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Appeal Decision – Davenham

Preface:

This appeal decision is important because it deals with a scheme allowed despite being outside the settlement boundary and the authority demonstrating a 5 year housing land supply which is relevant to the consideration of the appeal scheme.

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.

Appeal Decision

Inquiry held 28 April – 1 May 2015

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 3 September 2015

Appeal Ref: APP/A0665/A/14/2226994

Land at Fountain Lane, Davenham, Cheshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Richborough Estates Ltd against the decision of Cheshire West and Chester Council.
 - The application Ref 14/02130/OUT, dated 16 May 2014, was refused by notice dated 2 October 2014.
 - The proposal is an outline planning application for residential development of up to 70 dwellings, vehicular and pedestrian access, landscaping, infrastructure and associated works with details of new vehicular access from Fountain Lane submitted for approval.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 70 dwellings, vehicular and pedestrian access, landscaping, infrastructure and associated works with details of new vehicular access from Fountain Lane submitted for approval at land at Fountain Lane, Davenham, Cheshire in accordance with the terms of the application, Ref 14/02130/OUT, dated 16 May 2014, subject to the conditions set out in the attached schedule (Annex D).

The Inquiry and Subsequent Events

2. The Inquiry opened on 28 April 2015, sat for four days, and closed on 1 May. I carried out unaccompanied visits to the surrounding area on 27 and 29 April, and an accompanied visit to the site on 28 April.
 3. The current supply of deliverable housing sites was a main issue in dispute that had been identified in my pre-Inquiry note. Before, and during, the Inquiry the Council advised that it expected to publish its latest Housing Land Monitor ("HLM 2015") in June. Whilst certain information that was ultimately reflected in HLM 2015 was discussed at the Inquiry, along with other information provided on behalf of the appellant, a comprehensive update was not available at that time meaning that a base date of 1 April 2014 was used for considering housing land requirements and supply.
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4. Following the close of the Inquiry, I became aware that HLM 2015 had been published; this was confirmed by the Council on 9 June¹. As this report was a consideration material to one of the main issues, and one that I had anticipated, the parties were invited to make representations about the implications for the appeal and whether the Inquiry ought to be reopened. The appellant's response included a full assessment of HLM 2015 which concluded that, notwithstanding the findings of the Council's update, there was not a five year supply of deliverable sites². The Council, having considered the appellant's response, maintains that it can demonstrate a five year housing land supply³.
5. Whilst housing land supply remains a matter in dispute, and there is a significant amount of new evidence, neither party has requested that I re-open the Inquiry. Having considered all of the evidence, and the views of the parties, I am satisfied that I can now determine the appeal on the basis of the information before me.

Other Preliminary Matters

6. Local residents have advised that the appeal site is used by a local farmer and questioned whether the necessary legal notices have been served and appropriate certificates completed on the planning application and appeal forms. The appellant has confirmed that there is no formal agricultural tenancy, and that the forms have been correctly completed. I am satisfied that this is the case.
7. The application sought outline planning permission with all matters reserved for subsequent approval other than means of access. An indicative masterplan (T01 rev 09) and parameters plan (T06 rev 04) were submitted with the application but these are for illustrative purposes only rather than a formal part of the proposal.
8. The Council's decision notice refers to the emerging Cheshire West and Chester Local Plan (Part One) Strategic Policies ("CWCLP Part One") as well as the Vale Royal Borough Local Plan First Review Alteration (2006) ("VRBLP"). However, CWCLP Part One was adopted in January 2015 and now forms part of the statutory development plan along with saved policies in the VRBLP. I have determined the appeal accordingly.
9. I have been referred to numerous appeal decisions and court cases in the borough and elsewhere. Whilst I have had regard to all of those decisions and cases, the circumstances in each case differ from those before me in terms of the particular nature of the site in question and its surroundings, and the housing land supply situation. I have determined the current appeal on its own merits in the context of the specific evidence before me.
10. An executed planning agreement, dated 14 May 2015, was submitted in accordance with the timetable agreed at the Inquiry. However, in order for me to take its provisions into account in the determination of this appeal it is necessary for the legal requirements set out in the Community Infrastructure

¹ Email from Beth Fletcher with HLM 2015 attached (9 June 2015).

² Letter from Mat Jones, Turley Associates Limited (29 June 2015) including Appendix 4: "Assessment of Cheshire West and Cheshire Five Year Housing Land Supply" (Emery Planning, 29 June 2015).

³ Rebuttal proof of evidence of Beth Fletcher on behalf of the local planning authority (17 July 2015).

Levy ("CIL") Regulations (2010, as amended) to be met. I deal with this later in my decision.

Main Issues

11. The main issues are the effect that the proposal would have on:
 - the objectives of local and national planning policies relating to the location and supply of housing; and
 - the character and appearance of the area.

Reasons

The Site, Surroundings and the Proposal

12. The appeal relates to just less than five hectares of agricultural land surrounding two dwellings at Fountain Lane Farm that are outside the site boundary. Vehicular and pedestrian access is via a track from the end of Fountain Lane, a residential cul de sac to the east. Public footpaths run across the site close to its western boundary and connect to a network of paths in the wider countryside to the west and south and into the village. Existing dwellings on Fountain Lane, Mount Pleasant Road and London Road within Davenham lie to the north and east.
13. Davenham village centre, which includes a range of local shops and facilities, is less than a kilometre away on London Road to the north, and the village primary school is located nearby on Mount Pleasant Road. Northwich is approximately 3 kilometres to the north, and Moulton a short distance away to the south west.
14. The proposed vehicular access would be provided by extending Fountain Lane into the site, and alterations would be made to the existing cul de sac and its junction with Mount Pleasant Road. The illustrative material submitted with the planning application indicates two separate areas of development to either side of the existing buildings at Fountain Lane Farm and landscaped open space along the western side of the site within which the existing public footpaths would be retained.

Local and National Policies relating to the Location and Supply of Housing

15. The site adjoins, but lies outside, the settlement boundary of Davenham defined on the VRBLP proposals map and is therefore not in a location where residential development is permitted by VRBLP policy GS5 or by policy STRAT9 of the recently adopted CWCLP Part One. The reasoned justification to policy STRAT9 makes it clear that, until the forthcoming Land Allocations and Detailed Policies Plan (which will form Part Two of the CWCLP) has been adopted, the retained policies in the VRBLP relating to settlement boundaries and development beyond the existing built form of settlements will continue to operate.
16. Thus, whilst policy STRAT2 of CWCLP Part One requires at least 22,000 new dwellings in the borough as a whole in the period 2010 to 2030 and policy STRAT5 requires at least 4,300 dwellings to be accommodated in the greater Northwich area that includes Davenham, the proposal would be contrary to

- development plan policies relating to the location of housing due to the site being outside the settlement boundary as recently confirmed.
17. The National Planning Policy Framework (NPPF) aims to boost significantly the supply of housing and makes it clear that if local planning authorities are not able to demonstrate a five year supply of deliverable housing sites relevant policies for the supply of housing should not be considered up to date⁴. This applies irrespective of the age of the development plan policies in question.
 18. In so far as VRBLP policy GS5 and CWCLP Part One policy STRAT9 are aimed at preventing new housing in all locations outside settlement boundaries they are relevant policies for the supply of housing as referred to in the NPPF. This is not disputed by the Council. Therefore, notwithstanding the very recent adoption of CWCLP Part One, whether these policies can be regarded as being up to date depends on the current housing land supply situation.
 19. The appellant agrees with the five year requirement figure of 7,436 dwellings (net) at the base date of 1 April 2015 set out in HLM 2015. This is based on CWCLP Part One, and includes appropriate adjustments for a shortfall in delivery since 2010 and a 20% buffer.
 20. Where the parties disagree is over whether there is a current supply of deliverable sites sufficient to meet the current five year requirement. This was discussed at some length during the Inquiry, although publication of HLM 2015 has changed the picture significantly. The Council's latest evidence indicates that there is a deliverable supply of 10,151 dwellings and therefore a surplus of 2,715 dwellings compared to the current five year requirement.
 21. On the other hand, the appellant's assessment is that the current supply of deliverable sites is 7,806, meaning that there is a deficit of 370. This is for a variety of reasons including to do with site availability; assumptions about start times and delivery rates; whether a small site non implementation allowance should be included; the approach to demolitions and losses; and whether student accommodation developments should be counted as contributing towards meeting housing needs.
 22. The NPPF makes it clear that to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable.
 23. The NPPF also advises that sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example because they will not be viable, there is no longer a demand for the type of units, or sites have long term phasing plans⁵. Further advice is provided in the PPG which states that the existence of a planning permission does not necessarily mean that the site is available, and that consideration should be given, amongst other things, to any legal or ownership problems, and whether the planning background of a site shows a history of unimplemented permissions⁶. However, the Government has

⁴ NPPF paragraph 47 and 49.

⁵ NPPF footnote 11.

⁶ PPG ID 3-020.

recently reiterated that all sites with planning permission count against the five year supply unless it is very clear that they will not be implemented⁷.

24. In this case, the Council has identified a total of 10,910 dwellings with planning permission, 8,084 of which it considers to be deliverable⁸. This latter figure in itself comfortably exceeds the five year requirement figure, and includes a discount of 25% from the total number of dwellings with planning permission. Furthermore, whilst I share the appellant's concerns about some of the sites, particularly some of those without planning permission, it would only require me to find that 370 of around 3,000 dwellings in dispute were deliverable for the supply to be sufficient. For these reasons, on the balance of probabilities, I consider that the Council is able to demonstrate a five year supply of deliverable housing sites at the current time. To come to a more precise conclusion on this matter would require further testing of HLM 2015 and the appellant's response. However, due to my findings below, this is not necessary for the purposes of determining this appeal.
25. I conclude on this issue that the proposal would be contrary to the locational requirements of VRBLP policy GS5 and CWCLP Part One policy STRAT9 due to the site lying outside the defined settlement boundary of Davenham. Furthermore, having regard to the NPPF and the current supply of housing land, those policies can be regarded at the present time as being up to date.

Character and Appearance

26. Davenham has evolved over time and is quite varied in terms of the age, style and layout of dwellings and other buildings, and there is no reason why a development of the scale proposed, provided it was well designed, should detract from the existing character of the settlement as a whole. However, the introduction of up to 70 dwellings on to undeveloped greenfield land on the edge of the village would undoubtedly change the character and appearance of the appeal site and have some effect on the immediately surrounding area.
27. The site is part of the East Winsford Undulating Enclosed Farmland character area identified and described in the Vale Royal Supplementary Planning Document 5 adopted in 2007 ("SPD5") pursuant to VRBLP policy NE12. However, it forms part of an area of small fields and paddocks adjoining Davenham which is visually and physically distinct from the large to medium sized fields that characterize the open agricultural landscape to the west.
28. Whilst policy NE12 includes the site within an Area of Significant Landscape Value by virtue of it forming part of the open land between Davenham and Moulton, the more recently adopted SPD5 does not attribute any particular significance to the site in terms of its contribution to the quality of the wider landscape character area. The proposal would not result in any reduction in the narrow gap between the villages at Jack Lane, and a significant area of open countryside would remain between the site and the development recently allowed on appeal on the north east edge of Moulton⁹. The proposal would not,

⁷ Government response to Select Committee Inquiry into the Operation of the NPPF (February 2015).

⁸ HLM 2015 Table 7.1.

⁹ Appeal ref APP/A0665/A/13/2198931, Barnside Way, Moulton allowed 30 December 2013 (also referred to in evidence as land at Beehive Lane).

therefore, lead to the coalescence of Davenham and Moulton, or harm the wider countryside beyond these settlements.

29. The proposed dwellings would be visible from the public footpaths on and to the west of the site, although from the latter views are largely restricted by existing hedgerows and trees. The existing pattern of residential development on this edge of Davenham is varied with dwellings of different ages and design backing onto the site with rear boundaries defined mainly by fences and intermittent hedging of variable quality. The illustrative material submitted by the appellant demonstrates that, with appropriate design and high quality landscaping, including on land in the control of the appellant to the west of the site, the proposal could create an attractive new edge to this part of Davenham and lead to an improved relationship between the built up area and the open countryside to the west. Provided that appropriate conditions were imposed if the appeal were to be allowed, this could be ensured when reserved matters are submitted to the Council for approval.
30. Views from existing nearby properties would clearly be affected. However, this is invariably the case with development on the edge of settlements and there is no reason why a well-designed scheme should not maintain a reasonable outlook and standard of amenity for the residents of existing bungalows and houses around the site in accordance with the Council's policies and guidance.
31. The proposed alterations to Fountain Lane would result in the loss of some of the existing grass verges, but provided appropriate surfacing materials were used and landscaping carried out this would have a negligible effect on the street scene and quality of the wider area.
32. Overall, therefore, subject to appropriate layout, scale, appearance and landscaping of the development, the proposal would be consistent with the objectives of national policy¹⁰ and policies NE12 and GS5 of the VRBLP and policy STRAT9 of the CWCLP Part One in so far as they seek to ensure that development adds to the overall quality of an area, and to protect the character of villages and the intrinsic character, appearance and beauty of the countryside.

Other Matters

Planning Obligations

33. In order for me to take the planning obligations contained in the legal agreement submitted after the close of the Inquiry into account they need to 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 development¹¹. Furthermore, the obligations must comply with CIL regulation 123 which sets a "five obligation limit" on the use of financial contributions for the funding or provision of certain infrastructure.
34. A planning obligation would put in place appropriate arrangements to ensure that 30% of the houses on the site are affordable. This would be in accordance with CWCLP Part One policy SOC1 and help to meet the identified need for more

¹⁰ NPPF paragraph 17, 4th and 5th bullet points; and sections 7 and 11.

¹¹ NPPF paragraph 204 and CIL Regulation 122.

affordable homes in the area. I am satisfied that all of the necessary tests are met.

35. Financial contributions would be made which would be used to help create increased capacity at Davenham primary school and County High School, Leftwich. The appeal site is within the catchment area of these schools meaning that they would be likely to be used by future residents. The primary school does not have any surplus places and this is forecast to remain the case until September 2017. Whilst the secondary school is currently operating with surplus places this is not expected to continue after September 2019. I therefore agree that the capacity of both schools needs to be increased. The size of the financial contributions would be based on a standard formula used by the Council and would be dependent on the number and size of the dwellings to be developed on the site. I am satisfied, therefore, that these contributions would meet the requirements of CIL regulation 122. Furthermore, the Council advises that only one other financial contribution has been made under a planning obligation relating to Davenham primary school, and only two others relating to the County High School. The requirements of CIL regulation 123 are therefore met.
36. A financial contribution of £46,900 would be provided to improve children's play facilities at the nearby Butchers Stiles Field. This would be in lieu of any on site formal play space, and in accordance with VRBLP policy RT3 and Supplementary Planning Document 3 adopted in 2007 (SPD3). Given this, and because the facilities would be likely to be used regularly by future residents, I am satisfied that all of the necessary tests are met. Only one other financial contribution has been made by way of a planning obligation for these play facilities and therefore the requirements of CIL regulation 123 are met.
37. A financial contribution of £14,507 would be used by the Council towards funding the provision of a 3G sports pitch at Moss Farm, Hartford. This would be in lieu of any on site formal sports provision, and in accordance with VRBLP policy RT3 and SPD3. Whilst Moss Farm is not the closest playing field to the appeal site, it is within 4 miles and the new 3G facility could, therefore, be used by future residents participating in formal sporting activities. The Council has advised that the provision of a 3G pitch in this location is part of its Playing Pitch Strategy and Action Plan 2012, that part funding is already committed by the Football Association, and that a 3G pitch could not be accommodated any nearer to the appeal site. On this basis, and because no other planning obligations include provision for this type of infrastructure at Moss Farm, Hartford, I am satisfied that all of the necessary tests are met.
38. A financial contribution of £4,500 would be made towards the implementation of a 20 miles per hour scheme in the village which would slow vehicles entering and leaving the site and through the existing residential area until it reaches London Road. This is part of a package of mitigation measures that is required to ensure that the proposal would not have an unacceptable impact on highway safety. Whilst two local Councillors suggested at the Inquiry that funding was already in place for this scheme, the highway authority advises that the necessary funding is not secured. On this basis, I consider the proposed financial contribution to be required, and as only one other contribution has been made by way of a planning obligation for this type of infrastructure in the village, I am satisfied that all of the necessary legal tests are met.

39. Finally, an obligation would ensure that an area of the site would be made available for the provision of a new scout hut. This was included in the legal agreement at a late stage in response to representations made shortly before the Inquiry. However, this is not part of the current proposal and is not necessary to make the housing development acceptable in planning terms. It therefore fails to meet one of the necessary tests.
40. In summary, therefore, the planning obligations relating to affordable housing, education, the implementation of a 20 miles per hour zone, off-site play facilities at Butchers Stiles Field, and off-site playing pitch provision at Moss Farm, Hartford all meet the necessary tests and I have taken them into account in coming to my decision. However, the obligation intended to create the opportunity for a scout hut to be provided on the appeal site fails to meet one of the necessary tests and I have not, therefore, taken that into account in assessing the benefits of the proposal.

Social and Economic Benefits

41. The proposal would deliver social and economic benefits by providing up to 70 new homes, 30% of which would be affordable, in a reasonably accessible location that would help to meet identified housing needs and support services and businesses in Davenham, Northwich and elsewhere in the borough. There would also be shorter term local economic benefits arising from additional construction activity.
42. There is nothing to lead me to conclude that the development would not take place in the near future if the appeal were to be allowed. Whilst the site is not currently needed in order to ensure an adequate supply of deliverable sites, there is nothing in the NPPF to suggest that the existence of a five year supply should be regarded as a cap on further development, and indeed policies STRAT2 and SRAT5 of the CWCLP Part One set minimum targets for housing delivery. In this context, and given the need to deliver affordable homes in the area and the fact that recent levels of provision have been below identified requirements¹², I attach significant weight to the social and economic benefits associated with the proposal.

Highway Safety

43. The proposal would increase the amount of traffic using Fountain Lane, Mount Pleasant Road, and London Road. At peak times, an additional two cars per minute could travel in each direction on these local roads which are currently used by children and buses as well as other local and some through traffic. They are narrow in places, subject to street parking, and visibility for drivers is somewhat restricted at certain points, including at the junction of Fountain Lane and Mount Pleasant Road.
44. However, the expert evidence submitted by the appellant¹³ indicates that nearby junctions generally operate within capacity and only three personal injury accidents have been recorded on local roads in the last five years, all of which were slight. The highway authority is satisfied that the proposed access

¹² Strategic Housing Market Assessment 2013 identifies a need for an additional 714 affordable homes per year 2013-2018, whereas recent delivery has been at an average of 277 dwellings per year (evidence of James Stacey, Director of Tetlow King Planning).

¹³ Transport Assessment (PTB Transport Planning Ltd, May 2012).

arrangements are acceptable and that the additional traffic could be safely accommodated on the local road network provided that certain measures, which could be ensured by planning conditions or obligations, are implemented. Nothing that I have read or seen during my visits to the area leads me to a different conclusion to that reached by the transport experts, even having regard to the cumulative effect with other developments allowed and proposed nearby.

45. The NPPF advises that development should only be prevented on transport grounds where the residual cumulative impacts would be severe¹⁴. In this case, given the nature and current level of use of the local road network, and the scale of the development, the proposal would be unlikely to have anything other than a minor adverse impact on highway safety subject to appropriate detailed design of the access and mitigation measures which could be ensured by planning conditions and obligations.

Other Matters Raised by Interested Parties

46. A number of other concerns have been raised by a large number of local residents, Davenham and Moulton Parish Councils, and other interested parties in response to the planning application and the appeal, and during the Inquiry.
47. As all matters other than access are reserved, the Council would be able to ensure that any future detailed scheme would comply with its development plan policies such that it achieved good quality design, provided an appropriate mix of housing, and safeguarded the living conditions of existing local residents, including those living in the two dwellings at Fountain Lane Farm and in bungalows and houses adjoining the site.
48. The site includes just under one hectare of grade 2 agricultural land, with the remaining area being grade 3b¹⁵. The development would, therefore, lead to the loss of some best and most versatile land. However, the limited size of the site means that the impact on this resource, and the harm that would be caused, would be limited.
49. Provided that existing hedgerows and trees were protected and enhanced through appropriate landscaping, and other measures were taken as necessary, the proposal would be unlikely to materially harm the ecology of the area; indeed there could potentially be positive effects in this regard. This could be ensured by the imposition of conditions if the appeal were to be allowed.
50. It is clear that parts of the site and adjoining residential properties are prone to flooding at certain times. However, relevant technical studies have been carried out, and the Council and Environment Agency are satisfied that surface water run off from the site could be appropriately dealt with through the implementation of a drainage scheme which may include the provision of ditches and ponds. This could be required as part of the development, and there is nothing to suggest that this would not be effective in addressing drainage and flooding issues. The Council could ensure that any such scheme, along with the design, layout and landscaping of the site, contributed towards the creation of safe and attractive outdoor areas.

¹⁴ NPPF paragraph 32, third bullet point.

¹⁵ Agricultural Land Classification Report (Soil Environment Services Ltd, June 2013).

51. Other than with respect to the matters that I have already dealt with above, there is no substantive evidence to suggest that local infrastructure and services could not adequately cope with the additional demands placed upon them by the residents of up to 70 new homes. Indeed, future residents would be likely to help support local services and businesses. Furthermore the proposal, even in combination with others allowed or proposed nearby, would be unlikely to undermine community cohesion or fundamentally alter the nature of the village.
52. I am aware that a neighbourhood plan is in the process of being prepared. However, this is at an early stage, no draft has been provided to me, and I can attach no material weight at the present time to what may emerge in the future.
53. Whilst I understand that there are concerns amongst local residents about the consultation processes that have been carried out in relation to the proposal, there is nothing to lead me to conclude that the necessary procedures have not been followed.
54. As with all development projects, there is likely to be some disturbance and disruption to normal routines during the site preparation and construction phases. However, provided that a construction method statement was prepared and implemented the impact would be minimised and this would certainly not be sufficient reason to prevent the project going ahead.
55. None of the other matters raised alter my findings on the main issue or have a significant bearing on my overall assessment of the proposal.

Overall Assessment

56. By virtue of the conflict with the locational requirements of VRBLP policy GS5 and CWCLP Part One policy STRAT9 that I have identified, the proposal would not be in accordance with the development plan. Planning permission should not therefore be granted unless material considerations indicate otherwise¹⁶.
57. Subject to appropriate layout, scale, appearance and landscaping, the proposal would not detract from the qualities of the wider countryside or the character of the settlement as a whole, and could enhance the relationship between the built up area and the rural surroundings. However, as the scheme is in outline only, I attach only limited weight to these potential benefits.
58. I have identified economic and social benefits arising from the provision of up to 70 new homes to which I attach significant weight.
59. The proposed play facilities at Butchers Stile Field and 3G pitch at Moss Farm, Hartford, whilst required to make the development acceptable in planning terms, would also provide some benefits to the wider public.
60. I have identified a number of adverse impacts that the proposal would have. There would be limited harm arising from the loss of best and most versatile agricultural land, and minor adverse impacts on highway safety. There would also be some disruption and disturbance during the construction phase. In combination, these adverse impacts carry moderate weight.

¹⁶ NPPF paragraph 11.

61. On balance, the significant social and economic benefits, along with the potential environmental benefits arising from the creation of an enhanced settlement edge, are of sufficient weight to clearly outweigh the moderate harm that would be caused meaning that the proposal would represent sustainable development as defined in the NPPF¹⁷.
62. For these reasons, material considerations indicate that planning permission should be granted for development that is not in accordance with the development plan.

Conclusion

63. I therefore conclude that the appeal should be allowed.

Conditions

64. The conditions suggested by the Council were discussed at the Inquiry and a good degree of consensus was reached regarding those that it would be necessary to impose at outline stage and those that would more appropriately be dealt with in relation to reserved matters. The conditions set out in the attached schedule (Annex D) reflect those discussions and relevant national policy and guidance¹⁸.
65. In addition to the standard conditions relating to the timing of development and reserved matters, it is necessary to ensure development is carried out in accordance with the approved site plan and access plan for the avoidance of doubt and in the interests of good planning. However, as all other matters are reserved and the indicative masterplan (T01 rev 09), parameter plan (T06 rev 04), and material set out in the Design and Access Statement are for illustrative purposes only it is not necessary, reasonable or precise to require development to be carried out in accordance with those documents.
66. Further details of the proposed means of access, including the alterations to Fountain Lane and the landscaping that would be carried out in conjunction with that scheme, are required in the interests of highway safety and to safeguard the character and appearance of the area.
67. The appellant has suggested that additional landscaping would be carried out to create a belt of native trees and to enhance the existing hedgerows on land in its control to the west of the appeal site. This would help to ensure that the proposal would integrate successfully into its surroundings and enhance the wider landscape setting of the village. This is necessary to ensure that the proposal would contribute positively to the character and appearance of the area.
68. A surface water drainage scheme needs to be approved and implemented to prevent flooding and pollution.
69. A desk-based study has been carried out which advises that there may be below ground remains from historic human activities and enclosures on the site which in the past formed part of a larger area of heathland. An archaeological scheme

¹⁷ NPPF paragraphs 6-8.

¹⁸ NPPF paragraphs 203 and 206, and PPG ID-21a.

is therefore required to ensure that any heritage assets are identified and appropriate action then taken.

70. Various reports have been submitted relating to the ecology of the site and surrounding area. There are existing hedgerows and a pond on the site which form wildlife habitats, and there is evidence of protected and other species, including great crested newts, bats, badgers, reptiles and nesting birds, living on or using the site. Some of the surveys are now over two years old and it is necessary for these to be updated, and for a scheme to be approved and implemented in order to protect, enhance and manage the ecology of the area. Rather than the six separate conditions suggested by the Council, this can be adequately dealt with by a single condition.
71. Existing trees and hedgerows on the site need to be protected during the period that development takes place to safeguard the ecology and the character and appearance of the area.
72. A construction method statement needs to be approved and implemented to minimise disruption and disturbance to local residents and in the interests of highway safety. This statement should include the hours during which construction and related activity could take place; the Council is best placed to determine the most appropriate times and in so doing will no doubt have regard to the concerns of local residents including about the start and end of the school day. The attached condition does not specifically refer to piling as this can be adequately dealt with by clause (b). A separate condition is not required relating to construction traffic as this can be dealt with in the construction method statement.
73. It was agreed at the Inquiry that the conditions originally suggested by the Council relating to samples of materials; a phasing strategy; on site landscaping; car and cycle parking; means of enclosure; ground and floor levels; utility structures; and on site open space are not necessary as they can be dealt with under the reserved matters. I agree that this is so.
74. Finally, a condition relating to the provision of affordable housing is not necessary as this is more appropriately dealt with by a planning obligation.

William Fieldhouse

INSPECTOR

Appearances at the Inquiry

For the Appellant

Christopher Young <i>called:</i>	of Counsel <i>instructed by</i> Matthew Jones
Andrew Williams BA (Hons) DipLA DipUD CMLI	Director of Define
James Stacey BA (Hons) DipTP MRTPI	Director of Tetlow King Planning
Ben Pycroft BA (Hons) DipTP MRTPI	Principal Consultant at Emery Planning
Matthew Jones BSc (Hons) DipTP MRTPI	Director at Turley Associates Limited

For the Local Planning Authority

Martin Carter <i>called:</i>	of Counsel <i>instructed by</i> Pamela Chesterman, Cheshire West and Chester Council Solicitor
Debbie Fifer BSc (Hons) DipTP MRTPI	Principal Planning Officer
Nicholas Howard BSc (Hons) MRTPI	Senior Planning Officer

Interested Persons

Nigel Hilton	Local resident
Andrew Reid	Local resident
Martyn Whittaker	Local resident
Lyn Mitchell	Local resident
Livia Jones	Local resident
Dr Gareth Peel	Local resident
Simon McDonald	Local resident
Councillor Elton Watson	Cheshire West and Chester Council
Councillor Helen Weltman	Cheshire West and Chester Council
Councillor Arthur Wood	Davenham Parish Council

Documents Submitted at the Inquiry

- IQ1 Representation from 1st Davenham Scout Group (undated).
- IQ2 Emails (22 and 27 April 2015) and draft High Court Consent Order ref CO/352/2015 Burton and South Derbyshire College v SSCLG and others.
- IQ3 Updated Position Statement on Housing Land Supply on behalf of Cheshire West and Chester Council.
- IQ4 Summary Proof of Evidence by Nicholas Howard.
- IQ5 Opening Submissions on behalf of the Appellant by Christopher Young.
- IQ6 Opening Statement of the Local Planning Authority by Martin Carter.
- IQ7 Launceston appeal decision ref APP/D0840/A/13/2209757.
- IQ8 Whetstone appeal decision ref APP/T2405/A/13/2193758.
- IQ9 Droitwich Spa SoS appeal decisions ref APP/H1840/A/13/2199085 and APP/H1840/A/13/2199426.
- IQ10 Letter from Mr and Mrs Mitchell to Richborough Estates Ltd dated 12 June 2014.
- IQ11 Photographs of site and surroundings and flooded land (provided by Mrs Jones.)
- IQ12 Cheshire West Affordable Housing Update FOI response received 15 April 2015.
- IQ13 Affordable Housing Land Supply Table – AH Lost as a result of Viability (provided by Mr Stacey).
- IQ14 Statement of Common Ground signed on behalf of appellant and Council.
- IQ15 Statement of Common Ground re Housing Land Supply agreed by appellant and Council.
- IQ16 Table of Agreed Sites.
- IQ17 Housing Land Supply – Disputed Position.
- IQ18 Table of Disputed Sites.
- IQ19 CWC Local Plan Part One: Strategic Policies – Examination Inspector’s Guidance Notes.
- IQ20 Draft Planning Agreement pursuant to section 106 of the Town and Country Planning Act 1990.
- IQ21 Judgement of Mr Justice Lindblom in Bloor Homes v SSCLG and Hinckley and Bosworth Borough Council (2014).

- IQ22 Letter from Gateley LLP to Richborough Estates re Land at Fountain Lane, Davenham (dated 29 April 2015).
- IQ23 Brereton Heath appeal decision ref APP/R0660/A/13/2192192.
- IQ24 Davenham Parish Council statement, photographs, Northwich Guardian article (31 March 2015), and BBC website article (10 January 2014).
- IQ25 Letter from Treasury Solicitor (1 May 2015), associated emails, and High Court Consent Order ref CO/352/2015 Burton and South Derbyshire College v SSCLG and others.
- IQ26 High Court Judgment: Ivan Crane v SSCLG and Harborough District Council.
- IQ27 Statement of Compliance with CIL.
- IQ28 Statement by Dr G Peel.
- IQ29 Revised Draft Planning Agreement pursuant to section 106 of the Town and Country Planning Act 1990.
- IQ30 Closing Submissions on behalf of the Local Planning Authority by Martin Carter.
- IQ31 Closing Submissions on behalf of the appellant by Christopher Young.

Documents Submitted after the Inquiry

Planning Agreement pursuant to section 106 of the Town and Country Planning Act 1990 relating to land surrounding Fountain Lane Farm, Fountain Lane, Davenham, Northwich dated 14 May 2015.

Statement of Compliance with CIL (updated 6 May 2015).

Letter from Mat Jones, Director of Turley Associates Limited (8 May 2015) re proposed off site landscaping condition.

Cheshire West and Chester Council Local Plan Housing Land Monitor 1 April 2014 – 31 March 2015.

Letter from Mat Jones, Director of Turley Associates Limited, plus seven appendices (29 June 2015).

Rebuttal proof of evidence of Miss Beth Fletcher on behalf of the local planning authority (17 July 2015).

Letter from Mat Jones, Director of Turley Associates Limited (24 July 2015).

Schedule of 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) The development hereby permitted shall be carried out in accordance with the following approved plans: T07 rev 02 (site location plan) and Fig 6.1 rev A (proposed access).
- 5) Development shall not begin until details of the proposed access and works within the highway (including the landscaping thereof), along with an implementation scheme and timetable, have been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable.
- 6) Details of the proposed landscaping pursuant to condition No. 1 shall, as well as on-site landscaping, include a scheme relating to land in the control of the appellant outside the site as indicated on Figure 3 of Appendix C to the Landscape and Visual Impact Evidence (Define, 7 April 2015).
- 7) Development shall not begin until a surface water drainage scheme, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable.
- 8) Development shall not begin until a scheme for a programme of archaeological work, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable.
- 9) Development shall not begin until up to date reports on protected species along with a scheme for the protection, enhancement and management of the ecology of the area, which shall include an implementation timetable, have been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable and subsequently retained.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of trees and hedges on the site, which shall include an implementation timetable, has been submitted to and approved in writing by the local planning authority. The scheme shall be fully implemented in accordance with the approved timetable.

- 11) No site clearance, preparatory work or development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to at all times. The Statement shall provide for:
- a) the hours during which construction works and associated activities are to take place;
 - b) measures to prevent unnecessary disturbance to the occupants of nearby properties including from noise, dust, vibration, light and odour;
 - c) the proposed construction access arrangements;
 - d) a construction management plan setting out proposed construction vehicle routes and measures to minimise the impact on the local road network and the occupants of nearby buildings;
 - e) site compound and site offices;
 - f) the parking of vehicles of site operatives and visitors; and
 - g) wheel washing facilities.

End of Schedule of Conditions
