CLOSING SUBMISSIONS ON BEHALF OF THE COUNCIL

1. It is necessary to begin the Council’s Closing Submissions with a strong note of caution about the evidence presented by the Appellants since it serves no one’s interests to invite the Inspector to take into account a legally immaterial consideration with the consequences that any decision is subsequently quashed.

2. It is now clear that much of the Appellant’s evidence is unrelated to the main issues in contention at the Inquiry, repetitive and unnecessarily verbose. This has lead to a great deal of wasted effort in time and resource. Most of that is merely wasteful and inconvenient but there are two areas in which the Appellant’s failure to exercise any discipline in presenting evidence to the Inquiry creates a real threat to the lawfulness of any subsequent decision. These concern Law and OAN.
3. The Appellant’s witnesses have felt entitled to give opinion evidence about the Law even though they have no legal qualifications and therefore no authorisation to do so. Such evidence must be disregarded.

4. SN has given evidence about the housing requirement which will or may arise in this administrative area if aspirations for economic growth in the emerging local plan are to be pursued. SN’s evidence has been dressed up as “objectively assessed need” but it is, in fact, no such thing. In the first place it is not objective. It is the subjective view of a single participant in a much wider debate which will embrace different ideas, views, assumptions and projections from many different individuals and organisations with many separate and varying perspectives. The most that may be said about SN’s evidence is that it is a subjectively assessed need and it is therefore legally irrelevant to a decision which has its root in an OAN.

5. A second, and separate reason for rejecting SN’s evidence as legally irrelevant is that it offers a “policy-on” analysis of need. This is clear from paragraph 5.3 of his Appendix 3 and AF’s examination in chief.
6. The Inspector was indulgent to the Appellants and extended a high degree of latitude in allowing them to present SN’s evidence but the time for cold analysis has arrived and the Council draws attention to Keene LJ’s speech in Hunston quoted by AF (rebutted 2.2).

7. SN’s evidence must be rejected as irrelevant for either or both of these reasons discussed above.

THE ISSUES

8. The real issues are:

i) Whether the Council can demonstrate a 5 year HLS?

ii) If so, should the decision be made in accordance with the development plan?

iii) If not, does the harm significantly and demonstrably outweigh the benefit?

5 YEAR SUPPLY

9. This is an art not a science; a judgment not a calculation. There are different possible outcomes which are dictated by the
Inspector’s preference for one form of analysis over another. The Council sought to bring all the threads together in a comprehensive set of tables and invited the Appellants to agree that they accurately informed the Inspector about the outcome based on the combination of possibilities described in each table. The Appellants were characteristically obstinate and intransigent in their response. The Inspector is therefore required to make a judgment about the tables. The Council submits they are arithmetically correct and provide a reliable guide to the consequences of applying each set of assumptions described therein. The Inspector should have no difficulty in accepting this submission in view of the fact that the Appellants decided to produce their own set of tables. JM accepted that the Appellants’ tables were broadly similar to the Council’s tables and the corresponding tables were identified in cross-examination.

10. It is further necessary, as an introduction to this part of the submissions, consider the role of previous decision letters issued by the Secretary of State in other S78 appeals. It is a further aspect of the Appellant’s intellectual indiscipline that they have submitted a plethora of decisions without any clear understanding or analysis of their relevance to this decision.
11. The correct legal approach is found in the judgment of Lewis J in Cotswold DC v. SOSCLG [2013] EWHC 3719 at paragraph 69:

“One purpose of requiring one inspector in a planning appeal to consider earlier planning decisions is to ensure consistency so that like cases are treated alike but subject to the fact that an inspector is free to disagree with the judgment of another provided that the later inspector gives reasons for the difference in approach: see North Wiltshire District Council v. Secretary of State for the Environment (1992) 65 P&CR 130 at page 145”.

12. It is axiomatically true that each case turns on its own facts. Decisions are notoriously time and fact sensitive and so the fact that one Inspector has granted permission in one context provides no assistance, one way or another, to decision making in a matrix of facts which materially differ. A clear example of this was AF’s description of the decision at Elsworth Farm. He pointed to the Inspector’s description of the degraded state of the appeal site, the environmental benefit of restoration and the public benefit of 10 acres of open space. All of these matters reveal the strong factual differences between the decision at Elsworth Farm and the circumstances applying here.
13. There is, however, a real value to previous decisions where they address some relevant question of principle. In this context the consensus of decisions which affirm the RSS as providing the most reliable indicator of OAN is important. This is a powerful consensus because it includes the Secretary of State (Abbey Road, paragraph 24) and it includes decisions which post-date Hunston – Court of Appeal (for example Elsworth Farm (paragraph 17), it includes Statements of Common Ground between developers and the Council (AF Rebuttal 2.9) and AF pointed out in x-in-chief those SOCG include the Appellants. This is unsurprising given the evidence of JM to a July 2013 appeal which strongly argued for the RSS.

14. The previous decisions reflect a strong series of findings of fact. The Appellants have failed to suggest any reason why the Inspector should depart from that consensus and therefore, applying Cotswold, the need for consistency in the planning process requires those decisions to be respected and followed.

15. The Appellant’s legal submission is that Hunston precludes the use of the RSS as a basis for assessing an OAN (see JB Opening Submissions paragraph 15). That submission is plainly incorrect
in the light of the judgment of Ousley J in South
Northamptonshire Council v. SOSCLG and Barwood [2014]
EWHC 570 paragraph 16:

“I see no reason why the evidence base from the RSS should
not be used to measure the current full objectively assessed
housing need if the Inspector adjudges that it does just that,
nor, if so, why the RSS should not be used to measure the
extent of any past shortfall against housing in amount or in
persistence. This is quite apart from the argument that it was
during the life of the RSS that the shortfall arose and persisted,
and against which the capability and even willingness of the
local authority to meet housing requirements should be
measured”.

16. This is followed in the next paragraph by the strident observation:

“I see nothing in the Hunston decision which requires the RSS
to be totally expunged from history”.

17. It follows, whether the RSS is used to ascertain the OAN is a
question of judgment for the Inspector. The judgment turns on
whether the Inspector adjudges it to provide the best and most
authoritative statement of OAN when compared to any alternatives. The heavy lifting here has already been done by the many decision letters which have addressed this important issue. This is the point wherein the Inspector finds the real value of previous decisions.

THE REQUIREMENT

18. The discussion here begins with the agreement between the main parties that the Local Plan does not provide a reliable guide for understanding the requirement because it has yet to pass through its statutory procedures leading to the resolution of outstanding objections. The only candidates before the Inquiry are, therefore, the 1,150 arising from the RSS and the range of 1,750-2,050 arising from the evidence of SN. The Inspector pointed out that the LP approach must be regarded as a material consideration and that is true, but the weight to be attached to it is limited in view of the fact that it represents merely one view amongst others, that partial view is the subject of objections and it awaits examination through the EIP process. JM agreed that for those reasons the CELP figure of 1350 should be disregarded. He then argued – apparently without irony – the SN’s figures should be treated with great weight even though exactly the same considerations apply to them.
19. The evidence of SN is a legally immaterial consideration for the reasons discussed above. If the Inspector accepts that submission then the RSS is the only live candidate.

20. If the Inspector rejects that submission then it becomes necessary to consider the question of comparative weight. In support of the RSS the Council point to the following matters:

i) The Inspectorate’s consensus discussed above;

ii) The PPG advice at 3-030 which attaches weight to an evidence base which has been “tested” and “examined”. The RSS is the only evidence base before the Inquiry which has been through this process; and

iii) The RSS is closely aligned to the outcome of the 2011 ONS household projections for this administrative area. AF pointed out that the RSS advances a figure which is higher than the ONS in contrast to the position at St. Albans where the RSS constrained supply by 50%. This is important because it overcomes the obvious criticism of the RSS figures which is that they are old. The
congruency with the 2011 ONS data provides a contemporary relevance to the RSS which overcomes any complaint about its age.

21. SN’s evidence is in contrast to all of these considerations. There is no Inspector’s decision which endorses any figure remotely similar to the range advanced by SN. The SN approach has not been tested or examined in any relevant forum and attaching weight to it would therefore be in conflict with the approach urged by PPG guidance. SN’s evidence is wildly out of conformity with the ONS 2011 household projections. This becomes explicable when it is appreciated that SN has provided a “policy-on” analysis which considers the consequences for housing requirements of pursing a policy aspiration of boosting employment supply by 15,000 borough wide.

22. The Appellant’s only answer to this was to suggest the RSS is a constrained figure. They are wrong. AF explained the correct position in his rebuttal proof at 2.16:

“In particular a distinction must be drawn between core demographics and elements of policy. The NWRS unashamedly had an urban focus and promoted the growth of...
the major conurbations – as a matter of policy. Accordingly growth was not generally directed to adjoining shire areas. **However the absence of a policy of promotional growth should not be conflated with a policy of constraint. The preceding RPG13 reflected constraint and brought with it the housing moratoriums in areas adjoining Greater Manchester. The 2008 RS swept those aside and increased the housing requirement by 64% in Cheshire East**”.

23. The Appellants’ only response to this was to point to the approach at Offenham which supported the idea of a “vacuum” which JM agreed was interchangeable with his idea of a “void”. However, JM agreed the Barwood judgment was not brought to the Offenham Inspector’s attention and that that was a clear distinguishing feature of the two which would justify a different approach in this case. It must also be noted that the Offenham Inspector had the great comfort of being able to rely upon a preliminary finding of the examining Inspector who suggested a higher figure would be required than that suggested by the RSS. There is no such preliminary finding in this case and that, JM agreed, is a further reason to depart from the decision making approach in that case.
24. It is also necessary, in this context, to understand the relevance of the *Gallagher* judgment. The Appellants pointed again and again to paragraph 88 as though it provided a new insight. In fact, as JM agreed, all the paragraph does is require the decision maker to form an understanding of the full OAN. Both of the main parties agree that is the approach so that oft quoted paragraph adds nothing. It is, however, helpful to consider the definition of OAN at paragraph 37 and note its close relationship to household projections. In this context it is important to note that JM agreed the 1150 figure derived from the RSS is closely related to the 2011 household projections figure and far removed from the rival figure advanced by SN.

25. For these reasons the Council contends that the RSS requirement provides the base figure for deciding whether the Council can demonstrate a 5 year supply of housing land. It must be emphasised that no one is suggesting either of the rival candidates is perfect, ideal, correct or without flaws. SN accepted his figures were subject to the limitations discussed above and the Council acknowledge that the RSS figures are old. The PPG recognises that this situation will arise and places emphasis on tested and examined figures as providing the more reliable indicator of OAN pending the completion of the forward planning process. This
approach is supported by a suite of decision letters which all favour the RSS for these reasons. The Council contends the Inspector should prefer this approach and that there is no Cotswold compliant reason for departing from the consensus established by these decisions.

26. The Appellants also have a fall back position which suggests that if the RSS evidence base is to be used then it suggests a range of 1800-2100 which better accords with SN’s range. This range was derived from CD64, which is a technical appendix to the submitted draft of the RSS dated January 2006. When the tables from which this range are examined it becomes clear these are speculative economic projections by the authors of the document (Tables 4.17 page 22) which have their roots in the policy aspirations of the draft RSS as paragraph 4.77 (page 20) makes clear:

“At the regional scale both scenarios would support economic growth and the objectives of Draft RSS”.

27. The Appellants are therefore wrong to suggest the evidence suggests a higher figure than 1150. It does no such thing and this further highlights the problems which arise when individual S78 Inspectors are invited to embark on an exercise which is more apt
for an EIP. The Council’s argument here (as JM accepted) is fully supported by the Secretary of State at Abbeyfields paragraph 24:

“For the purposes of this appeal he considers it appropriate to continue to rely on the evidence base that underpins the former RS housing requirement” [emphasis added].

which is, as JM agreed, 1150.

THE BUFFER

28. The issue here is whether there has been a “…record of persistent under delivery of housing”. This question must now be considered in the light of the PPG (3-035) which requires a “…longer term view…” to be taken to addressing this issue because “…this is likely to take account of the peaks and troughs of the housing market cycle”.

29. The policy is explained by the letter from Junior Minister¹ which explains that the narrative background is important and it defies any categorical definition of the expression. It is unnecessary to embark on a wide discussion of that narrative since JM concedes it is wholly supportive of the Council’s position:

¹ See Appendix 7
“...CEC is entitled to point to the narrative in the NPPG, which allows weight being given to the reasons behind under delivery in the judgment...”

30. A very fair concession.

31. In this context the Council’s position is heavily reinforced by considering the facts of delivery. AF pointed out that over-delivery can be considered by reference to PPG 3-036. The uncontested factual evidence appears in AF Appendix 7, Table 2, which reveals a cumulative excess of supply over requirement in period 1996-2014 to the tune of 1,000 units. It must be noted that Table 1 ignores the contribution from C2. AF then provided the factual position in the period 2003-2013 including C2 and found a single year of negative supply with nine consecutive years of positive supply.

32. Inspector Major (Alsager) defined this expression as “....to continue steadily or firmly in some state, purpose, or course of action...”. If that definition is applied to the Council’s record of delivery, whether or not limited to 2003 and whether or not it includes C2, then there is a persistent record of delivery. It follows that a 5% buffer is appropriate in this case.
33. JM’s point here is that the Inspector should take a “penny packet” approach and look just at the year on year position where the last five consecutive years reveal a deficit. That approach fails because it departs from the holistic judgment of the “record” examined over an agreed period from 2003, and because it takes insufficient account for the reasons for under delivery in that short term period; the economic downturn and the effect of the monitoring.

SUPPLY

34. There is an agreed range of between 7,168 and 9,787 (excluding C2) and 10,514 (including C2). For reasons discussed below the supply must include C2 as the Inspector has no discretion to disapply advice in the PPG 3-038.

35. The windfall element is supported by compelling evidence linked to the inevitability of supply from this source and moderated by a 33% discount at years 4 and 5 as explained by AF in answer to the Inspector’s questions (see also AF Rebuttal Proof 4.71).

36. The contribution from large sites and the rate of delivery from this source is the subject of judgment. The Council contends that AF’s
judgment in this regard is sound. He was careful to point out the conservative approach to his assessment, discounting many applications and assuming a modest rate of delivery relative to his experience in the market. His approach leads to a lower figure than that found by Philip Major when looking at a similar range of figures in a similar dispute between the Appellants and the Council.

37. The C2 question requires careful consideration because the approach suggested by the Appellants invites an unlawful decision. The policy advice is:

“LPAs should count housing provided for older people, including residential institutions in use Class C2, against their housing requirement” (PPG 3-037)

“All student accommodation...can be included towards the housing requirement” (PPG 3-038).

The Appellants’ response to this clear policy advice is to delete all housing from these two sources of supply. That approach unlawfully departs from the clear policy requirement. It should therefore be rejected. The reason for doing so advanced by the
Appellant is no reason at all. The Secretary of State is fully aware of the way these sources of supply were treated in earlier assessments of need but has nevertheless taken a clear policy decision to require these sources of supply to be taken into account. The methodological complaint from the Appellant is a matter they can take up with the Secretary of State but it provides no justification for the Inspector to contravene that advice.

38. Overall – the Council contends that the requirement is a combination of the RSS figure of 1,150 p.a. with a 5% buffer and the C2 provision described by AF should be added. The Council draws attention to the Tables where this combination of issues is described in row 1. The Council has a 7.9 year housing land supply.

39. It is extremely important that the decision in this case makes an attempt to specify as closely as possible what is the level of supply found on the facts as this is likely to be helpful to both the Council and developers when considering applications elsewhere.
ISSUE 2: THE DEVELOPMENT PLAN

40. It is an agreed fact that if the Inspector finds there is a 5 year HLS then the countryside protection policies are not excluded by reference to paragraph 49 NPPF.

41. It is still, though, necessary to consider the Appellant’s alternative argument. This holds that the Local Plan is time expired and its policies should therefore be regarded as out of date. Added to this is the contention that national policy no longer provides a generally applicable protection of open countryside.

42. This argument is nonsensical and untenable. It reveals a serious failure by the Appellants to understand the whole thrust of environmental policy in the NPPF.

43. NPPF 17 elevates the recognition of the “…intrinsic character and beauty of the countryside…” to a core planning principle. This is affirmed by the letter dated 10 March 2014 from the Junior Minister which notes:

“We are also committed both to ensuring that countryside and environmental protections continue to be safeguarded”.

44. The position is correctly explained by the Inspector in “The Moorings DL” at AF Rebuttal Appendix 6 paras 27 and 28. In contrast to the clarity of this Inspector’s reasoning, the analysis at Launston paragraph 33 is poor and plainly in conflict with NPPF paragraph 17 and the Junior Minister’s letter of 10\textsuperscript{th} March 2014.

45. It is important that the Inspector resoundingly rejects the argument that the NPPF has abandoned the post war protection to the countryside which national policy has hitherto provided.

46. It follows, that if a 5 year HLS is found then the proposals are in conflict with up to date policies in the statutory development plan. S38(6) P&CP Act 2004 in this situation requires permission to be refused “unless material considerations indicate otherwise”. It is noted that this is also the policy of NPPF 12 and 196.

47. The conflict with the development plan is one matter and to this must be added the B&MV land question and the hedgerow question. To this must be added harm from the evidence of third parties which may be found. The benefits of the proposals must decisively outweigh the accumulation of this harm.
THE BENEFITS

48. KW suggested these must include “necessary contributions”, “Design”, “Ecology” “Public Open Space” and “New Homes Bonus”. These are not benefits recognised by the planning system because they are requirements imposed on any proposal coming forward for development. The policy advice which accompanied the publication of the PPG explicitly excluded New Homes Bonus as a material consideration.

49. The only benefit of the proposals are the market and affordable housing. This does not outweigh the conflict with the development plan and the other harm set out in the Council’s evidence.

50. The Appellants have also suggested it is inevitable that the boundaries of Audlem will have to be extended in view of the need for 2,500 homes in Local Service Centres. The Appellants are wrong. The Local Services Centres site allocation is 1099. In any event the position is dealt with by Mr Felgate; 114:

“I appreciate that refusing permission for this scheme may mean that other sites may have to be found, and these too may be in the...
countryside. However I must base my decision on the merits of the scheme that is before me…”

The Inspector is in the same position at this Inquiry.

51. Overall, the Council suggests that if there is a 5 year supply then there is no basis for departing from the development plan. This proposal would thereby be assessed as in conflict with material and relevant policies for the protection of the open countryside, B&MV land and hedgerows. The proposal would thereby conflict with the plan viewed as a whole and the proposal should therefore be rejected.

ISSUE 3: PARAGRAPH 14

52. If there is not a 5 year supply the Inspector would need to consider the degree of undershoot as a definition of weight (see Barrett opening and Dobsen DL paragraph 40 et al). Even here the Council contends that the harm as described above would outweigh the benefits in the way described in policy. Felgate found a 1-3 year supply and still rejected the proposal. The Council suggests a similar line of reasoning is appropriate here.
53. However, paragraph 14 is only engaged if the Inspector first decides the development proposal on offer at this appeal qualifies for the adjective “sustainable”. KW contended there were two reasonably arguable approaches to paragraph 14. That is wrong. Since Dundee the Court has declared itself to be the sole arbiter of the interpretation of policy and the Court has said, clearly and expressly, how the inspector must approach this issue. “Must” is emphasised because this is a part of the decision in which the Inspector has not discretion to exercise. This very issue was advanced and relied upon by the Claimant in Davis v. SOS CLG and Another [2013] EWHC 3058 at paragraph 28 of the judgment. Attention is drawn to paragraph 37 of the judgment where the Court rejects the proposition which KW is contending for in this case. It is true that this matter has been tangentially addressed by other judges but the decision in Davis is centrally focused on this issue and must, therefore, prevail in the event of any conflict.

54. KW agreed that the correct approach to considering “sustainability”, is to form a rounded assessment of its three limbs which must all be pursued simultaneously. The Council draws attention to the glossary definition of “economic development” and to paragraph 91 of the Wellington decision letter (all of which were well known to the Appellants at least 4 days before KW gave
his evidence). The Inspector has applied the NPPF and has thereby reduced the weight to be attached to the economic dimension. The long range commuting by private car owing to the absence of any railway station at Audlem explained by the excellent Mr Seddon all go into the balance of Social and Environmental harm and to these must be added the conflict with national policy objectives to protect the intrinsic beauty of the countryside, the imperative to protect B&MV and the hedgerow consideration. This leads, in the Council’s submission to an overall conflict with the policies in the framework which denies a finding of “sustainable” development. This follows the approach of all the Inspectors whose decisions are before the Inquiry of which Moorings, Wincanton and Wellington are the most obvious.

55. The paragraph 14 question never arises because this is not sustainable development.

S.106

Healthcare Contributions

56. The nearest secondary school, Brine Leas, is just over 3 miles away from Audlem village and is already oversubscribed. Excluding the 6th form, Brine Leas has space for 1050 pupils but 1074 children on the roll. It is already operating over capacity by
24 pupils and is forecast to have 1124 pupils on the roll by 2020. The school needs to expand to cater for the extra 16 secondary school pupils generated by the proposed development, hence the £115,000+ contribution sought.

57. The Appellants do not dispute the mathematical calculation of the contribution but they do dispute the necessity for it. Their main argument is that the 16 children will come forward at the rate of 4 per year as the appeal site is built out and that this is a small number which could be accommodated at Brine Leas without any need for expansion if that school chose to accept them in priority to other children who travel in from outside its catchment area.

This argument ignores the reality of the situation. The new Audlem children will not all present themselves at the beginning of Year 7 i.e. at the normal point of entry when popular schools fill up and admissions policies are applied. The new Audlem children will request admission across all year groups, possibly mid-year, and will inevitably be turned away from Brine Leas which is already full.

58. The Appellants took support for their argument from the Bloxham appeal where 40% of children on the roll were from outside the school’s designated area. However, Bloxham involved 10 new
pupils taking 16 spare places and leaving 1% spare capacity. The school sought a financial contribution in order to maintain a 5% - 10% spare capacity in line with Audit Commission Advice. By contrast, the Council here is not seeking to create spare capacity, it needs the contribution to accommodate the 16 new children at their local school without impacting negatively on the existing pattern of parental preference in the area.

59. During the round table session, Mrs Dale stressed several times that the Council has a statutory duty to comply with parental preference unless it would prejudice the provision of efficient education and the efficient use of resources (I supply the reference for that: School Standards and Framework Act 1998). It also has a duty (under the Education and Inspections Act 2006) to increase opportunities for parental choice. In line with these duties the Council is obliged to promote parental preference and diversity of choice by retaining rather than decreasing the number of places available for children coming to Brine Leas from outside its catchment area. Forcing those children to go to other schools would have knock-on effects, displacing pupils from outside those other schools` own catchment areas in turn, and so it continues.
60. The appellant argued that Malbank (Nantwich) and Shavington (Crewe) High Schools had more than sufficient capacity to accommodate an extra 16 pupils. However, both of these schools are too far from Audlem to be taken into account when planning provision in the area. Brine Leas School is outstanding, Malbank is good, Shavington requires improvement. In these circumstances, engineering a displacement of children there would run contrary to the EIA 2006 duty to promote high standards and the fulfilment of every child.

61. Brine Leas operates an admissions policy for allocating places. Criteria include, for example, siblings, looked after children and residence within the local catchment area. However cannot be relied on as a mechanism to lever the 16 new children into Brine Leas. Aside from the new cohort of Year 7 applicants, Brine Leas will already be full. Further, as it is an Academy School, the Council cannot control its catchment criteria. Admission arrangements can change yearly and catchment areas are no longer a guarantee of a school place.

62. In these circumstances there is a clear need to fund 16 extra places at Brine Leas School, the link to the appeal proposals is direct, the contribution is reasonable in scale & kind.
Healthcare Contributions

63. 120 new dwellings on the appeal site will generate approximately 276 new patients who will all need primary & community healthcare services from the existing medical practice in Audlem Village Centre. This is already beyond capacity. Its 2.3 FTE GPs already serve 1956 patients compared to NHG Guidance of 1800 patients : 1 GP.

64. The Appellants argue that other Medical Practices exceed standards, that the NHS has a duty to provide healthcare and that it will just have to carry on funding & accommodating new patients (the Barratt family) in Audlem or further afield, with or without a contribution from this development.

65. The Council and the NHS do not accept those arguments. There is no doubt that healthcare services are community infrastructure - just as schools and roads are - and new developments are expected to mitigate any adverse impact upon such infrastructure which
cannot be absorbed by existing capacity. The fact that standards may be exceeded in Audlem & elsewhere is no justification whatsoever all for exacerbating an underprovision, for failing to mitigate an adverse impact, for increasing the strain on NHS Services and taking them further from national standards.

66. GPs` lists need not and do not expand inexhaustively to accommodate new patients. The Council`s CIL Statement p4 sets out the national procedures for closing Medical Practice lists. The Statement shows that the nearest other Practices to which new Audlem patients might be sent are also at or over capacity. Steps should obviously be taken to cater for this Development`s new residents as close to Audlem as practicable.

67. The Appellants accept the NHS`s calculations of £116,288 (120 houses) or £111,443 (115 houses) as such - whilst objecting to them in principle. They criticise the formula approach and take support from the Mountsorrel appeal decision.

68. However, education and highways contributions are commonly calculated via formulae based on (i) new households (ii) their impact on existing facilities (iii) specific or averaged costs of mitigation works. The standard education contribution is an
example of averaged costs accepted without a specific project identified eg: a new classroom, enhanced sports fields. Mrs Partridge produced the Clifton Rd decision as an example - if one was needed - of cost multipliers used for education contributions to be spent in the vicinity of a development. The Council’s CIL Statement shows transparently how the NHS has calculated its cost multipliers:- ie: average construction costs for a number of projects between 2003 - 2014 and average costs-per-space-per-GP. This is a rational and reasonable approach, accepted in the Council’s Infrastructure Delivery Plan at App 11 of the CIL Statement.

69. The Appellants have not proposed an alternative methodology: their one alternative is a zero contribution. This contrasts with the offer of £100,000 promoted by them from December 2013 through to the committee report of March 2014: the figure was extrapolated from examples elsewhere in the country and is close to the NHS’ own calculations of £116+K or £111+K. One might infer from the costs application that the offer was withdrawn in pique or anger after their second-go application was refused, whatever the motivation, it leaves unmitigated impact and unmet need.
Again referring to the Mountsorrel decision, the Appellants criticise the lack of a specific, approved, costed project in place for expanded or new medical facilities.

However, one cannot expect a strategic commissioning body such as NHS England to have such a project in place for what is a speculative development, unallocated in the emerging Local Plan, subject to a minded-to-refusal decision by the LPA, located on the edge of a rural, Local Service Centre: as opposed to a planned allocation in a largely populated, strategic location. This is a chicken & egg scenario. It is unreasonable to expect the NHS’ wheels to have rolled into motion and produced a specific project for this Inquiry.

Between them, the Council’s CIL Statement and Mrs Partridge have explained the Business Case bidding & funding round which the NHS and the Audlem GPs will go through to make sure that NHS funds and developer contributions are applied to projects which are a sound strategic fit. There is nothing unreasonable in that: it is the reality of ad hoc development proposals impacting on strategic services: the former move faster than the latter. It would be inequitable for speculative developments to be able to avoid mitigating the impact of their proposals in those circumstances.
The parties have discussed how a contribution could be secured to new Audlem residents and to the public purse. The UU now contains an agreed form of definition of Healthcare Contribution. It specifies that the Council will pay the healthcare contribution to NHSE or a successor body (ie: not to the GPs personally), NHSE having its own controls (eg: conditions attached to building grants) for protecting the public purse. The UU defines the purpose of the contribution as the provision of primary & community services (ruling out Leighton Hospital for example) for the residents of Audlem, to be provided in the vicinity of Audlem (ruling out a new Health Centre in Crewe for example). No specific repayment period is expressed but if the payors consider that the contribution has been misapplied or not applied at all, it will be open to them to pursue an action by way of Judicial Review for a Declaration and order of Specific Performance. Of course, the Council is a public body, the NHS is a public body, neither has any intent other than to safeguard the public purse and relieve the additional stress arising in Audlem as a result of the proposals.
74. In all, the Healthcare Contribution is necessary, directly related, reasonable in scale & kind.

Anthony Crean Q.C.

15<sup>TH</sup> May 2014
AUDLEM ROAD, AUDLEM

CLOSING SUBMISSIONS ON BEHALF OF
THE COUNCIL

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