



Ministry of Housing,  
Communities &  
Local Government

Our ref: APP/A0665/V/15/3013622

Colin Griffiths  
Satnam Planning Services  
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Gloucestershire  
GL50 1QZ

27 February 2018

[colin@satnam.co.uk](mailto:colin@satnam.co.uk)

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
CALLED IN APPLICATION FOR LAND AT CLIFTON DRIVE, SEALAND ROAD,  
CHESTER  
APPLICATION REF: 13/03615/OUT**

1. I am directed by the Secretary of State to say that consideration has been given to the report of Inspector Phillip J G Ware BSc(Hons) DipTP MRTPI, who held a public local inquiry for two days on 11 and 12 July 2017 into your client's application to Cheshire West & Chester Council ("the Council) for outline planning permission for a residential development for up to 142 homes in accordance with application 13/03615/OUT, dated 16 August 2013.
2. On 26 March 2015, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority.
3. The Secretary of State initially issued his decision in respect of the above application by way of his letter dated 3 May 2016. That decision was challenged by way of an application to the High Court and was subsequently quashed by order of the Court dated 17 October 2016. The application has therefore been re-determined by the Secretary of State, following a new inquiry into this matter. Details of the original inquiry are set out in the 3 May 2016 decision letter.

**Inspector's recommendation and summary of the decision**

4. The Inspector recommended that the application be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. He has decided to grant planning permission. A copy of the Inspector's report dated 8 November 2017(IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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## **Procedural matters**

5. The Secretary of State has received post inquiry correspondence from the Council and Andy Scargill on behalf of The Friends of the North Chester Green Belt, regarding the Council's refusal of planning application 16/03489/FUL for housing on an adjacent site. The Secretary of State has also received further correspondence from Andy Scargill regarding Environment Agency flood incident training at Finchetts Gutter Flood Storage Basin. However, the Secretary of State does not consider that the representations raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this case and he is satisfied that no interests have thereby been prejudiced. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.

## **Policy and statutory considerations**

6. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan consists of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (CWCLP) and saved policies from the Chester District Local Plan (CDLP). The Secretary of State agrees with the Inspector that the development plan policies of most relevance to this case are those set out at IR9-11.
8. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

### *Emerging plan*

9. The emerging plan comprises the Cheshire West and Chester Local Plan (Part Two): Land Allocations and Detailed Policies. A Publication Plan has been approved by the Council for pre-submission consultation, which took place between 11 December 2017 and 29 January 2018. The Secretary of State considers that the emerging policies can only be given limited weight.
10. The Secretary of State has taken account of the matters already agreed between the parties, as set out in IR22-28, and agrees with the Inspector that the main outstanding issues relevant to this appeal are those detailed in IR71-73.

## **Main issues**

### *Promoting healthy communities*

11. The Secretary of State has taken account of the Inspector's assessment as to whether the sports facilities are surplus to requirements at IR76-83 and the fact that the facilities have not been in use for some years. He further notes that the Inspector considers at IR86 that there is no possibility of the site returning to its lawful recreational use. He agrees with the Inspector's conclusion at IR83 that, due to the lack of use and maintenance, the application site can no longer be regarded as part of the potential recreational facilities in the area. The site is, therefore, surplus for the purpose of sports provision as outlined in Local Plan policies.

12. The Secretary of State has also taken account of the Inspector's consideration at IR84-85 of the proposed sports mitigation package, including the creation and improvement of a number of pitches elsewhere, along with a Community Use Agreement. Having regard to the fact that the mitigation package has been enhanced and clarified since the previous Inquiry into this proposal, the Secretary of State agrees with the Inspector's conclusion at IR87 that the package provides at least equivalent replacement facilities, and that the proposal accords with CWCLP policy SOC 6 and national policy in the Framework.

*Meeting the challenge of climate change & flooding and coastal change*

13. The Secretary of State has taken account of the fact that the site is located within Flood Zone 3a (tidal zone 3 and fluvial zone 2) as identified by the Environment Agency (IR92), and notes that housing is classified as a 'more vulnerable' category of development. The Secretary of State therefore agrees with the Inspector that it is necessary to apply the sequential test and exception test to this proposal. The Secretary of State has taken account of the fact (IR93) that if the proposal were to have been submitted today, it would have to be considered across a wider search area than at the time the current application was submitted and that no party has suggested that there is a sequentially preferable site aside from the previously identified Wrexham Road site.

14. The Secretary of State agrees with the Inspector's consideration at IR94-100 of the Wrexham Road site, that matters have moved on since the previous Inquiry to the extent that that site cannot now be reasonably considered as an available site. The Secretary of State further agrees with the Inspector at IR99 that the current application is for a specific scheme tailored to the application site, including a substantial sports mitigation package, and cannot be transferred to another location. The Secretary of State therefore agrees with the Inspector's conclusion at IR100 that the Wrexham Road site is not a sequentially preferable site and that the parties agree that there is no other site which might fall into this category.

15. With regard to the Exception Test (IR101-102), the Secretary of State has taken account of the fact that it was common ground between the applicant and the Council at the previous Inquiry that the development would be safe for its lifetime without increasing flood risk elsewhere. He is satisfied that the flood protection measures proposed have not changed since the previous Inquiry into this application and has also taken account of the fact that the Environment Agency has not objected to the proposal (IR103).

16. Overall, therefore, the Secretary of State agrees with the Inspector's conclusion at IR103-104 that the proposal passes the Sequential and Exception tests, and that the community benefits of the proposal outweigh the risk of flooding so that the proposal accords with CWCLP policy ENV 1 and the Framework.

*A wide choice of high quality homes*

17. Having carefully considered the Inspector's analysis at IR105-108, the Secretary of State agrees with his conclusion at IR109 that the proposal is in line with policies requiring the provision of a wide choice of high quality homes, and that this matter carries significant weight in favour of the proposal. In coming to this conclusion, the Secretary of State has taken account of the fact that the main parties agree that a housing land supply of at least five years can be demonstrated, as required by paragraph 47 of the Framework. He also notes that there is no affordable housing included in the proposal (IR108), but accepts that this is to ensure viability; and that the Planning Obligation provides for a re-

evaluation at the reserved matters stage in line with national policy to build in flexibility (IR108).

#### *Other matters*

18. The Secretary of State notes that concerns have been raised by some residents regarding highway capacity and safety (IR109), but he agrees with the Inspector that no evidence has been put forward to counter the applicant's Transport Assessment, which concludes that the highways network has sufficient capacity to cater for the traffic generated by the proposal.

#### **Planning conditions**

19. The Secretary of State has given consideration to the Inspector's analysis at IR113-120, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework and that the conditions set out at Annex B should form part of his decision.

#### **Planning obligations**

20. Having had regard to the Inspector's analysis at IR111-112, the planning obligation dated 9 August 2017, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework.

#### **Planning balance and overall conclusion**

21. For the reasons given above, the Secretary of State considers that the application is in accordance with development plan policies SOC 6, ENV 1, policies STRAT 2 and STRAT 3 regarding housing, and policy STRAT 1 regarding sustainable development, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan. The Secretary of State gives significant weight to the provision of housing, even though there is a five year housing land supply, including the social benefits arising from the provision of housing and the economic benefits resulting from the construction of the housing and the boost to local spending and services. The Secretary of State also attaches significant weight to the sports mitigation package in support of the proposal and, with regard to flood risk, he is satisfied that the proposal would itself be safe without increasing flood risk elsewhere and so is consistent with relevant development plan and Government policies.

22. Overall, therefore, the Secretary of State concludes that the proposal accords with the development plan and national policies and planning permission should be granted.

#### **Formal decision**

23. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for outline planning permission for a residential development for up to 142 homes in accordance with application 13/03615/OUT, dated 16 August 2013.

24. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

**Right to challenge the decision**

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

26. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

27. A copy of this letter has been sent to Cheshire West and Chester Council and Sport England, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Jean Nowak*

Authorised by the Secretary of State to sign in that behalf

## Annex A

### SCHEDULE OF REPRESENTATIONS

#### General representations

<b>Party</b>	<b>Date</b>
Andy Scargill, on behalf of The Friends of the North Chester Green Belt	12/07/2017
Andy Scargill, on behalf of The Friends of the North Chester Green Belt	27/07/2017
Andy Scargill, on behalf of The Friends of the North Chester Green Belt	28/07/2017
Andy Scargill, on behalf of The Friends of the North Chester Green Belt	01/08/2017
Victoria Roberts, Cheshire West & Chester Council	25/07/2017
Paul Friston, Cheshire West & Chester Council	02/08/2017

## **Annex B**

### **Conditions**

#### Approval of reserved matters

- 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 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.

#### Details and drawings

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan ref B3705 P001 rev A, site access and junction plan ref 0709-07 SK13.

#### Quantum of development

- 5) The number of dwellings to be constructed on the site shall not exceed 142.

#### Height the of the development

- 6) None of the dwellings hereby permitted shall exceed three storeys in height, and no dwelling shall have a ridge height in excess of 17.95 AOD. No dwelling hereby permitted within 30m of the southern boundary of the application site shall exceed two storeys in height, and no dwelling within 30m of the southern boundary shall have a ridge height exceeding 14.95m AOD.

#### Open space provision

- 7) The layout submitted as part of any reserved matters application shall include details of the following components of a public open space scheme: play equipment within a neighbourhood equipped area of play (NEAP) together with a programme for implementation, levels, drainage, planting, enclosure, street furniture, and surfacing. The scheme shall make provision for an amenity open space provided at a rate of 25m<sup>2</sup> per dwelling, together with a NEAP of at least 1,000m<sup>2</sup> for the first 100 dwellings with an additional 10m<sup>2</sup> for each additional dwelling. The development shall be carried out in accordance with the approved details and the open space shall be retained thereafter.

#### Finished floor level

- 8) Floor levels of the buildings hereby permitted shall be a minimum of 5.95m AOD.

#### Trees/hedge retention

- 9) All trees/hedges on the site shall be retained unless removal is specifically included in details that have been submitted to and approved in writing by the local planning authority as part of the reserved matters submissions under condition No 1. The plans and particulars submitted in accordance with condition 1 above shall include a tree survey and arboricultural impact assessment in accordance with BS 5837 2012: Trees in relation to

design, demolition and construction – Recommendations the survey and impact assessment shall include:

- i. A plan showing the location of existing trees/hedges on the site, showing which trees/hedges are to be retained and the crown spread of each retained tree.
- ii. Details of the species, diameter, and the approximate height, and an assessment of the general state of health and stability of the trees.
- iii. Details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site.
- iv. Details of any proposed alterations in ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree or of any tree on land adjacent to the site.

#### Archaeology

- 10) Before the submission of the first application for approval of the reserved matters under condition No 1, a scheme of archaeological investigation shall be submitted to and approved in writing by the local planning authority. The scheme of archaeological investigation shall make provision for appropriate methods to secure the following:

- i) Any necessary arrangements for preservation in situ of as yet undiscovered remains.
- ii) Re-design and layout of the development to accommodate remains described in i) above.

iii) An archaeological programme of work and financial provision

The scheme shall include written detailed methods statement for all new ground works. The approved scheme and programme shall thereafter be implemented, and the development shall be carried out in accordance with the approved scheme and programme.

#### Badger protection

- 11) Before, or in conjunction with, the submission of the first application for approval of the reserved matters under condition No 1, an updated badger survey together with method statement/mitigation scheme for badger mitigation shall be submitted to and approved in writing by the local planning authority. The content of the method statement/mitigation scheme shall include the following;

- i) Purpose and objectives for the proposed works.
- ii) Detailed design(s) including corridor provision and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used).
- iii) Detailed proposals for the retention/removal of existing trees/hedge planting along the northern and eastern boundaries of the site, together with details of proposed boundary treatment for the dwellings, to take account of the movement needs of badgers.
- iv) Extent and location of proposed works shown on appropriate scale maps and plans.
- v) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction.
- vi) Persons responsible for implementing the scheme and for monitoring badger activity during the works, together with staff awareness training.

vii) Measures to avoid harm to badgers during construction (including covering excavations/open pipework overnight) and disposal of any wastes arising from works.

viii) Initial aftercare and long-term maintenance (where relevant).

The development hereby permitted shall be carried out strictly in accordance with the approved method statement/mitigation scheme and the scheme approved shall be carried out in full.

#### Access and off-site highway works

- 12) Notwithstanding the site access details on TPA drawing 0709-07 SK13, no development shall commence until a detailed scheme for the internal highways including roads, footways and cycleways, and with details of how these fit into the surrounding access network, together with full details of the access and off-site highway works have been submitted to and approved in writing by the local planning authority. The scheme shall include full design details, specifications, road markings/signage, and a programme for implementation for the following highway works:
- i. Provision of a right-turn filter lane on Sealand Road to access Clifton Drive.
  - ii. Provision of 10m junction radii to the Sealand Road and Clifton Drive junction.
  - iii. Pedestrian and cycleway provision to connect between Sealand Road and the northern corner of the application site.
  - iv. Provision of an uncontrolled pedestrian crossing with a refuge island on Sealand Road.
  - v. Alterations to the bus lane on Sealand Road.
  - vi. Provision of an emergency vehicle and pedestrian/cycle site access to Clifton Drive (as shown for illustrative purposes on indicative masterplan B3705 P002 REV E (AEW)).
  - vii. Provision of 3m wide cycleway/ footpath links to the northern boundary of the site (as shown for illustrative purposes on indicative masterplan B3705 P002 REV E (AEW)).

#### Finished levels (roads, parking, paths)

- 13) No development shall take place until a scheme to set road, parking and pedestrian areas at a minimum level of 5.65m AOD has been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved details.

#### Tree/hedge protection

- 14) No site clearance, preparatory work or development shall take place until measures for the protection of retained trees and hedges have been implemented in accordance with a scheme prepared in accordance with Clause 7 of British Standard BS5837 - Trees in Relation to Construction - Recommendations for the protection of the retained trees, which includes appropriate working methods, and which has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out as approved and the protection measures shall remain in place for the duration of the construction period.

#### Construction traffic

- 15) Full details of arrangements for construction traffic, including temporary highway vehicle and pedestrian routings, times, days and routing of large vehicle movements to and from the site (including details of vehicle movements in connection with the importation of fill material to avoid peak traffic periods), shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The works shall be carried out in accordance with the approved details.

#### Construction method statement

- 16) No development shall commence 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 throughout the construction period. The statement shall provide for:
  - i. Construction traffic site access off Clifton Drive.
  - ii. Off-highway parking for construction related vehicles.
  - iii. Loading, unloading and storage arrangements for plant and materials.
  - iv. Construction vehicle cleaning facilities.
  - v. The erection and maintenance of security hoardings.
  - vi. Measures to control the emission of dust, dirt, noise, vibration and light during construction.
  - vii. A waste audit/ scheme for recycling/disposing of waste resulting from construction works.
  - viii. Details of any piling.

#### Construction phasing

- 17) No development shall commence, including any importation of materials or raising of levels, until a scheme for flood protection during the course of carrying out the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be adhered to throughout the construction of the development.

#### Noise levels (internal and outdoor areas)

- 18) No development shall take place until a scheme for protecting the occupiers of the dwellings hereby permitted from noise from the neighbouring non-residential premises to the east has been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until all works to protect that dwelling have been completed. The submission for reserved matters approval shall include details of windows, openings and means of ventilation in the dwellings, and ensure the following noise levels are not exceeded and shall apply to all dwellings within the development:
  - i) An internal noise level for habitable rooms during the day (0700-2300hrs) of 35dB(A)LAeq,16hrs.
  - ii. An internal noise level for bedrooms during the night (2300-0700hrs) of 30dB(A)LAeq,8hrs and 45dB(A)LAm<sub>ax</sub>.
  - iii. Noise levels within external living areas such as balconies, terraces and gardens during the day (0700-2300hrs) of 50dB(A)LAeq,16hrs.

#### Landscaping management plan

- 19) A landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, amenity open space and recreational facilities, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the

commencement of construction of any dwelling hereby permitted. The landscape management plan shall be carried out as approved. The management plan shall make provision for access to and use of the open space by both residents of the development hereby permitted and for wider public use.

#### Completion of off-site highway works

- 20) None of the dwellings hereby permitted shall be occupied until the access and off-site highway works has been constructed in accordance with the details specified in condition No 12.

#### Surface water drainage

- 21) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with a scheme that has been submitted to and approved in writing by the local planning authority. Before the scheme is submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system. The scheme shall include:
  - i) Details of a surface water regulation system (including the details of any swales as shown on the Indicative Masterplan B3705 P002 Rev E (AEW)).
  - ii. Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, (including management of overland flow from surcharging of the site's surface water drainage scheme) and the measures taken to prevent pollution of the receiving groundwater and/or surface waters.
  - iii. A programme for implementation.
  - iv. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker.

#### Importation of materials

- 22) Any imported materials, soil or soil forming materials brought into the site for use in soft landscaping areas, filling or construction shall be tested for contamination and suitability for use on site. Proposals for contamination testing shall be submitted to and approved in writing by the local planning authority in advance of any imported materials being brought onto the site. The development shall proceed in accordance with the approved details.

#### Construction hours

- 23) No construction works shall take place outside 0800 hours to 1800 hours Monday to Friday; 0800 hours to 1300 hours on Saturdays or at any time on Sundays or bank holidays. No construction traffic shall be permitted to enter or leave the site outside 0800 hours to 1800 hours Monday to Friday; 0800 hours to 1300 hours on Saturdays or at any time on Sundays or bank holidays.

#### Travel plan

- 24) No dwelling hereby permitted shall be occupied until a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be developed in accordance with the residential travel plan (TPA - Report Number: 0709-07/TP/01 – September 2012) and shall include provision for the appointment of a travel plan co-ordinator, an implementation timetable and enforcement mechanism and shall include arrangements for monitoring of progress of the proposals and review thereof. The travel

plan shall be implemented and maintained in accordance with the approved timetable and scheme of monitoring and review as long as any part of the development is occupied.

#### Habitat mitigation scheme

- 25) No dwelling hereby permitted shall be occupied until a scheme for the provision of a minimum of 25 nesting boxes for birds, and a minimum of 25 boxes for bats, to suit a variety of bird/bat species and including a programme for implementation, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.



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# Report to the Secretary of State for Communities and Local Government

by Phillip J G Ware BSc(Hons) DipTP MRTPI

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

Date: 8 November 2017

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**TOWN AND COUNTRY PLANNING ACT 1990**

**CHESHIRE AND WEST CHESTER COUNCIL**

**CALLED IN APPLICATION BY BARK STREET INVESTMENTS LIMITED**

Inquiry held on 11 and 12 July 2017

Land at Clifton Drive, Sealand Road, Chester CH1 4LG

File Ref: APP/A0665/V/15/3013622

**File Ref: APP/A0665/V/15/3013622**

**Land at Clifton Drive, Sealand Road, Chester CH1 4LG**

- The application was called in for decision by the Secretary of State by a Direction, made under section 77 of the Town and Country Planning Act 1990, on 26 March 2015.
- The application is made by Bark Street Investments Limited to Chester and West Chester Council.
- The application Ref 13/03615/OUT is dated 16 August 2013.
- The development proposed is a residential development (up to 142 homes) with access to be determined at the outline stage (re-submission of previous reference 12/04229/OUT).
- The reason given for making the Direction was that the Secretary of State decided, in the light of his policy, that the application should be called in.
- On the information available at the time of making the Direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:

The extent to which the proposed development is consistent with Government policies on promoting healthy communities (NPPF Chapter 8)

The extent to which the proposed development is consistent with Government policies on meeting the challenge of climate change, flooding and coastal change (NPPF Chapter 10)

The extent to which the proposed development is consistent with Government policies on delivering a wide choice of high quality homes (NPPF Chapter 6)

The extent to which the proposed development is consistent with the development plan for the area

- The Secretary of State's subsequent decision on the application (3 May 2016) was quashed by order of the High Court. This report supersedes that issued on 18 January 2016.
- On 4 January 2017 the Secretary of State advised that, following the quashing of his earlier decision on the application, the Inquiry needed to be reopened to consider the following further matters:
  - The extent to which the proposed development is consistent with Government policies as set out in the NPPF with regard to *Promoting healthy communities* (Chapter 8), *Meeting the challenge of climate change* (Chapter 10), and *Delivering a wide choice of high quality homes* (Chapter 6)
  - Having regard to the terms of the Consent Order quashing the Secretary of State's decision, the implications of this on the evidence that was before the Inspector and the Secretary of State
  - Any other material changes in circumstances, fact or policy, that may have arisen since the Secretary of State's decision of 3 May 2016 which the parties consider to be material to his further consideration of this application

**Summary of Recommendation: The application be allowed.**

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**Procedural matters**

1. The application was submitted in outline form, with approval sought for access at this stage along with the principle of the development.
2. The Council's position is that it has resolved to grant planning permission for the proposal, since it considers that the sports mitigation package outweighs the harm caused by the loss of playing fields.

3. A Planning Obligation that has been concluded between the Council, the applicant and other parties with an interest in the proposal has been submitted<sup>1</sup>. The Obligation provides for a highways contribution, a review of viability in respect of affordable housing, an education contribution, a contribution and improvement scheme concerning playing fields, and arrangements for community use of the University of Chester sports facilities.

### **The site and surroundings**

4. The application site is about 1 km to the west of Chester city centre and is around 5.4 hectares in extent. It is part of an area of open land between Blacon to the north-west and development along Sealand Road to the south and east. Sealand Road (the A548) is a main route into the city centre from the west. Immediately to the south of the site is the rear of housing fronting onto Sealand Road, and adjacent to the east is Chester Retail Park. There are other retail units and a storage facility nearby on the south side of Sealand Road.
5. A watercourse known as Sealand Main Drain flows through the open land to the north of the site and on the west side of Clifton Drive. The area between the site and the watercourse includes extensive vegetation, through which a footpath runs from Clifton Drive to the retail park. An embankment has been formed on the southern side of the watercourse, and this area comprises the Finchetts Gutter flood basin. The predominantly residential area of Blacon sits at the top of a pronounced escarpment, which rises sharply from the lower-lying land on each side of the watercourse. Clifton Drive climbs up the escarpment to Blacon. Between its junction with Sealand Road and the edge of Blacon this road has no footpaths. The site is not prominent in views from the surrounding area.
6. The majority of the application site comprises former playing fields on the east side of Clifton Drive. In addition, the site also includes the southern end of Clifton Drive and a short length of Sealand Road at the junction with Clifton Drive. The playing fields are leased to the University of Chester and apparently formerly accommodated three full-sized football pitches, one rugby pitch and one training pitch, along with a parking area. They have clearly not been in use for some time, apparently since at least 2015, and were considerably overgrown at the time of my visit. Access is from Clifton Drive towards the southern end of the site, and leads to the parking area, on which there are two portable units which apparently used to serve as changing rooms.
7. Alongside the eastern and southern boundaries of the site are lines of tall trees, with a hedgerow with poplar and willow trees along much of the Clifton Drive site frontage. There is also hedgerow cover on the northern boundary.
8. The site is within Environment Agency (EA) fluvial flood zone 2 and tidal flood zone 3. The north and western parts of the site shows historic flooding according to EA records.

### **Planning policy**

9. The development plan comprises the Cheshire West and Chester Local Plan (Part One) Strategic Policies (CWCLP)<sup>2</sup> and the saved policies of the Chester District

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<sup>1</sup> Document 14

<sup>2</sup> CD 8.2

Local Plan (CDLP)<sup>3</sup> which have not been replaced by the CWCLP. The Statement of Common Ground (SOCG) lists the CWCLP and CDLP policies which are considered relevant by the parties<sup>4</sup>.

10. Of most direct relevance to this proposal are the following CWCLP policies:

- Policy STRAT 1 provides that the economic, social and environmental objectives of the Borough should be met in line with the presumption in favour of sustainable development.
- Strategic development is addressed in Policy STRAT 2. Over the period 2010-2030 at least 22,000 new dwellings are to be delivered, and most development is to be located within major settlements. Chester is expected to deliver at least 5,200 new dwellings (Policy STRAT 3).
- Policy STRAT 10 states that proposals should accommodate traffic safely and make appropriate provision for access to public transport and other alternatives to the use of the car.
- Policy SOC 1 seeks the provision of affordable housing in urban areas on larger sites up to a target of 30%. This will be dependent on a number of matters including the effect on the viability of the scheme.
- Policy SOC 3 promotes a mix of housing types, tenures and sizes of market and affordable housing. Safe and accessible environments will be provided and opportunities to widen the cultural, sport, recreation and leisure offer will be sought (Policy SOC 5).
- Policy SOC 6 deals with open space, recreation and leisure. The policy provides that proposals on existing sports facilities should only be permitted where a series of tests are satisfied. In the first instance equivalent or better replacement facilities should be provided (A), or it should have been demonstrated that the site is surplus for its current function (B). Test C requires that the site could not fulfil other unsatisfied open space, sport or recreation needs. Finally, if the facility is surplus for its current function, any replacement would remedy a deficiency in another type of open space, sport or recreation facility in the local area (D), or the development would be incidental to the use of the facility (E).
- The plan seeks to reduce flood risk. Policy ENV 1 specifies that all proposals must follow the sequential approach, directing new development to areas with the lowest risk of flooding, and that where necessary the exception test should be applied.
- In accordance with Policy ENV 2, proposals should take full account of the characteristics of the site and its relationship with its surroundings.

11. The site is identified on the CDLP as subject to Policy ENV 17, which is concerned with important areas of greenspace. Development should not normally be permitted on such greenspace. The reasoning for the policy explains that in the

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<sup>3</sup> CD 8.3

<sup>4</sup> SOCG Paragraph 6.1.2

case of playing fields, which have no value other than for active recreation, Policy SR 2 will apply (but that policy has been replaced by CWCLP Policy SOC 6).

12. The Chester West and Chester Local Plan (Part Two) is being progressed by a consultation draft Land Allocation and detailed policies document which was published in 2016, and the SOCG records the relevant policies<sup>5</sup>. Although these policies carry very limited weight, the evidence base is relevant, and includes a number of documents including those related to open space, playing fields and flooding<sup>6</sup>.
13. Sport England has produced non-statutory plans and guidance in relation to applications for development on playing fields, including how Sport England assesses proposals against the National Planning Policy Framework (the Framework).
14. I have also had regard to national planning policy and guidance, in particular that contained in the Framework, and the Planning Practice Guidance (PPG).

### **Planning history**

15. The site has been the subject of several planning applications, including a number of proposals for residential development<sup>7</sup>. Between 1981 and 1990 planning permission was refused for three applications for housing, and two subsequent appeals were dismissed. A fourth application was withdrawn in 1990.
16. Planning permission was refused in 2013 for the current applicant's initial proposal for up to 142 dwellings on the site. The reasons for refusal related to the loss of playing fields and capacity of the Chester wastewater treatment works. An appeal was dismissed in January 2014<sup>8</sup>. On appeal the main parties and Welsh Water agreed that the wastewater issue could be addressed by a condition, and the appeal was dismissed due to the effect of the loss of playing fields.
17. The current application was submitted in August 2013 and the Secretary of State's decision was issued on 3 May 2016<sup>9</sup>. That decision was quashed by order of the High Court on 17 October 2016<sup>10</sup>. The Consent Order referred to post-Inquiry correspondence from the applicant and the Secretary of State's response thereto.

### **The proposal**

18. The proposal is for the construction of up to 142 dwellings on the application site, with all matters reserved aside from access. Illustrative material<sup>11</sup> has been submitted addressing residential layout, heights ranging from two to four storeys (mostly two storeys on the northern part of the site), areas of open space and a surface water attenuation pond in the north-west corner.

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<sup>5</sup> SOCG Paragraph 6.1.5

<sup>6</sup> SOCG Paragraphs 6.4.1 – 6.4.3

<sup>7</sup> SOCG Paragraph 5.1

<sup>8</sup> CD 11.1

<sup>9</sup> CD 12.1

<sup>10</sup> CD 12.35

<sup>11</sup> CD 1.2

19. The scheme does not currently include any affordable housing, but viability would be reviewed at reserved matters stage. This matter is included in the Planning Obligation.
20. Vehicular access to the proposed housing would be taken from slightly further north on Clifton Drive than the existing access point. Footways would be provided along Clifton Drive between the new access and Sealand Road, and a contribution would be made towards a new length of footway between the north-west corner of the site and Blacon.
21. The proposal includes a package of mitigation measures related to playing fields, education, highways and affordable housing matters. The package has changed in detail since the previous Inquiry and report<sup>12</sup> in the light of the views of the previous Inspector and now includes:
- Interim use of the application site as community playing fields pending redevelopment
  - A scheme for a minimum of two full sized additional pitches at Kingsway campus
  - A Community Use Agreement in respect of the University's outdoor and indoor sports facilities
  - The upgrading and improvement of outdoor playing pitches and facilities at King George V playing fields, along with a contribution of £175,000
  - The improvement/reorientation of the University's Blacon Avenue site to provide increased pitch/training facilities.
  - The use of the changing accommodation at Clifton Drive by the Chester District Football league at nil cost.
  - A financial contribution (£314,289) towards primary education at a nearby school
  - A contribution (£60,000) towards the provision of a footway along Clifton Drive.
  - A viability re-appraisal at the detailed stage.

### **Agreed matters<sup>13</sup>**

22. There is a wide range of matters agreed between the Council and the applicant, which is unsurprising given the Council's resolution to grant planning permission for the development.
23. In relation to promoting healthy communities, the main parties agree that:
- The previous Inspector concluded that the applicant had not demonstrated that the application site was surplus to requirements at that time.

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<sup>12</sup> Statement of Common Ground (SOCG) paragraphs 4.5 – 4.6

<sup>13</sup> Largely from SOCG Document 15

- The applicant has not presented further evidence on this matter but relies on the mitigation package which is considered to represent at least equivalent facilities in a suitable location.
- The Council considers that the benefits of the development and the mitigation package outweighs the loss of the playing fields on the site, given that the applicant has clarified that the community use of the application site will not resume (aside as an interim use pending redevelopment).

24. In relation to the approach to climate change and flooding:

- The site is within Environment Agency (EA) fluvial flood zone 2 and tidal flood zone 3.
- The Environment Agency has withdrawn its initial objection, with various conditions recommended.
- The application is supported by a range of Flood Risk Assessments<sup>14</sup>.
- The existing and emerging policy requires a Sequential Test to be carried out on a Borough-wide basis. At the time the application was submitted it was agreed that the test should be carried out on a Chester-wide basis, including the Wrexham Road site in the catchment area. If the application were submitted now, the parties agree that the Test would be carried out on a Borough-wide basis. But given the background to the proposal, the Council does not raise objection to the Chester-wide search area.
- The Council does not raise objection to the proposal on the overall planning balance, but remains of the view that the Sequential Test has not been satisfied, and that therefore the Exception Test is not applicable. The applicant is of the view that both Tests have been met.

25. The key issue is whether the Wrexham Road site is sequentially preferable. In this respect the parties agree that:

- It is important to ascertain whether the Wrexham Road site is sequentially preferable to the application site – i.e. whether it is suitable and reasonably available.
- The Wrexham Road site is allocated in the CWCLP for around 1300 dwellings.
- The development brief for Wrexham Road is in draft form only.
- The Council has received linked applications for the Wrexham Road site.

26. It is agreed that if (contrary to the Council's views) the Sequential Test has been passed, then:

- It would then be necessary to consider the Exception Test.
- If the Secretary of State considers that the Sequential Test is passed, the Council raises no objection on the basis of the Exception Test.

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<sup>14</sup> SOCG Paragraph 7.9.4

27. In relation to the delivery of high quality homes it is agreed that :

- The annual net housing requirement is 1,100 (based on CWCLP policy STRAT 2). Set against the 2016 Housing Land Monitor Report, this gives a 7.8 year supply.
- The applicant considers this delivery rate to be optimistic, but both parties agree that the Council can demonstrate at least a five year supply<sup>15</sup>. Both parties agree that any differences are not matters on which the appeal should turn.
- Chester is identified as the key economic driver for the Borough and CWCLP policy STRAT 3 provides that it will deliver at least 5,200 new homes
- The parties agree that the application would make a welcome contribution towards housing supply and would assist in maintaining the five year supply.
- There is a demonstrable need for affordable housing but, in the light of the applicant's viability report showing abnormal costs, it is agreed that the development should not meet normal affordable housing requirements. This would be reappraised at the detailed stage.

28. In addition, the main parties agree that:

- The site is in a sustainable location within easy reach of a full range of facilities.
- On-site and off-site drainage and infrastructure can be addressed by conditions.
- There are no landscape, ecology or layout issues.
- Safe access can be achieved to the site and the existing highway network can accommodate the additional traffic. Clifton Drive is in need of improvements to pedestrian connectivity, and this will be funded by way of the Planning Obligation.
- An education contribution will be made for the necessary additional primary facilities. It is agreed that there will be no need for additional secondary provision.

## **The case for the applicant**

### Healthy communities

29. Paragraph 74 of the Framework provides that existing sports and recreational buildings and land should not be built on unless an assessment has been undertaken which has clearly shown the land to be surplus to requirements, or if the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

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<sup>15</sup> SOCG Paragraph 6.3.1

30. The previous Inspector's report and the Secretary of State's decision concluded that the site was surplus to the requirements of the University and that, to that extent, the proposal was consistent with national policy.
31. The legal<sup>16</sup> and actual position is that in reality the application site cannot play a part in accommodating the future sports or playing field needs of the community. The position is that the playing field use has ceased and no party suggests that it will ever resume. At the previous Inquiry even Sport England accepted that the site is now lost to recreational use. An application to register the land as an asset of community value was rejected in 2014<sup>17</sup>.
32. In the real world, any replacement would therefore be better provision than what exists and there is no point in preserving the site for its lawful sports use given that there is no possibility of a resumption. It would be necessary to show at least a balance of probability that, if the current application is refused, the sports use would resume. In fact it is common ground that this will not happen.
33. In contrast there will be a substantial package of benefits if the application is approved.

#### Climate change

34. It is common ground that the development can go ahead without increasing flood risk on the site or elsewhere. It is also agreed that the Exception Test is met. The only issue in dispute is whether the Sequential Test can be met – in particular whether the Wrexham Road site is sequentially preferable.
35. The area in which the Sequential Test is to be applied is noted in PPG as being defined by local circumstances relating to the catchment area for the type of development proposed. In this case the application site and Wrexham Road have entirely different catchment areas and the draft development brief for Wrexham Road shows a catchment area excluding the application site by a wide margin. In reality the inclusion of Wrexham Road within the same catchment is unrealistic.
36. But in any event the Wrexham Road site is not 'reasonably available'. It is under the control of a consortium of house builders, who are proposing comprehensive development in line with a development brief.
37. The Framework seeks reasonably available sites which are appropriate for the development in an area with a lower probability of flooding. PPG, incorporating EA Standing Advice, refers to such sites as potentially accommodating development which is the same or similar. This is the same approach as the sequential test in retail planning, where the Supreme Court<sup>18</sup> stated that the test is directed to what the developer is proposing, not some other proposal which is something less than is currently sought.
38. In this case the proposal is for the residential development of a disused playing field with a substantial mitigation package. This proposal is not transferable to Wrexham Road or any other site.
39. The proposal therefore complies with the Sequential and Exception Tests.

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<sup>16</sup> Related to the provisions of the lease which restricts use to the University

<sup>17</sup> CD 11.6

<sup>18</sup> Tesco Stores v Dundee City Council

### A wide choice of homes

40. Significant weight should be attached to the provision of housing even where, as in this case, there is a five year housing land supply. This is in line with a number of appeal decisions.
41. CWCLP policy STRAT 2 provides for at least 22,000 dwellings during the plan period. There is a considerable emphasis on development in Chester and the application scheme will add significantly to the continuing provision of housing in the area.

### Conclusion

42. The proposal complies with the development plan as a whole. The previous (quashed) decision found only partial compliance with CWCLP policy SOC 6 in relation to playing fields and conflict with CWCLP policy ENV 1 in relation to the Sequential Test. The applicant's position is that the proposal accords with the policies in full, and therefore there is full compliance with the development plan. The 'tilted balance' of paragraph 14 of the Framework is engaged and it is agreed that the site is a sustainable location<sup>19</sup>. There are no adverse impacts and the proposal represents sustainable development.

### **The case for the Council**

43. The Council's position stems from the Committee's resolution to grant planning permission subject to a planning obligation.

### Flood Risk

44. The application site is covered by Flood Zone 3a (tidal zone 2 and fluvial zone 3). It is therefore important to consider whether there are any reasonably available sites with a lower probability of flooding. The main issue between the parties is the different approach/analysis to the Wrexham Road site in terms of the Sequential Test. The area of coverage is agreed as the Chester urban area, including the Wrexham Road site (although the current approach would look to a wider area), and there is agreement as to the applicability of local and national policies.
45. The start point is that CWCLP policy ENV 1 and the Framework seek to steer development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The EA standing advice is that 'alternative' means a site which can accommodate development which is the same or similar to that proposed.
46. The Wrexham Road allocation is to provide a mix of housing as part of the Council's release of Green Belt land in preference to sites with a higher risk of flooding. The Wrexham Road site should be considered to be available as sequentially preferable to the application site.
47. The applicant's position regarding the ownership of Wrexham Road is misplaced as there is no reason why the development of that site should not come forward

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<sup>19</sup> Mr Griffiths Table 3 summarises

in parcels, within an overall comprehensive approach. There may be opportunities for other developers to join the existing consortium which is progressing Wrexham Road. In any event it is the strategic issue of the availability of housing land with a lower flood risk that is determinative, rather than whether a particular housing developer would have the opportunity to purchase and develop land of a similar size to the application site.

48. As to whether the Wrexham Road site could accommodate the application scheme, the position is not as rigid as the applicant suggests. The Wrexham Road site, given its size, could clearly accommodate the current proposal, albeit in a different form.
49. The applicant's approach which takes the availability of sequentially preferable sites as the start point would render such sites redundant every time. The Council endorses the conclusion of the previous Inspector that there is the prospect that Wrexham Road can accommodate the proposal, and that the proposal therefore does not pass the Sequential Test.

#### Sports pitches

50. It has not been shown that the application site is surplus to the needs of the local community for sports pitches. This is evidenced by the Playing Pitch Strategy<sup>20</sup> which sets out a 'protect and enhance' approach. There is a conflict with that approach and with paragraph 74 of the Framework.

#### Housing land supply and conclusion

51. The housing land supply at the time of the previous Inquiry was 6.83 years, and when the reconvened Inquiry opened it stood at around 7 years (including a 5% buffer).
52. In conclusion the Council supports the proposal in overall terms, especially given the applicant's sports mitigation package.

### **The case for interested parties appearing at the reconvened Inquiry**

53. Councillor C Gahan<sup>21</sup> (Blacon Ward Member) objected to the proposal as there is a five year housing land supply and the site is liable to flood – she drew attention to the Sequential Test. The loss of the pitches has had a significant impact on the football community in the area, and teams have disappeared due to the absence of the facility. The sports mitigation package does not replace the area that would be lost and the financial provisions are only a token gesture. The absence of affordable housing weakens the case for the applicant.
54. Mr A Skargill<sup>22 23</sup> drew attention to the proximity of the River Dee and explained his concern regarding the likelihood of the river embankment being breached. The land is at risk of fluvial flooding from various gutters and streams. There is no overriding need for new homes in the area. (He submitted photographs showing flood events in the area.)

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<sup>20</sup> CD 13.20

<sup>21</sup> Document 4

<sup>22</sup> Document 5

<sup>23</sup> He also spoke at the previous Inquiry

55. Other local residents spoke at the previous Inquiry, and I have obviously not had the benefit of hearing their representations. In this respect I have relied on the report of the previous Inspector and the previous core documents to which he referred.

### **Written Representations<sup>24</sup>**

56. Welsh Water have noted that their previous comments (related to off-site treatment works) are now outdated as the improvements to the Waste Water Treatment Works are close to completion. Subject to conditions no objection is raised.
57. Ms Coady objected on flooding and traffic grounds.
58. The resident of 140 Sealand Road objected on flooding grounds, in relation to the lack of green space in the area, pedestrian safety and traffic related pollution.
59. Mr McMullen<sup>25</sup> objected on flooding grounds and submitted photographs of flooding on Sealand Road during the Inquiry.
60. The University of Chester supports the application. The University has a 999 year lease on the site which restricts use to the University. Use by local clubs ceased in 2012 and will not recommence regardless of the outcome of the application – aside from community use on a pro tem basis if permission is granted. The site was last booked by the University for student sport in 2015, but for a total of only 6 hours. This followed a trend of decline in bookings. The University is willing to allow community use of other facilities as set out in the Obligation.
61. Chester and Wirral Football League<sup>26</sup> (formerly the Chester and District Football League) support the proposal<sup>27</sup>. The League consists of 57 teams split into four divisions and provides 'grassroots football' to the community. The proposal represents a once in a lifetime opportunity for sport in the city. In the past pitches have disappeared with no mitigation – the current proposal would see clubs playing on better pitches covering a larger spread of the city using better facilities.
62. Sport England appeared at the previous Inquiry but not the reopened Inquiry. Their position at the previous Inquiry was recorded by the Inspector in his report and was set out in the documents listed therein. I did not have the benefit of hearing their case, although I have read the written evidence and Sport England has made a further representation<sup>28</sup> which, along with its previous written evidence, sets out their position. In particular:
- There is new evidence in the form of adoption in 2016 of the Chester West and Chester Playing Pitch Strategy (PPS) (2015). The PPS was only in draft form at the previous Inquiry and the previous version was not up to date.

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<sup>24</sup> Letters on file

<sup>25</sup> Document 12

<sup>26</sup> Who spoke at the previous Inquiry

<sup>27</sup> Document 9

<sup>28</sup> CD 14.3

- Aim 1 of the PPS is to protect the existing supply of playing pitch facilities where it is needed to current or future needs. The assessment shows that all current playing field sites require protection and cannot be deemed surplus to requirements because of shortfalls now and in the future.
  - Framework paragraph 74 states that existing playing fields should not be built on unless (amongst other criteria) an assessment has been undertaken which has clearly shown that the land is surplus to requirements, or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
  - National policy is clear – land is either surplus or it is not, there is no provision for partial compliance. The previous Inspector referred to partial consistency in the light of the fact that the site will not be available for community use. The breach of Framework paragraph 74 weighs heavily against scheme.
63. The above representations were received in relation to the reopened Inquiry. In addition there are a number of other written representations which were submitted at the time of the previous Inquiry into this proposal. These have not been withdrawn and remain material considerations, as summarised below.
64. Councillors R Jones and M Nelson<sup>29</sup>. Both Councillors objected to the loss of playing fields, and queried the adequacy of the mitigation measures. They also expressed concern about flood risk and the lack of affordable housing. The proposal would conflict with local planning policies, and the Borough has a five year housing land supply.
65. Cheshire Football Association<sup>30</sup> stated that the development of the playing field would be a huge loss to football in Chester. When the community use ceased this had a negative effect on teams, with three folding. A number of teams in the area were unable to find pitches due to a lack of supply. The financial contribution and improvements put forward are not significant enough to make a material difference to pitch provision. The objection would be withdrawn if a replacement 5.2ha playing field were provided, capable of supporting at least five pitches, or if a financial contribution were available to increase the area's playing pitch capacity to meet the loss of the application site.
66. Chester Community Voice<sup>31</sup> stated that flood risk is a concern, and the development would exacerbate traffic problems.
67. The Trustees of the Estate of H C Beddington<sup>32</sup>. The estate owns land between Chester Retail Park and Blacon. It objects to the proposal on the ground of flood risk.
68. Twelve individual objections were submitted initially in response to the application, and seven more following notification of its call-in<sup>33</sup>. Most objections

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<sup>29</sup> Document 01 to the original report

<sup>30</sup> Document 01 to the original report

<sup>31</sup> Document 01 to the original report

<sup>32</sup> Recorded in the Committee report, CD3.4.

<sup>33</sup> The initial representations are recorded in the Committee report, CD3.4. Those submitted following call-in of the application are in Document 01.

were from local residents who have expressed concern about flood risk, the loss of the playing fields and the adequacy of mitigation, the lack of affordable housing, highway safety, and the effect of the proposal on wildlife, the character and appearance of the area, and their living conditions. Objections have been submitted by a few residents living near the Kingsway campus of the University, due to the effect on their living conditions from the community use of the playing fields there.

### **Conditions and the Planning Obligation**

69. The main parties submitted an agreed list of suggested conditions covering a wide range of matters including requirements for reserved matters applications, the identification of plans, the number and height of dwellings, open space, landscaping, access and off-site highway works, drainage, tree retention and protection, construction traffic, a construction method statement, the import of materials, internal roads and parking, an archaeological investigation, a travel plan and noise levels. These are repeated, with only minor changes, in the recommended conditions below.
70. A full draft of a Planning Obligation was available and discussed at the Inquiry. Due to the number of parties involved, this was not completed and submitted until after the Inquiry closed<sup>34</sup>. The Council submitted a statement detailing the compliance of the Obligation with the Community Infrastructure Regulations<sup>35</sup>.

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<sup>34</sup> Document 14

<sup>35</sup> Document 7

## **Inspector's conclusions**

References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number [ ].

### ***Main considerations***

71. The matters identified in the original call-in letter remain the main considerations in this case:

- The extent to which the proposed development is consistent with Government policies on promoting healthy communities (Framework Chapter 8).
- The extent to which the proposed development is consistent with Government policies on meeting the challenge of climate change, flooding and coastal change (Framework Chapter 10).
- The extent to which the proposed development is consistent with Government policies on delivering a wide choice of high quality homes (Framework Chapter 6).

72. The extent to which the proposed development is consistent with the development plan for the area is addressed throughout these conclusions and is summarised at the end.

73. Material changes in circumstances, fact or policy that may have arisen since the Secretary of State's decision of 3 May 2016 have been addressed in the cases of the parties and are considered below, as are any implications of the Consent Order quashing the previous decision.

### ***Promoting healthy communities***

74. The key element of the development plan is to be found at CWCLP policy SOC 6, which deals with open space, recreation and leisure [10]. This policy states that proposals on existing sports facilities should only be permitted where a series of tests are satisfied. There are two key tests in this instance:

- It should have been demonstrated that the site is surplus for its current function, or
- Equivalent or better replacement facilities should be provided.

75. These tests are very similar to those set out in paragraph 74 of the Framework. This paragraph is concerned with whether land is surplus to requirements and whether the loss would be replaced by equivalent or better provision. Existing playing fields should not be built on unless (amongst other criteria) an assessment has been undertaken which has clearly shown that the land is surplus to requirements, or that the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

#### Whether the land is surplus to requirements

76. From the evidence before me related to the 2014 appeal decision it appears that the appellant sought to demonstrate at that time that there was a surplus of

- pitch provision in the area. However this approach was not pursued at the previous Inquiry into the current application, nor at the most recent Inquiry.
77. Some reference has been made to the fact that an application was made in 2014 to have the site listed as an Asset of Community Value (ACV). The Council determined that the site did not have community value as defined in the Localism Act 2011. Although there had apparently been community use up to 2012, this had ceased and the parties do not dispute that it is the University's intention not to permit community use in the future. However the determination on the ACV application derived from the availability of the land and did not establish whether the site is surplus to requirements [31].
78. The application site was a playing field for the University of Chester. However the evidence is that use by the University fell sharply in recent years, ending with only 6 hours booked in the whole of 2014-15. All use has now ceased and University sports now take place at the main campus on Parkgate Road and at the Kingsway site. The application site is clearly not needed to meet the requirements of the University [31, 60]. The evidence is that use by local sports clubs, apparently in breach of the University's lease, ended in 2012 [6, 31]. With that background the use is on the cusp of being defined as 'lapsed' or 'disused' – however little turns on the precise definition.
79. Neither the Framework nor the development plan makes any distinction between private and public playing fields or otherwise constrains the assessment. It is therefore reasonable to have regard to the position concerning playing fields in the Chester area as well as the specific requirements of the University.
80. Sport England has noted the fact that in the 2014 appeal decision it was determined that it had not been demonstrated that the site was surplus to requirements. That was based on the then-extant Playing Pitch Strategy. However since that time the Chester West and Chester Playing Pitch Strategy (PPS) has been adopted (2016) [62]. The PPS was only in draft form at the previous Inquiry into this application and the previous version (discussed in the 2014 decision) was not up to date. This is a material change in guidance. The PPS provides details of the supply and demand for pitches throughout the Borough [62]. Aim 1 of the PPS is to protect the existing supply of playing pitch facilities where it is needed for meeting current or future needs. The assessment shows that all current playing field sites require protection and cannot be deemed surplus to requirements because of shortfalls now and potentially in the future.
81. On the face of it, the current proposal is in conflict with Aim 1 of the PPS. However that assumes that the application site can be categorised as part of the existing supply and that it is in any way capable of meeting existing or future shortfall.
82. The University, which holds a long lease on the land, has made its position clear [60]. The site is not needed by the University itself, and this is also evidenced by the falling off in activity leading to effective abandonment and apparently no maintenance. The University is also clear that there is no intention for permanent community use of the application site to resume. Given this position, it is difficult to regard the application site as part of the sports provision in the wider area.

83. Although there is no full assessment in the light of paragraph 74 of the Framework, this is a position founded on the reality of the situation. I appreciate that my predecessor Inspector considered that overall there was insufficient provision to meet the demand for sessions which were played at Clifton Drive. However time has moved on, and the position of the University and the absence of significant use or maintenance for some years leads to the position that, even if there is a need to retain a range of sports provision, the application site can no longer be regarded as part of the potential facilities in the area. It is therefore surplus for its current function in terms of CWCLP policy SOC 6 (which is to all intents and purposes a replacement for CDLP policies ENV 17 and SR 2).

Replacement by equivalent or better provision

84. If it is accepted that the site is surplus for its current function, it is still necessary to consider the benefits arising from the mitigation package. Additionally, should the Secretary of State take a different view on the question of whether the site is surplus, it is necessary to consider the extent of the proposed mitigation. The sports mitigation package is a material consideration weighing substantially in support of the proposal – as is acknowledged by both main parties. Indeed it has been identified as a key element leading the Council to support the proposal, although the authority does not agree that the package is at least an equivalent provision in policy terms [50].

85. The proposed development would result in the loss of a playing field of about 5.4ha, albeit not used for that purpose for some time. Although it is hard to see on the ground, I was told by the parties that the land previously accommodated five grass pitches. The sports mitigation package includes the creation and improvement of a number of pitches along with a Community Use Agreement [70]. The current package is significantly improved and clarified when compared with the position at the time of the previous Inquiry into this proposal, and there is now a greater degree of specificity with particular sites nominated for particular proposals. The mitigation would meet the objectives of Framework paragraph 74 in that it would upgrade and provide facilities in a range of suitable locations – as agreed between the applicant and the Council. Sport England has not raised substantial objection to the mitigation package in its own right but has rather focussed on the principle of the loss of the site.

Conclusion on healthy communities

86. Given the position of the leaseholder (the University) and the acceptance by all parties that there is no possibility of the site returning to its lawful recreational use, it is clear that the site cannot meet any need in the future and is surplus.

87. The mitigation package has been enhanced and clarified since the previous Inquiry into this proposal, and taken as a whole, provides at least equivalent replacement facilities. In coming to that view the strong support from the Chester and Wirral Football League is noteworthy [61].

88. Overall, the proposal accords with CWCLP policy SOC 6 and national policy in the Framework.

## ***Climate change, flooding and coastal change***

### Policy

89. The relevant development plan policy (CWCLP policy ENV1) seeks to reduce flood risk and states that proposals must follow the sequential approach, directing new development to areas with the lowest risk of flooding, and that where necessary the Exception Test should be applied [10].
90. This accords with the approach of the Framework, which aims to steer new development to areas with the lowest probability of flooding by way of the Sequential Test. Development should not be permitted if there are reasonably available sites appropriate for the proposal in areas with a lower probability of flooding.
91. If, following application of the Sequential Test, it is not possible for the development to be located in zones with a lower probability of flooding, the Exception Test should be applied as residential development is in the 'more vulnerable' category. However in this case all parties accept that there is no issue with the Exception Test in the light of the wider benefits to the community and in the light of the material submitted by the applicant [24, 34].

### Sequential test

92. The site lies within Flood Zone 3a (tidal zone 3 and fluvial zone 2) as identified by the EA [8]. Only where there are no reasonably available sites in Flood Zones 1 and 2 should sites in Zone 3 be considered. In this case the only issue between the parties (allowing for the fact that the Council supports the application overall) is whether the Sequential Test is passed. Even more specifically the issue is whether the allocated site at Wrexham Road is a sequentially preferable site. The parties agree that whether the Wrexham Road site is sequentially preferable is central to the decision [25].
93. There is some debate as to the appropriate search area for a sequential site [24, 35, 44]. If the proposal were submitted today, it would be considered across a wider search area than at the time when the current application was submitted. However this is of very limited relevance as no party suggested that there is a sequentially preferable site aside from Wrexham Road, whatever the search area.

### Wrexham Road

94. The Consent Order quashing the previous decision by the Secretary of State related to post-Inquiry correspondence from the applicant related to the Council's position in relation to Wrexham Road [17]. The evidence before me at the Inquiry sets out the parties' current position clearly.
95. Wrexham Road is in Flood Zone 1 and is an allocated housing site. On the face of it, it is therefore sequentially preferable to the application site. The Council's approach is that this large site should come forward in a comprehensive manner by way of a masterplan, but that this does not preclude applications for partial development within the overall area.
96. As my colleague noted in his report on this application, it is reasonable to expect a development of a site of the size of Wrexham Road to come forward in phases. I do not dissent from that view, although matters appear to have moved on since

that time which leads me to a different conclusion. There are two reasons why I do not consider Wrexham Road to be a sequentially preferable site.

97. Firstly, the Wrexham Road site is being actively pursued by a consortium of developers in line with a draft development brief. Hybrid applications for development have been submitted. The application of policy has to be founded on reality, and there is nothing to suggest that there is any opportunity for other parties to become involved in the overall development. The applicant was adamant that this could not happen at the current stage in the process, and the Council did not counter that position [36].
98. The Council's position is that it is the strategic issue of the availability of housing land at lower flood risk that is determinative [47]. However in the real world, from the evidence submitted at the Inquiry, the Wrexham Road site has moved on beyond being reasonably considered as an available site. If it were considered to be so in the light of the current circumstances, there would be a risk of significantly delaying the current proposal for no reason.
99. Secondly, the current application is bespoke to the Clifton Drive site. It is a proposal for housing development with no affordable housing element, due to the particular circumstances of the site and with a very substantial sports mitigation package necessitated by the previous use of the land. Although the Wrexham Road site is clearly physically large enough to accommodate the current application proposal, it is a specific scheme tailored to the application site, and cannot simply be transferred to another location [38].
100. I therefore conclude that Wrexham Road is not a sequentially preferable site, and the parties agreed that there is no other site which might fall into this category.

#### Exception test

101. Following the application of the Sequential Test, and given the conclusion that it is not possible for the development to be located in zones with a lower probability of flooding, the Exception Test needs to be applied as residential development is in the 'more vulnerable' category.
102. Where development is necessary in higher risk areas, the aim is to make it safe without increasing flood risk elsewhere. There are two parts to the exception test. Firstly it is common ground that the proposal would provide wider sustainability benefits to the community, particularly the benefit of the sports mitigation package. In relation to the second part of the test, it is common ground that the development would itself be safe without increasing flood risk elsewhere [26].

#### Conclusion on climate change, flooding and coastal change

103. Overall, the material submitted by the applicant persuasively demonstrates that the proposal passes the Sequential and Exception tests. It is also noteworthy that the EA has not objected to the application.
104. The proposal therefore accords with CWCLP policy ENV 1 and national policy in the Framework.

### ***A wide choice of high quality homes***

105. Development plan policy (CWCLP policy SOC 3) promotes a mix of housing types, tenures and sizes of market and affordable housing [10]. This is in line with national policy which seeks to boost significantly the supply of housing. Safe and accessible environments will be provided and opportunities to widen the cultural, sport, recreation and leisure offer will be sought (Policy SOC 5) [10].
106. The proposal, though in outline at this stage, envisages a mix of dwelling sizes, with two, three and four bedroom properties referred to in the Design and Access statement. The details of the proposal would be decided at a later stage against national and local policies requiring a high quality of development. There is no reason to suppose that a suitable high design quality could not be achieved in line with CWCLP policies SOC 3, SOC 5 and ENV 2.
107. The Council's housing land supply stands at around 7.8 years (including a 5% buffer). Although the applicant considers that the Council's delivery rate is over-optimistic, both parties accept that that the Council can demonstrate at least a five year supply [27]. In any event, national policy does not provide a cap once a five year supply is achieved. Especially given the fact that Chester is identified as the key economic driver for the Borough, it is unsurprising that both parties agree that the application would make a welcome contribution towards housing supply and that it would assist in maintaining the five year supply [27]. The proposal would therefore fully accord with local and national policy and boost significantly the supply of housing in the area.
108. CWCLP policy SOC 1 seeks the provision of affordable housing in the urban areas on larger sites up to a target of 30%. It is clear from the evidence that there is a need for affordable housing but, in the light of the applicant's Viability Appraisal showing abnormal costs, the Council's position is that the development should not meet normal affordable housing requirements at this stage. The Planning Obligation provides for re-evaluation at the reserved matters stages. This approach is in line with national policy which is that planning obligations should be sufficiently flexible to prevent planned development being stalled.
109. The proposal is therefore in line with policies requiring the provision of a wide choice of high quality homes. This matter carries significant weight in the planning balance.

### ***Other matters***

110. Some residents have raised matters related to highway capacity and safety [57, 58, 66, 68]. The proposal includes a new access point onto the highway and would obviously generate a significant amount of traffic. This matter was not the subject of objection by the Council. No evidence has been put forward to counter the applicant's Transport Assessment, which concluded that the capacity of surrounding roads could cater for the traffic generated by the proposal.

### ***The Planning Obligation***

111. The Planning Obligation includes a number of provisions, the most important of which are:

- The payment of a highway contribution (£60,000), before occupation of any dwelling, related to works to improve pedestrian and cycle access along Clifton Drive. This is based on the need to address CWCLP policy STRAT 10 and CDLP policy TR 19, which deal with highway safety and the footpath and cycle path networks.
- A Viability Review(s), at the reserved matters stage, to confirm the extent of affordable housing to be provided. The Council's target under CWCLP policy SOC 1 is 30% and makes specific reference to viability factors. Given that the most recent viability review indicates that the scheme cannot currently support affordable housing, this is a realistic and appropriate approach.
- A phased education contribution (£314,289) towards additional teaching space at a local primary school. (It is agreed that no additional secondary provision is necessary). The contribution is based on a clear assessment of how many primary age pupils are likely to be accommodated within the development.
- The payment of a playing field contribution (£175,000) towards improvements of sports pitches at King George V field and other improvements to sports facilities. This is based on CWCLP policy SOC 6.
- The submission of a playing field improvement scheme, to include sports provision at the Kingsway campus, improvements at the Blacon Avenue site, and the temporary use of the application site pending redevelopment. This is also based on CWCLP policy SOC 6.
- The submission of a Community Use Agreement including provisions related to the Blacon Avenue site, the Kingsway campus and the Parkgate Road campus.

112. The provisions of the Obligation are directly related to the proposed development and are necessary to make the development acceptable in planning terms. Therefore the Obligation meets the policy in paragraph 204 of the Framework and the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010. The provisions, especially those related to the sports mitigation package, weigh heavily in favour of the proposal.

### ***Conditions***

113. The conditions at the end of this report are agreed between the main parties and are based on the conditions agreed at the previous Inquiry. There are two changes since that time. The previous condition related to off-site surface water removal is no longer necessary as the improvements to the local waste water treatment works, which previously necessitated a condition prohibiting development prior to the completion of the works, have now been virtually concluded. In addition, as a result of a walkover ecology survey, a condition requiring badger sett mitigation is necessary (condition 11). This is in addition to the need for a habitat mitigation scheme (25).

114. Given the largely outline nature of the proposal, conditions are necessary to require the submission of reserved matters and define the approved plans (1 – 4). The provision of open space and landscaping within the development and the retention of existing trees and hedges needs to be controlled in the interests of the character of the area (7, 9, 14 and 19). For heritage reasons an archaeological investigation needs to be undertaken (10).
115. For highway safety reasons, details of the access and the roads within the site need to be controlled. For the same reason, off-site highway improvements need to be detailed and implemented (12 and 20). Construction traffic needs to be controlled, partly for highway safety reasons and partly in the interests of the amenity of nearby residents (15). For the same reasons a Construction Method Statement needs to be approved and implemented (16).
116. Given that the assessment of the scheme has been based by all parties and myself on a maximum number of 142 dwellings, this quantum needs to be controlled (5). Similarly, the assessment has been based on the heights indicated on the illustrative plans, a condition is necessary to control the height of the development (6).
117. Given the flooding issues discussed above, the finished floor levels of the development and of the roadways need to be controlled, along with the phasing of the construction and arrangements for surface water drainage (8, 13, 17 and 21).
118. In the interests of the amenity of residents, a scheme related to protection from any noise arising from the commercial development to the east needs to be incorporated into the initial design (18). For the same reason, construction hours need to be limited (23).
119. So as to avoid pollution a condition is necessary to control the importation of hazardous materials (22).
120. In order to encourage sustainable forms of travel, a Travel Plan needs to be submitted and implemented (24).

### ***Planning balance and conclusion***

121. The loss of the former playing fields, which have no realistic prospect of resuming permanent community or University use, has to be set against the substantial sports mitigation package. Given the fact that the former playing field use has effectively been lost and given the scale of the benefits enshrined in the Planning Obligation, the proposal provides at least equivalent facilities. The application therefore accords with national policy on promoting healthy communities and complies with CWCLP policy SOC 6.
122. In relation to flooding, the only issue between the parties is whether the Wrexham Road site can be regarded as sequentially preferable to the application site. For the reasons set out above, I conclude that it is not. As this is the only suggested sequential site, the Sequential Test is passed, and both parties agree that the Exception Test is passed. The application is consistent with Government policies on meeting the challenge of climate change, flooding and coastal change. It complies with CWCLP policy ENV 1.

123. It is agreed between the parties that the authority can demonstrate at least a five year supply of housing land. However this is not a cap on development and both parties agree that the provision of up to 142 dwellings is a matter carrying significant weight. It is in line with CWCLP policies STRAT 2 and STRAT 3 and national policy requiring a wide choice of high quality homes. Although there is no affordable housing element at this stage, for viability reasons, this would be reassessed at the detailed stage. This is in line with policy SOC 1 and national policy to allow sufficient flexibility to prevent developments stalling.
124. The parties are agreed that the proposal represents sustainable development, as set out in the SOCG in relation to all the roles of sustainability and complies with CWCLP policy STRAT 1. The site is in a sustainable location at the edge of the built up area and the sustainability credentials of the proposal are not in doubt [28]. Particular attention is drawn to the social benefits of the provision of housing and the economic benefit arising from construction employment and the boost to local spending and services.
125. There are a range of other policies, set out in the SOCG, with which the parties agree that the proposal would accord. These deal with drainage and infrastructure, landscape, ecology, highway safety and the provision of the necessary infrastructure.
126. The Consent Order quashing the previous decision dealt with the approach to evidence submitted to the Secretary of State after the close of the Inquiry related to the flooding issue. However matters have moved on since that time and there are no other implications flowing from the Consent Order.
127. The previous report and quashed decision on the application focused on the conclusion that, at that time, the Wrexham Road site was sequentially preferable. However the position of that site has moved on significantly since that time, to the point where it can no longer be considered as being reasonably available. In addition, the sports mitigation package has been enhanced and clarified since the previous Inquiry, and this weighs in favour of the proposal.
128. As the proposal complies with the development plan, the presumption in favour of sustainable development applies and the development should be approved.

### **Recommendation**

129. I recommend that planning permission be granted.

*P. J. G. Ware*

Inspector

## Conditions

### Approval of reserved matters

- 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 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.

### Details and drawings

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan ref B3705 P001 rev A, site access and junction plan ref 0709-07 SK13.

### Quantum of development

- 5) The number of dwellings to be constructed on the site shall not exceed 142.

### Height the of the development

- 6) None of the dwellings hereby permitted shall exceed three storeys in height, and no dwelling shall have a ridge height in excess of 17.95 AOD. No dwelling hereby permitted within 30m of the southern boundary of the application site shall exceed two storeys in height, and no dwelling within 30m of the southern boundary shall have a ridge height exceeding 14.95m AOD.

### Open space provision

- 7) The layout submitted as part of any reserved matters application shall include details of the following components of a public open space scheme: play equipment within a neighbourhood equipped area of play (NEAP) together with a programme for implementation, levels, drainage, planting, enclosure, street furniture, and surfacing. The scheme shall make provision for an amenity open space provided at a rate of 25m<sup>2</sup> per dwelling, together with a NEAP of at least 1,000m<sup>2</sup> for the first 100 dwellings with an additional 10m<sup>2</sup> for each additional dwelling. The development shall be carried out in accordance with the approved details and the open space shall be retained thereafter.

### Finished floor level

- 8) Floor levels of the buildings hereby permitted shall be a minimum of 5.95m AOD.

### Trees/hedge retention

- 9) All trees/hedges on the site shall be retained unless removal is specifically included in details that have been submitted to and approved in writing by the local planning authority as part of the reserved matters submissions under condition No 1. The plans and particulars submitted in accordance

with condition 1 above shall include a tree survey and arboricultural impact assessment in accordance with BS 5837 2012: Trees in relation to design, demolition and construction – Recommendations the survey and impact assessment shall include:

- i. A plan showing the location of existing trees/hedges on the site, showing which trees/hedges are to be retained and the crown spread of each retained tree.
- ii. Details of the species, diameter, and the approximate height, and an assessment of the general state of health and stability of the trees.
- iii. Details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site.
- iv. Details of any proposed alterations in ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree or of any tree on land adjacent to the site.

#### Archaeology

- 10) Before the submission of the first application for approval of the reserved matters under condition No 1, a scheme of archaeological investigation shall be submitted to and approved in writing by the local planning authority. The scheme of archaeological investigation shall make provision for appropriate methods to secure the following:

- i) Any necessary arrangements for preservation in situ of as yet undiscovered remains.
- ii) Re-design and layout of the development to accommodate remains described in i) above.
- iii) An archaeological programme of work and financial provision

The scheme shall include written detailed methods statement for all new ground works. The approved scheme and programme shall thereafter be implemented, and the development shall be carried out in accordance with the approved scheme and programme.

#### Badger protection

- 11) Before, or in conjunction with, the submission of the first application for approval of the reserved matters under condition No 1, an updated badger survey together with method statement/mitigation scheme for badger mitigation shall be submitted to and approved in writing by the local planning authority. The content of the method statement/mitigation scheme shall include the following;

- i) Purpose and objectives for the proposed works.
- ii) Detailed design(s) including corridor provision and/or working method(s) necessary to achieve stated objectives (including, where relevant, type and source of materials to be used).
- iii) Detailed proposals for the retention/removal of existing trees/hedge planting along the northern and eastern boundaries of the site, together with details of proposed boundary treatment for the dwellings, to take account of the movement needs of badgers.

- iv) Extent and location of proposed works shown on appropriate scale maps and plans.
- v) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction.
- vi) Persons responsible for implementing the scheme and for monitoring badger activity during the works, together with staff awareness training.
- vii) Measures to avoid harm to badgers during construction (including covering excavations/open pipework overnight) and disposal of any wastes arising from works.
- viii) Initial aftercare and long-term maintenance (where relevant).

The development hereby permitted shall be carried out strictly in accordance with the approved method statement/mitigation scheme and the scheme approved shall be carried out in full.

#### Access and off-site highway works

- 12) Notwithstanding the site access details on TPA drawing 0709-07 SK13, no development shall commence until a detailed scheme for the internal highways including roads, footways and cycleways, and with details of how these fit into the surrounding access network, together with full details of the access and off-site highway works have been submitted to and approved in writing by the local planning authority. The scheme shall include full design details, specifications, road markings/signage, and a programme for implementation for the following highway works:
- i. Provision of a right-turn filter lane on Sealand Road to access Clifton Drive.
  - ii. Provision of 10m junction radii to the Sealand Road and Clifton Drive junction.
  - iii. Pedestrian and cycleway provision to connect between Sealand Road and the northern corner of the application site.
  - iv. Provision of an uncontrolled pedestrian crossing with a refuge island on Sealand Road.
  - v. Alterations to the bus lane on Sealand Road.
  - vi. Provision of an emergency vehicle and pedestrian/cycle site access to Clifton Drive (as shown for illustrative purposes on indicative masterplan B3705 P002 REV E (AEW)).
  - vii. Provision of 3m wide cycleway/ footpath links to the northern boundary of the site (as shown for illustrative purposes on indicative masterplan B3705 P002 REV E (AEW)).

#### Finished levels (roads, parking, paths)

- 13) No development shall take place until a scheme to set road, parking and pedestrian areas at a minimum level of 5.65m AOD has been submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved details.

#### Tree/hedge protection

- 14) No site clearance, preparatory work or development shall take place until measures for the protection of retained trees and hedges have been implemented in accordance with a scheme prepared in accordance with Clause 7 of British Standard BS5837 - Trees in Relation to Construction - Recommendations for the protection of the retained trees, which includes appropriate working methods, and which has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out as approved and the protection measures shall remain in place for the duration of the construction period.

#### Construction traffic

- 15) Full details of arrangements for construction traffic, including temporary highway vehicle and pedestrian routings, times, days and routing of large vehicle movements to and from the site (including details of vehicle movements in connection with the importation of fill material to avoid peak traffic periods), shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The works shall be carried out in accordance with the approved details.

#### Construction method statement

- 16) No development shall commence 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 throughout the construction period. The statement shall provide for:
  - i. Construction traffic site access off Clifton Drive.
  - ii. Off-highway parking for construction related vehicles.
  - iii. Loading, unloading and storage arrangements for plant and materials.
  - iv. Construction vehicle cleaning facilities.
  - v. The erection and maintenance of security hoardings.
  - vi. Measures to control the emission of dust, dirt, noise, vibration and light during construction.
  - vii. A waste audit/ scheme for recycling/disposing of waste resulting from construction works.
  - viii. Details of any piling.

#### Construction phasing

- 17) No development shall commence, including any importation of materials or raising of levels, until a scheme for flood protection during the course of carrying out the development has been submitted to and approved in writing by the local planning authority. The approved scheme shall be adhered to throughout the construction of the development.

#### Noise levels (internal and outdoor areas)

- 18) No development shall take place until a scheme for protecting the occupiers of the dwellings hereby permitted from noise from the neighbouring non-residential premises to the east has been submitted to and approved in

writing by the local planning authority. No dwelling hereby permitted shall be occupied until all works to protect that dwelling have been completed. The submission for reserved matters approval shall include details of windows, openings and means of ventilation in the dwellings, and ensure the following noise levels are not exceeded and shall apply to all dwellings within the development:

- i) An internal noise level for habitable rooms during the day (0700-2300hrs) of 35dB(A)LAeq,16hrs.
- ii. An internal noise level for bedrooms during the night (2300-0700hrs) of 30dB(A)LAeq,8hrs and45dB(A)LAm<sub>ax</sub>.
- iii. Noise levels within external living areas such as balconies, terraces and gardens during the day (0700-2300hrs) of 50dB(A)LAeq,16hrs.

#### Landscaping management plan

- 19) A landscape management plan including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, amenity open space and recreational facilities, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the commencement of construction of any dwelling hereby permitted. The landscape management plan shall be carried out as approved. The management plan shall make provision for access to and use of the open space by both residents of the development hereby permitted and for wider public use.

#### Completion of off-site highway works

- 20) None of the dwellings hereby permitted shall be occupied until the access and off-site highway works has been constructed in accordance with the details specified in condition No 12.

#### Surface water drainage

- 21) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with a scheme that has been submitted to and approved in writing by the local planning authority. Before the scheme is submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Land drainage run-off shall not be permitted to discharge, either directly or indirectly, into the public sewerage system. The scheme shall include:
  - i) Details of a surface water regulation system (including the details of any swales as shown on the Indicative Masterplan B3705 P002 Rev E (AEW)).
  - ii. Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, (including management of overland flow from surcharging of the site's surface water drainage scheme) and the measures taken to prevent pollution of the receiving groundwater and/or surface waters.
  - iii. A programme for implementation.

- iv. A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker.

#### Importation of materials

- 22) Any imported materials, soil or soil forming materials brought into the site for use in soft landscaping areas, filling or construction shall be tested for contamination and suitability for use on site. Proposals for contamination testing shall be submitted to and approved in writing by the local planning authority in advance of any imported materials being brought onto the site. The development shall proceed in accordance with the approved details.

#### Construction hours

- 23) No construction works shall take place outside 0800 hours to 1800 hours Monday to Friday; 0800 hours to 1300 hours on Saturdays or at any time on Sundays or bank holidays. No construction traffic shall be permitted to enter or leave the site outside 0800 hours to 1800 hours Monday to Friday; 0800 hours to 1300 hours on Saturdays or at any time on Sundays or bank holidays.

#### Travel plan

- 24) No dwelling hereby permitted shall be occupied until a travel plan has been submitted to and approved in writing by the local planning authority. The travel plan shall be developed in accordance with the residential travel plan (TPA - Report Number: 0709-07/TP/01 – September 2012) and shall include provision for the appointment of a travel plan co-ordinator, an implementation timetable and enforcement mechanism and shall include arrangements for monitoring of progress of the proposals and review thereof. The travel plan shall be implemented and maintained in accordance with the approved timetable and scheme of monitoring and review as long as any part of the development is occupied.

#### Habitat mitigation scheme

- 25) No dwelling hereby permitted shall be occupied until a scheme for the provision of a minimum of 25 nesting boxes for birds, and a minimum of 25 boxes for bats, to suit a variety of bird/bat species and including a programme for implementation, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.

**APPEARANCES**

FOR THE LOCAL PLANNING AUTHORITY:	
Mr H Mohamed of Counsel	Instructed by Head of Legal Services
He called	
Mr P Friston BA(Hons) BPI MRTPI	Principal Planning Officer
FOR THE APPLICANT:	
Mr C Lockhart-Mummery QC	Instructed by Satnam Planning Services
He called	
Mr C Griffiths BA(Hons) MRTPI	Director, Satnam Planning Services
INTERESTED PERSONS:	
Ms C Gahan	Ward Councillor
Mr A Skargill	Friends of North Chester Green Belt

## INQUIRY DOCUMENTS

1	List of persons present at the Inquiry
2	Letter of notification of the Inquiry
3	Opening submission on behalf of the applicant (CD 16.8)
4	Statement by Cllr.Gahan (CD 16.9)
5	Statement by Mr A Skargill (CD 16.10)
6	Draft Planning Obligation
7	CIL Compliance Statement (CD 16.7)
8	Travel planning guidance SPD (CD 16.11)
9	Letter from Chester and Wirral Football League (CD16.12)
10	Photographs submitted by Mr Skargill (16.14 & 16.16)
11	Council's closing submission (CD 16.15)
12	Letter handed in from Mr McMullen (CD16.13)
13	Badger Survey and Mitigation Strategy (2017) (CD 16.5)
14	Planning Obligation (9 August 2017) (CD 16.6)
15	Statement of Common Ground (CD 16.1)
16	Sport England representations and appendices (CD 16.3/16.4)
17	Agreed conditions (CD 16.2)

## CORE DOCUMENTS

P.1	Drawing 3705 P001 Rev A Site Location Plan
P.2	Drawing B3705 P002 Rev E Indicative Masterplan
P.3	TPA drawing 0709-07 SK13 Proposed Site Access and Improvements to the Junction of Clifton Drive and Sealand Road for Residential Development
P.4	Drawing 3705 P003 Rev A Indicative Height Parameters Plan
P.5	Drawing 3705 P004 Site sections
P.6	Drawing B3705 P005 Topographic Survey
1.1	Application Form
1.2	Design and Access Statement
1.3	Flood Risk Assessment and Surface Water Drainage Strategy Report (Sandersons) (Sept 2012)
1.4	Planning statement in respect of playing field loss (Appleton Group) (Sept 2012)
1.5	Landscape and Visual Impact Appraisal (Appleton Group) (Sept 2012)
1.6	Extended Phase 1 Habitat Survey (Appleton Group) (Sept 2012)
1.7	Thames Valley Archaeological Services Land at Sealand Road An Archaeological Desk-Based Assessment Dec 2011
1.8	Preliminary Environmental Risk Assessment (Phase I Desk Study) EMS Solutions Nov 2011
1.9	TPA Services report 1111-48/STAT/01 (Sept 2012)
1.10	TPA Transport Assessment
1.11	Noise Assessment Report (Hawkins Environmental)
1.12	Statement of Community Involvement Report (Satnam)
1.13	Affordable Housing Viability Study
1.14	Affordable Housing Sealand Road Appendices
1.14 B	Letter from JLLS 11 November 14 (Affordable Housing Viability Update)

1.15	Playing Fields Dec 2012 rebuttal to Sport England
1.16	FloodRiskSequentialTestandExceptionsTest(GeraldEve)(MC 0567Oct2014)
1.17	Flood Risk Sequential Test and Exceptions Test(Gerald Eve)(August 2015)
2.1	Applicant Correspondence (letter of 19 Aug 13)
2.2	Applicant Correspondence (letter of 18 Sept 13)
2.3	Applicant Correspondence (letter of 17 Feb 14)
2.4	Applicant email 23 March 2015
2.5	Email from Applicant to Sport England 24 March 2014 Proposed revised mitigation
2.6	Replacement Pitches for the Sealand Road Site: Potential Sites in the Blacon Ward
2.7	Email from Applicant to Sport England 31 March 2014
2.8	Email from Applicant to CWCLP 30 April 2014
2.9	University of Chester Letter 2 October 2013
2.10	University of Chester Letter 25 March 2014
2.11	University of Chester Letter 7 April 2014
2.12	Letter 21 August 2015 from University of Chester
2.13	Applicant email 4 August 2014
2.14	LPA Gerald Eve e-mail 15 Sep 2014
2.15	Applicant Correspondence letter 21 October 2014 (and attachments with Mitigation Package)
2.16	Gerald Eve email 25 Nov 2014
2.17	Gerald Eve letter 12 Dec 2014
2.18	Applicant Correspondence letter 4 Dec 14 (and revised HoTS)
2.18 B	Applicant Correspondence letter 5 December 14
2.19	Applicant's Proposed Mitigation Package 7th Amendment (July 2015)
2.20	Applicant e-mail 16 January 2015 (comments on Cttee report)
2.21	Letter 4 Aug 2015 from Bark Street Investments
2.22	CDFL Statement (December 2014 Planning Committee)
2.3	Letter 11 August 2015 from JLLS
3.1	Committee Report 18.04.13
3.2	Committee Report 20.06.13
3.3	First Application Minutes of Strategic Planning Committee Meeting (20 June 2013)
3.4	Officer's Report to Committee (16 Dec 14)
3.5	Late Information Report to Committee (16 Dec 14)
3.6	Minutes of the Strategic Planning Committee (16 Dec 14)
3.7	Officer's Report to Committee (22 Jan 2015)
3.8	Late Information Report to Committee (22 Jan 2015)
3.9	CD3.9 Minutes of the Strategic Planning Committee (22 Jan 15)
4.1	Council letter to Satnam 20 Sept 13
4.2	Council letter to Satnam 29 Jan 14
4.3	Council letter to Satnam 20 Feb 14
4.4	Council letter to University of Chester 13 March

4.5	Council letter to University of Chester 28 March
4.6	Council letter to Satnam 2 Apr 14
4.7	Council 18 Jun 14 (Extn of Time Request)
4.8	Council letter to Satnam 27 June 14
4.9	Council letter to Satnam 9 July 14
4.10	Council 15 Aug 14 (Extn of Time Request)
4.11	Council 11 Sep 14 (Extn of Time Request)
4.1	Council Letter to Satnam 13 March 15
5.1	Sport England (7 Oct 13), with appendices
5.2	Sport England (13 Nov 14), Sport England response to reconsultation of 29 October 2014
5.3	Sport England (09 Jan 15)
5.4	Email from Sport England to Applicant 25 March 2014 Response to alternative mitigation
6.1	Airbus (17 Sept 13)
6.2	Natural England (10 Sept 13)
6.3	Sustrans (4 Sept 13)
6.4	Environment Agency (1 April 14)
6.5	Environment Agency (23 April 14)
6.6	Welsh Water (25 Sept 13)
6.7	Total Environment Comments 5 December 2014
7.1	Paul Graham, (Chester District Football League)114, Western Avenue, Chester (On-line comments)
7.2	Mrs J Eardley, 110, Sealand Road (22 Sept 13)
7.3	Mr T C Lamb, 112, Sealand Road (22 Sept 13)
7.4	Alison Mason, 238, Sealand Road (received 25 Sept 13)
7.5	T Williams, 284, Sealand Road (received 10 Sept 13)
7.6	Mrs C Williams, 284, Sealand Road (7 Sept 13)
7.7	Mr P J Collin, 158, Sealand Road (6 Sept 13)
7.8	Dr Ian Gloyne-Phillips, 64 Queensway, Chester, CH2 1PG (30 Jan 15)
7.9	Andrew Grime, Weetwood, (18 Feb 13)
7.9C	Email and correspondence from A Grimere: Trustees of Beddington Estate (incl. Weetwood letters 22 and 26 Oct 12)
7.10	Andrew Grime, Weetwood, (5 Sept 13)
7.11	Ian McMullen, 108, Sealand Road (22 Jan 15)
7.12	Mr Paul Foster, 14 Kirkwood Close (on-line comments)
7.13	Mr Andy Scargill, (Chair, Friends of North Chester Green Belt), The Lodge, 299 Parkgate Road, (on-line comments)
7.14	Ms Ann Charlton, 87 Kingsway, Chester (on-line comments)
7.15	Mr Anthony Carter, 138 Blacon Point Road, (on-line comments)
7.16	Mr A Bark, 160 Sealand Road, (25 Sept 13)
7.17	Composite of responses received on line
7.18	Composite of responses (internal consultees) received on line
8.1	National Planning Policy Framework

8.2	Cheshire West and Chester Council Local Plan (Part One) (Strategic Policies) (29 Jan 2015) (extracts)
8.3	Chester District Council Local Plan (May 2006) (extracts)
9.1	Cheshire West and Chester Open Space Assessment (Jan 2011) (extracts)
9.2	Cheshire West and Chester Open Space Assessment (Ward Update) (October 2011) (Extracts)
9.3	Cheshire West and Chester Playing Pitch Strategy Evidence Base (May 2011) (Extracts)
9.4	Cheshire West and Chester Council Playing Pitch Strategy(July 2012) (Extracts)
9.5	Strategic Housing Market Assessment 2013 (Extracts)
9.6	West Cheshire SFRA (summary)
9.7	West Cheshire SFRA (May 2008) and appendices/maps
9.8	Strategic Housing Land Availability Assessment(July 2013) (Summary and Extract of Discounted Sites)
9.9	Chester Archaeological Plan (Jan 14) (Guidance Note 2)
9.1	Cheshire West and Chester Open Space Assessment (Jan 2011) (extracts)
9.2	Cheshire West and Chester OpenSpace Assessment(Ward Update)(October 2011) (Extracts)
9.3	Cheshire West and Chester Playing Pitch Strategy Evidence Base (May 2011) (Extracts)
9.4	Cheshire West and Chester Council Playing Pitch Strategy(July 2012)(Extracts)
9.5	Strategic Housing Market Assessment 2013 (Extracts)
9.6	West Cheshire SFRA (summary)
9.7	West Cheshire SFRA (May 2008) and appendices/maps
9.8	Strategic Housing Land Availability Assessment(July 2013) (Summary and Extract of Discounted Sites)
9.9	Chester Archaeological Plan (Jan 14) (Guidance Note 2)
10.1	Extract from Statutory Instrument 2015/595
10.2	A Sporting Future for the Playing Fields of England (1997) (updated 2010)
10.3	Sport England Guidance Policy Exception 1
10.4	Sport England Guidance Policy Exception 4
10.5	House of Commons Select Committee on NPPF (2011)
10.6	Sport England Evidence to Select Committee on NPPF(2011)
10.7	Sport England Response to NPPF (2011)
10.8	Second Application LPA Re- consultation (29 October 2014)
10.9	First Application Sport England Response (28 February 2013)
10.10	First Application Sport England Letter Maintaining Objection (3 June 2013)
10.11	Legal Opinion "Whole of a Site" (2002)
10.12	Planning for Sport Development Management (June 2013)
10.13	Cheshire FA letter to PINS (17 July 2015)
10.14	Letter from Sport England to appellant 10 January 2013
10.15	Sport England Playing Pitch Strategy Guidance (October

	2013)
10.16	Council Map and Table of Open Space Blacon October 2013
10.18	Applicant Notes of All Party Meeting (29 July 2015)
10.20	Email from Sport England to Council 23 February 2013
10.21	Letter from Sport England to Council 23 February 2013
10.22	Draft s106 Agreement (date unknown) Draft s106 sent to Sport England 13 March 2015 for comment
10.23	Letter from Satnam to FL 1 October 2014 Confirmation of proposed mitigation package from the Applicant to Chester and District Football League
10.24	Cheshire West and Chester Council Draft Playing Pitch Assessment (August 2015)
11.1	Appeal Decision 23 January 2014 (APP/A0665/A/13/2200583)
11.2	High Court Challenge Particulars of Claim to quash Inspectors Appeal decision (APP/A0665/A/13/2200583) Claim No. CO/957/2014 between Bark Street Investments Ltd and Secretary of State for Communities and Local Government dated 27 February 2014
11.3	Letter from CLG 26 March 2015
11.4	Consultation and Deposit Draft Local Plan Extracts
11.5	Historic City Study Extracts
11.6	FL Asset of Community Value Nomination Form 16 May 2014 and subsequent documentation / decision
11.8	List of University facilities and anticipated time available for community use
11.9	Extracts from Local Plan Inspector's Report: 2014
11.10	Additional Extracts from Local Plan Inspector's Report: 2014
11.11	Matter 8 LPA response for Local Plan Examination
11.12	Matter 8 LPA response for Local Plan Examination (supplement)
11.13	CWCLP Housing Land Monitor 2014-2015
11.14	Planning Permission Kingsway 07/01106/FUL
11.15	Car Park Management Scheme (condition 10 to 07/01106/FUL)
11.16	Requisite notice (published in the Chester Standard September 2013)
11.17	Appeal Decision 31 July 2013 (APP/K3605/A/11/2156394) East Molesey
11.18	PPG 17 Planning for open space, sport and recreation (extracts)
11.19	Kingsway Campus, Officers Report and Refusal Notice (11/02264/S73)
11.20	Appeal Decision Fountain Lane Davenham (2226994) 3 Sep 15
11.21	Appeal Decision Hill Top Farm, By-Pass Road, Northwich (3000528) 3 Sept 15
11.22	Indicative Masterplan land to West Side Clifton Drive

	(15/00730/OUT)
11.23	Map of Schools Blacon Area
11.24	EA Flood Map
11.25	Agreed Draft Planning Conditions (14 Sept 2015)
11.26	Abacus Letter 18 September 2015
11.27	KKP letter (response to CG rebuttal proof)
11.28	Community Use Agreements (extract from Sport England Website)
11.29	Planning Inquiry Note: No1 Education contribution (22 Sept 2015)
11.30	David Appleton Note on Cost Estimate prepared by Sport England's Consultant (22 Sept 2014)
11.31	Portakabin Layout Plan
11.32	Housing Land Supply Note
11.33	Highway plan for Clifton Footpath route
11.34	Extracts from Local Plan Inspector's Proposed Modifications: 2014 (SOC6)
11.35	Representations from Paul Graham Cheshire Wirral Football League
11.36	Representations from Ian McMullen
11.37	Representations from Ms. Bailey
11.38	Extracts from West Cheshire SFRA
11.39	Flooding Photographs and Plan (from Andy Scargill, The Lodge, 299 Parkgate Road)
11.40	Representation from Shi Qian 140 Sealand Road
11.41	Extracts from Chester District Local Plan (SR2, TR20 and TR21)
11.42	Existing and Proposed Users/Facilities Schedule (as agreed with SE and LPA)
11.43	CIL Statement (FINAL)
11.44	Section 106 Agreement (FINAL)
11.45	Playing Pitch Assessment (CWCLP Oct 2015)
12.1	SoS Decision Letter (3 May 2016) & Inspector's Report (18 January 2016)
12.2	Mr Mohamed's closing submissions.
12.3	The Council's statement of case.
12.4	Letter dated 29 October 2015 from Mr Friston concerning 11.45.
12.5	Mr Lockhart-Mummery's closing submissions
12.6	The Applicant's statement of case
12.7	Mr Griffiths's proof of evidence
12.8	Appendices to Document A3
12.9	Mr Griffiths's rebuttal proof of evidence
12.10	Appendices to Document A5
12.11	Judgement in Tesco Stores Ltd v Dundee City Council [2012] UKSC 13
12.13	Judgement in Tiviot Way Investments Ltd v SSCLG and Stockton-on-Tees BC [2015] EWHC 2489 (Admin).
12.14	Judgement in Westminster CC v British Waterways Board [1985] AC 676.

12.15	Letter dated 22 October 2015 from Mr Griffiths concerning 11.45.
12.16	Mr Ponter's closing submissions.
12.17	Sport England's statement of case
12.18	Miss Pudge's proof of evidence
12.19	Appendices to Document S3
12.20	Letter dated 2 November 2015 from Miss Pudge concerning 11.45
12.21	Correspondence received in response to Document G2.
12.22	List of core documents 12 Oct 2015 (v8)
12.23	Notification of the application call-in and inquiry.
12.24	Statement of common ground
P.1	Plan A Location plan ref B3705 P001 Rev A.
P.2	Plan B Indicative masterplan ref B3705 P002 Rev E.
P.3	Plan C Site access and alterations to Sealand Road/ Clifton Drive junction ref 0709-07 SK13.
P.4	Plan D Indicative height parameters plan ref B3705 P003 Rev A.
P.5	Plan E Indicative site sections ref B3705 P004 Rev B.
P.6	Plan F Topographical survey ref B3705 P05.
Part of 12.8	Plan G Site and proposed alternative facilities.
Part of 12.	Plan H Blacon hub site proposals.
Part of 12.8	Plan I Kingsway hub site proposals.
12.28	Plan J Chester District Local Plan – Inset Map for the Urban Area
12.29	Plan K Flood risk map
12.30	Andy Scargill representations 10 January 16
12.31	Environment Agency Flood Risk Management Plan
12.32	Drawing 2710_200yr(2114)_Br_d Rev A
12.33	Flood Consequences Assessment Point House Frm (June 14)
12.34	Colin Griffiths Satnam representations 8 February 2016 (including Committee report on 15/00730/OUT)
12.35	Signed Consent Order CO_957_2014
12.36	Signed Consent Order CO_2896_2016
12.37	CLG letter 21.10.16 (Rule 19 letter)
13.1	CLG Letter 4.1.17 (Rule 19 letter)
13.2	Friends of North Cheshire Green Belt representations (6 Nov 2016)
13.3	G Eve (Satnam) Flood Risk Sequential Assessment Addendum
13.4	Sport England Written Representation (10 Nov 2016)

13.5	Satnam letter to CLG (Phil Barber) (11 Nov 2016)
13.6	CWCLP letter to CLG (11 Nov 2016)
13.7	Appendix 1 to CWCLP letter 11.11.16 - Sherbourne Ave Appeal 15/00436/FUL
13.8	Appendix 2 to CWCLP letter 11.11.16 - Wrexham Road draft Dev Brief
13.9	Appendix 3a to CWCLP letter 11.11.16 - Local Plan Pt 2 - Preferred Approach (Aug 16)
13.10	Appendix 3b to CWCLP letter 11.11.16 - Map Changes 5-10 new policies
13.11	Appendix 4 to CWCLP letter 11.11.16 - Strategic FRA Level 1 Final Report
13.12	Appendix 5 to CWCLP letter 11.11.16 - Housing Land Monitor 2015-16
13.13	Appendix 6a to CWCLP letter 11.11.16 - 16/03489/FUL Application
13.14	Appendix 6b to CWCLP letter 11.11.16 - 16/03489/FUL Location Plan
13.15	Appendix 6c to CWCLP letter 11.11.16 - 16/03489/FUL Layout Plan
13.16	Satnam (Colin Griffiths) email 18 Nov 2016
13.17	Satnam (Colin Griffiths) email 21 Nov 2016
13.18	CWCLP letter to CLG 21 Nov 2016
13.19	Attached to CWCLP Letter 21.11.16 - Wychavon BC (Droitwich Spa) Appeal Decision
13.20	Attached to CWCLP Letter 21.11.16 - playing pitch strategy cwac pps strategy Dec 15 (2).pdf
13.21	Satnam (Colin Griffiths) email 21 Nov 16
13.22	Policy Performance Panel 14 April 2016 (with Satnam email 21 Nov 16)
14.1	Advance Statement on behalf of Applicants (Rule 6) 9 Feb 2017
14.2	Local Planning Authority's Statement of Case (9 Feb 2017) (with Appendix 13.18 - letter of 21 Nov 2016)
14.3	Written Representations of Sport England (9 Feb 2017)
14.4	S Qian 140 Sealand Road 4 April 17
14.5	S Qian 140 Sealand Road 25 April 17
14.6	Avril Coady 64 Cambrian View Chester 19 April 17
14.7	Welsh Water correspondence (e-mail) 26 April 2017
14.8	Prof Wheeler University of Chester letter 12 April 2017
15.1	PPG - Flood Risk Coastal Change -Applying the Sequential Test individual applications (from HC Challenge papers)
15.2	Environment Agency Flood risk assessment; sequential test for applicants (from High Court Challenge papers)
15.3	Local Plan Part Two Policies - Preferred Approach Consultation Aug-Sep 16 (Policy Extract)
15.4	Housing Economic Land Availability Assessment (Feb 17) (extracts)



# Ministry of Housing, Communities & Local Government

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## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.