive. On the ground itself the feature has little visual distinction and, in my opinion, its loss would be of little heritage significance. The connection with the Brook Hall estate seems a tenuous one and there is little to support the view that the property helped slow down the erosion of ridge and furrow when it was built in the 19th century. The recording of relevant archaeological information could be controlled through a planning condition, which would be an appropriate response [***196; 262***].

CONCLUSIONS

543. For the reasons given above, Appeal C would have some adverse effect on the setting of Tattenhall Conservation Area and there would be some conflict with saved Policies ENV 37 and ENV 38. The other two appeal proposals would have no such impact and therefore would comply with the aforementioned policies. There would be no material loss of significance in terms of other undesignated heritage assets or important views from any of the schemes, apart from in respect of Appeal C and the view from the disused railway line. There is no reason why these should not be well designed additions to the existing settlement. Whilst the concerns relating to a large influx of new residents is acknowledged there is little evidence that such a change would result in unacceptable harm. The overall conclusion is that there would be no adverse effect on the layout and character of Tattenhall and its heritage assets.

CONSIDERATION FIVE: WHETHER THE DEVELOPMENTS WOULD BE ACCESSIBLE TO A RANGE OF TRAVEL MODES AND WOULD PROMOTE SUSTAINABLE TRAVEL CHOICES.

544. The Council has raised no objections on grounds of accessibility and it considers that all of the appeal schemes would offer opportunities to travel by modes other than the car. However local objectors disagree and believe that the developments would be inherently unsustainable because of their reliance

on the car. Tattenhall has been designated as a KSC in the emerging Local Plan, which means that it offers a level of services and facilities to meet local needs and sustain small-scale development. Clearly there will be many journeys that will necessitate travel further afield and many, although not all, of these would be undertaken by car. However that is likely to be the case in many housing locations because it is very unlikely that all requirements would be found on the doorstep [***31; 92; 309; 329; 335; 337; 343; 344; 350.10***].

WALKING AND CYCLING

545. There was much discussion as to whether new residents would walk into the village from the appeal sites. The Institution of Highways and Transportation document: *Guidelines for Providing for Journeys on Foot*, advises that acceptable walking distances vary between individuals, the nature of the walk and the purpose for which it is being conducted. The guidance suggests that for school or work a "desirable" distance would be 500 m and the "preferred maximum" would be 2 km. Tattenhall is clearly not equivalent to a town centre location and so the most appropriate advice for other journeys suggests respective distances of between 400 m and 1.2 km.

546. In the case of Appeal A the village centre is about 675 m from the centre of the site, the distance from the primary school is around 450 m and the doctor's surgery is about 255 m. Site C is a little further out but in my opinion the walk along Chester Road would still be a relatively easy one of around 730 m to the village centre and 555 m to the school. These would both be acceptable walk distances especially bearing in mind that there would be a continuous footway connection from the site access. Local objectors referred to the state of existing footways which are often narrow and difficult to negotiate. However in many cases I observed that the width has been substantially reduced due to encroaching vegetation and poor maintenance [***199; 200; 309; 332; 345***].

547. Site C also includes proposals for drop kerbs and tactile paving. These would aid movement for those with mobility impairments and also parents with pushchairs. Although Chester Road can be busy at times it is still essentially a country road and, in my opinion, the walk is a pleasant one through the village to the school and the High Street. Although the potential for links to Grackle Croft and Ravensholme Lane from Site C was mooted there is no guarantee that this would happen, due to land ownership issues [***218; 309***].

548. In the case of Appeal B, the centre of the site would be between about 950 m and 1.3 km from the village facilities, school and doctor's surgery. There is no reason why some trips should not be on foot as again the walk is relatively easy, pleasant and secure. The proposal includes a new section of footway along the site frontage to link with the existing pavement on the western side of Tattenhall Road close to its crossing with Keys Brook. I heard from objectors that many of the Greenlands residents drive to the village, including to the school. However it is not known whether these are trips combined with other purposes such as journeys to work, for example. It is the case that some incomers may also drive the short distance into the village. However the most relevant factor is that the site offers a reasonable choice to use other modes of travel [***26; 257; 335; 344; 395***].

549. All sites would also provide the opportunity to cycle. It is acknowledged that the roads around the village are narrow in places and there are no dedicated cycle lanes. Nevertheless National Cycle Route 45, which runs between Salisbury and Chester, passes through the village. From my site visits it is clear that the area is popular with cyclists, who are frequently seen within the vicinity. There is no evidence that cyclists within this area are prone to high accident risk and there is thus no reason why new residents would not undertake some journeys on a bike. Some may cycle to Chester and I heard from one of the highway expert witnesses[79] that this journey took about half an hour. However it is appreciated that for many people such a journey would seem daunting, especially if using main roads such as the A41. On the other hand local recreational or work trips could successfully be undertaken on a bike from all of the appeal sites [***12; 309; 338***].

BUS TRAVEL

550. The village is served by the 41/ 41A service, which runs between Chester through Malpas and to Whitchurch. The bus travels along Tattenhall Road, the High Street and Frog Lane. In the Chester direction there is an hourly weekday and Saturday service and the journey takes about 30 minutes. In the Whitchurch direction there is a less regular service that takes about 45 minutes. The regularity of the service allows villagers to plan their trip and the bus operator has confirmed that it is used by workers, shoppers and some school children [***201; 341.4***].

551. The bus operator also confirmed that the increased patronage arising from the appeal developments would be welcome and this would help support the service in the longer term. Whilst a rural service could not be expected to be as frequent as one in an urban area, that available to Tattenhall seems to me to be relatively good. Included in the Planning Obligations is a financial contribution to improve the level of service provided by the bus to half hourly. This would only be triggered if all three developments proposals were implemented. Neither the Council nor the Appellants believe this to be necessary in terms of the CIL Regulations. It is considered that an extended bus service would offer a considerable benefit to new and existing residents. However it is difficult to conclude on the basis of the customer projections, that such improvement is required in order for the appeal developments to go ahead [***202; 338; 347; 350.10; 391***].

552. The Planning Obligation for Appeal B includes provision for a new bus stop outside its site. There is also provision for another bus stop on the eastern side of the road if this is considered necessary by the Council. This would mean that those using the bus would have the service close at hand. The other two sites are further away from bus stops but still within a reasonable walking distance. The Planning Obligations for Appeals A and C include a payment to improve accessibility to existing bus stops in the High Street. In addition, there would be a new cantilevered bus shelter provided to the bus stop in Tattenhall Road, south of its junction with Park Avenue. All of these improvements would encourage bus patronage by improving facilities for

[79] Mr Bowers, who gave highways evidence on behalf of Barratt Homes.

people wishing to use this mode of travel and making it a more convenient and attractive transport opportunity [***391; 397***].

553. There is no doubt that many journeys would be undertaken by car as happens at present. Tattenhall is essentially a large village within a rural area and so this is not unexpected. Any new growth in the village would lead to an increase in car travel. However the important point is that there are opportunities to exercise other modal choices and this seems to me to accord with Paragraph 29 of the Framework. It is therefore concluded that the developments would be accessible by a range of travel modes and would promote sustainable travel choices. They would comply with saved Policy TR19 in the CLDP and the Framework in this respect.

CONSIDERATION SIX: WHETHER THE DEVELOPMENTS WOULD GENERATE TRAFFIC THAT WOULD CAUSE UNACCEPTABLE CONGESTION OR UNDUE HARM TO HIGHWAY SAFETY.

INTRODUCTION

554. The Council, in its role as Highway Authority, is satisfied that the appeal developments, either alone or in combination, would not have an adverse impact on the local highway network apart from at the Chester Road/ A41 junction. The modelling took account of other schemes recently granted planning permission, including The Oak Room, the Frog Lane Care Community and the Redrow housing development [***92; 204; 313***].

555. There was a great deal of local objection to the development proposals on traffic grounds. During my site visits I drove across the local highway network which runs in and out of the village. The A41 is to the west of Tattenhall and on 11 July I travelled along this busy main road in both directions, including northwards into Chester. I also drove through its junctions with Rocky Lane, Frog Lane and Chester Road during the evening peak between about 1730 and 1745 hours. On 12 July I stood and observed the Chester Road/ A41 junction during the morning peak between about 0820 and 0840 hours. On my visit the previous day I had observed the parking around Tattenhall Primary School between about 1515 and 1545 hours [***12; 327-329; 332; 333; 336; 337; 340; 341; 350.9; 350.11***].

IMPACT ON THE LOCAL HIGHWAY NETWORK

556. Local objectors did not consider that the local roads could accommodate the traffic generated by the appeal developments. As mentioned above many are relatively narrow country lanes. They are used by heavy goods vehicles as well as local buses and agricultural vehicles. This also appears to be a popular area for cyclists. Due to road alignments and limited visibility it is often difficult to overtake. However there is little evidence that the local road network suffers unduly from congestion or that accidents are particularly prevalent. Tattenhall is a village that is destined for growth at some level and it is difficult to conclude that the traffic that would be generated by the appeal developments would cause unacceptable harm to the safe and efficient operation of the local network. It is a matter of some weight that the local Highway Authority, who would be expected to be familiar with their own road system, has not objected to the appeal developments [***313; 335; 341.1; 350.10***].

557. The additional traffic would only result in a relatively small increase in the overall traffic flows along the stretch of the A41 adjacent to the Chester Road junction. Local objectors referred to the new junction of the A41 and A5115 at Broughton, which are several miles north of Tattenhall in the Chester direction. Reference was made to its complex and confusing design and the long queues that build up around it. Some of the development traffic would inevitably go through this junction but there is no evidence that the impact of the additional traffic arising from the appeal developments would result in capacity or safety issues. Reference was made to the refusal of planning permission for further development at Saighton on account of the junction. The details of this scheme are not known but what is clear is that the Council did not refuse permission on these grounds in the present appeals [***341.2; 350.11***].

558. Within the village several of the roads are made narrower by kerbside parking. This particularly occurs along the sections of Chester and Tattenhall Roads that adjoin the school. From my observations it was generally a relatively short lived problem connected to the beginning and end of the school day. There is only room for one passing vehicle at a time and if two vehicles get caught travelling in opposite directions it is possible that one would need to move across onto the footway. Whilst some new residents may seek to park in a similar way there is limited kerbside parking capacity. This would be available on a first come first served basis. In the circumstances it seems unlikely that the new developments would make matters materially worse. In any event if this is considered a risk to road or pedestrian safety, the Highway Authority could impose parking controls [***341.3***].

IMPROVEMENTS TO A41 / CHESTER ROAD JUNCTION

559. On the basis of the transport modelling it was agreed between the Highway Authority and the Appellants that under existing conditions the junction operates well within capacity, during both peak periods, with only limited queues. This situation would continue to be the case with traffic growth from the other residential developments. However, when two of the appeal schemes and the Redrow development are added, the modelling shows that the junction would exceed capacity and queues would build up to an unacceptable level during the morning peak [***204; 205***].

560. The main problem experienced at this junction is that the majority of vehicles are turning right towards Chester and have to wait for a gap in the main traffic flow. This explains why the problem is worse in the morning peak as people travel to work in the Chester direction. Those travelling south to places like Whitchurch would reasonably be expected to join the A41 at the Frog Lane or Rocky Lane junctions [***12; 340.1***].

561. It is proposed to increase the capacity of the junction through the introduction of a right and left turning lane. This would be delivered through the Planning Obligations which include a mechanism whereby the provisions come into effect when at least two of the appeal developments are implemented. The Highway Authority did not consider it necessary to carry out the improvement if only one of the appeal schemes went ahead. With the improvement in place, the modelling shows a significant reduction in the queue in the morning peak and the junction operating close to, but within, capacity [***206; 340.1; 390***].

562. My observations confirmed that the junction appears to be operating relatively well during the morning peak at the moment. I observed that the queues varied in length and generally dissipated quite quickly. Sometimes no vehicles were waiting and at other times there were two or three. At one time I counted eight. However an average of two over the whole peak would not seem unreasonable. One objector questioned the time period chosen for the morning peak, considering it should start earlier. However the Transport Assessment for Appeal A indicates that this was derived from survey data collected between 0730 and 0930 hours. It seems a reasonable period to capture main commuting traffic. There will of course be shoulders either side of the chosen peak, which in this case was between 0800 and 0900 hours [***206; 336***].

563. Local objectors have criticised the data collection and the modelling. The data input is measured in "passenger car units" and so does take account of lorries and larger vehicles in terms of flows through the junction. Trip rates were derived from the TRICS database. This is a standard tool and objectors suggested no better way of measuring trip generation. It is understood that trip assignment was based on existing travel behaviour and it is not unreasonable to assume that the travel patterns of new residents would mirror that of the existing population. There are centres of employment to the south as well as to the north and so the trip distribution north and south is not considered inappropriate. For all of these reasons it is considered that the modelling is robust and gives a reasonable assessment of the existing and projected future operation of the A41/ Chester Road junction [***206; 340; 350.9; 315***].

564. There is also concern from local people that the proposed improvements would not work in practice. It is the case that the model indicates that the improved junction would be operating within, but very close to, capacity in the morning peak with all developments in place. Objectors say that this leaves no room for prediction error and that the DRMB recommends 75% of maximum capacity. However the DRMB standard is mainly applied to trunk roads which are operated by the Highways Agency as part of the strategic road network. In this case the junction is part of the local road network where a less robust approach can be taken. The Highway Authority is satisfied that it would operate satisfactorily in terms of capacity. It seems unlikely that it would have reached this conclusion if it felt that unacceptable congestion would ensue [***208; 340.1; 341.2; 350.9***].

565. Furthermore, traffic count data for 2013 shows a reduction in peak traffic flows at the junction and along this section of the A41. This is criticised on the basis that the Department for Transport figures show that annual average daily traffic flows to 2011 have been steady. However the two data sets are not comparable and in any event the latter does not extend to 2013. From this information it is apparent that base flows are falling, which would increase the robustness of the modelling based on the 2011 data [***206; 340.2***].

566. From my observations and the other evidence it is clear that lorries and buses do use the junction and may turn left. Due to the site constraints the two lanes would only be 2.5 metres wide each and this would be insufficient to hold two lines of traffic if one of them included a large vehicle. However the

numbers of large vehicles are only a relatively small proportion of the total flow and so whilst there would be some temporary capacity reduction, this would not render the improvements useless as claimed by one objector. It is considered though that capacity would only be improved to a limited degree because there are relatively low left turning movements. Queues would certainly not be eliminated and it is likely that drivers would have to wait a little longer at the junction at times during the morning peak. However it is concluded that with the improvement in place the junction would operate satisfactorily if two or three of the proposed developments went ahead [***340.1***].

SITE ACCESS PROPOSALS

567. Each of the appeal schemes now proposes a simple priority junction rather than a priority controlled junction with a right turning lane. Appeal A includes both possibilities but the Appellant has made it clear that the former option is the preferred choice. The designs of these new accesses could be achieved within the existing limits of the adopted highway without any need to reduce the width of existing footways. The Highway Authority is satisfied that such junction arrangements would operate safely in all three schemes [***4; 207; 313***].

568. Local objectors do not consider that a T-junction would be an acceptable form of access onto Chester Road. Whilst this criticism was made in respect of Appeal A it could equally well apply to Appeal C. However the objections are based on DMRB guidance and Chester Road does not exhibit the characteristics of a trunk road which this advice is primarily directed to address. Following the implementation of Appeal B, both of the accesses would be within the 30 mph speed limit and there is no reason why the guidance in Manual for Streets and its companion Manual for Streets 2 should not be applicable. At the end of the day both the DMRB and the Manual for Streets are advisory and should be treated as such. The accesses have been deemed satisfactory by the local Highway Authority who is charged with ensuring that the local highway network operates in a safe and efficient manner [***328; 332; 333; 340.4; 350.9***].

569. There was considerable local complaint about the narrow footway on the western side of Chester Road. It is appreciated that this is well used by pedestrians travelling to the doctor's surgery and also by those walking between the houses in Ravensholme Court and Grackle Croft and the village centre. It is also part of the Millennium Walk used by local people and visitors alike. I was told that it is regularly used, including by parents with pushchairs and those with mobility impairments. It is understood that the Parish Council is looking at the condition of footways within the village generally. However this is an existing problem and the Appeal A scheme would not result in any change to make the situation worse. The proposal would however include a wider 1.8 m footway on the eastern side of Chester Road which would run from the site access and join with the existing footway to the north of Rookery Drive. This may provide a more attractive alternative for some users, although it is appreciated that they would need to cross Chester Road when travelling into Ravensholme Lane [***207; 332; 340.3***].

570. Most of the objections related to the access proposals of Sites A and C onto Chester Road. However it is worth noting that the Transport Assessment to the Appeal B scheme recorded peak hour flows along Tattenhall Road that were very similar. Not only does this indicate that Chester Road and

Tattenhall Road provide main routes into the village but also that in each case a simple priority junction would provide a safe and acceptable access.

CONCLUSION

571. For all of the above reasons it is considered that the appeal developments both individually and cumulatively would not cause harm in terms of congestion or highway safety. There would be no conflict with relevant saved policies in the CDLP, including saved Policy TR19. The Framework makes clear that development should only be prevented on transport grounds where the residual cumulative impacts of development are severe. It is concluded that this is not the case here [***30; 39***].

CONSIDERATION SEVEN: THE EFFECT ON NATURE CONSERVATION INTERESTS.

INTRODUCTION

572. The Council has raised no objection on the grounds of ecology although there were objections on this matter from local people. There were also objections from the Appellants on each other's schemes in relation to the issue of GCN, which are a Protected Species. For this reason there was detailed evidence presented to the Inquiry on the matter but in the absence of any formal cross-examination I had to test it myself through questioning of the three expert witnesses [***148; 150; 151; 218; 260; 320***].

573. The *Habitats Directive* is transposed into UK law by the *Conservation of Habitats and Species Regulations 2010* which is commonly known as the *Habitats Regulations*. It provides for the designation and protection of European Sites. None of the appeal sites fall within this category and there are no such sites that would be affected by the proposed developments. Accordingly there is no requirement for an Appropriate Assessment to be carried out before decisions can be made on the appeal developments. Paragraph 119 of the Framework is not relevant to these appeals [***14; 38***].

574. Under Regulation 41 of the Habitats Regulations, it is a criminal offence to deliberately capture, injure, kill or disturb a wild animal of a European Protected Species or to damage or destroy its breeding site or resting place. Regulation 53 allows Natural England to grant a licence that would set aside the criminal offences under Regulation 41, which is often called a "derogation licence". There are various tests that have to be satisfied before a licence is granted. The licensing process is separate from the planning regime, but is relevant because under Regulation 9(3) of the Habitats Regulations the Secretary of State, as the competent authority in this case, must have regard to the requirements of the Habitats Directive in exercising his functions.

575. The *Morge judgement*[80] dealt with the extent and nature of the duty imposed by Regulation 9(3) when considering whether to grant planning permission. It was concluded that the decision-maker did not have to carry out the assessment evaluation that would be made by Natural England in deciding

[80] Morge v Hampshire County Council – Supreme Court judgement handed down on 19/1/11.

whether to grant a derogation licence. Unless it is clear that a derogation licence would not be given, planning permission may be granted [***213***].

GREAT CRESTED NEWTS (GCN)

Appeal B: Land rear of 15-38 Greenlands and Appeal C: Land opposite Brook Hall Cottages, Chester Road

576. In the case of Appeal C the Appellant's ecologist and the Council's Biodiversity Officer agreed that there would be no need to apply for a derogation licence. There are no ponds on the site itself and although there are ponds within 250 m these were considered to be of negligible value to GCN. It was considered that avoidance measures could be taken, which did not need to be licensed. There was some debate at the Inquiry about whether a licence would be needed or not but no suggestion that it would not be granted [***225***].

Appeal A: Land adjacent Adari, Chester Road

577. In the case of Appeal B there are also no ponds on the site itself. However the ponds on Appeal Site A would be within 250 m and so it was considered necessary to apply for a derogation licence by the Appellant's ecologist. It is proposed to carry out a further GCN Survey in preparation for the licence. This may be considered as a similar situation to Appeal Site C where no licence was deemed to be necessary. However it is unnecessary to consider the matter further because no-one suggested that a licence would not be forthcoming if it was considered necessary by Natural England [***218; 255; 308***].

578. The evidence shows that there are GCN present in two ponds on Appeal Site A site which would be removed for development. The main breeding pond is on land outside the appeal site and adjacent to the western boundary. In order to mitigate for the loss of the existing newt habitat it is proposed to create three new ponds on land to the north of Keys Brook and a fourth new pond on the south side of the stream within the green buffer area. The northern section of land would be maintained and managed as an ecological area free from development. There was a great deal of debate about whether the mitigation strategy would be successful. The main area of dispute related to whether the existing population would be fragmented due to the presence of Keys Brook. It is the case that at certain times of heavy rainfall the stream flows quickly. Although GCN are aquatic creatures it is possible that at such times they may have difficulty swimming across. However there are alternative possibilities such as the provision of bridges and these could be designed with sufficient shelter to avoid the creatures being picked off by predators. In any event an adult newt, with its unpalatable protective skin is unlikely to provide a tasty morsel for birds to eat [***16; 21; 210; 212; 260; 320***].

579. An additional concern related to predatory fish, which are present in other ponds north of Keys Brook. From the evidence I see no reason why the new ponds should not be designed to a size and depth that would avoid such colonisation. Furthermore this could be controlled through the management regime which would be the subject of a planning condition [***212.4; 260; 320; 38***2].

580. For all of the above reasons it is concluded that the Appeal A proposal would adequately protect the GCN population and that a derogation licence is likely

to be granted. This view is shared by the Council's Biodiversity Officer. In fact the provision of a dedicated ecological mitigation area with a proper management regime could be considered to represent an enhancement to the habitat of the GCN. Even if the Secretary of State still has concerns he can draw comfort from the fact that the other two ecologists agreed that a derogation licence would be likely to be granted even though they considered that the present mitigation scheme would need to be changed [***209.2; 210.5; 211; 214; 260; 320***].

OTHER PROTECTED SPECIES

581. Appeal Sites A and B adjoin Keys Brook and Appeal Site C adjoins Mill Brook. The Environment Agency has referred to the ecological value of these watercourses and this has also been mentioned by Councillor Jones. The Appellants' surveys have not revealed evidence of water voles although otters have been seen in Keys Brook. It is indicated that the Cheshire Wildlife Trust have identified both of these protected species in Keys Brook and the potential for such species in Mill Brook. However no specific evidence was presented to support this contention. In any event a planning condition has been suggested for an 8 m wide buffer zone from the top of the banks of each stream and this would offer sufficient protection to water voles and otters if they are present in the watercourses [***16; 18; 20; 148; 150; 151; 209.4; 256; 307; 354; 357; 360; 381; 382***].

582. There is no evidence of badgers on Sites B and C. An outlier sett was found on Site A but this was found not to be active in a recent survey. The streams and hedgerows would act as wildlife corridors for bats and birds and the latter would use the trees and hedges for nesting. It is considered that all schemes provide adequate protection for the protected species and controls can be imposed through the use of planning conditions [***209.4; 209.5; 307; 383***].

BIODIVERSITY ENHANCEMENT

583. The appeal sites comprise semi-improved grassland and the hedgerows along their boundaries are species-poor. This means that they have relatively low ecological value at the present time. In all cases there are proposals for substantial areas of new planting, including meadowland, trees and hedges. New and enhanced corridors would be created, including along the two watercourses. This would lead to enhancement to biodiversity [***209.3; 256; 307***].

584. In the case of Appeal A an area of ecological mitigation would be created to the north of Keys Brook. Whilst this is partly to offset the on-site loss of ponds it would result in a proliferation of water bodies and therefore it has the potential to enhance the habitat for GCN and other species of flora and fauna. The long term maintenance of the ecological interest would be undertaken by a management company and the matter would be controlled through a planning condition and the Planning Obligation. The Appeal B scheme would create a linear park along the northern side of Keys Brook and this would provide a natural feature that local people as well as new residents could enjoy. It is not considered that the ecological and informal recreation functions would be incompatible [***210.5; 223; 256; 349.13; 382; 394***].

585. In the circumstances the appeal developments would have no adverse effects on nature conservation interests. They would accord with saved Policy ENV 27 in the CDLP as well as the relevant provisions of the Framework.

CONSIDERATION EIGHT: WHETHER THE PROPOSALS SHOULD BE SUBJECT TO PLANNING CONDITIONS AND PLANNING OBLIGATIONS

PLANNING CONDITIONS

586. The planning conditions for each appeal that have been suggested by the main parties and other consultees are set out in Annex Three, Annex Four and Annex Five. Justification has been provided in Paragraphs 362-87 and there are also references to specific conditions where relevant in my Conclusions. It is considered that the conditions are reasonable, necessary and otherwise comply with the provisions of Circular 11/95: *The Use of Conditions in Planning Permissions*. I recommend that they are imposed if the Secretary of State decides to allow one or more of the appeals.

PLANNING OBLIGATIONS

Introduction

587. There is a Planning Obligation by Agreement for each of the appeals. These include a variety of provisions as set out in Paragraphs 388-397 above. They have been referred to in the previous sections of my Conclusions and are put forward to mitigate adverse impacts, meet the needs of the development and enable the scheme to go ahead. The Planning Obligations were discussed in detail at the Inquiry. I am satisfied that the documents are legally correct and fit for purpose.

588. The policy context for the infrastructure contributions is provided by saved Policy MI 1 in the CDLP, which includes provisions for agreements to be negotiated where required. Amongst other things these would secure the provision of highway, public transport, traffic management and pedestrian improvements. Also community, education and recreational facilities where the requirement arises for additional or expanded services. Saved Policy HO 3 addresses affordable housing and includes provision for negotiation on non allocated sites, which would include those subject to the present appeals.

589. However it is necessary to consider whether the obligations meet the statutory requirements in Paragraph 122 of the Community Infrastructure Levy (CIL) Regulations in order to determine whether or not they can be taken into account in any grant of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question. It is noted that all of the Planning Obligations contain a clause that the contributions are conditional on the Secretary of State's finding that they comply with the CIL Regulations.

Obligations common to all appeals

590. The A41/ Chester Road junction improvement has been considered in Paragraphs 559-566 above. It has been concluded that it is required in order to deal with cumulative impacts on junction capacity. It takes account of developments already permitted and is triggered if two or more of the appeal

developments go ahead. The obligations include a trigger mechanism that requires payment once the second appeal development has been commenced. If the third appeal development is commenced then there are refund arrangements to ensure that the contributions are fairly apportioned.

591. The bus stop improvements have been considered at Paragraph 552. In relation to Appeals A and C it was concluded that they would encourage bus patronage by providing a new shelter to the bus stop in Tattenhall Road and accessibility improvements to the bus stops in the High Street. The contribution has been worked out on the basis of costs of provision. The Parish Council commented that as the Tattenhall Road bus stop is in the conservation area the cantilevered design may not be appropriate. However the Highway Officer did not believe that an alternative design would make a material difference in terms of cost. It is understood that there is already provision for the Redrow scheme to contribute to these bus stop improvements. If that happens the contribution from the Appellants would be unnecessary. This is reflected in the wording of the obligation. The bus stop contributions would be paid prior to the occupation of any dwelling.

592. The Appeal B scheme would make provision for a bus stop outside its site and this would have the benefit of encouraging new residents to use this mode of travel and improve accessibility. There is also a contribution towards a new bus stop on the eastern side of Tattenhall Road should the Highway Authority require it. As there is already an existing stop a short distance to the south this seems to me to be an unnecessary provision. The evidence was also not convincing that the contribution of £10,000 would be reasonable in terms of the cost of providing such a facility.

593. Each of the appeal developments would contribute towards the Bus Service Contribution, although it would only be payable if all three is granted planning permission. The total sum would be £550,000 and would be apportioned on the basis of the number of dwellings in each scheme. The contribution is based on the cost of providing an improved half hourly bus service. Neither the Council nor the Appellants consider that the contribution is necessary on the basis of the likely number of new residents that would use the bus. Whilst an extended bus service would be a benefit for new and existing residents it is difficult to conclude that there would be sufficient new patronage for it to be a necessary requirement in connection with the appeal developments [***202***].

594. There are currently 30 surplus primary school places at the Tattenhall Park Primary School where the younger children from the new developments would expect to be educated. This level is forecast to remain until around 2016 and I was told that it derives from a twice yearly pupil census count which is matched against the school's capacity. There is no surplus capacity at the Bishop Heber High School where the older children from the new developments would expect to be educated. The education contributions are based on a building cost multiplier and the primary or secondary child yield which derives from the number of pupils likely to come from the housing developments. This formulaic calculation is a reasonable basis for assessment and, in the case of the primary school contribution, account has been taken of the number of dwellings that could be accommodated bearing in mind the present surplus capacity.

595. The education contributions would be paid in two instalments which would be triggered by dwelling occupation. The triggers and percentage payments are slightly different in the case of the two outline schemes to the Appeal C. However both would ensure expedient delivery of the relevant payments to ensure that education provision would be made to accommodate the needs of each development. I was told that the contributions would be used to increase permanent capacity at the respective schools. It is noted that several local residents raised concerns about the capacity of existing schools to cope with the additional demand. However the evidence from the Council was that the additional pupils could be accommodated and that feasibility studies would be commissioned to see how this could be achieved in the most appropriate way [***329; 334; 336; 350.16; 393***].

Obligation specific to Appeal A

596. In the case of Appeal A there would be an ecological mitigation area north of Keys Brook. The long term protection of this area would be controlled through an ecological management scheme and secured by a planning condition. Such a scheme is necessary due to the ecological importance of the site and the presence of protected species, including GCN, as explained in the previous section. The Planning Obligation includes a covenant to indemnify the reasonable costs of the Council if it has to step in and assume responsibility for managing the mitigation area. This could happen, for example, if the management company failed.

Obligations specific to Appeal B

597. In the case of Appeal B there is an obligation to provide a footpath between the site and the existing footpath on the western side of Tattenhall Road. This would be dedicated as a public footpath under a Highways Agreement. Such a link would ensure an easier pedestrian route and encourage new residents to travel into the village on foot as explained in Paragraph 548. It is a necessary provision to improve the accessibility of the site.

598. In the case of Appeal B the provision of 35% affordable housing would be controlled through the Planning Obligation whereas in the other two schemes it would be dealt with by planning conditions. The chronic shortfall in affordable housing provision is identified in Paragraph 421. Before development commences a scheme is to be submitted and approved by the Council which details, amongst other things, the timeframe for provision relative to the construction of the market houses. The obligation relating to affordable housing is a necessary requirement in order to meet housing needs.

Conclusions

599. It is not considered that in respect of Appeal B the contribution towards a bus stop on the eastern side of Tattenhall Road is justified. Similarly the contribution of all three developments to an extended bus service would not be warranted. These obligations do not meet the tests in Regulation 122 of the CIL Regulations and cannot therefore be taken into account in any grant of planning permission.

600. The other obligations relating to highway improvements, bus stops, footway provision, affordable housing, education and ecological mitigation are required

and meet the tests in Regulation 122 of the CIL Regulations. They can therefore be taken into account in any grant of planning permission.

OTHER MATTERS

LOSS OF AGRICULTURAL LAND

601. The Framework makes clear that where significant development of agricultural land is demonstrated to be necessary, poorer quality land should be used in preference to that of a higher quality. It has been accepted by the Council that greenfield development will be necessary if housing needs are to be met. Furthermore it seems inevitable that some development will take place outside the existing settlement boundary of Tattenhall. The appeal sites comprise Grade 3b agricultural land, which is not classed as best and most versatile agricultural land by the Framework. Whilst food production is clearly an important issue, the loss of such land in this case is not a determinative factor [***10; 326; 350.2***].

FLOODING ISSUES

602. Appeal sites A and C are adjacent to Keys Brook and Appeal site B adjoins Mill Brook. The areas adjoining the watercourses are in Flood Zones 2 and 3 but the developed areas would be within Flood Zone 1 where there is a low risk of flooding from fluvial sources. The Environment Agency has raised no objections on this basis. The Flood Risk Assessments indicated that surface water drainage flows would be limited to existing greenfield runoff rates, with allowance for future climate change. This would ensure that flood risk from surface water runoff would not be transferred to areas outside the appeal lands. The Environment Agency and Wessex Water have raised no objections to the appeal proposals in terms of the capacity of the existing drainage system or flood risk [***350.12; 350.13; 354; 355; 357; 358; 360; 361***].

RESIDENTIAL AMENITY

603. The eastern boundary of **Site A** site adjoins the rear of houses in Rookery Drive. At present these occupiers have an uninterrupted view across pleasant open countryside. Clearly there will be a considerable change in outlook as I have already considered in relation to the visual assessment under Consideration Three. However there is no right to a view across third party land and this in itself is no reason to object to the development on amenity grounds. The Parameters Plan shows a buffer zone behind the existing properties and new dwellings would be sited beyond that. Although the illustrative layout indicates some breach of this, it is not a plan that has been submitted for approval at this stage. The detailed drawings accompanying the reserved matters will show the layout and house types. Amenity issues will be considered at this time but there is no reason why the development should not be designed to ensure that the living conditions of existing occupiers in terms of light and privacy are adequately protected [23; 189].

604. In the case of **Site B**, the Greenlands houses are separated from the site by Keys Brook. There would also be the linear park adjacent to the stream which would intervene between the new houses and the existing properties. In the

circumstances it is not considered that the living conditions of these residents would be adversely affected.

605. **Site C** site adjoins the rear of the Grackle Croft cul-de-sac. The nearest dwellings would be sideways on to the common boundary and there would be no habitable room windows facing towards the existing properties. I visited one of the properties in Ravensholme Court which also backs onto the site. This has a very small rear garden and clearly enjoys an unrestricted outlook across the countryside of the appeal site and beyond. This would of course change considerably but the nearest dwellings would be some distance away and separated by a landscaped open space. It is considered that the privacy and amenity of the existing residents adjoining Site C would not be unduly diminished [***271***].

CONSIDERATION NINE: HUMAN RIGHTS

606. A local objector considers that the development would be contrary to Article 1 of the First Protocol and Article 8 of the European Convention of Human Rights. The argument made is that the lack of homes is due to the economic situation and not due to a lack of housing land. It is contended that there are unimplemented planning permissions and that housebuilding is not being prevented by the lack of a 5 year housing land supply. Within the system there will always be some unimplemented planning permissions due to the need to comply with pre-implementation requirements. Undoubtedly also not all permissions granted will be taken up. However there is no evidence that this is a widespread problem in the Borough or that it would materially affect the current housing shortfall. The Framework makes quite clear that objectively assessed housing needs should be met and this is not happening in this Council's area for the reasons given in Consideration One [***350.17***].

607. Article 1 of the First Protocol is about the protection of property rights. It establishes that everyone is entitled to the peaceful enjoyment of their possessions. Article 8 states that everyone has a right to respect their private and family life, their home and their correspondence. The Secretary of State might agree that the argument advanced by the objector does not engage the requisite human rights under these provisions. Even if the Secretary of State does not so agree, the public benefits in the delivery of housing, as identified below, have to be taken into account and weighed against any individual property owner's rights.

CONSIDERATION TEN: OVERALL CONCLUSIONS AND PLANNING BALANCE TO DETERMINE WHETHER THE PROPOSALS WOULD BE A SUSTAINABLE FORM OF DEVELOPMENT.

608. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision-taking. It has been concluded that the Borough has a severe and substantial shortfall in the supply of deliverable housing sites over the next 5 years. In this respect it has an out-of-date development plan and no new Local Plan that is sufficiently advanced to provide policies that can be relied upon in terms of housing land supply. In such circumstances the relevant policy direction comes from the Framework and this establishes that the decisions should be made in accordance with Paragraph 14 and the presumption in favour of sustainable

development. Within the context of Paragraph 47 and the requirement to boost significantly the supply of housing, a shortfall as demonstrated in the case of this Council is inherently unsustainable.

609. The Framework identifies the three interdependent dimensions to sustainable development – economic, social and environmental. The appeal proposals would all be deliverable in the short term and in this regard shorter timescales for implementation have been agreed. There is no doubt that both individually and together they would make an important contribution to the Council's housing land supply problems. They would deliver land within a sustainable location and increase the choice of housing, including the provision of a significant number of affordable units within a district where the need for such homes is immediate and pressing.

610. There would undoubtedly be benefits to growth, including the provision of infrastructure to support the schemes individually and collectively. All sites are accessible to village facilities and offer new residents the opportunity to make journeys by modes other than the car. Whilst the developments would not include employment uses there would be jobs created during the period of construction, which would take place over several years. It is likely that many would be for local people and this would boost the local economy. Businesses connected with the construction industry would also benefit and some of these would be local suppliers and trades. Once the development is complete new residents would spend a proportion of their household income locally.

611. Despite the fears of existing residents about the negative impact that new development would bring it is considered that the new residents would contribute to the vibrancy and viability of the village. There would also be more tangible benefits such as the potential for increased patronage of the local bus service, which would be welcomed by the bus operator. There is no reason to believe that these would be other than high quality residential developments. Generous open space and landscaping would ensure an attractive setting at the edge of the village. In each case it would also offer a benefit for existing residents to enjoy. Furthermore, Proposal A would have the potential to improve the settlement edge and also to enhance existing newt habitats through the provision of an ecological mitigation area north of Keys Brook.

612. Nonetheless it is necessary to consider these benefits against the harm to the local landscape. This has been outlined in considerable detail under Consideration Three to users of Footpath 8 and those entering the village by Chester Road and Tattenhall Road would be of considerable significance. Whilst mitigation planting would have the potential to reduce the adverse effects, there would remain permanent and long term visual harm to the landscape around the village. In the case of Appeal C there would also be some adverse effect on the setting of the Tattenhall Conservation Area although as setting is not protected by statute, I do not consider that the heritage asset itself would be harmed.

613. Paragraph 14 of the Framework sets out the appropriate test to be carried out when relevant policies in the development plan are out-of-date. This requires a balance to be undertaken in the determination of whether the development proposals are sustainable development and whether there is a presumption in

their favour. In this case it is highly relevant that in order to meet the Council's housing requirements, greenfield development on rural land around Tattenhall will be inevitable. Such development is bound to result in landscape impacts of an adverse nature. I consider that the adverse impacts referred to in Paragraph 613 do not significantly and demonstrably outweigh the benefits referred to in the preceding paragraphs, when assessed against the Framework policies as a whole. The need for housing in particular is, in my opinion, a matter of very great importance in this case and it is concluded that the three appeal proposals would be sustainable development and that planning permission should be granted.

INSPECTOR'S RECOMMENDATIONS

614. That Appeal A is allowed and planning permission is granted subject to the conditions in Annex Three.

615. That Appeal B is allowed and planning permission is granted subject to the conditions in Annex Four.

616. That Appeal C is allowed and planning permission is granted subject to the conditions in Annex Five.

Christina Downes

INSPECTOR

ANNEX ONE: APPEARANCES

FOR CHESHIRE WEST AND CHESTER COUNCIL:

Mr Stephen Sauvain of Queen's Counsel	Instructed by Mr M Sullivan-Gould, Interim Head of Legal and Democratic Services, Cheshire West and Chester Council
Mr Martin Carter of Counsel	
They called	
Mr J King BSc MLD CMLI	Technical Director of Wardell Armstrong LLP
Mr S Matthews BSc(Hons) MA MRTPI	Senior Planning Officer with Cheshire West and Chester Council
Mrs C Coombs BSc(Hons) DipTP MRTPI	Principal Planning Officer with Cheshire West and Chester Council
Ms L Tye*	Planning Legal Advisor with Weightmans LLP
Mr K Jones*	Principal Development Officer, Development Management with Cheshire West and Chester Council
Mr D Tonks*	Team Manager, Housing Strategy & Enabling with Cheshire West and Chester Council
Ms C Davis*	Capital Development Manager of Children & Young People's Services with Cheshire West and Chester Council

*Spoke at the Planning Obligations Round Table Session only

FOR TAYLOR WIMPEY UK LTD:

Ms Morag Ellis of Queen's Counsel	Instructed by Mr D Hann of Indigo Planning Ltd
Mr Robert Williams of Counsel	
They called	
Mr D Hann BA(Hons) MTPL MSc MRTPI	Director of Indigo Planning Ltd
Ms P Randall BSc(Hons) MALA FLI	Founding Partner of Randall Thorp
Mrs M Gatland MRICS MRTPI	Consultant to Indigo Planning Ltd
Mr F Hesketh BSc(Hons) CMLI CEnv	Founding Partner of TEP

MIEEM MICFor Mr T Russell BSc(Hons) MIHT	Associate of Croft Transport Solutions
Mr M Collings*	Senior Associate with Eversheds LLP

*Spoke at the Planning Obligations Round Table Session only

FOR MR ASHLEY WALL:

Mr Paul Tucker of Queen's Counsel	Instructed by Mr S Harris of Emery Planning Partnership
Mr Jonathan Easton of Counsel	
They called	
Mr S Harris BA(Hons) MRTPI	Associate Director of Emery Planning Partnership
Mr P Rech BA(Hons) BPhilLD CMLI	Director of FPCR Environment & Design Ltd
Mr A Davies MSc MCILT MIHT MAPM	Director of Development Transport Planning Consultancy
Mr D Pollard BSc(Hons)	Proprietor of Corvus Ecology Consulting and Associate of Ascerta Consulting Ltd
Mr S Robinson**	Representative of Wainhomes
Dr J Edis BA MA PhD MIFA IHBC***	Partner of Heritage Collective LLP

**Spoke at the Conditions Round Table Session only
***Dr Edis was not called to give oral evidence and relied on his written submissions

FOR BARRATT HOMES:

Mr D Holgate of Queen's Counsel	Instructed by Mr S Taylor of Satplan Ltd
He called	
Mr S Bowers BSc(Hons) CMILT	Director of CBO Transport
Mr R Lomas BA(Hons) BLA CMLI	Managing Director of e*SCAPE Urbanists
Mr J Berry BA(Hons) DipLA AEIMMA CMLI MArborA	Partner of Tyler Grange LLP
Mr T Goodwin BSc(Hons) MSc MIEnvSc MIEEM MIALE	Director of Ecology Solutions Ltd
Mr S Taylor BA(Hons) MCD MRTPI	Founding Director of Satplan Ltd
Mr A Brown**	Representative of Barratt Homes

**Spoke at the Conditions Round Table Session only

FOR COUNCILLOR MIKE JONES:

He called	
Himself	Borough Councillor for the Tattenhall Ward
Councillor G Spencer	Chairman of Tattenhall & District Parish Council
Councillor C Weaver	Parish Councillor and Chair of the Neighbourhood Planning Steering Group

INTERESTED PERSONS:

Mr G Newman	Local resident
Mr I Cross	Local resident and speaking on behalf of residents of Greenlands, Tattenhall
Mr Weightman	Local resident
Ms C Vickers	Local resident
Mr M Reece	Local resident
Mr M Cooke	Local resident and speaking as Chair of the Tattenhall Business Alliance and Business Club
Mrs C Dzelzainis	Local resident and also speaking on behalf of Friends of Tattenhall (Rookery Drive) and Brook Hall Residents and speaking from the written submission by Mr P Barton MCD BA(Hons) MRTPI
Mr F White	Local resident
Mrs C Roberts	Local resident
Mr J Mogg	Local resident
Mrs J Chambers	Local resident
Mrs R Bell	Local resident
Mr P Gadd	Local resident
Ms A Puricelli	Local resident and business owner
Mr R Ikin	Local resident

Mrs L Morris	Local resident
Mr D Spraggs	Local resident
Mrs M Stubbs	Local resident
Mr T Leigh-Smith	Local resident
Mr G Reynolds	Local resident
Dr T Dzelzainis	Speaking on behalf of Friends of Tattenhall (Rookery Drive) and Brook Hall Residents
Mr D Hughes CEng MICE	Local resident and formerly Chief Engineer with Cheshire County Council
Mr I Waddington	Local resident and speaking on behalf of Friends of Tattenhall
Mr M Hudson	Local resident
Mrs V Meeks	Local resident

ANNEX TWO: DOCUMENTS AND PLANS

Please Note that not all CD numbers have been used and that there is now no CD8 or CD9 series.

CORE DOCUMENTS	
CD1 - Policy Documentation	
CD1.1	National Planning Policy Framework (March 2012)
CD1.2	Relevant Saved Policies of the Regional Spatial Strategy for the North West (2008)
CD1.3	Relevant Saved Policies of the Cheshire Structure Plan (2016)
CD1.4	Relevant Saved Policies of the Chester District Local Plan (2006) and Proposal Map Extracts
CD1.5	Cheshire West and Chester Development Options Consultation Paper (2011)
CD1.6	Cheshire West and Chester Preferred Policy Directions Paper (2012) including: a. Key Service Centre Background Paper b. Green Belt Background Paper c. Housing Requirement Background Paper d. Interim Sustainability Report
CD1.7	Consultation Draft Tattenhall Neighbourhood Plan (2012)
CD2 – Local Plan Evidence Base	
CD2.1	Strategic Housing Market Assessment (SHMA) (Update 2010)
CD2.2	Strategic Housing Land Availability Assessment (SHLAA) (2011)
CD2.3	Strategic Housing Land Availability Assessment (SHLAA) (Partial Review) (January 2013)
CD2.4	Interim Housing Land Monitor (September 2012)
CD2.5	Draft Housing Land Monitor Report (April 2013)
CD2.6	Strategic Housing Market Assessment (SHMA) (Update 2012)
CD2.7	Minutes from the Local Development Framework (LDF) Panel (29 April 2013)
CD2.8	Draft Strategic Housing Land Availability Assessment (SHLAA) 2013 (Part two: Schedule of Sites)

CD2.9	Agenda, Officers Report to LDF Panel and draft SHLAA. Also includes: Officer's Report to same LDF Panel and accompanying draft Environmental Policies (20 May 2013)

CD3 – Other

CD3.1	Open Space Provision in New Housing Developments SPG (1999)
CD3.2	Design for Residential Development SPD (2007)
CD3.3	Affordable Housing SPD (2007)
CD3.4	Tattenhall Village Design Statement (2009)
CD3.5	New Growth Programme of Development (2008)
CD3.6	Unleashing the Potential of Cheshire and Warrington (July 2010)
CD3.7	The Planning System General Principles (Communities and Local Government, 2005)
CD3.8	The Plan for Growth (HM Treasury March 2011)
CD3.9	The Ministerial Statement issued by Greg Clarke (Minister of State for Planning) entitled 'Planning for Growth' dated March 2011
CD3.10	Laying the Foundations: A Housing Strategy for England (November 2011)
CD3.11	Housing and Growth (September 2012)
CD3.12	Tattenhall Conservation Area Appraisal (January 2008)
CD3.13	Guidelines for Landscape and Visual Impact Assessment 2002
CD3.14	Landscape Character Assessment – Guidance for England and Scotland (The Countryside Agency and Scottish Natural Heritage) 2002
CD3.15	Photography and Photomontage in Landscape and Visual Impact Assessment (Landscape Institute Advice Note 01/11) 2011
CD3.16	Landscape Character Assessment Series: Topic Paper 6 – Techniques and Criteria for judging capacity and sensitivity (Countryside Agency and Scottish Natural heritage) 2003
CD3.17	Guidelines for Landscape and Visual Impact Assessment – Third Edition 2013
CD3.18	Guidance – Assessing the Cumulative Impact of Onshore Wind Energy Developments (Scottish Natural Heritage, 2012)

CD3.20	The Cheshire Landscape Character Assessment; Cheshire County Council Transport & Regeneration Service (November 2008)
CD3.23	Visual Representation of Windfarms: Good Practice Guidance (Scottish Natural Heritage, 2006)
CD3.24	Great Crested Newt Habitat Suitability Index May 2010 (ARG UK Advice Note 5)
CD3.25	Building for Life 12 (Building for Life Partnership, 2012)

CD4 – Application Related Documentation

CD4.1	Council's Overarching Report to Planning Committee (20 September 2012)
CD4.2	Committee Report for Redrow application (20 September 2012) (Application Ref: 12/02967/OUT)
CD4.3	Committee Report for Taylor Wimpey application (20 September 2012) (Application Ref: 12/02032/OUT)
CD4.4	Committee Report for Resubmitted Taylor Wimpey application (20 September 2012) (Application Ref: 12/03717/OUT)
CD4.5	Committee Report for Mr Ashley Wall application (20 September 2012) (Application Ref: 12/02352/OUT)
CD4.6	Late Items Report to Planning Committee (20 September 2012)
CD4.7	Minutes of the Strategic Planning Committee (20 September 2012)
CD4.8	Committee Report for Barratt Homes application (22 November 2012) (Application Ref: 12/03825/FUL)
CD4.9	Minutes of the Strategic Planning Committee (22 November 2012)
CD4.10	Committee Report for Resubmitted Redrow application (19 December 2012) (Application Ref: 12/04702/OUT)
CD4.11	Minutes of the Strategic Planning Committee (19 December 2012)

CD5 - Taylor Wimpey UK Ltd: Application documents (current appeal)

CD5.1	Application form, notices, certificates and cover letter
CD5.2	Red Line Plan 05022_MP_02_001
CD5.3	Parameters Plan 05022_MP_02_002

CD5.4	Illustrative Masterplan 05022_MP_02_003
CD5.5	Tattenhall Design & Access Statement 120427 Rev A
CD5.6	Code for Sustainable Homes Statement
CD5.7	Construction Waste Management Plan
CD5.8	Desk Based Archaeology Report
CD5.9	Flood Risk Assessment
CD5.10	Noise Impact Assessment
CD5.11	Outline Drainage Strategy
CD5.12	Outline Utility Strategy
CD5.13	Phase 1 Habitat Survey
CD5.14	Planning Statement
CD5.15	Preliminary Environmental Risk Assessment
CD5.16	Preliminary Landscape and Visual Impact Assessment
CD5.17	Proposed Access Plan
CD5.18	Statement of Community Involvement Report
CD5.19	Topography Survey
CD5.20	Transport Assessment
CD5.21	Tree Survey
CD5.22	Utilities Statement

CD6 - Taylor Wimpey UK Ltd: Application Documents (resubmission)

CD6.1	Application form, notices, certificates and cover letter
CD6.2	Parameters Plan 05022_02_PAR_01
CD6.3	Red Line Plan 05022_MP_02_001
CD6.4	Illustrative Masterplan 05022_MP_02_003 Rev A
CD6.5	Agricultural Land Classification Report August 2012
CD6.6	Code for Sustainable Homes Statement

CD6.7	Construction Waste Management Strategy
CD6.8	Design and Access Statement Final
CD6.9	Desk Based Archaeology Assessment
CD6.10	Flood Risk Assessment
CD6.11	Noise Impact Assessment
CD6.12	Outline Drainage Strategy
CD6.13	Outline Utility Strategy
CD6.14	Phase 1 Habitat Survey
CD6.15	Planning Statement
CD6.16	Preliminary Environmental Risk Assessment
CD6.17	Preliminary Landscape and Visual Impact Assessment August
CD6.18	Proposed Access Plan
CD6.19	Statement of Community Involvement Report
CD6.20	Topography Survey
CD6.21	Transport Assessment 02 final with appendices
CD6.22	Tree Survey
CD6.23	Utilities Statement
CD6.24	Decision Notice (Dated 3 October 2012)

CD7 - Mr Ashley Wall: Application documents (current appeal)

CD7.1	Application form & Certificate of ownership dated 18 May 2012
CD7.2	Decision Notice dated 2 October 2012
CD7.3	Location Plan, dwg ref. AW001/0
CD7.4	Indicative Master Plan, dwg ref. AW002/0
CD7.5	Topographical Survey, dwg ref. 12D082/001
CD7.6	Design & Access Statement by Astle Planning & Design dated May 2012
CD7.7	Planning Statement by Emery Planning Partnership dated May 2012

CD7.8	Arboricultural Assessment by Ascerta Consulting Ltd dated May 2012
CD7.9	Flood Risk Assessment by Ironside Farrar Limited dated April 2012
CD7.10	Ground Conditions Report by Coopers Chartered Consulting Engineers dated 25 April 2012
CD7.11	Waste Audit & Management Strategy by Emery Planning Partnership Ltd dated May 2012
CD7.12	Transport Assessment by DTPC dated April 2012
CD7.13	Travel Plan by DTPC dated April 2012
CD7.14	Ecological Issues by Pinnacle dated April 2012
CD7.15	Site Layout (Access), dwg ref. J150/Access/Fig2
CD7.16	Site Layout (Access) dwg ref. J150/Access/Fig1B (sent 02/08/2012) – superseded
CD7.17	Site Layout (Access) dwg ref. J150/Access/Fig1B (sent 15/08/2012)
CD7.18	Addendum to Ecological Issues by Pinnacle Environment Ltd dated July 2012
CD7.19	Addendum to Ecological Issues by Pinnacle Environment Ltd dated July 2012 – Revision A
CD7.20	Affordable Housing Statement dated July 2012
CD7.21	Soil Resources & Agricultural Use & Quality by Land Research Associates dated 7 September 2012
CD7.22	Landscape & Visual Impact Assessment by Pinnacle Environment Ltd dated July 2012
CD7.23	Letters from Parish Council dated 21 April 2012 and 7 August 2012
CD7.24	Letter to LPA requesting EIA Screening dated 17 April 2012
CD7.25	Letter from LPA with Screening Opinion dated 31 July 2012
CD7.26	Water Vole & Otter Survey by Ascerta Consulting Ltd dated September 2012
CD7.27	Arboricultural Assessment by Ascerta Consulting Ltd dated May 2012 (rev A – 05-09-2012)
CD7.28	Miscellaneous documents and plans relating to the planning application

CD10 - Barratt Homes: Application documents (current appeal)	
CD10.1	Drawing Package
CD10.2	Archaeology and Cultural Heritage Assessment, August 2012
CD10.3	Bat Tree Survey, November 2012
CD10.4	Design & Access Statement, Autumn 2012
CD10.5	Flood Risk and Drainage Assessment, August 2012
CD10.6	Great Crested Newt Pond Survey and Mitigation Strategy, November 2012
CD10.7	Local Benefits, August 2012
CD10.8	Landscape and Visual Impact Assessment, October 2012
CD10.9	Phase 1 Ecology Survey, August 2012 (Including Phase 1 Habitat Map)
CD10.10	Phase 1 Ground Conditions, August 2012
CD10.12	Planning Statement, August 2012
CD10.13	Statement of Community Involvement, August 2012
CD10.14	Transport Assessment, August 2012
CD10.15	Tree Quality Survey, RPAs & Development Implications, October 2012
CD10.16	Planting Plans

CD 11 – General appeal documentation	
CD11.1	Council's letter of notification of the Inquiry and list of persons notified
CD11.2	Recovery letter
CD11.3	Screening opinions
CD11.4	Questionnaire relating to APP/A0665/A/12/2180958 (Appeal A)
CD11.5	Questionnaire relating to APP/A0665/A/12/2185667 (Appeal B)
CD11.6	Questionnaire relating to APP/A0665/A/12/2188464 (Appeal C)

INQUIRY DOCUMENTS

SCG/ - Statements of Common Ground (before the Inquiry commenced)

SCG/1	Joint Statement of Common Ground (SCG) between all Appellants
SCG/2	Highways SCG between the three Appellants and Highway Authority
SCG/3	Site specific SCG between Taylor Wimpey and the Council
SCG/4	Ecology SCG between Taylor Wimpey and the Council
SCG/5	Site specific SCG between Mr A Wall and the Council
SCG/6	Landscape SCG between the three Appellants and the Council

HLS/ - Housing land supply round table

HLS/1	Letter from Indigo on behalf of the three Appellants relating to a round table session for housing land supply issues
HLS/2	Joint Housing Position Statement (JHPS) between the three Appellants
HLS/3	Appendices to the JHPS
HLS/4	Council's response to the JHPS
HLS/5	Councillor Jones's response to the JHPS
HLS/6	Joint rebuttal note by the three Appellants to Councillor Jones's evidence
HLS/7	Extract from the Panel's Report on the North West draft Regional Spatial Strategy (March 2007)
HLS/8	Joint closing statement by the three Appellants in relation to housing land supply

CWC/ - Cheshire West and Chester Council

CWC/1.1	Proof of evidence of Mr Matthews (overview)
CWC/1.2	Proof of evidence of Mr Matthews (Mr A Wall appeal)
CWC/2.1	Proof of evidence of Mrs Coombs (Taylor Wimpey appeal)
CWC/2.2	Proof of evidence of Mrs Coombs (Barratt Homes appeal)
CWC/3.1	Proof of evidence of Mr King
CWC/3.2	Drawings and Appendices to Mr King's evidence
CWC/3.3	Mr King's Photoviews: Barratt Homes site

CWC/3.4	Mr King's Photoviews: Taylor Wimpey site
CWC/3.5	Mr King's Photoviews: Mr A Wall site
CWC/3.6	Mr King's Context Views and Plates
CWC/3.7	Summary proof of evidence of Mr King
CWC/4	Policies ENV21-23, 37-39 from the Chester District Local Plan (2006) and the Saving Direction (2009)
CWC/5	Draft Decision Notice on Revised Tattenhall Conservation Area Appraisal
CWC/6	Speaking Note for Mr King Evidence
CWC/7	Note on Conservation Area Boundary Changes
CWC/8a	Report to the LDF Panel Meeting (20 May 2013)
CWC/8b	Minutes of the LDF Panel Meeting (20 May 2013)
CWC/9	Extract from Schedule 2 of the EIA Regulations 2011
CWC/10	Additional update to Mr King's Speaking Note – Photoview Schedule
CWC/11	Landscape Study Area Maps
CWC/12	Annotated Taylor Wimpey Parameters Plan with contour lines added
CWC/13	Extracts from the Cheshire Landscape Character Assessment – Sandstone Ridge and Sandstone Fringe
CWC/14	Illustrative layout from the 2013 planning application by Mr A Wall
CWC/15	Enlargements of Mr Rech's photomontages in Appendix A top his evidence.
CWC/16	List of Plate Views in Document CWC/3.6
CWC/17	Note on calculation of the education contribution requirements
CWC/18	Letter from Welsh Water to Mr Matthews regarding foul drainage (19/9/12)
CWC/19	Opening submission on behalf of the Council delivered by Mr Carter
CWC/20	Closing submission on behalf of the Council delivered by Mr Sauvain

TW/ - Taylor Wimpey UK Limited

TW/1.1	Summary proof of evidence of Mr Hann

TW/1.2	Proof of evidence of Mr Hann
TW/1.3	Appendices to Mr Hann's evidence
TW/1.4	Rebuttal evidence of Mr Hann
TW/2.1	Summary proof of evidence of Mrs Randall
TW/2.2	Proof of evidence of Mrs Randall
TW/2.3.1	Appendices to Mrs Randall's proof
TW/2.3.2	Appendix to Mrs Randall's evidence - Baseline landscape description
TW/2.3.3	Appendix to Mrs Randall's evidence – Scheme description
TW/2.4	Rebuttal evidence of Mrs Randall – To Mr King's evidence
TW/2.5	Rebuttal evidence of Mrs Randall – To evidence of other Appellants
TW/3.1	Summary proof of evidence of Mrs Gatland
TW/3.2	Proof of evidence of Mrs Gatland
TW/3.3	Appendices to Mrs Gatland's evidence
TW/3.4	Rebuttal evidence of Mrs Gatland
TW/3.5	Rebuttal appendix of Mrs Gatland
TW/4.1	Summary proof of evidence of Mr Hesketh
TW/4.2	Proof of evidence of Mr Hesketh
TW/4.3	Appendices to Mr Hesketh's evidence
TW/4.4	Rebuttal evidence and appendix of Mr Hesketh
TW/4.5	Access Road Arboricultural Assessment (2765.01.001) (April 2013)
TW/5.1	Summary proof of evidence of Mr Russell
TW/5.2	Proof of evidence of Mr Russell
TW/5.3	Appendices to Mr Russell's evidence
TW/5.4	Rebuttal evidence of Mr Russell
TW/5.5	Appendices to Mr Russell's rebuttal

TW/5.6	Supplementary rebuttal evidence of Mr Russell
TW/6	List of submitted drawings and documents
TW/7	Mr Russell's note in response to Dr Dzelzainis's submission
TW/8	Further evidence submitted by Mrs Randall including: a. Replacement Figure 2/6 b. Illustrative layout (Figure 3/1A) c. Visibility Cross Sections
TW/9	Mrs Randall's speaking note
TW/10	Mr Hesketh's supplementary written statement
TW/11	Annotated Figure 2/7 from Mrs Randall's evidence (Document TW/2.3.3)
TW/12	Indigo Briefing Note – Rebuttal of Dr Edis' evidence (with Honeybourne Appeal Decision appended)
TW/13	Mr Hann's speaking note
TW/14	800m pedestrian catchments
TW/15	Draft planning conditions
TW/16	Completed Planning Obligation by Agreement
TW/17	Mrs Randall's landscape response to residents
TW/18	Mrs Randall's additional cross section (Ref: 480A-24)
TW/19	Taylor Wimpey letter to Inspector regarding implementation period (21 June 2013)
TW/20	Opening submission delivered by Ms Ellis
TW/21	Closing submission delivered by Ms Ellis
TW/22	Annex to Ms Ellis's closing submission

AW/ - Mr A Wall

AW/1.1	Proof of evidence of Mr Harris
AW/1.2	Appendices to Mr Harris's evidence
AW/1.3	Summary proof of evidence of Mr Harris
AW/2.1	Proof of evidence of Mr Rech

AW/2.2	Appendices to Mr Rech's evidence
AW/2.3	Summary to Mr Rech's evidence
AW/2/4	Rebuttal evidence of Mr Rech
AW/3.1	Proof of evidence of Mr Davies
AW/3.2	Proof of evidence of Mr Davies
AW/3.3	Mr Davies's evidence – sustainability comparison of the appeal sites
AW/3.4	Rebuttal evidence of Mr Davies
AW/4.1	Proof of evidence of Mr Pollard
AW/4.2	Rebuttal evidence of Mr Pollard
AW/5.1	Rebuttal statement of Dr Edis[81]
AW/5.2	Appendices to rebuttal statement of Dr Edis
AW/6	Completed Planning Obligation by Agreement
AW/7	Appeal decision – Land at Coppice Way, Handforth (APP/A0665/A/12/2188195 and APP/R0660/A/12/2188198)
AW/8	Appeal decision – Land off Broad Lane, Burnedge, Rochdale (APP/P4225/A/12/2184755)
AW/9	List of submitted documents and plans
AW/10	Draft planning conditions
AW/11	Secretary of State appeal decision – Land off Abbey Road and Middlewich Road, Sandbach (APP/R0660/A/10/2141564)
AW/12	Mr Rech's panoramic view from Beeston Castle
AW/13	Mr Rech's speaking note
AW/14	Mr Rech's photographs of East Bridgford Millennium Wood
AW/15	Mr Rech's sections including landscape mitigation
AW/16	Mr Pollard's speaking note

[81] Dr Edis' main statement is at Mr Harris's Appendix 17 (Document AW/1.2). This evidence was submitted in written form and was not delivered orally.

AW/17	Extracts from Cheshire Landscape Character Assessment (2008)
AW/18	1st Edition OS Map Extract
AW/19	Mr Davies's speaking note
AW/20	Mr Davies's plans showing walking distances
AW/21	Mr Harris's speaking note
AW/22	Mr Pollard's response to the comments of Mr Evans, the Council's Biodiversity Officer at Document INQ/3
AW/23	Dr Edis's written response Inspector's questions
AW/24	Email from Helms Coaches to Mr Stevenson (20 June 2013)
AW/25	High Court judgements – Bizzy B Management Ltd and Salford Estates
AW/26	Opening submissions delivered by Mr Tucker
AW/27	Closing submissions delivered by Mr Tucker

BH/ - Barratt Homes

BH/1.1	Mr Berry's proof of evidence
BH/1.2	Appendices to Mr Berry's evidence
BH/1.3	Plans, photoviewpoints and photomontages to Mr Berry's evidence
BH/2.1	Mr Bowers's proof of evidence
BH/2.2	Appendices to Mr Bowers's evidence
BH/3.1	Mr Lomas's proof of evidence
BH/3.2	Appendices to Mr Lomas's evidence (A-D separately bound)
BH/3.3	Summary to Mr Lomas's evidence
BH/4.1	Mr Goodwin's proof of evidence
BH/4.2	Appendices to Mr Goodwin's evidence
BH/4.3	Summary to Mr Goodwin's evidence
BH/5.1	Mr Taylor's proof of evidence
BH/5.2	Appendices to Mr Taylor's evidence

BH/6	Rebuttal evidence on behalf of Barratt Homes
BH/7	Site Specific Statement of Common Ground
BH/8	List of submitted plans
BH/9	Letter to Mr Taylor from the Council about Policy ENV2 (29 May 2013)
BH/10	Planting Plans that accompanied Barratts planning applications
BH/11	Completed Planning Obligation by Agreement
BH/12	Great Crested Newt Survey submitted by Mr Goodwin (June 2013)
BH/13	Drawing: Development Context including an overlay of the Frog Lane community care development (June 2013)
BH/14	Drawing: Topographical Overlay (June 2013)
BH/15	Photomontages submitted by Mr Berry showing correction to mitigation planting at Year 15 (see (Document BH/17, Paragraph 4.1)
BH/16	Mr Goodwin's speaking note
BH/17	Mr Berry's speaking note
BH/18	Mr Lomas's speaking note
BH/19	Mr Bowers's speaking note
BH/20	Site specific statement in response to submissions by third parties
BH/21	Proposed dropped crossing points (Drawing no: CBO-0139-004) submitted by Mr Bowers
BH/22	Diagram of road traffic flows submitted by Mr Bowers
BH/23	Draft planning conditions
BH/24	Arboricultural Advisory and Information Service: Tree growth rates, Tattenhall submitted by Mr Berry
BH/25	Mr Taylor's speaking note
BH/26	Email from Helms Coaches to Mr Bowers (23 May 2013)
BH/27	Opening submission delivered by Mr Holgate
BH/28	Closing submission delivered by Mr Holgate

MJ/ - Councillor Mike Jones	
MJ/1	Proof of evidence of Tattenhall & District Parish Council and Tattenhall Neighbourhood Planning Steering Group
MJ/2	Summary to Councillor Jones's evidence
MJ/3	Councillor Jones's proof of evidence
MJ/4	Appendices to Councillor Jones's evidence
MJ/5	Supporting documents relating to the draft Neighbourhood Plan including: a. Final submission document b. Statement on the need for Habitat Regulation Assessment c. Documentation to Cheshire West and Chester Council to carry out the 6 week publicity period, including the Basic Conditions Statement, Sustainability Appraisal Scoping Report, Consultation Statement and Sustainability Appraisal Report. d. Maps the area covered by the draft Neighbourhood Plan
MJ/6	Cheshire West and Chester Council's letter to Mrs Dutton regarding the Neighbourhood Plan (31 May 2013)
MJ/7	Cheshire West and Chester Council's notification letter regarding the application for a Neighbourhood Area
MJ/8	Case Study – Grackle Croft including: a. Timeline b. Email to Carol Weaver from DCLG (6 June 2013) c. Email to Graham Spencer from the Council (10 June 2013) d. Letter from Indigo to Tattenhall Neighbourhood Plan Steering Group (21 December 2012) e. Letter to the Council from Mr and Mrs Goodwin (dated 20 May 2013)
MJ/9	Councillor Spencer's speaking note
MJ/10	Checklist of viewing points for Inspector's site visit
MJ/11	Opening submission delivered by Councillor Jones
MJ/12	Closing submission delivered by Councillor Jones
TP/ - Third party oral evidence to the Inquiry	
TP/1	Statement by Mrs C Roberts (local resident)
TP/2	Statement by Mrs C Dzelzainis (local resident)
TP/3	Statements by Mr F White (local resident)
TP/4	Statement and documentation by Mr M Cooke (local resident and

	speaking as the Chair of the Tattenhall Business Alliance and Business Club)
TP/5	Statement by Mr I Waddington (local resident and speaking on behalf of the Friends of Tattenhall)
TP/6	Statement by Mr M Hudson (local resident)
TP/7	Statement by Mr D Hughes CEng MICE (local resident and former Chief Engineer with Cheshire County Council)
TP/8	Statement on behalf of the Friends of Tattenhall (Rookery Drive) and Brook Hall residents by Mr P Barton MCD BA(Hons) MRTPI (delivered by Mrs C Dzelzainis)
TP/9	Statement by Mr I Cross (speaking on behalf of Greenlands residents)
TP/10	Statements by Dr T Dzelzainis (speaking on behalf of Friends of Tattenhall (Rookery Drive) and Brook Hall residents)

WR/ - Third party written representations to the appeal

WR/1	Folder of letters submitted prior to the opening of the Inquiry (Taylor Wimpey)
WR/2	Folder of letters submitted prior to the opening of the Inquiry (Mr A Wall)
WR/3	Folder of letters submitted prior to the opening of the Inquiry (Barratt Homes)
WR/4	Letter from Mr N Friswell[82] (6 June 2013)
WR/5	Written statement by Mrs S Hudson and other residents with attached Briefing Note by Cameron Rose Associates on highway matters
WR/6	Letter from Margaret Newman (10 June 2013)
WR/7	E-mails from Mr I Waddington (10 and 18 June 2013)
WR/8	Letters from Mr T Leigh Smith (17 and 21 June 2013)
WR/9	Letter from Mr White (17 June 2013)
WR/10	Letter from Mrs R Bell (16 June 2013)
WR/11	Written statement by Mr M Hudson

[82] It was not possible to verify the correct spelling.

WR/12	Letter from Mr A Turner, Chairman of Tattenhall Junior Football Club
WR/13	Letter from Mathew Green, Manager/ Coach, Tattenhall Junior Football Club
WR/14	Letter from Mrs W E Toud[83] (7 and 10 June)
INQ/ - General Inquiry documents	
INQ/1	Joint statement in response to highway submissions by third parties
INQ/2	Joint note by the three Appellants' advocates regarding the status of the Conservation Area Appraisal
INQ/3	Statement on ecology from Mr A Evans, Principal Biodiversity Officer with Cheshire West and Chester Council
INQ/4	Schedule of distances of Photoviews of each site agreed between the Council and Appellants
INQ/5	Compliance note by the Council and three Appellants on the planning obligations including the bus service improvement contribution for the purposes of Regulation 122 of the Community Infrastructure Levy Regulations
INQ/6	Briefing note by the Council and three Appellants concerning the proposed improvements at the A41/Chester Road junction
INQ/7	Outline planning permission relating to land to the rear of 2-36 Harding Avenue, Tattenhall (Redrow site) (1 May 2013)
INQ/8	Joint closing statement of the Appellants in relation to prematurity, localism and the Neighbourhood Development Plan
INQ/9	Joint closing statement of the Appellants in relation to housing land supply
INQ/10	Site visit itinerary
DOC/ – Documents received by the Inspector following the close of the Inquiry	
DOC/1	Letter from PINS seeking the parties' views on the TNDP following publication of the Examiner's Report and the Secretary of State's decision relating to Nantwich Road, Tarporley (3/9/13)
DOC/2	Responses to the above from the Appellants, Cheshire West & Chester Council, Cller Jones, Tattenhall & District Parish Council, Mr T Leigh-

[83] It was not possible to verify the correct spelling.

	Smith
DOC/3	Correspondence from the main parties relating to the Council's changed housing land supply position and whether the Inquiry should be re-opened
DOC/4	Information regarding the Pre-Action Protocol for Judicial Review of the TNDP
DOC/5	Letter from PINS concerning the judicial review of the TNDP and the Council's Housing Land Supply position (22/10/13)
DOC/6	Joint response regarding the judicial review position from the Claimants and Cheshire West & Chester Council
DOC/7	Correspondence from the Council relating to its 5 year Housing Land Supply position (22/10/13 and 5/11/13)

PLANS

Taylor Wimpey UK Limited	
A (1-3)	Application Plans (see CD5.2, 5.3, 5.4)
B	Revised plans submitted with the appeal: B/1: Access plan with right turn lane (0024_07 Rev E) B/2: Alternative access plan with T-junction (0024_09 Rev B) B/3: Refined parameter plan (480A-18A)
Mr A Wall	
C (1-3)	Application Plans (See CD7.3-7.5)
D	Revised plans submitted with the appeal: D/1: Illustrative layout plan (1263WHD/TRT/IL01 Rev D) D/2: Development parameters plan (5433-P-05 Rev A)
Barratt Homes	
E (1-30)	Application Plans (See CD10.1 and 10.16)
F	Revised plans submitted with the appeal: F/1: Revised access arrangement (CBO-0139-003 Rev B) F/2: Revised planting plan (1510/P14b) F/3: Revised planting plan (1510/P15b) F/4: Revised planting plan (1510/P16b) F/5: Updated layout to show revised access (1412/PL02/A) F/6: - Area of Open Space (1412-POS-25.04.13)

ANNEX THREE: CONDITIONS FOR APPEAL A

Land adjacent Adari, Chester Road, Tattenhall – Taylor Wimpey UK Ltd

APP/A0665/A/12/2180958

General commencement

1) Application for approval of reserved matters shall be made not later than the expiration of one year beginning with the date of this permission and the development shall be begun not later than whichever is the later of the following dates: a) the expiration of three years from the date of this permission; or b) the expiration of two years from the date of the approval of the final reserved matters.

2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced and thereafter the development shall only be carried out in accordance with the approved details.

3) The development hereby approved shall be carried out in accordance with the following approved plans:

- Site Location Plan drawing no: 05022_MP_02_001 (Plan A/1)
- Parameters Plan drawing no: 480A-18A (Plan B/3), save for the arrangement of ponds in the Area of Offsite Amphibian Mitigation and the storey height of dwellings, which shall be restricted to no more than two storeys.
- Proposed Site Access drawing no:0024_09B (Plan B/2)

Affordable housing

4) No development shall commence until an Affordable Housing Scheme (AHS) has been submitted to and approved in writing by the Local Planning Authority. The amount of affordable housing shall be equal to 35% of the total number of dwellings and shall provide for a 60:40 tenure split between affordable rented units and intermediate affordable housing (respectively) as defined in Annex 2 of the National Planning Policy Framework, unless otherwise agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved AHS. The AHS shall include details of:

i. the numbers, type, tenure and location on the site of the affordable housing provision to be made;

ii. the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if not by a Registered Social Landlord);

iii. the occupancy criteria to determine the identity of prospect and successive occupiers, including the identification of means to ensure such occupancy conditions are enforced;

iv. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing.

Drainage

5) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

ii. include a timetable for its implementation; and

iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

6) The development hereby permitted shall not commence until a scheme for the disposal of foul water, including details of any off-site works has been submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and subsequently maintained in accordance with the timing arrangements within the approved scheme.

Environmental

7) No development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of security fencing where appropriate;
- wheel cleaning facilities;
- measures to control the emission of dust, dirt, noise, vibration and light;
- hours of construction/demolition/deliveries;
- HGV routeing (including signage) to and from the site.

Landscaping

8) No development shall commence until details of the existing and proposed ground levels and finished ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.

9) The landscaping scheme shall include the following information:

- details of the existing trees and hedgerows to be retained (with reference to the submitted Tree Survey dated April 2012 and Access Road Arboricultural Assessment Version 3.0 dated April 2013) together with details of their protection during the course of construction;
- details of a replacement hedge along the site frontage with Chester Road;
- areas of amenity and informal open space (including play spaces);
- the area for offsite amphibian mitigation north of Keys Brook and any ecological areas south of Keys Brook;
- the provision of an undeveloped buffer zone (at least 8 metres wide) from the bank top of Keys Brook including details of the extent and layout of the buffer and any proposed planting (for example, native species);
- details of any footpaths
- fencing details.

10) Prior to first occupation of any dwelling a scheme for the management and maintenance of the areas of amenity and informal open space and undeveloped buffer zone (the landscaped areas) shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of the long term design objectives, management responsibilities, maintenance schedules for the landscape areas together with details of how public access will be secured and a timetable for implementation. The landscaped areas shall be managed and maintained within the site wholly in accordance with the details agreed for a period that shall be agreed in writing with the Local Planning Authority.

Archaeology

11) No development shall commence until the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been secured by the applicant, or their agents or successors in title and approved in writing by the local planning authority. The development shall be carried out strictly in accordance with the approved scheme.

Ecology

12) Prior to commencement of development, an Ecological Mitigation Scheme shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Mitigation Scheme shall include the following information and provisions:

- the proposed areas of ecological mitigation;
- an updated Protected Species survey, which shall be undertaken at the appropriate time by a suitably qualified ecologist and submitted, together with mitigation measures;

- a strategy for the mitigation of impacts on Protected Species including Great Crested Newts, including details of the proposed location, size and profile of new ponds notwithstanding the details of the Area of Offsite Amphibian Mitigation shown on the Parameters Plan (Ref: 480A-18A);
- the provision of bat and bird boxes;
- A timetable for implementation.

The development shall be implemented in accordance with the approved Ecological Mitigation Scheme and timetable and maintained thereafter in accordance with the Ecological Management Scheme required pursuant to Condition 13.

13) Prior to first occupation of any dwelling an Ecological Management Scheme for the long term protection of the measures implemented pursuant to the approved Ecological Mitigation Scheme shall be submitted to and approved in writing by the Local Planning Authority. The Ecological Management Scheme shall be implemented as approved and shall include:

- a description of the features to be managed;
- the overarching aims and objectives of the Ecological Management Scheme;
- details of any ecological trends and constraints on site that may influence management;
- appropriate options for achieving the aims and objectives;
- the management actions;
- the duration of the Ecological Management Scheme;
- preparation of a work schedule (including a project register, an annual work plan and the means by which the plan will be rolled forward annually);
- details of the management company responsible for implementation of the Ecological Management Scheme and funding mechanism, including the arrangements for the transfer of responsibilities in the event of default, winding up, insolvency of, or failure to comply by, the management company; and
- monitoring and remedial / contingency measures triggered by monitoring.

14) No clearance of trees, hedgerows or shrubs shall be carried out during the bird nesting season (March – August inclusive), unless a breeding bird survey is undertaken and submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for nesting birds. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

Highways

15) The access to Chester Road shall be constructed to binder-course level in accordance with the details on drawing no. 0024_07 Rev E before commencement on site of any other infrastructure or building works. The access shall be completed to surface level in accordance with a timetable that shall be first agreed in writing with the local planning authority before the first

dwelling is occupied.

16) No dwelling shall be occupied until:

   i. the site access to Chester Road and that part of the highway or footway which provides access to it has been constructed up to binder-course level in accordance with the approved details;

   ii. a timetable has been agreed in writing by the Local Planning Authority for the completion of the surface course.

17) No dwelling shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals, including the provision for the appointment of a Travel Plan Co-ordinator, targets, a timetable for implementation and arrangements for monitoring of progress of the Travel Plan. The Travel Plan shall be carried out as approved and in accordance with the agreed timetable.

18) No development shall commence until a scheme for external street lighting and lighting to public open spaces has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation. The external lighting shall be implemented in accordance with the approved details and retained thereafter.

End of conditions for Appeal A

ANNEX FOUR: CONDITIONS FOR APPEAL B

Land rear of 15-38 Greenlands, Tattenhall, Cheshire – Mr Ashley Wall

APP/A0665/A/12/2185667

General commencement

1) Application for approval of reserved matters shall be made not later than the expiration of one year beginning with the date of this permission and the development shall be begun not later than whichever is the later of the following dates: (a) the expiration of two years from the date of this permission; or (b) the expiration of one year from the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved.

2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development is commenced and thereafter the development shall only be carried out in accordance with the approved details.

3) The development hereby approved shall be carried out in accordance with the following approved plans and documents:

- Site Location Plan drawing no: AW001 (Plan C/1)
- Topographical Survey drawing no: A0 12D082/001 (Plan C/2)
- Illustrative Layout drawing no: 1263WHD/TRT/IL01 Rev. D (Plan D/1)
- Development Parameters Plan drawing no: 5433-P-05 Rev A (Plan D/2)
- Design and Access Statement dated May 2012

Drainage

4) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

   i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

   ii) include a timetable for its implementation; and

   iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

5) The development hereby permitted shall not commence until a scheme for the disposal of foul water, including details of any off-site works has been submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and subsequently maintained in accordance with the timing arrangements within the approved scheme.

Environmental

6) No development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;
- the storage of plant and materials used in constructing the development;
- the erection and maintenance of security fencing where appropriate;
- wheel cleaning facilities;
- measures to control the emission of dust, dirt, noise, vibration and light;
- hours of construction/demolition/deliveries;
- HGV routeing (including signage) to and from the site.

7) No development shall commence until details of the existing trees and hedgerows to be retained together with details of their protection during the course of construction have been submitted to and approved in writing by the local planning authority. The trees and hedgerows to be retained shall be consistent with those identified on the submitted Arboricultural Impact Assessment dated May 2012. The development shall be carried out only in accordance with the approved details and any protective fencing shall be installed prior to construction work commencing and retained during the construction period.

Landscaping

8) No development shall commence until details of the existing and proposed ground levels and finished ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out only in accordance with the approved details.

9) Prior to the first occupation of any dwelling a scheme for the management and maintenance of the areas of amenity and informal open space, including the areas of green infrastructure, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the long term design objectives, management responsibilities, maintenance schedules for the landscape areas together with details of how public access will be secured and a timetable for implementation. The areas of amenity and informal open space shall be managed and maintained within the site wholly in accordance with details agreed for a period that shall be agreed in writing by the Local Planning

Authority.

Archaeology

10) No development shall commence until the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been secured by the applicant, or their agents or successors in title and approved in writing by the local planning authority. The development shall be carried out strictly in accordance with the approved scheme.

Ecology

11) Prior to the commencement of development, an updated European Protected Species survey shall be undertaken at the appropriate time of year by a suitably qualified ecologist and submitted, together with mitigation measures, with the reserved matters application. The layout shall be informed by the presence of any protected species and the mitigation measures required (if any). The development shall be carried out in accordance with the updated information and mitigation strategy, which shall include a timetable for implementation.

12) No clearance of trees, hedgerows or shrubs shall be carried out during the bird nesting season (March – August inclusive), unless a breeding bird survey is undertaken and submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for nesting birds. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

13) Prior to the commencement of development, a scheme for the provision and management of an undeveloped buffer zone at least 8 metres wide from the bank top of Keys Brook, shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme. Any subsequent amendments thereto shall first be agreed in writing with the Local Planning Authority. As well as setting out a timetable for its provision, the scheme shall include:

    i) plans showing the extent and layout of the buffer zone;

    ii) details of any planting scheme;

    iii) details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term;

    iv) details of any footpaths, fencing, etc.

14) Prior to the occupation of the first dwelling a scheme for the provision of bird and bat boxes within the site shall be submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the bat and bird boxes have been installed in accordance with the approved scheme. Thereafter, the bat and bird boxes shall be retained.

Highways

15) No other infrastructure or building works shall take place until the access off Tattenhall Road has been provided in accordance with a scheme to be first agreed with the local planning authority. The site access and that part of the highway or footway that provides access to it shall be constructed to binder-course level in accordance with the approved details. The surface course shall be provided in accordance with a timetable that shall be agreed in writing by the Local Planning Authority as part of the scheme referred to above.

16) No dwelling shall be occupied until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out proposals, including the provision for the appointment of a Travel Plan Co-ordinator, targets, a timetable for implementation and arrangements for monitoring of progress of the Travel Plan. The Travel Plan shall be carried out as approved and in accordance with the agreed timetable.

17) No development shall commence until a scheme for external street lighting and lighting to public open spaces has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation. The external lighting shall be implemented in accordance with the approved details and retained thereafter.

End of conditions for Appeal B

ANNEX FIVE: CONDITIONS FOR APPEAL C

Land opposite Brook Hall Cottages, Chester Road, Tattenhall – Barratt Homes

APP/A0665/A/12/2188464

General commencement

1) The development hereby permitted shall be begun before the expiration of one year from the date of this permission.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

- Design and Access Statement Autumn 2012
- Location Plan 12/060/L01 (Plan E/1)
- Revised Access CBO-0139-003 Rev B (Plan F/1)
- Drawing showing dropped kerbs CBO-0139-004 (Document BH/21)
- Areas of Open Space 1412-POS-25.04.13 (Plan F/6)
- Updated Layout 1412/PL02/A (Plan F/5)
- House Types:

  431/HT/C/B1 (Plan E/5); 431/HT/C/B2 (Plan E/6); 431/HT/C/B3 (Plan E/7); 431/HT/C/B4 (Plan E/8); 431/HT/C/B5 (Plan E/9); 431/HT/C/B6 (Plan E/10); 431/HT/C/B7 (Plan E/11); 431/HT/C/B8 (Plan E/12); 431/HT/C/B9 (Plans E/13; E/14); 431/HT/C/B10 (Plan E/15); 431/HT/C/B11 (Plans E/16; E17); 431/HT/C/B12 (Plans E18; E19); 431/HT/C/B13 (Plans E/20; E21); B14-1 (Plan E/22); B14-2 (Plan E/23)

- Planting Plans

  1510/P14b (Plan F/2); 1510/P15b (Plan F/3); 1510/P16b (Plan F/4); 1510/P17a (Plan E/27); 1510/P18a (Plan E/28); 1510/P19a (Plan E/29); 1510/P20a (Plan E/30).

Materials

3) No development shall take place until samples of the materials to be used in the construction of external surfaces of the dwellings, and details of the materials to be used in the construction of any roads, footpaths, and hard surfaced areas have been submitted to and approved in writing by the local planning authority. Development shall be in accordance with the approved details.

Affordable housing

4) No development shall commence until an Affordable Housing Scheme (AHS) has been submitted to and approved in writing by the Local Planning Authority. The amount of affordable housing shall be equal to 40% of the total number of dwellings and shall provide for a 50:50 tenure split between affordable rented units and intermediate affordable housing (respectively) as defined in Annex 2 of the National Planning Policy Framework, unless otherwise agreed in writing by the Local Planning Authority. The development shall be carried out in

accordance with the approved AHS. The AHS shall include details of:

i. the numbers, type, tenure and location on the site of the affordable housing provision to be made;

ii. the arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing (if not by a Registered Social Landlord);

iii. the occupancy criteria to determine the identity of prospect and successive occupiers, including the identification of means to ensure such occupancy conditions are enforced;

iv. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;

v. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing.

Drainage

5) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

ii. include a timetable for its implementation; and

iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

6) The development hereby permitted shall not commence until a scheme for the disposal of foul water, including details of any off-site works has been submitted to, and approved in writing by the Local Planning Authority. The approved scheme shall be fully implemented and subsequently maintained in accordance with the timing arrangements within the approved scheme.

Environmental

7) No development shall commence until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:

- the parking of vehicles of site operatives and visitors;
- the loading and unloading of plant and materials;

- the storage of plant and materials used in constructing the development;
- the erection and maintenance of security fencing where appropriate;
- wheel cleaning facilities;
- measures to control the emission of dust, dirt, noise, vibration and light;
- hours of construction/demolition/deliveries;
- HGV routeing (including signage) to and from the site.

Landscaping, tree protection and boundary treatments

8) No development shall take place until details of the existing and proposed ground levels and ground floor slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

9) No dwelling shall be constructed until details of the boundary treatment for individual dwellings and the areas of open space has been submitted to and approved in writing by the Local Planning Authority. The approved boundary treatment for each dwelling shall be completed prior to the occupation of the dwelling to which it relates. The approved boundary treatment for the areas of open space shall be installed prior to the first use of the area to which it relates.

10) No dwelling shall be constructed until a programme for the implementation of the approved landscaping scheme has been submitted to and approved in writing by the local planning authority. The approved landscaping scheme shall be carried out in accordance with the approved programme unless otherwise agreed in writing by the Local Planning Authority.

11) If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.

12) In this condition a "retained tree" means an existing tree or hedge which is to be retained in accordance with the approved plans. Provisions (i) and (ii) below shall have effect until the expiry of 5 years from the date of the completion of development.

    i) No retained tree or hedge shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans unless agreed otherwise in writing by the local planning authority. Any lopping or topping shall be carried out in accordance with British Standard BS3998: *Tree Work*.

    ii) If any retained tree or hedge is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and the specification of the replacement tree shall be agreed in writing by the local planning authority.

    iii) The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the Tree Quality Survey, Root Protection Areas and Development Implication Report (11 October 2012) before any

equipment, plant machinery or materials are brought onto the application site for the purposes of implementing the development hereby approved. Such fencing shall be maintained in situ for the duration of the construction works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within the areas protected by the fencing shall not be altered in any way without the prior written agreement of the local planning authority.

13) No dwelling shall be occupied until a scheme for the management and maintenance of the areas of amenity and informal open space has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the long term design objectives, management responsibilities and maintenance schedules for the landscape areas together with details of how public access will be secured and a timetable for implementation. The areas of amenity and informal open space shall be managed and maintained within the site wholly in accordance with the agreed details.

Archaeology

14) No development shall take place until the implementation of a programme of archaeological work in accordance with a written scheme of investigation has been secured by the applicant, or their agents or successors in title and approved in writing by the local planning authority. The work shall be carried out strictly in accordance with the approved scheme.

Ecology

15) No clearance of trees, hedgerows or shrubs shall be carried out during the bird nesting season (March – August inclusive), unless a breeding bird survey is undertaken and submitted to and approved in writing by the Local Planning Authority to establish whether the site is utilised for nesting birds. Should the survey reveal the presence of any nesting species, then no development shall take place within those areas identified as being used for nesting during the period specified above.

16) Prior to the commencement of development, a scheme for the provision and management of an undeveloped buffer zone at least 8 metres wide from the bank top of Mill Brook, shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved scheme. Any subsequent amendments thereto shall first be agreed in writing with the Local Planning Authority. As well as setting out a timetable for its provision, the scheme shall include:

i) plans showing the extent and layout of the buffer zone;

ii) details of any planting scheme;

iii) details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term;

iv) details of any footpaths, fencing, etc.

17) Prior to the occupation of the first dwelling a scheme for the provision of bird and bat boxes within the site shall be submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until the bat and bird boxes have been installed in accordance with the approved scheme. Thereafter the bat and bird boxes shall be retained.

Highways

18) The access to Chester Road shall be constructed to binder-course level in accordance with the details on drawing no. CBO-0139-003 Rev B before commencement on site of any other infrastructure or building works. The access shall be completed to surface level in accordance with a timetable that shall be first agreed in writing with the local planning authority before the first dwelling is occupied.

19) No dwelling shall be occupied until the speed limit signage shown on drawing no 1412/PL02/A has been relocated

20) No dwelling shall be constructed until a specification for all internal roads, footways, footpaths and parking areas and a timetable for implementation has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved specification and timetable.

21) No dwelling shall be occupied until that part of the highway or footway which provides access to it has been constructed to binder-course level. The surface course shall be completed in accordance with a timescale that has been agreed in writing by the Local Planning Authority before any dwelling is first occupied.

22) No dwelling shall be occupied until the dropped crossings with tactile paving shown on drawing no. CBO-0139-004 have been provided.

23) No development shall commence until a scheme for external street lighting and lighting to public open spaces has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation. The external lighting shall be implemented in accordance with the approved details and retained thereafter.

End of conditions for Appeal C

The Planning Inspectorate

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

by Christina Downes BSc DipTP MRTPI

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

Date: 8 January 2016

TOWN AND COUNTRY PLANNING ACT 1990

CHESHIRE WEST AND CHESTER COUNCIL

Appeals made by

TAYLOR WIMPEY UK LTD (APPEAL A)

MR ASHLEY WALL (APPEAL B)

BARRATT HOMES (APPEAL C)

TOWN AND COUNTRY PLANNING ACT 1990

Pre-Inquiry Meeting held on: 24 September 2015
Inquiry held on: 2-6 November and 10 November 2015

Land adjacent Adari, Chester Road, Tattenhall, Cheshire (APP/A0665/A/12/2180958)
Land to rear of 15-38 Greenlands, Tattenhall, Cheshire (APP/A0665/A/12/2185667)
Land opposite Brook Hall Cottages, Chester Road, Tattenhall, Cheshire (APP/A0665/A/12/2188464)

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ABBREVIATIONS LIST

Term	Acronym
Annual Monitoring Report	AMR
Cheshire West & Chester Council Local Plan (Part One) Strategic Policies	LP (Part One)
Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies Plan Strategic Policies	LP (Part Two)
Chester District Local Plan	CDLP
Community Infrastructure Levy	CIL
Dwellings per annum	dpa
Full objectively assessed need	FOAN
Housing Land Monitor	HLM
Key Service Centre	KSC
Local Development Scheme	LDS
National Planning Policy Framework	the Framework
Planning and Compulsory Purchase Act 2004	2004 Act
PG	PG
Statement of Common Ground	SCG
Strategic Housing Land Availability Assessment	SHLAA
Strategic Housing Market Assessment	SHMA
Tattenhall and District Neighbourhood Development Plan	TNDP
Tattenhall Village Design Statement	VDS
The Continuing Care and Retirement Community at Frog Hall Farm, Frog Lane, Tattenhall	the Care Community

Appeal A: File Ref: APP/A0665/A/12/2180958
Land adjacent Adari, Chester Road, Tattenhall, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Taylor Wimpey UK Ltd against Cheshire West and Chester Council.
- The application Ref 12/02032/OUT is dated 30 April 2012.
- The development proposed is residential development including construction of a new access, provision of car parking, open space, ancillary landscaping and associated off-site highway works and ecological mitigation works.

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

Appeal B: File Ref: APP/A0665/A/12/2185667
Land rear of 15-38 Greenlands, Tattenhall, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Ashley Wall against the decision of Cheshire West and Chester Council.
- The application Ref12/02352/OUT, dated 18 May 2012, was refused by notice dated 2 October 2012.
- The development proposed is residential development of up to 137 dwellings, public open space, access and associated works.

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

Appeal C: File Ref: APP/A0665/A/12/2188464
Land opposite Brook Hall Cottages, Chester Road, Tattenhall, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Barratt Homes against the decision of Cheshire West and Chester Council.
- The application Ref 12/03825/FUL, dated 22 August 2012, was refused by notice dated 27 November 2012.
- The development proposed is erection of 68 dwellings including access, layout and landscaping.

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

PROCEDURAL MATTERS

1. The Inquiry into the three appeals sat for three weeks in June 2013. On 8 July 2015 the Secretary of State decided to re-open it because there had been a number of material changes in circumstance (Document CD11.8). In particular he made reference to the following matters:

   - The *Tattenhall and District Neighbourhood Plan* (TNDP), which was made on 4 June 2014.
   - The *Cheshire West and Chester Council Local Plan (Part One) Strategic Policies* (LP (Part One)), which was adopted on 29 January 2015.
   - The appeal decision on 13 Holly Drive, Nether Peover, which was issued on 25

March 2015 (APP/A0665/A/2224763).

- The recent judgement in the case of *Woodcock Holdings Ltd v SSCLG and Mid-Sussex DC* [2015] EWHC 1173 (Admin).

2. A Pre-Inquiry meeting was held on 24 September 2015. This discussed the arrangements for the re-opened Inquiry and the limited scope on which evidence would be heard was agreed. It was made clear that the Council's position on housing land supply had changed since 2013. Its position was that it could demonstrate a supply of deliverable sites well in excess of the 5 years required by the National Planning Policy Framework (the Framework). It was agreed that this matter would be dealt with by means of a round table session and that the three Appellants would prepare their evidence jointly. It was also agreed that the matter of planning conditions and planning obligations would be re-appraised and would be discussed in a round table format on the first afternoon of the re-opened Inquiry (***Document CD11.9***).

3. On 15 October 2015 the Council formally considered the appeal schemes and the approach to be taken at the re-opened Inquiry. It re-affirmed its landscape objections, which formed the main grounds of objection at the previous Inquiry. Policies STRAT 8, ENV 2 and ENV 6 in the LP (Part One) were referred to. The putative reason for refusal also concerned the following:

   3.1. The proposals would breach the 30 dwelling limit in Policy 1 of the TNDP and would not deliver the incremental growth it seeks.

   3.2. The type and scale of the proposals would deliver the controlled growth required by the locational strategy in Policies STRAT 2 and STRAT 8 of the LP (Part One).

   3.3. The proposals would be development in the countryside beyond the main built up part of Tattenhall and so contrary to saved Policy HO 7 in the CDLP, Policy STRAT 9 in the LP (Part One) and Policies 1 and 2 in the TNDP. This was not a point made in the previous Inquiry because the Council agreed that it would need to use greenfield land in order to meet its housing requirements.

   3.4. The proposals would not be sustainable development because of the above conflicts.

4. New Planning Obligations by Agreement were submitted by each of the Appellants and these contain a clause that they will supersede the legal documents submitted previously.

5. The re-opened Inquiry commenced on 2 November and sat for 6 days. This Report only deals with material changes that have arisen since June 2013. It should be read alongside the original Report, which I shall refer to as the Main Report. The evidence relating to landscape issues, heritage matters, accessibility, nature conservation, "other matters" and human rights and my conclusions thereon remain unchanged apart from the relevant planning policy context. The Documents List in Annex Two of this Supplementary Report contains only those documents received in connection with the re-opened Inquiry. The Schedule in Annex Three includes only those conditions which have changed as a result of the re-opened Inquiry.

6. Transport matters were raised by third parties in advance of the re-opened Inquiry and I agreed that these could only be discussed if a material change had taken place. On the fourth day of the Inquiry I was asked to accept a written statement by one of the participants at the 2013 Inquiry who had given evidence on highway matters[1]. This was said to respond to highway evidence given at that time on behalf of Taylor Wimpey. This did not seem to me fair to the Appellant who had received no prior warning of this additional statement. Furthermore, there had been an interim period of over 2 years within which such a rebuttal could have been made. In the interests of fair play to all parties I did not agree to accept this late material.

7. New statements of common ground (SCG) were submitted between the Appellants and Council on housing land supply and planning policy. There was also a SCG on various matters between Taylor Wimpey and the Council and a SCG between Barratt Homes and the Council on affordable housing (***Documents HLS/16; INQ/13; TW/26; BH/56***).

UPDATED PLANNING POLICY CONTEXT

THE DEVELOPMENT PLAN

8. The development plan now comprises the saved policies of the **CDLP,** the **LP (Part One)** and the **TNDP**. Whilst the SCG on planning policy refers to many policies considered material to these appeals, the following are considered to be of particular relevance. For the avoidance of doubt however all material policies have been taken into account in my conclusions and recommendations.

CDLP

9. The saved policies from the 2006 CDLP most relevant to these appeals were set out in Paragraph 30 of my earlier Report. However, as a result of the adoption of the LP (Part One), Policies HO 3, ENV 2, ENV 24, TR 1 and TR 19 have not been saved. Policies HO 7, ENV 37, ENV 38 remain of pertinence and the first of these saved policies was discussed at some length at the re-opened Inquiry (***Document CD1.9***).

The LP (Part One)

10. The LP Part One was adopted on 29 January 2015 (***Document CD1.8***).

    10.1. ***Policy STRAT 1*** establishes the presumption in favour of sustainable development and sets out a number of sustainable development principles.

    10.2. ***Policy STRAT 2*** provides the requirement for at least 22,000 new dwellings over the LP period (2010-2030). It includes a settlement hierarchy with the majority of new development being directed to the four main settlements of Chester, Ellesmere Port, Northwich and Winsford. To maintain the vitality and viability of the rural areas an appropriate level of new development will be focused on the key service centres (KSC), which include Tattenhall. The third tier of the local service centres are to be

[1] Mr Waddington asked for this document by Dr T Dzelzainis to be accepted.

identified in the Land Allocations and Detailed Policies Plan (LP Part Two). This plan is at an early pre-submission stage at the present time. The policy also says that further sites will be identified through the LP (Part Two) and/ or Neighbourhood Plans.

10.3. ***Policy STRAT 8*** deals with the rural area and establishes that there will be provision for at least 4,200 dwellings. It sets out the minimum amount of residential development that each KSC will accommodate and the relevant figure for Tattenhall is 250 dwellings. ***Policy STRAT 9*** seeks to protect the intrinsic character and beauty of the countryside and sets out the types of development that will be permitted.

10.4. ***Policy STRAT 10*** concerns transport and accessibility and includes provisions that development should be required to be safely and satisfactorily accommodated within the existing or proposed highway network, make appropriate provision for access to alternative modes to the car and take into account the safety of all road users in the design and layout.

10.5. ***Policy ENV 2*** aims to protect and, wherever possible, enhance landscape character and local distinctiveness. ***Policy ENV 6*** includes a number of criteria to ensure high quality construction and sustainable design.

10.6. ***Policy SOC1*** seeks to maximise the provision of affordable housing up to a target of 30%. ***Policy SOC3*** addresses housing mix and type and seeks to provide a mix of housing types, tenures and sizes of both market and affordable housing, taking account of the needs of the particular area.

TNDP

11. The TNDP was made on 4 June 2014 (***Document CD10***). It recognises the benefits of housing growth but wishes it to take place in a sensitive and incremental manner so as to meet the needs of the community whilst respecting the character of the village and the qualities that make it special.

11.1. ***Policy 1*** allows proposals of up to 30 homes on land within or immediately adjacent to the built up part of the village. The policy sets out exceptions, none of which apply to the present appeals. There are also requirements to provide an appropriate housing mix, respect or enhance the natural and built environment and retain the village's sense of place.

11.2. ***Policy 2*** includes a number of criteria which seeks to ensure that development respects local character, local distinctiveness and a sense of place, amongst other things. Accordance with the Tattenhall Village Design Statement (VDS) is required.

11.3. ***Policy 4*** aims to ensure that development proposals address impacts on local infrastructure and services, including cumulatively. ***Policy 5*** concerns transport impacts and accessibility.

12. The earlier Report was written within the context of the **National Planning Policy Framework** (The Framework). However, since then the **Planning**

Practice Guidance (PG) has been published and this provides advice on affordable housing, housing land supply and other matters relevant to these appeals. The **Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies** (LP (Part Two) is still at pre-submission stage with no consultation document yet published.

THE CASE FOR CHESHIRE WEST AND CHESTER COUNCIL

The main points are:

13. The re-opened inquiry has not revisited matters considered at the last Inquiry and which have not changed. The case at the last Inquiry was that without a deliverable five year supply, without an adopted up to date LP (Part One) and without a made TNDP, the adverse impacts of the three proposals individually or cumulatively would significantly and demonstrably outweigh the benefits of those schemes. If it is concluded that there is no five year supply, or that the special decision making test in Paragraph 14 of the Framework is triggered for some other reason, the Council's case simply becomes what it was in 2013.

HOUSING LAND SUPPLY

14. There is a five year supply of deliverable housing land and Paragraph 49 of the Framework is not triggered in this case. This judgment has been supported in the recent appeals concerning housing development at Hill Top Farm, Northwich and Fountain Lane, Davenham (***Documents CD 3.32; CD3.33***). Both decisions addressed the 2015 Housing Land Monitor (HLM) and evidence prepared and given in the current appeal by the Appellants. Both Inspectors concluded that the Council had a five year supply. It is accepted that because the HLM was published after the close of the Inquiries and, as neither party sought to have them re-opened, the issues were determined by way of written representations and not tested by live evidence.

15. There was a great deal of evidence put before the Inquiry by both sides to justify each party's contentions. There are tables which set out in one place the disputed sites, the numerical extent of the difference between the parties and a summary of each party's reasons for taking the view that they do on each site (***Document HLS/18***).

16. The Secretary of State's decision at Malpas found that there was a five year supply whereas the Inspector's decision at Nether Peover found that there was not (***Documents CD12.15; CD3.31***). However, these decisions are now of historic interest as neither considers the 2015 to 2020 monitoring period that is before the present Inquiry.

17. There is little dispute over the requirement aspects of the 5 year supply calculation. The base date is agreed to be 1 April 2015. The base annual requirement is agreed at 1,100 (net) dwellings. The extent of the backlog to date is agreed at 836 dwellings. The use of the Sedgefield method to remove the backlog and the need for a 20% buffer are also agreed.

18. The only dispute concerns whether the 20% buffer should be applied to the backlog or not. There are Inspector and Secretary of State decisions that adopt both positions. The Secretary of State did not apply the buffer to the backlog in his decisions at Gresty Lane and Malpas and that approach has been adopted by

the Council in the case of the current appeals (***Documents CD12.5; CD12.15; HLS/11, Section 6***). Although the point makes a difference of only 167 units in this case, it is of importance generally and the Secretary of State is asked to provide a fully reasoned conclusion on this issue to settle it once and for all.

19. The Council has adjusted its supply position of 10,151 dwellings as a result of evidence to the round table session of the Inquiry. It accepts the following adjustments:

    19.1. A reduction of 20 units from site WIC/0046/H at the Research Laboratories, Winnington Lane, Northwich.

    19.2. A reduction of 35 units from site WIC/0004A/S, Land off Peter Street, Northwich.

    19.3. A reduction of 13 units from site CHC/0070/H at Bollands Court / Commonhall Street, Chester.

    The Council's supply figure is thus 10,083 units. Against the Council's 5 year requirement figure of 7,436 units, that is an excess of 2,647 units and a supply of 6.78 years.

Demolitions

20. There is an issue about the inclusion of an allowance for demolitions but it is not considered that any deduction is warranted. Paragraph 5.21 of the LP (Part One) simply states that the 1,100 annual figure is a net figure and that if recent trends continue, up to approximately 50 dwellings per annum (dpa) could be lost to other uses or to demolition, which would equate to a gross provision of 1,150 dpa. That is not a justification for adding to the Council's figures. The Council's monitoring of past events is carried out in net terms. All of the Council's forecasting of future supply is done in net terms. Even the modest small sites windfall allowance in Years 4 and 5 is calculated by reference to past net rates of supply from windfalls. There is no scope for unknown demolitions to come into play in any way that affects deliverable future supply. If demolition or losses to other uses occur, that will be picked up in monitoring and the next annual monitor will adjust completions and past supply accordingly. That issue will not figure in forecasting future supply. If the Council learns of future proposed demolitions or losses, that will be taken into account when predicting net supply for the future. There is no mechanism by which unforeseen demolitions and losses can undermine monitoring or forecasting as it exists at any given point in time.

21. The Nether Peover Inspector expressly said that he was discounting from a net figure (***Document CD3.31, Paragraph 19***). However, one discounts from a gross figure losses and demolitions to get to the net figure in the first place. To discount from a net figure to allow for demolitions is to perform the discounting process twice. The Hill Top Farm Inspector was not explicit but does not appear to have discounted any figure from the Council's supply to allow for demolition or losses, because he noted that monitoring and forecasting was all done on a net basis.

22. The annual rate for demolitions and losses used by the Appellants is 50 dpa. However, that is the maximum figure that the LP (Part One) says could potentially occur. There is no justification for deducting future demolitions. As a result, 191 units should be added to the Appellants' claimed supply. Their claimed shortfall is therefore reduced to 632 units.

Student accommodation

23. The issue in the Fountain Lane decision was whether the accommodation units were self-contained. (***Document CD3.22, Paragraph 22***). The Appellants now take a different point citing the PG as saying that student accommodation can only count towards requirements to the extent that it frees up market housing. The Appellants contend that, whilst self-contained, there is no evidence that such provision will free up market housing but would rather meet the needs of increasing numbers of students in Chester.

24. However, this is a point that attacks the requirement figure, which is based on an assessment of full objectively assessed need (FOAN). It is not disputed that the need for both self contained student accommodation and houses in multiple occupation operated by private landlords were both considered in arriving at the FOAN and requirement figures (***Document HLS/12, Appendix 1***). Communal establishments that were not self-contained, such as halls of residence, were not accounted for in FOAN requirement. The LP Inspector took no issue with that approach.

25. If the need for a particular type of accommodation contributes towards the requirement its provision should count towards the supply of that requirement. It cannot mean that the provision of the accommodation somehow no longer count towards meeting the requirement, even if it has risen. The announcement of the removal of the cap on student numbers by the Government in late 2013 pre-dated the LP Examination hearings. None of the disputed schemes comprise communal accommodation. The Appellants' claimed shortfall should be reduced by a further 601 units, reducing the shortfall still further to just 31 units.

Class C2 uses

26. The 95 Assisted Living Units at Frog Hall Farm, Frog Lane, Tattenhall (the Care Community) should count towards meeting supply. The Planning Obligation only controls occupancy insofar as health needs or age is concerned, in connection with the provision of 20 affordable units. There is no other control on occupation, in particular, none in the conditions attached to the decision notice. Nor is there any evidence of any contractual control (***Documents HLS/10, Appendix 17b; INQ/12***).

27. Whether the development falls within Use Class C2 can be relevant to deciding whether affordable housing provision is required, depending upon local policy circumstances. However, it tells one nothing about whether such a scheme would meet a housing need. The PG makes clear that Class C2 uses can count towards such needs and that the local plan should set out the approach being taken. Policy SOC3 in the LP (Part One) and its supporting text explains the position. As a result, a further 152 units should be added back into supply from these two schemes, meaning that the Appellants' claimed shortfall is eradicated.

Non-implementation discount

28. No discount was made by the LP Inspector. The Malpas Inspector described a non-implementation discount as "arbitrary"; the Nether Peover Inspector gave detailed reasons for rejecting a claim for such a discount; the Hill Top Farm Inspector said that a discount was not needed as it is catered for in the monitoring exercise.

Build out rates and lead in times

29. There is criticism about the lack of involvement of others by way of consultation, workshops and the like. There is no basis for that criticism, other than to assert that the requirement for the annual monitoring exercise to be robust would require such steps to be taken. No guidance or policy which requires such an approach to be taken has been cited.

30. It was also said that those involved in providing information to the Council have incentives to increase or decrease forecast contributions from sites as the case may be. However, if a person consulted on a site has a reason to inflate their supply to thwart rivals, then the Appellants must have an incentive to downplay the likely delivery from other sites in order to maximise the chances of promoting the appeal sites. Indeed, when evidence was given about likely lead-in times and build rates for the appeal schemes, the times and rates used were perfectly consistent with the times and rates used in the HLM.

31. The delivery assumptions are clearly set out in the HLM. If there is no site specific evidence, then the rates from the Strategic Housing Land Availability Assessment (SHLAA), which were arrived at through the Housing Partnership Group, are used (***Document CD3.34, Paragraph 3.11-12***). If site specific evidence exists and it relates to a site disputed by the Appellants, then it will be before the Secretary of State and can be evaluated. Reliance by the Appellants on a settlement specific build out rate has an insecure evidence base. The rate put forward for Winsford, for example, is based on delivery rates from just 3 sites over a two year period. Even then not all of the sites were delivering during each of the two years. Nor is there any robust basis for the Appellants routinely halving delivery in year one of a site's development.

Deliverability

32. The assessment of a site's availability will be guided by the application of Footnote 11 of the Framework. Whilst the drafting of the footnote has led to litigation, planning permission is not a necessary pre-requisite for a site being deliverable[2]. Rather the Footnote means that if the site *did* have planning permission now, there would be no other legal or physical impediment to its delivery. The *Wainhomes* judgement also provides useful guidance on how the question of "available now" is to be approached when the site in question does not have planning permission.

[2] see the case of *Wainhomes (South West) Limited v SoSCLG and others* [2013] EWHC 597 (Admin), Paragraph 34(i) (***Document HLS/11, Appendix 11***]

33. The general definition of deliverability is that the site has to be available now, offer a suitable location now and be achievable with a realistic prospect of delivery within five years and that the site is viable. That definition applies in a qualified way to sites without planning permission and the Council bears the burden of proving deliverability of such sites. The PG indicates that there should be robust and up to date evidence. There is no prescribed detail as to what "robust" means. The judgment is left to the decision maker.

34. The position is different if a site has planning permission. Deliverability is presumed to exist until permission expires unless there is clear evidence that schemes will not be implemented within 5 years, with three examples of how that can occur being given in the footnote. The only sensible way to read that part of the footnote is that in order to show the deliverability of a site with permission, its availability now is not required to be proved. If that were so, it would make no sense to refer to the prospect of implementation within 5 years. The Government response to the Department of Communities and Local Government Select Committee Report reinforces its view that all sites with planning permission should count towards supply unless it is "very clear" that the site will not be delivered (***Document HLS/12, Appendix 13).***

35. It is not necessary to address each specific disputed site in terms of its prospects for supply. The points of difference are accounted for to a large degree by the issues of principle addressed above. Site specific factual evidential differences are set out in the schedule at ***Document HLS/18***. Some of these sites were addressed by the Nether Peover and Hill Top Farm Inspectors although in some cases new material is before the current Inquiry that was not before earlier Inspectors, for example, Premier House, Hoole, Chester (***Document HLS/11, Paragraphs 9.52-9.57***).

36. Much of the Appellant's attention is directed to sites without planning permission. However, it is important to note that these only amount to 1,131 units or 11% of the Council's claimed supply (***Document HLS/10, Table 13***). The Council is plainly not taking an overly optimistic approach to the contribution from this source as a proportion of supply. The Hilltop Farm Inspector was right to conclude that there was no difficulty in establishing that the Council has a five year supply. The Secretary of State is invited to conclude that it can demonstrate a supply of about 6.78 years.

PLANNING POLICY

The adoption of the LP (Part One)

37. It is accepted that saved Policy HO 7 in the CDLP, Policy STRAT 9 in the LP (Part One) and Policy 1 in the TNDP are relevant policies for the supply of housing. It was also accepted that Policies STRAT 2 and STRAT 8 and aspects of TNDP Policy 2 can be similarly categorised. Ultimately, that is a matter of planning judgment for the Secretary of State. However, the purpose is to identify those policies that are out of date if there is no 5 year supply and, in turn, to trigger the special decision making test in Paragraph 14 of the Framework. The fact that policies are out of date and that the test is triggered does not mean that the policies are to be set aside. They are still policies of the development plan to which the presumption in Section 38(6) of the Planning and Compulsory

Purchase Act 2004 (2004 Act) applies and it is still for the decision maker to determine what weight to attach to them[3].

38. If there is a five year supply, the route to the test in Paragraph 14 cannot be via Paragraph 49. There must be some other means, which can only be by the words of Paragraph 14 itself. This explicitly states that the test applies: *"where the development plan is absent, silent or relevant policies are out of date…"*. It is plain that *absence* relates to the absence of the development plan and not a component of the development plan or a policy in it. That is made clear in the Bloor Homes case[4] where the factual circumstances were comparable to the present situation and the LP (Part Two) did not exist. The Appellants all equated absence with incompleteness but as the *Bloor Homes* judgement demonstrates, it is simply not correct to contend that the development plan is absent because LP (Part Two) has yet to emerge (***Document INQ/14, Paragraphs 45, 47***). The development plan comprises LP (Part One), the saved policies of the CDLP and the TNDP. It is therefore incomplete but not absent.

39. On the issue of whether the plan is silent, there are a set of policies that are relevant to the proposals in question. This includes Policy STRAT 9, which sets out what kinds of development will and will not be acceptable in the countryside beyond the settlement limits, just as the Green Wedge policy in the *Bloor Homes* case did (***Document INQ/14, Paragraphs 49-53***). Although it is argued that the policy is in tension with Policy 1 of the TNDP, that issue cannot make the plan absent or silent. The fact that the LP (Part One) makes no allocations of land to meet any needs arising in the Tattenhall area does not make it silent any more than the absence of an allocations document did in *Bloor Homes*.

40. The plan-making regime allows for different local development documents to be identified as part of a LP. If the Appellants are right, then the special Paragraph 14 decision making test would apply to any proposal where the adoption of an up to date strategic document had left allocations to a later development plan component. That approach ignores *Bloor Homes* and undermines the primacy of the development plan set out in Section 38(6) of the Planning and Compulsory Purchase Act (2004 Act). There is thus no proper basis for concluding that the development plan is absent or silent.

41. The Appellants also variously argue that the development plan is out of date even if there is a five year supply because of the absence of Part 2, the absence of a settlement boundary for Tattenhall and the terms of Policy HO 7 of the CDLP. If there is no five year supply, this route into the decision making test of Paragraph 14 need not be grappled with. However, if there is a five year supply this route into the Paragraph 14 test does not apply for the following reasons:

    41.1. LP (Part One) Policy STRAT 9 provides a Framework compliant development management test for development in the countryside. All

[3] *Crane v SoSCLG* [2015] EWHC 425 Admin (***Document CWC/23, Appendix 2, Paragraph 62***); *Phides Estates (Overseas) Limited v SoSCLG* [2015] EWHC 827 (Admin) (***Document INQ/18, Paragraph 74***).

[4] *Bloor Homes East Midlands v SoSCLG and Hinckley and Bosworth Borough Council* [2014] EWHC 754 (Admin) (***Document INQ/14***)

three Appellants accept that their sites are in the countryside and that the policy applies to their schemes. The contention that the policy does not comply with Paragraph 17 of the Framework does not concur with the finding of the LP Inspector. The reference to "protecting" and not merely "recognising" the character of the countryside has been found sound and justified in accordance with national policy. It is not for that process to be re-run now (***Documents CD3.26, Paragraphs 161-2; INQ/18, Paragraph 42***).

41.2. If there is a five year supply the operation of Policy STRAT 9 is obviously not inhibiting the delivery of that supply. The Fountain Lane and Hill Top Farm appeal sites post-date the base date for the latest HLM and are not included in the five year supply. The Appellants do not contend that the Council's five year supply depends upon the deliverability of land covered by Policy STRAT 9.

41.3. The LP Inspector took the view that the use of the settlement boundary policies or policies restricting development outside the built up areas of settlements would allow the delivery of housing. He considered that the plan would deliver a five year supply to meet the 1,100 net annual requirement figure, make appropriate provision for affordable housing and be sound. He did not state, imply or even hint that this interim or temporary application of the saved policies was a policy approach which he was reluctant about or that it only had validity for any particular length of time. The fact that LP (Part Two) has been delayed beyond the timetable in the Local Development Scheme (LDS) does not mean that the interim approach has become out of date or more out of date.

41.4. Text in Paragraph 5.73 of LP (Part One) was added as a result of a main modification, which was intended to provide clarity as is plain from the LP Inspector's Report (***Document CD3.26, Paragraph 162***). Its purpose was to show the plan reader that the boundaries would be defined in the LP (Part Two). Its purpose was also to show where Policy STRAT 9 applied. In parts of the Borough where the saved policy had a settlement boundary, the boundary would continue to exist, along with the policy which created it. The same approach was taken to saved Policy HO7 in the CDLP. Even though the policy does not specify where it applies, that comes from its supporting text (***Document CD1.9, Page 221***). If only the policy itself has been saved and not the supporting text, then the main modification did not achieve one of the two purposes the LP Inspector thought it would.

41.5. Policy STRAT 9 is in effect now. Its application to decision making is not postponed until LP (Part Two) has been adopted.

41.6. It is accepted that Policy HO 7 is partly out of date. However, it was saved to guide the application of Policy STRAT 9. Until the LP (Part 2) is adopted, Policy STRAT 9 applies to the areas covered by saved Policy HO 7 and the other saved policies from Vale Royal and Ellesmere Port & Neston Boroughs. It could hardly be otherwise, because of the decision making test in Policy HO 7, which is not the same as that in Policy STRAT 9, being much stricter. Given the existence of a five year supply, and the

judgment of the LP Inspector that there was little, if any, need for additional land to be identified in the Rural Area to meet planned requirements, the approach is not out of date (***Document CD3.26, Paragraph 137***).

42. If there is a five year housing land supply, the development plan is not out of date because of the genesis of Policy STRAT 9, the terms of its Paragraph 5.73 and the absence of a settlement boundary.

43. It is not necessary to test the effect upon the character and beauty of the countryside of a particular scheme in order to test whether Policy STRAT 9 is complied with or breached by the appeal schemes. That is because they are all proposals not covered by the list of acceptable uses in the bulleted list in the first part of the policy. All three schemes breach the policy which causes significant harm.

44. The housing requirements in Policies STRAT 2 and STRAT 8 of the LP (Part One) are minima. However, that does not mean that there is a free for all in Tattenhall, and the consequences of providing up to 315 further dwellings needs to be addressed.

    44.1. The schemes, individually and cumulatively, would cause serious landscape and visual harm, which is an express part of the consideration required by Policy STRAT 8 as regards development in the Rural Area and an important consideration Borough-wide, as set out in Policies ENV 2 and STRAT 1.

    44.2. Even if all schemes were acceptable in landscape and visual terms, both individually and in combination, regard must be paid to the effect of the development upon the character of Tattenhall and the community's desire for incremental growth as set out in the TNDP. That is a legitimate matter for the planning system to take into account. There would be concerns about an addition to Tattenhall of over 300 dwellings and that the issue would be more serious still once a figure of 500 was reached.

45. If there is a five year supply, there is no pressing need to locate dwellings in Tattenhall. Supply is to be tested on a Borough-wide basis. In any event, out of the 250 dwelling minimum figure for Tattenhall, 185 dwellings are already committed (***Document CWC/21, Table 1***). Apart from perhaps the 28 dwellings at Smithfields, about which the Appellants expressed some reservation, the delivery of none of these schemes is in doubt and it would be fair to conclude that all would be built out by 2020 so that by then 185 of the minimum 250 figure would have been delivered, which is halfway through the plan period. The 95 units at the Care Community should count towards meeting needs, for reasons set out in Paragraphs 26-27 above. In addition, the change in households of persons over 65 years account for 19,900 of the 21,000 forecasted new households over the plan period (***Document CD2.7, Table 4.11***).

46. It is accepted that the presence of a five year supply is not, of itself, grounds for refusing planning permission. However, the Fountain Lane and Hill Top Farm appeal decisions are only illustrations of the principle and do not, of course, amount to precedents to guide decisions in these appeals, which must be reached on their own merits. In particular, it is important to note that at

neither appeal did the Council contend that the scheme would have any landscape, visual or other adverse site specific effect. In Hill Top Farm the benefits were not just the provision of additional market and affordable housing, but also the provision of highway works which would significantly improve an unsatisfactory part of the highway network for all road users (***Document CD3.32, Paragraphs 45, 47, 66***).

The making of the TNDP and the Woodcock Holdings judgement

47. The case set out previously in relation to landscape and visual matters means that the proposals, individually and cumulatively, would breach Policy 2 of the TNDP because they would not respect local character and would not respect local landscape quality. They would fail to comply with the requirement in Policy 1 to respect and, where possible, enhance the natural environment. The weight to be afforded to these breaches will depend upon the planning judgment formed about the degree or harm, individual and cumulative, and the balance of that with other material considerations.

48. The most controversial issue about the TNDP is Policy 1. To enable managed housing growth the policy states that up to 30 dwellings within or immediately adjacent to the built up part of Tattenhall will be allowed. It goes on to address smaller scale exception sites in Gatesheath and Newton-by-Tattenhall. It then provides for exceptions on previously developed land, conversions or schemes with a minimum of 70% affordable housing. The only sensible way to read the policy is that proposals for more than 30 dwellings breach the policy. It is untenable to claim that the policy is simply neutral on schemes of over 30 units. If the 30 dwelling figure were not a limit, there would be no need to set out the ability to provide for exceptions to the two bullets to be countenanced.

49. In the Judicial Review challenge to the decision to send the TNDP for Referendum, Mr Justice Supperstone recites all of the history of the making of the plan. This includes references to the 30 dwelling limit and deals with a ground of challenge which was expressly challenging the justification for the 30 dwelling figure. He says twice that there was an appropriate justification for, and examination of, the 30 dwelling figure, calling it a “limit” both times. (***Document CD3.30, Paragraphs 85, 88***).

50. It is also not logical to argue that the policy contains no limit and yet also argue that it acts as a brake on housing delivery. That is an inconsistent approach. The policy clearly does contain a limit of 30 dwellings and each of the appeal schemes breaches Policy 1 for that reason. The breach is not just material because of the numbers of houses involved but would also result in significant adverse landscape and character effects. The breach of the limit also itself deserves weight. The purpose of the policy, as set out in the plan itself, is to manage housing growth and allow “incremental” growth which is how “the best villages have developed”. It says that it is “essential” that this continues to be the case in Tattenhall. The community’s approach to development at Tattenhall was arrived at after extensive public consultation and found to meet the basic conditions at examination. It is not open to the Appellants to go behind the examination process’s conclusion and seek to re-examine the justification for the policy approach. That is to be taken as a given at this stage.

51. Part of the objection amounts to an attack on the neighbourhood planning system. The TNDP was found to have been lawfully sent for referendum and the examination was found to be legally adequate. The contention that Policy 1 should be afforded less weight is a scarcely concealed attack on the robustness of neighbourhood plans. Such an attack is unwarranted. Such plans form part of the development plan and Section 38(6) of the 2004 Act applies to them. There is no hint in the legislation, Framework or PG that they are an inferior part of the development plan or that the breach of a TNDP plan policy is to be treated as a less weighty matter than if the same policy were included in a local plan. Nor does the *Woodcock Holdings* judgement provide any support as it says nothing about the status of a made neighbourhood plan or the weight to be afforded to its policies relative to local plans. Nor even does it say that the "somewhat superficial" examination of such plans affects their content or the weight to be afforded to their provisions. In the case of Woodcock the neighbourhood plan had not been made.

52. The indications are the precise reverse. The Framework at Paragraphs 183-185 sees neighbourhood plans as giving "communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need" that they provide a "powerful set of tools" and that such plans "will be able to shape and direct sustainable development" outside strategic matters. The Appellants' arguments really amount to saying that the Parish Council was wasting its time in preparing a plan with a 30 dwelling limit, having it examined and subjecting it to Referendum, because the breach of the limit can be easily set aside. The Secretary of State is asked not to accede to such an argument.

53. The Appellants' point about the inconsistency of Policy 1 in the TNDP and Policy STRAT 9 in the LP (Part One) is made to downgrade the weight of the latter. However, that is the wrong way round as the LP (Part One) was adopted after the TNDP was made. Section 38(5) of the 2004 Act states that any conflict is to be resolved in favour of whichever document was the later to become part of the development plan.

54. The proposals, individually and cumulatively are in breach of the development plan. They breach Policies STRAT 1, STRAT 2, STRAT 8, STRAT 9 when read with HO 7 and ENV 2 of the LP (Part One) and Policies 1 and 2 of the TNDP. The Fountain Lane Inspector treated the breach of just Policy STRAT 9 and, in that case, Policy GS 5 as a breach of the development plan and the Hill Top Farm Inspector seems to have reached the same view (***Document CD3.32, Paragraph 68; CD3.33, Paragraph 56***). The breach of the development plan needs to be afforded considerable weight for the following reasons:

    54.1. The nature and extent of landscape and visual harm that the schemes would cause.

    54.2. Section 38(6) of the 2004 Act is the statutory expression of the plan-led system. The development plan is not a material consideration but has a special status and weight. There can therefore be no such thing as a technical breach of the development plan.

    54.3. Although the Framework is important, it does not displace Section 38(6) and it is particularly important to note that the policies of the LP (Part One) and the TNDP were examined in the light of the Framework.

54.4. The LP (Part One) expressly makes compliance with its policies part of the consideration of whether development is sustainable overall in Policy STRAT 1.

54.5. The *Bloor Homes* judgement is a reminder of the weight to be given to the question of development plan compliance. Mr Justice Lindblom held that development which was not in accordance with the development plan could still be permitted if the relevant material considerations which indicated that a decision otherwise than in accordance with the plan "*were strong enough to outweigh the statutory presumption in favour of the plan"* (***Document INQ/14, Paragraph 57***].

AFFORDABLE HOUSING

55. There are no material considerations in these cases which indicate that the decisions should be otherwise than in accordance with the development plan. Weight is attributed to the schemes' social and economic benefits, which were considered at the last Inquiry. Significant weight should also be given to the provision of market housing even if there is a five year supply. Substantial weight should be afforded to the provision of affordable housing and there seems very little difference with the Appellants' position[5].

56. The reference to the *Satnam Millenium Ltd* case[6] and the contention that the LP Inspector did not identify a specific figure for the FOAN for affordable housing is an attempt to attack the validity of the treatment of affordable housing in the LP (Part One). This is not something that can be done within the context of these appeals (***Document INQ/18, Paragraph 42***). The Satnam decision is somewhat drawn into question by the more recent decision of the High Court in the case of *Kings Lynn and West Norfolk*[7] which considers the question of the extent to which affordable housing needs to be considered when determining FOAN (***Document INQ/19, Paragraphs 32, 34***). There is no reference to *Satnam* in the judgment and the challenge related to a planning appeal rather than a local plan, so there are potential grounds to distinguish it from *Satnam*. Nevertheless the decision in *Kings Lynn* draws into question the need to specifically identify a figure for the FOAN of affordable housing and one can see a high degree of similarity between the approach taken by the LP Inspector and that set out by Mr Justice Dove[8].

57. The simple point of relevance is that the LP (Part One) has not been challenged and it is a plan that has been found to be Framework compliant. It should be followed and applied as it stands. The LP Inspector's Report makes clear that the housing requirement of 1,100 dpa was evidently arrived at having considered the need for affordable housing. It is obvious that one of the key reasons for finding a figure of 1,100 sound is the provision it makes for boosting

[5] Although each of the Appellant's witnesses dealt with the issue of affordable housing, Mr Stacey appeared on behalf of Barratt Homes to specifically provide expert evidence on the matter.
[6] *Satnam Millenium Ltd v Warrington BC* [2015] All ER (D) 215.
[7] *Borough Council of Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464 (Admin).
[8] This judgement may potentially be referred to the Court of Appeal.

affordable housing provision. The evidence that was before the LP Inspector and upon which he relied was the 2013 Strategic Housing Market Assessment (SHMA). He expressly acknowledged that this identified an annual need for 714 affordable dwellings but that this was based on reducing the backlog over a five year period. The figure would be reduced if the backlog were cleared over a longer period. It was on the basis of that evidence that he found the figure of 1,100 to be sound and it was also on that basis that he found the 30% affordable housing requirement in policy SOC 1 to be sound. It is the 30% that is the policy not the 714 (***Document CD3.26, Paragraphs 31, 36, 38***).

58. There is no new evidence to argue for a different need figure or to say the figures set out in the 2013 SHMA are wrong. Indeed it is the 2013 SHMA that is relied on by the Appellants in their evidence. The affordable housing need has been overstated and the 714 figure is not a figure that can be extrapolated to be an annual need for each year of the plan period. The Council has been delivering affordable housing since the 2013 SHMA and as the backlog of need has gone down so must the 714 figure.

59. The most pertinent new evidence is provided by the 2015 Annual Monitoring Report (AMR). This shows that from 2010 to 2015, the first five years of the plan period, an average of 32% affordable housing has been delivered per annum. Although it is accepted that a target of 1,100 net houses has not been delivered in each of these years, it shows that Policy SOC 1 has been effective in delivering 30% affordable housing. If there is a concern it is with regards to the overall delivery of housing, not an acute one regarding affordable provision. Even if the most recent year of delivery was an exceptional one it is clear on the basis of the last five years of delivery that the target is proving to be deliverable.

60. Even if Tattenhall had one of the greatest needs for affordable housing in the Borough there is no policy requirement that this must be met where it arises. The policy focus is on Borough-wide need.

61. Barratt Homes are keen to emphasise that they are delivering 40% affordable housing rather than the policy mandated 30%. In real term this translates to a difference of 7 houses. It is important to have regard to the actual number of affordable houses not simply the percentage.

THE PLANNING BALANCE

62. Overall, the Council's judgment is that the special decision making test in Paragraph 14 of the Framework is not engaged, regardless of whether or not there is a deliverable five year supply. A decision in accordance with the development plan would be to dismiss each appeal and no material considerations indicate that a decision should be taken otherwise. The landscape and visual effects and the breaches of the development plan mean that overall the proposals are not sustainable development, either considered alone or in any combination.

THE CASE FOR COUNCILLOR MIKE JONES

The main points are:

63. Since the last Inquiry the community has supported the TNDP with an overwhelming *yes* vote in the referendum. This was with a 96% vote in favour and a 52% turnout. The making of the TNDP was then delayed due to the Judicial Review, but was subsequently made on 4 June 2014 (***Document MJ/13, Paragraphs 5.6-5.7***). The *Woodcock Holdings* judgement refers to neighbourhood planning in progress. This is not the same situation as the TNDP, which has been made.

HOUSING LAND SUPPLY

64. The five year housing land supply was thoroughly tested during the LP (Part One) Examination in October 2014. A robust annual assessment of the five year supply was undertaken by the Council through the 2015 HLM and this reveals a housing supply of 6.83 years (***Document CD3.34, Table 8.1***). The PG indicates that this should not need to be updated for 12 months and there is no significant new evidence to say otherwise. Whilst some schemes slip, others come forward faster. The Nether Peover appeal decision was determined prior to the 2015 HLM. However, the five year housing land supply has been endorsed by more recent appeals at Fountain Lane, Davenham and Hill Top Farm, Northwich.

65. Paragraph 159 of the Framework indicates that local planning authorities should have a clear understanding of housing needs in their area. It requires that the need for all types of housing, including affordable housing, must be addressed to meet the needs of different groups in the community. It seems perverse that the Appellants are seeking to exclude the housing being delivered for the elderly and for students in the LP (Part One) that would satisfy the needs identified during the plan making process. The outcome was Policies SOC 1 to SOC 6 in the LP (Part One), with Policy SOC 3 setting out that the Council will support the provision of a range of accommodation types to meet the *long term* needs of older people. This could include the provision of lifetime homes, bungalows and extra-care housing. This policy also supports the provision of specialised student accommodation within Chester in appropriate, accessible locations, convenient for the facilities at the University of Chester.

66. These policies and the explanatory text in Paragraphs 7.17-7.23 were matters raised with the LP Inspector during the Examination. Indeed the announcement by Mr Osborne on 5 December 2013 that the university cap on undergraduates was to be removed was some 12 months prior to the Examination of the LP (Part One). There are complaints by those involved in the student accommodation sector that there is an over supply that is affecting lettings (***Document HLS/13, Appendix 3***). Many students now choose to live at home so the increasing number of students does not directly relate to a similar increase in housing need.

67. The Care Community in Tattenhall will cater for a wide range of requirements for elderly people. 95 of the houses and apartments are currently designated as Use Class C3 and are physically separate from the more intensive Use Class C2

care facilities, which are in a care home type building with communal facilities. The 95 dwellings include 1 bedroom dwellings to satisfy an identified need, with 20 being affordable and the remainder to be sold on the open market with many already sold off plan (***Document CD2.7, Table 4.23***). These 95 dwellings will be separately assessed for Council Tax and be responsible for their own utilities (***Document MJ/15***). These are no different to other private serviced accommodation. Many residents live in their own private homes and receive daily care from many organisations to enable them to continue to live at home. However, some of these homes are not suitable, some are very large and difficult for an older person to keep and maintain and compromises have to be made with regard to facilities. The 95 dwellings at the Care Community should therefore be counted in the housing land supply figures.

68. Not to include such accommodation would be perverse and potentially lead to the stifling of an increasing private sector provision of suitable accommodation for the country's growing elderly population. The movement of elderly persons from family homes in the village frees up those homes for new families and will assist the wider housing market. Policy SOC 3 properly reflects the changing demographics, which show an increase of 19,900 of +65 years olds out of a total increase of all households of 21,100 (***Document CD2.7, Table 4.11***).

69. The whole purpose of Paragraph 47 of the Framework is to boost housing supply and deliver economic growth. This fundamental principle will be undermined if accommodation for the elderly that enables individuals and couples to retain their independence and live with dignity is excluded. It will remove an essential, and recognised, need for suitable accommodation for a large group of residents. The needs of both students and the elderly are an identified need and properly covered in the LP (Part One). It is therefore perfectly reasonable that dwellings planned and delivered should count towards the housing land supply and delivery figures for the Council.

70. The Council has embarked on a pro-active policy to boost the supply of both affordable and market housing through the Strategic Housing Framework. £20m has been made available via additional funding and borrowing through, for example, the increased borrowing cap on the Housing Revenue Account. The proposed 230 affordable dwellings will be delivered by 31 March 2018 and this will be monitored by the Department of Communities and Local Government. The 377 associated market houses will be completed by 31 March 2020. These sites should therefore be included in the 5 year supply (***Documents HLS/12, Appendix 53; HLS/19***).

71. The evidence shows the continued ambition of the Council to deliver affordable housing. A further 598 affordable dwellings are allocated within the second round of the Affordable Housing Programme between 1 April 2015 and 31 March 2018 (***Document BH/51, Appendix 26, Page 7 table***). The Council achieved a significant number of affordable dwellings as part of the previous round and therefore should receive credit for this delivery. There have been a net total of 638 dwellings approved since 1 April 2015 that should be added to the housing land supply numbers (***Document HLS/13, Appendix 2***).

72. The Appellants make a range of claims to reduce the housing land supply figures and have tried to reduce the number of dwellings available to 6,780.

However, by including the student accommodation units (601 units), the designated village apartments at the Care Community development (95 units), the sites controlled by the Council (607 units) and the dwellings granted planning permission since 1 April 2015 (638 units) the total would be 8,721 dwellings, which would be a 5.97 year housing land supply. If the housing from other disputed sites is added, the situation would be even more improved. This means that the housing supply policies in the TNDP and LP (Part One) are up to date.

73. The Council has an overall positive planning approach to the delivery of a wide choice in the supply to enable developers to bring sites forward, noting some of the more difficult sites may take longer to deliver. There is a forward pipeline of land and so in addition to the net completions of 4,664 dwellings delivered in the first 5 years of the plan, there is a net deliverable supply of 19,442 dwellings over the remaining plan period (***Documents CD3.34, Table 6.1; HLS/13, Paragraphs 9-11***). This gives a total of 24,106 dwellings against a minimum target of 22,000 dwellings for the 20 year housing supply, which is a 10% over achievement.

74. The adjustments with regards to whether the buffer is applied to the shortfall and whether demolitions are included make little difference to the overall picture. Furthermore over the next 15 years, additional sites will add to the long term housing land supply thereby increasing further the choice of sites available for developers. This is absolutely in line with what Paragraph 47 of the Framework is designed to deliver to create growth in the housing market. This reflects the commitment the Council has made during recent years to boost housing supply. It has worked flexibly with developers, as in the case of sites in Ellesmere Port, to bring sites forward and support a range of applications, in a balanced way, in line with the local plan strategies across the whole Borough.

AFFORDABLE HOUSING

75. 81% of the affordable housing need is for one bedroom accommodation. 61% of one bed affordable housing need is identified in Chester, Northwich, Ellesmere Port and Winsford, which is where 68% of all affordable housing is required. 87% of the affordable housing delivered is not 1 bedroom (***Documents CD2.7, Table 4.23; CD3.35, Table 7.7***). The full application by Barratt Homes would not include any one bedroom units and therefore would not satisfy the identified need for affordable housing.

76. Existing applications in Tattenhall will deliver 65 affordable units and in the remainder of the Tattenhall area a further 52 affordable units are being delivered (***Document MJ/13, Appendix 1***). All of the 10 affordable dwellings in the first phase of the Care Community development are 1 bedroom. Based on the SHMA, the net identified need for non 1 bedroom affordable units in Tattenhall is 3 per year. This equates to 35.6 years of supply in the Tattenhall area for 2, 3 and 4 bedroom affordable housing.

77. For the immediate rural area of Tattenhall, Farndon, Malpas, Tarporley and Tarvin + Kelsall the SHMA indicates that there is a total need for 62 affordable homes a year of which 17 are for non one bedroom dwellings (***Document CD2.7, Table 4.23***). This is against a planned delivery of 544 affordable units. This equates to an 8.8 year supply of affordable homes.

78. For non one bedroom affordable housing delivery the total of 534[9] against an identified need of 17 per year means that there would be over 31 years of supply for 2, 3 and 4 bedroom affordable housing delivery in place. (***Document MJ/13, Paragraph 4.9***). These figures were not challenged by the Appellants at the Inquiry.

79. The 2015 AMR shows that the rural area is over delivering on the minimum target of 4,200 dwellings, by an additional 1,224 dwellings (***Document CD3.35, Table B1***). The LP Inspector commented in his report that over achievement of housing delivery above 1,100 units may be unrealistic, against a background of a local plan that is optimistic and aspirational (***Document 3.26, Paragraphs 45-47***). It was agreed that achieving the target figure for housing would be regarded as a good performance[10]. Therefore the current projected over delivery by 29% in the rural area is clearly an excellent performance. It should therefore be noted that the actual delivery of 1,415 dwellings has amounted to 34% of the 4,200 rural target at the 5 year point in a 20 year plan where an achievement of 25% would be on target (***Document CD3.35, Table B1***).

80. The AMR demonstrates that the council is delivering its ambitions for affordable housing with an over achievement of 2% against the target of 30% (***Document CD3.35, Table 7.5***). The rural area is making a substantial contribution to the affordable housing delivery of the Council. It is therefore inexplicable why the Appellants are seeking to justify their schemes only by the delivery of more non 1 bedroom affordable homes outside the Chester City and the key towns, when there is already such an excess relative to need being delivered in the rural area. The appeal proposals are therefore not in line with LP (Part One) policies.

81. The Council recognises the importance of affordable housing and, utilising Housing and Community Agency funding, has delivered additional affordable housing to compensate those sites where viability is challenging and where the requirement for affordable housing has been waived. This is a flexible approach to help developers bring the sites forward. A fully funded Strategic Housing Framework is in place that delivers affordable housing on Council owned land across the Borough, with a focus on areas where developers have viability issues such as Ellesmere Port and Winsford. Also, further affordable housing is being delivered through the second round of the Affordable Housing Programme prior to 31st March 2018. This ensures the Council will continue to deliver its very important affordable housing aspirations over the next 5 years.

82. Great emphasis has been placed on the challenging delivery issues in Ellesmere Port and Winsford. The suggestion made by the Appellants is that delivery of excess affordable houses in Tattenhall and other KSC is more viable. However, relocating people out of their communities to other areas and breaking family and community ties that are essential for social cohesion, is a disappointing solution. This is in conflict with the social dimension of sustainability in Paragraph 7 of the Framework and has proved to have failed in the past. There would be a substantial and unnecessary over supply of 2, 3 & 4 bedroom

[9] 10 of the units in the Frog Lane Farm development would be one bedroom.
[10] Mr Hann agreed in cross-examination by Councillor Jones that anything over the minimum figure would be seen as better than an acceptable performance.

affordable homes in the wider Tattenhall rural area when balanced against the significant harm the appeal developments would do to both the built up and landscape character of Tattenhall.

PLANNING POLICY

83. In the High Court challenge against the TNDP the key point of discussion was Policy 1 of the TNDP. Mr Justice Supperstone makes it very clear that he considered that the Examiner properly considered and addressed the material points in relation to the 30-dwelling limit. He said that the Council had met the basic conditions and he was satisfied that there was a proper evidential basis for Policy 1, which was introduced by the Council after due consideration (***Document CD3.30, Paragraphs 88, 89***). The judgement clearly supports Policy 1. It is in line with the Framework and the LP (Part One). All three appeal proposals breach Policy 1, which has undergone robust scrutiny in the High Court and was found to be an appropriate mechanism for delivering housing growth in a manner conducive to Tattenhall.

84. Policy 1 is closely aligned with Policy 2 which refers to local character and distinctiveness. The VDS is a supplementary planning document referred to in Policy 2. The Appellants have all stated at various times that their applications conform to all other Policies of the TNDP. However, during the consultation phase of the Barratt Homes application the Parish Council submitted objections based on its non-conformity with other policies. As the other two applications are currently in outline form there is no way of knowing yet if they would fully comply with other TNDP policies. However, by their scale, massing and indicative layout they currently would not.

85. Paragraph 185 of the Framework shows that the TNDP takes precedence over existing non-strategic policies in the LP (Part One) where they are in conflict and/or silent on a particular issue. Due to the characteristics of Tattenhall, the TNDP recognises that development will occur outside the existing built up area and therefore in the open countryside. However, it is important to avoid the mistakes of the past where large urban type developments have 'ringed' villages, as identified by Lord Taylor in *The Living Working Countryside*[11]. The TNDP, following consultation and analysis, restricts the size of any one development to avoid the large sprawling suburban developments that destroy the special characteristics of the very place they seek to benefit from.

86. This is a pro-growth neighbourhood plan that protects what is so special about Tattenhall. It enables managed growth and infrastructure to develop concurrently. Paragraph 183 of the Framework states that neighbourhood planning gives communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Paragraph 184 reinforces the principle that neighbourhood planning provides powers to the local community, to ensure they *get the right type of planning*. This is the sort of development that satisfies local need, and is community-led planning not the developer-led planning that is being witnessed with these three appeals. The TNDP was developed concurrently with the emerging LP (Part One) and accords

[11] Inspector's Note: Please see Paragraph 133 of my Report from the first Inquiry.

with national policies in the Framework with the full support of the community. It therefore carries significant weight in these decisions.

87. Tattenhall and District Parish Council were selected to be a Department of Communities and Local Government Neighbourhood Plan Pilot Front Runner. This was due to the outstanding track record the Parish Council had with regards to community engagement. A Parish Plan was produced in 2006 and the Village Design Statement in 2009. The natural progression was to deliver a neighbourhood plan that ensured the community retained what it liked and improved what it did not like. It was to influence change and ensure the community was in a better place for this and future generations.

88. Reference has been made to the Examination of the LP (Part One) and that the Inspector failed to properly consider affordable housing provision. However, the Inspector's Report clearly demonstrates that this matter exercised his mind. He was clear that the challenging figure of delivering 1,100 dwellings a year was both aspirational and realistic and would maximise the delivery of affordable housing (***Document CD3.26, Paragraphs 22-48***). With modifications, accepted by the Council, the LP (Part One) was found sound. Although the *Satnam* judgement was made shortly after the adoption of the LP (Part One) no challenge was made to the plan as a result (***Document BH/29***).

89. The Appellants have tried to reopen the examination of the LP (Part One) on the basis of the affordable housing requirement. However, the judgement by Sir David Keene, which was referred to in the judgement of Mr Justice Dove made it clear that it is inappropriate for an Inspector on a Section 78 appeal to seek to carry out some sort of local plan process as part of determining an appeal (***Document INQ/19, Paragraph 22(iv***). It is clear that the LP Inspector supported the Council's approach of balancing the development targets between the rural and urban areas combined with the other factors of sustainability included in the topics lists in Paragraphs 158- 177 of the Framework. He also properly considered the level of affordable housing in his Report and again supported the target of 30% of an uplifted housing target of 1,100 dwellings per year. He concluded that the LP (Part One) was challenging but viable and deliverable with a 30% affordable housing target.

90. Tattenhall and the neighbouring areas are currently delivering significant numbers of both market and affordable housing. Since 2010 Tattenhall has already delivered 16 market dwellings and a further 155 units are coming forward on two large sites under construction over the next 2-3 years. Another site for 28 houses has outline permission and there are a number of individual dwellings (***Document MJ/13, Paragraph 5.3***). The appeal proposals would represent disproportionate extensions to the village and be contrary to Policy STRAT 8 in the LP (Part One). There needs to be a balance with the lower number of jobs that will be created in this rural area in comparison with the urban areas where the jobs are being created. It brings into question the sustainability of the appeal proposals in the context of the LP (Part One), taken as a whole and balanced against the significant harm the developments would have on the character of both the built up area and countryside of Tattenhall. To use affordable housing as a licence to allow immediately any development at any location of any size is to ignore the evidenced based strategies in the LP (Part One). These strategies are for a balanced approach to deliver *all* types of

housing and establish where it should be developed, on the basis of it being a *sound, viable and sustainable* Plan.

91. All three appeals would be contrary to Policies STRAT 1, STRAT 2, STRAT 8, STRAT 9, SOC1, SOC3 as well as ENV 2 and ENV 6 in the LP (Part One). They would also conflict with the Policies of the TNDP and would conflict with a plan-led approach. All should thus be refused (***Document MJ/13, Paragraph 6.4***).

THE JOINT CASE BY THE APPELLANTS ON HOUSING LAND SUPPLY

The main points are:

HOUSING REQUIREMENT

92. There is no dispute with the Council about most of the stages in the housing land supply calculation (***Document HLS/9, Paragraph 5.1***). It is agreed that the relevant period to be examined is from April 2015 to March 2020. March 2015 is the last date by which verified data exists from both commitments and completions. The net annual housing requirement is agreed as 1,100 dpa, which is derived from the LP (Part One). The accumulated backlog since the start of the local plan period (2010) is agreed to be 836 dwellings. It is agreed that the backlog should be addressed in the next five years, in accordance with the Sedgefield method.

93. There is no dispute that there has been a persistent record of under delivery and as a consequence a 20% buffer is to be applied to the requirement (***Document HLS/9, Table 11***). The only point in issue is whether the 20% buffer should be applied just to the annual requirement or to the annual requirement plus the shortfall. It is relevant to consider, even though the difference only amounts to 167 dwellings.

94. In the Gresty Lane, Crewe appeal decision, the Secretary of State did not apply the buffer to the backlog and followed the Inspector that it would be double counting. However, there was no explanation as to what was meant by that phrase. In a more recent appeal decision at Audlem Road, Nantwich the Secretary of State did apply the buffer to the shortfall (***Documents CD12.5; CD12.6***). The approach of applying the buffer to the shortfall was also the approach of the LP Inspector (***Document HLS/9, Paragraphs 10.18-10.20***).

95. The Appellants' five year requirement is thus 7,603 dwellings and the Council's figure is 7,436 dwellings. The importance of the 167 dwelling difference will depend on the view reached at the end of the supply discounting process. However, even a shortfall of 155 dwellings was considered significant in the Nether Peover appeal decision (***Document CD3.31, Paragraph 39***).

HOUSING SUPPLY

96. This is where the principal dispute between the parties lies. It is not accepted that 10,282 dwellings would be deliverable in the next five years, resulting in the 6.9 years' supply claimed by the Council. The Appellants consider that there is a supply of just 6,780 dwellings, resulting in a supply of 4.26 years. The difference is therefore 3,502 units and arises from 8 key areas of dispute, plus a more minor dispute over the demolitions allowance.

97. A supply of 10,282 dwellings would assume an average delivery rate of over 2,000 new homes a year. The Council has never come close to delivering houses in these numbers in any one year, let alone doing so in five consecutive years. Even a supply of 6,780 dwellings would represent an average of 1,358 a year for each of the five years. The only occasion that the Council was able to achieve that was 2014/15, with a supply of 1,571 units. This was not as a result of the adoption of the LP (Part One) but rather due to affordable housing funding arrangements (***Document HLS/9, Section 8***).

98. The LP (Part One) is very similar to a core strategy in that it identifies the minimum quantum of development to be achieved in the main towns of the Borough and it identifies the key strategic sites. Further sites will be identified through the Local Plan (Part Two). The TNDP does not allocate any sites. Paragraph 33 of the PG suggests that housing supply is better investigated through the local plan process rather than at appeal. However, this is not appropriate in this case for the following reasons:

    98.1. The new version of Paragraph 33 was issued well after the LP (Part One) examination so it would be unfair to rely upon it as a justification for favouring the LP Inspector's conclusion on five year housing land supply. This is because the Appellants could not have known that the Government would subsequently place such reliance on the local plan process as the method by which to investigate the matter. They might well have sought to become more involved in the five year supply issue at the Examination. To have been able to participate in the relevant sessions of the Examination, the Appellants would have needed to object to submit representations at a much earlier stage.

    98.2. This is not a theoretical criticism in the context of this case. In earlier appeals this year, the Council has conceded that as little as two hours was spent investigating five year housing land supply during the examination. In contrast, at this appeal, the issue has been the subject of an in depth discussion[12], as was the case in other appeals in the Borough earlier this year (***Document HLS/9, Paragraph 4.14***).

    98.3. The PG identifies the need to update the supply annually. The appropriateness of relying on the LP Inspector's conclusions can only apply for a 12 months period from the date of publication of the 2014 HLM, which was the evidence relied upon at the Examination. The 2015 HLM is now available and provides different data.

    98.4. The Council has not sought to suggest that five year housing land supply can not be properly investigated at the Inquiry and has fully engaged in the debate. All Inspectors have looked at the matter in the 9 months since the adoption of the LP (Part One). This demonstrates that they do not feel inhibited from doing so in the context of appeals in this Borough, notwithstanding Paragraph 33 of the PG.

[12] Inspector's Note: The housing round table session took place on the second day of the re-opened Inquiry between 0930 hours and about 1900 hours.

99. In the Nether Peover appeal, five year housing land supply was properly investigated on a site by site basis. The Inspector concluded that the Council could not demonstrate a five year supply of housing land. In the case of the two subsequent appeals at Fountain Lane, Davenham and Hill Top Farm, Northwich, the Inspectors concluded that a five year housing land supply did exist. However, before the decisions were issued the Planning Inspectorate asked the Council for copies of the 2015 HLM. The Appellants were then given the unappealing options of either having the Inquiries re-opened or submitting full written representations within just 10 days. Both Appellants chose the second option to avoid more delay. The Council had added in new sites, including many without planning permission. It had also altered both lead-in times and build rates on a number of sites. Detailed scrutiny in the available ten days was not possible and there was no opportunity for any oral evidence or cross-examination of any of the new information in the 2015 HLM. Whilst this arrangement was far from satisfactory, both appeals were allowed so the Appellants were in no position to challenge the conclusion on the five year supply issue.

100. This appeal is very different. The 2015 HLM upon which the Council relies has been the subject of detailed evidence which was thoroughly debated and there has been more time to examine the HLM and investigate the evidence.

101. The Appellants have accepted far more of the Council's anticipated supply than they have discounted. This includes sites which do not yet have planning permission, accepting some delivery from large strategic sites and accepting delivery from a host of sites which have been stalled for many years. The Appellants' approach is very generous to the Council, especially as it has a track record of delivering only about 930 units a year.

102. The supply should not be about splitting the difference between the parties and Footnote 11 does not advocate that. It is about the robustness of the evidence supporting the sites in dispute. Either party would have grounds to complain if that approach is not followed through here. The Secretary of State needs to be given a realistic view about the actual supply that will come forward in the next five years to enable him to make his decision on the basis of robust evidence.

103. Much of the evidence relied upon by the Council in terms of housing land supply has not been the subject of appropriate consultation. It is largely derived from the developers of the preferred sites, who may have good reasons to talk up their delivery. This problem has been recognised in appeal decisions (***Document CD12.2, Paragraphs 24, 25; CD12.3, Paragraph 20***). The way to overcome this is to hold consultation events at which representatives of a wide cross section of the development industry are present. This will avoid promotion of overly optimistic lead-in times and delivery rates that might stifle unwelcome competition from a rival developer, just as a new housing site opens and goes to market. The Council itself recognised that such consultation was appropriate in the past but has not done so more recently. What clearly needs to happen is for there to be a proper and open debate about whether the Council is justified in changing its position on lead-in times and delivery rates. Until that exercise has been completed then it is essential that a healthy scepticism is maintained over the Council's untested assumptions.

104. The Council seems to have unilaterally changed its position in the 2015 HLM in significant ways. The five year supply has increased from 8,906 dwellings to 10,151 dwellings and the supply from 5.64 years to 6.83 years (***Document HLS/9, Paragraphs 2.14-2.18***). Most particularly:

    104.1. Heavy reliance is now placed on purpose built student accommodation as a source of housing supply.

    104.2. Shorter lead-in times are now assumed compared with the 2014 HLM.

    104.3. Quicker build-out rates are now assumed compared with the 2014 HLM.

    104.4. Empirical evidence of localised delivery rates seems to have been ignored.

    104.5. More new sites are relied upon, which do not have planning permission.

Student accommodation

105. There is reliance on purpose built student developments as a source of 600 units in the supply. Paragraph 38 of the PG suggests that all forms of student accommodation can be included in the housing requirement, *based on the amount of accommodation it releases in the housing market*. However, the Council has merely assumed that all of the permitted sites will free up general market housing. Although the term requirement is used, it is important to recognise that this guidance is contained in the part dealing with housing supply. New purpose built student accommodation has the potential to release accommodation in the housing market in some circumstances. However, complete transparency as to the approach adopted is needed to show the extent to which this might occur.

106. The Council presented evidence to the LP Inspector suggesting that student accommodation should form part of the housing requirement. However, the evidence in the Nevin Leather Report was explicit in suggesting there would be no growth in overall student numbers at the University of Chester (***Document HLS/10, Appendix 16C***). The latest evidence from the University shows that student numbers have grown and that this increase will swallow up all the new student accommodation that is being provided in Chester several times over (***Document HLS/10, Appendix 16D, Appendix C***). What might be anticipated is considerably more pressure on the houses in the Garden Quarter, not less. In a recent appeal into the proposals at the Telford Warehouse site the Council argued that new student accommodation would not free up houses in the Garden Quarter and the Inspector agreed (***Document HLS/9, Paragraphs 13.25-13.30***). The Inspector in the appeal at Pinhoe, Exeter also concluded that it would be unsafe to rely on student accommodation forming part of the supply when there is evidence of the growth in student numbers (***Document HLS/9, Paragraphs 13.23-13.24***).

107. The ability to safely rely on new student accommodation as part of the supply is far more complicated than just the issue of growth at the University. Other important factors are trying to identify where students who take up these units have come from. Some may be already living at home either in Chester or nearby so that if they move into a student unit they will not be freeing up any houses. Moreover, if 5 or 6 students live in a house in the Garden Quarter it

would take that number of bed sit units to release just one house. Even for that to happen evidence would be needed that such houses were being freed up because of new student accommodation. The University of Chester's own evidence shows that the majority of 2nd and 3rd year students do not want to live in purpose built accommodation (***Document HLS/10, Appendix 16D***).

108. The Council has provided no evidence to show to what extent student housing forms part of its housing requirement. The evidence that is available shows that at the time of the LP Examination the Council was relying on evidence showing that there was a static requirement of students and that no increase in the overall housing requirement was necessary. Now though the most recent evidence shows a significant increase in the demand for student accommodation, derived from a significant increase in student numbers. The University of Chester is expanding following the Government's removal of the cap on student numbers. This expansion certainly was not anticipated in the 2012 Nevin Leather Report, which formed the relevant evidence base to the LP Examination. The new purpose built accommodation is plainly going to be required to house the increase in student numbers, rather than facilitate any meaningful quantum of student housing to be released in the housing market.

109. Whatever is built, the fact remains that many students enjoy living in their own house with their friends and without University rules and regulations (***Document HLS/10, Appendix 16C***). Students clearly enjoy the environment of the Garden Quarter, even if the remaining local residents are less keen on the student presence. Most importantly, the Council has no evidence to show that the new purpose built student units will release any accommodation into the housing market so the requirement in the PG is not met. The majority of these new units have not been built yet and whilst such evidence may be provided in the years to come it does not exist at present.

Class C2 Uses

110. Class C2 uses are not to be counted as housing because the Department of Communities and Local Government's household projections, which are the starting point for all FOAN calculations, do not include the institutional population. It is noteworthy that the Council excludes four other Class C2 care homes from their land supply. For consistency they must also exclude the Care Community, Tattenhall and London Road, Northwich schemes. The Council claims that these two developments are not actually care schemes, which seems a little implausible given the nature of the development and the way the Council itself has classified the use (***Document HLS/9, Paragraphs 14.1-14.2).***

111. Paragraph 37 of the PG says that Class C2 uses can be counted towards housing supply provided the approach is clearly set out in the local plan. However, the LP (Part One) offers no clarity at all. Paragraph 7.19 refers to recommendations in the SHMA about diversification of the range of housing options available to older people. It does not though deal with Class C2 residential institutions and why they should be included in the supply, which is what the guidance requires.

112. The site at London Road, Northwich is plainly a Class C2 use as identified by the Council in its own report to committee (***Document HLS/9, Paragraphs 14.14-14.16***). Its 57 units should therefore be excluded from the supply.

113. The Planning Obligation confirms that the 20 affordable units at the Care Community, Tattenhall will be heavily restricted. Qualifying occupiers must be over 60 years of age and in need of care, or registered blind or registered disabled (***Document INQ/12***). Plainly such units are C2 care units but in accordance with the tenure blind approach to affordable housing provision they should not be distinguishable from the market ones. The sales brochure focuses more on positive lifestyle messages than talk of care assessments on entry, but the website has more information on this latter aspect (***Document TW/28***).

114. The 75 market units can also be defined as Class C2 as they form part of a wider continuing care development, where there is a high level of care available on site. Occupiers undergo a care assessment prior to occupation and the facility is registered with the Care Quality Commission. The scheme was originally submitted as a Class C2 care scheme and the planning statement clearly demonstrates that what has been permitted is not a Class C3 use (***Document HLS/9, Paragraphs 14.6-14.13***).

Sites not available now

115. The main feature of these sites is that they remain in an active existing use and are not available now. All have occupiers with no relocation plans. If the Council know something which the Appellants do not, that may be because they are not at liberty to disclose it. However, in the forum of a public Inquiry it would be inappropriate to rely on that assumption as a reason to reject the Appellants' evidence. If relocation does take place the time to record it would be in the next HLM. To assume that the sites of operating businesses are available now for housing is absurd.

116. The sites in question amount to 337 units which should be discounted from the supply (***Document HLS/9, Section 15***). The Hilltop Farm Inspector considered that three of these sites should be discounted. These were S Cooper & Sons, Winsford; Research Laboratories, Northwich; and Malvern House, Northwich. The Council conceded at the Inquiry that the 20 dwellings at the Research Laboratories should be removed from the supply.

Sites with long term phasing plans

117. This relates to a mixed use development with planning permission at Premier House, Hoole, Chester (***Document HLS/9, Section 16***). The approved phasing plan shows the housing element as the last phase and the Council now says that 100 dwellings will be delivered in Year 5. Although it has been claimed for some time that the phasing programme will change, no application has materialised. The Nether Peover and the Hill Top Farm Inspectors discounted the site.

Sites with no realistic prospect

118. All of these sites are in Ellesmere Port and have had planning permission for a very long time. There are real delivery problems in parts of Ellesmere Port. The Council has relied upon the views of the developers of these sites, which could be expected to be positive. However, remarkably in some cases not even the developers are optimistic. Indeed, the Council's evidence even goes against the evidence of some of the developers themselves, one of whom suggests that delivery of the sites is still speculative.

119. The land north of Cromwell Road, Ellesmere Port has had outline planning permission for 90 dwellings. However, there remain substantial contamination issues and there is an extended period for the submission of reserved matters. The agent for the site states that the delivery of any dwellings on this site in the next 5 years is speculative until a housebuilder is on board (***Document HLS/9, Paragraphs 17.2-17.9***).

120. The former Van Leer Site, Ellesmere Port has had outline planning permission for 144 dwellings since April 2010, which was renewed in 2012. The site has been unsuccessfully marketed for 7 years. It has not been sold to a housebuilder and there is no realistic prospect of delivery until that happens (***Document HLS/9Paragraphs 17.10-17.17***).

121. The former Service Station, Rossmore Road West, Ellesmere Port has had various planning permissions for 10 years. The most recent was for 39 apartments in October 2013. The Hill Top Farm Inspector did include some of the dwellings in the supply but the basis of this was difficult to understand as the evidence had been either that all 39 should be counted in the supply or conversely on the Council's case, none at all.

Sites awaiting Planning Obligations under Section 106

122. This concerns 60 dwellings in Phase 5 of the Rossfield Park development. This site faces a similar problem to others in Ellesmere Port in terms of its attraction to the market, but it has the added problem of not even having planning permission. Members resolved to grant outline planning permission over 5 years ago but the Planning Obligation has not been signed. The Council has agreed to a revised Planning Obligation to reduce the affordable housing. However, the Council want a clawback mechanism in it, which will create considerable uncertainty and has not been signed nearly 2 years later. The landowner, Peel Land & Property Ltd, is not a housebuilder (***Document HLS/9, Paragraph 86***).

123. These delays are both persistent and revealing about the state of the market at Ellesmere Port, in terms of bringing forward market housing on some of the key brownfield sites.

Sites without planning permission

124. When a housing site has planning permission, the onus is on the Appellant to prove it is not deliverable. This contrasts with the situation for sites without planning permission, where it is for the Council to show why a site should be included[13]. The grant of permission is clearly pivotal to a test that requires sites to be available now. The PG suggests that sites without permission can also meet the test but it is a moot point whether this is consistent with the policy in Footnote 11 of the Framework. This matter is currently going through the Courts[14].

[13] *Wainhomes v SSCLG and Others* [2013] EWHC 597 (Admin).

[14] This matter has been addressed by agreement in the *Wainhomes* case, but it is heading back to the High Court on this very point in a case where it was not agreed between the parties: the claim issued as St Modwen v SSCLG.

125. For present purposes sites without permission have not necessarily been excluded. The PG makes clear though that the evidence must be robust. Moreover, the Framework requires that there is evidence that the site is available, which is problematic if it has no permission. Also it must be achievable with a realistic prospect of housing being delivered within 5 years. It must also be viable.

126. The Council suggests that sites in its ownership are different and it knows when they will come forward. However, the delivery of these sites has been promised for years and they featured in the 2010 SHLAA issued over 5 years ago. The sites have not been disposed of and in previous Inquiries the Council's witnesses have accepted that the sites are being held back by the Council from disposal. There is no evidence at all that these sites are available now.

127. The various sites in this category that are in dispute amount to 664 dwellings over 11 sites. They are addressed at ***Document HLS/9, Section 19***.

Lead-in times and build rates

128. These are pivotal to how much delivery will be achieved within the next 5 years and even a minor adjustment to either can have a huge impact across so many sites. The Council has decided to increase its delivery rates and lead-in times on various sites from those used in the 2013 SHLAA but it is not clear:

    128.1. How the delivery rate of 36 dpa figure has been calculated.

    128.2. What account has been taken of local variations in delivery rates.

    128.3. What account has been taken of the difference in delivery rates on greenfield and brownfield sites, which is a major issue in the Borough.

    128.4. What account has been taken of the level of competition, including the proximity of sites to one another.

129. These are all issues where the development industry can greatly assist the Council in its task of trying to identify robust evidence to support their assumptions. Yet because the consultation did not happen before the 2015 HLM was published, the basis of the Council's figures is not known. It seems the reliance may have been placed on two sites controlled by Redrow to arrive at the 36 dpa across the whole Borough. However, that is not explained in the documentation and the extent to which other housebuilders have been consulted and had their views taken into account is unknown.

130. The Appellants have identified, for example, an annual delivery rate of 25 dpa at Winsford, which actually aligns with the Council's previous position. The Council has criticised the size of the data set but at least the source has been entirely transparent. The Council has not tried to differentiate between areas of high affluence and very high house prices like Tattenhall and areas of social deprivation and a housing market which appears to only operate with the benefit of public subsidy like parts of Ellesmere Port.

131. The Council has spoken to the individual site owners, developers or their agents but the need for caution here is obvious. The Inspectors in the Ottery St Mary and Engine Common decisions explain the problem in succinct terms

(***Documents CD12.2; CD12.3***). The Appellants' clear and transparent evidence is to be preferred and this alone would reduce the Council's supply by 1,039 dwellings.

132. Details of each of the sites where lead-in times and delivery rates are disputed is in the evidence (***Document HLS/9, Section 20***).

The relevance of past delivery

133. The average net delivery rate over the last 5 years was about 933 dpa and about 927 dpa over the last 12 years (***Document HLS/9, Table 9, Table 11***). The Council now expects that to grow to over 2,000 dpa. Some decision makers might wish to be generous to the Council now that its LP (Part One) is in place. However, the Council had been granting planning permissions in large numbers well before the plan was adopted. Unfortunately such generosity of spirit does not help with the housing problems in the Borough. Indeed it is partly what is fuelling the nationwide failure to deliver.

134. When delivery does not take place, it is the development industry that is blamed with claims of land banking. However, when developers have holding costs that is rarely is credible explanation. Decision makers often fail to recognise the difficulties of bringing sites forward, especially large strategic sites where permission requires infrastructure to be in place from the outset. There are also the delays in getting the Planning Obligations signed, which may be due to problems like viability or the time taken to agree the terms. Whatever the reasons, bringing forward development in this country is a painfully slow process and decision makers need to be realistic rather than eternally optimistic. That approach is anything but kind for those who year after year are unable to get on the property ladder, while house prices soar. As the Governor of the Bank of England made clear, what we suffer in this country is a chronic lack of supply. That is the problem in the UK housing market.

135. This is why it should always be relevant to look at each Council's past record of delivery. In this case both the short term and long term average show an annual rate of delivery which is below 1,000 dpa. Past policy restraint in Cheshire does not explain why the Council has for years refused applications for major housing schemes which have resulted in numerous appeals, which the Council has lost. It has resisted new housing development and done so unreasonably and systematically. Other Inspectors have recognised the relevance of the Council's past track record (***Documents CD12.17, Paragraph 63; CD/12.10, Paragraph 36***).

Responsibility for under delivery

136. There is no come back for those who take an overly optimistic view. The problem of under delivery, which has been going on for decades, was recently recognised by the Secretary of State himself (***Document BH/55***). His decision at Melton Park, East Riding indicates very clearly that permission can and should be granted even when the decision maker assumes the Council can demonstrate a five year supply of housing land (***Document AW/28, Paragraph 10***).

137. What is appropriate in this case is to look critically at the supply, recognise that development can be delayed and curtailed for a myriad of different reasons, and be realistic about what is likely to come forward before April 2020. The search for who is to blame for under delivery is pointless. The important thing is to be realistic and to simply recognise it is part of the system. In this case there is simply no credible basis for being confident that the Council will deliver over 10,000 new homes before April 2020. It would be simply naïve to make that assumption and even 1,500 a year still looks very ambitious.

Demolitions

138. The Council's housing requirement is a net figure based on a past trend which accounts for demolitions. The Council wishes to ignore that trend and only takes account of foreseeable demolitions. However, the past trend cannot simply be ignored because it is inconvenient. If the five year trend changes then the 50 demolitions a year can be changed, which would be a legitimate evidence based approach. However, to change from a past trend basis, which was used in the LP examination and was addressed in the LP (Part One) and move to a future prediction is wholly unreasonable.

139. Whilst the Council can see 59 demolitions in its future supply now in 2015, there is no basis for saying it will have remained that number by March 2020. Demolitions for clearance, compulsory acquisition and the like may all occur in the next five years. The Council's case does not follow its own evidence.

THE CASE FOR TAYLOR WIMPEY UK LTD

The main points are:

PLANNING POLICY

140. In spite of the recent adoption of the LP (Part One), the work of producing an up to date development plan is incomplete. Whilst this does not affect all elements of the LP (Part One), it does give rise to some deficiencies which bear on the Council's new putative reason for refusal (***Document CD4.15, Section 5***). The relatively recent examination and adoption of the plan does not preclude consideration of its currency and the weight to accord to its policies under Paragraphs 15 or 215 of the Framework.

141. The legislation requires regard to all material considerations and it is plain that consistency with national policy must be judged in the circumstances obtaining at the date that these appeals are determined. There have been important material changes in circumstances which must be taken into account alongside the LP Inspector's report, which was based upon the evidence put before him during the Examination. One of these is the fact that at the only Inquiry that has fully considered housing land supply at Nether Peover, the Inspector concluded that there was not a five year housing land supply. Another is the continuing delay in bringing forward the LP (Part Two).

The LP (Part One)

142. Policy STRAT 2 adopts a housing requirement of at least 22,000 dwellings over the Plan period, 2010-2030. It sets a hierarchy for the distribution of these dwellings across the Borough, with the four urban areas at the top, followed by

the KSC in the Rural Area and Local Service Centres below them. The KSCs were designated on the basis of evidence demonstrating that, in terms of facilities, services and infrastructure, they were the most sustainable locations for accommodating the growth required both by the Borough and the KSCs themselves, in order simultaneously to meet objectively assessed needs and enable the KSCs to thrive as vital and viable communities.

143. The supporting text spells out the sustainability advantages of locating development in accordance with that strategy, giving people the opportunity to make use of local facilities and services to help them live as sustainably as possible. This text also envisages that the release of greenfield sites will be required especially within the rural areas. The reference in the policy to the 22,000 being a net figure and a minimum figure is important. These clarifications were added as main modifications which were required by the Inspector in order to make the Plan sound (***Document CD3.26, Paragraph 48***).

144. Policy STRAT 2 is complemented by Policy STRAT 8, which focuses on the Rural Area. It was also the subject of a main modification to state clearly that its 4,200 dwelling global figure and the 250 dwellings for Tattenhall are minima, as distinct from the position in the submitted Plan, where they were expressed as maxima (***Document CD3.26, Paragraph 141***). The KSCs are to be the focus for new development in the Rural Area. Supporting text highlights that a faster ageing rural than urban population and relative lack of affordability are particular issues. The plan seeks to balance managed growth of the rural towns and key settlements with the overall Plan strategy of concentrating most new development in the Borough's four urban areas. It is the KSCs that are the named settlements, rather than their surrounding hinterland parishes.

145. The appeal proposal would accord with the distribution strategy of the LP (Part One). Commitments and completions at Tattenhall since 2010 are agreed by the Council to be 185 units (***Document CWC/21, Table 1***). On the assumption that all of these should be included, which is not agreed, the addition of 110 dwellings from the appeal scheme would not unbalance or otherwise harm the strategy. There was no evidence produced to make good the claim in the third part of the new putative reason for refusal that the proposal, either on its own or cumulatively, would conflict with the objective of delivering controlled growth. To the extent that the fourth part of the putative reason relies on STRAT 8, the report explains that this is in connection with the landscape/visual objections.

146. The Council accepts that there is no evidence that the housing requirement in Tattenhall can be met on previously developed land and that therefore some form of outward expansion on greenfield land may be necessary (***Document CD4.15, Paragraph 3.15***). This demonstrates that the references to infill and redevelopment in supporting Paragraph 5.66 of the LP (Part One) are of no practical significance for Tattenhall, whatever the position may be elsewhere. The Council's Committee Report does though persist with the belief that the 250 dwelling figure in Policy STRAT 8 operates as a cap, which was found by the LP Inspector to be an unsound approach.

147. The appeal proposal would comply with Policy SOC 1. The delivery of affordable housing is an important corporate priority of the Council and Parish Council[15]. The offer of 39 units or 35% of the total provision would exceed the ambition of the policy with its target of up to 30%. As an outline scheme, it is well placed to comply with the policy's further provision that type, tenure and size should take account of an up to date assessment of needs. It would enable needs to be responded to at the time of discharge, following consultation on reserved matters with the Parish Council. It also maximises freedom to respond to whatever the delivery context might then be in terms of central Government policy and funding mechanisms [16].

148. Policy STRAT 9 expressly restricts development to that which it recognises as requiring a countryside location and which cannot be accommodated within *"identified settlements"*. The stated rationale is protection of the intrinsic character and beauty of the Cheshire countryside. Although such policies are common in development plans, matters are complicated here because the limits of settlements have not been identified in the old Chester District. The explanatory text states that these boundaries will be identified through the LP (Part Two) and until then reliance will be placed on saved policies in the CDLP.

149. Unlike the single local plan envisaged by the Framework the Council is producing a two-part plan. Part One has been prepared and adopted but it is predicated on there being a second part. The Introduction to the LP (Part One) Plan proclaims that it will be the *starting point* when considering planning applications and will be supported by the second part (***Document CD1.8, Page 5***). This situation is not unusual and need not pose a particular problem. However, in this case it does because of failure to progress the LP (Part Two) in accordance with the anticipated timetable in the statutory LDS with its projected adoption date of January 2016. The Council has confirmed that preparation is substantially behind schedule and that it will therefore be a matter of years before a Part Two plan might be adopted[17]. The LDS has not yet been amended but is an important material consideration for two reasons:

    149.1. It is a mandatory part of the Council's statutory development planning activities.

    149.2. The LP Inspector had regard to it in connection with his finding in connection with Policy STRAT 9. In order for it to be found sound it had to be supplemented by the addition of the last sentence in Paragraph 5.73. The Inspector recognised the critical connection between defining settlement boundaries and the approach to countryside protection (***Document CD3.26, Paragraphs 161-162***). This is different to the *Bloor Homes* case where slippage was not an issue.

[15] This was confirmed by Councillor Jones in cross-examination by Mr Young.
[16] Mr Bolton agreed in cross-examination by Miss Ellis that flexibility is what the Council seeks through the affordable housing condition.
[17] Mr Carter confirmed at the pre-Inquiry meeting that the LP (Part Two) was at a very early stage and no document had yet been produced. In cross examination by Mr Tucker, Mr Bolton confirmed there had been "substantial slippage" and that this had not been anticipated by the LP Inspector.

150. The solution offered by the LP (Part One) to carry on applying the CDLP was therefore considered by the LP Inspector in a different factual context from that which now obtains. This solution cannot be equated with the effect of the LP (Part Two), which is to be produced. Paragraph 5.73 recognises that the second part of the LP will have to approach the question of setting settlement boundaries having regard to the need to accommodate development. This will be required to be subjected to extensive public consultation. There will need to be a call for sites and Sustainability Appraisal/ Strategic Environmental Assessment, to evaluate environmental capacity and relative sustainability/ suitability of areas for development and restraint.

151. The legislative and policy context in which the LP (Part Two) will come forward is very different from that in which the CDLP was produced. It was not subject to Strategic Environmental Assessment or an examination for soundness. Its area was the former Chester District, which no longer exists. The Plan period was 1996-2011 and it had to conform to the old Structure Plan and former Regional Strategy within a national policy matrix that focussed on urban renaissance, and an annual requirement for about 253 homes, of which 75% were targeted to be built on previously developed land. Tattenhall, in common with all other settlements in the rural areas had no settlement boundary and countryside for policy purposes merely started where development happened to stop. This definition governed the applicability of Policy HO 7, which states that general new housing would not be permitted in such areas (***Document CD1.9***).

152. Critically, it is now apparent that the approach of continued reliance on the CDLP is going to have to last for significantly longer than appeared to be the case when the LP Inspector considered the soundness of LP (Part One). The weight to be attached to this interim arrangement is a central issue in this case. In the event that the Secretary of State agrees that there is no five year housing land supply, the significance of the question about absence, silence or relevant policies being out of date is reduced. There is no dispute that Policy STRAT 9 is a relevant policy for the supply of housing within the meaning of Paragraph 49 of the Framework and should therefore not be considered up to date, irrespective of any other factors. Either way however, the treatment of Policy STRAT 9 is critical.

153. Policy STRAT 9 affords blanket protection to all countryside within the Borough, which is not consistent with Paragraph 17 of the Framework in terms of the different roles and character of different areas. In the absence of the settlement boundary work this is the result of happenstance at Tattenhall and the other rural settlements in the CDLP.

154. Policy ENV 2 is also affected by the two stage plan issue as the protection of landscape character and local distinctiveness requires the identification of key gaps in the LP (Part Two). This is a means by which the development plan will be able to address the need for a proportionate approach to landscape protection in accordance with the approach of Paragraphs 17, 109 and 113 of the Framework. The difficulty is not as fundamental as the failure to designate settlement boundaries and therefore determine the extent of countryside in a relevant, up to date policy context. Nevertheless the weight attributable to this policy should also be reduced due to the significant delay that will occur before the landscape identification work is done.

155. The reference to absence in Paragraph 14 of the Framework clearly does not refer to the whole development plan. On that basis there is probably nowhere in the country where it could apply, especially given the widespread use of the saving provisions of Schedule 8 to the 2004 Act. The Government must have had something in mind by use of the concept of absence. The way to know whether or not the development plan is fully present is to consult the statutory LDS. Here it is made clear that there will be a further plan to complete the development plan. Since that plan has not yet arrived, it is absent. Moreover, the fallback offered by the saved policies of the CDLP does not help, because it does not fill the gap, or make good the absence. It has no relevant settlement boundaries, because it was framed in a national and regional policy context which was utterly at variance with the Framework.

156. The point on silence in Paragraph 14 is similar. The development plan, insofar as it is present, is silent on the important question of settlement boundaries. There are no identified settlements, as presupposed by Policy STRAT 9. The classification of land beyond settlement boundaries as countryside envisaged by Paragraph 5.73 of the LP (Part One) has not taken place.

157. It follows that such policies of the development plan as touch upon the subject of settlement/countryside delineation in this case should not be regarded as up to date. Policy STRAT 9 cannot operate without recourse to the CDLP. It is unclear from Paragraph 5.73 whether or not Policy STRAT 9 is operational yet as a development management policy, because it refers to *identified settlements.* Supporting text explains that such identification and classification will happen in the future with old policy continuing in the interim.

158. The Council suggested at the Inquiry that the supporting text rather than Policy HO 7 itself was being used in order to find out whether or not land was to be viewed as countryside in the determination of the appeal schemes. It is however only certain policies of the CDLP that have been saved under Schedule 8 of the 2004 Act rather than reasoned justification. The status of the text relied on is at best an ancillary aid to interpretation of development plan policy, rather than a subsisting part of it, as a matter of law (***Document INQ/7, Paragraphs 18-22***). The Council's suggestion sits uneasily with the reference in the putative reason for refusal to the CDLP *Policy* HO 7 and also with Paragraph 5.73 in the LP (Part One), which indicates that it is the retained *policies* in the CDLP that will continue to operate.

159. Even if, despite the absence of relevant settlement boundaries in the CDLP and the dependency of STRAT 9 upon identification of settlement boundaries, the development plan is regarded as present and speaking, then it is impossible to regard Policy HO 7 and/ or Policy STRAT 9 as up to date. Policy HO 7 is plainly outdated and, to the extent that STRAT 9 can only operate by reference to this old policy and/ or its supporting text, it is also out of date. The fact that the LP Inspector pronounced it sound in December 2014 does not prevent such a finding now, because of what has failed to happen in the meantime.

160. Nor is the Council's suggestion that the LP Inspector *refreshed* the settlement boundaries borne out by his Report. He found that there was a five year housing land supply and a good supply of housing in the rural areas. He also found that the role of individual settlements was to a large extent established.

However, it is quite clear that he did not consider settlement boundaries as he did not have the evidence base before him to do so. The KSC background paper makes clear that Tattenhall has a good range of services and is very well qualified to accommodate housing growth (***Document CWC/23, Appendix 1, Paragraphs 2.10, 6.10***).

161. The Council suggested that if there is a five year housing land supply there would be no harm in the interim situation continuing. However that situation would prevent sustainable development from coming forward:

    161.1. Paragraph 9 of the Framework indicates that pursuing sustainable development involves the provision of high quality homes. This element of national policy was highlighted in the *Woodcock Holdings* judgement (***Document CD3.29, Paragraph 102***). There was no dispute that the appeal scheme would provide such homes.

    161.2. Policy STRAT 9 and/ or Policy HO7 inhibit the provision of high quality affordable and market housing coming forward in areas regarded as countryside. The Council's case is that housing outside the criteria of the policy does not even fall to be considered in terms of scale and design.

    161.3. Nevertheless TNDP Policy 1 is permissive of some greenfield expansion of Tattenhall and the Council accepts that this will be necessary even to reach the minimum 250 dwelling figure for the settlement. This was not evidence before the LP Inspector. The Framework affords priority to the TNDP in relation to local, as opposed to strategic, planning.

    161.4. Irrespective of whether or not the Council is achieving the matters set out in the bullet points at Paragraph 47 of the Framework, the national policy objective is to boost significantly the supply of housing. Building homes is treated as an inherently sustainable activity and applications for housing are to be considered in the context of the presumption in favour of sustainable development.

    161.5. The means of remedying the policy deficiency lies in the Council's own hands because it should have progressed LP (Part Two) in accordance with its own LDS. A finding against the Council under the absent/ silent/ out of date provisions of Paragraph 14 would, therefore, be something that it could address. In view of the Framework's desire for plans to be up to date, such a result would be in accordance with national policy.

162. If Policy STRAT 9 and/ or Policy HO 7 are assessed now against Paragraph 215 of the Framework they are not consistent with its policies, individually or jointly. Accordingly, they should be regarded as being out of date for the purposes of Paragraph 14 of the Framework.

163. The Council conceded that Policy ENV 6 is not breached, notwithstanding its appearance in the putative reason for refusal[18].

[18] This was agreed by Mr Bolton in answer to cross-examination by Mr Tucker.

164. Policy STRAT 1 reproduces the presumption in favour of sustainable development and seeks compliance with other policies of the LP (Part One). The concerns about Policy STRAT 9 should be considered under this policy too. The Council accepts that, in many ways, the proposal would represent the sustainable development in the Framework, to which Policy STRAT 1 also refers[19].

The TNDP

165. The TNDP states that it is not against development but welcomes growth that is sensitively undertaken (***Document CD1.10, Pages 10, 11***). Whilst it is clear that the preference expressed in Policy 1 and surrounding text is for developments of no more than 30 units, the following points should be noted:

    165.1. Unlike Policy 2, which contains a rider to the effect that development that does not meet these criteria will not be permitted, Policy 1 is positively worded. Although there is no doubt that the TNDP supports schemes of up to 30 units, it does not contain a development management policy to the effect that larger schemes will be rejected. The existence of exceptions does not undermine this interpretation. It is made clear that decision makers must accept the policies as a whole when judging if a proposal would be acceptable. It is therefore legitimate to have regard to the drafting of Policy 2 when seeking to resolve ambiguities in Policy 1.

    165.2. Policy 1, if interpreted so as to outlaw schemes of over 30 units, gives rise to difficulties and absurdities. For example, one might spread out development over a site at a very low density or apply for part of a site and then for the rest of it subsequently. A scheme might conform to the design requirements in Policies 1 and 2, but be regarded as contrary to TNDP policy because it was for 31 units. These potential consequences of a rigid cap would suggest that Policy 1 should be afforded little weight despite its being part of the development plan. That proposition is entirely reasonable, since such results are not sensible, desirable or justifiable on planning grounds.

    165.3. The Policy lends positive support to schemes of up to 30 units without automatically ruling out larger schemes, irrespective of the quality of their design and response to context. The High Court Judgement relating to the TNDP did not rule on the meaning of Policy 1 or offer an endorsement of its planning or drafting merits. Mr Justice Supperstone was merely asked to deal with the lawfulness of various procedural

[19] Mr Bolton agreed in cross-examination by Miss Ellis that there was no dispute about the quality of the homes proposed, that there was adequate infrastructure to support them and that the location was sustainable. He also agreed that there would be the opportunity for the mix and design of affordable housing to be agreed and for smaller homes to be provided for young people.

aspects, in the context of established principles of judicial restraint in relation to matters of planning evidence and judgment[20].

165.4. Policy 1 has not been effective in enabling housing growth. Since the making of the TNDP, planning permission has been granted for just one unit. The second Smithfields application for 28 units was refused. The Parish Council objected, amongst other things, on grounds of conflict with Policy 1 because the site lay adjacent to land subject to planning permission for 28 units (***Documents CWC/21, Table 1; TW/1.2A, Paragraphs 6.88-6.93; TW/27***). The effect of such a reading of Policy 1 is to rule out further expansion to the east of Tattenhall. Taking account of conservation area constraints to the south of the village and the lack of brownfield opportunities in the built up area, the only feasible areas for expansion lie to the west and north-west in the vicinity of the three appeal sites.

166. Reliance is placed on the evidence to the original Inquiry to demonstrate that the proposal is acceptable in terms of its design, effects on heritage interests and in landscape and visual terms. It thus complies with the second and third criteria of Policy 1 and Policy 2. 35% of the units would be affordable in accordance with the TNDP requirement[21]. Affordability is described as a key housing issue for Tattenhall due to high house prices relative to income. Taylor Wimpey are already developing one bed houses elsewhere in Cheshire and due to the outline status of the application it could provide the mix of homes that the Parish Council feel is needed. The TNDP notes the need for a wide choice of housing that is vital to the on-going viability of local services, particularly in light of the community's increasingly ageing population. Whatever is concluded on the Care Community development, it will only be open to older people.

167. The TNDP records that the village is well served in terms of shops, services, restaurants and public houses and supports more than forty clubs and societies. The Millennium Walk is an attractive and popular route which would be ideally placed to attract trips into the village centre from the appeal site. It is not surprising that Tattenhall has been designated as a KSC and that the Council regard the appeal site as a sustainable location (***Document CWC/21, Paragraph 8.23***).

168. There are therefore many ways in which the appeal scheme is supported by the TNDP. The Parish and Borough however take a restrictive view of the Policy 1 wording, as demonstrated recently in relation to the second Smithfields application. If that interpretation is correct, then the policy is not consistent with the Framework's positive approach to housing development and its proportionate approach to countryside protection. To that extent, Policy 1 does not exhibit consistency with the Framework and it should be regarded as out of date for the purposes of Paragraph 14 of the Framework. At the very least the

[20] Judgement of *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government and Mid Sussex District Council* (2015). The references in Paragraph 34 are all quotations from the Examiner rather than the Judge's own words.

[21] Policy 1 refers to affordable housing provision as specified in the local plan, although the text refers to a level of 35% (***Document CD1.10***).

weight to be afforded to it should be reduced by virtue of Paragraph 215, irrespective of the 5 year housing land supply position.

169. There is no suggestion that neighbourhood plans are inferior to other parts of the development plan as a matter of principle, or that this particular one was not properly examined in accordance with the relevant legislation. Reducing weight here would not have implications for neighbourhood plans elsewhere because the submission rests on an incorrect interpretation applied by the Councils to the particular wording of one sentence of one policy. If it is concluded that the Council does not have a five year supply of housing land then the *Woodcock Holdings* judgement established as a matter of principle that Paragraph 49 of the Framework applies as much to the relevant policies of neighbourhood plans as it does to other development plan policies.

THE PLANNING BALANCE AND SUSTAINABLE DEVELOPMENT

170. Paragraph 49 of the Framework makes it clear that housing proposals are to be considered in the context of the presumption in favour of sustainable development. The Council and the Parish Council recognise that the provision of affordable housing is extremely important. Behind the statistics there are real people, including children, whose needs are really important.

171. The Council's statistical exercise based on applying a 'Liverpool' style approach to accommodating affordable housing would fail to engage with the legitimate human concerns which should be to the fore when considering this topic. Also the Council accepts for the purposes of housing land supply generally that Sedgefield is the right approach to the backlog of housing requirements and seeks 30% affordable provision, which reflects a Sedgefield rather than a Liverpool approach. The rural area and specifically Tattenhall, whilst exhibiting particularly acute affordability criteria is well placed to be able to provide affordable housing owing to the absence of the viability problems associated with other parts of the Borough, most particularly, Ellesmere Port. Moreover, the SHMA figure for affordable housing has not been reflected in the LP (Part One) figure or assumption, which is less than half of the quantitative need identified in the SHMA[22].

172. The Council accepted that the appeal scheme would deliver housing of high quality and appropriate design, with the real opportunity of appealing, amongst others, to younger people. This would usefully and sustainably widen choice at a Borough and village level. Tattenhall is recognised as a sustainable location for housing development. The Council, both as Highways and Local Planning Authorities, considers that highways infrastructure is adequate to accommodate the proposed development either alone or in combination with one or both of the other appeal schemes. The same is true in respect of all other aspects of infrastructure and a new Planning Obligation has been entered into, which is satisfactory to the Council. The confidence that can be placed on the Appellant's track record for delivery is a positive factor in terms of policy

[22] Mr Bolton confirmed in cross-examination by Mr Young that there would remain some unmet need because 30% of 1,100 dwellings is less than the annual need of 714 dwellings in the SHMA.

objectives at all levels. The economic and ecological advantages discussed in evidence at the original Inquiry must also be taken into the planning balance in the current policy context.

173. It is therefore clear that the proposals are for sustainable development, irrespective of the five year housing land supply position. The recent appeal decisions at Hill Top Farm and Fountains Lane demonstrate that greenfield housing can be regarded as sustainable development, which outweighs conflict with Policy STRAT 9 and related old development plan policies even without the extra weight of a finding that there is no five year supply (***Document CD3.32; CD3.33***). In the latter case the Framework recognises an inherently unsustainable situation and Paragraph 14 is engaged. Whilst it is not accepted that there is a *"threshold"* test to be passed before the presumption is engaged, it is recognised that this question is subject to outstanding litigation. In this case, the question is academic, as the proposals are clearly for sustainable development, as explained above.

174. Paragraph 49 of the Framework refers to relevant policies for the supply of housing and the precise remit of such policies has been subject to much judicial consideration. In this case, the position is perhaps more straightforward as it is accepted that Policy STRAT 9, Policy HO 7 and TNDP Policy 1, if applied restrictively, are such policies. Policies STRAT 2 and STRAT 8 should be interpreted as policies setting the minimum requirements for housing together with the broad spatial distribution for development over the Borough. They do not regulate or control supply as such (***Document INQ/18***). They are permissive policies that support the appeal proposal. If however the Secretary of State considers that these policies control supply, then they would fall within Policy 49 of the Framework (***Document HLS/23/3***). In any event, Paragraph 14 is engaged by virtue of the development plan being, in material respects, absent, silent or out of date. The only impacts in issue here with the Council are those concerning landscape and visual matters about which evidence was given at the last Inquiry.

175. In terms of the balance under Paragraph 14 the adverse impacts would not significantly and demonstrably outweigh the benefits. The Council confirmed[23] that it does not suggest that Paragraph 109 of the Framework is engaged by virtue of the landscape at Tattenhall being *valued* in the sense in which the Court has held that this term is to be interpreted[24]. Notably, in the case of undesignated countryside, as opposed to Green Belt, Framework policy seeks recognition, as distinct from protection. The evidence to the last Inquiry explained how the proposals recognise and respond to their context.

176. Some third party representations raised objections on highway grounds. The new points amount to concerns and objections based on cumulative impact with developments permitted since the last Inquiry. These have been considered by the Appellants and the Highways Officer who have agreed that nothing which

[23] Mr Bolton confirmed in cross-examination by Miss Ellis that it was not part of the Council's case that this was a "valued" landscape and that the reference in the putative reason for refusal related to Paragraph 17 and not Paragraph 109 of the Framework.
[24] *Stroud DC v. Secretary of State for CLG [2015] EWHC 488* (***Document TW/1.2A, Appendix 2A, Paragraphs 13-18***).

has happened in the interim invalidates the conclusions put to the last Inquiry. The context for reaching these judgments is Paragraph 32 of the Framework, which provides that development should only be refused on highways grounds when the residual cumulative impacts are severe. The Council as Highways Authority and Local Planning Authority considers the refreshed Planning Obligations to be adequate for each development proposal individually or cumulatively (***Document INQ/15***). The local objections were based on pre-Framework and pre-Manual for Streets approaches and policy and this evidence must be accorded very little weight as a result.

177. The appeal proposal represents a sustainable development opportunity which should be approved without further delay. That basic position has not changed, in spite of the intervening circumstances about which the Secretary of State has asked to be informed.

THE CASE FOR MR ASHLEY WALL

The main points are:

178. Although this case does not address the comparative merits of the three appeal sites, there is no basis upon which to conclude that one is comparatively worse than either of the other two. There is no proper cumulative reason for withholding permission for all three schemes. They would be cumulatively capable of being served by existing infrastructure and the scale of development would not be out of scale with the existing settlement.

179. On 15 October 2015 the Council formally resolved the position it proposed to take in defending the three appeals at the Inquiry. The Report accompanying the resolution contended that the Council's case had strengthened since the time of the first Inquiry, largely as a result of the fact that it considered that it was now able to demonstrate a 5 year supply of deliverable housing in accordance with Paragraph 47 of the Framework (***Documents CD4.15; CD4.16***).

180. It became clear that the new putative reason for refusal was not especially well drafted and some elements were not supported by the Council's own witness. Bullet one alleges harm to the intrinsic character and beauty of the countryside and a conflict with both Policies HO 7 and STRAT 9. However, the Council conceded that Policy HO 7 applied in the interim until settlement boundaries were established in the LP (Part Two) after which Policy STRAT 9 would apply. On this basis the reference to Policy STRAT 9 is misplaced and the only policy that could be breached until settlement boundaries are established is Policy HO 7. This was accepted as significantly out of kilter with more recent policy at a local and national level.

181. Bullet two of the putative reason for refusal alleges a breach of Policy 1 of the TNDP, which is accepted. However, it alleges that the harm which would arise would not represent incremental growth. It does not allege harm to maintenance of the distinctive and cherished qualities of Tattenhall, which were concluded by the TNDP Examiner to be foundation of Policy 1 (***Document CD3.27, Page 21***). Since each development is not alleged to be individually out

of step with the scale of the settlement the supposed harm alleged under this bullet point is actually one of process and not a land use concern[25].

182. Bullet three of the putative reason for refusal alleges a conflict with Policies STRAT 2 and STRAT 8. However, the Council's final position at the Inquiry was that such conflict would only arise from all three schemes together. The two smaller developments would result in a marginal conflict of policy and the larger appeal scheme on its own would result in a less than marginal conflict. A less than marginal conflict could not properly be described as a conflict. As a matter of logic the policy would not therefore be breached by any of the three schemes individually[26].

183. It was explained at the Inquiry that the Council's approach was that Policy STRAT 8 provides for a minimum growth of 250 units for Tattenhall and that if all three sites were to be permitted then growth in the village would exceed 500 dwellings, which would be more than twice the growth expected from Policy STRAT 8. The policy would thus be breached. However, if the growth was less than 500 units then it would be more marginal whether there was a breach of the strategy in Policy STRAT 2 and in particular Policy STRAT 8 (***Document CWC/21, Paragraph 4.23***).

184. The above includes a base of 185 dwellings which have been granted planning permission in Tattenhall (***Document CWC/21, Table 1***). 95 of these are assisted living units within the Care Community and for the reasons given in Paragraphs 110-114 above, these should not be considered as Class C3 uses and should not be included. The base is thus 90 dwellings.

185. The three proposals together comprise growth of 315 units, of which 114 would be affordable. Against a base of 185 dwellings that would amount to 500 units in total and therefore development of all three sites would meet the Council's posited threshold. Against a base of 90 units the growth would be well below 500 dwellings. If the appeal scheme is granted together with one of the other two proposals then the figure would also be well below 500. The appeal scheme on its own would be well below the 500 figure whether the base is 185 or 90 units. The Council's position on either the solus impact of the appeal site, or the appeal site in combination with one of the other sites, is untenable. The real determinative issue as to whether or not Policy STRAT 8 is breached is whether the land use criterion within the policy is breached and not whether some arbitrary figure in excess of 250 has been exceeded. The application of this criterion, which is that d*evelopment should be appropriate in scale and design*

[25] Mr Bolton alleged that there was a 'less than marginal' concern over the effect of the appeal scheme on the character of the settlement in cross-examination by Mr Tucker in relation to Paragraph 8.11 of his proof (***Document CWC/21***).

[26] Mr Bolton stated in his proof that the two smaller sites (Taylor Wimpey and Barratts) would result in a marginal conflict with Policies STRAT 2 and STRAT 8 but there would be a conflict with the largest (Mr Wall) site (***Document CWC/21, Paragraphs 8.10, 8.11***). However, in cross-examination, Mr Tucker pointed out that the two smaller schemes would add up to 178 units, which would be larger than Mr Wall's site (137 units). Mr Bolton therefore agreed that it followed logically that the conflict with Policies STRAT 2 and STRAT 8 must be less than marginal in the case of Mr Wall's site.

to conserve each settlement's character and setting is the complete answer to the Council's concern that Policy STRAT 8 does not allow limitless growth

186. Bullet four of the putative reason for refusal is the Council's only meaningful case in opposition to these appeals. It concerns whether the proposals individually give rise to such a landscape and visual impact that they outweigh the benefits of the proposals. The resolution of that issue and whether or not the policies cited are breached is essentially dependent upon the resolution of the landscape considerations together with the weighing of other material considerations. However, even then this part of the putative reason is problematic. The allegation refers to "*this key entrance*" but the appeal site fronts onto an entirely different road to the other two. The Council was unable to provide clarification of what members had in mind. If the contention is that the reference was meant to include both roads, then the evidence submitted at the previous Inquiry can be relied upon. In addition, the putative reason claims conflict with Policy ENV 6 in the LP (Part One) but this was disavowed by the Council at the Inquiry[27].

187. Bullet five of the putative reason for refusal alleges a breach of Policy STRAT 1. However, the Council indicated at the Inquiry that the breach would not occur in relation to each site individually but only as a result of the combined effect of all three schemes. The Council's final position seems to have been that any breach of Policy STRAT 1 added nothing to any alleged breach of Policy STRAT 2. It seemed to be no more than a generalised point that to develop all three sites would be unsustainable since it would be out of scale with the settlement[28].

188. Whatever Members had alleged, the Council's final evidence to the Inquiry would seem to be as follows:

    188.1. The development of each proposal in the open countryside beyond the built confines of the settlement would be unacceptable in landscape and visual terms, would not be in character with the settlement and would be in breach of Policy HO 7 in the CDLP, Policies ENV 2 in the LP (Part One) and Policy 2 in the TNDP and potentially Policy STRAT 9[29].

    188.2. Development of the proposals in aggregate would be out of scale with the planned growth of the settlement, and therefore contrary to Policies STRAT 2 and STRAT 8.

    188.3. Development of each of the proposals would be in excess of 30 units and would not amount to incremental growth contrary to Policy 1 of the TNDP.

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[27] Mr Bolton said, in cross-examination by Mr Tucker, that it was no part of his case that the appeal proposals breached Policy ENV 6.

[28] Mr Bolton confirmed in cross-examination by Mr Tucker that there was no allegation regarding accessibility or that the infrastructure was inadequate.

[29] Mr Bolton accepted in cross-examination by Mr Tucker that the reasoned justification to Policy STRAT 9 appears to disapply it in the rural areas of the former Chester District until settlement boundaries are established in the LP (Part Two). However, it is nonetheless recognized that the policy itself does not disapply itself creating the paradox of two overlapping inconsistent policies existing in respect of part of the district (***Policies HO 7 and STRAT 9***).

PARAGRAPH 14 OF THE FRAMEWORK

189. Although housing land supply is dealt with in the joint case for the Appellants it is important to note that:

    189.1. The requirement to identify a minimum five years supply of deliverable housing is the least that is expected by Government.

    189.2. On the Appellants' joint case, the Council cannot demonstrate anything like that minimum requirement. The deficit against the minimum is serious and significant.

    189.3. The contribution that would be made by the appeal scheme to help meet the general and affordable housing shortfall should be afforded substantial weight so as to be consistent with other appeal decisions.

    189.4. Early delivery of housing in the LP period, without evidence of harm, would be a benefit of the proposal, mindful of the objectives of Paragraph 47 of the Framework.

The presumption in favour of sustainable development

190. The Council considered that if there is no five year housing land supply, Policy HO 7, Policy STRAT 9 in the LP (Part One) and Policies 1 and 2 of the TNDP would be presumed to be out of date[30]. However, the Council does not consider that Policies STRAT 1, STRAT 2 and STRAT 8 fall within this category and so any conflict would be undiminished by a lack of a five year supply. However, the argument that these three policies would be breached depends upon the proposition that they should be taken as imposing an inferential limit on development.

191. Policies STRAT 1 and STRAT 2 do not impose any limit and Paragraph 49 of the Framework could not engage them because they do not constrain the delivery of housing apart from perhaps in the extreme of a development altering the role of a settlement in the hierarchy. Policy STRAT 8 requires the delivery of *at least* 250 houses in Tattenhall so it does not impose a cap on development. However the policy also includes an express criterion that controls development which is out of scale or out of character. On any view that falls within the scope of what should properly be considered to comprise a policy for the supply of housing, since it potentially could constrain supply.

192. On the basis that there is no five year housing land supply, Paragraph 14 of the Framework is engaged. On that basis, permission ought to be granted unless significant and demonstrable adverse impacts arise. For the reasons given in relation to the last Inquiry, the landscape and visual impacts relating to the appeal site do not come anywhere near outweighing that presumption in favour.

193. In the event that the Secretary of State decides that a five year housing land supply can be demonstrated, Paragraph 14 of the Framework would still be engaged for a number of reasons:

[30] Mr Bolton conceded in cross examination by Mr Young that these policies would be out of date in the event that a five year housing land supply could not be demonstrated.

193.1. The Hill Top Farm and Fountain Lane appeals demonstrate that a development of peripheral greenfield land can be considered to comprise sustainable development and can be permitted, notwithstanding some environmental impact as well as a breach of Policy STRAT 9 (***Documents CD3.32; 3.33***). If the effect of Policy STRAT 9 was to prevent the delivery of otherwise sustainable development its operation would plainly be out of step with national policy.

193.2. Relevant policies are absent/ silent. It was conceded by the Council at the Inquiry that neither the CDLP nor the LP (Part One) establish settlement boundaries, and thus a relevant housing policy is absent[31]. Although Paragraph 14 of the Framework refers to the 'plan' being silent or absent it is incomprehensible to contend that this relates to the whole of the development plan. The compelling interpretation is that if a relevant part of the policy context in a development plan is missing then that part of Paragraph 14 is triggered.

193.3. Relevant policies are out of date. Policy HO 7 is out of step with national guidance. The geographic extent of countryside and the application of the policy concerns development needs that related to the period up to 2011. Policy 1 of the TNDP is permissive of development on Policy HO 7 land. It is abundantly clear from the reasoned justification to Policy STRAT 9 that something peculiar has occurred. The policy relates to development in the countryside and the reasoned justification explains that it applies to development beyond settlement boundaries. However, Policy HO 7 of the CDLP and its counterparts in the former Vale Royal Borough and Ellesmere Port and Neston Borough continue to be saved and also control development in the open countryside. In the case of Policy HO 7 the policy does so in a way that is demonstrably more restrictive than Policy STRAT 9.

193.4. The LP Inspector was told that development would come forward in the 4 KSC's and to a lesser extent the Local Service Centres during the plan period. However, for two of the former Boroughs the settlement boundaries were out of date and for the former Chester District there were no settlement boundaries at all. The Inspector appears to have arrived at a compromise and Policies HO 4, HO 5 and HO 7 of the CDLP would continue in place until settlement boundaries were established in the LP (Part Two). The Council's contention that Policy HO 7 only remains in force insofar as it relates to the geographic extent of the application of Policy STRAT 9 could not be the case in the former Chester District because it does not define any geographic extent. In any event Paragraph 5.73 of the LP (Part One) makes it clear that the policy and not just its geographic extent continue to operate.

193.5. The terms of Policy STRAT 9 do not disapply its effect and Policy HO 7 is a saved policy so both policies remain in force. The position therefore is a policy muddle that was intended to be in place only until the LP (Part Two) was adopted in January 2016. What has happened instead is that

[31] Mr Bolton conceded this point in cross-examination by Mr Young.

the LP (Part Two) is years behind the schedule upon which the LP Inspector placed reliance. Policy STRAT 9 may be Framework compliant once its settlement boundaries are established, but in the interim it is based upon out of date foundations insofar as the interim position is concerned and is therefore out of date.

194. In any event, even if a five year supply can be demonstrated that does not mean that planning permission for sustainable development should be withheld, given that there is an imperative in national guidance to boost significantly the supply of housing. There is demonstrable need to ensure a continuous supply of housing development over and above the least expectation of Government. If a five year supply is established then it is anticipated that the figure will be a fragile one. Furthermore there is a substantial ongoing need for affordable housing locally and within the district as a whole and a huge backlog in provision which needs to be urgently addressed.

195. The position regarding whether or not the Council can demonstrate a 5 year supply of housing has vacillated back and forth since June 2013. This demonstrates the fragility of the Council's position and the clear benefit to ensuring that additional housing, which is immediately available and deliverable, is brought forward. If the Government's aspiration to transform the UK housing market to benefit the national economy is to occur, then strong market areas should plainly be expected to contribute to such delivery.

PLANNING POLICY

196. The CDLP was adopted in 2006 but prepared well before at a time when national guidance propounded a sequential test for the release of housing land. It was also prepared at a time when regional planning housing numbers were significantly constrained leading to the introduction of local moratoria on general market housing. It was necessarily prepared to accommodate development requirements up to the end of 2011 and is accordingly time expired. The approach in Policies HO 4, HO 5 and HO 7 of allowing development within the built confines of settlements such as Tattenhall and precluding development beyond is not one that is now considered by the Council as appropriate for the KSCs. Restricting all residential development outside of the built confines of a settlement such as Tattenhall, save for agricultural workers, is inconsistent with the Framework and Policy 1 of the TNDP. It is also inconsistent with Policy STRAT 9 which is plainly more permissive. Policy HO7, both in terms of its substance and its geographical extent, is plainly out of date within the meaning of Paragraph 14 of the Framework.

197. It may have been expected that the adoption of Policy STRAT 9 would have resulted in the quiet demise of Policy HO 7. However, the LP Inspector was concerned about the approach to KSCs (***Document CD3.26, Paragraphs 141, 162***). A main modification provided the amendment that is now at the end of Paragraph 5.73 and provided for the operation of saved policy until the LP (Part Two) was adopted. The LP Inspector had not refreshed the scope of Policy HO 7 or given it a Framework green light until settlement boundaries were adopted. It is an out of date but saved policy that has to be applied to a proposal beyond the built confines of the settlement. Policy STRAT 9 would seem to be intended to apply where Policy HO7 applies and that is an out of date foundation for the

application of the policy. As an expedient to get the plan adopted the Inspector was content that a commitment to bring forward settlement boundaries in the LP (Part Two) was sufficient to ensure that the plan as a whole was sound[32].

198. It is acknowledged that the proposed development would not fall within one of the categories of Policy STRAT 9. However the weight to be afforded to that breach would be limited for the following reasons:

    198.1. The application of the policy is founded upon a demonstrably out of date foundation.

    198.2. The main modification was needed to render the LP (Part One) sound. It established that there was a commitment for the interim position to be replaced by an up to date settlement boundary to accommodate up to date needs.

    198.3. The LP Inspector envisaged that this unsatisfactory policy position would endure only until January 2016 when the LDS considered that the LP (Part Two) would be adopted. This was 14 months after the date of his Report and 1 year after the adoption of the LP (Part One). However, no meaningful progress has occurred on the LP (part Two) and its adoption now looks set to be in late 2017.

    198.4. The Council intends to establish a settlement boundary for Tattenhall and to include peripheral allocations on the edge of the settlement within it.

    198.5. The stated purpose of Policy STRAT 9 is to protect the intrinsic character and beauty of the countryside, which the appeal proposals would do on the evidence to the earlier Inquiry.

199. The contravention of Policy HO 7 in the CDLP and Policy STRAT 9 in the LP (Part One) should therefore be afforded limited weight when assessing in the overall planning balance. The compliance of the scheme with Policies STRAT 1, STRAT 2 and STRAT 8 has already been addressed.

200. Policy ENV 2 in the LP (Part One) provides a Framework compliant policy to judge landscape impacts of a proposed development and it seeks to manage not prevent development. It is not alleged by the Council that the proposed development would impact upon any important gap. Nor is there an impact upon estuaries or the undeveloped coast. It not alleged that the proposed development would result in the loss of a valued landscape within the meaning of Paragraph 109 of the Framework. The settlement specific Policy 2 of the TNDP contains a series of specific provisions. The only one that arises is the first where there was an issue in the landscape evidence as to potential. The remainder of the policy, including consideration of the VDS, is not alleged to be breached. The determination of whether there would be conflict with either policy depends upon the views formed on the evidence to the first Inquiry.

[32] *Barratt Developments plc v Wakefield Metropolitan District Council* [2010] EWCA Civ. 897 establishes that the test is a planning judgment as to whether the plan overall is sound not an endorsement that each and every part of the plan is precisely on all fours with national guidance.

201. There is not any ambiguity in the interpretation of Policy 1 in the TNDP. Its terms do not expressly prohibit the development of sites in excess of 30 units but that is the necessary implication of the policy. That is why the legality of the making of the plan with that policy was challenged in the Administrative Court. It is accepted that there would be a breach of Policy 1 as a result of the proposed development. However, what is at large is what weight should be afforded to such a breach of policy.

202. The policy is silent on its purpose. The putative reason for refusal states that the land use harm that would arise from the breach of this policy is that the proposed development does not comprise incremental growth. That appears to follow from the opening words of the policy which states that it seeks to manage growth. The purpose of that management of growth is to ensure that the supply of new homes accords with *the distinctive features, scale and grain of the local area.* The text goes on to discuss what the community thinks the purpose of this topic to be and in addition to some level of growth, complying with the VDS and character of the settlement were seen as key. This is covered by Policy 2. What is not alleged on the face of the document is that the policy seeks to ensure incremental growth for its own sake, nor to ensure that housing comes forward in a staggered manner to ensure community cohesion (***Document CD1.10, Page 12***).

203. The TNDP is silent as to what it is about individual applications in excess of 30 units that would give rise to land use harm and comprise harmful growth rather than acceptable growth. Accordingly, when assessing the weight to be afforded to that breach it is absolutely essential to look to see what evidence there may be to discover what exactly that harm might be.

204. The starting point is to look to see what evidence the Examiner had before him on this issue. Had such a policy been propounded in a LP then it might be expected that a landscape capacity study or an infrastructure study would have been to hand to judge whether such a policy was warranted. In this case there is nothing of the sort before the Examiner and he did not engage in a forensic analysis of such a cap to explain its reasoning. Still less was there any analysis of how such a policy might operate in practice since it does not preclude repeated applications on adjacent sites or even concurrent applications.

205. That there is no such evidence base or detailed examination of its justification arises from the nature of neighbourhood plan preparation, which has been bequeathed by Parliament. This is not intended to be an attack on the neighbourhood planning system. However, a policy that lacks any evidential foundation regarding land use harm and that has not had a proper justification[33] for its inclusion in the plan must be afforded less weight than if it had it been properly evidentially based and had been found to be a sound policy. This does not to go behind Section 38(6) of the 2004 Act but goes solely to the issue of weight. It is recognized that weight ought to be afforded to the policy since it

[33] In the case of BDW v CWC [2014] EWHC 1470 (Admin), Lord Justice Supperstone made the point that an Examiner has a different role to an Inspector when considering the justification for the 30 dwelling limit in a TNDP as opposed to a LP (***Document CD3.30, Paragraph 85***).

represents the considered views of the community. However, ultimately the planning system has to be determined on the basis of land use considerations and not popular vote. The neighbourhood planning system necessarily involves the promotion of policies which might not be as well evidentially grounded nor as justified as polices in a local plan. If that is the case for a given policy then that must be reflected in how that breach is weighed in the overall planning balance.

206. That is the essential message from the *Woodcock Holdings* case which seeks to distinguish between how the issue of prematurity might arise in respect of a local plan and how it might arise in the context of a neighbourhood plan. Mr Justice Holgate distinguishes between the two by reason of the much more limited degree of scrutiny and justification that is warranted for a neighbourhood plan rather than a local plan policy (***Document CD3.29, Paragraphs 135, 137***).

207. The present appeal is directly analogous. In the *Woodcock Holdings* case the illegality was that an appeal could not have prejudged the neighbourhood plan as to the extent to which new housing might be needed since that would not be the role of the neighbourhood plan to decide. Thus in ascribing weight to a material consideration, which in *Woodcock Holdings* was whether a prematurity reason for refusal was warranted, the Court has had regard to the different way in which policies in local and neighbourhood plans are required to be justified and scrutinized. In this case the essential point is that there has been no meaningful justification and scrutiny of the 30 dwelling limit, which would be breached.

208. That is not to say that such a limit might not be the point at which harm might arise. However, there needs to be evidence as to why a scheme that is in excess of 30 dwellings would give rise to a concern about “non-incremental” growth. Otherwise the policy is a mere technical breach which ought to be afforded very much less weight. Such evidence might be that local infrastructure cannot cope, but that is not part of the Council’s case. It might be that such development would be out of scale and character with the settlement, which was considered at the previous Inquiry. It might be the more inchoate concern of social integration, but there is no evidence on this point or why it could not be avoided by either a phasing condition or the simple fact of the time it would take to bring forward a development of this nature. In this case there would be no meaningful land use harm that would arise from the breach of Policy 1.

AFFORDABLE HOUSING

209. The TNDP requires the provision of 35% of units to be affordable, whilst the more recently adopted LP (Part One) requires the percentage to be 30%. The interaction between the applicability of the two is far from clear. In any event the appeal proposal would comprise a proportion which would be policy compliant with the TNDP and which would be materially in excess of the percentage required by the LP (Part One). This comprises a significant benefit of the proposed development over and above the substantial weight that ought to be afforded to the provision of affordable housing in any event.

210. The extent of the need has been explained in the case for Barratt Homes. It is clear that the need locally and on a Borough-wide basis is an acute one, and that there has been a failure to address this issue over many years. Whilst the aspiration of the Council to meet the backlog over the next five years is welcome, that does not mean that the scale of that task can be under-estimated. It will be a huge challenge. There is a local need for 23 affordable homes a year in Tattenhall (***Document CD2.7, Table D8***). However, based on current commitments there is simply no mechanism in place to address that shortfall. The appeal scheme would deliver 48 units, which would be two years' supply of affordable housing for the settlement. The three appeal proposals together would deliver 5 years supply of affordable housing, matching local needs almost precisely. This factor is a powerful weighty material consideration in favour of the proposed development.

PLANNING BALANCE

211. There is an acute need for affordable housing and there is not a five year supply of housing overall. Tattenhall is a location which is identified as suitable for peripheral greenfield expansion and there are no technical reasons why the appeal site could not be developed. It lies immediately upon a bus route and therefore has good sustainable credentials. As against those matters it is said that there would be some public views of the houses, albeit substantially mitigated. These would be predominantly from distant views and in the context of what is currently a wholly unremarkable parcel of land.

212. Even if there is a five year housing land supply, the planning balance still decisively weighs in favour of the grant of permission of what is demonstrably a sustainable parcel of land. Any breach of the development plan ought to be afforded limited weight as occurred in the two recent appeals at Fountain Lane, Davenham and Hilltop Farm, Northwich. This land is controlled by a developer who remains exceptionally keen to get on with the development of the site. It would deliver actual homes, to meet local and district needs.

THE CASE FOR BARRATT HOMES

The main points are:

213. This is also a detailed scheme meaning it is oven ready and can start to deliver housing in the short term. It is controlled by a housebuilder keen to deliver the scheme.

PLANNING POLICY

214. The proposal enjoys a significant degree of conformity with the development plan. This seeks to ensure the delivery of at least 22,000 new homes in the Borough by 2030, of which at least 4,200 should be in the Rural Area and at least 250 at Tattenhall. This is a modest proposal of 68 dwellings, located on the edge of one of the KSC, where development in the rural part of the Borough should be focussed. This is the intention of Policy STRAT 8.

215. The proposal exceeds the critically important policy requirements on affordable housing in the LP (Part One) and the TNDP. Affordable housing is a corporate

priority for the Council and no one suggests that the Council should not be addressing the huge backlog, which in the 2013 SHMA stood at over 4,000 households, in the 5 year period to 2018.

The LP (Part One)

216. The Council does not allege the proposal conflicts with Policies STRAT 1, STRAT 2 or STRAT 8, although combinations of two or three schemes are said to create conflict and potential conflict with these policies. Whether Policies STRAT 2 and STRAT 8 are caught by Paragraph 49 of the Framework is a moot point and the Court of Appeal is anticipated to provide clarity on the point early next year[34] The Secretary of State certainly takes a broad interpretation of the policies caught by the phrase '*relevant policies for the supply of housing'*, encompassing those which are restrictive of where development should go.

217. The proposal is located on the edge of Tattenhall, which is in conformity with the TNDP. It is to be judged against Policy 2, which seeks to protect the character and appearance of Tattenhall. This was the subject of much debate at the previous Inquiry. It is now well established that the Council do not believe that the proposal conflicts with the Village Design Statement. Landscape and visual impacts aside, the only real conflict that this proposal has with development plan policy is Policy STRAT 9 in the LP (Part One) and Policy 1 in the TNDP. The Council also raise an alleged breach of saved Policy HO 7 in the CDLP. However, this plan was only intended to address development needs until 2011. A breach of such a policy is meaningless when it is contained in a plan that has no relevance to meeting present day development needs.

218. It is accepted that there is conflict with Policy STRAT 9. The site is located in the countryside, and it is not one of the rural exceptions to which permission will be granted. But as the recent appeal decisions at Fountain Lane, Davenham and Hill Top Farm, Northwich demonstrate, the policy is no obstacle to the grant of permission for new housing development when the Framework is properly considered. The environmental harm caused by building a modest extension to a key service centre is clearly capable of being outweighed by the numerous social and economic benefits of new housing development. These include new market homes in a location when average house prices have rocketed to the exclusion of many. Also, the delivery of affordable housing to those most in need of housing in our society. The proposal at Tattenhall is the same size as the proposal permitted recently at Davenham.

The TNDP

219. Policy 1 sets a limit of 30 dwellings on the size of new developments. It is accepted to be a limit because the policy advocates the need to manage development in the form of welcoming proposals of up to 30 units. It is correct to say though that the policy is not explicit in rejecting proposals for more than 30 dwellings. The policy is part of the statutory development plan but it is not determinative of this appeal. The Council accepted that it serves no planning purpose which is not addressed by other policies. Policy 2 is designed to protect

[34] *Richborough Estates Partnerships LLP v Cheshire East Borough Council and SSCLG* to be heard in the Court of Appeal 13-15 January 2016 (Documents HLS23/1-23/3)

the local character, historic and natural assets of the surrounding area and reinforce local distinctiveness. If all of these are achieved, then it is questionable whether Policy 1 has a meaningful role in a professional planning judgement.

220. Policy 1 is said to be the articulation of local views about the scale of development. Such opinions are now given prominence in planning, as set out in Paragraphs 183-185 of the Framework. However, in this case the provenance of the 30 unit threshold is a mystery. The survey, which is said to justify it, was about how much development people would welcome over a set time period, not its geographical extent. There is no basis in the Framework or any other policy or guidance for such an approach. The TNDP Examiner considered it and objections to it. However, his role was limited to considering the basic conditions, something the Council was keen to emphasize during the High Court proceedings.

221. It is accepted that the Secretary of State is unlikely to just ignore the policy as it forms part of the statutory development plan. However, there is an important matter here to consider. If 30 dwellings is an acceptable limit on the size of development for no apparent reason, then why not 20 or even 15. The answer is that there is no reason. At the Fountain Lane, Davenham appeal, the Parish Council was seeking to introduce a policy which limits development to just 15 units at a time. It was only a draft policy and had not progressed to examination. However, the problem has revealed itself and if such limits can be adopted it is difficult to see why the threshold should be 30.

222. Understanding the role the policy is to play in this decision is not limited to just raising concerns about the policy. The TNDP is just the starting point for consideration of planning proposals and other material considerations must be considered. Paragraph 198 of the Framework is not some kind of trump card and the importance in particular of other material considerations was acknowledged by the Secretary of State in the *Woodcock Holdings* judgement. He also acknowledged that if there is no five year housing land supply then the relevant policies for the supply of housing in the neighbourhood plan would be out of date (***Document CD3.29, Paragraph 24***).

223. A key material consideration here is that Policy 1 of the TNDP was introduced without reference to any individual planning application. The Council accepted that the best time to judge the acceptability and suitability of new development on the edge of a settlement is at the planning application stage. It also acknowledged that the planning application process is a sophisticated one. Important considerations, which are relevant to judging whether a new proposal can be accommodated on the edge of a settlement, include its location and the extent of the landscaping.

224. If the appeal proposal is required to be restricted to 30 units, a development would be created across half of a small field for no apparent reason other than a theoretical policy limit. Although the Council suggested that half the site could be used for another purpose, that other use was not identified. The development could be spread out across the field to reduce the density, but that would be pointless and a profligate use of land. It is easy to see why, despite the intention of a development plan policy, the detail at application stage is

always important. For example, viability can be relied upon to justify the removal of affordable housing from a development proposal, despite a policy which seeks 30%. The same applies to Policy 1 if there are good reasons to allow the proposal, such as the provision of much needed housing and affordable housing. In both cases what is taking place is simply the elevation of material considerations capable of outweighing a breach of policy.

THE PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

225. All housing applications should be determined in this context as confirmed by Paragraph 49 of the Framework. It is always engaged but there is the special test for decision taking when plans are absent, silent or relevant policies are out of date. This special test in the presumption applies in this case because:

    225.1. The Council cannot demonstrate a five year supply of deliverable housing sites.

    225.2. Relevant policies of the development plan are out of date, and parts of the development plan are very obviously both silent and absent.

226. The development plan is out of date for the following reasons:

    226.1. The Council only has in place the strategic part of the local plan.

    226.2. The Council has made virtually no progress on, and has no date for, the adoption of the LP (Part Two).

    226.3. The Council is forced to still rely on claiming a breach of policies in the old CDLP, which ran out of steam nearly 5 years ago.

    226.4. There are no settlement boundaries around the settlements, including Tattenhall. These are expected to be defined in the LP (Part Two).

    226.5. There is confusion about the applicability of Policy STRAT 9. The necessary settlement boundaries, which form the very edge of this policy designation, do not exist.

227. A set of strategic policies, minimum development targets for the main settlements and a few strategic allocations do not make an up to date development plan. Having no settlement boundary for Tattenhall means that relevant policies are clearly out of date. That also means that a key part of the development plan is both absent and silent. The idea that what is required is a whole development plan not to exist is a contrivance. The process of policy saving means there would never be no development plan, so one could never say the whole development plan was absent. That is the whole point of the saving provisions, applicable now even some 8 years after 2007. It is difficult to see in the *Bloor Homes* judgement how a plan could not be adopted with saving directions (***Document INQ/14, Paragraph 45***). Part of a development plan can be absent without the whole.

228. If the Council want to show that no relevant policies are out-of-date then it could always progress the LP (Part Two). Its reluctance to do so is inexplicable. What matters though in the present situation is that the special test in the presumption for sustainable development applies, regardless of the position in respect of the five year housing land supply. There would be many benefits

arising from the proposal. These were addressed in the closing submissions to the previous Inquiry and reinforced in the present evidence (***Document BH/47, Section 8 and Paragraphs 11.14-11.19***).

AFFORDABLE HOUSING

229. A major part of the Appellant's case is the fact that the proposal involves the delivery of 40% affordable housing. That is above the policy level required in the LP (Part One), which is the later development plan document to have been adopted. As such, in contrast to some locations in the Borough, this site is able to not only support the full policy expectation of affordable housing but to exceed it by 10%.

230. Affordable housing needs in the Borough are acute. The origin of the problem is the national housing crisis as recognised by the Planning Minister of the time in 2013. He also made clear that this state of affairs was causing misery to millions of our fellow citizens (***Document BH/49, Paragraphs 2.49-2.53***). The extent of the crisis is revealed in a series of speeches, interviews and reports in May and June 2014, which demonstrated just how severe the housing crisis was within the UK and how important it was to take action to increase the housing supply (***Document BH/49, Paragraphs 2.54-2.75***).

231. The planning system in this country bears a tremendous responsibility for creating that crisis and the acknowledged misery it has inflicted on millions of people. As Mr Carney, Governor of the Bank of England has observed, Canada is a country which has half the population of the UK, but where twice as many houses are built. In his 2014 Mansion House speech, Mr Carney noted that house prices rose by 10% between 2013 and 2014 (***Document BH/51, Appendix JS15***). Some welcome the constrained supply and the fact it has led to an increase in house prices. Housing in the UK is a market like any other. At its core lies a simple balance between demand and supply. The huge reduction in supply over recent decades has been dramatic (***Document BH/49, Page 12***). Recently the Secretary of State himself accepted the point and accepted it is the fault of successive Governments. Worthy of careful consideration are the content of the local and regional reports and strategies on these issues (***Document BH/49, Paragraphs 4.39-4.97, 6.1-6.8***).

232. The provision of affordable housing is a matter to which the Secretary of State has consistently attached substantial weight. In circumstances where an Appellant is willing to offer 40% in a Borough where there are known viability issues, then it is a matter to which very substantial weight should be attached. The Secretary of State did not agree that the extra affordable housing above policy requirement should be removed from the Abbeyfields development in Sandbach. This suggests that over provision against policy requirements is important to the Secretary of State, as does the outcome of his decision in the Sketchley House, Burbage appeal (***Documents BH/49, Paragraphs 7.42-7.129; INQ/11, DL Paragraph 27***).

233. The 2013 SHMA identifies an annual requirement of 714 dwellings for affordable housing and there is no other figure on the extent of the need in the Borough. This is nearly two thirds of the overall housing requirement of 1,100 dpa. It is also significantly higher than the average affordable housing completions between 2008 and 2015 of 314 per annum. This does not represent a true

picture of the level of affordable housing delivery, as 1,418 social rented properties were lost through Right to Buy Sales between 2000 and 2015 (***Document BH/49, Paragraph 6.37***). The LP Inspector did not identify how this need was to be met, and did not even identify the FOAN for affordable housing, which is contrary to the Judgment in *Satnam Millenium Ltd v Warrington BC* (***Documents BH/29; BH/49, Paragraphs 5.2-5.9***).

234. 97 households have expressed a requirement for affordable housing in Tattenhall and meet the criteria for doing so. However, whilst re-letting does take place mainly in urban areas, the SHMA reveals no re-letting of either social rented or intermediate tenure properties in Tattenhall. (***Documents BH/49, Paragraph 6.10-6.15; CD2.7, Tables D4, D5***).

235. The need for 1 bed units is very much focused on the urban areas. In contrast, the greatest need for 2 bed units is in the rural parts of the Borough. The appeal proposal would deliver many of these within a KSC, which has the greatest need for affordable housing in the District as a percentage of total households. The proposal would also deliver 3 bed affordable units, which again would be ideally suited for families. There is some need for 1 bed units in Tattenhall. However, it is to be noted that couples without children are also placed in this category in terms of need and those planning to have a family also fall into this category (***Documents BH/54; CD2.7, Table 4.17, Table 4.23, Paragraph 4.64***).

236. The most recent evidence shows that there are 2,665 households registered on the Council's Housing Register. Those are people and families in need of affordable housing under the new qualifying criteria (***Documents BH/51, Appendix 24; BH/49, Paragraphs 6.17-6.18***). In the Drotwich Spa appeal the Inspector made it abundantly clear that *"affordability is at crisis point"* and emphasised the social element of this when recognising that *"these are real people in real need now"*. The need might be different in Wychavon, but the people are real. Without adequate provision of affordable housing, these acute housing needs will be incapable of being met. In terms of the requirements of the Framework to create inclusive and mixed communities, as acknowledged by the Inspector *"this is a disaster of catastrophic proportions"* (***Document BH/49, Paragraphs 7.62-7.70***).

237. The delivery of affordable housing in the Borough over the last 12 years has been disappointing with delivery only 3 times achieving more than the 330 dwellings per annum envisaged in the Local Plan. The accumulated shortfall in the 2013 SHMA is 4,025 affordable dwellings. This is really serious when one stops to think about the real people, individuals, families and children involved, rather than thinking of them as just numbers (***Document BH/49, Paragraph 6.56 and Figures 6.4, 6.7***).

238. Last year 572 affordable units were delivered. This significant increase in delivery was due to the cyclical nature of the Housing and Communities Agency funding regime, the completion of a significant number of extra care units, and the delivery of the entire HCA programme for Cosmopolitan as a result of earlier financial difficulties. These circumstances are unlikely to continue in the future due especially to the reduced Housing and Communities Agency programme in 2015-2020 (***Document BH/49, Paragraphs 6.26-6.30***).

239. There can be no doubt that there is an **acute** need for affordable housing in the Borough. Nor can there be any doubt that the proposal would deliver a substantial number of affordable homes, for which there is a significant and demonstrable need, in the face of significant under-delivery.

PLANNING BALANCE

240. The appeal proposal accords with key parts of the development plan, but there is some conflict focused on Policy STRAT 9 of the LP (Part One) and Policy 1 of the TNDP. However, that is significantly outweighed by the social and economic benefits of delivering new housing and the delivery of above policy levels of affordable housing. Permission should be granted on the basis of the statutory test in Section 36(8) and, most especially, if the special test in the presumption for sustainable development applies. The shortfall in the five year housing land supply is a significant additional material consideration weighing in favour of the scheme.

OTHER ORAL REPRESENTATIONS TO THE INQUIRY

241. Most of those who spoke also participated in the previous Inquiry. Those who spoke on behalf of the Friends of Tattenhall adopted a co-ordinated approach and covered different topics in order to avoid repetition.

The main points are:

242. **Mr T Leigh-Smith** is a local resident who spoke on behalf of the Friends of Tattenhall. His representations are at ***Document TP/12***. The spatial strategy in the LP (Part One) requires that the majority of new housing should be directed to the main urban areas where the infrastructure and resources can support it. Development in rural areas such as Tattenhall should be limited and accordingly the village is set to receive 250 dwellings. Although this is a minimum, it gives a broad indication of the scale of development anticipated. The Hill Top Farm and Fountain Lane appeal decisions can be distinguished as they involved development near to one of the main towns, Northwich, and in neither case was a neighbourhood plan in force. Furthermore, in the case of the appeal developments there would be significant adverse impacts on the landscape and rural character of the village.

243. The policies in the TNDP, including the 30 dwelling limit in Policy 1, are consistent with the scale of growth envisaged for Tattenhall in the LP (Part One). This will enable managed housing growth in the Parish. Policies 2, 5 and 6 would also be breached together with Policy STRAT 9 in the LP (Part One). If a five year housing land supply can be demonstrated the development plan should be applied as there are no overriding material considerations to suggest otherwise.

244. However, if there is no five year supply, substantial weight should be given to the objectives of the policies in the development plan. In the *Woodcock Holdings* case, Mr Justice Holgate said that the Framework does not prevent regard to policies deemed out of date and does not determine how much weight they should be given (***Document CD3.29, Paragraphs 107-108***). The delivery of housing land is well advanced in relation to the Rural Area and Tattenhall in particular. The development plan should therefore be given

substantial weight. The LP Inspector found that completions and commitments in the Rural Area had almost reached the planned level for the whole plan period and this is confirmed in the LP (Part One) itself (***Documents CD1.8, Paragraph 5.69; CD3.26, Paragraph 137***). It would thus be unnecessary for any large-scale housing development in Tattenhall to deal with a supply shortfall. It would be inappropriate to allow a substantial part of the shortfall to be met by all or any of the appeal developments in a village that has been allocated just 1% of the Borough's housing requirement over the plan period. The same point relates to affordable housing. The LP Inspector said that to increase the housing planned for the Rural Area to the level required to meet affordable housing needs would have a dramatic effect on the overall spatial strategy (***Document CD3.26, Paragraph 134***). In any event Tattenhall has a good record of providing affordable housing and 65 such units have either been built or have been approved.

245. The TNDP was found to be in accordance with the Framework and even if it is found out of date, substantial weight should be given to its objective of managed growth. The Parish Council and community have devoted a huge amount of time to the TNDP, which was a frontrunner in the neighbourhood planning pilot. The plan has been subject to intense scrutiny, including Judicial Review. It was approved overwhelmingly in the referendum and to allow these appeals would have a significant and demonstrable adverse impact on local empowerment and the principles of plan-led development, both of which are central to the Framework.

246. Landscape issues were covered at the last Inquiry. However, the letter of 27 March 2015 from the Minister of State for Housing and Planning to the Planning Inspectorate emphasises the importance of these matters in determining appeals.

247. **Mr G Newman** is a local resident who also spoke on behalf of the Friends of Tattenhall. His representations are at ***Document TP/13***. During the period 2010 to 2030 the planned number of dwellings for Tattenhall will be at least 250. After just 5 years of that period 263 dwellings have either been built or approved in the area covered by the TNDP and 204 in the village itself. Supply in the wider area should be taken into account in the KSC housing requirement of 250 dwellings. The TDNP manages housing development throughout its area, including places like Newton-by-Tattenhall and Gatesheath and those occupying the new developments will use services and facilities in Tattenhall village. The Council is already delivering well over its minimum target within the rural area (***Document CD3.35, Table B.1***).

248. The TNDP clearly indicates that planned growth should be encouraged by means of smaller scale developments. An additional 315 dwellings would result in a total of 519 dwellings in the KSC or 578 in the wider TNDP area. There are 15 more years of the planning period to run and some future needs cannot yet be foreseen. Rapid overbuilding and large bolt-on estates would have a damaging effect on local character and community cohesion and is just what the TNDP is seeking to avoid. Meeting housing needs must also take account of infrastructure, including the road network, schools and doctors' surgeries. That is the purpose of managed development and achieving a sustainable outcome.

249. Also, the flexibility to respond to evolving housing needs has already been limited by expansion which has not always been plan-led. For example 3, 4 and 5 bedroom units may be released onto the market as residents move into the Care Community, thus reducing the need for new houses of this type. The 95 apartments in the Care Community will be built as independent living units under Use Class C3. Whilst a domiciliary care package is available it is not a condition of residence. Perfectly fit people over 65 years can purchase an apartment and any care package is separately assessed and paid for outside of the annual service charge.

250. The SHMA shows that its figures for Tattenhall cover a wider spatial zone than just the village, incorporating a number of settlements (***Document CD2.7, Map 1.1***). The affordable housing need in Tattenhall is mainly for one bedroom units and yet these are not being offered in the appeal proposals.

251. **Mr I Waddington**[35] is a local resident who also spoke on behalf of the Friends of Tattenhall. His representations at ***Document TP/17*** were addressed specifically to the Taylor Wimpey appeal (Appeal A). The TNDP requires a mix of homes to meet local requirements. There is no evidence that there is a local need for this development. Policy 1 limits developments to 30 dwellings and the proposal for 110 dwellings would clearly not comply. The policy lists exceptions, but these do not include a higher number of houses or a development of three separate character areas as argued by the Appellant. The policies in the TNDP are perfectly clear to any reasonably minded person and were supported by Mr Justice Supperstone in the Judicial Review.

252. The proposed extension of the western boundary of the village into attractive open countryside would fail to maintain the strong and established sense of place required by Policy 1. The development would also erode the gap between Tattenhall and Gatesheath, which would not accord with Policy 2. The TNDP supports housing growth, whilst preventing large scale development that would erode the qualities that make the village special. The appeal scheme would fail to accord with the policies and spirit of the plan.

253. The development would be a sprawling incursion into open countryside, contrary to Policy HO 7 in the CDLP and STRAT 9 in the LP (Part One). The importance of considering the impact of development on the landscape has recently been highlighted by a letter from the Minister of State for Housing and Planning to the Planning Inspectorate.

254. **Mr I Cross** is a local resident who also spoke on behalf of the Friends of Tattenhall and his representations at ***Document TP/11*** were addressed specifically to Mr Wall's appeal (Appeal B). This site is in open countryside and the development would have significant adverse impacts on the intrinsic character and beauty of the Cheshire countryside for the reasons given in the

[35] Mr Waddington introduced at the end of his statement further concerns about the access. These have not been reported because no new access proposals have been proposed since the last Inquiry closed. He also refers to a further statement by Dr Dzelzainis who appeared at the last Inquiry but was not present at the re-opened Inquiry. For the reasons given in Paragraph 6 of this Report I did not accept this document on the grounds of natural justice.

evidence to the last Inquiry. The proposal would thus be contrary to Policy HO 7 in the CDLP and Policy STRAT 9 in the LP (Part One).

255. Although the TNDP does allow for small-scale developments adjacent to the built up part of the village it does not give blanket approval for the extension of village boundaries. The vision in the TNDP is that development should be measured, proportionate, timely and sustainable so as to meet local requirements. It is not anti-development but does not wish the very qualities that make the village special to be eroded. The 137 houses proposed would be contrary to Policy 1. In addition they would be inconsistent with the principle of managed growth; are not based on demonstrable housing need in the village; and would limit the flexibility of the community to respond to local needs in the remaining plan period.

256. The TNDP seeks to maintain the strong sense of place and character of Tattenhall and its landscape surroundings. The appeal proposal would not comply with Policies 1 and 2 in this regard. In particular there would be an unacceptable erosion of the undeveloped gap between Tattenhall and Newton-by-Tattenhall. Policy 2 also requires full compliance with the Village Design Statement and Building for Life 12. The prominent scale and visual dominance of the proposal would conflict with these principles. Policy 6 refers to the protection or enhancement of wildlife value. For the reasons given previously the appeal scheme would damage the Keys Brook wildlife corridor and therefore fail to comply with this policy. Policy 5 does not permit development that would give rise to unacceptable highway danger. The exit to the site and traffic generation would cause danger to the surrounding road network. This would be made worse by the increase in traffic levels caused by the recent expansion of the Ice Cream Farm.

257. **Mrs S Hudson**[36] is a local resident who also spoke on behalf of the Friends of Tattenhall and her representations at ***Document TP/16*** were addressed specifically to Barratt Homes appeal (Appeal C). The proposal would be some distance from the village centre so that most journeys would be by car. Public transport is in any event poor, as acknowledged in the TNDP. The proposal would thus be contrary to Policy STRAT 1.

258. The Parish Council has a good record of supporting the provision of affordable housing as evidenced by the 14 dwellings at Grackle Croft and work with the Community Land Trust. There are also ongoing schemes such as the Redrow development and the Care Community that will make a significant contribution. Most of the requirement is in the urban areas and trying to address the shortfall in Tattenhall or the rural area would be disproportionate and contrary to Policy STRAT 2 in the LP (Part One). Grackle Croft provides a clear edge to the village and the proposal would extend the built area into the countryside, which would be contrary to Policy STRAT 9 and Policy HO 7 in the CDLP.

[36] Mrs Hudson made a number of points about the failure to accord with the Village Design Statement. This was discussed in detail at the last Inquiry and was a document in the public arena at the time. It would thus be inappropriate to raise any new points at this stage and this section of Mrs Hudson's representation has not therefore been reported.

259. The proposal would be contrary to the purpose, vision and objectives of the TNDP as well as its policies as a whole. The scheme would be conflict with the strategy for housing growth in Policy 1. Permitting so much development now would limit the flexibility to manage housing demand over the remainder of the plan period. For the reasons given by other objectors Mrs Hudson considers that local character, landscape, gaps and views would be compromised and that the proposal would conflict with Policies 1, 2, 5 and 6 of the TNDP. She also reiterates the transport concerns raised by other objectors. In relation to Policy 6, she points to evidence put to the previous Inquiry about the harm to the Mill Brook wildlife corridor, protected species and surface water entering the brook.

260. **Mr M Reece** is a local resident of long standing who has a good knowledge of the cross-section of local residents. Since 2013 he has lived in Ravensholme Court. The TNDP is a legal document which has resulted from the democratic views of the local community and its provisions should stand. Residents fear that it will be read in a different way to how it was intended, which was for small developments of 30 dwellings. The Barratt Homes and Taylor Wimpey developments would bring large increases in pedestrian traffic onto the Millenium Walk which runs through Ravensholme Court. This would cause upset and disturbance to the elderly residents who live there.

261. **Mr D Hughes** is a local resident and was the Chief Engineer with Cheshire County Council prior to his retirement. His representations are at ***Documents TP/14 and TP/15***. There have been a number of changes in traffic conditions since 2013. These include a massive expansion of the Ice Cream Farm and a doubling in size of the parking area (***Document INQ/16***). Traffic generation on local roads is significantly higher but there has been no review of the traffic information. Impacts will occur at a number of local junctions, including the A41 and Chester Road junction. Even if congestion does not occur at the traditional weekday peaks it will happen at other times, resulting in adverse effects on residents of Tattenhall.

262. There have also been more developments approved in the villages south of Chester and these will further impact on the junction of the A41 and A5115 at Broughton. The Council can do no more to improve capacity and any further traffic generated by development at Tattenhall would exacerbate existing congestion at this point and add to already lengthy queues. Rocky Lane is a main route from the village for those travelling south. Its verges have deteriorated significantly and it is totally unsuitable for existing users, let alone more traffic.

263. Increases in traffic will lead to higher accident risks. It is local people who have to live with the consequences and they are very worried. Sufficient has changed to warrant a review of traffic and safety issues.

WRITTEN REPRESENTATIONS

WRITTEN REPRESENTATIONS FOLLOWING THE CLOSE OF THE INQUIRY IN JUNE 2014

264. The main Report took account of various correspondence in 2013 that was submitted following the close of the Inquiry and this will not be repeated here.

However, there was also other correspondence and although much of this may already have been seen by the Secretary of State it is summarised in this section and will be taken into account insofar as it is relevant to the topics covered by the re-opened Inquiry.

265. **Mr Hughes** submitted a further letter dated 7 August 2013 (***Document DOC/8***). This expressed concerns about the scheme changes and amendments that were introduced during the Inquiry and the difficulty that third party objectors had to keep up with them. He considered objectors had been marginalised and disadvantaged. He was concerned particularly about the joint statement submitted by the Highway Authority and the Appellants in response to local highway objections to which he had not had a chance to respond (***Document INQ/1 in my main Report***). His letter provided that response and expresses concern that the joint statement includes points which misrepresent his evidence.

266. **Tattenhall & District Parish Council** submitted a letter dated 5 September 2013, following receipt of the TNDP Examiner's Report. A further letter dated 14 November 2013 was submitted referring to the results of the Referendum. A letter from **Mr Leigh-Smith** dated 13 September 2013 made a similar point about receipt of the Examiner's Report. He also pointed out that the Council had endorsed a housing supply figure of 6.97 years (***Document DOC/9***).

267. **Mr S Taylor** acting on behalf of Barratt Homes wrote on 18 November 2013 enclosing an appeal decision for 41 dwellings on land north of Church Lane, Baltonsborough, Glastonbury (***Document DOC/10***).

268. Following the making of the TNDP on 4 June 2014, the Secretary of State sought the parties' views. Responses were circulated and a further opportunity to submit representations was given. Submissions were made on behalf of the three Appellants and there were also responses from local people who had contributed to the Inquiry. These representations are at ***Document DOC/11*** but broadly they cover the same points that have been made and attributed to the participants of the re-opened Inquiry.

269. Following the receipt of the Report of the LP Inspector and the proposed main modifications, the Secretary of State invited parties to the Inquiry to submit their views. Responses included **the Council, Mr Leigh-Smith, Mr Cross, Councillor Jones, the Parish Council and the three Appellants**. These representations are at ***Document DOC/12*** and add little to the evidence that has been submitted to the re-opened Inquiry.

FURTHER CONSULTEE RESPONSE

270. The Appellants and the Council as Highway Authority submitted an addendum to the SCG on highway matters (***Document INQ/15***). This confirmed that there were no highway objections to the appeals either alone or in combination, subject to the conditions and obligations put forward as part of the schemes at the previous Inquiry. Additional traffic as a result of the redevelopment of the Ice Cream Farm would not materially change highway conditions at peak periods. Further works to the A41/ A5515 junction at Broughton Heath were implemented in January 2015 to improve its capacity. This junction is about 6 miles from Tattenhall and the appeal proposals would

have an imperceptible impact on it. It was reiterated that none of the appeal proposals should be dismissed on highway grounds.

PLANNING CONDITIONS

271. The planning conditions for each appeal have been considered in detail in my Main Report. However, they were discussed again at a round table session at the start of the re-opened Inquiry. Each Appellant provided a new schedule, but most conditions remained unchanged (***Documents TW/23; AW/30; BH/52***). I discuss below those where the Appellants have suggested different conditions. This section of the Supplementary Report should be read alongside Paragraphs 362-387 of my Main Report. The new affordable housing condition for each scheme is set out in Annex Three. The other conditions remain as set out in Annex Three, Four and Five of my main Report.

272. Councillor Jones and the Parish Council produced a list of additional conditions that they would like to see imposed (***Document MJ/14***). A condition was suggested to ensure compliance with the Village Design Statement and Building for Life 12. Although these are referred to in the TNDP they were extant documents at the time of the last Inquiry and have been taken into account in my consideration of the proposals in the Main Report. I am sure that the developers will wish to ensure that provision for Superfast Broadband is available to new occupiers as a selling point for their developments. This is referred to in Policy 5 of the TNDP. It does not seem to me necessary to make this a particular requirement by condition.

AFFORDABLE HOUSING

273. The main change relates to the affordable housing condition. Whereas previously the proposal by Mr Wall (Appeal B) was to deal with the matter through the Planning Obligation, all three appeals now propose the use of a condition. Each of the conditions is the same, save for the first provision, which sets out the individual offers. In the case of the two outline schemes (Appeal A and Appeal B), that is stated to be no less than 35% of the housing units. No tenure split is specified, which allows more flexibility in the event that need requirements change.

274. In the case of the scheme for full planning permission (Appeal C) the offer is defined as being 19 social rented and 8 intermediate units and amounts to 40% of the total housing provision. This is reflective of the tenure preferences of those in housing need identified in the 2013 SHMA (***Document CD2.7, Paragraph 4.67***). In all cases the scheme to be approved by the Council would include occupancy criteria. I have no doubt that the Parish Council would have a valuable part to play in terms of how the allocations are determined.

275. The wording in the case of Appeals A and B would allow for an element of Starter Homes, if the Government decides to include these within the definition of affordable housing.

ECOLOGY

276. An updated Ecological Assessment, dated September 2015, was submitted in respect of the Barratt Homes proposal (Appeal C), which included a number of new habitat surveys (***Document BH/47, Appendix***). There is no evidence of

the site being utilised by badgers and therefore my conclusions in Paragraph 383 of my Main Report that a condition is unnecessary has not changed. The proposed Condition 12, in which the wording has been slightly changed, is therefore not necessary.

277. I note that the proposed Condition 15 on the Appeal C conditions schedule is new and requires a habitat and landscape management plan. Management of the open space and amenity areas is already the subject of Condition 13. The updated Ecological Assessment concluded that the site has low intrinsic ecological value and other conditions offer benefits to biodiversity such as the provision of bird and bat boxes. In the circumstances I see no particular justification for adding this further condition at this stage.

HIGHWAYS

278. A new condition has been suggested in respect of Appeal C concerning the High Street bus stop improvements. However, this is also a provision of the Planning Obligation, where a sum of £7,300 is covenanted for this purpose. Whilst the suggested condition includes details of what is expected this would be part of a package to which all three appeal schemes would contribute. In the circumstances the suggested condition is unnecessary.

DRAINAGE

279. A new condition has been suggested in respect of Appeal C that requires a drainage strategy for both foul and surface water drainage. Previously the two were treated separately and I recommended the same conditions for each of the appeals. There has been no new evidence to justify a change and therefore the conditions set out in my Main Report are considered to be fit for purpose.

PLANNING OBLIGATIONS BY AGREEMENT

280. Three new Planning Obligations by Agreement with the Council have been submitted (***Documents TW/24; AW/31; BH/52***). Each contains a clause that the previous legal agreements cease to have effect on the operative date. There is a clause in each legal document which states that an obligation need not be complied with if the Secretary of State concludes that it does not comply with the three statutory tests in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations, is immaterial as a planning consideration or cannot be given any weight in the determination of the appeal.

281. A useful note has been provided jointly by the Appellants and Council concerning the obligations and their compliance with the CIL Regulations. Since the last Inquiry the pooling restrictions in Regulation 123 of the CIL Regulations have come into effect and this is also considered in the aforementioned notes (***Documents TW/25; AW/32; BH/53***).

282. Councillor Jones and the Parish Council produced a list of additional covenants that they would like to see included as follows (***Document MJ/14***):

282.1. **The Apportioned Chester Road Improvements Contribution** would come into effect if two or three of the developments were implemented. Whilst it was suggested that this should apply also to the implementation of a single scheme as well, that position is not supported by the highway evidence even taking account of additional traffic from the Ice Cream Farm (***Document INQ/15***).

282.2. It was also suggested that a financial contribution of £500 per house should be paid for various local improvements, such as re-equipping the play area in the park, converting the redundant pool building to a community facility and upgrading the size of the library. It was explained that projects are in hand and that some have been costed. However, each scheme would provide open spaces and play areas in accordance with policy requirements. Whilst it is appreciated that the Parish Council wish to secure funding for these projects, there is insufficient justification to demonstrate that this sum of money would be fair, reasonable and necessary in order for one or more of these developments to go ahead.

282.3. There is concern that no one-bedroom units are proposed and a financial contribution is requested towards the costs of a 6 unit scheme to be developed and built by a Community Land Trust. However, all schemes propose above the 30% level of affordable housing in LP (Part One) and there is no policy support for requiring additional provision. Furthermore, the two outline proposals (Appeals A and B) could include single occupancy units in their developments if that is what is required locally. The sums of money that the Parish Council has in mind were not explained and there is no transparent way that such additional contributions could be justified.

283. The Appeal A Planning Obligation by Agreement is dated 5 November 2015. There are three material changes:

283.1. **The Bus Services Improvements Contribution** remains payable only if all three appeals are allowed but has been reduced from £550,000 to £375,000.

283.2. **The Primary Education Contribution** is based on a specific sum of £173,623, rather than a formula as previously. There is though a provision for re-calculation in accordance with the Council's Practice Note for Developer Education Contributions and also in the event that the number of dwellings permitted was less than 110.

283.3. **The Secondary Education Contribution** would also be based on a specific sum rather than a formula and this would be £286,566.58. Again there would be provisions for re-calculation in the same way as explained above in relation to primary education. Unlike in the previous legal document there is a specific requirement that the money should be directed to the Bishop Heber High School.

284. The Appeal B Planning Obligation by Agreement is dated 3 November 2015. There are four material changes.

284.1. **The Bus Services Improvements Contribution** remains payable only if all three appeals are allowed but has been reduced from £550,000 to £375,000.

284.2. **Affordable housing** is proposed to be dealt with by condition and so the requisite provisions have been removed from the legal document.

284.3. **The Primary Education Contribution** would be based on a specific sum of £216,239.93, rather than a formula as previously. There is though a provision for re-calculation in accordance with the Council's Practice Note for Developer Education Contributions.

284.4. **The Secondary Education Contribution** would also be based on a specific sum rather than a formula and this would be £356,905.65. Again there would be provisions for re-calculation in the same way as explained above in relation to primary education. The covenant is specific to Bishop Heber High School.

285. The Appeal C Planning Obligation by Agreement is dated 9 November 2015. There are three material changes

285.1. **The Bus Services Improvements Contribution** remains payable only if all three appeals are allowed but has been reduced from £550,000 to £375,000.

285.2. **The Primary Education Contribution** is based on a specific sum of £107,330.76, rather than a formula as previously.

285.3. **The Secondary Education Contribution** would also be based on a specific sum rather than a formula and this would be £177,150.26. Unlike in the previous legal document there is a specific requirement that the money should be directed to the Bishop Heber High School.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

286. The Secretary of State stated in his letter of 8 July 2015 that the Inquiry was to be re-opened due to a number of material changes in circumstance. At the Pre-Inquiry meeting it was made clear that it was these changes that were to be addressed and that the evidence to the Inquiry that sat in June 2013 remained extant, unless specific changes had occurred in the interim. The main change has been the policy context, with the adoption of the Local Plan (Part One) on 29 January 2015 and the making of the TNDP on 4 June 2014, following its Judicial Review [***1; 2***].

287. My conclusions regarding the following issues remain as set out in the Conclusions to the Main Report, save for the policy references [4].

- **Consideration three**: The effect on the landscape and rural setting of Tattenhall.

- **Consideration four**: The effect on the layout and character of Tattenhall and its heritage assets.

- **Consideration five**: Whether the developments would be accessible to a range of travel modes and would promote sustainable travel choices.

- **Consideration seven**: The effect on nature conservation interests.

- **Other matters**

- **Consideration nine**: Human rights.

288. The change in the policy landscape has resulted in the Council adopting a completely different position on housing requirements and supply. The considerations above will also need to be reviewed to take account of the changed policy context. This is undertaken in Consideration Two. Local residents remain concerned about traffic and so I revisit that matter, but only insofar as material changes have occurred. Planning conditions and the Planning Obligations have been reviewed and there are some limited changes. Finally, in the light of the new evidence it is necessary to reconsider the planning balance and the conclusions on sustainable development. For these reasons this Supplementary Report will address the following matters, keeping the same numbers for ease of reference to the Main Report [***4; 6***]:

- **Consideration one**: Whether the proposals are needed to meet the housing requirements of the Borough and to contribute to addressing any short term housing deficit.

- **Consideration two**: The development plan and planning policy context.

- **Consideration six**: Whether the developments would generate traffic that would cause unacceptable congestion or undue harm to highway safety.

- **Consideration eight**: Whether the proposals should be subject to planning conditions and Planning Obligations.

- **Consideration ten**: Overall conclusions and planning balance to determine whether the proposals would be a sustainable form of development.

CONSIDERATION ONE: WHETHER THE PROPOSALS ARE NEEDED TO MEET THE HOUSING REQUIREMENTS OF THE BOROUGH AND TO CONTRIBUTE TO ADDRESSING ANY SHORT TERM HOUSING DEFICIT.

289. The importance of the housing issue cannot be underestimated. The Framework makes clear that it is Government policy to boost significantly the supply of housing against the FOAN for market and affordable housing. Paragraph 49 states that housing applications should be considered against the presumption in favour of sustainable development. It is quite clear that the Government considers that maintaining an adequate supply of housing to meet the needs of the housing market area is a key aspect of sustainability. This is

why the "tilted balance" or "adverse impacts test" in Paragraph 14 applies to places where a five year supply of deliverable sites cannot be demonstrated. This does not of course mean that in such circumstances planning permission should automatically be granted. However, it does mean that the lack of supply assumes a particular significance in the overall planning balance.

290. At the last Inquiry it was agreed that on the basis of the Regional Strategy requirement the Council could only demonstrate a supply of between 2.1 and 2.6 years. With the adoption of the LP (Part One) the policy context has changed and a fresh assessment is therefore necessary.

HOUSING REQUIREMENT AND THE BUFFER

291. Policy STRAT 2 in the LP (Part One) sets out a minimum requirement of 22,000 dwellings over the 20 year plan period (2010-2030). This amounts to at least 1,100 dpa or 5,500 over five years. The LP (Part One) was recently adopted and the LP Inspector considered that this represented the FOAN for the Borough, taking account of market signals and the need to address affordable housing. This has been disputed by the Appellants in respect of affordable housing, which they say was not taken fully into account in terms of overall need. I return to this later, but the Appellants' land supply case did not rely on a different figure and indeed no alternative requirement figure has been proffered. Bearing in mind that it is not a ceiling, the requirement of 1,100 dpa was agreed by all and this therefore is the starting point [***10.2; 17; 92***].

292. There was no dispute that the Council has not had a particularly good past delivery record. Since 2010 a backlog of 836 dwellings has built up and this has to be addressed as part of the requirement. It is agreed by all parties that this should be dealt with over the next five years, which is the approach most aligned with the Framework and favoured by the PG [***17; 92***].

293. Paragraph 47 of the Framework requires a buffer to be added and in this case the Council agree that this should be 20%, reflecting past under-delivery. The disagreement is whether this should be added to the backlog as well as the base requirement. It is appreciated that there have been appeal decisions, including some by the Secretary of State, that do not apply the buffer to the backlog. However, there are others that do and this was also the approach of the Inspector in his consideration of the LP (Part One). It is important to consider the purpose of the buffer. The Framework makes clear it is not an additional requirement but rather part of the provision that is being moved forward from later in the trajectory. It is not a penalty on poorly performing local authorities but rather a means to ensure choice and competition in the market for land [***18; 74; 93; 94***].

294. The backlog is effectively part of the requirement that has not been met during the earlier years of the plan. It translates into the houses that are required to meet local needs but have not been provided. In the circumstances it is difficult to understand why the buffer would be excluded from this element of the requirement. In my Main Report I adopted the same approach. I therefore agree with the Appellants that the number of houses that are required to be provided is 7,603 and that the Council needs to be able to demonstrate, as a minimum, that it has a supply of deliverable sites to meet this figure [***95***].

HOUSING SUPPLY

295. It was agreed that the relevant five year period is from April 2015 to March 2020. On the basis of a requirement plus buffer of 7,603 dwellings, and on the Council's final position on deliverable sites of 10,083 dwellings, there would be a housing land supply of 6.6 years. The Appellants' position is that the deliverable sites would only yield 6,780 dwellings, giving a supply of about 4.26 years. Clearly there is a considerable difference that needs to be explored [***19; 92; 96***].

296. In finding the LP (Part One) sound, the LP Inspector was satisfied that the Council was able to demonstrate a five year supply of deliverable sites. The PG advises that the local plan process is a better arena for investigating this issue than an appeal. This is said to be because a wider picture can be considered rather than the evidence of one, or in this case three, Appellants contesting the Council's position. However, since the adoption of the plan there have been several appeals where the matter of housing land supply has been investigated in detail [***98***].

297. The available information suggests that little time was spent on discussing housing land supply at the Examination Hearings as the Council's position was apparently not significantly contested by interested parties. Furthermore, the advice in the PG post dated the Examination. It may well be that in the future landowners and developers will seek to engage more fully with the Examination process. In any event the decision maker has to address the evidence that has been given and, in this case, that amounted to a very detailed critique of the Council's housing supply position. It would risk being unlawful not to give it proper consideration [***98***].

298. Since the adoption of the LP (Part One) there have been three relevant housing decisions in the Borough. The first was referred to by the Secretary of State in his letter of 8 July and concerns development at 13 Holly Drive, Nether Peover. Here the Inspector concluded that the Council was unable to demonstrate a 5 year supply of deliverable sites against requirements. In common with the LP (Part One) Inspector's Report, his conclusions were based on the 2014 HLM.

299. There were two subsequent appeals relating to land at Hill Top Farm, Northwich and Land at Fountain Lane, Davenham, which concluded that there was a five year supply of housing land. Following the conclusion of the Inquiries, but before the decisions were issued, the Council published its 2015 HLM. This seems to have significantly increased the available supply and the justification is explored later. The important point in relation to the two aforementioned appeals is that the 2015 HLM was taken into account through further written submissions rather than by re-opening the respective Inquiries. It does not really matter why this happened, what is relevant is that the new information was not subjected to scrutiny through cross-examination. Although the Hill Top Farm Inspector in particular dealt with housing supply in some detail, his conclusions have to be considered in the context of the above circumstances [***99; 100; 104***].

Student accommodation

300. The housing requirement is based on population forecasts and it is apparent from the evidence that this includes student households associated with the University of Chester. Although there is no indication in the LP Inspector's Report as to the contribution from this sector to the requirement, it is clear that the LP dwelling forecasts only included purpose built self contained accommodation and private rented student accommodation. Accommodation in halls of residence has been excluded. The LP (Part One) at Paragraph 7.21 explains that the Garden Quarter of the city, which is near to the University, has a disproportionately high number of student households. In order to redress the balance and provide for existing and future need, specialised student accommodation is supported through Policy SOC 3. It seems to me quite reasonable to expect specialised student housing to be built to meet the need identified as part of the requirement [***24; 25; 69; 106; 108***].

301. Nevin Leather Associates submitted a Report in January 2012, which predicted that student numbers were likely to remain static. However since that time there had been substantial growth and that this is forecast to continue. The Appellants contend that this expansion is not reflected in the LP (Part One) requirement and that the student accommodation in the Council's five year supply should be removed, unless it can be demonstrated that private housing currently occupied by students will be released back into the market. It is important to note however that this provision relates to the supply side of the equation. It does not, in my view, suggest that the student population that formed part of the LP (Part One) requirement should not be catered for. If that were the case it would mean that an element of need was not being met [***105; 106; 108***].

302. The question then arises as to whether the student developments in dispute could reasonably be considered as meeting part of the LP (Part One) requirement or whether they are more likely to be addressing the more recently projected rise in student numbers. Two of the six disputed sites in Chester appeared in the housing supply data in the 2014 HLM, which was part of the evidence base to the LP (Part One). These are 51-57 Northgate Street, Chester and the Tramway site, Crewe Street, Chester and account for 90 units. These should reasonably be included in the Council's supply. The other four Chester sites, which comprise 350 units at Telfords Warehouse, Raymond Street; 61 units at Chronicle House, Commonhall Street; 100 units at the Former Newtown Bakery, Trafford Street; and 65 units at the car park site off Hunter Street[37] appeared for the first time in the housing land supply to the 2015 HLM.

303. When considering whether these four sites, which amount to 576 units, should be included in the supply, it is relevant to consider the PG advice. The Council has given no evidence to demonstrate that these units would release housing

[37] This site does not at present have planning permission and so the Appellants question whether it is deliverable anyway. However as it falls into the same category as other student sites not included in the 2014 HLM it can be discounted from the supply as a matter of principle.

currently occupied by students onto the market. Indeed, the evidence suggests the contrary. Many second and third year students are not attracted to specialised student accommodation, preferring to live in student houses in places like the Garden Quarter. The Inspector in the Telford's Warehouse appeal appeared sceptical that the number of student houses in the Garden Quarter would decline, especially in the short term. It is not therefore unreasonable to surmise that the aforementioned 576 units are being directed towards meeting needs arising from the growth of the university that was not anticipated in the LP (Part One). Although the LP Inspector may well have been aware of the intention to remove the cap on student numbers this did not finally happen until early in 2015. In any event, the evidence base on which he was working did not anticipate the growth that subsequently happened [***25; 66; 105; 106; 107; 109***].

304. It may well be that the number of new purpose built student developments is leading to an over supply, especially as many students will continue to live at home, whether by preference or for financial reasons. However, that does not alter the conclusion that 576 dwellings should be removed from the Council's supply. I have had regard to the Inspector's decision at Pinhoe, Exeter, which dealt with the issue of student housing. Her conclusions broadly concur with my own although, in the present case, the LP (Part One) postdates the Framework and included student needs within the housing requirement in accordance with the evidence base provided by the Nevan Leather Report [***66; 106***].

C2 uses

305. Paragraph 50 of the Framework indicates that local authorities should plan for a mix of housing based on current and future demographic trends. The 2013 SHMA indicates that between 2010 and 2030 the Borough will experience a large increase in residents over pensionable age. The PG recognises that older people have a wide range of different housing needs. It goes on to say that local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement provided the approach is clearly set out in the local plan [***27; 67;111***].

306. The Appellants' argument is that the Council has generally excluded C2 uses from its supply, apart from in two cases. These concern 95 apartments in the Care Community, Frog Lane, Tattenhall and 57 units at London Road/ Chester Way, Northwich. The debate at the Inquiry centred on whether these units were Use Class C2 or Use Class C3. Whilst this was an interesting discussion it does not seem to me to be the key point. What is important is whether the LP (Part One) has established a clear approach. To my mind Policy SOC 3 and its supporting text does explain the range of accommodation types that can contribute towards the housing needs of older people and thus be included as part of the supply. Reference is made to the SHMA, where various options are considered as part of Core Output 8. There is no definitive list but extra care housing is specifically mentioned as well as co-housing where facilities may be shared [***27; 110; 111***].

307. It is important to appreciate that as the proportion of elderly people in the population has increased, so too have the range and diversity of the housing offers that seek to cater for them. The emphasis is on older people remaining as independent as possible for as long as possible. Some remain in their own homes and have care, depending on their individual needs. Others choose to live on a bespoke, age-restricted development where they are able to benefit from different care packages. Nowadays the difference between Use Classes C2 and C3 is much less clear cut and can depend on the individual circumstances of a particular development [***67-69; 249***].

308. The Appellants have referred to a number of extra care schemes, which the Council has classed as C3 use. Three of them appear to be in both the 2014 and the 2015 housing supply data. No details have been given about these developments and the Appellants' criticism that the Tattenhall and Northwich schemes have been wrongly categorised as Class C3 use could equally apply to these other developments. The evidence suggests that the Council does include extra care housing within its supply. Regardless of whether the Tattenhall and Northwich developments are Use Class C2 or not, I do not find the evidence sufficiently convincing to justify removing them from the supply. I note in passing that both were in the 2014 housing supply data, which was part of the evidence base before the LP Inspector [***27; 110***].

309. In the circumstances the 152 units in question should remain in the Council's supply.

Losses and Demolitions

310. The LP Inspector specifically referred to this matter, which was included as a main modification and thus necessary for the purposes of soundness. On the basis of past trends, Paragraph 5.21 of the LP (Part One) envisages that up to about 50 demolitions or losses a year will occur. However, in arriving at its net supply figure, the 2015 HLM indicates that within the five year period there will be just 59 demolitions or losses. I noted a similar number in the 2014 supply data that was before the LP Inspector. These figures may well be a best estimate but they are well below what has happened in the recent past. Over and above the developments that are anticipated, there are likely to be instances where dwellings will be lost for other reasons. Although some caution is warranted because the 50 dpa is an approximation, there is no credible basis at the present time for arriving at a figure other than the one based on past trends, which was endorsed very recently by the LP Inspector. I note that the Nether Peover Inspector considered an allowance was justified and, in the circumstances, 191 dwellings should be removed from the Council's supply [***20-22; 138; 139***].

Site availability

311. Paragraph 47 explains what is meant by the requirement to boost significantly the supply of housing. The relevant part for present purposes is the identification and annual update of deliverable sites to provide for five years of housing against requirements. Footnote 11 to the Framework and the PG explain that to be deliverable the sites should be available now. Sites with planning permission or allocated for housing should be included, unless there is clear evidence that they will not be implemented within five years. This

does not mean to say that all sites without planning permission should be excluded. However, these need to be considered carefully to be satisfied that delivery is likely to happen within the time period in question [***32-34***].

312. Whether or not a site is deliverable involves planning judgement. Furthermore it will reflect the evidence provided and will thus be a snapshot in time. For the reasons already given my consideration is on the basis of a different HLM to the LP Inspector and the Nether Peover Inspector. Furthermore, although the two more recent appeal decisions relating to Hill Top Farm, Northwich and Fountain Lane, Davenham took account of the 2015 HLM, my colleagues' conclusions were on the basis of written evidence rather than evidence that had been tested through cross-examination. In the latter appeal the Inspector's approach was not to consider many of the sites in any detail. I have on occasion disagreed with my colleagues for the reasons given below [***35***].

313. The judgements that I have reached in the following paragraphs rely on the evidence given to the Inquiry, including at the round table session. The position of the parties on each site has not been set out in detail in the respective cases reported in the preceding sections. My conclusions generally follow either the position of the Council or the Appellants for the reasons I have given. These have been helpfully set out in summary form in the table at Document HLS/18 [15].

Sites with extant uses

314. There are several sites that are currently in active commercial use and the question is whether they are available now or likely to deliver in the next five years. The *S Cooper & Sons, Nat Lane, Winsford* site has outline planning permission for 161 dwellings and the Council envisage 72 dwellings being built in Years 4 and 5. However, reserved matters do not have to be submitted before 2021 in order to provide time for this haulage yard to relocate. There was no evidence that this employment use has found another site and I agree with the Hilltop Farm Inspector that the Council is being overly optimistic in suggesting that 72 dwellings would be delivered towards the end of the five year trajectory. They should therefore be removed from the supply.

315. *Wharton Road, Winsford* is adjacent to the above site and is currently occupied by a car storage and distribution business. Outline planning permission was granted in 2014 for 150 dwellings as part of a mixed use development. The Council considers that 75 dwellings would be delivered in Years 3, 4 and 5. Whilst it may be the case that the cost of a planning application would not have been made unless development was intended, the reserved matters do not have to be submitted until late 2019, which means that there would be no urgency to start work. There was some dispute about whether some of the offices had been relocated. However, there was no firm evidence that the occupier has found an alternative site and so I cannot conclude that the site is available now. 75 dwellings should be removed from the supply.

316. *Land to r/o Cedars, Chapel Lane, Wincham* is in active use as a scrapyard. The Council resolved to grant outline planning permission in October 2014 for up to 105 dwellings, subject to a Planning Obligation which still appears to be outstanding. The Council envisages a total of 72 units being delivered in Years

4 and 5. The application was made by the landowner and although there is an intention to relocate the business there is no evidence that a suitable site has been found. Such uses can be controversial and so this could take some time. In the circumstances, there is not sufficient evidence to allow confidence that these units will be delivered in the next 5 years and they should be removed from the supply.

317. *New Road Business Centre, Winsford* is a large building that is subdivided into business units occupied by commercial tenants. Planning permission has been granted for 64 affordable units and is being promoted by Wulvern Housing. The evidence I was given indicated that the housing association is building on an adjacent site and has said it would be ready to start in March 2016. There is also a deadline of March 2018 for completion in order to benefit from the Homes and Communities Agency funding. The main concern is that there are active tenancies and no information is available about the leases. On the other hand it seems likely that the housing association is clear about this and that it will not be an overriding constraint. The Hill Top Farm Inspector decided on balance to accept that the site would be likely to deliver and I agree. These units should therefore remain in the supply.

318. *Winsford Clio Centre, Sadler Road, Winsford* is in use as a garage and workshop. There is an outline planning permission for 12 dwellings which is due to expire in December 2015. This followed an earlier permission granted in 2009 which expired. The site is being marketed, although this is on the basis of a wider brief, including a mews development of 10 dwellings which has no planning permission. There is no evidence about what would happen to the business currently operating from the site and, bearing in mind that no progress has been made on advancing to reserved matters, I have little confidence that the site is likely to deliver. 12 units should therefore be removed from the supply.

319. *Haulage Yard, High Street, Norley* is in use as a haulage yard and it would appear from the available information that the existing use is being relocated and the site prepared for development. An outline planning permission granted in 2012 has recently expired and a further application for 6 market and 6 affordable houses has been submitted but not yet determined. It seems that the landowner is promoting the site and that it has been actively marketed since 2013. Whilst there is no evidence that a developer is yet on board this is a relatively small development and, on balance, I consider that this site is available and likely to deliver within the next five years. These units should therefore remain in the supply.

320. *Malvern House, Old Road, Northwich* is in active use by a coach company but unlike the Norley site there is no evidence that the existing commercial use is planning to move elsewhere. Planning permission for residential development was granted in 2010 but has now expired. There is an outline application for 11 dwellings but this has not yet been determined. The Council indicated that the site has been marketed since 2014 and it is agreed that this shows that the landowner intends to develop the site. However, a similar conclusion could have been reached in 2010 but the existing use remains in operation. The Council also indicates that the site may be sensitive to viability issues. I do not consider that there is sufficient information to be confident that this site

will deliver within the next five years and, even though this involves a relatively small development, the 10 dwellings (net) should be removed from the supply.

321. *Premier House, Chester* is a large, mixed use development within the city centre. The outline planning permission is for an office-led scheme which includes 200 residential units. The development is subject to an approved phasing plan that shows a 10 year development period with the residential element as the last phases to be built out. Both the Nether Peover and the Hill Top Farm Inspectors considered it unlikely that any of the dwellings would be delivered within the next five years. The Council on the other hand believe that 100 dwellings will come forward in Year 5. It seems to me that little has changed since the site was considered by my colleagues. There is still no formal application to change the phasing, despite this having been stated as the intention of the developer for some time. Since the last appeal decision there has been a press release from Muse stating that a reserved matters application for 100 apartments was being worked up. However, there was no indication as to when this would be submitted or when the residential element would commence. Most importantly, no application to change the phasing plan has been made. This is a large and complex development project and there is insufficient evidence to reach a different conclusion from the other Inspectors. 100 dwellings should therefore be removed from the supply.

322. There are a number of brownfield sites in *Ellesmere Port* within the Council's housing supply. Many of them suffer from substantial contamination issues and have been granted outline planning permissions with longer timescales for the submission of reserved matters. Viability is clearly an issue with some of these sites and, although the housing market is now improving, land values in many parts of Ellesmere Port are relatively low. Consequently the Council has often agreed to lower or remove the requirement for affordable housing and infrastructure contributions.

323. Planning permission has recently been granted for a greenfield site at Ledsham Road, Ellesmere Port, which is a large strategic site for up to 2,000 dwellings. This is likely to be a more attractive proposition for potential housebuilders than the more difficult brownfield sites. I do not question that these will eventually come forward, but the question is when this will be. This is recognised in Paragraph 5.32 of the LP (Part One). In the circumstances I consider that a very cautious approach should be taken to the delivery of these sites in the short term, even though there may be extant outline planning permissions and marketing is taking place.

    323.1. *Land north of Cromwell Road, Ellesmere Port* is a good example of the above issues. Although it is being brought forward by St Modwen that does not mean that the decontamination and subsequent sale to a housebuilder will deliver 30 houses a year from mid-2017 onwards. Indeed, the Agent's information to the Council did not give much confidence that this would be a realistic outcome. There are too many unknowns in this case to be able to conclude that this site is deliverable in the short term and 90 dwellings should be removed from the supply.

323.2. *Former Van Leer site, Ellesmere Port* adjoins the above site and was granted outline planning permission in 2010, which was extended in 2012 with reserved matters to be submitted by 2018. Since the 2014 HLM the Council has not only increased the rate of delivery from 25 to 36 units a year but also brought delivery forwards by a year to start in 2016. The site has been marketed since at least 2013 but there is no convincing evidence that it has been sold to a housebuilder. The Nether Peover Inspector retained it in the supply on the basis that there had been no change in circumstance since the site was considered by the LP Inspector. However, it is noteworthy that in the 2014 housing supply the rate of delivery was lower and was not shown to start until 2017. The Hill Top Farm Inspector discounted 50 houses from the supply although the reason for this figure is not altogether clear. From the evidence I have been given I cannot agree with my colleagues that there is sufficient evidence to confirm that this contaminated brownfield site is available now or likely to deliver homes by 2020. 144 dwellings should be removed from the supply.

323.3. *Former service station Rossmore Road West, Ellesmere Port* has had a number of unimplemented planning permissions, the last of which was granted in 2013. Although the evidence suggests that the site has now been sold it is not known whether this is to a housebuilder. The Council has compared this to another stalled site which is now being built out. However, it is difficult know whether circumstances are sufficiently similar to conclude that a similar outcome will ensue. Whilst there may well be a desire to develop the site, that is not sufficient to be confident that the 39 houses will materialise within the next five years. The Nether Peover Inspector included the site for similar reasons to those given for the Van Leer site. The Hill Top Farm Inspector thought that rather than 39 houses coming forward in Year 5 there would only be 20, but again the reasoning behind that figure is unclear. I take a more cautious view and consider that all 39 dwellings should be discounted from the supply.

323.4. *Phase 5 Rossfield Park, Ellesmere Port* is part of a much larger development area but does not itself benefit from planning permission. The Council resolved to grant outline planning permission for Phase 5 in 2010, subject to a Planning Obligation relating to affordable housing provision. This matter remains to be resolved, although information from the landowner, Peel Land & Property Ltd indicates that negotiations are nearly complete. Further information at the Inquiry indicated that Peel has other sites in the area and has struggled to find interest from housebuilders. The Nether Peover Inspector considered that delivery would take place within the last 3 years of the trajectory but I am not so confident, from the information before me, that this is likely to happen. In the circumstances 60 dwellings should be removed from the supply.

324. There are a number of *Strategic Housing Framework sites*, which are owned and are being pro-actively promoted by the Council. Additional Government funding has been obtained to build 230 new Council homes on these sites, but a main requirement is that the dwellings must be completed by 31 March 2018. Another feature is that these sites do not benefit from planning

permission. The PG indicates that if such sites are to be included there should be robust, up to date evidence to support delivery. Just because they involve Council owned land and are being actively promoted for development by the Council does not mean that they have any particular delivery advantage.

324.1. *Woodford Lodge, Winsford* and the *Greyhound Stadium, Ellesmere Port*, will also include market housing. Whilst both have developers on board, planning permission has yet to be obtained. In the case of Woodford Lodge there is the added complication that the site comprises playing fields and the Secretary of State for Education has yet to agree to the sale of the site. The latest projection by the Council[38] indicates a much more optimistic build rate on both sites than the 2015 HLM, although the reason for this is unclear. Furthermore, unlike the 2015 HLM the latest trajectory does not envisage any delivery until Year 3. In the case of the Greyhound Stadium this means that the 45 Council homes would have to all be delivered in one year, which seems rather unrealistic. In the case of Woodford Lodge the trajectory actually only envisages 50 of the 130 Council homes being built in Year 3 and the end of the funding period. If the affordable units cannot be delivered by March 2018 it is unclear what would happen to overall delivery on these sites. The evidence is not sufficiently robust that these sites will be delivered to meet the funding requirements. In view of these uncertainties I consider that 380 dwellings should be removed from the supply.

324.2. *Handley Hill Primary School, Casteleigh Centre and Church Street, Winsford* are three sites that would contribute 91 dwellings. The Primary School and Church Street sites are identified for residential development in the Winsford Neighbourhood Plan. These sites are to be brought forward by means of a special purpose vehicle and partnerships are being explored by the Council. However, it remains the case that no developer is on board and none of them benefit from a planning permission. I would agree with the Hill Top Farm Inspector that the Council is overly optimistic in its expectations for these sites. Whilst there is no reason why they should not deliver in the longer term I have no evidence to support his view that 45 of the dwellings could be expected to come forward. In the circumstances 91 dwellings should be removed from the Council's supply.

324.3. *Sherborne Road garage site, Ellesmere Port and Romney Close garage site, Neston* are two sites where 26 affordable dwellings in total are proposed. These have to be delivered by 31 March 2018. The information suggests that the garages are currently in use. It is said that the Council is acting as developer and that a planning application is anticipated by the end of 2015. These are relatively small sites and given that the Council has control and is keen to make progress it seems to me reasonable to surmise that the dwellings could be delivered within the requisite timescale. These units should remain in the supply.

[38] See Document HLS/18.

324.4. *The Acorns, Ellesmere Port* is proposed for 20 units of affordable housing but unlike the above garage sites a developer will be undertaking the construction. The information is that negotiations are at an advanced stage and that the delivery, which would be funded by the Council, will not need to be completed until 2020. There is no planning permission but the site is quite small so, on balance, it seems likely that the scheme will proceed in the next five years and can remain in the supply.

325. *The former car garage at Lower Bridge Street, Chester* is vacant and so available for redevelopment. 44 units were included in the 2014 supply data as well as the 2015 HLM but the Council now considers this is a conservative estimate. On the basis of pre-application discussions it considers that a 200 bed student development is likely to be forthcoming. There is no evidence that the site was considered as contributing to the student requirement by the LP Inspector and therefore it would fall to be discounted from the supply for the same reason as the other student schemes referred to above. Even if that were not the case, the Hill Top Farm Inspector mentions that pre-application discussions had been going on for some time. There is no evidence that the prospective developer owns the site or that a student development on this site is likely to be granted permission. There is too much uncertainty to conclude that the site is available now and the units should be removed from the supply.

326. *Former Highfield Hotel, Saughall Road, Blacon* has been acquired by Sanctuary Housing. There is an application for the redevelopment of the site with 38 apartments. Although it is appreciated that this could be delivered within the five year period there is no certainty that planning permission will be granted, especially as there are unresolved objections to the scheme. The Council has accepted that in such circumstances delivery becomes uncertain. It agreed, for example, that a residential development at Peter Street in Northwich should be removed from the supply because planning permission had been refused. It is quite possible that the outcome will be the same here. In the circumstances 38 dwellings should be removed from the supply.

Lead-in times and build rates

327. There are a range of sites where the dispute is with the number of dwellings that will come forward within the five year period. Delivery rates will depend on many factors, including the size and location of the site. It is evident that the 2015 HLM has adopted different assumptions to those in the 2014 supply data and the LP (Part One) trajectory. Site delivery has been increased by shortening lead-in times so that sites start delivering earlier and accelerating build rates so that delivery is faster. This of course may be quite justifiable as the economy improves and the housing market starts to pick up. However, I share the Appellants' concern that in some instances these more optimistic forecasts appear to be based on responses of individual developers rather than from any wider consensus from the development industry [***31; 128***].

328. It is not unreasonable to expect that individual housebuilders will wish to promote their site in the best possible light, especially in areas where land values are not high and where there is competition from others in the market place. In such circumstances their forecasts could well be high on optimism

but perhaps a little low on realism. The Council made the point that this could apply to the appeal schemes as well. However, these are not included within the five year supply and, in any event, in each case shorter implementation periods have been agreed through the planning conditions [***30; 131***].

329. Engagement with the Housing Partnership Group, whose membership includes local landowners, housebuilders, housing associations and planning consultants, will help to ensure that delivery assumptions are balanced and grounded. The evidence base for the LP (Part One) included the 2013 SHLAA. This makes clear that the Housing Partnership Group was involved in the assessment process. However, for the preparation of the 2015 HLM a similar peer review was not involved. This may not be a requirement of planning policy but nonetheless I consider it to be a shortcoming of the Council's most recent housing supply data [***29; 129***].

330. *Saighton Camp (Area C), Sandy Lane, Huntington, Chester* is the final part of a large brownfield residential development that is presently being built out. There is outline planning permission for 120 dwellings and the site is currently being marketed. It was indicated at the Inquiry that a sale is now subject to contract. The build out rates on the adjoining phases appear to be 36 dpa and so it is unclear why the Council considers that 40 dpa should be applied to Area C, especially as there are multiple outlets. This is at the very top of the range of 20-40 unit range for sites of over 100 units that is suggested in the 2015 HLM. It seems to me that before development can begin there is a considerable amount of work to do. Bearing in mind that there are only 3 months left of Year 1 of the trajectory, it is not unreasonable to conclude that with an 18 month lead-in time, only half a year's delivery is likely to occur in 2017/18. In the circumstances, the Council's supply should be reduced by 30 units.

331. *Land off Upton Grange, Liverpool Road, Chester* is part of a larger site that is being developed for residential purposes. The site has outline planning permission for 90 dwellings but it has not yet been disposed of by the National Health Service to a housebuilder. In the circumstances it seems very optimistic to think that there will be a full year's delivery in Year 3. The Council refers to a neighbouring site where 280 houses are nearing completion from an outline planning permission that was granted in 2007. However, the Appellants' evidence suggests that other parts of the Upton Grange site itself have not fared so well, with average build rates of 24 dpa and 27 dpa. In the circumstances, I prefer the Appellants' more cautious view. The Council's supply should be reduced by 28 units.

332. *Great Hall Park (Phase 3), Cambridge Road, Ellesmere Port* is part of a larger regeneration scheme. However, at present there appears to be no housebuilder on board, although the Council has indicated that negotiations are advancing. There seem to be viability issues and it is noted that the Council has agreed to remove the affordable housing requirement. Nevertheless a full year of delivery in Year 3 seems unlikely for the reasons given in relation to other sites in a similar position. I agree with the Appellants that 12 dwellings should be removed from the supply.

333. *Land bounded by Rossfield Road North, Poole Hall Road and Rossmore Road East, Ellesmere Port* has an outline planning permission for up to 280 dwellings and is part of a large regeneration scheme on brownfield land. No housebuilder has yet bought this site and there are contamination issues to deal with. It seems to me that even if there are completions in Year 3 these are only likely to be in the second half of the period. It is noted that the landowner, Peel Land & Property Ltd, indicated that other completed phases have delivered an average of 44 units a year. However, the Nether Peover Inspector considered that build rates should be reduced and it would not seem unreasonable to adopt a similar rate to what the Council propose on Phases 3B and 4 of the Rossfield Park site, which is 25 dpa rather than 30 dpa. 28 units should therefore be removed from the supply.

334. *Phases 3B and 4 Rossfield Park, Ellesmore Port* has outline planning permission. The landowner, Peel Land & Property Ltd, indicate that the site is vacant and cleared with the main infrastructure in place. It envisages delivery from Year 2 but, although discussions are taking place with a housebuilder, there is no evidence that these have yet been successfully concluded. There would also be reserved matters to be concluded and pre-commencement conditions to be discharged. In the circumstances delivery from Year 3 as envisaged by the Appellants seems more realistic and 38 dwellings should therefore be removed from the supply.

335. *Land adj West Cheshire College, Regent Street, Ellesmere Port* has outline planning permission for 120 dwellings in 2013 but reserved matters have yet to be submitted. The latest information from the Council is that the landowner is actively trying to sell the site to a major housebuilder, although there is no confirmation that this has yet been successful. The site was expected to deliver 20 dpa in the 2014 housing supply data but this has now been increased to 36 dpa without any apparent justification. In addition, the Council expect a lead-in time of two years and yet delivery is assumed to start in April 2017. A half year of delivery in Year 3 seems more likely. In the circumstances the Council's supply should be reduced by 58 dwellings.

336. *Dane Valley, Langley Road, Northwich* has received outline planning permission for 242 dwellings and a reserved matters application has been submitted by a housebuilder for 187 units, although it has yet to be determined. The Appellants indicate that there are flooding issues to be resolved and pre-commencement conditions will also have to be discharged. The Council has assumed delivery in Year 2 but this now seems optimistic. On the other hand, the site is well advanced and it is not unreasonable to expect a full year's delivery in Year 3. The Agent estimated a build rate of 40-50 dpa at best. This seems relatively high compared to other sites in Northwich in the HLM. In the absence of more evidence that it is realistic, the Appellants' build rate is to be preferred. I shall therefore reduce the Council's supply by 72 dwellings.

337. *Winnington Urban Village, Northwich* is currently being developed with 1,200 dwellings by four housebuilders. The delivery rate has substantially increased over the LP trajectory. However, bearing in mind the delivery that was achieved in 2014/15 and also that being achieved over the current year, I do not consider that the anticipated 140 dpa is unrealistic. It may be of course that delivery rates will change when one or more of the developers have built

out their section of the site but there is no evidence on which that can be taken into account at present. The site seems to be popular with house buyers and in the circumstances the units should be retained in the supply.

338. *Land to r/o Littler House, Littler Lane, Winsford* is part of a larger residential site under construction. The information from the developer of this part of the development is that construction of houses will not start until Year 5 as the site is anticipated to follow on from the company's development at Spring Croft, Chester. It is anticipated that 10 market dwellings will be delivered in 2019/20. In view of this statement it is difficult to support the delivery assumed by the Council and 102 units should be removed from the supply.

339. *Land at Welsh Lane, Winsford* has outline planning permission but has not been sold to a housbuilder. The 2015 HLM has increased delivery rates from 25 to 36 dpa. Whilst it is appreciated that the market is improving, three other sites in Winsford were delivering 25-28 dpa in 2014/15. Whilst it is appreciated this is only a small number of sites there is no counter evidence from the Council to justify its much higher delivery rate. As far as I can see no housebuilder is yet committed to the site and for the same reasons as already given, a whole year of delivery in 2017/18 is overly optimistic. I prefer the Appellants' assessment and 46 units should be removed from the supply [***31; 129***].

340. *Land to r/o Townsfields Road, Ways Green* is currently being prepared by site contractors for development and the Council's trajectory seems to me reasonable. However, for similar reasons to the above sites it is not considered that there is sufficient justification for the 36 dpa build rate. In the circumstances the Council's supply should be reduced by 39 dwellings.

341. *Land at Rilshaw Lane, Winsford* is a strategic site in the LP (Part One). The Council has resolved to grant outline planning permission for 215 dwellings, which will be within Phase 1 of the project. In increasing delivery rates to 36 dpa the Council is relying on the Planning Statement, which said that around 30-35 dpa would be completed. However, although the site has not yet been sold to a housebuilder this rate of delivery was also included in the 2013 SHLAA, which was based on input from the Housing Partnership Group. The Council anticipates delivery to begin in mid 2017 but this seems quite optimistic for a large site such as this, especially bearing in mind the likely infrastructure requirements. There are also reserved matters to be resolved, pre-commencement conditions and the sale of the site. All this takes time and I consider that delivery in Year 4 is more realistic. Bearing all this in mind I consider that the Council's supply should be reduced by 36 dwellings.

342. *Land opposite Brewery House, Churton Road, Farndon* has outline planning permission for up to 105 dwellings. It is understood that a developer is interested in buying the site although there is no information as to how far the transaction has progressed. The evidence from the Appellants is that two other sites in Farndon delivered houses at a rate of 19 and 22 dwellings in 2014/15. The 2013 SHLAA anticipates 25 dpa on this site. There is little justification for the increase to 36 dpa suggested by the Council. Furthermore, in view of what remains to be done before delivery begins, it is more realistic

to expect only partial delivery in Year 3 as suggested by the Appellants. 43 units should be removed from the Council's supply.

343. *Land between Chester Road, Well Street and Greenway Lane, Malpas* has outline planning permission for up to 140 dwellings. The Council anticipates that 40 dpa will be delivered, notwithstanding that the 2013 SHLAA indicated a rate of only 20 dpa. This is on the basis of the delivery rate anticipated at application stage of 30 market homes a year plus the affordable dwellings at the same time. However, this is information provided by Gladman who are promoting the site. It is understood that Bovis Homes are interested in a purchase but there is no information as to whether they consider these delivery rates to be realistic. In the circumstances, the Appellants' evidence is to be preferred. For similar reasons to other sites in the same position, it is not considered that a full year of delivery will happen in Year 3. 70 units should be removed from the Council's supply.

344. *Land to r/o 3-9 Spring Hill, Tarporley* has been granted outline planning permission for up to 100 dwellings and reserved matters have been approved. The site has been sold to David Wilson Homes and the Council confirmed at the Inquiry that ground works have been started. In the circumstances I see no reason why delivery should not start in Year 2. However, there is no justification given for raising the build rates from the 20 dpa in the 2013 SHLAA and no indication from the housebuilder that this would be viewed as realistic. On the other hand there would be an additional year of delivery in Year 5 so the supply should be reduced by 15 units.

345. *Land at former Marley Tile Works, Station Road, Northwich* has outline planning permission for up to 180 dwellings on land owned by the Crown Estate. The Agent indicated that work would start on site in mid 2017, which means that a full year's delivery of housing is unlikely. It was also indicated that 3.5 dwellings per month would be built. However, it is not known on what this is based and as there is no housebuilder input to challenge the 2013 SHLAA assumption of 25 dpa I agree with the Appellants that 64 units should be removed from the supply.

346. *Roften Works, Hooton Road, Hooton* has outline planning permission for 265 dwellings and a care home. It has been marketed since 2013 and whilst it is understood that a number of pre-application meetings with a major housebuilder have been held the site has not yet been sold. This was the site of a Royal Ordnance factory followed by a galvanising works, so it is likely to have contamination issues. The Hill Top Farm Inspector considered that the lead-in time was too optimistic and I agree. It is not clear what he thought about the build rate or even whether it was raised at that Inquiry. In any event, from the information I have been given, I find no justification for raising the build rate from 30 dpa to 36 dpa. In the absence of any better evidence I prefer the Appellants' approach and so 84 dwellings should be removed from the supply.

Conclusion on housing supply

347. Based on my detailed consideration of the disputed sites the Council's supply falls to about 7,324 dwellings. This would result in a supply of 4.8 years and a shortfall of 279 dwellings. This is not of the magnitude contended by the

Appellants but is nonetheless of significance. It is of course based on judgements but it does demonstrate that the housing supply situation in the Borough is not robust and does not support the optimistic outlook of the Council. I note that the Nether Peover Inspector considered a shortfall of 155 dwellings to be significant. Individually each of the appeal proposals would make a contribution to reducing this deficit. Whilst overall the 315 dwellings proposed would slightly exceed the shortfall, this is not a matter of great importance as the requirement is expressed as a minimum in Policy STRAT 2 of the LP (Part One).

348. Paragraph 49 of the Framework does not distinguish between the size of the shortfall. It makes clear that if the Council is not able to demonstrate a five year supply of deliverable sites then relevant policies for the supply of housing should not be considered up-to-date.

349. The point is made by objectors to the developments that the Rural Area is actually delivering housing over and above its requirements. Policy STRAT 8 in the LP (Part One) sets out a requirement for at least 4,200 dwellings for the Rural Area and the 2015 AMR shows that there would be 1,224 dwellings over and above this figure, taking account of existing commitments. Furthermore, it shows that about one third have already been delivered within the first 5 years of the 20 year plan period. It is appreciated that this is a good response and that the Rural Area, which includes Tattenhall, has done very well in addressing its housing obligations. However, there are two points to make. The first is that the 4,200 dwelling requirement is a minimum provision. The second is that when considering the Borough's housing land supply position in the absence of a five year supply, there is no policy provision to prevent consideration of sites within the Rural Area [***79; 244***].

AFFORDABLE HOUSING

350. In my Main Report I conclude that the affordable housing provision from the appeal schemes would make an important contribution to the need identified in the 2012 SHMA. I commented that whilst Tattenhall has a good record of provision relative to its needs, the same cannot be said for the Borough as a whole, where there is an ever growing shortfall of provision. It is clear that since the last Inquiry the problem of affordability has continued to be a matter of serious concern. Indeed this is an issue of national importance, not only because of its social ramifications but also on account of its economic repercussions [***230; 231***].

351. The 2013 SHMA indicates an annual net shortfall of 714 affordable homes for the period 2013-2018, which is based on addressing the backlog of need within the five year period. The LP Inspector commented on the high house prices in the Borough generally in comparison with the North West as a whole. In establishing the FOAN of 1,100 dpa, which was higher than forecasted household projections, he was factoring in economic growth, market signals and affordable housing need. He considered that this level of housing would be sufficient to have a "significant and positive effect on the provision of affordable housing". Whilst he clearly considered such a figure to be challenging, he also considered it to be realistic [***57; 233***].

352. It is within this context that the requirements of Policy SOC 1 in the LP (Part One) should be considered. The need would clearly not be met even if every development provided the 30% target[39]. There will of course be some sites that will deliver 100% affordable housing but there will also be sites where viability will prevent any affordable housing being delivered at all. Some of the large contaminated brownfield sites in Ellesmere Port are a good example. The *Satnam Millenium Ltd v Warrington BC* High Court Judgement makes clear that the Framework requires that the need for affordable housing should be addressed separately in the FOAN figure in accordance with Paragraph 47 of the Framework. This should then be met, subject to the constraints in Paragraphs 14 and 47. The High Court Judgement of *Kings Lynn and West Norfolk* draws this approach into question, but it can be distinguished because it related to a planning appeal rather than a local plan [***56; 171; 233***].

353. Both of the above judgements were handed down after the LP (Part One) had been adopted. It is acknowledged that the Inspector did not separately identify the affordable housing OAN although he did refer to the figure of 714 dwellings. On the other hand, affordable housing need was one of the factors that was considered in arriving at the FOAN figure. The Appellants claim that the true picture is much more serious, citing the loss of properties from the sector through Right to Buy Sales, for example. However, they do not go as far as to contend that the validity of the LP (Part One) is at stake. The short point here is that no alternative to the 714 dpa in the 2013 SHMA has advanced as a better assessment of affordable housing need [***56-58; 233***].

354. The Council's historic record of delivery of affordable homes has not been particularly good as I recorded in my Main Report. Since 2003 there have only been 3 occasions when delivery was above the policy level of 330 dpa. Although the Council contend that 32% affordable housing provision has been provided on average, this is mainly because overall delivery was well below 1,100 dpa. It also reflected the high delivery rate in 2014/15 when 572 affordable homes were completed. It is improbable that this will herald a new trend but is more likely to reflect the need for Registered Providers to complete their building programmes before the end of the funding cycle. Obviously if overall housing delivery does increase annually it is to be hoped that affordable provision will follow suit. Nevertheless, even if the backlog is eradicated over the five year SHMA period, there will be newly arising need to deal with year on year. As I have concluded, the Council is not at present managing to meet its annual policy requirement. Even if it did and the 30% target is delivered, there would still be an acute affordable housing need remaining in the Borough [***58; 59; 80; 237; 238***].

355. It is acknowledged that the Council is seeking to bring forward affordable housing on its own sites in areas where developers are struggling due to high development costs and low land values. There are also sites coming forward using Housing and Communities Agency funding. However, for the reasons already given I am doubtful that some of these sites will deliver as anticipated and so reliance cannot be placed on all of them to contribute to affordable housing need over the next five years [***71***].

[39] This is on the basis that 30% of 1,100 dpa is only 330 affordable homes per year.

356. It should be noted that the TNDP actually requires a figure of 35% affordable housing. This does not accord with the strategic requirement in the higher order plan, which was the most recently adopted document. Nevertheless, each of the appeal schemes would comply with the TNDP requirement. The 2013 SHMA identifies virtually no new affordable homes arising from re-lets or tenure sales in Tattenhall. This means that if a person or family requires such housing they will have to rely on a new build property. Although 97 households expressed a choice for an affordable home in Tattenhall and met the eligibility criteria, some are likely to also have expressed several other locational preferences as well. The SHMA indicates that there is a net annual requirement in the settlement for 23 affordable units [***210; 234***].

357. Tattenhall and its surrounding area have a very good record of delivery of affordable housing. Since 2010 there have been 65 units either built or with planning permission in the settlement itself and for the wider Tattenhall SHMA area there are a further 52. The SHMA indicates that the main requirement in Tattenhall is for one bedroom units and the Parish Council indicated that this is what they would wish to see provided. The two outline schemes (Appeal A and Appeal B) could meet this need because the housing mix has yet to be determined. Indeed I was told that Taylor Wimpey is building one bedroom houses elsewhere in Cheshire [***60; 76; 78; 147; 166; 235; 244; 250; 258***].

358. The Barratt Homes scheme (Appeal C) does not have 1 bedroom units in its portfolio. However, it is relevant that couples planning to have a family would be counted as having a need for a one bedroom unit even though this would not necessarily be suitable if their circumstances changed. It is appreciated that Borough-wide affordable housing completions have tended towards 2 and 3 bedroom units, whereas the greatest need is for 1 bedroom units. However, whether the dwelling is 1, 2, or 3 bedrooms it remains the case that need far outstrips supply. In the circumstances the affordable housing offer of Barratt Homes should not be diminished on this account. Even if there were no need for 2 and 3 bed affordable family homes in Tattenhall there is a need for such units in the Borough [***75; 235***].

359. There is no policy requirement for delivery within a particular part of the Borough or settlement. I agree that the best solution is to match the need to the provision but this is not always possible. In any event, the 2013 SHMA does indicate a need for larger dwellings in other villages nearby such as Farndon, Malpas and Tarvin + Kelsall. Allocations are generally on a bulls-eye approach whereby local connections have top priority. However, there will be cases where there is an acute need that has to be addressed urgently and so occupiers may also come from further afield. It remains the case that affordable housing policy focuses on Borough-wide need and is not disaggregated into individual settlement requirements [***82***].

360. The affordable housing offer remains the same as recorded in the Main Report and I am still of the opinion that it would be an important benefit to be given very significant weight. The 35% offer in respect of Appeals A and B and B and the 40% offer in respect of Appeal C would exceed policy requirements and the number of affordable homes would be 39 units for Appeal A, 48 units in Appeal B and 27 units in Appeal C or 114 dwellings in total. Although the Barratt Homes scheme would have the highest proportional offer it is also the

smallest scheme. In terms of affordable homes delivered on the ground, which seems to me to be the important thing in terms of real people in need of real homes, it does not offer any particular advantage over the other two developments [***61; 147; 210; 236***].

Conclusion on affordable housing

361. There is a considerable unmet need for affordable housing in the Borough. Each of the appeal schemes proposes delivery above the 30% policy level in the LP (Part One) and would make a valuable contribution towards addressing the shortfall. In the circumstances the affordable housing offer in each case is a matter of very significant weight in favour of these developments.

CONSIDERATION TWO: THE DEVELOPMENT PLAN AND POLICY CONTEXT

362. Since 2013 there have been two major changes to the policy landscape. In January 2015 the LP (Part One) was adopted and in June 2014 the TNDP was made. In my Main Report I afforded the LP (Part One), in its emerging form, little weight. The TNDP was more advanced but it was undergoing Judicial Review at the time my Report was submitted and so very limited weight was therefore placed on it. This situation has now of course changed and both plans have full statutory weight as, along with the saved policies in the CDLP, they now form part of the development plan.

363. The parties agreed in 2013 that the Council had a five year housing land supply deficit and that the decisions should be made in accordance with the "adverse impacts" or "tilted balance" test in Paragraph 14 of the Framework. Although the Council now considers that it can demonstrate a five year supply of housing land I do not agree for the reasons given in the preceding section.

364. There was also no disagreement that the appeal proposals would not accord with saved Policy HO 7 in the CDLP and Policy STRAT 9 in the LP (Part One) due to their location on greenfield land outside the built up area. The proposals would also breach Policy 1 in the TNDP. This policy allows developments of up to 30 homes within or immediately adjacent to the village. The argument was made that whilst it supports developments of up to 30 units it does not necessarily prevent larger schemes. It is acknowledged that there is no specific clause saying that proposals over 30 dwellings will not be permitted. However, it seems to me that the whole ethos of the plan is to encourage growth in a controlled way and that Policy 1 is the development management tool to make this happen. Whilst interpretation of policy is a matter for the courts it is difficult to see how an alternative reading fits in with the strategy of managed growth [***8; 49; 165; 190; 201; 219***].

365. Paragraph 49 of the Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development. It goes on to say that relevant policies for the supply of housing should not be considered up-to-date if a five year supply of deliverable sites cannot be demonstrated. There was no dispute that saved Policy HO 7 in the CDLP and Policy STRAT 9 in the LP (Part One) are relevant policies for the supply of housing. They are therefore out-of-date. In order to achieve

enough housing to meet requirements, development will be necessary on greenfield land beyond the built up areas [***8; 9; 37***].

366. It was also agreed by the Council that Policy 1 of the TNDP is a housing supply policy. The policy constrains supply because there will be a finite capacity to the number of 30 unit schemes that can reasonably be accommodated adjacent to the built up part of the village. It could be argued that developments could be added to each other in an incremental manner but this is clearly not the intention of the policy and it is doubtful that it would meet the requirement for managed growth that respects the natural, built and historic environment. This has been demonstrated by the refusal of planning permission for a second development of 28 houses at Smithfields [***10; 37***].

367. The Framework does not of course change the statutory position in terms of the primacy of the development plan under Section 38(6) of the 2004 Act. Nevertheless, in the absence of a five year housing land supply, the conflict with Policy HO 7, Policy STRAT 9 and Policy 1 will have reduced weight. In such circumstances the presumption in favour of sustainable development means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole. I return to this matter in Consideration Ten when I undertake the planning balance. As there was an agreed housing land supply deficit at the previous Inquiry this was the approach adopted in my Main Report. Nevertheless the balance will need to be revisited to address material changes in circumstance since 2013.

368. Policies STRAT 2 and STRAT 8 provide the spatial strategy and seek to direct most new development to the main settlements of Chester, Ellesmere Port, Northwich and Winsford. Provision is also made to support the vitality and viability of the Rural Area, with development focused on the KSC, which represent the most sustainable locations. Policy STRAT 2 sets out the settlement hierarchy and is purely a housing distribution policy that imposes no constraint on housing supply. However, Policy STRAT 8 seems to me less straightforward. It establishes the amount of dwellings that each KSC is expected to accommodate, which in the case of Tattenhall is 250. Like Policy STRAT 2 it refers to housing numbers, but these are expressed as minimum levels and indeed one of the modifications required to make the plan sound was to make clear that they were not to be considered as a ceiling [***9; 37; 191***].

369. Policy STRAT 8 does not however allow limitless growth. It does not specify how much development would be appropriate in each settlement but it does include a requirement that development should be appropriate in scale to conserve the character and setting. Furthermore, it states that the capacity of existing services and infrastructure should not be exceeded unless the required improvements can be made. It seems to me that these provisions would act as a brake on development and at that point it would be restrictive of housing development. The Courts have accepted a wide definition of the term and, in my opinion, Policy STRAT 8 should therefore be considered to be a housing supply policy. However if I am wrong on this point it is not of critical importance for the reasons set out below [***37; 44; 191; 216***].

370. I turn now to consider whether the appeal proposals would conflict with Policy STRAT 8. The evidence suggests that 16 units have been built in Tattenhall since 2010. There are 185 more either under construction or with planning permission. For the reasons given in Consideration One, the 95 units in the Care Community should be included. Developments in the surrounding villages of Gatesheath and Newton by Tattenhall should though be excluded. Whilst residents of these villages may use the shops and facilities in Tattenhall, they are not within the KSC. The proposals would add a further 110 units (Appeal A), 137 units (Appeal B) and 68 units (Appeal C) or 315 dwellings in total [***45; 144; 184; 247***].

371. Although Policy STRAT 8 seeks to conserve the character of the village *and its setting* it is difficult to see how this policy could support the Council's landscape objections as alleged in the new putative reason for refusal. This is because the supporting text to the policy itself envisages development on greenfield land outwith the built up parts of the settlements. Indeed much of the recently permitted development is not within the built up part of the village. Issues relating to character, infrastructure and social cohesion were dealt with in Consideration Four of my Main Report. My overall conclusions were that there would be no adverse impact as a result of the appeal proposals, either individually or cumulatively [***90; 146***].

372. The Council's objection in its putative reason for refusal was that the proposals would be in conflict with the overall spatial strategy of delivering controlled growth in the KSC. Its evidence to the re-opened Inquiry was that 500 dwellings could be seen as a tipping point beyond which further development would be unacceptable and contrary to the spatial strategy. This number resulted in the judgement of the Council's planning witness but, in any event, each scheme taken individually would comfortably fall within it, taking account of committed developments. Whilst at the Inquiry the Council seemed to suggest that there would be some conflict with Policy STRAT 8 from individual developments, it was conceded that this would be "less than marginal" which, to my mind, means no material conflict at all [***44***].

373. If two schemes were to be built out then the Council's evidence was that the policy conflict would be "marginal". This means "insignificant, minor or negligible" in common parlance and could not, in my opinion, be considered a material breach. If all three developments went ahead then this would go beyond the 500 dwelling "threshold" by about 16 dwellings. In view of the fact that there is no evidence base to support this proffered limit, one has to resort to the policy itself to make a sensible judgement. This brings me back to the matter of character and infrastructure, in relation to which no material harm has been demonstrated. In the circumstances, I do not consider that the appeal proposals, either individually or cumulatively, would conflict with Policies STRAT 2 and STRAT 8 in the LP (Part One) or indeed Policy 4 in the TNDP, which also concerns impacts on local infrastructure, services and facilities [***182; 183; 185***].

374. A great deal of evidence was given at the Inquiry as to the decision making context if a five year housing land supply was found to exist. However, in view of my conclusions on this matter it is unnecessary to consider this alternative scenario. Whilst the appeal proposals conflict with Policy HO 7 in the CDLP,

Policy STRAT 9 in the LP (Part One) and Policy 1 in the TNDP, these are relevant policies for the supply of housing. The *Woodcock Holdings* Judgement made clear that Paragraph 49 of the Framework equally applies to relevant policies in a neighbourhood plan. It confirms that these policies should not be considered up-to-date and it therefore follows that the decision should be made in accordance with the adverse impacts approach in Paragraph 14 of the Framework [***169***].

375. Consideration Three in my Main Report deals with the landscape issue. The policies referred to in 2013 have not been saved and I consider that the most relevant policy in the LP (Part One) is Policy ENV 2. This seeks to protect, and if possible enhance, landscape character and local distinctiveness. The LP Inspector found it to be an effective and justified approach that was consistent with national policy. I agree with that conclusion. The policy does rely on the LP (Part Two) to identify key gaps between settlements. Whilst it is appreciated that some local objectors were concerned about the erosion of gaps between Tattenhall and nearby settlements, the Council has raised no objections on these grounds. There may be circumstances where the lack of identification of the gaps would be a material issue but I do not consider that is the case here, taking account of the size of the proposed developments relative to the spatial distribution of settlements. Nevertheless, for the reasons given in my Main Report there would be adverse impacts on the landscape and therefore the appeal proposals would conflict with Policy ENV 2 [***9; 44; 54; 154; 200; 252; 257; 259***].

376. Policy ENV 6 addresses high quality design and construction. Although it is referred to in the Council's putative reason for refusal in support of the landscape objection, I do not consider it is of particular relevance to that issue. It is more relevant to Consideration Four in my Main Report where I deal with the design and layout of the developments and village character. For the reasons given there I am satisfied that the appeal proposals would comply with Policy ENV 6 and it was noted that the Council conceded at the Inquiry that it did not rely on a breach of this policy [***9; 163; 186***].

377. Policy STRAT 1 establishes the presumption in favour of sustainable development. It sets out a number of sustainable principles but it also establishes that the "adverse impacts" test in Paragraph 14 of the Framework will be applied if relevant policies are out-of-date at the time of making the decision. I will return to the matter of compliance with Policy STRAT 1 in Consideration Ten [***9; 164; 187***].

378. There are other relevant policies in the TNDP. Policy 2 supports development that respects local character, historic and natural assets and local distinctiveness. It refers to compliance with the Village Design Statement. In all these respects the appeal proposals would comply with Policy 2 for the reasons given in my Main Report in Consideration Four. However there is also a requirement to respect local landscape quality and for the reasons given in Consideration Two of my Main Report the proposals would conflict with this element of Policy 2. Policy 6 includes provisions concerning sites of nature conservation value but for the reasons given in Consideration Seven I am satisfied that Policy 6 would not be offended. It is to be noted that saved

Policy ENV 27 in the CDLP, which relates to nature conservation, has been retained.

CONSIDERATION SIX: WHETHER THE DEVELOPMENTS WOULD GENERATE TRAFFIC THAT WOULD CAUSE UNACCEPTABLE CONGESTION OR UNDUE HARM TO HIGHWAY SAFETY.

379. The matter of traffic and highway safety was considered in Consideration Six of my Main Report. Since then the LP (Part One) has been adopted and the TNDP has been made. Policy TR 19 in the CLDP was not saved. However Policy STRAT 10 in the LP (Part One) and Policy 5 in the TDNP include similar provisions.

380. Local objectors remain concerned about this issue. They pointed out that there has been additional development since 2013 and that this has resulted in more traffic on the local highway network. It is therefore considered that the traffic modelling no longer remains reliable. However, the assessment undertaken and considered at the 2013 Inquiry took account of traffic flow from development commitments in and around Tattenhall. The exception is the redevelopment at the Ice Cream Farm in Newton Lane where a large expansion in the visitor facilities has taken place. This opened in the Summer of 2015. There may well be times when the traffic associated with this facility causes congestion at local junctions, including the Chester Road/ A41 junction [***261; 270***].

381. The Council as Highway Authority was re-consulted on this matter and pointed out that the busiest period for this tourist attraction is in the middle of the day and well outside the identified peak periods for the residential developments. It also seems to me that the traffic associated with the Ice Cream Farm would benefit from any highway improvements to the Chester Road/ A41 junction resulting from the appeal schemes. It may well be that the redevelopment causes congestion at times in Tattenhall but this is not as a result of the appeal developments [***261; 270***] .

382. The junction at Broughton was a concern at the last Inquiry and has been considered in my Main Report. There may have been further developments in this vicinity, which resulted in more traffic going through this junction. However the Highway Authority in its latest response has commented that further capacity improvements were carried out in January 2015. There is no evidence that the traffic arising from the appeal developments would critically harm the Broughton junction. The verges along Rocky Lane may have deteriorated as a result of continuing use but this is part of the local highway network for which the Highway Authority has responsibility. It has not raised objections on the grounds that the additional traffic travelling along this route from the appeal developments could not be safely accommodated [***262; 270***].

383. Paragraph 32 of the Framework indicates that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. The Highway Authority raised no objections to the appeal developments either individually or together, subject to the mitigation discussed in my Main Report. There is no evidence that there would be severe impacts or that the developments would be other than compliant with Policy STRAT 10 in the LP (Part One) of Policy 5 of the TNDP.

In the circumstances the conclusions I reached in my Main Report have not changed and the appeal proposals would not offend Policy STRAT 10 in the LP (Part One) or Policy 5 in the TNDP [***9; 10; 176***].

CONSIDERATION EIGHT: WHETHER THE PROPOSALS SHOULD BE SUBJECT TO PLANNING CONDITIONS AND PLANNING OBLIGATIONS

PLANNING CONDITIONS

384. The planning conditions for each appeal are at Annex Three, Annex Four and Annex Five of my Main Report. The only necessary change relates to the affordable housing condition, which is set out in Annex Three of this Supplementary Report. The justification is provided in Paragraphs 271-279 and also in my Conclusions.

385. Two new conditions relating to **ecology** and the **High Street bus stop improvements** were proposed in respect of the Barratt Homes appeal (Appeal C). Barratt Homes also suggested an amended condition in respect of **drainage**. For the reasons given in Paragraphs 276-279 I do not consider these changes necessary or justified. Councillor Jones and the Parish Council proposed a condition relating to **design** and **broadband**. For the reasons in Paragraph 272 I do not consider this to be necessary.

386. It is considered that the affordable housing condition along with the others in my Main Report are reasonable, necessary and otherwise comply with Paragraph 206 of the Framework and the provisions of the PG.

PLANNING OBLIGATIONS

387. A new Planning Obligation by Agreement has been submitted in respect of each appeal scheme. These supersede the previous legal documents by virtue of a specific clause in each one. I am satisfied that the new Agreements are legally correct and fit for purpose.

388. Policy M1 1 of the CDLP has not been saved and Policy STRAT 11 in the LP (Part One) now provides the policy context for infrastructure contributions. Affordable housing is no longer to be provided through the legal agreement in the case of Appeal B, but it is noted in passing that Policy HO 3 in the CDLP is no longer saved.

389. Most of my conclusions regarding the justification for the planning obligations in the Main Report remain relevant. In most cases the contributions remain the same and the conclusions that were reached regarding compliance with Regulation 122 of the CIL Regulations have not changed.

389.1. The need for the **A41 / Chester Road junction improvement** has not changed and it is supported by Policy STRAT 10 in the LP (Part One). Although some local objectors consider that traffic has increased with the redevelopment of the Ice Cream Farm, the Highway Authority has not considered it necessary to change its advice regarding this junction and the need for the improvement if two or three of the appeal developments go ahead.

389.2. The **bus stop provisions** in all appeals remain unchanged. Policy justification is provided by Policy STRAT 10, which addresses transport and accessibility. For the reasons given in my Main Report I do not consider that a new bus stop outside the Appeal B site would be justified either in terms of the size of contribution or the need for the facility.

389.3. The contribution towards **a new bus service** would only become effective if all three appeals went ahead. At the last Inquiry neither the Council nor the Appellants considered that the covenants were justified. Now the Council does consider there is justification although the Appellants still do not. The proposal is to decrease the size of each contribution from £550,000 to £375,000, which would allow a subsidy of a half hour service for 5 years provided all three schemes went ahead. Although Policies STRAT 1, STRAT 10 and SOC 5 do provide support for sustainable travel, my concern remains that there would be insufficient new patronage for it to be considered as a necessary requirement.

389.4. At the time of the last Inquiry there were 30 surplus places at Tattenhall Park Primary School, now it is understood that has reduced to about 6. There remains no surplus capacity at the Bishop Heber High School. The Education Authority now uses a different method of calculation that is based on the expected number of bedrooms, the child yield factor and the Department of Education building cost multiplier. The new legal documents specifically refer to Bishop Heber high School. This seems to me to be a reasonable basis for assessment and the **education contributions** continue to be relevant and necessary.

389.5. The covenants relating to the indemnity to the **Ecological Management Scheme** for Appeal A and the **footpath provision** for Appeal B have not changed in the new Planning Obligations by Agreement and my comments in the Main Report at Paragraphs 395 and 397 remain relevant.

390. In April 2015 the pooling restrictions in Regulation 123 of the *Community Infrastructure Levy Regulations* 2010 came into effect. The relevant provision is that a planning obligation cannot constitute a reason for granting planning permission to the extent that it provides for the funding or provision of an infrastructure project or type of infrastructure for which five or more separate planning obligations have been entered into. Following the close of the Inquiry, and having considered the matter further, I had some concerns about the obligations in respect of secondary education, having regard to the information on the CIL Compliance Schedule[40]. The main parties were asked for their comments on the matter[41].

391. From the responses I am satisfied that the expansion to Bishop Heber High School that has already taken place was an infrastructure project funded by two previous planning obligations and other funds and was necessary to meet

[40] There were CIL Compliance Statements for each appeal scheme at ***Documents BH/53; AW/32; TW/25***.
[41] I have placed these as ***Document INQ/21***, although they were received after the Inquiry closed.

the needs of those developments. The further expansion necessary to accommodate children from further developments would be another discrete project and would be specifically to meet the educational needs of the new population. At present there are two existing planning obligations towards this infrastructure project from developments at Harding Avenue, Tattenhall and The Firs, Handley. The additional three from the appeal developments would make a total of five and therefore not exceed the pooling restriction.

CONSIDERATION TEN: OVERALL CONCLUSIONS AND PLANNING BALANCE TO DETERMINE WHETHER THE PROPOSALS WOULD BE A SUSTAINABLE FORM OF DEVELOPMENT

392. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision-taking. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. However, it has been concluded that the Borough has a significant shortfall in the supply of deliverable housing sites relative to its requirements over the next 5 years. In such circumstances Paragraph 49 indicates that relevant policies for the supply of housing should not be considered up-to-date. I have concluded that such policies include saved Policy HO 7 in the CDLP, Policies STRAT 8 and STRAT 9 in the LP (Part One) and Policy 1 in the TNDP. The three appeal proposals conflict with all of these policies, apart from Policy STRAT 8.

393. Whilst the development plan policies form the statutory starting point in decision making, the weight to be given to the policy conflict is substantially reduced. Within the context of Paragraph 47 and the requirement to boost significantly the supply of housing, a shortfall of housing provision as demonstrated in the case of this Council is inherently unsustainable. In such circumstances it is Paragraph 14 of the Framework that provides the context for decision making. It explains that in the present circumstances the presumption means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

394. The Framework identifies the three interdependent dimensions to sustainable development – economic, social and environmental. The appeal proposals would all be deliverable in the short term and in this regard shorter timescales for implementation have been agreed and would be controlled by planning conditions. There is no doubt that both individually and together they would make an important contribution to the Council's housing deficit. They would deliver land within a sustainable location and increase the choice of housing. The provision of a significant number of affordable units, over and above the policy level in the LP (Part One) is a substantial benefit within a Borough where the overall need for such homes is immediate and pressing.

395. There would undoubtedly be benefits to growth, including the provision of infrastructure to support the schemes individually and collectively. All sites are accessible to village facilities and offer new residents the opportunity to make journeys by modes other than the car. Whilst the developments would not include employment uses there would be jobs created during the period of

construction, which would take place over several years. It is likely that many would be for local people and this would boost the local economy. Businesses connected with the construction industry would also benefit and some of these would be local suppliers and trades. Once the development is complete new residents would spend a proportion of their household income locally.

396. Despite the fears of existing residents about the negative impact that new development would bring, it is considered that the new residents would contribute to the vibrancy and viability of the village. There would also be more tangible benefits, such as the potential for increased patronage of the local bus service thereby assisting its viability. There is no reason to believe that these would be other than high quality residential developments. Generous open space and landscaping would ensure an attractive setting at the edge of the village. In each case this would also offer a benefit for existing residents to enjoy. Furthermore, Appeal A would have the potential to improve the settlement edge and also to enhance existing newt habitats through the provision of an ecological mitigation area north of Keys Brook.

397. Nonetheless it is necessary to consider these benefits against the potential harm flowing from the appeal developments. As I have identified in Consideration Two of my Main Report each of the proposals would have adverse landscape impacts. Local objectors have referred to the letter of 27 March 2015 from the Minister of State for Housing to the Chief Executive of the Planning Inspectorate. This reiterated the wider emphasis on delivering sustainable outcomes at the heart of the Framework, which means taking full account of the environmental as well as the social and economic dimensions. Such an approach was fully followed in the Main Report when the various harmful impacts were addressed. These included the considerable adverse visual impacts to users of Footpath 8 and those entering the village by Chester Road and Tattenhall Road.

398. Mitigation planting would have the potential to reduce the adverse effects but there would remain permanent and long term visual harm to the landscape around the village. In the case of Appeal C there would also be some adverse effect on the setting of the Tattenhall Conservation Area, even though the heritage asset itself would not be harmed. In these regards all of the proposals would conflict with Policy ENV 2 in the LP (Part One) and Policy 2 in the TNDP.

399. The local community will undoubtedly be very disappointed with the conclusions I have reached in respect of Policy 1 of the TNDP, which is a document that was only recently made. The appeal proposals clearly would not result in the outcomes that local people wish to see for their village. Many will feel that the hard work in producing the TNDP has been a waste of time although, as I have concluded, it is only Policy 1 that would be breached. If the Secretary of State agrees with my conclusions on the Borough's housing land supply there will be consequences that will be felt locally. However, the Framework is quite clear as to the path to be followed in the event of the conclusion I have reached.

400. In this case it is though highly relevant that in order to meet the Council's housing requirements, greenfield development on rural land around KSC,

including Tattenhall, will be have to be utilised. Such development is bound to result in landscape impacts of an adverse nature. The need for market and affordable housing is, in my opinion, a matter of very great importance in this case. So whilst there will be harm to the landscape; adverse impacts on community engagement; and some adverse effect on the setting of Tattenhall Conservation Area in the case of Appeal C, in my judgement these factors would be insufficient to significantly and demonstrably outweigh the benefits that I have identified. Whether one, two or three of the schemes are built they would be sustainable development to which the presumption in Paragraph 14 of the Framework applies.

INSPECTOR'S RECOMMENDATIONS

401. That Appeal A is allowed and planning permission is granted subject to the conditions in Annex Three of the Main Report and the substitution of Condition 4 with the new Condition in Annex Three to this Supplementary Report.

402. That Appeal B is allowed and planning permission is granted subject to the conditions in Annex Four of the main Report and the addition of the new Condition in Annex Three to this Supplementary Report.

403. That Appeal C is allowed and planning permission is granted subject to the conditions in Annex Five of the Main Report and the substitution of Condition 4 with the new Condition in Annex Three to this Supplementary Report..

Christina Downes

INSPECTOR

ANNEX ONE: APPEARANCES

FOR CHESHIRE WEST AND CHESTER COUNCIL:

Mr Martin Carter of Counsel	Instructed by the Head of Governance, Cheshire West and Chester Council
Mr F Humphreys	
They called	
Mr R G Bolton BSc(Hons) MRTPI	Senior Director of DLP Planning Ltd
*Mr D Noble	Solicitor, Legal Services, Cheshire West and Chester Council

*Spoke at the Planning Obligations Round Table Session only

FOR TAYLOR WIMPEY UK LTD:

Ms Morag Ellis of Queen's Counsel	Instructed by Mr D Hann of Indigo Planning Ltd
She called	
Mr D Hann BA(Hons) MTPL MSc MRTPI	Director of Indigo Planning Ltd

FOR MR ASHLEY WALL:

Mr Paul Tucker of Queen's Counsel

He called

Mr S Harris BSc(Hons) MRTPI	Director of Emery Planning Partnership
Mr B Pycroft BA(Hons) DipTP MRTPI	Associate Director with Emery Planning Partnership
*Mr Jonathan Easton of Counsel	Instructed by Mr S Harris of Emery Planning Partnership

*Spoke at the Planning Obligations Round Table Session only

FOR BARRATT HOMES:

Mr C Young of Counsel	Instructed by Mr V Ryan of Barton Willmore LLP
He called	
Mr V Ryan BA(Hons) DipTP MRPTI	Planning Associate with Barton Willmore LLP
Mr J Stacey, BA (Hons) DipTP MRTPI	Director of Tetlow King Planning Ltd

FOR COUNCILLOR MIKE JONES:

He called

Himself	Borough Councillor for the Tattenhall Ward

INTERESTED PERSONS:

Mr G Newman	Local resident and speaking on behalf of Friends of Tattenhall
Mr I Cross	Local resident and speaking on behalf of Friends of Tattenhall
Mr T Leigh-Smith	Local resident and speaking on behalf of Friends of Tattenhall
Mr I Waddington	Local resident and speaking on behalf of Friends of Tattenhall
Mrs S Hudson	Local resident and speaking on behalf of Friends of Tattenhall
Mr D Hughes CEng MICE	Local resident and formerly Chief Engineer with Cheshire County Council
Mr M Reece	Local resident

ANNEX TWO: ADDITIONAL DOCUMENTS

CORE DOCUMENTS	
CD1 - Policy Documentation	
CD1.8	Cheshire West and Chester Local Plan (Part One) Strategic Policies (January 2015)
CD1.9	Retained policies of the Chester District Local Plan
CD1.10	Tattenhall and District Neighbourhood Plan (June 2014)
CD1.11	National PG (March 2014)
CD2 – Local Plan Evidence Base	
CD2.7	Strategic Housing Market Assessment (2013)
CD2.8	Strategic Housing Market Assessment – Viability Study
CD2.9	Strategic Housing Land Availability Assessment (2013)
CD2.10	Council's Statement to Matter 2 (the Strategy for Development) at the Examination
CD3 – Other	
CD3.26	Inspector's final report on the Cheshire West and Chester Local Plan (Part 1) (December 2014)
CD3.27	Report to Cheshire West and Chester Council following the Examination of the Tattenhall and District Neighbourhood Plan (August 2013)
CD3.28	Not used
CD3.29	Judgment of *Woodcock Holdings Ltd v Secretary of State for Communities and Local Government and Mid Sussex District Council* (2015)
CD3.30	Judgment of BDW Trading Ltd & Wainhomes Developments Ltd v Cheshire West and Chester Council (2014)
CD3.31	Appeal decision regarding land adjacent to the rear of 13 Holly Tree Drive, Nether Peover, Cheshire (ref. APP/A0665/A/14/2224763)
CD3.32	Appeal decision regarding land at Hill Top Farm, Northwich, Cheshire (ref. APP/A0665/W/14/3000528)

CD3.33	Appeal decision regarding land at Fountain Lane, Davenham, Cheshire (ref. APP/A0665/A/14/2224763)
CD3.34	Housing Land Monitor (2015) (Also referenced as CD/12.20)
CD3.35	Annual Monitoring Report (2015)
CD3.36	Cheshire West and Chester Local Plan (Part 2) Land Allocations and Detailed Policies – Issues consultation (May2014)
CD3.37	Cheshire West and Chester Local Plan (Part 2) Land Allocations and detailed Policies – Call for Sites consultation (May 2014)
CD3.38	Joint position statement of appellants re. TNP JR

CD4 – Application Related Documentation

CD4.15	Report to Strategic Planning Committee regarding the reopened inquiry (15 October 2015)
CD4.16	Minutes of the Committee (15 October 2015)

CD 11 – General appeal documentation

CD11.7	Council's letter of notification of the re-opened Inquiry and list of persons notified
CD11.8	Secretary of State's letter re-opening the Inquiry (8 July 2015)
CD11.9	Pre-Inquiry Meeting Note

CD 12 – Documents referred to in the Appellants' Joint HLS Statement

CD12.1	Appeal decision regarding land north of Congleton Road, Sandbach (APP/R0660/A/12/2189733)
CD12.2	Appeal decision regarding land between Iron Acton Way and North Road, Engine Common, Yate, South Gloucestershire (APP/P0119/A/12/2186546)
CD12.3	Appeal decision regarding land east of Butts Road, Higher Ridgeway, Ottery St Mary, Devon (APP/U1105/A/12/2180060)
CD12.4	Secretary of State Decision and Inspector's Report regarding land at Pulley Lane, Droitwich Spa (APP/H1840/A/13/2199085 & APP/H/1840/A/13/2199426) (Also referenced as BH/36)
CD12.5	Secretary of State Decision and Inspector's Report regarding land bounded by Gresty Lane, Rope

	Lane, Crewe, Cheshire (APP/A0665/A/13/2209335)
CD12.6	Secretary of State Decision and Inspector's Report regarding land off Audlem Road / Broad Lane, Stapeley, Nantwich, Cheshire (APP/A0665/A/13/2197532)
CD12.7	Appeal decision regarding land at Firlands Farm, Hollybush Lane, Burghfield Common, Reading, Berkshire (APP/W0340/A/14/2228089) (Also referenced as BH/39)
CD12.8	Appeal decision regarding land at Goch Way, Andover (APP/C1760/A/14/2222867)
CD12.9	Appeal decisions regarding land East of Mount Hindrance Farm, Mount Hindrance Lane, Chard and Land East of Crimchard, Chard (APP/R3325/A/13/2209680 and APP/R3325/A/13/2203867)
CD12.10	Appeal decision regarding land at Leasowes Road and Laurels Road, Offenham, Worcestershire (APP/H1840/A/13/2203924)
CD12.11	Appeal decision regarding land at Home Farm, Church Hill, Pinhoe, Exeter, Devon (APP/Y1110/A/14/2215771)
CD12.12	High Court Judgement (June 2015), Exeter City Council vs Secretary of State for Communities and Local Government (Neutral Citation Number: [2015] EWHC 1663 (Admin)
CD12.13	Appeal decision regarding land adjacent to Telford's Warehouse, Tower Wharf, Chester (APP/A0665/A/14/2217039)
CD12.14	Appeal decision regarding land off Boundary Park, Parkgate, Neston, Cheshire (APP/A0665/W/14/3001859)
CD12.15	Secretary of State Decision and Inspector's Report regarding land at Well Meadow, Well Street, Malpas, Cheshire (APP/A0665/A/14/2214400)
CD12.16	Secretary of State Decision and Inspector's Report regarding land at Bagley Lane / Calverley Lane, Farsley, Leeds (APP/N4720/A/13/2200640)
CD12.17	Appeal decision regarding land at the former Pontin's Holiday Centre, Wall Park Road, Brixham, Devon (APP/X1165/A/11/2145178)
CD12.18	Council's Statement to Matter 8 (the supply and delivery of housing land) at the Examination

CD12.19	Council's Supplementary Information to Matter 8 at the Examination
CD12.20	Housing Land Monitor (2015) (Also referenced as CD/3.34)
CD12.21	Supporting tables to the Housing Land Monitor (2015)
CD12.22	Housing and Economic Land Availability Assessment (HELAA, 2015

INQUIRY DOCUMENTS

HLS/ - Housing land supply round table

HLS/9	Appellants' joint proof of evidence on housing land supply
HLS/9.1	Summary of Appellants' joint proof on housing land supply
HLS/10	Appendices to Appellants' joint proof on housing land supply
HLS/11	Mr Bolton's proof of evidence on housing land supply
HLS/12	Appendices to Mr Bolton's proof of evidence
HLS/13	Councillor Jones' rebuttal proof and appendices to the Appellants' joint proof on housing land supply
HLS/14	Appeal Decision regarding Greaves Hotel, 142 Greaves Lane, Lancaster (APP/A2335/A/13/2195739)
HLS/15	Appeal Decision regarding former Portishead Pimary School site, Slade road, Portishead (APP/D0121/A/12/2168918)
HLS/16	Secretary of State Decision and Inspector's Report regarding land at Blackfield End Farm, Church Road, Warton (APP/M2325/A/14/2217060)
HLS/17	Statement of common ground between the Appellants and Council on housing land supply
HLS/18	Schedule of disputed sites with comments by the Appellants and the Council
HLS/19	Information from the Council on the delivery of its new build housing programme
HLS/20	Information from Taylor Wimpey about delivery rates on its Winsford sites
HLS/21	Information about the Ellesmere Port Greyhound Stadium (submitted by Councillor Jones)

HLS/22	Information from Taylor Wimpey about delivery rates at Winnington Urban Village, Northwich
HLS/23/1	Richborough Estates Partnerships LLP v Cheshire East Borough Council and SSCLG: Skeleton Argument by Richborough Estates (submitted by Mr Young)
HLS/23/2	Richborough Estates Partnerships LLP v Cheshire East Borough Council and SSCLG: Order by Mr Justice Sullivan giving leave to appeal (submitted by Mr Young)
HLS/23/3	Richborough Estates Partnerships LLP v Cheshire East Borough Council and SSCLG: Skeleton Argument on behalf of SSCLG (submitted by Mr Young)
HLS/24	Joint closing submissions by the Appellants on housing land supply

CWC/ - Cheshire West and Chester Council

CWC/21	Proof of evidence of Mr Bolton
CWC/22	Summary proof of evidence of Mr Bolton
CWC/23	Appendices to Mr Bolton's proof of evidence
CWC/24	Information provided by the Council on bus stop infrastructure
CWC/25	Information from the Council on the Chester Road improvement contributions
CWC/26	Closing submissions delivered by Mr Carter on behalf of the Council

TW/ - Taylor Wimpey UK Limited

TW/1.1A	Summary proof of evidence of Mr Hann
TW/1.2A	Proof of evidence and appendices of Mr Hann
TW/23	Agreed List of planning conditions between Taylor Wimpey and Cheshire West and Chester Council (October 2015)
TW/24	Planning Obligation by Agreement (5 November 2015)
TW/25	CIL compliance schedule
TW/26	Statement of common ground between Taylor Wimpey and the Council
TW/27	Refusal of outline planning permission for up to 28 dwellings at Smithfields, Tattenhall (5 June 2014)

TW/28	Extract from the Inspired Villages website giving information about the operation of the developments
TW/29	Closing submissions delivered by Miss Ellis on behalf of Taylor Wimpey UK Limited

AW/ - Mr A Wall

AW/1.4	Proof of evidence of Mr Harris
AW/1.5	Summary proof of evidence of Mr Harris
AW/28	Appeal Decision relating to land to the east and west of Brickyard Lane, Melton Park, East Riding of Yorkshire - APP/E2001/A/13/2200981 and APP/E2001/A/14/2213944
AW/29	Secretary of State Decision and Inspector's Report regarding land rear of 1-27 Thorpe Road, Earls Barton (APP/H2835/A/14/2221102)
AW/30	Agreed List of planning conditions between Mr Wall and Cheshire West and Chester Council (October 2015)
AW/31	Planning Obligation by Agreement (3 November 2015)
AW/32	CIL compliance schedule
AW/33	Closing submissions delivered by Mr Tucker on behalf of Mr A Wall

BH/ - Barratt Homes

BH/29	*Satnam Millenium Ltd v Warrington Borough Council* [2015] EWHC 370 (Admin)
BH/30	*R v Rochdale MBC ex parte Milne* [2000] CO/292/00
BH/31	Secretary of State Decision and Inspector's Report concerning Tonbridge and Malling Strategic Sites (August 2004) - APP/H2265/A/02/1094855, APP/H2265/A/02/1105982, APP/H2265/A/02/1095664, APP/H2265/A/02/1095665 and APP/H2265/A/02/1095666
BH/32	Secretary of State Decision and Inspector's Report concerning Land at Gotham Road, East Leake (March 2008) - APP/P3040/A/07/2050213
BH/33	Secretary of State Decision and Inspector's Report concerning Land at Ingleby Barwick (September 2013) - APP/H0738/A/13/219538
BH/34	Secretary of State Decision and Inspector's Report concerning Land at Long Marston, Pebworth (July 2014) -

	APP/H1840/A/13/2202364
BH/35	Secretary of State Decision and Inspector's Report concerning Land at Sketchley House, Burbage (November 2014) - APP/K2420/A/13/2208318
BH/36	Secretary of State Decision and Inspector's Report concerning Land off Rilshaw Lane, Winsford, Cheshire (October 2015) – APP/A0665/A/14/2229269
BH/37	Appeal Decision Concerning Land Opposite Rose Cottages, Brereton Heath (February 2014) - APP/R0660/A/13/2192192
BH/38	Appeal Decision Concerning Land North of Upper Chapel, Launceston (April 2014) - APP/D0840/A/13/2209757
BH/39	Appeal Decision Concerning Land at Greetham Garden Centre, Oakham (May 2015) - APP/A2470/A/14/2222210
BH/40	Appeal Decision Concerning Land at New Street, Weedon Bec (June 2015) - APP/Y2810/A/14/2228921
BH/41	Appeal Decision Concerning Land at Salisbury Landscapes, Boughton Road, Moulton (June 2015) - APP/Y2810/A/14/2225722
BH/42	Appeal Decision Concerning Land off Field End, Witchford (June 2015) - APP/V0510/A/14/2224671
BH/43	Appeal Decision Concerning Land adjacent to Cornerways, Twyning, Tewkesbury (July 2015) - APP/G1630/W/14/3001706
BH/44	Appeal Decision Concerning Land at Roes Lane, Crich, Derbyshire (July 2015) - APP/M1005/A/14/2226553
BH/45	Appeal Decision Concerning Land to the East of Broad Marston Road, Mickleton, Gloucestershire (September 2015) - APP/F1610/A/14/2228762
BH/46	Not used
BH/47	Proof of evidence and appendix of Mr Ryan
BH/48	Summary proof of evidence of Mr Ryan
BH/49	Proof of evidence of Mr Stacey
BH/50	Summary proof of evidence of Mr Stacey
BH/51	Appendices of Mr Stacey's Proof

BH/52	Agreed List of planning conditions between Barratt Homes and Cheshire West and Chester Council (October 2015)
BH/52	Planning Obligation by Agreement
BH/53	CIL compliance schedule
BH/54	Tables of the annual need for affordable homes of different sizes submitted by Mr Stacey
BH/55	Extract from the Hansard Record of the Housing and Planning Bill (2/11/15)
BH/56	Statement of common ground between Barratt Homes and the Council on affordable housing
BH/57	Closing submissions delivered by Mr Young on behalf of Barratt Homes
MJ/ - Councillor Mike Jones	
MJ/13	Proof of evidence and appendices of Cllr Jones
MJ/14	Conditions and Obligations proposed by Councillor Jones
MJ/15	Brochure for the Care Community development at Tattenhall
MJ/16	Closing submissions delivered by Councillor Jones
TP/ - Third party oral evidence to the Inquiry	
TP/11	Statement by Mr Cross
TP/12	Statement by Mr Leigh-Smith
TP/13	Statement by Mr Newman
TP/14	Statement by Mr Hughes
TP/15	Response to Appellants' addendum statement of common ground on highways (Document INQ/15)
TP/16	Statement by Mrs Hudson
TP/17	Statement by Mr Waddington
INQ/ - General Inquiry documents	
INQ/11	Secretary of State Decision and Inspector's Report relating to land off Abbey Road and Middlewich Road, Sandbach (APP/R0660/A/10/2141564

INQ/12	Planning Obligation by Agreement relating to the Care Community development at Tattenhall
INQ/13	Statement of common ground between the Council and Appellants on planning policy
INQ/14	High Court decision relating to *Bloor Homes East Midlands Ltd v SSCLG and Hinckley and Bosworth Borough Council* (19 March 2014)
INQ/15	Addendum to the statement of common ground on highway matters by the Appellants and Highway Authority
INQ/16	Location plan of the Ice Cream Farm, Tattenhall (submitted by Miss Ellis)
INQ/17	*R (on the application of Cherkley Campaign Limited) v Mole Valley District Council and another* [2014] EWCA Civ 567 (submitted by Miss Ellis)
INQ/18	*Phides Estates (Overseas) Limited and SSCLG and others* [2015] EWHC 827 (Admin) (submitted by Mr Humphreys)
INQ/19	*Borough Council of Kings Lynn and West Norfolk v Secretary of State for Communities and Local Government* [2015] EWHC 2464 (Admin) (submitted by Councillor Jones)
INQ/20	Local Development Scheme (July 2013)
INQ/21	Inspector's question regarding Regulation 123 of the CIL Regulations 2004 and responses from the Council and Appellants.

DOC/ – Correspondence received between the closing of the Inquiry in July 2013 and its re-opening in November 2015

DOC/8	Letter from Mr Hughes, including further highway comments on Documents INQ/1 and BH/21 and a revised statement on highway matters (7 August 2013)
DOC/9	Letters from Tattenhall & District Parish Council and Mr Leigh-Smith concerning progress on the Neighbourhood Plan (5 September, 13 September and 14 November 2013)
DOC/10	Letter from Mr Taylor on behalf of Barratt Homes regarding the Neighbourhood Plan and attaching an appeal decisions ref APP/Q3305/A/13/2196402. (18 November 2013)
DOC/11	Secretary of State's letter of 19 June 2014 requesting views of parties to the Inquiry on the making of the *Tattenhall Neighbourhood Development Plan* and responses received

DOC/12	Secretary of State's letter of 22 December 2014 requesting views of parties to the Inquiry on the Local Plan Inspector's Report into the *Cheshire West and Chester Local Plan (Part One) Strategic Policies* and responses received
DOC/13	Documentation regarding the re-opening of the Inquiry

ANNEX THREE: CONDITIONS

The only recommended change is to the affordable housing condition as set out below. This is an additional condition in the case of Appeal B and a replacement for Condition 4 in the Schedule to my Main report, in the case of Appeals A and C

APPEAL A: Land adjacent Adari, Chester Road, Tattenhall – Taylor Wimpey UK Ltd (APP/A0665/A/12/2180958)

In place of Condition 4 in the Annex Three Schedule to my Main Report:

The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any document that replaces it. The scheme shall include:

i) The numbers, type and tenure on the site of the affordable housing provision to be made which shall consist of not less than 35% of housing units;

ii) The timing of the construction of the affordable housing and its phasing in relation to the occupancy of market housing;

iii) The arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing) (if no RSL involved);

iv) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, or for the subsidy to be recycled for alternative affordable housing provision; and

v) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

APPEAL B: Land rear of 15-38 Greenlands, Tattenhall – Mr Ashley Wall (APP/A0665/A/12/2185667)

New condition:

The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any document that replaces it. The scheme shall include:

i) the numbers, type and tenure on the site of the affordable housing provision to be made which shall consist of not less than 35% of housing units.

ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of market housing;

iii) the arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing) (if no RSL involved);

iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, or for the subsidy to be recycled for alternative affordable housing provision; and

v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

APPEAL C: Land opposite Brook Hall Cottages, Chester Road, Tattenhall – Barratt Homes (APP/A0665/A/12/2188464)

In place of Condition 4 in the Annex Five Schedule to my Main Report:

The development shall not begin until a scheme for the provision of affordable housing as part of the development has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any document that replaces it. The scheme shall include:

i) 19 social rented and 8 intermediate tenure housing units;

ii) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of market housing;

iii) the arrangements for the transfer of the affordable housing to an affordable housing provider (or the management of the affordable housing) (if no RSL involved);

iv) the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing, or for the subsidy to be recycled for alternative affordable housing provision; and

v) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

End of conditions

Department for
Communities and
Local Government

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

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

SECTION 2: ENFORCEMENT APPEALS

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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