

Appeal Decisions

Inquiry opened on 16 May and closed on 4 July 2023

Site visits made on 15 and 19 May, and 16 June 2023

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal A Ref: APP/W4325/W/22/3313729

Land east of Glenwood Drive, Irby CH63 1JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Limited against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00946, dated 30 May 2022 was refused by notice dated 27 October 2022.
 - The development proposed is a residential development for up to 290 dwellings (Use Class C3), including 30% affordable housing and 10% self-build/custom build properties; delivery of part of the Borough's cycle supergreenway; green infrastructure including sports pitches, play areas and parkland, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
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Appeal B Ref: APP/W4325/W/22/3313734

Land east of Dale View Close, north of Gills Lane, Pensby

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Limited against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00941, dated 29 May 2022 was refused by notice dated 28 October 2022.
 - The development proposed is a residential development for up to 92 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new public open space and play area, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
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Appeal C Ref: APP/W4325/W/22/3313737

Land east of Thorncroft Drive, north of Gills Lane, Pensby

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Limited against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00942, dated 29 May 2022 was refused by notice dated 28 October 2022.
 - The development proposed is a residential development for up to 15 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a green space, wildlife habitats and wetland; and off-site environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
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Appeal D Ref: APP/W4325/W/22/3313741

Land west of Barnston Road, north of Gills Lane, Barnston, Wirral

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Limited against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00944, dated 29 May 2022 was refused by notice dated 28 October 2022.
 - The development proposed is a residential development for up to 153 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new public park and play area, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
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Appeal E Ref: APP/W4325/W/22/3313743

Land at Milner Road and Barnston Road, Heswall

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Limited against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00943, dated 29 May 2022 was refused by notice dated 28 October 2022.
 - The development proposed is a residential development for up to 120 dwellings (Use Class C3), including 30% affordable housing and 10% self-build/custom build properties; delivery of part of the Borough's cycle supergreenway; green infrastructure including a new public park and play area, community orchard, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
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Appeal F Ref: APP/W4325/W/22/3313775

Land west of Raby Hall, Raby Hall Road, Raby Mere

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Ltd against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00945, dated 30 May 2022 was refused by notice dated 28 October 2022.
 - The development proposed is a residential development for up to 38 dwellings (Use Class C3), including 30% affordable housing; safeguarded land for the expansion of Autism Together facilities; delivery of green infrastructure including a new pocket park and play area, wildlife habitats and green corridors; and off-site environmental, biodiversity and accessibility enhancements, including an off-road pedestrian and cycle connection between the site and Blakeley Road (all matters reserved except for access).
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Appeal G Ref: APP/W4325/W/22/3313777

Land east of Raby Hall, Raby Hall Road, Raby Mere

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Leverhulme Estates Ltd against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/22/00947, dated 30 May 2022 was refused by notice dated 28 October 2022.
 - The development proposed is a residential development for up to 80 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new open green space and play area, wildlife habitats and green corridors; and off-site environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
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DECISIONS

1. The appeals are dismissed.

APPLICATIONS FOR COSTS

2. At the Inquiry, applications for costs were made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance against Leverhulme Estates Limited. These applications are the subject of separate Decisions.

PRELIMINARY MATTERS

3. All the appeals are for outline planning permission with access. Parameters plans accompany each appeal and provide broad locations for development, such as residential, and protected green and blue infrastructure. These were submitted as plans for approval and would guide the reserved matters submissions if any of the appeals were allowed. Additionally, illustrative masterplans have also been submitted, and I have had regard to these so far as relevant to each appeal.
4. The appellant considered that the sites (some alone and cumulatively for all) exceeded the threshold criteria at Schedule 2, column 10 (B) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 (more than 150 dwellings and more than 5ha site area) and would be likely to result in significant effects. Therefore, they did not seek a formal Environmental Impact Assessment (EIA) Screening Opinion from Wirral Metropolitan Borough Council, as Local Planning Authority (LPA).
5. Instead, a combined Screening and Scoping Report was submitted to the LPA on 16 December 2021 and the LPA Screening and Scoping Opinion was issued on 4 February 2022. The Screening Opinion confirmed that the proposals were cumulatively EIA development and the scoping opening set out matters to be addressed in the Environmental Statements (ESs). Following review, the ESs are considered satisfactory in terms of Schedule 4 of the Town and Country Planning (EIA) (England and Wales) Regulations 2017. I have taken account of them accordingly.
6. Wirral Green Space Alliance (WGSA) received Rule 6 status on 7 March 2023 and presented evidence at the inquiry. WGSA describes themselves as an umbrella group that has represented over 30 local community, environmental, heritage, conservation, and nature groups since 2018.
7. The appeals are all made by the same appellant, Leverhulme Estates Limited, a large landowner in Wirral. The reasons for refusal in each appeal are the same, save for individual settlements noted in relation to character and appearance matters and Appeal C. Appeal C contained a reason for refusal relating to drainage matters. However, this was resolved prior to the inquiry opening and the Council did not defend this reason for refusal.
8. An appeal for a Suitable Alternative Natural Greenspace (SANG) also accompanied the other appeals under Ref: APP/W4325/W/22/3313726. This appeal was withdrawn shortly before the inquiry opened due to the Council and appellant agreeing that it would no longer be necessary to mitigate recreational pressure on National Sites. This is because the appellant agreed to contribute towards the Wirral Interim Approach¹ (WIA) for mitigating

¹ Core Document (CD) 04/4

recreational pressure taking account of both Strategic SANG and Strategic Access Management and Monitoring payments.

9. Owing to this agreement and others, set out in the Ecology and Biodiversity Statement of Common Ground (SoCG)², the Council did not defend the ecology reason for refusal on each appeal. However, WGSA maintained their ecology objections and presented evidence at a round table session.
10. Additional information, including a non-technical summary (NTS) and new climate change sections within the ES chapters were submitted with the appeals. This was to satisfy outstanding environmental concerns. To ensure no prejudice to any parties, a public consultation on this material took place prior to the inquiry opening. I have taken account of the representations. Additionally, once the SANG was withdrawn, Natural England were consulted³ on the WIA approach and raised no objections⁴ to this matter.
11. It is agreed in the Highways SoCG⁵ that the residual cumulative traffic impact on the M53 (Strategic Road Network) is considered acceptable by National Highways. Therefore, the second part of the highways reason for refusal⁶ on the appeals was not defended by the Council.
12. The appellant submitted 7 Unilateral Undertakings which commit to provide various obligations relating to infrastructure. For this reason, the Council did not defend the infrastructure reasons for refusal. However, many clauses in the agreements are not agreed and would be subject to my judgement if I were to allow any of the appeals.
13. I introduced prematurity as a main issue in a Preliminary Note⁷. This is because the new Local Plan had been submitted for Examination and could be at an advanced stage having regard to paragraph 49 b) of the National Planning Policy Framework (the Framework). I will return to this matter below. There are a significant number of unresolved objections to the emerging Local Plan (eLP) and I consider the policies should be given moderate weight for the purposes of these appeals.

MAIN ISSUES

14. It is common ground that all the proposals would be inappropriate development in the Green Belt. Therefore, the main issues are:
 - a) Whether the cumulative effect of the developments proposed would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan.
 - b) The effect of the proposals on the openness and purposes of the Green Belt.
 - c) The effect of the proposals on the character and appearance of the area, including the effect on the settlements of Irby and Thingwall⁸, Barnston⁹ and Raby Mere.¹⁰

² Inquiry Document (ID) 19

³ ID8

⁴ ID18

⁵ CD01/2.6

⁶ "The submitted Transport Assessment does not adequately assess cumulative impact of the development, along with other developments, on junctions on the M53 motorway".

⁷ CD06/27

⁸ Appeal A only.

- d) Whether the proposals would support active and sustainable modes of travel.
- e) The effect of the proposals upon biodiversity.
- f) The effect of the proposals upon the best and most versatile agricultural land.
- g) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposals.

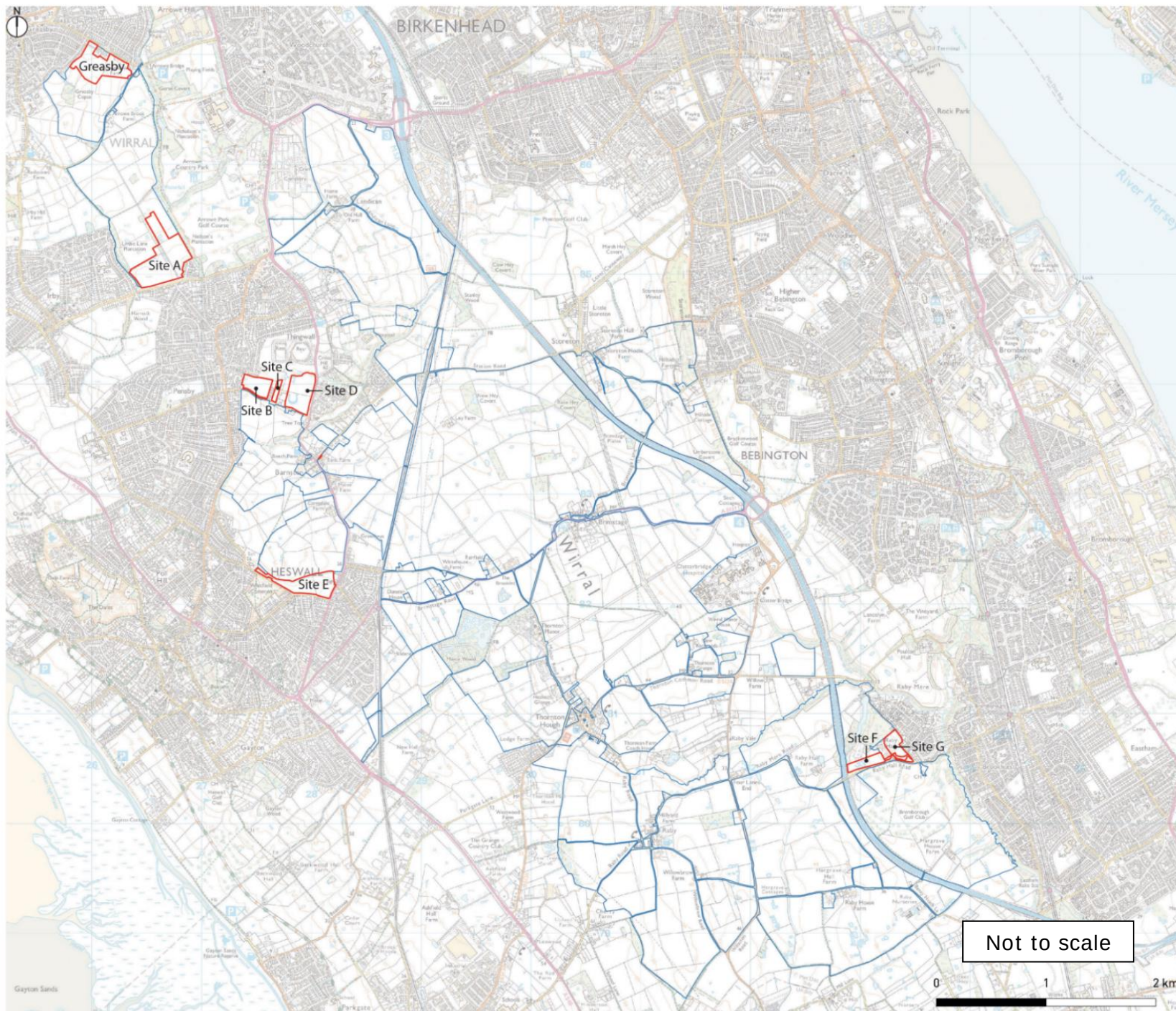
SITES AND PROPOSALS

15. An overview of the sites¹¹ is included on the next page. For information, the Greasby site is not part of this appeal decision, but it is another Leverhulme phase 1 site and was submitted to the Council as a planning application. This was also refused.

⁹ Appeal E only.

¹⁰ Appeals F and G only.

¹¹ ID13



- Leverhulme ownership
- Phase 1 site boundary

Not to scale

LEVERHULME ESTATES LIMITED

SITE LOCATIONS

1815/01/1240 Rev A

MARCH 2023

Alan Baxter

Appeal A

16. The site comprises 2 large, relatively flat, irregularly shaped agricultural fields, at around 17.38 hectares. It is bounded by Thingwall Road to the south, Glenwood Drive to the west and Parkway and Arrowe Brook golf course to the east, with further agricultural land to the north. The site contains a permissive bridleway, known as Limbo Lane, that runs north south through the site, linking Thingwall Road with Arrowe Brook Lane. To the west of the site is the eastern border of Irby and to the south is the northern border of Thingwall. Both are settlements that mainly consist of 20th century housing with local centres. Arrowe Brook passes along the western border of the site.
17. The proposal is for up to 290 dwellings, 30% of which would be affordable and 10% would be self/custom build. There are 2 access points proposed, one into each field west and east, that would connect to Thingwall Road. Public open space is proposed on site, which would retain the woodland to the west of Limbo Lane. Sports pitches are proposed to the north and there would also be 2 children's play areas and green spaces provided on site, along with drainage attenuation areas. Pedestrian access to Parkway, the PRow to the east boundary and into Arrowe Brook golf course are also indicated on the parameters plan. Lastly, a 'cycle supergreenway' is proposed to run along Limbo Lane, connecting to Arrowe Brook Lane, and along the front of the site on Thingwall Road. Off site enhancements to existing hedgerows and additional woodland planting are proposed to the north.

Appeal B

18. There are 2 sites that are identified for Appeal B. First, land east of Dale View Close, north of Gills Lane, which is the main appeal site, and second, a smaller site on Storeton Lane, Barnston.
19. The main appeal site is a reasonably flat, rectangular shaped agricultural field, at around 3.92 hectares. It is bounded by Gills Lane to the south, with Dale View Close to the west, and Thorncroft Drive to the east. Gwendoline Close is located to the north and occupies around half the northern boundary, with the other half being an open field with above ground reservoirs beyond. All residential properties back onto the site, with domestic boundary treatments, although the western boundary is well vegetated with a small pond and trees. To the west is Pensby, a settlement that mainly consists of 20th century housing with a local centre.
20. The proposal for the main appeal site is for up to 92 dwellings, 30% of which would be affordable. One vehicular access point is proposed off Gills Lane, with indicative pedestrian access to the east and west of the site. Public open space is proposed, which will retain the western landscaped area and pond. Drainage basins and a children's play area are also indicated on the parameters plan. Gills Lane would also be widened outside the site to enable the provision of a 2m wide footway on the northern side, along with replanting of the hedgerow. A new footpath and habitat green space is also proposed as off site enhancements, to the south of the site towards Barnston Dale.
21. The Storeton Lane appeal site is a small parcel of land where road widening is proposed at the junction with Barnston Road. This is to ensure 2 way traffic

movement is maintained along Storeton Lane, as there is a pinch point that causes traffic delays at times. The same off site highway improvement is also proposed for Appeals D and E.

Appeal C

22. The site is a long rectangular field around 0.82 hectares. It is located to the north of Gills Lane and to the east of Thorncroft Drive, the other side to Appeal B. Agricultural buildings are located on a stabling complex to the east, with a detached residential property fronting Gills Lane. To the north is the same field to the north of Appeal B, with the above ground reservoirs. Pensby is located to the west.
23. The proposal is for up to 15 dwellings, of which 30% would be affordable. A vehicular access point is proposed off Gills Lane, with indicative amenity space and a 'pocket park' to the south of the site. Green infrastructure and a drainage attenuation area would be located at the northern end of the site.

Appeal D

24. There are 3 sites that are identified for Appeal D. First is land west of Barnston Road, north of Gills Lane, the main appeal site. This sits to the east of Sites B and C. Second, a much smaller site on Storeton Lane, Barnston, which is the same as Appeal B and E. Third is Gills Lane.
25. The main appeal site is 2 broadly rectangular fields separated by a dividing hedgerow, extending to approximately 7.35 hectares and sloping gently upwards to the south west. To the west are fields, the stabling complex and dwelling. To the south is Gills Lane and to the east is Barnston Road. To the north are the above ground reservoirs. Mature hedgerows form the site boundaries and the hedgerow to the middle of the site contains mature trees. There is also a pond to the north west corner and a tributary of Prenton Brook is present on the northern site boundary.
26. The proposal on the main site is for up to 153 dwellings, of which 30% would be affordable. Three vehicular access points are proposed, 2 off Barnston Road and one off Gills Lane. The southern Barnston Road access and Gills Lane access would meet to create an alternative route, rather than using the existing junction, suitable for buses. Drainage attenuation is proposed to the north and south corners of the site on Barnston Road, and a children's play area is proposed to the centre of the site next to the retained hedgerow trees. Pedestrian connections are indicated from Barnston Road and Gills Lane. Off site enhancements include grassland and hedgerow habitat creation to the south east of the site, near to Pensby Road and Greenbank Drive.
27. The Gills Lane site comprises road widening to the front of Site B to 5.5m and a 2m footway. Off site highway works also include footway widening to Gills Lane adjacent to Site D and the stabling complex. The only part of Gills Lane that would not be subject to footway widening with Appeal D would be to the front of Thorncroft Drive, where a 'pinch point' for pedestrians would remain because of land ownership restrictions. As a result of the widening, protected trees and the hedgerow would be lost, however, compensatory planting would be proposed on the main appeal site.

Appeal E

28. There are 2 sites that are identified for Appeal E. First, Land at Milner Road and Barnston Road, which is the main appeal site, and second, a smaller site on Storeton Lane, Barnston, the same as Appeals B and D.
29. The main appeal site is an irregular shaped field, of around 8.34 hectares. It has an undulating topography, and slopes around 20m from west to east. A drainage channel runs to the northern boundary with fields beyond. To the south of the site is Milner Road and Whitfield Lane, and to the east is Barnston Road. To the western boundary is Heswall Primary School and the settlement of Heswall is located to the west, south and east.
30. The proposal is for up to 120 dwellings, 30% of which would be affordable and 10% would be self/custom build. Two vehicular access points are proposed, one off Whitfield Lane and the other off Barnston Road. Drainage attenuation is proposed to the north east corner of the site on Barnston Road, and a children's play area is proposed to the northern part of the site. Pedestrian connections are indicated opposite all surrounding terminating roads, such as Buff's Lane. A 'cycle supergreenway' is proposed to run along the northern boundary of the site, connecting Barnston Road to the western corner of the site, terminating at the primary school. An area of open space is also proposed to the western, narrower part of the site, where it is suggested that a community orchard would be planted. Highway widening for the footway on Whitfield Lane and Milner Road is proposed. Off site enhancements propose a new pedestrian footpath to the south east of the site, including pedestrian access across the railway bridge, hedgerow enhancement and grassland.

Appeal F

31. The site is a rectangular agricultural field around 3.30 hectares, together with a 'strip' of land that connects into Site G and to Blakeley Road. To the north and eastern boundaries of the site is Autism Together, a specialist education and residential care facility. To the west is the M53 and Raby, and to the south is Raby Hall Road, with Bromborough golf course on the other side of the road. Boundaries to the site comprise mainly hedgerows with the south west corner containing dense woodland copse. Trees to the south eastern boundary are protected by a group Tree Preservation Order.
32. The proposal is for up to 38 dwellings, 30% of which would be affordable. One vehicular access point is proposed from Raby Hall Road with the eastern strip being used as off road pedestrian and cycle access. A parcel of land within the site to the north eastern corner is safeguarded for Autism Together for future use. A children's play area would be provided and drainage attenuation is indicated to the west of the site. Off site works include a new off road pedestrian footpath from the west of the M53 to Raby village and enhanced habitat and woodland planting.

Appeal G

33. The site is an irregularly shaped field of around 3.69 hectares. To the south is Raby Hall Road and Bromborough golf course, and Blakeley Road runs to the east. The western boundary adjoins Autism Together, with Appeal F located beyond.

34. The proposal is for up to 80 dwellings, of which 30% would be affordable. Green and blue infrastructure would be protected to the south of the site, where access from Appeal site F is proposed. A children's play area is indicated to the north of this open space. One vehicular access point is proposed off Blakeley Road and a drainage attenuation is indicated to the north east corner of the site. Pedestrian access points are shown on the parameters plan at various locations around the perimeter of the site. Off site works include an enhanced habitat and woodland planting along the watercourse to the south of Raby Hall Farm and east of the M53.

REASONS

Prematurity

35. The Council's eLP¹² was submitted for Examination in October 2022. Examination hearings have commenced, however, because the Council did not have the resources to accommodate both the hearings and this inquiry, the hearings were scheduled to take place in 2 blocks. The first started in April, with the second block expected to commence at the end of September.
36. Matters relating to compliance with statutory procedures and legal matters, detailed policies, and minerals, waste, pollution and geology have been heard. However, matters relating to the vision, objectives, the spatial strategy, strategic policies for housing and employment, and infrastructure will be heard in block 2. They were programmed¹³ to be heard during the first block of hearings, however, due to additional evidence being submitted by the Development Consortium (of which the appellant is part) relating to housing numbers, viability and the strategy, these matters have been delayed.
37. A main plank of the appellant's case relates to their contention that the eLP is fundamentally flawed. The term was used in numerous proofs of evidence, and primarily relates to the Council's strategy, housing numbers and viability of the regeneration sites.
38. In the context of the Framework paragraph 49, arguments that an application [now appeal/s] is/are premature are stated to be unlikely to justify a refusal of planning permission other than in the limited circumstances where both:
 - a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging plan; and
 - b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

Is the emerging local plan at an advanced stage?

39. Taking 49 b) first, whilst matters relating to strategy, viability and housing need have not yet been heard, the underlying principle is that the eLP Examination has commenced. Hearings have taken place and the Local Plan (LP) Inspectors have also issued initial Matters, Issues and Questions for all matters in the eLP. The reasons for the pause in proceedings are owing to this

¹² CD04/13

¹³ CD06/33

inquiry and late evidence submitted by the Development Consortium. Without these, it may be that the Hearings would not have been paused.

40. Moreover, whilst the appellant sought to argue that because there were unresolved objections, there could be delays to adoption and main modifications would be necessary, these matters relate to the weighting to be given to emerging policies in relation to paragraph 48 of the Framework, not if the emerging plan is, or is not, at an advanced stage.
41. Additionally, paragraph 50 of the Framework details that refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination. To my mind, this means that once an emerging plan has been submitted, it can be considered as 'at an advanced stage', particularly once the Hearings have commenced. Consequently, it is my judgement that this eLP is at an advanced stage.

Would the proposals undermine the plan-making process?

42. The Council's eLP has 2 vital elements. The first is to regenerate the eastern part of the Borough, focusing on the regeneration of Birkenhead and wider regeneration programme for the 'LeftBank' of the River Mersey stretching from New Brighton to Bromborough. The second is to protect Wirral's Green Belt to underpin this regeneration. It is a holistic, 2-pronged strategy, with the Local Plan Vision 2037 outlining that "*Wirral's Green Belt remains as a vital mechanism to support urban regeneration and maintain the distinctive identity of many of Wirral's settlements.*"
43. The regeneration strategy is supported by stark evidence¹⁴. Wirral is ranked 77th most deprived district in England (out of 317), 20% of children are living in poverty, and perhaps the most alarming is the 11 year life expectancy gap between people living in the east and west of Wirral, on a peninsula some 7 miles wide.
44. The eLP details that "*One of the key aims for designating the Green Belt in Wirral in 1983 was to check the outward spread of the built up area, direct development into existing towns and encourage their regeneration*". The evidence before me is that the need for the regeneration of Birkenhead has not diminished over the past 40 years, nor has the importance of the Green Belt to assist. Regeneration will meet housing and economic needs of the current and future population, but will also improve the balance between the east and west. It also seeks to protect the Green Belt to promote sustainable patterns of transport and travel, by encouraging a modal shift away from motorised transport to provide greater connectivity on foot and cycling.
45. The regeneration programme is ambitious and is described as such in the Liverpool City Region's Plan for Prosperity¹⁵ being "*one of the largest and most ambitious regeneration programmes in the UK with the potential to create up to 20,000 new homes over the next 20 years through a radical re-use of neglected and brownfield sites, underpinned by the eLP*".
46. However, the Council has not simply assumed that there should be no Green Belt release in drawing up its strategy. On the contrary, the Council

¹⁴ CD04/45

¹⁵ CD04/13

considered 4 different development options in its Sustainability Appraisal¹⁶. Two of these looked at potential Green Belt release. However, the study concluded that sufficient brownfield land and opportunities exist within the urban areas of the Borough to ensure that objectively assessed housing and employment needs can be met over the plan period. The Council concluded that the exceptional circumstances to justify alterations to the Green Belt boundaries (paragraph 141 of the Framework) do not exist in Wirral. These circumstances are entirely different to the Colney Heath¹⁷ decisions placed before me by the appellant, which considered purpose e) of the Green Belt in the context of assessing Green Belt harm.

47. Therefore, the role of the Green Belt is important in this area to promote the needed urban regeneration, in line with one of its key purposes: to assist in urban regeneration, by encouraging the recycling of derelict and other urban land¹⁸.
48. Additionally, the eLP's plans for the towns and villages in the west, where Appeals A-E are located, promotes small scale incremental development. This would not starve these areas of growth, but it would be limited in numbers. This is because they are largely commuter towns and villages which are, in general, less accessible by sustainable transport and largely surrounded by Green Belt. Whilst there may be distinct housing markets in the east and west, Wirral is one housing market area and the distribution of housing is a matter for the eLP Examination.
49. The appeal proposals range from 15 to 290 dwellings, cumulatively reaching 788 dwellings. The total number of dwellings would represent just under 6% of the plan requirement¹⁹ for the plan period to 2037. This is not an insignificant amount, and it is my judgement that the combined scale, Green Belt location and resultant effect of the proposals would be significant.
50. Furthermore, the appellant's Vision, which forms part of their 'very special circumstances' package, sets out the appellant's intentions to develop an Estate-wide initiative over several decades to deliver over 7,700 new homes in the Green Belt. They assert that this is a plan-led approach, unique to them as a large landowner and essential to support the delivery of development in the Wirral. They claim that *"our analysis is that there is no prospect that the Borough Council will be in a position to adopt a Local Plan within a timeframe that will be able to support delivery of the developments needed to support Wirral socially, environmentally or economically in the short term"*²⁰. Whilst the further phases are not before me, the fact that the Vision is presented as part of the package of 'very special circumstances' signals that there is a strong intention to pursue the appellant's own plans.
51. The appellant also presented evidence which related low population growth that could lead to economic decline, an under delivery of housing, rebalancing housing growth and a failure of the eLP to make provision for affordable housing, meaning that these housing appeals were necessary in these locations. All these matters go to the heart of the eLP Examination.

¹⁶ CD04/32

¹⁷ CD05/3

¹⁸ Framework paragraph 138 purpose e)

¹⁹ 13,360 dwellings

²⁰ CD02/1 6.10

52. It was also argued by the appellant that the Regeneration Areas in the eLP propose unnecessary cramming of high-density one or 2-bedroom apartments, leading to future problems. Whilst evidence is presented that demonstrates the Council would be seeking a mixture of higher density family housing, this is a matter for the eLP Examination.
53. Lastly, the appellant sought to argue that, if the appeals were allowed, the dwellings would simply become 'new build commitments' under Policy WS 1.1 of the eLP, such that the housing numbers promoted in the Regeneration Area sites would remain the same and the total plan supply would simply increase. In essence, the appellant believes they would be delivered as well as, and before many of the eLP sites, such that the eLP would be unaffected and a fully functioning Green Belt would remain.
54. I disagree. This is an overly simplistic approach to assessing the impact, because in granting permission, the option to develop in the Green Belt would become available, such that the Regeneration Areas would be less attractive to developers because they are more difficult and costly to develop. This is highly likely to alter the market, and whilst there is no substantive statistical evidence to prove that this would happen, the very fact that purpose e) of the Green Belt serves to assist in urban regeneration demonstrates that there is a causal link.

Conclusion

55. The planning system should be genuinely plan led, with plans prepared by Local Planning Authorities. It is built on this foundation and whilst this eLP has been a long time coming, the strategy promoted by the Council is underpinned by its evidence base, which finds there are no exceptional circumstances to release any Green Belt land.
56. I accept that the strategy remains to be tested, and in theory, there could be 'fundamental flaws'. However, the place to test the strategy is at the eLP Examination. The appellant's case that the asserted fundamental flaws are reason which weigh in favour of allowing these appeals are in themselves, fundamentally flawed, because these matters must be decided by the eLP Inspectors. To form any judgement would be, in itself, premature.
57. Essentially, all roads in these appeals lead back to the eLP Examination, a matter referenced several times in the reasons below. In the context of the collective scale and location of these proposals being in the Green Belt, diametrically at odds with the emerging strategy and the advanced stage of plan making, approval of the proposals would be clearly premature. It would undermine, prejudice and predetermine decisions about the location of new development that are central to the eLP. The Council's witness was correct in stating: "*the dispersal of development to greenfield Green Belt sites is the antithesis of the eLP strategy of securing the regeneration of existing urban areas*"²¹.
58. These findings would not however, impose a moratorium on inappropriate Green Belt development until the eLP was adopted. Each appeal falls to be considered on its own merits, and this is what I have done for these appeals.

²¹ CD01/20.2 7.4

Openness and purposes of the Green Belt

59. Owing to their location in the Green Belt, all the proposals are inappropriate development. This is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
60. Where proposals are inappropriate development, there is a requirement to also assess the effect upon openness and purposes. The fact that a proposal is inappropriate does not mean that the harm from openness or purposes is already accounted for. Openness is generally described as the absence of development. There are several factors that can be considered, but it has both spatial and visual aspects. The duration of the development, its remediability and the degree of activity likely to be generated, such as traffic generation, are all factors to be considered.
61. Green Belt serves five purposes:
- a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another;
 - c) to assist in safeguarding the countryside from encroachment;
 - d) to preserve the setting and special character of historic towns; and
 - e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
62. There are 3 Green Belt Review documents before me. The appellant's own study²², the Council's 2018 study²³ and the 'full' review²⁴ carried out by Arup for the Council in 2019. Given the Arup study is the most recent, and independent, I have used this primarily where necessary. This Review assessed areas of land which included the appeal sites, and found that all, except Appeal A, made a 'weak' contribution to the Green Belt overall. Appeal A was assessed as a 'moderate' contribution, but this appears to relate to the potential merging of Irby and Greasby. Appeal A would not result in merging between these 2 towns and therefore, its individual contribution to the Green Belt is likely to be less than 'moderate'.
63. However, the fact that sites were scored as being in weak or moderate performing parcels does not reduce their status as Green Belt, and each site needs to be individually assessed as to the impact of the proposal upon openness and purposes. Thus, whilst the study is informative, it is important to note that it was prepared the purposes of the eLP evidence base. Indeed, the study identifies that should the Council consider that the release of sites is necessary [in the eLP], separate site-specific site selection work will need to be undertaken as part of the Local Plan preparation process. The purpose of the review is very different to the assessment of 7 individual sites in the context of s78 appeals.
64. The appellant sought to suggest that elements of the schemes, such as the play areas, sports pitches and open spaces would not be inappropriate development, and this somehow reduced the effect of the proposals. Yet,

²² CD04/7

²³ CD04/11

²⁴ CD04/12

whilst these elements would not be inappropriate development on their own, there would still be a requirement to preserve the openness of the Green Belt and not conflict with the purposes of including land within it²⁵. Furthermore, the open spaces, play areas and pitches would be clearly related to housing development.

65. Moreover, parallel with the above, arguments that significant amounts of land would remain undeveloped, and that would contribute to spatial openness are illogical. Private gardens, play areas and amenity spaces are included in the appellant's calculations as 'undeveloped' land, but these areas would be contained or surrounded by housing.

Appeal A

Openness

66. The proposal would develop 2 large open fields with up to 290 dwellings. The Design and Access Statement²⁶ (DAS) suggests a mix of 2-4 bedroom houses. There would be generally 1-2 storeys in height with a formal crescent of green space at the entrance, fronted by apartments and townhouses of 2 - 3 storeys in height. Irrespective of the areas of land that would remain 'undeveloped', there would still be a substantial reduction in spatial openness.
67. Visually, the site is contained by the existing settlement edge and the golf course. Furthermore, when looking south towards the site, views are limited by existing woodland blocks and topography. Nevertheless, views within the site and in proximity to the site, such as Thingwall Road, Parkway and those who frequently use the paths on site for recreational purposes would considerably change by the introduction of housing. The visual effect on openness would be substantial.
68. There would also be significant increases in activity through people using the site day to day, such as vehicle usage. The effect would be permanent, and whilst the visual effects would be localised, the reduction in openness overall would nonetheless be substantial.

Purposes

69. *Unrestricted sprawl* – The development is located on the edge of Irby and Thingwall, which I do not consider to be large built up areas. Therefore, there would be no effect upon this purpose.
70. *Merging* – there would be a reduction of the gap between Irby and Greasby, but the proposal would not result in the merging of these towns. However, in relation to Irby and Thingwall, much time was spent in the inquiry debating the meaning of a 'town' in the context of this purpose. I consider that many settlements could be considered as a 'town', and development that closes a gap between 2 separate settlements could be perceived as merging.
71. In this instance, Irby is located to the west of the site, with Arrowse Brook acting as a 'boundary'. To the south and east is Thingwall. Whilst clearly 2 separate settlements with their own centres and identity, development on the south side of Thingwall Road in Thingwall stops at Harrock Wood/Arrowse

²⁵ Framework 149 b)

²⁶ CDA02/3

Brook, with development jumping to the northern side of Thingwall Road in Irby. Aside from the bridge over the brook, there is very little 'gap' between settlements.

72. That said, the site acts as a perceived gap between Glenwood Drive and Parkway. Irby noticeably sits to the north of Thingwall Road and west of Glenwood Drive, and Thingwall is to south east. The proposal would result in a continuous built form on the northern side of Thingwall Road, and this would plausibly reduce the sense of a gap between settlements. The harm to the purpose would be limited.
73. *Encroachment* – The site is relatively contained, and the development would not protrude northwards beyond Glenwood Drive to the west. The southern, eastern and western boundaries to the site are dense. However, the northern boundary is open to the rest of the Green Belt towards Arrowe Brook Lane, and there would be considerable encroachment into the undeveloped open fields by the fundamental nature of the proposal. This would not safeguard this large parcel of countryside from encroachment and this purpose would be harmed. I consider the harm would be significant.

Appeal B

Openness

74. The proposal would develop a large open field with up to 92 dwellings. The Design and Access Statement²⁷ (DAS) suggests there would be a mix of 2-4 bedroom houses with front and rear gardens. Irrespective of the areas of land that would remain 'undeveloped', there would still be a substantial reduction in spatial openness.
75. Visually, the site is contained by the existing settlement edge to the west and around half the northern boundary. Thorncroft Drive forms the eastern boundary. However, it remains open with views from the south across the site towards the reservoirs. Views near to the site would be considerably changed by the introduction of housing and there would be a significant reduction in openness visually.
76. There would also be significant increase in activity through people using the site day to day. The effect would be permanent, and the reduction in openness overall would be significant.

Purposes

77. *Unrestricted sprawl* – The development is located on the edge of Pensby, which I do not consider to be a large built up area. Therefore, there would be no effect upon this purpose.
78. *Encroachment* – The site is contained by surrounding residential roads and Gills Lane, and only remains 'open' towards the reservoirs in the north eastern corner. These boundaries are defensible and have an urban influence on the site, such that while the proposal would inevitably lead to encroachment, the level of harm would be limited.

²⁷ CDB02/3

Appeal C

Openness

79. This is the smallest of the sites and sits between Thorncroft Drive and the stable complex. Nonetheless, the site is open and undeveloped and the development of up to 15 dwellings with associated road, gardens and amenity areas would reduce spatial openness significantly. Visually, the site frontage is narrow and notable for only a limited amount of time when travelling along Gills Lane. Views from the north are also limited owing to the surrounding developments and landscaping, and there would be a limited visual reduction in openness.
80. There would also be an increase in activity through people using the site day to day. The effect would be permanent, and the reduction in openness overall would be moderate.

Purposes

81. *Encroachment* - The site is contained to the east and west and has a narrow frontage. However, the site remains open and obviously linked to the countryside and fields to the north. These boundaries are defensible and have an urban influence on the site, such that while the proposal would inevitably lead to encroachment, the level of harm would be limited.

Appeal D

Openness

82. The site contains 2 large open fields, split by a well-established hedgerow. The site is open and free from development, and although there are some houses on Gills Lane to the south and on Barnston Road to the east, the site has a distinctly rural feel. Additionally, even considering that Barnston is located to the south, this is not obvious given Barnston 'dip' and the extent of woodland and tree cover between. Irrespective of the areas of land that would remain 'undeveloped', there would still be a substantial reduction in spatial openness. Visually, the site is prominently open from both Gills Lane and Barnston Lane. Whilst views are localised and there is no public access, there would still be a significant reduction in visual openness.
83. There would also be a significant increase in activity through people using the site day to day by the sheer number of homes, along with the proposed new bus route. The effect would be permanent, and the reduction in openness overall would be substantial.

Purposes

84. *Unrestricted sprawl* – The development would not result in urban sprawl as it is not located adjacent to a large built up area. Therefore, there would be no effect upon this purpose.
85. *Encroachment* – The site is contained by Barnston Road and Gills Lane, with the engineered above ground reservoirs to the north, such that the encroachment is limited to this field alone. Nevertheless, the proposal would inevitably remove these large open fields, and this would not safeguard this

parcel of countryside from encroachment, meaning this purpose would be harmed. The level of harm would be moderate in this instance.

Cumulative merging of appeal sites B, C and D

86. On their own, each of these sites would not result in any merging of towns. However, development of all 3 sites would create a bridge of housing development along the whole length of Gills Lane, between Pensby and Barnston. It would, without doubt, fill a gap between these settlements, regardless of their status of a 'town'. That said, it would not result in a complete merging because of the open fields to the south, but there would be a strong development connection tying the settlements together. The harm would be limited in my view.

Appeal E

Openness

87. The site slopes away from Milner Road and Whitfield Lane to a stream on the northern boundary. It is open and undeveloped, bounded by residential development to Milner Road and Barnston Road, such that it appears to fill in a triangle of space between. Around 46% of the site would remain undeveloped, owing to the long strip to the west that links to Heswall Primary School and a large area of open space. However, the proposal would provide up to 120 dwellings with associated infrastructure on the main part of the site, such that there would be a substantial reduction in spatial openness.
88. Owing to the topography and the location of footpaths and public access, the visual openness of Site E is limited. Additionally, retained open areas to the western and northern parts of the site would also ameliorate the impact to a small extent, particularly along Whitfield Lane. However, the proposal would urbanise a large area of open land and there would be a moderate reduction in visual openness.
89. There would be a significant increase in activity through people using the site day to day by the sheer number of homes. The effect would be permanent, and the reduction in openness overall would be significant.

Purposes

90. *Unrestricted sprawl* – The development would not result in urban sprawl as it is not located adjacent to a large built up area. Therefore, there would be no effect upon this purpose.
91. *Merging* – the location of the site is clearly in Heswall. Barnston is located to the north, separated by fields. Heswall railway station is located to the east of the site and the proposal would not project northwards beyond Whitehouse Lane to the east or Downham Road North to the west. Therefore, the proposal would not result in any merging.
92. *Encroachment* – the site is open and undeveloped, but it has urban influences on the southern, eastern and western boundaries, with a strong watercourse boundary to the north. Whilst there is a considerable amount of countryside to the north and development would result in encroachment to this parcel, the level of harm would be moderate.

Appeal F

Openness

93. The site is an open narrow field contained by the M53 to the west, the school to the north and the golf course to the south. To the east is a woodland block that divides sites F and G. Around 55% of the site would remain undeveloped, and whilst this is predominantly to the east and west of the site, this also accounts for the safeguarded land for the school and the pedestrian link through to Site G. Therefore, the actual extent of development on the site would still result in a significant reduction in spatial openness.
94. Visually the site is prominent when approaching from the east and from Raby Hall Road when outside the site. Although there are limited longer range views and the school development is visible to the north, views proximate to the site would be considerably changed by the introduction of housing and there would be a significant reduction in visual openness.
95. There would also be an increase in activity through people using the site day to day. The effect would be permanent, and the reduction in openness overall would be significant.

Purposes

96. *Unrestricted sprawl* – The development is located on the edge of Bromborough, which is a large built up area and the proposal would extend the edge of the settlement west. However, the M53 is a robust boundary and the sprawl would be restricted by this, such that the harm would be limited.
97. *Encroachment* – the site has urban influences on the northern boundary, and the M53 provides a hard eastern boundary with Raby Hall Road to the south. Therefore, whilst the site is an open field and development would encroach into this parcel, the harm would be limited.

Appeal G

Openness

98. The site is a large open field, bounded by the school to the west and dwellings on Blakeley Road to the east. To the north is woodland and to the south, the golf course. Irrespective of the areas of land that would remain 'undeveloped', there would still be a substantial reduction in spatial openness.
99. There is a well-established woodland to the south of the site that obscures views from Raby Hall Road, and there are limited views of the site from the west and north. However, when viewed from the east, even with the hedgerow boundary, the site is clearly an open field, and the development would moderately reduce visual openness.
100. There would also be an increase in activity through people using the site day to day. The effect would be permanent, and the reduction in openness overall would be significant.

Purposes

101. *Unrestricted sprawl* – The development is located on the edge of Bromborough, which is a large built up area and the proposal would extend

the edge of the settlement west. However, the level of sprawl would be limited.

102. *Encroachment* – the site is surrounded by other land uses, such as the school and woodland to the north. To this extent, whilst the site is countryside, it is isolated from other parts of the countryside, and although there would be encroachment into this parcel, that harm would be limited.

Cumulative sprawl of appeal site F and G

103. As the sites would be located on the edge of Raby Mere, which links to the larger settlement east of Bromborough and Eastham, the proposal would result in sprawl westwards from this large built up area. It would not breach the M53 and therefore the extent of sprawl would be limited.

Overall Conclusions

104. It is agreed between the Council and the appellant that there would be no harm to purpose d). However, WGSAs consider there would be moderate harm to this purpose, asserting that Irby and Pensby are historic towns. Whilst they are old settlements, I do not consider they are historic towns for the purposes of Green Belt policy and there would be no harm to this purpose.
105. For purpose e), the Council asserts significant harm across all sites, with the appellant stating minor harm. In addition to my findings above in relation to prematurity, there is an acute need to rebalance the eastern communities through regeneration. The life expectancy between the east and west of the borough is 11 years, and there are stark areas of deprivation. The need to regenerate these areas is necessary and not disputed by the appellant. UDP Policy URN1 seeks to make the best use of land and protect Green Belt from inappropriate development.
106. Developing these sites is likely to harm purpose e) as it would provide alternative opportunities for development outside the regeneration areas, and as detailed above, could affect the delivery of these sites. The extent of harm would clearly not be the same for Site C as it would be for Site A, but there would nevertheless be harm associated with this purpose. Cumulatively the effect from all the sites would be substantial, and it would run counter to the Council's urban regeneration strategy, such that there would be conflict with Policy URN1 of the UDP.
107. The appellant contends this policy is out of date. I disagree. The thrust of the policy is to promote urban regeneration, and in doing so will protect types of land and areas from inappropriate development. The Framework also promotes brownfield first, preservation of the Green Belt and the effective use of land. Additionally, although the appellant argues the policy is based on outdated needs assessments, the Council's strategy of regeneration remains the same in the eLP, releasing no Green Belt land, and this is based on current needs assessments (even if these needs are disputed). Therefore, this policy attracts full weight.
108. Overall, there would be harm arising from the inevitable reduction in openness and harm to the purposes of the Green Belt for each proposal, in particular purposes c) and e). Irrespective of the level of harm detailed above

for each site, it nevertheless attracts substantial weight, as required by the Framework.

109. There would be conflict with Policy GB2 of the Unitary Development Plan²⁸ (February 2000) (UDP). This policy sets out a general presumption against inappropriate development in the Green Belt, unless it is for the purposes listed within the policy. Although the policy pre-dates the Framework, it is broadly consistent with the Framework and should be afforded full weight. There would also be conflict with Policy WP8.1 of the eLP, which given it solely refers to the requirements of the Framework, would be consistent with the Framework and attracts considerable weight.

Character and appearance

Policy

110. The Landscape Statement of Common Ground²⁹ (Landscape SoCG) details that all the sites are not valued landscapes for the purposes of Framework 174 a) and therefore 174 b) requires that decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
111. The appellant argues that policy LA7 of the UDP is out of date as it fails to recognise the hierarchy in paragraph 175 of the Framework, and the distinction between valued landscapes and non-valued landscapes. I agree the policy does not differentiate between valued and non-valued landscapes, but it sets out design requirements for edge of settlement developments to ensure minimal visual intrusion, appropriate boundary treatments and retention and enhancement of prominent landscape features. This sets a moderately higher bar than the Framework, but I do not consider it to be wholly inconsistent and therefore it is of moderate weight.
112. Save for Site F, the sites are all essentially urban extensions of existing settlements, and the harm arising would be from the change that would occur when developing countryside fields to housing estates. It is accepted by all parties that the proposals would result in landscape harm, but the level of harm is not agreed. The appellant considers the harm to be limited, and compliant with the development plan and Framework. The Council claims higher levels of harm because it contends the appellant has missed out key visual receptors and underplayed the sensitivity of the sites. WGSA consider a higher level of harm for all sites.
113. The proposals for off site highway works at Storeton Lane, associated with Sites B, D and E would cause no harm to the character and appearance of the area.

Receptors

114. The Planning³⁰ SoCG sets out that the LVIAs were prepared in accordance with Guidelines for Landscape and Visual Impact Assessment (GLVIA) 3rd Edition³¹, and that the character and visual receptors within the LVIAs are agreed

²⁸ CD04/1

²⁹ CD01/2.7

³⁰ CD01/2.1

³¹ CD03/5

between the Council and appellant. However, from the exchange of evidence, the Council's landscape witness (JH³²) changed this position, and raised objections with the receptors, introduced additional receptors, particularly visual receptors from residential properties.

115. GLVIA³³ details that the *"visual receptors most susceptible to change are generally likely to include residents at home and communities where views contribute to the landscape setting enjoyed by residents in the area"*. It also details that *"the combined effects on a number of residents in an area may also be considered, by aggregating properties within a settlement, as a way of assessing the effect on the community as a whole. Care must, however, be taken first to ensure that this really does represent the whole community and second to avoid any double counting of the effects."*
116. The appellant had assessed all the relevant receptors for the purposes of the LVIAs, although for residential receptors (or local community as referred to by JH) these were in a narrative form rather than tabulated. For example, the LVIA methodology³⁴ and the LVIA Scoping Report³⁵ for Appeal A both state that *"with regards to the visual amenity of the residents of private properties, GLVIA3 recommends that private views can be dealt with by a separate 'residential amenity assessment' as in planning terms, residents are not entitled to a view. The presence of residents experiencing a view of the application site and the nature of the views experienced will be acknowledged and considered within the baseline and a succinct narrative will be provided regarding the likely visual effects, however the LVIA will only fully assess the visual effects upon the receptors that experience publicly accessible views"*. Notably, the Council did not respond to the Scoping Report, nor did they raise this as an issue until evidence was exchanged.
117. Moreover, the appellant's witness (NF) contends that the LVIAs assessed views from the local road network considered the views of the associated residents. If the appellant had also assessed the 'local community' on the same roads, this would have double counted the visual effects. Therefore, I am satisfied that private views of residents or local communities have been assessed by the appellant.

Sensitivity

118. There are Landscape and Visual Impact Assessments (LVIAs) for each site within the ESs. Additionally, the Council commissioned LUC to provide a landscape and visual based response to the proposals³⁶ as a desk top exercise which reviewed the evidence submitted by the appellant. The Site Appraisal document suggests that the sensitivity of the sites has been underplayed.
119. Aside from Sites A and E, the landscape sensitivity assessment in the LVIAs is consistent with the Council's Landscape Sensitivity Assessment 2019³⁷ and the Environmental Sensitivity Study 2021³⁸. Notwithstanding, GLVIA details that these overarching sensitivity assessments cannot provide a substitute for

³² Julie Hyslop

³³ CD03/5 6.33 and 6.36

³⁴ CDA02/5 page 673 of 824 (1.7)

³⁵ CDA02/5 page 622 of 824 (3.27)

³⁶ CD01/22

³⁷ CD04/39

³⁸ CD04/60

the individual assessment of the susceptibility of the receptors in relation to change arising from the specific development proposal³⁹. This is what the appellant and Council have done, and the differences are matters of professional judgement.

Assessing significance of effects

120. JH's methodology to form judgements on the significance of effect was questioned by the appellant. GLVIA provides guidance at Figure 3.5 on the approach to assessing the significance of effects, in a step-by-step process, and when combining judgements, this process should be transparent⁴⁰.

121. JH attempted to explain that her assessment attributed low, medium or high value to "community" value and then when combining with, for example, medium susceptibility could result in a higher sensitivity than low-medium. However, this is not explained in the written evidence, with the value simply being described as "community". Considering Figure A.1 in JH's evidence⁴¹ refers to community as the lowest level in value, it is unclear why a higher value is then attributed. Additionally, no sensitivity for visual receptors was recorded by JH's evidence. Helpfully, however, the Landscape SoCG sets these out.

National and local character areas

122. Sites A – E are in the National Character Area (NCA) 59 Wirral⁴², which has key characteristics such as:

- low-lying but gently rolling platform punctuated by low sandstone outcrops
- predominantly broadleaved woodland, with woodland cover on sandstone ridges, country parks and country estates
- core area is mixed agricultural land, with areas of improved pasture, arable farming and market gardens
- fields are defined by intermittent clipped hedgerows, with copses, and field ponds.

123. The NCA profile contains Statements of Environmental Opportunity (SEO), which of note is SEO 2: conserve and enhance the rolling countryside, while maintaining the long, open views over the coast and estuary that contribute to the varied sense of place. SEO 3 seeks to enhance biodiversity and SEO 5 looks to enhance people's enjoyment of the natural environment with a strong network of green infrastructure.

124. Sites F and G are in NCA 58 Merseyside Conurbation⁴³, which has key characteristics such as:

- A low-lying but gently rolling platform punctuated by low ridges
- Significant woodland cover
- Pockets of mainly versatile and good-quality farmland remain on the fringes of urban areas, often arable or horticultural
- Field boundaries are generally hedgerows

³⁹ CD05/5 paragraph 5.41

⁴⁰ CD03/5 3.27

⁴¹ CD01/15.2

⁴² CD04/57

⁴³ CD04/56

125. The NCA profile contains SEOs, of note is SEO1: conserve and enhance natural assets, improving the landscape, promoting sense of place, providing habitats for wildlife and bringing multiple benefits for people. SEO 3 seeks to connect habitats across the urban fabric, creating corridors and stepping stones for wildlife, to enhance the landscape, create local routes for walking and cycling, and provide accessible natural green spaces for people close to where they live and work.
126. The sites fall within either Landscape Character Type (LCT) 3 Sandstone Hills, and LCT 4 Lowland Farmland and Estates⁴⁴. The following Landscape Character Area (LCA) are where the proposals are in or close to:
- LCA 3b Thurstaston and Greasby Sandstone Hills (Site A)
 - LCA 3c Irby and Pensby Sandstone Hills (Site A)
 - LCA 4a Landican and Thingwall Lowland Farmland (Sites A, B, C, D and E)
 - LCA 4b Thornton Hough Lowland Farmland and Estates (Site E)
 - LCA 4c Clatterbrook and Dibbin Valley Lowland Farmland and Estates (Sites F and G)
 - LCA 4d Raby Lowland Farmland and Estates (Sites F and G)

Appeal A

Landscape

127. The site contains key characteristics of NCA59, with its low lying agricultural land, defined by hedgerows, field ponds and being bordered by broadleaved woodland, some of which is associated with Arrowe Country Park and golf course. The permissive footpath crossing the site and public rights of way (PRoWs) to the north and east are also characteristic of NCA59 which is described as containing “an intricate network of lanes, bridleways and footpaths” linking suburban development areas.
128. Key characteristics of LCA 3b are small wooded brooks, field ponds surrounded by reedbeds and woodland and varying field patterns, bordered by mature hedgerows, trees and narrow woodland belts. The site is tranquil, and although a snap shot in time, I saw that it was used by many walkers in the local area and is of high recreational value. The LSA attributes the fields within the site with a landscape sensitivity rating of ‘moderate’, noting several landscape sensitivities. These include the role that this area plays in the sense of separation between the larger part of Irby to the west and the remaining parts of Irby and Thingwall to the south and east. The site also maintains the rural setting to Irby and Thingwall, and enables views towards wooded skylines with distant views. I agree with the Council that the site has a higher sensitivity than that recorded in the LVIA⁴⁵.
129. The LVIA concludes that the proposal would not result in any significant adverse residual landscape impacts (at year 15), but at year 1 there would be a moderate adverse effect upon LCA 3b. The Council have increased the level of residual harm, with moderate adverse for LCA 3b, and major moderate adverse for the site and immediate setting and land features on site.

⁴⁴ CD04/5

⁴⁵ Contained in CDA02/5

130. The proposal would extend the urban edge of both Irby and Thingwall. This would coalesce the settlements to a greater extent than already exists by filling in the gap on the northern side of the Thingwall Road. Whilst my conclusions in relation to Green Belt purposes found this harm to be limited, in terms of landscape character, the effect would be more notable, particularly on LCA 3b and the site and surroundings. There is a large expanse of green space and filling the perceived gap would detrimentally affect the rural setting and identity between the settlements.
131. The masterplans indicate the dwellings would be set back behind the existing hedgerow, with tree planting in the streets. The development would be landscape led, containing lower density housing, play areas and amenity spaces. Additionally, boundary hedgerows and woodland would be maintained and enhanced. This would ameliorate the effect of development over time to a moderate extent. However, permanent unavoidable consequences would remain, such as the loss of the rural setting and identity and between Irby and Thingwall, the loss of the historic field patterns, and detrimental impacts upon tranquillity, rural and naturalistic qualities of the landscape. Overall, there would be a remaining significant adverse impact, particularly to LCA 3b, the site and its surroundings.

Visual

132. The LVIA concludes that the proposal would not generate any significant adverse, residual⁴⁶ visual effects, except in the case of 3 of the 12 visual receptors assessed, where a moderate (significant) adverse visual effect would prevail. The Council disagrees, citing greater effects for view points. Aside from VP12, all adversely affected viewpoints are very localised, being on the edge of the site or in the site.
133. Although there are 2 fields in between with boundary hedgerows, and dwellings are visible on Thingwall Road, there would be an adverse effect from VP12 as the dwellings would be closer, and this rural tranquil view would be detrimentally affected.
134. In terms of views from residential dwellings, the most affected would be the residents of dwellings on Parkway who back onto the site. This harm would be unavoidable and detrimental, given the change from a field to a housing estate. Residents on Thingwall Road would be affected, but this would not be significantly adverse given the intervening distance, planned set back of dwellings and existing tree cover.
135. Rural views towards wooded skylines and long distance views towards the coast would also be adversely affected. Although 'view corridors' are planned, this would not adequately mitigate the impact.
136. The site is also highly valued by people who use the footpaths for recreational purposes, as detailed in the representations. Although it would maintain a landscaped setting, with the route along Limbo Lane being part of the cycle 'cycle supergreenway' and 'green wedge', there would be a reduction in tranquillity and rural amenity of these recreational routes.

⁴⁶ At year 15

Conclusion

137. There would be inevitable harm from the urbanisation of a green field site. I agree that at reserved matters, the landscape led scheme would seek to moderate the harms. Most existing landscape features would be retained, and additional landscaping would be embedded in the scheme, for example, the green wedge. The Parameters Plan and illustrative masterplan also detail how the proposal has been designed to ensure the dwellings are sited, designed and landscaped, in order to minimise visual intrusion. The boundary treatments would also be appropriate.
138. However, owing to the overall scale and increased development along Thingwall Road, there would be a detrimental sense of coalescence and harm to LCA3b and NCA59. Adverse effects would remain and there would be visual intrusion to this rural setting. Additionally, there would also be harm to the recreational enjoyment and tranquillity of the site. Consequently, the proposal would have an adverse effect on the character and appearance of the area.

Appeal B

Landscape

139. The main site and land to the north, west and south falls within LCA 4a. Key characteristics of LCA 4a are narrow, wooded valleys of Prenton Brook and Arrowe Brook, woodland along watercourses and on high ground on the edge of settlement, historic field patterns, ornamental parkland and wooded ridgelines forming a backdrop to urban development. In contrast, Site B has an urban fringe character due to the presence of rear gardens and fences, and wider equestrian land-uses, a prominent mobile telephone mast and the large, covered reservoirs with engineered grass slopes located to the north.
140. The LVIA⁴⁷ concludes that the proposal would not result in any significant adverse landscape impacts at year one or year 15. The Council consider there would be moderate adverse harm at year one for all landscape receptors but only moderate minor adverse at year 15. There is not considered to be a residual significant landscape effect.
141. The proposal would extend the urban edge of Pensby into an open field and this would cause a degree of landscape harm. However, the development would infill an area largely surrounded by dwellings. The masterplan indicates the dwellings would be set back considerably into the site behind existing or replanted hedgerow, with tree planting in the streets. Open space to the west of the site would retain existing vegetation and new tree planting is proposed across the site. The development would be landscape led, containing lower density housing, play areas and amenity spaces.
142. The proposal would result in the loss of a wide expanse of established hedgerow on Gills Lane due to the road widening. Replanting is proposed, but I acknowledge it would take time to fully re-establish the hedgerow.

Visual

143. The site is open along Gills Lane and views across the site are exposed, especially when walking along the road. However, the extent of rural views

⁴⁷ Contained in CDB02/5

across the site is limited by the existence of housing. Longer range views through to the reservoirs are limited. There would be very limited visibility of the development from the east, west and north, and from any public views.

144. For visual impacts, the LVIA concludes the proposal would not generate any significant adverse, residual visual effects. Of the 9 scenarios assessed within the LVIA, 2 would be subject to a significant adverse visual effect at Year 1, reducing to none at Year 15. The Council disagrees citing greater effects for VP1 and introduced the community views from the private views of dwellings that back onto the site. VP1 is directly outside the site, but I disagree with the Council that there would be moderate adverse residual effects. The landscaping would be well established, and the housing would sit between existing housing.
145. The harm to the 'community views' would be obviously adverse and unavoidable for those residents, given the change from a field to a housing estate. Additionally, views from these southern facing dwellings towards the wooded valley would also be affected. However, these are private views from residential dwellings on edge of village locations. All affected views are on the edge of the site, and very localised.

Conclusion

146. There would be inevitable harm from the urbanisation of a green field site. However, the site is obviously contained by other housing development on nearly 3 sides, such that it has a strong urban influence. The reserved matters would also seek to moderate the harm. Most existing landscape features would be retained, and additional landscaping would be embedded in the scheme to create a softer urban edge. The Parameters Plan and illustrative masterplan detail how the proposal has been designed to ensure the dwellings are sited, designed and landscaped in order to minimise visual intrusion. The boundary treatments would also be appropriate when replacement planting becomes established.
147. Consequently, the proposals would have regard to the intrinsic character and beauty of the countryside and the effect upon the character and appearance of the area would be acceptable for this site.

Appeal C

Landscape

148. The site and land to the north, west and south falls within LCA 4a. Key characteristics of LCA 4a are the same as those set out above. Like Appeal B, this site is contained by other urban developments, such as the rear gardens of Thornfield Avenue and the equestrian development. To the north are the reservoirs and phone mast.
149. The LVIA⁴⁸ concludes that the proposal would not result in any significant adverse landscape impacts at year one or year 15. The Council consider there would be moderate minor adverse effects at year 15 for all receptors. There is not considered to be a significant residual landscape effect. I agree. Whilst the

⁴⁸ Contained in CDC02/5

site would develop a green field, it is a narrow strip of land contained by existing developments, such that the landscape effect would be minimal.

Visual

150. The site is open to Gills Lane, and there would be a perceptible change. However, views of this site are very limited given its size, shape and the location of other developments. The LVIA concludes that there would be no significant adverse residual effects. The Council consider that VP1 (directly outside the site) would have a moderate adverse effect at year 15 and moderate adverse effect to the 'local community' at Thorncroft Drive.
151. I disagree that a moderate adverse effect from VP1 would remain. A small pocket park is proposed at the front of the site and landscaping would become established such that the effect would reduce to minor. For the private views from Thorncroft Drive, the effect, as already detailed for other sites, would be obviously adverse and unavoidable for those residents given the change from a field to a housing estate. The Council contend that views from Barnston Road would be moderate adverse, however, there is very little view of this site from Barnston Road owing to the intervening distance, and I do not consider there would be any effect. In all instances, all views affected would be extremely localised.

Conclusion

152. There would be no significant residual effects on either the landscape or visual receptors. The site is strongly contained by other development and the proposal has had regard to the intrinsic character and beauty of the countryside. The effect upon the character and appearance of the area would be acceptable.

Appeal D

Landscape

153. The main site and land to the north, west and south falls within LCA 4a. Key characteristics of LCA 4a are the same as those set out above. The site is more exposed than Sites B and C, with Barnston Road located to the east and Gills Lane to the south. The LVIA⁴⁹ concludes that the proposal would not result in any significant adverse landscape impacts at year 15. The Council consider there would be moderate minor adverse effects at year 15 for all receptors. There is not considered to be a residual significant landscape effect.
154. The site would connect to the northern part of Barnston, almost mirroring existing residential development on the eastern side of Barnston Road. The proposal would retain the majority of the existing landscape features, including the existing ponds and associated woodland in the north-western corner of the site. The site would continue to have boundary hedgerows, enhanced with new trees. The proposed open space in the centre of the site would be retained, including the existing mature trees, with additional tree planting. The frontage to Barnston Road would be set back some distance behind a landscape corridor with tree planting. This would soften the effect on

⁴⁹ Contained in CDD02/5

Barnston Road. Overall, the residual effect upon the landscape would not be significantly harmful.

Visual

155. Visual effects would be localised and all receptors are close to the site. The LVIA concludes that there would be no significant harmful residual effects and indeed that some effects would be beneficial. The Council disagrees, finding greater levels of harm for VP1, VP5, VP10, VP11 and VP12, along with residents on Gills Lane and Barnston Road.
156. Given the more exposed nature of the site on the corner, development of the site would be prominent from its edge, particularly for users of the surrounding roads and residents. However, I disagree with the Council that the level of harm asserted would remain at year 15. The effect from VP1 at year 15 would be negligible given the intervening development. The other VPs are directly on the boundary of the site, and whilst there would be inevitable change and a degree of visual harm, at year 15, this would be limited considering the location of development and landscape buffering.

Conclusion

157. There would be no significant residual effects on either the landscape or visual receptors at year 15. The proposal has had regard to the intrinsic character and beauty of the countryside and the effect upon the character and appearance of the area would be acceptable.

Cumulative impact of B, C and D

158. Landscape guidelines in the Landscape Character Assessment for LCA 4a seek to conserve and enhance the dispersed settlement pattern and the local distinctiveness of village buildings, particularly within Barnston Conservation Area. Moreover, the Landscape Sensitivity Assessment⁵⁰ (LSA) sets out guidance for this Landscape Sensitivity Parcel SP061, which seeks to ensure the function of the area as a perceived gap is maintained by providing a clear physical and visual separation between adjacent settlements.
159. On their own, each proposal would have little effect upon reducing the gap between settlements and could accommodate residential development sensitively. However, the proposals together would create a bridge of housing between Pensby and the northern end of Barnston, with development alongside the whole of Gills Lane. Similar to the Green Belt findings, a strong development connection tying the settlements together would materialise.
160. The appellant argues that the 3 sites would not be seen simultaneously, and the effect would only be perceived when travelling along Gills Lane. I agree that it would be difficult to see all 3 sites from one public viewpoint. However, this does not overcome the fact that there would be no clear physical or visual separation between the settlements if all 3 sites were developed and when travelling along Gills Lane, the presence of development would be conspicuous. This change would be harmful to the landscape character and appearance of the area, particularly LCA 4a and NCA 59, failing to recognise the intrinsic character and beauty of this part of the landscape.

⁵⁰ CD04/39

Appeal E

Landscape

161. The main site lies in LCA 4a, the same as Sites B-D. Key characteristics associated with the LCA on this site are limited to the presence of small to medium sized pastoral fields, bordered by hedgerows and hedgerow trees.
162. The LVIA⁵¹ concludes that the proposal would not result in any significant adverse landscape impacts at year 15. The Council disagrees and asserts there would be major moderate adverse effects for the site and immediate setting and the land features of the site, with moderate adverse effects for LCA 4A. This is because they ascribe a higher sensitivity to the site.
163. The site would relate to the northern part of Heswall and it was identified as part of a parcel in the LSA as having a moderate to high sensitivity, whereas all other appeal sites are rated low or low-moderate. However, the parcel is much larger than the site, running up to Gills Lane. The LVIA and evidence of NF provides a detailed site-specific consideration of landscape sensitivity that demonstrate that this site itself is not of a moderate-high sensitivity. I agree with these conclusions given the influence of the surrounding housing, topography of the site, and the factors that increase sensitivity being located at the north end of the parcel, away from the site.
164. The proposal would essentially round off the settlement edge of Heswall on the northern side, by infilling between the school and development on Barnston Road, following the natural boundary of the stream. The proposal would not extend beyond the northern extent of the settlement, with Heswall Primary School and Barnston Road, such that the proposal would have no perceivable effect upon the coalescence of Heswall and Barnston. Furthermore, the landscaping on the masterplan shows a significant amount of planting on the northern boundary which would also provide an effective and high quality urban edge, including the 'cycle supergreenway'.
165. Whilst there would be inevitable harm through the loss of a green field, the site would be landscape led to a significant extent, with part of the site being retained for a community orchard and cycleways. Furthermore, there is development to the south, it is influenced by a settlement edge on 3 sites and the boundary treatments would retain or replace hedgerows, save for the access points. Additionally, existing woodland and trees on the site would be retained. The landscape effect would therefore be limited.

Visual

166. The LVIA details that adverse visual effects would remain at the end of 2 PROWs which adjoin Milner Road and Whitfield Lane, which in part is owing to the proximity of new housing at these points. The landscape buffers on Whitfield Lane could be deeper and this would ameliorate the visual effect. This is a matter that could be addressed at reserved matters.
167. However, the loss of the rural view of farmland would be adverse and would cause harm, especially for residents who directly overlook the site. All views that have an adverse effect at year 1 or year 15 are directly on the boundary

⁵¹ Contained in CDE02/5

of the site, and this would be the inevitable consequence of developing a green field.

168. The Council also consider that the site has a strong visual prominence, which increases its sensitivity. The site is visible from Whitfield Lane, especially when approaching from the west, as the topography is higher at this point and views across the site are clear. However, from Barnston Lane, and public footpaths surrounding the site, views are more limited due to hedgerows or intervening distances. Even the nearest footpath that runs to the west of the site would have limited views of the site given the established hedgerows and the field boundaries. Any change to views from the Church in Barnston would be negligible, given the intervening distance and landscaping between.
169. Development of the site would be prominent from its edge, particularly for users the surrounding roads and residents. However, I disagree with the Council that the level of harm asserted would remain at year 15. There would be inevitable change and a degree of visual harm, but this would be localised and moderate, especially considering the landscaping led approach, sloping topography and location being contained by Heswall to 3 sides.

Conclusion

170. There would be no significant residual effects on the landscape receptors, and a moderate adverse effect for VP6 and VP7 (or users of PROWs 24 and 66). Whilst this effect remains adverse, this is at the lower end of the scale. Therefore, although there would be harm to the character and appearance of the area from the axiomatic change, the effect is localised and the proposal would not be visually intrusive.
171. Therefore, I consider that the proposal has had regard to the intrinsic character and beauty of the countryside and the effect upon the character and appearance of the area would be acceptable.

Appeal F

Landscape

172. Site F is located close to the edge of Bromborough, and is located in NCA58 and LCA 4c. Key characteristics of LCA 4a include a well wooded landscape concentrated along watercourses, prominent wooded ridgelines, mostly pasture farmland in small to medium sized fields, rural roads bordered by hedge banks with high hedgerows, with the M53 being an urbanising feature.
173. The LVIA⁵² concludes that the proposal would result in 2 significant adverse landscape effect at year 1, one for the site and its immediate setting and the other for the effect on LCA 4c. Whilst this improves for the site to minor moderate adverse, there remains a moderate adverse effect upon the LCA. The significant, adverse, residual landscape effect is a result of the site's relative disconnect with the settlement edge to the east. Whilst Site F would be linked to Site G and there is adjacent development with the school to the north, the effect remains adverse and harmful. The Council also finds the same harm to LCA 4c, but also asserts there would be moderate adverse effects for the site and immediate setting and the land features of the site.

⁵² Contained in CDF02/5

174. The site contributes to the rural setting and character of the landscape, and the sloping open field is highly visible on approach from the west over the M53. Although the proposal seeks to retain hedgerows and the woodlands blocks, there would nevertheless be a considerable change to this area, introducing housing development where there is very little other prominent development. Whilst the school is visible from the road, this has the appearance of a collection of agricultural and rural buildings congruent with the rural character. The M53 has minimal urbanising effect upon the site due to its location in a cutting.
175. I accept that site would be linked with Site G, but this linkage would be essentially hidden in the trees between the sites. Even with the landscaping enhancements proposed, the resulting impact of this urbanising development would be incongruous and isolated in this location and harmful to the landscape, particularly LCA 4c.

Visual

176. As detailed above, the site is prominent from Raby Hall Road, owing to the sloping topography and open nature of the site. The LVIA concludes there would be no significant adverse residual effects, although there are moderate adverse effects at year 1 for view points directly outside the site.
177. I agree that the visual effect would be very localised, on Raby Hall Road only, and that the harm is likely to reduce over time, but there would remain an adverse effect for these view points. This would remain moderate because of the elevated nature of the site from the road and the more rural character. The views for the receptors at the school would be adversely affected by the proposal, given the change from an open field to overlooking a housing estate, especially from the areas of open space and the orientation of the school.

Conclusion

178. There would be inevitable harm from the urbanisation of a green field site. I agree that at reserved matters, the landscape led scheme would seek to moderate the harms. Existing landscape features would be retained, and additional landscaping would be embedded in the scheme. The boundary treatments would also be appropriate.
179. However, owing to the location, the proposal would appear as an isolated and incongruous development, harmful to the rural character of the area and LCA 4c and the NCA58. The adverse effects would remain and there would be visual intrusion to this rural setting. Consequently, although the harm would be localised, the proposal would have an adverse effect on the character and appearance of the area.

Appeal G

Landscape

180. Site G is located on the edge of Bromborough, with Blakeley Road forming the eastern boundary and the school forming the east boundary. The site is adjacent to Site F and is in NCA58 and LCA 4c with similar key characteristics to those set out above.

181. The LVIA⁵³ identifies no significant adverse landscape effects at Year 1 or Year 15. The Council disagrees and finds there to be residual moderate adverse effects for LCA 4c, the site and immediate setting and the land features of the site.
182. There would be inevitable harm through the loss of a green field, and the site contains key characteristics of LCA 4c, being the wooded character, field ponds within woodland, peripheral trees and hedgerows. Although the site is influenced by surrounding residential development to the east, there is little urban influence from the north, south or west owing to the lack of development or mature landscaping, which screens the school.
183. The proposal would be landscape led to a significant extent, with the southern woodland area retained along with boundary trees and there would also be enhanced planting within the scheme. However, for this site, because of the prevalence of LCA 4c characteristics, there would be a considerable adverse effect.

Visual

184. The LVIA concludes there would be no significant adverse residual effects, although there are moderate adverse effects at year 1 for viewpoints directly outside the site. The Council cite more harm for views on Blakeley Road and Raby Hall Road, as moderate adverse for year 15. I agree with the Council, because although the proposal would be landscape led, with retention of existing vegetation, the site provides a distinctive rural setting to the edge of Bromborough, with Blakeley Road acting as a physical buffer. The development would considerably change this and even at year 15, adverse effects would remain.

Conclusion

185. There would be inevitable harm from the urbanisation of a green field site. I agree that at reserved matters, the landscape led scheme would seek to moderate the harms. Existing landscape features would be retained, and additional landscaping would be embedded in the scheme. The boundary treatments would also be appropriate.
186. However, the site contains key characteristics of LCA 4c and there would be adverse effects upon these. This would be harmful to the rural character of the area. The adverse effects would remain and there would be visual harm. Consequently, the proposal would have an adverse effect on the character and appearance of the area.

Overall Conclusions

187. The development of all the sites would cumulatively affect the landscape character of the Wirral, removing large swathes of open countryside that form the rural edges to the settlements they surround. There would be harm to the LCAs and NCAs in which they are located due to the combined and collective removal of 7 rural sites and this would have a greater adverse effect overall than each site would individually.

⁵³ Contained in CDG02/5

188. However, individually, sites B, C, D and E would be compliant with Policy LA7 and whilst there would be harm to the character and appearance of the area from the obvious change from fields to housing sites, this harm would not be determinative.
189. Notwithstanding, Sites A, F and G, and the cumulative effect of B, C and D would cause harm to the character and appearance of the area, notably the LCAs and NCAs. This would be significantly harmful, detracting from the natural rural character and there would be conflict with the Policy LA7 and the Framework.

Active and sustainable modes of travel

190. It is agreed between the Council and appellant that the proposals would not have a "severe" residual cumulative traffic impact on the local road network in Framework terms. It is also agreed between the Council and the appellant that the proposals for sites A, E, F and G would not give rise to any unacceptable impacts on highway safety (individually or cumulatively). Many residents considered the effect on traffic would be unacceptable, or that there would be unacceptable effects on highway safety. However, no substantive evidence was produced to demonstrate this, and consequently, there are no reasons to demur from the agreed matters between the professional witnesses.
191. The Council and appellant disagree on whether safe access for active travel users has been demonstrated for sites B, C and D (Gills Lane sites). I have considered B, C and D together and F and G together given their proximity.
192. The Council's Highways Officers set out 13 requirements which they considered necessary to support active and sustainable travel in October 2022. All items on that list which are now sought by the Council have been provided.

Framework

193. The Framework requires appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location⁵⁴. It also sets out that significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes⁵⁵. The Glossary in the Framework defines sustainable transport modes as any efficient, safe and accessible means of transport with overall low impact on the environment, including walking and cycling, ultra low and zero emission vehicles, car sharing and public transport.

Car dominated travel

194. The Council argued that because the sites are in areas of lower levels of accessibility⁵⁶, this leads to greater levels of car ownership, because there is a need to access amenities. The Council's highway witness' (PP⁵⁷) evidence⁵⁸

⁵⁴ NPPF Paragraph 110

⁵⁵ NPPF Paragraph 105

⁵⁶ Based on the evidence contained in CD04/29

⁵⁷ Paul Parkhouse

⁵⁸ CD01/16.2

details that all the sites have limited transport choices and greater levels of car ownership, and conversely that the eLP sites would be in more sustainably accessible locations in urban areas. I accept that this is the case. Indeed, the eLP recognises that Thingwall, Irby, Pensby and Heswall are largely dormitory commuter settlements. This links back to the issue of prematurity. However, I must also assess the locational sustainability of the appeal sites before me on their own merits, considering that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

195. Furthermore, it is important to note that private car transportation will inevitably remain a primary choice for many people given it is the most popular mode of travel⁵⁹. This is particularly the case when houses would be built with garages and car parking spaces to accommodate private cars. Therefore, although the Council's 6th reason for refusal on all the appeals alleges that the developments would be car dominated and vehicles the primary choice of travel, this is the case for England as a whole. The test for me is whether these schemes would provide the future residents with the opportunity to realistically use sustainable modes of transport as an alternative to limit the need to travel. As well, given that all sites would provide electric vehicle charging points by condition, this could encourage future residents to drive ultra low and zero emission vehicles, which is a sustainable mode of travel.

Guidance for walking

196. There are several guidance documents⁶⁰ produced that provide advice on walking distances to indicate if a development would be accessible. Generally, it is my understanding that there is a range of around a 400m walk (to a bus stop) to a 'preferred maximum' 2km trip, where people would generally choose to walk over other forms of transport. However, around 800m to access local facilities is generally seen as comfortably accessible for a 'walkable neighbourhood' in Manual for Streets, but I agree with the appellant⁶¹ that most people will walk up to 1 mile (1.6km) to reach a destination. Although, walking for up to 2km would be a reasonable distance offering the greatest potential to replace short car trips. That said, some people would be prepared to walk greater distances, and others would choose not to walk at all. However, distance is not the only factor and other factors will play a part, for example the topography, road conditions, journey purpose and individual fitness.
197. The National Design Guide⁶² sets out that in well-designed places, people should not need to rely on the car for everyday journeys, including getting to workplaces, shops, schools and other facilities, open spaces or the natural environment. Safe and direct routes with visible destinations or clear signposting encourage people to walk and cycle.

⁵⁹ CD01/9.3 Appendix AV06 – National Travel Survey Results 2021

⁶⁰ National Design Guide (CD03/3), Chartered Institution for Highways and Transportation (CIHT) 'Guidelines for Providing for Journeys on Foot' (2000) (CD03/10), CIHT 'Planning for Walking' (2015) (CD03/11), Manual for Streets (CD03/12)

⁶¹ CD01/9.5 4.1.7

⁶² CD03/3

Guidance for cycling

198. I consider that distances of around 800m to 3.2km are seen as a realistic option, but commuters will cycle further, up to around 8km. Whilst many objectors raised issues with the cycling safety on roads around the sites, this would again depend upon the cyclists' propensity to cycle, although I accept that high speeds or high volumes of traffic would tend to discourage cycling.
199. In terms of cycling to and from every site, the Council uses LTN 1/20⁶³ to assess the suitability of the roads. Most surrounding roads for all sites are "suitable for few people and will exclude most potential users and/or have safety concerns". However, it must be noted that LTN 1/20 is guidance and categorises even the most lightly-trafficked 30mph road as "suitable for few people and will exclude most potential users and/or have safety concerns", and many roads in England would not meet LTN standards.
200. Therefore, a failure to be compliant with LTN 1/20 on the surrounding road network does not mean the proposal would fail to provide a genuine choice of transport modes. It just means that more inexperienced or less confident cyclists may not choose to cycle on these roads, but it would remain an option for others.

Railway accessibility

201. As an overall finding for sites A-E, Heswall railway station offers an hourly train service between Wrexham and Bidston. From Bidston, users can change to use the Merseyrail services across Wirral, with direct access to West Kirby, Birkenhead North (to change to New Brighton), Hamilton Square (to change to Chester and Ellesmere Port services) and to Liverpool stations.
202. It was argued by residents and WGS⁶⁴ that the service is inherently unreliable and Heswall one of the least used stations in Wirral. The services offered are not extensive nor frequent, but it does provide an opportunity to access rail services and could be used by prospective residents. Given the rural nature of the area, and the Framework recognition that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, this does provide a genuine choice of rail travel.

Appeal A

Walking

203. The site is located close to the centres of Irby and Thingwall with footpath access to both. The existing footways are lit and of adequate width with several controlled crossings, such that there are of good quality. All services are located within 2km, apart from the secondary school and railway station. Access to the secondary school would be via bus and this is a common occurrence. Likewise, having a railway station over 2km away is not unusual for many people, particularly in more rural areas and it would be accessible by bus, with there being a stop within 300m.
204. However, all services are over the 800m '10 minute' walking distance, such that it would take around 15-20 minutes to walk to the primary school, health

⁶³ CD03/15

⁶⁴ ID38

centre or local retail centre, but this is not unreasonable and is still less than 1 mile. Furthermore, given the proximity of the bus stop and frequency of buses, many people could use the bus to access nearby services if they were mobility impaired. Additionally, there would be sports pitches and pavilion and café/cycle hub on site which would provide facilities and the provision of the controlled crossing on Thingwall Road would enable safer crossing.

Cycling

205. A dedicated cycleway is proposed to run adjacent to the development along Thingwall Road and an off-road cycleway is proposed that would link to Arrowe Brook Lane. Thingwall Road is a busy road, with high speeds⁶⁵ considering the 30mph speed limit. The Council has requested that the proposed cycleway should be extended along Thingwall Road to the medical centre and to the Council's proposed Arrowe Park Road cycle route in one direction, and to facilities at Irby in the other direction. This would promote greater use of this mode to serve the site and make best use of the development frontage cycleway.
206. The appellants contend that this would not be necessary, and that there are other routes available should a cyclist not want to cycle on Thingwall Road, such as nearby residential roads. They also contend that the conditions would improve with the implementation of the controlled crossing and additional mitigation in the form of road markings and/or revised electronic signage.
207. Whilst vehicle speeds are not guaranteed to reduce, the highway works are likely to slow traffic. The condition of the road would not deter all cyclists and it does not provide an unsafe environment to cycle on. Therefore, although the provision of cycle lanes would be a betterment, it would not be necessary.
208. There is also a dispute between the Council and appellant as to the necessity for improvements to the priority junction of Arrowe Road/Arrowe Brook Lane. The Council claim this is to improve cycle links. Although it may better accommodate cyclists, no vehicular traffic would be routed through the junction and it would not be necessary.

Public transport

209. The site is served by 2 buses. The 471 provides a service to Liverpool and runs every day and evening. There is also a bus that runs between Irby and Heswall via Pensby. Whilst it does not run on Sundays or evenings, this offers a realistic choice for those with reduced mobility to access nearby shops and services during the day. Whilst the railway is further afield, there is the opportunity to travel by bus to access rail services from the site.

Conclusion

210. Although the walking distances from the site are greater than the desirable 10 minutes, walking to most services and facilities is a genuine option given the road conditions and topography. Cycling is a realistic option and there is a good bus service to Liverpool. The provision of these would limit the need to travel by car and provide a genuine choice of transport modes. This means that opportunities to promote sustainable transport modes can be taken up,

⁶⁵ CD01/16.2 8.3.6 "Thingwall Road is a 30mph speed limit route carrying over 6,000 vehicles per weekday, with recorded 85th percentile speeds of around 34mph"

given the type of development and its edge of village location in a predominantly rural area.

Appeals B, C and D

Highway works

211. The sites are located close to the centre of Pensby, although Site D would relate more to Barnston. The proposals include a reduction in the speed limit from 30mph to 20mph along Gills Lane, reducing vehicle speeds considerably. This is agreed with the appellant, and would be the same requirement for each site, even if one was allowed without the other. The proposals also include upgrades to the footpaths outside each site to 2m wide, but there is a dispute over how far the footpaths should extend for each site. The Council are seeking a footpath the whole length of Gills Lane even if Appeal B or C are developed in isolation. The appellants agree to a footpath for the whole length, but only if Appeal D is allowed, along with a 2m footpath along Barnston Road.
212. It is unlikely that people living on sites B or C would leave and travel east towards Barnston, because desire lines would indicate travel to the west towards Pensby given there are more services and facilities. Therefore, it would not be necessary to upgrade the footpath along the whole length of Gills Lane, if sites B and C were developed in isolation. However, if only Site C were developed, given the small size and expected trips⁶⁶, I do not consider that footpath upgrades outside Site B to Pensby would be necessary to make this development acceptable. There is an existing footpath and this could be used by the future residents of the 15 houses on site C, just like the residents on Thorncroft Drive already do.
213. There is a pinch point in the footpath provision outside Thorncroft Drive. This cannot be widened due to land ownership. Whilst this forms a narrow strip (around 1-1.5m), it is only for a short length of around 20m and it is wide enough for 2 people to pass. It would only form a conflict if there were a wheelchair or pram user, and in this case, common sense would prevail, i.e. one person would wait for the other to pass, and I do not consider that the width would deter future users, especially with the reduced vehicle speed.
214. Therefore, if any combination of these sites came forward, footpath provision along Gills Lane would be acceptable, suitably overlooked by existing and new housing, providing an acceptable link to Pensby on a relatively flat route.

Walking

215. Site B is located closer to the services and facilities in Pensby and retail, local centre and bus stops are all within 400m. The schools are a greater distance, but still within 2km. This is not an unreasonable distance to walk to schools. Furthermore, the health centre is also within 2km and would be accessible on foot if people chose to walk. The railway station is around 3km, but given the proximity of the bus service I do not consider this to be problematic for a multi modal trip. The distances increase marginally for Site C (apart from the railway station which is closer) and my findings are the same. For Site D, retail shops are within a 10 minute walk. The primary school, health centre

⁶⁶ 1-2 two-way pedestrian trips at peak times

and local centre would all be within 2km, and walking would be an option, especially considering the topography, 20mph road conditions and natural surveillance for most of the route.

Cycling

216. Cycling to services and facilities, particularly those over 2km would be likely, such as the railway station or schools. LTN 1/20 advises that Gills Lane will be 'suitable for few people and will exclude most potential users and/or have safety concerns'. However, with effective speed reduction measures, this would be less of a deterrent than the existing conditions, albeit cyclists would leave Gills Lane to reach their destination.
217. As well as the speed reduction, the Council has also requested traffic calming measures for cyclists on Gills Lane. This would not be necessary to make the development acceptable given the reduction in speed limit. There are additional traffic calming measures for cyclists in the wider area also requested, but these would contribute towards a wider cycle strategy. There is very little evidence before me to detail what these measures would be, and they would not be necessary.

Public transport

218. There are bus stops within 400m on Pensby Road and Barnston Road, and these can be accessed from Gills Lane. There are various bus services provided from the stops on Pensby Road, with services to Liverpool and Heswall (every 20 to 30 minutes everyday and evenings). There are also several school and college bus services. For Barnston Road, there is a hail and ride bus, with Site D proposing pedestrian refuge islands with dropped kerbs and tactile paving to provide safe and suitable pedestrian links to southbound bus stops. The proposal for Site D also includes the provision of the new bus route with stops through the site.
219. Additionally, the planning obligations for Sites B and D (if both came forward) also includes a monetary sum towards the provision of improving the frequency of the bus route 181. Sites B and D also include the provision of new bus shelters with accessible kerbs to improve the usability of the service. Therefore, public transport from the sites would be of good quality offering a choice of destinations.

Conclusion

220. Although the walking distances from the sites are greater than the desirable 10 minutes in some cases, retail services for all sites are accessible within 800m. Additionally, except for the railway station, walking to services and facilities remains an option, with the majority being under 2km on suitable footways. Cycling is also a realistic option with the speed reduction provisions on Gills Lane, and there is a good bus service to Liverpool from Pensby. The provision of these would limit the need to travel and provide a genuine choice of transport modes. This means that opportunities to promote sustainable transport modes can be taken up, given the type of development and its edge of village location in a predominantly rural area.

Appeal E

Walking

221. The site is located close to Heswall centre and the proposal includes pedestrian improvements to Barnston Road and Whitfield Lane, with footway links to bus stops on Barnston Road. A reduction in the speed limit from 30mph to 20mph on Whitfield Lane / Milner Road is proposed. A pedestrian refuge island would also be provided along Barnston Road to enable crossing points to access southbound buses and the railway station. Pedestrian refuge islands would be provided along Whitfield Lane to enable crossing points to access a choice of desire lines into Heswall and towards Pensby. Additionally, there would be the on site 'cycle supergreenway' running through the site from east to west. This could be used by walkers as well as cyclists.
222. The Council consider that footway widths to Heswall would not be conducive to walking owing, to the width and obstructions from pavement parking or refuse bins. Whilst these may deter some people, common sense often prevails if there is a conflict, with one person waiting for another to pass around a parked car or bin, and I do not consider that these factors would make the route unusable given they are primarily residential roads.
223. The site is within a 10 minute walk to the primary school, retail, bus stop and railway station. Moreover, the health centre and local centre is within a 15-20 minute walk at 1.7km and 1.3 km respectively. The secondary school is 2.5km, but this would be accessible by bus and not unreasonable to access on foot for many secondary age children.

Cycling

224. Cycling to services and facilities, particularly those over 2km could be likely, such as the secondary school. I note that Barnston Road is a 40mph A-road and is unlikely to be used by all cyclists, but if more experienced cyclists chose to use it, the carriageway has a total width of over 9m with lanes at least 4.5m. This is in general accordance with LTN1/20 principles.
225. Furthermore, the proposals would include a reduction in speed limit from 30mph to 20mph, reducing vehicle speeds considerably, such that cycling to Heswall would be favourable from the site, especially considering the residential nature of Milner Road.

Public transport

226. The site is located within 400m of a bus stop, however, the Council claim that the site is poorly served by bus services. The active stops nearest the site are served by the 472 service, but only during peak hours. The only other public service is between Heswall and Poulton, this is hourly and does not run in the evenings or on Sundays. The service is relatively poor, but the walking distances to services and facilities are mostly less than one mile, and the railway station is less than 800m. Therefore, the bus provision is adequate in this location.

Conclusion

227. Walking distances from the site would be a realistic choice. Cycling is also a realistic option and despite the limited bus service, the railway station is

close. The provision of these would limit the need to travel by car and provide a genuine choice of transport modes in this edge of village location in a predominantly rural area. This means that opportunities to promote sustainable transport modes can be taken up, given the type of development, and the proposal would not become 'car dominated'.

Appeals F and G

Walking

228. There are no pedestrian footways from Site F on Raby Hall Road to Bromborough and outside the site the national speed limit applies. The Council have requested that the 30mph speed limit is extended to outside the site, however, given no pedestrian infrastructure is being proposed on the road, I see no reason why this would meet the test of necessity.
229. A pedestrian link is proposed through the wooded area at the front of the school site and Site G to Blakeley Road. From here, a dropped kerb crossing would be installed, so that pedestrians can continue eastwards towards services and facilities in Bromborough. Even though the final details of the link would be reserved matters, the access through the wooded area would not be readily overlooked by natural surveillance and I am not convinced that it would be attractive or feel safe to all pedestrians, particularly when it is dark.
230. Moreover, distance for facilities and services from Site F are at the upper limits of walking being a primary choice, with the retail and local centre being 1.8km. The health centre is 3.8km away and this is unlikely to be accessed on foot. Whilst the primary school is only around a 15 minute walk at 1.3km, owing to the pedestrian infrastructure and my findings below, walking would not be a realistic option for many.
231. Site G would be accessed from Blakeley Road using the new dropped kerb crossing to then access Raby Hall Road. The Council have requested a new footway on the western side of Blakeley Road to run alongside the site. I do not consider this would be necessary, given the site would be accessible internally for pedestrians and the new dropped kerb crossing point would be provided near to the site access.
232. To access services and facilities in Bromborough, there is a footway along Raby Hall Road. However, this contains relatively steep elevation changes dropping down to and then up from Dibbinsdale Brook. There are wide verges on the decline to the brook, which would provide a suitable walking environment. However, at the bridge, the footway becomes much narrower, bendy, with no verges and on an incline until just before Barrymore Way. This would be for around a 2-3 minute walk.
233. The elevational changes and the narrowness of this part of the footway are likely to deter those with mobility impairments, pram/wheelchair users or people with children. This is because the footway is not of a sufficient width to enable 2 prams/wheelchairs to pass comfortably, and if a parent/carers was travelling with a child, or indeed a pram and a child, to the primary school they are likely to feel unsafe. This effect is compounded by the busy nature of the road and the lack of natural surveillance for this part. Whilst this arrangement is existing and utilised by other residents in the area, sites F and

G would introduce up to 118 additional dwellings, many of which would be occupied by families.

234. Off site works also include the new footpaths to Raby village, but this would be used for recreational purposes rather than to access services and facilities given the limited range of facilities in Raby.
235. Therefore, some people would choose to walk, and it remains an option. However, the distances to most services and facilities are at the upper limits. Combined with the topography, condition of the existing and proposed pedestrian infrastructure and the busy nature of the road, leads me to conclude that walking from both sites F and G is unlikely to be a realistic choice for shorter journeys.

Cycling

236. Many services and facilities would be available via cycling with National Cycle Network Route 56 being around 4km away. Additionally, the link between sites F and G would also be suitable for cyclists, yet my concerns relating to lack of natural surveillance with the footpath link also applies to cyclists.
237. Furthermore, outside site F, the national speed limit applies. The road conditions moving towards Bromborough include the change in incline, and the Council contend that daily weekday flows comprise at least 2,000 vehicles per day. LTN 1/20 also grades the route as 'suitable for few people and will exclude most potential users and/or have safety concerns'.
238. Therefore, cycling would be an option for more experienced and confident cyclists and there is access to a variety of employment, retail and leisure opportunities within a short cycle journey. However, it may not be a realistic choice for many residents, particularly younger people.

Public transport

239. A hail and ride stop for both sides of Blakeley Road is proposed outside Site G, along with a waiting area on the west side of the road. This is to access the bus service between Moreton Cross and Eastham Rake. Even with my concerns over the pedestrian link from Site F, because the bus service is daytime only and within a 5 minute walk of both sites, suitable access would be provided.
240. However, an hourly daytime service between 2 destinations, with no service on Sundays is limited and would restrict bus usage, particularly as the bus route would not provide access to the local centre. That said, the bus route would also run to Eastham Rake where there is a railway station that provides 6 services per hour to Chester and Liverpool and Bromborough railway station also offers a good service of 4 trains per hour.
241. The Council have requested additional hail and ride bus stops on either side of Raby Hall Road. This would result in pedestrians being on a road with no footpaths at the national speed limit. This would be an unsafe environment for pedestrians and would not be necessary given the provision of additional hail and ride stops on Blakeley Road.

Conclusion

242. Walking and cycling from both sites are unlikely to be a realistic choice for many residents. The bus service, both in frequency and destination choice is limited, and whilst the railway station offers a competitive rail service, access to this would also be hindered by the walking, cycling and bus limitations. Therefore, although some residents would choose to walk and cycle, for most residents, sites F and G would not provide a genuine choice of sustainable transport modes that would be realistically used to limit the need to travel.

Overall Conclusions

243. Sites A, B, C, D and E would be accessible via a genuine choice of transport modes taking account of their edge of settlement location. With the measures proposed, opportunities to promote sustainable transport modes can be taken up and they would support active and sustainable modes of travel. This would be compliant with Policies TRT1, TRT3 and TR11 of the UDP and the Framework. These policies require developments to make the best use of existing transport facilities, reducing unnecessary traffic in primarily residential areas, minimising the need to travel and ensuring a cycle friendly infrastructure.

244. However, Sites F and G would not provide a genuine choice of sustainable transport modes that would be realistically used to limit the need to travel, and the proposals would not support active and sustainable modes of travel. This would conflict with Policies TRT1, TRT3 and TR11 of the UDP and the Framework.

245. The appellant argues that TRT3 is out of date and TR11 is partially out of date. I disagree. Policy TRT3 requires the LPA to pay particular attention various transport element that seek to reduce the impact of traffic. This follows the principles of the Framework. I accept the requirement for a cycle audit in TR11 is not in the Framework, but the policy relates to the LPA negotiating with developers as to the provision for cyclists and is not an absolute.

Biodiversity

Habitats Regulations Assessment

246. The sites are near to the Dee Estuary Special Protection Area (SPA), special Area of Conservation (SAC) and Ramsar; Mersey Estuary SPA/Ramsar; Mersey Narrows and North Wirral Foreshore SPA/Ramsar; and Liverpool Bay SPA/Ramsar, such that the proposals across all residential sites (alone and in-combination) would result in Likely Significant Effects (LSEs) on the integrity of the National Sites Network (NSN) through increased recreational pressure.

247. The Council is using the WIA to mitigate recreational pressure on the NSN, which comprises a payment towards Strategic SANGs and SAMMs. This is agreed with Natural England (NE) as suitable mitigation to address recreational pressure to protect integrity of the NSN⁶⁷.

⁶⁷ CD01/19.3 Appendix 7

248. The Council and appellant are agreed (Ecology and Biodiversity SoCG⁶⁸) that full contribution towards the WIA for these sites would be sufficient to mitigate for the anticipated recreational pressure and all other Habitat Regulations issues brought about by the proposals. The appellant has also provided a shadow Habitats Regulations Assessment⁶⁹ which provides further details. I am satisfied that the measures could be effectively secured by conditions or the obligations.
249. WGSA raised concerns about the effectiveness of the householder information packs (HIPs), which would be provided to new residents as part of the WIA. They also raised concerns about the HIPs directing people to local wildlife sites that could also be affected by recreational pressure.
250. I accept that HIPs may not be passed onto future households down the line, but they are only one part of several methods used in the WIA to reduce recreational pressure. Furthermore, their purpose is to direct people away from the NSN to protect them, not to offer protection to local wildlife sites.
251. Thus, providing that the mitigation measures are implemented in full, and having undertaken the appropriate assessment, the LSEs would be avoided, and the integrity of the NSN would not be adversely affected. NE also have no objections⁷⁰ to the proposals on this basis.
252. NE also detailed in their response that for sites B, C & D, that further evidence and justification was required to rule out impacts on SPA birds because of the development of these sites and/or surrounding fields via either habitat loss or disturbance. NE's understanding was that this information remains outstanding.
253. I raised this matter during the round table session, where both the Council and appellant assured me that although NE had not been presented with the information, the investigations had been carried out and were satisfactory. For Site B, the site was not functionally linked to internationally designated sites. Site C was screened out due to its small size and Site D did not record any qualifying bird species. I am content with these findings.

Biodiversity Net Gain

254. Each site proposes on and off site biodiversity net gain (BNG). Sites B-G would deliver at least 20% BNG through a combination of on and off-site measures exceeding the 10% target set by the Environment Act 2021. For Site A, the overall net gain is targeted at a minimum of 10% for both on and off-site measures. The measures are set out in the planning obligation for each site.
255. The potential to see this level of BNG would be dependent upon the measures being fully implemented, managed and monitored. WGSA raise serious concerns about how successful the habitats would be because the soil conditions are too fertile for the habitats proposed. Ultimately, they do not believe that the BNG can be achieved and assert that the habitats would fail in

⁶⁸ ID19

⁶⁹ ID25

⁷⁰ ID18

the long term. The Council also raised concerns about habitat failure due to the fertile soil conditions.

256. However, the substantive evidence before me demonstrates that the BNG habitat units would be achieved. The Council has also verified the Biodiversity Accounting Assessments (BAAs) and these would be the baseline position for the purposes of calculating BNG. The conditions would require the reserved matters to be accompanied with an updated BAA report and metrics, that demonstrates on and off site BNG in line with or exceeding the BNG in the original BAA, and an assessment of the deliverability of the on site and off site BNG. There is also a clause requiring that if the deliverability assessment demonstrates that the proposed habitat types are not deliverable, alternative habitat types that deliver the equivalent total BNG uplift would need to be agreed with the Council. The appellant has also agreed to pay the Council's BNG monitoring contribution.
257. Additionally, the Landscape and Ecological Management Plan (LEMP) would require the submission of management options, setting out how the habitats would be created in order to achieve the agreed BNG uplift and habitat condition, specified in the BAA reports and completed metric assessments. Lastly, the obligations would secure the creation of a management company that would manage the habitats amongst other things, such as play areas and amenity spaces. Failure of, or changes to, the management company are also addressed in the obligations.
258. Fundamentally, whilst I understand the concerns from WGSa, many of these matters would be the subject of condition and obligation compliance. As drafted, the conditions and obligations would enable the delivery of BNG and its long-term monitoring and maintenance and I am satisfied that the proposals could deliver the specified BNG.

Recreational pressure on local wildlife sites

259. WGSa allege that the residents of the new dwellings would increase the usage of local wildlife sites (LWS), local nature reserves (LNR) or Sites of Special Scientific Interest (SSSI) near to the sites. These include:
- Site A: Harrock Wood LWS
 - Sites B, C and D: Barnston Dale, Murrayfield Hospital, Thingwall LWS
 - Site E: Heswall Dales SSSI / LNR and Heswall Beacons LWS
 - Sites F and G: Brotherton Park and Dibbinsdale LNR, Raby Mere LWS and The Marfords LWS
260. The ES for each site assesses the effect from recreational pressure on the nearest non-statutory designated sites. For Sites A, B, D, E and F "*minor adverse, permanent, indirect, local*" effects that are non-significant are reported. Mitigation includes on site public open space (POS), the SANG, and retained habitats, such that the residual effects are "*negligible and neutral*". The ES for Site C does not note any sites other than nationally designated, which given the small scale, is expected. Site G records the effect as "*moderate adverse, permanent, indirect, local effect that is significant*". Mitigation refers to POS and retained habitats, and records the residual effects as "*minor adverse and non-significant*".

261. The Council, together with WGSa, has included a suggested clause in the LEMP condition for each site that would require measures to mitigate increased recreational pressure effects upon these sites, arising from the proposed developments. The appellant disagrees, claiming that there is no evidence indicating that there would be increased recreational pressure that would be harmful to any of the above sites.
262. However, aside from Site G, Sites A, B, D, E and F all detail that the SANG would act as mitigation. Additionally, the consultation response from MEAS⁷¹ details that the SANG would help to ensure that recreational pressure effects on local sites would be either avoided or minimised (for all sites).
263. Given that the SANG has now been withdrawn, this mitigation is no longer available. Therefore, additional measures to mitigate the effect on these non-statutory designated sites would be necessary, such that the clause of the LEMP condition should be imposed on all sites.

Conclusion

264. The ESs consider the cumulative effects of the proposal on ecology and detail that no cumulative impacts are expected, and this includes the effect on wildlife corridors and badgers.
265. The Council and appellant are agreed (Ecology and Biodiversity SoCG⁷²) that with the following measures, there would be no residual adverse impacts on protected species, habitats or sites as a result of the proposals:
- i) the full implementation of the mitigation measures outlined in the ecological material⁷³ for each site;
 - ii) full payment towards the WIA on commencement of each development;
 - iii) implementation of the BNG onsite and off-site uplifts secured through appropriate legal mechanisms; and
 - iv) effective management, monitoring and reporting through a full and detailed LEMP for each site for a minimum period of 30 years.
266. Therefore, the proposals would have an acceptable effect upon biodiversity, compliant with Policies NCO1, NC1, NC3, NC4 and NC7 of the UDP and the Framework. These policies seek to protect all designated wildlife sites and protected species. There would also be compliance with the Framework, which seeks to conserve and enhance the natural environment.

Best and most versatile agricultural land

267. It is common ground that the proposals would result in loss of best and most versatile agricultural land (BMVAL). The total loss would be around 30.4 hectares, with mostly Grade 2 or Grade 3a losses, amounting to about 24.1 hectares of Grade 3a and 4 hectares of Grade 2. However, there is a small amount of Grade 1 on sites F and G, amounting to around 2.3 hectares.

⁷¹ CD04/710

⁷² ID19

⁷³ Which comprises the Ecology and Nature Conservation Chapters of the Environmental Statement(s) and associated Protected/Notable species appendices, the Biodiversity Accounting Assessment (BAA) report for each site and associated Defra Metric spreadsheets, blue and red-edged plans detailing the off-site areas proposed for biodiversity improvements associated with each site, and the addendum consolidated shadow Habitats Regulations Assessment report

268. Mitigation is proposed in the form of a soil resource management plan, which could be the subject of a condition. The plan would confirm the different soil types; the re-use for the soils; and the proposed methods for handling, storing, and replacing soils on-site. This would go some way to moderating the impact.
269. Comparisons made by the appellant about the economic benefits of the land versus the economic benefits of the developments is akin to comparing apples and pears and carries no weight. I acknowledge the country may well be largely self-sufficient in producing wheat, barley and grass-based livestock⁷⁴. However, the loss of this BMVAL should be recognised and there is an acknowledged harm to building on these valuable parcels of land, especially when considering the emerging importance of food security. Consequently, there would be conflict with Policy AGR1 of the UDP, which seeks to protect the loss of BMVAL.
270. The appellant considers this policy to be out of date. Policy AGR1 directs development towards the lowest possible grade, but the Framework only requires the decision maker to recognise the economic and other benefits of BMVAL when ensuring that decisions contribute to and enhance the natural and local environment. Whilst the directional element of AGR1 is not consistent with the Framework, the general thrust of the policy is to protect BMVAL, and this is consistent with the Framework.
271. The Council and appellant agree that Policy AG2 is of limited weight because of its consistency with the Framework. Despite the reference in the Council's decision notices, I do not consider that Policy AG1 is relevant because no evidence has been presented which demonstrates that the proposals would harm the operation of existing agricultural land holdings.

OTHER MATTERS

Housing Land Supply

272. The Council's housing delivery test, measured against their local housing need, identifies that it has delivered 99%. The HDT is used because the housing numbers in the UDP are obsolete. Nonetheless, the Council and appellant dispute the Council's 5 year housing land supply (HLS) figure. The Council claim it has 5.32 years and the appellant 3.76 years⁷⁵.
273. Regardless of whether the Council can demonstrate a 5 year supply of deliverable housing sites, the provision of housing would weigh in favour of granting the appeals. However, the sites are in the Green Belt and footnote 7 of the Framework applies. Therefore, even if I were to assess the proposal under paragraph 11 d) of the Framework, assuming there was no 5 year HLS or the policies were out of date, d) i. would first require the Green Belt balance to be addressed and very special circumstances established before paragraph d) ii. (the tilted balance) could become engaged. There is a flat balance until this point.
274. Moreover, even if d) i. was satisfied, and d) ii. was then engaged, it would serve no real function, as very special circumstances would indicate

⁷⁴ CD01/10.2 6.24 and 6.25

⁷⁵ ID4

permission should be granted and there would be no "clear reason for refusing the development".

275. The Council's witness gave significant weight to the provision of market housing, irrespective of whether the Council could demonstrate a 5 year HLS⁷⁶. In this context, very little in these decisions would turn upon if there was or was not a 5 year HLS. It is simply a matter of weighting, which I have had regard to below.
276. Notably, many of the disputed sites are those allocated in the Regeneration Areas in the eLP. Their deliverability would be assessed in the Local Plan Examination and to make any findings could prejudice the findings of the LP Inspectors. This matter links back to the prematurity concerns. Therefore, I do not consider it necessary to make a finding on the housing land supply.

Planning obligations

277. The obligations commit to providing affordable housing, public open space, sports and pitches, WIA payments and education contributions. As the appeals are being dismissed, aside from those which are benefits, it has not been necessary to consider the obligations in any great detail.

Interested parties

278. I have received thousands of objections to the proposals, in written form and by petition. Elected Council Members, the local MP and many residents spoke against the proposals at the inquiry during the opening day and at an evening meeting, which saw an attendance of over 500 people. The strength of feeling was notable, and I have had significant regard to the objections to the proposals.
279. There may be matters raised by interested parties that have not been referred to in the decisions. However, nothing turns upon these matters, and it has not been necessary to address them.

Other decisions and judgements

280. Many appeal decisions and Secretary of State decisions were put before me to support the main parties' respective cases. I have had regard to them so far as necessary, whilst also noting that the facts and matters in each of these appeals turn on things which are materially different, either by location, housing supply, main issues or other considerations.
281. Moreover, all parties agreed that each case is to be determined upon its own merits and it is a matter for the decision maker to undertake the planning balance. I attach limited weight to the other decisions presented.

GREEN BELT BALANCE

282. I have assessed the benefits and harms below cumulatively, providing a scale of weight to be attributed to each, rising on a scale from no weight, limited, moderate, significant to substantial. Where there are benefits and harms arising from certain sites, I have identified these separately.

⁷⁶ Mark Loughran XX

Benefits

Housing

Affordable housing

283. There is a need for affordable housing which is recognised by all parties. In 2021/22, there were nearly 15,000 households on the waiting list and a clear case of historic under delivery. This represents an acute pressing need. The eLP seeks to ensure the provision of affordable housing, but this is limited to 10% in Viability Zones 1 and 2, increasing to 20% in Viability Zones 3 and 4.
284. Over 80% of the Council's identified supply lies in Viability Zones 1 and 2, meaning that only 10% of affordable housing could be achieved on these sites. Although the LP Inspectors will test this policy against the affordable housing need, and this matter links back to prematurity, these proposals would deliver 30% affordable housing. This is considerably above the policy requirement and would provide up to 238 affordable homes for people in housing need. For these reasons, substantial weight is given to the provision of affordable housing.

Market housing

285. These proposals would provide up to 551 dwellings, which includes self and custom build housing. These would contribute towards the Government's objective of significantly boosting the supply of homes and attracts significant weight on their own, even if there was not a 5 year housing land supply.
286. Added to this was the socio-demographic evidence presented by the appellant, which was undisputed by the Council. Whilst much of this evidence links to the eLP and prematurity concerns, it cannot be disputed that Wirral has seen very little population growth between 2011 and 2021. It also has an ageing population, with the economically active population in decline. Wirral has also lagged in employment growth when compared to Merseyside, regional and national trends.
287. The eLP clearly seeks to address housing and economic growth, focusing this where there is most deprivation and the Council has performed adequately at 99% in the Housing Delivery Test.
288. However, given the low levels of population and employment growth overall, together with the ageing population, all of which are out of kilter with national trends, the delivery of market housing attracts substantial weight in the context of over 500 dwellings being delivered in a borough which has one housing market.

Self and custom build housing

289. There is no UDP policy that relates to self and custom building housing, however, over the last 5 years 156 dwellings have been built on single plots likely to have supported self and custom build housing. In November 2022, there were 346 individuals on the Council's Self Build and Custom Housebuilding Register, who had requested between 348 and 416 plots of land. In terms of location, there is a general preference for self-build plots in

the west of the Borough, such as Hoylake, West Kirby and Heswall; and in locations outside the existing built-up area.⁷⁷

290. The eLP details⁷⁸ that *"during the period March 2016 – January 2021 there were 304 households on the Council's Self Build Register. The Council will encourage the provision of self-build plots through eLP Policy WS 3.5. However, the identified preference for the rural area is not likely to be met due to policy for the Green Belt"*.
291. The Green Belt will obviously restrict the preference for self and custom build housing in the west. However, it is not the case that the eLP will not meet the existing need. Policy WS 3.5 sets out that the Council will work with developers on sites of more than 50 dwellings in areas where a need is identified to secure the delivery of serviced plots for custom and self-build dwellings. Additionally, there is one housing market in Wirral and whilst the desired location of these homes is clearly in the west of the borough, the eLP makes provision for self and custom build housing.
292. Therefore, whilst the delivery of up to 41 self or custom build houses would be positive, it would attract no more than moderate weight. This is particularly given that I have already attached substantial weight to the delivery of market housing, which includes these dwellings.

Economic

293. The appellant has provided undisputed figures⁷⁹ of the likely economic benefits arising from the developments, both individually and cumulatively. The total gross value added from construction expenditure of all appeal sites would be about £132.1 million, with a net total expenditure from residents per annum of around £11.8 million. Additionally, there would be about 751 full time equivalent (FTE) direct jobs and around 947 FTE indirect jobs because of construction and approximately 127 FTE total jobs created through resident expenditure. These are not small amounts of money nor a limited number of jobs, and the proposals would make a significant contribution to the economy.
294. The appellant presented socio-economic evidence that suggested there would be future economic decline in areas where Appeals A-E are located because of the ageing population and decline in population. However, whilst the evidence demonstrated a falling population, there was very little to indicate a declining economy in these settlements at this time. On the contrary, the town centres appeared to be busy and well occupied during my visits.
295. Furthermore, the eLP details that the former hamlets and villages on the western side of the Wirral have grown into thriving commuter suburbs, and the west side of the Borough's largely dormitory residential towns, such as Heswall, are generally far less deprived, with busy town and district centres. This is why the strategy focuses upon regeneration in the more deprived areas in the east as this is in most need of economic growth.
296. That said, Framework paragraph 81 details that significant weight should be placed on the need to support economic growth and productivity. Whilst the

⁷⁷ CD04/27

⁷⁸ CD 04/13 Paragraph 3.51

⁷⁹ CD 01/12.2 Table 6.1

economic benefits would be felt in settlements that are far less deprived, there would nevertheless be benefits. This is of significant weight.

Ecological enhancements

297. There would be considerable increases in biodiversity both on and off site through the proposals. This amounts to a total (on and offsite) habitat uplift of 98.15 units (an average of 53.3% increase across all sites) and a hedgerow uplift of 25.87 units (average of 52.4% increase across all sites)⁸⁰. All sites achieve at least 10% uplift, with Sites B-G achieving at least 20%.

298. The BNG includes new woodland planting, hedgerow creation and enhancement, grassland and bare ground, non-woodland habitat creation and enhancement. Tree planting is envisaged on streets with amenity green spaces and a community orchard for Appeal E. Trees and hedgerows will be retained where possible and the schemes would be 'landscape led'. Off site, nearly 16 hectares of new woodland, 12 hectares of new and enhanced habitat and over 2.5km of new and regenerated hedgerow would be planted.

299. The scale of BNG across all sites, amounting to more than 50% on average (on and off site) for both habitat and hedgerow uplift, greatly exceeds the 10% target set by the Environment Act 2021. This is of significant weight.

Open space and play provision

300. All sites provide open space that would exceed the UDP requirements. However, they do not all meet the requirements of the eLP. Each site is also proposed to contain play provision, suitable for the size of site. For example, Site A would provide 2 play areas and Site C would provide a 'pocket park'.

301. The space would benefit future residents in the main, but existing residents could use the open space and play provision as they would be publicly accessible. Given the exceedance of the development plan requirements, this is a benefit of moderate weight.

Placemaking

302. The Leverhulme Design Charter⁸¹, along with the evidence of the appellant's design witness⁸² sought to promote that the design aspirations of the schemes. These are to create beautiful and long-lasting new neighbourhoods which reflect Leverhulme's proud heritage and legacy of placemaking and delivering successful communities, following the Leverhulme Vision⁸³.

303. The appellant considers that the design and placemaking approach is outstanding, innovative, joined-up, contextual and forward looking. This is because these appeals are phase 1 in a wider estate masterplan for over 7,000 new homes in the Green Belt, as set out in the Leverhulme Vision. The appellant considers that the placemaking approach would help raise the standard of design more generally in the area, compliant with paragraph 134 of the Framework.

⁸⁰ CD 01/3.2 7.90

⁸¹ CD02/8

⁸² CD01/8.2 and 8.3

⁸³ CD02/3

304. On the other hand, the Council⁸⁴ considers that the approach would be pastiche, based on a quasi-historic approach that concentrates on Port Sunlight or Thornton Hough as the Leverhulme Vernacular, rather than Wirral wide building typologies. WGSa agree with the Council, and additionally have complaints about that lack of genuine community engagement.
305. Despite all parties' views on the appellant's approach to placemaking, the appeals are outline only, with access as a reserved matter. No final designs are presented for approval, and it is anticipated that the sites would be sold off to housebuilders or developers, who would inevitably propose their own schemes.
306. Nonetheless, the suggested conditions would require a design code to be submitted, that would align with the structure of the National Design Code and the principles contained within the Leverhulme Design Charter.
307. The 10 commitments in the Leverhulme Design Charter call for broad elements of high quality design, which look to creating beautiful long lasting places, connected neighbourhoods that promote community interaction, a broad mix of homes and flexible spaces that can adapt to residents' changing needs over time and responding to climate change. Many of these align with the 10 characteristics of well designed places from the National Design Guide.
308. Therefore, whilst the appellant makes a commitment to deliver high quality beautiful housing, all new housing schemes in England should be delivering the same, given the Government's requirement to achieving well designed places. Framework paragraph 126 sets out that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. That said, Framework 134 sets out that significant weight should be given to development which reflects local design policies and government guidance on design, taking into account any local design guidance.
309. The proposed placemaking would be a benefit. Yet, given that the proposals are outline only, I cannot give significant weight to something which has not yet been designed, especially when the Council contends that the proposed design would not reflect local design policies and the appellant acknowledges most sites would be sold to housing developers. Thus, this benefit attracts limited weight.

Green belt management regime

310. The appellant owns around 30% of Wirral's Green Belt land, and claims they are in a unique position to deliver a credible and interlinked series of proposals, which include the provision of more than 11km of entirely new footpaths, bridleways and cycleways, along with enhancing existing routes on the appellant's other Green Belt land holdings. Some of these would be the 'cycle supergreenways' on Sites A and E.
311. They also claim that the new habitat features and other features within the areas would prevent coalescence of settlements, meaning that the retained Leverhulme land beyond the Vision's 3 phases would continue to perform this Green Belt function in an effective manner. The physical extent of land that

⁸⁴ CD01/13.6

would be accessible to the public, together with the management measures proposed to deliver other planning improvements, such as BNG, would “deliver a sea change in such provision in central Wirral”⁸⁵.

312. I agree that increased public access would be a social benefit, supported in the Framework. Whilst paragraph 145 places the onus upon local planning authorities to plan positively to enhance the beneficial use of the Green Belt, I see no reason why these opportunities cannot be the result of development proposals. The increased access would benefit existing and future residents.
313. However, taking Site A for example, a bridleway already runs north-south on the eastern border of the site connecting Thingwall Road with Arrowe Brooke Lane, and the permissive path which would become the ‘cycle supergreenway’ already exists. Furthermore, the new footpath from Site B takes you to a what appears to be a dead end, with no connecting PRoW to Pensby.
314. That said, the new footpaths associated with Site E and F would enable increased public access to the Green Belt, with Site F providing a direct off road footpath to Raby village. This would promote walking and overall, the increased public access is of significant weight.
315. For nearly all sites, the appellant plans to retain ownership of undeveloped areas, such as off site BNG or increase public access and for these to be managed by a dedicated management company. A proportion of the developed areas are also planned to be retained, so that some of the new housing forms part of the Estate. This is their long-term stewardship plans.
316. However, this long term stewardship and Leverhulme management through the retention of land cannot be controlled by the planning system, and is of no weight. Additionally, whilst management schemes would be a requirement of the planning conditions, this would be to make the developments acceptable and is neutral in the balance.
317. Furthermore, the management of the Green Belt through the appellant’s vision, such as the creation of habitat features to prevent coalescence of settlements is of no weight. The provision of Green Belt policy itself, preventing urban sprawl by keeping land permanently open and the essential characteristics being openness and their permanence will, and already has, managed the Green Belt effectively.

Environmental credentials

318. The proposed dwellings would incorporate sustainability measures detailed in each site’s Design and Access Statement to minimise energy consumption and help reduce greenhouse gas emissions. This would be the subject of a condition for an Energy and Climate Statement. All dwellings would have a car charging point.
319. The Design and Access Statements for each site set out that the detailed design would seek to provide homes which are ‘zero carbon ready’ with low carbon heating and high levels of energy efficiency, including those delivered in advance of the 2025 deadline proposed by the Government’s emerging Future Homes Standards. This would enable homes to become fully zero

⁸⁵ CD01/3.2 7.84

carbon as the national grid is decarbonized without the need for future retrofitting.

320. The commitment to these measures is a benefit, especially considering the Council has declared a climate emergency. However, it essentially follows good design practice and is of limited benefit.

Leverhulme's Vision (Estate wide benefits)

321. The appellant's Leverhulme Vision suggests an estate wide approach to the release of Green Belt is needed and that their extensive land ownership makes them uniquely placed to deliver residential development as part of sustainable growth. The Vision shows the extent of their ambition to develop in the Green Belt over their plan period comprising in total some 416.81 ha of land and around 7,754 dwellings.
322. This Vision is to be developed over 3 phases, with phase 1 comprising these appeals, phase 2 to be promoted through the eLP and phase 3 for a local plan review. Each of the appeal sites that are potentially capable of further expansion, have been planned with this future in mind. Whilst the Leverhulme Vision is not part of the proposals before me, the appellant considers their own strategic vision is more suitable than the Council's and considers this to be a 'plan led' approach, prepared "*in the absence of a functional and effective plan-led system which has significantly constrained housing delivery in Wirral for more than two decades*".⁸⁶
323. To plan such large scale release of Green Belt over 3 decades by a private landowner without local authority support is undoubtably unique. However, it is the antithesis of a plan led approach that a local planning authority would be required to follow, which has been subject to extensive public consultation amongst other things. Despite all the assertions about the Council's failure to deliver a local plan, it is at Examination stage with its eLP. This Vision, and the approach being pursued, is harmful to the eLP strategy and links back to the prematurity concerns. Therefore, the Vision is of no weight in favour.

Site specific benefits

Sports provision

324. Appeal A would deliver 2 sports pitches, a sports pavilion and a cycle hub. These would be publicly accessible, and subject to a Community Use Agreement, which would be required by condition. This would comprise pricing policy, hours of use, management responsibilities, and a mechanism for review. This would secure a managed and safe community access to the sports facility. The provision of sports pitches and a supporting pavilion would be a benefit to all future and existing residents and is of significant weight.

Junction Improvements

325. Sites B, D and E would individually provide widening to the Barnston Road/Storeton Lane junction to remove the pinch point along the Storeton Lane arm. This would improve journey reliability/times for traffic travelling to/from the eastern side of Wirral. This is of moderate benefit given that this

⁸⁶ CD 01/3.2 4.15

pinch point causes delays, especially when buses are attempting to pass through.

326. Enhancements to the B5138 Pensby Road/Thingwall Road East junction to improve capacity, reduce delay and increase safety are proposed. This would be by providing a dedicated pocket for right-turning vehicles along the B5318 and upgrading pedestrian crossing facilities. These off site highway works are linked to Site A and required because of the proposal. However, the works will ease congestion at the junction for all users and this will be of moderate weight.
327. Other highway works are planned, but these would be neutral in the balance as they are required to off set the effect of the proposals.

Active travel enhancements

328. Appeal A would provide a controlled pedestrian crossing over Thingwall Road. Site B, C and D would introduce a reduced 20 mph speed limit on Gills Lane and Site E and on Whitfield Lane. The provision of a footway along the western side of Barnston Road and pedestrian refuge islands, connecting areas east of Barnston Road to northbound bus services would arise because of Site D. The provision of a footway along Gills Lane, connecting Barnston Road to Pensby would also arise from Site D.
329. Pedestrian infrastructure improvements along Barnston Road near to Milner Road, connecting areas east of Barnston Road to northbound bus services would arise because of Site E. There would also be pedestrian refuge islands on Barnston Road and Whitfield Lane to promote safe crossing. Off-road cycle infrastructure throughout Sites A, D, E, F and G would be incorporated.
330. The active travel enhancements would primarily benefit the future residents as they are near to the sites and would be necessary to make the developments acceptable. However, they would also promote pedestrian and cycling connectivity for existing residents and this is of limited benefit.

Public transport infrastructure enhancements

331. New cantilever bus shelters on Gills Lane (Sites B, C and D) and Barnston Road (Site E) would be provided. Sites F and G would include the provision of improved waiting areas for the hail and ride bus services. Sites B and D would contribute towards the increased frequency of services on bus route 181.
332. These transport infrastructure enhancements would primarily benefit the future residents as they are near to the sites and would be necessary to make the developments acceptable. However, they would also promote bus usage for existing residents and this is of moderate benefit.

Enhancement of Autism Together School

333. Appeal F would safeguard land to the east of the development for the future potential expansion of Autism Together school. There are no plans before me about how this space would be used, or how it would benefit the school, and whilst the safeguarding of land would be a benefit, this is of limited weight.

Neutral

334. No harm arises from the effect of all the proposals on ecology or on active and sustainable transport for Appeals A – E. These matters remain neutral.
335. Additionally, whilst there would be harm to character and appearance, there would be compliance with the development plan for site E, and sites B, C and D when considered individually. These matters also remain neutral.

Harms

336. Substantial weight must be given to any harm to the Green Belt, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposals, is clearly outweighed by other considerations.
337. The proposals are inappropriate development, and there is an in principle policy harm, which is of substantial weight. Furthermore, there would be harm to openness and the purposes of the Green Belt. For each and every site, the effect upon openness would be substantial, and this attracts substantial weight. Whilst the effect upon Green Belt purposes varies for each appeal, the harm to those purposes still attracts substantial weight.
338. The harm to the character and appearance of the area, for Sites A, F and G, and cumulatively B, C and D is of significant weight. My conclusions on active and sustainable transport mean that there would be harm arising from Appeals F and G and this is of significant weight. The loss of BMVAL is of moderate weight.
339. Nonetheless, critically, the cumulative effect of the developments proposed would be so significant that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the eLP. This is of tremendously substantial weight against the proposals.

Balance

340. I have considered the proposals individually and cumulatively, and whilst some cause more harms than others, each site would result in harm at some level. Notably, my findings on prematurity weigh very heavily against granting planning permission. Therefore, whilst the benefits are extensive, both individually and cumulatively, the other considerations for each appeal do not clearly outweigh the totality of harm.
341. Consequently, the very special circumstances necessary to justify the developments do not exist and there are clear reasons for refusing the developments proposed.

CONCLUSION

342. For the reasons given above, I conclude that the appeals are dismissed.

Katie McDonald

INSPECTOR

APPEARANCES

For the Local Planning Authority:		
John Barrett, Counsel for the Local Planning Authority		Instructed by Legal Services, Wirral Metropolitan Borough Council
He called		
	Mark Loughran BA(Hons) DipTP	Interim Principal Planning & Enforcement Team Leader, Wirral Metropolitan Borough Council
	Tom Booty BA (Arts)	Head of Regeneration Delivery, Wirral Metropolitan Borough Council
	David Coleman BA (Hons) MA MRTPI MInstLM	Managing Director, DAC Planning
	Daniel Robinson-Wells BA(Hons) MSC	Associate Director, Marrons
	Dr Alan Jemmett BSc(Hons) Ph.D CIEEM	Director, Merseyside Environmental Advisory Service
	Paul Parkhouse MEng MIHT	Senior Principal Transport Planner, Mott MacDonald
	Julie Hyslop BA(Hons) DipLA CMLI	Principal Landscape Architect, LUC
	Kath Lawless BSc, MSc Dip TP MRTPI	Interim Assistant Director Chief Planner, Wirral Metropolitan Borough Council
	Andrew Siddall BA(Hons) DipTP	Principal Planning and Enforcement Team Leader, Wirral Metropolitan Borough Council
	Emma Hopkins BA(Hons) MSc RTPI CTPP	Principal Planning Officer - Regeneration and Place, Wirral Metropolitan Borough Council
	Peter McKeon BSc(Hons) MSc MCIEEM	Principal Development Management Ecologist, Merseyside Environmental Advice Service
For the appellant:		
Christopher Boyle KC and Andrew Parkinson, Counsel for the appellant		Instructed by Simon Handy, Strutt & Parker
They called		
	Simon Handy BA(Hons) MPlan MRTPI	Director and Head of the Oxford Planning Team, Strutt & Parker
	Brian O'Connor BA(Hons) MPlan MAEIAM MRTPI	Planning Director, Nathaniel Lichfield & Partners
	Nicholas Folland BA(Hons) DipLA CMLI	Director, Barnes Walker Ltd
	Joseph Dance BSc(Hons) MCIEEM	Client Director, Tyler Grange Group Ltd

	Clare Coats BSc(Hons) DipLA CMLI	Director, Alan Baxter Ltd
	Alex Vogt BSc(Hons), MSc, TPP, FCIHT	Board Director, Curtins
	Richard Coburn MA MPhil MRTPI MIED	Senior Director, Lichfields
	Oliver Neagle BA(Hons) MAURP MRTPI	Associate Director, Strutt & Parker
	Edward Watson BA(Hons) MSc AEMA	Planner, Strutt & Parker
	Jennifer Roe MA(Hons) MSc	Solicitor, Freeths
For Wirral Green Space Alliance Rule 6 Party		
Peter Black, advocate for the Rule 6 party		
He called		
	Jackie Copley MRTPI MA BA (Hons), PgCERT	Planning witness
	John Heath B.Arch(Hons) RIBA (retired)	Convenor for WGSA, Irby, Thurstaston and Pensby Amenity Society and local resident
	Professor (retired) David Gregg	Statistician and local resident
	Dr Hilary Ash MA PhD MCIEEM	Hon Conservation Officer, Wirral Wildlife, The Wirral Group of Cheshire Wildlife Trust
Interested parties:		
	Margaret Greenwood MP	Member of Parliament for Wirral West
	Councillor Paul Stuart	Leader of Wirral Metropolitan Borough Council
	Councillor Jean Robinson	Deputy Leader of Wirral Metropolitan Borough Council
	Councillor Gail Jenkinson	Elected Member for Wirral Metropolitan Borough Council
	Councillor Cllr Richie Pitt	Elected Member for Wirral Metropolitan Borough Council
	Councillor Harry Gorman	Elected Member for Wirral Metropolitan Borough Council
	Councillor Mark Skillicorn	Elected Member for Wirral Metropolitan Borough Council
	Councillor Helen Cameron	Elected Member for Wirral Metropolitan Borough Council
	Councillor Mary Jordan	Elected Member for Wirral Metropolitan Borough Council
	Phil Simpson	Chairperson, Natural Wirral and Greasby Green Belt Action Group, and local resident
	Jo Kendall	Local resident
	Graham Lowsby	Local resident

David Burgess-Joyce	Local resident
Philip Josling	Local resident
Sir Malcolm Thornton	Local resident
Graham Wilson	Local resident
Jim McCosh	Local resident
Professor Ludi Simpson	Professor of Population Studies, University of Manchester
Dr Steven Anderson	Chairperson, The Heswall Society and local resident
David Billington	Chairperson, Bebington Rambling Club and local resident
Frank Howden	Local resident
Geoff Walmsley	Member of Wirral Footpaths and Open Spaces Preservation Society, and local resident
Andy Steele	Local resident
Sandra Gibson	Local resident
Richard Lewis	Local resident
Steve McBride	Local resident
Neil Parry	The Wirral Society and local resident
Ite Rafferty	Secretary, Barnston Conservation Society and local resident
Julie Bodenes	Local resident
Dr Will Holt	Local resident
Dr S Mostafa	Local resident
Keith Hounsley	Local resident

INQUIRY DOCUMENTS

ID1	Opening Statement by Leverhulme Estates Ltd
ID2	Opening Statement by Wirral Council
ID3	Opening Statement by Wirral Green Space Alliance
ID4	Scott Schedule, Housing Land Supply, submitted 16 May 2023
ID5	Cable Route information supplied to ITPAS through Site A, submitted 17 May 2023
ID6	Natural England Consultation Email Records and Letters
ID7	Sport England's Position on the Appeal Sites
ID8	Letter from PINS to Natural England consulting them on the 7 remaining appeals, 22 May 2023
ID9	Professor Greg's Rebuttal Proof on Housing Land Supply
ID10	Missing Appendices Wirral's Green Belt Review 2019 (by Arup)
ID11	Flood risk and surface water drainage technical note relating to Site A (May 2023)
ID12	Leverhulme ownership structure note dated 22nd May 2023;
ID13	Simplified overall site locations plan (minus SANG site)
ID14	Revised overall estate-wide embedded and offsite VSCs enhancements plan (minus SANG site)
ID15	Leverhulme Appeal Sites and Regeneration Areas with Housing Supply
ID16	Leverhulme Land Ownership (submitted by Graham Lowsby)
ID17	Shenley Appeal Decision - Land adjacent and to the rear of 52 Harris Lane, Shenley WD7 9EG
ID18	Response to ID8 from Natural England dated 5 June 2023
ID19	Statement of Common Ground – Ecology and Biodiversity (Signed Version) (also referenced CD01/2.8)
ID20	Response from the Environment Agency indicating that they responded to Appeal A (00946) Email and letter
ID21	Revised Table 3 from Green Belt Openness and Purposes SoCG, submitted by Wirral Council
ID22	Revised Table 3 from Green Belt Openness and Purposes SoCG, submitted by Leverhulme Estates Ltd
ID23	Agenda for the Round Table Session on Ecology
ID24	Agenda for the Round Table Session on Housing Land Supply
ID25	Shadow HRA, Tyler Grange
ID26	Agenda Reports Pack, Policy & Resources Committee, 14 June 2023
ID27	Magic Map presented by Joseph Dance
ID28	Housing Supply Implications over the Local Plan Period, submitted by Professor Gregg
ID29	Wirral SHMA Final Report, May 2016, submitted by Professor Gregg
ID30	Curtins Technical note on improvements to Borderlands Railway 04/07/2023
ID31	Site A Electricity Cable Technical Note
ID32	Note from the Local Planning Authority in respect of Unilateral Undertaking Clause 7.9. 2

ID33	Appeal decision - Land to the north of Whychurch Farm and to the south of Filands, Malmesbury
ID34	Note prepared by MEAS on behalf of the Council in respect of Biodiversity
ID35	Spreadsheet prepared by MEAS on behalf of the Council setting out how the BNG monitoring costs have been calculated
ID36	R Basildon District Council v First Secretary of State 2004 JPL 942
ID37	Response by Jackie Copley, Wirral Green Space Alliance to the Inspector's question on prematurity
ID38	Wirral Green Space Alliance – response to new transport evidence (ID30) on the Bidston-Wrexham rail line
ID39	Note on the involvement of Julie Hyslop on behalf of Wirral Council
IN40	Wirral Green Space Alliance – response to ID31 - LE Site A Electricity Cable Technical Note
IN41	Closing Submissions by Wirral Council
IN42	Closing Submissions by Wirral Green Space Alliance
IN43	Closing Submissions by Leverhulme Estates Ltd
IN43a	Category B Appendix
IN43b	Site Specific Appendices
IN44	Completed S106 Agreement – Site A, 24 July 2023
IN45	Completed S106 Agreement – Site B, 24 July 2023
IN46	Completed S106 Agreement – Site C, 24 July 2023
IN47	Completed S106 Agreement – Site D, 24 July 2023
IN48	Completed S106 Agreement – Site E, 24 July 2023
IN49	Completed S106 Agreement – Site F, 24 July 2023
IN50	Completed S106 Agreement – Site G, 24 July 2023

Costs Decisions

Inquiry opened on 16 May and closed on 4 July 2023

Site visits made on 15 and 19 May, and 16 June 2023

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Costs application in relation to Appeal A Ref: APP/W4325/W/22/3313729
Land east of Glenwood Drive, Irby CH63 1JD

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 290 dwellings (Use Class C3), including 30% affordable housing and 10% self-build/custom build properties; delivery of part of the Borough's cycle supergreenway; green infrastructure including sports pitches, play areas and parkland, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
-

Costs application in relation to Appeal B Ref: APP/W4325/W/22/3313734
Land east of Dale View Close, north of Gills Lane, Pensby

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 92 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new public open space and play area, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
-

Costs application in relation to Appeal C Ref: APP/W4325/W/22/3313737
Land east of Thorncroft Drive, north of Gills Lane, Pensby

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 15 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a green space, wildlife habitats and wetland; and off-site environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
-

Costs application in relation to Appeal D Ref: APP/W4325/W/22/3313741
Land west of Barnston Road, north of Gills Lane, Barnston, Wirral

- The application is made under the Town and Country Planning Act 1990, sections 78,

- 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 153 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new public park and play area, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
-

Costs application in relation to Appeal E Ref: APP/W4325/W/22/3313743
Land at Milner Road and Barnston Road, Heswall

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 120 dwellings (Use Class C3), including 30% affordable housing and 10% self-build/custom build properties; delivery of part of the Borough's cycle supergreenway; green infrastructure including a new public park and play area, community orchard, wildlife habitats and green corridors; and off-site highway, environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
-

Costs application in relation to Appeal F Ref: APP/W4325/W/22/3313775
Land west of Raby Hall, Raby Hall Road, Raby Mere

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 38 dwellings (Use Class C3), including 30% affordable housing; safeguarded land for the expansion of Autism Together facilities; delivery of green infrastructure including a new pocket park and play area, wildlife habitats and green corridors; and off-site environmental, biodiversity and accessibility enhancements, including an off-road pedestrian and cycle connection between the site and Blakeley Road (all matters reserved except for access).
-

Costs application in relation to Appeal G Ref: APP/W4325/W/22/3313777
Land east of Raby Hall, Raby Hall Road, Raby Mere

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a residential development for up to 80 dwellings (Use Class C3), including 30% affordable housing; delivery of green infrastructure including a new open green space and play area, wildlife habitats and green corridors; and off-site environmental, biodiversity and accessibility enhancements (all matters reserved except for access).
-

Costs application in relation to the SANG Appeal Ref:
APP/W4325/W/22/3313726

Land west of Barnston Road, Barnston, Wirral

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
-

- The applications are made by Wirral Metropolitan Borough Council and Wirral Green Space Alliance for a full award of costs against Leverhulme Estates Limited.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the creation of a Suitable Alternative Natural Greenspace (SANG) development of 22.6 hectares including boundary works and means for access and parking; biodiversity enhancements to hedgerows, meadows/grasslands, field ponds and woodlands; creation of green infrastructure and footpaths; creation of wildlife habitats; and off-site highway works.
-

Decisions

1. The applications for an award of partial and full costs are refused.

The submissions for Wirral Metropolitan Borough Council

Application for full award

2. The Council considers that the residential appeals (A-G) had no reasonable prospect of succeeding. The basis of the Council's costs case is that each appeal is a proposal for inappropriate development in the Green Belt (as set out in the development and the emerging Local Plan (eLP)) requiring the appellant to demonstrate very special circumstances (VSC) exist such that the harm by reason of inappropriateness and other harm is clearly outweighed.
3. The appellant's case constituting VSC is weak. They assert that the housing land supply position is 3.45 years (this is disputed such that the Council considers the supply to be 5.49 years), which the Council does not consider to be significant. Furthermore, the appellant's case is predicated on a claim that the eLP is "*fundamentally flawed*" and challenges key aspects of it including the spatial strategy and regeneration proposals. This aspect of the case itself gives rise to the position that the development proposals are premature, in the sense used in paragraph 49 of the National Planning Policy Framework (the Framework).
4. Based on the appellant's own case the appeals have no reasonable prospect of success, but rather should be seen as an unreasonable attempt to usurp the plan led system through use of the appeal process.

Application for a partial award

5. After the exchange of evidence and rebuttal evidence, the appellant withdrew the appeal in relation to the SANG (Appeal H) on 10 May 2023 when the inquiry was scheduled to commence on 16 May 2023. The Council's case was apparent from the Statement of Case and the Ecology Proof of Evidence of Alan Jemmett, Director of Merseyside Ecological Advisory Service (MEAS), the Council's Ecological and Environmental Advisor.
6. The suggestion made by the appellant that the withdrawal was because of late introduction of new information is a transparent ruse to attempt to avoid the prospect of a costs application. The appellant misunderstood the Council's approach to mitigating recreation pressure as set out in the Wirral Interim Approach to Avoid and Mitigate Recreational Pressure (WIA)¹ and also introduced late evidence which should have been made available prior to

¹ Core Document (CD) 04/4

determination. The evidence that was introduced late by the appellant comprises:

- i. 7 Stage 2 shadow HRAs for Appeal sites A to G
 - ii. Stage 2 shadow HRA for the proposed SANG
 - iii. Non-Breeding Bird Survey Report
 - iv. SANG Management Report
 - v. SANG Agricultural Land Classification Report
7. Furthermore, the Council claim that MEAS did not receive a copy of the bat survey report of trees associated with the proposed SANG in the vicinity of the proposed car park.
8. The failure of the appellant to provide the necessary evidence during the determination of the SANG application, despite additional information and evidence being sought by the Council, has resulted in the Council not being able to complete the Stage 2 HRA Appropriate Assessments which are a regulatory requirement. The only "late" information the Council has referred to is the final Visitor Survey report² prepared as evidence upon which the final Liverpool City Region and West Lancashire Recreation Mitigation Strategy will be based. Liverpool City Region and West Lancashire Visitor Survey Report 2021-22 (Caals, Liley & Panter, Footprint Ecology, March 2023) was completed and uploaded onto the MEAS website on 28 March 2023. The WIA does not rely on it because it is supported by the previous evidence base, which is referred to in the MEAS and Ecology Proof of Evidence.
9. The late withdrawal was procedurally unreasonable and the SANG appeal was unreasonable in itself, as it was apparent from the Reason for Refusal, the Council's case and evidence.

Conclusion

10. A full award of costs is justified because of the appellant's unreasonable behaviour in pursuing and maintaining the residential appeals in circumstances when such appeals have no realistic prospect of succeeding. An award of costs in respect of the SANG appeal is justified because it also had no realistic prospect of succeeding in light of the Council's evidence and the late withdrawal of the appeal.

The submissions for Wirral Green Space Alliance

11. Wirral Green Space Alliance (WGSA) applies for full costs in relation to the Appeal H. WGSA a local community umbrella group, were exposed to costs for the SANG in relation to site visits, document review and preparation of evidence for the inquiry. Withdrawal at the late stage was unreasonable at a point where the Rule 6 party had assembled all their evidence. An award of costs in respect of the SANG appeal is justified because it also had no realistic prospect of succeeding considering the Council's, MEAS, Wirral Wildlife and WGSA evidence at an early stage.
12. WGSA was liable for consultancy costs from Jackie Copley and Peter Black as they have undertaken site visits, involving travel to the site, and background

² CD04/55

research in order for written proofs, responded to information requests and reading proofs of evidence. The team members incurred printing costs and wasted many hours on the SANG.

13. If the housing appeals (A-G) are dismissed, WGSa should be awarded full costs relating to the residential appeals. The appeals ran contrary to relevant policies in the adopted local plan and the Framework. The appellant has readily accepted that the proposals were inappropriate development in the Green Belt and the appeals were always doomed to failure. The Council did not accept the VSC argument. This relates to its very good (99%) performance of the Council in delivering houses against (an inflated) housing requirement and the healthy current 5-year land supply position.
14. There are several other material considerations. The development plan is still relevant in the Framework terms and evidence provided in the Rule 6 planning proof was not contested in cross-examination. Other factors included no community engagement, the Secretary of State letter of 5th December 2022, proposed changes to the Framework and prematurity against eLP. This is seen as an improper and unreasonable attempt to undermine the plan led system through use of the appeal process.

The response by Leverhulme Estates Limited to Wirral Metropolitan Borough Council

Full costs application

15. This application is made on the basis that the appeals had no reasonable prospect of succeeding. To be awarded its costs, it is not sufficient for WBC to demonstrate that the appeals should be dismissed, or even that this was a likely outcome, it must demonstrate that it was unreasonable for the appellant to pursue to the appeals – i.e. that they were bound to fail.
16. The costs application fails to address this fundamental test and should be refused for this reason alone. Planning Practice Guidance (PPG) gives examples of conduct that may fall into this category. The example relied on by the Council is “*development [that] is clearly not in accordance with the development plan*”. Putting aside the fact that the Unitary Development Plan (UDP) is plainly out of date, the Council’s cost application fails to appreciate that if VSC are demonstrated, then the applications would be in accordance with that plan taken as a whole (and in addition would be supported by paragraph 148 of the Framework).
17. The Council must therefore show that the appellant had no reasonable prospect of demonstrating that VSC exist. The application fails to even begin to demonstrate this, and instead takes the clearly erroneous approach that any reliance on VSC is “unreasonable”. As the evidence will show, when judged on the correct basis in accordance with national planning policy, the appellant’s VSC case is compelling; it is certainly not unreasonable.
18. As for the reliance on prematurity, again to succeed in its costs application it is not sufficient for the Council to demonstrate that the applications are premature. Rather, it would have to show that it was “unreasonable” to conclude otherwise. This is an impossible hurdle for the Council to surmount, not least because it did not refuse the applications on the grounds of

prematurity. It is fanciful to suggest that it was unreasonable for the appellant to take the same approach that the Council itself adopted when it determined the applications.

19. The reasons why the applications are not in fact premature will be addressed in the evidence. For the purposes of responding to this application, it can simply be noted that (i) it is plainly reasonable to conclude that the eLP is not at an "advanced stage" (paragraph 49(a) of the Framework) when (i) lengthy examination hearings into the plan have only just begun, and key matters (such as the spatial strategy, housing need and viability) have already been postponed to September (ii) that plan is subject to profound objection.
20. It is also plainly reasonable to conclude that granting planning permission for these 788 new homes would not prejudice or predetermine decisions that are "central" to the eLP given (i) the Local Plan seeks to deliver 16,322 units in total and (ii) there is no evidence that those 788 new homes, with all the benefits they would bring with them, could not come forward together with the delivery of the Local Plan supply.
21. For all of these reasons, there is no merit at all in the Council's application for full costs.

Partial costs application

22. The starting point is that costs should only be awarded when an appeal is withdrawn "without good reason". The reason why the SANG appeal was withdrawn is set out in the emails from the appellant to the Council on 28 April 2023 and 10 May 2023. In short:
 - i. On 18 April 2023, Natural England (NE) signed a statement of common ground with the Council (SoCG)³ which stated that payment of the full tariff under the WIA was sufficient to mitigate recreational disturbance on the National Sites Network arising from residential developments permitted prior to the adoption of the Liverpool City Region Recreational Mitigation Strategy.
 - ii. On the same day, the appellant received the Proof of Evidence of Alan Jemmett from MEAS. This stated that should the full contribution be made "*then the proposed SANG...is no longer necessary to provide mitigation for alone and in-combination recreation pressure*".
23. This was the first time that NE had formally confirmed its approach in respect of the WIA, and therefore represented a significant change in circumstances. Prior to NE's endorsement in the SOCG, there were significant concerns that the WIA failed to meet the test of certainty under the Habitats Regulations, rendering a bespoke SANG necessary. As recognised by Mr. Jemmett, the SOCG meant that the SANG appeal was "*no longer necessary*". The appellant quickly sought to confirm the position (by email on 28 April 2023) and on 1 May 2023 the Council confirmed that "*the Council has no objection to the withdrawal of the SANG appeal*". There was no indication that this withdrawal would give rise to a costs application, nor any suggestion that the appeal was being withdrawn without good reason. Following this confirmation, the appeal was withdrawn shortly after.

³ CD01/19.3 Appendix 7

24. None of this background is set out in the Council's costs application. It provides a complete answer to the application. Plainly there was a good reason for withdrawing the SANG appeal: in light of the SOCG, the SANG was now not necessary for the residential schemes to receive a favourable Appropriate Assessment, and maintaining the appeal would simply add increased costs and length to the Inquiry.
25. Finally, it is necessary to briefly respond to the suggestion that the appellant has provided 'late' information in respect of the SANG application (with the inference that this is why the appeal was withdrawn). As set out in the Proof of Evidence of Mr. Dance, the information was provided in response to WBC's reasons for refusal. It could not have been provided before this point, since the first time WBC indicated that it sought additional information was at the point that it refused the application.
26. In any event, the withdrawal had nothing to do with a view on the merits of the SANG as such, but rather to its necessity. With the SOCG and the Council's ecology proof, the SANG was not necessary so was withdrawn, thereby actually saving Inquiry time and the parties' costs.

Conclusion

27. For all of these reasons, WBC's cost applications should be refused – indeed, they should never have been made.

The response by Leverhulme Estates Limited to Wirral Green Space Alliance

Full award

28. The full costs application is contrary to the PPG which makes clear (at paragraph 56) that: *"An award will not be made in favour of...interested parties, where a finding of unreasonable behaviour by one of the principal parties relates to the merits of the appeal"*. WSGA is an interested party for the purpose of the PPG.
29. Therefore, in accordance with guidance, even if there was any merit in the full costs application (which there is not), WSGA is not entitled to an order for costs. This reflects the fact that WSGA came to this Inquiry as a volunteer, and therefore was under no obligation to incur any expense defending appeals which it purportedly considered had no reasonable prospect of success. For this reason alone, the full costs application must be refused.
30. In any event, there is no substantive merit whatsoever in WSGA's application which (i) as with the Council's application simply repeats WSGA's case without explaining why the appellant's position is unreasonable (ii) in doing so, relies on a number of propositions which are clearly contrary to national policy (such as the suggestion that the applications were *"doomed to failure"* simply because they are classed as being inappropriate development – ignoring the fact that paragraph 148 of the Framework permits such development where VSC are demonstrated) and (iii) simply refers to a collection of considerations (e.g. the proposed changes to the Framework) without explaining what relevance (if any) they have to either the appeal or the costs application. Therefore, even on its own terms, WSGA's full costs application discloses no legitimate basis for a costs award.

Partial award

31. The application in respect of the SANG appeal adds nothing to the application made by the Council and should therefore be refused for the reasons set out in the appellant's response to the partial costs application made by the Council.
32. There are 2 further reasons why WGSa's partial costs application should be refused. First, whilst the PPG does envisage that, in principle, costs can be awarded to interested parties on procedural grounds, it also makes clear that this should only occur in "exceptional circumstances" (paragraph 56 of the PPG). There are no exceptional circumstances here, and none is identified by WGSa.
33. Second, to succeed in an application for costs, WGSa must identify not only that unreasonable behaviour has occurred but that, as a result of that behaviour, it has incurred unnecessary or wasted expenses in the appeal process. The only issues raised by WGSa in relation to the SANG application related to its ecological impact. However, none of WGSa's witnesses gave expert ecological evidence. Instead, Ms. Copley's evidence relied on evidence and input provided by Dr Hilary Ash, a retired ecologist. WGSa does not claim that it occurred any expense in relation to that input and therefore it has not incurred any expense. For all these reasons, the partial costs application should also be refused.

Final submissions for Wirral Metropolitan Borough Council

Full Award

34. The primary application seeks a full award of costs on the basis that the residential appeals in respect of Sites A-G have no reasonable prospect of succeeding. The test is that the appellant has pursued an appeal that had no realistic prospect of success and that in maintaining the appeal this has caused the Council to incur unnecessary costs. The Council maintains that this threshold has been clearly met.
35. The appellant in addressing one example given in the PPG concerning development that is "clearly not in accordance with the development plan" clearly confuses two issues; namely, the age of the Plan and whether it is up-to-date in the sense of being in conformity with national policies in the Framework. Whilst the UDP is dated and is pre-Framework (2014) its most important policies for determining the appeal are consistent, and acknowledged to be consistent, with the Framework.
36. The VSC case, such as it is, relies principally upon demonstrating housing need (Market, Affordable and Self Build) and a basket of other "add-on" benefits including contributions to open space and biodiversity net gain. Individually or cumulatively the matters relied upon as VSC justifying a conclusion that they "clearly outweigh" the definitional harm and other harm do not come close to being of sufficient weight to justify a rational basis for entertaining a prospect of success in this case.
37. The high-water mark of the appellant's case on supply is well over 3.5 years in circumstances where there is an identified supply to meet need. The Appellant's case is not that the regeneration sites will fail to deliver housing but that the anticipated rate is generally too optimistic to contribute to the 5YYS.

38. The point made by the Council is all the more powerful in circumstances where the eLP is being tested at Examination contemporaneously with these appeals. Furthermore, the appellant has mischaracterised the “prematurity” issue. The eLP is clearly at an advanced stage and on any view these appeals are diametrically counter to the spatial strategy being advanced in the eLP. The fact that a consortium of landowners and housebuilders maintain that the spatial strategy is flawed and pursue that matter in the Examination hearings serves only to demonstrate that if the appeals on green field and Green Belt land are allowed they would pre-determine the crucial issue at the heart of the eLP that brownfield redevelopment is appropriate, necessary and sufficient to meet need.
39. The number of houses at 788 across several sites is not insignificant but is not the crucial consideration here (even bearing in mind that the Leverhulme Estate have openly admitted it has ambitions for about 10 times greater) because what is crucial is the issue of principle – need for Green Belt land.
40. The Council’s case for a full award is entirely justified.

Partial award

41. There was no good reason to pursue the SANG appeal from the outset. There was a perfectly good and fit for purpose mechanism to address the matters concerning the protection of the ecological value and integrity of the protected sites on the Wirral. The Appellant has now belatedly accepted the good sense of embracing the solution that was present throughout. The withdrawal was not precipitated by confirmation by NE.
42. The appellant pursued the case for a SANG to meet the needs generated by their development proposals. The WIA had been tested and found to be sound at Examination and had been deployed previously.
43. At no time did the Council give any indication that a costs application would not be made in respect of this issue. In truth, this application for a partial award is unanswerable.

Final submissions for Wirral Green Space Alliance

44. WGSa had already enquired about the matter of abortive costs arising relating to the SANG, in advance of the Council issuing its cost claim letter. It is a fact that the SANG was deemed unnecessary by MEAS (although not by WGSa) if the full financial contribution to mitigation of recreational pressure was agreed by the appellant, which it has been, but:
- i. this was in the light of MEAS (the Council and our) belief that the Council's proposals for measures to address the harm of increased recreational pressure (away from the Coast) would be better and more appropriately located at Arrowe Park (for several reasons), if deemed necessary at all;
 - ii. the particular SANG proposed by the appellant would be ineffective as a SANG because:
 - a) the area chosen by the appellant is not popular for walkers using the existing footpaths;

- b) the soil is very unsuitable and would require deep 'inversion', which would be difficult to achieve, very costly, and (from experience elsewhere) probably 'doomed to failure' - therefore the lack of certainty would also weigh against;
 - c) the proposal had not sufficiently been prepared and was undergoing changes;
 - d) the period before any measurable benefit would accrue would be many years at best and the level of certainty too low;
 - e) proposals were confused, changing, incomplete and most likely ineffective over public access being restricted at times with (probably ineffective) fencing and gates to give protected birds some preferred conditions at some critical times;
 - f) construction could not start for an extended but indefinite period owing to the extent of known and protected underground heritage assets over at least 50% of the Site, and possibly more could be discovered. As there had been no proper reference to heritage, nor any surveys undertaken despite both known and suspected heritage assets affecting the site and being legally protected, approval would have been unsafe; and
 - iii. taking into account that the SANG was entirely an invention of the appellant, not called for by the Council, and purely located to suit their own inappropriate housing schemes in the Green Belt and not where independently best located.
45. WGSa was obliged to commission professional expertise relating to the appeals to respond to the paperwork submitted. The involvement is not 'voluntary' but because of the scale of local opposition (26,000 recorded objections against release of Green Belt land in the eLP and 25,000+ to LE's applications) to 'unnecessary' Green Belt loss, over issues of non-compliance with national and local planning policy. There is unanimous support for the eLP at the constituency MP and across the political spectrum of the Council. All support a regenerative approach. The Government supports the regeneration of Birkenhead, and there are identified development partners.
46. There has not been a need, nor is there a need, for the release of land in the Green Belt as set out in the UDP, which has relevant policies in the Framework terms, and as shown in the eLP, based on its up to date evidence base. Considering the Census 2021, the actual up to date data, there is even more evidence of no housing need to justify approval. Thus, there is no VSC.
47. There is a clear prematurity case here. Particularly considering that this set of applications is part of a much bigger scheme. In addition, the appellant is part of the Developer Consortium, which is promoting Green Belt land. The delay to the eLP examination is leading to a situation where the appeal decisions would significantly compromise it.
48. This case is unique, in many respects, and the unreasonable behaviour has presented additional challenges for the local group. WGSa has been put under considerable undue pressure arising from the actions of the appellant.

Reasons

49. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. One of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case.
50. Unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal. Examples of unreasonable behaviour which may result in an award of costs against an appellant include withdrawal of an appeal without good reason. Additionally, an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise.
51. The appellant claims that WGSA would not be entitled to an order for costs because they are an interested party and there would need to be exceptional circumstances. However, they are not an interested party. They are a Rule 6 party under the Inquiry Procedure Rules, and thus are considered as a main party. Therefore, they could be liable to an award of costs if they behave unreasonably, and likewise, may also have an award of costs made to them.

Substantive award for full costs (Appeals A-G)

52. The appeals were pursued by the appellant on the basis that they were inappropriate development, but that there were VSC that clearly outweighed the totality of harm. If I had found that there were VSC, the proposals would have been compliant with the development plan and Framework. The other considerations advanced were not insignificant and have been subject to a great deal of work from the appellant. They required careful consideration and weighting and were clearly material considerations. Therefore, the appeals were not pursued on the grounds that they had no reasonable prospect of succeeding.
53. Moreover, whilst all roads in the appeals lead back to the prematurity issue, this was raised by me prior to the inquiry opening. Neither the Council, nor WGSA, can claim that the appellant behaved unreasonably by pursuing appeals when they were not refused for this reason.
54. Therefore, the appellant did not behave unreasonably for substantive reasons and the application for an award of full costs fails for both the Council and WGSA.

Procedural award for partial costs (SANG Appeal)

55. The WIA has been in the public domain since May 2022 and was based on 'Towards a Liverpool City Region European Sites Recreation Mitigation & Avoidance Strategy – Evidence Report' (July 2021)⁴ (LCRMS). The LCRMS

⁴ CD 04/41

provides an *opt-in* mechanism, where residential developments of 10 or more units can pay a mitigation tariff per dwelling through a planning obligation to contribute to on and off-site mitigation measures. This is in lieu of developing and implementing their own project-level measures relating to recreational disturbance and demonstrating that these comply with the Habitats Regulations.

56. Other Merseyside authorities are using the LCRMS and charging tariff style payments, agreed with NE, for example Liverpool⁵ and Halton⁶. However, Wirral's own arrangement (the WIA) was only published as part of the Regulation 19 Local Plan consultation, and stated that *"the prioritisation of these mitigation measures will be agreed (my emphasis) in consultation with NE and the other local authorities in the Liverpool City Region and West Lancashire Council to ensure the measures align with the emerging LCRMS mitigation measures"*. The WIA was not agreed with NE until the SoCG on 19 April 2023, during the first block of Local Plan hearings.
57. The SANG was identified as necessary mitigation for the likely significant effects upon the National Sites Network by the appellant during preparation of the applications in 2020-2021⁷. At this time, there was no other available mitigation available, and it was considered necessary by the appellant to propose mitigation in the form of a SANG.
58. Additionally, the appellant also claims that, even after publication of the draft WIA, they had significant concerns about whether it was suitable. Even as late as preparing the SANG SoC⁸, it was considered that the Council's approach for mitigating recreational pressures was fundamentally flawed, because the WIA acknowledged both the need for a SANG and the impossibility of Wirral delivering one⁹.
59. Nonetheless, at the application stage, concerns were raised by MEAS¹⁰ on 9 August 2022 that the SANG would not adequately address the potential in-combination effects, because future residents would still visit the coast for recreation. MEAS requested a commuted sum payment would also be necessary for Site Access Management and Monitoring measures (SAMMs).
60. NE's response was similar for Appeals A and G (2 August 2022), which required further assessment of the impacts of recreational disturbance on designated sites along with suitable mitigation measures. NE noted that the mitigation would include provision of the SANG but advised that the suitability would need to be fully assessed. They concluded by detailing that further measures in addition to a SANG may also be required.
61. Wirral Wildlife objected to the efficacy of the SANG, and are part of WGSA. Their concerns were clear from the application stage.
62. However, MEAS welcomed the provision of the SANG and set out minimal concerns about its efficacy in the original consultation response¹¹, detailing that

⁵ CD 04/68

⁶ CD 04/69

⁷ EIC Simon Handy

⁸ CDS01/2

⁹ CD04/4 7.6

¹⁰ CD04/70

¹¹ Dated 18 October 2022

"the SANG has been designed following Natural England guidelines (Guidelines for Creation of Suitable Alternative Natural Greenspace, August 2021), this is welcomed." The only area of concern raised related to the extent of access for dogs, although additional information was requested, such as biodiversity metrics and additional ecological enhancements.

63. It is not clear whether these were requested prior to determination as stated in the response. The appellant claims they were not and there is evidence of chaser emails from the appellant¹² prior to the refusal of the SANG. This explains why the appellant submitted additional evidence with the appeal as part of ongoing case management to reduce the reasons for refusal. Moreover, I do not agree that the SANG had no reasonable prospect of succeeding at this stage. Indeed, the LCRMS is an *opt-in* mechanism for tariff payments in lieu of developing and implementing a developer's own project-level measures.
64. The appellant's Ecology Proof of Evidence¹³ followed on from the original overarching SoCG¹⁴ and responded to MEAS's comments¹⁵. It detailed that the SANG, coupled with payment towards SAMMs contributions quoted in the LCRMS, would provide sufficient mitigation to address impacts arising from increased recreational pressure. This was a change in the appellant's approach to the WIA, as they now agreed to pay towards the SAMMs.
65. Notwithstanding, the appellant considered that the only issue in dispute with the Council, at that point, was the level of contribution required towards the SAMMs. The appellant considered that it should only contribute towards the SAMMs since it has provided its own bespoke SANG, whereas the Council sought full payment irrespective of the SANG.
66. Conversely, the Council's Ecology PoE¹⁶ raised numerous concerns about the efficacy of the SANG and included a NE consultation response¹⁷ dated 24 March 2023. This highlighted that the SANG may not be compatible with the aim of allowing dogs off lead. Nevertheless, the PoE concluded that should the appellant agree to pay the full WIA contribution, then the SANG would be no longer necessary as recreational pressure mitigation for Appeals A to G.
67. Within the same PoE, appendix 7¹⁸ contained the SoCG between NE and the Council, which endorsed the WIA as an appropriate response to address recreational pressure. The SoCG also raised concerns that the SANG would not provide effective mitigation for in combination recreation effects arising from Appeals A-G, citing various areas of concerns. These included increased risk of recreational interactions and harm to biodiversity, insufficient ecological evidence and failing to meet NE guidelines for effective functioning SANGs.
68. Whilst WGSA maintained their concerns at the evidence stage, the change to MEAS and NE's opinions with the efficacy of the SANG and the endorsement of the WIA by NE was a significant change in circumstance.

¹² CD01/7.6

¹³ CD01/7.2

¹⁴ CD01/2.1 3.15-3.20

¹⁵ CD04/70

¹⁶ CD01/19.2 13.3

¹⁷ CD01/19.3 Appendix 10

¹⁸ CD01/19.3

69. Importantly, it was made clear by the Council that the SANG was not considered necessary if full payment towards the WIA were made. Whilst this option had been available to the appellant the whole time, the WIA was not endorsed by NE until April 2023.
70. Consequently, the appellant promptly reviewed their case, agreed to the WIA tariff style payments, and withdrew the appeal for the SANG. They did this after first consulting with the Council and WGSA. Whilst the withdrawal was late in the day, the appellant's pursuit of the SANG was justified and reasonable given the changing position of consultees and evolving status of mitigation.
71. Whilst the SANG did not address the full recreational impacts of visitors to the coast, at the appeal stage, they agreed to pay the contribution towards the SAMMs. It was only when the efficacy of the SANG was objected to by MEAS, NE and the Council, and the WIA was fully endorsed by NE, that the position changed and the appellant recognised the SANG was no longer necessary.
72. Therefore, the withdrawal of the SANG appeal was for good reasons and actually saved inquiry time and costs. This was not unreasonable behaviour. Thus, the application for partial costs from both the Council and WGSA fails.

Katie McDonald

INSPECTOR