
Appeal Decision

Inquiry held on 9-11 June 2015

Site visit made on 11 June 2015

by Karen L Baker DipTP MA DipMP MRTPI

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

Decision date: 6 August 2015

Appeal Ref: APP/R0660/A/14/2227068

Land east of Rope Lane, Shavington, Crewe, Cheshire CW2 5BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Wainhomes (North West) Limited against the decision of Cheshire East Council.
 - The application Ref. 14/3267N, dated 4 July 2014, was refused by notice dated 30 September 2014.
 - The development proposed is the construction of up to 53 dwellings including details of access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the construction of up to 53 dwellings including details of access on land east of Rope Lane, Shavington, Crewe, Cheshire CW2 5BL in accordance with the terms of the application, Ref. 14/3267N, dated 4 July 2014, subject to the conditions in Appendix 1.

Procedural Matters

2. The planning application was made in outline with all matters reserved for subsequent approval, with the exception of access.
3. At the Inquiry the appellants submitted a Unilateral Undertaking¹ under Section 106 of the Town and Country Planning Act 1990. This Unilateral Undertaking includes obligations relating to the provision of 30% affordable housing on the site (of which 65% would be social rented and 35% would be discounted housing for sale); the provision of, and a scheme of management for, an amenity area, which would include on-site open space and a Locally Equipped Area for Play (LEAP), incorporating 5 pieces of equipment; and a financial contribution of £80,000 towards highways works. I have had regard to this Unilateral Undertaking during my consideration of this appeal.
4. Prior to the Inquiry, the Council confirmed² that it would not contest matters set out in its reasons for refusal relating to the 5 year housing land supply, highways and hedgerows, but that it would proceed to defend the appeal on the following grounds:

¹ Document 9

² Core Document 16

'The proposed residential development is unsustainable because it is located within the Open Countryside, contrary to Policies NE.2 (Open Countryside) and RES.5 (Housing in Open Countryside) of the Borough of Crewe and Nantwich Replacement Local Plan, Policy PG 5 of the Cheshire East Local Plan Strategy – Submission Version and the principles of the National Planning Policy Framework and create harm to interests of acknowledged importance. The application is also contrary to the emerging Development Strategy. Consequently there are no material circumstances to indicate that permission should be granted contrary to the development plan.'

In the opinion of the local planning authority, the proposed development would cause a significant erosion of the Green Gap between the built up areas of Shavington and Crewe and would adversely affect the visual character of the landscape which would significantly and demonstrably outweigh the benefits of the scheme notwithstanding a shortfall in housing land supply. The development is therefore contrary to Policy NE.4 (Green Gaps) of the Borough of Crewe and Nantwich Replacement Local Plan 2011 and guidance contained within the National Planning Policy Framework.'

Main Issues

5. The main issues in this appeal are:
- a) the effect of the proposed development on the character and appearance of the open countryside;
 - b) the effect of the proposed development on the visual character of the landscape and the purpose of the Green Gap between the built up areas of Shavington and Crewe;
 - c) whether or not, in the absence of a 5 year supply of deliverable housing sites, the proposal would represent a sustainable development, having regard to the National Planning Policy Framework; and,
 - d) if the proposal is a sustainable development, whether or not any harm identified would significantly and demonstrably outweigh the benefits of the scheme.

Planning Policy

6. The development plan for the area is the Borough of Crewe and Nantwich Replacement Local Plan 2011³, which was adopted in February 2005. Replacement Local Plan Policy NE.2⁴ says that all land outside the settlement boundaries defined on the Proposals Map will be treated as open countryside, within which only development which is essential for the purposes of agriculture, forestry, outdoor recreation, essential works undertaken by public service authorities or statutory undertakers, or for other uses appropriate to a rural area will be permitted. It goes on to say that, an exception may be made where there is the opportunity for the infilling of a small gap with one or 2 dwellings in an otherwise built up frontage. Policy NE.4 states that a number of areas are defined on the Proposals Map as Green Gaps in the open countryside, including the Shavington/Weston/Crewe Gap. It goes on to say

³ Core Document 3

⁴ The Replacement Local Plan policies to which I refer in this Decision have been saved by a Direction, under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004, of the Secretary of State for Communities and Local Government, dated 14 February 2005

that, within these areas, approval will not be given for the construction of new buildings or the change of use of existing buildings or land which would result in the erosion of the physical gaps between built up areas; or adversely affect the visual character of the landscape. Furthermore, it states that exceptions to this policy will only be considered where it can be demonstrated that no suitable alternative location is available. Policy RES.5 says that outside settlement boundaries all land will be treated as open countryside with new dwellings restricted to those that meet the criteria for infilling contained in Policy NE.2; or are required for a person engaged full time in agriculture or forestry, in which case permission will not be given unless a number of criteria are satisfied.

7. The Council cannot currently demonstrate a 5 year supply of deliverable housing land. It is therefore necessary, having regard to paragraph 49 of the National Planning Policy Framework (The Framework), to consider whether or not any of these policies are relevant policies for the supply of housing and how much weight should be afforded to them. The settlement boundaries within the Replacement Local Plan were defined in order to allow for sufficient growth to meet future land use needs for the plan period, which was up to 2011. As such, post 2011, these settlement boundaries would have the effect of constraining development, including housing, within these settlements. The restrictions imposed upon development within the open countryside, outside the settlement boundaries, within Policies NE.2 and RES.5 of the Replacement Local Plan, are therefore clearly time expired and should be considered out of date. This approach is consistent with a recent High Court Decision⁵, in respect of land north of Moorfields, Willaston, Cheshire, which has established that Policies NE.2 and RES.5 are policies which are relevant for the supply of housing. Furthermore, the Secretary of State has come to the same conclusion on a number of occasions⁶.
8. It is apparent, however, that Policies NE.2 and RES.5 of the Replacement Local Plan have a dual purpose. As well as containing built development within existing settlements, they also seek to protect the open countryside from development in order to safeguard its character and amenity. I note the Decision of the High Court⁷ that a policy cannot be divided, according to its perceived purposes – it either comes within paragraph 49 of The Framework or it does not. If it comes within paragraph 49 it is effectively disapplied in its entirety. However, I acknowledge other Decisions of the High Court⁸ which held that policies which were out of date should not be ignored and that paragraph 49 does not prevent a decision maker from giving a policy as much weight as he judges to be right. One of the 12 core planning principles set out in paragraph 17 of The Framework includes recognising the intrinsic character and beauty of the countryside. In my opinion, the aspect of these Replacement Local Plan policies which seeks to safeguard the character and amenity of the open countryside is generally consistent with The Framework and should therefore be afforded some weight.

⁵ Core Document 11 (paragraphs 35 – 37)

⁶ Core Document 14 (paragraph 11) and Core Document 26 (paragraph 9)

⁷ Core Document 11 (paragraph 62)

⁸ Crane v SSCLG [2015] EWHC 425 (Admin) (paragraphs 70 – 71 and 75); Woodcock Holdings v SSCLG [2015] EHC 1173 (Admin) (paragraphs 87, 105 and 107); and, Wenman v SSCLG [2015] EWHC 925 (Admin) (paragraph 49)

9. I acknowledge that leave to appeal the High Court Decision in respect of land north of Moorfields, Willaston, Cheshire has been granted and is due to be heard in the Court of Appeal in December 2015. Indeed, I note the Skeleton Argument⁹ submitted by the Secretary of State and the Council's response¹⁰ to it, submitted following the close of this Inquiry. However, the current legal authority¹¹ is that Policy NE.4 is not a policy for the supply of housing for the purposes of paragraph 49. It is apparent that Policy NE.4 has a specific strategic planning function, which is to protect the gaps between settlements, in order to maintain their separation and to prevent settlements from merging. However, as a consequence, it has the effect of restricting housing development within the Green Gaps. Nevertheless, the designated Green Gaps do not cover the whole of the open countryside outside settlement boundaries, and so do not have the same effect of constraining development within these settlements as do Policies NE.2 and RES.5. In my view, which is consistent with current judicial authority¹² as well as other appeal Decisions¹³, the overriding function of Policy NE.4 is to protect the gaps between settlements, in order to maintain their separation and to prevent settlements from merging, and, as such, is not a relevant policy for the supply of housing. I have, therefore, afforded it significant weight in my consideration of this appeal.

Reasons

Character and appearance of the open countryside

10. The appeal site is located outside the settlement boundary of Shavington, within the open countryside. It is sited to the south east of the A500 and to the north of an existing residential development site. The dwellings on this neighbouring residential development site, referred to as Phase 1 by the appellants, are currently under construction. Beyond the Phase 1 development to the south west is Rope Lane, with dwellings mostly along its south western side. Further to the south east, beyond the Phase 1 development, are residential properties along both sides of Vine Tree Avenue and Northfield Place. The appeal site itself is a grassed field, which slopes gently down from west to east, with a further area of open countryside located to the north east, beyond Swill Brook, which is mostly used for the grazing of horses.
11. The proposed development would include the erection of up to 53 dwellings on the appeal site, with a single access, via the existing Phase 1 development, onto Rope Lane. The Council and local residents are concerned that the loss of this area of open countryside would be detrimental to the character and appearance of the area.
12. Cheshire County Council adopted the Cheshire Landscape Character Assessment in February 2009. This Assessment identifies 20 different character areas or types within the County, with the appeal site located within Landscape Character Type 10: Lower Farms and Woods¹⁴. Within Type 10, the Landscape Character Assessment identifies 7 distinct sub-areas, including the LFW7: Barthomley Character Area, within which the appeal site is located.

⁹ Document 13

¹⁰ Document 14

¹¹ Core Document 11 (paragraph 63)

¹² Core Documents 11, 30 and 31

¹³ Core Documents 12 and 14

¹⁴ Appendix 3 to the Landscape and Visual Appraisal: Rope Lane, Shavington, prepared by Barnes Walker (Ref. M2371.LVA.05.14)

13. As part of the planning application, the appellants submitted a Landscape and Visual Appraisal (LVA)¹⁵. This assessed the value of the landscape within the site area and the study area (to the south and north of the appeal site) as being Low to Medium. The LVA includes an assessment of the landscape effects of the proposed development. With regards to landscape features, which are identified as comprising the hedgerows and hedgerow trees, located around the perimeter of the existing agricultural fields within the site area; the Swill Brook and associated waterside trees and understorey shrubs along the north eastern boundary of the appeal site; and the internal field areas comprising semi-improved grassland which has been predominantly used to graze livestock, the LVA considers that the Sensitivity would be High, with a Magnitude of Effect of Low and the Significance of Effect being Minor Beneficial. In terms of landscape character, the LVA finds that the Sensitivity of the landscape character of the site and the surrounding landscape is Medium, with a Magnitude of Effect on the landscape character of the wider landscape area considered to be Low and the Significance of Effect being Minor Adverse. The LVA concludes that the anticipated Significance of the Overall Landscape Effect for Year 1 would be Negligible.
14. The Council undertook its own assessment¹⁶ as part of the appeal process to determine the landscape and visual impacts that would result from the proposed development. Tables 1 and 2¹⁷ set out the factors affecting susceptibility to change of the Study Area and factors affecting landscape value, in order to identify the overall Sensitivity of the landscape resource in the Study Area, which the assessment concludes is Medium. The assessment states that the Magnitude of landscape change has been based upon the size or scale of the change to the landscape resource; the geographical extent of the area influenced (the Study Area); and its duration and reversibility. The direct landscape effects are identified in Table 3 and these relate to the replacement of pasture with housing and associated development; and the loss of agricultural land. The assessment also considers the indirect effects of the development by assessing how the direct landscape effects are perceived and viewed from outside the appeal site. The assessment indicates that the Magnitude of Change is considered to be Medium/High within the immediate setting of the site and Medium within the wider area, namely in the Green Gap between Shavington and Crewe. Finally, the Council concludes in its assessment that Significance of landscape impact would be Moderate-Adverse on both the site and its immediate setting.
15. **The Officer's Report**¹⁸ to the Southern Planning Committee, in respect of the planning application the subject of this appeal, refers to the consideration of **the appellants' LVA by the Council's Landscape Architect. Although he** considered that the landscape Significance of Effect would be greater than identified in the submitted LVA, he concluded that it would not be substantially **so. The Council's Landscape Architect confirmed** during cross examination at the Inquiry that, following his own assessment of the impacts of the proposed development, this remained his view.
16. The appellants consider that the rural character of the wider site area itself is directly affected by the existing residential development that defines its

¹⁵ Landscape and Visual Appraisal: Rope Lane, Shavington, prepared by Barnes Walker (Ref. M2371.LVA.05.14)

¹⁶ Section 5 of Mr Gomulski's Proof of Evidence

¹⁷ Pages 24 and 25 of Mr Gomulski's Proof of Evidence

¹⁸ Core Document 1

boundaries to the south west and south east. Indeed, the appellants say that the rear garden fences and properties on Vine Tree Avenue and Northfield Place are clearly visible across the open fields of the appeal site presenting an urban edge that is both disjointed and abrupt in character. No planted buffer zone exists to reduce its impact and they consider that the urban context of the adjacent landscape is evident. Furthermore, although masked to a degree by road side planting, the appellants state that moving traffic along the A500 to the north west of the appeal site is both visible and audible, which compounds the urban fringe identity of the appeal site. The development of the Phase 1 scheme is currently under construction and the appellants refer to the changes that would occur to the character of the wider area once this is complete and, in particular, the urbanising influence that this approved development would have on the character of the appeal site.

17. The Council considers that the appeal site is currently in agricultural use and that it does not have the characteristics of an urban fringe site. Indeed, the Council states that the existing settlement edge of Shavington is well defined and the agricultural landscape of the appeal site is generally intact, with landscape features and elements, including the ancient field system, in an excellent condition, being well preserved and representative of the Landscape Character Area.
18. The appeal site is located between the built up area of the settlement to the south and the A500 to the north west. Substantial planting exists along Swill Brook along the north eastern boundary of the appeal site. The residential development which forms Phase 1 is currently under construction and once completed would extend the built form of the settlement up to the southern boundary of the appeal site. The approved scheme for Phase 1 includes a **countryside park and children's play area within a triangular wedge of land** to the north of the dwellings, which now forms the south eastern part of the appeal site. The eastern boundary of this approved countryside park would run along part of Swill Brook and the north western boundary would run parallel to the A500, with the remainder of the appeal site retained as a field beyond.
19. The indicative layout for the proposed development shows how the appeal site could be developed for up to 53 dwellings by extending the built form of the settlement within the central part of the appeal site, immediately to the north of the Phase 1 development, with a countryside park wrapping around the proposed dwellings between them and the north eastern boundary with Swill Brook and the north western boundary with the A500. The existing planting along these boundaries would be retained and enhanced, with further planting within the proposed development.
20. At the Inquiry, the Council confirmed that the ancient field system found in and around the appeal site is relatively common within Cheshire. Indeed, the Council accepted that changes to this ancient field system had, in any event, taken place, as was evidenced by the historic Ordnance Survey plans¹⁹ submitted at the Inquiry by the appellants. Although the Council and the appellants differ in their assessments of the Significance of Effect of the proposed development on the landscape, the Council has agreed that while it **considers it would be greater than that identified in the appellants' LVA, it would not be substantially so.**

¹⁹ Document 3

21. The proposed development would include the loss of some open countryside. However, given the contained nature of the appeal site and its location immediately adjacent to the built up area of Shavington, along with the retention of many of the existing landscape features, including boundary hedgerows and trees, and the addition of further planting within the proposed development, I do not consider that the proposal would introduce features that would be completely uncharacteristic of the immediate area or would represent a substantial intrusion into the landscape of the wider area. Furthermore, I consider that, given the outline nature of the proposal, further opportunities exist for the development of a masterplan to secure an appropriate design and landscape management regime at the reserved matters stage.
22. I conclude, therefore, that the proposed development would cause some harm to the character and appearance of the open countryside. However, given the nature of these impacts, I consider that only limited weight should be afforded to the landscape changes that would result from the proposed development.

Visual character of the landscape and the purpose of the Green Gap

Visual character of the landscape

23. The Council and local residents are concerned about the impact of the proposal on the visual character of the landscape and the purpose of the Green Gap. The proposed development would include the construction of up to 53 dwellings on land that is currently used for agricultural purposes.
24. The **appellants' LVA identified** potential visual receptors as residents of dwellings, users of public footpaths and users of the surrounding road network. The LVA allocates receptor group numbers (RG1 – RG13) to the various visual receptors identified and includes viewpoint photographs which, where utilised, are considered to be representative of the kind of view experienced by those receptors which are located close to where the photograph was taken.
25. With regards to users of public rights of way, the LVA concludes that RG1 and RG2, which represent the users of Rope FP2 and Rope FP3 respectively, would have very limited views, if any, of the appeal site, once the Phase 1 housing development has been completed. Furthermore, the LVA finds that users of public footpaths Shavington Cum Gresty FP3, FP4, FP5, FP6, FP7 and FP9; Rope FP1 and FP4; Willaston FP8 and FP13, and FP5, FP6, FP7 and FP8; and Wybunbury FP21, do not experience any views of the appeal site due to the distance of the view, the topography and the presence of foreground built form and/or intervening trees and hedgerow.
26. As far as the views of local residents are concerned, the LVA concludes that it would be highly unlikely that any views of the appeal site would be discernable through the built form and associated landscaping once the Phase 1 housing development has been completed from RG3, RG4, RG5 and RG8, which represent the occupiers of some properties on Rope Lane, Burlea Drive, Vinetree Avenue and Northfield Place. Although the LVA concludes that views of the appeal site would be mostly obscured by the completed housing and landscaping to the foreground once the Phase 1 development has been completed from RG6, which includes the properties on the western side of Northfield Place, it says that it is possible that residents of Nos. 17 and 19a Northfield Place may retain partial or clear views through to the appeal site. The LVA concludes that views of the appeal site from Rose Cottage (RG7)

would be mostly obscured by the housing and landscaping to the foreground as a result of the completion of the Phase 1 development, with the nature of the views experienced by these residents having been changed. Finally, the LVA considers that views of the appeal site from properties on Chestnut Avenue, within RG9, would be unlikely, due to the orientation of properties, built form along Chestnut Avenue and on Northfield Place, mature trees and hedgerows in the foreground and the topography of the land.

27. In terms of road users, the LVA considers that once the dwellings on the Phase 1 development site have been completed and are in the foreground of the views, it is highly unlikely that any views of the appeal site would be discernible through the built form and associated landscaping from Rope Lane (RG10) and Burlea Drive (RG11). The LVA concludes that there are no views of the appeal site from Chestnut Avenue (RG12) due to the siting of residential properties on Chestnut Avenue, topography and the orientation of the road itself. Finally, from the A500 (RG13) the LVA says that any discernible views of the appeal site would be from the section of this road which is adjacent to the northern corner of the appeal site, although in summer it is likely that the views would be effectively screened by vegetation. Furthermore, given that the A500 is a high speed dual carriageway, such views would be likely to be experienced at speed and for a short period of time only.
28. The LVA assessed²⁰ how the views of the different receptor groups may be affected by the proposed development, in order to ascertain the nature of any visual effects which may arise from its implementation. This concluded that for receptor groups RG1 – RG5 and RG8 – RG13 the Sensitivity of Effect would be Low and for receptor groups RG6 and RG7 the Sensitivity of Effect would be Low to Medium. Furthermore, it found that the Magnitude of Effect would be Negligible for receptor groups RG1, RG9 and RG12, Low to Negligible for receptor groups RG2, RG4, RG10 and RG11, Low for receptor groups RG3, RG8 and RG13, and Low to Medium for receptor groups RG5, RG6 and RG7. This would result in the Significance of Effect being Negligible for receptor groups RG1 – RG4 and RG8 - RG13, Negligible/Minor Adverse for receptor groups RG5 and RG7, and Minor Adverse for receptor group RG6. The LVA concludes that the overall anticipated Significance of Visual Effect for Year 1 would be Minor Adverse/Negligible.
29. **The Council's assessment of visual impacts was based on viewpoints located in close proximity to those within the appellants' LVA, but included a number of additional viewpoints.** Again, the Council has assessed the visual impacts on users of footpaths and public rights of way, users of the road network and the occupiers of residential properties from 12 viewpoints (1 – 12). Viewpoint 1 represents the proposed footpath from Rope Lane, Viewpoints 2 and 3 are from Rope Lane, Viewpoint 4 is from the Rope Lane/Vinetree Avenue junction, Viewpoint 5 is located along the pedestrian footpath on Burlea Avenue and Viewpoint 6 is from public footpath Rope 2. Viewpoint 7 represents the view from the rear of 19a Northfield Place, although it is located at the very eastern extent of the appeal site, to the west of Swill Brook. Viewpoints 8 and 10 are located close to the southern boundary of the appeal site, close to the northern edge of the Phase 1 development, and represent the views of future occupiers of the Phase 1 development. Viewpoint 9 is located along the north western boundary of the appeal site in an area shown on the indicative plans as being

²⁰ Appendix 2 to the LVA

accessible to the public as a countryside park, including a number of footpaths and a play area. Finally, Viewpoints 11 and 12 represent views from Chestnut Avenue and Vinetree Avenue towards Northfield Place, respectively.

30. **The Council's** assessment considers that the Sensitivity of Viewpoints 1 and 6 – 10 is High, with the remaining viewpoints having a Medium Sensitivity. It also says that the Magnitude of Change at Viewpoints 1 and 7 – 10 is High, with a Negligible Magnitude of Change at Viewpoints 2 – 6 and 11 and 12. The Significance of Effect at Viewpoints 1 and 7 – 10 is therefore determined as Substantial, with the Significance of Effect at Viewpoints 2 – 6 and 11 and 12 considered to be Slight/No Change.
31. **The Officer's Report**²¹ to the Southern Planning Committee, in respect of the planning application the subject of this appeal, refers to the consideration of **the appellants' LVA by the Council's Landscape Architect. Although he** considered that the visual Significance of Effect would be greater than identified in the submitted LVA, he concluded that it would not be substantially **so. The Council's Landscape Architect** confirmed during cross examination at the Inquiry that, following his own assessment of the impacts of the proposed development, this remained his view.
32. It was agreed by the Council and the appellants at the Inquiry that, due to the siting and well screened nature of the appeal site, the visual effects of the proposed development would be very localised. Indeed, the viewpoints of particular concern to the Council were confirmed as being Viewpoints 1 and 7 – 10. All of which, the Council considers, the proposed development would have a Substantial Significance of Effect upon.
33. Viewpoint 1 is located on Rope Lane, to the north of Rose Cottage. The view is obtained from the footpath on the north eastern side of Rope Lane, along an existing agricultural track which enters the appeal site at its south western end. Substantial planting exists along both sides of the track, which then turns to cross the A500. The Council also refers to this agricultural track as being retained and used as the start of a footpath link associated with both the approved development of Phase 1 and the proposal before me. However, the appellants dispute this.
34. It was apparent from my site visit that from Viewpoint 1 on Rope Lane, users of the footpath on the north eastern side of this road would only have a narrow, glimpsed view of the proposed development, given the extent of existing planting on either side of the agricultural track. If this agricultural track was retained and extended to provide a footpath link, as shown on the indicative plans, views of the proposed development would become more extensive from this footpath as users walk through the appeal site. Nevertheless, currently no public views are available from this agricultural track, given its private nature, and no public footpath exists across the appeal site. In my opinion, future users of any footpath link would be likely to be residents of either the Phase 1 development or that proposed as part of this appeal and views of the proposed dwellings from this location would be likely to include both the built form and the landscaping associated with the countryside park. I am satisfied, therefore, that the proposed development would not appear visually obtrusive to users of this footpath link.

²¹ Core Document 1

35. Viewpoint 7 is located at the very eastern extent of the appeal site and was used by the Council to represent the view from No. 19a Northfield Place, albeit that Swill Brook and the existing boundary planting is sited between this dwelling and the appeal site. Indeed, given the extent of the existing planting along Swill Brook and the intervening fields to the east, along with the distance between No. 19a and the appeal site and the orientation of this dwelling, I am satisfied that the proposed development would not appear prominent or visually intrusive to the occupiers of No. 19a from within their dwelling and garden, given that such views would be oblique and only glimpsed through the intervening trees.
36. Viewpoint 8 is located at the northern edge of the Phase 1 development and was used by the Council to indicate the view that, once built, residents of these neighbouring residential properties would have. Although future occupiers of the dwellings to the south of the appeal site in Phase 1 would have clear views of the proposed development, these views would not be dissimilar to the views that existing occupiers of dwellings along Vine Tree Avenue and Northfield Place have of the dwellings being constructed as part of Phase 1. Furthermore, such views are typical of the layout of modern residential estates and there is no evidence before me to indicate that adequate separation distances would not be provided to ensure that future occupiers would have adequate levels of privacy and outlook.
37. Viewpoint 9 is located along the north western boundary of the appeal site in an area that would become part of the countryside park shown on the indicative site layout. Again, public views from this area of the appeal site are currently not available. However, the indicative layout plan shows that this area would include a play area and footpaths within the proposed countryside park. Although I acknowledge that from this viewpoint the proposed residential development would be visible to future users of the countryside park, they would be likely to be residents of either the Phase 1 development or that proposed as part of this appeal and views of the proposed dwellings from this location would be likely to include both the built form and the landscaping associated with the countryside park and the existing planting along Swill Brook. As such, I do not consider that the residential development would appear unduly overbearing or prominent in views from this location.
38. Finally, Viewpoint 10 is located along the southern boundary of the appeal site in an area that would remain as an open field according to the plans approved as part of Phase 1. Again, public views from this area of the appeal site are currently not available, although the Council refers to the proposed footpath link between the Phase 1 development and Rope Lane in this location. I acknowledge that from this viewpoint the proposed residential development would be visible to future users of the proposed footpath link. However, they would be likely to be residents of either the Phase 1 development or that proposed as part of this appeal and views of the proposed dwellings from this location would be likely to include both the built form and the landscaping associated with the countryside park beyond, adjacent to the existing planting along Swill Brook. As such, I do not consider that the residential development would appear unduly overbearing or dominant in views from this location.
39. I conclude, therefore, that the proposed development would cause some harm to the visual character of the landscape. However, given the nature of these impacts, I consider that only limited weight should be afforded to the changes

to the visual character of the landscape that would result from the proposed development.

Green Gaps

40. The Council considers that the designated Green Gap in this location, which includes the appeal site, serves to physically separate and prevent the merging of Shavington and Crewe and maintains them as distinct settlements. The Council and local residents, along with Shavington Parish Council, are concerned that any development within the Green Gap in this location would reduce the extent, and erode the integrity, of the Green Gap, which would make it more difficult to retain the essential separateness, identity and individuality which characterises the settlement of Shavington. Furthermore, they are concerned that this proposed development and others like it would result in Shavington being merged into Crewe, with which local residents have no affinity.
41. Paragraph 4.18 of the reasoned justification to Replacement Local Plan Policy NE.4 says that the areas designated as Green Gaps need additional protection in order to maintain the definition and separation of existing communities and to indicate support for the longer term objective of preventing Crewe, Willaston, Wistaston, Nantwich, Haslington and Shavington from merging into one another. It goes on to say that the building of principal traffic routes through the narrow gaps between the settlements has the potential to increase pressure for new development up to and along those routes. Furthermore, that pressure, it says, is already manifest in the Green Gaps, justifying a stricter level of development control to ensure continuing separation of the settlements.
42. I note the historical context of the development of the Green Gap policy within the former Borough of Crewe and Nantwich set out by the Council and their specific function which is to prevent neighbouring towns and villages from merging into one another as a result of the unrestricted sprawl from the larger built up area of Crewe. The Council has referred to the New Green Belt and Strategic Open Gap Study²², published in September 2013, which was prepared as part of the evidence base for the emerging Cheshire East Local Plan. It **reviews the evidence related to the Council's proposals to designate a new Green Belt in the Nantwich and Crewe area and Strategic Open Gaps in 2 locations, including between Crewe, Shavington, Weston, Willaston and Rope.** This Study concludes, at paragraph 5.1.5, that strong policy protection continues to be necessary to safeguard the existing gaps between settlements that are at risk of coalescence resulting from future growth of Crewe. Indeed it considers that a proposal to extend the existing North Staffordshire Green Belt around the southern, eastern and western edges of Crewe, which would include the appeal site, would provide more effective policy protection than the proposed Strategic Open Gap indicated in the Development Strategy. As an alternative to an extended Green Belt designation, the Study also concludes, at paragraph 5.1.9, that the Strategic Open Gap Policy should be applied to replace Replacement Local Plan Policy NE.4.
43. Appendix 2 of the Study sets out the results of the Green Gap surveys undertaken as part of the assessment. With regards to the gap between Crewe (Rope Lane) and Shavington, Survey Locations B1 and B2 are within the

²² Core Document 15

immediate vicinity of the appeal site. When looking north along Rope Lane, from the edge of Shavington towards Rope, Crewe, the Study states that there is no view of Crewe and the main feature is the rising road ramp, and screening to the A500. It concludes that from this location, there is no feeling of a gap owing to the dominance of the road bridge. With regards to Survey Location B2, which is looking north from a public footpath to the rear of Vine Tree Avenue, Shavington, at its junction with Rope Lane, the Study concludes that no view of Crewe is possible, but that there is a distinct impression of a gap in this location. However, the Study was undertaken prior to the commencement of the Phase 1 development which, the Council agreed at the Inquiry, would severely restrict views of the Green Gap from this location.

44. The Examination of the Cheshire East Local Plan Strategy was adjourned on 3 October 2014 and the Local Plan Inspector published his Interim Views on the Legal Compliance and Soundness of the Submitted Local Plan Strategy²³ on 6 November 2014. This identified a number of shortcomings²⁴ in the approach adopted by the New Green Belt and Strategic Open Gap Study. It also referred²⁵ to the success, until recently, of the existing Green Gaps policy, which has only come under threat when the 5 year housing land supply has been a decisive issue. The Local Plan Inspector concluded that there seems to be insufficient justification to establish a new Green Belt in the south of the District, which stems largely from the perceived risk of Crewe merging with Nantwich and other smaller settlements as a result of the proposals for growth and development in an around the town. Furthermore, he concluded that there seems to be little evidence to suggest that normal planning and development management policies (including the Green Gaps policy) would not be adequate to prevent the erosion of existing gaps between settlements, provided that a 5 year supply of housing land is consistently maintained. This approach is supported by the conclusions of the Green Belt Update – Critical Friend Advice: New Green Belt Policy, dated 20 April 2015²⁶, prepared for the Council by Ove Arup and Partners Limited.
45. The appellants agreed in cross examination at the Inquiry that the proposed development would result in the erosion of the physical gap between Shavington and Crewe and would adversely affect the visual character of the landscape. Furthermore, the appellants confirmed that they have not demonstrated that no suitable alternative location is available. As such, this proposal could not be considered as an exception to Policy NE.4 and its development would be contrary to it. Nevertheless, the appellants do not consider that the proposed development would undermine the objectives of Policy NE.4, given the low visual prominence of the appeal site, its perceived disassociation with the Green Gap to the north of the A500 and an absence of any levels of intervisibility between the appeal site and the wider Green Gap.
46. The appellants state²⁷ that in the vicinity of the appeal site, the narrowest part of the Green Gap is currently around 670m at the point between the most northerly properties on Rope Lane (just to the south of the A500 overbridge) and the southern edge of Crewe (properties on Glaisdale Close). Once completed, they say that the proposed development would result in a Green

²³ Core Document 6

²⁴ Paragraph 91

²⁵ Paragraph 92

²⁶ Document 4

²⁷ Paragraph 1.9.4 and Figure 05 of Mr Folland's Proof of Evidence

Gap of between around 640m and 655m between the new dwellings and the southern extent of the built up area of Crewe. The appellants consider²⁸ that the most extensive and effective part of the Green Gap is to the north of the A500 in the vicinity of the appeal site, which is between around 525m and 575m and would remain unaffected by the proposed development.

47. In addition to the changes to the physical gap between Shavington and Crewe, the appellants consider that the perception of the Green Gap on the ground should be considered concurrently. In particular they consider that, due to the width of the A500 and the height which is generated by embankments and tree planting along its corridor, this highway creates a strong visual and physical barrier between the significant proportion of the Green Gap to its north and the comparatively smaller part of the Green Gap to its south, which is partly occupied by the appeal site. Furthermore, the appellants conclude that the perceived Green Gap in the vicinity of the appeal site extends between the A500 and the southern edge of Crewe, due to the topography of the area, the effectiveness of the screening provided by existing planting along the northern boundary of the appeal site, the lack of any inter-visibility between the settlement edges of Crewe and Shavington, the lack of intra-visibility, namely the inability to see both settlement edges from a single point, and the sense of leaving Shavington when travelling over the bridge over the A500 along Rope Lane. As a result, although the proposed development would nominally reduce the physical gap between Crewe and Shavington, the appellants consider that this reduction would not generally be perceived on the ground.
48. The proposed development would be sited within the Shavington/Weston/Crewe Green Gap as shown on the Proposals Map in the Replacement Local Plan. Within the Green Gaps, Policy NE.4 is very clear that approval will not be given for the construction of new buildings which would result in the erosion of the physical gaps between built up areas; or, adversely affect the visual character of the landscape. In this case, it is apparent from the evidence before me that, by its very nature, the proposed development of up to 53 dwellings would result in the erosion of the physical gap between Shavington and Crewe; and, I have found that it would adversely affect the visual character of the landscape. The appellants have not demonstrated that no suitable alternative location is available for the proposed development. As such, the proposal would be contrary to Policy NE.4.
49. Nevertheless, I have had regard to the reasoned justification to Policy NE.4 contained in paragraph 4.18 of the Replacement Local Plan and in particular the purpose of the policy and the reason for the designation of Green Gaps which is to maintain the definition and separation of existing communities and to indicate support for the longer term objective of preventing Crewe, Willaston, Wistaston, Nantwich, Haslington and Shavington from merging into one another. It is also apparent from the emerging Cheshire East Local Plan Strategy that this is a policy approach which the Council wishes to retain and extend in the future and which has tremendous support from local residents and the Parish Council.
50. I note the 9 factors referred to in the Office of the Deputy Prime Minister (ODPM) document '**Strategic Gap and Green Wedge Policies in Structure Plans**'²⁹ published in 2001, referred to by the appellants. These factors, which

²⁸ Paragraph 1.9.12 and Figure 05 of Mr Folland's Proof of Evidence

²⁹ Appendix 4 to Mr Folland's Proof of Evidence

relate to distance, topography, landscape character/type, vegetation, existing uses and density of buildings, nature of urban edges, inter-visibility, intra-visibility and the sense of leaving a place, were considered by the Inspector in his Report on the Eastleigh Local Plan (1998) to be useful in delineating strategic gaps. Although in this case I am not considering the delineation of a Green Gap, these factors are useful in assessing the impact of the proposed development on the Green Gap.

51. With regards to the distance between Crewe and Shavington, the proposal would not substantially reduce the physical gap between the 2 settlements, given that a distance of between around 640m and 655m would be retained, with the majority of the Green Gap located to the north of the A500 remaining unaffected. There would be some loss of agricultural land adjacent to the built up area of Shavington, however, it was established at the Inquiry that the ancient field system found in and around the appeal site is relatively common within Cheshire and that changes to this ancient field system have, in any event, taken place. It was apparent from my site visit that, given the topography of the local area, along with the existing planting and vegetation around the north western and north eastern boundaries of the appeal site, existing public views of this part of the Green Gap are limited. Indeed, the perception when travelling along Rope Lane from Shavington towards Crewe is that the extent of the former is the bridge over the A500, with a sense of leaving the settlement at that point, given the built up nature of Rope Lane. In my opinion, the A500 is perceived as the boundary of Shavington at this point along Rope Lane.
52. During my site visit, it was apparent that there was no inter-visibility between the settlements of Crewe and Shavington or intra-visibility from any point along Rope Lane, given the topography of the area, the substantial planting and the embankment associated with the A500. Furthermore, although some built development exists within this Green Gap, including Shavington High **School, a farmstead and a children's nursery, along with other features such as** powerlines and sports pitch floodlights, views from Rope Lane, to the north of the A500, extend across open agricultural fields, with some views of the urban edge of Crewe. In my opinion, the perception of the Green Gap, when travelling north on Rope Lane from Shavington, is that it is located north of the A500, culminating at the southern edge of Crewe, which is defined by housing adjacent to the railway line and Gresty Lane.
53. I acknowledge that the location of the A500 through this Green Gap has the potential to increase pressure for new development up to and along this route and this is evidenced by the proposal before me, as well as other developments which have been the subject of planning applications and appeals within this locality. However, in this location, I do not consider that the proposed development would perceptively reduce the Green Gap, given its siting, the topography of the local area and the existing substantial screening, along with the sense of leaving Shavington that currently exists at the bridge over the A500.
54. Indeed, in my opinion, although the proposed development would physically erode the Green Gap to a limited degree, it would not cause significant harm to the wider functions of the Green Gap in this location, given the extent of the remaining gap between the settlements, the lack of inter-visibility between Shavington and Crewe, the limited harm to the visual character of the

landscape and that the function of this Green Gap in maintaining the definition and separation of these 2 settlements would not be significantly diminished.

55. I conclude, therefore, that although the proposed development would be contrary to Policy NE.4, there would be little harm to the purposes of the Green Gap in this location. As such, I have afforded this breach of policy some weight in my consideration of this appeal.

Sustainable development

56. Paragraph 7 of The Framework sets out the 3 dimensions to sustainable development: economic, social and environmental and paragraph 8 says that the roles performed by the planning system in this regard should not be undertaken in isolation, because they are mutually dependent. It goes on to say that, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system, which should play an active role in guiding development to sustainable solutions.

57. There is no dispute between the main parties that the appeal site is sustainable in locational terms, given its proximity to local services and facilities. The appellants refer to a number of elements of the proposed development which they say would fulfil the sustainability objectives of The Framework. In terms of the economic role, they say that the proposed development would help contribute to ensuring the Borough has a stable workforce in terms of ability and age. Furthermore, the construction of the proposed development, which would be by a local housebuilder, would also create and maintain construction jobs. Once completed the residents of the development would spend money in Shavington and Crewe and help to maintain facilities and services in the local area.

58. The appellants say that in terms of the social role, there are 3 strands to this criterion, namely accessibility, provision of housing where required and supporting strong, vibrant and healthy communities. With regards to accessibility, the appellants say that Shavington contains a wide range of essential facilities and services including a secondary school, leisure centre, primary school, community centre, employment and shops, with all of these facilities being within walking distance of the appeal site. In terms of the provision of housing, the appellants point to the need for both open market and affordable housing in the area and that the proposed development would include the construction of up to 53 dwellings, of which up to 16 would be affordable. Finally, the provision of housing in this location would support Shavington as a strong, vibrant and healthy community.

59. With regards to the environmental role, the appellants refer to the high quality design of the proposed scheme, which they say would be landscape led, and would include substantial areas of open and play space to meet the needs of future residents. Furthermore, they refer to the appeal site being well located in relation to the services and facilities offered in Shavington and Crewe which would negate the need for longer car journeys to access day to day services **and facilities. Finally, evidence has been presented to address the Council's concerns in respect of the 'important hedgerow'.**

60. The Council considers that the proposal would not amount to sustainable development and that as such, the presumption in the second part of

paragraph 14 of The Framework is not engaged. Although the Council welcomes the provision of housing, including affordable housing, and acknowledges the economic benefits of the development through the construction of the dwellings themselves and the spending that the residents of the houses would bring to the area, it considers that this would be outweighed by the environmental harm to the open countryside and Green Gap from the development of housing beyond the settlement boundary, in the open countryside and Green Gap, which would adversely affect the rural character and narrow the effect of the Green Gap in this locality.

61. I concur with the views of the main parties that the appeal site is sustainable in locational terms, given its proximity to local services and facilities. The proposed development would provide up to 53 dwellings. Furthermore, the submitted Unilateral Undertaking includes an obligation to provide 30% affordable housing on the appeal site. I am satisfied therefore that the proposed development would go some way towards meeting the needs for such housing in this area.
62. The provision and maintenance of employment within the construction industry, through the construction of the proposed dwellings, along with the additional spending from future occupiers of the proposed dwellings, would help support the local economy and maintain facilities and services in the local area.
63. The proposal would involve the loss of an area of open countryside. However, I have afforded the loss of this open countryside and the landscape changes that would result from the proposed development, along with the harm to the visual character of the landscape, limited weight in my determination of this appeal. Furthermore, I consider that although the proposed development would be contrary to Policy NE.4 of the Replacement Local Plan, there would be little harm to the purposes of the Green Gap in this location and, as such, have only afforded this breach of policy some weight. The proposed development would include substantial elements of open space, including a countryside park and a play area, along with the retention and creation of substantial landscaping which would represent an environmental gain. Given this, in addition to the social and economic gains detailed above, I consider that the proposed development would, on balance, represent a sustainable form of development.
64. I conclude, therefore, that the proposed development would represent a sustainable form of development, having regard to local and national policy.

Whether or not any harm identified would significantly and demonstrably outweigh the benefits of the scheme

65. Paragraph 49 of The Framework says that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. The Council and the appellants agree that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. As such paragraph 49 is engaged in this case.
66. Paragraph 14 of The Framework states that at its heart there is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For the latter this

means where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework as a whole.

67. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.
68. I have found that the proposal would represent a sustainable form of development. Furthermore, the lack of a 5 year supply of deliverable housing land, along with the need to boost significantly the supply of housing in Cheshire East, is a material consideration of substantial weight in this appeal. The provision of up to 53 houses, including 30% affordable housing, would go some way to reducing the shortfall. Indeed, the appellants confirmed at the Inquiry that work would commence on the appeal site, once the Phase 1 development is complete, with the site anticipated to be completed within 5 years.
69. Although the proposed development would lead to the loss of some open countryside and some harm to the character and appearance of the area has been identified, I have afforded limited weight to the landscape changes that would result from the proposed development. I have also found that the proposed development would cause some harm to the visual character of the landscape, however, given the nature of these impacts, I have afforded limited weight to the changes to the visual character of the landscape that would result from the proposed development. Furthermore, I have concluded that the proposal would be contrary to Replacement Local Plan Policy NE.4. However, given that there would be little harm to the purposes of the Green Gap in this location from the proposed development, I have afforded this breach of policy only some weight.
70. I have considered all the other matters raised by the Council and third parties including precedent; the preference for the development of brownfield sites; flood risk concerns; the impact on local services and facilities; increase in traffic; and, highway safety concerns. However, I do not consider that these matters and the harm identified to the character and appearance of the open countryside, the visual character of the landscape and the purpose of the Green Gap would significantly and demonstrably outweigh the benefits of the proposed development, which would provide much needed housing in Cheshire East. As such, I conclude that the appeal should be allowed.

Conditions

71. A list of suggested conditions was included in the Statement of Common Ground. In addition to the standard time limit and reserved matters conditions, this list includes 19 conditions, 18 of which are agreed by the Council and the appellants. I have had regard to the advice in the Planning

Practice Guidance (The Guidance)³⁰ when considering these conditions. A condition listing the plans to which this permission refers would be reasonable for the avoidance of doubt and in the interests of proper planning. A requirement that details of the existing ground levels, proposed ground levels and the level of proposed floor slabs be submitted and approved would be reasonable to safeguard the character and appearance of the area and the living conditions of neighbouring residents. The submission and approval of samples of the materials to be used in the construction of the external surfaces of the dwellings would be necessary to safeguard the character and appearance of the area.

72. Conditions relating to the implementation of the mitigation measures set out in the Flood Risk Assessment and the drainage of the site would be necessary to safeguard the environment and reduce the risk of flooding. A requirement that the reserved matters include the provision of replacement hedge planting for any hedgerows that are to be removed would be necessary to safeguard the character and appearance of the area. A condition requiring the reserved matters to include a detailed lighting plan would be necessary to safeguard the living conditions of neighbouring residents. A requirement that the development be carried out in accordance with the recommendations of the Noise Assessment would be necessary to ensure that future occupiers of the proposed dwellings would not suffer undue noise and disturbance from the A500.
73. A condition which requires the submission of an updated Air Quality Assessment as part of the reserved matters would be reasonable to safeguard the health and well being of future occupiers of the proposed dwellings. The submission and approval of an Environmental Management Plan would be reasonable to safeguard the living conditions of neighbouring occupiers. Conditions requiring the submission and approval of a Tree Survey, a scheme for the retention and protection of trees, shrubs and hedges on or adjacent to the site, their replacement if they die or become severely damaged or seriously diseased within 5 years and the prevention of particular activities being carried out within any fenced off or otherwise protected areas, would be necessary to safeguard existing trees, shrubs and hedges on and adjacent to the site during construction.
74. A requirement that the works to form the site access, as required by previous planning permissions, would be necessary in the interests of highway safety. Conditions requiring a detailed survey to check for nesting birds between 1 March and 31 August in any year, the incorporation of features in the scheme suitable for use by breeding birds and the preparation of an updated badger survey would be necessary in the interests of biodiversity. Finally, I do not consider that a condition which would require the submission of details of Broadband access or equivalent wide bandwidth data transmission and its installation would be necessary in the interests of providing a sustainable development.

³⁰ Circular 11/95: The Use of Conditions in Planning Permissions has been largely superseded by the Planning Practice Guidance, with the exception of Appendix A (Model Conditions)

Unilateral Undertaking

75. The appellants submitted a Unilateral Undertaking³¹ under Section 106 of the Town and Country Planning Act 1990, which includes a number of obligations to come into effect if planning permission is granted. I have considered these in the light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. I have also had regard to the Community Infrastructure Levy Regulations 2010 Compliance Statement³², submitted at the Inquiry by the Council.
76. The Council confirmed in its Compliance Statement that, with regards to Regulation 123(3), no other obligations have been entered into on or after 6 April 2010 which provide for the funding or provision of the infrastructure for which the Council is seeking any obligation in relation to this appeal proposal.
77. Policy BE.5 of the Replacement Local Plan says that the local planning authority may seek to negotiate with developers to make adequate provision for any access or other infrastructure requirements and/or community facilities, the need for which arises directly as a consequence of that development. It goes on to say that such provision may include on site facilities, off site facilities, or alternatively payment of a commuted sum. The obligations within the Unilateral Undertaking relate to the following matters:
78. **Affordable Housing:** Policy RES.7³³ of the Replacement Local Plan says that affordable housing targets on windfall sites of 25 units or more, or greater than 1ha in size, will be 30%. Policy RES.7 (as modified)³⁴ of the Replacement Local Plan says that the need for affordable housing will be met through negotiation on a site by site basis with developers for an element of affordable housing on windfall sites of 15 units or more, or greater than 0.5ha in size in Crewe, Nantwich and the rural areas, with affordable housing targets on windfall sites **being 35%. The Council's** Interim Planning Statement: Affordable Housing³⁵ requires the provision of 30% affordable housing on all windfall sites of 15 dwellings, or more than 0.4ha in size, in areas with a population exceeding 3,000. The SHMA Update 2013 identified a requirement for 270 new affordable homes between 2013/14 – 2017/18 in the Wybunbury and Shavington sub area. The Unilateral Undertaking includes the provision of 30% of the total dwellings as affordable. Given the level and nature of the need for affordable housing in Wybunbury and Shavington, I am satisfied that this obligation would pass the statutory tests.
79. **LEAP and Public Open Space:** Policy RT.3³⁶ of the Replacement Local Plan says that in new housing developments with more than 20 dwellings the provision of a minimum of 15sqm of shared recreational open space per dwelling will be sought. It goes on to say that where the development includes family **dwellings, an additional 20sqm of shared children's play space per family** dwelling will be required as a minimum for the development as a whole, subject to various requirements. The proposed development, the subject of this appeal, would involve building on the approved play area for the neighbouring residential site, known as Phase 1. The Council is, therefore,

³¹ Document 9

³² Document 2

³³ Core Document 3

³⁴ Appendix 1 to Document 2

³⁵ Appendix 2 to Document 2

³⁶ Core Document 3 and Appendix 3 to Document 2

seeking sufficient on-site provision to serve both the Phase 1 development and that proposed as part of this appeal. This would equate to around 4,725sqm of public open space and a Locally Equipped Area for Play (LEAP) which would include 5 pieces of equipment. The Unilateral Undertaking would provide around 6,200sqm of public open space and a LEAP with 5 pieces of equipment. Furthermore, the Unilateral Undertaking includes the mechanism for the management and maintenance of the public open space and LEAP. Given the scale and nature of the proposed and approved developments it is likely that there would be significant demand for the use of public open space. I consider, therefore, that these obligations would pass the statutory tests.

80. **Highways:** Policy TRAN.3³⁷ of the Replacement Local Plan says that proposals for new development will only be permitted where appropriate provision is made for pedestrians. It goes on to say that, where appropriate, the Council will seek to improve conditions for pedestrians through a number of measures, including creating safer routes to school. The Council is seeking a financial contribution towards a pedestrian crossing for Rope Lane, which is a heavily trafficked road. Such a crossing would link the appeal site to the footway/cycle network on the western side of Rope Lane so that pedestrians can safely cross the road and access Shavington High School further to the north. The Unilateral Undertaking includes a financial contribution of £80,000 for the provision of a pedestrian/toucan crossing on Rope Lane. A pedestrian crossing on Rope Lane would provide residents of the proposed development with a connection to the footpath/cycle network on the western side of Rope Lane and a safer route to Shavington High School for pupils walking/cycling there from the new dwellings. I consider, therefore, that this obligation would pass the statutory tests.

81. At the Inquiry, the Council confirmed that, if I was minded to allow the appeal and this Unilateral Undertaking came into effect, it would not enforce the obligations relating to the provision of open space included within the Unilateral Undertaking for the Phase 1 development, given that sufficient amenity space would be provided as part of this proposed development to meet the needs of the future occupiers of both the Phase 1 development and this proposal.

Karen L Baker

INSPECTOR

³⁷ Core Document 3 and Appendix 6 to Document 2

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Scott Lyness <i>of Counsel</i>	Instructed by Ms Nicky Folan, Solicitor for the Council
He called	
Mr Jan Gomulski	Principal Landscape Architect
BA(Hons) BLD MCD CMLI	
Mr Ben Haywood	Major Applications Team Leader
BA(Hons) MA MBA MRTPI MCM	

FOR THE APPELLANTS:

Mr Vincent Fraser QC	Instructed by Mr Stephen Harris, Emery Planning
He called	
Mr Nicholas Folland	Director of Barnes Walker Limited
BA(Hons) DipLA CMLI	
Mr Stephen Harris	Director of Emery Planning
BSc(Hons) MRTPI	

DOCUMENTS

- 1 Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, submitted by the appellants
- 2 The Community Infrastructure Levy Regulations 2010 Compliance Statement, submitted by the Council
- 3 Field Boundary Comparison (Drawing No. M2371 Figure 10), submitted by the appellants
- 4 Cheshire East Council: Green Belt Update – Critical Friend Advice, New Green Belt Policy, prepared by Ove Arup and Partners, dated 20 April 2015, submitted by the appellants
- 5 Supplemental Agreement under Section 106A of the Town and Country Planning Act 1990, relating to the Phase 1 development, submitted by the appellants
- 6 Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, relating to the Phase 1 development, submitted by the appellants
- 7 **Secretary of State’s Decision and Inspector’s Report in respect of appeal** Ref. APP/U4230/A/13/2209607, submitted by the appellants
- 8 **Officer’s Report to the Council’s Planning Committee on 10 June 2015 in** respect of planning application Ref. 14/3962N, submitted by the appellants
- 9 Revised Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990, submitted by the appellants
- 10 Closing Submissions on behalf of Cheshire East Council, submitted by the Council
- 11 High Court Judgement in respect of Case No. CO/5795/2014, submitted by the Council
- 12 Closing Submissions on behalf of the appellants, submitted by the appellants
- 13 Letter from Emery Planning, dated 6 July 2015, including Skeleton

- 14 Argument on behalf of the Secretary of State, submitted by the appellants
Email from the Council, dated 15 July 2015, submitted by the Council

PLANS SUBMITTED AS PART OF THE PLANNING APPLICATION

- A1/1 Location Plan – Phase 2 (Drawing Ref. 8525 Drawing No. 1)
- A1/2 Sketch Layout – Phase 2 (Drawing No. 1274WHD/RLP2-SK01 Rev. B)
- A1/3 Combined layout (Drawing No. 1274WHD/RLP2-CL01)
- A1/4 Proposed Site Access Junction (Drawing No. 9W9523/PLAN 4 Rev. C)
- A1/5 Phase 1 Habitat and Vegetation Map (Drawing No. Figure 1)
- A1/6 Pond Location Map (Drawing No. Figure 2)
- A1/7 Plan to Illustrate Habitat Protection, Creation and Enhancement (Drawing No. Figure 3)
- A1/8 Plan 1: Site Location (Drawing No. Plan 1)
- A1/9 Plan 2: Local Highway Network (Drawing No. Plan 2)
- A1/10 Plan 3: Local Amenities and Pedestrian Catchments (Drawing No. Plan 3)
- A1/11 Plan 4: 3km & 5km Cycle Catchment (Drawing No. Plan 4)
- A1/12 Plan 5: Local Bus Network (Drawing No. Plan 5)

Appendix 1 – Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) This permission shall refer to the following plans, unless any other condition attached to the permission indicates otherwise:
 - i. Location Plan – Phase 2 (Drawing Ref. 8525 Drawing No. 1);
 - ii. Sketch Layout – Phase 2 (Drawing No. 1274WHD/RLP2-SK01 Rev. B); and,
 - iii. Proposed Site Access Junction (Drawing No. 9W9523/PLAN 4 Rev. C).
- 5) No development shall take place until details of existing ground levels, proposed ground levels and the level of proposed floor slabs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) The development shall be carried out in complete accordance with the recommendations set out in Section 8 of the Flood Risk Assessment Final Report v1.1, dated 5 June 2014, with the following measures carried out prior to the occupation of the development:
 - i. The surface water run-off generated by the proposed development shall be limited so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site; and,
 - ii. Finished floor levels shall be set no lower than the relevant 1 in 100 years plus climate change fluvial flood level plus 600mm freeboard.
- 8) The site shall be drained on a separate system with only foul drainage connected into the public foul sewerage system. Surface water shall discharge to the watercourse via an attenuation scheme as required by Condition 7.
- 9) The reserved matters shall make provision for replacement hedge planting for any hedgerows to be removed as part of the development hereby permitted.

- 10) The reserved matters shall include a detailed lighting plan for the development hereby permitted. The development shall be carried out in accordance with the approved plan.
- 11) The development hereby permitted shall be carried out in accordance with the conclusions and recommendations included in Section 8 of the Noise Assessment (Ref. 20140605 6142 Crewe PPG24) dated 8 May 2014. All works which form part of the scheme shall be completed before any of the dwellings to which they relate are occupied.
- 12) The first reserved matters application shall be accompanied by an updated Air Quality Impact Assessment, the scope of which shall first be agreed in writing with the local planning authority. The Assessment shall, inter alia, acknowledge the recently identified disparity between measured NO_x and NO₂ and the projected decline with emission forecasts which form the basis of air quality modelling. The Assessment shall **predict air quality with 'no emission reduction' and 'with emission reduction' scenarios. The Assessment shall also include details of any necessary mitigation measures for the dwellings and the proposed children's play area. The mitigation measures shall be completed before any of the dwellings to which they relate are occupied.**
- 13) No development shall take place until an Environmental Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Plan shall provide for:
 - i) the hours of construction work and deliveries;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) wheel washing facilities;
 - vi) details of any piling required, including method (best practicable means to reduce the impact of noise and vibration on neighbouring sensitive properties), hours, duration and prior notification to the occupiers of potentially affected properties;
 - vii) details of the responsible person (for example the site manager/office) who could be contacted in the event of complaint;
 - viii) 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;
 - ix) waste management – there shall be no burning of materials on site during construction; and,
 - x) a scheme to minimise dust emissions arising from 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.
- 14) The reserved matters shall include a Tree Survey which shall inform the design of the layout of the development hereby permitted. The reserved matters shall make provision for the retention of those trees that are classed as Category A and Category B in the Tree Survey.

- 15) No development or other operations shall commence on site until a scheme (hereinafter called the approved protection scheme) which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site including trees which are the subject of a Tree Preservation Order currently in force, has been submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme, which shall be in place prior to the commencement of work. The approved protection scheme shall be retained intact for the full duration of the development hereby permitted and shall not be removed without the prior written permission of the local planning authority. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the local planning authority.
- 16) Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within 5 years from the occupation of any dwelling or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.
- 17) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- 18) The approved works to form the access as required by planning permissions Refs. 11/4549N, 13/1021N and 14/1534N shall be carried out prior to the first occupation of the development hereby permitted.
- 19) Prior to the commencement of any works between 1 March and 31 August in any year, a detailed survey shall be carried out to check for nesting birds within the area of the proposed works. Where nests are found in any hedgerow, tree or shrub to be removed a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed in writing to the local planning authority by a suitably qualified person.
- 20) Prior to the commencement of the development hereby permitted, detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including swifts and house sparrows shall be submitted to and approved in writing by the local planning authority. The features shall be permanently installed in accordance with the approved details prior to the first use of the development hereby permitted.
- 21) The first reserved matters application shall be accompanied by an updated badger survey and mitigation report. The mitigation shall be completed before any of the dwellings are occupied.