Department for Communities and Local Government

Our ref: APP/R0660/W/16/3150968
APP/R0660/Q/16/3157808

Mr Mark Bassett
Freeths LLP
80 Mount Street
Nottingham
NG1 6HH

Your ref: 14/5671N
16/3092N

9 October 2017

Dear Sir

APPEAL A: TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY HADDON PROPERTY DEVELOPMENT LIMITED
LAND AT FORMER GORSTYHILL GOLF CLUB, ABBEY PARK WAY, WESTON, CREWE CW2 5TD
APPLICATION REF: 14/5671N

APPEAL B: TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 106B
APPEAL MADE BY HADDON PROPERTY DEVELOPMENT LIMITED
LAND AT FORMER GORSTYHILL GOLF CLUB, ABBEY PARK WAY, WESTON, CREWE CW2 5TD
APPLICATION REF: 16/3092N

1. I am directed by the Secretary of State to say that consideration has been given to the report of Claire Sherratt DipURP MRTPI, who held a public local inquiry over 4 days from 31 January 2017 into your client's appeals against:

   Appeal A: the failure of Cheshire East Council ("the Council") to determine your client's application for planning permission for a proposed housing development (up to 900 new dwellings) together with associated new employment development, a new primary school, indoor and outdoor recreational facilities, supporting retail development and the layout of significant areas of new landscaped open space to complement both the new development and the existing Gorstyhill Country Park, in accordance with application ref: 14/5671N, dated 15 December 2014.

   Appeal B: the refusal by the Council to modify planning obligations dated 8 October 2003 and 9 May 2011, as set out in application ref: 16/3092N, dated 23 June 2016 so as to exclude the proposed access link to the appeal site from the terms of the obligation dated 9 May 2011 and to exclude the application site from the section 106 restriction on the number of dwellings which can be built upon the Golf Course Site as specified in the obligation dated 8 October 2003.

Department for Communities and Local Government
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2. On 5 July 2016 Appeal A was recovered and on 21 September 2016 Appeal B 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.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that both appeals be dismissed and planning permission refused for Appeal A.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. He has decided to dismiss both appeals and refuse planning permission for Appeal A. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural matters

5. The Secretary of State agrees with the Inspector that, for the reasons given at IR4, no prejudice has been caused as a result of the delay in serving notice on Countryside Properties (UK) Ltd under Articles 13 and 36 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Environmental Statement and Habitats Regulations Assessment

6. In reaching his decision on this appeal, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the subsequent addendum (IR5-6). Having taken account of the Inspector's comments at IR292-295, the Secretary of State is satisfied that the Environmental Statement complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal. The Secretary of State has also taken account of the Habitats Regulations Assessment (IR7).

Matters arising since the close of the inquiry

7. On 20 June 2017 the Local Plan Inspector published The Report on the Examination of the Cheshire East Local Plan Strategy 2010-2030 (LPS), and the LPS was adopted on 27 July 2017. At the time of writing her report, the appeal Inspector considered the version of the LPS titled 'Local Plan Strategy Proposed Changes Final Version July 2016' but, having given careful consideration to the adopted version of the LPS, the Secretary of State is satisfied that the policies of relevance to the appeal are not materially different from those considered by the appeal Inspector, and so he has not considered it necessary to refer back to the parties on them.

8. The Secretary of State also notes the appeal Inspector's comments with regard to responses received on the Weston and Basford Neighbourhood Plan (NP) at IR12-13, and is satisfied that the publication of the Examiner's report on the NP on 31 August 2017 does not necessitate any further referral back to parties on this matter.

9. The correspondence submitted to the Secretary of State after the close of the Inquiry is listed at Annex A to this letter. He has carefully considered these representations and is satisfied that the issues raised do not necessitate any further referrals back to parties prior to reaching his decisions on these appeals. Copies of these letters may be obtained on written request to the address at the foot 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 LPS and the saved policies of the Borough of Crewe and Nantwich Replacement Local Plan (CNRLP). At the time of writing her report, the appeal Inspector considered that the policies in the then emerging LPS of most relevance to this case were PG2, PG5 and PG6 (IR22-24). The Secretary of State agrees. However, he notes that, in adopting the LPS, some if its policies have been re-numbered, so that LPS Policy PG5 (Open Countryside) is now numbered Policy PG6 and Policy PG6 (Spatial Distribution of Development) is now numbered PG7. Nevertheless, apart from the renumbering, the Secretary of State is satisfied that Policies PG6 and PG7 in the adopted LPS are not materially different from Policies PG5 and PG6 as referred to by the appeal Inspector in her Report.

12. At the time of writing her report, the appeal Inspector considered that the saved policies of the CNRLP of most relevance to this case were Policies NE.2, RES.5 NE.5, NE.9, BE.1 and BE.2 as set out at IR19-21. The Secretary of State agrees. CNRLP Policy NE.2 has now been replaced by LPS Policy PG6 and CNRLP Policy BE.2 has been replaced by LPS Policies SD2 and SE1, but the other relevant CNRLP policies remain as "saved" policies.

13. 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'); sections 1 and 3 of the Neighbourhood Planning Act 2017; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.

Emerging neighbourhood plan

14. As indicated above, the Examiner published his report on the emerging NP on 31 August 2017. He recommended that the Plan, once modified, should proceed to referendum, but this has not yet been held. Accordingly, having regard to the terms of section 1(2) of the Neighbourhood Planning Act 2017 and the advanced stage of the NP, the Secretary of State gives significant weight its policies.

Main issues

Appeal A

15. The Secretary of State agrees with the Inspector that the main issues are those set out at IR277.

The development plan

16. For the reasons given at IR279, the Secretary of State agrees with the Inspector that the proposed development would conflict with CNRLP Policy NE.2 (which has now been replaced by LPS Policy PG6 – see paragraph 12 above).

17. For the reasons given at IR280, the Secretary of State agrees with the Inspector that the proposed development would be significant and the proposal would conflict with saved CNRLP Policy RES.5 which envisages small scale infilling in the open countryside. The

Secretary of State considers that the Inspector's discussion at IR281-284 has been superseded by the adoption of the LPS but, for the reasons given at IR285-286, he agrees with her at IR287 that the appeal scheme is neither small scale nor is it proportionate to or commensurate with the function and character of the settlement. The Secretary of State also agrees with the Inspector at IR288 that, for the reasons given at IR279 and IR285-287, the proposed development would clearly conflict with LPS Policies PG2, PG6 and PG7.

18. For the reasons given at IR289, the Secretary of State agrees with the Inspector at IR290 that the development would be contrary to the emerging NP.

Character and appearance of the area

19. For the reasons given at IR291, the Secretary of State agrees with the Inspector that the overall scale of the development would result in a significant incursion into the open countryside which would be disproportionate in scale to the existing developments of Wychwood Village and Park. He therefore also considers that the development would be contrary to CNRLP Policy BE.2 (now LPS Policies SD2 and SE1).

Ecological interests

20. For the reasons given at IR292-294, the Secretary of State agrees with the Inspector's conclusion at IR295-296 that the proposed development could be accommodated whilst conserving and enhancing the ecological qualities of the site, so that there would be no conflict with the development plan or the Framework in this regard.

Prematurity

21. For the reasons given at IR297, the Secretary of State agrees with the Inspector's conclusion at IR298 that the development of the appeal site would be premature and would prejudice and undermine the overarching spatial policies of the LPS. He gives this significant weight.

Other material considerations advanced

22. For the reasons given at IR299-300, the Secretary of State agrees with the Inspector that the location of the South Cheshire Growth Village (SCGV) cannot provide a benchmark to allow other developments that conflict with the development plan. He also agrees that how the future demands of HS2 will be met is a matter for consideration through a development plan and should be afforded no weight in the planning balance.

23. With regard to housing land supply (IR301-305), the LPS has been adopted on the basis that the Council can now demonstrate a 5.3 years' housing land supply. The Secretary of State agrees with the Inspector at IR305 that the proposal would help to boost the supply of housing sooner rather than later, including a proportion of affordable housing; and that that is a material consideration in favour of the proposal. However, although the appeal scheme would be a numerically large number, the Secretary of State has taken account of the Inspector's point at IR305 that the contribution over a five year period from the appeal development would be the equivalent of about 2% of the 5 year housing requirement and, given that the LPS as adopted demonstrates an overall 5.3 years' housing land supply without this site, he does not consider that its addition to the housing land supply overrides the factors weighing against it.

24. Turning to the benefits of the proposal, for the reasons given at IR306-307, the Secretary of State agrees with the Inspector's reasoning that the benefits of self-build plots and retirement dwellings can only be afforded minimal weight. The Secretary of State also agrees with the Inspector that there would be economic benefits for the local area arising from the development to which he affords modest weight; and that the benefits to existing occupiers of the new facilities and services can only be afforded modest weight in favour of the development because of the relatively inaccessible location other than by private car.

Other matters

25. The Secretary of State considers that the matters raised at IR308-310 are neutral in the overall planning balance.

Planning conditions

26. The Secretary of State has given consideration to the Inspector's analysis at IR254-264, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector 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.

Planning obligations

27. Having had regard to the Inspector's analysis of the planning obligation then before her (IR265-274), the signed planning obligation dated 15 March 2017 submitted after the close of the Inquiry, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010 as amended, the Secretary of State shares the Inspector's concern (IR266) that not all persons with an interest in the land affected by the planning obligation have signed it. The Secretary of State agrees with the Inspector at IR271 that, if enforceable, the terms of the obligation 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. However, in addition to his concerns about the enforceability of the obligation, he does not consider that it overcomes his reasons for dismissing this appeal and refusing planning permission.

Planning balance and overall conclusion

28. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policies PG2, PG6, PG7, SD2 and SE1 of the LPS or saved Policy RES.5 of the CNRLP, and is not in accordance with the development plan overall. He has then 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.

29. Weighing in favour of the proposal are the benefits that the scheme would provide through the provision of facilities and services, to which the Secretary of State gives modest weight and through the contribution to the supply of housing overall including affordable housing, self-build plots and retirement homes and the benefit to the local economy. However, against that, and weighing against the proposal, is the significant

harm that would arise due to the scale of the development proposed in the open countryside.

30. Given that the Council has now addressed the lack of a 5 year housing land supply in the recently adopted LPS, the Secretary of State considers that the proposed development would prejudice and undermine the overarching spatial policies of the LPS. The Secretary of State considers that no material considerations indicate that the development should be determined other than in accordance with the development plan, and he therefore concludes that the appeal should be dismissed and planning permission refused.

Appeal B

31. The Secretary of State agrees with the Inspector at IR318-319 that if Appeal A is dismissed, it follows that it would not serve any useful purpose to modify the s106 agreements as proposed in Appeal B since they would not relate to a development that benefits from planning permission. He therefore concludes that Appeal B should be dismissed.

Formal decision

Appeal A

32. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for a proposed housing development (up to 900 new dwellings) together with associated new employment development, a new primary school, indoor and outdoor recreational facilities, supporting retail development and the layout of significant areas of new landscaped open space to complement both the new development and the existing Gorstyhill Country Park, in accordance with application ref: 14/5671N, dated 15 December 2014.

Appeal B

33. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal against the refusal by the Council to modify planning obligations dated 8 October 2003 and 9 May 2011, as set out in application ref: 16/3092N, dated 23 June 2016 so as to exclude the proposed access link to the appeal site from the terms of the obligation dated 9 May 2011 and to exclude the application site from the section 106 restriction on the number of dwellings which can be built upon the Golf Course Site as specified in the obligation dated 8 October 2003.

Right to challenge the decision

34. 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.

35. Copies of this letter have been sent to the Council and Wychwood Community Group and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Annex A

Schedule of representations

Party	Date
Wychwood Community Group	23 June 2017, 22 June 2017, 17 March 2017
Cheshire East Council	22 June 2017, 12 May 2017
Freeths LLP	15 March 2017
Weston and Basford Parish Council	2 October 2017, 3 October 2017

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by C Sherratt DipURP MRTPI

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

Date: 5 July 2017

Town and Country Planning Act 1990

Appeals by Haddon Property Development Ltd

Cheshire East Council

Inquiry opened on 31 January 2017

File Refs: APP/R0660/W/16/3150968 & APP/R0660/Q/16/3157808

Former Gorstyhill Golf Club, Abbey Park Way, Weston, Crewe CW2 5TD

- The appeals are made by Haddon Property Development Limited against Cheshire East Council.

Appeal A - File Ref: APP/R0660/W/16/3150968

- 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 application Ref 14/5671N, is dated 15 December 2014.
- The development proposed is proposed housing development (up to 900 new dwellings[1]) together with associated new employment development, a new primary school, indoor and outdoor recreational facilities, supporting retail development and the layout of significant areas of new landscaped open space to complement both the new development and the existing Gorstyhill Country Park.

Summary of Recommendation: The appeal be dismissed.

Appeal B - Ref: APP/R0660/Q/16/3157808

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
- The development to which the planning obligation relates is two golf courses and associated buildings, hotel, shops, leisure facilities, school and housing.
- The planning obligation, dated 8 October 2003 ('the Principal Agreement'), was made between Cheshire County Council, Crewe and Nantwich Borough Council and Countryside Properties PLC.
- The planning obligation dated 9 May 2011 ('the 2011 Agreement') was made between Cheshire East Borough Council, Weston and Basford Parish Council and Countryside Properties (UK) Limited
- The application Ref 16/3092N, dated 23 June 2016, was refused by notice dated 25 August 2016.
- The application sought to have the planning obligations modified to exclude the proposed access link from the provisions of clause 4.1 of the 2011 Agreement and to exclude the application site from the application of clause 4.4 of the Principal Agreement such that there will be no section 106 restriction on the number of dwellings which can be built upon the Golf Course Site.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The Secretary of State directed, under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning act 1990, that he shall determine these appeals himself. The reason for this direction is that the appeals relate to proposals for residential development of over 150 units.

[1] Notwithstanding the description of the proposed development set out on the planning application form that refers to "approximately 900 dwellings", the description was amended during the application process to "up to 900 dwellings". Appeal A is made on this basis.

2. The application to which Appeal A relates was submitted in outline form with all matters reserved for subsequent approval. The application was not determined. The appeal against non-determination was made in May 2016. By resolution on 24 August 2016 the Council determined its putative reasons for refusal[2].

3. Wychwood Community Group (WCG) is a Rule 6 party. WCG comprises 716 landowners on the Wychwood Development (Wychwood Village and Wychwood Park), other residents in the parish and other local parishes, ex golfers from Gorstyhill Golf Club and numerous other parties.

4. As a consequence of preparing a draft Section 106 Agreement it came to the attention of the appellant that Countryside Properties (UK) Ltd retained ownership of a small area of the application site which is identified on Inquiry Document (ID) 24. Notice was served on Countryside Properties (UK) Ltd on 14 November 2016 under Articles 13 and 36 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Countryside Properties (UK) Ltd were given the prescribed period to comment in advance of the Inquiry (period for comments expired 6 December 2016). It is considered that no prejudice has been caused as a result.

5. An Environmental Statement (ES) and non-technical summary, as required under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 accompanied the application[3]. Updates to the ES Transport chapter[4] and ES Ecology chapter[5] were produced at the request of the local planning authority during the application process, together with a Barn Owl Mitigation Strategy[6].

6. In preparing evidence for the Inquiry, the Appellant has considered an 'alternative' location for the proposed primary school. This is not proposed as an amendment to the appeal scheme but as an alternative which could be suitably conditioned should the Secretary of State deem it appropriate. As a consequence of including this 'alternative', an ES addendum has been produced which was submitted to the Council and the Planning Inspectorate on 10 November 2016[7]. The appellant undertook consultation on the revised ES with a consultation letter sent on 1 December 2016 and a press notice displayed in the Crewe Chronicle on 7 December 2016 relating to a possible alternative location for the primary school.

7. A Habitat Regulations Assessment (HRA)[8] was provided to support the application. This has assessed the potential for the proposed development to have impacts upon Ramsar and European sites within 10km of the development, both alone and in combination with other plans and projects. It considers the impacts of the proposal on the West Midlands Mosses Special Area of Conservation (SAC), the Midland Meres and Moses Phase 2 Ramsar site and the Midland Meres and Moses Phase 1 Ramsar site, from increased recreational

[2] Core Document (CD) 29 and SoCG (ID6)
[3] CD11 and CD12
[4] CD13
[5] CD18
[6] CD22
[7] CD21
[8] CD16

pressures, changes in air quality and changes to hydrology. It concludes that none of the sites present a constraint to the grant of planning permission.

8. I have had regard to the ES and HRA in reaching my conclusions and recommendation.

9. Although a section 106 agreement was discussed at the Inquiry, Countryside Properties (UK), the owners of a small area of land previously referred to, have not signed it. The appellant has since submitted a Unilateral Undertaking (UU) instead. The validity of the UU is challenged by the Council who consider Countryside Properties (UK) still need to be party to a UU. This is addressed in further detail under the heading 'Conditions and Obligations'.

10. The Inquiry sat for 4 days. Evidence relating to housing land supply (HLS) was heard as a round table discussion. I conducted an unaccompanied site visit.

11. Since the close of the inquiry, the Supreme Court's (SC) judgment (Suffolk Coastal District Council v Hopkins Homes Ltd & Anor [2017] UKSC 37) of 10 May 2017 concerning the interpretation of paragraph 49 of the National Planning Policy Framework (the Framework) and its relationship with paragraph 14 of the Framework was issued. The judgment also went on to consider both footnote 9 (to paragraph 14) and paragraph 135 of the Framework. In light of this judgement, the main parties were invited to make any comments as to whether the Supreme Court's judgment has any bearing on the appeal[9].

12. In addition, since the close of the inquiry, the Weston and Basford Neighbourhood Plan has been submitted to the Council for consideration and consultation for a six week period commenced on 9 May which will expire on 20 June 2017[10]. Again the views of the main parties were sought on whether this had any bearing on the cases advanced by the parties.

13. Responses on these matters were received from the appellant and local planning authority (ID37) which are summarised in the cases for the parties. I have had regard to the judgement, the stage of the Neighbourhood Plan and these responses in reaching my conclusions and recommendation.

The Site and Surroundings

14. The appeal site comprises 64.74ha of land forming the Former Gorstyhill Golf Course and wrapped around an existing housing development known as Wychwood Village which comprises 315 dwellings. It is situated to the south of the A500 and approximately one mile from the village of Weston. The site is contained by highways along its north-western, southern and northern sides and, slightly further afield, behind intervening land in predominantly agricultural use, to its north-east and east.

15. A Tree Preservation Order granted in June 2015 covers 29 individual trees and 9 groups of trees.

[9] Letter sent from the Planning Inspectorate to the main parties on 12 May 2017.
[10] Inquiry Document 36

Planning Policy

16. The development plan for Cheshire East Council currently comprises the saved policies of three Local Plans (the Congleton Borough Local Plan, Borough of Crewe and Nantwich Replacement Local Plan (CNRLP) and the Macclesfield Local Plan). The appeal site is situated within an area that is covered by the CNRLP adopted in 2005 and covering the period up to 2011.

17. The appeal site is designated as open countryside. It is shown as being within a housing commitment on the CNRLP Proposals Map. The housing commitment relates to the northern and southern Wychwood planning permissions referred to in the 'History' below.

18. The CNRLP policies relevant to the appeal are listed in the Statement of Common Ground (SoCG) (ID6) and provided in full within CD 33. Those of particular relevance to the issues are summarised briefly below.

19. Policy NE.2 confirms that all land outside the settlement boundaries is to be treated as open countryside where only development which is essential for the purposes of agriculture, forestry, outdoor recreation or other uses appropriate to a rural area will be permitted. Housing in open countryside will be restricted to those that meet the criteria set out in Policy RES.5, none of which apply to the proposal at hand.

20. Policy NE.5 secures the protection and conservation of the natural conservation resource (nature conservation and habitats) by requiring developments to ensure a number of criteria are met. These include that where any wildlife habitat is unavoidably damaged by development it is compensated for by the provision of similar or equivalent nearby, or by mitigation works to safeguard protected species. Development that would have an adverse impact upon protected species would be contrary to Policy NE.9.

21. Policy BE.1 requires new development to be compatible with surrounding land uses; to not prejudice the amenity of future occupiers or those of adjacent property; not to generate such levels of traffic that the development would prejudice the safe movement of traffic; or lead to an increase in noise, air or water pollution. Various policies set out the design standards that the proposal should meet. Policy BE.2 requires development to respect the pattern, character and form of the surroundings.

22. A number of policies contained in the emerging Cheshire East Local Plan Strategy (LPS)[11] are agreed to be of relevance to these appeals. In particular Policy PG2 sets out the settlement hierarchy identifying four categories of settlements. In the principal towns of Crewe and Macclesfield significant development will be encouraged. Below this are Key Service Centres and then Local Service Centres with Other Settlements and Rural Areas forming the lowest tier. Here only proportionate development at a scale commensurate with the function and character of the settlement and confined to locations well related to the existing built-up extent of the settlement will be appropriate.

23. The spatial distribution of development is confirmed in Policy PG6 which sets out a requirement for 7,700 new homes in the Principal Town of Crewe and some

[11] CD37

2950 new homes in the Other Settlements and Rural Areas including Alderley Park (275 homes).

24. Policy PG5 concerns open countryside where only development essential for specific purposes will be permitted. Exceptions may be made in limited circumstances such as limited infilling in villages, limited affordable housing and the like, none of which would apply to the appeal proposal.

Planning History

25. In 1990 outline planning permission was granted for two golf courses and associated buildings, hotel, shops, leisure facilities, school and housing (Reference 7/16321). This permission relates to land referred to as both the northern and southern Wychwood sites. It was subject to a section 106 agreement that limited the overall number of dwellings on both the south and north course developments to 500 in total.

26. Planning permission was granted for a maximum of 315 dwellings and the formation of a country park, golf course and means of access on 8 October 2003 on the northern site. This was also subject to a section 106 agreement (the principal agreement) that allowed an increase in the total number of dwellings on the north course from 110 to 315 with an increase in the total number of dwellings on both developments from 500 to not more than 725 in total as set out in clause 4.4 of that agreement.

27. A reserved maters application for landscaping the country park north course was subsequently approved in February 2004. Bryant Homes secured permission for reserved matters for 146 dwellings (July 2004) and Bovis Homes a total of 169 dwellings on the north course (in 2004 and 2005).

28. A full permission for 11 homes was approved in May 2011. This permission took the overall total number of dwellings permitted at Wychwood Village to 326 and 716 dwellings overall across both north and south sites. This permission was granted subject to Countryside Properties, the applicant, entering into a s106 agreement relating to open countryside and facilities north of the A531 to permit the Country Park and the Community Hall to be managed and owned separately ('the 2011 Agreement').

29. The recitals record that the objective of the 2003 Agreement in so far as it related to the Country Park and the Community Hall was to secure landscaping to the Country Park, to provide public access in the long term and to secure the construction of the Community Hall. The 2011 Agreement confirms that the restrictions and obligations contained within it shall be substituted for the restrictions and obligations contained in the 2003 agreement in so far as they relate to the Country Park and / or the Community Hall and / or the application site. The only exception is Clause 4.4 of the 2003 agreement (that restricts the number of dwellings).

30. The 2011 agreement provides at Clause 4.1, a covenant not to carry out any development upon the Country Park or use the Country Park other than as a country park.

The Proposals

Appeal A

31. In December 2014 the planning application was submitted. The application site area is 64.74ha. The combined net developable area of the residential parcels is approximately 29.4ha[12].

32. The scheme is for up to 900 dwellings, a maximum of 5,200m^2 of employment floorspace (B1/B8) and a retail element comprising a maximum of 1500m^2 gross floor space, with a convenience store not exceeding 1000m^2. The scheme also proposes medical facilities with the potential for a doctor's surgery, pharmacy and dentist. A primary school, with initial capacity for up to 400 children and a nursery also form part of the appeal scheme. A range of recreation and leisure proposals are included comprising outdoor fixed play areas, formal and informal recreation space, a clubhouse, a public house and a café. As part of the open space proposals the development will increase the existing country park from 14.4ha to 44.5ha.

33. The scheme proposes 30% affordable housing which would equate to up to 270 dwellings based on the upper limit of the appeal proposal. An indicative masterplan[13] indicates an area (Parcel R7) that would be for retirement dwellings/nursing home and it is anticipated to deliver approximately 67 units. It is proposed that 5% of the total number of dwellings proposed would be 'self-build' homes.

34. The appeal proposes an employment parcel comprising 1.2ha and a total of 5200m². No individual class B8 storage unit shall exceed 500m². The proposed food store is limited to 1000m² gross. In addition there are a range of smaller units comprising A1 (retail) and A2 (Financial and Professional Services), with a total maximum floor space of 500m² and a maximum individual size of 100m². The total retail provision would therefore be a maximum of 1500m². The appeal scheme retains the Doctor's Surgery, Pharmacy and Dentist element of the proposal, although no indicative sizes are provided at this stage.

35. The appeal scheme includes the provision of a primary school with initial capacity for up to 400 children and a nursery. It would also provide for outdoor fixed play areas, formal and informal recreation space, a clubhouse, a public house and a cafe.

Appeal B

36. Appeal B seeks to modify clause 4.4 of the principal agreement so that the appeal site is excluded from the restrictions on the number of properties. In addition, Appeal B also seeks to modify the 2011 s106 agreement to allow the provision of an access road through the Country Park to serve the proposed development.

[12] Chris Waumsley's (CW) proof paragraph 6.34
[13] CD20

Other Agreed Facts

37. Although the Council refused the s106A application (Appeal B), it is common ground between the appellant and Council that Appeal B stands or falls on the outcome of Appeal A (the s78 planning appeal)[14]. This is not the position of WCG.

The Case for Haddon Property Developments

The material points are:

38. In opening submissions[15] the background to this appeal is set out. Cheshire East Council (CEC) has not sought to resile from the agreed position that the fact of, and reasons for, the closure of the former golf course is not a material consideration militating against the grant of permission which the Appellant now seeks. WCG has continued to cast doubt on the probity and evidence base surrounding the closure. But the evidence shows that this was a matter considered by Sport England, which has withdrawn its original objection. Further the Inquiry was told that the closure of Gorstyhill golf course has not been the only one[16]. It would seem that a local 'rush to golf' in the 1990s has not proved to be commercially sustainable. So far as golf is concerned, 'we are where we are'. There is simply no prospect that if this appeal is dismissed that the north course at Gorstyhill will be re-opened.

39. At the close of this Inquiry no one has seriously doubted the national and local need for more housing. The Secretary of State assessment, given to the Party Conference in Birmingham in October 2016 is of relevance. The appellant agrees that the need for housing is "a huge issue for our country" and that "building more homes is critical", "that having a safe, secure home is so important" and that despite the good work done to date "there's still a long, long way to go."

40. Even though the Council is about to adopt a new local plan, as at 31 March 2016 the housing shortfall was 5,205 dwellings below what has been needed in this borough since 2010. The appellant agrees with the Secretary of State that "tackling this shortfall is ... a moral duty." It most certainly is "time to get building".

41. It is true that the local community and the local MP[17] are against the proposal, but the appellant agrees that we all have "a responsibility, not just to our constituents, but to the next generation." In this case, the proposal is not "in the wrong place", there will be "enough infrastructure" and the development will not be "just plain ugly". The appellant takes comfort from the fact that the Secretary of State is "willing to take difficult decisions, make the hard calls, in order to build a better Britain for everyone."

42. Of course, the appellant does not suggest that one should approach Appeal A in any way other than in accordance with the statutory framework: the outcome must be in accordance with that indicated by the development plan unless material considerations indicate otherwise.

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[14] See Statement of Common Ground.
[15] ID1
[16] see for example ID10 from Councillor Clowes
[17] ID5

43. The issues raised by the Council in those reasons are (a) Development in the open countryside location contrary to development plan policy; (b) Harm to the character and appearance of the countryside by virtue of proposed density, layout, distribution of uses and lack of connectivity; (c) Insufficient evidence to show the required / adequate levels of open space / play space will be provided; (d) Insufficient evidence to show existing level of barn owl activity on site can be safeguarded (subsequently resolved and withdrawn[18]); (e) Prematurity - compromise to the spatial vision for the future development of the rural areas within the Borough set out in the emerging LPS[19].

44. Both the Appellant and Council submitted evidence dealing with the 2nd and 3rd putative reasons. But it was subsequently agreed that while this evidence will 'lie on the table' it was not discussed further at the Inquiry. Instead, conditions and planning obligations will ensure the future submission of a masterplan and open space strategy which can be approved by the Council before or at the same time as the first reserved matters application. As all matters are reserved in this outline application this is an entirely sensible outcome, wholly in line with the Secretary of State's advice to parties to look for 'solutions not problems' (NPPF paragraph 187). Other technical matters are also agreed, for example highways and flood risk between the Council and the appellant, though some third-party objectors remain to be convinced.

45. Further matters of agreement are set out in the SoCG. In addition the Appellant suggests the following matters have not been disputed and ought to be regarded as being uncontroversial:

    (a) The distances to facilities before and after development[20] and distance savings that would follow from the appeal development[21];

    (b) The impacts assessed in the ES[22];

    (c) That although the appeal site is in the open countryside, it is not a "valued landscape" for purposes of NPPF, paragraph 9 nor a designated landscape for the purposes of paragraphs 115 & 116.

46. The appellant accepts that the adopted CNRLP, on the basis of a breach of policy NE.2 and RES.5, indicates the dismissal of the appeal. The appeal site is in the open countryside where housing led development is only exceptionally countenanced. The approach is consistent with the NPPF and is broadly being carried forward into the LPS (although whereas formerly countryside was 'protected for its own sake', it is now 'recognised for its intrinsic beauty').

47. However, in considering what weight to give that starting point in the s38(6) planning balance, the appellant draws attention to a number of matters that suggest that as a result of the impact of the development on the countryside, the appropriate weight does not lie at the top end of the scale.

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[18] see Adrian Fisher's (AF) proof paragraph 1.8 and CW's proof paragraph 6.68 and Appendix Tab 13/M
[19] CD36
[20] The application was supported by an Environmental Impact Assessment (EIA)
[21] CW proof paragraph 6.26 & table 3
[22] Summarised by CW in his proof at Table 12.

48. As well as being 'open countryside' the appeal site is also covered by an RES.1 housing designation (not allocation) which the appellant's witness refers to as a "tandem" designation on the appeal site. It is accepted by the appellant that this shows a development commitment (the permission for the two golf courses and housing) and appendix 1 records that at that time 475 houses remained to be built. What this plainly demonstrates is that this particular piece of countryside is one where it has been considered acceptable in principle for housing since about 1990. Indeed, the last grant of planning permission for housing in this area was in 2011. To be clear, 900 more houses would take the total beyond the RES.1 'residual', but the point is this is an area of open countryside that the planning authority has consistently not regarded as having an 'in principle' objection to more housing when it needed to.

49. As already noted, the appeal site is not a 'designated' or 'valued' landscape. Landscape and visual impacts are not recognised as being problematic by the Council. The report to Committee[23] records the Council's landscape architect's views (p108-9) as being supportive of the judgments in the Appellant's LVIA and concluded that "*the landscape and visual impacts of the proposed can be mitigated with appropriate design details and landscape proposals. This could be ensured through the reserved matters, appropriate conditions and the S106 agreement*."

50. Policy BE.2 Design Standards[24] has at its second bullet point a requirement that developments "respect the pattern, character and form of the surroundings". The harm identified suggested in the second reason for refusal, properly analysed, relates to "character and appearance of the countryside". The causes of the alleged harm are (i) proposed density, (ii) layout, (iii) distribution of uses and (iv) lack of connectivity. The report to Committee (p112-3) analysed the likely density of the proposed development and concluded that delivering an urban form of c900 dwellings would be "inappropriate in a rural setting" and that "the number should be reduced considerably". The report thus identified a 'problem' and a 'solution' at the same time in the terms of the very clear advice in NPPF paragraph 186 and 187. This is clearly going to be a matter for detailed design and the appellant's 'solution' that any development be limited to "up to" 900 dwellings, and the joint position regarding the need for a further iteration of the masterplan prior to detailed design, is the appropriate response.

51. The report to Committee (p113-4) discussed the issue of layout and the distribution of uses on the illustrative masterplan - none of these criticisms had been made during the 17 months the Council was considering the application. The appellant's planning witness states in his proof that "whilst technical objections were addressed throughout the application process, CEC did not express a view on matters such as the masterplanning which subsequently became a reason for refusal."[25] Again, any such 'problem' will find its 'solution' at or prior to the reserved matters stage pursuant to the proposed conditions / obligations. Such an approach is consistent with the Council's approach elsewhere in the borough. The appellant's witness shows that at a site at Sydney

[23] CD29
[24] CD33, Page 34
[25] CWs proof at paragraph 4.10

Road it was content to 'flag up' the issue at the time of the outline application for careful scrutiny at the reserved matters stage[26].

52. Reason for Refusal 3 expresses the concern that the provision of "adequate levels" of open space / play space, as required by policy RT.3, have not been demonstrated. This is a quantitative issue not a qualitative one. However, the report to Committee (p102) states that "Policy RT.3 of the CNRLP requires that on sites of 20 dwellings or more, a minimum of 15sqm of shared recreational open space per dwelling is provided and where family dwellings are proposed 20sqm of shared children's play space per dwelling is provided. This equates to 4125sqm of shared recreational open space and 5500sqm of shared children's play space. This totals 29,750 sq. or 2.9 ha based on up to 850 family homes (2-4 bed units), whilst accepting that a proportion of any housing will also be 1 bedroomed and therefore not counted as family accommodation. The amount of open space provided is considerably in excess of this and also includes expansion of the Country Park."

53. The report goes on to identify other concerns that in essence all go to 'layout' and qualitative matters. Once again, so far as a 'problem' is identified (which is not accepted) the 'solution' will be arrived at during further masterplanning and detailed design. The Appellant is grateful for the 'heads up' on public open space matters that will need to be addressed further from the Council's point of view.

54. The concerns so far expressed about the amount and quality of the extended country park are misconceived at this stage[27]. The plan at Appendix Tab 12/L of the appellant's proof shows what must now be regarded as an example of the existing and extended country park. What is clear is that in principle an enhanced network of green amenity space can be delivered for the enjoyment of all. There is no dispute with the Council in respect of compliance with policy NE.5 Nature conservation and habitats,[28] again subject to conditions and obligations.

55. So, the Appellant submits that more housing can be provided than the Council is planning for, of the order of magnitude proposed by the Appellant, in the open countryside and without unacceptable environmental impact at the Gorstyhill appeal site.

56. Of course, that does not diminish the harm resulting from the breach of countryside policy. But in the circumstances full weight should not be given to that harm. It is not a particularly valuable piece of countryside or one that cannot absorb well designed development proposals even at a substantial scale. The appellant's planning witness judges that the weight ought to be somewhere between "moderate" and "substantial". This is a perfectly sound and respectable position which the appellant commends to the Secretary of State.

57. The Appellant submits that the appropriate conclusion for the Secretary of State to reach on the 'starting point' indication given by a consideration of the development plan as a whole is that:

[26] CW's proof at paragraph 6.38-43
[27] As explained by CW in his proof (p74) and in the ES (CD18 & 12, CH 12 Ecology and Appendix 12.2, paragraph 4.1
[28] CD33, p16

(a) There is an 'in principle' development plan policy objection to development in the open countryside;

(b) In this part of the open countryside the harm or impact of that development is not substantial on any fair assessment;

(c) There is no other development plan objection - all matters can be satisfactorily addressed by detailed design;

(d) The weight to be given to the development plan indication in the s38(6) balance is by no means, as the Council would apparently have it, at the top of the scale.

Other Material Considerations

58. The emerging LPS has had a long examination period from submission in May 2014 to 'main modifications' consultation in January 2017. Adoption is still some little way off, and the Inspector's final conclusions have yet to be received. It is therefore at present a material consideration worthy of some weight. There is a real (as opposed to fanciful) prospect, subject to slip-ups, that it may be adopted in the second or third quarter of 2017 which may well be in the course of decision-taking on this appeal - if not by the time of the submission of the Inspector's report then by the time of the Secretary of State's decision.

59. The Council's fifth stated reason that it would have refused the application concerns 'prematurity'. The key issue on prematurity in this case is not with the 'scale' of the proposal, nor whether the identification of strategic sites is central to the LPS, but whether to grant permission now would undermine the plan-making process. In other words, would it 'pull the rug' from under the process? The answer is obviously "no". This is not a case that would end the LPS debate on how many or where strategic sites should be allocated (or in the case of the appeal decision referred to by the Council's witness[29] prejudge an ongoing Green Belt issue); all the sites identified in the plan-making process would still be allocated. There is also no evidence, for example, that granting this permission now will adversely affect the delivery of any of the planned strategic sites at Crewe or anywhere else in the plan area - indeed no such evidence emerged in the examination of the LPS. So, the evidential position is that the appeal proposal could only complement the plan's allocations and not undermine or prejudice it. A prematurity argument adds nothing to the weight that will be given to any breach of LPS policy.

60. Whilst it is accepted that a s78 Inquiry is not a re-run of a local plan examination, it is relevant to consider how the appeal proposal was assessed by the Council in the evidence base for and during the LPS examination process. The appellant submits that this shows that:

(a) The Council supported from an early stage the concept of a South Cheshire Growth Village (SCGV) South East of Crewe as part of a suite of sites of varying character to make a contribution to the housing needs of Crewe where growth was (and still is) to be encouraged[30];

[29] Appendix 13 of AFs proof
[30] see CW's proof paragraph 5.111

(b) The appeal proposal was within what might properly be regarded as the 'area of search' (even if a formal area was never designated) for a SCGV and was a candidate project;

(c) In March 2014 the Council's "non-Preferred Sites Justification Paper" explained Gorstyhill was not "progressed at this time ... because there are more appropriate sites ..."[31];

(d) In July 2016 the final points taken against Gorstyhill by the Council[32] were accessibility to services and facilities in Crewe[33], the fact that it is a greenfield site[34] and the impact on the character and urban form of Wychwood Village on the basis that "The site wraps around an existing village and country park but does not adjoin any built up frontages";

(e) On the 'plus side' it is apparent that the project had much to commend it including that it would be "sustainable in itself"[35].

61. The assessment of Gorstyhill can be compared to that for the allocated CS37 Crewe Hall SCGV[36]. It too had three red traffic lights; but its de-merits were somehow 'excused' on the basis of services to be provided on site or elsewhere. HS2 growth opportunities were a positive feature as was the potential for new public transport access to Crewe railway station. The majority of all this can also be said in respect of Gorstyhill, but it was not. The appellant thus considers that its proposal was never seen through the same lens as that used to assess that of the Duchy of Lancaster site who has been successful in securing a number of site allocations in the LPS.

62. The appellant submits that the Gorstyhill project was not finally rejected by the Council as unstainable[37]; it was rejected because the Crewe Hall project was judged by the Council to be more sustainable[38]. The examining inspector made clear that his duty was to accept that judgment unless something had gone seriously wrong. The appellant's judgment is supported by the fact that during the examination of the LPS the Council accepted the prospect of allocating a second SCGV at Gorstyhill in the event that it was necessary to make the LPS 'sound'[39]. It also accepted, as did the promoters of the Crewe Hall allocation, that Gorstyhill would not have any adverse impact on the delivery of the Crewe Hall SCGV [40]. Gorstyhill was also not rejected on the basis that it would have an adverse impact on the delivery of any other allocations at Crewe.

63. The LP Inspector's Final Report is unlikely to consider the Gorstyhill project in any detail; he is likely to find the allocations at Crewe 'sound' (subject to the outcome

[31] CW rebuttal proof Appendix A, p9
[32] CD44
[33] paragraph 4.7
[34] paragraph 4.12
[35] CD44
[36] CD52, p36+ & 136
[37] see CW's proof paragraph 5.101
[38] See CW's proof paragraph 5.102
[39] See CW's proof paragraph 5.103 and Appendix Tab 3/C, p8
[40] See CW's proof paragraph 5.104 and letter from Crewe Hall promoters at CD53, Appx1, paragraph 6.2

of HRA) with no need to consider 'omission sites'[41]. The soundness of the allocations in the LPS was also influenced by a good dose of pragmatism in the LP process - the examination had been going on for so long, and the need to release sites from the Green Belt, particularly in the north of the borough was so pressing, that there was simply no real opportunity to consider further allocations, for example to improve land supply in the early years of the plan period; this would all have caused further delay[42].

64. But it is important for the Secretary of State to have in mind that not being 'needed' to make a plan sound is not to be equated with the Gorstyhill SCGV being an unsound or unsustainable proposal. The Council's Urban Potential and Edge of Settlement Studies identified a pool of sites of about 40,000 including Gorstyhill[43]. In selecting sites from the pool to meet the requirement for 36,000 there were, naturally, almost endless permutations for the spatial distribution of development in the LPS[44]. It is clear that Gorstyhill could have been chosen in the beauty contest that followed, but it was not; but this was not because it was not a perfectly selectable and sustainable candidate, it was because Crewe Hall SCGV was, in the Council's view, judged to be better. In this beauty contest second place was a more than respectable place to be.

65. On balance, it would now seem that a Gorstyhill SCGV is not likely to be an allocation in the LPS - so much can fairly be read into the examining Inspector's latest 'Views on Modifications Needed' of 13 December 2016[45]. It will therefore not be 'plan led'. The issue then becomes a question of what weight to give to this emerging development plan conflict. All parties have examined this issue at this Inquiry.

66. Of the policies of the LPS mentioned in the reasons for refusal, Policy PG5 (p78) continues the protection of the open countryside. The appeal scheme does not fall within the limited exceptions to make it compliant.

67. The appeal site is, for the purposes of Policy PG2 located within the 'Other Settlements and Rural Areas' category[46]. In terms of its location the appeal proposal is not therefore compliant with this policy. Policy PG6 (p84) concerns the Spatial Distribution of Development. Both Planning witnesses have analysed how the appeal proposal would fare if up to 900 houses were counted against the expectations for the 'Other Settlements and Rural Area'. However, this is not the appropriate test in all the circumstances. The appeal proposal was conceived as a SCGV as part of Crewe's 'offer'[47]. When judged as part of Crewe's contribution to spatial distribution there is no harm at all to Policy PG6. The appeal site is plainly as well related to Crewe as other strategic allocations[48].

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[41] see CW's Appendix Tab 3/C, p7
[42] see CW's Appendix Tab 3/C p1, 6-10
[43] CD39, paragraph 54
[44]CD39, paragraph 65
[45] CD41
[46] CD37, p64
[47] For the reasons set out in CW's proof at paragraphs 6.71-75

[48] See plan in LPS (CD36) at p193 and Google Maps analysis at ID 14

68. LPS policies SD1 (p89) & SD2 (p91) set out the criteria required of 'sustainable development' in Cheshire East[49]. Neither of these policies are referenced in the reasons that the Council would have refused the application. This is, of course, consistent with the acceptance during the LPS examination that the Gorstyhill project amounted to sustainable development in itself, a point with which the Council still agree[50]. This is a matter which goes beyond the presumption in favour of sustainable development in the NPPF[51]. These policies are a quite deliberate expression of what is required if a development proposal is to be considered as being 'sustainable development' in the Cheshire East area.

69. Policy MP1.1 (p55) requires a "positive approach" so that "proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area". This does not require an application site to be allocated in the LPS before it is entitled to the benefit of the 'positive approach'[52].

70. LPS Policy EG2 supports the rural economy. The appeal proposal does this and no conflict with this policy has been alleged. Policy SC1 protects and seeks enhancement of existing leisure facilities. Again, this is not a policy cited in the Council's reasons for refusal and no point is taken by the Council or Sport England on the 'loss' of the golf course subject to conditions / obligations. The Country park will be enhanced quantitatively and qualitatively. The Council has not suggested any breach of Policy SC3 (health and well-being) nor Policy SE4 (landscape character and quality).

71. When judged against the requirements of the emerging LPS as a whole, the Secretary of State is invited to conclude that although the appeal site is not allocated for the proposed development and is, as a result, in breach of policy which protects the open countryside, it is nevertheless 'sustainable development' when judged against the local criteria, is entitled to a deliberate policy support for a 'positive approach', is well located in relation to Crewe and will therefore contribute to development needs at the top of the spatial hierarchy.

National Planning Policy Framework

72. It is convenient and conventional to start with NPPF paragraphs 49 & 14. There is not a 5 year supply at present; the range is 3.5 years (the appellant's calculation) to 4 years (the Council's). Policies NE.2, RES.5, NE.5, NE.6 and Policy RT.1 are identified as adopted CNRLP policies that affect the supply of housing. Of these policies NE.2 and RES.5 are listed in the reasons for refusal and were focused upon at the inquiry. These relate to the protection of the countryside.

73. The Supreme Court Judgement which favours a narrow interpretation of what are housing supply policies has little impact on the appellant's case. That is because these policies remain out-of-date in any event as they relate to settlement boundaries which were designed to meet housing requirements to 2011.

[49] See CW's proof at paragraphs 5.118-120
[50] see SoCG paragraph 6.10
[51] see LPS paragraph 9.30
[52] see CW's proof, p36 and Appendix Tab 3/C p12

74. The paragraph 14 "grant permission unless" presumption is fully engaged. Housing policies are out-of-date as they relate to a housing requirement up to 2011. In such circumstances and in the balance of trying to boost housing supply, the weight to be given to open countryside policies which are restricting housing delivery should be reduced. The first 'adverse impact' is obviously that the proposal is not plan led. Although the LPS was originally intended to make all strategic allocations, that is no longer necessarily the case. It seems likely that existing allocations, including strategic allocations[53], will be revisited in Part 2 if only for monitoring purposes, which even the LDS does not anticipate being in place until the end of 2018. Thereafter a review of the LPS will doubtless follow.

75. The Council's witness explained that part of the 'harm' in permitting development that is not plan led is that it can cause a loss of public confidence in the planning system. But that does not explain the scale of local opposition in this case. The Appellant arranged a public exhibition event locally in March 2013 (CD7, paragraph 6.2) and set up an on-line consultation portal which was open for 28 days (CD10). In May 2013 the Council consulted on "Possible Additional Sites Proposed by Developer and Land Interests" which included the Gorstyhill site. Just prior to that consultation the Leader of the Council, Councillor Jones, wrote to residents in the vicinity in surprising and striking terms making it clear that sites such as Gorstyhill would be resisted by the Council and seeking popular support for this approach[54].

76. Unsurprisingly local people rallied to the cause. It has been suggested by the WCG representatives that Councillor Jones was acting in a personal capacity as he toured the village halls speaking to local communities. If this is correct, why then did he write on Council headed notepaper in his capacity as Leader of the Council? The Gorstyhill project was pre-judged from the outset and it is now apparent that no amount of calm deliberation can reverse entrenched opinion. Attempts to list the golf course and temporary club house as an Asset of Community Value were unsuccessful[55].

77. The Weston and Basford Neighbourhood Plan had been published at the time of the inquiry[56] and the regulation 16 consultation has recently commenced. It purports to be based / build upon the LPS. It is quite clear that the main driver for its production was the Gorstyhill planning application in order to fight this proposed development[57]. Unsurprisingly Policy H1 countenances small scale schemes only which meet locational criteria i.e. not the appeal scheme. Policy H4 foreshadows a tight settlement boundary being drawn around Wychwood Village.

78. The Appellant has submitted an objection to the NP[58] on the basis that it does not meet the 'basic conditions' as it does not contribute to the achievement of sustainable development. At present, and notwithstanding the consultation that is underway, it should still attract only limited weight for the following reasons:

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[53] see CW's proof p37
[54] CW rebuttal proof appendix B paragraphs 5.4 & 5.5 & Appendix; the signed letter from the leader of the Council is at Appendix N to the Appellant's Statement of Case (CD23)
[55] See the First Tier Tribunal decision at Appendix M to the Appellant's Statement of Case.
[56] CD55
[57] See CW rebuttal proof Appendix C and ID 13
[58] see CW's rebuttal proof Appendix D

- The outcome of the (regulation 16) NP consultation is still unknown;
- The outcomes of the regulation 14 consultation is not clear – the consultation statement fails to provide any meaningful information or explain the position in relation to unresolved objections;
- The Council is unable to demonstrate a five year supply of housing land and so policies relevant to the supply of housing would be out-of-date.

79. It is accepted that there will be a loss of countryside (contrary to LPS policy) and urbanisation of what is now a 'green' site. However, as already discussed above, with mitigation there will be no substantial adverse impact on the character and (visual) impact of/in the wider countryside. The ES accepted some impact (see CW p9, Table 1) on and very close to the site itself.

80. Given, as we have already explained, 'prematurity' is not really a freestanding element of harm in this case (in effect the real harm is being contrary to the LPS open countryside policy), that is the extent of the harm relied on by the Council. As explained during the Inquiry, CEC's is an "in principle" policy objection.

Benefits

81. The contribution of the proposed development to the national need for housing is an important benefit. It is necessary to address the weight to be given to boosting the supply of housing in the planning balance. There is no 5 year supply. The Council is bringing forward the LPS and the Inspector examining the LPS was naturally concerned to ensure that its adoption would enable the demonstration of a 5 year supply. However, based on the preferred method of making up shortfall in the first 5 years the Council had to tell him that 'it can't be done'. The options open then were stark: find the plan unsound or adopt a plan on the basis of a pragmatic compromise. Unsurprisingly the latter approach was given the nod and `Sedgepool8' was born. The Inspector obviously thought it was sound to assume it would be successful, based on the 31 March 2016 base date evidence that he had. But since then there have been signs of stress on the delivery assumptions from strategic allocations. These were the subject of the appellant's Rebuttal proof and the Inquiry round table session to consider HLS (ID20 and ID21).

82. The appellant's witness accepted[59] that this exercise is not "comprehensive" because it does not consider 'swings' as well as 'roundabouts' and that in any 12 month period some predictions will underperform but may be offset, in whole or in part, by information about better than predicted delivery elsewhere. Until actual completions are counted at the end of the 'housing year' it will not be possible to see if enough houses were completed to ensure that the shortfall did not get worse, or so many were completed that the shortfall was reduced. All that is for the next comprehensive 'annual update' which is likely to be produced around May / June 2017 (2 to 3 months after the 31 March 2017 base date). But the 5 year supply explained to the LPS Inspector is 'on a knife edge' at just over the required 5 years. It will not take much in the way of 'unfortunate events' to tip it below 5 years.

[59] in XX

83. But an inevitable consequence of 'Sedgepool 8' is that the substantial shortfall of 5,205 dwellings will not be made up for 8 years[60]. It is described by the appellant's witness as a "sub-optimal compromise"[61] and means that those waiting for the planning system to deliver much needed housing will have to wait longer. If un-allocated but sustainable development like the appeal scheme can be approved to accelerate meeting the shortfall, the planning system should allow them to come forward.

84. The Council appears to accept this in principle, but retort that the appeal scheme is not likely to contribute substantially (or significantly) to the shortfall in the 5 year supply period. The Secretary of State will have to reach a view as to the likely delivery timescale and rates on the appeal site if he grants permission. There is a wide panoply of evidential indicators to assist him, but in order to make a meaningful comparison it is necessary to ensure that 'apples' are being compared with 'apples' and not 'pears'. Asking what a site might contribute to a particular 5 year supply period depends on when in that period permission is granted and actual building then commences.

85. Obviously a site which is permitted towards the end of a year has a reduced opportunity in which to deliver in that 5 year period. It is more reliable to look at a 'standard' 5 year period measured from a common event such as a grant of planning permission.

86. On the basis of the Council's 'standard methodology' set out in the Housing Supply and Delivery Topic Paper[62], the appeal site is judged to deliver 105 to 180 dwellings depending on the number of housebuilder outlets on the site. The figures derive from an assumption that from both the grant of outline permission and the grant of full permission / reserved matters on a site of 500+ houses with 3 outlets there will be 30 completions in year 2 and 50 in years 3 to 5 (CD 41, Appendix 6). This, the Council's witness said is to include both market and affordable housing. The Council will adopt different delivery rates where it has 'bespoke' site specific information from promoters / developers. It seems reluctant to do so in this case.

87. ID20, discussed in the 'round table' session appears to indicate that the combined Wychwood Park and Wychwood Village sites between a grant of full permission in April 2000 and April 2009 delivered a total of 605 dwellings. For this 9 year period one should, assume that in year 1 there were no completions and that on average the succeeding 8 years the average was 76 dpa (605/8 = 76). On these developments affordable housing was off-site; had they been on-site and applying the current requirement for 30%, the total number of dwellings would have been 864 at an average of 108. Of course the 'crash' came in 2008, very late in the period so perhaps it would not have made a material difference.

88. The Appellant's evidence is that relying on builders' expectations 531 might be delivered within 5 years of a grant of outline permission[63]. The appellant discounts this by up to 25% for robustness's sake. On a full discounted basis 143 dpa at peak production would reduce to 107.

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[60] See CD41
[61] CW's proof at paragraph 5.90
[62] CD41
[63] CW's Appendix E, Tab 5

89. There would seem to be some synergy between 107 and 108. Assuming in this case that outline permission was granted in the summer of 2017 and that in year two a half of peak was achieved (54) and thereafter 3 years at 108 then the appeal site would contribute 378 dwellings in the 5 year supply period from 1 April 2017. If the period is extended by 2 years to encompass the period of shortfall recovery in Sedgepool 8, then the contribution is 594 dwellings.

90. In any event, whichever methodology is applied the contributions are plainly significantly material. Of the above contribution 30% would be affordable housing (in line with LPS policy SC5). That is also very significant against the background of the current shortage[64] and as was recognised in the report to committee[65]. The s106 obligation gives a priority to key workers. The appellant has reserved 5% of the output for self-build homes on serviced plots to accord with the priority that the Secretary of State has given to encouraging the small and medium housebuilding sector. This is a matter which deserves additional weight.

91. There is also the potential for modular homes; another of the Secretary of State's priorities. Specialist accommodation for the elderly is planned to be provided. The report to committee cast doubt on the delivery of this element on the basis of lack of interest of a provider[66]; but the Council had never asked for such evidence, although it is, in any event, now in place[67].

92. The delivery of a settlement extension that is 'sustainable development in itself' will have benefits for the existing communities of Wychwood Village and Wychwood Park that do not currently have sustainable access to social infrastructure. These existing two settlements (combined over 700 dwellings) have near access to very few facilities and services (the report to committee included a table showing the current position at Wychwood Village without taking into account anything to be provided with the appeal development[68]); this will of course change if this development is approved[69]. So, the delivery of new retail, education, and sports facilities will help the existing 'deficit'. The fact that some residents' evidence to the Inquiry that they are quite happy with the current arrangement of having, for example, to drive to fetch a pint of milk because they 'bought into' a car dominated development is nothing to the point.

93. Public transport access will be improved. Local access to employment opportunities will be improved. Delivery mechanisms are set out in the s106 planning obligation to address the concerns about delivery set out in the report to committee[70]. There are two matters where the appellant lacks absolute control over delivery. There is an obligation to offer the Council a serviced and suitable site on which to build a school and an appropriate financial contribution towards construction. But the Appellant cannot compel the Council to build a school on site. However, given that the 900 dwellings will generate 171 primary school children (see RTC p85) and on the same basis the existing Wychwood Village

[64] see CW's proof at paragraph 6.16
[65] CD29, p101
[66] CD29, p102
[67] See CW's Appendix Tab 5/E (last letter)
[68] CD29, p99
[69] As set out in Tables 2 and 3 in CW proof pp62-64
[70] CD29, p99-100

community would generate 60, there will be more than enough 'demand' for a 1FE school (210 pupils) without even taking into account the children from Wychwood Park. It therefore makes no sense not to have a school at an extended Wychwood Village.

94. The site is capable of accommodating a 2FE school should the Council wish to expand provision in any education review. The same lack of control applies to health services. But the Inquiry heard from Cllr Clowes that, based on local experience, the provision of a satellite medical practice to the Shavington surgery was "feasible". The appellant will provide the opportunity. It can do no more than that.

95. The appellant has produced evidence that shows a biodiversity net-gain achieved through a Landscape Ecology Management Plan (last part of CD17) supplemented by the Barn Owl mitigation strategy (in CD22). Further opportunities will be explored in updating reports required by condition.

96. The benefits to the local economy have been set out in the Regeneris report[71]. They are substantial on any measure and have not been called into question during the Inquiry.

97. As already stated, Crewe and its environs is an area where the Council is keen to encourage growth. The growth will and needs to continue as HS2 further fuels the Northern Powerhouse. Crewe is perfectly placed to bridge the gap between the Midlands Engine and the Northern Powerhouse. However, the LPS takes no substantial account of HS2 (on the basis it was not judged to be sufficiently certain in late 2014 / early 2015 when the Council was 'revisiting' the level of economic growth it should plan for during the suspension of the examination) and it proposes to leave 'HS2 related growth to a review of the LPS[72]. However, HS2 will bring further growth, particularly now that a hub station at Crewe is confirmed. The Council's witness argued that the main benefits of HS2 would not be experienced until 2028 and could therefore be planned for in a review of the LPS. However, this means, so far as HS2 is concerned, that plan-making in CEC is to be 'reactive' and not `proactive' or 'anticipatory'.

98. The appellant wonders whether the Secretary of State really wants the Council to wait until the main benefits come on stream before taking action or whether he wants to encourage the private sector to make investment decisions now so that jobs and homes are in place to take advantage of the early benefits of HS2 and therefore accelerate the arrival of the main benefits? The Council's approach can only delay the securing of the undoubted economic benefits to the region and the nation that tax-payer investment in HS2 at Crewe is designed and intended to deliver. The appellant submits that this adds significant weight to the benefits of allowing this appeal.

99. As with many developments the appellant is providing some contributions to mitigate impacts including the off-site highway contributions. These count neither as adverse impacts nor benefits in the planning balance.

[71] see CW's proof, paragraph 8.3 and Appendix P
[72] See CD39, paragraph 15 & CW's Appendix Tab 3/C p2&3

Conclusions for the appellant on Appeal A

100. This proposed development is not plan led. It is contrary to the adopted development plan and will not be allocated in the emerging LPS. Those promoting a Neighbourhood Plan are implacably prejudiced against it. However, there are in this case, so the appellant submits, weighty other material considerations that indicate that the Secretary of State should allow this appeal.

101. This development is 'sustainable in itself'. It was not rejected in the plan-making process because of any inherent deficiency or because it gave rise to unacceptable impacts. The Council did not select it because it was judged to be less sustainable than another option for a SCGV but because it was deeply unpopular amongst those who do not share the Secretary of State's appreciation of the moral duty to build more houses. The appeal site is well related to Crewe where growth is encouraged and will become more important if Cheshire East is to take full advantage of the economic benefits that HS2 will bring at a huge cost to the taxpayer. Permitting this scheme will not cause any prejudice whatsoever to the delivery of allocated strategic development planned at Crewe. This mixed use scheme will address the unsustainable features of daily living of the existing communities of Wychwood Village and Wychwood Park. It will address the housing needs of a very broad cross section of the population including key workers. It will give a substantial boost to the local economy including small builders. There are no technical objections to a grant of permission.

102. Conditions and planning obligations will both secure the delivery of sustainable development and mitigate impacts. In short, this is just the sort of proposal that should be permitted to secure the delivery of homes that this country needs.

103. The Secretary of State is faced with a number of actual and potential 'moving targets' in this case the emerging LPS, a fresh 5 year supply assessment as at 31/3/17, the potential for the method of calculating 5 year supply to change if the recommendations of the Local Plan Experts Group are accepted, the emerging Neighbourhood Plan, a Supreme Court case concerning the interpretation of important parts of the NPPF, judicial review of the Written Ministerial Statement of Dec 2016.

Appeal B – section 106B appeal

104. As the SoCG records, both the appellant and Council agree that the outcome of Appeal B should be the same as Appeal A. This means that if Appeal A is dismissed, the appellant does not require the Secretary of State to consider Appeal B.

105. In this case the application is to amend clause 4.4 of the 2003 Agreement and clause 4.1 of the 2011 Agreement. The application states that "with the modifications proposed [the clauses] will continue to serve their purposes equally well". This is obviously a reference to the test in s106A(6)(c) of the Act which states "... the authority may determine - ... if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications."

106. The first issue is whether the current obligations serve "a useful purpose" (emphasis added). The Courts have held that whether or not a planning

obligation serves a useful purpose, or would do so equally well if modified, does not require that the useful purpose is related directly to the underlying development or its mitigation (R(Renaissance Habitat Ltd) v West Berkshire DC [2011] J.P.L. 1209). The second is whether the purpose that continues to be served is "useful". This means a useful planning purpose (R (Batchelor Enterprises Ltd) v North Dorset [2004] JPL 1222).

107. The original purpose of clause 4.4 limiting the number of houses to 725 appears on the face of the Agreement itself. Recital (E) in the 2003 Agreement records that the purposes include "that certain other provisions are agreed to regulate to the satisfaction of the Borough Council the manner in which the development described in the Applications is carried out". As that development has now been carried out, that original purpose has plainly been effective and the relevant parts of the obligation have fulfilled their original purpose.

108. As noted above, it is material to consider whether there is still a useful planning purpose in respect of the limitation to 725 dwellings on the wider land. If the Secretary of State allows Appeal A and grants permission on the basis that more housing is needed, and that the proposal amounts to sustainable development, then it is clear that any continuing planning purpose is not, as a matter of planning judgment, "useful".

109. The original purpose of clause 4.1 the 2011 Agreement is evident from Recital (D): "The objective of the 2003 Agreement insofar as it related to the Country park ... was to secure the landscaping of the country park to a specification approved by CNBC, [and] to provide for access in the long term ...". Clause 4.1 prevents any development (as defined by s55 of the Act) in the Country Park.

110. Again, while keeping land in the country park free from any development might have "a" continuing purpose, allowing the construction of an access road through the country park would not interfere materially with the public enjoyment of or access to the country park as such. Further, the existing Country Park is to be enhanced in the current applications in terms of quantitative and qualitative improvement. The land lost to the access road will be off-set by an expansion of the Country Park, and so preventing this advantageous state of affairs would not serve a "useful" purpose and would allow public access to be enjoyed "equally well".

111. It is clear that a principal ground of objection by WCG is a feeling that in the purchase of their properties they were assured by 'due diligence' they were 'protected' for all time by restrictive covenants and the covenants in the s106 obligations. They told the Inquiry that 'we are all equal' and have 'equal rights'. However, whatever they think or were told at the time of their purchase, there is a statutory scheme for seeking modifications to s106 obligation covenants, and the restrictive covenants on the title documents do not have the effect they think.

112. The Land Registry transfer deed between Countryside Properties Ltd and Bovis Homes Ltd dated 31 March 2004 sets out what the transferee (Countryside Properties) covenants in Schedule 3. It covenants not to develop the land other than in accordance with planning permissions including those granted on 21 November 1990 (7/16321) and outline planning permission granted 8 October 2003 reference P02/1079 and not to construct more than 55 dwellings.

There is no restrictive covenant that says development cannot take place on the Country Park.

113. The Land Registry transfer deed between Countryside Properties and Haddon Property Developments Ltd dated 14 September 2012 is also within the WCG Homeowners Pack. The restrictive covenant contained in clause 12.1 and 12.2 ensures that no development can take place in the country park unless the covenants set out in paragraph 6 and 7 of the Schedule (as far as applicable) have been performed. These paragraphs essentially require a payment to be made to Countryside Properties should Haddon wish to develop on the Country Park and ensure that any successor in title is also bound by the same restrictive covenant (To find paragraphs 6 and 7 it is necessary to look at the appellant's rebuttal proof of evidence Appendix G (Tab 7)). There is no covenant restricting the development of the Country Park per se.

114. For these reasons, Appeal B should be allowed.

The Case for Cheshire East Council

The material points are:

115. The Council considers that the appeal should be dismissed as applying section 38(6) of the Planning & Compulsory Purchase Act 2004 determining the application in accordance with the development plan means that it should be refused, and material considerations do not indicate otherwise. Instead, material considerations add force to the case for dismissing the appeal.

116. In relation to the first limb of section 38(6) the site is within the "open countryside"; building hundreds of homes on it breaches saved CNRLP policies NE.2 & RES.5 such that determining the application in accordance with the development plan means that it should be refused.

117. It was agreed that the proposal is for the development of land outside the settlement boundary, and therefore in "open countryside", without satisfying any of the listed exceptions. The proposal is therefore in conflict with both policies NE.2 and policy RES.5 of the CNRLP[73]. The Development Plan would therefore require a refusal of permission and dismissal of the appeal.

118. The meaning and effect of the development plan is a matter of law. The appellant's planning witness is plain wrong to argue that the site is the subject of a "tandem designation" (or allocation) for housing development. Paragraph 7.11 of the CNRLP refers to "the Housing supply [having] been updated to include the position as at 21 September 2004 (see also Appendix 7.1)"; Appendix 7.1 lists the "number of dwellings remaining" [i.e. to be completed] on "Major Housing Commitments" as at "September 2004" and records for Reference 14 "Weston Hall Estate, Weston" that 474 dwellings remained. In other words, this simply records for the purpose of calculating the "commitments" line in the then "Housing supply figures" (see the title to Table 1 on page 59 of the Local Plan) what at that time remained to be built out under then extant planning permissions. There is no policy in the CNRLP that allocates the appeal site for housing development.

[73] CD33, p.14 and 61

119. The Council's witness explained in examination in chief that the appellant has misunderstood the purpose of identifying 'commitments' on the Proposals Map by carefully going through (a) paragraph 7.11 of the CNLP[74], (b) page 125 of the Local Plan (which describes Appendix 7.1 as recording "Housing Commitments (September 2004) with more than 10 units remaining"), (c) Appendix 7.1 itself[75], and (d) the Urban Areas Proposals Map for the Local Plan[76].

120. On the basis of that material, it is argued that the Proposals Map clearly distinguishes between "commitments" (i.e. extant permissions at the time the plan was prepared), which are indicated by orange boundaries, and "allocations", which are indicated by purple/orange stripes. The "Weston Hall Estate, Weston" boundary, coloured orange, is therefore clearly indicated to be a commitment. The boundary represents the red-line boundary of the then extant planning permission, which included residential development on certain areas and significant areas of open space (including golf courses) on others. There is no sense in which the orange boundary was intended to "designate" or "allocate" the entire land within it, and therefore the appeal site, for housing. To the contrary, in the "commitment" in question the appeal site was permitted and protected as open land, not to be built upon.

121. In cross examination of the Council's witness, the "tandem designation" point was heavily watered-down into a suggestion that land within the orange boundary was simply considered acceptable for an "element" of housing. This is beyond dispute, but the "element" of housing is what subsequently became the hamlets of Wychwood, and there is no policy basis for a further "element" of housing on the appeal site, which (as said) was permitted and protected as open (unbuilt upon) land.

122. Therefore, the notion that the CNRLP designates the land in the orange boundary as a "wide housing commitment zone, including the appeal site[77]" is misconceived. There is no confused tension between the housing commitment and open countryside designation on the proposals map as suggested by the appellant. The "housing commitment" is what is now Wychwood Village & Park and the "open countryside designation" of the appeal site is entirely unaffected by this.

123. The appellant refers to a committee report produced by the Council which refers to another site which fell within the orange line[78]. The report states: "with the site being allocated in the Local Plan for residential development there are clearly no planning policy conflicts in the use of this site for residential development". However, the appellant's witness accepted that this interpretation of the CNRLP policies and Proposals Map was simply wrong[79].

124. He also conceded that the orange line incorporates an area of housing plus lots of open space (including the appeal site), and that there is nothing in the policy or Proposals Map which tells the reader that housing on the appeal site would be

[74] CD33, p.58
[75] Appendix B to CW's PoE
[76] Added to CD34 during the Inquiry
[77] CW's PoE, para. 6.4
[78] CW's PoE, para. 6.6
[79] XX of CW

acceptable despite it being open countryside. Just as there has been a consistent history of planning permission for housing on what is now Wychwood, there has been a consistent position by the current and former planning authority to regard the appeal site as an area that should not be built upon.

125. The suggestion by the appellant's witness that his "tandem designation" point had some relevance as a material consideration fails to understand that the dispute here is about the correct interpretation of the development plan as a matter of law, prior to any discussion of material considerations. Indeed, once the appellant's witness conceded that the first limb of section 38(6) would require a refusal of permission, there is no room left for his "tandem designation" argument. Even as a "material consideration" if anything it lends weight to the Council's case rather than the Appellant's because, as said, the "commitment" did not permit housing on the appeal site.

126. None of this alters the fact that the appeal site is "open countryside" (as it is outside the settlement boundaries defined on the Proposals Map) to which CNRLP policies NE.2 & RES.5 apply in terms. As explained already, this was conceded by the appellant's witness.

127. Turning to the second limb of section 38(6) namely whether material considerations indicate otherwise, the primary material considerations in this case are the NPPF and the emerging LPS.

128. The Council cannot demonstrate a five-year supply of deliverable housing sites. Accordingly, by virtue of NPPF paragraph 49, the relevant policies for the supply of housing should not be considered up-to-date. At the time of the inquiry the Council accepted that policies NE.2 and RES.5 were policies relevant to the supply of housing and therefore were out-of-date. However, applying the recent Supreme Court's ruling giving a narrow rather than wide interpretation on the meaning of "relevant policies for the supply of housing", the Council no longer views Policy NE.2 'Open countryside' as a relevant policy and therefore it remains up-to-date. This is a significant change as an out of date policy was synonymous with a reduction in weight.

129. The second bullet point in the "decision-taking" part of the "presumption in favour of sustainable development" in NPPF paragraph 14 applies under which planning permission is to be granted unless "any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole."

130. Weight is a matter of planning judgment according to the circumstances of the case in hand. The Supreme Court concluded on the matter of policies not directly related to housing and not out of date that "…the weight to be given to it alongside other material considerations, within the balance set by paragraph 14, remains a matter for the decision maker in accordance with ordinary principles."

131. The hiatus in housing supply is short term and temporary and will soon be overcome. In contrast, the Policy to protect the countryside, enshrined in the NPPF and exemplified in Policy NE2 and its successor Policy PG5 is long term and enduring.

132. In the Audlem Road, Stapeley decision (11th August 2016) (CD63) and prior to the SC judgement the Secretary of State concluded, that policies NE.2 & RES.5

are consistent with the NPPF (NPPF 17, 5th bullet point) and serve a sound planning purpose affording them "significant weight" (even though or despite their being out of date because the Council cannot demonstrate a five year supply of housing land).

133. The appellant's witness markedly disagrees with the Secretary of State as to the weight to be given to policies NE.2 and RES.5[80]. He gives "very limited" weight to both. During his examination in chief, he attempted to distinguish the present case from the Audlem Road decision, in order to explain his different weighting. He said that the loss of the site in the Audlem Road decision, unlike the present appeal site, was considered to (a) cause harm to the character and appearance of landscape which has value; (b) result in the loss of best and most versatile (BMV) agricultural land; (c) cause the loss of protected trees; and (d) that the "Sedgepool 8" approach (addressed in detail later) was not the Council's proposed approach to addressing the HLS shortfall in August 2016.

134. Taking first the points (a) – (c), i.e. the "environmental" differences, the appellant's witness accepted[81] that, in the reasoning at paragraphs 18-25 of the Audlem Road decision, which includes the Secretary of State's view as to "significant weight" at paragraph 25, there is no mention of any of the points (a) – (c). The appellant's case is instead that the conclusion at paragraph 25 was merely an "interim" conclusion as to the appropriate weight to attach to the policies, which was then modified later in the letter, once points (a) – (c) were taken into account.

135. It is submitted on behalf of the Council that this interpretation of the decision is wrong because:

(i) There is nothing "interim" about the phrasing of the Secretary of State's conclusion at paragraph 25: "[o]verall, having considered paragraph 215 of the Framework, he considers that these policies and boundaries carry reduced but still significant weight".

(ii) In the analysis of point (a) on harm to character/appearance at paragraph 26, the Secretary of State reiterates that "[f]or the reasons set out in paragraphs 22-25 above, he gives [the relevant] policies reduced but still significant weight". Therefore, far from point (a) modifying the Secretary of State's view as to significant weight, he expressly affirms the view in the analysis of point (a).

(iii) In the final assessment of the "Planning Balance" at paragraph 42, the Secretary of State says that "[f]or the reasons given at paragraphs 20-25 above, the Secretary of State considers that LP policies NE.2 and RES.5 are not up to date and carry reduced but still significant weight". Therefore, after all the consideration of points (a)-(c), his conclusion at paragraph 25 is re-stated again.

136. The appellant's witness has, it is submitted, muddled two completely different things, namely (i) the weight to be attached to the policies; and (ii) the weight to be attached to the harms for the purposes of the overall balance of the harms

[80] At para. 5.6 of CW's PoE
[81] in XX

and benefits. The weight that can be attributed to Policy NE.2 is now, since the inquiry, further enhanced given it is no longer out-of–date and its purpose and function remains as pertinent as ever.

137. Points (a) – (c) (i.e. the environmental issues) do not go to the former. A two stage process is required; first, it is necessary to consider the weight to be attached to the relevant policies (which the Secretary of State did at paragraphs 18-25); second, it is necessary to look at the weight of various harms in the overall planning balance (which the Secretary of State did at paragraphs 26 onwards). They are distinct stages. The weighting of harms in stage two will not influence the weighting of policies in stage one. There is therefore no basis for suggesting that points (a)-(c), being distinguishing features of the Audlem Road decision, should have any effect at all on applying the Secretary of State's "significant weight" assessment (as a minimum) to the relevant policies in the present appeal.

138. Turning to point (d) 'Sedgepool 8' - the appellant's witness suggested[82] that back in August 2016, unlike now, the Council had not come out and proposed the "Sedgepool 8" approach to addressing the HLS shortfall. Therefore the Secretary of State in the Audlem Road decision "could well have been expecting the Council would use the normal 'Sedgefield' 5 year approach". However, there is no indication that this formed part of the Secretary of State's reasoning in the discussion of housing strategy at paragraph 22 of the Audlem Road decision; the Council has never stated that it would follow the Sedgefield approach; and in any event, 'Sedgepool 8' as a strategy was first introduced by the Council in March 2016.

139. In summary on this issue, the attempts to distinguish the present case from the Audlem Road decision are bad points. Accordingly, the Secretary of State's "significant weight" is the minimum weighting to be accorded now to the relevant policies of the existing Local Plan although the Council consider the weight should be even greater.

140. The emerging LPS continues the protection of open countryside (including the appeal site) in policy PG5. The Council's witness said[83] that there was a "very clear conflict" between the proposal and emerging policy PG5[84]. Again, this does not appear to be disputed by the Appellant. Indeed the appellant's witness agreed[85] that the proposal breaches PG5.

141. Turning to the "Settlement Hierarchy" at emerging policy PG2[86], the Council's witness explained that the proposal fell into the lowest tier of the hierarchy, namely development in "Other settlements and Rural Areas" (i.e. not being development in a Principal Town, a Key Service Centre or a Local Service Centre). He said that the proposal for up to 900 homes is "*completely out of step*" with the need for development in the lowest tier to be "*confined to proportionate development at a scale commensurate with the function and character of the settlement*".

[82] in XIC
[83] In examination in chief (XIC)
[84] CD36, p.78
[85] in XX
[86] CD36, p.64

142. The appellant's witness incorrectly claims in his proof (e.g. paragraph 6.71) that, in terms of the Settlement Hierarchy at emerging policy PG2, the proposal should be seen as serving the needs of Crewe, a "Principal Town". He reached this conclusion, by pointing to site allocations that, despite being equally or thereabouts as far from Crewe compared with the appeal site, were considered to be meeting the needs of Crewe.

143. The Council finds no basis for such a view. The Settlement Hierarchy is concerned with the physical location of a site, rather than some less tangible assessment of what needs are being met. Geographically, the appeal site is not in Crewe and is separated by a clear distance (some 4 mile drive to Crewe Train Station) and is part of the rural area.

144. This point was picked up with the appellant's witness in cross examination by reference to the actual wording of policy PG2 (CD36, p.64), which sets out what is appropriate development "in" the Principal Towns and "in" the Key and Local Service Centres. The relevant question is therefore whether the appeal site is "in" Crewe. As explained by the Council's witness, the answer is obviously no. This undoubtedly places the appeal site in the lowest tier: Other Settlements and Rural Areas. It was put to the appellant's witness that he was muddling the distinction between where the appeal site locationally lies (which is the only relevant question regarding Policy PG2) and whose needs might be met by the proposed development (which is plainly not what the Settlement Hierarchy in PG2 is concerned with). The appellant's witness eventually accepted that the appeal site was on land defined as "open countryside", which connotes with "rural areas" under the lowest tier of PG2 in any event.

145. Emerging policy PG6[87], entitled "Spatial Distribution of Development", provides that "[t]he Other Settlements and Rural Areas are expected to accommodate … 2,950 new homes (including Alderley Park)" over the plan period. This lowest tier in the Settlement Hierarchy accounts for 89 parishes in the borough of Cheshire East. The approval of 900 homes in one location, as proposed, would be "grossly disproportionate", soaking up almost three quarters (72%) of the remaining site allocations allowance (once completions, commitments and Alderley Park are excluded)[88].

146. Even if the appellant is right to treat homes on the appeal site as attributable to Crewe for the purposes of the Spatial Distribution of Development set out in Policy PG6, the appellant's witness conceded[89] that, by reference to the Proposed Housing Growth Distribution in the July 2016 version of the emerging LPS (CD37, p.510), the appeal site is proposing more homes than any of the 10 strategic sites listed under Crewe, and would add another 17.5% (900 on top of the Crewe sub-total of 5,145) outside of the plan-making process.

147. Pulling all the threads together, the Council argues that the proposal would be in "direct conflict" with policies PG2, PG5 and PG6 of the emerging LPS. Furthermore, since the Secretary of State's Audlem Road, Stapeley decision, Examination Hearings sessions have been held in September & October 2016 to consider objections to the March 2016 Proposed Changes Version of the LPS and

[87] CD36, p.84
[88] As set out in the proof of Adrian Fisher for the Council (paragraphs 7.11 to 7.13),
[89] In XX

the Examining Inspector has issued his "Views"[90] which give a clean bill of health to the Council's position on all issues of potential relevance to determining this appeal including policies PG5 (protection of the open countryside); PG2 (the settlement hierarchy) and PG6 (spatial distribution of development); and that as an "omission site" the appeal site will not be recommended as a housing allocation. The LPS was almost literally on the eve of its 6 week consultation on Main Modifications at the time of the Inquiry.

148. As explained in paragraph 3 of the Examining Inspector's 13 December 2016 letter (CD40), the Inspector's approval for the Settlement Hierarchy (PG2) and the Spatial Distribution of Development (PG6) has been longstanding, reaching back to the Inspector's Interim Views in November 2014 (CD38), and that no evidence had been presented since to change those initial views.

149. The Council witness, who was also the lead officer at Cheshire East Council for the purposes of the Local Plan Examination Hearings, has been fully involved in the Local Plan process. He said that the Inspector's most recent views followed a number of weeks of hearings and consultations[91]. He confirmed that there was "nothing at all" in the Inspector's pronouncements in December 2016[92] to give any glimmer of support for 900 homes on the appeal site. Those pronouncements giving support for the key policies, the site allocations and the housing strategy are entirely inimical to the proposal.

150. The Council's witness also noted that the appellant had throughout the Local Plan process sought to persuade the Council and the Inspector that the appeal site should be allocated. As the site was not allocated in the draft Plan, it was treated during the process as an "omission site". The Examining Inspector determined in December 2016 that "there is … no need to consider in detail any "omission" sites"[93]. The next stage is the consultation on "main modifications", due to commence on 6 February 2017 for 6 weeks. The Inspector has had a direct role in reviewing the draft main modifications prior to consultation. There is "nothing at all" in the main modifications that might assist the appeal proposal. The appellant's witness accepted this.

151. The appellant in Opening[94] fairly concedes that "unless something changes dramatically, the appeal proposal is not going to be allocated in the LPS". The appellant also says that "[t]his s78 Inquiry will not be a 're-run' of the local plan examination". With respect, that is exactly what the appellant is attempting to turn this appeal into. Much of the case for the appellant relies upon the detailed history of the local plan process, which is all irrelevant now that the Examining Inspector will (subject to modifications that do not bear upon the appeal proposals at all) endorse the LPS as "sound" without the allocation of the appeal site.

152. The point in relation to protecting the open countryside from being built upon is that there is a continuity of protection of the appeal site as open countryside

[90] by letter dated 13th December 2016

[91] See also paragraphs 5.8 to 5.13 of AF's PoE.
[92] CD40
[93] paragraph 4, CD40
[94] ID1, paragraph 6

from the (2005) CNRLP through to the (2016) LPS. Given the now very advanced stage of preparation of the LPS, with this continued protection of the appeal site from being built upon having to all intents and purposes been signed off by the Examining Inspector, this means that even more weight can be given to the existing CNRLP policies (NE.2 & RES.5) because nothing of any relevance to the appeal site and the appeal proposals is going to change in the new LPS. It also means that very considerable weight should be given to the emerging LPS policy PG5 because the writing is on the wall for any notion that the appeal site will be allocated for housing development in the new Plan.

153. The Council's witness said there will be "no lurch in a different direction" in the emerging LPS as against the existing Plan, and that the emerging Plan "carries on in a similar theme" with regard to protection of the appeal site – as "open countryside" and from being built upon. This continuity, he said, "enhanced" the weight to be given to the relevant policies in both the existing Plan and the emerging Plan. The appellant's witness agreed with this during cross examination.

154. The Secretary of State in the Audlem Road decision[95] in August 2016 (i.e. prior to the LPS Inspector's latest views) gave the relevant housing policies in the existing plan "significant" weight. The Council's witness said that the only logical outcome following the December 2016 Examining Inspector's view was that "very significant" weight must now be attributed. As to the weight to be given to the relevant policies in the emerging Plan, he had regard to the three criteria in paragraph 216 of the NPPF (weight to policies in emerging plans). He concluded that "very significant" weight should be attached. Despite the LPS, at least in so far as is relevant to this appeal, being as good as settled, the appellant's witness was unwilling to attribute even "significant" weight. He would go no higher than "more than moderate, less than substantial". With respect, this simply doesn't make sense.

155. More generally in relation to policies protecting the open countryside, the appellant's witness was taken[96] to the Court of Appeal's decision in Gladman Developments Limited v Daventry District Council v SSCLG [2016] EWCA Civ 1146. In this case, the court was considering saved policies HS22 (a village infill policy) and HS24 (an open countryside policy, much like those in this case) of the relevant Local Plan. Sales LJ, with whom the other judges agreed, said at paragraph 42 *"… policies HS22 and HS24 were saved in 2007 as part of a coherent set of Local Plan policies judged to be appropriate for the Council's area pending work to develop new and up-to-date policies. There was nothing odd or new-fangled in the inclusion of those policies in the Local Plan as originally adopted in 1997. It is a regular feature of development plans to seek to encourage residential development in appropriate centres and to preserve the openness of the countryside, and policies HS22 and HS24 were adopted to promote those objectives. Those objectives remained relevant and appropriate when the policies were saved in 2007 and in general terms one would expect that they remain relevant and appropriate today. At any rate, that is something which needs to be considered by the Planning Inspector when the case is remitted, along with the question of the consistency of those policies with the range of*

[95] CD63, paragraph 25
[96] in XX

policies in the NPPF under the exercise required by para. 215 of the NPPF. As the judge observed at [49], "some planning policies by their very nature continue and are not 'time-limited', as they are re-stated in each iteration of planning policy, at both national and local levels."

156. This is exactly what has happened in Cheshire East with the continuity of protection of the appeal site as open countryside in the existing and new Local Plans. This protection of the appeal site from being built upon is also continued in the emerging Weston & Basford NP. Although little weight can be given to the NP in its own right at this early stage of its preparation, the better point and one which transcends this is that there is a consistent trend over many years of policies which are inimical to the appeal proposals. There is nothing in any of these Plans (the existing Local Plan, the very well advanced LPS or the nascent NP) which lends support to building hundreds of homes here.

157. The evidence submitted in the course of the Inquiry illustrates that the emerging NP is proceeding at a brisk pace. ID13 is a print out of a webpage from the Weston & Basford Parish Council website that sets out the current position and history of the emerging NP. ID7 is a statement from Mr Andrew Thomson, planning consultant to the Weston & Basford NP Steering Group, which summarises the state of play as at 31 January 2017. He anticipates a referendum on the NP in autumn 2017. A statement from Mr John Cornell, Chairman of the NP Steering Group, which states on the final page that "the Plan will now proceed swiftly to the Regulation 15 stage – the enthusiasm, pragmatism and resources are there to make this happen" is contained in ID8.

158. The very advanced stage reached in the preparation of the LPS also bears upon another point made by the Court of Appeal in Richborough that one potentially relevant factor alongside the extent of the HLS shortfall is "the action being taken by the local planning authority to address it". The HLS without the LPS in place (with its extensive revisions to the Green Belt to release housing allocations) stands at some 4 years (CEC) – 3.5 years (the appellant). However the independent Examining Inspector considers that sufficient provision will be made to achieve a five year HLS with the LPS without the need to consider omission sites.

159. There is no dispute between the main parties that the difference between the parties as to the current housing land supply position (4 years v 3.5 years) is not a material difference that is going to change the outcome of the appeal[97].

160. The Council's witness confirms that the forthcoming adoption of the emerging LPS is a remedy to address the HLS shortfall[98]. He also said that the Inspector considered in great detail the Council's approach to tackling the HLS shortfall[99] over three days of hearings during the most recent examination hearing sessions, hearing a wide range of views from participants. At paragraph 4 of his December 2016 letter[100], the Inspector concluded that the Council had "*established a realistic and deliverable means of meeting the objectively assessed housing need and addressing previous shortfalls in provision*". The Inspector recommended at

[97] As agreed by CW in XX
[98] AF confirmed in XIC (see also paragraphs 5.54-55 of AF's PoE)
[99] most recently set out in the Housing Topic Paper of August 2016 – CD41
[100] CD40

paragraph 5(viii) that the housing strategy should be included within the appendices to the Local Plan.

161. The Council's proposed strategy for correcting the shortfall is referred to as "Sedgepool 8". The concept is a "halfway house" between the Liverpool method (catching up over the remainder of the Plan period) and the Sedgefield method (catching up within 5 years). "Sedgepool 8" seeks to catch up with the shortfall within 8 years. This is what the Council proposed for adoption in the Local Plan. Many others at the examination hearings were arguing for Sedgefield and others for the Liverpool approach. The Inspector in December 2016 endorsed the "Sedgepool 8" approach and recommended that it be included within the appendices to the Plan[101]. Therefore, it is beside the point that the appellant (like others at the hearings) considers the Sedgefield method to be the "correct approach"[102].

162. The appellant's witness agreed that the Local Plan Inspector "signed off" on the 'Sedgepool 8' approach[103]. He also acknowledged that, underpinning this "sign-off", is the advice in the PPG that "local planning authorities should aim to deal with any undersupply [of housing] within the first five years of the plan period where possible" (CD41, Housing Supply and Delivery Topic Paper - August 2016 Update, para. 4.14). The Inspector accepted the Council's case, set out in the Topic Paper, in particular at paragraphs 4.17-4.21, that the Sedgefield approach would not be possible, realistic or achievable in the LPS.

163. Applying the "Sedgepool 8" approach, the Council's case (endorsed by the Local Plan Inspector) is that there will be a 5.3 year HLS at adoption. The appellant's witness applies his "amended trajectory" to reach a supply of 4.84 years under Sedgepool 8 (or 4.99 under Sedgepool 9)[104]. To get from 5.3 years to 4.84, he has attempted to identify "slippage" in relation to individual sites where the house-building is not likely to happen as quickly as had been anticipated.

164. The Council's witness considered the appellant's approach to be both wrong in principle and wrong in application[105]. In respect of the principle, it is necessary to undertake a "comprehensive" assessment at a single point in time, in this case 31 March 2016, to then be updated annually under the second bullet of paragraph 47 of the NPPF. Between that base date and the next annual update, some sites will perform worse than expected, and other sites will perform better, and other unexpected things can arise. The "cardinal error" is to pick and choose the sites that have done less well, and ignore the sites that have done better. The only coherent approach is to assess all elements comprehensively. The only relevant question is whether, at the initial point in time of the assessment, the Council used reasonable assumptions.

165. When this point of principle was put to the appellant's witness[106], he accepted that looking simply at a handful of sites is going to miss the overall picture. He

[101] CD40
[102] Paragraph 7.15 of CW's PoE.
[103] During XX
[104] CW's PoE, page 92, Table 8
[105] AF in XIC
[106] in XX

also accepted that the only comprehensive assessment has been undertaken by the Council (i.e. the Topic Paper – CD41) as at the base date of 31 March 2016. Such an assessment will be updated in due course this year (albeit the results may take a few months to be evaluated and published once the assessment is comprehensively completed). The appellant's witness also accepted that this update, if the past year has been a good year, will result in a lower figure for the shortfall, which, comprising a third of the 5-year HLS requirement as of 31 March 2016[107], would have a significant influence on that requirement.

166. As to the appellant's approach being wrong in application, the Council's witness suggested that a number of the identified "slippages" were inaccurate, and the Council has provided detailed rebuttal in relation to each identified site during the Inquiry (ID21). During the roundtable session held to discuss some of those sites identified, ID21 and the outcome of that session shows that the adjustments made by the appellant to the entries set out in the Council's HLS are, to some or other extent, unduly pessimistic.

167. Having regard to paragraph 14 of the NPPF, allowing the appeal proposals would undoubtedly bring real benefits, primarily through providing new homes (albeit only some 1/5th (the Council) or 1/3rd (the appellant) of the 900 would be completed within and count towards the five year HLS figures) including 30% affordable, and potentially, depending upon securing their actual delivery via planning conditions and / or obligations, by providing facilities, the adverse impacts would nevertheless significantly and demonstrably outweigh these benefits.

168. Applying the Council's standard methodology as accepted by the Local Plan Inspector as part of the overall housing strategy the Council's witness concluded that the site (once the house-building is up and running) could contribute 50 units per year[108]. The appellant's projection of 143 completions per annum (in years 3-5)[109] is not accepted by the Council. It fails to take into account the "law of diminishing returns" where there are three housebuilders on site – it is not possible to simply multiply the numbers for one housebuilder by three. In addition, the lack of proximity to facilities and Crewe would affect the rate of completion, as would the forthcoming allocation of around 4,000 homes within a few miles of the appeal site. The key reason for rejecting the appellant's optimistic projection is historically, as emerged during the roundtable discussion, the completions per annum for Wychwood Village and Wychwood Park (see ID20) were nowhere near the 143 per annum the appellant envisages for the appeal scheme.

169. Were the Council to adopt and apply the appellant's delivery projections to the Council's strategy generally, the Council would have a five-year HLS here and now in advance of the emerging Plan's adoption[110]. The Council's witness explained that despite wanting to agree with this optimistic approach regarding the borough generally, it was necessary to be realistic. The realistic approach

[107] See Table 5, page 87 of CW's PoE
[108] AF in XinC & AF PoE, para. 5.60
[109] see Appendix E of CW's PoE, page 5
[110] see AF's PoE, Appendix 6, page 18, Table 4, which shows the number of commitments at 17,329 on 31 March 2016, and page 22, table 4.6 which shows the supply requirement under Sedgepool 8 as 14,704.

embodied in the standard methodology was exactly the approach approved by the Local Plan Inspector.

170. In any case, the outcome of the dispute about how many of the 900 homes will count towards the 5-year HLS is not going to significantly alter the weight to be given to this benefit[111]. Of the total 5-year requirement (including the 20% buffer) at 17,046, the Council's figure of 180 versus the appellant's figure of 334 is equivalent to about 1% and 2% respectively of that requirement.

171. The appellant also relies on other "ancillary" benefits that the proposal will bring, namely a convenience store, five shop units, a doctor's surgery, a pharmacy, a dentist, a primary school and a nursery[112]. The Council's witness expressed reservations concerning the provision of new medical facilities and isolated employment units[113].

172. It was established that conditions could be imposed to secure the provision of the retail units by a particular stage of the development. However, there is nothing in the conditions or the section 106 planning obligation to secure delivery of the medical facilities. The appellant's witness admitted that there was a "leap of faith" to be relied on[114]. The Council's view, endorsed by Councillor Clowes, is that it is very difficult to deliver medical facilities due to processes beyond the developer's control. There is no evidence before the Inquiry of any interest in these elements. This is inevitably relevant to the question of how much weight should be attached to these points. The Council say that the weight should be limited due to the degree of uncertainty[115].

173. The Appellant seeks to establish a "benefit" of sustainability in the NPPF paragraph 14 balance. Paragraph 6.10 of the section 78 appeal Statement of Common Ground states that "if the services and facilities proposed within the appeal scheme are delivered in an appropriate phased manner, the development is capable of being sustainable in itself". The appellant made the point that this meant that the proposal amounted to sustainable development. The attempt to equate a development being "capable of being sustainable in itself" with a development being sustainable overall was resisted by the Council's witness [116]. He explained that sustainability "in itself" does not alter the fact that the site is in an unsustainable location. For this reason, the proposal is not "sustainable development" as set out in the NPPF and emerging policies SD1 and SD2 of the LPS[117]. Fundamentally, the appeal proposal is not sustainable development because it is so significantly at odds with the Plan-led approach.

174. Even if the proposal did comply with policies SD1 and SD2, the mere compliance of a proposal with development plan policies (whether existing or emerging) concerning sustainability, is not of itself capable of constituting a "benefit" in the NPPF 14 balance. It is what is expected in any event.

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[111] As accepted by CW in XX
[112] See CW's PoE, p.11, 2nd and 3rd bullets
[113] Explored more fully in section 8 of his PoE
[114] During XX
[115] paragraph 8.3 of AF's PoE
[116] Both in XX and subsequently in Re-examination (REX)
[117] CD36, p.89 and 91

175. Connected to the issue of sustainability, the appellant has suggested that the current Wychwood Village and Wychwood Park developments suffer from "sustainability deficits" in terms of existing facilities and services, and the proposal therefore presents an opportunity to address these (CD1, paragraph 4). It is clear from the evidence given to the Inquiry by the Wychwood Community Group that the local residents regard the available facilities and services, which include a pub and restaurant at the local hotel, as adequate, which may temper the alleged "deficits", relied on by the Appellant[118].

176. The main adverse impacts are that the proposals are fundamentally at odds with policies in the existing CNRLP and very well advanced emerging LPS which seek to protect the open countryside from being built upon and which direct housing development of anything like this scale elsewhere, there being a continuity in these Plans over many years of protection of the appeal site from being built upon; the scale of the proposed development (some 900 homes and other built development) means that the breach of these policies, as represented on the ground by way of harm to the open (unbuilt upon) countryside, would be very significant indeed; and allowing the appeal would be wholly against the plan-led system, not only in relation to the existing Local Plan but also in terms of the very well advanced LPS, through which the Appellant has tried but failed to secure the allocation of the appeal site for residential development. The Council's witness said that allowing the appeal for this site would "*drive a coach and horses through the emerging Plan*" by undermining the spatial distribution, the settlement hierarchy and the protection of the open countryside.

177. Paragraph 17 of the NPPF contains the 12 "core planning principles". The first principle – so far as relevant – is that "planning should … be genuinely plan-led". Paragraph 150 provides that "[l]ocal Plans are the key to delivering sustainable development that reflects the vision and aspirations of local communities". Paragraph 154 adds that: "[l]ocal Plans should set out the opportunities for development and clear policies on what will or will not be permitted and where".

178. The Council's witness said significant weight should be given to the adverse impact on the plan-led system. Granting permission would fundamentally undermine the views of the Local Plan Inspector, who considered and rejected arguments for more site allocations.

179. In the precise terms of NPPF paragraph 14, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. This is not a marginal case. Instead, it was a very clear case in which the absolutely fundamental conflicts and adverse impacts firmly weighed the scales against the limited benefits.

180. The appellant's witness accepted[119]:

(i) A significant but tempered breach of the relevant policies of the existing CNRLP. While accepting that this was not a small-scale incursion on the countryside policy but a significant one, he said that his "tandem designation" point tempered that significance. The Council disagrees for

[118] 1. In any event, see earlier submissions concerning what services and facilities are and are not secured by the proposed conditions and planning obligations.
[119] In XX

the reasons already discussed. The "commitments" designation does not dilute in any way the significance of the breach of NE2 and RES5.

(ii) A significant breach of the relevant policies of the emerging Plan. The significance derives from the same reason, namely the large-scale nature of the incursion on the open countryside.

181. Although it is no part of the Council's case, the evidence from the Wychwood Community Group claims various additional harms, for example, ecological harm. If the Secretary of State is minded to agree with this evidence, then these matters need to be factored in as adverse impacts for the purposes of the NPPF paragraph 14 exercise. The Council submits that the balance is firmly against the proposal without considering these other harms.

182. Allowing this appeal would certainly fall foul of the PPG's guidance on the issue of prematurity. Given that the LPS has moved ahead even more, and significantly so, since the Council resolved upon its reasons for refusal it is at least as much to the point that to allow the appeal would be to defy key policies in the LPS which at this late stage in the plan-making process should be given very considerable weight.

183. The PPG (Determining a planning application, para. 14) sets out guidance on prematurity. Annex 1 of the NPPF explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development, arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:

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

(b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

184. The two tests of prematurity are met in this case[120]. Although the appellant's witness agrees (b) is met, he does not accept (a). He did accept that if both limbs (a) and (b) of the prematurity test are satisfied, then it follows that the harms significantly and demonstrably outweigh the benefits under NPPF paragraph 14 and that the phrase "likely, but not exclusively" in the PPG means that the Secretary of State may choose to refuse on prematurity grounds even if limb (a) is not met. Finally, he agreed as a matter of principle that harm to the emerging Local Plan process, even if it is not a "central" issue, is still an adverse impact to be placed in the NPPF paragraph 14 weighing scales.

[120] AF discusses the prematurity point at paragraphs 7.15-7.37 of his PoE.

185. Turning to the application of limb (a) above in respect of this case, it was put to the appellant's witness that one way of testing "centrality' is to consider scale. The appeal site, as discussed earlier, is larger than all the allocated sites for Crewe (unless Basford East and Basford West (which are separated by the main railway line) are considered as one site[121], in which case the appeal site is the second largest). In addition, had it been allocated, the appeal site would be the fourth largest strategic site in a list of 46 strategic sites in the LPS[122]. As indicated above, if the proposal is correctly regarded as falling within the lowest tier of "Other Settlements and Rural Areas" in the settlement hierarchy, it will swallow up nearly three quarters of the remaining houses to be built in that tier across the entirety of the Borough.

186. The Council submits that these points clearly indicate the centrality of a large, strategic scale site such as this to the LPS. In seeking to rebut this, the appellant's witness could only resort to arguments that are suitable only at the plan-making stage, which itself is demonstrative of the "centrality" test being satisfied. In any event, as explained already, such arguments should not be re-run in this section 78 appeal.

187. In addition, the present situation, given the very advanced stage of the LPS, now transcends prematurity. Allowing the appeal would not pre-determine a pending decision, but fundamentally undermine a decision that has already been made through the appropriate process, namely the making of the Local Plan.

188. To conclude, the section 78 appeal should be dismissed in accordance with section 38(6) as material considerations do not indicate otherwise. The appeal proposals are wholly at odds with the plan-led system and the continuity of protection that the existing and new Local Plans give to this site from being built upon. Accordingly, the appeal proposals are not sustainable development as they fundamentally challenge and run counter to the plan-led system which is at the heart of the planning legislation and the NPPF. The challenge to the plan-led system would not be on a marginal scale but rather would be extremely significant.

189. The Council object to the form and content of the UU submitted in respect of Appeal A. I address this in more detail in the section on conditions and obligations.

Appeal B

190. It is common ground between the Council & the appellant that the outcome of the Section 106B appeal should follow from that of the section 78 appeal and so if the section 78 appeal is dismissed then so too should the section 106B appeal.

The Case for Wychwood Community Group

The material points are:

191. This is a planning appeal, but to the WCG members it is so much more than that – it is a defence of their legal rights, their choice of lifestyle, their quality of life and their fortitude.

[121] As suggested by the appellant's witness.
[122] see p.510-11 of the July 2016 version of the LPS (CD37)

192. The case for WCG is centred upon the rights inherent in the existing s106 agreement and covenants that should be protected at all costs. The planning arguments appear to be an open and shut case. The LPS is nearing completion and whatever the appellant has said about "beauty contests" and prematurity, these have been robustly countered, not by WCG, but by the Inspector examining the LPS. This must add substantial weight to the outcome of this Inquiry.

193. The NP is also nearing completion and as that grows closer to completion it holds more and more weight against this application, a position confirmed by Gavin Barwell MP, Minister of State for Housing and Planning in a Written Ministerial Statement as recently as 13 December 2016. Added to this are the thousands of objections to the proposed development and the variation of the S106 over the course of the past 4 years, submissions from Parish Councils in the area, adjoining affected villages, our Ward Councillor, Janet Clowes and last but not least our local MP, Mr Edward Timpson. These must surely hold some sway in the recommendation to and decision of the Secretary of State.

194. The numerous hamlets of the Wychwood development were built as a design concept with some, but admittedly, limited local facilities, where travel off site was an expected and accepted part of the concept. The two golf courses, very different in nature were the integral part of the design and the housing developments were a necessity only to fund those courses and was not an end in itself.

195. The closure of the Gorstyhill golf course was a travesty. The WCG has provided evidence of the ongoing viability of the course and how it thrived until changes to the membership scheme began its sad demise[123]. The downgrade to a 'Pay & Play' course (which led to members leaving in droves) was the most serious detrimental change that could happen as it meant Gorstyhill would no longer be a Club. Instead it would simply be a municipal course that would no longer have members (and therefore a guaranteed subscription revenue stream). As a consequence of this, former members could no longer maintain an official handicap which has to be issued by a bona fide Club; would no longer be able to play in official competitions at other Clubs, even as guests, without handicap certificates and would not be able to host official competitions at Gorstyhill. This meant no league, individual or team competitions. These competitions are key elements of playing golf for people who are not even particularly serious golfers, let alone for those who are serious about the sport.

196. The designated open space surrounding the existing housing is a core part of the site and adds to the outstanding quality of life enjoyed by residents and land owners on the site. The disused golf course continues to be a recreational asset to the wider community and there has never been any attempt by the owners to limit or prevent access to the site. The WCG has continually asked residents to keep off the course and there are many notices on the site to that effect, however you cannot stop the wider community from utilising what they see as a great place to walk dogs.

197. The existing site of Wychwood Village has been a building site from 2004 through to 2015 taking 11 years to build 315 houses. The final sale completed in

[123] WCG evidence document, PURCHASE & CLOSURE OF GORSTYHILL GOLF CLUB & COURSE

early 2016. This equates to an average of 28 dwellings per annum, far from the figures quoted by the appellant. The appellant's suggested delivery numbers are strongly disputed.

198. The housing access is as yet still not wholly adopted and street lights remain unlit and there are no parking restrictions either. The same mistakes should not be repeated all over again.

199. In relation to the Shavington Triangle development, discussed during the round table session and an allocation in the LPS, the discussion in respect of delivery simply highlighted that the implementation of planning permissions is not an exact science. The appellant's representatives have, understandably, highlighted any and all potential delays. The Council's witness has highlighted that whilst delays do occur these are often mitigated or may be avoided. He has highlighted where additional time has been allocated or where the appellant's concerns are not necessarily valid.

200. In effect, in planning terms this is all "business as usual" and the understanding of WCG is that much flexibility has already been built into the standard methodology developed by the Council, acknowledged by the Local Plan Inspector, and which has been applied to the calculation of housing completion numbers and to the 5 year housing land supply.

201. Nothing raised in the discussion suggests that the appellant and associated builders can either start or complete the development any quicker than anyone else. If anything the debate has highlighted that bigger schemes are more problematic in terms of starting delivery and indeed completing to anywhere near a schedule. It is not clear why this development could deliver at an accelerated rate.

202. The appellant cannot deliver any of the medical and school facilities that they quote as they are simply unable to. The facilities quoted to deliver have never been requested by most existing residents[124]. There are many local facilities, both on the site and in Weston Village which serve a significant and substantial purpose to the Community and deliver what the residents 'bought into' as a design concept and continue to enjoy.

203. Wychwood Village already experiences traffic issues, with congestion and parking problems and clearly the addition of up to 900 houses and associated retail development etc. can only add to the congestion at the single entry and exit point. There have already been a number of accidents at the Wychwood's roundabout on the A531, and the fact that it is still governed by a 60mph speed limit, only exacerbates the dangers. Intensifying the level of road traffic using this single junction to the level proposed by the appellant is completely irresponsible and clearly will deliver the core ingredients for a major accident, even if the Highways computer programme dictates there is some capacity existing at the junction.

204. The decision by the highway authority not to object results in a severe threat to safety. The A531 and local routes through Weston would become even more

[124] Of all the submissions made by residents against this development over the past few years only 1 representation has said a shop would be a good idea

gridlocked than now at peak times and the use of Google Maps (as presented by the appellant) is not a reliable source of peak travel times. It is the local community that understands the existing situation and how it will suffer if this development is ever approved.

205. The proposal is clearly not sustainable. Houses will be built well before the subsided bus route comes into plan and patterns of movement will by then be set, for school runs, shopping etc. These patterns would be very hard to break. What happens when the bus subsidy stops? Local routes are already being ceased and this could easily be the next one. Footpaths and cycle paths are great, but unless the local off site areas are improved to compliment them, ahead of any development, then the "isolated bubble"[125] would actually be perpetuated by this plan.

206. The appellant is trying to force sustainability on a Community that clearly does not want it. The local parishes are already deluged with approved developments which are commonly accepted, but enough is enough, the addition of this site would be totally disproportionate for the local area, and the Inspector has accepted this by making this an Omission site.

207. The Wychwood Village site is fast becoming a true haven for wildlife, flora and fauna and the evidence produced by the WCG, whilst at odds with the Council, goes into greater depth and detail than anyone else has ever done for this site. It was necessary to show the appellant's expert where the Barn Owl was located. The TPO's have to be properly adhered to and the wildlife properly cared for. A Barn Owl cannot be instructed to change its habits just because a developer thinks it should. The Secretary of State is referred to the evidence in the WCG Ecological and Environmental Objection[126]. The Wychwood Community cares passionately about what it has and wants to protect it.

208. Since the closure of the golf course in April 2013 the maintenance of the fairways and greens was reduced with mowing eventually stopping altogether. The habitats of protected species will be adversely affected and the findings and recommendations of the various surveys conducted by the appellants are contested. The extended Phase 1 habitat survey was conducted in April 2013 when the golf course had just closed. The lack of management since has resulted in increased variety of species being present. Later surveys in August 2013, May and June 2014 concentrated on marshy grasslands, swamps and hedgerows rather than the now unmanaged grassland. Much of the mitigation measures implemented as part of the previous permissions would be disregarded and lost should the development proceed. A list of species witnessed and recorded by WCG is contained Appendix 6 to the POE.

209. The country park itself is a fantastic facility and despite the lack of adequate maintenance from the appellant, unmaintained footpaths, unmanaged hedgerows and a general lack of care and attention (which has been the subject of numerous complaints from the WCG to the Council's Enforcement Team) is used extensively for numerous recreational activities. In the opinion of WCG members it does nevertheless highlight the problems of expecting the appellant to keep to any agreement.

[125] A description used in earlier representations and used by the appellant's witness
[126] See appendices to WCG proof

210. WCG has never supported this development and has campaigned tirelessly, initially to return the site to a Golf Course, introducing potential buyers to the appellant, to no avail. The Community Group lodged a “Community Right to Bid” application, which despite being overturned on appeal showed that the Community wanted to deliver a serious and sustainable business plan to turn an overgrown mess into a valuable community asset. The full details of this “without a hearing decision” are already provided as evidence, and the comments of Judge Lane make interesting reading.

211. If the development goes ahead, instead of being able to be onto a country park in 2 minutes and have unobstructed views across the open countryside where a dog can run free and reap the benefit of the open space, there would be 10, 15 or 20 years of building work, followed by the view of a housing estate, a country park cut in two by a loop road, and the thought of a drive to work where it would probably take longer to get off the estate then it does to get to work.

212. The planned development has no depth and no substance. There are no real facts and figures behind it, no accurate timelines of delivery, no integrated plans to link up supply to demand, sustainable travel to retail delivery. Only the landowner benefits.

213. This is not a sustainable development and is not in keeping with the character of the area or indeed the wishes of the Council. The right decision from a planning perspective, both Local and Neighbourhood; from an ethical perspective; from a moral perspective is to refuse the development proving that “an Englishman’s Home is indeed his castle” and that the deeds and titles and the attachments that go with it do mean something, and do amount to the protection that 716 landowners, supported by 716 separate legal opinions during conveyancing, believed it would. Forced sustainability would ruin everything that the WCG and its 1200 members stand for.

Appeal B

214. The application to vary and discharge planning conditions laid out in the current October 2003 s106 agreement not only needs to satisfy that "the current obligation no longer serves a useful purpose" but other weighted factors need to be taken into consideration such as sustainability and weight of objections shown by its neighbours who are also freehold landowners covered and protected by the same s106 agreement and who submitted over 900 individual objection against any variation of the 2003 s106 agreement.

215. Another consideration is whether it would be reasonable to vary or discharge conditions that the other 716 freehold landowners bought into as a design concept offering them capped development and protected open space for their enjoyment and quality of life.

216. The Wychwood Park (South Course) and Wychwood Village (North Course) two phase development was born out of information provided from the Royal and Ancient Golf Club report in 1989 stating that there was a national need for 500 new Members Golf Clubs. The proposal for two golf courses of PGA international quality was submitted to Crewe & Nantwich Borough Council and was called the Wychwood Park development.

217. It was made very clear at the local planning authority meeting that the housing component of the development was only necessary to help fund the two PGA prestigious golf courses and therefore dwellings were secondary and subordinate to the golf clubs. This is supported by the information submitted to the Inquiry.

218. Both developments have been carefully controlled under a singular s106 Agreement dated 8th October 2003 including a wide range of planning conditions. For the avoidance of doubt, this agreement protects the whole Wychwood development (South & North Course) and the application site is only a small part of a much wider development. It is important to note that the new owner of Haddon Property Developments Ltd (16 May 2011) and in turn the new owners of the Gorstyhill Golf Club (again 16 May 2011) were not the original signatories of the 8th October 2003 s106 agreement signed some 8 years earlier.

219. The 1990 agreement[127] identifies the land (Plan 1 outlined and etched in red) that covered the whole of the Wychwood Village (North course) and Wychwood Park (South course) and shows the whole of the Countryside Properties' land (North course) outlined in Orange that was protected by this singular agreement. The s106 agreement was put into place before any dwellings were occupied on the North Course and before the completion or opening of the Gorstyhill Golf Course (North Course) in 2004 / 05.

220. WCG sought advice from Edward Timpson MP's office about the 2003 s106 agreement. The response said "Thank you for letting me have the copies of the 106 agreement. I have discussed it with my colleague in the House of Commons Library who is an "expert" in the planning field. She feels that this is quite unusual, in that a 106 usually enforces a party to "do something" rather than prevents them from doing something".

221. A s106 agreement is a legal contract between the original developer and the Council. It has then been passed to the householder. This transfer of undertakings and planning conditions were transferred to each home owner when they signed their purchase contracts and become freehold landowners on the 1990 land in their own right. This was reinforced as their purchase contracts included copies of the 2003 s106 agreement, plus all land registry and search documents stating there is a maximum of 725 properties allowed across both sites combined and in 2003, that the split was a maximum 390 South course and 315 North course. Other conditions included protection of the country parks and open spaces.

222. In 2009 the completion of the 390 South course properties had been carried out and occupied and were already bound by the 2003 s106 agreement. In 2004 the North Course dwellings development was underway and completed in 2015 with over 200 properties by 2007 purchased and occupied.

223. By 16 May 2011 when Peter Hunt purchased the Gorstyhill Golf Club about 90% of the total freehold properties were already occupied with all the owners having signed contracts containing the conditions outlined in the October 2003 agreement and other documents giving them reassurances the land was protected from further development.

[127] See WCG Appendices "Home Owners Documents" p39 & 40

224. The transfer of the s106 agreement to each individual freehold / property owner is a unique situation as it prevents the land from future development and is built in to each property's contract / purchase pack. To be clear, the golf club owner purchased the land after the majority of dwellings on the site were already occupied. They were not original signatories of the 2003 s106 agreement. They just purchased a golf course located as part of a much larger development and within two years closed it[128].

225. The 716 additional landowners collectively own more freehold land than the golf course land. The appellant has no more legal right than the other 716 landowners over the conditions protecting the land from further development and it would be unreasonable to assume or consider otherwise. This is further reinforced by the regulations that come into force on 28 February 2013 which altered the scope of section 106A(3) of the Town and County Planning Act 1990 which allows a landowner / developer to apply to the local planning authority for the modification or discharge of an existing section 106 agreement where it meets certain criteria.

226. Once completed, planning obligations can be very difficult to renegotiate or modify. Historically, two potential means of renegotiating or discharging s106 agreements have been available to landowners / developers against whom the obligations are enforceable. The first method requires the voluntary cooperation and consent of the local planning authority, together with any other party against whom the agreement is enforceable. This clearly includes the WCG residents as 'other parties' whom have submitted some 900+ objections to any variation or modification of the 2003 s106 agreement. Agreed amendments to s106 obligations can be negotiated at any time, and are normally effected by way of a deed of variation made between the parties currently holding the benefit and the burden of the contract – again, this includes the WCG residents.

227. Secondly, s106 agreements over five years old are eligible for a specific statutory process under section 106A(3) which allows an application to be submitted to the local planning authority requesting that it be modified or discharged. Upon receipt of a valid application, the local planning authority must consider whether the obligation(s) contained in the s106 agreement still serves a "useful purpose". In making such a determination, the local planning authority can reach one of three conclusions:

- that the planning obligation shall continue to have effect without modification
- that the obligation no longer serves a useful purpose, in which case the local planning authority shall discharge it or
- that the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, in which case it shall have effect subject to those modifications.

228. In August 2016, the Council refused a variation and discharge of conditions to the 2003 s106 agreement made by the appellant which is now part of this appeal process.

[128] Additional and more detailed information concerning the closure of the golf course is appended to WCG's proof

229. Guidance from the Secretary of State (in the now-cancelled circular 05/2005) previously stated that the phrase "useful purpose" should only be considered within the context of land-use planning. In the absence of any replacement guidance to the contrary, advice would be that this context is likely to still be relevant; which today would include relevant local plan policies, the NPPF, and any other material planning considerations.

230. From 28 February 2013 onwards, all s106 agreements made on or prior to 6 April 2010 will be eligible to be considered by the local planning authority under the statutory application procedure. The amended regulations follow in the footsteps of a written ministerial statement made on 23 March 2011 (Mr Greg Clark MP), which first encouraged local planning authorities to voluntarily agree to reconsider existing s106 agreements which jeopardised the viability of development schemes, a policy now enshrined in paragraph 205 of the NPPF.

231. However, the consultation document also made clear that this intention should not constitute a reason to permit unsustainable development, and that any modification or discharge should be tested against local plan policies and national guidance. In other words, a strong justification ought to be made in support of any proposed change - something that this application has not achieved.

232. The appellant has not demonstrated or proven that the existing October 2003 s106 agreement is unsound or that "the current obligation no longer serves a useful purpose". Some 716 additional freehold landowners have just as equal rights and protection and have been on the land before the appellant. Nevertheless, the appellant is still looking to vary or discharge conditions contained in the 2003 s106 agreement over those neighbours. It is one agreement covering all parties with these following obligations:

• Section 4.3 - Not to carry out any development upon the country park (other than for the purpose of constructing the country park and the community hall/interpretation centre within it) and not to use the country park otherwise than as a country park in accordance with the principles and objectives contained in the Design Brief.

• No vehicular access shall be created onto Snape Lane from the application site.

• Except for provisions for the statutory public footpaths, there shall be no vehicular or pedestrian access direct onto the former A500 in the interests of highway and pedestrian safety. The development has been planned with a singular vehicular access from A531.

• Section 4.4 contained in the October 2003 s106 Agreement states "Not at any time to construct or permit the construction of any dwelling upon Countryside Properties' land if the construction of that dwelling would result in a) the number of dwellings now or hereafter constructed or lawfully permitted to be constructed by any planning permission on the 1990 agreement land (excluding Countryside's land) or any part thereof exceeding 725 (seven hundred and twenty five) in total." (The land being the 1990 permitted development land as previously highlighted above covering both Wychwood Park and Wychwood Village).

233. Another point to draw the Secretary of State's attention to is the restricted covenant that is currently in place (TP1) and signed by Haddon Property Developments Ltd & Countryside Properties (original developer) on

12 September 2014 protecting any further build on the country park (clause 12.1 & 12.2 on page 31)[129]. The Secretary of State must review the original planning statement submitted as evidence under clause 4.4 & the s106 agreement clause 4.3 to understand the principle & spirit of the long term plan to protect the country park from future development including the proposed loop road.

234. The appellant has not proven that "the current obligation no longer serves a useful purpose" because the appeal site is only part of a wider permitted development that includes registered open spaces, protected country parks, a well used PGA golf course plus other facilities including a large hotel, a restaurant, a conference centre, beauty and hair services, a gym, two large well used function halls booked solidly for weddings and parties, a pub (claret jug that also serves bar foods) a village / community hall, children's play area which are used by the onsite property / land owners who are also issued with a discounted residents card (20% off facilities), plus all these facilities are used by the winder community.

235. In respect of the other facilities such as the protected country parks and registered open spaces, these are used not only by the land owners from both the park and village, but are also used by the wider community for leisurely walks including families and dog walkers. This also includes the Gorstyhill Golf Course land that has public rights of way run across the land. This is because the owners have not put up any private land notices, so the wider public continue to use the whole area for leisure activities.

236. The appellant cannot prove, based on the information presented, that the current obligation no longer serves a ‘useful purpose’. In fact, it is completely the opposite - the 1990 permitted development and the October 2003 s106 agreement that was put in place to protect the original designed concept, does exactly what it was designed to do.

237. The Gorstyhill Golf Course owner purchased their land after the majority of other 716 landowners had already purchased their freeholds some years earlier (on the same 1990 permitted land). They have no more rights over the other 716 landowners who collectively have made over 1200 objections to the planning application on three separate occasions and over 900 objections to any variation of conditions of the October 2003 s106 agreement submitted by Haddon Property Developments Ltd.

238. The final test is sustainability. In this case the appellant has not proven that they can provide the school, the medical centre or other services outlined in their application. In fact, it is the proposed 900 houses to be built that would create a need and not the current properties. The substantial level of objection from existing occupiers is a significant message to the Secretary of State.

239. These appeals should be refused.

Interested Parties

240. A number of interested parties spoke to the Inquiry (as listed in the Appearances list), most of whom provided written statements (ID5, 7-11). These included local Councillors, Parish Council representatives and local

[129] As highlighted in WCG’s Appendix 3 - Home Owner Docs

residents. The Office Manager to Edward Timpson MP read out a statement from him. In most instances the views of the interested parties reflected those put to the Inquiry by the Council or WCG and so, where that is the case, I have not repeated them here. Additional material points made are summarised below:

Andrew Thompson – Planning Consultant to Weston and Basford Neighbourhood Plan Steering Group[130]

241. The regulation 14 consultation stage is now complete. Discussions have taken place with Cheshire East Council to discuss and agree amendments to the NP prior to submission for Regulation 15. A request has been made to the Council for an SEA screening opinion. A response is (was) expected in the week commencing 13 March 2017. It is (was) intended to submit the NP to the Council under regulation 15 in March with a view to holding a Referendum in the Autumn. 11 responses were received to the regulation 14 consultation that are summarised in Mr Thompson's statement. These include objections to the settlement boundary.

John Cornell – Local resident, Chair of Weston and Basford Parish Council, Chair of NP Steering Group and retired town planner[131]

242. Wychwood village is one of 7 settlements which make up the parish. Weston village is the hub and contains a pub, post office, church, school, nursery, cemetery and allotments. The parish comprises tightly knit communities albeit graphically widely spread, which have a small local feel about them and a strong sense of identity. The integration and linkages of these communities into the wider parish are extremely important.

243. The principle of the local plan strategic sites at Basford East and SCGV have been accepted and will more than double the size of the parish by adding a further 1500 dwellings. These will accommodate additional community facilities along with a primary school and linkages to Weston village. The fundamental aim of the NP is to retain and develop the distinctive character of our communities, to enable them to thrive as vibrant communities that will evolve and prosper in a sustainable way and ensure residents have an outstanding quality of life. The proposed development is of a scale that will destroy this.

244. The infrastructure within the parish is already very stretched. Of particular concern is the pressure on our local highway network that has markedly increased over the last few years; public transport links are barely adequate (the long term viability of an additional bus service is questioned); Weston primary school is already up to capacity with no room for expansion within its existing curtilage – the proposed school will not be built at the outset thus adding to pressures; any GP, pharmacy and dentist would need to draw on a much wider catchment than the Wychwood developments and so would increase traffic; the employment opportunities are unlikely to be taken up by local residents; the Parish Council have not received requests for additional community facilities other than a children's play area; and much of the country park extension appears to be limited to narrow greenways and buffers with a questionable function.

[130] ID7
[131] ID8

Ann Broome, Chair of Hough and Chorlton Parish Council[132]

245. The Parish Council have received no representations requesting additional community facilities on Wychwood Park. At no time have residents expressed to the Parish Council the desire for such facilities in Chorlton.

Cllr Janet Clowes: Wynbunbury Ward[133]

246. The primary concern of the LPS Inspector in 2014 was that there were too many strategic sites in the South of the borough compared to the north.

247. Sport England withdrew their objection to the loss of the golf course in late 2015. The evidence submitted by the appellant could not be countered by the Council as they had not completed Phase 2 of the Local Plan that will look in greater detail at Open Space, outside leisure facilities (not in the Playing Pitch Strategy) and will provide a review of golf facilities across the borough.

248. Since Sport England retracted their objection the two most comparable municipal golf clubs that were cited in the supplementary evidence submitted with the application as local to Wychwood Village and capable of taking new members displaced from Gorstyhill have closed and the land has since been developed.

249. Wychood Park and Wychwood Village are concept villages, purposely designed to sit within the context of the golf course developments. The application seeks to build up to 900 houses on open space areas that are an essential component of the original applications and without which the integrity of those developments are not simply diminished but destroyed. Wychwood village deliberately designed to sit in the centre of the site looking over the golf course and country park, would be completely encapsulated by the proposed development.

250. The critical mass of residents to GP is based on numbers and demographics. It may range from 3000 – 6000 patients per GP and so it is feasible that the proposed Park and village populations could support 1.5-2.0 GP FTEs. However Capital Expenditure for property maintenance is the remit if NHS Property Company as is the geographical allocation of GPs. The preference is to extend existing surgeries (with associated pharmacies) to cope with rising patient numbers. Rope Lane surgery in Shavington and the Madeley Surgery in Madeley both have room to expand.

251. In Wybunbury ward the parishes are certainly not aligned with Crewe despite Crewe and Nantwich being the nearest towns. The Shavington Triangle allocated site sits in open countryside. Unlike the appeal site however it will be feasible (once a zebra crossing and short lengths of footpath have been installed) to walk or cycle 2-3 miles to the Shavington Co-op, the 1.2 miles to the Rope Lane Surgery, to walk your child to primary school or older children to walk to Shavington High School. There are bus services accessing Shavington and the site is within 4 miles of Crewe station. This type of infrastructure connectivity simply does not exist at the appeal site.

[132] ID9
[133] ID10

252. Wybunbury Ward (currently 2200 dwellings) would double in size when other current and windfall applications are taken into account. This would be a wholly unacceptable and disproportionate loading on one ward.

Written Representations

253. A substantial bundle of written representations were received in response to the appeal[134]. Again, these largely reflect the views advanced by the WCG.

Conditions and Obligations

Conditions

254. A set of draft conditions agreed between the appellant and the Council was submitted to the Inquiry (ID17) for discussion, should the Secretary of State be minded to allow the appeal and grant planning permission. Those that I consider are necessary are set out in Annex A.

255. The standard conditions requiring the submission of reserved matters applications and specifying the time limits within which they shall be submitted are necessary. A period of 5 years is suggested. However, if the Secretary of State is of the view that the contributions that the development would make to the five year housing supply are a material consideration that tipped the balance between Appeal A being dismissed or allowed then he may wish to consider reducing this to the standard period of 3 years for the submission of the reserved matters.

256. Given the scale of the proposed development a masterplan is necessary to consider the overall design concept for the layout of the site to ensure a high quality design that has regard to the relationships and connectivity between the various areas within and adjacent to the site and how the various environmental constraints, for which mitigation is required, will be addressed. It is considered that density should also be included. Furthermore, having regard to the masterplan, a comprehensive Design Code for the site should be agreed, to ensure a satisfactory standard of design. These will inform the reserved matter applications. In addition, a scheme of phasing is necessary to ensure a coordinated approach to development of the site.

257. For each phase, details of existing and finished ground and floor levels and materials are required to ensure that the development satisfactorily integrates with the surrounding area.

258. In the interests of the protection of the environment, the approval of schemes for a comprehensive strategy across the site for the adequate and appropriate provision for the disposal of foul and, for each phase, surface water drainage will be required.

259. Conditions requiring the remediation of any contaminated land are necessary together with an Environmental Management Plan to ensure the appropriate protection of the environment. This should include measures for the appropriate routeing of vehicular traffic. A Travel Plan for each phase should be agreed to minimise reliance on the private car and Electric Vehicle Infrastructure shall be

[134] Contained in red appeal file

provided in both commercial properties and for each dwelling. It is necessary to agree details of all external lighting to minimise loss of amenity caused by light spillage on adjoining properties, to safeguard living conditions. The requirement of an acoustic assessment specifying a scheme of measures to mitigate the impact of road noise from A531 and achieving specific internal nose levels is reasonable and necessary to ensure acceptable living conditions for future occupiers.

260. A number of conditions are suggested to protect the ecological interests identified in relation to the site. Whist the ES and various surveys have been submitted to demonstrate that the development could occur subject to appropriate mitigation without causing any negative impact, the suggested conditions require certain surveys and mitigation strategies to be updated either at the time of the first reserved matters application or at the time of the submission of reserved matters for a certain phase. These conditions are both reasonable and necessary to ensure that the mitigation proposed has regard to any change in circumstances since the surveys that support this application and appeal were carried out. In relation to the retention of habitats that support uncommon plant species, a change to the wording was suggested during the discussions at the inquiry so that the condition is not specific in relation to which uncommon plant species habitats are to be retained, but rather it should relate to any uncommon plant species. Given the lapse in time since the last relevant survey, it is considered that this is reasonable.

261. The submission of a detailed Arboricultural Impact Assessment for each phase of development is reasonable and necessary in the interests of visual amenity. A programme of archaeological mitigation in accordance with a written scheme of mitigation will protect archaeological interests.

262. A number of Grampian-style conditions pertaining to various highway works off-site, internal access arrangements, the provision of footway and cycle ways are both reasonable and necessary in the interests of highway and pedestrian safety and to ensure appropriate linkages within the site and to surrounding networks where feasible.

263. Control over the size of the commercial units is necessary to ensure they are of a scale commensurate with the immediate area they are intended to serve and will not become an attractive destination in their own right. I have added wording and an additional condition to ensure the size of the individual A1 and A1/A2 units and employment floorspace (B1/B8) is restricted in accordance with the description of development.

264. Additional conditions are suggested by the appellant (conditions 31 to 33 in Annex 1) that would require the A1/A2 and 50% of the B1/B8 units to be constructed to practical completion stage, ready for occupation, prior to the occupation of the 300th and 450th dwelling respectively. Should the Secretary of State consider the provision of local facilities a benefit of the proposal that justified allowing the appeal and the grant of permission then it would be both reasonable and necessary to impose these conditions. Similarly if the inclusion of self-build plots is a material consideration that, when weighed in the balance, was essential to the secretary of State allowing the appeal then the condition requiring 5% of the total number of dwellings to be self-build plots is necessary.

Planning Obligation

265. Whilst a draft section 106 agreement was made available prior to the Inquiry, following a great deal of discussion between representatives for both the Council and appellant, it was revised (ID23). Additional time was agreed to allow WCG reasonable timescales to digest and consider the contents of the s106 agreement presented to the Inquiry shortly before the discussions and make any additional comments on it, prior to a final version being submitted. The Council refuse to sign the s106 agreement if Countryside Properties (UK) Ltd, who owns a small part of the appeal site (a strip of drainage land), shown on title plan (ID24), is not a signatory to it. It was necessary to allow some time, following the drafting of the s106 being finalised to facilitate this.

266. However, the appellant explains that Countryside Properties (UK) has refused to sign the s106 agreement even on the basis of an indemnity offered by the appellant. An impasse has arisen whereby the s106 cannot be put in place. It secured a substantial number of obligations necessary to make the development acceptable and directly related to it.

267. It should be noted that the transfer of the freehold interest of this land to the appellant is to take place after Countryside Properties has fulfilled its obligation to use all reasonable endeavours to have the drainage vested in United Utilities. It is understood that the vesting is expected to happen in the near future.

268. By way of resolution, a Unilateral Undertaking (UU) is put forward by the appellant (ID30). In the UU the appellant undertakes to provide:

- A Phasing Plan including the total number of dwellings and total number of affordable housing units (prior to the first reserved matter);
- An Open Space Strategy, Sports Strategy and a Landscape Ecology Management Strategy (prior to the first reserved matter application);
- An Affordable Housing Scheme, Landscape Ecology Management Plan, Management Plan and details of Management Company to which all Open Space will be transferred;
- On-site Open Space to be maintained by a Management Company;
- A financial contribution towards the widening of the A500;
- Procure a bus operator to provide a bus service extension;
- A Travel Plan monitoring fee;
- Agree and complete a s278 highways agreement or pay a contribution in lieu for improvements to Meremoor Moss Roundabout;
- Make financial contributions for the provision of a primary school, the amount being dependent upon whether the primary school site is transferred to the Council (contribution A) or not (Contribution B); Special Needs Education; and Secondary Education Transport.

269. As a matter of principle, all of these obligations are necessary and relate to the development. In the UU the appellant is also agreeing to enter a further short s106 UU with respect to the drainage land to make the UU obligations

enforceable against the freehold interest when acquired by the appellant. Under a previous transfer of this land to facilitate the drainage works for the adjacent Wychwood Village development Countryside Properties are obligated to transfer it back once the drainage is vested. The strip runs adjacent to the A531, anticipated to be included in the proposed country park extension. It cannot be built upon as a 3m protection zone exists for a public sewer or drain.

270. The track changes necessary due to the different nature of the obligation are helpfully set out in ID31. The changes can be summarised as follows:

- Countryside Properties (UK) is not a signatory with respect to the freehold interest in the title CH583419;
- Changes to the approvals, consents and agreements etc. provision (clause 15.1);
- The obligations on the Council have been deleted, given the Council is not a signatory; and
- Consequential text changes.

271. The Council considers that the UU is not a valid planning obligation (ID32) because Countryside Properties (UK) are not party to it. In other words, not all persons with an interest in land affected by the planning obligation have signed it. This would not accord with the Planning Inspectorate's Procedural Guide (rule N.5.1) or the Council submits section 106 of the Act. The Council considers it could lead to problems of enforceability. Further, the Council is unable to give assurance to the Secretary of State that the submitted UU binds all the relevant interests in the application site. Up-to-date office copy entries are supplied by the appellant together with evidence of their equitable interest in Countryside Properties' land (ID34 and ID35).

272. However, it remains the case that Countryside Properties own some of the land, albeit a very small strip and therefore not all parties with an interest in the land to which the appeal relates are party to it, thus making it not enforceable in relation to those strips of land.

273. I agree with the appellant that this is a small area of land that would have no material effect on the overall development. However, as a matter of fact, the UU would not bind all parties with an interest in the land, which the Secretary of State may consider makes it ineffective in its intended purpose.

274. The Council also objects to the manner in which a number of obligations in the UU are presented, specifically (but not limited to), the effects of Clause 15. This could impose upon the Council a series of outcomes in relation to the development of the site, over which the Council would have no control. The clauses in Part 2 of the First Schedule of the UU relating to Affordable Housing are in potential conflict with the Council's policies relating to the operation, provision and management of on-site affordable housing. Notwithstanding the Council's concerns, as the track changed version of the UU document demonstrates (ID31) the obligations on the Council are not materially different to the s106 agreement agreed. I do not see this as preventing the appeal being allowed.

Inspector's Conclusions

275. I have reached the following conclusions based on all the above considerations, the evidence and representations given at the Inquiry and since, my inspection of the appeal site and its surroundings. Numbers in square brackets [] indicate source paragraphs in the report from which the Conclusions are drawn.

Appeal A

276. It was agreed by the Council and the appellant that the provision of satisfactory open space and appropriate children's play space could be secured through conditions, a planning obligation and approval of a masterplan, a view with which I concur. The Council withdrew putative reason number 5 relating to the impact of the development on Barn Owl activity on the site following the submission of additional information by the appellant. However this and other ecological concerns remain part of the case advanced by WCG.

277. It is considered that the main considerations are:

(a) Whether or not the development would accord with the development plan;

(b) The effect of the development on the character and appearance of the area;

(c) The effect of the development on ecological interests, including Barn Owl activity on the site

(d) Whether the proposal would be premature, having regard to the emerging Cheshire East Local Plan Strategy;

(e) Whether there are other material considerations in support of the proposed development;

(f) Whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole such that development should be granted in accordance with the presumption in favour of sustainable development.

The development plan

278. The proposition advanced by the appellant that the annotation on the LP proposals map is an indication that the development of the appeal site is acceptable in principle is not accepted. It is clear that the annotation relates to an existing commitment at the time the CNRLP was produced and that the area depicted corresponds to that of the planning application and subsequent permission, including the golf course and open space immediately surrounding the Wychwood Village housing development. It cannot be interpreted to indicate that the site was regarded as suitable for development in its entirety; firstly because the key and references to it are clear that it is an existing commitment and so can only relate to the extent of development permitted at that time and secondly, because had that been the intention it would have been identified as an allocation. It is suggested that nothing turns on this annotation on the Proposals Map and so no weight should be afforded to it [48, 118-126].

279. The appeal site is situated in an area designated as open countryside where relevant policies in the CNRLP resist new housing development except in certain circumstances, none of which apply to this development. Accordingly, the development would conflict with LP Policy NE.2 which concerns development in the countryside.

280. The proposed development would be significant. It would not constitute the small scale infilling envisaged in the open countryside in Policy RES.5. Whilst the masterplan is illustrative, it indicates a potential development totalling some 34.6 hectares. In comparison, the Council calculates the Wychwood Village development to be approximately 12.7 ha of built development. The number of existing dwellings in Wychwood Village is in the region of a third of the potential number of properties proposed, demonstrating the scale of the proposal. The proposal would clearly conflict with Policy RES.5. [145, 146, 176]

281. Paragraph 215 of the NPPF confirms that due weight should be given to existing plans according to their degree of consistency with the framework. Like the conclusion that the Secretary of State reached in the Audlem Road appeal decision, it is considered that these policies that seek to restrict development in open countryside are not out of step with the NPPF or the emerging LPS. The overall purpose of these policies is to protect the countryside. This accords with one of the core principles of the NPPF - to recognise the intrinsic character and beauty of the countryside and to conserve and enhance the natural environment.

282. However, it was agreed that the Council cannot demonstrate a five year supply of housing land at this time. In accordance with paragraph 49 of the NPPF, relevant policies for the supply of housing should not therefore be considered up-to-date. At the inquiry it was agreed that CNRLP policies NE.2 and RES.5 were both policies that restrict the supply of housing and so were considered to be out-of-date in accordance with paragraph 49 of the NPPF.

283. The recent SC judgement effectively favoured a “narrow” interpretation of “policies for the supply of housing”, rejecting the Court of Appeal’s wide interpretation of the word “for” in paragraph 49 as meaning “affecting” the supply of housing. The SC considered that paragraph 49 must be seen within the context of paragraph 47, which sets the objective of boosting the supply of housing, and that the words “policies for the supply of housing” were no more than an indication of the category of policies in the development plan, i.e. the housing supply policies. The SC indicated that these were policies relating to the provision of housing such as housing allocation policies. Accordingly Policy NE.2 that is concerned with the protection of the countryside is, as now agreed by the parties, not a policy that would be regarded as out of date. Policy RES.5 restricts housing in the countryside to specific circumstances and so can still be regarded as being out of date.

284. Furthermore, the SC made it clear that this interpretation should not lead to the need for a legalistic exercise to decide whether individual policies do or do not come within the expression “relevant policies for the supply of housing”. The important question is not how to define individual policies but whether the result is a five year supply of deliverable housing in accordance with the objectives of paragraph 47. If there is a failure it does not matter if this is because of the policies which specifically deal with housing provision or because of other restrictive policies, the shortfall itself is the trigger for the operation of the tilted

balance in paragraph 14. Paragraph 14 is engaged in this case. It requires the granting of permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole, a balancing exercise to which I shall return.

285. Within the emerging LPS, the appeal site lies within the lowest tier of the settlement hierarchy 'the Other Settlements and Rural Areas'. The LPS vision is that some small scale residential and employment development will take place in these settlements. More specifically Policy PG2 confirms growth and investment in other settlements should be confined to proportionate development at a scale commensurate with the function and character of the settlement and confined to locations well related to the existing built-up extent of the settlement.

286. The spatial distribution of development within Policy PG6 apportions some 2950 new homes (including about 275 dwellings at Alderley Park) to this settlement tier. The proposed development of up to 900 houses would be a substantial proportion of the overall housing to be provided in the 'Other Settlements and Rural Areas'. The Council calculates that commitments already account for some 1120 dwellings, completions 733, Alderley Park 275 and the site allocations 1250, totalling some 3378 dwellings. The appeal site would account for almost three quarters of the overall site allocation allowance concentrated on this one development. [145]

287. The appeal scheme is not small scale or proportionate to or commensurate with the function and character of the settlement. Rather, in stark contrast it would have the potential capacity to be the fourth largest development in comparison to all the site allocations contained in the LPS, completely engulfing the small hamlet of housing at Wychwood Village.

288. The proposed development would clearly conflict with LPS PG2, PG5 and PG6 of the emerging LPS. Given the very advanced stage that the examination has reached and the endorsements of the Inspector in his Interim Findings concerning those matters of relevance to this appeal, the LPS can be afforded very considerable weight. [147, 148]

289. Consultation on the pre-submission draft of the Weston and Basford Neighbourhood Plan (NP) had just concluded when the Inquiry opened. It advocates small scale development which is in character with the settlement. The proposed development would conflict with these emerging NP policies. The Council and the appellant both agreed it could only be afforded minimum weight. Whilst it has now been submitted to the Council for consideration and a further consultation stage has commenced, there remains some outstanding objections and the outcome of the consultation is still unknown. It is considered that it can still only be afforded minimum weight.

290. To conclude on the first issue, it is considered that the development would be contrary to both the adopted and emerging LPS and NP.

Character and appearance of the area

291. Whilst matters of detailed design can be addressed through masterplanning of the site to establish the overall layout and housing densities together with the submission of reserved matters application(s), the overall scale of the development, as described above, would result in a significant incursion into the

open countryside. Unlike the existing developments that are set back from the main road network and surrounded by a relatively broad swathe of 'greenery', the proposal would result in a substantial development in far closer proximity to surrounding roads. It would be disproportionate in scale to the existing developments of Wychwood Village and Park, reflecting the 'in-principle' conflict with the development plan. The proposed development, due to its overall size and form surrounding Wychwood Village, would have a harmful urbanising impact in this rural location and fail to respect the pattern, character and form of the existing developments, contrary to CNRLP Policy BE.2. [141, 145 -146, 176, 185, 249, 252]

The effect of the development on ecological interests, in particular Barn Owl activity on the site

292. The Council was satisfied that the ES satisfactorily addressed ecological concerns in all respects with the exception of the impact of the development on Barn Owl activity on the site. It has since withdrawn its putative reason for refusal in relation to this following the submission of additional information by the appellants. However WCG retain an ecological and environmental objection (Appendix 6 to POE), contesting the results of the various survey work carried out on behalf of the appellants and the suitability of the mitigation proposed.

293. The ES concludes that overall there will be a positive impact arising from the development upon ecological receptors enabled through careful scheme design, combined with appropriate construction and operation phase mitigation measures. A benefit of the development would be an extension to the publically accessible country park that would increase the country park area from 14.36 Ha to 44.5 Ha. The extension includes the majority of the habitats that were identified to be of ecological interest such as wet grassland, ponds, scrub, hedgerows and mature trees that will be protected and enhanced as part of the management of the country park to be secured through the conditions / s106 - Construction and Environment Management Plan (CEMP) and Landscape and Ecology Management Plan (LEMP). Proposed mitigation also includes retaining mature trees, suitable for roosting (although no roosts were identified). The site is considered to be of District importance for Great Crested Newts which were found in ponds scattered across the site. The majority of the development is encompassed by a 500m radius from each of the ponds. Conditions requiring further survey work would ensure that mitigation reflects the most up-to-date situation at the time of individual reserved matters applications. [45, 95]

294. The ES acknowledges that some 95% of the habitat that would be lost (having regard to the revised masterplan) would be the improved / semi improved species poor grasslands of the golf course that was managed by close and frequent mowing and has very low ecological value. WCG maintain that the lack of management has resulted in a greater variation of species than identified, referring to an occurrence of Marsh Orchids found 'in the rough' and supported only by generalised references and records of declining grasslands that are not site specific. If the golf club were to re-open, as desired by local residents, then the maintenance would resume. A condition is proposed that requires all identified uncommon species to be retained.

295. Overall it is considered that the ES and associated survey work is comprehensive and detailed. The later Barn Owl Mitigation Strategy sets out a

strategy to maintain and enhance the opportunities for Barn Owls at the development site by creating a corridor of suitable prey rich habitat, by providing nesting opportunities, and by protecting the Ash tree from disturbance.

296. Based on the revised draft masterplan and having regard to the comprehensive surveys conducted on behalf of the appellants and the significant extension to the country park, I agree with the Council that the development can be accommodated whilst conserving and enhancing the ecological qualities of the site. I find no conflict with the development plan or NPPF in this regard.

Prematurity

297. The success of this appeal is unlikely to change the outcome of the LPS examination at this stage. There is no specific evidence before the Secretary of State to demonstrate that the site would compromise the delivery of individual sites. However, at the very least it would undermine the strategy applicable to the Other settlements and Rural Areas settlement tier by concentrating such a large proportion (75%) of the overall housing allocations requirement in one place, thus prejudicing the future distribution of sites across this settlement tier through a future site allocations plan. [59, 182-187]

298. To conclude on this issue it is considered that the site is premature and would prejudice and undermine the overarching spatial policies of the LPS.

Other material considerations advanced

299. The appeal site is a similar distance from Crewe as the SCGV proposed allocation. As explained in the case for the appellant the site was also promoted through the LPS process and a contender for the SCGV. Having been considered it was not one of the preferred sites allocations put forward by the Council to meet the housing needs of the area and is now unlikely to be included. It is nevertheless argued that the appeal site, given its comparable distance to Crewe as the SCGV, would still help to meet the overall growth aspirations of Crewe and help to meet the demands that HS2 will bring, in addition to contributing towards a five year housing land supply. [60 - 65, 97, 98, 142-147]

300. The emerging LPS does not identify an artificial ‘radius’ extending into the countryside around Crewe where future housing commitments and completions would count towards the requirements of Crewe rather than the Other Settlements and Rural Areas. The process of site selection in a local plan is inherently different to the considerations that apply to a section 78 appeal where the starting point is the development plan. In my view the location of the SCGV cannot provide a benchmark to allow other developments that conflict with the development plan or determine what may be regarded as a sustainable location. To do so would seriously undermine the purpose of a plan-led system. If the appeal were to succeed the contributions it would make to the overall housing supply would not contribute to the spatial housing requirement for Crewe as the site is clearly within open countryside. Similarly how the future demands of HS2 will be met, is in my view a matter for consideration through a development plan rather than individual applications. I consider this should be afforded no weight in the planning balance.

301. There is no dispute that at this time, the Council cannot demonstrate a five year supply of housing land. The Council is seeking to address the shortfall in

housing land supply through the LPS which has reached a very advanced stage. The Council has acknowledged through the LPS examination that there has been an undersupply of housing since the beginning of the plan period which it cannot address over a five year period (i.e. the preferred approach to meeting under supply 'the Sedgefield approach'). Instead the Council proposes to meet the shortfall over a period of 8 years ('the Sedgepool 8 approach'). The Inspector examining the LPS has indicated that this approach appears to be acceptable in principle. On the basis of an annual requirement adopting this 'Sedgepool 8' method, the Council considers that it can demonstrate a five year housing land supply on adoption of the plan (5.3 years). [40, 72, 81, 83, 128, 158-163]

302. Whilst the appellant suggests the Council's inability to address the shortfall over the preferred 5 year period is a consideration that weighs in favour of allowing the appeal, the appropriate strategy for delivering sufficient housing to meet the housing requirement and any shortfall is a matter for the LPS examination. If the 'Sedgepool 8' approach is adopted, which now seems likely, then this will determine the annual requirement against which the five year housing land supply will be calculated and monitored. The inability of the Council to address the shortfall over the preferred 5 year period is therefore a consideration to which I afford minimal weight. [63, 81, 83]

303. On the basis of the appellant's analysis, it is suggested that the Council will only be able to demonstrate 4.84 year housing land supply on adoption of the LPS. There will only be a marginal excess in supply based on the HLS calculations produced by the Council, and accepted in principle by the Inspector examining the LPS, for the LPS examinations (5.3 years).

304. It is considered that the comprehensive analysis conducted for the LPS examination is a more robust assessment having regard to all the elements of housing supply and delivery comprehensively. That is not to say that some of the slippage highlighted by the appellant on individual sites has not occurred since 31 March 2016 but all the data has not been reviewed to see if other sites are likely to perform better than anticipated during the five year period. This appeal cannot test the robustness of the overall evidence in the same way as a local plan examination. Given that this has been considered relatively recently as part of the examination and the Inspector has indicated that the housing supply and delivery assessment appears to be acceptable, the calculation of the Council is preferred at this time. [81-90, 16 -170]

305. The proposal would nevertheless help to boost the supply of housing sooner rather than later including a proportion of affordable housing (up to 270 dwellings) which is a material consideration in favour of the proposal. The contribution over a five year period from the appeal development would be somewhere between 180 dwellings per annum (on the Council's calculation) and 334 dwellings (on the appellant's calculations). Taking the higher figure as a proportion of the 5 year housing requirement would be the equivalent of about 2% of the requirement. In this overall context, it is not a substantial contribution. With the LPS examination drawing to a conclusion, which will address the lack of a 5 year HLS, I only afford this minimal weight. [85-90, 159-166]

306. The proposal would also provide some self-build plots and retirement dwellings, benefits that can be afforded further weight, albeit I consider only

minimal for the reasons set out above. There would be economic benefits [96] for the local area arising from the development to which I afford modest weight.

307. There was no dispute that the existing occupiers of the Wychwood Park and Wychwood Village developments are largely reliant on the private car for most trips. There are some facilities that form part of the golf club on Wychwood Park and are open to residents. The nearest convenience shop is in Weston village. WCG confirmed that they were happy to be largely reliant on the private car to access main services and facilities, it being a concept they 'bought into'. However, this is contrary to national policy that seeks to ensure sustainable forms of development. The proposed development would facilitate the provision of a primary school, retail and industrial units and a possible medical centre and an extension of the country park. Whilst not necessarily welcomed by the current occupiers of housing on Wychwood Park and Village, it would in planning terms greatly improve the sustainable credentials of the existing developments. However the weight I afford to this is tempered by what I consider to be a relatively inaccessible location, other than private car, particularly for a development of this scale at odds with the settlement hierarchy. It is a consideration that I afforded modest weight in favour of the development. [92-94, 202, 206, 238]

Other matters

308. It is considered that measures can be secured through appropriate conditions to ensure disturbance arising through construction would be satisfactorily minimised. Notwithstanding the 'in principle' policy conflict arising from the overall scale of the development in the countryside, it is considered that an appropriate design and layout within the site can be secured through initial masterplanning and the reserved matters applications for each phase.

309. It is acknowledged that the ability for local residents and others to use the land previously associated with the golf course for recreational purposes will be lost. However there is no public access rights to this land and so those benefits would not necessarily prevail irrespective of any future development. In any event the substantial extension to the country park where public access is permissible would far outweigh the loss of this private land in terms of recreational opportunities and access to open space.

310. There is no doubt that the proposal would be likely to generate additional vehicle movements associated with the additional housing, all of which would be served off only one access onto the A521 [203]. However, there is no objection from the relevant highway authority and no adverse impacts that cannot be satisfactorily mitigated are identified in the ES. There is no substantive evidence provided to support a contrary view. The provision of services and facilities on site that the proposal would facilitate would reduce some vehicle trips generated by the existing development.

The overall planning balance

311. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development is contrary to the development plan. The NPPF is a material consideration. The presumption in favour of sustainable development set out in paragraph 14 is

engaged. It is therefore necessary to consider whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the NPPF policies as a whole.

312. Weighing in favour of the proposal are the benefits that the scheme will introduce to the existing housing developments of Wychwood Village and Wychwood Park by facilitating the provision of facilities and services. In addition, the proposal would contribute to the supply of housing overall including affordable housing, in accordance with the NPPF policy objective of boosting significantly the supply of housing. The development includes self-build plots and retirement homes, a further benefit of the scheme. It would in turn be of benefit to the local economy, a further consideration in favour.

313. Weighing against the proposal is the significant harm that would arise due to the scale of the development proposed in the open countryside, contrary to the CNRLP, the emerging LPS and the NPPF, in particular paragraphs 7 and 17 (5th bullet) that seek to protect and conserve the countryside.

314. There are no changes in circumstances since the Audlem Road decision that might suggest that the CNLP adopted policies should be given any lesser weight than the 'significant weight' attributed by the Secretary of State at that time. Indeed the LPS is considerably more advanced now than at that time with the Inspector examining the LPS having issued his Further Interim Views (following the resumed hearings) that indicate his support in principle for the overall strategy and allocation of sites. Consultation on the Main Modifications is complete and the report is due shortly. This will address the lack of a 5 year HLS that renders the relevant policies out of date. As such the weight to be given to the CNLP policies in the tilted balance is now, notwithstanding the lack of a five year HLS at this time, very significant. The development would prejudice and undermine the overarching spatial policies of the LPS. The harm to the overall emerging plan-led strategy for the area carries considerable weight. [47, 56-57, 128-136, 152-156]

315. In this case, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the NPPF as a whole, such that the presumption in favour of sustainable development contained in paragraph 14 of the NPPF does not apply.

316. To conclude, the development would conflict with the development plan, in particular policies NE.2, RES.5 and BE.2 of the CNRLP and policies PG2 and PG5 of the emerging LPS. No material considerations indicate that the development should be determined other than in accordance with the development plan.

Overall Conclusion

317. I conclude that Appeal A should be dismissed.

Appeal B

318. It is necessary to consider whether the obligations serve a useful purpose that would be equally well served if they were modified as proposed. Whether or not that is the case will depend on the outcome of Appeal A.

319. If the Secretary of State agrees that Appeal A should be dismissed, then it follows that the s106 agreements, if modified as proposed in Appeal B would not serve any useful purpose since it would not relate to a development that benefits from planning permission. Accordingly it should be dismissed.

320. However, if the Secretary of State disagrees with my recommendation on Appeal A and allows the appeal and grants planning permission, then I agree (for those reasons made out by the appellant and not challenged by the Council), that the s106 agreement would continue to serve a useful purpose equally well if modified as proposed. [104-113]

321. As stated by the Council (ID32), the area of land to which Appeal B relates is greater than the site area to which Appeal A relates. The Council requests that should Appeal B succeed then the 2003 Agreement should only be varied insofar as it relates to the application site for Appeal A. This view is supported by WCG. I concur that it would be necessary to ensure any modification only relates to the Appeal A site.

322. In addition, the Secretary of State will wish to be satisfied that, as a matter of law, the s106 agreement(s) can be modified without the owners of those properties which are now included within the land to which the 2003 Agreement relates ("the 1990 Agreement Land"), being party to it. No legal view was obtained by WCG.

323. The 2003 principal s106 Agreement, in stating Countryside UK's obligations in Clause 4, is with the intent to bind the land "into whosoever hands the same may come". Part of the land that is subject to that agreement is now 'in the hands' of the individual property owners which, WCG consider means the obligations are equally binding on each property owner, at least in so far as some are on-going. Indeed, the inclusion of the principal s106 agreement as part of the conveyancing Homeowners Pack supports the point.

324. A s106A application provides for the modification and discharge of planning obligations (a) by agreement between the appropriate authority and the person or persons against whom the obligation is enforceable. Section 106(A)(3) provides that an application to discharge or modify an obligation must be made by a person against whom a planning obligation is enforceable. WCG submit that clause 4.4 of the agreement, is enforceable against them.

325. Whilst there is no doubt that the occupiers of the existing properties were not signatories to the s106 agreement (and nor could they be given the land still remained undeveloped at that time), the point made by WCG that all current landowners should now be party to any modifications made. Whilst acknowledging, as demonstrated by the appellant, that the restrictive covenants contained within the Land Registry Deeds of Transfer between Countryside Properties and Bovis Homes (March 2004) and Haddon Properties (Sept 2012) do not restrict development on the Country Park provided that a payment is made to Countryside Properties, it seems to me these are two separate legal documents.

326. As it is recommended that Appeal A is dismissed, and consequently Appeal B, I have not reached a view on this.

Recommendations

Appeal A - APP/R0660/W/16/3150968

327. I recommend that the appeal be dismissed and planning permission refused.

328. If the Secretary of State is minded to disagree with my recommendations, Annex A lists the conditions that I consider should be attached to any permission if the appeal is allowed.

Appeal B – APP/R0660/Q/16/3157808

329. I recommend that the appeal be dismissed. In the event that the Secretary of State disagrees with my recommendation on Appeal A, he will need to satisfy himself upon the efficacy of the S106 as I outline above.

Claire Sherratt

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Katkowski QC	Instructed by Matthew Fraser
He called	
Mr Adrian Fisher BSc (Hons) MRTPI MRTPI	Head of Planning Strategy for Cheshire East Borough Council

FOR THE APPELLANT:

Hugh Richards of Counsel	Instructed by
He called	
Mr C H Waumsley DipTP MRTPI	Of Freeths LLP Planning and Environmental Group

FOR WYCHWOOD COMMUNITY GROUP:

Andrew Bailey and Trevor Sandry

He called

Andrew Bailey	Appeal A
Trevor Sandry	Appeal B

INTERESTED PARTIES

Rosalind Buchanan for Edward Timpson MP

S.A.M. Corcoran	Councillor for Sandbach Heath and East
Andrew Thompson	Planning consultant for Weston and Basford NP
John Cornell	Local resident, Vice Chair Weston & Parish Council
Ann Broom	Chair of Hough and Chorlton Parish Council & local resident
Councillor Janet Clowes	Wybunbury Ward
Jenny Moran	Local resident and author of ecology report for WCG

INQUIRY DOCUMENTS

ID1	Opening Statement for the appellant
ID2	Opening Statement for the Council
ID3	Opening Statement for WCG
ID4	Rebuttal proof of evidence by Chris Waumsley
ID5	Statement from Edward Timpson MP (read by Rosalind Buchanan, his Officer Manager)
ID6	Statement of Common Ground (Appeal A)
ID7	Statement of Mr Thompson, Planning Consultant to Weston and Basford Neighbourhood Plan Steering Group
ID8	Statement of John Cornell, Vice Chair of Weston & Basford Parish Council, Chair of Neighbourhood Plan Steering Group & local resident of parish
ID9	Statement of Anne Broome, Chair of Hough & Chorlton Parish Council & local resident of Wychwood Park
ID10	Statement of Cllr Janet Clowes, Wybunbury Ward
ID11	Statement of Cllr S.A.M. Corcoran, Sandbach Heath and East Ward
ID12	WCG website extract
ID13	Extract from Weston & Basford Neighbourhood Plan website
ID14	Google travel distances
ID15	Copy of planning permission P94/0950 for 18 hole golf course, North Course, Weston Hall Estate, Crewe
ID16	Bovis Homes' Sales Brochure for Wychwood Village
ID17	Draft List of Conditions
ID18	Statement from Mr Joe Berman
ID19	Committee Report relating to proposal for 11 houses at Wychwood Village
ID20	Wychwood Village Housing Completions information
ID21	Housing supply information
ID22	Suggested alterations to condition 23 (to accommodate suggestions made by WCG)
ID23	Draft Section 106 agreement
ID23a	Comments from WCG on draft s106 agreement (10 Feb 2017))
ID24	Countryside Land identification plan
ID25	CIL Compliance Statement
ID26	Closing Statement on behalf of WCG (1)
ID27	Closing Statement on behalf of WCG (2)
ID28	Closing Statement on behalf of Cheshire East Council
ID29	Closing Statement on behalf of Haddon Property Developments Limited
ID30	Certified copy s106 Unilateral Undertaking dated 15 March 2017 and covering letter.
ID31	Copy of UU including track changes to the draft s106 agreement agreed with the Council (ID23)
ID32	Comments from Cheshire East Council on UU, dated 21 March 2017
ID33	Comments on UU from Wychwood Community Group dated 17 March and 22 March 2017
ID34	Final response from the appellant to the comments of Cheshire East Council and Wychwood Community Group in relation to the

UU, dated 22 March 2017
ID35 Land Registry Title plans
ID36 Notification that the Weston and Basford Neighbourhood Plan has been submitted to the Council for consideration and consultation for a six week period commenced on 9 May
ID37 Responses received from main parties following Supreme Court judgement and updated position in relation to Neighbourhood Plan.

CORE DOCUMENTS

Original Planning Documents submitted December 2014

CD1. Location plan CL.206212.LOC
CD2. Masterplan (Revision D) CL.207612.101D
CD3. Design parameters CL.207612.102
CD4. Phasing CL.207612.103A
CD5. Site sections CL.206212.104
CD6 Country park landscaping master plan 1 – 3 CL.207612.105A, 106A & 107A
CD7. Planning statement and appendices
CD8. Design & access statement
CD9. Sustainability statement
CD10. Statement of community consultation
CD11. Environment Statement and Technical Appendices
CD12. Non-technical summary

Additional Documents Submitted During Application

CD13. Updated Transport ES Chapter (inc update to ES Non-Technical Summary)– May 2015
CD14. Golf Needs Assessment – May 2015
CD15. Golf Needs Assessment Addendum – December 2015
CD16. Shadow Habitat Regulations Assessment - December 2014
CD17. Supplementary Ecological Report including LEMP Strategy – July 2015
CD18. Ecology Environmental Statement Chapter 12 update (including update to ES Non-Technical Summary) – July 2015
CD19. Revised Masterplan CL.207612.101 (Revision F) – June 2015
CD20. Revised Masterplan CL.207612.101 (Revision H) – July 2015
CD21. ES Addendum R1/Primary School Alternative – November 2016 (including Non-Technical Summary as supportive document)
CD22. Barn Owl Mitigation Strategy (Baker Consultants) 25 November 2016

Statements of Case

CD24. Appellant's Statement of case and appendices for S.106B Appeal
CD25. CEC's Statement of case and appendices for Planning Appeal
CD26. CEC's Statement of case and appendices for S.106B Appeal
CD27. Wychwood Village Community Group's Statement of case and appendices for Planning Appeal
CD28. Wychwood Village Community Group's Statement of case and appendices for S.106B Appeal

Reports and Decision Notice

CD29. Committee Report dated 24th August 2016 and Minutes.
CD30. Committee Report dated 14 December 2016 and Minutes
CD31. Delegated Officer Report - Variation of S106 agreement 16/3092N dated 25 August 2016
CD32. Decision notice 16/3092N (25 August 2016)

Adopted Local Plan

CD33. Crewe and Nantwich Replacement Local Plan (2011)
CD34. Crewe and Nantwich Replacement Local Plan Proposals Map
CD35. Inspector Report for Adopted Local Plan dated 5 November 2003

Emerging Cheshire East Local Plan Strategy

CD36. CEC Local Plan Strategy Proposed Changes 'clean version' March 2016
CD37. CEC Local Plan Strategy Further Proposed Changes July 2016
CD38. Inspectors Interim Views on the legal compliance and soundness of the submitted local strategy dated 6 November 2014
CD39. Inspector's Further Interim Views on the additional evidence produced by the Council during the suspension of the examination and its implications for the submitted local plan strategy dated 11 December 2015
CD40. Inspector's Views on Further Modifications Needed to the Local Plan Strategy (Proposed Changes) dated 13 December 2016
CD41. Housing Supply & Delivery Topic Paper dated August 2016 (base date 31 March 2016)
CD42. Email from CEC to LPS Inspector and accompanying schedule demonstrating housing supply from 1 April 2016 to 31 October 2016.
CD43. CEC Local Plan – Green Space Strategy (no date – added to examination library in January 2013)
CD44. CEC Site Selection Final Report: Gorstyhill July 2016
CD45. CEC Item 30 – Matter 5.3 Approach to considering extensions to proposed housing sites
CD46a. Infrastructure Delivery Plan Update July 2016
CD46b. Proposed Changes Examination Hearings – Inspector's Closing Remarks dated 20 October 2016
CD47. Council's Response to Hearing Statements Matter 1– Legal Requirements and Procedural Matters
CD48. LPS Proposed Changes - Habitats Regulations Assessment Implications (July 2016)
CD49. CEC Matter 5.14, Homework Item 20 - Local Development Scheme 2016 – 2018
CD50. Cheshire East Council Closing Statement dated 20 October 2016
CD51. CEC - Approach to Considering Extensions to Proposed Housing Sites
CD52. Site Selection Report for Crewe
CD53. Appendix 1 (Response to Objections regarding South Cheshire Growth Village dated 19th August 2016) to Statement on behalf of the Duchy of Lancaster Matter 5 – Distribution of development and local plan strategy sites and strategic locations
CD54. Determining the Settlement Hierarchy (Examination Library Ref BE046)

Weston and Basford Neighbourhood Plan

CD55. Regulation 14 Pre-Submission Consultation Document and Appendices

Case Law

CD56. Suffolk Coastal DC and Hopkins Homes Ltd and SSCLG and Richborough Estates and Cheshire East BC and SSCLG [2016] EWCA Civ 168
CD57. Cheshire East Borough Council v Secretary of State for Communities and Local Government and Renew Land Developments Ltd [2016] EWHC 571 (Admin)
CD58. East Staffordshire Borough Council (ESBC) v SoSCLG & Barwood Strategic Land II LLP [2016] EWHC 2973 (Admin)
CD59. Gladman Developments Ltd v Daventry District Council (2016) EWCA Civ 1146

Appeal Decisions

CD60. Abbey Road Sandwich, Cheshire (SoS) 3128707
CD61. Land off London Road Holmes Chapel Cheshire (SoS) 3100555
CD62. Land off Main Road, Goostrey, Cheshire (SoS) (3129954)
CD63. Broad Lane / Peter de Stapleigh way, Nantwich, Cheshire (SoS) 2197532 and 2197529
CD64. Gresty Lane, Crewe, Cheshire (SoS) 2209335
CD65. The Gables, Peckforton Hall Lane, Spurstow, Cheshire (SoS) 2218286
CD66. Park Road, Willaston Cheshire (SoS) 3011872

Guidance Documents

CD67. Guidance for Outdoor Sport and Play : Beyond the Six Acre Standard England (October 2015)
CD68. Cheshire East Borough Design Guide (Consultation Draft) January 2016
Volume 1: Setting the scene of Cheshire East
Volume 2: Residential Guidance – creating quality
CD69. Building for Life 12 (2016 Edition)

Miscellaneous

CD70. Letter to P Hurdus CEC highways 18 October 2016 & reply dated 7 November 2016

Annex 1 – List of Conditions

1) Details of the access, 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 takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 5 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) Notwithstanding the submitted Indicative Masterplan (Ref: CL207612.101 Rev H), prior to, or with the first reserved matters application, a revised Masterplan shall be submitted to and approved in writing by the Local Planning Authority. The revised Masterplan shall identify the zones of the site proposed for residential development, densities, the location of employment and community facilities, areas of public open space including the position of children's play facilities and main vehicular and pedestrian and cycle routes. The reserved matters applications shall be submitted in accordance with the approved revised Masterplan.

5) Notwithstanding the submitted phasing plan, the first Reserved Matters application shall include a scheme of phasing for the development. The development shall be carried out in accordance with the approved scheme unless amended as a subsequent Reserved Matters application.

6) No phase of the development shall commence until details of the existing ground levels and the level of proposed floor slabs, within that phase have been submitted to and approved in writing by the local planning authority. Development of that phrase shall be carried out in accordance with the approved details.

7) No phase of development shall commence until samples of the materials to be used in the construction of boundary treatments and the external surfaces of the dwellings to be erected within that phrase have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

8) Prior to or with the submission of the first reserved matters application a comprehensive Design Code having regard to the revised masterplan pursuant to Condition 4, shall be submitted to and approved by the Local Planning Authority.

   The Design Code shall include the following items:

   - Determining the design, form, heights and general arrangement of external architectural features of buildings including the roofs, chimneys, porches and fenestration;
   - Determining the hierarchy for roads and public access;
   - Determining the colour, texture and quality of external materials and facings for the walls and roofing of buildings and structures;

- The design of the public realm to include the colour, texture and quality of surfacing of footpaths, cycleways, streets, parking areas, courtyards and other shared surfaces;
- The design and layout of street furniture and level of external illumination;
- The laying out of the green infrastructure including the access, location and general arrangements of the children's play areas, open space within the site;
- Sustainable design including the incorporation of decentralisation and renewable or low carbon energy resources as an integral part of the development;
- Ensuring that there is appropriate access to buildings and public spaces for the disabled and physically impaired

Each reserved matters application should demonstrate compliance with the Design Code.

9) Prior to, or with the submission of the first reserved matters application a strategy for the disposal of foul and surface water arising from the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be completed I accordance with the approved strategy, unless otherwise agreed in writing by the Local Planning Authority.

10) No development shall commence within a phase, until details of the detailed design, implementation, maintenance and management of a surface water drainage scheme (including integration of SuDS principles and a scheme for the onsite storage and regulated discharge), in accordance with the approved Drainage Strategy, pursuant to Condition 9 has been submitted to and approved in writing by Cheshire East Council both as Planning Authority and Lead Local Flood Authority (LLFA). Those details shall include:

(a) The existing site is split into three catchments for surface water drainage purposes; the western catchment draining to Mere Gutter, the central catchment draining to Englesea Mere and the south eastern catchment draining to Balterley Mere. The new development is to be split into three catchments to mimic the existing site drainage conditions.

(b) Existing ponds shall not be used for flood attenuation

The approved scheme shall be implemented for each phase of the development prior to the first occupation of that phase.

11) No phase of development shall commence until a scheme for the disposal of foul sewerage within that phase has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented to each phase of development prior to the first occupation of that phase.

12) No phase of development shall commence until the following is provided for that phase:

(i) A Phase II investigation has been carried out and the results submitted to, and approved in writing by, the Local Planning Authority (LPA).

(ii) If the Phase II investigations indicate that remediation is necessary, then a Remediation Statement shall be submitted to, and approved in writing by the LPA, and the remediation scheme carried out in accordance with the approved Remediation Statement. If remediation is required, a Site Completion Report detailing the conclusions and actions taken at each stage of the works, including validation works, shell be submitted to, and approved in writing by, the LPA prior to the first use or occupation of any part of the development hereby approved.

13) No phase of the development hereby permitted shall commence until an Environmental Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved Plan shall be adhered to throughout the construction period of that phase. The Plan shall include for:

(a) The hours of construction work and deliveries;

(b) The parking of vehicles of site operatives and visitors;

(c) Loading and unloading of plant and materials;

(d) Storage of plant and materials used in constructing the development;

(e) Wheel washing facilities;

(f) Details of any piling required including, method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration, prior notification to the occupiers of potentially affected properties;

(g) Details of the responsible person(s) (e.g. the site manager / officer) who could be contacted in the event of complaint [at any time];

(h) Mitigation measures in respect of noise and disturbance during the construction phase including piling techniques, vibration and noise limits, monitoring methodology, screening, a detailed specification of plant and equipment to be used and construction traffic routes;

(i) Waste Management: there shall be no burning of materials on the site during construction;

(j) A scheme to minimise dust emissions arising from the construction activities on the site. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development; and

(k) Details of construction vehicle routeing to avoid Weston Village and a scheme of measures for its implementation, including monitoring.

14) No phase of the development shall be occupied until a Travel Plan for that phase has been submitted to, and approved in writing by the Local Planning Authority. The Travel Plan shall include, inter alia a timetable for implementation and provision for monitoring and review. No part of that phase shall be occupied until those parts of the approved Travel Plan that are identified as being capable implementation prior to occupation have

been carried out. All other measures contained within the approved Travel Plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented, in accordance with the approved scheme of monitoring and review.

15) Prior to the first occupation of the development hereby permitted, details of Electric Vehicle Infrastructure to be installed on the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include a scheme of provision for commercial premises, and specify the provision of electric vehicle charging points for each dwelling with dedicated off road parking. No property shall be occupied until the approved infrastructure relating to that property has been fully installed and is operational. The approved infrastructure shall thereafter be retained.

16) Prior to installation, details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority. The details shall include the location, height, design and luminance of any lighting and minimise potential loss of amenity caused by light spillage on adjoining properties. The lighting shall thereafter be installed and operated in accordance with the approved details.

17) Notwithstanding the particulars accompanying the planning application, no phase of the development shall commence until an acoustic assessment specifying a scheme of measures to mitigate the impact of road traffic noise from A531 of that phase has been submitted to and approved in writing by the Local Planning Authority. The proposed mitigation scheme must achieve the internal noise levels defined within BS8233:2014 and include provisions for ventilation and glazing. Development of that phase shall be carried out in accordance with the approved details.

18) Any future reserved matters application shall be supported by an updated Barn Owl survey and Mitigation Strategy. The Mitigation Strategy shall accord with the recommendations of the Barn Owl Mitigation Strategy prepared by Baker Consultants dated 25 November 2016, which also includes proposals for additional nest boxes to be erected at least 30 days prior to the commencement of any potentially disturbing works and development within 100m of any identified roosts to be completed during daylight hours only. All development shall take place in accordance with the approved strategy.

19) Notwithstanding the submitted Environmental Statement, chapter 12 Ecology, any future reserved maters application shall be supported by a revised Ecological Mitigation Strategy to address all ecological impacts associated with the development. This strategy should include a Great Crested Newt mitigation strategy and an updated badger survey. No development shall take place except in complete accordance with the revised Strategy.

20) Applications for the approval of reserved matters for each phase of development should include detailed proposals for that phase to retain the habitats of uncommon plant species including Common Cudweed, Southern Marsh Orchid, Lesser Spearwort and Lesser Reedmace unless agreed by the Local Planning Authority. Development of that phase shall be carried out in accordance with the approved details.

21) Each reserved matters application shall be supported by a detailed Arboricultural Impact Assessment in accordance with BS5837:2012 for that phase of development. This shall include i) details of the retention and protection of trees, shrubs and hedgerows on or adjoining the site, ii) implementation, supervision and monitoring of the scheme of protection, iii) a detailed tree work specification and details of its implementation, supervision and monitoring, iv) implementation, supervision and monitoring of construction works in any tree protection zone, to avoid excavations, storage, parking and deposit of spoil or liquids, and v) the timing of arboricultural works in relation to the approved phase of development. The development shall proceed in accordance with the approved Arboricultural Impact Assessment and the scheme of protection shall be retained throughout the period of construction of the phase of the development.

22) No development within a phase of the development shall commence until a programme of archaeological mitigation in accordance with a written scheme of investigation has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme for that phase.

23) Prior to the commencement of development, details of highways works including footway/bus stops improvements along the A531 Newcastle Road and the provision of a footway/cycleway connection from the site to Weston via Snape Lane shall be submitted to and approved in writing by the Local Planning Authority. The approved works shall be carried out prior to the first occupation of any phase of the development hereby permitted.

24) Application(s) for the approval of reserved matters for each phase of development shall include details of internal access arrangements to all proposed land uses, together with a comprehensive scheme of footways/cycleways linking the existing Wychwood Village to the proposed scheme and a timetable for implementation. The approved works shall be carried out in accordance with the approved timetable prior to the first occupation of the relevant phase of the development.

25) The highway improvement scheme detailed on Jacobs drawing no JAC_CGLR_A5020) OPT at the A532/A5020 Roundabout, shall be fully implemented prior to the occupation of any part of the development.

26) Prior to the commencement of development a scheme for the signalisation of the A531/B5500 priority junction shall be submitted to and agreed in writing by the Local Planning Authority. The approved Scheme shall be fully implemented prior to the first occupation of any phase of the development hereby permitted.

27) The total gross floorspace to be used for the purposes of uses within Class A1 and Class A2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) shall not exceed 1500 sq. metres (gross), which shall comprise a Class A1 retail food store, not exceeding 1000 sq. metres (gross) and 5 smaller units comprising A1 (retail) and A2 (Financial and Professional Services), with a total maximum individual floor space of 100 sq. metres each.

28) The total gross floorspace to be used for the purposes of uses within Class B2 and Class B8 of the Town and Country Planning (Use Classes) Order

1987 (as amended) shall not exceed 5200 sq. metres. No individual unit to be used for a purpose of use within Class B8 shall exceed 500 sq. metres.

29) No phase of development shall commence until details of the proposed bin storage facilities for that phase has been submitted to and approved in writing by the Local Planning Authority. The details should ensure that bins are stored securely, and provide facilities for both recyclable and household waste storage.

30) No phase of development shall commence until details of the positions, design, materials and type of boundary treatment to be erected within that phase have been submitted to and approved in writing by the Local Planning Authority. That phase of the development shall not be occupied until the scheme has been implemented in accordance with the approved details.

31) Prior to the occupation of the 300th dwelling, the retail convenience store (A1) and other retail floorspace (A1/A2) up to 1500 sq. metres shall be constructed to practicable completion and ready for occupation in accordance with details approved through the reserved matters.

32) Prior to the occupation of the 450th dwelling, 50% of the approved employment floorspace (B1/B8) shall be constructed to practical completion and ready for occupation in accordance with details approved through the reserved matters.

33) The development shall provide a minimum of 5% of the total number of dwellings as 'self-build' plots to be delivered in accordance with phasing details approved under condition 5.

Department for
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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.