

Summary of Appeal Decisions – Relating to Housing Applications in Cherwell Including commentary on 5-year supply cases and time expired plans.

Wainhomes Holdings Ltd vs Secretary of State and Wiltshire Council

The key issue discussed in the decision is the meaning of “deliverable” sites in the context of the NPPF (para 34). Justice Stuart Smith accepted:

- Planning permission is not a necessary prerequisite to a site being “deliverable”;
- For a site to be “available now” means that if it had planning permission there would be no other legal or physical impediment integral to the site that would prevent immediate development (i.e. available now means now and not “within 5 years”);
- “Available now” was distinct from the site “being a suitable location for development now” and from the site “being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable”;
- Questions of viability would affect prospects of delivery of the site within 5 years but not the question as to whether the site is available now;
- Sites without permission and subject to objection may be subject to questions of suitability and also questions as to whether development is achievable within 5 years;
- For a body of sites without planning permission which are known to be subject to objection, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect of delivery within 5 years;
- Allocated sites in emerging policy must be considered in the context of para 216 NPPF;
- The starting point for allocated sites in emerging policy is the inclusion of evidence that the site is deliverable. In the absence of site specific evidence it cannot be assumed or guaranteed that the sites so included are deliverable when they do not have planning permission and are known to be subject to objections.

Rushwick – Appeal Refs. 2187934 and 2193129

The LPA had acknowledged that they could not demonstrate a 5-year supply but argued that the absence of a 5-year supply was not relevant to the case. Contended that regardless of housing land supply position, the appeal should fail because the design of the proposal was poor.

Inspector robustly dismissed this argument, awarding costs against the Council. Inspector concluded that para.14 of the NPPF requires decision-makers to grant permission unless significant and demonstrable harm is identified and where it is that it is not outweighed by the benefits of boosting the supply of housing.

Tenbury Wells – Appeal Ref. 2194904

The site was located outside a settlement boundary on land not subject to any specific designation (footnote 9 of NPPF). It was in an area where policies of restraint applied.

It was concluded on this matter that the LPA's policies on the supply of housing could not be considered up-to-date as the Development Plan was prepared to meet housing requirements only to 2011 – the plan had time expired. It is agreed by the parties to the appeal that para. 14 of the NPPF was engaged for that reason.

Significant weight was given to the benefits of the scheme which were considered to significantly and demonstrably outweigh any harm that was identified. The site was sustainably located.

Silverstone – Appeal Ref. 2183859 (SOS Decision)

The inspector considered that a number of policies of the saved Plan which had time expired in 2006 were out of date.

It was stated that policies that restrained development outside settlement boundaries, and consequently put a restraint on the housing supply, conflicted with the aims and policies of the NPPF.

The same conclusion was drawn to other policies which were relevant to the supply of housing.

The LPA could not demonstrate a 5-year supply.

Inspector considered that for a site to be considered 'deliverable' and thus included in the 5-year supply calculation, it did not need to benefit from planning permission.

The presumption in favour of sustainable development was applied and the appeal allowed.

Whetstone – Appeal Refs. 2193758 and 2193761

The Inspector concluded that the LPA could demonstrate 5-year housing land supply and that, in accordance with para.49 of the NPPF, the relevant policies for the supply of housing were up to date.

Despite this, the Inspector also reasoned that applications for housing should be considered in the context of the presumption in favour of sustainable development.

Limited weight was given to a saved policy (Plan had time expired) because it did not allow for the decision-maker to balance the benefits of development against the harm. The policy stated that planning permission will not be granted for built development which would have a significant adverse effect on the appearance and character of the

landscape. In effectively preventing any significant housing development in the countryside, the Inspector found it to be inconsistent with the balance that is required in the NPPF.

In summing up, the Inspector found that the proposal would not have a significant adverse effect on the character and appearance of the surrounding countryside. Also, the need to retain countryside was outweighed by the benefits that the proposal would provide in terms of additional housing in a sustainable location.

Coleman vs Secretary of State

The case involved a windfarm application and assessed the weight given to policies of time expired plans.

In addition to housing land supply, where a Councils Local Plan is time expired, the degree of weight that can be given to relevant saved policies of the Plan depends on the consistency of those policies with those of the NPPF.

Any inconsistency between saved policies and the NPPF would render them out of date and cause the approach as set out in para.14 of the NPPF to be engaged i.e. the presumption in favour of sustainable development. This is unless specific policies of the NPPF indicate development should be restricted.

The recent High Court judgement considered this approach in detail:

(Nita Colman V (1) Secretary Of State For Communities & Local Government (2) North Devon District Council (3) RWE NPower Renewables Ltd (2013))

The Inspector concluded that the relevant policies were not up to date and therefore carried less weight than the presumption in favour of granting consent set out in the NPPF.

The High Court judgement is relevant to other restrictive policies, for example on landscape and conservation, which are often unduly restrictive and do not afford the decision-maker the ability to balance the merits/benefits of a proposal against any identified harm.

Honeybourne – appeal ref. 2171339

Inspector notes that the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to “boost significantly the supply of housing” would clearly conflict with the NPPF.

It was considered that the residual ('Liverpool') approach was inconsistent with Planning for Growth and the NPPF (para. 47) to meet any housing shortfall by spreading it over the

whole plan period. It was concluded that it was better to meet the shortfall sooner rather than later. Moreover, if the buffers are brought forward into the first 5 years as in the NPPF, so also should the shortfall. Inspector could not agree with the Council's use of the residual method and concluded the 'Sedgefield' approach should be used.

Winchcombe – appeal ref. 2183317

The LPA could not demonstrate a 5-year housing land supply. Although the site was located outside the settlement boundary the inability to demonstrate a 5 year housing supply outweighed this argument. The Inspector concluded that the development was required as a means of meeting the housing needs of the Borough.

Although the Inspector identified adverse impact on the adjacent Special Landscape Area the overall impact was considered to be of limited significance. Significant harm to the landscape of the AONB was also identified by the Inspector however it was ruled that the landscape factors had to be balanced against the significant economic, social and environmental benefits of the proposal. In conclusion, the balance of considerations was "clearly in favour of granting planning permission".

Shotton – appeal ref. 2163206

The judge presiding over the High Court challenge rejected the Council's claim that the SOS approval last year for 800 homes would prejudice its emerging local plan.

The inspector, the judge said, had been required to assess unmet housing need in the area and his conclusion that 11-12,000 new homes would be required in the area over a 20-year period - rather than the 8,000 contented for by the council - was "unimpeachable". The LPA were significantly under-performing on their housing supply and could not demonstrate 5-years' worth of land for housing.

The council argued that planning permission should have been refused on prematurity grounds in that such a large development carried the risk of pre-empting or prejudicing consideration of the area's emerging local development plan. There were also claims that it ran contrary to the Localism Act.

However, the judge said objectors to the scheme had been given "every opportunity" to take part in the planning process and the inspector was entitled to conclude that the need for new housing outweighed any potential harm the development might cause to the emerging plan.

The law did not require that a "blanket stop" be put on developments that might impact on the formulation of future policy and could not be used as "a weapon for those who wish to inhibit development, in the hope that planning policy will change in the future to one which is more in line with their wishes".



Appeal Decision

Inquiry held on 23, 24 and 25 July 2013

Site visit made on 25 July 2013

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 13 August 2013

Appeal Ref: APP/J1860/A/13/2194904

**Land off Mistletoe Row, Oldwood Road, Tenbury Wells,
Worcestershire, WR15 8XA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Kensington and Edinburgh Estates/WM Housing Group against Malvern Hills District Council.
 - The application Ref 12/00876/OUT, dated 8 June 2012, was refused by the Council by notice dated 5 April 2013
 - The development proposed is outline application comprising a residential development of 44 dwellings (including 18 affordable dwellings), public open space together with associated roads and parking. Access taken from existing access off Oldwood Road. Replacement field access.
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Decision

1. I allow the appeal and grant outline planning permission for a residential development of 44 dwellings (including 18 affordable dwellings), public open space together with associated roads and parking. Access taken from existing access off Oldwood Road. Replacement field access, at Land off Mistletoe Row, Oldwood Road, Tenbury Wells, Worcestershire, WR15 8XA in accordance with the terms of the application, Ref 12/00876/OUT, dated 8 June 2012, subject to conditions 1) to 16) on the attached schedule.

Procedural Matters

2. The application was in outline with all matters reserved except access. The access for general use is onto the existing Mistletoe Row development, a rural exception site that is complete and occupied. There is to be a field gate directly onto Oldwood Road for access to remaining agricultural land.
3. The appeal was made against the Council's failure to determine the application within the prescribed period. In fact, the Council state that they had not received formal notification of the appeal by the time of the Committee meeting that resolved to refuse planning permission. A Refusal Notice was issued. In order to be consistent with the terms of the S106 undertaking, this appeal is taken to be against that refusal of planning permission.
4. A formal site inspection took place after the close of the Inquiry encompassing footpaths, roads and the private land of the site, and this covered all significant vantage points referred to in evidence. Unaccompanied visits had been made after the previous two sitting days to view other areas of the town and its surroundings.

Main Issues

5. These are;
 - The principle of development having regard to the presumption in favour of sustainable development.
 - The accessibility of the site location for this form of development.
 - The effect of the development on the character and appearance of the area.
 - In the planning balance, whether any adverse impacts significantly and demonstrably outweigh the benefits.

Reasons

Principle of Development

6. The site is outside the settlement boundary and in an area where policies of restraint apply. The appellant points to appeal Decisions at Rushwick, in the same Council area (Refs; APP/J1860/A/12/2187934 and /13/2193129) where the Inspector recorded the Council's acceptance that their policies on the supply of housing cannot be considered up-to-date as the Development Plan was prepared to meet housing requirements only to 2011. It is agreed by the parties to this appeal that paragraph 14 of the National Planning Policy Framework is engaged for that reason.
7. That paragraph states that at the heart of the Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. The site is not covered by footnote 9 and the paragraph goes on to say, with regard to decision taking, that where the development plan is absent, silent or relevant policies are out-of-date, as here, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. That exercise will be carried out as a planning balance following consideration of the remaining two main issues.

Accessibility

8. The Council's objection as part of the first reason for refusal is that the site does not benefit from conventional access to the local bus services and that the footway between the site and Morningside is narrow and unsuitable in its present form. Saved Local Plan Policy DS3 seeks development that will not undermine objectives for sustainable transport. Proposals should demonstrate that consideration has been given to reducing the need to travel and securing access to the development by public transport or by other alternatives to the car. Oldwood road does not appear to have a regular bus service, with buses only serving the school almost opposite the site at the beginning and end of the school day. The nearest usable services are on Bromyard Road to the east.
9. The planning history of the rural exception site is relevant to this consideration, as it shares the same accessibility arrangements as the appeal site. The Framework defines rural exception sites as being small sites used for affordable housing in perpetuity where sites would not normally be used for housing. That is usually taken to mean a location outside the settlement where housing would not be permitted as a matter of policy, as here. Such a location might

bring with it an element of being less well located for access to services for that reason, but a balance would be clearly struck in the decision. In this case there is no evidence to suggest that the decisions for both 20 dwellings and the later 33 were taken on a balance that included the matter of accessibility as a negative aspect, and an intervening refusal did not cite this as a shortcoming, referring instead to access to play provision which was solved with the inclusion of on-site provision. It is also the case that the highway authority did not raise insurmountable objection to the footway or accessibility generally.

10. Of the options open to future residents, it is not reasonable that the walking route should be by turning south out of the site onto Oldwood Road and by way of the footpath links to either the school or to Wheeler Orchard. Apart from being counter-intuitive regarding the initial direction, the route involves difficult stiles and is not an all-season one. Future development of the southern housing site would however overcome some of the drawbacks and would provide choice, but this route would remain indirect.
11. More likely is a route involving turning left onto Oldwood Road and walking down the left hand footway, crossing to Redgate Avenue and thence through the link to Bromyard Road. In addition to giving access to buses and the Co-op shop there, this would be a more pleasant route to the town centre and not very much longer than by way of the main road. Were the Morningside site to be developed there would be some positive changes to the main road route resulting along its frontage.
12. The footway does appear somewhat narrow, but investigation of access chambers to services indicated that there is a degree of overgrowth of vegetation causing much of this problem. There appears to be scope for widening in places, and for a hard surface to be formed across the opposite highway verge onto Redgate Avenue with dropped kerbs. The route would remain alongside a main road, but that is not unusual and the short length between the site entry and either Redgate Avenue, or, longer term, an improved frontage to the Morningside site would be acceptable.
13. Also whilst there appears no doubt that buses do stop outside the Co-op shop on Bromyard Road, there is no stop visible, much less any timetable. There are clearly areas requiring improvement, but funding sought by the highway authority and included within the submitted S106 Undertaking would be used to improve the footway and signage. With that provision, it is concluded that the site should be regarded as being in an accessible location, whether or not the other two sites are developed. Development of either or both of those other sites would provide scope for further improvements and a choice of reasonable walking routes and would make an already satisfactory situation better. The appeal proposal therefore accords with the requirements of saved Local Plan Policy DS3 and with Section 4 of the Framework on promoting sustainable transport, through being able to provide walking routes that are acceptable in both distance and quality.

Character and Appearance

14. Saved Local Plan Policy DS3 sets out general development requirements that include the location of the development being appropriate, the safeguarding of features of the landscape, prominent views and the landscape character of the area. The Proposed Submission Document – Consultation Version of the South Worcestershire Development Plan contains at Policy SWDP25 the need to

- demonstrate that, among other things, the development is clearly appropriate to and integrates with the character of the landscape setting.
15. The site is currently cultivated farmland extending further from the road than the present rural exception site, whether or not described or intended as a 'Phase I' and 'Phase II'. Whilst the rural exception site almost abuts the settlement boundary in that the main road separates the two, the appeal site is clearly further from it and is rightly considered to be within the open countryside where policies of restraint apply. The Council has referred to the exceptions in paragraph 55 of the Framework, but these are more usually looked at in relation to applications for solitary, isolated, houses.
 16. The nature of the land running down a valley system towards the junction of Morningside and Oldwood Road has been variously described as a 'green wedge' or 'green tongue' although it has no particular designation as performing a policy-backed function. The undeveloped space between Berrington Road/Morningside and Oldwood Road is not repeated between the latter and Bromyard Road and the Council's suggested southern site would further fill-in that area. However, the existence of the 'green tongue' of land is a pleasant feature and it does perform a separating function. That function is particularly evident to the west of the main valley where there is public access along a footpath. To the east there is to be building at the Morningside site, and there is already the rural exception site with its development in depth, as well as other more sporadic development along Oldwood Road.
 17. As the 'tongue' widens away from the town, its urban role as a separator and in bringing countryside into the built-up area lessens, as it becomes more akin to true countryside. Hence its role is more to do with its length and penetration of the built-up area than its width and it is concluded that this role does not necessarily rely on the area of the appeal site remaining within it.
 18. Building on the presently open farmland would cause visual harm and that is accepted by both main parties. The proximity of the footpath and views from it would mean that the development would be plainly seen. However, much of those views would already encompass the rural exception site as a backdrop and that does not presently appear as an attractive or mature development, although when the planting grows that would change. The views of the Town Council's representative are concurred with that there is an over-dominance of parking and hard areas, and the arrangement of the dwellings is not well related to the open space to the rear, being more arranged along the road frontage. There is as a result an isolated block of dwellings adjoining the field gate to the present appeal site. Development of the appeal site is an opportunity to make-good this unresolved rear area, integrating the car parking areas more within an overall layout.
 19. The Council refers to a 'wayside' form of development being more desirable than what is seen as development-in-depth brought about by the appeal proposals. That is clearly not the same as 'ribbon' development, the latter being similar and regular whereas 'wayside' can be characterised as more varied in type and regularity. However, as just stated, the rural exception site does not conform to this 'wayside' aim and there is every likelihood of the Morningside site not doing either, as the 73m contour referred to as the extent of building is some way into the site. No such form of development is evident on the east side of the road and the southern site will further consolidate development-in-depth. None of this can be said to cause harm. The

shortcomings in the layout of the rural exception site could be improved upon in views from the main road as part of the entry to the town as well as from the 'green tongue'.

20. In conclusion on this main issue, there will be adverse effects from building on open land, but these are on balance, only low adverse, and there is scope for realising the visual benefits of a well designed and laid-out scheme making good some of the harm that has already taken place. The proposal would satisfy the requirements of Local Plan Policy DS3 on the protection of the landscape character and similar requirements emerging in the South Worcestershire Development Plan Policy SWDP25.

Planning Balance

21. The harm that has been identified above is a low adverse effect on the landscape character of the area, but only through building on currently open agricultural land, with sufficient area, and importantly length, of open 'green tongue' remaining to perform its function. A loss of foraging land for wildlife should also be included as minor harm, given the remaining land available.
22. The benefits can be summarised as follows, utilising the appellant's scale for clarity;
- Improvements to the footway that are required to make this development acceptable but would benefit the residents of the rural exception site. This is a significant benefit.
 - Improvements to bus stops and information that are required to make this development acceptable but would benefit existing users in a wide area either side of Bromyard Road. This is a considerable benefit.
 - Flood prevention measures that, through incorporating provision for climate change, would have an immediate beneficial effect, but reducing over time to the point where the climate change provision is required to only mitigate the effects of development. This is of some benefit.
 - The provision of bat and bird boxes would not be a direct replacement for lost foraging land, but is a benefit that would not otherwise be provided. This is of some benefit.
 - The 'village green' would be available for use by existing residents of the rural exception site which appears to have limited accessible green areas. This is a considerable benefit.
 - The unresolved rear area of the rural exception site and the isolated block by the access gate would be improved by the addition of well designed further dwellings and landscaping, secured through the consideration of reserved matters. This is a significant benefit.
 - The intended provision, through the particular 'tighter than usual' timescales for starting secured by condition, of market and affordable housing at an early date. The former would be in line with the aim of the Framework and Ministerial statements on the need to boost significantly the supply of housing and the latter would assist in providing accommodation quickly, of value given the doubts expressed over the timescale for both the Morningside site and the southern site. This is a considerable benefit.

23. In addition, and as made clear in paragraph 7 of the Framework, there are three dimensions to sustainability;
- *An economic role*, where the development would be on land of the right type, which is available, and in the right place and at the right time to support growth generally and assist in maintaining the viability of Tenbury Wells as a settlement and the services it provides.
 - *A social role*, through the meeting of needs for present and future generations, assisting through the support that this will bring for the use of services, and the social life of the town. The provision of affordable housing among market housing will foster social cohesion which together with the existing rural exception site would help provide a balanced community.
 - *An environmental role* has been set out previously and the net result of the development would be beneficial, with housing placed in an accessible location, allowing access to transport and services other than by car, assisting in a general movement towards a low carbon economy.

The proposal would therefore further the aims of promoting sustainable forms of development, and significant weight attaches to this.

24. In conclusion, and based only on the matters detailed in the main issues above, it is concluded that the limited harm identified does not significantly and demonstrably outweigh the benefits, the terms of the test in paragraph 14 of the Framework. In fact it is the benefits of the scheme that significantly and demonstrably outweigh the harm such that at this point in the Decision it is concluded that the development should be permitted.

Other Considerations

25. Notwithstanding the findings of the Rushwick Inspector, the Council now say that the present appeal is the first in which they have offered detailed evidence on the five year supply 'target' and the detailed components of the 'supply' and where they challenge evidence proffered by an appellant.
26. The Council rely on the target figure going forward for scrutiny in the emerging South Worcestershire Development Plan. Details of the inter-relationship of the three authority's requirements were given and the emerging plan is said to reflect up-to-date need and the duty to co-operate. Paragraph 216 of the Framework says that from the day of publication, decision-takers may give weight to relevant policies in emerging plans according to three considerations. That approach was re-iterated by the Parliamentary Under-Secretary of State for Communities and Local Government in a debate of 17 July 2013 regarding the weight afforded emerging plans increasing according to their progress.
27. With regard to the three considerations in paragraph 216, the stage reached by the South Worcestershire Development Plan does allow the level of weight generally to be increased. Many policies of the emerging plan would be accorded this increased level and Policy SWDP25 has been dealt with in that way earlier in this Decision. However, moving on to the second bullet point, there are significant unresolved objections to the very parts of the plan that are pertinent to consideration of housing targets, which lowers considerably the weight that can be accorded. The third bullet point is then in real doubt as to whether the figures being put forward would be consistent with the aims of the

Framework to boost significantly the supply of housing and to meet the full objectively assessed need.

28. There seems some confusion over the use elsewhere of the terms 'objectively assessed' and 'objectively tested', but it can be taken that the Council has objectively assessed the need. However, until that assessment has been tested through the Examination in Public process, it is far from clear that this assessment meets the *full* need. As a result it is concluded that the figures in the emerging South Worcestershire Development Plan should be accorded insufficient weight at this stage to be the target for five year housing land supply purposes in this appeal.
29. Other sources of possible targets have been considered. The Phase 2 Regional Strategy figure is derived from an evidence base between 2001 and 2003 and whilst subject to scrutiny in public, now stands a real risk of being out of date. The appellant sets out the problems with using the latest household projections, as they may be over-influenced by the state of the housing market at the time, and that should not be a reliable base for the future. The 2008 figures have been used in other appeals and in the absence of local figures for such as second homes, for which the Malvern Hills area may well be attractive, should give a robust figure when the households to dwellings conversion is carried out.
30. Be that as it may, the evidence is that once the conclusion has been reached that the emerging plan figures should not be used, the Council cannot demonstrate a five year supply of housing land even with a 5% buffer and with all other considerations on supply going in their favour. Those supply considerations contain scope for much doubt due to the predictive nature of the exercise, and of the many sites and decisions referred to, only the Morningside site and the southern site were visited. Conclusions on lapse rates, windfalls, the inclusion of proposed site allocations, build-out timetables and other possible constraints on supply can be left for the South Worcestershire Development Plan Examination in Public, which is the proper forum for detailed testing.
31. As previously stated, this conclusion, resulting from the limited weight that can, at present, be placed on the emerging South Worcestershire Development Plan, is not decisive in the determination of the appeal, which is set out in the planning balance above, but adds weight to it.

Conditions and Undertaking

32. Conditions had been agreed between the main parties and set out in a Statement of Common Ground. Of note, and a matter to which weight has been attached in this decision as a benefit, is the shorter time scales for reserved matters. It is appropriate and necessary to attach conditions requiring details of levels, roads and highway drains with requirements over timing, and a condition on archaeology. In order to protect the living conditions of existing residents, control should be exercised on hours of operation and parking during the building phase, as well as a requirement for wheel washing in that phase to ensure no mud is left on the highway. It was agreed that there is no need to attach the suggested condition on driveways and service roads as the approved plan referred to will only be put forward at reserved matters stage. Control of the site entry and that to the remaining fields is however appropriate now.

33. Sustainable drainage and the likelihood of benefit to an area that has suffered flooding through run off and rising river levels has been taken into account in the decision, and therefore a condition is required to secure this provision. Similarly, a condition requiring details and implementation of bat and bird boxes is required. In order to protect wildlife, a condition is required to control the removal of the hedgerow, and re-wording was discussed to ensure a proportionate approach and timing.
34. A condition seeking details of the provision of sustainability measures, such as energy reduction and generation, was resisted by the appellant, saying that this can be deferred to reserved matters stage. Whether or not the 'where appropriate' requirements of Policies QL1 and DS3 apply is a matter between the Council and the appellant in the discharge of the condition, but to avoid the 'bolted on' approach that appears to have been taken with the use of solar panels at the rural exception site, it is considered essential that the condition be attached now to allow the detailed design of the dwellings to incorporate sustainability measures as an integral part of the design.
35. A condition is required listing the drawings as, otherwise than as set out in this decision and conditions, it is necessary that the development be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. As this is an outline application the wording of the condition should make clear that it is only in respect of those matters not reserved for later approval, in this case access.
36. A signed and dated unilateral undertaking was presented making provision for the delivery of the affordable housing to which weight has been attached in this decision. An open space contribution is included along with the contribution to improve the accessibility of the site. The figure for the latter has been suggested by the highway authority and there is a definite need for works to be carried out to make the development acceptable. The fact that the works would benefit existing residents has been taken into account in the appeal decision. The undertaking satisfies the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010, being necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.

Conclusion

37. Paragraph 14 of the Framework is engaged due to the Development Plan being out of date with regard to the supply of housing. The required balancing exercise has shown that the limited harm identified does not significantly and demonstrably outweigh the benefits and that in fact the benefits significantly and demonstrably outweigh the harm. Those benefits can be secured by conditions and the undertaking and with those provisions and for the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Hugh Richards who called;	of Counsel
Rosie Murray BA(Hons) MRTPI	Malvern Hills District Council
Arthur Amos BSc(Hons), PGDipLD, CMLI	Arthur Amos Associates
Simon Jones BA DipTP MRTPI	Malvern Hills District Council

FOR THE APPELLANT

Satnam Choongh who called;	of Counsel
Charles Potterton BA DipLA CMLI	Potterton Associates Ltd
Philip Rawle BSc(Hons) MA DipTP MRTPI	PRP Consultants Ltd

INTERESTED PERSONS

E Hudson A Jenyon R Routledge	Tenbury Wells Town Council Resident Resident
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DOCUMENTS

Document 1	Statement of Common Ground – Planning
Document 2	Statement of Common Ground – Landscape
Document 3	Letter and Comments on Case submitted by R Jenyon
Document 4	Replacement Appendix 05a and Appendix 03 Photo 15a to A Amos Proof of Evidence
Document LPA1	Table 2 (RM4)
Document LPA2	Table 2 update (RM5)
Document LPA3	DCLG Decision and Inspector’s Report Hailsham APP/C1435/A/12/2186147
Document LPA4	Wainhomes (South West) Holdings Limited v Secretary of State for Communities and Local Government
Document LPA5	Hansard 17 July 2013
Document LPA6	e-mail 17 July regarding stakeholder consultation
Document LPA7	SWDP Housing Background Paper 30 November 2012
Document LPA8	Interim Position Statement 5YHLS 25 June 2013
Document LPA9	Opening submissions
Document LPA10	Consideration Sheet Exception Site 33 dwellings
Document LPA11	Historic Housing Delivery handwritten sheet
Document LPA12	Regional Spatial Strategy for the West Midlands

Document	LPA13	S106 contributions justifications
Document	LPA14	Developability Panel Sites Tenbury Wells
Document	LPA15	Closing Submissions
Document	APP1	Appeal Decision Kings Sutton APP/Z2830/A/13/2194278
Document	APP2	C Potterton 456/A/21 and 22
Document	APP3	Bus service information
Document	APP4	Northern Area Development management Committee 3 July 2013 re. Morningside site
Document	APP5	Northern Area Development management Committee 3 July 2013 re. The Crown, Martley
Document	APP6	Opening Submissions
Document	APP7	Minister of State for Housing and Planning 15 June 2004
Document	APP8	Time estimates for delivery of housing
Document	APP9	Examination of the SWDP, Inspector's Matters, Issues and Questions
Document	APP10	MHDC Annual Monitoring Report December 2006
Document	APP11	MHDC Annual Monitoring Report December 2007
Document	APP12	MHDC Annual Monitoring Report December 2008
Document	APP13	MHDC Annual Monitoring Report December 2009
Document	APP14	Closing Submissions
Document	APP15	S106 Undertaking dated 25 July 2013
Document	APP16	73m contour drawing Morningside site

Schedule of Conditions

- 1) Approval of the details of the appearance, layout and scale of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 2) Application for the approval of the matters reserved by conditions of this permission shall be made to the Local Planning Authority before the expiration of 12 months from the date of this permission. This shall be in the form of a 'reserved matters' application. The development hereby permitted shall be begun not later than whichever is the latest of the following dates:
 - 1 The expiration of 12 months from the date of this permission, or
 - 2 The expiration of 12 months from the final approval of the reserved matters, or
 - 3 In the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) No development shall commence until a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings approved and a datum point outside of the site, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 4) No development shall commence until foul and surface water drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the

development, have been submitted to and approved in writing by the Local Planning Authority, and the scheme shall be implemented in accordance with these approved details before the first of the dwellings are occupied.

- 5) No demolition/ground works/construction work shall take place outside the following hours:
Monday to Friday 07.30-18.00 hrs
Saturdays 08.00-13.00hrs.
There shall be no such work on Sundays or Bank or Public Holidays.
- 6) No development shall commence until a programme for the removal of hedgerows, together with proposals for a survey for nesting birds by an appropriately qualified ecologist, has been submitted to and approved in writing by the Local Planning Authority. Should the actual timing of intended removal require it, a report and recommendations prepared by that ecologist shall be submitted to and approved in writing by the Local Planning Authority before any such removal occurs and the removal shall be carried out in accordance with the recommendations as approved.
- 7) No other works on site shall commence until visibility splays have been provided from a point 0.6m above ground level at the centre of the new access to the adjoining farmland and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 8) No development shall commence until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the scheme as been constructed in accordance with the approved drawings.
- 9) No development shall commence until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved in writing by the Local Planning Authority and such provision is to be retained and kept available during the construction of the development.
- 10) No development shall commence until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and such provision shall be operated and maintained during the construction of the development hereby approved.
- 11) The development shall not be first occupied until the roadworks necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 12) No development shall commence until details of the roadworks proposed including the specification of making good of surfacing, grassing and landscaping, has been submitted to and approved in writing by the Local Planning Authority. The approved roadworks including the making

good of surfacing, grassing and landscaping shall be completed within a period of two years from the commencement of work on the site, or another period agreed in writing by the Local Planning Authority.

- 13) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:

- 1 The programme and methodology of site investigation and recording.
- 2 The programme for post investigation assessment
- 3 Provision to be made for analysis of the site investigation and recording.
- 4 Provision to be made for publication and dissemination of the analysis and records of the site investigation
- 5 Provision to be made for archive deposition of the analysis and records of the site investigation
- 6 Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Written Scheme of Investigation.

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 14) No development shall commence until details of sustainability measures (including energy, waste, recycling and water management) to be incorporated into the design of the dwellings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented prior to the occupation of each dwelling, and shall be retained operating as approved thereafter.
- 15) No development shall commence until details of the location and numbers of bat and bird boxes have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and the bat and bird boxes shall be retained thereafter.
- 16) The development hereby permitted shall be carried out in accordance with the following approved plans: 1204/sit/01, 02 and 03 but only in respect of those matters not reserved for later approval.

Judgments

QBD, ADMINISTRATIVE COURT

Neutral Citation Number: [2013] EWHC 597 (Admin)

Case No: CO/12207/2012

IN THE MANCHESTER CIVIL JUSTICE CENTRE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

Manchester Civil Justice Centre,

1 Bridge Street West, Manchester,

Greater Manchester,

M60 9DJ

Date: 25/03/2013

Before:

THE HONOURABLE MR JUSTICE STUART-SMITH

Between:

WAINHOMES (SOUTH WEST) HOLDINGS LIMITED

Claimant

- and -

**(1) THE SECRETARY OF STATE FOR COMMUNITIES AND
LOCAL GOVERNMENT**

Defendant

(1) WILTSHIRE COUNCIL

(2) CHRISTOPHER RALPH CORNELL AND SARAH CECILIA CORNELL

Interested Parties

(Transcript of the Handed Down Judgment of

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David Manley Q.C (instructed by **Ashfords LLP**) for the **Claimant**

Lisa Busch (instructed by **The Treasury Solicitor**) for the **Defendant**

Hearing date: 11 March 2013

Judgment

As Approved by the Court

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Mr Justice Stuart-Smith: Introduction

1. This is a claim under s.288 of the Town and Country Planning Act 1990. The Claimant ("Wainhomes") challenges a decision dated 5 October 2012 by which inspector Mike Robins dismissed an appeal against the non-determination by Wiltshire Council ("the Council") of a proposal to build up to 50 houses on land at Widham Farm, Widham Grove, Station Road, Purton, in Wiltshire. The inquiry was undertaken on the appeal of Mr and Mrs Cornell, who are now interested parties in these proceedings, against the Council's non-determination of their application for planning permission. Wainhomes has an interest in the land the subject of the challenge by reason of an option agreement dated 13 November 2012.

2. The inspector identified as one of the main issues in the case, whether or not there were material considerations that would outweigh the development plan presumption against development in the countryside. Central to that issue was whether or not there was a supply of specific deliverable sites sufficient to provide five years worth of housing against the Council's relevant housing requirements with an additional buffer of five per cent to ensure choice and competition in the market for land, as required by paragraph 47 of the National Planning Policy Framework ("NPPF"). As discussed in greater detail below, that issue involved consideration of whether the strategic sites included in Wiltshire's draft Core Strategy and AMR should be included by the inspector when determining the supply of deliverable sites over the next five years. The Council contended that they should be included; the appellants said that they should be excluded. After the hearing of the inquiry two decisions by another inspector (Inspector Papworth) were promulgated in relation to sites in Calne, which is also in Wiltshire. Those decisions decided, in materially identical terms, that strategic sites should be excluded from consideration of the supply of deliverable sites. Those decisions were sent promptly to the inspectorate by those who were at that time advising Mr and Mrs Cornell; but they were not considered by Inspector Robins. When he made his decision on 5 October 2012 he found against the appellants and included the strategic sites. Having done so he concluded that a five year housing supply had been shown.

3. By these proceedings Wainhomes advances five grounds of appeal, namely:

i) The inspector failed to have regard to a material consideration namely the two decisions at Calne or give reasons for not following the approach taken in those cases to the five year housing land supply;

ii) The inspector failed correctly to interpret the NPPF;

iii) The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational;

iv) The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding;

v) The inspector made a mistake or otherwise reached a conclusion based on no evidence.

4. In summary, this judgment concludes that:

i) Ground 1 of the challenge is established. The inspector failed properly to exercise his discretion in deciding whether or not to admit the Calne decisions for consideration and failed to give proper reasons for his decision;

ii) The other grounds of challenge fail because when the Decision Letter is read fairly and with the reasonable latitude appropriate to a review of such decisions, it appears that the inspector made no material error of law, reached conclusions that it was open to him to reach on the material he considered, and gave adequate reasons for his decision.

The applicable principles

5. The principles applicable to a challenge under s.228 of the Town and Country Planning Act 1990 have been set out frequently and repeatedly in many decisions including decisions of the highest authority. It is neither necessary nor desirable to provide a comprehensive review in this case, and I merely highlight principles that are directly in point for this challenge.

6. In *Wiltshire Council v Secretary of State for Communities and Local Government and Robert Hitchins Limited* [2010] EWHC 1009 (Admin) Simon J provided a useful summary of the applicable principles at [7-8] which I gratefully adopt without setting it out again. I bear in mind at all times that:

a) Where an expert tribunal (such as a planning inspector) is the fact finding body, the *Wednesbury* unreasonable test will be "a difficult obstacle" and poses a "particularly daunting task" for an applicant under s.288;

b) A decision letter must be read in good faith and as a whole. It should be construed in a practical manner and not as if it were a contract or statute.

7. The scope and extent of an inspector's obligation to provide reasons were explained in *South Buckinghamshire DC v Porter (no.2)* [2004] 1 WLR 1953 by Lord Brown of Eaton-Under-Heywood at [36]:

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

8. A decision maker ought to take into account all matters which might cause him to reach a different conclusion to that which he would reach if he did not take it into account. That includes considerations where there is a real possibility that the decision maker would reach a different conclusion if he did take that consideration into account. If a matter is excluded from consideration and it is clear that there is a real possibility that the consideration of the matter would have made a difference to the decision, a Judge is able to hold that the decision was not validly made. But if the Judge is uncertain whether the matter would have this effect or was of such importance in the decision-making process then he does not have before him the material necessary for him to conclude that the decision was invalid: see *Bolton MBC v SoSE* [1991] P&CR 343, 352-353. This obligation derives from s.70 (2) of the Town and Country Planning Act 1990 which applies to the determination of appeals by virtue of s.79 (4) of the Act: and see *R (on the application of Kides) v South Cambridgeshire DC* [2002] EWCA Civ 1370 at [122-127]. *Kides* establishes that the obligation to have regard to material considerations continues up to the time that the decision maker (in this case the inspector) makes his decision.

9. It is common ground that a previous inspector's planning decision is capable of being a material consideration, though the importance to be attached to a previous decision will depend upon the extent to which the issues in the previous decision and the current decision overlap. In *North Wiltshire DC v SoSE and Clover* [1992] 605 P&CR 137 Mann J addressed the limits of the inspector's obligation to have regard to previous decisions. At page 145 he said that 'an inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision'. Mann J provided what he called 'a practical test for the inspector' which was to ask 'whether if I decide

this case in a particular way, am I necessarily agreeing or disagreeing with some critical aspect of the decision in a previous case?' This guidance cannot simply be applied by rote. S.38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise; and this requirement is reflected and reiterated. The development plan may itself be in a state of flux and development. That being so, previous decisions that were made when the planning regime or development plan were significantly different are likely to be of less materiality than recent decisions made in the same or a closely similar planning context.

10. The Town and Country Planning Appeals (Determination by Inspectors) (Enquiries Procedure) (England) Rules 2000 provides the procedural framework for the conducting of inquiries. They include rules that are intended to ensure that all relevant materials upon which the inspector will make his decision are available both to the inspector and to other parties according to an orderly timetable. The rationale for this procedural framework is self evident: the late submission of additional materials is liable to produce inefficiency, delay, increased expense and, at worst, injustice. However, it is inevitable that there will be occasions when information that is material to an inspector's decision will become available for the first time at a date which prevents compliance with the normal framework and rules. Against that eventuality the inspector has a discretion to admit materials which have not been provided in accordance with the normal procedural timetable. That discretion continues up to the time that he makes his decision. Rule 18 makes express provision for the admission of material after the inquiry has been held and before he has made his decision as follows:

"(2) When making his decision the inspector may disregard any written representations or evidence or any other document received after the close of the inquiry.

(3) If, after the close of an inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the inquiry and which he considers to be material to his decision, he shall not come to a decision without first (a) Notifying [in writing] the persons entitled to appear at the inquiry who appeared at the matter in question; and (b) affording them an opportunity of making written representations to him or of asking for the re-opening of the inquiry. And they shall ensure that such written representations or requests to re-open the inquiry are received by the Secretary of State within three weeks of the date of notification.

(4) An inspector may, as he thinks fit, cause an inquiry to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned within paragraph (3): and where an inquiry is re-opened - (a) The inspector shall send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited;..."

11. The inspector's power to admit material after an inquiry and the basis upon which he should exercise his discretion when asked to consider further material is the subject of Planning Inspectorate Good Practice Advice Notes. Advice Note 07 says at [67]:

"At any point before deciding the appeal the inspector may exercise his/her powers to seek further information from the parties if it is considered necessary to enable a properly informed, and reasoned, decision to be made."

Advice note 10 says (at [7]) that, if new matters arise which are considered likely to be material to the inspector's consideration of the case, the relevant material should be submitted at the earliest possible stage. At [9] the note says:

"The Secretary of State and Inspectors have discretion as to how to treat new materials submitted with or during the consideration of an appeal. They will apply their discretion on the basis of the relevance of the material to the appeal proposal, whether it simply repeats something that is already before the Inspector (for example, rebuttal evidence which adds nothing to what is already recovered in a proof of evidence) and whether it would be procedurally fair to all parties "including interested persons" if the material were taken into account..."

12. These being principles that are relevant to apply in this case, I turn to consider the grounds of challenge.

Ground 1: The inspector failed to have regard to a material consideration namely the two decisions at Calne or to give reasons for not following the approach taken in those cases to the five year housing land supply

13. It is necessary to examine the factual background in more detail to put this ground of challenge in context. For convenient reference, the relevant passages of the Decision Letter are reproduced at Annexe A and are not set out again in the body of this judgment.

Factual background

14. The NPPF was introduced in March 2012. Under the heading "Delivering a wide choice of high quality homes", [47] of the NPPF provides:

"To boost significantly the supply of housing, local planning authorities should:

- Use their evidence base to ensure that their local plan meets the full, objectively assessed needs for market and affordable housing in the housing market area as far as is consistent with the policies set out in this framework, including identifying key sites which are critical to the delivery of the housing strategy over the planned periods;
- Identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of five per cent (moved forward from later in the planned period) to ensure choice and competition in the market for land..."

15. A footnote attached to the word "deliverable" in the second bullet point ("Footnote 11") defines what that word means in [47] as follows:

"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within 5 years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."

16. It was central to the appellants' case before the inspector that there was an insufficient supply of deliverable sites and that insufficiency was a material consideration in favour of the appellant's proposal. The importance of the existence or otherwise of deliverable sites sufficient to provide 5.25 years worth of housing against the identified housing requirements was made clear by Tracy Smith, the Council's Area Team Leader, who expressly accepted in evidence that if it were to be concluded that there was a shortfall in the 5 year housing land supply and if it were to be concluded (as the inspector did conclude in the Decision Letter) that

prematurity was not a legitimate basis on which to reject the appeal then development of the appeal site would be permissible in principle subject to satisfactory s 106 contributions being made. She also accepted that the Council was not suggesting that any more sustainable sites existed within the settlement boundaries of Purton, that the site had no constraints that would preclude its development, and that the development of up to 50 units could not be characterised as "large scale". Accordingly, given the inspector's conclusion on prematurity, the sufficiency of the housing land supply was of primary importance.

17. Various different sources of data relating to land supply were available. The appellants favoured the evidence base that had underpinned the dRSS while the Council favoured the approach adopted in the emerging Core Strategy for Wiltshire ("eWCS"). A number of reasons were put forward by the parties in support of their respective positions, which were encapsulated in the witness statements of Mr Stephen Harris, a Chartered Town Planner who gave evidence for the appellants, and Mr Neil Tiley, who gave evidence for the Council and who was the Council's Manager of Monitoring and Evidence within Economy and Regeneration.

18. The inspector set out the competing positions at [11-14] of the Decision Letter. In summary, both parties accepted that the date and projections found in the adopted development plan were out of date. Revised housing requirements were promoted during the development of the dRSS, which was subject to Examination in Public and revision for the version that was published for consultation in 2008. However, because of the Coalition Government's antipathy towards RSSs, it was recognised that although the dRSS had reached an advanced stage it was extremely unlikely to be adopted. In response to this state of affairs, the Council reconsidered the housing requirements for Wiltshire and its reconsideration informed the eWCS. The eWCS had reached the stage of being submitted for Examination in Public but that examination had not taken place. The Council preferred to rely on the eWCS evidence base because extensive consultation had already taken place; but the outcome of the EIP was as yet unknown and uncertain, not least because it was subject to objections to proposed housing numbers and because concerns had been raised which suggested a need for the Council to re-consult.

19. A discrete but important argument related to what sites could properly be regarded as "deliverable" within the meaning of Footnote 11. The Council had included in its calculations 1,657 units from sites identified as "strategic sites" in the eWCS. None of these sites had planning permission. Mr Tiley did not know which, if any, were objected to. Mr Harris gave unchallenged evidence that, to the best of his knowledge, all were subject to objection. Mr Tiley was unable to identify any case in which the Secretary of State had deemed it appropriate to include emerging Core Strategy "strategic sites" in a calculation of the 5 year housing land supply where such sites were subject to objection. At the present hearing, the Court was informed that no such decision of the Secretary of State had been identified but that there are decisions of the Secretary of State going the other way (i.e. excluding strategic sites which were subject to objection from inclusion in the calculation of the 5 year housing land supply). No further details about these decisions have been provided.

20. The potential impact of this dispute about strategic sites on the raw figures as found by the inspector emerges clearly from the evidence of Mr Harris for the present proceedings. Inspector Robins included strategic sites in his calcula-	Housing Requirement	5 year Housing Requirement	Housing Supply	Assessment (years)
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tions, which led him to produce a table at [52] of the decision letter as follows:				
Plan/Policy				
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3
eWCS North and West HMA	15,249	5,083	6292	6.2

In other words, adopting the Appellant's favoured approach by reference to the dRSS North Wiltshire would support the conclusion that there was a shortfall in supply but adopting the Council's favoured approach by reference to the eWCS North and West HMA would support the conclusion that there was not.

21. Mr Harris, whose evidence is not contradicted, says that "for North Wiltshire the total supply from [strategic sites] in the next 5 years was 990 dwellings ... and 1,657 dwellings for the North and West HMA ...". The effect of excluding these dwellings upon the inspector's table is shown in the right hand column of the adjusted table below:

Plan/Policy	Housing Requirement	5 year Housing Requirement	Housing Supply	Inspector Robins' Assessment (years)	Adjusted assessment excluding strategic sites
dRSS Rest of Wiltshire	3,024	1,008	1522	7.5	7.5
dRSS North Wiltshire	10,684	3,549	3052	4.3	2.9
eWCS North and West HMA	15,249	5,083	6292	6.2	4.6

In other words, if the strategic sites are excluded there is a much greater shortfall by reference to the dRSS for North Wiltshire and there is also a shortfall by reference to the eWCS North and West HMA.

22. During the inquiry the inspector was referred to three previous decisions which touched on the issue of inclusion or exclusion of strategic sites. The decisions pre-dated the introduction of the NPPF and were referred to at [22-23] of the Decision Letter. The decisions were:

i) The decision of Inspector Youle relating to land at Meadow Lane, Ruands, in Northamptonshire dated 18 January 2010. At [41] of his decision the inspector referred to "impending consents and DPD allocation" which the Council had brought into account in its calculation of the housing land supply. The inspector said:

"This includes a number of sites which are proposed as housing allocations in the Preferred Options versions of the TTP and the RAP. However, these Plans have not been subject to independent testing through an examination and several of the sites do not appear to have planning permission or to be allocated for housing in the Local Plan. In addition, some sites appear to have constraints which could impede deliverability. Consequently I have not been given sufficient evidence to indicate that these sites can be regarded as being

available, suitable and achievable as required by PPS3. Therefore, it has not been demonstrated that a five year supply exists. ";

ii) The decision of Inspector Graham relating to land at Moat House Farm, Marston Green, in the area of Solihull MBC dated 21 February 2012. At [11] of her decision she addressed the question of Draft Local Plan sites, which the Council had brought into account in its calculation of the housing land supply. The inspector said:

"The draft Local Plan identifies proposed sites for 1,445 net additional dwellings, and the Council maintains that these should be taken into account when calculating the 5 years supply position. However, it is important to bear in my mind that this emerging Local Plan is still only a draft, which has yet to be the subject of further consultation, representations, and Examination in Public. Paragraph 54 of PPS3 explains that to be considered deliverable, sites should be available, suitable and achievable at the point of adoption of the relevant Local Development Document. There can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan, which in any event will not be adopted before 2013. As the situation stands at present, I consider that these sites should not be included when calculating the current five year land supply position"

iii) The later decision of Inspector Graham relating to land at Park Road, Malmesbury, Wiltshire dated 15 March 2012. At [18] of her decision she accepted that "the Council's 2010/2011 Annual Monitoring Report (AMR) provides the logical starting point for assessing the supply of deliverable housing sites." She then considered specific sites, and at [23] she addressed the inclusion of three strategic sites at Chippenham which the Council had brought into account in its calculation of the housing land supply. The inspector said:

"It is fair to note that all three sites have physical, environmental and infrastructure constraints that will need to be addressed. However, the council has liaised with the developers of each, and obtained delivery trajectories which update the information provided in AMR. I see no convincing reason to doubt these revised figures, which indicate that within the five year period an additional 420 dwellings will be provided at the north Chippenham site, and a further 110 at the East Chippenham site. "

23. Certain points may immediately be noted:

i) Each inspector was prepared in principle to treat sites which did not yet have planning permission as potentially satisfying the PPS3 requirements;

ii) The inspectors at Meadow Lane and Moat House Farm identified the fact that the Plans in those cases had not been subjected to Examination in Public as a feature weighing against the inclusion of the sites there listed;

iii) In the Malmesbury decision, the inspector's reservations about the status of two of the sites were resolved by the calling of site specific evidence about their availability and deliverability. By contrast, no such evidence had been called in the other two appeals.

24. In the present case it was not suggested before the inspector and is not suggested now that strategic sites which did not yet have planning permission were necessarily to be excluded from the calculation of the housing land supply. The case advanced before the inspector (relying upon the previous decisions from Meadow Lane and Moat House Farm) was that because the eWCS had not been adopted, sites could not be regarded as available by virtue of their inclusion in the eWCS since their deliverability would be assessed through the Core Strategy process. Inspector Robins dealt with the previous decisions specifically at [22-23] of the Decision Letter. He accepted that he should not prejudge the outcome of the eWCS Examination in Public and that the weight to be ascribed to the eWCS depended upon "the specific stage of prep-

aration of the evidence base and the evidence supporting deliverability." In contrast to what had happened at Malmesbury, no site specific evidence of deliverability was presented to Inspector Robins. Referring to that decision he said that "the Inspector in that case also accepted the principle of including strategic sites." It is evident that he saw the Malmesbury decision as supporting the conclusion (which he ultimately reached) that the strategic sites in the present case should be included.

25. Before Inspector Robins made his decision, two potentially relevant events occurred. First, on 3 September 2012 Mr Harris sent to the inspector a copy of a letter to the Council dated 29 August 2012 from Mr Andrew Seaman, the Senior Housing and Planning Inspector who was to conduct the Examination in Public of the eWCS. That letter raised a number of concerns about the eWCS and its prospects when submitted to the EIP. There were concerns relating to the soundness of the evidence base underpinning the housing chapter and the quality of the sustainability appraisal that had been carried out. Mr Seaman noted that the Council was "undertaking further consultation on its proposed pre-submission changes which will include details of the revised Sustainability Appraisal and an opportunity to comment upon the implications of the [NPPF] and Government Policy for Gypsies and Travellers." He foresaw that the Examination would certainly extend into 2013. This further information was admitted by Inspector Robins. It seems likely that he had it in mind when he said, at [12] of his Decision Letter, that "the Council's ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult."

26. The second potentially relevant event was that Inspector Papworth made two decisions on 18 September 2012. Each decision related to land at Calne, in Wiltshire. Each considered in some depth (and in identical terms) the principles of development to be applied, at and from [9]. At [13-15] Inspector Papworth considered the housing requirement side of the equation established by [47] of the NPPF. He regarded the Malmesbury decision as "an anomaly" and contrasted it with a decision of the Secretary of State at Salisbury which "expressed a different view on a more advanced core strategy." Turning to the state of development of the eWCS he said that it was "advanced inasmuch as an Examination is imminent, but in view of the extent of unresolved objections, including to the adequacy of the provisions for housing, there must remain doubts over the outcome and the consistency with Framework policies on increasing the supply of housing." He held that the assumption that the Regional Strategy will not now be taken further does not materially alter the weight that can be attached to that evidence base relative to that presently informing the emerging Core Strategy"; and he concluded that, having regard to the first bullet point of Framework [47] "it is appropriate to regard the figures derived from the evidence for the Regional Strategy as a robust basis for determining the requirement."

27. Turning to the supply side of the equation at [16], Inspector Papworth took the view that "to ensure a robust appraisal it is necessary to look further at the list of sites as discussed at the hearing." It is apparent that site specific evidence had been presented in relation to some but not all sites, and that no site specific evidence had been submitted in relation to strategic sites, because Inspector Papworth said at [17-18]:

"17. Of the large permitted areas, there does appear to be doubt over the delivery of the former Bath and Portland Stoneworks site given its past history, not being in the 2009/10 Annual Monitoring Report, and little evidence that matters have moved on substantially since. Similarly with the Blue Hills Site, this appears to have been subject to persistent delays and to being put back in time in the successive Annual Monitoring Reports. The delivery timescale for land adjacent to the scrap yard at Trowbridge also appears to be receding and reduction here is appropriate.

18. Other sites with permissions that had been previously dismissed have been brought back into the list, but it is apparent that even with the acceptance of these sites in total, a shortfall is possible. The Council has added 183 units in this category where none were previously included. Footnote 11 of the framework does provide for live permissions to be counted unless there is clear evidence that the schemes will not be implemented within 5 years, for example, they will not be viable, there is no longer a demand for the type of units or sites or sites have long term phasing plans. Clearly those where the permission has expired should not be

included and where land was bought at or near the height of the market, doubts over viability would be legitimate. The prospect of new permissions on new land being required to replace such stalled schemes was discussed. Windfalls have also been significantly increased and that is provided for in paragraph 48 of the framework subject to certain requirements on historic evidence. There appears to be good reason to reduce the figure on that basis as suggested, *Vision and strategic sites are disputed in their entirety, and given the process to be gone through and the doubts over delivery, a degree of caution is appropriate. The requirement is to identify a supply of specific deliverable sites and to be considered deliverable, sites should be available now. These sites cannot truly be described as being available now.* [Emphasis added]

28. Inspector Papworth concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to increase further the shortfall which he had already found to have existed by reference to the various evidence bases even if those sites were included.

29. On 26 September 2012 Mr Harris had a conversation with someone at the relevant PINS team who advised him to send the Calne decisions together with a brief note. As a result of that conversation he sent the Calne decisions by email times at 10:35 that day. In that email he provided the suggested note in the following terms:

"Following our conversation earlier, I understand that the Council has not commented on the letter from Wiltshire Core Strategy Inspector and therefore you do not require any further comment from the Appellant.

We also discussed two appeal decisions which were issued last week for the two sites in Calne, Wiltshire. As they are in the same policy area of North Wiltshire we consider that they are relevant to our appeal as they deal with similar issues. However we are conscious that the Inquiry closed a number of weeks ago. Therefore you requested that we send the decisions to you and you would decide whether or not they can be taken into account on this appeal.

Both of the attached appeals were heard at the same hearing in July this year. The first (APP/Y3940/A/12/2171106/NWF) was for some 154 dwellings and the second (APP/Y3940/A/12/2169716) was for up to 200 dwellings. Therefore both appeals (some 354 dwellings) would meet the 370 dwellings that remain to be planned for in the emerging Core Strategy for Calne. These decisions conclude that:

- The housing requirement to be used is the RSS Proposed Changes;
- The geographical area to determine the supply is the former North Wiltshire;
- Limited weight can be given to the emerging Core Strategy due to the stage it has reached;
- There are concerns on the deliverability of commitments and emerging allocations;
- The appeals would not result in prematurity against the emerging Core Strategy and neighbourhood plan.

Should you require any further information please do not hesitate to contact me"

30. Receipt of Mr Harris' email was acknowledged at 15:50 on 26 September 2012. The only additional comment made by the person acknowledging receipt was the accurate but inconsequential statement that "The Appeals referred to have now been decided and the Decisions issued on 18 September", which Mr Harris obviously knew already.

31. No further response was sent until 14:11 on Tuesday 2 October 2012 when a Case Officer from the relevant team at PINS emailed Mr Harris above a copy of the email with which he had sent the Calne decisions:

"Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector."

32. Inspector Robins' decision was made on 5 October 2012. No reference was made in the Decision Letter to the Calne decisions; nor has any further information or reason been given to explain why Mr Harris' email of 26 September 2012 and the Calne decision he had attached to it were not considered by the inspector.

33. The relevant passages in the Decision Letter are set out in Annexe A. The following features may conveniently be highlighted here:

- i) The Decision Letter addresses the issue of "deliverable" sites and whether strategic sites should be included specifically at [21-24] and [51-54];
- ii) At [21] the inspector's acceptance that allocated sites, including those within emerging plans, could be included was subject to two provisos:
 - a) Acceptance would be "subject to the weight that can be given to that plan and its evidence base"; and
 - b) Acceptance would be "subject to ... the submission of information indicating a reasonable likelihood of them progressing within the five year period."
- iii) At [22] and [24] the inspector accepted that the existence of outstanding objections to sites meant that housing supply from such sites could not be guaranteed; and that he could not prejudge the outcome of the eWCS Examination. He treated these as matters going to the weight that he was able to attach to the Council's assertion that such allocations should be included;
- iv) At [23] he identified the evidential factors supporting his conclusion that exclusion of all the draft allocations was not appropriate, including that the Malmesbury inspector had "accepted the principle of including strategic sites.";
- v) He referred to the Moat House Farm and Meadow Lane decisions at [22]. There was no discussion of the basis or reasoning supporting either of those decisions or the Malmesbury decision. In particular, the Decision Letter does not evidence an appreciation that there was site specific evidence in the Malmesbury decision (but not in the other two) or that this might be a significant factor, despite his statement in [21] that acceptance would be subject to the submission of evidence indicating a reasonable likelihood of sites progressing within the five year period;
- vi) He accepted at [24] that, although exclusion of all the draft allocations was not appropriate, "full weight cannot be given to the precise numbers put forward by the Council"; but he concluded that it was "reasonable to include these sites in absence of specific evidence that they cannot be delivered.";
- vii) At [53], reviewing the contents of his table, he concluded that the Council had shown a 5-year housing supply relative to the dRSS Rest of North Wiltshire figures and the eWCS North and West HMA figures

but had failed to demonstrate adequate supply for the dRSS North Wiltshire Area. He concluded that the weight to be given both to the dRSS figures and the eWCS figures was "somewhat lessened", to a similar degree in each case;

viii) At [54] he stated that he did not rely upon the exact (or raw) figures in his table, but regarded the figures (taken broadly) to demonstrate a 5 year housing supply except in relation to the former North Wiltshire District, where he considered that the 4.3 years, set against an expectation of 5.25 years, did not represent a serious shortfall. As a result, he did not consider that there was an "overwhelming need for development to meet" the specific demand in the former North Wiltshire District. He therefore considered that a 5-year housing supply had been shown.

Discussion

34. The issue for the inspector was whether the strategic sites were "deliverable" as defined by Footnote 11 so that they fell within the meaning of [47] and should have been included in the assessment of housing land supply. Footnote 11 is not entirely straightforward, but the following points are relevant to its interpretation:

i) It is common ground that planning permission is not a necessary prerequisite to a site being "deliverable". This must be so because of the second sentence of Footnote 11 and because it would be quite unrealistic and unworkable to suggest that all of the housing land supply for the following five year period will have achieved planning permission at the start of the period;

ii) The parties are agreed that a site which is, for example, occupied by a factory which has not been derequisitioned, or which is contaminated so that housing could not be placed upon it, is not "available now" within the meaning of the first sentence of Footnote 11. However, what is meant by "available now" is not explained in Footnote 11 or elsewhere. It is to be read in the context that there are other requirements, which should be assumed to be distinct from the requirement of being "available now", though there may be a degree of overlap in their application. This suggests that being available now is not a function of (a) being a suitable location for development now or (b) being achievable with a realistic prospect that housing will be delivered on the site within five years and that development of the site is viable. Given the presence of those additional requirements, I would accept Ms Busch's submission for the Secretary of State: "available now" connotes that, if the site had planning permission now, there would be no other legal or physical impediment integral to the site that would prevent immediate development;

iii) Questions as to the viability of the proposed development or, for example, whether a developer had been identified or was in a position immediately to start work, would go to the question whether there was a realistic prospect of delivery within five years, but not to the question whether the site was available now. For the same reason, the fact that a site does not "offer a suitable location" does not affect whether or not it is "available now", suitability of the location being a separate requirement;

iv) Where sites without planning permission are subject to objection, the nature and substance of the objections may go to the question whether the site offers a suitable location; and they may also determine whether the development is achievable with a realistic prospect that housing will be delivered on the site within five years. Even if detailed information is available about the site and the objections, prediction of the planning outcome is necessarily uncertain. All that probably need be said in most cases is that where sites do not have planning permission and are known to be subject to objections, the outcome cannot be guaranteed. Accordingly, where there is a body of sites which are known to be subject to objections, significant site specific evidence is likely to be required in order to justify a conclusion that 100% of all those sites offer suitable locations and are achievable with a realistic prospect that they will be delivered within five years;

v) For similar reasons, where sites are in contemplation because of being included in an emerging policy document such as the eWCS, and the document is still subject to public examination, that must increase the lack of certainty as to outcome. That is implicitly recognised by [216] of NPPF which requires decision-takers to "give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given)" and to "the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given)... ." As Inspector Graham pointed out in the Moat House Farm decision, there can be no guarantee that sites included in the current draft will remain in the finished version of the Local Plan. The approach taken by the various inspectors whose decisions have been considered in this case (including Inspector Robins at [22]) is therefore correct: the stage of preparation of the evidence base and the progress of the draft document are important considerations going to the prospects of housing being delivered within five years and therefore being "deliverable" within the meaning of Footnote 11.

35. I would accept as a starting point that inclusion of a site in the eWCS or the AMR is some evidence that the site is deliverable, since it should normally be assumed that inclusion in the AMR is the result of the planning authority's responsible attempt to comply with the requirement of [47] of the NPPF to identify sites that are deliverable. However, the points identified in [34] above lead to the conclusion that inclusion in the eWCS or the AMR is only a starting point. More importantly, in the absence of site specific evidence, it cannot be either assumed or guaranteed that sites so included are deliverable when they do not have planning permission and are known to be subject to objections. To the contrary, in the absence of site specific evidence, the only safe assumption is that not all such sites are deliverable. Whether they are or are not in fact deliverable within the meaning of [47] is fact sensitive in each case; and it seems unlikely that evidence available to an inspector will enable him to arrive at an exact determination of the numbers of sites included in a draft plan that are as a matter of fact deliverable or not. Although inclusion by the planning authority is some evidence that they are deliverable, the weight to be attached to that inclusion can only be determined by reference to the quality of the evidence base, the stage of progress that the draft document has reached, and knowledge of the number and nature of objections that may be outstanding. What cannot be assumed simply on the basis of inclusion by the authority in a draft plan is that all such sites are deliverable. Subject to that, the weight to be attached to the quality of the authority's evidence base is a matter of planning judgment for the inspector, and should be afforded all proper respect by the Court.

36. The first limb of the challenge under Ground 1 is that the inspector failed to have regard to the two decisions at Calne. While it is common ground that the inspector had a discretion whether to admit or to refuse to admit the late-submitted material, this limb raises the following questions:

- i) Whether the Calne decisions were material that might have caused him to reach a different conclusion to that he in fact reached without taking them into account; and, if they were
- ii) Whether the inspector's decision not to consider them was a lawful exercise of his discretion. This second question raises two sub-questions:
 - a) Whether the decision not to consider them could be and was a proper exercise of discretion in the circumstances prevailing; and
 - b) Whether the inspector was obliged to give any or proper reasons for his decision and, if so, whether he did so.

37. The Secretary of State accepts that it would have been open to him to submit evidence providing information about the circumstances in which the inspector decided not to consider the Calne decisions. Ms Busch correctly points out that the submission of such evidence could give rise to a risk of retrospective and unreliable justifications being advanced. That point is well made. However, once the risk is recognised, it

can be addressed by the witness and should not be exaggerated; and the decision not to submit evidence covers not merely evidence about any reasoning that may have informed the inspector's decision but also primary factual evidence that may have been relevant. As it is, in the absence of such evidence, nothing is known save that the Calne decisions were submitted and received after the inquiry but nine days before the inspector made his decision on 5 October 2012.

38. Turning to the first question, there can be no real doubt that the Calne decisions were material that might have caused the inspector to reach a different conclusion to that he in fact reached without taking them into account. Ms Busch did not argue the contrary. It is, however, important to identify the features of the Calne decisions that gave them particular significance:

i) While Inspector Robins already had before him three other decisions that were said to be relevant, they all pre-dated the introduction of the NPPF. The Calne decisions directly addressed the requirements of [47] of the NPPF, as Inspector Robins was required to do. It was therefore a previous decision that was directly in point;

ii) Inspector Papworth's Decision Letter identified the possibility of site specific evidence and that there had been none submitted in relation to the strategic sites in his case. His conclusion was that Malmesbury (where there had been site specific evidence) was "an anomaly" and he referred to a decision of the Secretary of State in relation to land at Salisbury going the other way, which does not appear to have featured in the material considered by Inspector Robins in his decision letter;

iii) Given its timing and the fact that Calne was also in Wiltshire, Inspector Papworth's decision was doubly relevant. It was relevant geographically since it addressed the same eWCS and other aspects of the Development Plan as applied to the Purton appeal; and it addressed them at the same stage of their progress as applied to the Purton appeal;

iv) Inspector Papworth had concluded that there were sufficient doubts remaining over a number of included sites and supply provisions to reduce the number of such sites that should be regarded as deliverable.

39. In these circumstances, there must have been (at least) a real possibility that considering the Calne decisions would have led Inspector Robins to a different conclusion. Although it would have been his decision and he would have been entitled to disagree with Inspector Papworth's conclusion, before doing so he would have been obliged to have regard to the importance of consistency and to give his reasons for departure from Inspector Papworth's decision. Given the features identified above, the result of applying Mann J's practical test would have been that he was disagreeing with a critical aspect of Inspector Papworth's decision, namely the conclusion that, there being no site specific evidence, the stage of progress of the development plan and the Council's evidence base did not justify the inclusion of the strategic sites as deliverable.

40. It would have been obvious to anyone receiving and reading the email (even without reading the attached Calne decisions themselves) that the decisions dealt with the same issues as were central to the Purton inquiry, that the decisions had been issued the previous week (and so could not have been provided earlier), and that, as very recent decisions, they were likely to address the same issues as arose in the Purton inquiry by reference to Wiltshire's Development Plan in its current state of development. Even a cursory review of the Calne decisions would have confirmed that this was so. In particular it would have confirmed that Inspector Papworth had produced a very recent assessment of whether, in the absence of site specific evidence, strategic sites included in the eWCS should be regarded as deliverable within the meaning of [47] of the NPPF.

41. That being so, the principle that a decision maker ought to take into account all matters which might cause him to reach a different conclusion and the obligation to have regard to material considerations up to the time that the decision is made weighed heavily in favour of Inspector Robins exercising his discretion in favour of admitting the Calne decisions for consideration.

42. In support of her opposition to Ground 1 Ms Busch submitted that the late submission of the Calne decisions was a breach of the 2000 Rules. That submission is rejected. No sensible interpretation of the rules can require the submission of information before it is in existence. Furthermore, Rule 18(2)-(4) of the 2000 Rules expressly contemplates the submission of late information and that it may be admitted by the inspector in accordance with the rules. Reference to The Good Practice Advice Note 10 also weighed in favour of admitting the decisions for consideration. It provided that the inspector would apply his discretion on the basis of:

- i) The relevance of the material to the appeal proposal: the material was highly relevant and potentially decisive in persuading Inspector Robins to find in the appellants' favour on the issue of strategic sites. Had he done so the balance of evidence in favour of a finding that the existence of a 5-year land supply was not shown would shift markedly, as Mr Harris' evidence and the revised tables set out above show;
- ii) Whether it simply repeats something that is already before the inspector: it did not; and
- iii) Whether it would have been procedurally fair to all parties if the material were taken into account: even if some modest delay were to be incurred in bringing out the decision (as to which, see below) the admission of the Calne decisions could be handled in a way that was procedurally fair. The Secretary of State has not submitted to the contrary, which is realistic and correct.

43. I would accept that in some cases where information is submitted late there may be a tension between the need for finality and proportionate expense on the one hand and a willingness to admit evidence which has not been submitted in accordance with the normal procedural timetable under the Rules. However, there is no material available to the Court to suggest that there was any significant tension in this case. In particular, there is no evidence to suggest that the Calne decisions, though highly material, would open up any new issues or indicate the need for further evidence or hearings. On the evidence that is available to the Court, it would have been possible for any supplementary submissions to have been made shortly and in writing. It is not realistic to suggest, and it has not been suggested, that it would have been necessary to re-open the inquiry or that significant delay would have been caused by taking the Calne decisions into account. There is therefore no evidential basis upon which it could be said that it was disproportionate or contrary to the wider interests of justice for the Calne decisions to be taken into account.

44. In her oral submissions Ms Busch submitted that there was no obligation upon the inspector to state a reason for his decision not to take the Calne decisions into account because the Rules do not expressly require him to give reasons when exercising his discretion in these circumstances. That submission is rejected. No such implication can be deduced from the silence of the rules. On the contrary, the obligation on a decision maker to give reasons for his decisions (including exercises of discretion) which will or may affect the rights and obligations of parties to legal proceedings over which he is presiding is a general one which covers the exercise of Inspector Robins' discretion in this case. Reasons were required in accordance with the guidance in *South Buckinghamshire DC*: see [7] above.

45. To the extent that any reason can be said to have been given at all, it was the statement in the email of 2 October 2012: "Thank you for your email below. Unfortunately it was received too late to be considered by the Inspector." Taken at face value this says that not merely the Calne decisions but Mr Harris' email were not considered at all by the inspector, but it is plain that the email was read, at least by one or more case-workers. What is neither self-evident nor the subject of evidence is whether the inspector (or anyone

to whom he reasonably delegated the task) looked at the Calne decisions themselves before deciding that they would not be taken into account by the inspector for the purposes of reaching his decision.

46. The position confronting the Court when considering this limb of Ground 1 is that there is no evidence to suggest that the inspector (or anyone on his behalf) carried out a reasoned assessment of the materiality of the Calne decisions or whether, applying the approach advocated by Good Practice Advice Note 10 or any other reasonable balancing exercise, the decisions should be admitted and taken into account. For completeness I record that it was not submitted by Ms Busch that he had done so. While she submitted that there was material which could have justified him in reaching a reasoned decision to reject the late submission of the Calne decisions, she did not (and could not in the absence of any reasons being given by the inspector) submit that he in fact did take such a reasoned decision. She concentrated upon the fact that the submission that the information was submitted late and that, as she submitted, no one with knowledge of planning practice would be surprised to see the submission of the Calne decisions rejected on the basis that it was "just too late".

47. Whether or not competent practitioners in the field would be surprised to see a late submission of information being knocked back on the basis that it is too late should depend upon the circumstances of the particular case, for two reasons. First, lateness is not of itself necessarily or even probably the determinative consideration. Secondly, the determinative considerations should be those that go into the mix of a reasoned assessment which balances those factors that tend in favour admission or rejection on the facts of a particular case. That assessment may be relatively simple or it may be complex; but in either event, the parties concerned are entitled to reasons that are intelligible and adequate to enable the reader to understand why the matter was decided as it was.

48. On the facts of this case, there is no information to support the suggestion that the Calne decisions were received too late to be considered by Inspector Robins and all the available information contradicts the assertion. The decisions were submitted promptly and were received 9 days before he made his decision on 5 October 2012. There is no evidence to suggest that he required that length of time to take them into account, or that his decision had in fact been taken by 29 September 2012, or that 5 October 2012 was an immutable deadline, or that reasonable accommodation could not have been made to ensure procedural fairness if the decisions were taken into account. In the absence of any reason or other material to explain why the date of the receipt of information trumped all other relevant considerations I am driven to the conclusion that the reason given is unsupportable. At its lowest, there was a failure to give adequate reasons so that the reader could know why, if any reasoned balancing exercise was in fact carried out, it led to the exclusion of the Calne decisions.

49. For these reasons, I therefore uphold Ground 1 of the challenge. In summary, his decision to exclude the Calne decisions from consideration should be set aside because:

- i) The inspector failed to exercise his discretion properly. A proper exercise of his discretion would have involved a balancing exercise either in accordance with or similar to that advocated by Good Practice Advice Note 10. Had he carried out such an exercise, he should have concluded that the considerations that weighed in favour of admitting the Calne decisions outweighed those that weighed in favour of excluding them;
- ii) The reason given by the inspector, namely that the material was submitted too late to be considered by the inspector, was unsustainable;
- iii) The inspector failed to give adequate reasons for his decision not to take the Calne decisions into account.

50. Given that he did not take the Calne decisions into account, it is somewhat academic to advance as a separate head of challenge that the inspector failed to give reasons for not following the approach taken in them. That said, in accordance with the principles established in *North Wiltshire DC v SoSE and Clover*, if he had taken them into account and decided not to follow them, he should have given his reasons for doing so. This would have been particularly important given the geographical and temporal overlap between the Calne and the Purton decisions.

Ground 2: The inspector failed to correctly interpret the NPPF.

Ground 3: The inspector gave inadequate reasons for the inclusion of strategic sites in the five year housing land supply and/ or the inclusion of the site was irrational.

Ground 4: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

51. Although these are separate and distinct grounds of challenge, they overlap to the extent that they may be seen as different facets of the same argument, and I shall address them together. These Grounds fall to be considered by reference to the material actually considered by the inspector, without reference to the excluded Calne decisions.

52. Ground 2 is based upon an alleged disparity between the terms of [21] and [24] of the decision letter. In [21] the inspector wrote:

"In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period."

In [24] he wrote:

"While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered."

53. The Claimant submits that this shows that the inspector failed to apply the test required by [47] of NPPF. It is common ground that the correct test for sites not having planning permission, such as the strategic sites, is that set out in the first sentence of Footnote 11. The Claimant submits that the inspector failed to apply that test. It submits that the inspector has applied a presumption in favour of including sites in the absence of specific evidence that they cannot be delivered and that this is only appropriate in the case of sites having planning permission, where the approach is permitted and mandated by the second sentence of Footnote 11.

54. I have discussed Footnote 11 at [34-35] above. I accept that, for sites which fall to be considered under the first sentence of Footnote 11 to be taken as deliverable, it must be shown that they satisfy the requirements there set out. There is no a priori assumption that sites not having planning permission are deliverable. However, the fact that sites have been included in an emerging policy document or evidence base may (and often will) be a starting point. In other words, inclusion may be evidence in support of a conclusion that the sites so included are deliverable. Once that is accepted, there is no reason in principle or on the proper interpretation of Footnote 11 why the fact that sites are included in the eWCS or the AMR may not be taken as sufficient evidence that they are deliverable in the absence of evidence (specific or otherwise) that they are not. The weight to be attached to the evidence that they are deliverable will vary from case to

case and is a matter of planning judgment for the inspector: see [35] above. So too will be the weight to be attached to any evidence that they are not. Evidence that they cannot be delivered can in principle be specific (e.g. site specific evidence that a site is contaminated or in delay) or general (e.g. evidence that all sites are subject to objection, though this evidence may be refined to the extent that the objections to particular sites are identified and capable of being considered).

55. Once [24] is read in its entirety and in context, it appears that the inspector was adopting this approach. Having set out the Footnote 11 test at the commencement of [21], he acknowledged the existence of objections at [22] and identified that it was for him to decide what weight he should attach to the sites having been allocated. At [23] he identified as a reason for including the sites that they had been identified by the Council in the course of the development of the eWCS. He acknowledged the weakness inherent in that process at the start of [24] but came to a planning judgment that sufficient weight could be given to the evidence in favour of inclusion so that the sites could be included in the absence of other, specific, evidence that they could not be included. Seen in this light, it is apparent that he did not misinterpret Footnote 11 in the way suggested by the Claimant. While other inspectors may have given different weight to particular aspects of the evidence, that does not cast doubt on the interpretation adopted.

56. Two further questions need to be considered. The first is the significance or otherwise of the cited passage from [21] of the Decision Letter. Bearing in mind the obligation on the Court to read the Decision Letter in good faith and as a whole, construing it in a practical manner, the cited passage does not subvert the conclusion that the inspector did not misinterpret Footnote 11. If anything it states too demanding a test, since it suggests that the plan and evidence base can never be enough to support a finding that sites are deliverable in the absence of additional information indicating a reasonable likelihood of them progressing within the five year period. However, the passage should not be taken in isolation and, viewed overall, it appears that the inspector applied the correct test.

57. The second question is how an inspector should deal with the fact that, as Inspector Robins acknowledged, the housing supply from the sites could not be guaranteed. The logical consequence of this lack of certainty at first blush appears to be that the raw numbers should be discounted for the probability or certainty that not all included sites are in fact deliverable. Inspector Robins dealt with this in terms of weight, both at [21]-[24] and when tying his findings together at [51-54]. On a fair reading, at [54] he carried out a balancing exercise which started with the express recognition that "the exact numbers cannot be relied upon." Prudently, in my judgment, he did not try to apply a precise numerical discount to reflect the uncertainty that he had identified. Instead, having acknowledged the uncertainty and after rehearsing the context in which the raw figures were generated, he reached the conclusion that the Council had demonstrated a 5-year housing supply. On a detailed semantic analysis, his reference to 4.3 years set against an expectation of 5.25 years not representing a serious shortfall may be criticised on two grounds. First, it suggests that, despite his balancing exercise, he is still adhering to the raw and exact figure of 4.3 years. Second, it may fairly be pointed out that the issue was whether there was adequate provision and, on the basis of a finding of 4.3 years supply, there was not. However, while it might have been preferable for the inspector to have inserted a qualification to show that he was not "sticking" at 4.3 years, a fair reading of the relevant paragraphs as a whole shows that he did in fact recognise the weakness of the raw figures and was not committed to them; and the thrust of the sentence was that no overwhelming need for development had been shown, which was a conclusion that was open to him on his findings.

58. In summary, I would accept that the inspector could have included an additional sentence or two which would have made [54] more transparent; but in my judgment, fair reflection upon [54] shows that he has carried out a balancing exercise to reflect the lack of certainty he had identified.

59. In support of Ground 3 of the challenge, the Claimant criticises [23] of the Decision Letter. The first criticism, as advanced in the Claimant's skeleton argument, is that the inspector failed to engage with the issue whether Malmesbury inspector's approach was still valid in the light of the NFFP and the fact that it was designed to address economic stagnation and boost the housing land supply. At the hearing, however,

although the Claimant again pointed out the broad economic purpose of the NPPF, its focus on the Malmesbury decision was different: it is now alleged that the significance of the Malmesbury decision is that there was site specific evidence justifying the inclusion of the sites. That observation is correct, but does not advance the criticism that had been advanced in the Skeleton Argument. In my judgment, while there is no sign that Inspector Robins identified the distinguishing feature that there had been site specific evidence available to the Malmesbury inspector in relation to strategic sites, that does not vitiate his decision. Furthermore, there is substance in the Secretary of State's submission that the thrust of the second half of [23], including the reference to the Malmesbury decision, was to support the undoubtedly correct view that the weight to be attached to an emerging plan and its evidence base depended upon the stage of progress it had achieved.

60. The Claimant's second criticism under Ground 3 is that [24] is opaque. If the Decision Letter had been a statute, it might have been profitable to observe that it could have been more detailed and precise; but it is not a statute. Having had the opportunity to reflect again upon the Decision Letter as a whole, I conclude that the inspector gave adequate reasons which were well capable of being understood by the parties. His reasons were not irrational, though other inspectors may have given different weight to the materials which he considered. On the contrary, having interpreted Footnote 11 correctly, he was entitled to reach the conclusions he did on the materials he considered and for the reasons he gave. The Court should in those circumstances be slow to interfere and I am not persuaded to do so.

61. Ground 4 is supported by a direct challenge to [54], which is said to be opaque. I reject that criticism. The Claimant points specifically to the words "...within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political boundaries ...". When read fairly and in context those words are identifying the source and provenance of the "exact" figures that the inspector had set out in his table at [52] and which he had just acknowledged could not be relied on as such. Identifying the source and provenance of the figures served a useful and not unduly opaque purpose by giving some qualitative colour to the figures that he was balancing in that paragraph. Once again, the Court should be slow to interfere, and I am not persuaded to do so.

62. For these reasons I reject Grounds 2, 3 and 4 of the challenge. In summary, when read fairly, it appears that the inspector did not misinterpret Footnote 11, his reasons were adequate and rational and, on the basis of the materials that he considered, reflected planning judgments with which the Court should not interfere.

Ground 5: The inspector failed to take into account material considerations; gave inadequate reasons for concluding a five year housing land supply existed or otherwise behaved irrationally in so concluding.

63. This challenge relates to [58] of the Decision Letter where the inspector stated that the appropriateness of Purton's settlement boundaries had been considered as part of the eWCS. He therefore concluded that the boundaries were up to date. On the evidence of Mr Harris, this was not based on any evidence and was wrong. It is alleged that this caused him to place more than limited weight on Policy H4 of the Local Plan which provided that New Dwellings in the Countryside outside the Framework boundaries will be permitted in strictly limited circumstances w were not applicable to the Purton proposals.

64. In my judgment there is no substance in this ground of challenge. Although his belief that the settlement boundaries had been considered as part of the eWCS was incorrect, the central fact was that the boundaries remained and were not changed by the eWCS. He was therefore entitled to conclude that the Policy H4 was not out of date and conformed to the Framework.

65. Ground 5 of the challenge is therefore rejected.

Conclusion

66. For the reasons set out above, Ground 1 of the grounds of challenge is established. Grounds 2, 3, 4, and 5 are rejected.

Annexe A

RELEVANT EXTRACTS FROM DECISION LETTER

DATED 5 OCTOBER 2012

Background

...

11. In terms of housing supply both main parties accepted that the data and projections found in the adopted development plan are out of date. In this respect revised housing requirements were promoted during the development of the draft Regional Spatial Strategy, (dRSS). This was subject to Examination in Public, incorporation of proposed changes and a version was published for consultation in July 2008. Although reaching an advanced stage, the likelihood of this plan being adopted is considered extremely low in light of the Secretary of State's avowed intention to revoke Regional Strategies, and the enactment of the Localism Act, which prevents further Regional Strategies from being created.

12. In response to the Government's position on Regional Strategies, the Council indicated that they moved to reconsider the housing requirements for Wiltshire to inform an emerging Core Strategy, (eWCS). This document has now reached a relatively advanced stage with a resolution by the Council and its submission for examination. The Council's ambitions for this plan to be adopted by the end of 2012 or early 2013 may, however, be questioned in light of recent concerns and a need to re-consult.

13. Notwithstanding this the Council point to an extensive consultation process involved in the development of evidence base and suggest that the eWCS is preferable, both in terms of the housing requirement and the strategic approach to delivery, to either the out of date WSSP or the figures promotes in the dRSS.

14. The appellant raised concerns over the weight that should be afforded to the eWCS in light of the objections to the proposed housing numbers, declaring a preference for the publicly tested dRSS. However, the appellant goes further, suggesting an additional proposition that irrespective of the housing land supply position, the proposal represents a sustainable development. As such it would benefit from the Frameworks' presumption in its favour, in light of a contention that the development plan policies are out of date.

...

Sites

...

19. Thus the appellant suggests a difference between the Council's housing supply and their own of some 4,045 dwellings, made up in part by site specific differences and in part by a disagreement over which ele-

ments should be included. Some 80% of the difference relates to the strategic sites, the Vision Sites, wind-falls and previously discounted sites.

20. The Council refer to paragraph 47 of the Framework and its footnote regarding the inclusion of strategic sites, specifically allocations in the eWCS. This paragraph seeks to significantly boost the supply of housing and requires that local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area". It specifically includes "key sites critical to the delivery of the strategy over the plan period".

21. The footnote sets out a definition for specific, deliverable sites: that they should be available now, offer a stable location for development now, and be achievable with a realistic prospect of delivery within five years. While on the face of it the requirement for sites to be available now would appear to preclude sites without permission, the definition continues by addressing permitted sites directly. In order for strategic plans to be put in place to address the housing supply, I consider that allocated sites can be included, including those within emerging plans, subject to the weight that can be given to that plan and its evidence base and the submission of information indicating a reasonable likelihood of them progressing within the five year period.

22. I accept that where there are outstanding objections to sites, such matters need to be addressed and resolved, however, it is not for me to prejudge the outcome of the eWCS examination. I must decide on what weight I can give to the Council's assertion that these allocations should be included. In doing this it is necessary to separate the weight that can be given to the emerging plan from that associated with the evidence base associated with that plan. While I have been given examples from East Northampton and from Preston where draft allocations have not been included, the relevant weight must be ascribed based on the specific stage of preparation of the evidence base and the evidence supporting deliverability.

23. In this case I consider that exclusion of all the draft allocations is not appropriate. The Council have identified the sites following public consultation and they report that they have been subject to a Sustainability Appraisal. The sites are included within the AMR. While I note the appellant's concern over the recent appeal decision in Malmsbury the Inspector in that case also accepted the principle of including strategic sites. The Council relied on this decision to support their position that the sites were available and deliverable. The appellant referred me to a slightly earlier decision by the same Inspector which discounted draft Local Plan sites, however, it strikes me that this differs in the progress of the emerging plan and the evidence therefore available to the Inspector. The decision clearly refers to the need for consultation and representations on the emerging plan.

24. I accept that until planning permission is secured and the sites are built out, the housing supply from the sites cannot be guaranteed. Nonetheless to exclude such sites risks Councils having to plan to meet housing supply in a dynamic market on the basis of only sites with planning permission or from relatively old plans. This would risk devaluing the process of strategic planning. While full weight cannot be given to the precise numbers put forward by the Council, I consider it reasonable to include these sites in absence of specific evidence that they cannot be delivered.

25. Turning to Vision Sites similar arguments apply, albeit that they are not formally proposed as allocations. They are included in the AMR and the eWCS sets out a specific policy for their delivery. The Council presented evidence that two sites, Foundary Lane and Hygrade Factory, while not currently having permission, are likely to be delivered within the five year period. While there may be some matters to be resolved on these sites, and the appellant points to part of the Foundary Lane site and the Hygrade site as being still partly occupied, this does not mean they cannot be delivered. On balance I consider that the dwellings associated with these sites can be included.

...

Housing Requirements

39. This is not therefore, as the Council set out, a simple case of "a stark choice" between the dRSS and the eWCS. Although I favour the RSS figures at this stage, which furthermore provide a conservative approach to ensuring adequate provision of housing, I must give some weight to the emerging evidence base in light of its more up to date projections and the extent of more local engagement in assessment of needs.

...

Conclusions on the 5-Year Housing Supply

51. It has been necessary to carefully consider the housing requirement and supply situation in Wiltshire as a result of the changes being introduced at both national and local level. My conclusions are by necessity based on the evidence put before me and can in no way prejudice the outcome of the eWCS Examination in Public which may take place later in this year or early 2013.

52. I consider that the principal assessment should be made between the housing requirement for the RoNW and the housing supply presented by the Council, amended in response to the evidence provided at the Inquiry. This must be further considered in light of the housing demand across North Wiltshire and the emerging strategic approach for the North and West HMA. I have summarised this in the following table:

Plan/Policy	Housing Requirement	5-year Housing Requirement	Housing Supply	Assessment (years)*
dRSS Rest of North Wiltshire	3,024	1,008	1,522	7.5
dRSS North Wiltshire	10,684	3,549	3,052	4.3
eWCS North and West HMA	15,249	5,083	6,292	6.2

*5.25 years required to meet the 5% buffer

53. This indicates that the appellant's proposition that even using the eWCS figures the Council cannot demonstrate a 5-year housing supply is not well founded. The Council have shown a 5-year housing supply relative to the RoNW dRSS figures and the eWCS North and West HMA, but have failed to demonstrate adequate supply for the dRSS North Wiltshire area. As set out above, I consider that the weight that can be given to the dRSS figures is somewhat lessened by the length of time since their preparation and examination, but also that the weight I can give to the emerging figures is similarly limited.

54. Nonetheless, although the exact numbers cannot be relied on, I am satisfied that the resulting figures indicate that within the context of a strategic approach focussing sites on larger settlements or a housing market area that responds to the existing settlement pattern rather than political boundaries, the Council have demonstrated a 5-year housing supply. Furthermore I do not consider that the 4.3 years, set against an expectation of 5.25 years, represent a serious shortfall in the former North Wiltshire District, such that there is an overwhelming need for development to meet the specific demand.

55. In such circumstances I consider that there is sufficient evidence to support that, for this location, a 5-year housing supply has been shown.

...

58. My reading of the previous appeal decision on this site suggests that the boundaries were considered in both the preparation and Examination of the Local Plan in 2006, and while they do not appear to have been assessed against the significant increase in supply sought by the dRSS, they have been against the large increase currently promoted in the eWCS. This process has not led to a redrawing of the boundaries, consequently I do not consider that Policy H4, which they inform, is out of date or fails to conform with the Framework.



Appeal Decisions

Hearing held on 11 July 2013

Site visit made on 12 July 2013

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 1 August 2013

Appeal A: APP/T2405/A/13/2193758

Land east of Springwell Lane, Whetstone, Leicestershire LE8 6LT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by David Wilson Homes East Midlands against Blaby District Council.
 - The application Ref 12/0952/1/OX is dated 21 November 2012.
 - The development proposed is residential development of up to 150 dwellings and parkland with associated access, infrastructure and landscaping.
-

Appeal B: APP/T2405/A/13/2193761

Land off Countesthorpe Road and Springwell Lane, Whetstone, Leicestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by David Wilson Homes East Midlands against Blaby District Council.
 - The application Ref 12/0951/1/PY is dated 20 November 2012.
 - The development proposed is formation of access for use by construction traffic in conjunction with proposed residential development.
-

Decisions

1. Appeal A is allowed and outline planning permission is granted for residential development of up to 150 dwellings and parkland with associated access, infrastructure and landscaping on land east of Springwell Lane, Whetstone, Leicestershire LE8 6LT in accordance with the terms of the application, Ref 12/0952/1/OX, dated 21 November 2012, subject to the conditions in the attached schedule.
2. Appeal B is allowed and planning permission is granted for formation of access for use by construction traffic in conjunction with proposed residential development on land off Countesthorpe Road and Springwell Lane, Whetstone, Leicestershire in accordance with the terms of the application, Ref 12/0951/1/PY, dated 20 November 2012, subject to the conditions in the attached schedule.

Preliminary Matters

3. The Appeal A application was submitted in outline form with all matters of detail, except access, to be reserved for later consideration. However, at the hearing the appellant confirmed that access is now to be considered as a reserved matter.

4. Subsequent to the submission of these appeals, the Council's Development Control Committee resolved on 28 March 2013 that it would have refused planning permission for both developments for the following reason: *'the residential development of this Greenfield site located within countryside (and its associated construction access road) would cause significant harm to the character and appearance of the landscape and thus would be contrary to Policy C2 of the Blaby District Local Plan (1999) and Policy CS18 of the Blaby District Local Plan (Core Strategy) Development Plan Document (Adopted February 2013).'*

Main Issues

5. The main issues in both appeals are whether a 5 year supply of deliverable housing land has been demonstrated in accordance with the National Planning Policy Framework (Framework); and the effect of the proposal on the character and appearance of the surrounding countryside.

Reasons

Housing Supply

6. The Council has provided a housing trajectory that demonstrates about a 6.2 year housing supply at 1 April 2013. This is based on a 20% increase due to a record of persistent under delivery and the previous shortfall spread over the remaining years of the plan up to 2029. The Council adopted its Local Plan Core Strategy Development Plan Document (DPD) in February 2013. Policy CS5 sets out the approach to the distribution of housing in the District. The Inspector's Report on the Examination of this document indicates in paragraph 52 that he is satisfied that the Core Strategy will provide a five year supply of deliverable housing sites, based on the shortfall in housing delivery since 2006 being accommodated over the remaining plan period and including a 20% buffer in the early years until the issue of persistent under delivery has been addressed.
7. The Council's trajectory allows for a contribution of about 1000 new houses from a Sustainable Urban Extension (SUE) in Lubbethorpe over the 5 year period. The appellant has suggested that a more realistic maximum delivery of housing within this development would be about 650 houses in the 5 years, based on the required access bridge over the M1 being completed in 2015, 50 dwellings being completed in 2014-15 and 200 dwellings per annum in 2015-16 and 2016-17. Taking account of the evidence presented at the hearing, I find that the appellant's suggested figures would be more likely to reflect the actual delivery, given the levels of delivery on other sites within the District and that the appellant is one of the 6 potential developers of the SUE. On this basis, the Council has indicated that it can demonstrate a 5.56 year supply of deliverable housing sites.
8. The appellant has not provided sufficient evidence of under delivery on specific sites to justify a 10% reduction in the housing trajectory, even though some of the planning permissions are in outline form.
9. With regard to the method of spreading the shortfall, the 'Sedgefield approach', whereby the accumulated shortfall is spread over the 5 year period, is favoured. On this basis, and the reduced contribution from the SUE, the appellant has indicated that the Council would only have demonstrated a 4.52 year housing supply. In support of this approach, the appellant has referred to

the advice given in the Planning Advisory Service (PAS) Document¹ and other appeal decisions, including one in Essex where the appellant has claimed that the Examination Inspector applied the residual approach to the shortfall. However, the previous appeals involve significantly different circumstances from the current appeal, particularly with regard to the relative date of the Examination Inspector's Report and adoption of the relevant development plan policies. Therefore, whilst I note the points raised, no direct comparisons can be made with the current appeals.

10. The PAS Document indicates that its advice is based on previous Inspectors' decisions, and the Sedgefield approach being more closely aligned with the requirements of the Framework and the need to boost significantly the supply of housing and remedy the consequences of persistent under delivery. However, the Document accepts that there is no guidance or advice that sets out the preferred approach. Taking account of the recent date of the Examination and adoption of the Core Strategy, it would be premature to take a different approach to housing supply than that taken in the Examination Inspector's Report. Furthermore, that Report considered that further flexibility is given by the housing trajectory not including an allowance for windfall sites.
11. Based on the above, I find on this main issue that the Council has demonstrated a five year supply of deliverable housing sites in accordance with the Framework. As such, the relevant policies for the supply of housing are to be considered up-to-date in accordance with paragraph 49 of the Framework. However, the Framework also indicates that housing applications should be considered in the context of the presumption in favour of sustainable development.

Character and Appearance

12. The appeal sites include arable fields and hedgerows. They are outside the settlement boundaries of Whetstone and form part of the surrounding open countryside. The Appeal A site is bounded to the north and west by residential roads and to the east by mature vegetation alongside Whetstone Brook. The Appeal B site consists of a strip of land that is at least 7m wide.
13. The Blaby District Landscape and Settlement Character Assessment 2008 (BDLSCA) identifies the main features of the landscape in the area. These are given as the strong urban fringe characteristics of settlements, fields bounded by hedgerows, linear woodland planting and open space, fairly rural and wooded views across high ground, and a fragmented character with many human influences. It also gives 2 key pressures in the area as relating to settlement expansion and expansion of the urban edges.
14. The Appeal A proposal would develop the appeal site with up to 150 dwellings at about 30 dwellings per hectare, together with public open space and landscaping that includes balancing areas, structural landscape to the south and the Brook corridor and associated infrastructure. Although access is a reserved matter, the Indicative Masterplan indicates that it would be provided from Wright Close to the north. The buildings would range from 3 to 2 storeys, rising to about 8.5m to ridge height.

¹ Planning Advisory Service Document: Ten Key Principles for Owning Your Housing Number- Finding Your Objectively Assessed Needs, July 2013

15. The appellant has carried out a Landscape and Visual Appraisal of the likely landscape effects of the proposed development, with reference to the BDLSCA and based on the Guidelines for Landscape and Visual Assessment. It concludes that there would be no significant effects in terms of landscape resources and character and, on balance, the proposal would provide some beneficial effects. The Council has not shown that it has conducted a similar appraisal.
16. With regard to the concerns expressed by the Inspector in the previous appeals against the refusal of planning permission for residential development on the current Appeal A site, the Indicative Masterplan indicates a number of changes. These changes include an increase in the area of the site to the south to allow a 10m to 12m wide woodland belt; a reduction in the overall housing density to allow for planted avenues across the development; and an increase in soft landscaping along Springwell Lane frontage.
17. At my site visit, I observed the site from some of the most sensitive public vantage points to determine the effect of the proposals on public views. Whilst the Appeal A proposal would result in an urban extension into the countryside, the proposed landscaping would ensure that the edge of the development would be well screened from nearby public vantage points to the south. As such, the proposed woodland planting would provide a greater level of screening to the edge of built development than is currently provided to the southern edge of the existing development, as advocated by the BDLSCA. This would be sufficient to mitigate the harm resulting from the foreshortening of views from the south across the open countryside towards the urban area.
18. Views of the site from a higher vantage point on the Cosby Road at the western edge of Countesthorpe would include the proposed housing, which would appear as an extension to the urban area. However these views are a significant distance away from the site and the landscape planting that would be able to be provided on the boundaries of, and within, the site would mitigate the adverse effect of this encroachment into the countryside.
19. Views of the development from Springwell Lane would be screened by additional planting to supplement the existing hedgerow. This planting would be sufficient to reduce the dominance of the proposed built development on the eastern side of this lane.
20. The Appeal B proposal would provide a temporary access road for use in the construction of the Appeal A development. It would involve the removal of a section of hedgerow on the eastern side of Springwell Lane and the paving of most of the land. Its route would be near to the hedgerow boundary of the fields to the east of Springwell Lane. The impact of the paved area and vehicles using the access road would be limited by the position relatively near to an existing lane and hedgerows. Furthermore, the access road would be removed and the area restored following the completion of the Appeal A development. As such, I agree with the previous Inspector that the Appeal B proposal would not cause any significant harm to the character and appearance of the surrounding countryside.
21. With regard to development plan policies, the Council has referred to Blaby District Local Plan 1999 Policy C2 which states: *'within the area identified as countryside on the Proposals Map, planning permission will not be granted for built development, or other development which would have a significantly*

- adverse effect on the appearance or character of the landscape*'. The interpretation of this Policy given in the accompanying text would prevent any significant housing development in the countryside. This is inconsistent with the balance that is required in the Framework. At the hearing, the Council accepted that the Policy is out-of-date but suggested that it has not been deleted as it identifies the boundaries of the countryside on the Proposals Map. Therefore, I have attached limited weight to Local Plan Policy C2, based on the inconsistency with the Framework and the date of the Local Plan.
22. The other development plan policy that has been referred to is Core Strategy Policy CS18. This Policy reflects the wording of the 1999 Local Plan Policy C2 but balances the need to retain countryside against the need to provide new development, including housing, in the most sustainable locations. The balance that it provides ensures that its consistency with the Framework is greater than that of Local Plan 1999 Policy C2. It also requires the details of the boundaries of the countryside to be established through the forthcoming Allocations, Designations and Development Management DPD. At the hearing, the Council indicated that this DPD would not be submitted until summer 2014. As such, the countryside boundaries are those given on the Proposals Map in the Local Plan 1999, which are due to be the subject of an update.
 23. Turning to the balance, the Core Strategy Examination Inspector has suggested in paragraph 54 of his report that the housing requirements of 380 houses per annum across the District should be regarded as a minima. Whetstone has been identified in the Core Strategy as one of the non Principal Urban Area parts of the District with regard to the provision of new development. It has an identified minimum requirement of 365 houses, of which the Council has indicated some 323 houses have been built or committed at 1 April 2013.
 24. The Appeal A proposal would be in a relatively sustainable location, as it would be easily accessible to the wide range of facilities within Whetstone, which include schools, shops, leisure and employment, and public transport. It would also provide contributions towards cycling and public transport improvements, secured through planning obligations.
 25. In terms of affordable housing in the District, the Council has accepted that there is a significant shortfall in delivery, including within Whetstone, as indicated in its latest update of the Strategic Housing Market Assessment. The Appeal A proposal would provide 25% of its dwellings as affordable housing, in accordance with Core Strategy Policy CS7.
 26. The Council has not contested the appellant's estimate for the implementation of the proposed development should planning permission be granted, which is an August 2014 start date with 40 dwellings completed per year. The appellant has suggested that, should the appeal proposal be implemented, the minimum requirement in Whetstone would be exceeded by about 30%. I find that this would not be excessive, given the sustainability of the site location and the environmental constraints on the scope for growth in Whetstone as a result of strategically important areas of Green Wedge and the former Great Central railway line. The appeal proposals would result in the provision of additional housing to help to address the previous shortfall, including affordable housing, which is consistent with the government's objective to significantly boost the supply of housing given in paragraph 47 of the Framework.

27. Taking account of the above, I find that neither of the appeal proposals would have a significant adverse effect on the character and appearance of the surrounding countryside. Also, the need to retain countryside is outweighed by the benefits that the Appeal A proposal would provide in terms of additional housing in a sustainable location, particularly as the boundaries of the countryside are subject to a review. As such, both the Appeal A proposal and the Appeal B proposal would accord with Core Strategy Policy CS18.

Planning Obligations- Appeal A

28. The appellant has submitted an engrossed Section 106 Agreement for Appeal A after the close of the hearing. The planning obligations would secure 25% affordable housing, contributions towards public transport, cycling, a travel pack, highway improvements, healthcare, libraries, police and the maintenance of the public open space that would form part of the scheme. I have considered the evidence provided in writing and at the hearing in support of the contributions to satisfy myself that the obligations meet the tests in Community Infrastructure Levy (CIL) Regulation 122. These tests are that the obligation is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonable related in scale and kind to the development.

29. The affordable housing obligation accords with Core Strategy Policy CS7 and the provision of affordable housing is an important consideration in deciding whether the proposed development would be an acceptable form of development in the countryside. Without the affordable housing that the obligation would secure, the proposal would have an adverse effect on the provision of affordable housing in the District.

30. At the hearing, the appellant confirmed that it is not contesting any of the contributions secured by the planning obligations. The contributions towards public transport, cycling and a travel pack are necessary to promote sustainable transport modes, in accordance with the Framework objectives and to ensure that future residents of the proposed housing would be able to access necessary facilities by means of sustainable transport. The off-site highways improvement contribution is necessary to ensure that the proposal would not have an adverse effect on the free flow of traffic at the A426/Enderby Road roundabout, as identified in the traffic analysis.

31. The healthcare contributions have been calculated by the Primary Care Trust with the aim of funding additional capacity at the Hazelmere Medical Centre, which is near to the appeal site. The evidence provided shows that the contribution secured by the obligation is reasonable to cater for the additional demands due to the future occupants of the proposed dwellings.

32. The County Council has provided sufficient evidence to demonstrate that the proposed development would place additional demands on library facilities that would not be able to be addressed without increased funding. The contribution has been calculated in accordance with the standards contained in the County Council's adopted *Statement of Requirements for Developer Contributions in Leicestershire*. I am satisfied that this contribution would be required to ensure that there would be adequate library provision to cater for future occupants of the proposed dwellings.

33. Leicestershire Police (LP) has supported the need for contributions towards policing services and facilities in its statement and at the hearing. The required contributions are significantly less than those considered by the previous Inspector, and LP have suggested that it has used a different method of calculation, based on the impact of the development itself. Therefore, I am satisfied that the sum provided for in the obligation is necessary to make the development acceptable in planning terms, having regard to the requirements in paragraph 58 of the Framework to create safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.
34. A contribution towards the maintenance of the public open space that would be provided by the proposed development is required due to the additional expenditure that would be incurred. The amount of the contribution would be calculated in accordance with the Council's adopted policy document.
35. Having regard to the above, I conclude on the Section 106 Agreement that all the planning obligations meet the tests in CIL Regulation 122 and paragraph 204 of the Framework. Without the obligations, the proposal would fail to accord with the relevant development plan policies and would have unacceptable impacts on local facilities and services and affordable housing in the District.

Other Matters

36. I have considered the concerns expressed by local residents. With regard to wildlife, one of the reasons given by the previous Inspector for dismissing the appeals was the effect on protected species. However, since those appeals, the appellant has submitted an ecological report, including a recently updated survey of the area for the presence of water voles which confirms that there are no issues with relation to water voles on the development site. Natural England has not objected but has requested that it is contacted should any water voles be found during construction or the status of the species changes or the plans differ during the works. The Council has not given this matter as a reason why it would have refused planning permission and I am satisfied that a suitable planning condition would address it. Although the proposal would result in the loss of agricultural land, I have insufficient evidence to show the importance of the land for agriculture to give this matter any significant weight.
37. With regard to concerns about flooding, a Flood Risk Assessment has been provided, the Council has not expressed any concerns about this matter, and the Environment Agency has not objected to the proposals subject to conditions. I have not been provided with sufficient substantive evidence to support a refusal of planning permission on this basis, even though some of the identified open space would be liable to flooding. In terms of this open space, the Council has indicated that it is satisfied that the Indicative Masterplan identifies that there would be sufficient land outside the constraints provided by the flood zones to enable the provision of an equipped children's play area and a flood attenuation pond, in addition to landscaping.

Conclusions

38. For the reasons given, I have found that a 5 year supply of deliverable housing land has been demonstrated in accordance with the Framework and neither of the Appeal proposals would have a significant adverse effect on the character

and appearance of the surrounding countryside. On balance, the benefits of the Appeal A proposal outweigh the resulting harm due to the loss of countryside. Both of the proposals would represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that both Appeal A and Appeal B should succeed.

Conditions

39. I have considered the conditions suggested by the Council should the appeals be allowed. With respect to Appeal A, conditions regarding the submission of reserved matters details and the standard timescales are necessary as a result of the application being in outline form. Further details of the requirements for reserved matters, including reference to the Illustrative Layout and implementation of a landscaping scheme, are necessary for the avoidance of doubt and in the interests of proper planning and to protect the character and appearance of the surrounding area. A condition requiring adherence to a Construction Method Statement is necessary in the interests of residential amenity and health and safety.
40. A condition regarding drainage is necessary to reduce the risk of flooding and pollution, and secure the provision of adequate and sustainable drainage. A condition regarding contamination is necessary for health and safety reasons. A condition regarding bats and water voles is necessary to safeguard species protected under the Wildlife and Countryside Act 1981, given the evidence provided and the presence of Whetstone Brook.
41. A condition requiring archaeological survey work is necessary for historical recording reasons, based on the expert evidence provided. A condition to ensure that the proposal would meet the Leicestershire County Council design standards is necessary to make the development acceptable in terms of residential amenity and highway safety.
42. With regard to Appeal B, a condition regarding the standard time for commencement of development is necessary and I have included a condition to ensure compliance with the plans as being necessary for the avoidance of doubt and in the interests of proper planning. A condition requiring the restoration of the site is necessary in the interests of the character and appearance of the area, given the temporary nature of the permission. A condition requiring archaeological survey work and a condition regarding water voles are necessary for the same reasons as in Appeal A.
43. I am satisfied that all the conditions in Appeal A and Appeal B are reasonable and necessary. I have combined some of the suggested conditions and worded them to reflect the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*.
44. A condition in Appeal A regarding a Travel Plan is unnecessary to provide a choice of sustainable modes of travel, as this would be adequately secured by the Section 106 Agreement.

M J Whitehead

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jenny Wigley	Of Counsel, instructed by Pegasus Planning Group
Jeremy Peachey BSc(Hons) MLD CMLI	Landscape Design Director, Pegasus Planning Group
Gary Lees BA(Hons) BTP MRTPI	Director, Pegasus Planning Group
Robert Blaney	Appellant Company

FOR THE LOCAL PLANNING AUTHORITY:

Rob Thornhill BSc(Hons) DipSP MA	Principal Policy Officer, Blaby District Council
Ian Davies BSc(Hons) DipTP MRTPI	Planning Delivery Team Leader, Blaby District Council
Tony Greenwood	Deputy Leader of Blaby District Council

INTERESTED PERSONS:

Victoria Hutton	Of Counsel, instructed by Leicestershire Police
Michael Lambert	Leicestershire Police
Andrew Tyrer	Leicestershire County Council
Steve Kettle	Leicestershire County Council
Lee Breckon	Clerk, Whetstone Parish Council
Alice Tyler	Whetstone Parish Council
Alan Tanner	District and Parish Councillor
L Phillimore	Local Resident
Mark Jackson	Councillor, Whetstone Parish Council

DOCUMENTS SUBMITTED AFTER OPENING THE HEARING

- 1 Note on behalf of the Police and Crime Commissioner for Leicestershire, submitted by Leicestershire Police on 11 July.
- 2 Crime Mapping and trends, submitted by Leicestershire Police on 11 July.
- 3 Note by Michael Lambert addressing the 24 January 2012 Report, submitted by Leicestershire Police on 11 July.
- 4 Copies of submissions made by Leicestershire Police, submitted by Leicestershire Police on 11 July.
- 5 Draft Section 106 Agreement, submitted by the appellant on 11 July.
- 6 Local Government Association Planning Advisory Service Ten key principles for owning your housing number- finding your objectively assessed needs, submitted by the appellant on 11 July.
- 7 Addendum to Hearing Statement on Planning Issues, submitted by the appellant on 11 July.
- 8 Summary Note on 5 Year Housing Land Supply Calculations, submitted by the appellant on 11 July.
- 9 Amendment to Proof of Evidence of Rob Thornhill (para 7.17), submitted by Blaby District Council on 11 July.
- 10 Copy of Appeal Decision Ref APP/T2405/A/10/2135068, submitted by Blaby District Council on 11 July.

- 11 Copy of High Court Judgement: Anita Colman and Secretary of State for Communities and Local Government and others, submitted by the appellant on 11 July.
- 12 Copy of contributions requested by Leicestershire Policy for previous development of 178 Units, Springwell Lane, Whetstone, submitted by Leicestershire Police on 11 July.
- 13 Extracts from Secretary of State Report Ref APP/M1520/A/12/2177157, submitted by the appellant on 11 July.
- 14 Copy of Secretary of State Decision and Report Ref APP/F1610/A/10/2130320, submitted by the appellant on 11 July.
- 15 Extracts from Secretary of State Report Ref APP/M1520/A/12/2177157, submitted by the appellant on 12 July.
- 16 Copy of e-mail from Neill Talbot, Senior Conservation Officer, Leicestershire & Rutland Wildlife Trust, submitted by Mr Breckon on 12 July.
- 17 Statement by Mark Jackson, dated 11 July 2013, submitted by Mr Breckon on 12 July.
- 18 Statement and points made by Lee Breckon, read and submitted by Mr Breckon on 12 July.
- 19 Copy of a Section 106 Agreement, dated 16 July 2013, submitted by the appellant after the close of the hearing.

PLAN SUBMITTED AT THE HEARING

- A Plan of sites to visit, submitted by Mr Breckon on 12 July.

SCHEDULES OF CONDITIONS

Appeal A

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The reserved matters details required under Condition 1 shall be in accordance with the principles and parameters indicated on the Illustrative Layout Drawing No EMS.2271_07-1E and shall include a landscaping scheme that shall be carried out within one year of completion of the development. Any trees, hedges, shrubs or plants as part of the approved landscaping scheme which within a period of 5 years from the completion of the planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.
- 5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) the routing of construction vehicles; and
 - viii) the hours of construction and the hours for the loading/unloading of materials.
- 6) Notwithstanding the submitted details, no development shall commence on-site until full details of the means of foul and surface water drainage for the site have been submitted to and approved in writing by the local planning authority. The details shall include the Sustainable Urban Drainage System including the proposed surface water balancing facility, with cross sections and boundary treatment, and oil separators that shall be designed and constructed to have a capacity compatible with the site being drained. Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water from parking areas and hard standings susceptible to oil contamination shall be passed through an oil separator. Roof water shall not pass through the interceptor. The drainage shall be carried out in

accordance with the approved details before any of the development is occupied and retained as such thereafter.

- 7) The development hereby permitted shall be carried out in accordance with remediation measures contained in the Phase II Site Appraisal document by GRM Development Solutions Ltd. If during the course of development contamination not previously identified is found to be present at the site, no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until an amendment to the remediation strategy giving details on how to deal with this contamination has been submitted to and approved in writing by the local planning authority. The remediation measures shall be carried out in accordance with the approved amended details.
- 8) Notwithstanding the submitted details, no development shall take place within the site until precautionary surveys for the presence of bats and water voles have been secured in accordance with a written scheme that shall have been submitted to and approved in writing by the local planning authority. The surveys shall be undertaken in full accordance with the approved written scheme. If the surveys identify the presence of bats or water voles, a scheme of mitigation measures shall be undertaken in accordance with details and a timescale that shall have been submitted to and approved in writing by the local planning authority prior to the commencement of development.
- 9) No development shall take place within the site until a programme of archaeological work has been secured in accordance with a written scheme of investigation and reporting programme that has been submitted to and approved in writing by the local planning authority. The development shall be undertaken only in full accordance with the approved written scheme. No variation shall take place without the prior written approval of the local planning authority.
- 10) All details of the development hereby permitted shall comply with the design standards of the Leicestershire County Council as contained in its current design standards document: The 6 Councils Design Guide. The details shall include parking and turning facilities, access widths, gradients, surfacing, external lighting, signing and lining (including that for the cycleway and shared use footway/cycleway) and visibility splays and shall be submitted to and approved in writing by the local planning authority before the development commences. Development shall be carried out in accordance with the approved details.

Appeal B

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2500 Scale Location Plan and Drawing No NTT/540/004 Revision P4.
- 3) Within three months following the first occupation of the final dwelling constructed as part of the residential development to be accessed by the temporary access hereby permitted the use shall discontinue, construction material shall be removed from the site, hedgerows shall be replaced or

replanted and the land shall be restored to its former condition in accordance with a scheme of work that shall be submitted to and approved in writing by the local planning authority.

- 4) No development shall take place within the site until a programme of archaeological work has been secured in accordance with a written scheme of investigation and reporting programme that has been submitted to and approved in writing by the local planning authority. The development shall be undertaken only in full accordance with the approved written scheme. No variation shall take place without the prior written approval of the local planning authority.
- 5) No development shall take place within the site until precautionary surveys for the presence of water voles have been secured in accordance with a written scheme that shall have been submitted to and approved in writing by the local planning authority. The surveys shall be undertaken in full accordance with the approved written scheme. If the surveys identify the presence of water voles, a scheme of mitigation measures shall be undertaken in accordance with details and a timescale that shall have been submitted to and approved in writing by the local planning authority prior to the commencement of development.



Appeal Decision

Inquiry held on 4, 5, 9-11 April 2013

Site visits made on 3 and 11 April 2013

by Christina Downes BSc DipTP MRTPI

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

Decision date: 14 May 2013

Appeal Ref: APP/G1630/A/12/2183317

Land adj Gretton Road, Winchcombe, Gloucestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Redrow Homes Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref 12/00464/OUT, is dated 30 April 2012.
 - The development proposed is residential development of up to 120 dwellings, vehicular access from Gretton Road, public open space, facilities for sport and recreation and other associated infrastructure.
-

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 120 dwellings, vehicular access from Gretton Road, public open space, facilities for sport and recreation and other associated infrastructure on land adjacent to Gretton Road, Winchcombe in accordance with the terms of the application, Ref 12/00464/OUT, dated 30 April 2012, and the plans submitted with it, subject to the conditions on the Schedule at the end of this decision.

Procedural Matters

2. The Inquiry was originally intended to consider a second appeal proposal by Bloor Homes for 92 dwellings on land at Greet Road. However, following the submission of a new scheme with additional landscape information, planning permission was granted for that development and the appeal was withdrawn.
3. The proposal is in outline form with only access to be considered at this stage. The Council indicated that it would have refused planning permission had it been in a position to do so for nine reasons. Six of these related to the lack of provision for affordable housing, open space, education and other infrastructure. The Council is however satisfied that these matters have been addressed through the Planning Obligations by Agreement. These are considered later in the decision. The other putative reasons for refusal concerned the location outside the settlement boundary, the harm to the character and appearance of the landscape and the unsatisfactory nature of the form and layout relative to the prevalent urban morphology of the area.
4. The site comprises two parcels of land. The housing and open space proposal would occupy land between Gretton Road and Greet Road (Site A). The

proposed sport and recreation use would be on land to the east of Greet Road, north of Winchcombe School (Site B).

Reasons

Whether the proposal is needed to meet the housing requirements of the borough and contribute to the short term housing land supply deficit

5. The development plan currently comprises the Regional Planning Guidance for the South West (RPG10), the saved policies in the Gloucestershire Structure Plan Second Review (SP) and the saved policies in the Tewkesbury Borough Local Plan (LP). RPG10 was in the process of being reviewed and this had reached an advanced stage following an Examination in Public and proposed changes by the Secretary of State. However the proposed changes to the Regional Spatial Strategy for South West England (the draft RS) never progressed further due to the Government's stated intention to abolish regional strategies. The Order was laid before Parliament on 24 April and is due to come into force on 20 May 2013. It should be noted that all saved Structure Plan policies of relevance to this appeal will also be revoked at the same time. Whilst this occurred following the close of the Inquiry the pending revocation was considered by the parties and I am satisfied that there is no need to seek further comments on the matter.

Housing requirement

6. The Council prefers to use the housing target in the SP as the basis for its housing land supply calculations. Although this document is currently the statutory starting point it only covers the period to 2010 and is based on household projections dating back to the mid 1990's. In the circumstances the housing requirement in the SP is out of date and not fit for purpose. Whilst a Joint Core Strategy (JCS) is being prepared by Tewkesbury and Cheltenham Borough Councils and Gloucester City Council this is still at a relatively early pre-submission stage. Despite being commenced some years ago this document is not expected to be adopted until December 2014 at the earliest. Although some objectors considered that the appeal scheme was premature in advance of a settled local policy position, the early stage that the document has reached means that such arguments cannot be supported. The emerging JCS can be afforded little weight at the present time.
7. In the circumstances the most up to date and robust housing requirement is provided by the draft RS rather than the SP. The Secretary of State reached a similar conclusion in the recent appeal decision relating to Highfield Farm, Tetbury. Whilst this concerned a different local planning authority, the SP and the draft RS were the same as in the current appeal. The Framework requires an additional buffer of 5% or 20% to be moved forward in the housing trajectory in order to ensure choice and competition in the market for land. In this case the Council considered that a 20% buffer should be added to reflect the persistent under delivery of housing.

Housing supply

8. The main parties disagreed about the deliverability of some of the housing sites. However it is unnecessary to explore this further because even on the Council's assessment there would be a shortfall of 2,912 dwellings and a supply of only 2.7 years. The Secretary of State when granting planning permission for housing development at Bishop's Cleeve referred to the "pressing need" for

- additional housing within Tewkesbury Borough in his decision. The shortfall referred to above takes account of the houses that would be delivered as a result of that decision and also the Bloor Homes planning permission.
9. The spatial strategy in the draft RS, which appears likely to be carried forward in the emerging JCS, is to concentrate housing within sustainable urban extensions around Gloucester and Cheltenham, including Bishop's Cleeve. However there is also a requirement for 2,900 houses in the "rest of Tewkesbury", which includes Winchcombe and Tewkesbury. Aside from the latter, in the 2011 audit of rural settlements undertaken as part of the evidence base for the JCS, the town was ranked second in terms of the overall level of services that it offers and its accessibility. Even on the basis of the whole borough, including Bishop's Cleeve, it was ranked fourth on this basis. The approval of the Bloor Homes development shows that the Council recognises Winchcombe as a sustainable settlement where further development can take place to contribute to the housing shortfall. Furthermore it has acknowledged in its Committee Report that the scale of the appeal proposal would not be prejudicial to the spatial strategy in the emerging JCS.
 10. The appeal site is outside the current development boundary for Winchcombe. The proposal would thus not comply with saved LP Policy HOU4 which restricts new housing to limited purposes relating to affordable housing and rural activities. However Paragraph 49 of the Framework makes clear that where a 5 year supply of deliverable sites cannot be demonstrated, housing supply policies should not be considered up to date. It is clear that the Council will not be able to meet its housing commitments without breaching Policy HOU4 and this policy should not therefore be considered as a constraint. Insofar as saved Policies H.6 and S.4 in the SP seek to restrict housing development outside of rural settlements they should not be considered up to date either.
 11. There was no dispute that the new houses could be ready for occupation within the next 5 years. Although the Bloor Homes development would add further homes to the local housing market within a similar time period there was no evidence that this would significantly slow down delivery on the appeal site. The Appellant indicated that there would be no objection to a foreshortening of the implementation period to ensure an expeditious start.
 12. Winchcombe is undertaking a Neighbourhood Plan and it is creditable that local people involved with this plan are seeking to be pro-active with regards to future development, including the provision of housing and employment. I can understand their concerns that local choices could be limited if the appeal scheme goes ahead, especially in view of the recent Bloor Homes permission. Those involved in its production indicated that they would wish to see an organic growth of the town involving a number of small scale housing developments. This is in line with the *Winchcombe Town Design Statement*, which envisaged infill developments to meet local housing needs. However, notwithstanding the considerable amount of work that has already been done, the Neighbourhood Plan is still at a very early stage. It has not yet reached any consensus with regard to strategy or policy and can have very little weight as a material consideration at the present time.

Conclusions

13. Drawing together the above points, the appeal proposal is needed to meet the housing requirements of the Borough. Winchcombe is recognised as a

sustainable settlement where further housing development can be expected to take place. The scale of the deficit means that this is likely to occur on sites outside the current development boundary and that saved SP Policies H.6 and S.4 and saved Policy HOU4 in the LP are now out of date in this respect. In his decision, the Secretary of State commented that other than allowing the Bishop's Cleeve appeals there was no other credible way of reducing the 5 year housing land deficit. The same could be said in respect of the appeal scheme. Apart from mention by the Town Council of a proposal for more houses at Brockworth there was no evidence that any significant provision was in the pipeline elsewhere in the borough. Other objectors mentioned that sufficient brownfield land was available but there was no firm evidence that this is the case. The effect on the landscape will be considered under the next issue but the contribution that the scheme would make to help address the serious short term housing land supply deficit in Tewkesbury Borough is an important material consideration in its favour.

The effect of the proposal on the rural character of the area which is designated as a Special Landscape Area (SLA) and provides the setting for the Cotswolds Area of Outstanding Natural Beauty (AONB)

14. The planning application was accompanied by a Landscape and Visual Impact Assessment (LVIA). The Council also undertook its own LVIA for the purposes of the appeal. The methodology used in these assessments was based on the *Guidelines for Landscape and Visual Impact Assessment: Second Edition* and has not been challenged. The viewpoints within the Appellant's LVIA were agreed in advance by the Council. I visited most of these during my site visits, including seeing the site from the Gloucestershire Way, the Cotswold Way and the Wychavon Way within the AONB. I also saw the land from more local viewpoints within the SLA, including the approaches along both of the adjoining roads. I have taken all of this information into account in reaching my conclusions along with the oral and written landscape evidence to the Inquiry.

Policy context

15. There are several saved policies in the SP that seek to safeguard the quality of the landscape and the setting of settlements. Of particular relevance is saved Policy NHE.5 in the SP, which indicates that provision should not be made for development that would detract from the particular landscape qualities and character of the SLA. In the LP, saved Policy LND2 requires special attention to be paid to the protection and enhancement of the special landscape character of the SLA, which is of local significance. The supporting text explains that whilst the quality of the landscape is worthy of protection in its own right it also plays a role in providing the foreground setting for the adjacent AONB.
16. The Framework recognises the need to conserve and enhance the natural environment as a core planning principle. It also indicates that policies should set criteria against which proposals affecting landscape areas will be judged. The protection of designated sites should be commensurate with their status and great weight should be given to conserving the landscape and scenic beauty in AONBs. It seems to me that unlike saved LP Policy LND4, which relates to countryside protection in the non-designated areas, saved Policy LND2 is essentially criteria-based and permissive in its tone. There was some debate about whether the Council had used the policy to constrain the principle of development when considering the planning application. However that is clearly not what it purports to do as the Council accepted at the Inquiry.

Indeed the Bloor Homes site is also within the SLA and the Council clearly thought that the designation was not a barrier to granting planning permission. The correct construction of the policy is not at odds with the Framework, it does not seek to apply AONB controls to the SLA and it should not be considered out of date.

Effect on the morphology of Winchcombe

17. Winchcombe is a small town that has become established on the western side of the River Isbourne. Much of the settlement is on the lower slopes of the valley within the AONB and the remainder lies within the SLA. The town is surrounded by AONB countryside to the east, west and south and by the SLA to the north. Site A comprises farmed land and adjoins the northern boundary of the settlement. Both Site A and B are within the SLA and Site A adjoins the AONB boundary, which runs along Gretton Road at this point.
18. The northern boundary of the settlement is not even. Mount View Drive forms its current limit on the western side of Gretton Road whereas between Greet Road and the River Isbourne it is considerably further south. The Bloor Homes development will move this part of the settlement a little further northwards. The current settlement edge between Greet and Gretton Roads has a harsh appearance. New development to the west of Greet Road appears to have obliterated a stretch of important hedgerow¹ that previously existed near to that boundary and the view is of built development close to the development edge. The development of Site A would continue the pattern of development between the two roads out of the town but would offer the opportunity of a softer landscaped edge to the settlement provided by the field hedge that runs along the northern ridge and is roughly 5 metres high. With augmented planting there would be a considerable improvement to the setting of the town when approaching along either Greet or Gretton Roads from the north.
19. The housing development itself would occupy the western part of Site A. Its eastern boundary would have a diagonal alignment which is dictated by the presence of the subterranean remains of a Roman villa which is a Scheduled Monument (SM). SM Consent was granted in July 2012. One of the Council's concerns is that the proposed development would disrupt the strong rectilinear field pattern that is a particular feature of the area. However there are several instances of development at the edges of the town where the existing hedgelines have not been followed and boundaries are irregular in shape. One example relates to housing adjacent to the River Isbourne where the development edge has clearly been constrained by the need to avoid building on the flood plain. Another example is Mount View Drive which has straight boundaries that do not appear to follow any natural feature.
20. Although the SM is not to be excavated the proposal to include an informal recreation area and wildflower meadow within this part of the site would be beneficial to its protection. The existing ploughing regime has the potential for further damage to the subterranean remains. There would also be the advantage of display boards to allow people to understand a piece of history on their doorstep. If anyone were to question the diagonal alignment of the development boundary it would likely alert them to the archaeological

¹ The importance of the hedgerow is in terms of the Hedgerow Regulations 1977. The site visit revealed that much of the important hedgerow shown as H3 in Document 17 no longer exists.

significance of the site. For all of these reasons it is considered that the form and layout of the appeal development would integrate successfully with the existing urban morphology of the town.

Effect on the SLA landscape

21. The *Gloucestershire Landscape Character Assessment* identifies the SLA as falling within the *Unwooded Vale: Teddington and Greet Vale Character Area*. Features include a relatively sparsely settled open agrarian landscape with rural villages and scattered farms, medium to small scale hedged fields, scarce woodland cover contrasting to the wooded backdrop of the Cotswold escarpments and broadly undulating, gentle or almost flat vale landscape. The character area also includes the northern part of the built up area of Winchcombe as well as other settlements in the SLA, including Greet.
22. Hedgerows enclosing medium sized fields are a defining feature of the character area. The appeal proposal would largely retain the existing well managed hedgerows around the boundaries of both sites and through the centre of Site A. The new housing would however result in a loss of openness which is another important characteristic of the vale landscape. The significance of the hedgerows would be diminished by the loss of the farm land that they enclose. The proposed wildflower meadow on Site A would be an attractive feature but would not be typical of the landscape within this particular character area. This part of the SLA however is affected by a number of urban influences, including the poorly screened and exposed settlement edge that adjoins the southern site boundary of Site A. There is also the substantial spread of school buildings on the eastern side of Greet Road. Whilst these are presently surrounded by farmland this will be replaced by formal playing pitches and housing once the Bloor Homes site is developed. So whilst there would be some adverse impact to the SLA landscape, this would be relatively slight.
23. The western part of Site A is at a higher level and there is a small local ridge near the northern site boundary. Notwithstanding the screening effect of the northern field hedge, the upper parts of the new houses would be seen when approaching along Greet or Gretton Roads towards the town. There would be some visual perception that the gap between Winchcombe and Greet had been diminished. However the existence of the other existing and future development mentioned above renders this impact of limited importance. Site B would remain largely open and reflect other sports uses on adjoining land. Overall, the relatively flat nature of the vale landscape and the prevalence of hedgerows and other vegetation would mean that any adverse visual impacts arising from the appeal proposal on the SLA would be small scale and localised.
24. There is in addition scope for mitigation in the form of additional planting so that over time the built development on Site A would become better integrated with its surroundings. Furthermore there is the opportunity to create a new softer landscaped edge to the town as referred to above. Overall I consider that whilst the appeal development on Site A would have an adverse impact on the character and appearance of the SLA this would be of limited significance, especially in the longer term.

Impact on the setting of the AONB

25. The “setting” of the AONB enjoys no particular protection as a designation in its own right. Nevertheless LP Policy LND2 indicates that the SLA plays a role in providing the foreground setting. The Cotswolds Conservation Board² in its Position Statement considers the setting to be the area where development can have a positive or negative impact on the natural beauty and special quality of the AONB. This is also a view endorsed by Natural England. Within the *Cotswolds AONB Landscape Character Assessment* and the associated *Cotswolds AONB Landscape Strategy and Guidelines* the land to the west falls within the *Escarpment Outlier: Langley Hill* character area. The character assessment points out that there is considerable variety within the landscape patterns of the various outliers and that this may even apply to different sides of the same hill. It is therefore relevant to consider whether the appeal site has features in common with the adjoining AONB in order to assess the importance of this part of the SLA in terms of setting.
26. The landscape of the AONB itself would remain unchanged by the development proposal. Nevertheless Site A does share topographic similarities with the AONB as the gradient of the lower slopes of Langley Hill continues east of Gretton Road. Unlike the well tended hedgerows along the other boundaries of Site A, the northern hedgerow is much taller, contains trees and is characteristic of the unmanaged hedges that feature on the adjoining slopes of Langley Hill. There are views across the appeal site towards the AONB in both directions due to its elevated position. This is in contrast to the vale landscape where the much flatter topography, hedgerows and vegetation restricts the line of view. It therefore seems to me that Site A shares a number of landscape characteristics with the AONB landscape of Langley Hill. This seems hardly surprising because the AONB boundary, which was established in 1966 well before the SLA came into being, is not defined by topographic or landscape features but rather by Gretton Road.
27. The AONB is crossed by a number of footpaths and both Site A and Site B can be seen from several elevated viewpoints on Langley Hill as well as from Salter’s Hill on the other side of the valley. These are national trails which include the Gloucestershire Way, the Cotswold Way and The Wychavon Way. From these places one gains a clear understanding of the existing settlement pattern which has extended up the lower eastern slopes of Langley Hill within the AONB.
28. Site B would be seen within the context of the adjoining school and its sports fields. The new housing on Site A would be seen as an extension beyond the existing built confines of the town. However this would be within the context of existing development, including Mount View Drive. Furthermore as previously noted the settlement edge extends much further northwards west of Greet Road than east of it. Winchcombe School is also seen as a significant area of development which is level with the northern site boundary. Although at present I would agree it is distanced from the settlement edge this will become much less apparent when the Bloor Homes development is built. In any event from these elevated viewpoints within the AONB there is the mitigating effect

² The Cotswolds Conservation Board was set up by Parliament to conserve and enhance the natural beauty of the Cotswolds AONB and increase awareness and understanding of its special qualities.

of distance. The existing sense of tranquillity that people enjoy when using these footpaths would not significantly change. Taking all of this into account I consider that the impact on views out of the AONB would be insignificant.

29. In views towards the AONB the visual effect of the development on Site A would be much more pronounced. This is due to the prominence of the topography and the construction of the housing on the elevated part of the site. At present Mount View Drive appears as two parallel rows of houses on the western side of Gretton Road. Whilst this development seems to me to be a highly evident feature it does nestle into its setting and the upper slopes of Langley Hill rise up behind to form a backdrop. It is the case that the new houses would interrupt that foreground view and be prominent to the observer standing outside the site in Greet Road. Whilst some of the upper slopes would be apparent the context of the rising hillside behind the town would be significantly diminished. From Gretton Road the situation is likely to be even worse because the observer would find that views towards Salter's Hill and the AONB escarpment on the other side of the valley would be greatly impeded due to the proximity and elevation of the built development. The adverse impacts on the setting of the AONB would be significant. Whilst these impacts would be confined to limited viewpoints it seems unlikely that they would diminish in time, even with the proposed landscaping.

Conclusions

30. In reaching my conclusions I have had regard to the Local Plan Inspector's views that the development of this land would be prominent and harmful both from the elevated viewpoints of the AONB and from Greet and Gretton Roads. She was also concerned about coalescence between Winchcombe and Greet. Whilst the landscape clearly has not changed since she made her assessment there has been further development within the last 10 years and changes to the settlement edge, including the construction of Mount View Drive and the permission for 92 dwellings on the Bloor Homes land. The Inspector was also of course making her comments under a totally different national planning policy regime and within the context of there being alternative housing land available to meet housing requirements to 2011. It is relevant to note that the Bloor Homes land was not favoured for housing development either.
31. The appeal proposal would extend built development beyond the settlement edge resulting in a loss of countryside. However this in itself is not a bar to development in a situation where the development plan policies relating to the supply of housing are now out of date. Saved Policy LND2 does not prohibit housing development within the SLA in principle. There would be an adverse impact on the character of the SLA landscape itself but this would be localised and should be set against the benefits in terms of the provision of a softer settlement edge.
32. Of greater importance is the harm to the setting of the AONB arising from the housing on the elevated part of Site A. The latter plays a role in providing the foreground setting to Langley Hill within the adjoining AONB with which it shares a number of topographic and landscape features in common. The appeal development would interrupt westerly views thus adversely affecting the setting of the AONB. Furthermore views would be impeded in an easterly direction towards the Cotswold escarpment on the other side of the valley. These impacts would be limited to those public viewpoints close to the east and west site boundaries. Nevertheless there would be significant harm to the

setting of the AONB. This would be contrary to development plan policy, including saved Policies S.6 and NHE.5 in the SP and saved Policy LND2 in the LP.

Other Matters

Affordable housing

33. There is no dispute that within the borough there is a substantial undersupply of affordable housing. It is the case that within Winchcombe there have been several affordable housing schemes, including Mount View Drive. The Parish Housing Needs Survey of February 2012 indicates that 40 households with a local connection were in need of affordable housing. Most of these would be accommodated by the Bloor Homes scheme where 32 affordable homes would be built. However this does not mean that there is no further requirement for affordable housing within this area. Whilst locally derived needs should be met first, there are also many nearby parishes for which Winchcombe would be the nearest and most sustainable location in which to live. Furthermore the severe deficit that exists in the borough as a whole cannot be ignored. I was told that 129 households had specified Winchcombe as their preferred choice and that 75 of those have a proven local connection.
34. Saved Policy HOU13 in the LP seeks to negotiate appropriate levels of affordable housing although there is no development plan policy that is specific about level or mix. The proposal is for 35% provision with a mix of social rent, affordable rent and intermediate housing. The Council is satisfied that the quantum and mix would be acceptable to address current housing needs. The Planning Obligation includes the mechanism for provision and this is tied to the occupation of the market dwellings.

Congestion and highway safety

35. The Town Council and many local residents were concerned about the increase in traffic on local roads, including within Winchcombe itself which is a historic centre with narrow streets and tight junctions. During my visits to the town I experienced delays caused by parked cars, delivery vehicles and local buses. Whilst queues can quickly develop they are also quick to disperse. I have no doubt that on occasion local roads become congested for longer periods especially at peak times. The appeal development would inevitably add more traffic to the local highway network and this must be judged in combination with the 92 homes to be built by Bloor Homes, also on the northern side of the town. However the evidence shows that junctions within the town would remain well within capacity with both developments in place and that queues would not significantly increase. The Framework makes clear that development should only be refused on transport grounds where residual cumulative impacts are severe. That would not be the case here.
36. Gloucestershire County Council as Highway Authority has raised no objections to the appeal scheme on traffic grounds and this is a matter of considerable weight. The proposal would accord with the relevant development plan policies relating to transportation in accordance with the Framework.

Flooding

37. There have been local concerns about flood risk and additional surface water runoff arising from the appeal development. The sites are within Flood Zone 1

where there is a low risk of fluvial flooding. The exception is the eastern part of Site B where no change is proposed. The Flood Risk Assessment concludes that other sources of potential flood risk, including from ground and surface water, would also be low. The post development runoff rates are to be maintained at the existing greenfield level. It is proposed to employ a sustainable drainage system (SuDS) for the housing development at Site A although the SM will be a constraint to drainage infrastructure.

Tourism

38. It is appreciated that Winchcombe is a very attractive town within the AONB. Its economy relies on the many tourists that visit and attractions include the historic Sudeley Castle. The town especially welcomes walkers who enjoy the numerous national footpaths that descend into the town from the surrounding countryside. Whilst I have concluded that there would be some harm to the setting of the AONB this would be restricted to relatively limited viewpoints along Greet and Gretton Roads. The enjoyment of the footpaths themselves and the tranquil experience valued by walkers would not be unduly diminished.

Heritage Matters

39. Several of the hedgerows have been found to be important under the 1997 Hedgerow Regulations. These include the hedgerows along the northern and eastern boundary of the Site A as well as that running along part of the centre and the southern boundary. The hedgerow along part of the southern boundary of Site B is also important. The importance of the hedgerows on Site A is due to their association with the SM. The northern boundary hedgerow also gains importance as a historic parish delineation as does the southern hedgerow on Site B. None of these hedgerows are deemed important on account of their wildlife or landscape interest.
40. In the main the significance of the important hedgerows referred to above would not be affected by the appeal proposal, apart from where the central and eastern hedgerow on Site A would be punctuated to provide footpath access. However from my observation at the site visit there are gaps within the hedgerows that could accommodate the necessary pathways. As layout is a reserved matter and the Masterplan in the Design and Access Statement is illustrative it is considered that small adjustments could be made to ensure that no harm ensues to the significance of the undesignated heritage asset.

Whether the proposal would be sustainable development taking account of the three dimensions in the National Planning Policy Framework.

41. The Framework establishes that sustainable development should be seen as a golden thread running through both plan-making and decision-taking. It identifies three dimensions to sustainable development, economic, social and environmental. It makes clear these roles are mutually dependent and should not be taken in isolation.
42. There is no dispute that in order to address the serious short term land supply deficit new housing in Tewkesbury Borough will have to be built on greenfield sites. As one of the most sustainable settlements in the borough, Winchcombe can be regarded as a suitable location for further housing development. The town is within and adjacent to the AONB apart from the northern section which is within the SLA. All things being equal this locally designated landscape would be considered as a preferable location to the nationally important

landscape of the AONB. Although the Strategic Housing Land Availability Assessment states not to be a policy document it makes clear that sites within the AONB have been ruled out as unsuitable and would need to be considered through the development plan process. It is not an unreasonable proposition that sites close to the settlement edge are generally more sustainable than those further away from it. Having granted planning permission for the Bloor Homes housing scheme, the only remaining land contiguous to the settlement and outside the AONB is Site A.

43. The appeal proposal would result in harm both to the SLA landscape and to the setting of the AONB. The former would be limited due to its localised nature. The latter would be more significant and there would be conflict with policies in both the Structure and Local Plans. There would though also be environmental benefits. These would include the improvements to the SM as well as the provision of a soft landscaped edge to the northern boundary of the town. There would also be other advantages including carbon reduction measures and the use of SuDS techniques. Although there would be a loss of agricultural land this should be set against the gains to biodiversity from the open areas within Sites A and B, including the wildflower meadow.
44. In terms of the social role, the most important benefit would be the provision of market and affordable homes to help meet housing needs over the next five years. There is no reason why the scheme should not deliver a high quality built environment that integrates successfully with the host community. New residents would be able to walk, cycle or travel by bus for many of their journeys. Various measures have been proposed to increase the accessibility of the location, including a section of new footway, various pedestrian crossing points and a Travel Plan. Footpaths across Site A would allow people to walk through the site including across the open space to reach Winchcombe School. In addition there would be a significant contribution to the bus service. As well as benefiting the new population these measures would also deliver wider advantages to the existing population of the town. Site B would offer a substantial area of land adjacent to Winchcombe School for sports pitches. The *Winchcombe Town Design Statement* mentions that there is a need for further sports facilities in the town. It is recognised that the provision would provide mitigation for the recreational needs of the new population. Nevertheless it would also provide a wider benefit to the local community which should not be overlooked.
45. In terms of the economic role the appeal scheme would deliver land in a sustainable location to improve choice and competition in the market place. This would contribute to economic growth both directly and indirectly. There would be new employment created during the period of construction, which is estimated as being three years. It is likely that many would be local jobs and this would boost the local economy. Businesses connected with the construction industry would also benefit and some of these would be local suppliers and trades. Once the development is complete new residents would spend a proportion of their household income locally. Whilst some of these people may already live within the area others would be from elsewhere. The Appellant has estimated that an annual expenditure of £650,000 would be generated of which £160,000 would be spent locally. This seems a relatively conservative estimate given the assumptions on which it is based.

46. I have carefully considered the environmental harm against the advantages of the scheme, including helping to address the serious deficiency of housing land. I have come to the conclusion that taking the policies of the Framework as a whole the proposal represents a sustainable form of development. The policies for the supply of housing are out of date and the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits that would be gained. There are therefore material considerations that override the conflict with the development plan, including saved SP Policy NHE.5 and saved LP Policy LND2 in this case.

Planning Obligations

47. There are two fully executed Planning Obligations by Agreement dated 9 April 2013. The first is with Gloucestershire County Council relating to education, libraries and transportation. It includes a Bonding provision to ensure that the relevant payments are made. The other is with Tewkesbury Borough Council relating to recreation, community facilities, medical care and various other requirements. I observed that no sum had been inserted in either document relating to the respective councils' legal charges. However I was told that the relevant monies had already been paid. I am satisfied that both of the legal agreements are legally sound and fit for purpose.
48. The policy context for the infrastructure contributions is provided by saved Policy S.5 in the SP, which requires consideration of the need for community services, education, sport and leisure facilities and transport services, amongst other things. Saved Policy GN11 in the LP seeks infrastructure provision and public services necessary to enable development to take place. However it is necessary to consider whether the obligations meet the statutory requirements in Paragraph 122 of the Community Infrastructure Levy (CIL) Regulations in order to determine whether or not they can be taken into account in the grant of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question. It is noted that the Planning Obligations do not contain a clause that the contributions are conditional on my finding that they comply with the CIL Regulations.

Obligations to the County Council

49. A contribution has been made towards early years and primary education. The evidence indicates that there is a shortfall in provision within the Winchcombe area. There is sufficient information to be satisfied that the level of the contributions is justified. The money would either be spent on improving the qualifications of existing childminders or else towards providing additional capacity at the local playgroup which is oversubscribed. Winchcombe Abbey Church of England Primary School has limited scope to expand. However one room within the building is available to be used as a classroom and the money would be spent to increase capacity in this way.
50. The library contribution is based on the size of the new population and the cost of providing new stock, electronic access and increasing opening hours. However the information does not clearly demonstrate why existing facilities could not meet the needs of new residents. Whilst I was told that the lending area at Winchcombe Library is to be reconfigured to make more space available there is little convincing evidence that this is necessary in order for the development to go ahead.

51. A contribution is included to improve various crossing points on walking routes between the site and the town through tactile paving and the like. The evidence has included a breakdown of the costs to undertake the work, which includes the installation of dropped kerbs and tactile paving. There is also a contribution towards upgrading one of the bus stops local to the site on the bus route that runs towards Cheltenham along Greet Road. The evidence has included a breakdown of the costs to undertake the work, which includes a new bus shelter and real time passenger information displays. The bus service contribution would provide a morning and evening peak hour service on a subsidised route which is not presently viable. The information provided is sufficient to justify the payment and the objective is to encourage new residents to use the bus thus confirming its viability at the end of the one year period. The Travel Plan monitoring contribution would cover the cost of checking modal shift targets during the period that the plan is current. This is in accordance with the County Council's *Travel Plan Guidance* and is necessary to promote sustainable travel.
52. For the reasons given above there is sufficient information to be satisfied that the education and various transportation related contributions meet the CIL tests and can therefore be taken into account. The library contribution however has not been adequately justified, does not meet the CIL tests and cannot be taken into account.

Obligations to the Borough Council

53. The provision of the affordable housing would be linked by triggers to the market housing delivery to ensure that the affordable units are constructed within a reasonable timescale. There would be two trigger points and the arrangement would be acceptable to ensure the timely delivery of the affordable housing element of the scheme. The obligation is necessary to meet local housing needs.
54. In accordance with saved Policy RCN1 in the LP the appeal scheme would be required to provide 0.34 hectares of open space. The open space on the eastern side of Site A around the SM, which would include a children's play area, would exceed this requirement. There is provision for a Management Company to be set up and this would be responsible for the long term maintenance of the open space. The company would be financed through annual contributions from each household and is necessary to ensure the open space is properly looked after for the benefit of all who use it.
55. The Council has a local standard for playing pitches in different parts of the borough and in accordance with its Playing Pitch Strategy the requirement here would be for 0.25 hectares and this would be on Site B. The intention would be for this to be used by the school and community although the Planning Obligation makes arrangements for the transfer of the land in the first instance to the Council. A contribution has been made for the laying out of the pitches and the provision of changing facilities. Bearing in mind that the sports land would be transferred for the charge of £1, the financial contributions, which are based on Sport England's cost multiplier, would be reasonable and necessary.
56. There are also contributions towards the Cascades swimming pool in Tewkesbury and towards AstroTurf provision at Winchcombe School. Whilst the sums of money involved are based on the Sport England sports facility calculator I have considerable doubts about the justification for these additional

- contributions towards recreational facilities. There was insufficient information to be satisfied that the improvements to the pool would be necessary to accommodate those new residents who wished to use it. Winchcombe School would benefit considerably from the pitch provision referred to above and it is difficult to see how a further payment towards Astroturf could be justified.
57. Representations from local people and from the healthcare provider make clear that the existing medical centre in Winchcombe is operating at capacity. The medical centre contribution would be used to extend the facility and is worked out on the basis of the number of GP's needed to serve the new population, the space to accommodate them and the build costs for this space. There is room on the site to extend the existing building.
58. A contribution has been made for community facilities. It seems that this was initially offered by the Appellant. Whilst I was told that it may go towards more allotments or extending existing burial facilities it is difficult to see how the sum of money was worked out and what specific project it is intended to address to meet the needs of the new population.
59. There are several contributions that relate to facilities for individual households. These include a contribution towards refuse and recycling containers and a contribution towards the Smart Water Scheme. The latter is an anti-theft mechanism and has been requested by the police. Whilst these contributions have been worked out on the basis of cost of provision it seems to me that they relate to items for which individual householders should be responsible themselves. It is difficult to conclude that they are necessary for the development to go ahead. The provision of dog bins and appropriate signage would though be necessary to ensure that the open space on the eastern side of Site A is a safe and pleasant place for all to use. The contributions relate to the cost of provision and are justified.
60. For the reasons given above there is sufficient information to be satisfied that the obligations relating to the affordable housing provision and Management Company and the contributions towards school sports provision, the medical centre, dog bins and signage meet the CIL tests and can therefore be taken into account. The contributions towards the swimming pool, Astroturf provision, community facilities, refuse and recycling and the Smart Water scheme have not been adequately justified, do not meet the CIL tests and cannot be taken into account.

Planning conditions

61. I have considered the planning conditions suggested by the main parties bearing in mind advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. I have reworded them where necessary in the interests of precision, relevance and enforceability. Wherever possible I have imposed conditions that reflect the Secretary of State's model conditions in the circular.
62. In order to contribute to the housing land supply shortfall in the short term it is reasonable to reduce the implementation period from that normally applied to outline proposals. The Design and Access Statement sets out the principles and parameters that the scheme would follow and against which the proposal has been assessed. This includes frontage development along Gretton Road and further details would be provided at reserved matters stage.

63. There are several conditions that require specific details to be submitted at reserved matters stage. These relate to such matters as materials, bin and cycle storage, planting schedules, hard surfacing as well as implementation. Whilst I can understand that the Council wishes to offer guidance to the developer they cover matters that relate to the reserved matters stage. It does not seem to me that these conditions pass the circular test of necessity. The exception concerns construction details of internal roads and footways and the details required to ensure that individual dwellings are not occupied before access to the public highway has been provided. Such details go beyond the reserved matter relating to layout and so I have worded these as stand alone conditions.
64. Hedgerows and associated trees are to be retained and a condition is required to ensure that they are protected during the construction period. The lower slopes of Langley Hill continue across Site A and details of site levels and slab levels are necessary to ensure that the new houses sit comfortably within the landscape. Such details would not necessarily be linked to appearance or layout and should be required through a stand alone condition.
65. The suggested drainage condition included foul drainage. However it is unnecessary to require details of this as the proposal is to connect to the main sewerage system and can be dealt with under other legislation. There is no suggestion that there is insufficient capacity to accommodate the new dwellings. It is proposed to dispose of surface water using SuDS techniques. The success of this approach in the longer term is particularly dependent on the effectiveness of the future management regime. A condition to cover these matters is therefore required. The sports pitches on Site B would not be provided by the Appellant and it seems likely that their development would require a further planning application by the end user. This would include consideration of the drainage works and so it is unnecessary for a condition relating to this matter to be imposed.
66. In the interests of the safety of future occupiers it is necessary to provide fire hydrants. Several improvements are proposed to pedestrian accessibility. These include a pedestrian crossing facility in Greet Road near to Winchcombe School and a new stretch of footway along the Gretton Road frontage. Conditions are required to ensure these improvements come about but requiring the footway to be maintained is not sufficiently precise and requiring it to be retained seems unnecessary.
67. Access is not a reserved matter but it is necessary to ensure that it is provided in accordance with the submitted details and surfaced satisfactorily prior to adoption. In order to ensure the free flow of traffic along Gretton Road it is appropriate to require a Construction Method Statement to cover matters such as operatives' parking and unloading arrangements. It will also include wheel washing arrangements to ensure excess mud is not deposited on the highway.
68. The Ecological Impact Assessment indicates that there are no designated sites of nature conservation value either on or adjacent to the appeal site. The hedgerows around and within the site would be largely retained and the proposal includes the creation of new grassland and a wildflower meadow in the vicinity of the SM. This would result in a gain to biodiversity but as suggested in the assessment an Ecological Management Plan is necessary for hedgerow enhancement and providing the new habitats on the eastern part of the Site A. The condition also specifies details for future management of these

areas although the open space would be looked after by the Management Company as specified in one of the Planning Obligations. Due to the archaeological importance of the site a programme of investigation and recording is required.

69. The Council suggested a condition requiring a minimum of 10% of the energy supply to be secured by decentralised and renewable or low carbon energy sources. This is not supported by any specific development plan policy and the Appellant's Energy Statement indicated that carbon reductions would be delivered by other means such as insulation of dwellings. It seems to me that the suggested condition, which requires a 30% improvement in carbon reduction above that required under Building Regulations would serve a similar purpose and allow greater flexibility as to how the savings could be achieved.

Overall conclusions

70. For all of the reasons given above the appeal proposal comprises sustainable development. Whilst there would be significant landscape harm and conflict with development plan policy there would also be substantial benefits. Most notably these would include the contribution towards housing land supply in the face of a serious short term deficit. I have taken account of the appeal decisions proffered by the Council where the lack of a 5 year housing land supply was found insufficient to outweigh the harm to the countryside. However each case is different and here I have found that the balance of considerations is clearly in favour of granting planning permission, notwithstanding the policy conflict. I have considered all other matters that have been raised but have found nothing that alters my conclusion that the appeal should succeed.

Christina Downes

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Cairnes	Of Counsel instructed by Ms S Freckleton, Borough Solicitor
<i>He called</i>	
Mr R Eaton BA(Hons) MTPL MRTPI	Planning Consultant with RJE Planning
Mr J Overall BA(Hons) CMLI	Landscape Architect with Ryder Landscape Consultants

FOR THE APPELLANT:

Mr Jeremy Cahill	Of Queen's Counsel instructed by Mr P Stacey, Turley Associates
<i>He called</i>	
Mr D Archer BA(Hons) DipTP MA MRTPI	Director of pad Design
Mr A Cook BA(Hons) MLD CMLI MIEMA CEnv	Director of Pegasus group
Mr P Finlayson BSc CEng MICE MIHT MCIWEM	Managing Director of PFA Consulting Ltd
Mr P Stacey BA DipTP CertArch MRTPI	Planning Director of Turley Associates

ROUND TABLE DISCUSSIONS ON CONDITIONS AND PLANNING OBLIGATIONS

Mrs K Riossi	Senior Solicitor with Gloucestershire County Council
Mr R Pitts	Senior Development Valuer with Gloucestershire County Council
Mr M Glaze	Development Co-ordinator for the Tewkesbury Area with the Highways Division of Gloucestershire County Council
Mrs F Evans BA MCIH	Housing Enabling Manager with Tewkesbury Borough Council
Mr A Sanders BA(Hons)	Leisure and Culture Manager with Tewkesbury Borough Council
Mr G Spencer LLB	Locum Solicitor with Tewkesbury Borough Council
Mr A Ross	Turley Associates
Mr A White	Planning Officer with Tewkesbury Borough Council

INTERESTED PERSONS:

Mrs A Telling	Local resident
Mr R Harrison	Chairman of Winchcombe Town Council
Mr D Bayne	Secretary and Trustee of the Campaign to Protect Rural England (CPRE) Gloucestershire

Mr J Mason	Branch and Secretary of CPRE Cheltenham, Gloucester and Tewkesbury District Local Borough Councillor for the Winchcombe Ward
Mr R Wakeford MRTPI (Hon)	Local resident, Co-ordinator of the Winchcombe Neighbourhood Plan, Town Councillor and Member of the Cotswolds Conservation Board
Mr M Watt MRTPI CMLI FArbor	Planning Officer with the Cotswolds Conservation Board

DOCUMENTS

- 1 Council's notification of the Inquiry and list of persons notified.
- 2 Statement delivered orally by Mrs Telling (local resident)
- 3 Statement delivered orally by Mr Bayne (CPRE)
- 4 Statement delivered orally by Mr Watt (Cotswolds Conservation Board)
- 5 Letter submitted by Mr and Mrs A J Brown, local residents
- 6 Draft conditions
- 7 Table prepared by the Borough Council showing CIL compliance of planning obligations
- 8 Correspondence from Natural England
- 9 Scheduling information for the Scheduled Monument on the eastern part of the site
- 10 Covering letter and extracts from the Inspector's Report into objections to the Tewkesbury Borough Local Plan
- 11 Statement delivered orally by Mr Harrison (Winchcombe Town Council)
- 12 Statement delivered orally by Mr Wakeford
- 13 Statement delivered orally by Councillor J Mason
- 14 Table prepared by the County Council showing CIL compliance of planning obligations (education and libraries)
- 15 Table prepared by the County Council showing CIL compliance of planning obligations (highways)
- 16 Briefing Note by Nathaniel Lichfield & Partners to explain the eVALUATE approach on behalf of the Appellant
- 17 Hedgerow Review submitted by the Appellant
- 18 Planning Obligation by Agreement between the owners, the Appellant and the County Council including the consent of Clydesdale Bank as Chargee
- 19 Planning Obligation by Agreement between the owners, the Appellant and the Borough Council including the consent of Clydesdale Bank as Chargee

PLANS

- A Application plans
- B Topography plan with the urban area marked
- C Plan showing AOBB/ SLA boundary
- D Approved layout of the Bloor Homes (Western) development, east of Greet Road, Winchcombe

SCHEDULE OF CONDITIONS

1. The development for which permission is hereby granted shall not be begun before detailed plans thereof showing the layout, scale and external appearance of the buildings, and landscaping thereto (hereinafter referred to as "the reserved matters") have been submitted to and approved by the Local Planning Authority.
2. Applications for the approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 12 months from the date of this permission.
3. The development hereby permitted shall be begun before the expiration of 12 months from the date of approval of the last of the reserved matters to be approved.
4. Applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and identified in the revised Design and Access Statement dated August 2012.
5. No development shall take place until details, which show how the existing trees and hedgerows that are to be retained will be protected during the course of construction, have been submitted to and approved in writing by the local planning authority. The details shall accord with BS 5837: *Trees in Relation to Construction*. All approved tree and hedge protection measures shall be in place prior to the commencement of construction and shall be retained thereafter until construction has been completed.
6. No development shall take place until details of existing and proposed ground levels and ground floor slab levels of the buildings relative to Ordnance Datum Newlyn have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
7. No development shall take place until a comprehensive and detailed drainage scheme for the disposal of surface water incorporating sustainable drainage principles and rain water harvesting (where possible), have been submitted to and approved in writing by the local planning authority. The scheme shall be in accordance with the submitted Flood Risk Assessment and Drainage Strategy dated March 2012 and shall include details of future management and maintenance and a timetable/phasing plan. Development shall be implemented in accordance with the approved drainage scheme.
8. No development shall take place until details of the provision of fire hydrants served by mains water supply, including a timetable for their provision, have been submitted to and approved in writing by the local planning authority. The fire hydrants shall be provided in accordance with the approved details and timetable.
9. No development shall take place until the applicant, or their agents or successors in title, has secured and implemented a programme of

- archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
10. No works shall commence on site until details of a pedestrian crossing facility across Greet Road have been submitted to and approved in writing by the local planning authority. The works shall be completed in accordance with the approved details prior to occupation of any of the proposed dwellings.
 11. No development shall take place until full details of all roadways within the site have been submitted to and approved in writing by the local planning authority. Details shall include drainage, surfacing, construction, visibility splays, turning heads, street lighting, footways, road gradients and a timetable for provision. Development shall be in accordance with the approved details and timetable.
 12. Before any dwelling is first occupied the road between that dwelling and Gretton Road shall be constructed to binder course or surface course level and shall be retained in that condition until and unless the road is adopted as highway maintainable at public expense.
 13. No dwelling shall be occupied until the footway along the frontage of Gretton Road has been provided in accordance with plan no R281/1 E.
 14. No development shall take place until the proposed access off Gretton Road has been provided in accordance with plan no R281/1 E. The first 20 metres of the access road from Gretton Road shall be surfaced in a bound material and retained in that condition until and unless the road is adopted as highway maintainable at public expense
 15. No development shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. wheel washing facilities
 - v. measures to control the emission of dust and dirt during construction
 16. No development shall take place until an Ecological Management Plan (EMP) has been submitted to and approved in writing by the local planning authority. The EMP shall be in accordance with the mitigation and enhancement measures in the Ecological Impact Assessment (dated April 2012). It shall include a timetable for implementation, details for monitoring and review and how the areas concerned will be maintained and managed. Development shall be in accordance with the approved details and timetable in the EMP.
 17. A 30% improvement in carbon reduction above the 2010 Building Regulations requirement shall be secured across the development as part of the reserved matters submissions under Condition 1. This shall provide details of how the proposal will contribute to achieve aggregate reduction in carbon emissions in accordance with an agreed delivery trajectory.

End of conditions

5.000.6 NPPF para.14 – planning permission for wind farm – no local policies approved under the 2004 Act – inconsistency between NPPF and out of date policies

Colman v Secretary of State for Communities and Local Government and others

High Court of Justice Queen's Bench Division
Administrative Court

Kenneth Parker J.: May 9, 2013

[2013] EWHC 1138 (Admin)

Kenneth Parker J. said:

Introduction

1. This is a claim under s.288 of the Town and Country Planning Act 1990. The claimant, Anita Colman, seeks the quashing of the decision of the inspector, Mr. R W N Grantham BSc (Hons) MRSC MCIWEM, appointed by the Secretary of State for Communities and Local Government, the first defendant, contained in a decision dated 22 October 2012. The inspector held an inquiry over 15 days from June to September 2012 and undertook both accompanied and unaccompanied site visits.

2. The inspector granted planning permission for the construction of nine wind turbines of 103m in height to blade tip on land at Batsworthy Cross, Knowstone, North Devon. Planning permission had been refused by the North Devon District Council, the second defendant, in July 2011.

The National Planning Policy Framework (March 2012) ("the NPPF")

3. Prior to the public inquiry, but after the council had considered and refused the applications, the Secretary of State published the National Planning Policy Framework (March 2012) ("the NPPF") setting out the Government's planning policies for England and guidance as to how it expects those policies to be applied. However, para.2 of the Introduction to the NPPF makes clear that –

"Planning law requires that applications for planning permission must be determined in

accordance with the development plan, unless material considerations indicate otherwise. The National Policy Framework must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions..." (Footnotes omitted)

4. Paragraphs 11, 12 and 196 of the NPPF reiterate the approach required by s.38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act"), namely that a proposed development which is in accordance with an up-to-date Local Plan should be approved and proposed development that conflicts should be refused "unless other material considerations indicate otherwise". Paragraph 13 identifies the guidance in the NPPF as a material consideration to be taken into account in determining applications for development.

5. Paragraph 14 of the NPPF refers to a presumption in favour of "sustainable development" as a central feature of the NPPF in relation to both plan-making and decision-taking. In the context of decision-taking, the presumption in favour of sustainable development is given expression in two ways. The first is by approving development proposals that accord with the development plan. The second is to grant permission where the development plan is absent, silent or where relevant policies are "out-of-date" unless any adverse impacts of granting permission for the proposed development "would significantly and demonstrably outweigh the benefits, when assessed against the policies in the [NPPF] taken as a whole". Paragraph 211 in Annex 1 to the NPPF makes clear that for the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the NPPF.

6. Transitional provisions in Annex 1 to the NPPF permit decision-takers, for 12 months from the date of publication of the NPPF, to continue to give full weight to relevant policies in development plan documents adopted since, and in accordance with, the 2004 Act even if there is a limited degree of conflict between those development plan policies and the NPPF (see para.214). However, where relevant policies are contained in development plan documents which have not been adopted in accordance with the 2004 Act (or the policies have been adopted under the 2004 Act but there is more than a limited degree of conflict with the NPPF) the weight to be given to them depends on the consistency of those policies with the NPPF, with greater weight being given to development plan policies which are consistent with the NPPF's policies (see para.215).

7. The policies relevant to determination of the appeals considered by the inspector were not in development plan documents adopted in accordance with the 2004 Act. Any inconsistency between those policies and the NPPF would render them out of date and cause the approach set out in para.14 of the NPPF to be engaged. In that case the decision-taker would be required to consider whether any adverse impacts of granting planning permission for the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

The inspector's decision

8. At para.19, the inspector set out the planning policy context for the determination of the appeals noting that (a) the NPPF was a material consideration which could be given considerable weight if the relevant policies in the development plan were not adopted in accordance with the 2004 Act; and (b) the weight to be given to the NPPF would increase according to the degree of inconsistency between the relevant development plan policies and the NPPF (see paras 214 and 215 of Annex 1 to the NPPF).

9. At para.20, the inspector identified the development plan as including RPG10 and the saved policies of the Local Plan (LP) and the Devon Structure Plan (SP) but noted that the development plan policies were not adopted in accordance with the 2004 Act. The inspector stated that it was therefore necessary to consider the consistency of the individual relevant development plan policies with the policies of the NPPF for the purpose of deciding how much weight to give the development plan policies and those in the NPPF in his assessment of the merits of the development.

10. At para. 21, the inspector noted that the NPPF replaced much of the previously published national planning policy guidance but that certain of the companion guides to those policy statements remained extant. At para.22, he referred to the approach to be adopted in the assessment of on-shore wind farms in the context of the extant Overarching National Policy Statements for Energy (EN-1) and for Renewable Energy Infrastructure (EN-3).

11. At para.23 the inspector referred to the Government's commitment to reducing greenhouse gas emissions and increasing energy supply from renewable sources, including from on-shore wind farms. The inspector also mentioned that not all renewable energy developments are sustainable and that the impacts of such developments (e.g. on the landscape) have to be taken into account.

12. At para.26, the inspector identified the main issues in relation to the wind farm as being the impact

of the proposed development on the landscape, cultural heritage, living conditions of local residents, bats and highway safety and whether any impacts would be outweighed by the benefits of the scheme.

13. At paras 30–214 the inspector assessed the impacts of the proposed development against the identified issues in the context of the relevant development plan policies and arrived at his conclusions in relation to each of the relevant issues.

14. In addition to the impacts identified above, the inspector considered the benefits of the scheme at paras 215–229 and concluded that –

- i) On-shore wind was essential to meeting the UK's need for energy security and reducing greenhouse emissions (para.219).
- ii) The savings in CO₂ emissions were likely to be substantial and valuable over the lifetime of the scheme (25 years) (para.227).
- iii) There would be economic benefits from employment during construction and operation of the wind farm with possible expenditure of more than £1 million to the local economy (para.228).

15. At paras 230–236, the inspector weighed the harmful impacts against the benefits of the proposed development and concluded as follows –

“234. Some employment would be generated by the development, but this would be mostly during the construction phase. However, the benefits of reduced greenhouse gas emissions would be long lasting and the need for new renewable electricity generating projects is urgent. Whilst the CO₂ savings which this wind farm would achieve would not be as great as anticipated, they would nevertheless be valuable and, as such, would outweigh the limited harm which the scheme would cause.

235. Development plan policies which seek to promote renewable energy schemes provide no direct support for these proposals. This is because they only allow for the benefits of the scheme to be balanced against the harm, if the energy generated would contribute towards meeting the county's 2010 target of producing 151MW of electricity from renewable sources. That target no longer applies and the development plan's approach is outdated when considered against the framework's presumption in favour of sustainable development.

236. This is not a case where the harm caused would significantly and demonstrably outweigh the benefits. Indeed, subject to putting suitable controls in place, the impact of the Batsworthy

Cross Wind Farm would be acceptable and, on that basis, permission should be granted for the Appeal A proposals."

The grounds of challenge

16. For reasons that are apparent from the foregoing analysis it was common ground at the inquiry and in this appeal that the inspector had first to identify and analyse the relevant policies in the development plan and, secondly, to determine the extent, if any, to which a relevant policy was consistent with the NPPF. The central ground of challenge in this appeal is that the inspector failed properly to analyse a number of relevant policies and also reached conclusions on consistency that were wrong. Also the challenge was presented under two separate heads. The points are closely interlinked, and I shall deal with them together. I shall look in turn at the relevant policies.

A. Landscape character

17. At para.60 the inspector stated:

"The impact would also be limited to a period of 25 years, or less. Although this is a matter to be considered in the overall balance, it does not reduce the degree of harm or alter my conclusion that the proposals run contrary to LP Policy ENVI and SP Policy COI. However, the framework requires a judgment to be made as to whether an adverse impact, such as this, would be outweighed by the scheme's benefits. This approach is unlike that set out in Policies ENVI and COI; it therefore carries substantial weight."

18. Given the background and earlier references it was plain that the inspector was in the above paragraph concluding that relevant policies LP Policy ENVI and SP Policy COI were significantly inconsistent with the NPPF and to that extent the overall "cost/benefit" approach of the NPPF was to be preferred.

19. Mr. David Cocks QC, on behalf of the claimant, submitted that there was no significant inconsistency between the relevant policies. At first sight that is a curious submission, given the express terms of the relevant policies. For example, SP COI expressly provides:

"Policy SP COI

Landscape character and local distinctiveness
The distinctive qualities and features of Devon's Landscape Character Zones, illustrated in Map 5, should be sustained and enhanced ... Policies and proposals within each part of Devon should be

informed by and be sympathetic to its landscape character and quality." (My emphasis).

20. The supporting text to Policy SP COI also refers to "conservation" and "maintenance".

21. LP Policy ENVI states:

"Policy ENVI (Development in the Countryside)
Development in the countryside will only be permitted where:

"A rural location is required.

It provides economic or social benefits to the local community: and

It protects and enhances its beauty, the diversity of its landscape and historic character, the wealth of its natural resources and its ecological, recreational and archaeological value."

22. These policies are, in my view, on their own express terms very far removed from the "cost/benefit" approach of the NPPF. The policies as such do not permit any countervailing economic or similar benefit to be weighed in the scales. A submission that such benefits may be implicitly taken into account would be immediately rejected as running directly contrary to both the language and rationale of the relevant policies. Mr. Cocks QC sought to meet this formidable objection by submitting that such benefits, recognised as central to the NPPF, would always constitute a "material consideration" relevant to the grant of development permission, and should, therefore, be "read into" the relevant policies.

23. I reject that argument on two grounds. First, the NPPF in referring to "relevant policies" is plainly directing the mind of the decision maker to the express terms of the relevant policies and requiring the decision maker to compare, for consistency, the express terms with the "cost/benefit" approach of the NPPF. Secondly, and perhaps more importantly, it is a fundamental and long established principle of planning law that something identified as a "material consideration" (such as the putative economic and environmental benefit in the present context) is conceptually distinct from considerations identified in the development plan and does not *ceteris paribus* carry the same weight as an aim or consideration identified in the development plan itself. It is, therefore, essential, both analytically and in policy terms, to separate objectives or considerations specifically set out in the development plan from something else that can count only as another "material consideration". Mr. Cocks' argument confounds elements that fall within different relevant categories, and which have a different character for planning purposes, and it cannot rescue

the inconsistency that is obvious on its face between the relevant policies and the NPPF.

24. For these reasons I conclude that the inspector properly directed his mind in the present context to the relevant policies and correctly analysed the inconsistency between those policies and the NPPF.

B. Historic buildings and ancient monuments (cultural heritage)

25. SP policy CO7 is as follows:

“Historic settlements and buildings

The quality of Devon’s historic environment should be conserved and enhanced. In providing for new development particular care should be taken to preserve the historic character of settlements, the character and appearance of conservation areas, the historic character of the landscape, listed or other buildings of historic interest and their settings and parks and gardens of special historic interest and their settings.” (My emphasis).

26. LP policy ENV17 is as follows:

“Policy ENV17 (listed buildings)

Development affecting a listed building will only be permitted where it preserves the architectural or historic interest of the building and its setting.” (My emphasis).

27. The relevant development plan policies are, therefore, expressed in very restrictive terms. Any harm, or anything less than preservation of the status quo, should lead to permission being refused. The policies admit of no express exceptions. They leave no room to accommodate harm without breaching the policy. Any development which did not at the least preserve the status quo would run counter to the relevant development plan policies.

28. On cultural heritage, the NPPF states that planning should “conserve heritage assets in a manner appropriate to their significance”. (My emphasis; para.17; para.126).

29. The NPPF also applies a threshold of “substantial harm” and provides different tests where the impact of a development is above or below that threshold. Harm or loss can be allowed where there is clear and convincing justification (para.132). Substantial harm should be exceptional (para.132) but can be allowed where it can be demonstrated either that it is “necessary to achieve substantial public benefits that outweigh that harm” or where certain criteria apply (para.133). Where there is less than substantial harm,

the “harm should be weighed against the public benefits of the proposal” (para.134).

30. The NPPF also provides that it is necessary to “avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal” (para.129; my emphasis added).

31. It is clear from the foregoing that, unlike the highly restrictive relevant development plan policies, the NPPF takes a far more balanced approach, allowing an analysis of the significance or, where appropriate, of the substantiality of harm to the identified cultural interests, and a weighing of the identified harm against the actual benefits that could be expected to result from the benefits. Again I reject, for the reasons given above, the argument that the inconsistency that emerges from an evaluation of the express terms of the relevant development policies, as against the balanced approach of the NPPF, can be rescued by seeking to “read into” the relevant policies a corresponding balance as a “material consideration”.

32. The inspector summed up the position at para.99 of the decision as follows:

“Development plan policies simply seek to protect the setting of listed buildings, and of scheduled monuments, against harm, whatever the circumstances. There is no suggestion here that such harm would be substantial, in terms set out in the framework. Considerable weight therefore attaches to the framework’s requirement that any harm should be balanced against the public benefits of the proposals; a matter that I return to later.” (Footnotes omitted).

33. In the light of the matters that I have set out at length above, I endorse that summary as a fair and accurate statement of the position, and entirely reject the claimant’s criticisms of it.

Renewable energy developments

34. The main relevant policies of the development plan on renewable energy developments are SP Policy CO12 and LP Policy ECN15.

35. Policy CO12 states:

“Renewable energy development

Provision should be made for renewable energy developments, including offshore developments, in the context of Devon’s sub regional target of 151MW of electricity production from land based renewable sources by 2010, subject to consideration of their impact upon the qualities and special features of the landscape and upon the conditions of those living or working nearby.” (My emphasis).

36. Thus the policy's support for renewable energy developments had to be assessed against the background of the target referred to which would determine whether permission would be granted.

37. Policy ECN15 states:

"Provision should be made for renewable energy developments to contribute towards Devon's sub regional target of 151MW of electricity production from renewable sources by 2010. In considering proposals for renewable energy, the benefits of the developments in meeting this target will be balanced against the impact on the local environment. A proposal for the generation of energy from a renewable source will be permitted where:—

The proposal, including any associated transmission lines, access roads and other related works does not adversely affect the visual character of its surroundings; it does not significantly affect the living conditions of the occupants of residential properties or the amenities of other users of the locality." (My emphasis).

38. Accordingly, the relevant development plan policies not only supported renewable energy development only against the background of the 2010 target, but also expressly provided that planning permission should be refused where there was significant harm to important identified interests, including visual character, living conditions and landscape character. The central aim of the policies was to avoid such significant harm.

39. By contrast, the NPPF's policy is that the development of renewable energy is to be encouraged (para.17) and supported (para.93). The NPPF states that "this is central to the economic, social and environmental dimensions of sustainable development" (para.93).

40. In particular, the NPPF says that policies should:

"maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts." (My emphasis).

41. The NPPF states that when determining planning applications a decision-maker should "approve the application if its impacts are (or can be made) acceptable" (para.98).

42. In the same way, the Overarching National Policy Statement for Energy (EN-1), (applied by footnote 17 to para.97 of the NPPF) provides at para.5.9.12 that it is necessary to "judge whether any adverse impact on

the landscape would be so damaging that it is not offset by the benefits (including need) of the project".

43. As already mentioned, the inspector noted the approach of the NPPF to renewable energy developments at paras 22-23, including the encouragement for renewable energy, the requirement that the impact need only be "acceptable" and that the delivery of renewable energy infrastructure was central to the presumption in favour of sustainable development.

44. At para.235 the inspector stated:

"Development plan policies which seek to promote renewable energy schemes [LP Policy ECN15 and SP Policy CO12] provide no direct support for these proposals. This is because they only allow for the benefits of the scheme to be balanced against the harm, if the energy generated would contribute towards meeting the county's 2010 target of producing 151MW of electricity from renewable sources. That target no longer applies and the development plan's approach is outdated when considered against the framework's presumption in favour of sustainable development."

45. Given the context, as explained above, the inspector was in this paragraph making two separate points. First, policies ECN15 and CO12 are drafted so as to relate to the 2010 target of 151MW. As the inspector noted, that target no longer applies. Secondly, "the development plan's approach is outdated when considered against the framework's presumption in favour of sustainable development".

46. Mr. Cocks QC submitted that the inspector in the present context did not have regard to all the relevant policies in the development plan, did not analyse these policies correctly and wrongly concluded that the policies were inconsistent with the NPPF and/or outdated. I reject that submission. It is clear from the foregoing that at a number of points in the decision the inspector identified the relevant development plan policies. It would have been astounding if he had not done so: they were central to the relatively lengthy inquiry and were referred to, particularly in closing submissions, by the experienced advocates at the enquiry. Furthermore, there is nothing in the inspector's description or analysis of the relevant policies that points to any misunderstanding by the inspector. The 2010 target was no longer applicable. The whole thrust of the relevant development policies was restrictive, intended to ensure that any significant harm to important identified interests was avoided, and to that extent they were in substance discouraging; by contrast the NPPF encouraged and supported the

development of renewable energy schemes, so long as any adverse impacts could be “addressed satisfactorily” and were “acceptable” – a wholly integral framework.

The inconsistency that is plain between the development plan policies and the NPPF cannot again be avoided by an appeal to any implicit presumption that could be read into the relevant policies (paras 22-24 above).

Second principal ground of challenge: application of para. 14 of the NPPF was irrational/unlawful

This ground of challenge is closely related to the principal ground of challenge.

Mr. Cocks QC submitted that the inspector:

“failed to observe the presumption in favour of the development plan and failed to give individual policies that conflicted with the proposal their proper weight.”

The high point of this submission was that the inspector did not specifically mention s.38(6) of the Act. There was no legal requirement for him to do so (see *South Northamptonshire Council v Secretary of State for Communities and Local Government* [2013] EWHC 11 (Admin), para.64. The test is one of materiality, namely, whether the inspector failed to take into account the approach that is mandated by s.38(6).

In this case the inspector began, as he was entitled, with the relevant policies set out in the development plan. As explained above, he assessed the planning application in respect of each of the main policies against the relevant policies. However, as also explained above, he correctly concluded that in material respects some of the relevant policies were inconsistent, indeed strikingly inconsistent, with the development plan and were to that extent also out of date.

Where relevant policies of the development plan are outdated, para.14 of the NPPF provides that planning permission should be granted unless adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole. There is no material and recent consideration of para. 14 by Males J in *Newbury BC v SSELG* [2013] EWHC (Admin). The learned judge observed at para.13 that the weight given to a development plan would depend upon the extent to which it was up-to-date and at para.19 of para.14 of the NPPF provides for what should be done when an existing plan was out-of-date. The result of the exercise would be that the relevant policies would

be a presumption in favour of granting permission (see paras 20, 29 and 49).

53. Lest it be thought that the approach in para.14 represents some fundamental shift in planning law or policy, it is perhaps worth recalling some general and well established principles. In *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447, the House of Lords considered the approach to the development plan in equivalent Scottish legislation. Their Lordships contemplated that there could well be a departure from the development plan where that policy had become outdated because of more recent national planning policy.

54. Lord Hope said at 1450B-G that a planning decision-maker:

“is at liberty to depart from the development plan if material considerations indicate otherwise. No doubt the enhanced status of the development plan will ensure that in most cases decisions about the control of development will be taken in accordance with what it has laid down. But some of its provisions may become outdated as national policies change, or circumstances may have occurred which show that they are no longer relevant. In such a case the decision where the balance lies between its provisions on the one hand and other material considerations on the other which favour the development, or which may provide more up-to-date guidance as to the tests which must be satisfied, will continue, as before, to be a matter for the planning authority.”

55. And Lord Clyde said at 1458E-F:

“If the application does not accord with the development plan it will be refused unless there are material considerations indicating that it should be granted. One example of such a case may be where a particular policy in the plan can be seen to be outdated and superseded by more recent guidance. Thus the priority given to the development plan is not a mere mechanical preference for it. There remains a valuable element of flexibility. If there are material considerations indicating that it should not be followed then a decision contrary to its provisions can properly be given.”

56. If the decision is read fairly as a whole, there was no arguable legal flaw in the inspector’s approach. For the reasons already given, he was entitled to conclude that the relevant policies in the development plan were outdated and that the provisions of the NPPF should be given decisive weight.

57. In that context it is also worth recalling that, where the provisions of the development plan become outdated, "the balance between the provisions of the plan and the considerations pulling against it is for the decision-maker to strike": *Cala Homes v SSCLG* [2011] EWHC 97 (Admin) at para.48, my emphasis. In this case the inspector followed the appropriate legal approach and his ultimate decision, which it was for him to make as an expert planning judgment, cannot be impugned as irrational.

The third principal ground: the inspector was wrong to conclude that the proposed development did not conflict with Policy CO2

58. This is a discrete ground of challenge. The claimant contends that the inspector was wrong to conclude that the development would not conflict with Policy CO2 in relation to the Exmoor National Park. In essence it is argued that because at para.71 of the decision the inspector found that "the turbines would have an impact in views from the National Park" there was a clear conflict with Policy CO2.

59. The proposed development lies outside the National Park by more than 7km. Policy CO2 provides that development outside Devon's National Parks should not be permitted if it would "damage the natural beauty, character and special qualities" of the parks.

60. At para.70 of the decision the inspector found that the development site was outside the setting of the National Park and also that the ridge on which the turbines would be seen lay "beyond Exmoor's obvious influence". The question was then whether in these circumstances any impact in views from the National Park would tend significantly to undermine users' enjoyment of the park's qualities and so cause damage to the park's "natural beauty, character and special qualities". That value judgment called for a classical application of planning expertise, which could be impugned only on grounds of legal error or irrationality. In my view, there is nothing to suggest that the inspector misunderstood the reach of the relevant policy or that he came to a conclusion on its application that was not rationally open to him. It might be conceded that for an individual user the impact on the view from the park might reduce that user's enjoyment of the park's qualities, but the inspector had to consider the matter more broadly and to assess whether, on such a broader consideration, the impact was so significant as to damage the park's special character.

The fourth principal ground: the inspector failed to apply s. 66 of the Planning (Listed Buildings and Conservation Areas Act) 1990 ("the PLBCA Act 1990")

61. This is a new ground of challenge, for which permission to amend the grounds of appeal is required. I shall first deal with the substantive merits of this new ground.

62. Section 66(1) of the PLBCA 1990 provides:

"In considering whether to grant planning permission for development which affects a listed building or its setting, the Local Planning Authority, or as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

63. Section 66(1) was recently considered in *East Northants DC and others v SSCLG and Barnwell Manor* [2013] EWHC 473 (Admin) where Lang J. said at para.39:

"In my judgment, in order to give effect to the statutory duty under s.66(1), a decision-maker should accord considerable importance and weight to the "desirability of preserving ... the setting" of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status. Thus, where the s.66(1) duty is in play, it is necessary to qualify Lord Hoffmann's statement in *Tesco Stores v Secretary of State for the Environment & Ors* [1995] 1 WLR 759, at 780F-H, that the weight to be given to a material consideration was a question of planning judgment for the planning authority."

64. In fact the inspector gave careful and detailed consideration to the effects of the development on the settings of listed buildings at paras 98-115 of the decision. He noted that the SEI identified significant impact on five such buildings (para.102) and he focussed his attention on these buildings and on three others and a SAM.

65. In respect of five listed farmhouses that are less than 2km from the appeal site, the development would have no material effect on the asset's significance (para.106). The inspector found that the development would have "minimal impact" on the landscape in which the grade II* listed farmhouse at Shapcott Barton, 3km from the nearest turbine, was set (para.108). The inspector then closely examined the setting of the Church of St Michael, a listed grade II building,

converted to a dwelling now known as All Angels. At para.113 he concluded as follows:

"... the wind farm would be harmful to the rural valley setting of All Angels and thereby to the historic significance of this heritage asset. This would be contrary to LP Policy ENV17 and SP Policy CO7. Nevertheless that harm would be less than substantial in terms of the framework's requirements."

66. In respect of other buildings he concluded that there would be no harm or that the harm would be minor (paras 114-119).

67. At para.231 under the heading "Balance", the inspector stated:

"There would also be some harm to the setting of designated heritage assets and, in particular, to the historic significance of All Angels in Creacombe, but this would be less than substantial."

68. That conclusion has, of course, to be read against the detailed findings that, apart from All Angels, insofar as there was any harm at all, it was "minimal" or "minor". It is also notable that the inspector concluded that the overall harm that would arise from the development was "limited" (para.234). In my view, the inspector did give in this case "special regard" to the consideration referred to in s.66(1) of the PLBCA. He did so by carrying out a careful and detailed assessment of the impact on the setting of the listed buildings in question. In all instances but one there was no such impact or the impact was such that it could in effect

be discounted in the decision making. The inspector did have real concern about one listed building and found that the impact was significant. However, he was then required, first, to evaluate the extent of that impact and to weigh the negative impact against the substantial benefits of the development in accordance with the NPPF. The impact on the one building was less than substantial, and even if special weight were attached to that impact, the overall negative effects were limited and could not outweigh the benefits of the development.

69. I conclude, therefore, that the proposed ground relying on s.66(1) is without merit, and I refuse permission to amend for that reason. There was, furthermore, no good explanation for not including this proposed further ground in the original claim. Bearing in mind the strict time limit in s.288 and the public interest in having claims of this nature dealt with expeditiously, I would in any event have been reluctant to allow the amendment.

70. For completeness there was an additional ground advanced in respect of alleged inadequacy of reasoning in the inspector's decision. As is very apparent from this judgment, the inspector addressed each relevant issue, set out the material considerations in relation to each issue and explained how he reached his assessment in each case. The claimant can be in no doubt why the issues were resolved adversely to the arguments put by the claimant, and was in a position to challenge, albeit unsuccessfully, both the reasoning and conclusions in the decision.

71. This claim is accordingly dismissed.

Case Index

This table provides further citations to cases referred to in the Monthly Bulletin. Cases are frequently cited initially on the basis of a transcript or a brief summary

report, such as in the *Times*, or the *Estates Gazette Case Summaries*. A fuller report often follows, in the *Property, Planning and Compensation Reports*, the *Planning Law Reports* or the *Journal of Planning and Environment Law*. Citations are also now included, where appropriate, to the Crown Office Digest (COD), but these are summaries rather than full reports.

The Index is now maintained on a rolling basis: cases generally remain in it for one year from the time of their most recent citation in the Bulletin.

<i>Arun District Council v Secretary of State for Communities and Local Government</i> [2013] EWHC 190 (Admin)	Apr 13
<i>Barkas v North Yorkshire County Council and Scarborough BC</i> [2012] EWCA Civ 1373	Dec 12
<i>Colman v Secretary of State for Communities and Local Government and others</i> [2013] EWHC 1138 (Admin)	July 13
<i>Compton v Secretary of State for Communities and Local Government</i> [2012] EWHC 351 (Admin)	Nov 12



Appeal Decision

Inquiry held on 24-26 July 2012

Site visit made on 26 July 2012

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 24 August 2012

Appeal Ref: APP/H1840/A/12/2171339

**Land between Station Road and Dudley Road, Honeybourne,
Worcestershire**

- 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 Lioncourt Homes (Honeybourne) LLP; and E, J, M and H Westoby against the decision of Wychavon District Council.
 - The application Ref W/11/02531/OU, dated 11 November 2011, was refused by notice dated 7 February 2012.
 - The development proposed is an outline planning application for mixed residential and business development, public open space, landscaping with detailed access arrangements.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for mixed residential and business development, public open space, landscaping with detailed access arrangements on land between Station Road and Dudley Road, Honeybourne, Worcestershire in accordance with the terms of the application, Ref W/11/02531/OU, dated 11 November 2011, and the plans submitted with it, subject to the conditions listed at Annex A.

Application for costs

2. At the Inquiry an application for costs was made by Lioncourt Homes (Honeybourne) LLP; and E, J, M and H Westoby against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal site comprises some 4.6 hectares which is currently undeveloped and unused agricultural land. On its northern boundary the site adjoins the mainline railway linking Evesham and other settlements to the west, to London. Station Road runs along the western boundary of the site, with an existing field gate access positioned towards the north-west corner. A mature hedgerow runs along most of the western boundary of the site. Honeybourne Railway Station and a housing development surrounding the Station lie on the opposite side of Station Road.
4. To the south, the site adjoins residential properties facing onto Station Road, Dudley Road and Harvard Avenue. An existing access drive leading from Dudley Road and serving a garage parking area leads to the southern

boundary of the site and the northern end of Harvard Avenue also adjoins the southern boundary. Open fields lie to the east. A high pressure gas pipeline runs across the site in a north east to south west direction.

5. The proposal is for outline planning permission with all matters reserved for later consideration, except for detailed access arrangements. Both parties agreed that the plans on which the proposal should be determined are as follows: Location Plan: 11-030/01; Proposed Site Access Drawings: 0349-011, 12 and 13 and Development Framework Plan: 11/030/DF01 Rev A.
6. In addition to the above plans, Drawing 11-030 MP06 was submitted as an illustrative Layout Plan to demonstrate one way in which the site might be developed for 67 dwellings. An additional illustrative Layout Plan 11/030/MP06 Rev A was submitted which superseded the originally submitted illustrative layout and it shows how a development of up to 70 dwellings could be accommodated on the site. Another illustrative plan, Drawing MID3157/003 Rev A was submitted by the Appellant at the Inquiry. This drawing shows Noise Mitigation Stand-Off Distances. I have had regard to all of these illustrative plans in coming to my decision in this case.
7. The proposal is therefore for a residential development of up to 70 dwellings. The illustrative layout plan¹ shows the majority of these units being positioned in the northern half of the site. However, 5 of these units would be located off a new access from Dudley Road, using the existing drive accessing the garage parking area, and a single dwelling towards the southern boundary with access directly off Station Road. The development would include 34.2% of the proposed dwellings as affordable housing i.e. some 24 affordable dwellings.
8. The proposed business development would comprise of up to 2,000 sq metres of B1 (a) (offices) or B1 (b) use (research and development) positioned towards the southern boundary of the site although to the north of the proposed residential development off Dudley Road. The provision of an open space area measuring some 2.5 hectares is shown on the illustrative layout plan² as lying within the central part of the site. The plan shows community woodland and surface water balancing ponds within the proposed open space area.
9. A new vehicular access is proposed off Station Road leading to the majority of the proposed development. Also the proposal includes a new vehicular access off Dudley Road (to serve 5 of the proposed dwellings), a vehicular drive off Station Road to serve a single dwelling and a new pedestrian access off the site onto Station Road with pedestrian crossing, close to the access drive to the railway station.
10. The application was supported by various reports including a Design and Access Statement (DAS), a Desk Based Assessment of Land Next to Station Road, an Ecological Assessment, a Transport Assessment, a Framework Business Travel Plan, a Residential Travel Plan, an Archaeological Evaluation, a Landscape Assessment, a Planning Statement, a Noise Assessment, a Hedgerow Report, a Flood Risk Assessment and a Water Management

¹ Layout Plan 11/030/MP06 Rev A

² Op. cit.

Statement. A Statement of Common Ground (SCG) was agreed between the Appellant and the Council.³

11. I note that Reason for Refusal 2 (RFR2) relating to the business element of the scheme was withdrawn prior to the Inquiry and was not defended by the Council. Furthermore, I am aware that on 20 July 2012 the Council accepted that the issue of noise (RFR5) was capable of being addressed by an appropriate planning condition.⁴
12. The Appellant and the Council have completed a S106 Agreement⁵ to take effect should planning permission be granted for the appeal. Amongst other matters this Agreement provides arrangements for: some 34% of the proposed dwellings on the site to be delivered as affordable units; the enhancement/provision of off site measures to encourage travel to and from the site by means other than the private car including improvements to the local cycle network and improvements to local bus shelters; the enhancement/provision of education facilities; and the maintenance and/or improvement of recycling facilities and/or services.
13. The S106 Agreement also provides for a contribution towards off site public open space including provision and/or enhancement and/or maintenance of a sports ground/sports club for use by the occupants of Honeybourne as well as a financial contribution towards the provision and/or enhancement and/or maintenance of recreational facilities in the Parish of Honeybourne. It includes a public art and community culture contribution to help fund a project aimed at integrating the new community into local village life and public art. I have had regard to the provisions of the S106 Agreement in the consideration of the appeal. I return to the Agreement later in the decision.

Main Issues

14. I consider the main issues in this appeal are:
 - (i) Whether in the light of the development plan, national guidance and other material considerations, including the housing land supply position, the appeal proposal would be a sustainable form of development;
 - (ii) Whether the nature and design of the proposed development would adversely affect the character and appearance of the village;
 - (iii) Whether the proposed development would unacceptably harm the historic, visual and ecological value of the hedgerow fronting Station Road;
 - (iv) The effect of the proposed development on the significance of any designated heritage assets and/or their setting;
 - (v) Whether the occupiers of the proposed dwellings on the site would suffer from excessive noise and disturbance; and

³ INQ3

⁴ Mr Cahill's Opening Statement paragraph 6

⁵ APP7

- (vi) Whether the proposal makes adequate provision for mitigating any adverse impact it would have upon local services and infrastructure.

Reasons

Planning history

15. I am aware of the planning history of the site and other relevant planning applications. The SCG⁶ provides brief details of the only other planning application submitted and relating to the site.⁷ The SCG also mentions the planning application and appeal relating to the land on the opposite side of the road. The Applicant (Sharba Homes) has appealed against the Council's decisions to refuse planning permission for this application and a planning appeal Inquiry commenced on 18 July 2012.⁸
16. I am also aware of two other applications which have been submitted. Firstly, I note that the Appellant has submitted a revised planning application relating to the appeal site. Details of this are set out in Mr Edwards' proof.⁹ The new application relates to residential development of up to 60 units and a redesigned/re-located vehicular access of Station Road. Secondly, I note there is a planning application submitted by Taylor Wimpey West Midlands which relates to a site of some 4.16 hectares on Grange Farm, High Street, Honeybourne. This application seeks permission for the erection of up to 75 dwellings. Details are included within Mr Edwards' proof.¹⁰ The Council resolved to approve this application subject to various matters including a S106 Agreement on 19 July 2012.¹¹

Planning policy background

17. The development plan for the area includes the Regional Spatial Strategy for the West Midlands (WMRSS) (2008), The Worcestershire County Structure Plan (WCSP) (2001) and the Wychavon District Local Plan (WDLP) (2006).
18. The WMRSS remains part of the development plan, although the SoS is committed to abolishing it. The revocation of Regional Strategies has come a step closer following the enactment of the Localism Act on 15 November 2011. However, until such time as the WMRSS is formally revoked by Order, I have attributed limited weight to the proposed revocation in determining this appeal. There is broad agreement between the parties with regard to the WMRSS policies that are relevant in this case. These are set out in the SCG¹² and there is no need for me to repeat them here.
19. I am aware that the housing figures in the WMRSS are only on a county wide basis and are extremely old, being based on household projections from the 1990s. In respect of paragraphs 214 and 215 of the National Planning Framework (NPPF) full weight cannot be given to the saved policies of this plan and any weight that is given will depend on the degree of consistency with the NPPF. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded

⁶ INQ3

⁷ SCG Section 3

⁸ APP/H1840/A/12/2172588

⁹ Mr Edwards' proof paragraph 8

¹⁰ Mr Edwards' proof paragraph 9

¹¹ APP2 and LPA2

¹² SCG Section 4

to the policies. They should not be used for future requirements. I note that no WMRSS policy is referred to in the Council's reasons for refusal.

20. The Phase 2 Revision Draft of the WMRSS is not an approved document and therefore it does not form part of the development plan. It is though a document which is a material consideration in this appeal and given the stage reached (Panel Report) would normally be of substantial weight. In a number of appeals the emerging RSS has been given substantial weight, particularly because it has undergone an EIP and the housing figures are more up to date and have been properly examined.¹³ The Phase 2 Revision Draft as amended by the Panel seeks the provision of an annual average of 475 dwellings per annum (dpa) in Wychavon in the period 2006 to 2026 (total 9,500 dwellings). The figures contained within the Panel Report remain the most recent objectively assessed figures available, although there have been more recent household and population projections since these were published. The figures in this plan are therefore of weight and are a starting point in the consideration of housing supply.
21. The WCSP was adopted in 2001 and covers the period to 2011. Many of its policies were saved by a SoS Direction under paragraph 1(3) of Schedule 8 of the Planning Compulsory Purchase Act 2004. There is broad agreement between the parties with regard to the WCSP policies that are relevant in this case. These are set out in the SCG¹⁴ and there is no need for me to repeat them here. WCSP Policies SD2, SD4, SD8, CTC5, CTC17, CTC 19, D10 and D26 were referred to in the Council's reasons for refusal. However, the WCSP policies cited in RFR2 are no longer relevant, as RFR2 has been withdrawn.
22. The WCSP does contain housing figures relating to Wychavon. In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan and any weight that is given will depend on the degree of consistency with the NPPF. Given the policies relating to housing land requirements are out of date and based on old information then little weight can be accorded to the policies. The policies relating to the provision of housing were not saved. There is therefore no figure relating to housing provision within this plan.
23. The WDLP was adopted in 2006 and covers the period 1996 to 2011. Many of its policies were saved under a Secretary of State Direction in May 2009. A number of policies within the plan were not saved. There is broad agreement between the parties with regard to the WDLP policies that are relevant in this case. These are set out in the SCG¹⁵ and there is no need for me to repeat them here. WDLP Policies GD1, GD2, GD3, SR5, ENV1, ENV7, ENV8, ENV10, COM2, COM12 and ECON6 were referred to in the Council's reasons for refusal. In respect of paragraphs 214 and 215 of the NPPF full weight cannot be given to the saved policies of this plan because the plan was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and any weight that is given will depend on the degree of consistency with the NPPF.

¹³ Mr Bateman's proof and appendices

¹⁴ SCG Section 4

¹⁵ SCG Section 4

24. I note that the policies relating to housing provision are time expired and are out of date so limited weight can be given to these policies. Any interpretation of policies within the WDLP which sought to restrict a ready supply of housing and therefore adversely impact on the NPPF requirement to "boost significantly the supply of housing"¹⁶ would clearly conflict with the NPPF. In respect of housing supply, Policy SR1 sought to provide 7,450 dwellings in the District between April 1996 and March 2011 (497 dpa). The plan is therefore time expired in respect of housing provision policies.
25. Emerging Local Planning Policy is contained in the South Worcestershire Development Plan (SWDP). This is being produced jointly by Wychavon District Council, Malvern Hills District Council and Worcester City Council to guide development in the South Worcestershire area. The Preferred Options version of this document was the subject of a public consultation exercise that ended in November 2011. The most recent timetable for the SWDP outlines that the Council aims to consult on the pre-submission draft in November 2012, with the document being submitted to the Secretary of State in March 2013. The independent Examination would be likely to take place in July 2013 with adoption in December 2013. In respect of housing in Wychavon the document suggests that 7,803 dwellings will be provided in the period 2006 and 2030. There have been a number of objections to this figure and inevitably it will be discussed in detail at the independent Examination. The Council has recently resolved¹⁷ to increase the dwelling requirement figure in the SWDP to a total of 23,200 dwellings with the Wychavon figure (excluding WWA) being 8,900 dwellings. Given the stage reached the SWDP can be given little weight.
26. With regard to other documents, I am aware of the Worcestershire Strategic Housing Market Assessment (2012) (WSHMA). This document considers a great deal of background information relating to housing and population within the area, including projections for households. There are a number of detailed concerns with this document in respect of the work that has been undertaken in respect of household projections, not least because of its significant divergence with the demographic projections used by ONS. The document has not been subject to any public consultation and I consider it can be given little weight at this appeal.
27. The following Supplementary Planning Guidance and Documents are relevant in the assessment of this appeal: Developer Contributions Towards Service Infrastructure SPG; Developer Contributions for Education Facilities SPD; Affordable Housing SPG; Water Management SPD; Planning and Wildlife SPD Development Guide - Developer Contributions to Public Open Space; and the Residential Design Guide SPD. I also have taken into account the Written Ministerial Statement Planning for Growth¹⁸ and Laying the Foundations,¹⁹ which emphasises the Government's approach to house building and the need to provide action to build more houses and to boost economic growth.
28. The NPPF was published in March 2012. The NPPF largely carries forward existing planning policies and protections in a significantly more streamlined and accessible form. It also introduces the presumption in favour of

¹⁶ Paragraph 47

¹⁷ APP13

¹⁸ March 2011

¹⁹ November 2011

sustainable development²⁰ and makes adjustments to some specific policies. Paragraph 7 of the NPPF explains the three dimensions to sustainable development – an economic role, a social role and an environmental role. Paragraph 17 sets out 12 principles that planning should achieve. Paragraph 47 indicates that the Government's ambition is to boost significantly the supply of housing. Moreover, paragraph 49 indicates that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. The NPPF also sets out how decision-takers should proceed taking account of the date of adoption of the relevant policy and the consistency of the policy with the NPPF. I have taken the NPPF into account as a material consideration in this case.

Issue 1 – Housing Land Supply and Sustainability

29. From the evidence that is before me there are a number of shortcomings in the Council's approach in this case particularly in relation to the wider development plan context. Firstly, the Saving Letters²¹ made clear that the Council should adopt a 2004 Act²² compliant development plan "promptly". That request was made in May 2009 and there is still no such development plan nor will there be until the end of 2013. This failure is compounded by the fact that the time period which the WDLP was intended to cover expired on 31 March 2011. Secondly, the Council supported the Option Figure of 9,100 for WDC for the period 2006 to 2026 which was presented for Examination by the Panel.²³ That Preferred Option was submitted in draft in December 2007 and committed the Council to providing 9,100 over the 20 year period, i.e. 455 dpa starting from 2006.
30. Thirdly, it is clear that the Council has not achieved this total in any one year since 2006. Instead it has relied upon the saved policies to refuse planning applications such as this. Overall this approach is in direct conflict with the advice in the former PPS3 (2006) to bring about a "step change" in housing land supply. It also ignores the Planning for Growth's injunction to issue planning permissions where possible which was issued in March 2011 and most recently it denies that the failure to make 5 year provision engages paragraph 14 of the NPPF by reason of paragraph 49.
31. It seems to me that the "Saving Letters"²⁴ make clear the contingent basis upon which the policies were saved, namely the requirement in the decision making process to have regard to up-to-date policies, such as the former PPS3, which required a 5 year land supply. These "material considerations", now include the NPPF, which means that it is simply not good enough to regard saved policies as an opportunity to refuse rather than grant planning permission. The Council's approach is at odds with the requirement in the Saving Letters. Relevant policies in the WCSP and the WDLP must be viewed in the context of paragraph 215 of the NPPF. Importantly, there is an obligation to consider the development plan in the light of any absence of a 5 year supply which predated the NPPF and can be traced back to 2006.

²⁰ Paragraph 14

²¹ Mr Bateman's Appendices 9 and 10

²² Planning and Compulsory Purchase Act 2004

²³ Mr Bateman's Appendix 7 page 105

²⁴ Mr Bateman's Appendices 9 and 10

32. It is common ground in this case that the Council is unable to demonstrate a 5 year housing land supply. It follows that paragraph 49 of the NPPF is engaged. The Council does not accept that land supply polices which are not "up-to-date" (paragraph 49) must therefore be considered "out of date". I disagree with the Council's interpretation. The Council also argues that the extent of the housing supply deficit is relevant when ascertaining the weight to be attributed to this fact in the overall assessment of the proposal. However, I cannot find evidence to support this view. The Council's delivery record is very poor (234 dpa²⁵) when compared to the targets it set for itself in 2007 (455 dpa) and 2012 (371 dpa).
33. In my view the target should be guided by the WMRSS Panel Report which indicates a figure of 9,500 additional dwellings i.e. 475 dpa.²⁶ This remains a reliable evidence base, consistent with the NPPF.²⁷ More up to date information is available in the CLG 2008 Household Projections and the 2010 population figures adjusted by using the Chelmer Model are now available and relevant.²⁸ The result of using these three information sources is that it is obvious that the Council has a 5 year supply of below 3 years when the correct approach is adopted.²⁹
34. The Council argues that it has responded proactively to the recognised shortfall by granting planning permissions beyond the WDLP development boundaries. In addition, it states that the lack of completions is, in very large part, due to the on-going economic recession, especially the dearth of finance, which is beyond the control of the Council rather than a lack of extant planning permissions. Whilst this may be so I note that the Council prefers to rely on the housing provision figures in the emerging SWDP. In my view there are fundamental problems with this. Firstly, it is not yet "objectively tested" in the context of the NPPF.³⁰ Secondly, it relies upon WSHMA figures to which unjustified adjustments have been made.³¹ Thirdly, the SoS places importance upon tested figures. This was confirmed in a recent decision in Salford.³²
35. Fourthly, the Council was unable to point to one recent decision where an Inspector or the SoS had relied upon figures in an emerging plan. Neither could Mr. Bateman. Fifthly, reliance upon the emerging SWDP conflicts with The Planning System: General Principles paragraph 18 as the plan is not likely to be submitted for independent Examination until March 2013. Nor can it be afforded weight under paragraph 216 of the NPPF for reasons already set out above. Finally, the Bishops Cleeve decisions make clear that little weight can be attached to a Preferred Options document which is yet to be consulted upon.³³ The most recent overall timetable for the SWDP also refers to a Preferred Options Consultation document which is indicative of its present status.³⁴ For all the above reasons I consider that the full, objectively assessed housing needs target cannot be the SWDP figure.

²⁵ Mr Bateman's proof paragraph 7.5

²⁶ Mr Bateman's Appendix 7 page 126

²⁷ NPPF paragraph 218

²⁸ NPPF paragraph 159

²⁹ Mr Bateman's proof and APP12 Tables 4-6

³⁰ NPPF paragraph 47

³¹ Mr Bateman's evidence at page 37 onwards

³² APP10 paragraph 15

³³ APP9 paragraph 19

³⁴ APP13 paragraph 14

36. The Council considers that the residual method for assessing housing needs should be preferred over that of the Sedgefield approach. It is common ground that the NPPF is silent on the matter. However, the Council was unaware of any post NPPF decision which followed the residual approach. Recent pre-NPPF decisions by the SoS expressly approve the Sedgefield approach at Andover and Moreton in Marsh.³⁵ In my view, it is inconsistent with Planning for Growth and the NPPF paragraph 47 to meet any housing shortfall by spreading it over the whole plan period. Clearly it is better to meet the shortfall sooner rather than later. Moreover, if the buffers are brought forward into the first 5 years as in the NPPF,³⁶ so also should the shortfall. I cannot agree with the Council's use of the residual method. In my view the Sedgefield approach should be used for the reasons outlined.
37. There was debate at the Inquiry as whether the Council was a 5% authority or 20% authority in relation to buffers. The test is to be found within NPPF paragraph 47 which refers to "persistent record of under-delivery." When using the SWDP figures (371 dpa) measured from 2006, the agreed table attached to APP16 shows the Council's delivery rates compared to the required rate. It is clear from this evidence that in every one of the last 6 years delivery is below the SWDP requirement of 371 dpa.
38. In my view that failure to deliver amounts to a "persistent" record of under-delivery. Indeed the overall deficit is 823 dwellings which equates to over 2 years. Clearly if the figures in the Phase 2 Revision Draft of the WMRSS were used the deficit would be considerably more. The evidence of the deficit figures left the Council with no option other than to accept that this is a 20% authority. Moreover, it cannot be right to blame the slump in the property industry for under performance so long as there is not a 5 year supply of sites available now as required by paragraph 47 of the NPPF.
39. In terms of housing supply calculations and the need to identify a supply of specific and developable sites, I am aware that the Appellant's approach was not to argue for exclusion of any site. The Appellant simply referred to the circumstances of each and concluded that a 10% reduction was justified overall and reasonable having regard to lapses, delays and reduced delivery. The comparison of the 2006 AMR forecasts with actual deliveries showed this was justified and conservative.³⁷ Moreover, this approach is supported by "*Housing Land Availability*" DOE, Planning and Research Programme Paper, Roger Tym and Partners 1995 and it was accepted in planning appeal decisions at Moreton in Marsh³⁸ and Marston Green.³⁹ I recognise from the table included in the Appendix to APP16 that delivery is often less than expected. Overall I consider it is reasonable to allow for a 10% discount on sites with planning permission.
40. I also accept the Appellant's approach in excluding large windfalls from future delivery. To include them there must be "compelling evidence" according to paragraph 48 of the NPPF. Even in the past there were no large windfalls in 2006/7 and 2008/9.⁴⁰ So far as the future is concerned I

³⁵ Mr Bateman's Appendices 3 and 15

³⁶ NPPF paragraph 47

³⁷ See figures in APP16 Appendix

³⁸ Mr Bateman's Appendix 15 paragraph 178

³⁹ Mr Bateman's Appendix 13 paragraph 8

⁴⁰ Mr Davies' Appendix D Table 4

consider these sites would either be allocated – in which case to include them would be double counting – or will be granted on appeal – in which case there would not be any "compelling evidence" of future delivery, merely the chance thereof. In my view large windfalls should be excluded from the calculation.

41. The Council indicates that there have been 485 small windfalls developed over 6 years which equates to approximately 80 dpa.⁴¹ The previous percentage of garden land planning permissions of all windfalls was 28%⁴² and therefore the appropriate figure using the Council's evidence is 72% of 80 which equals 58 dpa. This compares with the Appellant's estimate of 55 dpa. The Council's 5 year figure of 490 for windfalls is not reliable or based on "compelling evidence": quite the opposite, it is contradicted by the evidence. The appropriate figure should be $58 \times 5 = 290$ or $55 \times 5 = 275$.
42. Taking into account all of the above information it is clear to me that the Council does not have a 5 year housing land supply available. The Appellant's evidence indicates a number of ways of calculating housing supply based on housing requirement figures using policy advice and based on the most up to date information. In respect of the Appellant's supply figure, which I prefer, there is between 1.9 to 2.76 years supply. Taking account of the 20% buffer required by NPPF, this amounts to a shortfall of between 3,129 and 1,705 dwellings. Using the Council's supply figures the years supply situation improves to between 2.56 and 3.71 years supply. Taking account of the 20% buffer required by NPPF there is a shortfall of between 2,627 and 1,203 dwellings.⁴³ In all cases there is always less than a 5 year supply available. In my view, the Council has serious housing land supply problems. It is imperative that restorative action should be taken.
43. It is common ground that the appeal is in conflict with Policy GD1 of the WDLP. The Council argues that due weight, not full weight, should be applied to the conflict in the light of the current housing supply deficit. I accept that the proposed development lies beyond the defined settlement boundary of Honeybourne and I attach some weight to that conflict. However, I am aware that the Council has granted planning permissions for other schemes beyond the settlement boundaries such as at Copcut Lane, Droitwich Spa. I also note the advice in paragraph 47 of the NPPF to boost significantly the supply of housing and paragraph 49 of the same document which indicates that relevant policies for the supply of housing should not be considered up to date if the Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites. It is agreed that in this context paragraph 14 of the NPPF comes into play and also that no "relevant policies"⁴⁴ affect the appeal site. The test therefore is whether the advantages are "significantly and demonstrably" outweighed by the benefits. This can be tested by reference to the 3 dimensions to sustainable development.⁴⁵

⁴¹ Mr Davies' Appendix D Table 4

⁴² Mr Davies' Appendix D Table 4

⁴³ APP12 Tables 4-6

⁴⁴ NPPF paragraph 14 footnote 9

⁴⁵ NPPF paragraph 7

44. In terms of an economic role I consider the housing construction would bring direct and indirect employment according to "Laying the Foundations".⁴⁶ The location is adjacent to a Category 1 village with good services and transport links including a nearby railway station. The employment element of the scheme would provide the opportunity for local employment.⁴⁷ The open space on site would be new village "infrastructure". In terms of a social role, I consider that open market housing is needed as evidenced by the deficit in the 5 year housing land supply. There is also a significant under provision of affordable housing against the established need figure and an urgent need to provide affordable housing in Wychavon. The local services are accessible. The new development would serve to "knit in" the Stephenson Green development as part of the village.
45. In terms of an environmental role, I consider that any necessary development brings about change and this one is no exception. I am aware that in a recent SoS decision for a residential development at Burgess Farm Worsley, the SoS acknowledged that development of the site *"would result in the permanent loss of an area of open countryside enjoyed by local people; encroachment into the wildlife corridor; a significant intrusion into the setting of Walkden; and that it would seriously degrade the character and appearance of the area and the amenities of neighbouring residents (IR206)."*⁴⁸ Nevertheless, the SoS decided that the proposal would have an environmental role. *"... by providing open areas and nature parks. He accepts that there are substantial environment disbenefits to the development of this site including the loss of countryside that is valued by residents and the impact on the rural setting of Walkden."*⁴⁹
46. It follows that even a site which has the effect of seriously degrading the character of an area can still have an environmental role. In this case the development (i) would lead to the loss of 23m of hedgerow but would provide planting on the northern boundary of the site with a new one; (ii) would lose some ridge and furrow but makes publicly available for close enjoyment by future generations the best of what would remain. This represents a net benefit in its own right according to the evidence of the Appellant's expert, and (iii) would provide a large open space with woodland, grass management and three SUDS areas all of which would increase biodiversity.
47. Overall I conclude on the first issue whilst there would be conflict with aforementioned development plan policies, other material considerations including the housing need position far outweigh such conflict. This is genuinely a sustainable form of development as envisaged in the NPPF.

Issue 2 – Effect on the character and appearance of the village

48. The Council refers to particular paragraphs in the NPPF as providing evidence as to why the appeal proposal should be rejected. Paragraphs 17 and 56 to 64 in relation to design are highlighted. It is common ground between the parties that the yardstick to which the appeal proposal should be judged is whether it can be characterised as high quality design. Paragraph 64 states

⁴⁶ Mr Bateman's Appendix 5 page 57 paragraph 11

⁴⁷ Report by Halls (Worcester) LLP November 2011

⁴⁸ APP10 paragraph 21

⁴⁹ APP10 paragraph 28

that permissions should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. The Council submits that by siting the vast majority of the houses (64 of the 70 units) in the north-west corner of the site most of the development would be poorly related to, and visibly divorced from, the remainder of the village. The Council also argues that the scheme runs contrary to Policy GD2 of the WDLP and the provisions of the Council's Residential Design Guide SPD, notably paragraphs 4.3 and 4.7. It is claimed that the proposed development would be seen as detached and not well connected to Honeybourne.

49. From the evidence that is before me and from my site visit, it seems to me that Honeybourne, has grown in a rather haphazard and fragmented way over the last 100 years and, should the proposed development be implemented, it would not be uncharacteristic of the way in which Honeybourne has evolved. Whilst layout is a reserved matter, I consider that the appeal proposals would conform to the Council's SPD. The scheme has taken appropriate care to reflect the surrounding scale and appearance of the existing settlement in the design of all the built environment; and its design ensures that it would fit into the surrounding built environment and landscape. Moreover, the proposed layout provides a clear contrast between the public and private realm and it includes home zones which establish pedestrian priority. In addition, the proposals are of a higher design quality than the Stephenson Way development, which was granted consent by the Council in 2001.
50. In my view, the scheme is designed in such a way as to maximise the public benefit of the scheme to the local community, including dedicated public open space, community woodland (2.16 hectares) and it would make a positive contribution in terms of local employment and community facilities. It could hardly be described as exclusive or indeed 'non inclusive'. The layout of the housing is outward-looking offering plenty of natural surveillance both to the open space and Station Road. Furthermore, the layout completes and creates a more robust boundary to the settlement than the weak and poorly defined edge created by the 1970's housing to the south.
51. Having regard to the advice in the NPPF, I consider that the development constraints attributed to the location of the gas main do not provide sufficient negatives to warrant dismissing this appeal. Given that the consent of the development would be representative of Honeybourne's organic evolution, and the scheme conforms to the principles of high quality inclusive design, from a design perspective there is no reason why the appeal scheme should not be granted planning permission. On the second issue I conclude that nature and design of the proposed development would not adversely affect the character and appearance of the village.

Issue 3 - Effect on the hedgerow fronting Station Road

52. The Council points out that hedgerows are a characteristic feature of the Worcestershire countryside and that the value to be attached to the hedgerow is high as it is a recurring and oft-repeated theme of the "Village

Claylands" LCT.⁵⁰ The single key primary characteristic of this landscape type is "hedgerow boundaries to fields". The LCT information sheet states that these are landscapes where the conservation of the hedgerow network is of prime importance and the landscape guidelines indicate that the pattern of hedgerow boundaries should be conserved. It is agreed that by applying the criteria under the Hedgerow Regulations 1997, the hedgerow is 'important' but it is in no way exceptional compared to other hedgerows of similar age in Worcestershire. It is also agreed that the proposed development would only result in a relatively small loss of hedgerow amounting to 23m in length with the remaining hedgerows on Station Road totalling 269m being retained in the development. In the Appellant's view the hedgerow is unkempt and suffers from extensive elm death from disease, albeit it currently remains dense, stock proof and an effective visual screen.⁵¹ It is also common ground that the Station Road hedgerow is the principal habitat on the appeal site but it is not unusually valuable in terms of biodiversity compared with others in the county.

53. The Appellant's survey of the Station Road hedge indicates that the portion of hedge in Highway Authority ownership on the road embankment has limited species diversity with hawthorn dominant. There is then a break in the hedge which serves as the current field access. Immediately south of this break in the hedge the hedge vegetation is dominated by elm which is suffering from Dutch Elm disease leading to extensive dieback of the hedge. Progressing south the quality and species composition of the hedge improves but at chainage 220-254m is not of high quality because this is where the high pressure gas main was laid which involved the removal of a 35m length of hedge to provide a working corridor for construction works. This gap has subsequently been replanted with a single species of hawthorn. The lengths of hedge between chainages 172-220m and 268-310m are typically more species diverse.⁵²
54. The Council argues that the proximity of a number of the dwellings in the proposed development as well as the direct loss of hedgerow as a consequence of the proposed new accesses from Station Road would devalue its importance and threaten its wellbeing contrary to WDLP and WCSP policies and national guidance. I disagree. Whilst the relatively small loss of part of this hedgerow is regrettable from both a visual, historical and ecological viewpoint, the impact has to be assessed against the backdrop of the mitigation and landscape strategy proposed for the site. This includes the improved management of the retained hedgerow which would increase species diversity and wildlife population density, as well as increasing visual and amenity value. The retention of most of the hedgerow, its long term protection and management as part of the wider public open space would be a positive benefit which significantly outweighs the minimal and minor loss of hedgerow to gain access to the site. I consider that the Council's concern about a maintenance strip to the side of the hedge of a sufficient width so as to act as a buffer to protect the ecological value of the hedge is a detailed layout matter which could be resolved at the reserved matters stage.

⁵⁰ LPA3 - Village Claylands Landscape Character Type Information Sheet

⁵¹ Mr Dobson-Smyth's proof, paragraph 6.3.5

⁵² Mr Dobson-Smyth's Hedgerow Survey Plan Drg No. 902B-01

55. In my view the loss of hedgerow would be compensated for by the provision of new hedgerow, SUDS areas, open space and extensive new tree planting in the proposed community woodland. The loss of hedgerow would be more than compensated for in the ecological sense by the positive wider impact set out above. Whilst the hedgerow has historic value the extent of the loss is limited compared to the loss of 123m at the Taylor Wimpey site.⁵³ The Council's witness agreed that the hedge fronting the Taylor Wimpey site was similar to the one at Station Road albeit the former has a lower ecological value since it has fewer species and contained a higher proportion of dead/dying elm. I consider the visual impact of the loss at the appeal site would be minor compared to the major removal at the Taylor Wimpey site. The absence of a 5 year housing land supply also adds considerable weight in favour of allowing the development. I consider that there would be no material harm to the WDLP and WCSP policies as overall the proposal would conserve and enhance biodiversity through mitigation and compensatory measures. Similarly there would be no conflict with national advice including that contained in the NPPF paragraph 118. On the second issue I conclude that the proposal would not unacceptably harm the historic, visual and ecological value of the hedgerow fronting Station Road.

Issue 4 - Effect on the significance of heritage assets and/or their setting

56. Both parties acknowledge there are ridge and furrow earthworks on the site that are undesignated heritage assets. The LCT for the area records the notable representation of ridge and furrow. The ridge and furrow earthworks are agreed to be locally significant in view of their survival and, to a lesser extent, their condition. The remains are in poor condition but do survive to a height of about 400mm and are readily visible. They are a visual expression of medieval arable activity. There is variation in condition over the appeal site. From the Appellant's evidence ridge and furrow is not rare within Honeybourne. However, they are vulnerable to rapid reduction by ploughing of land which may mean that they become rarer.⁵⁴ The earthworks within the site contain two areas of ridge and furrow on different alignments, but no other features of note.
57. The proposed development would retain about 50% of the earthworks but as the preservation is better to the east the proportion increases to about 80% of the better preserved earthworks. The development proposals would also greatly increase the potential for appreciation. The earthworks are readily visible and they would fall within the open space provision. Although there may in principle be some minor loss of a non-designated heritage asset of local significance, the significant retention of much of the best and most well preserved areas of ridge and furrow and its long-term protection means that there are more benefits to the proposals here in terms of heritage assets, which substantially outweigh the minor adverse impact. I consider there would be no material conflict with WCSP Policy CTC17, WDLP Policy ENV10 or the advice in the NPPF. I conclude that the development would not have an adverse effect on the significance of undesignated assets or their setting.

⁵³ APP1

⁵⁴ Mr Woodiwiss' proof page 9

Issue 5 - Effect of noise and disturbance on future occupiers

58. The Council's RFR5 indicates that the appeal site lies adjacent to Station Road and a mainline railway. It refers to the submitted Noise Assessment and records that parts of the site suffer from noise levels that require either a stand-off between the proposed dwellings and the road/railway or design measures incorporated in the proposed development such as the positioning of gardens and habitable rooms away from the sources of noise. It is argued that the submitted layout plan does not reflect the recommendations set out in the Noise Assessment and therefore the proposal would conflict with Policy GD2 of the WDLP and the provisions of the former PPG24.
59. The Appellant has confirmed that there are two remedies for addressing the ambient sound levels which represented a constraint of less than 1dB(A) in magnitude. Mitigation can be achieved either through the introduction of stand-off distances between the noise source and the proposed dwellings or by incorporating noise reduction features into the design of each dwelling. All that needs to be done in relation to the proposed dwellings within noise band NECB shown on Drawing MID3157/003 Rev A could be as simple as double/triple glazing detail with acoustic grade trickle vents, acoustically attenuated wall construction and other building elements, given that the noise levels to be achieved are only a reduction of less than 1 dB(A) from ambient noise levels. At the outset of the Inquiry both parties agreed that issue could be dealt with by means of a planning condition.
60. I am aware that in relation to the proposed development at Copcut Lane Salwarpe, the level of noise that has to be addressed is 6.8 dBA above the acceptable (former PPG24) levels because 2,400 vehicles pass on the A38 each hour as opposed to 420 each hour on Station Road. I note that the Council was content to use planning conditions to deal with the noise issue at Copcut Lane⁵⁵ where the Council wished to grant planning permission but not at the appeal site where the acoustic problems were lesser and could have been addressed either by siting or by construction detail. I consider that the proposal would not be in conflict with Policy GD2 or national guidance on noise. I conclude on this issue that the occupiers of the proposed dwellings on the site would not suffer from excessive noise and disturbance.

Issue 6 - Effect on local services and infrastructure

61. Both parties agree that RFR7, RFR8, RFR9, RFR10 and RFR11 could be addressed through the completion of an appropriately worded S106 Planning Obligation.⁵⁶ A S106 obligation⁵⁷ was submitted at the Inquiry and is agreed by the main parties. It was discussed in detail at the Inquiry. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (CIL) indicates that any planning obligation entered into must meet the following tests: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development and (c) fairly and reasonably related in scale and kind to the development. I was also provided with an agreed

⁵⁵ Mr Tait's Appendix 13 conditions 12, 13

⁵⁶ SCG Section 6

⁵⁷ APP7

statement of compliance with the CIL Regulations 2010.⁵⁸ From all the evidence that is before me I consider that the provisions of the S106 Agreement complies with paragraph 204 of the NPPF and meets the 3 tests of Regulation 122 of the CIL Regulations 2010. I accord the S106 Agreement significant weight and I have had regard to it as a material consideration in my conclusions. I conclude that the Appellant has made adequate provision for mitigating any adverse impact that the proposed development would have upon local services and infrastructure.

Other matters

62. I have taken into account all other matters raised including the business units proposed, the evidence on site access, sustainable travel, flood risk and drainage. The Council and interested persons raise concerns about the cumulative impact of this proposal and the advice in NPPF paragraph 17 that planning should be genuinely plan-led, empowering local people to shape their surroundings. Reference was made to the fact that there are currently 3 proposals for significant residential development at this village, one of which has now been allowed. It is common ground that some 189 dwellings could be built in the village over the next 5 years which constitutes a 28% increase in the number of dwellings. Concern was expressed about the effect on local services, the effect on the character of the village and on the spatial strategy of the district (SWDP) which anticipates only 75 dwellings in Honeybourne up to 2030. I am aware that there was local preference and Parish Council support for the Taylor Wimpey site.
63. Whilst I understand these concerns I also note that in this case the Council did not include any RFR alleging over-development of Honeybourne nor could there be as the Council has decided to grant planning permission for the Taylor Wimpey site without knowing the result of either of the two current appeals. Certainly it was an option for the Council to await the decisions on these two appeal decisions to determine the "proper level" of development at Honeybourne. The Council has been minded to put other applications in abeyance such as the proposal at Crown Lane, Wychbold.⁵⁹ In any event the concept of a "satisfactory" amount of development for Honeybourne comes only from the emerging SWDP to which little weight can be attached for reasons set out above. In my view prematurity should not be given any decisive weight in respect of the appeal proposals.
64. I have also considered the point made by the Council that there may be an alternative proposal which omits the employment land, provides a lower number of dwellings and is likely to cause less material harm to the hedgerow.⁶⁰ However, no alternative scheme was submitted to the Inquiry. No alternative is before me and it would not be right for me to comment on such a scheme as it could prejudice the Council's consideration of the matter. In any event I found that overall the appeal proposal would conserve and enhance biodiversity.

⁵⁸ APP15

⁵⁹ APP14

⁶⁰ See paragraph 16 above

Conclusions

65. Although the proposal would conflict with some development plan policies including Policy GD1 of the WDLP, I conclude that it represents a sustainable form of development in line with the NPPF and there are material considerations which clearly outweigh this conflict. There are a considerable number of positive benefits in this case such as housing provision, business units, heritage and ecology. In line with paragraph 14 of the NPPF there are no adverse impacts which would significantly and demonstrably outweigh the considerable number of benefits and therefore the appeal should be allowed.

Conditions

66. Both parties prepared a schedule of suggested conditions which were discussed at the Inquiry.⁶¹ I have considered these conditions in the light of the advice in Circular 11/95. Condition 1 is necessary because the application was made for outline permission. Condition 2 refers to time limits for the submission of reserved matters which I consider is reasonable and necessary. I can see no justification for the shorter time limit proposed in the alternative condition 2 requested by the Council. Condition 3 relating to surface water and foul drainage is necessary to ensure that the site can be properly drained without flooding. Condition 4 is necessary to ensure a satisfactory development. Conditions 5-12 are necessary in the interests of highway safety and to establish measures to encourage more sustainable non-car modes of transport. Condition 13 is necessary in the interests of protecting nature conservation issues. Condition 14 is necessary to protect ridge and furrow earthworks on the site. Condition 15 is necessary to encourage an energy efficient development. Conditions 16-19 are necessary to ensure a satisfactory development of the site. Condition 20 is necessary to ensure that the detailed site investigation and remediation strategy will not cause pollution of ground and surface waters. Condition 21 is necessary to ensure a satisfactory development in the interests of visual amenity. Condition 22 is necessary in the interests of protecting residential amenity. Condition 23 is necessary to ensure that inappropriate uses do not occur.

Harold Stephens

INSPECTOR

⁶¹ APP8

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Smyth of Counsel	Instructed by the Solicitor to Wychavon District Council
He called:	
Mrs Susanne Hiscock Dipl. Ing. (FH) CLMI	Landscape and Natural Heritage Officer
Mr Jonathan Edwards BSc (Hons) Dip TP MRTPI CLMS	Development Manager (Planning)
Mr Fred Davies MTP MRTPI	Policy Manager

FOR THE APPELLANT:

Mr Jeremy Cahill QC	Instructed by Mr Tait, Planning Prospects Ltd
He called:	
Mr Anthony Bateman BA (Hons) TP MRICS MRTPI MCMi MIOd	Managing Director, Pegasus Planning Group
Mr Ian Turvey BSc MSc CMILT MIEnv Sc	Director, JMP Consultants Ltd
Mr Simon Woodiwiss BA (Hons) Prehistory Archaeology MifA	Archaeological Services Manager, Worcestershire County Council
Mr Martin Sullivan MA BSc (Hons) Dip UD MRTPI FRSA	Managing Director, The Urbanists
Mr Nigel Dobson-Smyth BA DipLA Dip UD CMLI	Chartered Landscape Architect and Urban Designer, Arthur Amos Associates
Mr Jason Tait BA (Hons) Dip TP MRTPI	Director, Planning Prospects Ltd

INTERESTED PERSON:

Councillor Alastair Adams	Local Councillor
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INQUIRY DOCUMENTS

INQ1	Notification of Public Inquiry and list of persons notified, submitted by the Council
INQ2	Letters received in response to the Notification of the Public Inquiry
INQ3	Statement of Common Ground

DOCUMENTS SUBMITTED DURING THE INQUIRY**Appellant's List of Additional Inquiry Documents**

Reference	Document
APP1	Taylor Wimpey Committee Report
APP2	Update to Taylor Wimpey Committee Report
APP3	Sapcote Road Appeal Decision
APP4	Noise Correspondence
APP5	Taylor Wimpey Layout
APP6	Taylor Wimpey Access Drawing
APP7	Section 106 Agreement
APP8	List of Proposed Conditions
APP9	Bishops Cleeve Appeal Decision
APP10	Salford, Manchester Appeal Decision
APP11	Torquay Appeal Decision
APP12	Updated Housing Land Supply Tables produced by Anthony Bateman
APP13	WDC July Report to Special Council – SWDP Update
APP14	WDC Letter re Crown Lane, Wychbold – 6 th July 2012
APP15	CIL Compliance Statement
APP16	Closing submissions including Appendix on Five Year Supply Update

Council's List of additional Inquiry Documents

LPA1	South Worcestershire Development Plan, Policy SWDP23
LPA2	Resolution on Taylor Wimpey planning application, Ref. No. W/12/01020
LPA3	Landscapes of Worcestershire, Landscape Type Information Sheet – Village Claylands
LPA4	The Hedgerow Regulations – Your Questions Answered
LPA5	Comments from the Council's Planning Policy Officer regarding Public Open Space Requirements
LPA6	Extract of Minutes of Meeting of the Council's Planning Committee for 1 st March 2012 referring to Minute No. 190 including resolution of the Committee relating to planning application Ref. No. W.11.02055, Land off Crown Lane, Wychbold
LPA7	Closing Submissions
LPA8	Response to application for costs

Interested Persons Documents List

IP1	Statement of Councillor Alastair Adams
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ANNEX A

CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of reserved matters relating to the appearance, landscaping, layout and scale of the development must be made not later than the expiration of 3 years beginning with the date of this permission and the development must be begun not later than whichever is the latter of the following dates:
 - the expiration of 5 years from the date of this permission; or
 - the expiration of 2 years from final approval of the reserved matters, or in the case of approval of different dates, the final approval of the last such matter to be approved.
- 3) The development shall not commence until drainage plans and information for the disposal of surface water and foul sewage have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 4) The Reserved Matters details required under condition 1 shall include the following;
 - a. a plan showing how the proposed development relates to the high pressure gas pipeline that runs across the site as well as any Consultation/Exclusion zones as defined by the Health and Safety Executive
 - b. details of the floor levels of the proposed buildings
- 5) Before any dwelling hereby approved is first occupied visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway, (measured perpendicularly), for a distance of 120 metres in each direction along the nearside edge of the adjoining carriageway, Station Road. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above and these areas shall thereafter be retained and kept available for visibility purposes at all times.
- 6) The development shall not be occupied until the approved access arrangements as shown on Proposed Site Access Drawings 0349-011, 12 and 13 have been completed.
- 7) The development shall not be occupied until the road works to the individual units from the adopted highway, their respective individual vehicular accesses and entrance, turning areas and parking facilities have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the

Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

- 8) The development shall not commence until a temporary means of vehicular access for construction traffic between the nearside edge of the adjoining carriageway and the highway boundary and any set back entrance is agreed in writing with the Local Planning Authority in consultation with the Highway Authority and shall be carried out in accordance with a specification to be submitted to and approved in writing by the Local Planning Authority, at a gradient not steeper than 1 in 20.
- 9) The development shall not be occupied until the temporary vehicular access for construction is permanently closed in accordance with details to be submitted to and approved in writing by the Local Planning Authority.
- 10) The development shall not be occupied until the existing field gated access entrance onto Station Road shall be permanently closed to vehicular traffic in accordance with details which shall be submitted to and approved in writing by the Local Planning Authority.
- 11) The development shall not be occupied until secure parking for cycles for the respective dwelling or business unit to comply with the Council's standards is provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority and thereafter be retained for the parking of cycles only.
- 12) The development shall be not be occupied other than in accordance with the provisions of the submitted Framework Business Travel Plan November 2011 and Residential Travel Plan November 2011.
- 13) No development shall commence until a habitat creation/enhancement and management plan and programme has been submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. The plan shall include (but not be limited to) further details of measures for: the maintenance and enhancement of retained hedgerows, proposed replacement hedge planting and ecological enhancement and habitat creation proposals within the proposed open space and site drainage ponds. The approved habitat creation/enhancement and management plan shall be implemented in full in accordance with the approved programme.
- 14) No development shall commence until measures to protect ridge and furrow earthworks on the site both during and after construction have been submitted to and approved in writing by the Local Planning Authority. The measures shall be implemented as approved.
- 15) No development shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
 - how renewable energy measures are to be incorporated into the proposed development;
 - measures to conserve and recycle water to be incorporated into the proposed development;

- energy efficiency measures to be incorporated into the proposed development; and
- construction materials to be used in the proposed development with the aim of minimising the use of primary non-sustainable materials
- an implementation timetable

The approved details shall be implemented and incorporated into the approved development in line with the approved implementation timetable.

- 16) No development shall commence until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- (i) the parking of vehicles of site operatives and visitors
 - (ii) loading and unloading of plant and materials
 - (iii) storage of plant and materials used in constructing the development
 - (iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - (v) wheel washing facilities
 - (vi) measures to control the emission of dust and dirt during construction
 - (vii) a scheme for recycling/disposing of waste resulting from construction works.
- 17) Applications for the approval of reserved matters shall be in accordance with the principles and parameters broadly described and illustratively indicated in the submitted "Design & Access Statement" (as clarified in Planning Prospects letter dated 9th December 2011) including with regard to the general areas of development, floor areas and storey heights. Any reserved matter application shall include a statement providing an explanation as to how the design of the development responds to the Design and Access Statement.
- 18) The development shall not commence until details of the facilities for the storage of refuse for the proposed buildings within the development has been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the approved refuse storage facilities to serve the respective dwelling or business unit have been provided in accordance with approved details.
- 19) The development shall not commence until details of a phasing plan for the development have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing plan.
- 20) The development shall not commence until the site has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The

remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

- 21) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas including the proposed open space and the frontage hedge to Station Road (which shall not be demised to individual dwellings) but other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be carried out as approved.
- 22) No development shall commence until a noise mitigation scheme designed to minimise the impact from road and railway traffic such that the noise levels within the dwellings do not exceed the recommendations set out in BS8223:1999 Sound Insulation and Noise Reduction for Buildings shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the approved business units shall only be used for B1a and B1b purposes as defined by the Town and Country Planning (Use Classes) Order 1987 (or any order revoking, re-enacting or modifying that Order).



Appeal Decisions

Inquiry held on 9th, 10th and 11th April 2013

Site visits made on 8th and 10th April 2013

by David Morgan BA MA (IoAAS) MRTPI IHBC

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

Decision date: 10 June 2013

Appeal no.1: Appeal Ref: APP/J1860/A/12/2187934

Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by CARLA Homes (Midlands) Ltd against Malvern Hills District Council.
 - The application Ref 12/00833/FUL, is dated 1 June 2012.
 - The development proposed is residential development of 31 dwellings, including 12 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements.
-

Appeal no.2: Appeal Ref: APP/J1860/A/13/2193129

Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by CARLA Homes (Midlands) Ltd against the decision of Malvern Hills District Council.
 - The application Ref 12/01661/FUL, dated 30 November 2012, was refused by notice dated 7 February 2013.
 - The development proposed is residential development of 28 dwellings, including 11 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements.
-

Decisions

Appeal no.1: Appeal Ref: APP/J1860/A/12/2187934

1. The appeal is allowed and planning permission is granted for residential development of 31 dwellings, including 12 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements at Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP in accordance with the terms of the application, Ref 12/00833/FUL, dated 1 June 2012, subject to the conditions set out in the first schedule at the end of this decision.

Appeal no.2: Appeal Ref: APP/J1860/A/13/2193129

2. The appeal is allowed and planning permission is granted for residential development of 28 dwellings, including 11 affordable dwellings with a new main vehicular and pedestrian access off Claphill Lane, and associated car parking arrangements at Land at Green Hedges, Claphill Lane, Rushwick, Worcester, Worcestershire WR2 5TP in accordance with the terms of the application, Ref 12/01661/FUL, dated 30 November 2012, subject to the conditions set out in the second schedule at the end of this decision.

Procedural matter

3. The appellants submitted two signed and dated unilateral undertakings under section 106 of the Act facilitating the provision of affordable housing and financial contributions towards education, transport infrastructure, play facilities and public open space. The affordable housing provision is considered against the provisions of paragraph 204 of the National Planning Policy Framework¹, whilst local infrastructure contributions are considered against the tests of the Community Infrastructure Levy Regulations 2010 (CIL) below.

Application for costs

4. At the Inquiry an application for costs was made by CARLA Homes (Midlands) Ltd against Malvern Hills District Council. This application will be the subject of a separate Decision.

Planning context

5. The site currently falls under the jurisdiction of policies DS1 and DS14 of the Malvern Hills District Local Plan (MHDLP), which seek to restrict development in the open countryside and safeguard the 'Significant Gap' (SG) designation securing degrees of separation between settlements. However, the site is allocated as a housing site in the emerging South Worcestershire Development Plan (SWDP) and the intention is to remove it from the defined SG designation. It is on this basis that the Council accept, notwithstanding Parish Council objection to the allocation of the site, that the principle of residential development is accepted. That said however, the saved policies of the MHDLP remain in place until superseded, and the proposals remain technically in breach of them as a consequence.
6. In evidence and at the Inquiry the Council accepted that it could not demonstrate a five year supply of housing land, asserting that this does not constitute a material issue in these cases. In accordance with the expectation of paragraph 49 of The Framework (notwithstanding the Council's view on the materiality of the supply issue) in these circumstances relevant policies for the supply of housing can no longer be considered up-to-date. The Council in part seem to accept this, opting not to cite saved policies DS14 and DS1 of the MHDLP in their deemed refusal notice. The acknowledged out-of-datedness of such policies in-turn triggers the consideration set out in the fourth bullet point of paragraph 14 of The Framework, which anticipates decision-makers granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in The Framework as a whole. It is in this context that those adverse impacts, or

¹ Henceforth referred to as *The Framework*.

harm, are identified as main issues, which are in turn then considered against any identified benefits of the schemes, with the whole considered in a balancing exercise to conclude.

Main Issues

7. These key main issues are therefore identified as a) whether or not both proposals, in design terms, constitute high quality inclusive developments conducive to a quality living environment for future occupiers, b) whether or not both development proposals would provide an appropriate mix of dwelling types and sizes so contributing to the delivery of a mixed market housing stock across the district and c) whether both proposals constitute sustainable development.

Reasons

Design

8. Although the Council cite policy QL1 of the MHDLP in their deemed reason for refusal, their critique of the design of both schemes is presented very much through the lens of *Buildings For Life 12 (The Sign of a Good Place to Live)* (BFL), published by Buildings For Life Partnership in 2012 and the policies relating to design set-out in The Framework. The former document, endorsed by Government, is described as a tool to 'help structure discussions between local communities, the local planning authority, the developer of a proposed scheme and other stakeholders', to 'help local authorities assess the quality of proposed and completed developments' and act as 'a point of reference in the preparation of local design policies'. The intent of the document is clearly to leverage an improvement in housing design through the whole process, facilitating an optimal result with sign-up from all parties².
9. As an endorsed Government publication supported by key players in the housing design and construction business BFL merits significant weight. However, it seems to me that an over-reliance on the *questions* of the document, applied exclusively to a post-refusal assessment of both schemes, especially unsupported by formal local endorsement as a development control approach and in the absence of contextual supplementary design guidance or documents, is in my view a miss-application of the document. This conclusion qualifies the weight that may be apportioned it in this case. Nevertheless, insofar as the criteria are consistent with those design objectives of Framework and policy QL1 of the MHDLP, they remain relevant to the judgement.
10. When applying the document, key areas of harm are identified through the award of 'red' marks in respect of each key consideration; these are addressed below in respect of each scheme. That question relating to housing mix in both cases is considered under the second main issue *Housing mix* below. 'Amber' marks signal an acceptance of constraints or relate to issues that could be addressed (such as cycle parking) through condition, and are not addressed explicitly below.

Appeal no.1

11. Whilst the Council accept the design of the Claphill Lane frontage, they take issue with the internal layout, referred to as an 'ordinary cul de sac'

² There is clear reference to adjudication by 'a BFL professional' in cases where the parties cannot agree.

necessitated by the dominant number 'large market dwellings proposed'. This has a concomitant effect on character, precluding the provision of open space. However, given there is only one access to the site available, and the layout has to respond to the constraints of a functional highway, a cul de sac, or no-through-lane, appears to me to be the only realistic format for such development. That said, the house numbers in this scheme do impose a dominance of built form on the site, and the arrangement at 'T' junction towards the south of the approach road would appear constrained and visually congested, to the detriment of the character of this element of the site. Such a layout also precludes a definitive 'marker' for this part of the development which, I acknowledge, diminishes its legibility to a degree. The turning head serving plots 10-20 is terminated to north and south by parking spaces. However, it would be wrong to conclude on this basis that the pedestrian experience here has been 'overlooked'; traffic speeds would be low and the space would still have the capacity for shared communal use. On balance therefore, I conclude that there are identified deficiencies in the scheme in respect of character and legibility that miss the opportunities to create a positive sense of place and local character in accordance with criterion b) of policy QL1, the relevant design policies of The Framework and the aims of BFL. This does equate to a measure of harm that I judge as moderate when considering in relation to the scheme as a whole, and which must be weighed against the proposals in the planning balance.

Appeal no.2

12. This revised scheme seeks to address the design issues identified above. The number of units is reduced by three, loosening the layout in the south west corner of the site and facilitating an area of open space to the west of the 'T' junction at the south of the lane or approach road. These amendments in my view satisfactorily address the shortcomings identified above. The reduction in numbers relieves the visual congestion to the west of the 'T' junction, whilst the open space, with the potential for a specimen tree, offers a point of arrival at the epicentre of the development and builds on the more open aspect facilitated by the looser dwelling configuration to the west. The result is a tangible improvement in legibility and the establishment of a space that begins to define the character of the estate as its own. The scheme therefore accords with policy QL1, with BFL and with the relevant design policies of The Framework. Such a positive design outcome may legitimately be apportioned substantial weight in favour of the proposals in the planning balance.

Housing mix

13. The Council accept, in relation to both appeals, that the 4X3 bed/8X2 bed and 6X3 bed/ 5X2 bed mix for the affordable house allocation is acceptable. However, they maintain the 4X5 bed/11X4 bed/4X3 bed and 5X5 bed/11X4 bed/1X3 bed mix for the market housing fails to make a positive contribution to the delivery of a mixed market housing stock across the district, citing saved policy of CN1 of the MHDLP and policy SWDP14 of the emerging SWDP.
14. Policy CN1 of the MHDLP comes under the heading 'Affordable Housing', the sub-heading 'Dwelling Mix'. Its key requirement is that development proposals of 5 or more dwellings provide 'a mix of dwelling types and sizes that addresses the housing needs of the district'. It seems to me that the purpose of the policy is to ensure a mix of house types and sizes across the development as a whole; the mix being calibrated by local housing need, site

constraints, existing development patterns and the character of the area. The fact of the matter is that both appeal proposals deliver, through the provision of market and affordable units, a mix of dwelling types and sizes, covering the spectrum of 2 to 5 bed dwellings as either detached, semi-detached or terraced structures, including bungalows, which in my view do respond to the broadly identified housing needs of the district and reflect the character of development in the village.

15. It is the case that the Worcestershire Strategic Housing Market Assessment (WSHMA) concludes that continued demand for smaller properties, based on demographic trends, 'is likely'. However, the section of the Main Report relating to *Estimating Future Demand for New Housing* concludes by also acknowledging that 'in order to accommodate demand and the aspirations of householders new supply of this type and size of dwelling of housing (larger family house types) will be required over the plan period'. Moreover, when addressing the future requirements for affordable housing, the same document also states that a mixture of sizes of properties are needed across each of the Worcester authorities, though also stating that demand for 1 and 2 bed properties is acute across all, but with specific regard to affordable housing. Whilst this clearly underpins the necessity for such provision in any affordable housing component of a proposal, using this as justification for the same such emphasis in relation to market sector provision is, in my view, more qualified.
16. Policy SWDP14 does make reference to the need for more 'affordably sized homes and bungalows' (although 'affordably sized homes' is not defined) and this is reflected in the supporting text which suggests there is a need to focus on delivering 2 and 3 bed properties. However, this text also states that house sizes required to address identified needs range from 1 bed to 4/5 bed properties. Again therefore, there is scope within the policy for accepting mixes of house types and sizes within a given scheme. Both proposals would deliver between 42% and 53%³ 2 and 3 bed dwellings, with the remainder being 4 and 5 bed. In my view, this does amount to an acceptable degree of 'focus', allowing a measure of flexibility to account for market choice anticipated by The Framework and to fulfil other identified need in the area. Even if both proposals were held to contravene SWDP14, it constitutes a policy itself subject to objection and a component of an emerging plan yet to be examined, found sound or formally adopted; necessarily this limits the weight that may be apportioned to in any judgement on the current proposals.
17. There was also debate over the traction of policy CN1 in relation to the paragraph 49, test of The Framework, or whether it should be considered not up-to-date as a policy relevant to the supply of housing. In my view regulating the mix of housing size and type is in part a qualitative tool; this is reflected in sensitivities in CN1 about the character of an area and of the street scene and may consequently be considered not relevant to housing supply. However, such a policy is also about defining the physical structure, make-up and ultimately market value of a site. Where there is an overt prescription of the housing mix, which may for example restrict the provision of the, size and number of specific house types or conversely require a house type affecting the overall value or profitability of a scheme, this may, in my view, be held to be relevant to the supply of housing. However, there is limited purpose in perusing the nuances of this debate as, on a reasonable interpretation of the

³ Paragraph 18, Council's Closing.

policy, I have found that both schemes are in accordance with its expectations, which are that a mix of dwelling types and sizes that addresses the housing needs of the district will be provided. On this basis both the proposals accord with policy CN1 of the MHDLP and with policy SWDP14 of the SWDP.

Sustainable development

18. Rushwick is defined as a category 1 village, which recognises its accessibility in relation to local services, employment opportunities and transport nodes; in these terms it may reasonably be considered locationally sustainable. Sustainable development, as defined in The Framework, is set out in tripartite terms: economic, social and environmental. On the basis of the above, the proposals would bring economic benefits, delivering homes in reasonable proximity to jobs, and provide shorter term employment opportunities during construction. Both developments would provide homes, including affordable homes where there is a demonstrated unmet need and help consolidate and nurture local village services, fulfilling a social function. Although in both cases they would result in the development of a green field site, there would be no significant loss of biodiversity and the residential environment created would complement and respect the character of the existing settlement; on this basis it can be considered environmentally sustainable in the context of The Framework.

Other matters

19. Concerns over the potential for flooding of the site or adjacent land, the effect of the developments on highway safety and their effect on the character and appearance of the area were raised by local residents. However, none of these concerns are supported by objection from formal consultees, or the Council and were not supported by substantive evidence at the Inquiry. In any event, I am satisfied that with the appropriate conditions in place in respect of site drainage, visibility splay and road layout, landscaping (including boundary treatments) and materials used in the construction of the developments, no material harm in respect of these matters would result.

Unilateral undertakings

Affordable housing

20. There is an established need for affordable housing in the area and in the district as a whole, as assessed by the Council. The proposed development would provide up to 40% (or 12 dwellings in respect of appeal no.1 and 11 dwellings in respect of appeal no.2) that would go towards addressing that need and would accord with the Council's policy objectives. Moreover, 9 of these dwellings would be for social rent and 3 of shared ownership in respect of appeal no.1 and 8 and 2 in respect of appeal no.2, providing a mix of tenure types in accordance with need. On this basis both obligations accord with the three criteria set out in paragraph 204 of The Framework.

Local infrastructure

21. Regulation 122 of the Community Infrastructure Levy requires that planning obligations are necessary to make the development acceptable in planning terms, that they are proportionate and that they are directly related to the development.

Education

22. The appellant argues that Rushwick Primary school is below capacity in 3 years and relies on pupils from without its catchment to achieve its capacity. However, the Council suggests that 4 of the 7 years are at or above capacity and that other developments in the area, in conjunction with the appeal proposals, will sustain that level of demand. Whilst there may be a debate over the extent to which external pupil numbers sustain the school, it seems to me evident that the proposed developments would create an additional demand for places, and the local school is likely to be the overwhelming choice for future residents. The contributions set out in the undertakings are calculated to an adopted formula and would be directed at increasing the number of pupil places at the school although at this stage there are no approved plans for its enlargement, and this too is dependent on other development coming forward in the mid term to justify it. Notwithstanding this point, I conclude the contributions are necessary to make the respective developments acceptable in planning terms, are proportionate, being based on adopted guidance and are self-evidently directly related to the developments. The obligations therefore meet the regulatory tests and may duly be taken into account in respect of both cases.

Open Space

23. The application of contributions for the maintenance of the Upper Wick Lane recreation facility to its 'current standard', as suggested by the Council's Community Services Manager, would not meet the criteria of the CIL Regulations. However, the proposed developments make no provision for recreation or play space within the site and it is beyond dispute that as such, the development would create a need for such a facility. Whilst no evidence has been presented to confirm that the existing facility is at or near capacity, it was evident to me that it was well used, and was likely to appeal to users from beyond its immediate catchment. Given the scale of development proposed and the size and apparent use of the facility, I conclude on balance the contribution is necessary to make the development acceptable in planning terms, that it is proportionate and directly related to the site. Similarly, increasing the capacity for people living in the proposed developments to participate in sports activities at the cricket club, apparently with the support of the Worcester Cricket Board, would also be consistent with the regulatory criteria. On this basis, and knowing both contributions (calculated at different amounts to reflect dwelling numbers) are calibrated in accordance with adopted Council guidance regulating their proportionality, these obligations also accord with the regulatory tests and may be taken into account.

Transport contribution

24. The appellant argues that the Local Transport Plan, on which the contributions are both predicated and calibrated, is not part of the development plan and that the County Council already have Ministerial funding for strategic highway infrastructure improvements. Nevertheless, the Local Transport Plan, and the Worcester Transport Strategy that gives it local focus, is a formally adopted document that sets out in detail the rationale for seeking mitigative funding, its calibration and a justification for why such funding may be considered directly related to the development. The premise is that nearly all such development will have a cumulative deleterious impact on the highway network and with detailed modelling, this impact will increase unless mitigated. A formula is set

out which distils the per-dwelling requirement (calculated at different amounts to reflect dwelling numbers) with the net contributions being pooled and applied across the area network. This is, in my view a reasonable model, supported by local planning and strategy that accords with the three regulatory criteria of the CIL, determining these obligations may be taken into account.

Highway works

25. I also conclude that as future residents would anticipate pedestrian and non-ambulant access to the village and public transport nodes, improvements to local highway infrastructure, including the provision of propped kerbs, upgrading of cycle signage and improvements to existing bus stops would also be necessary to make the development acceptable in planning terms. The works have been costed and are clearly related to the development; the obligations therefore meet the regulatory tests and may duly be taken into account in respect of both cases.

Planning balance and conclusions

26. The Council argue that the absence of a five year supply of housing land is not germane to the case, stating that housing land supply and design should be considered 'hand in hand', with one not trumping the other. They conclude that 'regardless of the housing land supply position, the appeal proposals fail to accord with The Framework because they propose poor design'. Such an approach however fails to grasp the nature of the reasoning required in this case. Paragraph 49 of The Framework makes clear that where a Council cannot demonstrate a five year supply its relevant policies cannot be considered up-to-date. This in turn triggers the fourth bullet point of paragraph 14, which makes clear that for decision makers, in these circumstances, this means granting permission unless the adverse impacts of doing so significantly and demonstrably outweigh the benefits of the scheme. This exercise requires the identification of any benefits and disadvantages, an apportionment of weight to each in accordance with the extent of that betterment or harm, and a judgement made as to whether indeed the latter (the disadvantages or harm) significantly and demonstrably out-weigh the benefits. The Council has failed to undertake this task in respect of both appeals; I do so below.
27. Both proposals have established benefits. They would deliver a sustainable mix of market housing in an authority that has very significantly underperformed in that task on a persistent basis, and which presently cannot demonstrate a 5 year supply of housing land, all in the absence of a tested and adopted local development plan. In this context, both proposals would make a meaningful, deliverable contribution towards meeting that unmet need. The provision of market housing here therefore weighs very significantly in favour of both schemes in the planning balance.
28. Both proposals would also deliver near 40% affordable housing on the site, including a higher proportion of 2 bed units in accordance with anticipated demand, and in a sustainable location. Such provision also demands significant weight being apportioned in favour of both schemes in the planning balance.
29. Both schemes, across the board, would also deliver a mix of housing types and sizes that broadly respond to local need and respect local character and

the street scene in accordance with the policy of the development plan. Moreover, in respect of appeal no.2, the development would deliver a scheme of good design complementary to and respectful of the existing settlement; this too merits significant weight being apportioned in its favour.

30. Both developments would be neutral in terms of its impact on local services, which will be fully mitigated through the provisions of the section 106 unilateral undertakings.
31. I have though identified harm in respect of appeal no.1, insofar as it relates to design and layout. Here the southern part of the site would in my view appear visually congested, with limited markers and a consequent lack of distinctive character, sense of place or identity. That said, the degree of that harm is limited in extent, and I have defined it as moderate in relation to the scheme as a whole. I conclude therefore, that the moderate extent of this harm would not significantly or demonstrably outweigh the clear benefits of providing sustainable mixes of market and affordable homes in Rushwick. In the absence of identified material harm in respect of appeal no.2, and indeed the acknowledgement of its design quality, there is also no basis on which to resist the proposal.
32. The Council argue that if the appeals were dismissed with clear reasoning to identify the salient, significant and demonstrable harm, a revised scheme could come forward confident of the Council's support within four months or so – an acceptable scheme is, they assert, apparently within reach. This is not a convincing argument; there is no real assurance that an amended scheme could come forward quickly which would meet the requirements of the appellant in terms of numbers, layout and house type or the expectations of Council members in respect of the same. Such a conclusion anyway misses the point; The Framework is emphatic that sustainable development be brought forward without delay, thus the focus on deliverable sites being available now⁴. Such an imperative runs consistently with the preceding Ministerial Statement *Planning for Growth* which anticipates the planning system stimulating and proactively driving economic recovery and growth.
33. On the basis of the above therefore, and in accordance with paragraph 14 and the other relevant policies of The Framework and the development plan, I conclude planning permission in both cases should be granted, thus meaning both appeals should succeed.

Conditions

34. The appeals being allowed, conditions are attached in both cases requiring that the development be carried out in accordance with the approved plans set out in the respective schedules in the interests of sound planning and for the avoidance of doubt. Conditions are also attached securing the provision of the necessary visibility splays to the site entrance, details of the roads and drains within the site, and provision, for their agreed construction and the delivery of secure cycle parking within the cartilage of specified dwellings, in the interests of highway safety and in the case of the latter to encourage and facilitate sustainable modes of transport.

⁴ Third bullet point of paragraph 14 of The Framework page 4, footnote 11 of The Framework page 12 and core principle 3 of paragraph 17 of the same, page 5.

35. Conditions are also attached requiring the submission of a Method of Construction Statement and a restriction on the hours of site activity and construction, all in the interests of safeguarding the living conditions of adjacent occupiers during the course of construction.
36. Conditions are also attached requiring the submission of materials for the external facing of the development, details of fenestration, finished slab levels, boundary treatments, landscaping (and its ongoing mid term management) and a condition attached withdrawing permitted development rights in respect of new boundary treatments to the plots, all to ensure a satisfactory appearance to the development.
37. Conditions are attached requiring the submission of details of a scheme for the foul and surface water drainage of the development to ensure full and proper consideration of the drainage provision for the site. Conditions are attached requiring the developments to be carried out in accordance with the submitted habitat survey in order to safeguard habitats for protected species and to enhance the biodiversity of the site. Conditions are also attached requiring the submission of a tree protection plan and method statement to the local planning authority and provision made for the installation of tree and hedge protection measures on the site, all to safeguard existing trees and hedges. Finally, conditions are attached requiring the submission of scheme of archaeological investigation and post-excavation assessment, all to safeguard any archaeological remains on the site and secure an understanding of their significance.
38. Conditions have been suggested by the Council in respect of both schemes seeking the submission of a renewable energy plan for the development. However, the relevant policy of the MHDLP has not been saved and policy SWDP27 of the SWDP, as yet untested at Examination in Public or formally adopted, can at this time only be afforded little weight. In the absence of adopted policy or Supplementary Planning Documents, there is no local policy-based justification for the condition, and on this basis I have determined it would be unreasonable to apply it.
39. For the reasons given above and having considered all matters raised in evidence and at the Inquiry, I conclude that both appeals should be allowed.

David Morgan

Inspector

Conditions overleaf

Schedule of Conditions

First Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans set out in the schedule of drawings entitled '31 Dwelling Scheme – 12/00833'.
- 3) Before any works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 4) Development shall not begin until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the scheme has been constructed in accordance with the approved drawings.
- 5) The Development shall not be occupied until the roadwork's necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 6) Prior to the first occupation of dwellings 9 to 20 inclusive, secure cycle parking for 2 shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 7) No development shall take place until a Method of Construction Statement, to include details of:
 - a) parking of vehicles of site personnel, operatives and visitors
 - b) loading and unloading of plant and materials
 - c) storage of plant and materials within the site
 - d) programme of works (including measures for traffic management)
 - e) provision of boundary hoarding behind any visibility zones
 - f) the provision of wheel cleaning apparatus for site traffic
 - g) means of vehicular access for construction traffic from the A44 and Claphill Lane onlyhas been submitted to and approved in writing by the local planning authority. Only the approved details shall be implemented during the construction period.
- 8) The external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 9) All details of fenestration, including windows and doors, used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of development details of all boundary treatments to be erected shall be submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatments and annotated or accompanied by a schedule specifying type, height, composition, colour and appearance of boundary treatments throughout the site. The approved boundary treatments shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 1, Part 2 of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification).
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification) no new boundary treatment shall be erected between the dwellings and the highway without the submission and subsequent approval of a separate application for planning permission.
- 12) Prior to the commencement of development, full details of all foul and surface water drainage systems shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first use of the dwellings hereby permitted and shall be retained thereafter.
- 13) Prior to the commencement of the development a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings hereby approved and a datum point outside of the site, shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 14) Prior to the commencement of development a scheme of landscaping, including details of all hedgerows to be retained and removed, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out concurrently with the development and completed to a timeframe submitted to and agreed in writing by the local planning authority. The landscaping scheme shall include the provisions set out in the following schedule:
 - planting specification
 - cross section drawings at 5.0 metre intervals depicting the ground levels to Claphill Lane and within the site, indicating the location of existing and proposed trees and hedgerows;
 - native hedgerow planting to the western and eastern site boundaries;
 - soft and hard landscaping to the all external public spaces and the private gardens of the dwellings;
 - details and specification of hard surfacing to the bin collection area;
 - the location and type of all means of enclosure *I* boundary treatments and their colour finishes, including all gates, walls, fences and railings.

- 15) If within a period of five years from the date of the planting of any tree planted pursuant to condition 13 that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
- 16) No works shall commence until a tree protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 17) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) and previously approved in writing by the Local Planning Authority), has been erected along the boundary of the Claphill Lane hedge, around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in SS 5837 (2012)» fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the Local Planning Authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 18) The development hereby approved shall be carried out in accordance with the recommendation set out in the submitted 'fpcr - Phase 1 Habitat and Preliminary Protected Species Survey' dated, November 2012.
- 19) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
 1. The programme and methodology of site investigation and recording.
 2. The programme for post investigation assessment.
 3. Provision to be made for analysis of the site investigation and recording.
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 5. Provision to be made for archive deposition of the analysis and records of the site investigation.
 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
 7. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 20) The development shall not become first occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 19 of this permission and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 21) Demolition/ground works/construction work shall not take place outside the following hours:
Monday to Friday: 07.30-19.00 hrs
Saturdays: 07.30-13.00hrs

There shall be no such works on Sundays or Public Holidays.

Second Schedule

- 1) The development hereby permitted shall begin not later than three years from the date of this decision
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans set out in the schedule of drawings entitled '28 Dwelling Scheme - 12/00661'.
- 3) Before any works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 4) Development shall not begin until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the scheme has been constructed in accordance with the approved drawings.
- 5) The Development shall not be occupied until the roadwork's necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the Local Planning Authority.
- 6) Prior to the first occupation of dwellings 8 to 18 inclusive, secure cycle parking for 2 shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 7) No development shall take place until a Method of Construction Statement, to include details of:
 - h) parking of vehicles of site personnel, operatives and visitors
 - i) loading and unloading of plant and materials
 - j) storage of plant and materials within the site
 - k) programme of works (including measures for traffic management)
 - l) provision of boundary hoarding behind any visibility zones
 - m) the provision of wheel cleaning apparatus for site traffic
 - n) means of vehicular access for construction traffic from the A44 and Claphill Lane only

has been submitted to and approved in writing by the local planning authority. Only the approved details shall be implemented during the construction period.

- 8) The external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) All details of fenestration, including windows and doors, used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) Prior to the commencement of development details of all boundary treatments to be erected shall be submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatments and annotated or accompanied by a schedule specifying type, height, composition, colour and appearance of boundary treatments throughout the site. The approved boundary treatments shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 1, Part 2 of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification).
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification) no new boundary treatment shall be erected between the dwellings and the highway without the submission and subsequent approval of a separate application for planning permission.
- 12) Prior to the commencement of development, full details of all foul and surface water drainage systems shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the first use of the dwellings hereby permitted and shall be retained thereafter.
- 13) Prior to the commencement of the development a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings hereby approved and a datum point outside of the site, shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 14) Prior to the commencement of development a scheme of landscaping, including details of all hedgerows to be retained and removed, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out concurrently with the development and completed to a timeframe submitted to and agreed in writing by the local planning authority. The landscaping scheme shall include the provisions set out in the following schedule:

- planting specification
 - cross section drawings at 5.0 metre intervals depicting the ground levels to Claphill Lane and within the site, indicating the location of existing and proposed trees and hedgerows;
 - native hedgerow planting to the western and eastern site boundaries;
 - soft and hard landscaping to the all external public spaces and the private gardens of the dwellings;
 - details and specification of hard surfacing to the bin collection area;
 - the location and type of all means of enclosure *I* boundary treatments and their colour finishes, including all gates, walls, fences and railings.
- 15) If within a period of five years from the date of the planting of any tree planted pursuant to condition 13 that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
- 16) No works shall commence until a tree protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 17) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) and previously approved in writing by the Local Planning Authority), has been erected along the boundary of the Claphill Lane hedge, around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in SS 5837 (2012)» fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the Local Planning Authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 18) The development hereby approved shall be carried out in accordance with the recommendation set out in the submitted 'fpcr - Phase 1 Habitat and Preliminary Protected Species Survey' dated, November 2012.
- 19) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and:
1. The programme and methodology of site investigation and recording.
 2. The programme for post investigation assessment.
 3. Provision to be made for analysis of the site investigation and recording.
 4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 5. Provision to be made for archive deposition of the analysis and records of the site investigation.
 6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

7. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 20) The development shall not become first occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition 19 of this permission and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 21) Demolition/ground works/construction work shall not take place outside the following hours:
Monday to Friday: 07.30-19.00 hrs
Saturdays: 07.30-13.00hrs

There shall be no such works on Sundays or Public Holidays.

Appearances overleaf

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Richards of Counsel

He called

Mrs Rosie Murray BA
(Hons) MRTPI

Mr Simon Jones BA
(Hons) Dip TP MRTPI

FOR THE APPELLANT:

Mr Satnam Choongh of Counsel

He called

Mr Philip Rowle BA
(Hons) Dip TP MA MRTPI

Mr AC Bateman BA
(Hons) TP MRICS MRTPI
MCMi MIOd

Mr Malcolm Payne Dip
Arch RIBA IHBC

INTERESTED PERSONS:

Mrs Rodway

Documents presented at the Inquiry

1. Unilateral undertaking – Appellant
2. Revised layout plan – Appellant
3. X2 urban design photographs – Appellant
4. Letter from PINS relating to Appeal decision – 2174450
5. Openings – Appellant
6. Openings – Council
7. Revised Statement of Common Ground – Appellant
8. Appendix 3 of SHMAA – Appellant
9. Bound copy of Mr Payne’s proof – Appellant

10. Plan illustrating site services – Appellant
11. X2 schedules of drawings – Appellant
12. Policy objections to local plan by appellant – Appellant
13. Application for costs – Appellant
14. Appendix to appendix 13 Mr Bateman’s proof – Appellant
15. letter to Council 12 Oct 2012 – Appellant
16. Response to application of costs – Council
17. List of conditions – revised – Council
18. Fenestration condition – Council
19. Closings – Council
20. Closings - Appellant



Department for
Communities and
Local Government

Mr Owen Jones
Boyer Planning
Oak Tree House
1b Oak Tree Court
Mulberry Drive
Cardiff Gate Business Park
Cardiff CF23 8RS

Our Ref: APP/J3720/A/11/2163206

24 October 2012

Dear Mr Jones,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY J S BLOOR (TEWKESBURY) LTD & HALLAM LAND MANAGEMENT
LTD. APPLICATION REF: 09/02196/OUT
LAND WEST OF SHOTTERY, SOUTH OF ALCESTER ROAD AND NORTH OF
EVESHAM ROAD, STRATFORD-UPON-AVON, CV37 9RX**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Terry G Phillimore MA MCD MRTPI, who held a public local inquiry which opened on 4 April into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the decision of Stratford-on-Avon District Council to refuse outline planning permission for the construction of up to 800 dwellings; a mixed use local centre to consist of residential development, retail floorspace (1,000 sq m A1-A5) and D1 uses, and a primary school; laying out of green infrastructure consisting of open space, structural landscaping, and areas of equipped play and associated infrastructure; construction of new highway infrastructure between Alcester Road and Evesham Road and associated highway works and access connections; associated engineering and ground modelling works and drainage infrastructure; and demolition of Nos 3 and 4 Bordon Hill, in accordance with planning application ref: 09/02196/OUT, dated 26 October 2009.

2. The appeal was recovered for the Secretary of State's determination on 27 October 2011, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves residential development of over 150 units and is on a site of over 5 hectares, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Pamela Roberts
Planning Casework Division
Department for Communities and Local Government
Zone 1/H1, Eland House
Bressenden Place
London SW1E 5DU

Tel 03034444359
Email: PCC@communities.gov.uk

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and outline planning permission be granted. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. The Secretary of State notes those amendments and corrections at IR2-3 and has determined the appeal on that basis.

5. In reaching his decision, the Secretary of State has taken into account the Environmental Statement (ES) and additional environmental information submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (IR6-8, IR576-580 and IR644). Like the Inspector (IR580), the Secretary of State considers that the environmental information as a whole meets the requirements of these regulations and that sufficient information has been provided for him to assess the environmental impact of the application.

6. Following the close of the inquiry the Secretary of State received a number of letters of objection to the proposal which he has taken into account in reaching his decision. However, he does not consider that this correspondence raises any new issues which would affect his decision or require him to refer back to parties prior to reaching his decision. Copies of these representations, listed at Annex A, can be made available upon written request to the address at the foot of the first page of this letter.

Policy Considerations

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises Regional Planning Guidance for the West Midlands (renamed the West Midlands Regional Spatial Strategy (WMRSS)) (published June 2004, re-issued in January 2008), the saved policies of the Warwickshire Structure Plan 1996-2011 (2002) and the saved policies of the Stratford-on-Avon District Local Plan Review 1996-2011 (LPR) (July 2006). Development plan policies relevant to the appeal are set out at IR24-42.

8. The draft Stratford-on-Avon Core Strategy is a material consideration but as this is at a relatively early stage and is still subject to change, it has been afforded relatively little weight

9. The Localism Act 2011 provides for the abolition of Regional Strategies by Order. However, the Secretary of State has attributed limited weight to the proposed plan to revoke the WMRSS. Any decision to revoke the WMRSS will be subject to the environmental assessment which is in train.

10. Other material considerations include the local policy documents listed at IR49-52 and national policy referred to in IR53-54. In addition the Secretary of State has had regard to the Community Infrastructure Levy (CIL) Regulations (2010) as amended; Technical Guidance to the National Planning Policy Framework (2012); Baroness

Hanham's Written Ministerial Statement on Abolition of Regional Strategies of 25 July 2012; and his Written Ministerial Statement on Housing and Growth of 6 September 2012.

11. In deciding this appeal, the Secretary of State has paid special attention to the desirability of preserving listed buildings and their setting or any features of special architectural or historic interest they possess, as required under the provisions of sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. As the proposal would be close to the Shottery Conservation Area, the Secretary of State has also had regard to the desirability of preserving and enhancing the character or appearance of these areas, as required by section 72 of the same Act.

Main Issues

12. The Secretary of State agrees with the Inspector that the main considerations are those set out at IR476.

The development plan

13. The Secretary of State agrees with the Inspector's reasoning and conclusions on the development plan as set out in IR477-487 and IR631-633. He notes that the site is explicitly referred to in LPR Policies STR.2A and SUA.W. He agrees that although the expectation was that the need to release the site would be addressed after the Council had prepared its Core Strategy and Site Allocations Development Plan Documents, this does not rule out the development of the West of Shottery reserve site in advance of such a stage in plan preparation being reached, if required to meet current housing needs (IR480-481). He agrees that residential development of the West of Shottery site at the present time to meet housing needs is consistent with the expectation of Policy STR.2A and in such circumstances the proposal accords with this policy (IR482). He notes that most of the requirements of Proposal SUA.W would be provided by the proposed development and he agrees that overall the appeal development substantially accords with the LPR (IR632-633).

Housing land supply

14. The Secretary of State agrees with the Inspector's reasoning and conclusions on housing land supply as set out in IR488-502, IR631 and IR633. He notes that there is disagreement over the 5 year land requirement and supply position, and that the Framework requires local planning authorities to plan for the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework (IR489). For the reasons given by the Inspector on the information currently before him, he considers that the figure of 11,000-12,000 dwellings for the period 2008-2028 more closely accords with the requirements of the Framework (IR492). The Secretary of State notes that the 5 year land supply is between 2.0-3.5 years depending on the way it is calculated (IR499). Even taking the more generous assessment of housing land supply there is still a significant unmet need for housing in the district which warrants a role for the appeal site as anticipated in the LPR. He considers that the proposal thus accords with the development plan in this respect (IR502).

Prematurity

15. The Secretary of State agrees with the Inspector's reasoning and conclusions on prematurity as set out in IR503-511 and IR634. He agrees that given the relatively early stage reached, apparent unresolved objections to relevant policies, and areas of potential inconsistency with the Framework, relatively little weight can be accorded to the emerging Core Strategy (IR634). He does not consider that refusal of the proposal on the grounds of prematurity is justified in the circumstances of this case.

16. The Secretary of State notes that considerable work has been undertaken on the neighbourhood plan process in Stratford-on-Avon. He agrees that the Inspector is right to record that a core planning principle of the Framework is that planning should be genuinely plan-led, empowering local people to shape their surroundings. In this case he has reached the conclusion that the proposed development accords with the development plan, the LPR, which itself has been prepared with public participation. As the neighbourhood plan must be consistent with the adopted Core Strategy and both are at an early stage, he therefore considers that relatively little weight attaches to the neighbourhood plan at this stage (IR511).

Character and appearance of the area

17. The Secretary of State agrees with the Inspector's reasoning and conclusions on the character and appearance of the area, as set out in IR512-523 and IR635. He considers that containment of the road within a false cutting would preserve the view westwards from the Garden of Anne Hathaway's Cottage of unbroken countryside, with the skyline in its existing position (IR521). He agrees that the landscape impact of the development would be one of change but involving limited harm and that there would be no material breach of relevant development plan policies (IR523).

Heritage assets

18. The Secretary of State agrees with the Inspector's reasoning and conclusions on heritage assets, as set out in IR524-543 and IR636-637. He agrees that the impact of the proposal on Anne Hathaway's Garden would amount to a slight element of harm as a result of visible urban development (including lighting) replacing countryside as part of its setting (IR534). He further agrees that it would involve a limited degree of harm to the setting of the assets (IR535). Overall, the Secretary of State considers that the proposal would result in less than substantial harm to the significance of the designated heritage assets and he weighs this against the public benefit of the proposal in his conclusions.

Tourism

19. For the reasons given in IR544-547 and IR638, the Secretary of State agrees with the Inspector that while a degree of adverse effect on tourist numbers cannot be ruled out, a potential harmful economic outcome has not been sufficiently established or quantified for this to be given other than very limited weight (IR547).

Highway conditions

20. The Secretary of State agrees with the Inspector's reasoning and conclusions on highway conditions, as set out in IR548-559 and IR639-640. He notes that predicted traffic flows are within the capacities of the affected roads and would not give rise to

serious adverse highway effects (IR639). He agrees that the proposed link road would result in only modest improvements in town centre traffic conditions (IR640). He notes that the Council raises no objection to the proposal in respect of highway safety (IR558) and that safety concerns could be met through detailed design (IR639).

Flooding and living conditions

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on flooding and living conditions, as set out in IR560-568 and IR641-642. He agrees that the proposal would not add to the risk of flooding in the surrounding area, and would make satisfactory provision for drainage within the development (IR565). He also agrees that the impact the development would have on living conditions of properties in Bordon Hill involves an element of harm from noise (IR642).

Sustainable development

22. For the reasons given in IR569-575 and IR643, the Secretary of State agrees with the Inspector that the site is in a reasonably accessible location for necessary services which would enable a choice of travel modes (IR569) and that the proposal overall does represent a sustainable form of development (IR575).

Conditions and obligations

23. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and obligations, as set out in IR581-630 and IR645. He agrees that no weight should be accorded to the contributions to Parkway Station and the police (IR625). He notes that there is a reservation about the enforceability of delivery and maintenance of the landscaping on the Shakespeare Birthplace Trust (SBT) land, which reduces the degree of reliance that can be placed on the planning conditions. However, he agrees that the implementation of the scheme would require the willing involvement of the SBT and this moderates the likely consequences of the risk (IR645).

Overall conclusions

24. The Secretary of State agrees with the Inspector's overall conclusions as set out in IR631-649. He agrees that overall the appeal development substantially accords with the LPR (IR632-633). Although the emerging Core Strategy does not include the West of Shottery proposal, he agrees with the Inspector that relatively little weight can be accorded to it (IR634).

25. Having weighed up all of the material considerations, the Secretary of State concludes that though there are material considerations weighing against the proposal, such as impact on the landscape, less than substantial harm to the significance of heritage assets, visual impact and harm from noise; these are outweighed by factors in its favour, such as helping to meet a significant unmet housing need in a sustainable location, new green infrastructure and local facilities, and some modest transport benefits from the new road. The Secretary of State therefore agrees that the benefits of the proposal outweigh the harmful impacts and that the decision should be taken in accordance with the development plan.

Formal Decision

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for up to 800 dwellings; a mixed use local centre to consist of residential development, retail floorspace (1,000 sq m A1-A5) and D1 uses, and a primary school; laying out of green infrastructure consisting of open space, structural landscaping, and areas of equipped play and associated infrastructure; construction of new highway infrastructure between Alcester Road and Evesham Road and associated highway works and access connections; associated engineering and ground modelling works and drainage infrastructure; and demolition of Nos 3 and 4 Bordon Hill, in accordance with planning application ref: 09/02196/OUT, dated 26 October 2009, subject to the conditions listed at Annex B of this letter.

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

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

29. This letter serves as the Secretary of State's statement under regulation 21(2) of the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Right to challenge the decision

30. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

31. A copy of this letter has been sent to Stratford-on-Avon District Council and the Residents Against Shutter Expansion. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

Pamela Roberts
Authorised by the Secretary of State to sign in that behalf

Annex A

Post Inquiry correspondence, including correspondence not seen by the Inspector during the Inquiry

Name/Organisation	Date of correspondence
Gordon Brace	14 May 2012
Julia Howells – Shakespeare Birthplace Trust	15 May 2012
Mrs M Serafini & Mr D Collier	24 June 2012
J Butterfield	25 June 2012
Charlotte Matthews	26 June 2012
Ms S Williams	26 June 2012
Pauline & Brian Eggleton	26 June 2012
Dr Emmie Williamson	26 June 2012
Matt Pinfield & Vicky Jordan	26 June 2012
Evelyn Abrams	26 June 2012
Dr Catherine Alexander	26 June 2012
Mary Boddington	27 June 2012
Rebecca Sayce	27 June 2012
Jean Cholerton	28 June 2012
Milan Tursner	28 June 2012
Mark Undery	28 June 2012
Rita Kubiack	28 June 2012
Sarah Undery	28 June 2012
Sarah Buttrick	29 July 2012
Jason & Catherine Duffey	30 June 2012
Mrs V Lageard	2 July 2012
Keith Vickery	3 July 2012
Paula Edwards	4 July 2012
Miles Buttrick	4 July 2012 (received)
Mavis Farthing	5 July 2012
Heskett Dawson	5 July 2012
John McDermott	5 July 2012
Alan & Sharon Morris	5 July 2012
Phil Edwards	6 July 2012
Mrs C Wilks	6 July 2012
Anne Hicks	7 July 2012
Dave Townsend	7 July 2012
Elizabeth Hicks	7 July 2012
Lisa Cartwright	7 July 2012
Ian Garrett	7 July 2012
Freda Douthwaite	7 July 2012
Robert Harding	8 July 2012
R.E.Scarlett	8 July 2012
Brian Ash	8 July 2012
Paul McGinn	9 July 2012
G Harrington	9 July 2012
Joan K M Page	9 July 2012

Victor Nicholls	9 July 2012
Keith Lazenby	10 July 2012
Alexis Harriott	11 July 2012
Mr and Mrs S Lawrence	11 July 2012
A Draycott – Shottery Village Association	11 July 2012
Mr & Mrs D J Sargent	11 July 2012
J E Harris	11 July 2012 (received)
Julian Emslie	12 July 2012
Stella Golding	12 July 2012
Barrie and Patricia Tracey	13 July 2012
David Bowie	13 July 2012
Diane Brennan	13 July 2012
Helen Commander	13 July 2012
Leonard Pohl	13 July 2012
James E Phillipotts	14 July 2012
P.A.E. Taylor	15 July 2012
R J Malloy JP	15 July 2012
David Chamberlain	16 July 2012
Michael & Anne Whick	16 July 2012
Mrs M A Wincote	16 July 2012
Mrs Pat Wade	16 July 2012
Adrian Wood	17 July 2012
Peter and Mary Jones	17 July 2012
Mary Malloy	17 July 2012
Katherine Zaffigani	18 July 2012
Lucien Riviere	18 July 2012
Martyn Luscombe	18 July 2012
Mary Finegan	19 July 2012
Paula Owen	19 July 2012
Russell Jones	22 July 2012
Sarah Jones	22 July 2012
Richard Thomas	23 July 2012
Steven Cooper	25 July 2012
Peter and Jane Donaghue	25 July 2012
Robin Malloy	4 August 2012
Joyce Johnson	5 August 2012
Amy Malloy	6 August 2012
Emily Thorpe	7 August 2012
Dr Anthony Malloy	7 August 2012
Michael Gerrard	8 August 2012
Elizabeth J Lawton	15 August 2012

CONDITIONS

Annex B

General

- 1) No part of the development hereby permitted shall be commenced on any parcel (as referred to in Condition 5) until full details of the layout, scale, appearance and landscaping within the parcel (hereinafter called “the reserved matters”) have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved details.
- 2) Application for approval of the reserved matters for the first phase of the development hereby permitted as approved under condition 5 shall be made to the Local Planning Authority no later than the expiration of three years from the date of this permission and the last application for reserved matters approval shall be made no later than seven years beginning on the date of this permission.
- 3) Each phase of the development hereby permitted as approved under condition 5 shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.
- 4) The development hereby permitted shall not be carried out except in substantial accordance with the details shown on the following submitted plans:
 - i) Parameters Plan 1953-SK-01 Rev. S
 - ii) Access Plan 207137-00 Figure 13 Issue 05No more than 800 dwellings shall be developed on the site.
- 5) No part of the development hereby permitted shall be commenced until a detailed phasing plan showing the parcels which shall be the subject of separate reserved matters applications has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the phasing plan thus approved.
- 6) No development shall take place, including any works of demolition or clearance, until a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) the loading and unloading of plant and materials;
 - iii) the storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) installation and maintenance of wheel washing facilities;
 - vi) measures to control the emission of dust, dirt and odour during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) an appropriately scaled plan showing “Environment Protection Zones” where construction activities are restricted and where protective measures will be installed or implemented;
 - ix) details of protective measures (both physical measures and sensitive working practices) to minimise impacts during construction;
 - x) a timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife, particularly nesting birds, could be harmed;

- xi) details of persons/organisations responsible for:
 - a) compliance with legal consents relating to nature conservation;
 - b) compliance with planning conditions relating to nature conservation;
 - c) installation of physical protection measures during construction;
 - d) implementation of sensitive working practices during construction;
 - e) regular inspection and maintenance of the physical protection measures and monitoring of working practices during construction;
 - f) provision of training and information about the importance of "Environment Protection Zones" to all construction personnel on site.
- xii) pollution prevention measures;
- xiii) details of measures to protect the public footpaths and amenity of users of the public footpaths crossing the site during the construction works;
- xiv) in relation to every element topic or subject included in the Plan, proposals for the standards to be achieved, monitoring schedules, record keeping and communication of results to the Local Planning Authority.

All works shall be carried out in accordance with the approved details. Any alteration to this Plan shall be approved in writing by the Local Planning Authority prior to commencement of the alteration.

Highways

- 7) No more than 150 dwellings in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as Housing Area - Alcester Road [Component A]), shall be occupied until a highway scheme substantially in accordance with drawing number 207137-00 CH-011 Issue 01 (Wildmoor Roundabout) has been submitted to and approved in writing by the local planning authority and the approved scheme has been fully implemented and is open to traffic.
- 8) Prior to the first occupation of the development, a Travel Plan, in substantial accordance with the submitted Travel Plan Framework (October 2009), to include details of the mechanisms to be used for its delivery, monitoring and enforcement, shall be submitted to and approved in writing by the Local Planning Authority.
- 9) The proposed Stratford Western Relief Road (SWRR), connections to the existing highway and new junctions on the SWRR, shall be laid out in general accordance with the following plans in the Revised Transport Assessment (February 2011):
 - 207137-00 Figure 6 Issue 03
 - 207137-00 Figure 7 Issue 03
 - 207137-00 Figure 8 Issue 04
 - 207137-00 Figure 9 Issue 04
 - 207137-00 Figure 10 Issue 04
 - 207137-00 Figure 11 Issue 04
 - 207137-00 Figure 12 Issue 03
 - 207137-00 Figure 15 Issue 06
 - 207137-00 Figure 16 Issue 04
 - 207137-00 Figure 17 Issue 03
 - 207137-00 Figure 18 Issue 05
 - 207137-00 CH-011 Issue 01
- 10) No development shall take place until a highway works agreement has been entered into and signed to secure the construction, completion and adoption of the entirety of the SWRR (as shown on Plan 207137-00 Figure 13 Issue 05).

- 11) No more than 200 dwellings shall be constructed pursuant to this permission in the southern development area (shown on Parameters Plan 1953 SK-01 Rev. S as the Housing Area - Evesham Road [Component B]). Prior to the commencement of the southern development area and notwithstanding the detail shown on the Parameters Plan 1953-SK-01 Rev. S and drawing 207137-00 Figure 15 Issue 06, an access scheme for the junction of the SWRR and the Evesham Road roundabout shall be submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied in the southern development area until the Evesham Road / Luddington Road roundabout (as shown on Plan 207137-00 Figure 15 Issue 06 and incorporating the approved amendment) has been completed and is open to traffic.
- 12) No dwellings shall be occupied in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as the Housing Area – Alcester Road [Component A]) until the new junctions on Alcester Road (as shown on Plan 207137-00 Figure 9 Issue 04) and West Green Drive (as shown on Plan 207137-00 Figure 7 Issue 03) and the new pedestrian crossing on the Alcester Road (as shown on Plan 207137-00 Figure 9 Issue 04) have been completed and are open to traffic and/or pedestrian use (as applicable).
- 13) No more than 150 dwellings in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as Housing Area – Alcester Road [Component A]), shall be occupied until the northern section of the SWRR (as shown on Plans 207137-00 Figure 16 Issue 04 and 207137-00 Figure 17 Issue 03), the improvements to the Wildmoor Roundabout (as shown on Plan 207137-00 Figure 20 Issue 07), the northern sector access roundabout (as shown on Plan 207137-00 Figure 6 Issue 03) and works to create the crossings of the SWRR for public right of way SD16, in accordance with details approved under Condition 15, have been completed and are open to traffic and/or pedestrian use (as applicable).
- 14) Within 2 years of the commencement of development or prior to the occupation of the 300th dwelling in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as Housing Area – Alcester Road [Component A]), whichever is the sooner, the entirety of the SWRR (as shown on Plan 207137-00 Figure 13 Issue 05), the Anne Hathaway's Cottage access roundabout (as shown on Plan 207137-00 Figure 12 Issue 03) and works to create the crossings of the SWRR for public right of ways SD16b and SD42, in accordance with details approved under Condition 15, shall have been completed and be open to traffic and/or pedestrian use (as applicable).
- 15) Detailed schemes for providing suitable crossings of the SWRR for public rights of ways SD16, SD16b and SB42, as shown on Plans 207137-00 6 Issue 03, 207137-00 12 Issue 03 and 207137-00 16 Issue 04, shall be submitted to and approved in writing by the Local Planning Authority. The crossings shall thereafter be implemented in accordance with the approved details concurrently with construction of the SWRR.
- 16) All new highway junctions, as shown on Plans 207137-00 Figure 7 Issue 03, 207137-00 Figure 8 Issue 04, 207137-00 Figure 9 Issue 04, 207137-00 Figure 10 Issue 04 and 207137-00 Figure 11 Issue 04, shall be laid out so as to provide the relevant visibility splays shown on these plans and thereafter no structure or vegetation exceeding 0.6m in height above the adjoining highway carriageway shall be placed or allowed to grow within the visibility splays as defined.
- 17) If the north-eastern arm of the Anne Hathaway's Cottage access roundabout (as shown on Plan 207137-00 Figure 12 Issue 03) is not brought into use within 2 years of the completion of the roundabout, it shall be landscaped during the next planting season in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. Any planting that is removed, uprooted, severely damaged, destroyed or dies within 5 years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season.
- 18) With the exception of lighting that is required to directly illuminate roundabout junctions, no street lighting shall be installed on the SWRR between the northern

development area access roundabout (as shown on Plan 207137-00 Figure 6 Issue 03) and the Anne Hathaway's Cottage access roundabout (as shown on Plan 207137-00 Figure 12 Issue 03). Details of a scheme for lighting that is to be installed in connection with the SWRR including the design of lighting columns, lux levels and lighting direction shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of any lighting and the works shall be carried out and permanently retained thereafter in accordance with the details thus approved.

- 19) Details of car parking provision within the local centre and primary school to be constructed as part of the development shall be submitted to and approved in writing by the Local Planning Authority prior to their construction and the development shall be carried out and thereafter retained in accordance with the details thus approved.
- 20) Details of cycle parking provision within the local centre and primary school to be constructed as part of the development shall be submitted to and approved in writing by the Local Planning Authority prior to their construction and the development shall be carried out and thereafter retained in accordance with the details thus approved.

Drainage

- 21) No development shall take place including works of demolition until such time as a phasing plan for the surface water drainage has been submitted to and approved in writing by the Local Planning Authority. Any reference to parcels in Conditions 21-25 inclusive shall be to the parcels set out on the phasing plan approved pursuant to this condition.
- 22) The development hereby permitted shall not be commenced until such time as a scheme to provide for the following three requirements has been submitted to, and approved in writing by, the Local Planning Authority:
 - i) Ensure no raising of ground levels in the floodplain, i.e. Flood Zones 3 and 2, other than as set out specifically in the approved details for the provision of development infrastructure and in accordance with the approved floodplain compensation scheme.
 - ii) Ensure finished floor levels are set 600mm above the corresponding 100 year plus 20% for Climate Change Flood Level (set to AOD).
 - iii) Implement the flood compensation area as indicated in drawing number 1363/FL/03 Rev B contained in the submitted Flood Risk Assessment (October 2009).

The scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme.

- 23) Development shall not begin within each parcel until a surface water drainage scheme for that parcel, based on and in accordance with the principles outlined in the submitted Flood Risk Assessment (October 2009) together with assessment and proposals for drainage in connection with runoff from raised levels or embankments associated with the SWRR or other parts of the development, and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the timetable for implementation approved as part of the scheme for each respective parcel.

The scheme for each parcel shall also include:

- i) Final drainage calculations for the site taking into account the drainage catchment areas from each phase of the development (determined through Condition 5) as they contribute to the site network.
- ii) Infiltration tests for use of soakaways.
- iii) Final drainage layouts including SUDS.

- iv) Details of how the scheme shall be maintained and managed in perpetuity after completion.
 - v) Details of the landscaping and safety features of the balancing ponds.
- 24) Prior to any site works commencing, a scheme to cover interim surface water drainage measures during construction shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme.
- 25) The development hereby permitted shall not commence until comprehensive details of permanent foul drainage proposals for the site, to include phasing, have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied in any parcel until the foul drainage scheme for that parcel has been implemented in accordance with the approved details.

Design

- 26) Prior to the submission of any reserved matters applications, a Design Code document for the site shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles of the Design and Access Statement (October 2009) and the Design and Access Code Addendum (October 2010) and address the matters set out in paragraphs 1.7 to 1.13 of the Addendum. Applications for approval of reserved matters shall thereafter be in accordance with the approved Design Code.
- 27) The building forms and sizes shall follow the matrix set out in Chapter 8 of the Design and Access Statement (October 2009). The 'narrow plan' dwelling form as described shall only be used for terraced or semi-detached units.
- 28) Notwithstanding the building heights set out through Condition 27, maximum building heights shall be limited in accordance with details that shall be approved as part of the Design Code submission pursuant to Condition 26.
- 29) No parcel of the development hereby permitted shall be commenced until detailed plans and sections showing existing and proposed site levels for that parcel and showing the proposed relationship with adjacent parcels have been submitted to and approved in writing by the Local Planning Authority and the development thereafter shall only be carried out as approved.
- 30) No part of the development hereby permitted shall commence until details of how 'Secured by Design' standards will be achieved have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details thus approved.
- 31) The development hereby permitted shall not be commenced until a scheme for the provision of energy from on-site renewable sources sufficient to replace a minimum of 10% of the predicted carbon dioxide emissions from the total energy requirements of the development has been submitted to and approved in writing by the Local Planning Authority. The design features, systems and equipment that comprise the approved scheme shall be fully implemented in accordance with the approved plans and particulars prior to the development first being brought into use, or alternatively in accordance with a phasing scheme which has been agreed in writing by the Local Planning Authority, and shall thereafter be retained in place and in working order at all times.
- 32) Not less than 23% of all Private Market Dwellings shall fully comply with all relevant requirements of the Joseph Rowntree Foundation's "Lifetime Homes" standards (or any substitute therefore which may be published from time to time) and details of which of the Private Market Dwellings will comply with the "Lifetime Homes" standards shall be set out in reserved matters for each parcel and thereafter the Private Market dwellings

identified in reserved matters approvals as being those which will comply with the "Lifetime Homes" standards shall be constructed in accordance with these standards.

- 33) All new dwellings within each parcel shall achieve a minimum rating of Level 3 of the Code for Sustainable Homes as applicable at the time of commencement of development within that parcel. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that a minimum of Code Level 3 has been achieved. Copies of certificates shall be supplied to the Local Planning Authority on request.

Landscape

- 34) No part of the development hereby permitted shall be commenced or equipment, machinery or materials brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the Local Planning Authority and has been put in place.

The scheme must include details of the erection of stout protective fencing in accordance with British Standard 5837 (Trees in relation to design, demolition and construction). Fencing shall be shown on a plan and installed to the extent of the tree protection areas as calculated using the British Standard. Nothing shall be stored or placed in those fenced areas or the ground levels altered without the prior consent in writing of the Local Planning Authority.

The development shall be carried out in accordance with the approved scheme which shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed.

- 35) No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by Condition 34 has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include details of:

- i) induction and personnel awareness of arboricultural matters;
- ii) identification of individual responsibilities and key personnel, including the qualified arboriculturalist responsible for administering the scheme;
- iii) statement of delegated powers;
- iv) timing and methods of site visiting and record keeping, including updates;
- v) procedures for dealing with variations and incidents.

The scheme of supervision shall be carried out as approved.

- 36) No works or development shall take place in any parcel until full details of all service runs within that parcel have been submitted to and approved in writing by the Local Planning Authority. The details shall include:

- i) The location of all existing services above and below ground
- ii) The location of all proposed services (e.g. drainage, power, communications cables, pipelines etc) including routes, supports etc.

The development shall be carried out in accordance with the details thus approved.

- 37) Prior to the commencement of site works, full details of hard and soft landscape proposals for the areas of Structural Landscape, Shottery Community Park and Shottery Conservation Landscape as shown on Green Infrastructure Plan 1953-SK-04 Rev. E shall have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The details shall include the following amendments:

- a) Notwithstanding the landscaping detail shown on the northern edge of the Housing Area – Alcester Road (on Green Infrastructure Plan 1953-SK-04 Rev. E), such an area of landscaping shall accord with that shown on the

Development Principles Plan with the Land West of Shottery Statement of Development Principles Document (October 2003).

- b) Notwithstanding the landscaping detail shown within the Shottery Conservation Area ('southern field') on Green Infrastructure Plan 1953-SK-04 Rev. E these landscape features shall accord with that shown on the Development Principles Plan with the Land West of Shottery Statement of Development Principles Document (October 2003).

The submitted details shall also include:

- i) the timing of implementation, which shall be no later than the end of the first planting season following the completion of the SWRR;
- ii) planting plans;
- iii) written specifications;
- iv) a schedule of plants noting species, plant sizes and proposed numbers;
- v) existing landscape features such as trees, hedges and ponds to be retained accurately plotted (where appropriate);
- vi) existing landscape features such as trees, hedges and ponds to be removed accurately plotted (where appropriate);
- vii) existing and proposed finished levels (to include details of grading and earthworks where appropriate).

The hard and soft landscaping approved as part of this condition shall be completed in accordance with the approved timing details.

Any planting that is removed, uprooted, severely damaged, destroyed or dies within five years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season.

- 38) All hard and soft landscape works, including earth works in the Shottery Conservation Landscape and adjacent to the Electricity Substation, shall be carried out in accordance with the details approved through reserved matters submissions. The works approved by all reserved matters submissions shall be completed within the first planting season following the first commencement of any part of the development on that parcel.

Any planting that is removed, uprooted, severely damaged, destroyed or dies within five years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season.

- 39) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules, for the Shottery Conservation Landscape (shown on Parameters Plan 1953 SK-01 S) shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.

- 40) Where a parcel is crossed by existing Power Lines, all Power Lines within that parcel shall be diverted underground prior to the first occupation of any dwelling within that parcel.

- 41) Prior to the construction of the Anne Hathaway's Cottage roundabout (as shown on Plan 207137-00 Figure 12/03), a Management Plan for the Plantation to its east and north-east shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details of any tree works and replacement planting including timing, as appropriate, within the Plantation as a result of weaker trees being subjected to increased wind as a result of the removal of outer trees and shall be implemented in accordance with the details approved.

Ecology

42) A Combined Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The Plan shall thereafter be implemented and carried out as approved and in accordance with timescales and programmes as set out in the approved Plan. The Plan shall include the following elements:

- i) short and long term design and ecological objectives;
- ii) description of target habitats and range of species appropriate to the site;
- iii) selection of appropriate strategies for creating/restoring target habitats or introducing/encouraging target species;
- iv) selection of specific techniques and practices for establishing vegetation;
- v) sources of habitat materials (e.g. plant stock) or species individuals;
- vi) method statement for site preparation and establishment of target features;
- vii) extent and location of proposed works;
- viii) management responsibilities and maintenance schedules for all landscape areas, other than small privately owned domestic gardens, to be designed to maximise ecological benefits on the site, e.g. seasonal mowing to encourage wildflowers;
- ix) the personnel responsible for the work;
- x) the timing of works;
- xi) monitoring;
- xii) disposal of wastes arising from works.

43) The development hereby permitted (including demolition of Nos. 3 and 4 Bordon Hill) shall not commence on any parcel, until a further bat survey of the site, to include appropriate day/night time activity surveys, preferably during May to August in the season prior to demolition or the commencement of works in that parcel, has been carried out. If evidence of bats is recorded, a detailed mitigation plan including a schedule of works and timings shall be submitted to and approved in writing by the Local Planning Authority. Such an approved mitigation plan shall thereafter be implemented in full.

44) The development hereby permitted shall not commence on any parcel, unless and until two weeks' notice in writing of the start of any site works has been given to a licensed great crested newt ecologist appointed by the applicant to supervise all ground work elements of the development within the site. Should evidence of newts be found, then any recommendations or remedial works shall be implemented within the timescales stated/approved by the relevant consultant ecologist and the Local Planning Authority shall at the same time be advised in writing of these.

45) Should a protected species, with the exception of bats, great crested newts or badgers, be found to be present and either preparing to breed or in the process of breeding or rearing young, then:

- i) work shall stop across the entire site until the Local Planning Authority has approved details of a 'permitted working area' in writing;
- ii) site works shall thereafter only continue outside of the 'permitted working area', unless and until details of appropriate mitigation measures and contingency plans including timescales have been submitted to and approved in writing by the Local Planning Authority.

The works shall thereafter be carried out in accordance with the details approved.

46) No part of the development hereby permitted shall be commenced until a scheme for the provision of suitable bat bricks/bat access tiles and bird nesting boxes to be erected on buildings within the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of box type, location and timing of works. Thereafter, the bat bricks/bat access tiles and bird nesting boxes shall be installed and retained in perpetuity.

47) Prior to the commencement of development a scheme for the provision and management of a buffer zone (at least 8m wide on one bank) alongside the Shottery Brook and of buffers around ponds and ditches present shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority.

The scheme shall include:

- i) plans showing the extent and layout of the buffer zones;
- ii) details of the planting scheme;
- iii) details demonstrating how the buffer zones will be protected during development and managed/maintained over the long term.

48) The proposed pond shown indicatively on the Green Infrastructure Plan 1953 SK-04 Rev. E shall be constructed in accordance with a scheme, to include the timing of its implementation, to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development.

49) Prior to the commencement of development, a working method statement to cover channel and bank works shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority. The method statement shall cover the following requirements:

- i) timing of works;
- ii) methods used for all channel and bank side water margin works;
- iii) machinery (location and storage of plant, materials and fuel, access routes, access to banks etc.);
- iv) protection of areas of ecological sensitivity and importance.

50) Prior to the commencement of development, details of all bridges proposed on site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the bridges shall be constructed as set out in the approved scheme. The scheme shall comprise the following features:

- i) all bridges shall be clear spanning structures with the abutments set back from the watercourse on both banks to provide a bank width of 4 metres beneath the bridge;
- ii) bridges shall be a minimum of 4 metres from the bank top of the watercourse to provide an unobstructed corridor to allow the movements of otters and other animals;
- iii) bank revetment should not be necessary as all revetment and structural work should be associated with the bridge structure and set back at least 4 metres.

Ground, Air and Noise Quality

51) No work shall commence on the site unless the further intrusive site investigations detailed in Chapter 12 of the Geo-environmental Phase 1 Desk Study 2008 have been undertaken and the results, including any mitigation measures, have been submitted to

and approved in writing by the Local Planning Authority. Any mitigation measures proposed as a result of the investigations shall be carried out in accordance with the approved details and a validation report shall be submitted within 2 months of the works being carried out to the Local Planning Authority confirming that the mitigation works have been completed.

- 52) Construction works, construction related works or construction related deliveries shall not be carried out on the site outside of the following hours and at no time on Sundays or Bank Holidays:

Monday to Fridays 08:00-18:00 hours; Saturdays 08:00-13:00 hours.

In addition, piling operations or vehicle/equipment maintenance shall not be carried out on the site outside of the following hours and at no time on Saturdays, Sundays or Bank Holidays:

Monday to Fridays 09:00-16:00 hours.

- 53) Prior to the commencement of the development hereby permitted, details of a package of acoustic measures to allow all residential units within the development to achieve the "good" internal ambient noise criteria, as described by BS8233:1999 i.e. achieve internal noise levels equal to or less than $30\text{dB}_{\text{L}_{\text{Aeq,T}}}$ during the day and $30\text{dB}_{\text{L}_{\text{Aeq,T}}}$ at night for living rooms and bedrooms with the windows open in a manner typical for ventilation (or where the above criteria cannot be met with windows open, for example where habitable rooms have windows with unscreened views towards the estate through-road, using passive acoustic ventilators with equivalent acoustic performance to those approved for use under the Noise Insulation Regulations), shall be submitted to and approved in writing by the Local Planning Authority. The approved package of measures shall be installed before the proposed dwellings are occupied.
- 54) A noise mitigation/control scheme to ensure the provision of a garden area suitable for amenity use for each residential property that achieves a noise level of $55\text{dB}_{\text{L}_{\text{Aeq,T}}}$ or lower during the day and $45\text{dB}_{\text{L}_{\text{Aeq,T}}}$ or lower at night shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development and none of the dwellings shall be occupied until the approved scheme has been implemented.
- 55) Prior to the commencement of dwellings hereby approved in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as the Housing Area – Alcester Road [Component A]) a mitigation scheme detailing the external works proposed to mitigate the noise impact of the electricity substation affecting part of the development and a glazing/ventilation specification to protect the internal space of dwellings proposed shall be submitted to and approved in writing by the Local Planning Authority and none of the dwellings within the northern residential parcel shall be occupied until the approved scheme has been implemented.
- 56) There shall be no deliveries to or collections from any non-residential building outside the hours of 07:00-19:00 Mondays-Saturdays or at any time on Sundays or Bank or Public Holidays.
- 57) No security lighting or floodlighting shall be installed on any non-residential building until full details have been submitted to and approved in writing by the Local Planning Authority. All such installations shall be designed and located to avoid nuisance to the occupiers of nearby dwellings, and shall be implemented and thereafter retained in accordance with the approved details.
- 58) Development shall not commence on any non-residential building until details of arrangements for refuse storage have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 59) Development shall not begin on any non-residential building until details of any externally-mounted plant or equipment or any internal equipment which vents

externally, including any extraction ventilation system for a cooking area, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Other

- 60) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. Thereafter the approved scheme shall be implemented and the work shall be carried out by a professional archaeological organisation or person approved in writing by the Local Planning Authority.
- 61) No parcel of the development hereby permitted shall be commenced until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes for that parcel has been submitted to and approved in writing by the Local Planning Authority. No parcel of the development shall be occupied until the scheme for that particular parcel has been implemented in accordance with the approved details.
- 62) No dwelling or other building that has a downpipe within the development hereby permitted shall be occupied or used until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.

End



Report to the Secretary of State for Communities and Local Government

by Terry G Phillimore MA MCD MRTPI

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

Date 12 July 2012

TOWN AND COUNTRY PLANNING ACT 1990

STRATFORD-ON-AVON DISTRICT COUNCIL

APPEAL MADE BY

J S BLOOR (TEWKESBURY) LTD & HALLAM LAND MANAGEMENT LTD

Inquiry held on 4, 5, 11-13, 17-20, 24-26 April & 15 May 2012; site visits made on 26 April & 16 May 2012

**Land West of Shottery, South of Alcester Road and North of Evesham Road,
Stratford-upon-Avon CV37 9RX**

File Ref: APP/J3720/A/11/2163206

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File Ref: APP/J3720/A/11/2163206

Land West of Shottery, South of Alcester Road and North of Evesham Road, Stratford-upon-Avon CV37 9RX

- 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 J S Bloor (Tewkesbury) Ltd & Hallam Land Management Ltd against the decision of Stratford-on-Avon District Council.
- The application Ref 09/02196/OUT, dated 26 October 2009, was refused by notice dated 22 September 2011.
- The development proposed is construction of up to 800 dwellings; a mixed use local centre to consist of residential development, retail floorspace (1,000 sq m A1-A5) and D1 uses, and a primary school; laying out of green infrastructure consisting of open space, structural landscaping, and areas of equipped play and associated infrastructure; construction of new highway infrastructure between Alcester Road and Evesham Road and associated highway works and access connections; associated engineering and ground modelling works and drainage infrastructure; and demolition of Nos 3 and 4 Bordon Hill.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

PROCEDURAL MATTERS

1. The appeal relates to an outline planning application with all matters of detail reserved for later approval other than means of access. Among other documents, the application was supported by an Environmental Statement, a Design and Access Statement and a number of plans¹.
2. The description of development on the application form referred to the demolition of Nos 3 and 4 Evesham Road. This was subsequently corrected to Nos 3 and 4 Bordon Hill (which forms part of Evesham Road)², and this correction has been adopted above.
3. Other amendments were made to the application prior to its determination by the Council. The amendments comprised relatively minor changes to the layout and areas allocated to individual uses within the development, as shown in revised plans, with additional supporting information in an Addendum to the Design and Access Statement³. There was no change to the fundamental nature of the proposal and the Council's decision to refuse the application took account of these amendments. This report deals with the final revised scheme and it is considered that no interest would be prejudiced by determining the appeal on this basis.
4. At the inquiry a completed legal agreement and a completed unilateral undertaking containing planning obligations pursuant to section 106 of the Act were submitted, both dated 14 May 2012⁴.
5. Rule 6 status for the inquiry was given to a group known as Residents Against Shottery Expansion (RASE).

¹ Documents CD/A/3, CD/A/9, CD/A/4-8 respectively

² CD/A/3 Errata

³ CD/A/15a, CD/A/15b, CD/A/18a, CD/A/9a respectively

⁴ INQ/APP/52, INQ/APP/53

ENVIRONMENTAL INFORMATION

6. The proposal is Environmental Impact Assessment development under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. As stated above, the application was accompanied by an Environmental Statement. In October 2010 and February 2011 additional information was submitted in response to two Regulation 19 directions issued by the Council⁵. Prior to the inquiry in February 2012 the appellants issued another document referred to as a Further Environmental Information Submission, which contained supplementary details on a number of specific matters⁶.
7. Shortly before the start of the inquiry the National Planning Policy Framework was published on 27 March 2012. To deal with potentially relevant changes resulting from this, the appellants produced an Environmental Statement Update (April 2012)⁷. This was given publicity, and the representations received in response⁸ were considered before the close of the inquiry⁹.
8. Together with other material information and comments from statutory consultees, these items form the environmental information which is taken into account in this report. Whether the information can be considered to be adequate for the purposes of assessing the significant environmental effects of the proposal was raised as an issue at the inquiry, and is dealt with in the reporting of the cases and conclusions below.

THE SITE AND SURROUNDINGS

9. The site¹⁰ is described in the Statement of Common Ground¹¹. It adjoins the existing built-up area on the west side of Stratford-upon-Avon¹², which is a town with a population of some 23,000 people. The town centre is approximately 3km to the east of the site. The part of the town adjacent to the site is known as Shottery.
10. The site area is 54.18 hectares. Most of the site lies between two roads that lead into the town from the west: the A422 Alcester Road to the north and the B439 Evesham Road to the south. A projection from the north edge of the site abuts the Wildmoor roundabout where the A46 Stratford Northern Bypass joins the A422. The east boundary of the site in its north section lies along West Green Drive and part of South Green Drive, which comprise a mix of mid 20th century housing. An existing electricity substation off the west side of West Green Drive is excluded from the site. The southern section of the site lies to the west of late 20th century housing along Hogarth Road, with Shottery Brook running in between. The site's central part abuts open land on the west side of Cottage Lane. This is part of the older core of Shottery village, which is a Conservation Area containing many listed buildings¹³. These include the Grade I listed Anne

⁵ CD/A/3d, CD/A/15, CD/A/16

⁶ CD/A/23

⁷ INQ/APP/23

⁸ INSP/4

⁹ INQ/APP/48

¹⁰ CD/A/4a is the Site Plan

¹¹ CD/H/1. Useful photographs are contained in INQ/LPA/5 and INQ/APP/4&5

¹² Location plan at CD/A/9 Figure 1

¹³ CD/F/18; INQ/LPA/5 Figure SW2; INQ/APP/4&5 Appendix 2 Figures 41 & 42

Hathaway's Cottage and its Grade 2 Registered Park and Garden¹⁴, and a section of the site's eastern boundary lies to the rear of this.

11. Two houses on the north side of Evesham Road in a section known as Bordon Hill are included within the site. A further part of the site is an area of open land to the south of Evesham Road. The site's western boundary generally follows field boundaries. Most of the site comprises land in agricultural use laid to arable/pasture with a small portion of the land to the rear of Anne Hathaway's Cottage being fallow. Within the southern part of the site are two small buildings used for equestrian purposes and a flooring showroom. Three public footpaths cross the site generally in an east-west direction. Further land to the west of the site and two other Bordon Hill properties are controlled by the appellants¹⁵.
12. Within the neighbouring countryside, the land to the south-west rises to the local high point of Bordon Hill. To the south of Evesham Road is Stratford Racecourse.

THE PROPOSAL

13. Descriptions of the proposal are included in the Statement of Common Ground¹⁶, with information contained in the Design and Access Statement and Addendum¹⁷ and the Environmental Statement and supplements¹⁸. The elements of the development are shown in the Parameters Plan and Green Infrastructure Plan¹⁹. Some visualisation material has been provided²⁰.
14. A new single carriageway road is proposed to traverse the whole site. This would link into the existing highway network at the Wildmoor Roundabout on Alcester Road and by a new roundabout junction on Evesham Road, where nos 3 and 4 Bordon Hill would be demolished. There would be two further roundabouts along the new road. The construction of the road would involve significant elements of earthworks and landscaping, with much of it to be set within a false cutting.
15. The residential content of the scheme of up to 800 dwellings would be divided into two portions. A northern development parcel (south of Alcester Road) of up to 605 dwellings would be served from the northern roundabout along the new road. A southern development parcel (north of Evesham Road) of up to 195 dwellings would be served from junctions onto the new road. The average net density would be 37 dwellings per hectare, with a mix of accommodation of 1 bedroom to 5 bedroom units and affordable housing comprising 35% of the residential floorspace. Together the housing areas measure 19.94 hectares²¹.
16. To the south of the substation along West Green Drive would be a new local centre of 1.41 hectares. This would accommodate retail/commercial uses (classes A1-A5) limited to a maximum of 1,000 sq m with no one unit larger than 350 sq m. An area of 0.5 hectare would be reserved for the provision of a health facility.

¹⁴ INQ/APP/7 Appendix 9 and INQ/LPA/2 Appendix 3 contain the list descriptions; INQ/APP/7 Appendix 4.4 and INQ/APP/46 identify the location of features within and around the Registered Park and Garden.

¹⁵ CD/A/4a

¹⁶ CD/H/1

¹⁷ CD/A/9, CD/A/9a

¹⁸ CD/A/3, CD/A/16 section 2.3, CD/A/23 section 5

¹⁹ CD/A/15a, CD/A/15b

²⁰ INQ/APP/4&5 Figures 31 & 32, INQ/APP/5a

²¹ INQ/APP/1 para 4.4

17. To the south of the local centre, also on West Green Drive, would be a site of 1.66 hectares to accommodate a two form entry primary school.
18. A Neighbourhood Equipped Area of Play of 1,000 sq m would be located south of the primary school site. Two Local Equipped Areas of Play of 400 sq m each would be located in the northern and southern housing development parcels.
19. Green infrastructure within the scheme would be divided into accessible and non-accessible types. The former would comprise structural landscaping throughout (woodland planting and grassland meadow) of 3.55 hectares, incidental open space and children's play space (2.12 hectares) and the Shottery Community Park (3.78 hectares) located on the western side of the new road within the central portion of the site. The non-accessible elements would comprise structural landscape (10.23 hectares), Shottery Conservation Landscape (7.55 hectares to the west of Anne Hathaway's Cottage), and a Flood Compensation Landscape Area to the south of Evesham Road (1.53 hectares).
20. The southern roundabout along the new road would provide the potential for vehicular access onto land owned by the Shakespeare Birthplace Trust to serve a new coach/car park. This roundabout would be at grade.
21. At the closest points the new housing would be some 218 metres from Anne Hathaway's Cottage and the new road some 177 metres from the edge of the Registered Park and Garden²².

PLANNING POLICY

22. The Statement of Common Ground²³ identifies the development plan position. The development plan for the area comprises:
 - Regional Planning Guidance for the West Midlands (RPG11), which was published in June 2004 and became the West Midlands Regional Spatial Strategy in August 2004. It was re-issued in January 2008 following the publication of the Phase 1 Revision in respect of the Black Country sub-region²⁴;
 - certain saved policies of the Warwickshire Structure Plan 1996-2011, adopted in 2002²⁵;
 - and certain saved policies of the Stratford-on-Avon District Local Plan Review 1996-2011, adopted in July 2006²⁶.
23. The following policies have been identified as of some relevance²⁷.

West Midlands Regional Spatial Strategy

24. Policy RR1 aims for a rural renaissance in the region. Policy RR3 sets out the role for market towns and policy RR4 seeks to improve rural services.
25. Policy CF2 deals with housing beyond the Major Urban Areas, identifying the towns of Worcester, Telford, Shrewsbury, Hereford and Rugby as sub-regional foci for development. Elsewhere the function of the other large settlements

²² INQ/APP/4&5 Appendix 2 Figure 42

²³ CD/H/1

²⁴ CD/B/7

²⁵ CD/B/6

²⁶ CD/B/1, CD/B/2

²⁷ CD/A/20

should not generally be to accommodate migration from the Major Urban Areas. In rural areas the provision of new housing should generally be restricted to meeting local housing needs and/or to support local services, with priority being given to the reuse of previously developed land and buildings. Policy CF3 refers to rates for provision for additional dwellings, which are to be applied as minima for the Major Urban Areas and maxima elsewhere. Policy CF5 deals with delivering affordable housing and mixed communities. Policy CF6 requires development plans to incorporate policies which allow for the managed release of housing land consistent with the spatial strategy.

26. Policy QE1 seeks to conserve and enhance the environment. Policy QE2 aims to restore degraded areas and manage and create high quality new environments and policy QE3 to create a high quality built environment for all. Policy QE4 sets out objectives for greenery, urban greenspace and public spaces. Policy QE5 deals with the protection and enhancement of the historic environment, seeking respect for local character and distinctiveness. Policy QE6 seeks the conservation, enhancement and restoration of the Region's landscape. Policy QE7 requires protection, management and enhancement of the Region's biodiversity and nature conservation resources. Policy QE9 sets out objectives for the water environment.

Warwickshire Structure Plan

27. Very few policies have been saved. Policy GD.7 deals with previously-developed sites. Policy T.7 promotes public transport. Policy T.10 seeks developer contributions for transport to serve development and regeneration. Policy TC.2 defines a hierarchy of town centres, with Stratford-upon-Avon identified as a Major Town Centre.

Stratford-on-Avon District Local Plan Review 1996-2011

28. Policy STR.1 provides a settlement hierarchy, with Stratford-upon-Avon identified as the main town. Policy STR.2 sets out provision for approximately 1,450 dwellings to be completed in the District in the period 2005-2011, with sites identified for approximately 425 new dwellings. Permission will not be granted for housing proposals which would lead to or exacerbate significant over-provision of housing in relation to the requirements of the Regional Spatial Strategy.
29. Policy STR.2A states that: "*The release of sites for housing development will be regulated...*". Three sites "*are identified as Strategic Reserve Sites to help meet long term (post 2011) housing needs*". One of these is proposal SUA.W 'land West of Shottery' (which as shown on the Proposals Map effectively comprises the appeal site), with the others SUA.X 'Egg Packing Station, Bishopton Lane' and SUA.Y 'land south of Kipling Road'. The policy goes on to state:
- "Any development which would prejudice the long-term use of these sites for housing will not be permitted. The development of any of the sites, in whole or in part, for housing will not be permitted before 31 March 2011, unless there is a significant under provision of housing land identified through the monitoring process."*
30. Policy STR.2B sets out an average density requirement of between 30 and 50 dwellings per hectare in order to make efficient use of land. Policy STR.4 expects development to utilise previously developed land except in accordance with the provisions of specific policies in the Plan.

31. Policy PR.1 requires all development proposals to respect and, where possible, enhance the quality and character of the area. Reference is made to supplementary planning guidance. Policy PR.2 deals with Green Belt. Policy PR.5 expects development to minimise the depletion of irreplaceable resources. Policy PR.7 deals with flood defence, and sets out criteria for development in an area at risk from flooding, all of which must be met as fully demonstrated by a flood risk assessment. Policy PR.8 resists development which could give rise to harmful air, noise, light or water pollution or soil contamination.
32. Policy PR.10 safeguards land for specific identified improvements to transport infrastructure.
33. Policy EF.5 encourages the conservation and enhancement of parks and gardens of historic interest, and development which adversely affects their appearance, character, setting or possible restoration will not be permitted.
34. Policies EF.6 and EF.7 provide protection and aims with respect to nature conservation and geology. Policy EF.9 gives protection to woodland and, where appropriate, promotes the establishment of new woodlands. Policy EF.10 seeks to preserve and enhance the landscape, amenity and nature conservation value of trees, woodlands and hedgerows.
35. Policies EF.11 and EF.11A seek to protect archaeological sites. Policy EF.13 sets out that proposals which do not preserve or enhance the character or appearance of a conservation area or its setting will not be permitted. Policy EF.14 aims to secure the preservation of listed buildings.
36. Policy DEV.1 sets out principles to be taken into account in requiring development proposals to have regard to the character and quality of the local area through layout and design. Policy DEV.2 requires the landscape aspects of a development proposal to form an integral part of the overall design, and sets out means to achieve a high standard of landscape. Policy DEV.3 provides requirements on amenity open space.
37. Policy DEV.4 gives requirements on access arrangements to serve development. Policy DEV.5 refers to car parking standards. Policy DEV.6 sets out requirements on off-site services and infrastructure to serve development. Policy DEV.7 gives requirements on drainage, including an expectation for sustainable drainage systems to be incorporated. Policy DEV.8 expects energy conservation in the layout and design of new development. Policy DEV.9 deals with access for people with disabilities, and policy DEV.10 with crime prevention.
38. Policy COM.3 encourages the provision of new shops and services which meet the needs of local communities. Policies COM.4 and COM.5 give standards and requirements for open space. Policy COM.7 sets out measures by which support will be given to bus services and policy COM.8 for rail services. Policy COM.9 expects the layout and design of proposals to incorporate facilities for walking and cycling which are safe, convenient to use and well connected. Policy COM.12 deals with proposals for the existing housing stock. Policy COM.13 sets out measures towards maximising the supply of affordable housing, including for on-site provision. Policy COM.14 requires a range and mix of dwelling types in larger developments, with policy COM.15 expecting provision of accessible housing. Policy COM.16 seeks the retention of existing business uses.
39. Policy SUA.1 on Town Setting sets out requirements for proposals outside the Built-Up Area Boundary on the fringe of the urban area of Stratford-upon-Avon,

including having regard for distinguishing features of 'character areas'. Policy SUA.2 requires a proposal within the built-up area to complement rather than conflict with the character of the area to which it relates. Policy SUA.3 seeks environmental enhancement of Stratford-upon-Avon.

40. Proposal SUA.W deals with the Strategic Reserve Site of Land to the West of Shottery, and sets out components that it is expected will be included in the development. These are:
- (a) approximately 15.5 hectares (gross) to the south of Alcester Road, for residential (including a proportion of affordable units) and associated uses
 - (b) approximately 5.6 hectares (gross) to the north of Evesham Road, for residential (including a proportion of affordable units) and associated uses
 - (c) a road link between Alcester Road and Evesham Road, incorporating a rear vehicular access to Anne Hathaway's Cottage, and associated traffic calming measures in the Shottery area
 - (d) approximately 6 hectares of public open space
 - (e) a local centre, to include a convenience store, a primary school and a doctor's surgery
 - (f) areas of woodland west of the proposed residential development off Alcester Road and north-west of the proposed residential development off Evesham Road.
41. Policy CTY.1 sets out a restrictive approach to development in the countryside.
42. Policy IMP.1 identifies requirements for supporting information with planning applications. Policy IMP.2 refers to adopted supplementary planning guidance. Policy IMP.3 refers to detailed development site guidance being prepared in appropriate cases. Policy IMP.4 requires arrangements to be put in place to secure the provision of the full range of physical and social infrastructure necessary to serve and support proposed development, and policy IMP.5 deals with transport infrastructure provision. Policy IMP.6 gives requirements for Transport Assessment, and policy IMP.7 for Green Transport Plans.

Emerging Policy

West Midlands Regional Spatial Strategy Phase 2 Revision

43. A Phase 2 Revision was commenced by the Regional Assembly in order to update certain other elements of the 2004 Regional Spatial Strategy in addition to those revised under the Phase 1 Review. This included strategy and levels of housing. A Preferred Option was prepared and submitted to the Secretary of State for the purpose of Examination in December 2007²⁸. The Examination in Public was conducted in the spring/summer of 2009, and the report of the Panel was published in September 2009²⁹. No Proposed Changes have been prepared. The main parties agree that with the Government's intention to revoke Regional Spatial Strategies it is highly unlikely that this document will progress further³⁰.

²⁸ CD/E/1

²⁹ CD/E/2

³⁰ CD/H/1 para 7.1

Stratford-on-Avon Core Strategy

44. Work commenced on the Core Strategy in 2007, with an Issues and Options document published for consultation³¹. A Draft Core Strategy was issued for consultation in October 2008³². This was prepared in the context of the Regional Spatial Strategy Phase 2 Revision Preferred Option as submitted for Examination in Public. It contained a housing requirement of 5,600 additional dwellings between 2006 and 2026. The Draft included West of Shotton as a strategic allocation (proposal SUA.4) to be developed after 2016.
45. A second Draft Core Strategy was issued for consultation in February 2010³³. This was prepared in the context of the Report of the Regional Spatial Strategy Panel, which recommended that the level of housing to be provided in the District should be 7,500 between 2006 and 2026. With the incorporation of the higher housing requirement, the West of Shotton site was identified as a strategic allocation for development after 2011 (Proposal SUA.7).
46. Both these draft Core Strategies incorporated a strategy where Stratford-upon-Avon is the main focus for development, reflecting its role and function as the District's main town. The suitability of the West of Shotton proposal for accommodating future development is repeated in the consultation documents³⁴.
47. At a Meeting of its Cabinet on 5 September 2011 the Council resolved to prepare a third Draft Core Strategy for consultation, with this to be based on a level of housing of 8,000 dwellings between 2008 and 2028³⁵. This third Draft version was issued for consultation in February 2012³⁶. It envisages a wider dispersal of development throughout the District than previous versions of the Core Strategy³⁷. Thus, with a proposed provision of approximately 8,000 dwellings during the period 2008-2028, policy CS 16 proposes up to 560 dwellings in Stratford-upon-Avon and, to preserve the character of the town, a maximum estate size of 100 homes. Elsewhere dwellings are to be provided in the Main Rural Centres (up to 1,680), Local Service Villages (up to 2,240), within and adjacent to smaller settlements (up to 560), and on large previously developed land sites in the countryside (up to 560). A proposal for development on land West of Shotton is no longer included.
48. The most recent timetable for preparation of the Core Strategy is: consultation February-March 2012; formal period for representations/objections August-September 2012; submission to Secretary of State for Examination November 2012; Examination March 2013; Adoption May 2013³⁸.

Other Local Policy and Documents

49. There are a number of other local documents of relevance. 'Land West of Shotton - Statement of Development Principles' was prepared for the Council in 2003 in support of policy SUA.W of the Local Plan Review³⁹. At the same time

³¹ CD/E/7

³² CD/E/8

³³ CD/E/9

³⁴ CD/E/8 p 19, CD/E/9 para 7.1.19

³⁵ CD/E/16a, CD/E/16b

³⁶ CD/E/18

³⁷ CD/E/18 para 9.06

³⁸ CD/E/19

³⁹ CD/B/5

- the 'Stratford-upon-Avon Western Relief Road Scheme Assessment Study' was produced by Warwickshire County Council⁴⁰.
50. On design, the District Council adopted the 'Stratford-upon-Avon Town Design Statement'⁴¹ as supplementary planning guidance in 2002. In 2007 it adopted the 'Urban Design Framework for Stratford-upon-Avon'⁴² as a supplementary planning document. Several other items of supplementary planning guidance and supplementary planning documents have been adopted by the Council, including on 'Meeting Housing Needs' and 'Developer Contributions towards Transport Schemes'⁴³.
51. A number of reports have been prepared for the Council to inform its Local Development Framework. The 'Green Infrastructure Study for the Stratford-on-Avon District'⁴⁴ and the 'Stratford-on-Avon Landscape Sensitivity Assessment'⁴⁵ were issued in 2011. The GL Hearn report 'Housing Provision Options Study' was issued in June 2011⁴⁶.
52. Warwickshire County Council has prepared the 'Warwickshire Local Transport Plan 2011-2026'⁴⁷.

National Policy

53. As already stated, the National Planning Policy Framework was issued shortly before the start of the inquiry. Evidence for the inquiry had been prepared having regard to Government policy in a number of Planning Policy Statements and Planning Policy Guidance documents⁴⁸ which were withdrawn on publication of the Framework. As a result, supplementary proofs of evidence dealing with the revised national planning policy context were submitted by most witnesses⁴⁹.
54. In addition to the Framework, relevant national policy is set out in 'The Planning System: General Principles' and Circular 11/95 'The Use of Conditions in Planning Permissions'. The 'PPS5 Historic Environment Planning Practice Guide' and Circular 06/2005 'Biodiversity and geological conservation' are also referred to in evidence and submissions.

REASONS FOR REFUSAL AND SUBSEQUENTLY AGREED MATTERS

55. The planning application was refused by the Council for 9 reasons⁵⁰. In summary, these raised objections on grounds of: 1. detrimental impact on character and appearance resulting in unacceptable harm to the setting of the town, including due to the density of the northern parcel and the incongruity of housing in the southern parcel to the west of the link road; 2. visual and noise harm to the setting of Anne Hathaway's Cottage and its associated Registered Park and Garden and the setting of Shottery Conservation Area; 3. adverse highways impact with no substantial highway benefits; 4. harm to existing and

⁴⁰ CD/D/1

⁴¹ CD/C/6

⁴² CD/C/10

⁴³ CD/C/1-CD/C/9

⁴⁴ CD/E/14

⁴⁵ CD/E/13

⁴⁶ CD/E/12

⁴⁷ CD/D/2

⁴⁸ CD/G/1-CD/G/20

⁴⁹ INQ/LPA/1a, INQ/LPA/4a, INQ/LPA/7a, INQ/LPA/9a, INQ/APP/1b, INQ/APP/3b, INQ/APP/6c, INQ/RASE/7

⁵⁰ CD/A/22

- proposed residents from traffic noise; 5. harm to existing residents of West Green Drive from intensified traffic use; 6. inadequate minimisation of energy use; 7. harm to the Racecourse Meadows Site of Special Scientific Interest from increased drainage runoff; 8. not environmentally sustainable and premature pending the Local Development Framework; 9. absence of planning obligations to deal with physical and social infrastructure.
56. Prior to the inquiry the Council reconsidered some aspects of these objections, as recorded in the Statement of Common Ground between the Council and the appellants⁵¹. As a result it withdrew the reference in reason 1 to the housing in the southern parcel to the west of the link road, and confirmed that in this reason landscape is not an urban design objection but solely one of landscape impact. It also advised that it no longer considered the density of the northern parcel to be too high. In addition, the Council withdrew reasons 5, 6 and 7, and accepted that there is no conflict with policy DEV.8 or policy EF.6 of the Local Plan.
57. Other points in the Statement of Common Ground can be noted. The Council agrees that urban design is not at issue, and that the strategy set out in the Design and Access Statement and Addendum are satisfactory. It is agreed that the use of Design Codes would ensure that the development would achieve a high quality environment, and that the scheme represents an efficient and effective use of the site⁵².
58. The Council, with relevant statutory bodies, is satisfied with the submitted Flood Risk Assessment and the drainage proposals, and considers that any risks of contamination could be adequately controlled by condition⁵³.
59. In addition, no disagreement is raised by the Council with respect to the scheme's acceptability with regard to archaeology; affordable housing; private market housing mix and composition; ecology; air quality; the technical noise assessments and the noise standards for new dwellings; crime prevention; public open space and play provision; impact on neighbouring amenity with respect to daylight, sunlight and privacy; and the location and uses of the proposed local centre⁵⁴. On highways, there is substantial agreement on the technical aspects of the Transport Assessment, and on pedestrian and cycle links, car parking and the principles of the travel plan⁵⁵.
60. In contrast, RASE has objections to the proposal in many of the areas of agreement between the appellants and the Council. Its position on these is recorded in an annotated version of the Statement of Common Ground⁵⁶, and the specific points are set out in the statement of its case below.
61. The summaries of cases of the main parties now set out are based on the closing submissions supplemented by the written and oral evidence and with references given to relevant sources.

⁵¹ CD/H/1 part 12

⁵² CD/H/1 part 13

⁵³ CD/H/1 parts 14.1,14.2

⁵⁴ CD/H/1 parts 14.3-14.12

⁵⁵ CD/H/1 part 14.15

⁵⁶ INQ/RASE/8

THE CASE FOR J S BLOOR (TEWKESBURY) LTD & HALLAM LAND MANAGEMENT LTD

62. The main points are:

Introduction

63. The integrity and credibility of the planning system are both at stake in the appeal. The appeal proposals have been promoted by the Council for a decade: they were expressly included by the Council in its draft Local Plan Review (LPR)⁵⁷, endorsed by the LPR Inspector⁵⁸, saved by the Secretary of State in a Saving Direction⁵⁹ and then subsequently incorporated by the Council in both the First and Second Drafts of its Core Strategy⁶⁰. However, they have been dropped from the latest (Third) Draft of the Core Strategy⁶¹ after the refusal of the planning application which is the subject of this appeal against its officers' recommendation⁶² and the refusal by members to accept officers' advice about the targets which should form the basis for its Core Strategy⁶³.
64. The prematurity case against the appeal proposals relies on an approach to spatial distribution in which additional housing numbers for Stratford-upon-Avon, the District's principal settlement, have been reduced to 35 per annum until 2028⁶⁴, and the site specific (strategic allocation) elements of the Core Strategy have been abandoned altogether.
65. None of these elements is the product of a robust evidence base. The approach consistently goes against the advice of professional officers and the Council's own appointed consultants (GL Hearn⁶⁵). It is apparently based on the mistaken premise that the 'localism agenda' gives a local council freedom to do what it wishes, however inconsistent with its previous actions and ungrounded in analysis. A recent decision on a proposal at Bidford-on-Avon⁶⁶ is the latest example of this pattern.
66. This can be expected to continue until the Core Strategy examination, unless suitable indications are given by the Secretary of State on this appeal.

The National Planning Policy Framework

67. The National Planning Policy Framework was published just before the opening of the inquiry and has been the subject of specific evidence for the appellants⁶⁷. The Framework gives the following advice on 'Decision-taking'⁶⁸:

"Local planning authorities should approach decision-taking in a positive way to foster the delivery of sustainable development. The relationship between

⁵⁷ CD/B/1

⁵⁸ CD/B/3 paras 85, 731-784

⁵⁹ CD/B/2

⁶⁰ CD/E/8 & CD/E/9

⁶¹ CD/E/18

⁶² CD/A/20

⁶³ CD/E/16a, CD/E/16b

⁶⁴ CD/H/1 policy CS 16 (560 divided by 16 years)

⁶⁵ CD/E/12

⁶⁶ INQ/APP/28

⁶⁷ INQ/APP/1b, INQ/APP/ INQ/APP/3b, INQ/APP/6c

⁶⁸ CD/G/24 paras.186-187

decision-taking and plan-making should be seamless, translating plans into high quality development on the ground.

Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area”.

68. The appeal proposals are the product of the development plan process. They were initiated by the Council back in 2002; they have been developed through extensive engagement across the full range of consultees; they were endorsed by an independent Inspector as part of a wide-ranging exploration of where best to locate additional development around Stratford⁶⁹. The proposals were adopted by the Council⁷⁰ and saved by the Secretary of State⁷¹. They remain fully part of the statutory development plan, which itself remains the starting point for the consideration of all applications for planning permission.

69. The Framework gives guidance on the weight to be given to development plan policies, which will be dealt with below in the context of the key policies. It is also relevant to note the judgment of the High Court in London Borough of Bromley v. SoSCLG and Castlefort Properties Limited⁷², in particular:

“While the weighing of material considerations is a matter for the decision maker, the re-weighing of the same material considerations that have been weighed already in the plan process is not, it seems to me, the exercise contemplated by the words “unless material considerations indicate otherwise”. If it is evident that a consideration had indeed been taken into account in the adoption of the plan, it seems to me that no reasonable Inspector could properly conclude that the identical consideration was material or, alternatively, if it was material, that any weight should be put upon it.”

70. It is accepted that the Judge goes on to observe that :

“Once a circumstance has changed and the consideration is not quite the same, or there are other new relevant circumstances to take into account, the significance or otherwise of the differences becomes a matter of the Inspector’s judgment with which the court will not interfere unless the judgment is Wednesbury unreasonable.”

71. The appeal involves matters of judgment. However, some of the key judgments are bound up in the development plan’s inclusion of Proposal SUA.W. These include the acceptability or otherwise as a matter of principle of introducing development into the landscape west of Shottery, the acceptability of impacts on the setting of Anne Hathaway’s Cottage, and the acceptability of introducing a new access on Evesham Road. These judgments alone cannot properly be relied upon *without more* as reasons for refusing permission.

⁶⁹ CD/B/3

⁷⁰ CD/B/1

⁷¹ CD/B/2

⁷² INQ/APP/54

The Benefits of the Appeal Proposals

72. Reflecting some of the themes addressed in evidence, the appeal proposals have the following 10 sustainable characteristics:

- a) They would function as an urban extension to the District's largest town, adding homes and local facilities at a location which is very well placed to benefit from all that the town already has to offer in terms of its employment, retail, social, transportation and cultural role⁷³.
- b) The two development parcels of 600 and 200 houses would be located where they are physically able to link with the existing urban form, with the minimum of disruption. A new primary school is also proposed, with the written support of the current Head Teacher and Governors⁷⁴, which would serve both existing and new communities.
- c) There would be no impact on any environmental designation, with no Green Belt, Area of Outstanding Natural Beauty, Site of Special Scientific Interest or National Trust land affected.⁷⁵
- d) Housing would be built to modern standards of sustainability and would include a full 35% affordable housing. This would be provided against a backdrop of inadequate provision of affordable housing by the Council, which has consistently failed to meet its own targets by a wide margin⁷⁶.
- e) This boost to housing and affordable housing supply for the District could be achieved without unacceptable impacts on the highway network: the local highway authority and the Highways Agency are content with the proposals, which give rise to no concerns with regard to safety or capacity⁷⁷.
- f) The proposals could link into an existing network of footpaths, cycle ways and bus services⁷⁸. The planning obligation provides for the extension and reinforcement of public transport provision to serve the new housing areas⁷⁹. The County Council is satisfied that this provision is appropriate⁸⁰.
- g) Approximately half the area to be developed is not proposed for any form of built development but rather for very extensive green infrastructure⁸¹. Power lines would be 'undergrounded'⁸², a public park provided and this extensive new green infrastructure managed for increased biodiversity⁸³. This is to be contrasted with the raw urban edge presently along much of the west of Shottery, which is

⁷³ INQ/APP/10 para 4.5.2

⁷⁴ CD/A/19; summarised in CD/A/20

⁷⁵ INQ/APP/3

⁷⁶ INQ/APP/1 paras 9.49-9.60

⁷⁷ INQ/APP/10 section 4

⁷⁸ CD/A/18 section 3.1

⁷⁹ APP/INQ/52

⁸⁰ INQ/WCC/1

⁸¹ INQ/APP/3 paras 6.17-6.20

⁸² INQ/APP/35

⁸³ INQ/APP/3 paras 8.15-8.17

compounded by the electricity substation, and with the arable or 'improved' pasture nature of the agricultural regime⁸⁴.

- h) The proposals are acceptable to the Environment Agency and would help to alleviate existing conditions by, among other things, attenuating surface water flows and increasing the capacity of the culvert under Evesham Road.⁸⁵
- i) The proposed Stratford Western Relief Road (SWRR) would provide relief both to the environmentally sensitive lanes of Shottery Conservation Area and also to key junctions within the town centre⁸⁶. Additional benefits could arise from the implementation of traffic management measures in Shottery⁸⁷. The SWRR also offers the opportunity (by providing additional highway capacity) to undertake further pedestrian improvements in the town centre, in particular to the Historic Spine⁸⁸, which is a long held aspiration of the District and County Councils.
- j) The SWRR further offers the opportunity to the Shakespeare Birthplace Trust to relocate its existing car and coach parking facilities from within the historic core of Shottery Conservation Area where they are near to Anne Hathaway's Cottage, and to utilise its land holding more effectively for conservation purposes.⁸⁹

The Development Plan and Housing Land Supply in the District

- 73. Express policy provision was made in the LPR – when adopted in 2006 and saved in 2009 as part of the statutory development plan – for the appeal site to serve as one of only 3 sites in the District earmarked "to help meet long term (post 2011) housing needs"⁹⁰.
- 74. Some time has been taken debating whether there is any significance to be attached to the words "identified as Strategic Reserve Sites" in policy STR.2A. However, whether the words 'allocated' or 'identified' are used in the development plan amounts to a distinction without a difference⁹¹. Proposals SUA.W, X and Y are incorporated into the development plan using precisely the same format as sites intended for development pre-2011 and are all expressly shown as Proposals on the LPR Proposals Map⁹².
- 75. The logic underlying this provision is to be found in the supporting text for the policy:

"the Council is...cognisant of ministerial guidance stating that Local Plans should make provision for at least 10 years potential supply of housing from adoption⁹³. The identification of these three sites as Strategic Reserves recognises their potential role in meeting housing needs post 2011. It also

⁸⁴ INQ/APP/3 section 4

⁸⁵ INQ/APP/12, INQ/APP/13

⁸⁶ INQ/APP/10 p 9, INQ/APP/22

⁸⁷ INQ/APP/10, INQ/APP/22, INQ/APP/3 paras 6.31-6.32, CD/A/23

⁸⁸ INQ/APP/50

⁸⁹ INQ/APP/1 paras 4.21-4.24

⁹⁰ CD/B/1 policy SRT.2A

⁹¹ Cross-examination and re-examination of Mr Jones

⁹² INQ/APP/2 Appendix 4

⁹³ i.e. to 2016

*acknowledges the Inspector's conclusions that all three sites are suitable for development ... (It) is reasonable to assume that there will be an ongoing need for the District to accommodate development consistent with meeting local needs... (The) identification of these sites as Strategic Reserves is considered appropriate to ensure that there is a continuous land supply to meet longer-term housing requirements."*⁹⁴

76. The LPR emphasises that:

*"The District Planning Authority maintains that the development of land west of Shottery represents a long term sustainable development option... When the need to release additional greenfield land is identified, priority is likely to be given to the release of land at Shottery in a phased manner."*⁹⁵

77. Thus the development plan, when adopted in 2006 (and as saved in 2009), recognised that housing needs would not cease in 2006. It took the opportunity to comply with national guidance to look ahead to 2016 by endorsing 3 sites for development that were the product of a lengthy and comprehensive local plan process which explored the potential expansion of Stratford-upon-Avon in all directions. Thus the Council was effectively 'banking' these Strategic Reserve Sites for the post 2011 period and ensuring that the process was not wasted. That approach is commended, particularly given the slow progress which has subsequently been made with the LDF (see below).

78. This approach of course left open the question of precisely what housing needs might be post-2011, which is dealt with below, but this was the only unresolved issue of principle. In the Inspector's decision on an appeal relating to the SUA.Y site Land South of Kipling Road⁹⁶, the Inspector clearly found that bringing forward that strategic reserve site at this stage (2011) accorded with policy STR.2A.

79. It is acknowledged that the LPR, when adopted in 2006, anticipated that it would be unlikely to be necessary to release any of the Strategic Reserve Sites until after the adoption of the Core Strategy and Significant Allocations DPD⁹⁷. However, in 2006 the Council's Local Development Scheme expected that this process would be complete by 2009, i.e. well before 2011⁹⁸. Thus the timetable envisaged in 2006 has proved to be grossly optimistic, and there has been slippage of at least 5 years from the LDF adoption timetable anticipated at the time of the adoption of the LPR⁹⁹. In the meantime housing needs remain.

Post 2011 housing needs

80. As the appeal site is expressly identified in the development plan for the purpose of meeting post 2011 needs, it is necessary to consider whether such needs arise and to what extent. The appellants' planning expert has undertaken a comprehensive review of this issue¹⁰⁰. This is supplemented by his analysis of the present state of the Council's 5 year Housing Land Supply¹⁰¹. The latter

⁹⁴ CD/B/1 paras 2.4.12 and 2.4.13

⁹⁵ CD/B/1 para 2.4.14

⁹⁶ CD/F/13 para 8

⁹⁷ CD/B/1 para 2.4.16

⁹⁸ INQ/APP/2 Appendix 11 p 58

⁹⁹ Cross-examination of Mr Brown

¹⁰⁰ INQ/APP/1 section 9

¹⁰¹ INQ/APP/36

- considers the supply in a variety of permutations in order to demonstrate the weakness and dependence on self-serving assumptions of the Council's claim that it has a Framework compliant supply¹⁰². Certain key differences between the parties can be identified.
81. First and most significant is the target or requirement figure, which is the starting point. The Council has used the figure of 8,000 dwellings for the period 2008-2028 which it has 'rounded down' from Option 3 in the GL Hearn housing study¹⁰³. However, the Council has sought to use that figure in its third Draft Core Strategy of February 2012¹⁰⁴ without observing the pre-conditions that GL Hearn set out for its use¹⁰⁵. These require "*displaced demand*" issues to be addressed. No evidence of any sort has been seen that these issues were addressed prior to the Council adopting an 8,000 target, nor is there evidence that they have been subsequently¹⁰⁶. Indeed, a January 2012 Council Cabinet Report identified a need to generate an evidence base to support the Core Strategy¹⁰⁷.
 82. Initial consultation responses on the third Draft Core Strategy from a neighbouring authority such as Wychavon¹⁰⁸ confirm that displaced demand is still entirely unaddressed. By contrast, 11-12,000 dwellings is the figure which officers recommended to Members following receipt of the GL Hearn Report¹⁰⁹. The Report was commissioned by the Council expressly to serve as a key element of its Core Strategy evidence base. The figure accords closely with that of 12,000 plus relied upon by the Inspector in the Land South of Kipling Road appeal¹¹⁰ on the basis of the demographic evidence of the late Professor King using the Chelmer model¹¹¹.
 83. The 12,000 figure is therefore greatly to be preferred over the 8,000 figure, which as the Council's officers identified is described by the consultants as "*risky and unlikely to be found sound by an independent Inspector*"¹¹². The professional evidence is to be preferred over the conclusions advanced by RASE¹¹³.
 84. The second difference between the parties is the treatment of backlog. The appellants' approach is supported by appeal decisions at Alsager¹¹⁴ and Moreton-in-Marsh¹¹⁵, the latter being a Secretary of State decision. This approach ensures that authorities are obliged to 'catch up' when there has been a significant shortfall in provision in the early years of a trajectory and are not able simply to defer most of the shortfall to the middle and back end of the trajectory, whilst current needs are unmet or inadequately met. The appellants' planning

¹⁰² INQ/LPA/17

¹⁰³ CD/E/12

¹⁰⁴ CD/E/18

¹⁰⁵ CD/E/12 paras 9.50-9.52

¹⁰⁶ Re-examination of Mr Jones

¹⁰⁷ CD/E/17

¹⁰⁸ INQ/APP/27

¹⁰⁹ CD/E/16a

¹¹⁰ CD/F/13

¹¹¹ INQ/APP/26

¹¹² CD/E/16a para 7.11; INQ/APP/1 para 9.13

¹¹³ Oral addition to closing submissions, in response to INQ/RASE/19 para 1.11.4

¹¹⁴ INQ/APP/29

¹¹⁵ INQ/APP/39

- expert was not challenged on his treatment of this issue¹¹⁶, nor has the Council offered any evidential support for its approach of spreading the shortfall across the whole plan period.
85. The third difference is the treatment of windfalls. The Framework permits an allowance to be made for windfalls where there is "*compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply*"¹¹⁷. At Stratford-on-Avon, despite the investigations by the appellants' planning expert¹¹⁸, the evidence as to precisely what types of site have made up the supply of windfalls is not only not "*compelling*" but completely absent. It would be dangerous and contrary to the Framework to rely on windfalls making up a significant element of supply when it is impossible to understand how such supply has come forward in the past and thus equally impossible to make judgments or extrapolations about the future.
86. Accordingly, and on the basis of these three variables alone, the District's housing land supply to meet its 5 year requirement is well below 5 years. This is shown in a range of calculated estimates using different permutations of inputs, most of which are below 3 years¹¹⁹. For example, based on a 12,000 unit requirement and using the Council's land supply figure (and with a correction of completions to date) gives a supply of 3.22 years (estimate *l*). This reduces to 2.40 years with the backlog added to the 5 year requirement (estimate *i*). Adjusting the land supply by removing windfalls reduces these periods to approximately 2.63 years and 1.96 years respectively¹²⁰. With an 8,000 unit requirement, keeping a windfall allowance but adding the backlog to the first 5 years gives a period of 3.86 years (estimate *xi*). This can properly be regarded as a significant shortfall, which lends proportionately significant weight to the appellants' case.
87. In addition, further adjustments should be made to the land supply figure. The Former Cattle Market Site in Stratford-upon-Avon (197 units) has been vacant for a considerable number of years and the demand for flatted schemes has virtually disappeared¹²¹. There is no implementable permission on this site¹²². Chestnut Walk (7 flats) is also a flatted scheme and should be removed¹²³. Maudslay Park (179 units) is an extra care facility and a Class C2 residential institution, and therefore should not be included, as with the Tiddington Fields development for the same reason¹²⁴. Deleting these sites further reduces the 5 year housing supply period to as low as 1.47 years (estimate *x*).
88. The Framework requires that the buffer moved forward from later in the plan period should be increased to 20% where there has been a persistent record of under delivery of housing¹²⁵. Even on the basis of the requirement of 8,000

¹¹⁶ Cross-examination of Mr Jones

¹¹⁷ APP/G/24 para 48

¹¹⁸ INQ/APP/36 paras 18-33

¹¹⁹ INQ/APP/36 Schedule

¹²⁰ The schedule attached to INQ/APP/36 does not provide a calculation where the only adjustment to the land supply is removal of the windfall allowance of 494 units. However, the calculations at estimates v and ix under scenario 3 which removes 487 units can be taken as close approximates for this.

¹²¹ INQ/APP/36 para 11

¹²² INQ/APP/51; oral addition to closing submissions

¹²³ INQ/APP/36 para 11

¹²⁴ INQ/APP/36 paras 8 & 12

¹²⁵ CD/G/24 para 47

dwelling relied upon by the Council, over the first 4 years of the Core Strategy period (2008-2012) only 685 dwellings are expected to be built rather than 1,600 units, a shortfall of 915 units¹²⁶. The shortage of housing supply in the District has been a consistent theme of decision making since 2010¹²⁷. Despite the number of sites granted permission in 2011/12 there continues to be a difficulty in achieving the minimum requirement for housing land supply. The extent of deliverable supply will not remedy the shortfall in housing completions between 2008-2012 in anything other than the long term. Moreover, there is an obvious shortage of affordable housing in the District. The Housing Needs Strategy 2009-2014 identified an annual shortfall of 532 affordable homes¹²⁸. In contrast the average annual provision of affordable homes between 2005/2006 and 2010/2011 is 91. Estimated future supply would not increase this average¹²⁹. In these circumstances the Council must be considered to have performed poorly hitherto and the 20% buffer would be applicable. In this scenario the requirement would be increased to 2,743 dwellings (based on an 8,000 target), in effect an additional year's supply being required, and the supply estimate could not achieve this¹³⁰.

89. However, the appellants' case does not depend on the housing land supply shortfall alone. The Council's own position is that it needs to find sites for some 5,000 dwellings¹³¹. The SUA.W site can contribute to this need in the way envisaged by policy STR.2A and by the Council when the development plan was adopted. These policies were saved in 2009 for the purpose of "*supporting delivery of housing and necessary infrastructure*"¹³². It is anticipated that, with a development programme involving 3 house builders and a housing association, the scheme could contribute 400 dwellings by 2016/2017 (the end of the current 5 year housing supply period) while providing a continuous supply of housing for a further 4 years¹³³. One house builder has signed up in advance of permission being granted¹³⁴.
90. Thus there is a clear and present need for the release of additional land for housing in the District. The SUA.W site was expressly identified to meet this contingency post 2011 and allowing this appeal would be in accordance with the clear intent of the statutory development plan. The prospect of alternative sites being allocated in time to meet this present need (pursuant to the LDF process) is so remote as to be negligible. The Council's own officers¹³⁵ and sustainability auditors¹³⁶ plainly have serious doubts about the soundness of Members' decisions, and the Core Strategy - even if it progresses in its present form - proposes no site allocations. The more likely scenario is that the Core Strategy will be found unsound by the examining Inspector.

¹²⁶ INQ/APP/36 paras 34-43

¹²⁷ INQ/APP/1 section 10

¹²⁸ INQ/APP/1 para 9.51

¹²⁹ INQ/APP/1 paras 9.55 & 9.56

¹³⁰ INQ/APP/36 Schedule - estimate xxii; estimate xxi is with a 20% buffer on a 12,000 unit target

¹³¹ CD/E/18 para 9.08

¹³² CD/B/2; INQ/APP/1 para 6.19

¹³³ INQ/APP/1 paras 4.9-4.19.

¹³⁴ Oral evidence of Mr Jones

¹³⁵ CD/E/17

¹³⁶ CD/E/20

Proposal SUA.W and the SWRR

91. The next matter to examine is whether the proposal meets the requirements of proposal SUA.W¹³⁷. These are very clearly set out in sub-paragraphs (a) to (f). All of these requirements have been met or could be secured by planning condition. Accordingly SUA.W is satisfied and the appeal proposals are clearly in accordance with the development plan in this regard.
92. The Council and RASE have sought to undermine the express support given to the appeal proposals by the LPR on the basis that the Inspector's report¹³⁸ referred to the anticipated relief to Stratford Town Centre which the SWRR would bring, along with opportunities to improve the pedestrian environment in the historic core. Whilst it is clear that a Major Scheme Bid was being considered at the time of the LPR inquiry, there are a number of reasons why the objectors' heavy reliance on this point is misplaced:
- a) The LPR Inspector did not make his recommendation contingent upon the Bid proposals going ahead.
 - b) The Council on adopting the LPR made no reference to such lapsed Bid proposals in either the required components of the development or the explanatory text (in contrast to the requirement for "*associated traffic calming in the Shottery area*"¹³⁹ ... "*to ensure the effectiveness of the new road link*"¹⁴⁰).
 - c) The Council applied for the policy to be saved and a Saving Direction was issued quite independently of the lapsed Bid proposals.
 - d) In any event, the SWRR would provide relief to some of the key junctions in the town centre and is still seen by Warwickshire County Council (the local highway authority) in its current Local Transport Plan 2011-2026 as a "*Key Proposal*"¹⁴¹. Its role in providing relief in Shottery and the town centre is expressly acknowledged in the Local Transport Plan¹⁴², and it would still be a relief road. It would enable cross town traffic to avoid the town centre by re-routing via Severn Meadows Road and Evesham Road, and analysis of traffic flows and conditions shows that overall conditions in the town would be better than those in the base models¹⁴³. Queue levels at the critical junctions are forecast to fall in almost all cases. The biggest reduction in total delay in the AM peak would be at the Birmingham Road/Arden Street junction, with a 22 minute reduction (-9.9%). The largest in the PM peak would be a 51 minute reduction in total delay at the Alcester Road/Arden Street junction (-22.1%). These are key town centre junctions which experience large levels of junction delay. Some of the biggest reductions in delay would occur in the central area, such as a 33% reduction in delay in the PM peak at the High Street/Bridge Street junction. On a daily basis, total delay in the peak periods in the town

¹³⁷ CD/B/1

¹³⁸ CD/B/3

¹³⁹ CD/B/1 policy SUA.W

¹⁴⁰ CD/B/1 para 7.15.47

¹⁴¹ CD/D/2 p 96 Figure 11.3

¹⁴² CD/D/2 p 105-106

¹⁴³ INQ/APP/10 paras 4.5.4 & 6.1-6.15; INQ/APP/22

centre would reduce by over 15 hours from a base level of 133.6 hours. Flows in Shotton would typically reduce even with the inclusion of the development, with some 148 vehicle movements less on roads through Shotton in the AM peak hour and 136 in the PM peak hour. The most pronounced reductions would be in those roads with a parallel alignment to the SWRR, i.e. Hathaway Lane, Cottage Lane and Church Lane. There would be further potential benefits with traffic management¹⁴⁴. An area wide scheme could see traffic flows on Cottage Lane reduce by over 50%¹⁴⁵.

- e) Moreover, the SWRR would have the effect of introducing new capacity onto the road network in Stratford-upon-Avon¹⁴⁶. This would facilitate and provide headroom for schemes similar to those contemplated as part of the Bid, in particular in relation to the Historic Spine¹⁴⁷, which it appears residents see as a priority¹⁴⁸. Pedestrianisation schemes need to make provision for displaced traffic, and the SWRR would be able to play a role in accommodating such traffic, if and when such schemes come forward (as originally envisaged in the Major Scheme Bid).

Conclusion on the development plan

93. The appeal proposals therefore accord with the provisions of policies STR.2A and SUA.W, which directly anticipate the grant of permission for a development such as that proposed in the period post 2011. This level of accord would require very substantial material considerations to "*indicate otherwise*" than that permission should be granted.
94. The Framework indicates that "*due weight*" should be given to relevant policies in existing (pre LDF) plans according to their degree of consistency with the Framework¹⁴⁹. The LPR (although pre LDF) was adopted in 2006 and most of its policies were saved in 2009. This reflects the fact that its structure and content are strongly reflective of the principles of sustainable development, for example paragraph 1.2.10, as acknowledged by the Council's planning expert¹⁵⁰. Accordingly its saved policies remain part of the development plan and should attract substantial weight. Submissions to the effect that the LPR is 'out of date' are inconsistent with the Framework¹⁵¹ and should be rejected.

Prematurity in respect of the Emerging Development Plan

95. A prematurity objection requires the decision maker to consider the status of what it is that is emerging and how reasonable it is to hold up lawfully submitted planning applications on the grounds that they might prejudice another process, which is necessarily inchoate. European legislation, referred to by the Council¹⁵², does not require everything to be put on hold once a core strategy is underway¹⁵³.

¹⁴⁴ INQ/APP/10 paras 6.16-6.19; APP/APP/22; CD/A/23

¹⁴⁵ INQ/APP/10 para 6.19

¹⁴⁶ Evidence in chief and cross-examination of Mr Ojeil

¹⁴⁷ INQ/APP/50

¹⁴⁸ INQ/APP/49

¹⁴⁹ CD/G/24 para 215

¹⁵⁰ Cross-examination of Mr Brown

¹⁵¹ CD/G/24 para 211

¹⁵² INQ/LPA/25 para 9.2

¹⁵³ Oral addition to closing submissions

96. ODPM Guidance in 'The Planning System: General Principles' appears still to be extant. It advises that: "*Where a DPD is at the consultation stage, with no early prospect of submission, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question*".¹⁵⁴
97. The Stratford-on-Avon Core Strategy is unlikely to be submitted before November 2012¹⁵⁵. Officers reporting on a recent Bidford-on-Avon planning application felt that the Core Strategy did not have an "*early prospect of submission*" within the terms of the ODPM guidance and should only be accorded "*limited weight*"¹⁵⁶.
98. The consultation on the Third Draft Core Strategy has produced over 1,600 responses¹⁵⁷, a small sample of which was produced at the inquiry¹⁵⁸. Some of these are objections from statutory consultees (such as District and Parish Councils) which will not be easy to resolve. Many of the smaller towns in the District have already grown at a faster pace than Stratford-upon-Avon, as the Council's planning expert accepted¹⁵⁹. He observed that, in relation to the consultation on the Third Draft Core Strategy, the Council has "*a major task on its hands*"¹⁶⁰. Moreover, the Council has additional and serious obstacles to overcome:
- a) it does not have an evidence base in place which addresses "*displaced demand*" issues (such as those referred to by GL Hearn¹⁶¹ and now Wychavon DC¹⁶²)¹⁶³;
 - b) it has significant sustainability audit issues to address which strike at the heart of the draft Core Strategy¹⁶⁴.
99. Even assuming that the Core Strategy is submitted and goes to examination, it proposes no allocations, so specific land use issues will remain unresolved for the foreseeable future. The notion that the gap can be plugged by one or more Neighbourhood Plans is not realistic. The current information¹⁶⁵ on the Stratford Neighbourhood Plan reveals little more in terms of engagement than a short and simplistic survey, and it cannot sensibly progress without clarity on the Core Strategy in any event. It is unknown how Neighbourhood Planning could possibly address the allocation of thousands of houses across the District (if that is being suggested). In the meantime, in relation to the Council's own target figure of 400 units per year from 2008 (1,600 units), it is so far showing a shortfall in excess of 900 units¹⁶⁶. This shortfall would be larger were a more realistic target adopted.

¹⁵⁴ CD/G/23

¹⁵⁵ CD/E/19

¹⁵⁶ INQ/APP/28, pp 40 and 41

¹⁵⁷ Information given at the inquiry

¹⁵⁸ INQ/APP/27, INQ/APP/38

¹⁵⁹ Cross-examination of Mr Brown; CD/B/6, paras.2.3.2 & 2.3.3

¹⁶⁰ Re-examination of Mr Brown

¹⁶¹ CD/E/12

¹⁶² INQ/APP/27

¹⁶³ CD/E/19 para 4.5

¹⁶⁴ CD/E/20 pp 21, 25, 32

¹⁶⁵ INQ/RASE/14

¹⁶⁶ INQ/LPA/17 calculated from Table 2

100. By contrast, the appeal site is already identified for development post-2011 in the statutory development plan and is ready to assist in addressing the inevitable further hiatus. The suggested alternative sites for development put forward by RASE are not sufficiently genuine to substantiate an allegation of prematurity¹⁶⁷.
101. Were, contrary to all the above, the Council to be successful in persuading the examination Inspector that dispersal of development to the rural hinterland is sustainable, and the appeal proposal has been granted permission by then, it would still be able to divert 86% of new housing¹⁶⁸ to the rural areas. Its spatial distribution policy would therefore be largely unaffected. It is clear that there is no prospect of 5,600 homes being located on brownfield land in the District and no one has suggested the contrary¹⁶⁹.
102. It is therefore not plausible to argue that granting permission for the appeal proposal would have such an individually substantial or cumulative effect that the Core Strategy would not be able to achieve its apparent aim of redirecting growth to the rural areas were that to be accepted.
103. This case is fundamentally different from cases at Winchester¹⁷⁰ and Sandbach¹⁷¹ (even had these decisions not been quashed) or Newmarket¹⁷². None of these involved sites that had adopted development plan status.
104. In summary, delaying permission for the appeal development on grounds of prematurity just at the moment when its preordained time (post 2011) has arrived would be nothing short of perverse.

The Effect on the Character and Appearance of the Area

105. A character and appearance objection to the proposal is difficult for the Council to pursue, given the presence of adopted and saved proposal SUA.W on the LPR Proposals Map¹⁷³, which is virtually identical to the appeal proposals.
106. The LPR Inspector considered these matters against the backdrop of the now lapsed Special Landscape Area designation across the land west of Shottery¹⁷⁴. Notwithstanding this designation, he concluded that:

*"...whilst there would be inevitable changes to the area immediately west of the existing urban edge, the overall cumulative impact on the SLA would not be materially harmful".*¹⁷⁵

One can properly substitute "*the wider landscape setting of Stratford*" for "*the SLA*".

107. He also concluded that: "*...the impact on views to and from Bordon Hill and its environs would be minimal*"¹⁷⁶, and that "*...the harmful effects of the proposals would be, perhaps surprisingly, limited*"¹⁷⁷.

¹⁶⁷ INQ/APP/1 paras 10.49-10.57

¹⁶⁸ CD/E/18 para 9.08 (5,600 units to be provided on allocated sites): 5,600-800/5,600 gives 85%

¹⁶⁹ CD/E/18 sections 9.0 & 9.1

¹⁷⁰ CD/RASE/5

¹⁷¹ CD/RASE/7

¹⁷² CD/RASE/7A

¹⁷³ INQ/APP/2 Appendix 4

¹⁷⁴ INQ/APP/3 para 5.25

¹⁷⁵ CD/B/3 para 756

¹⁷⁶ CD/B/3 para 756

¹⁷⁷ CD/B/3 para 781

108. Nothing significant has happened since to this landscape to undermine his conclusion. It was a conclusion that the Council has shared for the past decade and which was supported by four landscape professionals at the LPR inquiry (acting for the District Council, the County Council, the Shakespeare Birthplace Trust and the appellants¹⁷⁸). The Landscape and Visual Assessment undertaken as part of the Environmental Statement for the current application confirms that the effects would be no greater than those considered by the LPR Inspector¹⁷⁹. The mitigation measures provide a high degree of certainty that the extensive green infrastructure proposals would generate long term landscape enhancement. The development would be visually contained and, when visible at all, would generally be seen against the existing urban edge, and would not result in unacceptable landscape or visual harm¹⁸⁰.
109. The only change since 2006 is that the Council's consultant Mr White has undertaken an assessment of the landscape setting of Stratford-upon-Avon¹⁸¹ using his own somewhat idiosyncratic methodology and analysis¹⁸². This alleges that virtually the entire landscape setting of the town and the vast majority of the District (over 75%) has a high or medium to high sensitivity to development.
110. However, this is perhaps not surprising, given that the assessment proceeds by considering each of the minutely defined "*land cover parcels*" on the basis that it is virgin countryside and then imagines the impacts of covering it with development. This exercise leaves little room for broader judgments to be made, nor scope for consideration of the mitigating effects of structural planting and carefully considered urban design strategies. It was notable that the Council's landscape expert had expressly not done this for the appeal site, nor reviewed the Design and Access Statement¹⁸³ on the basis that 'design' was not a reason for refusal he had been asked to consider¹⁸⁴. By contrast, the appellants' landscape expert considered this to be a critical document in understanding how the proposed development would sit within the landscape and how the proposed mitigation strategy would operate to achieve a successful form of development¹⁸⁵. The Council's landscape expert did not claim expertise as a master planner¹⁸⁶.
111. It is acknowledged that different views have been expressed at different times about the landscape west of Shotton. However, the 1997 Inspector's Report on a 1994-5 inquiry on the Stratford-on-Avon District Local Plan¹⁸⁷ is very time-expired. In particular this is because it plainly proceeded (in the style of the times) on the basis of the now abandoned 'landscape quality' approach, which allowed subjective views of the 'attractiveness' of a landscape to prevail over a much subtler analysis of 'landscape character'¹⁸⁸. Landscape character

¹⁷⁸ CD/B/4, INQ/APP/3 paras 5.14-5.21

¹⁷⁹ CD/A/3 chapter 10

¹⁸⁰ INQ/APP/3

¹⁸¹ CD/E/13

¹⁸² INQ/APP/3 paras 5.34-5.43

¹⁸³ CD/A/9, CD/A/9a

¹⁸⁴ Evidence in chief and cross-examination of Mr White

¹⁸⁵ INQ/APP/3 paras 6.6-6.8, 6.27-6.29; evidence in chief of Mr Rech

¹⁸⁶ Cross-examination of Mr White

¹⁸⁷ CD/RASE/17

¹⁸⁸ Re-examination of Mr Rech

- assessment superseded the outmoded landscape quality approach shortly after that Report¹⁸⁹.
112. For the last decade the Council has supported development on the land west of Shottery as outlined in proposal SUA.W of its development plan. An 'in principle' landscape objection cannot legitimately now materialise, simply on the basis of one consultant's report, which has been subject to no public consultation either as to its scope or content and has not been adopted by the Council as policy¹⁹⁰.
113. The Council's landscape expert identifies saved policies of the development plan, with which the appeal proposals are alleged to conflict, including PR.1, DEV.1, SUA.1 and 2, and CTY.1¹⁹¹. However, the same development plan (the LPR) also contains saved proposal SUA.W, which he only briefly mentions¹⁹². He had to agree¹⁹³ that the Council in adopting the LPR must have anticipated that the land west of Shottery could be developed without conflict with the Plan's policies that he cites against it. He suggested that the LPR Inspector (and the Council) took a mistakenly optimistic view about the length of time that planting takes to mature¹⁹⁴. This was refuted by the appellants' landscape expert¹⁹⁵, who has shown conventional rates of growth in his photomontages¹⁹⁶, which rely on actual experience in the field¹⁹⁷.
114. The Council's landscape expert accepted that he had been mistaken in thinking that the Framework heralded or invited the return of SLAs and a qualitative approach to landscape assessment¹⁹⁸. He also agreed that the materials to which he makes reference¹⁹⁹ dating from before 2006 (the Stratford-on-Avon District Design Guide²⁰⁰ and the Stratford-upon-Avon Town Design Statement²⁰¹) would have been available to the LPR Inspector and to the Council itself when the LPR was adopted in 2006.
115. The SWRR has been designed in a very sensitive fashion, reducing any adverse environmental harm to an acceptable level²⁰². The vertical and horizontal alignment responds to the existing landform and landscape features. Gentle external ground contouring and the use of false cuttings would result in all traffic (including high sided HGVs) being completely hidden in views from the more sensitive vantage points at Anne Hathaway's Cottage and the Shottery Conservation Area. All car traffic would be immediately hidden from the majority of other vantage points, with planting further reducing visibility of moving traffic

¹⁸⁹ When PPG7 was published in 1997

¹⁹⁰ INQ/APP/3 paras 5.34-5.43

¹⁹¹ INQ/LPA/3 section 2

¹⁹² INQ/LPA/3 para 2.13

¹⁹³ Cross-examination of Mr White

¹⁹⁴ Cross-examination of Mr White

¹⁹⁵ Evidence in chief of Mr Rech

¹⁹⁶ INQ/APP/5a

¹⁹⁷ Evidence in chief of Mr Rech

¹⁹⁸ Cross-examination of Mr White

¹⁹⁹ INQ/LPA/3 section 2

²⁰⁰ INQ/LPA/5 Appendix SWA

²⁰¹ CD/C/6

²⁰² INQ/APP/3 6.21-6.22

- within 10-15 years²⁰³. The new junctions would provide the opportunity to deliver 'gateway' opportunities for the town²⁰⁴.
116. No departure from the Council's Land West of Shottery Development Principles document²⁰⁵ is alleged in the reasons for refusal²⁰⁶, and this has been closely followed in the development of the scheme²⁰⁷. Indeed, the Council's landscape expert confirmed²⁰⁸ that the two "*main points*" of departure which he now identified²⁰⁹ involving structural planting areas could be addressed by conditions²¹⁰ if the Secretary of State so wished. The appellants' landscape expert confirmed²¹¹ that the changes from the Principles had been agreed with officers of the Council at an early stage, but could easily be reversed if it was considered necessary to increase the areas of structural planting. He also expressed the opinion that the apparent concerns about the scope to establish a woodland planting type west of the existing Plantation were groundless²¹².
117. Even the assessment in the Landscape Sensitivity report²¹³ by the Council's expert falls some way short of providing unequivocal support for the Council's case. Indeed, the assessment expressly identifies the area proposed for housing off the Evesham Road (which is part of his LCP St21) as having potential for housing development. It suggests that this should be subject to advance planting and the access detail being resolved acceptably, but if those preconditions are not agreed to be inhibitions to development now, the Council's expert identified no other obstacles to the development of Area B from a landscape perspective²¹⁴. His LCP St25 is identified as containing a "*bow*", which "*could be said to be hidden from the wider landscape*"²¹⁵. This is precisely the topographical feature which has led the appellants to the design of the northern residential Area A²¹⁶. The Council's expert is much more conservative in his assessment, but had to acknowledge that, even on his approach, some housing development would be acceptable at this location²¹⁷. What is unexplained is how the positive identification (within the Landscape Sensitivity report) of land within the appeal site for housing development seemed to fade away in the analysis by the Council's expert for this appeal²¹⁸.
118. The Council's expert was content on exchange of evidence that the proposals were properly and fully explained and supported by photomontages²¹⁹. He found no additional viewpoints to those considered by the appellants' expert. No suggestion that the Environmental Statement is inadequate was pursued by the

²⁰³ INQ/APP/5a; INQ/APP/4&5 Figures 21-29, CD/A/23 section 5 & Appendix D

²⁰⁴ INQ/APP/3 pars 6.23-6.26, INQ/APP/4&5 Appendix 2 Figure 29

²⁰⁵ CD/B/5

²⁰⁶ CD/A/22

²⁰⁷ INQ/APP/3 p 16, section 6

²⁰⁸ Cross-examination of Mr White

²⁰⁹ INQ/LPA/5 para 2.27; cross-examination of Mr White confirmed that the first 2 bullet points are the main ones

²¹⁰ INQ/APP/43

²¹¹ Evidence in chief of Mr Rech

²¹² Evidence in chief of Mr Rech

²¹³ CD/E/13

²¹⁴ Cross-examination of Mr White

²¹⁵ INQ/LPA/5 p 120

²¹⁶ INQ/APP/3 para 4.10, 4.13-22

²¹⁷ Cross-examination of Mr White

²¹⁸ INQ/LPA/3

²¹⁹ INQ/LPA/3; cross-examination of Mr White

Council's landscape expert or any other Council witness. Such allegations have been confined to RASE²²⁰.

119. Particular emphasis has been placed on the allegedly "iconic" view from the B439 Evesham Road driving towards Stratford-upon-Avon²²¹. The Council's landscape expert agreed²²² (by reference to his photographs²²³) that this view was obtainable for about 15 seconds whilst driving at 40 mph, and described it as "a pleasant view, probably in England, of a country town". By his own admission, this cannot convincingly be described as an "iconic" view: it is patently not immediately identifiable as Stratford-upon-Avon (or even England), as it has nothing within it to announce it as Stratford-upon-Avon²²⁴.
120. Notwithstanding the term of description, when properly analysed²²⁵ there would be no material impact as a result of the southern development parcel on this panorama, which would be preserved intact with no narrowing due to the proposed development. The photomontages²²⁶ show that the nearest part of the development would soon be lost behind a hedge and, in any event, is seen on the lower ground against the existing urban edge. Insofar as it is presently possible to pick out the spire of Holy Trinity Church, it would still be possible to do so unimpeded were the development to proceed.
121. In the view towards the site from the Royal Shakespeare Theatre Tower the development would be very difficult to perceive in the extensive panorama. The visual material submitted by RASE²²⁷ is misleading in the relationship it suggests between the development and Bordon Hill, showing it higher up than it would be.²²⁸

The Impact on the Settings of Anne Hathaway's Cottage and its Registered Park and Garden and of Shottery Conservation Area

122. Again, this cannot amount to an 'in principle' objection to the proposal, given that the Council has an adopted and saved development plan proposal SUA.W, which has a virtually identical relationship with Anne Hathaway's Cottage and Shottery Conservation Area. Moreover, the adopted proposal was subject to detailed scrutiny by the LPR inquiry Inspector. He found that:

"...the proposals would have negligible direct visual impact on the immediate vicinity of the Cottage. This is as a result of the intention to put the SWRR in a false cutting in the section directly behind Anne Hathaway's Cottage and to regrade the field directly behind the Cottage. Although during the undertaking of these works there would be some inevitable disruption and harm including the reduction or loss of the very few remaining traces of ridge and furrow in this field, and although considerable care would be needed in its detailed design and execution, in particular replicating the effect of the hedge and trees that would be lost and in ensuring that the new mounding did not look

²²⁰ INQ/RASE/15; INQ/APP/47

²²¹ INQ/APP/3 paras 4.28, 5.40

²²² Cross-examination of Mr White

²²³ INQ/LPA/5 pp 13-14

²²⁴ INQ/APP/6 paras 4.69-4.75

²²⁵ INQ/APP/3 paras 4.23-4.31

²²⁶ INQ/APP/5a Figure 33A

²²⁷ INQ/RASE/3 Appendix 9

²²⁸ Evidence in chief and cross-examination of Mr Rech

unnatural, the scheme as a whole appears to be an ingenious method by which the benefits of the SWRR could be achieved without material long-term harm....I can see no reason to suppose that the existence of unbroken countryside flowing west from the Cottage is in itself a vital aspect of the settings of the Cottage or of the Conservation Area. What is of concern is the preservation of continuous views of open countryside from the orchard of the Cottage, and also of the open areas to the east of the Cottage, keeping a partial visual separation between Shottery and the main part of Stratford. I am satisfied that the latest version of the scheme incorporates a framework capable of ensuring the achievement of these objectives. ²²⁹

He concluded in respect of visual impact:

*"Once the new planting had become established there should be no perceptible change in views from the grounds of the Cottage...I am satisfied that provided that sufficient care was taken in detailed design and implementation the character and appearance of this part of the Conservation Area and setting of the Cottage would be preserved."*²³⁰

123. In respect of tranquillity, he concluded: *"I do not regard there as being likely to be a material overall harmful effect on the Conservation Area or on the setting of the Cottage."*²³¹ This is hardly a surprise, as the Cottage is on the edge of a large urban area, positioned with its gable end adjacent to a well-trafficked road and subject to very substantial numbers of visitors (many arriving by coach and parking immediately next door to the Cottage)²³². There is nothing wild or remote about the setting of the Cottage at present.
124. There would need to be some substantially different new evidence to justify a departure now from the LPR Inspector's conclusions²³³.
125. In this regard, it is also important to note that his conclusions were reached on the basis of a shallower false cutting²³⁴, higher predicted noise levels²³⁵ and the clear felling of the Shakespeare Birthplace Trust Plantation on the site of the old Rifle Range²³⁶.
126. English Heritage's position is also worthy of note. It is apparent from consideration of its various letters that it has never taken a position of objection in principle to development west of Shottery²³⁷. Its representative, appearing at the inquiry to support the refusal, had to accept that this was the case over the 9 years of its involvement in the proposals²³⁸. He agreed that English Heritage had sought certain safeguards (in respect of traffic management in Shottery and the appearance of the development to the rear), but had not opposed the development in principle, although it would have been open to it to have done so.

²²⁹ CD/B/3 para.744

²³⁰ CD/B/3 para 745

²³¹ CD/B/3 para 749

²³² INQ/APP/6 paras 2.15-2.16, 4.37, 6.25

²³³ INQ/APP/6 section 3

²³⁴ INQ/APP/3 p 28

²³⁵ INQ/APP/8 section 5.2, para 6.1.5

²³⁶ INQ/APP/6 para 4.54; CD/B/3 para 747

²³⁷ INQ/APP/19, INQ/LPA/2 Appendix 2

²³⁸ Cross-examination and re-examination of Mr Molyneux

127. Even his view was expressed on the basis that the harm he alleges would “*probably be less than substantial*”²³⁹, which engages a less stringent set of policy requirements than substantial harm and allows harm to be balanced with development needs²⁴⁰. The view of the appellants’ expert is that there would be no harm from the proposals²⁴¹.
128. English Heritage’s expert agreed²⁴² that no part of the significance of the Cottage that he identifies²⁴³ would be affected: that there would be no impacts on the evidential, historic, aesthetic or communal significance of the asset, largely because of its ‘intimate’ nature and the fact that no part of that significance derives from the areas affected by the proposed development.
129. In respect of the Registered Park and Garden, he addressed this in two parts²⁴⁴. Firstly the flower garden, he agreed that this was a relatively modern creation (the second half of the 19th century and long post Shakespeare, with very few trees of any significant age) and that its nature is intimate and not dependent on the wider landscape or extensive panoramas. He also agreed that there would be no change to the historic, evidential or aesthetic significance of the Garden and that the ‘chocolate box’ views would be unaffected²⁴⁵.
130. As to the orchard, he agreed that there are no especially interesting trees or views. If one ventures up to the hedge at the western end of the orchard²⁴⁶ (and there is nothing to entice this), one sees the telecommunications mast on Bordon Hill and the Leylandii trees at Hansel Farm (which are no more Shakespearean than the conifers in the Shakespeare Birthplace Trust Plantation). English Heritage’s expert agreed that the view is pleasant but nothing special in aesthetic terms²⁴⁷. The appellants’ heritage expert²⁴⁸ and landscape expert²⁴⁹ agree.
131. English Heritage’s expert also agreed that he was not suggesting that the Registered Park and Garden depended to any extent upon ‘tranquillity’ for its designation²⁵⁰. Given the tourist coaches and the crowds which they bring to Shottery to enter what is a diminutive Cottage and garden, the tourist trade would seem to be fundamentally incompatible with any sustained sense of tranquillity at the site. There are also the impacts of traffic on Cottage Lane, parking vehicles, and traffic on Evesham Road, which already bring the hum of road noise to the rear of the Cottage orchard, particularly when the wind is from the (prevailing) south west direction²⁵¹. It is unclear whether the scene described by Arthur Mee in the 1930’s²⁵² would be recognised in that found today (particularly since the excavation of the coach park adjacent to the Cottage in the 1960s).

²³⁹ Inspector’s questions of Mr Molyneux

²⁴⁰ CD/G/24 para 132

²⁴¹ Inspector’s questions of Dr Miele

²⁴² Cross-examination of Mr Molyneux

²⁴³ INQ/LPA/1 section 4.2

²⁴⁴ INQ/LPA/1 section 4.2; cross-examination of Mr Molyneux

²⁴⁵ INQ/APP/6 paras 5.28-5.58

²⁴⁶ INQ/APP/5a Figure 37

²⁴⁷ Cross-examination of Mr Molyneux

²⁴⁸ INQ/APP/6 paras 5.46-5.58, section 6

²⁴⁹ INQ/APP/3 paras 4.32-4.41

²⁵⁰ Cross-examination of Mr Molyneux

²⁵¹ INQ/APP/6; evidence in chief of Mr Zarebski

²⁵² INQ/LPA/1a para 4.3.6

132. English Heritage's expert further agreed²⁵³ that the significance of the garden and orchard as assets is not in any way connected with the outward views at the rear, despite the reference to the view in the designation description of the Registered Park and Garden²⁵⁴.
133. The Council's Shottery Conservation Area Booklet²⁵⁵ illustrates what are essentially 'internal' views and there is no reference to views to the rear of the Cottage being of any special significance. This accords with an extensive trawl through the available literature by the appellants' heritage expert²⁵⁶. English Heritage's expert agreed that the elements of the Conservation Area identified as having significance were unaffected by the proposed development²⁵⁷.
134. There is an error in the assessment by English Heritage's expert of the settings of the heritage assets²⁵⁸. He proceeds to analyse the settings of each asset as if they are, themselves, heritage assets. This is an approach which has no mandate in any published guidance, indeed English Heritage expressly cautions against it²⁵⁹. The nature of the error is clear in references such as the suggestion of "...a significant impact on the significance of the setting..."²⁶⁰, whereas the setting has no significance independently of the heritage asset.
135. In the light of this error of approach, the evidence and judgments of the appellants' heritage expert²⁶¹ should be preferred. He finds the assets in this case to derive very little, if any, significance from their broader settings. There is no clear historical or functional link between the Cottage and the land beyond the western boundary of the orchard and, although they adjoin, the two areas are not integrated in any way. There are no designed views in that direction²⁶². The plot boundary for the Cottage may be medieval, but there is no evidence to support the contention²⁶³ that the hedges bordering the registered landscape are very old²⁶⁴. The Cottage cannot be made out from higher positions to the west²⁶⁵.
136. The appellants' expert also makes the following points²⁶⁶. Distances between the proposed development and the Cottage and Garden would reduce the potential for any significant effect. The Shottery Conservation Landscape would provide further protection to the Cottage and its gardens and act as a landscape buffer between the heritage features and the built development further to the north west. The fields would continue in agricultural use. With the false cutting and landscaping, views to the west would continue uninterrupted and characterised by gently rising land and linear landscape features. The skyline

²⁵³ Cross-examination and re-examination of Mr Molyneux

²⁵⁴ INQ/LPA/2 Appendix 3

²⁵⁵ CD/F/18

²⁵⁶ INQ/APP/6

²⁵⁷ Cross-examination of Mr Molyneux

²⁵⁸ INQ/LPA/1 section 4.3

²⁵⁹ CD/F/6 p 19, p 7 para 2.4

²⁶⁰ INQ/LPA/1 para.4.4.3.6

²⁶¹ INQ/APP/6 sections 5 & 6

²⁶² INQ/APP/3 para 7.11

²⁶³ INQ/RASE/3 Appendix 4

²⁶⁴ INQ/APP/6b

²⁶⁵ INQ/APP/6 paras 4.54, 6.7

²⁶⁶ INQ/APP/6 section 7

would remain as it is, as shown by the photomontages²⁶⁷. There would be no adverse impact on Conservation Area views, but views along Cottage Lane would be enhanced through a reduction in traffic. With the remaining significant area of open land west of the Cottage before the new road, there would be no harmful physical separation of the asset from its wider setting. There would be no visual impact from the new road, nor material visual impact from the proposed two blocks of housing. There would be no real impact on settings as seen from the west. The evidence indicates that there would be no perceptible increase in noise, and therefore no harm to tranquillity. There would be no impact from light spillage. Traffic conditions in Cottage Lane would be improved. A relocated coach/car park, were this to be implemented, would be a substantial benefit. The proposal would also have no impact on Burmans Farmhouse or other listed buildings in the vicinity. Relevant development plan policies on heritage are satisfied.

137. These views are strengthened by the fact that the judgments of the appellants' heritage expert accord with so many of those who have gone before him, including the parties to the LPR, the LPR Inspector, the Council itself²⁶⁸ and its professional officers²⁶⁹. In addition, English Heritage has never registered an 'in principle' objection on the basis of unacceptable impacts to Anne Hathaway's Cottage²⁷⁰.
138. Although English Heritage's expert addressed tranquillity issues, he is not qualified in acoustics²⁷¹ and did not challenge the evidence of the appellants' acoustic expert²⁷². RASE also did not call expert evidence²⁷³. The appellants' final noise analysis²⁷⁴ reveals no perceptible adverse impacts (i.e. increases in noise) at the rear of the Cottage. The predicted worst case effect with the scheme as refused is that noise level change at 2023 at the western boundary of the Cottage grounds would be an increase of 1.7dB and at the Cottage façade facing Cottage Lane a fall by 1.3dB²⁷⁵. Such changes are not significant and would not be perceptible without the ability to directly compare the before and after scenario, which would not arise in this case. In addition, the road would not be visible to the listener, thus avoiding visual cues that can distort perception through psychological effects. By comparison, the LPR Inspector was presented with a change of 4 to 6 dB(A) increase in noise levels²⁷⁶. Further reductions could be obtained from additional landscape screening and the use of a low noise road surface²⁷⁷ for the SWRR²⁷⁸. With a traffic management scheme for Shottery, there would be clearly perceptible improvements at the front of the Cottage, nearest to Cottage Lane, at the point from which the most celebrated views of the Cottage are obtained²⁷⁹. There is no evidence to support RASE's

²⁶⁷ INQ/APP/5a Figure 37A

²⁶⁸ CD/B/1

²⁶⁹ CD/A/20

²⁷⁰ INQ/APP/19, INQ/LPA/2 Appendix 2

²⁷¹ Cross-examination of Mr Molyneux

²⁷² INQ/APP/8-9

²⁷³ Oral addition to closing submissions

²⁷⁴ INQ/APP/8c; INQ/APP/8 section 6.1

²⁷⁵ INQ/APP/8 para 6.1.2-6.1.6

²⁷⁶ CD/B/3 para 749

²⁷⁷ INQ/APP/34

²⁷⁸ INQ/APP/8 paras 6.1.7-6.1.14, INQ/APP/34, CD/A/23 section 4 & Appendix C

²⁷⁹ INQ/APP/8 paras 6.1.11-6.1.13; re-examination of Mr Zarebski

suggestion that noise reflection would arise from Bordon Hill²⁸⁰. It is also not appropriate to take account of the unlawful behaviour of drivers (speeding) in an acoustic model²⁸¹.

139. In summary, the LPR Inspector and the Council were entirely correct to conclude that impacts on the Shottery assets would be negligible, with the exception of the material benefits which would accrue when traffic is diverted from the Conservation Area roads to the SWRR. Further potential benefits would arise were the Shakespeare Birthplace Trust to choose to relocate its parking. However, no such scheme is required to be submitted by proposal SUA.W, which has never been conditional upon such a proposal coming forward.
140. RASE has attempted to create confusion in its approach to the closure of Cottage Lane²⁸². Its representative claimed that this should be regarded as a pre-condition of the development and encouraged English Heritage's expert towards this position²⁸³. This appeared to be to enable a claim that the appeal proposals required the implementation of a closure scheme which nobody in Shottery would support. However, the approach is mistaken: English Heritage's last substantive letter²⁸⁴ (on this application) concludes with the "*Recommendation*" that it is "...not opposed in principle to the Western Relief Road" subject to it forming part of "*an integrated package of traffic management for the settlement of Shottery...*"; closure is thus not stipulated. The Council's position in proposal SUA.W accords with the LPR Inspector's, which is that the development proposals should be accompanied by "*associated traffic calming measures in the Shottery area*"²⁸⁵. That is precisely what the Appellants have covenanted to deliver in the section 106 Agreement with the County Council²⁸⁶.

The Effect on Tourism within the District

141. This is an unproven objection based on an alleged, unresearched and unquantified risk of an adverse perception. No objections have been received from the tourist trade, coach operators or hoteliers.
142. Stratford-upon-Avon is an 'international brand'. According to the Council's tourism expert, it has a strong unique selling point and has maintained visitor numbers notwithstanding the global financial situation²⁸⁷. He agreed that its tourist economy is "*very resilient*"²⁸⁸.
143. The natural approaches to Anne Hathaway's Cottage from the town would not take the visitor as far as the termini of the SWRR and it very difficult to see how they would be aware of the proposed development²⁸⁹. The existing approaches, along West Green Drive or Evesham Road, involve the tourist passing by many examples of modern (post-Shakespearean) development. The Council's tourism expert was unable to suggest whether this has any effect on tourist behaviour.

²⁸⁰ INQ/APP/8 paras 7.2.16-7.2.19

²⁸¹ INQ/APP/8 para 7.2.24

²⁸² INQ/RASE/1

²⁸³ Questions by Mr Ford to Mr Molyneux

²⁸⁴ INQ/LPA/2 Appendix 2 Letter of 18th December 2009

²⁸⁵ CD/B/1 proposal SUA.W part (c)

²⁸⁶ INQ/APP/52

²⁸⁷ INQ/LPA/6; CD/A/18

²⁸⁸ Cross-examination of Mr Holmes

²⁸⁹ INQ/APP/6 paras 2.17-2.44

Likewise, he has conducted no survey of any sort within the tourist sector²⁹⁰. Such survey material as exists reveals that many visitors to Stratford-upon-Avon do not visit the Shakespeare houses²⁹¹. However, he acknowledged that those who set out to visit the Shakespeare 'tourist trail' sites were unlikely to be dissuaded by the proposed development²⁹².

144. He also agreed that his case depended on two propositions: first, that the appeal proposals would have a material negative impact upon the setting of Anne Hathaway's Cottage (which was for other witnesses); second, that the negative impact (if it existed) would have to be perceived by visitors to Anne Hathaway's Cottage in such a way as to cause them not to make a visit to the Cottage and/or the District²⁹³.

145. The evidence does not even begin to make good the second proposition. There is no sensible basis for supposing that anybody on (or off) the Shakespeare tourist trail would decide not to come to the Cottage because of the appeal proposals. There is nothing more than one person's assertion of an unquantified risk that this 'might' happen and no convincing explanation from anyone as to why it would or of what processes would operate to cause it to happen.

The Effects on Highway Safety and the Free Flow of Traffic

146. There is no objection to the appeal proposals from the local highway authority, the Highways Agency or the District's Engineers²⁹⁴. The appellants' highways expert was the only technically qualified witness to give evidence on these matters²⁹⁵. Development of the methodological approach to assessment of the scheme's impact was agreed with the Highways Agency and County Council, including use of the GEH statistical measure²⁹⁶. Traffic modelling was updated during the consultation process to reflect a dialogue with these bodies, with previous assessments superseded by that of February 2011²⁹⁷.

147. The design of the proposed SWRR is consistent with the scheme identified in the 2003 Scheme Assessment Study²⁹⁸. As shown by the Transport Assessment, it would draw traffic to use primary routes on the network including the A46 Stratford Northern Bypass and Evesham Road and reduce flows on routes into Shottery and the town centre. The A46, Evesham Road and Severn Meadows Road all form part of the continuous route that would be created by the SWRR. All these roads would show increases in trips which is consistent with the findings of the Scheme Assessment Study, but these impacts are not significant. The forecast flows are well within the capacity of the A46 and not considered to be an issue in terms of traffic flows, as accepted by the Highways Agency. The forecast flows are also well within the capacity of Evesham Road, and the overall reliability of journeys would not be affected significantly. The assertion that there would be

²⁹⁰ Cross-examination of Mr Holmes

²⁹¹ INQ/LPA/6 para 5.7

²⁹² Cross-examination of Mr Holmes

²⁹³ Cross-examination of Mr Holmes

²⁹⁴ CD/A/20; INQ/APP/10 para 6.33; INQ/APP/14

²⁹⁵ INQ/APP/10, INQ/APP/22

²⁹⁶ INQ/APP/10 p 8 & paras 8.45-8.60; INQ/APP/14

²⁹⁷ INQ/APP/22 section 3; CD/A/18

²⁹⁸ CD/D/1; INQ/APP/11 Appendix A

a significant worsening of congestion along Evesham Road and detriment to the safety and function of the highway network is without foundation.²⁹⁹

148. Peak hour traffic growth in Stratford-upon-Avon has been much lower than that modelled in the Scheme Assessment Study³⁰⁰. Overall traffic flows were expected to be far greater at 2023/2024 at the time of the LPR inquiry than now forecast, but flows with the development are also forecast to be lower than previously or similar. On Evesham Road the impact would be significantly less than accepted at the time of the LPR inquiry³⁰¹. Whilst some of the benefits of the SWRR may not be as significant as those considered at the time of the LPR inquiry, neither are some of the negative impacts which the LPR Inspector expected³⁰².
149. Safe pedestrian and cycle crossing points of the SWRR would be provided³⁰³. The design of the SWRR incorporates safety features, and junctions subject to detailed design would not be hazardous³⁰⁴. On-street parking in West Green Drive would not be significantly affected by the proposed new junctions along its length³⁰⁵. School trips and trips associated with the proposed local centre have been taken into account³⁰⁶.
150. No party has raised a matter under this head which could possibly amount to a reason for refusal of planning permission. The proposal complies with policy DEV.4 of the LPR³⁰⁷.

The Effects of Noise on the Living Conditions of Residential Occupiers

151. Again, the reason for refusal on this ground would appear to be fundamentally incompatible with the presence of proposal SUA.W as part of the statutory development plan.
152. With regard to the proposed occupiers of the development, this matter is now understood to have fallen away with the appellants' confirmation that a 'Good' standard of noise insulation would be provided within the new units³⁰⁸.
153. In respect of existing occupiers, it has always been acknowledged that there would be some who would experience a worsening of their living conditions, as is often the case when new infrastructure is provided³⁰⁹. However, there are statutory mechanisms in place to compensate for this and, in this case, the appellants have also undertaken to make payments to affected parties to allow them to improve sound insulation to their properties. This would apply to the 6 properties in Bordon Hill which would experience a major adverse impact as predicted in the revised noise assessment (which includes additional screening but excludes the use of a low noise surface for the road). This is now agreed as

²⁹⁹ INQ/APP/10 paras 6.29.3-6.33

³⁰⁰ INQ/APP/10 paras 6.26-6.28

³⁰¹ INQ/APP/10 paras 6.21-6.33; INQ/APP/22 section 2

³⁰² INQ/APP/22 section 2

³⁰³ INQ/APP/10 paras 8.18-8.21

³⁰⁴ INQ/APP/10 paras 8.23-8.29, 8.39

³⁰⁵ INQ/APP/10 para 8.25

³⁰⁶ INQ/APP/10 para 8.54

³⁰⁷ INQ/APP/10 section 7

³⁰⁸ INQ/LPA/23 (agreed condition); INQ/APP/7 section 6.4

³⁰⁹ INQ/APP/8 para 2.5.7, section 6.2, paras 7.2.8-7.2.10

part of the planning obligation to the Council³¹⁰. There is no suggestion that any properties would experience unacceptable living conditions. It is also relevant to note that the evidence of a long term resident of Evesham Road was that it is necessary under current conditions, in any event, to keep windows closed due to road noise³¹¹. With regard to West Green Drive, the analysis shows that the noise effect of changes in traffic flow here would be minor adverse at worst³¹².

Whether the Proposal is Sustainable Development

154. For the reasons given above and in the appellants' evidence³¹³, the proposal is a sustainable form of development. The principles of sustainable development clearly and expressly underpin the LPR which identifies the SUA.W proposal³¹⁴. They have not changed.
155. The Transport Assessment demonstrates that the transport networks in Stratford-upon-Avon currently provide good sustainable links to the site, thereby enabling the proposed development to benefit from existing pedestrian, cycle and public transport connection (bus/rail). This would ensure that attractive sustainable travel choices would be available to prospective residents³¹⁵.
156. By contrast, the Council's present intentions for development in the District³¹⁶, with development focused on rural areas with limited services and public transport infrastructure, together with environmental constraints, appear to be contemplating a wholesale departure from sustainable development principles.

Mitigation of the Impacts of the Development on Infrastructure

157. The appellants have been able, with helpful cooperation from officers at District and County level, to conclude a series of planning obligations which provide appropriately in respect of all reasonable requirements³¹⁷.
158. The Agreement with the County would also provide a sum of money to implement traffic management measures in Shottery Conservation Area, in accordance with the express requirements of proposal SUA.W (c). The policy requires that this be done (as did the LPR Inspector), the County Council support the initiative³¹⁸ and RASE's representative acknowledged that "*traffic calming can be beneficial*"³¹⁹. Mr Brace of Burmans Farmhouse expressly drew attention to speeding traffic on Cottage Lane, which he described as well in excess of the 30mph limit³²⁰.
159. The details of traffic calming are to be addressed, but the policy requirement would not have been imposed unless it is possible to introduce a suitably sensitive scheme which achieves its ends without unnecessary physical intervention. A reduction in the speed limit though Shottery remains a possibility as part of the measures.

³¹⁰ INQ/APP/53

³¹¹ INQ/TP/4 para 5.4; cross-examination of Ms Griffiths

³¹² INQ/APP/7 section 6.3

³¹³ INQ/APP/1b

³¹⁴ CD/B/1 Section 1

³¹⁵ INQ/APP/10 para 4.5.2

³¹⁶ CD/E/18, CD/E/19

³¹⁷ INQ/APP/52, INQ/APP/53

³¹⁸ INQ/APP/21; INQ/APP/33

³¹⁹ Cross-examination of Mr Ford

³²⁰ Cross-examination of Mr Brace

160. The appellants' experts have addressed all the relevant highway and engineering requirements³²¹. The Environment Agency, Natural England and Severn Trent Water all supported the proposals as outlined in the Flood Risk Assessment³²². Storm water run-off from the development would be reduced to 20% below the existing baseline rate³²³. Adequate provision for future maintenance of the SUDS system would be provided, and the County Council would have statutory duties in this respect³²⁴. The circumstances are suitable for use of a SUDS system, and appropriate assumptions are made³²⁵. With proposal SUA.W as part of the LPR, the scope of policy PR.7 and the site specific flood risk were considered, including in relation to the sequential approach³²⁶. The Council continued to view the proposal as sequentially acceptable in the first 2 draft versions of the Core Strategy. There would be no built development in flood zones 2 and 3, with only part of the proposed highway access off Evesham Road in areas which is flood zone 3³²⁷. The access is essential infrastructure, being a strategic link road, and therefore acceptable in flood zone 3³²⁸. The exception test is passed by virtue of the sustainability benefits of the proposal³²⁹. An existing culvert on Shottery Brook at Evesham Road would be upgraded³³⁰. The proposal complies with Framework guidance on flood risk³³¹.
161. Statutory consultees are satisfied that all ecological matters have been robustly addressed³³². The creation of substantial areas of new habitat within the overall green infrastructure network would provide improved connectivity across the area, improving opportunities for all types of wildlife. Thorough surveys were undertaken following standard methodologies. All were in suitable conditions during optimal survey periods. On great crested newts, a full risk assessment has been produced³³³, which concluded that it is very unlikely that any newts present in Burmans Farmhouse pond would utilise working areas within the application site, but statutory compliance would be maintained.
162. The criticisms of the proposal by CABE³³⁴ are not accepted³³⁵. There is more than enough supporting information for an outline application. There is no foundation for the suggestion that the proposed road would create severance between new communities to the north and south of the site. The existing rights of way network would be protected, maintained and enhanced by a comprehensive network of new interconnecting routes to ensure permeability through the development, and public transport provision is an integrated component of the proposal. The location of the local centre has been specifically selected in order to address the existing as well as the new community; an

³²¹ INQ/APP/10, INQ/APP/12

³²² INQ/APP/12 para 3.2; CD/A/12

³²³ INQ/INQ/12 para 3.3

³²⁴ INQ/APP/12 para 3.9

³²⁵ INQ/APP/12 paras 3.33-3.41; INQ/APP/21

³²⁶ INQ/APP/12 paras 3.16-3.25

³²⁷ CD/A/12 para 4.24

³²⁸ INQ/APP/21

³²⁹ CD/A/12 para 4.76

³³⁰ CD/A/12 para 3.8

³³¹ INQ/APP/21; INQ/APP/23 section 11

³³² INQ/APP/3 paras 8.15-8.17

³³³ CD/A/16a

³³⁴ CD/A/19

³³⁵ INQ/APP/3 paras 6.36-6.43

alternative position off Alcester Road would be remote from the bulk of the community and instead cater for the less sustainable general passing trade. It has always been the intention to prepare a Design Code for the site once the outline permission is in place, and this is normal practice. The Design and Access Statement³³⁶ provides a robust framework upon which this can build. Similarly, the Green Infrastructure Biodiversity Management Plan is not needed in advance on this site, and can be addressed by condition. Following CABE's review of the scheme it was agreed with the Council that the Statement of Development Principles³³⁷ remained robust, and an Addendum to the Design and Access statement³³⁸ was prepared which adds another layer of design detail ready to inform a subsequent Design Code exercise. CABE's criticisms have not been pursued by Council³³⁹.

163. The energy statement submitted with the application³⁴⁰ outlines how the proposal would comply with the Council's Sustainable Low Carbon Buildings Supplementary Planning Document³⁴¹ and LPR policy DEV.8³⁴². The proposal can be categorised as having a low geo-environmental risk and is entirely conventional³⁴³.

164. The local needs in respect of retail and community provision have also been addressed³⁴⁴.

Environmental Information

165. The allegations made by RASE³⁴⁵ that the environmental information provided is inaccurate, inadequate or incomplete and not capable of being properly regarded as an Environmental Statement for the purposes of the Regulations are all refuted³⁴⁶.

166. The use of the GEH statistic for the Transport Assessment has been addressed in the expert highways evidence, and was at the request of the local highway authority³⁴⁷.

167. The extent of the highway network that was required to be analysed and reported was also agreed with the local highway authority and the Highways Agency. No request was made for this to include West Green Drive. Notwithstanding this, the February 2012 additional information provided traffic flow information for West Green Drive, and demonstrated that as anticipated this would be well within the capacity of the road³⁴⁸.

168. The February 2011 Transport Assessment analysed the developments' impacts both at 2013 and 2023, and a condition on construction of the SWRR obviates the need for any additional assessment of the period between 2013 and 2023.

³³⁶ CD/A/9

³³⁷ CD/B/5

³³⁸ CD/A/9a

³³⁹ Oral addition to closing submissions

³⁴⁰ CD/A/13

³⁴¹ CD/C/9

³⁴² INQ/APP/12 section 5

³⁴³ INQ/APP/12 section 4

³⁴⁴ INQ/APP/1

³⁴⁵ INQ/RASE/15

³⁴⁶ INQ/APP/47

³⁴⁷ INQ/APP/10 p 8 & paras 8.45-8.60; INQ/APP/14

³⁴⁸ CD/A/23

169. The air quality assessment with the application found negligible effects. Based on predicted traffic flows³⁴⁹, this would not change with the proposed traffic management measures.
170. Other alleged flaws in the Transport Assessment have been responded to in the appellants' highways evidence³⁵⁰.
171. With respect to the suggested need for an invertebrate survey, the Environmental Statement identified that the site lies adjacent to the Bordon Hill Site of Importance for Nature Conservation which is noted for its beetle fauna. However, the habitat requirements for the relevant invertebrate species are either absent from the application site or are associated with habitats which are to be retained and would be unaffected by construction operations. Circular 06/2005 advises that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development. Furthermore, the proposal includes a buffer area within the Shottery Conservation Landscape between Bordon Hill and any construction areas. Landscape planting within the buffer area would provide substantially more habitat for invertebrate species than currently exists within the site. The County Council's Ecology Unit and Natural England agree with this approach.³⁵¹
172. With regard to the flood risk assessment, although no soil infiltration tests have been undertaken, this point has been addressed³⁵². Conservative assumptions have been made in the assessment, and the Environment Agency is satisfied with the approach.
173. It is entirely permissible for the environmental statement to comprise a series of documents to provide the necessary environmental information. The Regulations expressly provide for the submission of relevant additional material and for taking into account material submitted to a public inquiry on appeal. The submitted documents have been properly logged and referenced, and do not constitute a 'paper chase'.

Residents Against Shottery Expansion

174. RASE as a representative organisation needs to be treated carefully. It is a somewhat unorthodox grouping. Notwithstanding its apparent age, it has no constitution, elected officers, or membership³⁵³. It participated at the inquiry with one or two individuals and it is difficult to gauge the depth of support it has for its case, which has been entirely negative³⁵⁴. Whilst objections from residents living locally to a proposed development of this scale are always heard at an inquiry, that is not the case for expressions of support from those who keenly hope to see their housing needs met by such a development. These concerns are just as valid, but the inquiry process does not lend itself to their articulation.
175. All the matters raised by RASE have been addressed. Its representative pursued points in relation to the financial standing of the appellants and the rate

³⁴⁹ INQ/APP/47 Appendix 1

³⁵⁰ INQ/APP/10

³⁵¹ INQ/APP/47 paras 22-30

³⁵² CD/A/15 section 8.4; INQ/APP/12 para 3.36

³⁵³ INQ/RASE/1 section 1; cross-examination of Mr Ford

³⁵⁴ INQ/RASE/7

of delivery of development on the site³⁵⁵, which have been dealt with³⁵⁶. Neither of these matters has been challenged by the Council.

Shakespeare Birthplace Trust

176. It is clear that the Shakespeare Birthplace Trust has been subject to significant pressure from RASE (including a petition), seeking to use its influence to undermine the SUA.W allocation and the appeal proposals³⁵⁷. However, the Trust is plainly aware of its duties as Trustees and has not been persuaded by RASE to prejudge the outcome of this inquiry³⁵⁸.
177. From the outset, the Trust has indicated that it would wish to be satisfied on 6 or 7 criteria, which are set out and repeated in its various letters. The appellants' own correspondence with the Trust³⁵⁹ confirms that the Trust's Executive has not considered the Further Environmental Information of February 2012³⁶⁰, which addresses matters which are of concern to the Trust.
178. The appellants' planning expert believes that all of the Trust's preconditions are now capable of being satisfied³⁶¹. The Trust advises that it will await the outcome of the appeal and the conclusions reached about its interests³⁶², and does not contradict the propositions set out by the appellants³⁶³. A recent letter from the Trust submitted by RASE³⁶⁴ does not alter this carefully considered exchange. The Trust could, in theory, have said that it would under no circumstances participate in the west of Shottery development. It has not done so, and neither the Council nor RASE can contrive a contrary position. It can properly be inferred that the Trust's absence from the inquiry was not accidental. While some of the proposed green infrastructure would be on land owned by the Trust, the suggestion by the Council that this would be undeliverable is puzzling since to implement the scheme it would be necessary to have reached agreement with the Trust to acquire the land³⁶⁵.

Conclusions

179. Paramount amongst the considerations which operate in this case must be the development plan status of the appeal site. However, this is not relied upon merely as a matter of form, but also on account of the substance of the analysis underpinning the allocation and the very extensive process which preceded it. It would be perverse to abandon or shelve such a soundly based proposal, which is fully supported by professional officers³⁶⁶, on the basis of claims of 'localism' and an unsustainable Core Strategy which is plainly not supported by a sound evidence base.
180. It is therefore requested that the appeal be allowed.

³⁵⁵ INQ/RASE/5, INQ/RASE/6

³⁵⁶ INQ/APP/1 para 4.20, INQ/APP/25, INQ/APP/40

³⁵⁷ INQ/RASE/1 para 12

³⁵⁸ INQ/APP/16

³⁵⁹ INQ/APP/15 & INQ/APP/16

³⁶⁰ CD/A/23

³⁶¹ INQ/APP/1 paras 4.22-4.24; evidence in chief of Mr Jones

³⁶² INQ/APP/16

³⁶³ INQ/APP/16

³⁶⁴ INQ/RASE/17

³⁶⁵ Oral addition to closing submissions

³⁶⁶ CD/A/20

THE CASE FOR STRATFORD-ON-AVON DISTRICT COUNCIL

181. The main points are:

Introduction

182. Stratford-upon-Avon is a special place. Its associations with Shakespeare have made a modest market town into a national heritage asset with an international reputation. The presence of its unique collection of assets, including Anne Hathaway's Cottage and Garden, make it a global tourist destination. Tourism is a main source of employment and its visitors have an essential role in sustaining the economy of the District. The surrounding landscape and setting to the heritage assets demand particular care in the consideration of the appeal proposals. The new planning environment comprising the Localism agenda and the National Planning Guidance Framework, along with other material changes since the Local Plan Review inquiry in 2006, require a fresh approach to be taken to development on the appeal site.³⁶⁷

The Development Plan and Housing Land Supply

183. The Local Plan Review (LPR) does not exist in isolation but is part of a wider planning framework, as expressed in the LPR itself³⁶⁸. The LPR explains the context in which its strategies and policies were adopted in July 2006. At that time, the Regional Spatial Strategy (RPG11) was described as having required "*a fundamental change in direction*"³⁶⁹ for development in the region and set out a number of principles and challenges to guide development plans. These included the need for an urban renaissance to counter the unsustainable outward movement of people and jobs that had been facilitated by previous strategies³⁷⁰. Stratford-upon-Avon was not identified as a Major Urban Area in the Regional Spatial Strategy (RSS) but as a market town that should not accommodate migration from the Major Urban Areas³⁷¹.

184. The LPR strategy for new housing provision as set out in policy STR.2 was grounded in national policy guidance (particularly for housing) and the regional policy guidance of the RSS and the Warwickshire Structure Plan³⁷². The regional strategy also dictated the housing requirements for the District to the end of the plan period (March 2011), which ultimately resulted in the Council's moratorium on housing as set out in its Managing Housing Supply Supplementary Planning Document (November 2006)³⁷³, which was not lifted until March 2011³⁷⁴.

185. The purpose of LPR policy STR.2A was to protect the 3 identified Strategic Reserve Sites from development during the plan period. It states that: "The release of sites for housing development will be regulated". Three factors are identified in the policy to regulate their release. The first is the District's progress towards the housing provision as provided in the RSS and set out in LPR policy STR.2. The second is concerned with the aims of LPR policy STR.4 on previously developed land. The third is any changes in strategic planning policy.

³⁶⁷ INQ/LPA/13

³⁶⁸ CD/B/1 para 1.2.1

³⁶⁹ CD/B/1 para 1.2.10

³⁷⁰ CD/B/1 para 1.2.11(a)

³⁷¹ CD/B/7 policy CF2

³⁷² CD/B/1 para 2.4.2

³⁷³ CD/C/3

³⁷⁴ INQ/LPA/8 para 5.15

Policy STR.2A makes it clear that these sites were identified to help meet long term (post 2011) housing needs and that their development, in whole or in part, was not to be permitted before 31 March 2011 “*unless there is a significant under provision of housing land identified through the monitoring process*”³⁷⁵. The policy explanation indicates the potential role of these sites in meeting longer term housing requirements:

*‘The housing provision identified in this Plan covers the period up to 2011. It is inappropriate to retain or identify the three greenfield sites supported by the Inquiry Inspector as allocations in the Plan as it is unlikely that they will need to be released in order to meet requirements prior to 2011...The identification of these three sites as Strategic Reserves recognises their potential role in meeting housing needs post 2011.’*³⁷⁶

Furthermore, at the time of adoption it was considered unlikely that their release would need to be addressed until after the Council had prepared its Core Strategy and Significant Allocations Development Plan Documents following the partial review of the RSS³⁷⁷.

186. Although proposal SUA.W (Land to the West of Shottery) has been saved³⁷⁸, the context in which it was identified in the LPR and how it should be read has materially changed³⁷⁹. Furthermore, there is no significant under provision of housing land in the District (as set out below). The explanation for proposal SUA.W records that the appeal site was identified following a comprehensive assessment of a range of sites on the edge of Stratford-upon-Avon during the LPR inquiry³⁸⁰. The inquiry Inspector expressly noted the specific benefits that justified his recommendation that the site was more suitable for development than others being assessed. Those benefits were the Stratford Western Relief Road (SWRR) and the associated improvements to the setting of Anne Hathaway’s Cottage and the Shottery Conservation Area. He concluded that: “*without them, it might be that neither of the two constituent housing areas would be regarded as being superior to other potential development sites...*”³⁸¹. Irrespective of the changed national planning policy framework since then, dealt with below, there have been other major changes specific to the proposal since it was promoted at the LPR inquiry. Their importance cannot be overstated because they go to the heart of the reasoning behind the LPR Inspector’s conclusions and the subsequent identification of the appeal site as a Strategic Reserve Site. In essence, there are now fundamental differences between the scheme that was assessed by the LPR Inspector and the appeal proposals.

187. The first material change is to the benefits that were expected to accrue from the SWRR. At the time of the LPR inquiry and the adoption of the LPR, the SWRR was identified as providing a very substantial benefit. This was because of specific opportunities it provided to make environmental improvements to Stratford-upon-Avon town centre, to relocate the car and coach parks for Anne

³⁷⁵ CD/B/1 policy STR.2A

³⁷⁶ CD/B/1 para 2.4.12

³⁷⁷ CD/B/1 para 2.4.16

³⁷⁸ CD/B/2

³⁷⁹ CD/B/2 last two paragraphs

³⁸⁰ CD/B/1 para 7.15.43

³⁸¹ CD/B/3 para 778

Hathaway's Cottage, and to prevent through traffic in Shottery³⁸². Those anticipated benefits have either gone or changed significantly:

- a) The Inspector had considered benefits of the SWRR to Stratford-upon-Avon as a whole by reference to the 2003 Scheme Assessment Study³⁸³. This emphasised that the SWRR was "*a fundamental component*" of the Stratford Major Transport Scheme Bid that "*provides positive benefits that enhance the case for other elements of the bid.*"³⁸⁴ The Bid comprised the following elements³⁸⁵:
 - The pedestrianisation of three key town centre streets (Bridge Street, High Street and Waterside)
 - Demand reduction elements (including a Park and Ride at Shipston Road and a bus/rail interchange at Stratford Station)
 - Congestion reduction schemes (including the SWRR).
- b) The Scheme Assessment Study anticipated considerable improvements in predicted two way traffic flows on various links, including Alcester Road, Birmingham Road and Church Lane, Shottery³⁸⁶. Those figures were all premised upon the development of the appeal site with 700 houses and the pedestrianisation of the town centre streets, as confirmed by the appellants' highways expert³⁸⁷. The forecast flows on those links can be compared³⁸⁸ with the figures contained within the 2011 revised Transport Assessment for the appeal scheme (conducted on the basis of 800 houses)³⁸⁹. These figures demonstrate that the appeal proposals will not now significantly impact traffic flows on those links³⁹⁰.
- c) The benefits of the SWRR as considered by the LPR Inspector have fallen away. The benefits now espoused by the appellants are simply not those that were considered at the LPR inquiry. The Transport Assessment indicates traffic flows that differ significantly from the previous predictions. In particular, the base traffic flows presented to the LPR inquiry were much higher for both the AM and PM peak hours³⁹¹. Such reductions in traffic flows as are now claimed are minimal. The adding together of traffic flows on links through Shottery is a meaningless exercise because it would result in double counting³⁹². Moreover, the predicted reductions in AM and PM peak hour traffic flows around Shottery must be viewed in the context that the base flows are not themselves particularly heavy and the reductions are all only in double digits³⁹³. The claimed reductions in delay at congested junctions in Stratford-upon-Avon as a whole are similarly minimal when

³⁸² CD/B/3 paras 778 & 781

³⁸³ CD/D/1

³⁸⁴ CD/D/1 p 5

³⁸⁵ CD/D/1 p 5

³⁸⁶ CD/D/1 Table 1.1

³⁸⁷ Cross-examination of Mr Ojeil

³⁸⁸ INQ/LPA/10 Appendix 10; INQ/LPA/8 paras 7.32-7.59

³⁸⁹ CD/A/18 Tables 35-36

³⁹⁰ Cross-examination of Mr Ojeil; INQ/APP/22 paras 2.12 & 2.13

³⁹¹ INQ/APP/10 paras 6.23-6.25, tables JO6 & JO7

³⁹² Evidence in chief of Mr Brown; INQ/APP/10 paras 6.14-6.20

³⁹³ INQ/APP/10 table JO4 and JO5

considered in the context of individual drivers and journey times³⁹⁴. Furthermore, the appellants' highways expert was unable to produce any evidence as to the level of extraneous local traffic that might be deterred³⁹⁵.

- d) Consequently, the proposed SWRR is not a relief road. Its primary purpose would no longer be the relief of town centre congestion deriving from the pedestrianisation measures but simply to serve the proposed development (as appears to have been acknowledged in the latest iteration of the Warwickshire Local Transport Plan³⁹⁶).

188. The second material change is that both the Shakespeare Birthplace Trust (SBT) and English Heritage now object to the appeal proposals. The same applies for the Council. The in-principle objection of the SBT has been explained in clear terms in its statement dated 15 March 2012³⁹⁷. In a recent exchange with the appellants, SBT expressly reserved its present position, namely objection³⁹⁸. It would be wrong to suggest that the SBT objection should somehow be given less weight because SBT may or may not change its position in the future. That would be contrary to its clear representation and undermine SBT's effective participation in the consultation process by introducing an element of unfounded speculation or conjecture. The objection of SBT also means that the relocation of the car and coach parks for Anne Hathaway's Cottage is no longer a benefit that weighs in favour of the appeal proposals (as it was considered to be at the LPR Inquiry and the adoption of the LPR).

189. The third material change is to the proposed traffic calming measures considered at the time of the LPR inquiry. It was then contemplated that the SWRR presented the "*opportunity to remove all vehicular traffic other than emergency or service vehicles*" from Cottage Lane³⁹⁹. That is not what is proposed now. The appeal proposal does not include any action outside the appeal site. There appears to be little or no local support for the belated offer of funding for traffic calming (which is not necessary to enable the development). There is no definitive proposal on traffic calming measures because that necessarily requires agreement with the local highway authority. Furthermore, any Traffic Regulation Order would have to undergo the statutory consultation process and there can be no certainty as to the outcome.

190. In addition, the Government has introduced fundamental changes to the planning environment through the Localism Act 2011 and the National Planning Policy Framework. These are constituent parts of the shift away from a top down imposition of housing requirements and spatial strategy to a bottom up approach to planning. The saved policies of the development plan must now also be considered against the implementation provisions of the Framework⁴⁰⁰. Whilst decision-makers may continue to give full weight to relevant policies adopted since 2004⁴⁰¹, they may also give weight to relevant policies in emerging plans

³⁹⁴ INQ/APP/10 paras 6.1-6.13, tables JO1 & JO2

³⁹⁵ Cross-examination of Mr Ojeil

³⁹⁶ CD/D/2 p 105

³⁹⁷ INSP1; earlier letters dated 17 December 2009 & 26 November 2010 at INQ/LPA/2 Appendix 2

³⁹⁸ INQ/APP/15, INQ/APP/16

³⁹⁹ CD/B/3 paras 748 & 781

⁴⁰⁰ CD/G/24 Annex 1

⁴⁰¹ CD/G/24 para 214

according to a number of criteria, including their degree of consistency with the policies of the Framework⁴⁰². Moreover, the Framework's policy presumption in favour of sustainable development⁴⁰³ militates against the appeal proposals. Whilst the adopted development plan is now out of date and silent on housing requirements, the adverse environmental and economic impacts of allowing the appeal (dealt with below) significantly and demonstrably outweigh its benefits. It is recognised that there would be some social benefits in the form of market and affordable housing (although these would not be peculiar to this development), but the proposals would no longer deliver the benefits that had originally been envisaged.

The housing land position

191. Paragraph 47 of the Framework addresses housing requirements, with an obligation to ensure that the full objectively assessed needs for both market and affordable housing are met as far as is consistent with the other policies in the Framework. The Council's case on the 5 year housing land supply is simple, straightforward and robust:

- a) The Council commissioned GL Hearn to provide a Housing Options Study as part of its evidence base to inform and support policies for housing provision in the latest draft Core Strategy⁴⁰⁴. The Study considered a total of 10 possible projections but recommended 3 options for the plan period 2008-2028 based upon the following projections:
 - Option 1: Main Trend-Based projection. This produced a housing requirement of 10,300 units. GL Hearn considered the impact of this option on the environment to be hard to judge but potentially greater than Option 3⁴⁰⁵.
 - Option 2: Economic-led projection. This produced a housing requirement of 13,000. Whilst GL Hearn considered this option to be strongly positive in social and economic terms, the environmental impact was expected to be higher⁴⁰⁶.
 - Option 3: 25% reduction in Net In-Migration. This produced a housing requirement of 8,200. This option was considered to have the least environmental impact and would do most to preserve the character of the District. GL Hearn indicated that this option would potentially have a higher cost in economic and social terms⁴⁰⁷.
- b) In producing these options GL Hearn indicated that their analysis had identified various trade-offs that needed to be considered. They concluded that: *"It would be possible to conclude that any of the above options were the most advantageous based on ascribing different weight to the environmental, economic and social considerations. This is a matter for the District Council to consider."*⁴⁰⁸ Whilst GL Hearn were of the view that the Council should plan on the basis of a housing

⁴⁰² CD/G/24 para 216

⁴⁰³ CD/G/24 para 14

⁴⁰⁴ CD/E/12

⁴⁰⁵ CD/E/12 para 9.44

⁴⁰⁶ CD/E/12 para 9.49

⁴⁰⁷ CD/E/12 para 9.54

⁴⁰⁸ CD/E/12 para 9.61

requirement in the 11,000 - 12,000 range, the Council was not obliged to follow that recommendation. The Members' view was that the GL Hearn analysis and trade-offs did not properly reflect the particular economic value represented by tourism and the character of the District⁴⁰⁹. Stratford-upon-Avon is a tourist destination of global significance. Consequently, the environmental impacts arising from the housing requirement could potentially overlap the economic impacts on the tourist economy of the District. In effectively opting for Option 3 and a housing requirement of 8,000 the Council properly considered the need to preserve the special character of the District and recognised the key role played by that character in the District's tourism economy.

- c) The appellants now contend that the Council's housing requirement should be nearer the 12,000 upper figure suggested by GL Hearn⁴¹⁰. There is no justification for their approach. The view of GL Hearn is not a substitute for the Local Plan. Neither is the current inquiry an examination of the draft Local Plan.
- d) The housing land supply position has improved dramatically over the last year. It is agreed that in March 2011 the supply was 3.4 years when measured against a requirement of 8,000 dwellings during the period 2008-2028⁴¹¹. The Council's assessment now demonstrates a housing land supply of 5.26 years when measured against that housing requirement and including a 5% buffer as required by the Framework⁴¹².
- e) An allowance which equates to an average of 99 dwellings per annum has been made for windfalls, as allowed by the Framework where there is compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. The figure is based on an average historical windfall delivery rate in the 5 years to 2008, which was 2 years into the moratorium (a higher figure would result if a 21 year period was used). This figure has then been reduced by 17% to reflect garden land development. The Council's officer who previously collated the housing permissions database had been doing so since 1987. Baker Associates, who used this data to compile the District's Strategic Housing Land Availability Assessments (SHLAAs)⁴¹³, had no cause to query his figures. Simply because the officer, due to sad circumstances, was unable to assist the appellants' interrogation of his extensive database is no reason to reject any windfall allowance whatsoever. Historically windfalls have made a significant contribution to the District's housing land supply, as confirmed in the SHLAAs for 2008⁴¹⁴ and 2009⁴¹⁵. The contribution from windfall sites was also recognised in the LPR⁴¹⁶. For the

⁴⁰⁹ CD/E/16a, CD/E/16b

⁴¹⁰ INQ/APP/36

⁴¹¹ CD/H/1 para 10.1

⁴¹² INQ/LPA/17. The 5.26 years equates to 5.01 years with the 5% buffer included in the 5 year target requirement (rather than effectively increasing the 5 year requirement to 5.25 years) – the calculations are included in INQ/APP/40.

⁴¹³ CD/F/1a, CD/F/1b

⁴¹⁴ CD/F/1a paras 7.1.2, 7.1.4 & 7.1.6

⁴¹⁵ CD/F/1b paras 7.1.1-7.2.1 & 7.2.22 (Table 7.2)

⁴¹⁶ CD/B/1 para 2.4.5 & Table 2

appellants to contend for a nil windfall allowance undermines the credibility and robustness of their response to the Council's figures⁴¹⁷.

- f) The attempt by the appellants to remove 43 dwellings from the Tiddington Fields and 179 dwellings from the Maudslay Park developments because they fall within use class C2 is also misconceived⁴¹⁸. Both these developments provide extra care units that comply with the definition of dwellings as required by relevant National Indicators⁴¹⁹ i.e. a self-contained unit of accommodation. The Tiddington Fields dwellings (Margaret Court) are sold individually on leaseholds⁴²⁰. At Maudslay Park, each of the units would have its own kitchen, living room, bathroom and bedroom accommodation and its own front door⁴²¹. The C2 Use Class restriction through the section 106 obligations does not remove these individual dwellings from the housing land supply. They remain to be counted as part of the District's dwelling stock.
- g) The appellants also seek to delete the Former Cattle Market site (197 dwellings) and Chestnut Street (7 dwellings) permissions on the basis of a current lack of demand for flats⁴²². There is no reason to believe that these developments will not go ahead as soon as the market recovers and within the next 5 years. The demand for flats is not dependent solely upon the general state of the market but is also affected by the desirability of the location⁴²³. From any objective view Stratford-upon-Avon is a desirable location (further evidenced by the need for a moratorium and the volume of applications/permissions since it was lifted⁴²⁴). To simply remove all permissions for flatted development from the housing land supply is unrealistic.
- h) The credibility of the appellants' approach to the Council's housing land supply is further undermined by their insistence on a 20% buffer, as required by the Framework where there has been a record of persistent under delivery of housing. It is wholly unjustified for the appellants' planning witness to contend that the Council has such a record⁴²⁵. The very reason for the moratorium and the number of permissions granted in the limited 12 month period since it was lifted confirm the contrary to be true.
- i) There is a sense of desperation in the appellants' attempts to reduce the Council's housing land supply figures. The Council's evidence confirms that the key criterion in policy STR.2A for the release of this strategic reserve site is not met because there is no significant under provision of housing land in the District.

⁴¹⁷ INQ/APP/36

⁴¹⁸ INQ/APP/36

⁴¹⁹ INQ/LPA/19

⁴²⁰ INQ/LPA/21

⁴²¹ INQ/APP/30 (first paragraph under the heading 'Use Class')

⁴²² INQ/APP/36

⁴²³ Cross-examination of Mr Jones

⁴²⁴ INQ/LPA/8 para 9.21; INQ/LPA/17

⁴²⁵ Cross-examination of Mr Jones

192. Irrespective of the above, the SBT's in-principle objection means that limited (if any) weight can now be given to the contribution that the appeal proposals could make to the supply of housing land in the District.

Prematurity

193. The Localism Act 2011 and the Framework have made fundamental changes to the planning system designed to ensure that decisions about development are taken locally. The 2005 ODPM guidance note (General Principles) has not been replaced by the Framework. This indicates that a refusal on the grounds of prematurity may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development. It is for the Council to demonstrate how the grant of permission would prejudice the development plan process⁴²⁶.

194. Prematurity is not a concept derived from the 2005 guidance note. It reflects the UK's obligations to ensure proper public participation in the preparation of plans and programmes relating to the environment. In particular, provision must be made for early and effective public participation where all options are open. Furthermore, due account must be taken of the outcome of such public participation⁴²⁷. The Framework confirms that "*Planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements*"⁴²⁸. The EU is a signatory to the Aarhus Convention 1998 and consequently the obligations are engaged in the consideration of the appeal proposals, a point which the appellants do not disagree with⁴²⁹.

195. That the Council has consulted on a third version of its proposed Core Strategy⁴³⁰ adds weight to the prematurity issue for a number of reasons:

- a) As explained in its introduction⁴³¹, the previous drafts were premised upon the need to conform to the regional strategy. The latest version properly reflects the changes to the planning framework. In particular, it presented the first opportunity for the Council to consult upon, among other things, a new housing figure for the District and a new spatial approach for the distribution of development. This is of particular importance for Stratford-on-Avon, which over the last 30 years has seen the number of dwellings increase by 40% in the District and 50% in the town, far outstripping the national average growth⁴³².
- b) The latest version responds to the results of the previous public consultations which indicated a 'more local' approach should be taken to policy making⁴³³. This means it is more likely to be adopted by the community⁴³⁴.

⁴²⁶ CD/G/23 paras 17-19

⁴²⁷ CD/SDC/7 Article 7 (and Articles 6(3), 6(4) and 6(8))

⁴²⁸ CD/G/24 para 2

⁴²⁹ Cross-examination of Mr Jones

⁴³⁰ CD/E/18

⁴³¹ CD/E/18 paras 1.1.1-1.1.8

⁴³² INQ/LPA/8 para 9.30

⁴³³ CD/E/18 para 1.1.8

⁴³⁴ INQ/LPA/8 para 9.16

- c) The new spatial vision is to provide for 8,000 dwellings over the plan period of 2008-2028. The rationale for the figure is clearly stated and robust⁴³⁵. It includes the aim for lower net in-migration (itself consistent with the previous regional strategy), the Council's concerns that the GL Hearn Study did not assess the contribution of tourism to the economy, and the need to preserve the special nature of the District. The reasoning for the 8,000 requirement is entirely consistent with the Government's core planning principles in the Framework⁴³⁶.
- d) The proposed dispersal strategy provides for between 560-840 dwellings in Stratford-upon-Avon over the plan period⁴³⁷. To allow the appeal proposals now would prejudice this strategy because it would necessarily predetermine the scale and location of housing in Stratford-upon-Avon.
- e) To allow the proposal would wholly undermine the consultation process. The consultation responses need to be properly processed and assessed to ensure that the public participation is effective. It is only after all the consultation responses have been properly processed can due account be taken of them. To select individual responses to the consultation document⁴³⁸ will necessarily show a partial picture and they should therefore be given no weight.

196. Consequently, to permit the appeal proposal would seriously prejudice the DPD process. It would predetermine the immediate allocation of a large unallocated greenfield site in a sensitive countryside location, undermine the preferred strategy and preclude effective public participation in the plan-making process.

The Effect on the Character and Appearance of the Area

197. Another consequence of the Localism agenda and the revocation of the regional strategies is the greater freedom afforded to the Council in determining the location of development through its spatial strategy. This represents a further material change since the LPR inquiry and the adoption of the LPR.

198. When assessing the changed circumstances in which the appeal proposals now fall to be determined it is important to consider the evolution of LPR proposal SUA.W. The potential for development on land to the west of Shottery was considered during the 1994-5 District Local Plan inquiry. An omission site comprising mixed uses and including some 450 dwellings was promoted, which included a Western Relief Road as a major feature⁴³⁹. There are significant differences between that omission site and the present appeal proposals but the landscape and its relationship with Shottery and Stratford-upon-Avon was essentially the same as it is now⁴⁴⁰. At that time the land to the west of Shottery was designated in the District Local Plan as a Special Landscape Area (SLA). The inquiry Inspector considered that with any development of such a scale in that location there were three broad landscape matters that needed to be addressed:

⁴³⁵ CD/E/18 para 9.03

⁴³⁶ CD/G/24 para 17

⁴³⁷ CD/E/18 Table 1 p 80

⁴³⁸ INQ/APP/27, INQ/APP/38

⁴³⁹ CD/RASE/17; INQ/LPA/20

⁴⁴⁰ Cross-examination of Mr Rech

landscape quality, landscape form and the nature of the settlement edge⁴⁴¹. The appellants' landscape expert agreed with that approach⁴⁴². When making his assessment of the quality of the landscape the Inspector concluded that the area was rightly included within the SLA and described it in the following terms:

*"...an area of very attractive and gently undulating landscape...the rising nature of the land makes the countryside to the west very important to the setting of the town; an importance which is heightened by the quality of the landscape itself....While the SLA designation is one which sets this landscape apart, it is not an absolute bar to development. Nevertheless it seems to me that the quality of the landscape must weigh heavily in the balance and the proposal would have to demonstrate clear and overriding benefits and advantages over other locations."*⁴⁴³

199. He then addressed the landscape form between Alcester Road and Evesham Road and agreed with the Council that the topography of the landscape defines the settlement edge. Before recommending that the omission site should not be allocated for development he concluded that:

*"...the landscape is of a quality which rightly suggests its inclusion within the SLA. In principle, this quality should be protected for its own sake. The gently undulating and rising landform provides an attractive landscape setting for the town and very satisfactorily contains the urban area, especially where the town edge is weakest. To the south the town edge is strong and attractive, and in the vicinity of Shottery the openness of the countryside is taken into the urban area through the spaciousness and loose-knit form of the village. All in all I believe these factors add up to a periphery of the town which performs very well in terms of the relationship between town and country, and one which has a quality which should be safeguarded."*⁴⁴⁴

200. A restrictive approach was thereafter taken towards development to the west of Shottery⁴⁴⁵. This is evidenced in the Stratford-upon-Avon Town Design Statement (2002) which recommended, among other things, that the fields on either side of Bordon Hill should be protected in perpetuity and the panoramic view preserved⁴⁴⁶. However, that strategic planning context had changed by the time of the LPR inquiry following the publication of RPG11, which varied the previous spatial strategy for the region. Furthermore, the Council and the SBT were then promoting the site. This change in context was acknowledged by the LPR inquiry Inspector⁴⁴⁷. He endorsed the general approach to landscape impact that had been taken by the previous Inspector (Mr Golder) at the District Local Plan inquiry⁴⁴⁸, and concluded:

"Clearly there would be a substantial change to the western side of Stratford. Nonetheless...the harmful effects of the proposals would be, perhaps surprisingly, limited. At the same time the various benefits, above all the opportunities provided by the SWRR...are very substantial. Mr Golder in

⁴⁴¹ CD/RASE/17 para 9.43.17

⁴⁴² Cross-examination of Mr Rech

⁴⁴³ CD/RASE/17 para 9.43.18

⁴⁴⁴ CD/RASE/17 para 9.43.24

⁴⁴⁵ INQ/LPA/3, INQ/LPA/5

⁴⁴⁶ CD/C/6 p 32

⁴⁴⁷ CD/B/3 para 736

⁴⁴⁸ CD/B/3 paras 753-754

considering earlier proposals in this area said that there would have to be a very sound case for the existing settlement boundary to be breached. I consider that...such a case does exist with the present proposals, and that this case more than outweighs any harm that would be caused."⁴⁴⁹

201. A current assessment will need to be made of the visual impact of the appeal proposals. However, the need for a very sound case before breaching the existing settlement boundary to the west of Stratford-upon-Avon has now been confirmed on two occasions. Both Inspectors recognised that large scale proposals to the west of Shottery would cause landscape harm. It was only because of the "very substantial benefits" that were then perceived to arise from the SWRR that the appeal site was recommended by the LPR Inspector and subsequently adopted by the Council. However, those expected benefits and the weight to be attached to them have now evaporated.
202. An essential element of the Council's case is the scale of the development in this location. The 2005 Stratford Urban Edge Pilot Study⁴⁵⁰ evaluated the land around the settlement boundary. The County Landscape Description Units (LDUs) were subdivided into smaller Land Cover Parcels (LCPs) to assess their condition, visual sensitivity and suitability for new development. The LCPs that roughly equate to the appeal site are numbered 10, 12 and 15. The Summary Table in the Study simply does not support the scale of development that is now proposed in those areas. Specifically, component A (the northern parcel) of the appeal proposals is within LCP10, which was assessed as being suitable for small-large scale development (more than 50 dwellings) with mitigation planting. 605 houses are proposed here. Component B (the southern parcel) encompasses LCP12 and part of LCP15, which were assessed as suitable for no more than 54 dwellings in total. 195 houses are proposed in this area.
203. White Consultants were appointed by the Council in April 2011 to undertake a landscape sensitivity assessment for the main settlements within the District in order to determine the "most appropriate locations for development to be identified in the Local Development Framework"⁴⁵¹. It was completed in July 2011 and addressed both residential and commercial development. The assessments adopt an LCP/Zone approach similar to that used in the 2005 Pilot Study. Component A of the appeal proposals is located in LCP/Zone St25, which is considered to be of medium sensitivity to housing. Component B is located in LCP/Zone St21, considered to be of high/medium sensitivity. The proposed SWRR would pass through LCP/Zone St24, considered to be of high sensitivity. These zones would be significantly adversely affected by the proposal's expected landscape effects, which are unacceptable⁴⁵².
204. The sensitivity assessments were made using a clear and transparent methodology⁴⁵³. Moreover, the definition of sensitivity and its calibration are clearly explained⁴⁵⁴ and applied⁴⁵⁵. The appellants' landscape expert argues that

⁴⁴⁹ CD/B/3 para 781

⁴⁵⁰ CD/F/12

⁴⁵¹ CD/E/13 para 1.2

⁴⁵² INQ/LPA/3 section 5, para 5.15

⁴⁵³ CD/E/13 para 2.1 & Box 1

⁴⁵⁴ CD/E/13 paras 2.2-2.6

⁴⁵⁵ INQ/LPA/5 Appendix SWJ p 113 onwards

the work by White Consultants is “*fundamentally flawed*”⁴⁵⁶. His reasons do not bear scrutiny:

- a) He complained that no attempt was made to address the quantum of development, but that was not part of the brief.
- b) He complained that no account has been taken of potential mitigation measures. That is wrong, since the need for mitigation planting is specifically considered.
- c) He complained that the study is “*intrinsically negative*” and exaggerates the true sensitivity of the landscape. His own case on this is undermined by insisting that only designated quality landscapes such as national parks and Areas of Outstanding Natural Beauty would have high sensitivity. Furthermore, the Core Planning Principles of the Framework require that account is taken of the different roles and character of different areas and that recognition should be given to the intrinsic character and beauty of the countryside⁴⁵⁷. The appeal proposals lie within attractive countryside that provides an important setting for Anne Hathaway’s Cottage, Shottery and Stratford-upon-Avon.
- d) He tried to argue that “*the study was not subject to any public consultation process, which further undermines its value. In my experience it is essential to involve the community in any strategic, district wide landscape character assessment process*”⁴⁵⁸. The Assessment is part of the evidence base for the emerging Core Strategy upon which the wider community is being consulted. Prior consultation on a Landscape Assessment that is used to inform an emerging plan which is itself then subject to consultation is a novel concept.
- e) Criticism is made of the opinion of the Council’s landscape expert that the view of Stratford-upon-Avon from Bordon Hill is “*iconic*”⁴⁵⁹. Semantics will not determine the appeal, but the view of Southwell used by the appellants’ landscape expert to illustrate an iconic view⁴⁶⁰ is not a reasonable comparator to the expectations of visitors arriving at Stratford-upon-Avon.

205. The differing assessments made by the landscape experts as to the visual impact of the appeal proposals are clearly set out in the Comparative Visual Effects Schedule provided to the inquiry⁴⁶¹. The following should be noted⁴⁶²:

- a) The development in Component B would be visible through the SBT Plantation from the southern orchard associated with Anne Hathaway’s Cottage, thereby detracting from the rural nature of this view⁴⁶³. The sensitivity of visitors to the Cottage is clearly high. The removal of a

⁴⁵⁶ INQ/APP/3 para 5.35

⁴⁵⁷ CD/G/24 para 17

⁴⁵⁸ INQ/APP/3 para 5.35

⁴⁵⁹ INQ/APP/3 paras 4.28, 5.40

⁴⁶⁰ INQ/APP/3 para 4.28; INQ/APP/ 4&5 Appendix 2 Figure 14

⁴⁶¹ INQ/APP/20

⁴⁶² INQ/LPA/3 sections 6 & 7; INQ/LPA/5 Appendix SWP

⁴⁶³ INQ/LPA/5 Viewpoint SWiii

- significant part of the plantation to accommodate a roundabout and parking would reduce its qualities and effectiveness as a screen⁴⁶⁴.
- b) In the absence of advance planting, visitors arriving on the B439 Evesham Road would be immediately aware of the development in Component B when descending Bordon Hill, with a clutter of lighting and signage on the approach to the proposed roundabout⁴⁶⁵ and views to the raw edge of housing.
 - c) Component A would extend development to the prominent ridge whilst the SWRR would result in a visible 'notch'.
 - d) The SWRR would physically cut off Anne Hathaway's Cottage and grounds from the countryside and would be highly visible from footpaths to the west of the appeal site. The sensitivity of footpath users is high.
 - e) The extensive re-grading works and disruption of field boundaries would also be visible from the orchard⁴⁶⁶. Furthermore, some of the proposed green infrastructure intended to screen the SWRR from the orchard (retained hedgerow and woodland planting) is on SBT land and consequently undeliverable⁴⁶⁷. The LPR Inspector's confidence in the design to ensure no perceptible change in views from the grounds of the Cottage was misplaced⁴⁶⁸.
 - f) There are harmful departures from the Statement of Development Principles⁴⁶⁹.

206. The proposal does not comply with policies PR.1, DEV.1, SUA.1 and SUA.2 of the LPR⁴⁷⁰. The scale of the appeal proposals in this location and the construction of the SWRR would cause significant harm to the landscape character of the area and important views from locations that are of national importance. The material changes that have occurred since the LPR inquiry and the adoption of proposal SUA.W indicate that the adverse visual impact of the proposals is no longer acceptable in planning terms.

The Impact on Heritage Assets

207. The Framework emphasises the need to recognise that heritage assets are an irreplaceable resource and consequently any harm or loss should require clear and convincing justification⁴⁷¹. Whilst PPS5 has been replaced its associated Practice Guide⁴⁷² has not. The Framework requires identification and assessment of the particular significance of heritage assets and their setting that may be affected by the proposals⁴⁷³. Key definitions include those of *setting* and *significance*.

⁴⁶⁴ INQ/LPA/3 paras 7.11-7.13

⁴⁶⁵ INQ/LPA/5 Appendix SWQ

⁴⁶⁶ INQ/APP/5a Figure 37

⁴⁶⁷ CD/A/15b

⁴⁶⁸ INQ/LPA/3 para 7.9

⁴⁶⁹ INQ/LPA/3 paras 2.27, 7.2, 7.19

⁴⁷⁰ INQ/LPA/3 section 2; paras 7.31-7.37

⁴⁷¹ CD/G/24 section 12

⁴⁷² CD/G/4b

⁴⁷³ CD/G/24 para 129

"Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of the setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."

*"Significance (for heritage policy): The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting."*⁴⁷⁴

208. Shottery is rich in heritage assets, with one Grade 1, one Grade II* and twenty Grade II listed Buildings⁴⁷⁵. The centre of the village is a Conservation Area, and the grounds of Anne Hathaway's Cottage are a Grade 2 Registered Park and Garden. A material change since the LPR inquiry and the adoption of the LPR is that now both English Heritage and the SBT object to the proposals. English Heritage's expert representative has provided a comprehensive and transparent assessment of the impact of the proposed development on Anne Hathaway's Cottage, the Garden (including the orchard), the Conservation Area and their respective settings⁴⁷⁶. He has meticulously followed the step-by-step assessment process recommended in the English Heritage guidance on settings⁴⁷⁷, as follows.
209. Step 1: In identifying the heritage assets affected and their settings there is no issue that the most significant is the Grade I Listed Anne Hathaway's Cottage. English Heritage's expert describes it as *"unquestionably of international significance."*⁴⁷⁸ He also identifies the Garden and orchard as being highly significant⁴⁷⁹. He observes: *"as with the house it provides an area for reflection upon the genius of Shakespeare. Quiet contemplation is not always possible in the immediate garden due to the pressure of visitors, but in the orchard reflection is possible"*, whilst also noting that *"the tranquillity is currently disturbed to a small extent by distant road noise, depending on the direction of the wind."*⁴⁸⁰
210. Step 2: When assessing the settings and their contribution to the significance of the identified heritage assets, he places particular importance on the tranquillity of the garden setting to the Cottage⁴⁸¹. Furthermore, the significance of this tranquillity extends to the setting of the garden and orchard themselves. In particular, the connection to the landscape and views provides *"a considerable degree of tranquillity within the immediate garden and the wider area managed as the visitor attraction."*⁴⁸² He also notes *"a strong connection with the rural and agricultural qualities of the setting"* which is appreciated by the very large visitor population⁴⁸³. In the context of the Conservation Area, the significant

⁴⁷⁴ CD/G/24 p 56

⁴⁷⁵ CD/F/18; INQ/LPA/2 Appendix 3

⁴⁷⁶ INQ/LPA/1

⁴⁷⁷ CD/SDC/12

⁴⁷⁸ INQ/LPA/1 para 4.2.8.6

⁴⁷⁹ INQ/LPA/1 para 4.2.10.6

⁴⁸⁰ INQ/LPA/1 para 4.2.10.4

⁴⁸¹ INQ/LPA/1 para 4.3.2.3

⁴⁸² INQ/LPA/1 paras 4.3.4.4

⁴⁸³ INQ/LPA/1 paras 4.3.4.4, 4.3.4.5

elements of its setting also encompass the tranquillity of the area along with its visual relationship with Stratford-upon-Avon, particularly in views from Bordon Hill⁴⁸⁴. When making his assessment English Heritage's expert has properly commented on those matters that detract from the significance of the settings such as the noise of traffic. His assessment is consistent with that of the LPR inquiry Inspector, who shared the Council's view "*that the area around Anne Hathaway's Cottage can be described as being generally tranquil, quiet and peaceful although it is subject for much of the time to a noticeable amount of traffic noise.*"⁴⁸⁵

211. Step 3: English Heritage's expert has no doubt that the appeal proposals would have an adverse impact on the setting of the Cottage, Garden and Conservation Area to the detriment of visitors experiencing these heritage assets⁴⁸⁶. The proximity of the housing to the Cottage and Garden would disturb the tranquillity that is currently enjoyed by visitors. The housing would also affect the visual experience in terms of views into the Conservation Area from the west. The housing in Component B would also be visible from the orchard (certainly during the winter). Of greater impact would be the proposed SWRR. It would cut off the Cottage, garden, orchard and settlement of Shottery from part of its historic agricultural hinterland both physically and visually (in views from the west). Furthermore, the noise and light from the road would have a considerable impact on the tranquillity that is presently experienced in the garden and orchard, "*providing, effectively, an acoustic enclosure, where road noise will be noticeable irrespective of the wind direction.*"⁴⁸⁷ English Heritage's expert considers the impact on the settings of these assets to be serious albeit not substantial⁴⁸⁸.
212. Step 4: This step is consistent with paragraph 134 of the Framework which requires the harm to be weighed against the public benefits of the proposal. When assessing those elements of the appeal proposals that might maximise the enhancement of the visitor experience and those that would minimise the harm caused, English Heritage consider the situation to have materially changed since the LPR inquiry. The benefits that were then perceived to flow from the SWRR to the enhancement of the heritage assets were the new car and coach parks, the opportunity to remove traffic from Cottage Lane (described by the Inspector as being of "*especial value*" and by the SBT as a "*major benefit*"⁴⁸⁹) and the introduction of other limited traffic improvement measures within Shottery⁴⁹⁰. The SBT now objects to the appeal proposals and those benefits that were previously perceived to outweigh the harm can no longer be placed into the planning balance. There would be no car and coach park, there is no proposal to remove traffic from Cottage Lane and the suggested traffic calming measures are not guaranteed⁴⁹¹. Consequently, English Heritage concludes that the harm

⁴⁸⁴ INQ/LPA/1 paras 4.3.6.1-4.3.6.5

⁴⁸⁵ CD/B/3 para 749

⁴⁸⁶ INQ/LPA/1 section 4

⁴⁸⁷ INQ/LPA/1 para 6.4

⁴⁸⁸ INQ/LPA/1 paras 4.5.1 & 6.5; evidence in chief

⁴⁸⁹ CD/B/3 para 748

⁴⁹⁰ CD/B/3 para 765

⁴⁹¹ Cross-examination of Mr Jones

caused to the heritage assets is not outweighed by the claimed benefits or proposed mitigation of the appeal scheme⁴⁹².

213. Furthermore, the approach taken by English Heritage has been consistent since the LPR inquiry, as shown by the relevant correspondence⁴⁹³. This demonstrates that English Heritage's support for the scheme was subject to the proviso that it would bring "*major benefits to Shottery conservation area and the immediate vicinity of Anne Hathaway's Cottage by removing tourist and through traffic provided it was clearly linked to road closure of Cottage Lane*" and "*very much contingent on the relief road forming part of a wider package of traffic management and road closures for Shottery*"⁴⁹⁴. This position was confirmed in subsequent correspondence at that time⁴⁹⁵. When responding to the appeal application English Heritage noted the absence of these benefits. Its response was consequently that "*the scheme has not yet been justified in terms of bringing substantial benefits to Shottery, or to Anne Hathaway's Cottage, and their settings*"⁴⁹⁶. Its view has not changed.
214. The heritage experts agree that the setting of a heritage asset includes the manner in which it is experienced⁴⁹⁷. This requires an assessment of the tranquillity of that experience in the context of the Cottage, garden and orchard. Whatever that may be, the SWRR would introduce a new source of noise into that environment⁴⁹⁸. The impact and perception of that noise will depend upon a number of factors. These include matters such as wind direction and intensity of traffic but also the expectation of the receptors - in this case visitors to a heritage asset of international significance. The WHO guidance on noise⁴⁹⁹ is not necessarily appropriate for a location of notable tranquillity. As the appellants' noise expert fairly agreed, if visitors expect tranquillity then they will be disappointed with noise intrusion irrespective of whether they are able to compare it to previous noise levels⁵⁰⁰. Furthermore, he accepted that visitors would be able to perceive the location of the new source, namely the SWRR to the west⁵⁰¹. This tends to confirm that visitors to the garden and orchard would perceive the "*acoustic enclosure*" that English Heritage expects to adversely affect the tranquillity of their experience. The predictions in the increase in noise levels from points that surround the Cottage, garden and orchard⁵⁰² lend weight to this concern. It is also important to note that the predictions⁵⁰³ take into account the proposed mitigation in the form of landscaping alongside the SWRR⁵⁰⁴. However, some of this landscaping is proposed on SBT land and therefore its delivery cannot be guaranteed.

⁴⁹² INQ/LPA/1 paras 4.5.1-4.5.5; 6.6

⁴⁹³ INQ/LPA/2 Appendix 2

⁴⁹⁴ INQ/LPA/2 Appendix 2 letter dated 7 August 2003

⁴⁹⁵ INQ/LPA/2 Appendix 2 letter dated 10 November 2003

⁴⁹⁶ INQ/LPA/2 Appendix 2 letter dated 18 December 2009

⁴⁹⁷ INQ/APP/6 para 4.28; cross-examination of Dr Miele

⁴⁹⁸ Cross-examination of Mr Zarebski

⁴⁹⁹ CD/B/3 para 749; INQ/APP/8 para 5.1.11

⁵⁰⁰ Cross-examination of Mr Zarebski

⁵⁰¹ Cross-examination of Mr Zarebski

⁵⁰² INQ/APP/9 p 64-66 Schedule 09/2250/SCH/B, ref points AP18-AP34 (of which increased noise levels above 1dB are considered minor, above 3dB are considered moderate and above 5dB are considered major according to p 17 Table 14.1)

⁵⁰³ INQ/APP/9 p 22 Table 14.3

⁵⁰⁴ INQ/APP/9 p 22 para 14.6.12

215. The assessment that accompanied the application⁵⁰⁵ wholly failed to include any description of the settings to which it related⁵⁰⁶. Its conclusions that there would be no significant impacts were therefore not surprising⁵⁰⁷. Specifically, English Heritage's expert takes issue with the contention that the settings of the Cottage, garden and orchard do not extend to the relief road. The description provided in the Historic Parks and Gardens Register specifically refers to the western boundary and its connection to the agricultural land which rises gently to the south west towards Bordon Wood and the "*significant views west across the adjacent farmland from the orchard...*"⁵⁰⁸. The SWRR would fall within those views, and be clearly visible in views from the west.
216. The appellants' heritage expert agreed that most visitors to Anne Hathaway's Cottage are not concerned with the historical accuracy of the assets or their links to Shakespeare but their known association⁵⁰⁹. His evidence provides some interesting popular images and descriptions of the experience to be expected by visitors to the Cottage, Garden and Shottery, including references to "*an oasis of calm*"⁵¹⁰; "*...the tranquillity of ...the Cottage Garden*"⁵¹¹; "*views across fields...escape into a peaceful oasis*"⁵¹²; and "*...perhaps the most intimate place that remains in Shakespeare's world, unspoiled and full of the things he saw...*"⁵¹³. The susceptibility of heritage assets to harm from change relates to their sensitivity rather than just their designation status. There can be doubt that Anne Hathaway's Cottage, its garden and orchard are particularly sensitive to adverse impacts arising from the proposed development and particular care must therefore be taken. The planning balance weighs heavily against the proposals. The impact on the heritage assets was previously justified by the benefits that were expected to accrue. That is no longer the case as confirmed by the objections from both English Heritage and the SBT.

The Effect on Tourism within the District

217. The Framework provides that sustainable economic development is one of the core land-use planning principles that underpin both plan-making and decision-taking⁵¹⁴. The Government is committed to securing sustainable economic growth and advises that this policy should be given significant weight⁵¹⁵. The theme of sustainable economic development is also an essential element of the Government's Tourism Policy (2011)⁵¹⁶ and the Council's Corporate Strategy⁵¹⁷, and is carried forward in the Council's draft Core Strategy⁵¹⁸.

⁵⁰⁵ CD/A/3 Chapter 9; CD/A/3a

⁵⁰⁶ CD/A/3 Table 9.6 (p 97)

⁵⁰⁷ INQ/LPA/1 Section 5

⁵⁰⁸ INQ/LPA/2 Appendix 3

⁵⁰⁹ Cross-examination of Dr Miele

⁵¹⁰ INQ/APP/7 Appendix 4.3

⁵¹¹ INQ/APP/7 Appendix 4.4

⁵¹² INQ/APP/7 Appendix 4.5

⁵¹³ INQ/APP/7 Appendix 4.10

⁵¹⁴ CD/G/24 para 17

⁵¹⁵ CD/G/24 paras 18 & 19

⁵¹⁶ CD/SDC/17

⁵¹⁷ CD/SDC/5; CD/SDC/16

⁵¹⁸ CD/E/18

218. The Council's tourism expert, with considerable experience, highlighted the vital part that tourism plays as a key economic driver in the District⁵¹⁹. The Shakespeare connection with Stratford-on-Avon was estimated to produce some 4.9m trips to Stratford in 2009, generating a business turnover related to tourism of over £421m and some 8,000 jobs⁵²⁰. Despite the downturn in the economy generally, the visitor numbers to the Shakespeare houses (including Anne Hathaway's Cottage) have risen consistently since 2007⁵²¹. Significantly, almost two thirds of overseas visitors and one third of staying visitors have cited the Shakespeare houses as the main attraction for their visit⁵²². Stratford-upon-Avon's unique collection of cultural and heritage assets associated with Shakespeare has enabled it to sustain a thriving economy that belies its relatively small size, as the cultural facilities, retail diversity and size of outlets demonstrate⁵²³. Furthermore, it is an essential component of the UK's international cultural appeal to overseas visitors as one of the 'Attract Brands' identified by Visit England⁵²⁴, and plays a key role in maintaining the existing UK tourism market as well as securing future growth in emerging markets⁵²⁵.
219. Consequently, this core economic resource should be treated with utmost care and a precautionary approach taken to ensure that there is no harm to it⁵²⁶. The intangible nature of the tourism attraction and the perishable nature of the product mean that proposals with the potential to have an adverse impact should be comprehensively consulted upon. This is best done through the development plan process⁵²⁷. Modern communication methods such as internet reviews can result in negative perceptions being spread very quickly⁵²⁸.
220. The potential risk to this key economic driver from the proposals should be contrasted with the potential economic benefits as described by the appellants. A report from Nathaniel Lichfield & Partners⁵²⁹ predicts, among other things, 95 full time jobs and £2.7m expenditure from the new residents (the New Home Bonus and Council Tax would accrue to all development in the District). The report concludes that the development would consequently benefit the local economy. If, as the Council's experts predict, the appeal proposal would adversely impact on the visitor experience, then the potential harm to the District's principal economic driver would be irrecoverable and permanent. As such, this would be the opposite of sustainable economic development.

Highways Impact

221. It is no longer part of the Council's case that the appeal proposals would have an unacceptable impact on highway and pedestrian safety⁵³⁰. However, for the reasons already explained, the adverse visual and aural impacts of the SWRR are no longer outweighed by the benefits that were previously anticipated.

⁵¹⁹ INQ/LPA/6

⁵²⁰ INQ/LPA/6 para 4.4

⁵²¹ INQ/LPA/6 Appendix B

⁵²² INQ/LPA/6 para 5.7

⁵²³ INQ/LPA/6 para 5.1-5; evidence in chief of Mr Holmes

⁵²⁴ INQ/LPA/6 Appendix D

⁵²⁵ INQ/LPA/6 para 5.8

⁵²⁶ Evidence in chief of Mr Holmes

⁵²⁷ INQ/LPA/6 section 6

⁵²⁸ Evidence in chief of Mr Holmes

⁵²⁹ INQ/APP/2 Appendix 9

⁵³⁰ INQ/LPA/13

Impact on Residential Amenity

222. The living conditions of existing residents would be adversely affected by the proposal⁵³¹. Residents in Evesham Road would be subjected to major noise impacts i.e. an increase of more than 5dB in noise levels⁵³². The impact would be exacerbated by the new roundabout, meaning that the pattern of noise generation would be constantly changing. These impacts cannot be dismissed lightly. There are appeal decisions which demonstrate situations where noise and disturbance generated by development traffic was considered to have an unacceptable impact on existing residents⁵³³. Small scale developments in those locations (with significant noise barriers) have subsequently been permitted⁵³⁴. However, they are very different in scale to the appeal proposal.
223. Although the appellants have agreed to purchase no. 2 Bordon Hill they do not own nos. 10 and 12⁵³⁵. The appellants' evidence indicates that a significant number of existing residences (7) in the vicinity would be subjected to major adverse noise impacts from the SWRR (especially in their gardens)⁵³⁶. The revised role of the SWRR means these adverse impacts should now weigh more heavily against the appeal proposals.

Sustainability

224. The appeal site is in a reasonably accessible location for the purposes of services, employment, public transport, cycleways and public footpaths. This is simply because it is located on the edge of the urban area. However, for the reasons given above the appeal proposals do not represent sustainable development in environmental and economic terms when assessed against the core planning principles of the Framework⁵³⁷.

Mitigation

225. There are concerns about the planning obligations⁵³⁸. In particular, SBT is not a party to the section 106, as set out below. Whilst the delivery of the SWRR could be addressed through the proposed Grampian condition, there is no such mechanism to ensure the delivery of the landscaping mitigation that is proposed on SBT land⁵³⁹. The importance of this mitigation is not only visual but was also assumed in the appellants' noise assessments⁵⁴⁰.

Conclusion

226. There is no justification for the appeal proposals. There is no under provision of housing land in the District. Even if there was, this site would not make a contribution because the SBT objects to the development. The SWRR would not now deliver the benefits that justified the identification of the appeal site as a strategic reserve in the LPR. The impacts on the environment and the internationally significant assets are unacceptable. Those impacts have the

⁵³¹ INQ/LPA/8 section 8

⁵³² INQ/APP/8 para 6.2.8

⁵³³ INQ/LPA/10 Appendix 8

⁵³⁴ INQ/APP/8b

⁵³⁵ INQ/APP/31; CD/A/4a

⁵³⁶ INQ/APP/9 Appendix APP/9/A p 27 Table 14.4

⁵³⁷ INQ/LPA/9a

⁵³⁸ INQ/LPA/22; INQ/LPA/24

⁵³⁹ CD/A/15b

⁵⁴⁰ INQ/APP/9 Appendix APP/9A para 14.6.12

potential to inflict permanent damage on the tourist experience. Consequently the proposals do not represent sustainable development in environmental and economic terms. These negative impacts demand that a precautionary approach is taken. The new planning environment requires a fresh approach to development on the appeal site. The Council is responding to the new Localism agenda but to allow the appeal proposal now would be premature and completely undermine the emerging DPD process. For these reasons the appeal should be dismissed.

THE CASE FOR RESIDENTS AGAINST SHOTTERY EXPANSION

227. The main points are:

Introduction

228. Residents Against Shottery Expansion is an informal residents' group. Its activities are co-ordinated by a steering group, and in addition there are around 40 participants who assist with communications. It has a database of 150 supporters' details. Of the 1,000 plus objections made to the planning application on submission, 453 were made in a format supplied by RASE but completed and sent independently, and another 275 objections to further consultation material were made in the same way⁵⁴¹.

The Development Plan

229. There is no significant extant local development plan policy support for the proposal. There are four reasons for this.

230. Firstly, policy STR.2A of the Local Plan Review 2006 (LPR) did not allocate the site, instead it was identified as a Strategic Reserve Site in case there was a shortfall in housing supply until the end of 2011. The appellants' planning expert was unable to dispute the reluctance of the Council in placing the site in strategic reserve⁵⁴², as is evident in the history behind the inclusion of the proposal in the LPR⁵⁴³. His suggestion that distinguishing between 'identification' and 'allocation' is a "*distinction with no difference*" is clearly wrong. A site is 'allocated' if it is considered necessary and 'identified' if it is considered 'potentially' necessary, which is an important distinction. The supporting justification for policy STR.2A generally confirms that, whilst the LPR Inspector supported the "*allocation*" of the site in the Plan, the Council merely "*identified*" it as having a "*potential role*" in meeting housing needs post 2011⁵⁴⁴.

231. There was no housing shortfall during the Plan period. Housing targets were delivered well ahead of schedule, leading to a moratorium so that the site was not 'needed'. In relation to the Strategic Reserve Site policy also being to identify sites which have a "*potential role*" in meeting housing needs post 2011, that should be read in the context of the policy assumption that the Core Strategy process would review this need and the need for any Strategic Reserve Site to form part of the solution to meeting this need⁵⁴⁵. In this respect, the Third Draft Core Strategy⁵⁴⁶ is clearly not envisaging that this site comes forward

⁵⁴¹ INQ/RASE/1 section 1

⁵⁴² Cross-examination of Mr Jones

⁵⁴³ INQ/RASE/1 para 1.7-1.8, INQ/RASE/3 Appendix 16

⁵⁴⁴ CD/B/1 para 2.4.12

⁵⁴⁵ CD/B/1 para 2.4.16

⁵⁴⁶ CD/E/18

in the form proposed given the 560 unit cap it sets out for Stratford-upon-Avon. The Core Strategy process is thus on track to decide that the site is not actually needed, a process envisaged by policy STR.2A. No extant policy support can thus be claimed for the proposal on a careful analysis of policy STR.2A, as the reality is that the policy supports the Core Strategy process as being determinative of whether or not the site is needed post 2011.

232. The second reason is that the LPR is, in practice, significantly out of date. It is not a Development Plan Document pursuant to the 2004 Planning and Compulsory Purchase Act and contains policies that were clearly adopted with the intent of expiry at the end of the 2011 plan period. It is recognised that the Framework states that local plans "*should not be considered out-of-date simply because they were adopted prior to the publication of this Framework*"⁵⁴⁷. However, it is also clear that only "*due weight*" rather than "*full weight*" should be given to relevant policies in existing plans which are not post 2004 Act DPDs, and that such "*due weight*" should be "*according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)*"⁵⁴⁸. The extent of incompatibility of the development proposals with a significant number of Framework policies is such that the "*due weight*" to be given to the LPR should be limited⁵⁴⁹. The appellants have set out the extent of compatibility with other Framework policies⁵⁵⁰. However, the incompatibility outweighs the compatibility, and the adverse impacts of the development proposals would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole in accordance with its provisions⁵⁵¹.
233. Thirdly, there have been clear material changes of circumstance since the LPR inquiry such that the development proposals do not meet the strategic reserve policy in any event. These include:
- a) that the so-called "Stratford Western Relief Road" (which is a complete misnomer) would not provide the benefits previously claimed;
 - b) there are no proposals for a rear coach park to Anne Hathaway's Cottage;
 - c) there are no proposals for the closure of Cottage Lane.
234. All of these were considered by the LPR Inspector to be a fundamental pre-requisite to any potential development. However:
- a) the LPR Inspector's report highlighted that the Stratford Western Relief Road (SWRR) was supposed to be part of a package of town centre transport improvements which are not now being proposed⁵⁵²;
 - b) The LPR Inspector was clearly envisaging closure of Cottage Lane as part of the development proposals. The "*associated traffic calming measures in the Shottery area*" in his recommendation for proposal

⁵⁴⁷ CD/G/24 para 211

⁵⁴⁸ CD/G/24 para 215

⁵⁴⁹ INQ/RASE/7

⁵⁵⁰ INQ/APP/1b

⁵⁵¹ CD/G/24 para 14

⁵⁵² CD/B/3 para 762

SUA.W must be read as including closure of Cottage Lane⁵⁵³, not just traffic calming of Cottage Lane which the appellants now assume will happen (though with no certainty that it would). This is consistent with the fact that the 2003 Scheme Assessment Study⁵⁵⁴ did not include any assessment of the impact of the development on Cottage Lane in traffic terms as it was assumed to be closed;

- c) The Local Plan Inspector was clear that if these "*benefits*" were not being provided, alongside a road that provided genuine relief to Stratford-upon-Avon, the site was no better than any other housing site being promoted, as follows:
- "*The inherent nature of the Shottery package of proposals would lead to considerable improvements to the Conservation Area and in particular to the setting of Anne Hathaway's Cottage, a Listed Building of international importance.*"⁵⁵⁵
 - "*The new car and coach parks would have vehicular access from a roundabout on the SWRR. This would mean that vehicles for visitors to the Cottage would no longer have to use Cottage Lane, which would in turn provide an opportunity to remove all vehicular traffic other than emergency or service vehicles. This would very greatly enhance the character of the Conservation Area and setting of the Cottage as the noise and visual intrusion of vehicles on Cottage Lane is considerable, and the width and featureless environment of the road causes serious harm to the character of the area. I regard the opportunity for such enhancement as being of especial value, far outweighing any temporary harm caused during the execution of works and the maturing of new planting.*"⁵⁵⁶
 - "*... That would ensure that the most beneficial elements of the package – the SWRR and the associated improvements to the settings of Anne Hathaway's Cottage and the Shottery Conservation Area - would be implemented. Without them, it might be that neither of the two constituent housing areas would be regarded as being superior to other potential development sites, although, of the two, that to the south would be likely to be the less harmful.*"⁵⁵⁷

The potential for traffic calming (rather than road closures) in Shottery via a TRO process cannot be regarded as a substitute for "*removing all vehicular traffic other than emergency or service vehicles*" which underpinned the Inspector's judgment. In any event, what benefit the measures would have is questionable, and traffic calming may well be opposed⁵⁵⁸. Any TRO process would

⁵⁵³ CD/B/3 paras 748, 765,781 & 784

⁵⁵⁴ CD/D/1

⁵⁵⁵ CD/B/3 para 659

⁵⁵⁶ CD/B/3 para 748

⁵⁵⁷ CD/B/3 para 778

⁵⁵⁸ INQ/RASE/1 paras 2.1.5-2.1.6, 3.7.2

need to undergo thorough public consultation, so cannot be assumed. No material weight can be given to this postulation.

- d) the County Council in July 2008 was opposed to closure of Cottage Lane⁵⁵⁹, and the response of the Conservation Officer of the District Council to the planning application also suggests opposition to it⁵⁶⁰.
- e) the LPR is clear⁵⁶¹ that traffic calming measures (which inherently would need the closure of Cottage Lane as envisaged by the LPR Inspector) were needed to "ensure" the effectiveness of the new link road and such closure is not now being proposed;
- f) the appellants could have, but did not, progress a traffic calming proposal as part of the planning application or in parallel with the planning application proposal⁵⁶². This is because the appellants did not consider traffic calming was technically necessary as evidenced in the original 2009 Transport Assessment⁵⁶³. Traffic calming is belatedly being supported by the appellants on the basis of seeking to comply with policy SUA.W. However, the uncertainty as to the nature and extent of any traffic calming, that it would need to include closure of Cottage Lane to accord with what was envisaged by the LPR Inspector but does not, and the uncertainty on whether any traffic calming would be approved, means that policy compliance cannot credibly be established.

235. Fourthly, the previous Local Plan Inspector (Mr Golder) in his 1997 inquiry into the Stratford District Local Plan⁵⁶⁴ expressed particular concerns about the benefits of the so-called "Western Relief Road" and the harm to the landscape setting which would occur, which it turns out were right. The Inspector said:

He was "not persuaded that ... the traffic benefits which might arise from the WRR, both in terms of timescale and overall effect, are sufficient to justify the considerable detriment to the town of the construction of the SWSS along a greater part of the western periphery".⁵⁶⁵

"I am not convinced that in practice the WRR is required to achieve a satisfactory level of relief in the town or that the level of benefits with the WRR, would be such as to lead to substantially better highway conditions. Furthermore, I see no sound reason why traffic management measures could not help to alleviate some of the difficulties in Shottery village".⁵⁶⁶

"Taken overall I consider that the western periphery of the town has many important features. The landscape is of a quality which rightly suggests its inclusion within the SLA. In principle, this quality should be protected for its own sake. The gently undulating and rising landform provides an attractive landscape for the town and very satisfactorily contains the urban area, especially where the town edge is weakest. To the south, the town edge is

⁵⁵⁹ INQ/RASE/11 p 3

⁵⁶⁰ CD/A/20 p 58

⁵⁶¹ CD/B/1 para 7.15.47

⁵⁶² Cross-examination of Mr Jones

⁵⁶³ CD/A/10

⁵⁶⁴ CD/RASE/17

⁵⁶⁵ CD/RASE/17 para 9.43.28

⁵⁶⁶ CD/RASE/17 para 9.43.27

*strong and attractive, and in the vicinity of Shottery the openness of the countryside is taken into the urban area through the spaciousness and loose-knit form of the village. All in all I believe these features add up to a periphery of the town which performs very well in terms of the relationship between town and country, and one which has a quality which should be safeguarded".*⁵⁶⁷

These remain key reasons why the development proposals should be refused⁵⁶⁸. The appellants' landscape expert agreed that there have been no significant landscape alterations to the site since the 1997 District Local Plan inquiry⁵⁶⁹. The views of Local Plan Inspectors on landscape matters can be influenced by the context in which they are being asked to consider the proposals⁵⁷⁰.

Housing Provision in the District

236. The adequacy of the provision target for dwellings in the District against which to calculate a 5 year housing supply is clearly a matter for the Local Plan examination process. The Third Draft Core Strategy sets out a housing provision of 8,000 new homes⁵⁷¹. This is compatible with Option 3 set out in the GL Hearn report⁵⁷². It is also compatible with the RSS Panel's report which set a dwelling provision of 7,500 new homes for the Stratford-on-Avon District Core Strategy and recommended that the Core Strategy review process "*consider the options available*" to the extent further provision is needed⁵⁷³. The appellants' planning expert was unable to dispute that the Local Plan review process is able to deal with any necessary increase (if any) in the housing provision over 7,500 or 8,000 new homes as recommended by the RSS Panel report⁵⁷⁴.

237. The appellants have not produced any of their own evidence as to the housing provision needed for the District, rather relying on other options set out in the GL Hearn⁵⁷⁵ report and the Chelmer projections provided by the appellant in an appeal relating to a proposal at Kipling Road⁵⁷⁶. The reality is that the extent of differences in terms of assessments as to the housing provision needed for the District largely rests on the extent of in-migration into the District. The unchallenged evidence of RASE⁵⁷⁷ is that:

- a) The Chelmer projections in the Kipling Road inquiry vary considerably depending on the amount of in-migration and out-migration assumed, for example one scenario showed a net in-migration of 500 per annum (p.a.) in 2010 and subsequent years, leading only to a need for 7,587 dwellings from 2008 to 2028⁵⁷⁸. That level of net in-migration is realistic for a prolonged 'coming out recession' period, as is evidenced by the average net in-migration

⁵⁶⁷ CD/RASE/17 para 9.43.24

⁵⁶⁸ INQ/LPA/3

⁵⁶⁹ Cross-examination of Mr Rech

⁵⁷⁰ Evidence in chief of Mr Brown and Mr White

⁵⁷¹ CD/E/18

⁵⁷² CD/E/12

⁵⁷³ CD/E/2

⁵⁷⁴ Cross-examination of Mr Jones

⁵⁷⁵ CD/E/12

⁵⁷⁶ CD/F/13

⁵⁷⁷ INQ/RASE/1

⁵⁷⁸ INQ/RASE/3 Appendix 1

between 1994-99 when coming out of the last recession where in-migration averaged 520 p.a.⁵⁷⁹. It is clear that the UK economy is in a 'double dip' recession and recovery will be significantly slower than with previous recoveries from recession. A level of net in-migration of 500 p.a. is not unrealistic, particularly when it is evident that net in-migration decreases in economically difficult times⁵⁸⁰. These matters are best examined as part of the forthcoming Core Strategy process.

- b) The Chelmer projections were also based on 2008 household data (reported in 2010) and thus do not take into account the prolonged recession since. This, as above, is likely to have led to a reduction in net inward-migration, which may well be below the average assumed and potentially lower than the net in-migration scenario of 500 p.a. as evidenced by the 2008-09 period when only 200 p.a of net in-migration was experienced.
- c) In any event, the Chelmer projections are purely trend based and do not take into account the future implications of local policy. One of the specific aims of the Council's Cabinet decision on 5 September 2011 to adopt a housing target of 8,000 for 2008 to 2028 is to reduce net inward-migration⁵⁸¹.
- d) The Inspector in the Kipling Road decision⁵⁸² did not say that the projection of 12,000 new dwellings was reliable and robust, rather that the Chelmer projections methodology was reliable and robust. This is an important distinction as the reliability and robustness of the Chelmer projection itself depends on the assumptions input into it, as illustrated above. Given that the Council did not seek to deal at all with the appellant's evidence at the Kipling Road inquiry, the Inspector's decision in that case was not founded on properly tested evidence. These matters will need to be properly examined as part of the Local Plan process.

238. In relation to the wider conclusions of the GL Hearn report, it can be observed that:

- a) there was a lack of critical infrastructure constraint information provided to GL Hearn⁵⁸³;
- b) there was acknowledgement of further assessment being needed in relation to the deliverability of the scale of development contemplated⁵⁸⁴;
- c) there was acknowledgement that a reduction of in-migration in a policy driven scenario would lead to a much reduced housing requirement, e.g. 8,200 dwellings being needed from 2008 to 2028 as shown in Option 3, which could be justified as part of a sub-

⁵⁷⁹ CD/E/12 Figure 4.9 p 39

⁵⁸⁰ CD/E/12 significant reductions in 2007-8 and 2008-9 in Figure 4.9 p 39

⁵⁸¹ CD/E/16b

⁵⁸² CD/F/13

⁵⁸³ CD/E/12 para 8.19 p 82

⁵⁸⁴ CD/E/12 e.g. para 9.7 p 84

regional strategy to support regeneration of the Metropolitan areas⁵⁸⁵ (and would also respond to the infrastructure constraints, which are acute in Stratford-upon-Avon);

- d) the "*displaced demand*" which the report cites as a concern is likely to be depressed by the ongoing difficult economic climate. The appellants have produced no evidence as to the effect that the recession and the anticipated slow rate of recovery will have on demand. However, it is reasonable to assume that demand will be depressed due to the lack of availability of mortgage finance and tough economic conditions. Where demand exists, householders will be looking for areas of lower house prices than in Stratford-on-Avon District (and particularly in Stratford-upon-Avon itself). The appellants also presented no evidence that adjoining authorities in Warwick District, Coventry, Redditch and Worcestershire do not all benefit from lower and more affordable house prices than in Stratford-upon-Avon. It is reasonable to conclude that such areas would be well placed to help accommodate any unexpected demand if 8,000 dwellings proved an under-provision in Stratford-on-Avon District. All authorities are able to review housing provision requirements during their Local Plan reviews, as envisaged by the RSS Panel, so any need to cater for any 'displacement effect' would only be short term;
- e) the assumption that ageing population means less economic activity is overly simplistic, ignoring the extensions to retirement age and the job creation generated by ageing population.

239. There is not sufficient evidence at this time to increase the target from the RSS Panel recommendation of 7,500 new homes for the District. These issues, amongst others, including the variety of alternative sites for housing allocations in the District⁵⁸⁶, will be examined on a District-wide basis as part of the Local Plan process. They should not be pre-determined by any premature grant of planning permission for the appeal scheme.

Adequacy of 5 year housing supply

240. It is clear that, now the District's housing moratorium⁵⁸⁷ has been lifted, the housing supply for the District is being rapidly replenished.
241. On the basis of a 7,500 target (the RSS Panel recommendation) or an 8,000 target (the draft Core Strategy recommendation), the Council's evidence is that there is a 5 year housing supply (plus 5% to be brought forward from later in the plan-period) as required by the Framework⁵⁸⁸. RASE supports this evidence.
242. A windfall allowance should be included in the 5 year housing supply assessment in line with the Framework⁵⁸⁹. There is clearly "*compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply*". The Council's assessment has

⁵⁸⁵ CD/E/12 e.g. para 9.14 p 85

⁵⁸⁶ INQ/RASE/1 sections 1.28-1.30

⁵⁸⁷ CD/C/3

⁵⁸⁸ INQ/LPA/17

⁵⁸⁹ CD/G/24 para 48

complied with the Framework's advice. The appellants' planning expert could point to no reason why expected future trends would be likely to differ from previous windfall delivery rates⁵⁹⁰, and the Council has had regard to the SHLAA⁵⁹¹.

243. There has clearly been no "*record of persistent under delivery of housing*" in Stratford-on-Avon District⁵⁹². The appellants' planning expert's attempt to claim that the lower delivery of housing during the moratorium period amounted to such a record is without foundation. The moratorium was put in place due to the over-provision of housing and there was bound to be lower housing delivery during that period. Since the moratorium has been lifted, there has been a strong flow of housing sites coming forward. The SHLAA reservoir of sites is also extensive and is being reviewed again. There can be no credible suggestion that there is likely to be a shortage of deliverable development sites within the District coming forward within the next five years without the appeal site. On the contrary, sites are coming forward very rapidly and the Council has a very strong track record in helping deliver new homes. This is not a "*persistent under delivery of housing*" case.

244. In terms of the further 'discounts' which the appellants sought to apply to the Council's figures by excluding certain sites⁵⁹³, the following points are made:

- a) The Council has provided strong evidence that the Tiddington Road and Maudslay Park developments consist of individual units with their own entrances and that a finely balanced technical 'use class' C2/C3 distinction⁵⁹⁴ does not alter the position that these units provide 'dwellings' for residents in terms of the housing supply. Case law reinforces the position that a C2 use satisfies a residential use local plan policy classification⁵⁹⁵.
- b) Although there has been a decline in the flatted market since 2007, the promoters of the Cattle Market site on Alcester Road, which has planning permission, are continuing to actively discuss with the Council how the site can best be brought forward in terms of housing mix⁵⁹⁶. The site has clearly not been 'abandoned', and in reality is likely to receive an amended planning permission shortly and deliver within the 5 year period. There is no credible evidence presented to the contrary by the appellants.
- c) If the Chestnut Street development is to be excluded on the basis of being a flatted scheme, similarly 25% of the affordable housing units in the appeal scheme ought to be discounted on the basis that the section 106 obligation⁵⁹⁷ indicates that they would be flats. It is simply not credible to say that there is not a market for 7 flats in Stratford-upon-Avon in the next 5 years.

⁵⁹⁰ Cross-examination of Mr Jones

⁵⁹¹ CD/F/1b

⁵⁹² CD/G/24 para 47

⁵⁹³ INQ/APP/36

⁵⁹⁴ INQ/APP/30; INQ/LPA/21

⁵⁹⁵ INQ/RASE/16

⁵⁹⁶ INQ/APP/51

⁵⁹⁷ INQ/APP/53

Contribution of the appeal development to the housing supply

245. The appellants' claim that the appeal site would deliver 400 homes within the first 5 years⁵⁹⁸ is not agreed. No evidence has been presented as to how these are realistic delivery rates in terms of construction programme and market absorption of sales. No breakdown of how many homes would be built in the northern parcel and the southern parcel has been provided.
246. Neither Bloor Homes nor Hallam Land currently has the financial standing to develop the scheme. Bloor Homes Limited made a £2.1million loss in 2010 on a turnover of £54.916million, and £876,000 loss in 2011 on a turnover of £301.372million⁵⁹⁹. Bloor Homes Limited is the housing division of the Bloor Homes group and the appellant is just a shelf company with no significant assets. Hallam Land Management Limited made a loss of £2.636 million in 2009 on a turnover of £10.181 million and a profit of only £88,066 on a turnover of £33.893 million in 2010⁶⁰⁰. The depreciation in land values and poor trading conditions have clearly eroded both appellants' ability to deliver schemes or sell on schemes profitably. No viability evidence has been presented to the contrary by the appellants. The appellants' response to these points⁶⁰¹ does not provide any indication of the rate of delivery of schemes. It illustrates that no scheme has delivered 400 new homes in a single location in a 5 year period and fails to provide any information where that has been achieved.
247. Hallam Land is not a house-builder itself and needs to sell its land-holding to a variety of house-builders (at least 3 according to the 'multiple starts' approach proposed by the appellants) which would take a significant amount of time. The oral evidence of the appellants' planning expert⁶⁰² was that between Bloor Homes and Hallam Land only one sub-housebuilder has agreed a sale or development agreement with them to date. A variety of RSL Partners would need to be sourced and there remains considerable uncertainty over housing grant at present. Neither appellant would be likely to progress the discharge of over 30 pre-commencement Grampian conditions⁶⁰³ without having secured sub-developers and RSL Partners first, since the financial outlay would be at risk and also potentially incompatible with the designs preferred by the sub-developers and the RSL Partners.
248. The SBT land, which is needed for the scheme, is not under the appellants' control, and the SBT objects to the scheme⁶⁰⁴. The SBT makes it clear that this is not an objection on 'development control' matters:

"As you know, the Trust is objecting to the Scheme and has made no deals with anyone. In our statement we clearly affirm that, despite all the mitigation, the Trust believes that this Scheme will have a harmful impact on the setting of the Cottage and that was confirmed by English Heritage at the Inquiry. It is not up to the Trust to decide where housing should be built in

⁵⁹⁸ INQ/APP/1 para 4.19

⁵⁹⁹ INQ/RASE/5

⁶⁰⁰ INQ/RASE/6

⁶⁰¹ INQ/APP/40

⁶⁰² Evidence in chief of Mr Jones

⁶⁰³ INQ/LPA/23

⁶⁰⁴ INSP/1 statement of 15 March 2012, INQ/APP/15, INQ/APP/16, INQ/RASE/17

Stratford District. However, we are doing our utmost to defend the interests of the Cottage at all times." ⁶⁰⁵

The SBT clearly considers that the development would adversely impact on the setting of Anne Hathaway's Cottage. Given the Trustees' duties to preserve the SBT's historic houses and gardens, there can be no reasonable degree of confidence that the SBT would sell its land to the promoters and thus no reasonable degree of confidence in any delivery, let alone early delivery, of the development. The SBT is not in practice susceptible to compulsory purchase as no 'compelling case' in the public interest could credibly be established given the protective purposes for which the Trustees originally purchased the land and the availability of alternative sites.

249. The appellants seek to rely on a planning condition⁶⁰⁶ requiring a highways agreement to be signed with the County Council, together with (it is assumed but not confirmed) a financial bond, for delivery of the road prior to commencement as comfort that the road would be developed. However, as drafted there is no requirement in the condition that the SBT would need to be a party to the highways agreement as landowner. There is clearly a risk that, in the absence of a Grampian condition requiring the SBT's land to be bound into the section 106 agreement (which is not proposed), then the development could be commenced but the road never fully constructed. This amounts to an unlawful approach to EIA mitigation in that there is not a sufficient degree of confidence that mitigation would be secured.

250. In any event, the lack of SBT's agreement to sell its land is an impediment to delivery of the proposal which militates against it in terms of deliverability by comparison with alternatives to be considered in the Local Plan process. The appellants also notably do not have any agreement with SBT regarding management and maintenance of the field between Anne Hathaway's Cottage rear orchard and sculpture garden and the proposed link road.

Prematurity

251. How many homes and where they should be sited in the District are clearly matters for the Local Plan process and the Neighbourhood Plan process.

Weight to be given to the Third Draft Core Strategy

252. The Local Plan process has reached the Third Draft Core Strategy⁶⁰⁷ stage. It should be given significant weight as:

- a) it is the final draft pre-submission of the Local Plan for public examination and adoption;
- b) it is founded on a suite of evidence base studies produced since the second Draft Core Strategy⁶⁰⁸ stage and on two rounds of public consultation;
- c) it is a progression of the First Draft Core Strategy and Second Draft Core Strategy, which both contained dispersal policies⁶⁰⁹ that have received majority consultee support;

⁶⁰⁵ INQ/RASE/17

⁶⁰⁶ INQ/LPA/23 draft condition 10

⁶⁰⁷ CD/E/18

⁶⁰⁸ CD/E/9

- d) it has not been "*rushed out*" to deliberately frustrate the appeal proposals as suggested by the appellants' planning expert⁶¹⁰, but has been published in response to the evidence base studies and the public consultation process and taking into account the Localism Act 2011. It gives greater weight to the need to guard against excessive and inappropriate development in Stratford-upon-Avon itself than the previous versions, but that is in response to the weight of consultation and evidence produced since they were published.

253. The Appellants have objected to several elements of the Third Draft Core Strategy⁶¹¹. These objections need to be tested, alongside all other representations, during the Local Plan examination process. It is clearly premature and inappropriate to pre-determine the outcome of that process at this stage, but due to the stage the Core Strategy has reached it should be given significant weight. The proposals can be considered to be "*so substantial that granting permission would prejudice the DPD by predetermining decisions about the scale, location, or phasing of new development which are being addressed in the policy in the DPD*"⁶¹².

Weight to be given to the Neighbourhood Plan process

254. The Neighbourhood Plan process for Stratford-upon-Avon has made significant progress⁶¹³:

- a) The Neighbourhood Plan Steering Group has been operational since summer 2011 and making good progress for several months;
- b) The Neighbourhood Plan consultation has been undertaken and the consultation report published. 1,568 valid responses were received and the consultation supported either no new housing in Stratford-upon-Avon or a limit on development size to 100 or 50 homes. There was a clear recognition of the infrastructure constraints in Stratford-upon-Avon and the detrimental effect further development would have on its historic character and landscape setting;
- c) The chairman of the Neighbourhood Plan Steering Group has confirmed that:
 - i. The current timetable is to have a draft Neighbourhood Plan towards the end of 2012, then verify the draft through further consultation before putting it to independent review and a referendum in late spring 2013;
 - ii. The Steering Group is large (approximately 40 people) and is made up of representatives from existing organisations and societies as well as interested residents. The actual drafting of the plan is largely delegated to Working Parties which are looking at:
 - Housing and Planning

⁶⁰⁹ CD/E/8 p 13 & CD/E/9 p 25 respectively

⁶¹⁰ Evidence in chief of Mr Jones

⁶¹¹ INQ/APP/17

⁶¹² CD/G/23 para 17

⁶¹³ INQ/RASE/14

- Infrastructure
 - Mature Stratford
 - Young People and families
 - Business and Tourism
- iii. There are also functional Working parties covering:
- Consultation and Communication
 - Statistics and data collection
 - Finance
- iv. The Steering group meets monthly and there are further monthly meetings for each of the working parties and the Management Group which is made up of the Working Party Chairs. Most of the Working parties have now drafted and presented documents setting out their initial ideas. This process has identified areas of common ground and also issues which will need further consideration and detailed consultation.
- v. The general view of most people who are involved in this process is that overdevelopment of Stratford-upon-Avon and associated loss of character should be resisted.
255. Experience with the Dawlish Neighbourhood Plan confirms that it is realistic for a Neighbourhood Plan to be promoted to examination in the timescales envisaged above.
256. Over 1,000 objections have been made to the appeal development proposals⁶¹⁴, and residents have shown repeated opposition to further large housing developments in Stratford-upon-Avon (for example, the Town Poll referred to by Stratford Voice's representation to the inquiry⁶¹⁵, previous responses to the First and Second Draft Core Strategy documents, as well as the Neighbourhood Plan survey⁶¹⁶).
257. In contrast to the Government's objectives in terms of local engagement and neighbourhood planning, the appellants:
- a) have undertaken only one single consultation event in 2009 (which is surprising given the extent of the local concerns raised);
 - b) not fully reported the outcome of that event (the Statement of Community Involvement⁶¹⁷ gives no indication of the results of the consultation in terms of numbers supporting, objecting or commenting);
 - c) not engaged with RASE or with any significant number of local residents;

⁶¹⁴ CD/A/20 p 19

⁶¹⁵ INQ/TP/5

⁶¹⁶ INQ/RASE/14

⁶¹⁷ CD/A/14

- d) belatedly attempted to undertake a misleading and skewed 'doorstep' survey;
- e) not presented their case or been available to answer questions at the planning committee⁶¹⁸;
- f) sought to influence the consultation process on the Core Strategy by a mass distribution of a mail-shot⁶¹⁹ containing a host of errors (not denied by the appellants) which the Council could only correct late in the process⁶²⁰.

These are not the actions of promoters acting in accordance with the Localism and Neighbourhood Planning agenda.

258. The proposal represents approximately a 10% increase in housing in the town and 10% of the overall District housing target of 8,000 new homes in the plan period. It has strategic implications and carries clear housing 'delivery' risks given the housing supply in the town would be largely reliant on just one site to come forward. To grant permission for this would fly in the face of the purpose of the Neighbourhood Plan process, which is for local communities to help shape development in their area. It would be manifestly premature and prejudicial to the Neighbourhood Plan process.

259. It is noted that the Secretary of State has recently issued several decisions refusing planning permission for major housing schemes as being premature with respect to the Local Plan and Neighbourhood Plan process⁶²¹.

Landscape Impact

260. The Framework reiterates the need to recognise the "*intrinsic character and beauty of the countryside*"⁶²². That was carefully considered for inclusion following consultation on the draft Framework and its importance should not be under-estimated.

261. A host of landscape experts have now confirmed that the proposals would have an unacceptable impact on the important landscape surrounding the site. These are:

- a) the experts presenting evidence to the 1997 District Local Plan inquiry and the Inspector's report⁶²³;
- b) the White Consultants Landscape Sensitivity Study for the District of July 2011⁶²⁴;
- c) the Council's witness on landscape matters for this inquiry⁶²⁵.

262. The Stratford-Upon-Avon Town Design Statement, adopted by the Council as supplementary planning guidance in 2002, states that:

⁶¹⁸ INQ/APP/1 para 5.60

⁶¹⁹ INQ/LPA/11

⁶²⁰ INQ/LPA/12

⁶²¹ CD/RASE/4-7a

⁶²² CD/G/24 para 17

⁶²³ CD/RASE/17

⁶²⁴ CD/E/13

⁶²⁵ Mr White; INQ/LPA/3

"the fields on either side of Bordon Hill should be protected in perpetuity and the panoramic view preserved".⁶²⁶

263. The SBT objects to the impact on the landscape setting of Anne Hathaway's Cottage and Garden⁶²⁷.
264. The 'iconic' view down Bordon Hill would be marred by housing and a roundabout, with its attendant direction signage⁶²⁸ and possibly safety signage⁶²⁹ as well as lighting columns. The view from the Royal Shakespeare Theatre Tower and elsewhere in and around the town would include urbanisation creeping up the Bordon Hill section of the town's backdrop⁶³⁰.
265. The Landscape Sensitivity Study highlights that out of the 141 sites in the District assessed:
- 5 are in the 'medium to low' sensitivity category (3.6%)
 - 29 are in the 'medium' sensitivity category (20.5%)
 - 64 are in the 'medium to high' sensitivity category (45.4%)
 - 43 are in the 'high' sensitivity category (30.5%)⁶³¹
- This illustrates that 69.5% of the sites assessed have less than 'high' landscape sensitivity, whereas part of the appeal scheme is in a 'high' sensitivity category. In terms of alternatives, therefore, there are 69.5% of sites in the District which are less sensitive in landscape impact terms than a key part of the appeal site. This illustrates why the Local Plan process should not be pre-determined at this stage.
266. In relation to the claimed benefit for the undergrounding of powerlines, there is a risk that the suggested condition requiring this⁶³² would be varied by way of a future section 73 application as the appellants have been careful to avoid including these works in the description of development. Were the undergrounding part of the description of development as well, there would be the added protection of the appellants being unable to deviate from that without breaching the 'Wheatcroft' principle. Given the history of the promoters of the scheme arguing for flexibility in respect of the undergrounding at the LPR inquiry, the repeated lack of commitment to it within the application documents and its continuing omission from the description of development, the weight to be given to this claimed benefit needs to be put into context. In addition, the landscape assessment does not take into account the new powerlines to be installed where any undergrounding 're-emerges'.
267. Those familiar with the historic landscape of the appeal site include the Council, Parish Councils, local residents and the SBT. All object to the harm to the landscape. The assessment of the appellants' landscape expert concentrated on the experience of the visitor (for example arriving into Stratford-upon-Avon at the top of Bordon Hill) but ignored local residents and those who travel into work

⁶²⁶ CD/C/6 p 32

⁶²⁷ INSP/1 statement of 15 March 2012, INQ/APP/15, INQ/APP/16, INQ/RASE/17

⁶²⁸ INQ/LPA/5 Appendix SWQ

⁶²⁹ Cross-examination of Mr Boileau

⁶³⁰ INQ/RASE/3 Appendix 9

⁶³¹ CD/E/13 Table 1

⁶³² INQ/LPA/23 condition 41

in the town, and he conceded that weight needed to be given to their experience as well⁶³³.

268. He also agreed that the aerial visualisations⁶³⁴ are not accurate. They do not accurately show the density and typologies of the development nor other features such as lighting and street signs⁶³⁵. A number of his viewpoint photographs⁶³⁶ do not contain a full view, rather a partial view in one direction.

269. The appellants' landscape expert conceded that the proposals effectively represent the edge of acceptability, agreeing that no more development ought to be permitted any higher up Bordon Hill⁶³⁷. Although the LPR Inspector felt that mitigation may be possible, the Council's landscape expert considered that he was being over optimistic⁶³⁸. Significant weight should be given to the views of local communities in respect of landscape impact. This was acknowledged by the appellants' landscape expert who felt that public consultation was an important part of the landscape impact assessment process⁶³⁹. The public, English Heritage, the SBT and the Council all consider that there would be a harmful landscape impact from the development and that the proposals should be refused.

Heritage Setting Impact on Anne Hathaway's Cottage and Registered Garden and the Character of Shottery Village

270. The proposals would have an unacceptable heritage impact on the setting of Anne Hathaway's Cottage, which is a Grade 1 Listed Building and has a Grade II Registered Garden. The world famous tourism importance, as well as heritage importance, of Anne Hathaway's Cottage and Registered Garden means a strongly precautionary approach should be taken to impact⁶⁴⁰.

271. Taking heritage, landscape or tourism risks with Anne Hathaway's Cottage and Registered Garden is not acceptable, particularly given that the Local Plan and Neighbourhood Plan process should consider alternatives. It is not credible that there are not better alternative housing sites than one which risks damaging these heritage assets and their settings in any way.

272. The SBT objects to the proposal⁶⁴¹. It has not made available the land it owns to the rear of the Cottage for mitigation purposes, and is understood to be satisfied with access to the Cottage without the proposed rear access provided by the link road. It would be odd, and likely to be a breach of the Trustees' duties, for the SBT to sell the land which the SBT specifically purchased to protect the Cottage and its gardens. It clearly does not wish this development to proceed.

273. In visual impact terms:

- a) The list entry for the Registered Garden highlights that "*...the western boundary of the orchard adjoins agricultural land which rises gently to the south-west towards Bordon Wood, and west towards*

⁶³³ Cross-examination of Mr Rech

⁶³⁴ INQ/APP/4&5 Figures 31 & 32

⁶³⁵ Cross-examination of Mr Rech

⁶³⁶ INQ/APP/5a

⁶³⁷ Cross-examination of Mr Rech

⁶³⁸ Cross-examination of Mr White

⁶³⁹ INQ/APP/3 para 5.35

⁶⁴⁰ Cross-examination of Mr Molyneux and Mr Holmes

⁶⁴¹ INSP/1 statement of 15 March 2012, INQ/APP/15, INQ/APP/16, INQ/RASE/17

*Hansel Farm and Gretel House. The site slopes gradually west up from the roadside boundary to the west boundary of the orchard, and there are significant views west across the adjacent farmland from the orchard...*⁶⁴². The importance of the views is significant.

- b) the rear view across the field up to the top of Bordon Hill is clearly visible from, and visually connected to, the Garden. It is not (as suggested by the appellants) only visible if peering through the hedge. This was plainly evident on the accompanied site visit;
- c) the raised bund for the link road, with planting on top or adjacent, would bring the distant horizon at the top of the hill into the near distance, significantly foreshortening the view from the Garden;
- d) the field retains medieval features that would be damaged by the bunding⁶⁴³;
- e) attractive mature trees and hedges would be lost as a result of the cutting and bunding;
- f) the Woodland Walk, an important tourist attraction as indicated by the SBT advertising leaflets⁶⁴⁴, would be damaged by the roundabout to the rear of the Cottage and there would be an inevitable sense of the nearness of the road and the acoustic screening. The southern development would be visible from parts of the Woodland Walk, creating an impression of being within a housing development rather than having rural vistas through the trees;
- g) mitigation through planting would take many years to mature, during which time there would be further harm to the visitor experience.

274. An expert heritage report⁶⁴⁵ concludes that the orchard, garden and landscaping deserve particular protection and would be damaged by the development proposals. The appellants' heritage expert is not a qualified archaeologist⁶⁴⁶, and this needs to be taken into account when assessing his criticisms of this evidence⁶⁴⁷ given the author's credentials and experience in this area.

275. In noise impact terms:

- a) The appellants' noise expert conceded that noise impact during construction will last for many years⁶⁴⁸. He also agreed that:
 - by the time development is completed, traffic levels would have grown⁶⁴⁹. More traffic would mean more noise at Anne Hathaway's Cottage and its Registered Garden. The existence of the new link road would, as it becomes more congested over time, inexorably increase noise levels;

⁶⁴² INQ/LPA/2 Appendix 3

⁶⁴³ INQ/RASE/3 Appendix 4

⁶⁴⁴ INQ/APP/7 Appendix 4.5

⁶⁴⁵ INQ/RASE/3 Appendix 4

⁶⁴⁶ Cross-examination of Dr Miele

⁶⁴⁷ INQ/APP/6b

⁶⁴⁸ Cross-examination of Mr Zarebski

⁶⁴⁹ INQ/APP/10 para 6.27

- no account is taken of maximum noise levels in the noise assessment, only average noise levels. Maximum noise levels may well be greater (such as acceleration of HGVs from the roundabout access to the rear of the Cottage).
- b) With respect to the proposed 'low noise surface' for the road, it is apparent that⁶⁵⁰:
- the type of thin road surfacing material relied upon by the appellants is unspecified and different types produce different results;
 - the actual benefits (or otherwise) of low-noise surfaces will vary depending on location and scheme specific factors. Some of the relationships used (such as between surface condition and noise) have not been formally investigated; more research would be required before the modelling can be considered comprehensive and robust;
 - for thin surfacings, results for light vehicles and medium speed roads show an estimated increase in noise of 0.5dBA per year (i.e. a loss of 0.5dBA effectiveness per year). There are no results available for other speed roads or for heavy vehicles. The noise benefits are therefore only very temporary;
 - all local authorities reported problems with the durability of Thin Stone Mastic Asphalt (TSMA), casting doubt as to whether it would be chosen by the local highway authority in any event. Indeed, the research highlighted that most authorities report that traditional Hot Rolled Asphalt (HRA) is the most cost-effective surface material. Although the initial costs are higher there is a longer life expectancy than the TSMA which means less maintenance and therefore reduced costs in the longer term;
 - in heavier rain, the texture on some types of low noise surfacing can be rapidly flooded; this might have implications for an increased risk of aquaplaning (if adequate surface levels are not designed), which is relatively rare on other older types of surfacing;
 - it has also been speculated that low-noise surfaces could lead to increased risks because of the way in which drivers might respond. For example, the quiet, smooth ride that these surfaces could offer could lead some drivers to increase speed. This could negate any advantages of improved skid resistance (such as might be offered by smaller aggregates) or exacerbate the effects that are already known, thus increasing accident rates;
 - the principal observed fault of thin surfacing systems is fretting, with it being evident on nearly 90% of all sites

⁶⁵⁰ INQ/RASE/13

visited by the time they were 12 years old. This was followed by cracking, with a significant proportion (18%) of sites showing signs of this after three years in service.

All this evidence from research cited by the appellants⁶⁵¹ illustrates the dangers of relying on any noise assessment dependent on a thin road surfacing material being applied to the link road. Any low road surfacing (if chosen) would clearly deteriorate and may not be replaced in the future by the local highway authority.

- c) No account is taken in the noise modelling of speeding on the link road⁶⁵², and speeding would create significant noise increases⁶⁵³. Whilst it might not be usual for speeding to be considered in noise assessments, the impact on Grade I listed Anne Hathaway's Cottage and its Registered Garden demands a precautionary approach be taken to the assessment.

276. In flood risk terms, it is evident that Anne Hathaway's Cottage is vulnerable to flooding⁶⁵⁴. The scheme's flood risk assessment and drainage proposals are unsatisfactory, as set out below.

277. In terms of impact on Shottery Village and the Shottery Conservation Area, it was agreed by the Council's heritage and landscape experts and by the appellants' landscape expert that Shottery has a 'semi-rural' character⁶⁵⁵. This is also confirmed by the original Environmental Statement ("*it can now be better described as semi-rural*"⁶⁵⁶) and the Council's Shottery Conservation Area document⁶⁵⁷. The appellants' heritage expert is in the minority in describing Shottery as "*urban-suburban*"⁶⁵⁸, which casts doubt on the credibility of his assessments generally.

278. The development proposals are not in keeping with the character of Shottery Village and Shottery Conservation Area. Nowhere in Shottery are there houses of more than 2 storeys, nor is there a density of over 36 dwellings per hectare or anything approaching that. Shottery would in essence be encircled by development completely out of keeping with the type and density of the village.

Traffic Impacts and Benefits

279. The evidence and even the developers' own Transport Assessment material⁶⁵⁹ show that the link road to serve the development would not in reality be a 'Western Relief Road' for Stratford-upon-Avon as it has been previously portrayed. This is as the Inspector in the 1997 inquiry into the District Local Plan correctly predicted⁶⁶⁰. The link road would present no significant (and in many cases no) relief to town centre traffic. In a number of cases there would be actual traffic and congestion increases in the town centre. There are also some

⁶⁵¹ CD/A/23

⁶⁵² Cross-examination of Mr Zarebski

⁶⁵³ INQ/RASE/3 Appendix 14

⁶⁵⁴ INQ/TP/19

⁶⁵⁵ Cross-examination of Mr Molyneux, Mr White and Mr Rech

⁶⁵⁶ CD/A/3 Table 9.4 p 92

⁶⁵⁷ CD/F/18 p 9

⁶⁵⁸ INQ/APP/6 para 4.37

⁶⁵⁹ CD/A/18

⁶⁶⁰ CD/RASE/17 section 9.43

very significant increases predicted in traffic elsewhere in and around the town, for example:

- a) the A46 Northern Bypass experiences a 10% increase in the am and pm peak (on average), with a 19% increase in the am peak and 24% increase in the pm peak in the most congested part of the A46 between Birmingham Road and Wildmoor roundabout;
- b) the B439 Evesham Road experiences a 5.6% increase in the am peak and 0.9% increase in the pm peak (on average), with a 10% increase in the am peak and 15% increase in the pm peak on the most congested part of the Evesham Road east of Luddington Road;
- c) the A3490 Severn Meadows Road experiences a 6% increase in the am peak and 17% increase in the pm peak in what is already a very congested road at peak hour;
- d) the A4390 Trinity Way experiences a 4% increase in the am peak and 5% increase in the pm peak in an area which is also to host the new Waitrose supermarket currently being built;
- e) the A3400 Shipston Road experiences a 4% increase in the am peak and 8% increase in the pm peak;
- f) the B4632 Clifford Lane experiences a 2% increase in the am peak and 3% increase in the pm peak.⁶⁶¹

280. There would also, contrary to strenuous assertions from the appellants, be no significant relief to Shottery rat running (including along Shottery Road) as a result of the proposals. The predictions are an average of just 10% decrease in the am peak traffic flows throughout Shottery (Church Lane, Hathaway Lane, Cottage Lane, Shottery Road – 1,603 to 1,454 vehicles) and a 8.7% decrease in the pm peak (1,692 to 1,556 vehicles)⁶⁶².

281. The appellants' last minute attempts to rely on traffic calming measures in Shottery⁶⁶³ (which were not proposed as part of the application) to produce a greater benefit cannot be given any material weight as there can be no certainty that any measures would proceed and the nature and extent of any traffic calming is unknown. As the Inspector in the 1997 inquiry into the District Local Plan noted⁶⁶⁴, if any traffic calming measures were needed these could be applied for, consulted upon and implemented without the link road, and without all the harm and risk associated with the link road and the development.

282. In any event, traffic calming measures in Shottery would lead to displacement of traffic to other areas of the town centre, as shown in the appellants' own material⁶⁶⁵:

- Alcester Road (near Arden Street signals) – 380 Annual Average Daily Traffic (AADT) increase;
- Evesham Road (east of Luddington Road) - 337 AADT increase;

⁶⁶¹ INQ/RASE/9

⁶⁶² INQ/RASE/9

⁶⁶³ CD/A/23

⁶⁶⁴ CD/RASE/17 para 9.43.27

⁶⁶⁵ INQ/APP/47

- Evesham Road (west of Luddington Road) – 120 AADT increase;
- Birmingham Road (between Worths Way and Bishopton Roundabout) – 122 AADT increase;
- Clopton Bridge – 379 AADT increase;
- Greenhill Street – 332 AADT increase;
- Bridge Street – 161 AADT increase;
- High Street – 219 AADT increase;
- Rother Street – 202 AADT increase;
- Guild Street – 311 AADT increase;
- Bishopton Lane (north near the Park & Ride) – 88 AADT increase;
- Bishopton Lane (south near Heron Lane) – 177 AADT increase;
- Banbury Rd (south of Trinity Way) - 266 AADT increase.

Whilst some traffic is also modelled as being displaced onto the SWRR, and there would be some decreases as well, Shottery traffic calming displacement would increase town centre traffic in a number of locations.

283. The Transport Assessment⁶⁶⁶ also contains serious flaws. The Highways Agency highlighted that: "*Statistical significance... is not represented clearly through the use of the GEH statistic*"⁶⁶⁷. The evidence of an expert transport consultant⁶⁶⁸ on the shortcomings of using this statistic has not been responded to from a technical perspective, rather the appellants seek to rely on the agreement of the Highways Authority to its use. The use is flawed because:

- a) The GEH statistic is normally used for variability of traffic counts versus traffic counts, not model runs versus model runs. The guideline numbers (GEH of 5 for counts, 4 for screenlines) are specifically geared to reflect count variability, and hence entirely meaningless for journey time figures;
- b) The GEH statistic is only relevant where there is an inherent statistical variability in one or both measures being compared. Traffic counts are inherently variable whereas models should not be. Each traffic count day is different from every other and each counter will give a slightly different answer depending on method of 'counting'. Most obviously, a particular issue arises where the model is trying to match counts at different points along a road and those counts are inherently inconsistent because of random, statistical variation. The model cannot match them all and hence the GEH statistic is used to test count reliability. However, if the model is given the same input assumptions then it should give the same answer, so that if a model is run for a different set of assumptions then the different results should be a consequence of those different assumptions rather than model statistical variability – or 'unreliability'.

⁶⁶⁶ CD/A/18

⁶⁶⁷ CD/A/19(i) Highways Agency response of 5 April 2011 p 1

⁶⁶⁸ INQ/RASE/3 Appendix 7

- c) Using a GEH statistic comparing a 'base data model' run against a 'model with scheme data' run risks confusing oscillation effects within the model with differences in the results. Acceptability guidelines are needed to reflect the particular nature of the variability and strict convergence criteria within the model are needed to ensure the model does not have much oscillation. That is not evident in the Transport Assessment work undertaken by the appellants.

284. Use of the GEH statistic is a fundamental issue because, if it cannot be relied upon, the whole Transport Assessment is flawed, as is the Environmental Statement, as set out below.

285. It is also clear that:

- a) the appellants claim a traffic benefit based on queues at selected junctions⁶⁶⁹, but queuing at other junctions would be worse. In reality, traffic is simply being moved from one point on the network to another. It is the overall impact on the network that matters;
- b) the overall measures of impact on the transport network are the charts of average journey time and average speed⁶⁷⁰. These show 9 seconds saving on journey times and under 1 mph improvement in average speeds. These would both be imperceptible to road users, so that no overall benefit is being produced and the SWRR would not be a 'relief road';
- c) the limitations of traffic projections are obvious, for example as illustrated by the differences between those at the time of the LPR inquiry and the present ones⁶⁷¹;
- d) the prediction of no traffic queues on the Evesham Road eastbound arm of the proposed roundabout⁶⁷² is not credible to local residents; numerous third parties at the inquiry and in written objections have testified to traffic backing up to the top of Bordon Hill, even without the roundabout. The Transport Assessment is clearly not a 'real world' assessment;
- e) the impact on West Green Drive of two access roads and the proximity of the school and local centre has not been properly assessed. The traffic increase on West Green Drive would be very significant, and assertions that the road would have sufficient capacity to cope are without evidence⁶⁷³. There is no information about school drop off and parking, which often create major difficulties;
- f) there is considerable concern about highway safety, including a lack of safe pedestrian and cycling crossings and an increased crash risk leading up Bordon Hill⁶⁷⁴, as reflected by the concerns of third parties at the inquiry;

⁶⁶⁹ INQ/APP/10 Tables JO1, JO2, JO3

⁶⁷⁰ CD/A/18 p20

⁶⁷¹ INQ/APP/10 para 6.23

⁶⁷² CD/A/18 section 6.6.1

⁶⁷³ Cross-examination of Mr Ojeil

⁶⁷⁴ INQ/RASE/3 Appendix 8

- g) there is also concern that the proposed houses might be built but the road never completed. No financial bonds to secure the delivery of the road before any housing is built are expressly required by draft condition 10⁶⁷⁵.

286. By comparison with alternative potential development sites, because of the expenditure on the 'link road' the appeal proposal would not make any contribution to strategic transport improvements as required by the Council's Supplementary Planning Document⁶⁷⁶. This is a clear disbenefit.

Flood Risk Assessment and Flood Alleviation

287. Shotton has experienced severe flooding in the last 10 years⁶⁷⁷. In fact, it is evident that two severe flood events in less than 10 years have occurred which were predicted to have just a 1 in 75 and 1 in 50 year chance of happening⁶⁷⁸. It is also clear that the Environment Agency does not have any accurate assessment of flood risk in Shotton, and the appellants' flooding expert acknowledged the limitations of the Environment Agency's understanding⁶⁷⁹. In such circumstances, the detail and robustness of the flood risk assessment and drainage strategy need particular care and attention and a high degree of thoroughness. However, that has not been the case.

288. The Framework requires local planning authorities only to allow development in areas at risk of flooding in exceptional circumstances where it can be demonstrated that there are no reasonably available sites in areas of lower risk, and the benefits of that development outweigh the risks from flooding⁶⁸⁰. However, that has not been done, as acknowledged in the officer's report to committee⁶⁸¹. The sequential test cannot properly be met until that is undertaken as part of the Local Plan process.

289. There are significant expert concerns⁶⁸² over the submitted Flood Risk Assessment⁶⁸³ in relation to:

- a) Flood Zone designation, including over the siting of the link road access in Flood Zone 3 (3A or 3B);
- b) Lack of assessment of flooding considerations;
- c) Lack of detail in relation to flood compensation works;
- d) Deficiency of the surface water drainage (SUDS) strategy;
- e) the need for adoption, management and maintenance regimes for SUDS systems to be clearly worked through, including the funding position, which has not happened in this case.

290. Regarding the reliability of SUDS systems, the appellants' flooding expert accepted that a blockage could form and a pool overflow but said that "*there*

⁶⁷⁵ INQ/LPA/23

⁶⁷⁶ CD/C/2

⁶⁷⁷ INQ/RASE/1 para 9

⁶⁷⁸ INQ/RASE/1 paras 7.3-7.4; INQ/RASE/3 Appendix 10 photos

⁶⁷⁹ Cross-examination of Mr Boileau

⁶⁸⁰ CD/G/24 paras 101-102

⁶⁸¹ CD/A/20 p 101

⁶⁸² INQ/RASE/3 Appendix 11

⁶⁸³ CD/A/12

would be a failsafe design"⁶⁸⁴. His description of this was that it would direct the resulting overflow into Shottery Brook. This is the very water course that it is supposed to retain the water from and which, when it overflows, causes flooding to the front of Anne Hathaway's Cottage.

291. The appellants' flooding expert also conceded⁶⁸⁵ that there is no scheme design to protect against surface run off from the raised embankment behind Anne Hathaway's Cottage, which he said would be provided in a detailed design. That is unsatisfactory given the importance of protecting the Cottage, the Registered Garden and their settings.
292. If the development is permitted to proceed and leads to consequent flooding of existing properties, the creation of a nuisance and infringement of Article 8 European Convention of Human Rights could occur⁶⁸⁶.

Noise and Tranquillity Impacts

293. The proposal would have an unacceptable noise impact on existing residential properties, in particular those on Bordon Hill (4 with a severe adverse effect, 16 with a substantial adverse effect, 8 with a moderate adverse effect and 253 with a slight adverse effect)⁶⁸⁷. This is a very significant worsening of the noise environment due to the development. It is also a clear disbenefit of the scheme by comparison with alternatives.
294. The impact on Evesham Road noise levels caused by the new roundabout slowing traffic at the foot of the hill has not been recognised⁶⁸⁸.

Design Quality of the Scheme

295. The Framework seeks to raise standards of design⁶⁸⁹. It attaches great importance to the design of the built environment, and indicates that:
*"Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions."*⁶⁹⁰
296. The illustrative designs and key principles set out in the design code for this development⁶⁹¹ are mediocre.
297. The design has been heavily criticised by CABE⁶⁹², including objections about:
- a) the poor estate link road design and severance;
 - b) the poor design and location of the local centre;
 - c) lack of clear standards or principles for design or character (the Design and Access Statement being deficient in detail);
 - d) unambitious sustainable design;
 - e) a lack of phasing information.

⁶⁸⁴ Cross-examination of Mr Boileau

⁶⁸⁵ Cross-examination of Mr Boileau

⁶⁸⁶ INQ/RASE/1 paras 7.12-7.14

⁶⁸⁷ CD/A/20 pp 71 & 128

⁶⁸⁸ Cross-examination of Mr Zarebski

⁶⁸⁹ CD/G /24 Ministerial foreword

⁶⁹⁰ CD/G/24 paras 56 & 64

⁶⁹¹ CD/A/9, CD/A/9a

⁶⁹² INQ/RASE/12

298. It was clear at the inquiry that the appellants have ignored the CABE objection and made no effort to engage with CABE in respect of its concerns⁶⁹³.
299. There are no real commitments in the Design and Access statement at the outline stage as to what quality design would actually mean. This is contrary to CABE guidance which states that it is a matter of good practice that the fundamental design principles of a scheme should not be relegated for later consideration⁶⁹⁴.
300. The illustrative designs and key principles in the design code⁶⁹⁵ in reality represent minor variations of an 'anywhere town'. They are designs which Bloor Homes and Hallam Land use anywhere in the country. There has been experience of bland design elsewhere in Stratford-upon-Avon, for example with the housing estates built in the last 15 years south of the river at Trinity Mead, and along Birmingham Road and Alcester Road. It is time to require good design, which the Local Plan and Neighbourhood Plan are seeking to ensure, as is the Stratford Society. Granting permission for the appeal scheme would prejudice attempts to deliver the good design policies which the Framework is encouraging in the Local Plan and decision making process.
301. Other design and scheme content flaws include a failure to provide the 8.2 acres of playing fields which should be provided; no provision of money to build or operate a new health centre so the land may never be used for that purpose; failure to explain how secondary school provision (a shortfall of 57 places in Stratford-upon-Avon⁶⁹⁶) would be accommodated; and the fact that the existing primary school would close when the new one opens, which is therefore not a net benefit.

Ecological Impacts

302. The Framework sets out measures by which the planning system should contribute to and enhance the natural and local environment⁶⁹⁷.
303. However, the Environmental Statement identifies the following negative impacts:
- a) potential habitat fragmentation and isolation through loss of hedgerows;
 - b) loss of semi-mature and mature trees;
 - c) loss of bat flight lines through removal of hedgerow sections;
 - d) loss of foraging/nesting habitat for skylarks which is significant and cannot be mitigated;
 - e) potential disturbance of bats;
 - f) potential disturbance of great crested newts;
 - g) potential degradation of Racecourse Meadow Site of Special Scientific Interest (SSSI) through increased siltation or accidental pollution incidents.⁶⁹⁸

⁶⁹³ Cross-examination of Mr Rech

⁶⁹⁴ 'By Design' p 68 [not a listed inquiry document]

⁶⁹⁵ CD/A/9a

⁶⁹⁶ CD/A/3 Table 7.7 p 55

⁶⁹⁷ CD/G/24 para 109

304. There is also a lack of invertebrate surveys and of a great crested newt survey in Burmans Farmhouse Pond, where great crested newts have been sighted⁶⁹⁹.
305. Although the appellants seek to put forward a set of mitigation and 'compensation' measures⁷⁰⁰, the significant harm to ecological flora and fauna that would result from the development cannot be disguised. This harm makes no sense when alternatives could be considered which are not located near to an SSSI and areas where protected species have been located, particularly in the context of the cumulative negative impacts of the development proposals.

Other Impacts of the Development

306. There is a significant risk of an adverse impact on tourism to Anne Hathaway's Cottage and Garden, both during construction works and following these. Traffic increases would also affect tourism in the town generally, which is already known for its heavy traffic congestion. No risks ought to be taken with the Cottage and Garden given their importance to the District's tourism industry⁷⁰¹.
307. The proposal does not include an adequate delivery plan for provision of on-site renewable energy and overall achievement of carbon reduction, rather envisaging this can be dealt with at the approval of reserved matters stage⁷⁰². Given the size and scale of the development proposal, there should be a clear commitment to a particular delivery method to achieve adequate provision.
308. The proposal would lead to an air quality deterioration for nitrogen dioxide at the Birmingham Road/Clopton Road junction, Greenhill St, Guild St, Old Town Mews and on site properties; and PM10 (Fine Particulate Matter) increases at Guild St and Bridgefoot/Guild St junction⁷⁰³. Stratford-upon-Avon is designated an Air Quality Management Area and no decrease in air quality should be permitted. The extent to which alternative development options in the District would not result in air quality deterioration in an Air Quality Management Area should be assessed as part of the Local Plan process.
309. There would be loss of an area of grade 3a agricultural land⁷⁰⁴.

Environmental Statement Evidence

310. Relevant legal principles on Environmental Statements are set in a number of cases⁷⁰⁵.
311. RASE requested in two objection letters on the application⁷⁰⁶ that the Local Planning Authority require further environmental information pursuant to Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. In the event the Council required some of the information sought but not all.
312. There are a number of areas of the environmental information provided which are inaccurate, inadequate or incomplete to the extent that planning permission

⁶⁹⁸ CD/A/3 para 11.7.1 p169

⁶⁹⁹ INQ/TP/11b

⁷⁰⁰ CD/A/3 chapter 11

⁷⁰¹ INQ/LPA/6

⁷⁰² CD/A/13

⁷⁰³ CD/A/3 pp 220-221

⁷⁰⁴ INQ/RASE/1 para 5.4.8, INQ/RASE/3 Appendix 18

⁷⁰⁵ INQ/RASE/15 section 3

⁷⁰⁶ INQ/RASE/15 attachments

should not be granted. In combination, these inaccuracies, inadequacies or omissions are of such significance that the environmental information provided is not capable of being properly regarded as an Environmental Statement for the purposes of adequately assessing the environmental effects of the development as is reasonably required, as set out by the Regulations.

313. For example, if it is agreed that the use of the 'GEH statistic' is flawed in respect of the Transport Assessment, then the Transport Assessment is so inadequate that the assessment provided cannot properly be regarded as information upon which the Environmental Statement can rely and therefore the Environmental Statement cannot properly be regarded as an Environmental Statement. There are other areas in which the same principle applies, for example:

- a lack of assessment of the transport impacts on West Green Drive;
- a lack of adequate assessment of the traffic impacts between 2013 and 2023 (simply road junctions assessed);
- a lack of assessment of air quality in the 'with traffic management measures in Shottery' scenario;
- other flaws in the Transport Assessment as highlighted by RASE in its objection letters⁷⁰⁷;
- no invertebrate survey carried out;
- no soil infiltration tests carried out for the flood risk assessment.

314. The environmental information itself is also a 'paper chase' which makes it very difficult to ascertain the assessment of the environmental effects of the development as required by the Regulations.

315. Judgment on adequacy of the environmental information is properly a matter for the decision-maker, but such judgment will be liable to judicial review scrutiny.

Overall

316. For the above reasons the adverse impacts of the development proposals would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole as required by the NPPF⁷⁰⁸. The proposal does not comply with many of the requirements of the Framework⁷⁰⁹. The appeal scheme is also manifestly premature in relation to the Local Plan and Neighbourhood Plan process. For these reasons, the appeal should be dismissed.

THE CASES FOR OTHER PARTIES WHO GAVE EVIDENCE AT THE INQUIRY

Debbie Griffiths⁷¹⁰

317. Ms Griffiths is a local resident. She gave a visual presentation to the inquiry.

318. The proposal does not adhere to sustainable development principles. Any development that seeks to destroy greenfield sites before all available brownfield

⁷⁰⁷ INQ/RASE/15 attachment – para 2.3 of RASE objection dated 31 March 2011

⁷⁰⁸ CD/G/24 para 14

⁷⁰⁹ INQ/RASE/7

⁷¹⁰ INQ/TP/4

sites have been used is opposed. This site is of conservation importance. Stratford Racecourse has been subject to repeated flooding and the proposal would increase the risk of flooding. The proposed link is not a relief road and would increase traffic on Evesham Road. This is already extremely busy and dangerous. The output of carbon emissions would be increased. Traffic already speeds, and there are serious safety issues with the proposal. There is also existing noise pollution which would increase.

319. The proposal for a new health centre is not guaranteed. No plans have been made for the 11+ education of young people.

320. The developers are more interested in short-term gain than the long-term sustainability and social cohesion of the town. There has been experience of their approach elsewhere in the country⁷¹¹. The proposal is environmentally, socially and economically unsustainable.

John Condés⁷¹²

321. Mr Condés is a local resident. He gave a visual presentation to the inquiry.

322. Shottery Brook, a tributary of the River Avon, forms the natural western boundary to Stratford-upon-Avon. The proposal includes a significant amount of new hardstanding and remodelling of land. Properties at the foot of Bordon Hill are flooded on a regular basis, as shown by photographs, and further development would make the problem worse. It would increase discharge into Shottery Brook which is not capable of dealing with surface runoff today.

323. It is questioned whether sequential and exception testing have been fully carried out, and a comprehensive flood risk assessment provided.

324. There is local evidence of SUDS systems that have failed. Maintenance and landscape impact are concerns. It is questioned whether the proposed systems are fit for purpose. Measures are needed to ensure sewage systems in the area are not affected by flooding.

325. The development is not in the spirit of localism and should be considered democratically.

James Philpotts⁷¹³

326. Mr Philpotts is a local resident.

327. Stratford-upon-Avon is the centre of Shakespeare country, and tourism the lifeblood of the town. Anne Hathaway's Cottage is the gemstone of the property portfolio. Its tranquillity and rural setting are of key importance. There is a current scheme to improve the quality of the land at the rear of the Cottage. Anything that undermines these factors would degrade the number of visitors and put tourism at risk. The proposal would ruin the Cottage's setting permanently and intrude on peace and tranquillity, including by way of its long term construction impact.

328. The Draft Core Strategy and Neighbourhood Plan will form a blueprint for Stratford-upon-Avon of the future, intended to be the embodiment of Localism. The local policy of restricting house building in the town and spreading

⁷¹¹ INQ/TP/4a

⁷¹² INQ/TP/6

⁷¹³ INQ/TP/7

development more widely could not be fulfilled if the proposal were allowed, at the expense of consultation and localism.

Bill Dowling⁷¹⁴

329. Mr Dowling is a Town Councillor and Mayor of Stratford-upon-Avon.

330. Many residents are concerned about the proposed huge development in a highly sensitive area of the town. Traffic would become more intense, and the proposed island at the bottom of Bordon Hill would be a danger. The capacity of secondary schools is of concern. There would be risks of flooding and damage to the tourism industry. The site is not needed to meet the District's house building target.

Nicholas Butler⁷¹⁵

331. Mr Butler is the planning representative of the Warwickshire Branch of the Campaign to Protect Rural England.

332. Anne Hathaway's Cottage is a world renowned iconic building and a prime tourist attraction. Tourism is an important part of the town's economy, which is supported by the Draft Core Strategy. The proposal would change the ambience of the Cottage, creating continuous road noise, visible houses and street lighting. The proposal would also detract from the character of Shottery Village as a Conservation Area. Stratford-upon-Avon is still a country town, and this should be preserved for future generations.

333. Traffic levels would be increased substantially. The proposed link road would not reduce traffic but be likely to redistribute it, with harmful effects.

334. The level of housing to be proposed in the District is yet to be determined and is the subject of consultation on the Core Strategy. The locational strategy is in contention. Approving this proposal would prejudice these decisions. The appeal should be dismissed.

James & Kirstin Greygoose⁷¹⁶

335. Mr & Mrs Greygoose are local residents.

336. As primary school teachers, great pride is taken in fostering a community atmosphere. The sense of community and friendliness of Stratford-upon-Avon are impressive. Smaller developments on existing sites would protect the aesthetic and historical nature of the town while providing the houses needed for population and economic growth. This ought to be examined as part of the Core Strategy process. The Trinity Mead estate to the south of the town demonstrates the folly of such large estates. Stratford-upon-Avon should not be allowed to become a monotonous copy of other towns.

337. There is local pressure on school places.

338. The views reached in a project by school children are illustrative of the negative effects that the proposal would have. It is opposed by residents all over the town, and would damage the tourism industry.

⁷¹⁴ INQ/TP/9

⁷¹⁵ INQ/TP/1

⁷¹⁶ INQ/TP/10

Gordon Brace⁷¹⁷

339. Mr Brace is a local resident, living in Burmans Farmhouse which is next to the tree garden of Anne Hathaway's Cottage⁷¹⁸.
340. There are concerns about the identities of the appellants and their fitness to deliver the scheme and keep promises.
341. The proposal would add to traffic. Noise would be created, and the survey assessment assumes that traffic would obey speed limits. There is already flash flooding of local houses and the road in front of the Cottage. An increase in gradient of the site is a potentially disastrous option, and the proposed control systems could fail.
342. Great crested newts breed in the garden pond of Burmans Farmhouse. No ameliorating measures are proposed.
343. The Core Strategy should not be undermined.

Milan Turšner⁷¹⁹

344. Mr Turšner is a local resident.
345. There was flooding of the field at the bottom of Bordon Hill from Shottery Brook in 1998. Hard runoff areas have been increased since then. The proposal would add to this. The proposed flood compensation area is the same field and this does not appear to have been properly considered.
346. The proposed roundabout at the bottom of a hill would cause problems for vehicles. Traffic would be increased on Alcester Road and Evesham Road. Further congestion would be created.

Roy Massey⁷²⁰

347. Mr Massey and his wife are local residents.
348. Traffic increases are of concern, particularly in West Green Drive where residential parking effectively reduces the road to a single lane. Two new outlets are proposed on this road, but there is no scope for increased traffic flow along it. The only vehicle access from the development should be to the new road.

Robert Harding⁷²¹

349. Mr Harding is a local resident.
350. There is an imbalance in that the appellants are represented by a QC but the residents cannot afford such an advocate.
351. The flood assessment refers to a 1:100 event, but Stratford-upon-Avon floods approximately every 3 years. No actual field study has been carried out. The flood assessment does not have satisfactory supporting evidence on the effects the development would place on the higher ground above Shottery Brook and sewers. The assessment is out of date due to climate change. Prolonged rain raises the water table significantly. Urbanisation increases runoff. Existing

⁷¹⁷ INQ/TP/11b

⁷¹⁸ Photographs at INQ/TP/11a

⁷¹⁹ INQ/TP/2

⁷²⁰ INQ/TP/13

⁷²¹ INQ/TP/12

residents would suffer increased flood risk. There should be an independent assessment of the effects the development could have on flooding. There has been significant growth of the town in at least the last 15 years.

352. The benefits of the proposal to the town and the existence of jobs to support the new population are questioned. There would be more congestion. There is doubt about the financial status of the appellants.

Donald Cowan⁷²²

353. Mr Cowan is a local resident.

354. Stratford-upon-Avon in the past was a delightful, small county town of great beauty and character, surrounded by countryside, as well as being Shakespeare's town. Its over-rapid expansion in recent years has changed much of that, with ever extending suburban sprawl of indifferent and mundane dwellings. It is now necessary to pass through housing estates to reach the countryside. This has saddened residents and had a marked effect on visitors, with many no longer coming to it. First impressions from the approaches to the town are important. The town needed and still needs more housing, but the expansion has been too rapid, bringing a new population with little or no interest in the town.

355. The Core Strategy aims to spread development more evenly, but the proposal would drive a hole through this. Shottery and the icon of Anne Hathaway's Cottage depend on a rural location with countryside adjacent. This should be protected but would change radically with the proposal.

356. There are vacant houses and flats in the town. The proposed houses could not be afforded by those on the waiting list.

357. The new road would be of no value as other routes would be easier, and it would mainly be to serve the proposed development.

358. New education provision and infrastructure would be needed. Existing provision would be overburdened.

359. The appellants have no long-term commitment to the town. If localism is to mean anything the proposal should be rejected.

Jenny Fradgley⁷²³

360. Ms Fradgley is a District Councillor for Guild and Hathaway Ward.

361. Policy EF.13 of the Local Plan Review seeks to protect Conservation Areas⁷²⁴. Concerns about despoiling the setting of Anne Hathaway's Cottage are enhanced by the Council's Landscape Sensitivity Assessment⁷²⁵, which identifies how sensitive this area is. The area is of importance to the whole town and the tourism economy. This is supported by the Core Strategy and the National Planning Policy Framework.

362. Stratford-upon-Avon sits in a bowl and the landscape fringes of the town can be glimpsed from many points. The views are characteristic and should be protected. Once lost they are gone for ever. The development would detrimentally impact on the Cottage and its setting.

⁷²² INQ/TP/14

⁷²³ INQ/TP/3

⁷²⁴ CD/B/1

⁷²⁵ CD/E/13 land parcel St21xc

363. The accumulation of traffic pressure on key points in the town from recent and proposed developments needs to be appreciated. The experience of residents is one of increasing traffic pressure, traffic jams and poor air quality. The proposal would be out of scale, intrusive and detrimental to the town.

Peter Moorse⁷²⁶

364. Mr Moorse is a District Councillor for Mount Pleasant Ward. He also spoke for his fellow ward member Joyce Taylor.

365. Traffic impact on Alcester Road is of particular concern. At peak times the road is extremely busy. The proposal would be likely to add significantly to traffic volume and delays.

366. There is considerable local opposition to the proposal. It was always envisaged that the site would only be used as a last resort if there was a shortfall in housing numbers. That is not at present the case. The proposal conflicts with the draft Core Strategy.

367. There are also concerns about the impact on Anne Hathaway's Cottage and its garden and setting; the character of Stratford-upon-Avon as an historic market town; the tourist industry; infrastructure and in particular secondary school provision; and the surrounding landscape setting.

Bob Malloy⁷²⁷

368. Mr Malloy is a local resident.

369. Experience indicates that the vast majority of residents oppose the development. It would have a negative impact on Anne Hathaway's Cottage and its gardens, and on Shottery and the local landscape.

370. The development would bring an increase in traffic, and congestion is already occurring at all times of the day. Concerns would be magnified if this proposal is just the start of a much larger development.

371. There have been four significant floods in recent years. There are concerns about the construction period, the reliability of the proposed flood measures and what would happen were they to fail. There appear to be no management or compensation commitments.

372. There is a lack of secondary school places. Travelling to school further afield would increase traffic and have other negative implications.

373. The proposal would breach the current largely natural boundary on the west side of the town, especially Shottery Brook. The iconic view from Bordon Hill would be damaged and there would be harm both during and after construction to the surroundings of Anne Hathaway's Cottage, as concluded by the Shakespeare Birthplace Trust.

374. The dispersal approach of the Core Strategy to housing development is supported. The proposal is not required.

Valerie Hobbs⁷²⁸

375. Ms Hobbs is a District Councillor for Old Stratford & Drayton Ward.

⁷²⁶ INQ/TP/17

⁷²⁷ INQ/TP/15

⁷²⁸ INQ/TP/16

376. The ward is rural and has great historic importance to the town.
377. Under the Warwickshire Structure Plan there is a requirement for priority to be given to development within the existing urban area of Stratford-upon-Avon and for brownfield sites to come forward in advance of greenfield. The proposal does not comply with the saved Local Plan Review, emerging policy or the National Planning Policy Framework.
378. The development would have a visual and environmental impact on open countryside. Anne Hathaway's Cottage is of vital importance to the Shakespeare experience and tourism. The atmosphere and ethos of the house and garden could be jeopardised from noise and light pollution. The tourism policies of the District seek to raise awareness of the world class destination⁷²⁹. Visitors should be encouraged to keep coming and the character of the Shakespeare houses retained.

Jean Chollerton⁷³⁰

379. Ms Chollerton formerly worked at Anne Hathaway's Cottage.
380. The Cottage is a precious monument to Stratford-upon-Avon's historic past. The town is an international tourist destination and Shakespeare's history helps to retain the town as a desirable place to live. Alongside the Birthplace, the Cottage records the highest visitor numbers in the Shakespeare Birthplace Trust portfolio, and is an iconic image. The landscape to the rear has potential historic importance⁷³¹.
381. Many different events throughout the year are held in the house and grounds, for example the Cottage landscape was turned into a midsummer nights dream theme. These events are not currently disturbed by traffic. It is questioned how such an event could have taken place with noise intrusion spreading from the west. The orchard is currently a place of peace and tranquillity. No amount of landscaping would protect the area. Occasional disturbance from motor bike scrambling west of Bordon Hill illustrates how sound cannot be blocked out.
382. The rural character of the western view is under threat. Sunsets would be obstructed, and the perspective permanently changed.
383. The Cottage has previously been affected by flash flooding, with water flowing through the site. More flooding can be expected with climate change.
384. Skylarks cannot be relocated just anywhere. The woodland walk would be affected. Historic heritage should be protected.

Paul Stanton⁷³²

385. Mr Stanton is a local resident.
386. The gradient of Bordon Hill is 1 in 10. Traffic already backs up. An island at the bottom of the hill would be highly dangerous. Winter conditions would be particularly difficult.
387. There have been severe floods in the past. These close Luddington Road and Luddington village is cut off, affecting emergency access. The proposal with

⁷²⁹ INQ/TP/16 attachment

⁷³⁰ INQ/TP/19

⁷³¹ INQ/TP/19 attachment

⁷³² INQ/TP/20

significant amounts of storm water runoff would create major flooding, no matter how many balancing ponds may be installed.

David Bowie⁷³³

388. Mr Bowie is a local resident and representative of Stratford Voice. This is a residents association for Stratford-upon-Avon with 700 members.
389. When launched in 2005 a town poll on the need for further housing development in the town produced a 98% 'no' vote to more large developments. Recent surveys for the Neighbourhood Plan support this. The character and appearance of the town and its heritage are extremely important to residents. There is continuing opposition to substantial housing development and the additional traffic it would bring.
390. The decision on the suitability of a development of this scale and impact should be determined through the Core Strategy and Neighbourhood Plan process. The draft Core Strategy seeks a limit on housing and estate size in the town, which is strongly supported by members.
391. Policies to protect heritage assets of the town are fundamental to its international reputation and economic health. Visitors come to see a town which in many ways retains the character of a medieval market town, containing many buildings which Shakespeare would have known surrounded by a landscape across which he would have wandered. The town is in a basin, and it is extremely important that development is not allowed to creep up the surrounding hills. The new observation tower at the Royal Shakespeare Theatre creates an important viewpoint from where the development would be highly visible and the vista would be seriously harmed. Success with this proposal would lead to further applications resulting in the building line being continued up the hill.
392. The development would degrade the setting of the Shottery Conservation Area. The importance of this was clearly expressed in the Stratford-upon-Avon Town Design Statement⁷³⁴ and the Landscape Sensitivity Assessment Report⁷³⁵. Serious damage to the setting of Anne Hathaway's Cottage is threatened. The idyllic countryside setting would be gone forever and the peace of its gardens would be ruined by noise and visual intrusion. There is an absolute requirement to protect this setting from harm.
393. A great deal of new housing has been built in Stratford-upon-Avon in recent years and the infrastructure has failed to keep up. The development would result in many secondary school children being bussed or driven to schools in surrounding towns.
394. Traffic congestion has become worse, and the proposed link road would add to congestion on Evesham Road, which is residential. This could lead to more rat running through Shottery.
395. There is little employment on offer for the new occupiers. The development would be a dormitory settlement for commuters to other urban areas. Public transport would be very limited, and transport would be car dependent and therefore highly unsustainable.

⁷³³ INQ/TP/5

⁷³⁴ CD/C/6

⁷³⁵ CD/E/13

396. In the spirit of the Localism agenda the appeal should be dismissed.

Yvonne Wiggins⁷³⁶

397. Ms Wiggins is a local resident.

398. An overwhelming majority of the population of the District support the decision to reject the application.

399. The connection of Anne Hathaway's Cottage to the farmland to the west is essential to its credibility as a farm cottage. Many visitors walk the footpaths around the farmland. Accessible footpaths are important for recreation and health. Photographs show the original layout of the farmland before recent alterations⁷³⁷. Some views would disappear with the new development.

400. There has been a lack of transparency with the application. Traffic in Shotton does not require the construction of the link road. Streets in the town are already closed at certain times and this does not cause a traffic problem. The road would be opposed even if not linked to the housing development. It would create a traffic hazard for those using the footpaths and be detrimental to recreation and views.

401. There was considerable opposition to the land becoming a strategic reserve site and it was only ever intended to be considered as a last resort.

402. The appellants' information has been misleading. Most of the new occupiers would need to commute elsewhere to work. The proposed recreation space would be on the wrong side of a busy road at the expense of green fields. The proposed attenuation ponds would be a hazard. There would be enormous pressure on local schools and health facilities. The density of the housing would not be in keeping with neighbouring areas. The new development would be isolated.

403. The population of the town has doubled since 1950 and there has been a very good record of providing housing. A lot of demand for new housing has dried up. The town has a very vibrant and caring community.

Peter Emmerson⁷³⁸

404. Mr Emmerson is Chairman of Old Stratford and Drayton Parish Council.

405. The Council opposes the proposal for the same reasons as the District Council. There is overwhelming opposition to the scheme.

406. The Parish consists largely of open countryside. The whole northern housing area would lie within it. The Council covers the northern and western approaches to the town and is vigilant to protect its landscape setting. The proposal would seriously harm the setting and the iconic view of the town from the top of Bordon Hill. The Hill provides a natural visual boundary and would be breached. There would also be unacceptable urbanisation of the rural landscape to the south of Alcester Road. The country setting of the whole town would be degraded, diluting the experience of visitors and making it a less attractive place to live in.

⁷³⁶ INQ/TP/21

⁷³⁷ INQ/TP/21 attachment

⁷³⁸ INQ/TP/18

407. Traffic congestion, already serious, would be increased. The new road would not be a relief road but create a rat run. Flood risk would be increased, and there is concern about the effect on properties further downstream where there has been previous flooding.
408. The District Council's emerging policy of dispersing housing across the District, using brown field sites in preference to green field, and limiting the size of new estates is supported. The development would be premature.
409. The infrastructure of the town is inadequate to support a development of this size. There would be insufficient secondary school places and local employment opportunities. The growth of the town as a dormitory to the West Midlands cities would be further encouraged.
410. There is concern about the adequacy of the existing foul water treatment facilities to cope. There is local knowledge about previous problems with smell nuisance.

WRITTEN REPRESENTATIONS

Representations Made at Appeal Stage⁷³⁹

Nadhim Zahawi MP

411. Mr Zahawi is Member of Parliament for Stratford-on-Avon.
412. The local planning authority has taken up the Government's Localism agenda and developed its own 20 year housing supply figures as well as pursuing a policy of dispersing new housing around the District. There is concern about how recovery of the appeal by the Secretary of State could be interpreted, and clarity sought as to why this decision was taken.

Highways Agency

413. The Agency had extensive discussions with the relevant parties in relation to the proposal and its concerns have been satisfactorily addressed. Conditions were directed to be attached to any grant of planning permission in the final response to the application.

Shottery Village Association

414. Shottery is a very pleasant Conservation Area. This is valued by its residents and enjoyed by the large number of visitors, making it a major tourist attraction of importance to the local economy.
415. The Town Design Statement⁷⁴⁰ recommends that the fields either side of Bordon Hill be protected in perpetuity and the panoramic view preserved, and the Landscape Sensitivity Assessment⁷⁴¹ reinforces this. The site was included in the Local Plan Review as a reserve site with a caveat making it clear that it should only be released if no other site could be found. Local residents have consistently objected to the proposal and never supported the construction of the proposed link road. This would not reduce congestion and Evesham Road is totally unsuitable for the extra traffic which would be re-routed.

⁷³⁹ INSP1

⁷⁴⁰ CD/C/6

⁷⁴¹ CD/E/13

416. The traffic island, new entrance and associated signage would be extremely damaging visually.

417. There is concern about the high risk of increased runoff.

The Shakespeare Birthplace Trust

418. The planning application includes land in the ownership of the Trust and materially affects the setting of Anne Hathaway's Cottage. Officers of the Trust and its professional advisers have had discussions with the applicants to seek to meet the concerns of the Trustees with regard to the effect such development might have on the Cottage and its associated Registered Park and Garden.

419. The Trust is a charity established by Act of Parliament in 1891. One of its defined objectives is "*to maintain and preserve the Shakespeare birthplace properties for the benefit of the nation*". This guides the Trustees' consideration of the proposal. Except insofar as it may directly affect the Cottage and its setting, the Trust does not have a view on the amount of housing to be provided in or around Stratford-upon-Avon or its location.

420. The Trust objected to the application in December 2009. This objection set out the Trustees' overriding responsibility to preserve the setting and integrity of the Cottage and Park and Garden, and identified a number of concerns and requirements. In particular these were in relation to the proposed link road, which would cross land in the ownership of the Trust, and traffic management in Cottage Lane. Whilst there are potential advantages from the scheme with regard to vehicle parking and traffic management in and around Cottage Lane, they have to be weighed with the overarching responsibility of the Trustees to protect the Cottage and its setting.

421. The Trust was consulted on further information and responded in November 2011 with confirmation of the earlier objection. The applicants have sought to satisfy the Trust on all matters raised in the objection and in November 2011 the Executive Committee considered all the issues. It concluded that, having regard to its duty, the advantages that could accrue from the application do not outweigh the potential irreversible harm from this development to the Cottage, its setting and the Registered Park and Garden.

Ron Cockings⁷⁴²

422. Mr Cockings is a District Councillor.

423. Shottery is an historic village and the home of Anne Hathaway's Cottage. It was linked to Stratford only by ribbon development until the 1980s. Putting 800 houses where proposed would increase the enclosure of Old Shottery, against all the restraint observed over the years. This is not the time to destroy the setting of Shottery enjoyed by the residents and the increasing number of tourists who walk from the town. Although the ward of Shottery has 1,056 dwellings the village has only 231 dwellings and would be dwarfed.

Others

424. There are around a further 120 individual written representations on the appeal which contain objections to the proposal. These are largely on the

⁷⁴² INQ/TP/8, INQ/TP/8a

grounds covered in the cases made by third parties who gave evidence at the inquiry, as set out above.

425. There are 2 individual representations in support of the proposal, which cite a need for additional housing.

Representations Made at Application Stage

426. The representations received by the Council as a result of its consultation on the planning application were attached to its appeal questionnaire⁷⁴³ and summarised in the Committee report⁷⁴⁴. The report records that in total **1,155 letters from third parties** were received. Of these, 635 were in response to the original application, with 452 and 68 respectively in response to consultation on further details subsequently received by the Council. 2 of the letters were in support of the proposal and 7 commented only, with the remainder containing objections to it. The report sets out a full analysis of the issues raised in the objections and a breakdown of the letters into standardised and more individual letters. The objections generally raised grounds which have been repeated at appeal stage and are set out in the above reporting of the cases.
427. The application was supported by **Shottery St Andrew's Primary School** on the basis that the school would be enabled to move to a purpose-built building within the development where it could continue its work. The response notes that the school is currently over-subscribed and unable to meet needs on the current site.
428. The report also summarises the responses to the application from local bodies. Most of these have made further representations at appeal stage, which are dealt with above. There were also objections from **Stratford-upon-Avon Town Council, Luddington Parish Council, Binton Parish Council** and **Friends of the Earth Stratford-upon-Avon** on similar grounds to those raised by other parties. The **Stratford Society** did not oppose the application in principle, but raised concerns about the approach of the development to house design.
429. The responses from consultative bodies to the application are also recorded in the report. The comments of those which have not made appeal representations can be briefly summarised as follows.
430. **Advantage West Midlands** expressed interest in the application with respect to how it could contribute to creating a sustainable community at Stratford-upon-Avon.
431. **Sport England** did not object, seeking a financial contribution to mitigate the impact of the development on indoor and outdoor sports facilities.
432. **Warwickshire County Council** requested various contributions towards infrastructure, as set out below. As the local highway authority, the final position of the County Council, after additional information was provided and agreement reached on mitigation measures, was of no objection subject to conditions. On education, it was pointed out that it cannot be taken for granted that Shottery St Andrews Primary School would close and be relocated onto the appeal site. On countryside recreation, objection was raised to the crossing proposals for public footpaths. On archaeology, some further work was sought to be undertaken by

⁷⁴³ CD/A/19

⁷⁴⁴ CD/A/20

- way of a suggested condition. On ecology, an initial objection was withdrawn following provision of further information, with conditions to cover protection and mitigation recommended.
433. **Warwickshire Police** sought a contribution towards policing.
434. The **Environment Agency** advised that the issues it had raised initially were sufficiently addressed to allow a recommendation of conditions on any permission granted, including with respect to ecology and great crested newts.
435. **Severn Trent Water** also had no objection subject to a condition.
436. **English Heritage** advised that the Council would need to satisfy itself that the site remains the most appropriate for development having regard to the emerging spatial strategy. The scheme would affect the setting of the village of Shottery and there is concern at the possible impact of the proposed road on the setting of Anne Hathaway's Cottage and Garden. Landscape issues need careful further justification. The western relief road is not opposed in principle subject to it forming part of an integrated package of traffic management for Shottery, together with striving to minimise its impact on the setting of the village and the heritage assets within it. The scheme has not yet been justified in terms of bringing substantial benefits to Shottery or the Cottage.
437. The Commission for Architecture and the Built Environment (**CABE**, now part of the Design Council) advised that significant further work was needed prior to outline approval⁷⁴⁵. Much of the information expected at outline stage is not yet available. The scheme should be more rigorous in testing the previous Statement of Development Principles⁷⁴⁶, for example the relief road may create future problems of severance between communities. There should be more information about the relationship between new and existing communities. The location of the local centre away from primary routes may not help it thrive. Further information on the character of the development is needed, with the opportunity to respond to differing contexts to the north and south of the site. The site would benefit from an approach driven by landscape and sustainable design, which could inspire more creative solutions, to achieve a high quality new place. A design code could address some of the concerns and allow a high quality design to be secured through the planning process. However, to be successful this would need to be developed alongside revisions to the Masterplan, addressing the fundamental concerns. Finally, the success of the development as a new community would depend in part on a strong phasing strategy, ensuring a high quality of life for residents occupying early phases of development.
438. **Natural England** withdrew its original objection after being satisfied by the provision of further information that there would be no adverse effects on the Racecourse Meadow Site of Special Scientific Interest. It supported the recommendations of the great crested newt assessment, and recommended conditions on construction impact and long term management of green infrastructure and SUDSs by way of planning obligation.
439. **Warwickshire Wildlife Trust** noted that no reptile or invertebrate studies were included in the assessment, but was broadly satisfied with the survey work

⁷⁴⁵ Response at INQ/RASE/12

⁷⁴⁶ CD/B/5

that had been conducted. Recommendations were made on mitigation, including a financial contribution for skylark habitat replacement.

440. The Council's **Building Control Officer** considered that the submitted energy statement was sufficient for an outline application. Its **Environmental Health Officer** generally accepted the technical submissions made with the application and suggested recommended conditions.
441. **Western Power Distribution** raised a number of points but had no objection.

CONDITIONS

442. A set of suggested planning conditions in the event of the appeal being allowed was put forward at the inquiry⁷⁴⁷. These were discussed, and a number of changes were agreed, but there were also areas of disagreement.
443. In addition, the appellants put forward for consideration 3 conditions which would accommodate potential changes to the scheme that arose from the evidence⁷⁴⁸. RASE suggested a further condition dealing with traffic management⁷⁴⁹.
444. Due to the number and detailed nature of points made on the conditions during the discussion these are not set out individually here, but they are addressed in the section on conditions in the Conclusions below where there are material differences of view to resolve.

PLANNING OBLIGATIONS

Legal Agreement

445. The submitted legal agreement⁷⁵⁰ is between the appellants, various other owners of parts of the site, a chargee with respect to one part of the site, and Warwickshire County Council. The planning obligations contained in its Schedule 1 are as follows:
446. **Part 1: Secondary/Sixth Form Education Contribution.** This sets out a formula for calculation of a financial contribution to the County Council. It contains elements relating to anticipated pupil yield, birth rate, average stay-on rate and pupil place cost multipliers for the extension of an existing school, together with an additional amount for funding special needs places. Triggers are set out for payment of four equal instalments of the contribution relating to the number of dwellings occupied.
447. **Part 2: Primary School.** This requires the primary school site not to be used for any purpose other than the provision of a primary school unless otherwise agreed by the County Council. An initial contribution provides for surveys of the site, with two options then set out. The first is transfer of the site to the County Council for it to procure construction of the primary school, and the second is transfer of the site to the County Council with a completed primary school. Financial contributions to the County Council are required for early needs, primary and special needs provision by way of formula and triggers, as

⁷⁴⁷ INQ/LPA/23

⁷⁴⁸ INQ/APP/43

⁷⁴⁹ INQ/RASE/18a

⁷⁵⁰ INQ/APP/52

above for Part 1, with adjustment of the contributions under the second option to reflect the cost of construction of the school.

448. **Part 3: Library Contribution.** The contribution to the County Council is to be used for extending, altering or improving library and information facilities. It is calculated on a sum per dwelling basis, varying with dwelling size (from £85.34 to £284.49), and is payable by development parcel.
449. **Part 4: Bus Contribution.** This is a sum of £387,120 payable to the County Council by instalments for the purpose of enhancing existing bus services and equipment provision and/or to secure new services to serve the development.
450. **Part 5: Travel Pack Contribution.** A sum of £50 per dwelling, payable to the County Council by development parcel, for provision of information packs on sustainable modes of transport.
451. **Part 6: Traffic Management Contribution.** This provides for payment to the County Council of a maximum of £500,000 to cover the reasonable costs of implementing a traffic management scheme. The scheme is defined as traffic measures regulating or controlling the movement of traffic in or through Shotton as shown indicatively on an included drawing or a scheme or measures otherwise agreed. The contribution is to be paid at any time required within 2 years of opening of the Relief Road.
452. **Part 7: Parkway Station Contribution.** This is £40,000 payable to the County Council prior to occupation of more than 150 dwellings towards provision of a new train station.

Unilateral Undertaking

453. The submitted unilateral undertaking⁷⁵¹ is by the appellants, various other owners of parts of the site, a chargee with respect to one part of the site, to Stratford-on-Avon District Council. The planning obligations are set out in Schedule 1 as follows:
454. **Part 1: Affordable Housing.** This is to be provided in accordance with an affordable housing scheme set out in Schedule 2. 35% of the dwellings are to be affordable housing, with this calculated by reference to the total residential floor area of the development. The scheme contains requirements relating to tenure, unit sizes, build standard and clustering. Detailed arrangements are set out for phasing of provision, occupancy, protection of mortgagees and variation of restrictions.
455. **Part 2: Community Park.** Works for laying out and planting the park are to be completed prior to occupation of 200 dwellings. Provisions are set out for either transfer of the park to the Council with a commuted sum or for the developer to retain and maintain the park according to an approved management scheme.
456. **Part 3: Open Space Land.** This relates to areas of public open space within the development including play areas, and contains requirements relating to specification and the phasing of provision. There are again alternative arrangements for transfer of the areas to the Council or retention by the developer.

⁷⁵¹ INQ/APP/53

457. **Part 4: Local Centre Land.** Marketing of the local centre land to commercial operators is required, with alternative provisions if this is not successful.
458. **Part 5: Off-Site POS Contribution.** This is payable to the Council according to a formula which reflects the calculated under-provision of on-site open space for youth and adult use in Stratford-on-Avon. It is payable by parcel for provision of local facilities.
459. **Part 6: Skylarks.** Implementation of an approved skylark mitigation strategy is required in accordance with an agreed timetable, with related ongoing land interest restrictions.
460. **Part 7: Health Centre Land.** This requires confirmation to be obtained from the PCT as to whether there is a need for additional health related facilities to serve the development. If so, marketing of the health centre land is to be carried out to enable completion by occupation of the 600th dwelling, with alternative provisions if the land is not required or the marketing is not successful.
461. **Part 8: Marketing Obligations.** Requirements are set out on the details of marketing exercises where these are necessary under other obligations.
462. **Part 9: Built Facilities Contribution.** Payment to the Council is required according to a formula based on a cost of £371.37 per person towards a leisure centre in Stratford-upon-Avon, phased by parcel.
463. **Part 10 Police Contribution.** Payment of £566 per dwelling (£396 if secured by design compliance is achieved) to the Council towards Police facilities and costs, phased by parcel.
464. **Part 11 Noise Mitigation Measures.** A requirement to notify the owners of 4 specified properties that they are potentially eligible for noise mitigation measures funded by the developer and implementation of these where required to a maximum of £20,250.
465. The District Council and the appellants submitted an agreed statement of justification for the obligations having regard to the local and national policy framework and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations (2010)⁷⁵². This provides in each case (except the noise mitigation, as referred to below) a reference to relevant policies and an explanation for the quantum of contributions in the obligations. Although a joint document, it notes that the appellants do not concur with the justification for the obligations on Stratford Parkway Station and the Police.
466. With respect to Stratford Parkway Station, the statement advises that the Station is being promoted, funded and delivered by Warwickshire County Council and part of the Stratford Local Sustainable Transport Project. It is to be located adjacent to the existing bus-based Park & Ride in Bishopton, 2km northwest of the Town Centre, on the Stratford to Birmingham Railway. The scheme would assist the delivery of the Local Transport Plan and national transport goals. Of the total cost of £8.866m, developer funding is to provide £0.7m. A formula for contributions provides a consistent basis for calculating these. According to the County Council⁷⁵³, the formula would result in a contribution of £339,707 for a

⁷⁵² CD/H/2

⁷⁵³ INQ/WCC/1

scheme of 800 dwellings, but that in fairness to the appellants in this case the contribution was limited to £40,000 on the basis that an initial request had been made for this amount. It also referred to an appeal decision in Bromsgrove District where an Inspector had agreed the need for a development to contribute to a station scheme⁷⁵⁴.

467. The appellants point out⁷⁵⁵ that the officer report to Committee advised that this contribution had not been justified for the purposes of the CIL tests⁷⁵⁶. It is also argued that it appears the scheme has already secured the required funding⁷⁵⁷, and that in December 2011 the Council issued a consultation statement acknowledging⁷⁵⁸ that the West of Shottery scheme is not required to fund transport schemes listed in the Developer Contribution towards Transport Schemes Supplementary Planning Document⁷⁵⁹. It is therefore contended that a contribution to the Station has not been justified.
468. On the Police contribution, the appellants referred to a letter on behalf of Warwickshire Planning Authorities to the Police Authority⁷⁶⁰ advising that a document it had published in February 2011 did not provide adequate evidence to justify the level of contributions it sought. At the inquiry the Council advised that it was not party to the letter, and that specific evidence had been provided in relation to the appeal scheme on the need for a Police contribution, including details on how it would be used, and it considered that this was compliant with Regulation 122⁷⁶¹. The appellants maintained that insufficient justification had been given for the substantial contribution sought.
469. With respect to the noise mitigation measures, the Council advised that it had not sought this as an obligation and would not be able to enforce it since it derived no benefit from it. Such provision should be secured by other means. The appellants, supported by RASE, considered that this was properly a matter to be covered by an obligation since it responded to a concern about impact of the development, and that enforcement of the mechanism would be possible.

Parties to the Obligations

470. The Council made representations in relation to the absence of the Shakespeare Birthplace Trust as a party to the undertaking⁷⁶². It considers this is of concern since the SBT owns a large part of the site onto which parts of the Relief Road and structural landscaping including the Shottery Conservation Landscaping are proposed to be located⁷⁶³. Further, it is appropriate for the whole of an application site to be bound by the provisions of a planning obligation seeking to secure financial contributions for off-site works. The undertaking provides that open space land which would include the landscaping which falls within the SBT land is to be either transferred to the Council or a Management Company. Given that a large amount of that land is currently not bound by the

⁷⁵⁴ INQ/WCC/2

⁷⁵⁵ INQ/APP/1 p 122

⁷⁵⁶ CD/A/20 p 132

⁷⁵⁷ INQ/APP/2 Appendix 17 Table 2.4

⁷⁵⁸ INQ/APP/2 Appendix 18 p 127

⁷⁵⁹ CD/C/2

⁷⁶⁰ INQ/APP/45

⁷⁶¹ INQ/LPA/22 para 3.1

⁷⁶² INQ/LPA/22 Section 2

⁷⁶³ INQ/LPA/24

provisions of the undertaking such obligations would not apply to the landscaping and Shottery Conservation Area which fall within the SBT land. Even were the landscaping to be retained and managed by SBT, which had not been suggested, an obligation entered into by SBT would be necessary to secure this arrangement. Further⁷⁶⁴, maintenance of the conservation landscape is required for mitigation and an important area of retained vegetation is affected. A condition cannot be relied upon.

471. The appellants responded as follows⁷⁶⁵. SBT land is proposed to be used to deliver a section of the relief road. The balance of the SBT land would be the subject of planting and landscaping works only, which are to be specified pursuant to planning conditions. No residential or associated development is proposed to be located on SBT land. The SBT land is not required to be bound by the proposed planning obligations. While local planning authorities generally adopt an approach that all persons having an interest in a site should be party to any obligation, there is no provision in section 106 or requirement by guidance or legal authority that this has to be the case. For example, where a red line boundary includes access works on highway land outside the principal development site, the highway authority would not normally be expected to be party to a planning obligation. The key issue is whether the interests which need to be bound in order to secure delivery of the obligations are in fact bound. The County Council and District Council have agreed that the new road does not need to be the subject of a planning obligation but would be secured by way of a condition requiring a highways agreement and a bond to secure it prior to any development commencing. To conclude the highways agreement to discharge the condition, it would be necessary for ownership of that part of the SBT land on which the road is to be located to be secured. This would either be following acquisition by the appellants or by SBT being party to the agreement. Accordingly, none of the development is capable of being brought forward until the SBT land is secured to enable delivery of the road. All of the planning obligations relate to things that are to be delivered on land already within the control or ownership of the appellants. None of the proposed obligations are to be delivered on the SBT land. It is incorrectly suggested that areas of land to be transferred to the District Council or a Management Company lie within the SBT land. Accordingly, it is not necessary for the SBT land to be bound by such obligations, and no mischief could arise as a result of the SBT land not being bound, with no development value to be derived from that land. Further⁷⁶⁶, the SBT land is not intended to be publicly accessible or part of the open space offer, and SBT could be relied upon to continue to look after land in agricultural use.
472. On this matter the County Council initially expressed the view that all land owners should be party to the agreement in accordance with normal practice, and that it was minded not to execute the agreement unless and until the SBT were a party to it⁷⁶⁷. However, it subsequently entered the legal agreement as set out above.

⁷⁶⁴ Oral addition to submissions

⁷⁶⁵ INQ/APP/44

⁷⁶⁶ Oral addition to submissions

⁷⁶⁷ INQ/WCC/1 section 2

473. RASE pointed out that there was no certainty of a bond in the condition as drafted. The County Council advised that it was normal practice to require such a bond.
474. RASE also raised a number of detailed points on the drafting of the obligations by way of annotated versions of these⁷⁶⁸.

⁷⁶⁸ INQ/RASE/18

CONCLUSIONS

475. The numbers in square brackets in this section are references to previous paragraphs in the Report which are particularly relied upon in reaching the conclusions.

Main Considerations

476. Having regard to the Council's reasons for refusal of the application, the relevant policy context and the evidence to the inquiry, the main considerations that need to be addressed are as follows:

- i) whether the proposal is in accordance with the development plan;
- ii) whether and to what degree the proposal is supported by the housing land supply situation in the District;
- iii) whether allowing the development now would be premature in relation to the emerging development plan;
- iv) the effect the development would have on the character and appearance of the area with particular reference to landscape considerations;
- v) the impact the proposal would have on the settings of the heritage assets of Anne Hathaway's Cottage and its associated Registered Park and Garden, and the Shottery Conservation Area;
- vi) the effect the development would have on tourism in the District;
- vii) the effect the development would have on highway conditions;
- viii) whether the proposal would give rise to a risk of flooding;
- ix) the effect the development would have on the living conditions of existing residential occupiers in the vicinity and on residents of the development with respect to noise;
- x) whether the proposal is a sustainable form of development;
- xi) whether there is adequate environmental information;
- xii) whether any permission should be subject to planning conditions and planning obligations and the likely effectiveness of these with respect to mitigation of impacts.

(i) The Development Plan

477. The development plan comprises the West Midlands Regional Spatial Strategy (August 2004 and re-issued January 2008), saved policies of the Warwickshire Structure Plan 1996-2011 (Adopted 2002), and saved policies of the Stratford-on-Avon District Local Plan Review 1996-2011 (Adopted July 2006). There is no dispute that the saved policies remain in place notwithstanding that the original intended plan periods of the Structure Plan and Local Plan Review have passed. [22]

478. The appeal site is explicitly referred to in the Local Plan Review (LPR) in two policies, both of which have been saved. These are STR.2A and SUA.W [29,40]. It is described as Land West of Shottery, with the Proposals Map showing an almost common boundary with the current appeal site. In policy STR.2A, proposal SUA.W is one of three listed sites. The first part of this policy states that: "*The release of sites for housing development will be regulated...*",

- indicating that it is a phasing-type policy. Consistent with this, the policy goes on to state that the three sites listed "*are identified as Strategic Reserve Sites to help meet long term (post 2011) housing needs*". The penultimate part of the policy seeks to prevent "*any development which would prejudice the long-term use of these sites for housing*". Such prejudice does not arise with the present proposal since it is substantially for housing development [13-21]. The final part of the policy precludes housing development before 31 March 2011 unless there is a significant under provision of housing land. Since that date is past, there is also no conflict with this part of the policy.
479. There is disagreement as to whether the use of the term 'identified' in the policy differs significantly in meaning from 'allocated' [74-77,185,230-231]. Supporting paragraph 2.4.12 differentiates the three Strategic Reserve Sites from Plan allocations on the basis that it was unlikely they would need to be released in order to meet requirements prior to 2011, and the housing provision identified in the Plan covered the period up to 2011 [75,185,231]. Nevertheless, the final part of the policy would have allowed their development pre-2011 had the need arisen, so that the term 'identified' in effect can be seen as intended to indicate an acceptance of actual development. Similarly, paragraph 2.4.14 states that "*when the need to release additional greenfield land is identified, priority is likely to be given to the release of land at Shottery in a phased manner*" [76]. Again, it is clear from this that identification of the site anticipated the scope for development to take place rather than being merely to prevent other prejudicial development.
480. Paragraph 2.4.12 refers to the reserve sites having a "*potential role in meeting housing needs post 2011*" [75,185,231]. The policy was extended by its saving in 2009 to support the delivery of housing, and remains saved [22,68,77]. It is reasonable to conclude that the realisation of that potential role by way of development now to meet current housing needs accords with the saved policy, despite the original intended end-date of the Plan being passed [77,93,185,232]. Housing needs can be interpreted as need for housing land (as evident in paragraph 2.4.13 which refers to "*an ongoing need... to accommodate development consistent with meeting local needs*", and ensuring that "*there is a continuous land supply to meet longer-term housing requirements*") [75].
481. Paragraph 2.4.16 refers to it being unlikely that the need to release any of the reserve sites will have to be addressed until after the Council has prepared its Core Strategy and Significant Allocations Development Plan Documents [79,185,231]. This has not happened, and the partial review of the Regional Spatial Strategy to cover the period post 2011 will not now occur [43]. However, the policy does not explicitly rule out development of the reserve sites in advance of such a stage in the development plan being reached. Conversely, with the progress yet to be made on the emerging development plan (dealt with below under consideration (iii)), and the saving of the LPR policies, the latter continue to provide the development plan framework for housing land supply in the post-2011 period [79,104].
482. Arguments have been made suggesting that policy STR.2A and proposal SUA.W are out of date, that benefits envisaged by the LPR Inspector no longer apply, and that emerging policies should take precedence [186-190,232-234]. These points are potentially other material considerations to balance against the development plan. They do not mean that there cannot be compliance with these policies [69-70,229]. Residential development of the West of Shottery site

at the present time to meet housing needs is consistent with the expectation of policy STR.2A. In such circumstances, the proposal accords with this saved policy [93]. A similar view was reached by the Inspector in an appeal decision on another of the Strategic Reserve Sites [78]. The matter of whether housing needs exist is considered below.

483. With respect to proposal SUA.W, this specifies a number of components that development of the site is expected to include, as indicated on the Proposals Map [40]. The appeal scheme proposes northern and southern residential parcels including affordable housing (components (a) and (b) of the policy), public open space (d), a local centre including a convenience store, primary school and doctor's surgery (e). With respect to (f), the required woodland areas could be incorporated in the development by way of planning conditions, as dealt with under consideration (iv) below. Under (c), the scheme includes the required road link between Alcester Road and Evesham Road, and makes provision for a rear vehicular access to Anne Hathaway's Cottage. Associated traffic calming measures in the Shottery area, also specified in (c), do not form part of the proposal itself, but a financial contribution towards these is put forward in a planning obligation [189,140,234]. This and the weight to be given to it are addressed below under considerations (vii) and (xii).
484. On the above basis, and subject to the remaining matters to be considered further below, the scheme substantially accords with proposal SUA.W [91]. It also closely follows the Council's Statement of Development Principles, which supported the policy [49,116]. There is no suggestion in the reasons for refusal that the proposal conflicts with this part of the development plan [55].
485. The refusal does cite a number of other policies in the LPR. To the extent that policy STRA.2 and proposal SUA.W form part of the same development plan, compliance with the site specific requirements of these should effectively override areas of apparent conflict identified with the Plan's other more general policies. This is on the basis that the Plan should be capable of an internally consistent interpretation [113]. Nevertheless, suggested conflicts with individual policies arising from the particular features of the appeal scheme, and related to changed circumstances, are considered within the specific topic issues below.
486. No breach of the Regional Spatial Strategy is suggested [55]. The LPR, including policy STR.2A and proposal SUA.W, was prepared in the context of both this and the Structure Plan, and reflects their requirements [183-184].
487. It can be concluded that, in the event that the proposal is shown to be required to meet current housing needs and subject to some detailed matters relating to proposal SUA.W on woodland and traffic calming to be considered further, it has a close accord with key policies of the development plan.

(ii) Housing Land Supply

488. The National Planning Policy Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirements with an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. There is disagreement as to whether the Council is able to meet this requirement. The Council's assessment of its 5 year housing land supply position (supported by RASE) is that it has a

- 5.01 years supply of housing land⁷⁶⁹, while the appellants' calculations applying a variety of assumptions are in a range in which the shortest period is 1.47 years and the longest 3.22 years [86-87,191,241].
489. Looking at the differing inputs leading to these varied estimates, the first is the size of the requirement for the 20 year plan period of 2008-2028. The Council suggests that this should be 8,000 dwellings [191,236], while the appellants prefer a figure of 12,000 [81-83]. The Framework requires that local planning authorities use their evidence base to ensure that the Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with policies in the Framework.
490. A study of housing provision options for the District has been undertaken by GL Hearn to provide evidence for the Council's Core Strategy [81,191,237]. The study gave a range of options between 8,200 and 12,000 dwellings for the plan period, but advised that the Council should plan on the basis of a requirement in the 11,000-12,000 range. The lower option of 8,200 dwellings was put forward based on an assumption of reduced net in-migration. While indicated to have least environmental impact and do most to preserve the character of the District, also identified was that it would have a higher cost in economic and social terms. The Council has recently selected a figure of 8,000 for use in the third draft version of its Core Strategy. This is based on the belief that this scale of provision would best preserve the special character of the District and recognise the key role played in this by the District's tourism economy, which the Council considers was not properly reflected in the GL Hearn study [191].
491. Weighing the options with their differing environmental, economic and social implications for the District is a matter for the Council to consider through the emerging Local Plan [191,239]. However, the GL Hearn study is clear that the lower option is based on an approach of restraint and requires 'displaced demand', with implications for neighbouring authorities, to be addressed [81-82]. There is no apparent evidence base dealing with this in support of the Core Strategy. The 8,000 figure is yet to be tested through the Core Strategy examination process. The weight to be given to the emerging Plan is dealt with below under consideration (iii), but at this stage the adoption of the restraint figure in itself carries limited weight.
492. There is no reason to doubt that the GL Hearn study is a properly prepared independent assessment. Its recommended range of 11,000-12,000 dwellings is consistent with that produced in a separate expert analysis of demographic data using a well-established modelling approach, and received the support of Council officers [82-83]. Detailed criticisms have been made by RASE of the analysis, in particular in relation to migration assumptions [237-238]. However, the expert assessments are based on the most up to date available information and consider a range of factors before arriving at the recommended option. The GL Hearn study provides a more recent evidence base than the RSS Review Panel report [43-45]. I therefore consider that the figure of 11,000-12,000 dwellings for the period 2008-2028 accords more closely with the full, objectively assessed needs for market and affordable housing required to be met under the Framework than the Council's figure of 8,000 dwellings.

⁷⁶⁹ Calculated as explained in the footnote to paragraph 191(d).

493. The second area of difference relates to whether or not certain specific sites should be included in the land supply. The developments at Tiddington Fields (43 units) and Maudslay Park (179 units) are restricted for use as residential institutions, but on the evidence of the particular nature of the developments they comprise what can reasonably be regarded as individual dwelling units for housing supply purposes. They are therefore legitimately counted by the Council in the supply. [87,191,244]
494. The Former Cattle Market site (197 units) does not appear to have permission for a development that would currently be viable. However, it is in a suitable location for development and available, and with a desire for a viable scheme to come forward there would appear to be a realistic prospect that housing could be delivered within 5 years. This site is reasonably included in the supply. Similarly, the Chestnut Street site (7 units) should not be excluded merely because it has permission for flats. [87,191,244]
495. Therefore, the disputes on these sites can be resolved in favour of the Council (as supported by RASE).
496. A further area of disagreement on supply is with respect to windfalls. The Framework indicates that local planning authorities can make an allowance for these in the 5 year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the SHLAA, historic windfall delivery rates and expected future trends. The Council's allowance of 99 units per annum excludes residential gardens, as required by the Framework. There is evidence of the previous availability of such sites, and this is reflected in the SHLAA and by reference to windfalls in the LPR. However, there is not compelling evidence on the future reliability of this source, with the parties unable to satisfactorily interrogate the relevant Council data during the inquiry. As a result, there have to be reservations about whether the Council's allowance is realistic. [85,191,242]
497. Another disagreement is on treatment of the backlog in completions in the first part of the Plan period. The Council's figures spread this shortfall over the whole of the remaining period, while the appellants' assume it should be made up in the first five years. There is no firm policy guidance on the correct approach. However, the emphasis of the Framework is to boost significantly the supply of housing, which implies dealing expeditiously with a backlog. There are previous decisions which have followed the appellants' approach, and no strong local reason for a long term offsetting of the remaining requirement. The backlog should therefore be added to the 5 year requirement. [84]
498. The Framework suggests that the 5% buffer should be increased to 20% where there has been a record of persistent under delivery of housing. There has been a significant shortfall against the Council's own target over the period 2008-2012. However, the number of permissions was constrained by the moratorium imposed between November 2006 and March 2011 due to an oversupply of sites having regard to the strategic target. This would have been a strong factor in limiting delivery during recent years. Despite shortcomings in the achievement of new affordable homes, the performance record does not warrant a 20% buffer. [88,191,243]
499. I therefore conclude that a robust assessment of the 5 year housing land supply position in the District should be based on an 11,000-12,000 unit

requirement for the whole Plan period, a 5% buffer, the land supply as identified by the Council but excluding a windfall allowance, and the backlog being added to the 5 year requirement. This gives a supply of around 2.0-2.2 years. This would increase to around 2.4-2.6 years with the Council's windfall allowance and further to around 3.2-3.5 years if the backlog is spread over the whole Plan period. The degree of shortfall in the 5 year supply even with generous assumptions indicates the existence of a substantial requirement for land to meet objectively assessed housing needs in the District. [86]

500. The appellants suggest that the appeal site could deliver some 400 dwellings during the 5 year period, and add to the supply thereafter for a further 4 years [89]. The scope for the development being implemented is challenged by the other parties due to the need for this to involve the Shakespeare Birthplace Trust [248-250,188,192], and this point is addressed below in the overall conclusion. The rate of delivery has not otherwise been questioned by the Council, but RASE contends that the scale of this as set out by the appellants is unrealistic [175,245-247,258]. Points have been made regarding the financial position of the appellant companies and their capacity to undertake the scheme. This has been responded to by the appellants by way of information on recent performance. The identity of an appellant is not normally material to the decision on the grant of permission. The reference in the Framework in paragraph 173 to there being a need for attention to viability and costs in plan-making and decision-taking relates to the effect of the scale of obligations and policy burdens in affecting viability. There is no suggestion that implementation of the appeal scheme would not be viable. Delivery rates are clearly subject to uncertainty, and there would be complex issues to deal with including discharging conditions and risk. However, the appellants anticipate the involvement of 3 house builders and a housing association, such that a number of interests would be active in delivery. If implemented, there is no overriding reason to doubt the appellants' confidence that the development would contribute a substantial number of units within the 5 year period. This is consistent with the LPR's anticipation of the site making a significant contribution to the District's post 2011 housing supply.
501. While it is suggested that alternative sites should be considered, the review of sites for inclusion in the 5 year supply has been comprehensive, with known alternatives assessed on the basis of deliverability. The 5 year assessment as such takes reasonable alternatives into account. [90,100,250,265,271,286,293, 305,308]
502. It is therefore found that there is a significant unmet need for housing land in the District, and this warrants a role for the appeal site as anticipated in the LPR [90]. The proposal thus accords with the development plan in this respect.

(iii) Prematurity

503. Advice on prematurity in relation to emerging development plans is given in 'The Planning System: General Principles'. This indicates that refusal of planning permission on grounds of prematurity may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD. A clear demonstration of how the grant of permission would prejudice the outcome of the DPD process is required. [96,193]

504. Although the West of Shottery proposal was included in the first and second drafts of the Core Strategy, it did not appear in the third draft issued in February 2012 [44-47,63-64,195,231,252]. That current draft seeks to restrict the number of new dwellings in Stratford-upon-Avon to no more than 560-840 and limit the size of estates to 100 homes. The appeal proposal is for up to 800 dwellings. If granted permission, a wider dispersal of the remaining substantial proportion of the total number of dwellings that the Core Strategy seeks to provide for would still be possible [101]. However, the scale and location of the appeal scheme, and a prospect of immediate development, would run strongly counter to the strategy that the emerging plan is seeking to deliver [258,195-196,253,258]. This would be to a degree that a grant of permission would materially prejudice the outcome of that process. The conflict between the proposal and the current version of the Core Strategy is widely cited in local representations, which see local decision making through the development plan as a key element of localism [317-410,412,414,422-426,428].
505. The General Principles advises that, when a DPD is at the consultation stage with no early prospect of submission for examination, then refusal on prematurity grounds would seldom be justified because of the delay which this would impose in determining the future use of the land in question. Consultation in the preparation of plans is consistent with consultation obligations in European Law, but it is important to avoid unreasonably holding up proposals on the basis of conflict with another process which has an uncertain outcome. The Council's officers in April 2012 considered that, with the Core Strategy unlikely to be submitted for examination before November 2012, it did not have an early prospect of submission and should only be accorded limited weight. November is now sooner, but an earlier prospect of submission does not automatically mean that refusal is justified on prematurity grounds. [95-97,194]
506. The Framework in paragraph 216 advises that weight may be given to relevant policies in emerging plans according to a number of factors. First is the stage of preparation reached, with the weight greater the more advanced the preparation. In this case two previous consultation exercises have been undertaken on the Core Strategy, and further consultation has been carried out. The Council considers that the latest version responds to the results of previous consultation and to changes in the planning context. However, with submission not until November 2012 it remains at a relatively early stage. [97-98,195]
507. The second factor is the extent to which there are unresolved objections to relevant policies, with the less significant these are the greater the weight that may be given. The information given to the inquiry is that there are some 1,600 duly made objections to the Plan, but no analysis of these had been carried out. Copies of a number of representations were provided, and within these there are objections to the relevant policies. The analysis of the representations and the implications of the whole range of these for the Core Strategy are matters for the Council to address. However, there do appear to be unresolved objections which are significant. In addition, it is apparent that the evidence base in support of the current version of the Core Strategy remains to be developed. [98,195,253]
508. The third factor is the degree of consistency of the relevant policies with policies in the Framework, with the closer the policies are the greater the weight that may be given. Again, this is a matter to be considered through testing of the Plan. However, identified above under consideration (ii) is the key issue relating to the housing requirement for the Plan period, where it is concluded that

the 8,000 unit figure put forward by the Council does not accord with advice in the Framework on meeting housing needs. Furthermore, sustainability concerns have been identified with the proposed distribution. The soundness of the emerging Plan is not for determination through this appeal, but there do appear to be significant questions relating to the degree of consistency with the Framework. [64-65,98,195,253]

509. A further relevant point is that the Core Strategy does not include site allocations, and therefore its progress would not resolve land delivery issues [99].
510. The Framework includes as a core planning principle that it should be genuinely plan-led, empowering local people to shape their surroundings. Representations on the appeal reflect evident local concerns about the previous growth of Stratford-upon-Avon and the changes that this has brought about, and there are many references to the Government's localism agenda. The Framework also identifies a role for neighbourhood planning as giving communities direct power to develop a shared vision for their neighbourhood and deliver the sustainable development they need. Considerable work has been undertaken on the neighbourhood plan process in Stratford-upon-Avon including consultation, which has been contrasted with that carried out by the appellants on the appeal proposal. To the extent that the neighbourhood plan would need to be consistent with the Core Strategy, the proposal would also be prejudicial to this. However, there is not expected to be a draft until the end of 2012. [65,99,190,195,254-259 317-410,412,414,422-426,428]
511. Taking all the above factors into account, I consider that relatively little weight can be attached to the emerging Core Strategy and the neighbourhood plan at this stage.

(iv) Character and Appearance of the Area

512. The inclusion of policy STR.2A and proposal SUA.W in the LPR confers an acceptance within the development plan of the landscape impact of the west of Shottery development, subject to compliance with the parameters it sets out [70,105,113]. That position reflected the analysis of the LPR Inspector, based on the information before him. This included the Council's Statement of Development Principles and the Scheme Assessment Study for the Stratford Western Relief Road (SWRR). The Inspector found that there would be inevitable changes to the area immediately west of the existing urban edge but that the overall cumulative impact on the designated Special Landscape Area would not be materially harmful [106]. Specifically in relation to views, he considered that the impact on those to and from Bordon Hill and its environs would be "*minimal*" [107]. His overall conclusion was that the scheme would have "*limited*" harmful effects [107].
513. Reference has been made to the findings of a previous Inspector on proposed development west of Shottery in the 1994-5 District Local Plan inquiry [111,198-199,235,261]. There is no dispute that fundamental elements of that Inspector's approach and the identified features of the landscape itself on this edge of the town remain applicable [198,235]. However, his conclusions were reached in relation to a scheme which was not the same as the current proposal and was in an earlier development plan context [111,198]. Those conclusions were clearly recognised by the LPR Inspector, who nevertheless found in favour of the West of Shottery proposal. He agreed on the need for a very sound case to justify a

- breach of the existing settlement boundary but considered that such a case existed [200-201]. The case included his acknowledgement of a requirement for housing development on greenfield land on the periphery of Stratford-upon-Avon⁷⁷⁰ as well as the site specific benefits of the West of Shotton proposal [201,234]. On the deficit side his findings on the limited degree of harm from the LPR scheme are clearly set out in relation to the landscape impact, as referred to above. His analysis leading to this conclusion followed the current approach of landscape character assessment rather than one based on assessing landscape quality which was reflected in the earlier Inspector's findings [111].
514. There is doubtless scope for differing views to be held on the landscape impact of the proposal [108,201,205,261,269]. In addition to the Council and RASE, there are many other local representations which are strongly opposed to the scheme on landscape grounds [269]. However, the conclusion of limited harm was reached by the LPR Inspector in agreement with a wide body of expert evidence supporting that finding submitted at the LPR inquiry. A very similar expert case is put forward by the appellants on the current appeal, including a detailed Landscape and Visual Impact Assessment. [108]
515. Given the inclusion of policy STR.2A and proposal SUA.W in the development plan, it is necessary to focus on whether there are any considerations indicating a different conclusion on the acceptability of the current scheme [105,108-109,206]. The Special Landscape Area designation no longer applies, as the relevant policy was not saved [106,198]. This change does not militate against the LPR Inspector's findings or the justification for the proposal. The District Design Guide and the Town Design Statement, the latter explicitly seeking to give protection to the fields on either side of Bordon Hill and the panoramic view, were before the Inspector and the Council when the LPR was adopted [114,200,262]. The National Planning Policy Framework specifies a need to recognise the intrinsic character and beauty of the countryside, but that is not a material shift in national policy and does not warrant a change in approach to landscape impact assessment [114,204,260].
516. The Council has recently produced a Landscape Sensitivity Assessment which builds on an earlier Urban Edge Pilot study [109,203,261]. The northern residential component in the proposed development would lie within a zone identified in the Assessment as of medium sensitivity to housing, the southern residential component would be in a zone identified as of high/medium sensitivity, and the road link would pass through a zone identified as of high sensitivity [109-110,117,203,265]. However, the degree of sensitivity ascribed to these parcels of land, over which there is not expert agreement, does not in itself render the proposals unacceptable. In fact, the descriptors to the northern and southern zones in the Assessment provide for a potential acceptance of some housing development within these, although the scale of such development is at issue.
517. The Assessment has been prepared as supporting evidence for the Council's emerging Core Strategy, but has not been the subject of consultation and does

⁷⁷⁰ CD/B/3 para 782: "...I remain convinced that it is necessary to seek greenfield land on the periphery of Stratford for housing development, and that on balance the package of proposals set out in SUA.W represents the least harmful and most beneficial way of achieving this."

- not represent adopted policy. At this stage the weight it carries is limited [112,204].
518. The details of the proposed development and the supporting mitigation are important factors [110]. Reasonable reliance can be placed on the photomontage material, accepting that this provides restricted perspectives and is of an illustrative nature, as are the aerial visualisations [118,268]. The photomontages indicate limited visual impact over the longer term (10-15 years) with mitigation planting, as anticipated by the LPR Inspector. It can be expected that such planting, subject to appropriate conditions, would be successful in achieving a good level of screening and integration of the development within the landscape. I note at this stage that some of the landscaping is on land owned by the SBT, and the implications of this are examined under consideration (xii) below [113,205,269,272].
519. The proposal largely follows the Statement of Development Principles and the Scheme Assessment Study for the SWRR, closely adhering to the layout shown on the LPR Proposals Map and including extensive areas of green infrastructure. The two substantive areas of difference relate to the depth of planting to the north of the northern development area and the form of structural planting to the south west of Anne Hathaway's Cottage within the Shottery Conservation Landscape. Both of these could be brought into line with the indicative scheme and part (f) of policy SUA.W by way of amending conditions. [72,116,205,443]
520. The northern housing development would breach a ridgeline within that part of the site but be largely contained within the bowl that characterises this area [117,205,269]. The southern housing element would be exposed in views from Evesham Road without advance planting, but mitigation planting as part of the development would provide for visual absorption as a soft edge to the built up area in the longer term [117,205,269]. Approaching Stratford-upon-Avon along this road provides a vista of the town, with the recognisable landmark points of Holy Trinity Church spire and the Royal Shakespeare Theatre Tower. There is disagreement about whether this relatively brief view when travelling by vehicle can properly be described as 'iconic'. Notwithstanding this, the development would be to one side of the vista and not affect the identifiable features. New road signage and the roundabout would have a degree of negative visual impact, but overall the longer term effect on this approach to the town would not involve serious landscape harm. [119-120,204-205,264]
521. The new road would be contained within a false cutting for much of its length. Over time, with planting, the road and associated roundabouts could also be expected to be absorbed to a fair degree within the landscape. As envisaged by the LPR Inspector, in the view westwards from the Garden of Anne Hathaway's Cottage the proposed cutting and re-grading would preserve a continuous view of unbroken countryside, with the skyline in its existing position [115,122,136,205,272]. The new residential developments to the north and south as seen from here would be filtered by vegetation and peripheral, and have a limited visual impact [136,205,211,273].
522. The RSC Tower provides a new viewpoint in the town with an impressive panoramic view. This takes in the higher surrounding ground including Bordon Hill. It could be expected that the development would be perceived in this, but the contextual feature of higher ground surrounding the town would remain and the visual intrusion on this would be minimal. [121,264]

523. The submitted comparative visual analysis encapsulates the different expert opinions on the sensitivity of receptors, magnitude of visual change with the development, and significance of the impact from various viewpoints [108,201,205]. In the appellants' assessment, at year 15 the significance in almost all cases drops to negligible, with some only slight adverse, while the Council's has a number of major adverse impacts. Based on the evidence and with the benefits of site inspection, I prefer the assessment in the appellants' analysis. This reinforces the judgments that underlined the LPR Inspector's conclusions that the landscape impact of the development as then envisaged would be one of change but involving limited harm [106-107]. There is nothing to indicate in this respect that the development plan is out of date or has been overtaken by other factors. In this context there would be no material breach of policies PR.1, DEV.1, SUA.1 or SUA.2 of the LPR or of RSS landscape objectives. [26,31-39,69-71,112-113,201,206,232-233]

(v) Heritage Assets

524. National policy in the Framework requires an identification and assessment of the significance of heritage assets. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. [207]

525. Shottery contains a large number of designated heritage assets, with the Shottery Conservation Area covering the older part of the village which includes many listed buildings. Pre-eminent amongst these is the Grade 1 listed Anne Hathaway's Cottage ('the Cottage') together with its Grade 2 Registered Park and Garden ('the Garden'). The significance of these assets has been clearly set out in the evidence. The Cottage is of international importance, with its architectural and historic interest as a building of medieval origin added to by its historic, artistic and associative links with Shakespeare. The Garden has historic and aesthetic interest, although its current appearance is largely derived from the early 20th century rather than Shakespeare's time. Elements of the Garden including the presence of an orchard and boundaries may be relics of a medieval peasant homestead, but the evidence on this is uncertain. [10,129-130,132-133,136,208-209,216,270,274]

526. The setting of a heritage asset, as defined in the Framework, comprises the surroundings in which a heritage asset is experienced [207]. It does not have significance independently of the asset itself [134]. The Garden provides an established curtilage for the Cottage, which may be of medieval origin. It also creates a picturesque surrounding for the Cottage, enhancing the experience of the many visitors. The Shakespeare Birthplace Trust (SBT) owns land beyond the boundaries of the Garden, some of which forms part of the area open to visitors, including an extension of the orchard and a plantation to the south, which also contribute to the aesthetic qualities of the assets. There are views from the Garden to the countryside beyond to the west. These are not designed views and they would not be sought out by all visitors to the Cottage site, but they are mentioned in the Garden designation. The open vista contributes to the rural quality of the site and enhances an associative link with an agricultural landscape which potentially retains some elements of early origin. The settings

of the Cottage and Garden also include the more modern surrounding development through which most visitors approach. While a general sense of tranquillity is a feature of the site, this is intruded upon by traffic noise and views of passing cars, and by the negative impact in these respects of the Cottage coach park which immediately adjoins the site. [10,123,129-130,132,135,210,273]

527. The special interest of the Conservation Area is largely defined by the listed buildings and open spaces it contains, reflecting the early layout of the settlement. A feature of the Conservation Area, enhanced by its setting, is the linkage between the countryside and the town, with green space extending into this part of the built up area. There are no views from the west including Bordon Hill from which Anne Hathaway's Cottage can be readily discerned⁷⁷¹, but in both inward and outward views there is a visual connection between open farmland and the settlement which contributes to the Area's significance. [133,135,210,277]
528. These elements of significance and setting were recognised by the LPR Inspector. He concluded that the West of Shottery proposal would have negligible direct visual impact on the immediate vicinity of the Cottage as a result of the inclusion of a false cutting for the road and land re-grading. He acknowledged some disruption and harm during the undertaking of the works including the reduction or loss of the very few remaining traces of ridge and furrow in the affected field. However, rather than the existence of unbroken countryside, he considered that preservation of continuous views of open countryside to the west was of concern for the settings of the Cottage and Conservation Area, and that this could be achieved by the scheme. [122-123]
529. The Inspector agreed that the area around the Cottage can be described as being generally tranquil, although he noted that it is subject for much of the time to a noticeable amount of traffic noise [123,131,209-210]. The evidence before him was of a predicted increase in noise with the scheme of some 4 to 6db(A) in the Cottage and Garden respectively, with the type of sound similar to that which already existed. He concluded that, while this would be perceptible, given the existing audible traffic noise and the relatively low increase, there was not likely to be a material overall harmful effect on the Conservation Area or the setting of the Cottage. [123,138]
530. The inclusion of policy STR.2A and proposal SUA.W in the LPR was in the context of these findings and can be viewed as consistent with them [122]. Paragraph 7.15.49 of the LPR in support of proposal SUA.W states that it is essential that the development does not have a material impact on the setting of Anne Hathaway's Cottage⁷⁷². Given the Inspector's recognition of temporary harm, as set out above, this can reasonably be interpreted as a permanent material impact.
531. Key questions to consider are whether it has been demonstrated that the current scheme would give rise to any harm to heritage assets that was not anticipated by the LPR Inspector and by the inclusion of the relevant policies in the LPR, and whether there have been any other changes in circumstances in this regard [69-71,124].

⁷⁷¹ It could not be seen at the site visit

⁷⁷² CD/B/1

532. The expert evidence for the appellants is that there would be no material harm from the development, such that paragraphs 133 and 134 of the Framework, which deal with harmful outcomes, are not engaged [127]. In contrast, English Heritage gave evidence in support of the Council against the proposal [127,188,211,269]. There is debate over the consistency of this as a change from its previous position of raising no objection to the proposal subject to certain provisos [126,137,188,213,436]. Of more importance, however, are the nature and extent of its concerns regarding the impact of the scheme. While many third party representations suggest that there would be a major degree of harm to the heritage assets, the expert assessment for English Heritage does not contend that the impact reaches the threshold of substantial harm in the sense addressed by paragraphs 132 and 133 of the Framework [127,211].
533. The proposal would have no direct physical effects on the Cottage or Garden or the Conservation Area [21]. In terms of the visual impact of the link road on their settings, with this contained in a false cutting and the proposed gentle contouring of the land, this would be no more and probably less than previously anticipated in views westward from the Garden [115,122,125,136,273]. The use of lighting would be restricted, and this could be required by condition [136,211,442]. The view of open countryside directly to the west, identified as important by the LPR Inspector, would be retained. The evidence, including the response from the County Council, is that archaeological interest of ridge and furrow, which he referred to, could be safeguarded satisfactorily by an investigative condition [59,122,273,432]. The loss can be regarded as a slight harm, including that it would not enable a fully precautionary approach which has been advocated [271].
534. The proposed landscaping would substantially screen the housing in the northern parcel lying to the north west of the Garden. Similarly, the plantation to the south of the Garden would largely obscure the southern housing parcel beyond this. Nevertheless it is likely that there would be some partial views of residential development from some positions in the Garden and the neighbouring SBT land, especially before new planting is fully established. This impact was not identified by the LPR Inspector, but the views would be restricted and peripheral to the main rear outlook from the Garden. The impact would amount to a slight element of harm as a result of visible urban development (including lighting) replacing countryside as part of the setting of the assets. [122,135-136,205,211,273]
535. In views from the west the new blocks of residential development would be seen. However, these would be to the sides of the Conservation Area and not affect the positive feature of its setting derived from the penetration of countryside into the edge of the urban area at this point. From this direction looking towards the rear of the Garden and the adjoining land it could be expected that the line of the road would be perceived as traversing the countryside. Although this would be substantially mitigated by the re-grading and new planting, a residual effect would be to create a visual divide between the wider countryside and that immediately abutting the western edge of the Conservation Area. The effect on this eastward view was not explicitly considered by the LPR Inspector, and would involve a limited element of harm to the settings of the assets. [122,135-136,205,211,273]
536. In terms of noise, the only expert evidence is that of the appellants [138]. The technical basis of this noise assessment is agreed in the statement of

- common ground between the appellants and the Council [59]. Some criticisms are made by RASE of the assumptions used in this, including of the modelling of traffic speeds and the design year, but there is no counter evidence on which to evaluate these [138,275]. The assessment indicates an increase in background noise within the Garden at the design year of 1.7dB. This is significantly less than that considered by the LPR Inspector, and the technical evidence is that it would not be perceptible as a change from the existing noise environment despite the acceptance that the road could be an identifiable noise source [125,138,214]. On this evidence, the suggestion that the Garden would be in an 'acoustic enclosure' appear to be exaggerated. According to the assessments, the use of a low noise surface for the road and additional screening would reduce noise levels further [138]. There are limitations to the likely effectiveness of low noise surfacing, particularly in terms of deterioration over time [275]. However, the assessment indicates a negligible noise impact even without the use of this. Some of the proposed noise mitigation would be on SBT-owned land [214], and this is addressed under consideration (xii) below.
537. Due to distance and intervening structures, the proposal would have no material effects on the settings of Burmans Farmhouse or other listed buildings in the Conservation Area [136].
538. Drawing the above together, in most respects the impact of the proposal would be as or less than that anticipated by the LPR Inspector. There would be minor harm as a result of a loss of potential archaeological interest, glimpsed views of urban development from the rear of the Garden and Conservation Area, and severance by the road of the countryside beyond the rear of the Garden and Conservation Area as seen from the west. This harm, although less than substantial, would be in addition to that of a temporary nature and involve a minor erosion of significance of the assets. The proposal would therefore not entirely meet the requirement of paragraph 7.15.49 of the LPR and policies EF.13 and EF.14. However, a preclusion on any harm to heritage assets does not comply with the Framework, and is not up to date. Paragraph 134 of the Framework sets out that, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
539. The LPR Inspector gave consideration to the benefits of the West of Shottery development proposal. In particular, he cited the opportunity for a new vehicular access from a roundabout on the link road, which would mean that vehicles for visitors to the Cottage would no longer have to use Cottage Lane, which would in turn provide an opportunity to remove all vehicular traffic other than emergency or service vehicles. He considered that this would very greatly enhance the character of the Conservation Area and the setting of the Cottage, noting that the noise and visual intrusion of vehicles on Cottage Lane is considerable and the width and featureless environment of the road causes serious harm to the character of the area. [139,212-213,234]
540. The view of SBT at the time was that this would be a major benefit. The Inspector saw it as of 'especial value' [188,212,272]. It is suggested by the Council and RASE that the Inspector required this benefit as the basis for acceptance of the development proposal [187,212,234]. However, it is important to note that his general findings on the proposal were that the character and appearance of the Conservation Area and setting of the Cottage would be preserved, and that there would be no material harmful effect in terms of noise

[122,123]. He saw the potential access changes as an opportunity for enhancement; the only harm referred to as being 'far outweighed' was that of a temporary nature caused during the execution of works and maturing of new planting [234].

541. The provision of the re-located coach park would be dependent on this option being pursued by SBT [20,136] and a grant of planning permission for it, which would need to take into account the landscape implications in current circumstances including with respect to the plantation. SBT's position in relation to the development has evidently changed [176-178,188,208-209,233,272,418-421]. It has objected to the proposal and has set out concerns about its impact. SBT did not give evidence to the inquiry, and there is some speculation about whether its pre-conditions can be met [176-178,188]. Given that SBT itself wishes to reserve its position until the outcome of the appeal is known, assumptions cannot be made about what this would be.
542. The Framework requires less than substantial harm to the significance of designated assets to be weighed against the public benefits of a proposal. While the provision of rear parking for the Cottage is far from certain, it cannot be ruled out. It is therefore a potential public benefit, and the provision for this complies with proposal SUA.W [40,91]. A lack of certainty does not impel that the benefit should be given no weight, but in the circumstances I consider that little weight can be attached to it.
543. Public benefits do not need to be restricted to heritage ones, and other benefits have been contended for the development [72]. The overall balance is dealt with in the final conclusion.

(vi) Tourism

544. The tourism industry is an important part of the economy of the District, and makes a significant contribution to national tourism. The attractions in Stratford-upon-Avon linked to Shakespeare are a fundamental element in drawing visitors to the area. Anne Hathaway's Cottage is prominent amongst these. [142,217-218]
545. The propensity of tourists to visit a particular location can be affected by a change in perception of its attractiveness. Information is easily available to potential visitors and quickly updated. Were an image to develop of Anne Hathaway's Cottage as a degraded attraction, this could affect visitor numbers, despite its existing iconic status. [219-220,306]
546. These general assertions, supported by expert evidence at the inquiry, can be readily accepted. However, the contention that this particular scheme would have such an impact is lacking in tangible analysis. If it is agreed, as set out in these conclusions, that the proposal would not give rise to significant landscape, heritage or traffic harm, there is no basis to believe that the completed development would have any effect on visitor numbers. Construction works during implementation of the development could potentially be expected to be more apparent to visitors. However, certain factors suggest that the effect of these on the overall visitor experience would be unlikely to be perceived as markedly intrusive. The works would not directly affect the Cottage or Garden or Conservation Area and would be physically separated from the site by some distance. Not all visitors take an interest in what happens beyond the rear boundary of the Garden. It would already be seen by visitors that the town's older heritage co-exists with modern development. Planning conditions could be

imposed to regulate the impact of construction works on the amenity of the area. [21,143-145]

547. The relative resilience of Stratford-upon-Avon's tourism was accepted in the expert evidence [142]. With no quantification of the possible effects of the proposal on visitor numbers, either short term or permanent, comparison of the risk to tourism with the scale of predicted economic benefits of the proposal are not informative [220]. While a degree of adverse effect on tourist numbers cannot be ruled out, a potential harmful economic outcome has not been sufficiently established or quantified for this to be given other than very limited weight.

(vii) Highway Conditions

548. The proposal includes a new road link between Alcester Road and Evesham Road, as required by proposal SUA.W in the LPR. This is laid out in close accordance with the scheme assessment study, and would provide for access to the two residential parts of the development. [14,40,72,91,147]

549. At the time of the LPR inquiry the road link formed part of a transport Major Scheme Bid, the benefits of which were identified in the study. As a relief road it was seen as a congestion reduction scheme. It was part of a package which also included pedestrianisation schemes in the town centre. The evidence before the Inspector included traffic forecasts with the anticipated scheme, which showed considerable improvements on various links including Alcester Road, Birmingham Road and Church Lane Shottery. There were also forecast to be traffic increases on other roads, including Evesham Road and Severn Meadows Road. The Inspector took into account the transport benefits of the proposal as then put forward, and also the scope for traffic management in Shottery. [92,187,234]

550. The appeal scheme is supported by a detailed Transport Assessment, which was refined during the application process in consultation with the local highway authority and Highways Agency. The assessment includes traffic forecasts for the modelled year of 2023 both with and without the development and new road link. As in the scheme assessment study, these show that with the development there would be both increases and decreases in traffic flows on various road links at the modelled peak hours. [146-147,187,279]

551. In terms of the increases, these would be fairly large on some roads, for example 24% in the pm peak on part of the A46 North, 15% in the pm peak on the Evesham Road, and 17% in the pm peak on Severn Meadows Road [279]. However, these increases are consistent with the aim of the scheme to concentrate traffic on the primary links [147]. Substantial increases in traffic on these roads were forecast in the scheme assessment study. Moreover, there are significant changes in overall traffic flows between that study and the current assessment. These reflect reductions in modelled traffic growth. As a result, the flows on these roads with the development would be less or similar to those in the assessment, and implicitly accepted by the inclusion of proposal SUA.W in the LPR. [147-148]

552. In addition, the local highway authority and Highways Agency have accepted the scheme with these increases. The resultant traffic levels appear to be within the capacity of these roads and would not add significantly to journey times or have an adverse impact on journey reliability. This includes on Evesham Road, which has been raised as of concern in many representations. [146,147-148,413,432]

553. On Alcester Road, the forecast peak hour traffic flows would be similar to those forecast in the scheme assessment study, but the percentage reduction from the position without the scheme is much smaller than previously modelled. In Shottery, the pattern for Church Lane is similar. For the various roads paralleling the SWRR, the Transport Assessment forecasts reductions of 10% in the am peak and 8.7% in the pm peak. [187,280]
554. With respect to the town centre, there would be some relatively small increases in traffic on some links, and decreases on others. These changes would be reflected in variable results on queuing, although this would reduce at some important junctions. In overall terms, there would be a saving in average journey time of 9 seconds and increases in average speed of 1mph. In global terms, total delay in the town centre in peak periods would reduce by over 15 hours from a base level of 133.6 hours. [92,187,285]
555. Overall the development would not have a serious adverse effect on traffic conditions on the surrounding road network or within the town. However, also for consideration is the scale of the potential benefits with respect to transport that would arise from the proposal and whether the proposed road link would serve the function of a relief road as envisaged at the time of its inclusion in the LPR. There has been a change in the context of these factors involving the lower levels of traffic growth now anticipated and that the road scheme no longer forms part of a Major Scheme Bid. The latter factor is not decisive in assessing the desirability of the scheme. Its status in this respect was not referred to in the LPR, and furthermore the road remains in the Local Transport Plan in which it is identified as a key proposal. The assessment indicates that it would bring some net benefits in the town centre, although these would be modest and considerably less in terms of congestion reduction than previously envisaged. The added road network capacity could offer future potential for pedestrianisation schemes by way of providing for displaced traffic, but these are not worked up at this stage, and the degree to which these would be related or would be a necessary pre-condition is difficult to assess on the available evidence and therefore uncertain. [72,92,147,187,233-234,279-280]
556. In Shottery the reductions in flows at peak times would involve relatively small numbers of vehicles. However, the environmental impact of traffic in the Conservation Area means that such reductions are more significant than is apparent simply from numbers of vehicles, removing elements of rat running. [72,187,280]
557. Policy SUA.W requires development of the West of Shottery site to include associated traffic calming measures in the Shottery area [40,140]. The analysis of the potential effects of such measures suggests that they could result in substantial further reductions in through traffic, together with more wide ranging environmental benefits, with relatively minor displacement effects including in the town centre [92,282]. The LPR Inspector saw traffic calming as a substantial benefit, and this was reflected in the requirement of policy SUA.W. Funding for traffic calming is put forward by way of a section 106 obligation towards this [72,140,158,281,451]. The likelihood of traffic calming being implemented and the weight to be given to this obligation are addressed below under consideration (xii). Traffic calming could be pursued independently of a road scheme, but there is no evidence that this would be likely, and therefore this alternative carries very little weight [281].

558. With regard to highway safety, the Council raises no objection to the scheme in this respect [221]. There are local concerns, including with respect to traffic on Bordon Hill and the new roundabout on Evesham Road, and in West Green Drive including the effect of parked cars on the access points to the local centre and school. However, there is no technical evidence to indicate that with the details subject to conditions these aspects could not be designed to be safe [149,285]. Crossing points of the SWRR could also be safe, although there would be some erosion of quality of public rights of way [149]. This was an inherent aspect of the scheme accepted in the LPR. There would be no breach of policy DEV.4 of the LPR.
559. Some detailed criticisms have been made of the technical analysis in the Transport Assessment, in particular the use of the GEH statistic including by way of an expert opinion on this. The statistic is used as a measure of significance. The technical basis for the assessment was agreed with the Highways Agency and local highway authority, and the appellants' highways witness was the only expert in this field to give evidence at the inquiry. The statistic is only one indicator of the highways impact of the development, and the figures showing the absolute values are available. The assessment does not contain fundamental flaws that invalidate its findings. [146,166,283,313]

(viii) Flooding

560. Flood risk and drainage matters were addressed in the application by way of a flood risk assessment. Most of the proposed built development would be in Flood Zone 1 (low probability of flooding as defined in the Technical Guidance to the Framework), with only part of the road access off Evesham Road in Zone 3 (high probability of flooding). [160]
561. The Framework requires inappropriate development in areas at risk of flooding to be avoided by directing development away from areas at highest risk, but where development is necessary making it safe without increasing flood risk elsewhere. The sequential test should be applied to steer new development to areas with the lowest probability of flooding. [288]
562. The sequential test under the guidance is to be undertaken through the Local Plan process. That has yet to be done for the District. However, policy STR.2A and proposal SUA.W in the LPR were put forward in the context of its policy PR.7 which deals with flood risk. Under the Framework guidance, essential transport infrastructure which has to cross the area at risk can be accepted in Zones 2 and 3, with for Zone 3 the exception test needing to be passed, requiring wider sustainability benefits to the community to outweigh the flood risk. [31,160,288]
563. The Environment Agency, Natural England and Severn Trent Water agreed to the application subject to conditions based on the mitigation measures put forward in the assessment [160,434,435,438]. The Council has also withdrawn its objection on flooding grounds [56,58]. The drainage proposals would provide for storm water run off from the developed areas to be reduced by 20% below the existing rate. Drainage would incorporate SUDS, in accordance with policy DEV.7 of the LPR. These would be subject to County Council control over future maintenance. [37,72,160,172]
564. Flooding from Shottery Brook has occurred in the local area, with evident unwelcome consequences. As well as for residential properties, this is of concern with respect to Anne Hathaway's Cottage. There are objections on flooding grounds from RASE and local residents, with representations which dispute the

detail and conclusions of the technical work which support the assessment including some written expert comments [276,287-291,313,322-324,341,345,351,371,383,387,410]. However, the flood risk proposals have been accepted by the relevant statutory bodies. The proposal would also upgrade an existing culvert near Evesham Road which appears to be a local constriction [72,160]. There remain a large number of detailed matters to be addressed further, but this work could be required by way of conditions. [160,434,435,438]

565. It is concluded that the proposal would not add to the risk of flooding in the surrounding area, and would make satisfactory provision for drainage within the development. In this context a suggested infringement of Human Rights would not arise [292]. I view these findings as outweighing that the site has not been allocated under an up to date sequential assessment. The exception test is addressed further in the overall conclusions below.

(ix) Living conditions

566. The development would involve the removal of two properties on Bordon Hill to enable the southern end of the new road to link with Evesham Road at the proposed roundabout junction [14]. The properties to either side of this section of road would be affected by increases in traffic noise, in particular by way of a new noise source at the rear and to the sides of the immediately adjacent properties [153,222-223,293-294].

567. Harm to living conditions by way of noise is a material consideration, and can lead to permission being refused [222]. For 6 properties the impact is categorised as 'major adverse' in terms of predicted change in noise levels in the final assessment (excluding use of low noise surfacing). The appellants have put forward a financial package to cover noise insulation works for the properties they do not control, and there would also be the normal potential eligibility for compensation as a result of noise increases from the public highway. Such noise impact was a foreseeable outcome of the inclusion of proposal SUA.W in the LPR. Nevertheless, the specific harm to living conditions gives rise to a conflict with policies PR.8 and DEV.1 of the LPR, and is to be taken into account in the overall balance. [31,36,151,153,222-223,294,464]

568. The noise impact on properties in West Green Drive would not be material [56,59,153]. Appropriate standards could be achieved for the new dwellings within the development, including having regard to noise from the electricity sub-station [152,440].

(x) Sustainable Development

569. The LPR describes the West of Shottery proposal as a long term sustainable development option [76]. The preparation of the LPR had regard to sustainable development principles [94,154,183]. There is no disagreement by the Council that the site is in a reasonably accessible location for necessary services which would enable a choice of travel modes [155,224].

570. The site is of a greenfield nature, and includes an area which is good quality agricultural land. However, the principle of development of such land is accepted in the LPR proposal. In addition, the emerging Core Strategy envisages a need for greenfield sites to meet development needs in the District, although no specific sites are identified. [11,40,99,101,309,318]

571. Impact on ecology is addressed in the Environmental Statement. Some significant negative impacts are identified, but mitigation is proposed to deal with

- these, including habitat creation. It can be expected that the biodiversity of the site would be enhanced through the green infrastructure proposals. Conditions could deal with protection during construction and the securing of new habitats, and a planning obligation is put forward on creating alternative habitats for skylarks. Following the provision of additional information, including a great crested newt survey and proposed pollution control, the approach is accepted by the relevant consultative bodies. It takes into account the nearby protected areas including Racecourse Meadows Site of Special Scientific Interest. With regard to the absence of an invertebrate survey and of a great crested newt survey at Burmans Farmhouse, on the basis of the available information, and with conditions and the statutory protection that would exist, the advice in Circular 06/2005 on circumstances where surveys should not be required are considered to apply. There would be no breach of LPR policies EF.6 and EF.7. [34,55-56, 59,72,161,171,303-305,313,432,434,438,439,459]
572. The air quality implications of the proposal have been assessed, including taking into account the various traffic flow predictions. The changes are not regarded as significant. There would be no material breach of LPR policy PR.8 in this respect. [31,59,169,308,313,440]
573. An energy statement was submitted with the application. With the envisaged measures that would be incorporated, and the scope for a condition on this matter, the statement is adequate for an outline application. The proposal complies with policy DEV.8 of the LPR and the Council's supplementary planning document in this respect. [37,50,56,163,307,440]
574. Criticisms were made of the scheme at application stage by CABI, although these have not been taken up by the Council. In part the criticisms are on matters of layout which were incorporated in the Development Principles Document and reflected in the LPR by proposal SUA.W and the Proposals Map. The new road is designed to provide a strategic link between Alcester Road and Evesham Road as well as serve the development, and therefore could be expected to a degree to act as a physical barrier across the site. However, new and existing routes would allow for permeability and linkages through the site. The location of the proposed local centre appears to respond to the needs of both the existing and new communities. As CABI acknowledges, a Design Code could deal with some of its concerns relating to the need for creative and high quality design. The Design and Access Statement, as supplemented, provides a satisfactory basis for a Code at this stage with an appropriate condition. Conditions could also deal with the need for acceptable phasing. There is no fundamental conflict with the objective of the Framework for development to take the opportunity to improve the character and quality of an area and the way it functions, or in this respect with development plan design policies including LPR policy DEV.1 and supplementary advice. [36,50,162,278,297-298,437]
575. More generally, the Framework indicates that its policies in paragraphs 18 to 219, taken as a whole, constitute the meaning of sustainable development. These policies cover the range of matters addressed in the above considerations, and therefore whether or not the proposal is regarded as sustainable development will depend on the degree to which the conclusions on these matters are agreed. With my findings as set out above on each of these, it is considered that the proposal overall does represent a sustainable form of development. [72,179,226,316]

(xi) Environmental Information

576. RASE has questioned the adequacy of the submitted environmental information, although the Council has not raised this as a concern [118,310-315]. The environmental information comprises the original Environmental Statement and the supplements to this subsequently submitted, together with the information provided for the purposes of the inquiry and comments from statutory consultees [8].
577. Most of the points questioned by RASE relate to elements of the evidence which have been dealt with above. The methodology of the Transport Assessment was agreed with the relevant statutory bodies, and taken overall the Assessment provides an appropriate set of information on which the likely significant transport implications of the proposal can reasonably be understood. The traffic impact between the assessed dates of 2013 and 2023 could be regulated by conditions on phased implementation, and important information on the effects between these dates has not been omitted. The information indicates that the traffic impact on West Green Drive would not be significant. [166-170,313]
578. With respect to air quality, ecology and flooding, the impacts of the development as assessed and consulted upon have been found acceptable on the basis of suggested conditions. The suggested defects in the information including the lack of an invertebrate survey and soil infiltration tests have not underrepresented or overlooked any likely significant effects in these respects. [169-172,313]. Overall, it is possible to reach a reasonable understanding of the likely effectiveness of proposed mitigation measures involving conditions and planning obligations [249,442-474].
579. The environmental information, although in a suite of documents, is not so disparate or difficult to track that it involves a 'paper chase' [173,314].
580. Regard has been had to relevant case law [310], but the environmental information is not considered to be materially inaccurate, inadequate or incomplete. The information meets the purposes of the Regulations in this respect and is not defective such that this should prevent the granting of planning permission.

(xii) Conditions and Obligations

Conditions

581. Suggested conditions to be imposed on a grant of permission were put forward and discussed at the inquiry. There was a large measure of agreement on these, but also differing views on some matters [442-444]. The conditions fall to be considered against the advice in Circular 11/95. Taking into account the views expressed and the advice, a set of amended conditions that are recommended in the event of the appeal being allowed is included in an Annex.
582. A number of detailed changes have been made to the suggested conditions to improve the wording. Specifically, this has included adding implementation clauses and requirements for subsequent approvals to be in writing, and removing discretionary clauses to provide for certainty (conditions 1, 22, 24, 30, 31, 34, 36, 40, 57). References to the consultations to be carried out by the Local Planning Authority in its approval of details have been removed (6, 7, 8, 15); although such references were advocated by RASE, the procedure followed by the Council with such approvals would be a matter for it to determine, and the

compliance elements of the conditions are intended to be requirements for the appellants to discharge rather than procedural matters that are imposed on the Local Planning Authority.

583. Some conditions require submission of further details in compliance with details that were previously submitted with the application. In these conditions, 'substantial accordance' with the previous details is a reasonable level of requirement given the outline nature of the application, and provides an appropriate balance between precision in terms of approving what has been applied for and allowing for a reasonable degree of flexibility in drawing up the final details (4, 7, 8).
584. Other changes made in the recommended conditions from the discussed drafts are now set out under the headings of the groups into which the conditions are arranged, dealing with the matters in dispute. The need for imposition of the conditions is also referred to.

General

585. Appropriate timescale conditions are required to reflect the outline nature of the application and the need for subsequent approval of reserved matters. Condition 3 as originally suggested conflicts with condition 2 in that it requires commencement within 3 years of the date of permission, whereas condition 2 allows for the first submission of reserved matters to be up until 3 years after this date. The development is expected to be implemented on a phased basis, with the phases subject to approval under condition 5. As discussed at the inquiry, amending condition 3 to a requirement that commencement be within 2 years of the last of the reserved matters to be approved for each phase is consistent with this. The time periods are reasonable given the scale of the development while retaining currency of the Environmental Assessment.
586. To ensure the development is in accordance with the maximum scale proposed and assessed, and to provide certainty, it is necessary to impose a limit on the total residential content (added to condition 4).
587. The scale of development, and the sensitivity of the setting into which it would be inserted, warrant adherence to an approved Construction and Environmental Management Plan of some detail (6). Control of odour is added to the measures on emissions under point (vi).

Highways

588. The construction of the Stratford Western Relief Road is an important part of the scheme, needed to serve the development as a whole as well as providing some elements of wider benefit as sought under the LPR and discussed above. A Grampian style condition (10) requires an agreement to secure implementation of the road prior to the development. While the condition does not specify who should be signatories to the agreement, the requirement for the agreement to secure the entirety of the road would ensure that all relevant owners would need to be party to it. This would include the Shakespeare Birthplace Trust. The likely willingness of SBT to be involved in the development is a matter discussed above and in the overall conclusion below, but the evidence does not establish that there is no prospect of the condition being complied with within the time limit of the permission. RASE pointed out that the condition does not specify the requirement for a funding bond, but the County Council explained that provision

of a bond would normally be expected with such a condition; that is a matter for it to determine. [249,473]

589. Various details of the SWRR and other aspects of highway infrastructure and footpath provision require further working up and approval. To ensure satisfactory highway conditions during the carrying out of the development and prior to completion of the road, thresholds on the amount of development to be occupied are needed. The thresholds of 150 and 300 units relate to phasing scenarios tested in the Transport Assessment, and are reasonable. For provision of crossings of the SWRR, a reasonable timescale would be for this to be concurrent with construction. Condition 11 is amended to incorporate suggested condition 64⁷⁷³, which imposes a maximum on the number of houses in the southern development area which is consistent with the Transport Assessment. In addition, the condition is expanded to allow for amended details to be incorporated for an improved layout of the southern roundabout as a result of further acquisition of property neighbouring the site by the appellants [11]. This reflects the appellants' suggested additional condition on this matter [443].
590. The Anne Hathaway's Cottage access roundabout makes provision for access to a new coach/car park, but should this not be taken up within a reasonable timescale it would be necessary for the unused roundabout arm to be landscaped in the interests of amenity.
591. As well as a preclusion on lighting along the sensitive part of the SWRR in order to safeguard the setting of the Cottage and Garden, details of the lighting to be installed along the remainder should be approved, as suggested by RASE.
592. A Travel Plan, following the framework plan already prepared, should be secured in the interests of sustainable transport.
593. Car and cycle parking provision within the local centre should be controlled to reflect local standards and context. This would be more effectively done by requiring the details to be approved rather than specifying current documents (conditions 19 and 20).

Drainage

594. Conditions on drainage are needed to secure appropriate provision to deal with flooding and runoff, in accordance with the evidence. Further details need to be worked up on some matters.
595. The reference in condition 23 to the Flood Risk Assessment should be 'and in accordance with the principles' rather than just 'based on', in order to provide clarity on this; 'substantially' is not required here as the reference is to principles rather than details. A requirement for further details to be approved in relation to raised levels/embankments is also added to deal with the specific features of these. The reference in (i) to 'phase' rather than 'parcel' is correct since condition 5, to which there is a cross reference, identifies phases. 'In perpetuity' is added to (iv) on maintenance and management to provide long term certainty, and details are additionally required under (v) on the landscaping and safety features of balancing ponds to ensure that these important elements are appropriately addressed.

⁷⁷³ This refers to condition 64 as included in document INQ/LPA/23

Design

596. Although the application is in outline, a requirement for approval of a Design Code is an effective means to ensure design quality and consistency across the development. Reference is added to the Design and Access Statement Addendum in condition 26, with the specific paragraphs cited setting out a detailed list of matters to be addressed, including density. While RASE wished to see the principles included as conditions, as explained by the Council the list sets out the structure and the principles which would then be in the Code, and would be subject to approval by the Council.
597. Building forms, sizes and heights warrant additional specific conditions. In condition 27 it is clarified that the narrow form dwelling is a type identified in the Design and Access Statement. In view of the importance of site levels, these should be approved, with the requirement extended to adjacent parcels (condition 29).
598. Various other detailed matters warrant additional control. These are Secured by Design standards to ensure that crime prevention is addressed, renewable energy in the interests of sustainable development in accordance with the local standard, and the Code for Sustainable Homes and Lifetime Homes standards for the same reason. RASE suggested that the Code Level should ratchet up to Levels 4 and 5 over the lifetime of the development, but there is no local policy basis for this. The Lifetime Homes target is based on the local standard, with the required percentage reflecting an expectation that all affordable housing would meet this, so that an appropriate ratio is applied to the market housing to achieve the overall target.
599. There is insufficient justification for removal of permitted development rights for all boundary structures (suggested condition 30⁷⁷⁴); the suggested condition is therefore not recommended.

Landscape

600. Landscaping is clearly an important element of the development in ensuring that it is acceptable in landscape and visual terms. Although a reserved matter, a number of requirements need to be incorporated whatever the final details. In order to provide adequate structural landscaping in accordance with the Statement of Development Principles, condition 37 is expanded to incorporate the appellants' suggested additional conditions to allow for the necessary amendments [116].
601. With respect to condition 40, RASE advocates adding undergrounding of powerlines to the description of the development [266]. However, reasonable certainty would be provided that this would be carried out by removing the discretionary clause from the condition.
602. Some of the proposed landscaping works are on land not currently within the control of the appellants but owned by SBT. The implications of this are addressed below.

⁷⁷⁴ This refers to condition 30 as included in document INQ/LPA/23

Ecology

603. Provision for ecology through a management plan and approval of further worked-up details on various mitigation measures are needed in the interests of biodiversity. Short term design and ecological objectives are added to long term ones in condition 42 (i), as suggested by RASE, to ensure that a range of timescales is addressed.
604. Although there is adequate information for determination of the application, provision for further surveys of certain species is required to deal with the likely timescale of implementation, with these setting out measures to be taken in the event of any being found [432,434,438,439]. Together with statutory protection, the wording of the conditions would provide for appropriate control in these circumstances.

Ground, Air and Noise Quality

605. In accordance with the Environmental Assessment, provision for investigation of ground conditions and appropriate mitigation are necessary for environmental safety. Construction hours should be controlled to protect the local noise environment, and similarly hours of deliveries in the finished development. Good noise standards should be achieved by the new dwellings to ensure high quality living conditions, including taking account of the existing substation. Condition 54 has been amended to reflect the deletion of PPG24.
606. To protect amenity and the environment, controls are needed on lighting, refuse storage and plant.

Other

607. A requirement for archaeological investigation is warranted by the identification of potential interest [432]. Fire hydrants are needed for safety, and water butts for sustainability.

*Further Highways and Noise Conditions*⁷⁷⁵

608. Suggested condition 65 deals with the specification of the SWRR in terms of the surface treatment and speed limits. The condition is agreed by the appellants and the Council, although RASE expressed concern about lack of specification of the surface and future maintenance. The objectives of the condition are desirable in terms of minimising noise emissions from use of the road. However, the intention is that the road would be constructed through a highways agreement leading to its adoption. In these circumstances it is considered that the matters cited are not appropriate for a reasonable planning condition since they would be outside the control of the developer. In addition, as set out above, the noise assessment indicates that the proposal would be acceptable without the use of low noise surfacing. The condition is therefore not recommended.
609. Suggested condition 66 deals with the offer of funding for sound insulation of affected existing properties. This is also covered by a planning obligation. In accordance with the views expressed by the Council and RASE, it is considered that, given the private funding basis of the arrangement, the matter is more appropriately dealt with by the obligation, and the condition is not recommended.

⁷⁷⁵ This refers to the Further Highways and Noise Conditions as included in document INQ/LPA/23

610. RASE suggested a further Grampian condition to require a traffic management scheme for Shottery to be capable of implementation, including contracts let and no legal matters outstanding, prior to commencement of the development [281,443]. This is on the basis that traffic calming is necessary to meet the requirements of policy SUA.W. The appellants argued that a calming scheme is not needed until the SWRR is completed, and that the steps needing to be overcome in achieving an agreed calming scheme would set up opportunities to frustrate the development; a planning obligation is put forward, and details would be progressed in parallel with the development. Weight to be given to the planning obligation is dealt with below. In the circumstances I consider that the suggested condition would not be reasonable since it is an onerous requirement which would not in itself achieve implementation of a calming scheme at a specified stage.

Obligations

611. The Framework sets out policy tests for the seeking of planning obligations, and there are similar statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations (2010) which must be met for obligations to be given weight. There are also relevant development plan policies, including policies IMP.4 and IMP.5 of the LPR, supplementary planning documents (SPDs), and the Local Transport Plan [42,50,52]. The submitted obligations have been considered in the light of these requirements and the joint evidence put forward in support of them and the evidence on areas of disagreement [445-474].

Legal agreement

612. The secondary/sixth form education contribution would address needs that would arise from the development which would need to be catered for, with various options outlined in the joint statement as to how this would be done [301,465]. The basis for assessing the shortfall in places and calculating the contribution has been properly explained.

613. The primary school obligation responds to the requirement of policy SUA.W for a primary school to be included within the development and to the unmet education needs that would arise. Alternative means for provision are appropriately addressed, including with respect to funding and the potential relocation of the existing St Andrew's Primary School [427,432].

614. The library contribution is also properly explained in terms of how it is calculated and would be spent to meet additional library needs that would arise.

615. The bus contribution responds to policy COM.7 of the LPR on support for bus services and the sustainable development objectives of the Local Transport Plan, and would provide a subsidy to enable serving of the development. The travel pack contribution would similarly be used to promote sustainable travel and has been calculated on a reasonable basis.

616. The traffic management contribution has been calculated on the basis of the estimated costs associated with a likely traffic calming scheme in Shottery. While there is an indicative scheme, the details are yet to be worked up, and it may or may not require a Traffic Regulation Order. The obligation responds to the requirement of policy SUA.W for the West of Shottery development to include associated traffic calming measures in the Shottery area, and therefore can be regarded as necessary to make the development acceptable on a policy basis.

The measures could be expected to provide for environmental improvements within the Conservation Area, and with the County Council a party to the agreement there is a reasonable likelihood of a scheme being implemented [158-159,189,281].

617. The justification for the Parkway Station contribution is disputed by the appellants. The station scheme reflects local sustainable transport objectives, and it could be expected that it would be used by occupiers of the development. Although the contribution is relatively modest, the sum appears to have been arbitrarily calculated rather than reflecting an apportionment of actual costs. In addition, the evidence suggests that further funding for the scheme is not needed. The necessity and reasonableness of this contribution has therefore not been fully established. [466-467]

Unilateral undertaking

618. The commitment on on-site affordable housing responds to policy COM.13 and proposal SUA.W and the Meeting Housing Needs SPD. Arrangements for the nature and provision of this are appropriately addressed.

619. The Community Park and open space land obligations deal with the provision and future ownership and management of these important amenity elements of the development. They reflect the requirements of proposal SUA.W and policies DEV.3, COM.4 and COM.5 of the LPR.

620. The local centre and health centre land commitments again respond to specific requirements of proposal SUA.W. The marketing obligations reasonably allow for alternative arrangements for these areas in the event that occupiers are not forthcoming.

621. The off-site public open space and built facilities contributions address needs that could be expected to arise from the development but would not be provided for within it. Site specific reasons have been given for not incorporating play pitches within the development on the basis of the nature of the land and the relationship to heritage assets [301,465]. The calculation of the contributions and how they would be used has been properly explained, and the provision accords with the LPR policies.

622. The skylark mitigation obligation arises from a likely adverse impact of the development identified in the Environmental Statement [303,432,439]. It would involve favourable habitat treatment of adjoining land under the appellants' control.

623. The police contribution is disputed by the appellants. The calculation of the amount has been explained, but equates to a sum per dwelling with no clear link between needs that would arise from the development and how the funding would be spent in response to those. [468]

624. The Council is concerned that it would not be able to enforce the obligation on noise mitigation measures since it would derive no benefit from it. However, the obligation relates only to the setting up of a funding mechanism for noise insulation, and properly responds to a planning impact of the proposal on residential living conditions. [469]

625. All of the above obligations meet the tests of being necessary, directly related to the development and fairly and reasonably related to it, with the exception of

the contributions on Parkway Station and the police, which are therefore accorded no weight.

Parties to the obligations and the enforceability of conditions

626. An important matter arises with respect to land ownership. The Shakespeare Birthplace Trust, which owns a central portion of the site, is a party to neither the agreement nor undertaking. The obligations cover a wide range of commitments. Normal good practice is that all those with an interest in an application site should be party to section 106 obligations in order for these to be properly enforceable. [205,225,250,272,470-474]
627. The SBT land would be traversed by part of the SWRR. The remaining SBT land within the site is covered by the Shottery Conservation Landscape designation as shown on the Green Infrastructure Plan, which includes some structural planting and hedgerow retention/reinstatement. An agreement involving the developers and SBT to enable full construction of the road would be needed in advance of the development, with this covered by the suggested Grampian type condition no. 10. The County Council as local highway authority would oversee this, and I note that it entered the section 106 agreement notwithstanding its initial concern about SBT not being party to it [472]. Given the extent of land works that would be required to construct the road, it can be anticipated that any future agreement would include the land on which the noise mitigation measures alongside the road are proposed, such that the scope for delivery of these could reasonably be relied upon [225,214].
628. The remaining landscape area is not intended to be publicly accessible or the subject of a future transfer involving maintenance commitments under the obligations. It appears that the ownership matter should not therefore affect the weight that can be given to the obligations [470-471].
629. It can realistically be expected that the land retained by SBT would continue in agricultural use with an appropriate management regime. However, this land is covered by the proposed landscape conditions, which include some ongoing requirements beyond the development. Since it appears that the developers would not control all the land covered by the conditions, there have to be reservations about the full enforceability of these. In the particular circumstances where delivery of the development would require the willing involvement of SBT, and in view of its particular interests in sustaining the settings of the Cottage and Garden, it seems that this gives rise to only a limited risk on the securing and future of the landscaping. It is therefore not suggested that the concern about enforceability is of such magnitude as to invalidate the conditions, which remain recommended on a grant of permission. Nevertheless, it does to a small degree reduce the weight that can be placed on them as mitigation. [470,471]
630. RASE made a number of detailed comments on the wording of the obligations which were not taken up by the authorities [474]. It is not considered that these points materially affect the weight that can be given to the obligations.

Overall Conclusion

631. The development of the appeal site substantially as proposed in the appeal scheme has been part of the development plan since 2006. Policy STR.2A of the Local Plan Review on Strategic Reserve Sites has been saved, and anticipates the development of the West of Shottery site to meet housing needs in the post 2011

- period. An assessment of the housing land position in the District based on the extent of needs that the Framework requires should be met indicates that there is a significant shortfall in the 5 year supply. In this respect the proposal complies with an important element of the development plan.
632. Proposal SUA.W of the LPR sets out a number of components which development of the West of Shottery site should include. Most of these would be provided by the appeal development. A rear vehicular access to Anne Hathaway's Cottage off the new link road would be created, in accordance with the requirement for this to be incorporated. Associated traffic calming measures in the Shottery area are not part of the proposal itself, but a planning obligation would provide funding for this. The implementation of such measures is not certain but could realistically be expected to take place. A planning condition requiring full capability for implementation of a management scheme prior to commencement of development is considered not to be reasonable. The areas of woodland required by the policy are not included in the proposal, but could be added by way of amending conditions.
633. Overall the appeal development substantially accords with the LPR. Such compliance with its two policies that are specific to the site diminishes the significance of identified areas of conflict with other policies where these conflicts arise from the form of development and its impacts as implied by the inclusion of proposal SUA.W in the LPR.
634. The latest version of the emerging Core Strategy does not include the West of Shottery proposal, and envisages a different distribution of development in the District from that previously planned for. With this draft Local Plan's relatively low limits on the number of dwellings to be accommodated in Stratford-upon-Avon and on the size of estates, the proposal is in conflict with it. Approval of the development now would substantially prejudice the emerging Plan as a result of its size and location, and run counter to what appear to be widespread local expectations on what the Plan should achieve. The Framework supports a shared local vision for development and neighbourhood planning. However, the weight to be given to the emerging plan is a matter to be determined. Given the relatively early stage reached, apparent unresolved objections to relevant policies, and areas of potential inconsistency with the Framework, I consider that relatively little weight can be accorded to it.
635. The impact the development would have on the character and appearance of the area by way of visual and landscape changes is anticipated to involve very limited harm. This matches the assessment by the LPR Inspector, and reflects a combination of the nature of existing landscape features and key elements of the scheme, the latter including a false cutting for the road and new landscaping. The Council's recent Landscape Sensitivity Assessment study is not a new consideration that alters the fundamental acceptability of development in this location. Nevertheless, with the proposal's scale there is scope for different views to be legitimately taken on its potential impact.
636. There are important designated heritage assets in the vicinity of the development, in particular Anne Hathaway's Cottage and its Registered Park and Garden. Again, the potential impacts on these and the Shottery Conservation Area were assessed by the LPR Inspector, and his findings are substantially agreed. In terms of the likely effect of the road on tranquillity, technical noise evidence suggests that the mitigated impact even without a low noise surface would be less than previously expected and negligible. Rational challenges have

- been made to the robustness of this conclusion, but there is no expert counter evidence.
637. The LPR Inspector anticipated that the development would involve harm to the settings of the heritage assets of a temporary nature during the works and a small loss of archaeological interest. Some additional minor harm to the settings has now been identified by way of new visible urban development glimpsed from the east and the severance effects of the new road in views from the west. The current approach to heritage assets, as set out in the Framework, requires that where there would be less than substantial harm to the significance of designated heritage assets, as in this case, this should be weighed against the public benefits of a proposal. The potential benefit of a relocated coach park for the Shakespeare Birthplace Trust can now be given little weight, in view of SBT's reserved position pending the outcome of the appeal and the need for any proposal on this to be considered in the light of current circumstances. The potential for traffic calming in Shottery remains a benefit. Other benefits to be taken into the balance are dealt with at the end of this conclusion.
638. Tourism is important to the economy of the District, and the Shakespeare related attractions are a key part of this. However, there is no substantive evidence to indicate that the proposal would have a material adverse effect on visitor numbers, and the generalised assertion of consequent economic harm carries very little weight.
639. The potential impact of the development on highway conditions is of local concern. The forecasts indicate that there would be increased traffic flows on some roads, but the flows would be no more than anticipated previously and are not objected to by the relevant statutory highway bodies. The predicted flows are within the capacities of the affected roads and would not give rise to serious adverse highway effects. Safety concerns could be met through detailed design.
640. In terms of potential transport benefits, the evidence is that, in the current context of forecast background flows that are significantly lower than previously modelled, the proposed road link would result in only modest improvements in town centre traffic conditions. New circumstances also involve that the new road is no longer part of a Major Scheme Bid, although still in the Local Transport Plan. A compelling case has not been made for the new road on the basis of potential pedestrian and environmental improvements in the town centre. In this respect one of the strong arguments cited in favour of the West of Shottery development in the LPR is now significantly diminished. As set out above, it would however bring forward a reasonable likelihood of traffic calming in Shottery, with beneficial environmental effects.
641. Potential flooding is another matter of widespread local objections, but the concern of the Council and statutory bodies on this has been met subject to conditions. There would be some drainage benefits from reduced storm water runoff and an upgraded culvert. The sequential test is not strictly met since this relies on site selection through the Local Plan, but the West of Shottery proposal in the LPR was included in the context of its policy on flood risk. The exception test for the small section of road infrastructure in Flood Zone 3 requires consideration of benefits, as dealt with below.
642. The impact the development would have on living conditions of properties in Bordon Hill involves an element of harm from noise.

643. Development of the appeal site as proposed, although greenfield agricultural land, was seen in the LPR as a sustainable form of development. Whether it can currently be viewed as such has given rise to debate in the context of the range of points in the Framework on which this depends, and encompasses the conclusions reached on other considerations. On the specific points of ecology, air quality and design, the objections that have been raised have been addressed or could be by way of conditions. Along with my above findings on other considerations, the development can reasonably be regarded as sustainable.
644. The submitted environmental information is adequate for the purposes of assessing the likely significant effects of the proposal and this factor should not prevent the granting of planning permission.
645. Planning conditions and the submitted planning obligations would largely be effective in mitigating the effects of the development, and most of the planning obligations can be given weight in its favour. Despite that SBT are part site owners and not a party to the obligations, it appears that were the development to be implemented the specific objectives of the obligations could still be secured. However, there is a reservation to be acknowledged about the enforceability of delivery and maintenance of landscaping on SBT owned land. This reduces to a degree the reliance that can be placed on planning conditions, but implementation of the scheme would require the willing involvement of SBT and this moderates the likely consequences of the risk.
646. The development would provide a number of benefits to be balanced against the harmful effects. There would be a substantial gain of dwellings including affordable housing, in accordance with the aim of the Framework to boost significantly the supply of housing. This would be in a sustainable location that accords with the development plan. New green infrastructure would be provided in the form of a park, with scope to increase biodiversity. New local facilities would be available to existing as well as new residents. There would be some drainage improvements. The new road would enable some modest transport benefits. There would be a reasonable likelihood of traffic calming in Shottery, although the potential for a relocated coach park for SBT carries little weight.
647. The implementation of the scheme would require the involvement of SBT. Since SBT's current position is unresolved, it is therefore not certain that the scheme would be implemented and the benefits delivered. However, were it not implemented, there would also be no harmful impacts. This factor therefore carries little weight in terms of the overall balance. [178,192,248,]
648. The Framework sets out a presumption in favour of sustainable development, and advises that development that accords with an up-to-date Local Plan should be approved. Policies in a Local Plan should not be considered out of date simply because they were adopted prior to the publication of the Framework. Policy STR.2A, although drawn up in the context of RSS housing targets, is reinforced by a current assessment of housing needs and the emphasis of the Framework on housing delivery. The assumptions underlying proposal SUA.W in terms of the transport benefits of the new road link and the position of SBT are not now correctly founded. However, the sustainable development qualities of the West of Shottery proposal are such that it remains reasonably up-to-date. [186-190,232-234]
649. In the overall balance, I find that the benefits of the proposal are sufficient to outweigh the harmful impacts, and to meet policy tests on heritage and flooding.

The changed circumstances since the adoption of the LPR, the harmful effects of the proposal that have been identified, and the prejudice to the emerging Local Plan, do not amount in my judgement to material considerations such as to indicate a decision otherwise than in accordance with the statutory development plan.

RECOMMENDATION

650. That the appeal be allowed and planning permission be granted subject to the conditions set out in the attached Annex.

T G Phillimore

INSPECTOR

ANNEX: RECOMMENDED CONDITIONS

General

- 1) No part of the development hereby permitted shall be commenced on any parcel (as referred to in Condition 5) until full details of the layout, scale, appearance and landscaping within the parcel (hereinafter called "the reserved matters") have been submitted to and approved in writing by the Local Planning Authority. The development shall not be carried out otherwise than in accordance with the approved details.
- 2) Application for approval of the reserved matters for the first phase of the development hereby permitted as approved under condition 5 shall be made to the Local Planning Authority no later than the expiration of three years from the date of this permission and the last application for reserved matters approval shall be made no later than seven years beginning on the date of this permission.
- 3) Each phase of the development hereby permitted as approved under condition 5 shall be begun not later than two years from the date of approval of the last of the reserved matters to be approved for that phase.
- 4) The development hereby permitted shall not be carried out except in substantial accordance with the details shown on the following submitted plans:
 - i) Parameters Plan 1953-SK-01 Rev. S
 - ii) Access Plan 207137-00 Figure 13 Issue 05No more than 800 dwellings shall be developed on the site.
- 5) No part of the development hereby permitted shall be commenced until a detailed phasing plan showing the parcels which shall be the subject of separate reserved matters applications has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the phasing plan thus approved.
- 6) No development shall take place, including any works of demolition or clearance, until a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) the loading and unloading of plant and materials;
 - iii) the storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) installation and maintenance of wheel washing facilities;
 - vi) measures to control the emission of dust, dirt and odour during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;

- viii) an appropriately scaled plan showing "Environment Protection Zones" where construction activities are restricted and where protective measures will be installed or implemented;
- ix) details of protective measures (both physical measures and sensitive working practices) to minimise impacts during construction;
- x) a timetable to show phasing of construction activities to avoid periods of the year when sensitive wildlife, particularly nesting birds, could be harmed;
- xi) details of persons/organisations responsible for:
 - a) compliance with legal consents relating to nature conservation;
 - b) compliance with planning conditions relating to nature conservation;
 - c) installation of physical protection measures during construction;
 - d) implementation of sensitive working practices during construction;
 - e) regular inspection and maintenance of the physical protection measures and monitoring of working practices during construction;
 - f) provision of training and information about the importance of "Environment Protection Zones" to all construction personnel on site.
- xii) pollution prevention measures;
- xiii) details of measures to protect the public footpaths and amenity of users of the public footpaths crossing the site during the construction works;
- xiv) in relation to every element topic or subject included in the Plan, proposals for the standards to be achieved, monitoring schedules, record keeping and communication of results to the Local Planning Authority.

All works shall be carried out in accordance with the approved details. Any alteration to this Plan shall be approved in writing by the Local Planning Authority prior to commencement of the alteration.

Highways

- 7) No more than 150 dwellings in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as Housing Area - Alcester Road [Component A]), shall be occupied until a highway scheme substantially in accordance with drawing number 207137-00 CH-011 Issue 01 (Wildmoor Roundabout) has been submitted to and approved in writing by the local planning authority and the approved scheme has been fully implemented and is open to traffic.
- 8) Prior to the first occupation of the development, a Travel Plan, in substantial accordance with the submitted Travel Plan Framework (October 2009), to include details of the mechanisms to be used for its delivery, monitoring and enforcement, shall be submitted to and approved in writing by the Local Planning Authority.
- 9) The proposed Stratford Western Relief Road (SWRR), connections to the existing highway and new junctions on the SWRR, shall be laid out in general accordance with the following plans in the Revised Transport Assessment (February 2011):

- 207137-00 Figure 6 Issue 03
 - 207137-00 Figure 7 Issue 03
 - 207137-00 Figure 8 Issue 04
 - 207137-00 Figure 9 Issue 04
 - 207137-00 Figure 10 Issue 04
 - 207137-00 Figure 11 Issue 04
 - 207137-00 Figure 12 Issue 03
 - 207137-00 Figure 15 Issue 06
 - 207137-00 Figure 16 Issue 04
 - 207137-00 Figure 17 Issue 03
 - 207137-00 Figure 18 Issue 05
 - 207137-00 CH-011 Issue 01
- 10) No development shall take place until a highway works agreement has been entered into and signed to secure the construction, completion and adoption of the entirety of the SWRR (as shown on Plan 207137-00 Figure 13 Issue 05).
- 11) No more than 200 dwellings shall be constructed pursuant to this permission in the southern development area (shown on Parameters Plan 1953 SK-01 Rev. S as the Housing Area - Evesham Road [Component B]). Prior to the commencement of the southern development area and notwithstanding the detail shown on the Parameters Plan 1953-SK-01 Rev. S and drawing 207137-00 Figure 15 Issue 06, an access scheme for the junction of the SWRR and the Evesham Road roundabout shall be submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied in the southern development area until the Evesham Road / Luddington Road roundabout (as shown on Plan 207137-00 Figure 15 Issue 06 and incorporating the approved amendment) has been completed and is open to traffic.
- 12) No dwellings shall be occupied in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as the Housing Area – Alcester Road [Component A]) until the new junctions on Alcester Road (as shown on Plan 207137-00 Figure 9 Issue 04) and West Green Drive (as shown on Plan 207137-00 Figure 7 Issue 03) and the new pedestrian crossing on the Alcester Road (as shown on Plan 207137-00 Figure 9 Issue 04) have been completed and are open to traffic and/or pedestrian use (as applicable).
- 13) No more than 150 dwellings in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as Housing Area – Alcester Road [Component A]), shall be occupied until the northern section of the SWRR (as shown on Plans 207137-00 Figure 16 Issue 04 and 207137-00 Figure 17 Issue 03), the improvements to the Wildmoor Roundabout (as shown on Plan 207137-00 Figure 20 Issue 07), the northern sector access roundabout (as shown on Plan 207137-00 Figure 6 Issue 03) and works to create the crossings of the SWRR for public right of way SD16, in accordance with details approved under Condition 15, have been completed and are open to traffic and/or pedestrian use (as applicable).
- 14) Within 2 years of the commencement of development or prior to the occupation of the 300th dwelling in the northern development area (shown on

Parameters Plan 1953 SK-01 Rev. S as Housing Area – Alcester Road [Component A]), whichever is the sooner, the entirety of the SWRR (as shown on Plan 207137-00 Figure 13 Issue 05), the Anne Hathaway’s Cottage access roundabout (as shown on Plan 207137-00 Figure 12 Issue 03) and works to create the crossings of the SWRR for public right of ways SD16b and SD42, in accordance with details approved under Condition 15, shall have been completed and be open to traffic and/or pedestrian use (as applicable).

- 15) Detailed schemes for providing suitable crossings of the SWRR for public rights of ways SD16, SD16b and SB42, as shown on Plans 207137-00 6 Issue 03, 207137-00 12 Issue 03 and 207137-00 16 Issue 04, shall be submitted to and approved in writing by the Local Planning Authority. The crossings shall thereafter be implemented in accordance with the approved details concurrently with construction of the SWRR.
- 16) All new highway junctions, as shown on Plans 207137-00 Figure 7 Issue 03, 207137-00 Figure 8 Issue 04, 207137-00 Figure 9 Issue 04, 207137-00 Figure 10 Issue 04 and 207137-00 Figure 11 Issue 04, shall be laid out so as to provide the relevant visibility splays shown on these plans and thereafter no structure or vegetation exceeding 0.6m in height above the adjoining highway carriageway shall be placed or allowed to grow within the visibility splays as defined.
- 17) If the north-eastern arm of the Anne Hathaway’s Cottage access roundabout (as shown on Plan 207137-00 Figure 12 Issue 03) is not brought into use within 2 years of the completion of the roundabout, it shall be landscaped during the next planting season in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. Any planting that is removed, uprooted, severely damaged, destroyed or dies within 5 years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season.
- 18) With the exception of lighting that is required to directly illuminate roundabout junctions, no street lighting shall be installed on the SWRR between the northern development area access roundabout (as shown on Plan 207137-00 Figure 6 Issue 03) and the Anne Hathaway’s Cottage access roundabout (as shown on Plan 207137-00 Figure 12 Issue 03). Details of a scheme for lighting that is to be installed in connection with the SWRR including the design of lighting columns, lux levels and lighting direction shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of any lighting and the works shall be carried out and permanently retained thereafter in accordance with the details thus approved.
- 19) Details of car parking provision within the local centre and primary school to be constructed as part of the development shall be submitted to and approved in writing by the Local Planning Authority prior to their construction and the development shall be carried out and thereafter retained in accordance with the details thus approved.
- 20) Details of cycle parking provision within the local centre and primary school to be constructed as part of the development shall be submitted to and approved in writing by the Local Planning Authority prior to their construction and the development shall be carried out and thereafter retained in accordance with the details thus approved.

Drainage

- 21) No development shall take place including works of demolition until such time as a phasing plan for the surface water drainage has been submitted to and approved in writing by the Local Planning Authority. Any reference to parcels in Conditions 21-25 inclusive shall be to the parcels set out on the phasing plan approved pursuant to this condition.
- 22) The development hereby permitted shall not be commenced until such time as a scheme to provide for the following three requirements has been submitted to, and approved in writing by, the Local Planning Authority:
- i) Ensure no raising of ground levels in the floodplain, i.e. Flood Zones 3 and 2, other than as set out specifically in the approved details for the provision of development infrastructure and in accordance with the approved floodplain compensation scheme.
 - ii) Ensure finished floor levels are set 600mm above the corresponding 100 year plus 20% for Climate Change Flood Level (set to AOD).
 - iii) Implement the flood compensation area as indicated in drawing number 1363/FL/03 Rev B contained in the submitted Flood Risk Assessment (October 2009).

The scheme shall be fully implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme.

- 23) Development shall not begin within each parcel until a surface water drainage scheme for that parcel, based on and in accordance with the principles outlined in the submitted Flood Risk Assessment (October 2009) together with assessment and proposals for drainage in connection with runoff from raised levels or embankments associated with the SWRR or other parts of the development, and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall subsequently be implemented in accordance with the timetable for implementation approved as part of the scheme for each respective parcel.

The scheme for each parcel shall also include:

- i) Final drainage calculations for the site taking into account the drainage catchment areas from each phase of the development (determined through Condition 5) as they contribute to the site network.
 - ii) Infiltration tests for use of soakaways.
 - iii) Final drainage layouts including SUDS.
 - iv) Details of how the scheme shall be maintained and managed in perpetuity after completion.
 - v) Details of the landscaping and safety features of the balancing ponds.
- 24) Prior to any site works commencing, a scheme to cover interim surface water drainage measures during construction shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be fully

implemented and subsequently maintained in accordance with the timing/phasing arrangements embodied within the scheme.

- 25) The development hereby permitted shall not commence until comprehensive details of permanent foul drainage proposals for the site, to include phasing, have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied in any parcel until the foul drainage scheme for that parcel has been implemented in accordance with the approved details.

Design

- 26) Prior to the submission of any reserved matters applications, a Design Code document for the site shall be submitted to and approved in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles of the Design and Access Statement (October 2009) and the Design and Access Code Addendum (October 2010) and address the matters set out in paragraphs 1.7 to 1.13 of the Addendum. Applications for approval of reserved matters shall thereafter be in accordance with the approved Design Code.
- 27) The building forms and sizes shall follow the matrix set out in Chapter 8 of the Design and Access Statement (October 2009). The 'narrow plan' dwelling form as described shall only be used for terraced or semi-detached units.
- 28) Notwithstanding the building heights set out through Condition 27, maximum building heights shall be limited in accordance with details that shall be approved as part of the Design Code submission pursuant to Condition 26.
- 29) No parcel of the development hereby permitted shall be commenced until detailed plans and sections showing existing and proposed site levels for that parcel and showing the proposed relationship with adjacent parcels have been submitted to and approved in writing by the Local Planning Authority and the development thereafter shall only be carried out as approved.
- 30) No part of the development hereby permitted shall commence until details of how 'Secured by Design' standards will be achieved have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details thus approved.
- 31) The development hereby permitted shall not be commenced until a scheme for the provision of energy from on-site renewable sources sufficient to replace a minimum of 10% of the predicted carbon dioxide emissions from the total energy requirements of the development has been submitted to and approved in writing by the Local Planning Authority. The design features, systems and equipment that comprise the approved scheme shall be fully implemented in accordance with the approved plans and particulars prior to the development first being brought into use, or alternatively in accordance with a phasing scheme which has been agreed in writing by the Local Planning Authority, and shall thereafter be retained in place and in working order at all times.
- 32) Not less than 23% of all Private Market Dwellings shall fully comply with all relevant requirements of the Joseph Rowntree Foundation's "Lifetime Homes" standards (or any substitute therefore which may be published from time to time) and details of which of the Private Market Dwellings will comply with the "Lifetime Homes" standards shall be set out in reserved matters for each parcel and thereafter the Private Market dwellings identified in reserved matters

approvals as being those which will comply with the "Lifetime Homes" standards shall be constructed in accordance with these standards.

- 33) All new dwellings within each parcel shall achieve a minimum rating of Level 3 of the Code for Sustainable Homes as applicable at the time of commencement of development within that parcel. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that a minimum of Code Level 3 has been achieved. Copies of certificates shall be supplied to the Local Planning Authority on request.

Landscape

- 34) No part of the development hereby permitted shall be commenced or equipment, machinery or materials brought onto the site until a scheme for the protection of all existing trees and hedges to be retained on site has been submitted to and approved in writing by the Local Planning Authority and has been put in place.

The scheme must include details of the erection of stout protective fencing in accordance with British Standard 5837 (Trees in relation to design, demolition and construction). Fencing shall be shown on a plan and installed to the extent of the tree protection areas as calculated using the British Standard. Nothing shall be stored or placed in those fenced areas or the ground levels altered without the prior consent in writing of the Local Planning Authority.

The development shall be carried out in accordance with the approved scheme which shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed.

- 35) No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by Condition 34 has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include details of:

- i) induction and personnel awareness of arboricultural matters;
- ii) identification of individual responsibilities and key personnel, including the qualified arboriculturalist responsible for administering the scheme;
- iii) statement of delegated powers;
- iv) timing and methods of site visiting and record keeping, including updates;
- v) procedures for dealing with variations and incidents.

The scheme of supervision shall be carried out as approved.

- 36) No works or development shall take place in any parcel until full details of all service runs within that parcel have been submitted to and approved in writing by the Local Planning Authority. The details shall include:

- i) The location of all existing services above and below ground
- ii) The location of all proposed services (e.g. drainage, power, communications cables, pipelines etc) including routes, supports etc.

The development shall be carried out in accordance with the details thus approved.

37) Prior to the commencement of site works, full details of hard and soft landscape proposals for the areas of Structural Landscape, Shottery Community Park and Shottery Conservation Landscape as shown on Green Infrastructure Plan 1953-SK-04 Rev. E shall have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. The details shall include the following amendments:

- a) Notwithstanding the landscaping detail shown on the northern edge of the Housing Area – Alcester Road (on Green Infrastructure Plan 1953-SK-04 Rev. E), such an area of landscaping shall accord with that shown on the Development Principles Plan with the Land West of Shottery Statement of Development Principles Document (October 2003).
- b) Notwithstanding the landscaping detail shown within the Shottery Conservation Area ('southern field') on Green Infrastructure Plan 1953-SK-04 Rev. E these landscape features shall accord with that shown on the Development Principles Plan with the Land West of Shottery Statement of Development Principles Document (October 2003).

The submitted details shall also include:

- i) the timing of implementation, which shall be no later than the end of the first planting season following the completion of the SWRR;
- ii) planting plans;
- iii) written specifications;
- iv) a schedule of plants noting species, plant sizes and proposed numbers;
- v) existing landscape features such as trees, hedges and ponds to be retained accurately plotted (where appropriate);
- vi) existing landscape features such as trees, hedges and ponds to be removed accurately plotted (where appropriate);
- vii) existing and proposed finished levels (to include details of grading and earthworks where appropriate).

The hard and soft landscaping approved as part of this condition shall be completed in accordance with the approved timing details.

Any planting that is removed, uprooted, severely damaged, destroyed or dies within five years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season.

38) All hard and soft landscape works, including earth works in the Shottery Conservation Landscape and adjacent to the Electricity Substation, shall be carried out in accordance with the details approved through reserved matters submissions. The works approved by all reserved matters submissions shall be completed within the first planting season following the first commencement of any part of the development on that parcel.

Any planting that is removed, uprooted, severely damaged, destroyed or dies within five years of the date of planting shall be replaced by the approved type planting by the end of the first available planting season.

39) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules, for the Shottery

Conservation Landscape (shown on Parameters Plan 1953 SK-01 S) shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.

- 40) Where a parcel is crossed by existing Power Lines, all Power Lines within that parcel shall be diverted underground prior to the first occupation of any dwelling within that parcel.
- 41) Prior to the construction of the Anne Hathaway's Cottage roundabout (as shown on Plan 207137-00 Figure 12/03), a Management Plan for the Plantation to its east and north-east shall be submitted to and approved in writing by the Local Planning Authority. The Plan shall provide details of any tree works and replacement planting including timing, as appropriate, within the Plantation as a result of weaker trees being subjected to increased wind as a result of the removal of outer trees and shall be implemented in accordance with the details approved.

Ecology

- 42) A Combined Ecological Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. The Plan shall thereafter be implemented and carried out as approved and in accordance with timescales and programmes as set out in the approved Plan. The Plan shall include the following elements:
- i) short and long term design and ecological objectives;
 - ii) description of target habitats and range of species appropriate to the site;
 - iii) selection of appropriate strategies for creating/restoring target habitats or introducing/encouraging target species;
 - iv) selection of specific techniques and practices for establishing vegetation;
 - v) sources of habitat materials (e.g. plant stock) or species individuals;
 - vi) method statement for site preparation and establishment of target features;
 - vii) extent and location of proposed works;
 - viii) management responsibilities and maintenance schedules for all landscape areas, other than small privately owned domestic gardens, to be designed to maximise ecological benefits on the site, e.g. seasonal mowing to encourage wildflowers;
 - ix) the personnel responsible for the work;
 - x) the timing of works;
 - xi) monitoring;
 - xii) disposal of wastes arising from works.
- 43) The development hereby permitted (including demolition of Nos. 3 and 4 Bordon Hill) shall not commence on any parcel, until a further bat survey of the site, to include appropriate day/night time activity surveys, preferably during May to August in the season prior to demolition or the commencement of works

in that parcel, has been carried out. If evidence of bats is recorded, a detailed mitigation plan including a schedule of works and timings shall be submitted to and approved in writing by the Local Planning Authority. Such an approved mitigation plan shall thereafter be implemented in full.

- 44) The development hereby permitted shall not commence on any parcel, unless and until two weeks' notice in writing of the start of any site works has been given to a licensed great crested newt ecologist appointed by the applicant to supervise all ground work elements of the development within the site. Should evidence of newts be found, then any recommendations or remedial works shall be implemented within the timescales stated/approved by the relevant consultant ecologist and the Local Planning Authority shall at the same time be advised in writing of these.
- 45) Should a protected species, with the exception of bats, great crested newts or badgers, be found to be present and either preparing to breed or in the process of breeding or rearing young, then:
- i) work shall stop across the entire site until the Local Planning Authority has approved details of a 'permitted working area' in writing;
 - ii) site works shall thereafter only continue outside of the 'permitted working area', unless and until details of appropriate mitigation measures and contingency plans including timescales have been submitted to and approved in writing by the Local Planning Authority.

The works shall thereafter be carried out in accordance with the details approved.

- 46) No part of the development hereby permitted shall be commenced until a scheme for the provision of suitable bat bricks/bat access tiles and bird nesting boxes to be erected on buildings within the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of box type, location and timing of works. Thereafter, the bat bricks/bat access tiles and bird nesting boxes shall be installed and retained in perpetuity.
- 47) Prior to the commencement of development a scheme for the provision and management of a buffer zone (at least 8m wide on one bank) alongside the Shottery Brook and of buffers around ponds and ditches present shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority.

The scheme shall include:

- i) plans showing the extent and layout of the buffer zones;
 - ii) details of the planting scheme;
 - iii) details demonstrating how the buffer zones will be protected during development and managed/maintained over the long term.
- 48) The proposed pond shown indicatively on the Green Infrastructure Plan 1953 SK-04 Rev. E shall be constructed in accordance with a scheme, to include the timing of its implementation, to be submitted to and approved in

writing by the Local Planning Authority prior to the commencement of development.

- 49) Prior to the commencement of development, a working method statement to cover channel and bank works shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority. The method statement shall cover the following requirements:
- i) timing of works;
 - ii) methods used for all channel and bank side water margin works;
 - iii) machinery (location and storage of plant, materials and fuel, access routes, access to banks etc.);
 - iv) protection of areas of ecological sensitivity and importance.
- 50) Prior to the commencement of development, details of all bridges proposed on site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the bridges shall be constructed as set out in the approved scheme. The scheme shall comprise the following features:
- i) all bridges shall be clear spanning structures with the abutments set back from the watercourse on both banks to provide a bank width of 4 metres beneath the bridge;
 - ii) bridges shall be a minimum of 4 metres from the bank top of the watercourse to provide an unobstructed corridor to allow the movements of otters and other animals;
 - iii) bank revetment should not be necessary as all revetment and structural work should be associated with the bridge structure and set back at least 4 metres.

Ground, Air and Noise Quality

- 51) No work shall commence on the site unless the further intrusive site investigations detailed in Chapter 12 of the Geo-environmental Phase 1 Desk Study 2008 have been undertaken and the results, including any mitigation measures, have been submitted to and approved in writing by the Local Planning Authority. Any mitigation measures proposed as a result of the investigations shall be carried out in accordance with the approved details and a validation report shall be submitted within 2 months of the works being carried out to the Local Planning Authority confirming that the mitigation works have been completed.
- 52) Construction works, construction related works or construction related deliveries shall not be carried out on the site outside of the following hours and at no time on Sundays or Bank Holidays:

Monday to Fridays 08:00-18:00 hours; Saturdays 08:00-13:00 hours.

In addition, piling operations or vehicle/equipment maintenance shall not be carried out on the site outside of the following hours and at no time on Saturdays, Sundays or Bank Holidays:

Monday to Fridays 09:00-16:00 hours.

- 53) Prior to the commencement of the development hereby permitted, details of a package of acoustic measures to allow all residential units within the development to achieve the "good" internal ambient noise criteria, as described by BS8233:1999 i.e. achieve internal noise levels equal to or less than $30\text{dB}_{\text{LAeq,T}}$ during the day and $30\text{dB}_{\text{LAeq,T}}$ at night for living rooms and bedrooms with the windows open in a manner typical for ventilation (or where the above criteria cannot be met with windows open, for example where habitable rooms have windows with unscreened views towards the estate through-road, using passive acoustic ventilators with equivalent acoustic performance to those approved for use under the Noise Insulation Regulations), shall be submitted to and approved in writing by the Local Planning Authority. The approved package of measures shall be installed before the proposed dwellings are occupied.
- 54) A noise mitigation/control scheme to ensure the provision of a garden area suitable for amenity use for each residential property that achieves a noise level of $55\text{dB}_{\text{LAeq,T}}$ or lower during the day and $45\text{dB}_{\text{LAeq,T}}$ or lower at night shall be submitted to and approved in writing by the Local Planning Authority before the commencement of the development and none of the dwellings shall be occupied until the approved scheme has been implemented.
- 55) Prior to the commencement of dwellings hereby approved in the northern development area (shown on Parameters Plan 1953 SK-01 Rev. S as the Housing Area – Alcester Road [Component A]) a mitigation scheme detailing the external works proposed to mitigate the noise impact of the electricity substation affecting part of the development and a glazing/ventilation specification to protect the internal space of dwellings proposed shall be submitted to and approved in writing by the Local Planning Authority and none of the dwellings within the northern residential parcel shall be occupied until the approved scheme has been implemented.
- 56) There shall be no deliveries to or collections from any non-residential building outside the hours of 07:00-19:00 Mondays-Saturdays or at any time on Sundays or Bank or Public Holidays.
- 57) No security lighting or floodlighting shall be installed on any non-residential building until full details have been submitted to and approved in writing by the Local Planning Authority. All such installations shall be designed and located to avoid nuisance to the occupiers of nearby dwellings, and shall be implemented and thereafter retained in accordance with the approved details.
- 58) Development shall not commence on any non-residential building until details of arrangements for refuse storage have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 59) Development shall not begin on any non-residential building until details of any externally-mounted plant or equipment or any internal equipment which vents externally, including any extraction ventilation system for a cooking area, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Other

- 60) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the Local Planning Authority. Thereafter the approved scheme shall be implemented and the work shall be carried out by a professional archaeological organisation or person approved in writing by the Local Planning Authority.
- 61) No parcel of the development hereby permitted shall be commenced until a scheme for the provision of adequate water supplies and fire hydrants necessary for fire fighting purposes for that parcel has been submitted to and approved in writing by the Local Planning Authority. No parcel of the development shall be occupied until the scheme for that particular parcel has been implemented in accordance with the approved details.
- 62) No dwelling or other building that has a downpipe within the development hereby permitted shall be occupied or used until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Paul Cairnes of Counsel	Instructed by Mrs Leenamari Aantaa-Collier, Principal Solicitor, Stratford-on-Avon District Council
He called:	
Nicholas Molyneux FSA IHBC	Team Leader and Inspector of Historic Buildings, English Heritage
Simon White DipLA DipUD(Dist) MA CMLI	Director, White Consultants
Alexander Holmes BA(Hons) MTS MTMI DipTour	Tourism Consultant
Malcolm Brown FRICS MRTPI	Director, Sibbett Gregory
Ms R Warren	Solicitor, Stratford-on-Avon District Council (at session on planning obligations and conditions)
Richard Gardner	Planning Department, Stratford-on-Avon District Council (at session on planning obligations and conditions)

FOR THE APPELLANT:

Tom Hill QC	Instructed by Owen Jones, Boyer Planning
He called:	
Phil Rech BA(Hons) BPhil CMLI	Director, FPCR Environment & Design Ltd
Johnny Ojeil MSc MIHT	Director, Ove Arup and Partners
Tom Zarebski BSc(Hons) MSc MIOA MInstP	Director, Cole Jarman Limited
Dr Chris Miele MRTPI IHBC FRHS FSA	Partner, Montagu Evans LLP
Paul Boileau BEng CEng CEnv MICE	Director, Brookbanks Consulting Ltd
Owen Jones BA(Hons) PGDip MSc MRTPI	Director, Boyer Planning Ltd

FOR RESIDENTS AGAINST SHOTTERY EXPANSION:

Richard Ford	Resident of Shottery and planning solicitor
Martin Luscombe	Resident of Shottery

FOR WARWICKSHIRE COUNTY COUNCIL:

Peter Oliver	Solicitor, Warwickshire County Council (at session on planning obligations and conditions)
Mr D Neale	Highway engineer, Warwickshire County Council (at session on planning obligations and conditions)

INTERESTED PERSONS:

Debbie Griffiths	Local resident
John Condés	Local resident
James Philpotts	Local resident
Bill Dowling	Town Councillor and Mayor of Stratford-upon-Avon
Nicholas Butler	Warwickshire Branch of the Campaign to Protect Rural England
James & Kirstin Greygoose	Local residents
Gordon Brace	Local resident
Milan Turšner	Local resident
Roy Massey	Local resident
Robert Harding	Local resident
Donald Cowan	Local resident
Jenny Fradgley	District Councillor for Guild and Hathaway Ward
Peter Moore	District Councillor for Mount Pleasant Ward
Bob Malloy	Local resident
Valerie Hobbs	District Councillor for Old Stratford & Drayton Ward
Jean Chollerton	Local resident
Paul Stanton	Local resident
David Bowie	Stratford Voice
Yvonne Wiggins	Local resident
Peter Emerson	Chairman of Old Stratford and Drayton Parish Council

CORE DOCUMENTS

Planning Application Documents

CD/A/1	Planning application forms
CD/A/2	Ownership Schedule
CD/A/3	Environmental Statement Main Text (Volume 2)
CD/A/3a	Environmental Statement Technical Appendices (Volume 3a)
CD/A/3b	Environmental Statement Technical Appendices (Volume 3b)
CD/A/3c	Environmental Statement Non-Technical Summary (October 2009)
CD/A/3d	Environmental Statement Non-Technical Summary (October 2010)
CD/A/4	Site plan 1953-SK-02 Rev G
CD/A/4a	Site plan 1953-SK-02 Rev J
CD/A/5	Parameters plan 1953-SK-01 Rev R
CD/A/6	Access Plan 207137-00 CH-007 Issue 02
CD/A/7	Green Infrastructure Plan 1953-SK-04 Rev C
CD/A/8	Indicative Layout 1953-SK-08 Rev C
CD/A/9	Design and Access Statement
CD/A/9a	Design and Access Statement Addendum (October 2010)
CD/A/10	Transport Assessment (incorporating access drawings)
CD/A/10a	Travel Plan Framework
CD/A/11	Planning Statement
CD/A/12	Flood Risk Assessment and Drainage Strategy
CD/A/13	Energy Statement
CD/A/14	Statement of Community Involvement
CD/A/15	1 st Regulation 19 Response (October 2010)
CD/A/15a	Amended parameters plan 1953-SK-01 Rev S
CD/A/15b	Amended green infrastructure plan 1953-SK-04 Rev E
CD/A/16	2 nd Regulation 19 Response (February 2011)
CD/A/16a	Great Crested Newt Risk Assessment (January 2011)
CD/A/16b	Badger Survey Report (3 March 2011)
CD/A/16c	Green Infrastructure and Open Space Provision (13 July 2011)
CD/A/17	Revised Transport Assessment (September 2010)
CD/A/18	Revised Transport Assessment (February 2011)
CD/A/18a	Amended access plan 207137-00 Figure 13 Issue 05
CD/A/19	Consultation Responses – LPA Appeal Questionnaire
CD/A/20	Planning Committee Report – 21 st September 2011
CD/A/21	Planning Committee Update Note – 21 st September 2011
CD/A/22	Stratford-on-Avon District Council Decision Notice – 22 nd September 2011
CD/A/23	Further Environmental Information Submission – February 2012

Development Plan Related Documentation

CD/B/1	Stratford-on-Avon District Local Plan Review 1996-2011 Written Statement and Proposals Map
CD/B/2	Stratford-on-Avon District Local Plan Review Saved Policies Schedule and Government Office letter dated 9 July 2009
CD/B/3	Stratford-on-Avon District Local Plan Inspector's Report
CD/B/4	Evidence submitted to Local Plan Inquiry on proposal SUA.W
CD/B/5	Land West of Shottery Development Principles Document 2003
CD/B/6	Warwickshire Structure Plan 1996-2011 and Saved Policies Schedule
CD/B/7	Regional Spatial Strategy for the West Midlands Incorporating Phase 1 Review January 2008

Stratford-on-Avon District Council Supplementary Planning Documents

CD/C/1	Car and Cycle Parking Standards
CD/C/2	Developer Contributions towards Transport Schemes

CD/C/3	Managing Housing Supply
CD/C/4	Provision of Open Space
CD/C/5	Design in Residential Areas
CD/C/6	Town Design Statement
CD/C/7	Local Choice – meeting the needs of Rural Communities
CD/C/8	Meeting Housing Needs
CD/C/9	Sustainable Low-Carbon Buildings
CD/C/10	Urban Design Framework

Highways Documentation

CD/D/1	Stratford-on-Avon Western Relief Road Scheme Assessment Study October 2003 – Warwickshire County Council
CD/D/2	Warwickshire Local Transport Plan 2011-2026
CD/D/3	Design Manual for Road and Bridges

Emerging Development Plan

CD/E/1	West Midlands Regional Spatial Strategy (Phase 2 Revision) Preferred Option December 2007
CD/E/2	West Midlands Regional Spatial Strategy (Phase 2 Revision) Panel Report September 2009
CD/E/3	West Midlands Regional Spatial Strategy (Phase 2 Revision) EIP Participant Statement - Stratford-on-Avon District Council
CD/E/4	West Midlands Regional Spatial Strategy (Phase 2 Revision) EIP Participant Statement - Bloor Homes & Hallam Land Management
CD/E/5	(Unused)
CD/E/6	Stratford-on-Avon District Council Local Development Scheme – updated timetable 12 September 2011
CD/E/7	Stratford-on-Avon District Core Strategy - Issues and Options May 2007
CD/E/8	Stratford-on-Avon District Draft Core Strategy October 2008
CD/E/9	Stratford-on-Avon District Consultation Core Strategy February 2010
CD/E/10	Sustainability Appraisal / Strategy Justification paper 2010 Draft Core Strategy
CD/E/11	(Unused)
CD/E/12	Housing Provision Options Study Final Report (GL Hearn, June 2011)
CD/E/13	Landscape Sensitivity Assessment Final Report (White Consultants, July 2011)
CD/E/14	Green Infrastructure Study (UE Associates, August 2011)
CD/E/15	Draft Core Strategy – Summary of representations received February-April 2010
CD/E/16a	Report to Cabinet on 5 September 2011 relating to Housing Provision Options
CD/E/16b	Cabinet Decision of 5 September 2011 relating to Housing Provision and the spatial approach to the Core Strategy
CD/E/17	Report to Cabinet on 16 January 2012 relating to the spatial approach to the Core Strategy
CD/E/18	Stratford-on-Avon District Draft Core Strategy February 2012
CD/E/19	Report to Cabinet on 6 February 2012 relating to the Draft Core Strategy
CD/E/20	Sustainability Appraisal of Stratford-on-Avon District Core Strategy (Lepus Consulting, January 2012)

Other Documents

CD/F/1a	Strategic Housing Land Availability Assessment (Baker Associates 2008)
CD/F/1b	Strategic Housing Land Availability Assessment (Baker Associates 2009)
CD/F/2	Joint Housing Assessment for South Warwickshire (Outside Research & Development, 2006)
CD/F/3	Stratford-on-Avon District Housing Strategy 2009-2014
CD/F/4	Stratford-upon-Avon Town Design Statement (2002)
CD/F/5	Conservation Principles - Policies and Guidance (English Heritage 2008)
CD/F/6	The Setting Of Heritage Assets (English Heritage 2011)

CD/F/7	Defining a Fabric Energy Efficiency Standard for Zero Carbon Homes - Executive Summary of Task Group Recommendations (Zero Carbon Hub November 2009)
CD/F/8	Carbon Compliance for Tomorrow's New Homes: A Review of the Modelling Tool and Assumptions (Zero Carbon Hub July 2010)
CD/F/9	Allowable Solutions for Tomorrow's New Homes: Towards a Workable Framework (Zero Carbon Hub July 2011)
CD/F/10	Warwickshire Landscape Guidelines (1993)
CD/F/11	Stratford-upon-Avon Landscape Study (1992)
CD/F/12	Stratford Town Edge Study (2005)
CD/F/13	Land at Kipling Road Committee Report and Appeal Decision Ref APP/J3720/A/10/2139071
CD/F/14	Egg Packing Station, Bishopton Lane Committee Report and Decision Notice
CD/F/15	Long Marston Storage Depot, Campden Road Committee Report and Decision Notice
CD/F/16	Land off Ettington Road, Wellesbourne Committee Report
CD/F/17	Land West of Birmingham Road, Bishopton Committee Report
CD/F/18	Stratford-on-Avon District Council Shottery Conservation Area Booklet 1992 and Conservation Area boundary plan 2005
	National Planning Policy ⁷⁷⁶
CD/G/1	PPS1 Delivering Sustainable Development- General Principles – Planning and Climate Change Supplement
CD/G/2	PPS3 Housing
CD/G/3	PPS4 Planning for Sustainable Economic Growth
CD/G/4a	PPS5 Planning for the Historic Environment
CD/G/4b	PPS5 Historic Environment Planning Practice Guide
CD/G/5	PPS9 Biodiversity and Geological Conservation
CD/G/6	PPS13 Transport
CD/G/7	PPG17 Planning for Open Space, Sport and Recreation
CD/G/8	PPS22 Renewable Energy
CD/G/9	PPS23 Planning and Pollution Control
CD/G/10	PPS24 Planning and Noise
CD/G/11	PPS25 Development and Flood Risk
CD/G/12	Draft National Planning Policy Framework 2011
CD/G/13	PINS Guidance on Draft National Planning Policy Framework (amended)
CD/G/14	Dear Chief Planning Officer letters re RSS revocation
CD/G/15	Ministerial Statement Planning for Growth
CD/G/16	Circular 5/05 – Planning Obligations
CD/G/17	Circular 11/95 – Conditions
CD/G/18	Community Infrastructure Levy Regulations 2010
CD/G/19	Circular 11/95: The Use of Conditions in Planning Permissions
CD/G/20	Circular 05/05: Planning Obligations
CD/G/21	Community Infrastructure Levy Regulations 2010
CD/G/22	Circular 08/09: Arrangements for Handling Heritage Applications
CD/G/23	The Planning System: General Principles (ODPM 2005)
CD/G/24	National Planning Policy Framework
	Joint Documents
CD/H/1	Statement of Common Ground between the Local Planning Authority and Appellants
CD/H/2	Stratford-on-Avon District Council and Bloor Homes and Hallam Land Management: Joint Statement addressing the tests on obligations arising under

⁷⁷⁶ Numbered for reference only, copies not provided

CD/H/3 Regulation 122 of the Community Infrastructure Levy Regulations
Suggested site visit route

Stratford-on-Avon District Council Core Documents

CD/SDC/1 Stratford-on-Avon District Annual Monitoring Reports 2006-2011
 CD/SDC/2 (Unused)
 CD/SDC/3 Housing Development Sites in Stratford-on-Avon District September 2011
 CD/SDC/4 Statement of Community Involvement April 2006
 CD/SDC/5 Corporate Strategy 2011-2015
 CD/SDC/6 Sustainable Community Strategy
 CD/SDC/7 The Aarhus Convention 1998
 CD/SDC/8 (Unused)
 CD/SDC/9 Landscape Character Assessment Guidance for England and Scotland 2002
 CD/SDC/10 The European Landscape Convention 2006
 CD/SDC/11 Topic Paper 6: Techniques and criteria for judging capacity and sensitivity, Countryside Agency and Scottish Natural Heritage January 2004.
 CD/SDC/12 The Setting of Heritage Assets (English Heritage 2011)
 CD/SDC/13 Stratford-on-Avon District – Tourism Economic Impact Assessment 2009
 CD/SDC/14 Stratford-upon-Avon Visitor Survey – Final Report 2011
 CD/SDC/15 Making Tourism our Business in the Stratford-on-Avon District 2011
 CD/SDC/16 Stratford-on-Avon Destination Tourism Strategy 2011-2015 – revised draft 2011
 CD/SDC/17 Government Tourism Policy (Dept for Culture, Media and Sport, March 2011)
 CD/SDC/18 A Strategic Framework for Tourism in England 2010 – 2020, revised edition 2011 (Visit England)
 CD/SDC/19 Office of National Statistics Annual Business Inquiry 2008 revised results
 CD/SDC/20 Culture and Heritage Topic Profile, February 2010 (Visit Britain)

Residents Against Shottery Expansion Core Documents

CD/RASE/1 RASE objections documents to the application
 CD/RASE/2 (Unused)
 CD/RASE/3 Stratford-on-Avon District Council Response to Inspector’s Report July 2005 (extracts)
 CD/RASE/4 Appeal Decision Ref APP/R3515/A/09/2115949 Land at Westerfield Road, Ipswich
 CD/RASE/5 Appeal Decision Ref APP/LI765/A/10/2126522 Land at Barton Farm, Andover Road, Winchester, Hampshire
 CD/RASE/6 Appeal Decision Ref APP/D0840/A/10/2130022 Land at Treverbyn Road, St Austell, Cornwall
 CD/RASE/7 Appeal Decision Ref APP/R0660/A/10/2141564 Land off Abbey Road and Middlewich Road, Sandbach, Cheshire
 CD/RASE/7a Appeal Decision Ref APP/H3510/A/10/2142030 Land at Hatchfield Farm, Fordham Road, Newmarket
 CD/RASE/8 Appendices to David King proof of evidence to Land South of Kipling Road inquiry dated February 2011 (APP/J3720/A/10/2139071)
 CD/RASE/9 Guidance on Transport Assessment (Department for Transport 2007)
 CD/RASE/1 WG-AEN’s Good Practice Guide And The Implications For Acoustic Accuracy NANR 93 (DEFRA 2005)
 CD/RASE/11 Noise Modelling research paper NANR 208 (DEFRA 2007)
 CD/RASE/12 Research into the Practical and Policy Applications of Soundscape Concepts and Techniques in Urban Areas NANR 200 (DEFRA 2009)
 CD/RASE/13 Stratford-on-Avon District Council Housing Advisory Panel report 20 January 2012
 CD/RASE/14 (Unused)
 CD/RASE/15 Stratford-on-Avon Western Relief Road Scheme Assessment Study October 2003 – Warwickshire County Council

- CD/RASE/16 Faber Maunsell transport statement on behalf of RASE submitted to the Local Plan Inquiry in 2003
- CD/RASE/17 Report of the Inquiry into objections to the Deposit Draft of the Stratford-on-Avon District Local Plan held 22 March 1994 to 22 March 1995
- CD/RASE/18 Decision Notice refusing a planning application proposing development at Evesham Road, Luddington Road (Reference 99/03097/OUT)

INQUIRY EVIDENCE AND SUBMISSIONS – LOCAL PLANNING AUTHORITY

- INQ/LPA/1 Mr Molyneux's proof and summary
- INQ/LPA/1/a Mr Molyneux's supplementary proof
- INQ/LPA/2 Mr Molyneux's Appendices
- INQ/LPA/3 Mr White's proof
- INQ/LPA/4 Mr White's summary
- INQ/LPA/4a Mr White's supplementary proof
- INQ/LPA/5 Mr White's Appendices
- INQ/LPA/5a Mr White replacement Appendix SWN
- INQ/LPA/6 Mr Holmes's proof and Appendices
- INQ/LPA/7 Mr Holmes's summary
- INQ/LPA/7a Mr Holmes's supplementary proof
- INQ/LPA/8 Mr Brown's proof
- INQ/LPA/9 Mr Brown's summary
- INQ/LPA/9a Mr Brown's supplementary proof
- INQ/LPA/10 Mr Brown's Appendices
- INQ/LPA/11 Bloor Homes' publicity leaflets
- INQ/LPA/12 Council news releases
- INQ/LPA/13 Opening statement
- INQ/LPA/14 Letter from the Council to Visit England dated 14 November 2011
- INQ/LPA/15 Letter from Visit England to the Council dated 19 December 2011
- INQ/LPA/16 Letter from Advantage West Midlands to the Council dated 21 December 2009
- INQ/LPA/17 Technical Note on the Five Year Housing Land Supply April 2012 and Schedules
- INQ/LPA/18 Armorial Bearings of the Stratford-on-Avon District Council
- INQ/LPA/19 National Indicators for Local Authorities and Local Authority Partnerships Handbook of Definitions Annex 4
- INQ/LPA/20 Masterplan considered at time of 2000 Local Plan inquiry (CD/RASE/17)
- INQ/LPA/21 Accommodation Report: Margaret Court
- INQ/LPA/22 Statement addressing the planning obligations offered by the Appellants
- INQ/LPA/23 Suggested planning conditions
- INQ/LPA/24 Land ownership plan
- INQ/LPA/25 Closing submissions

INQUIRY EVIDENCE AND SUBMISSIONS – APPELLANTS

- INQ/APP/1 Mr Jones's proof
- INQ/APP/1a Mr Jones's summary
- INQ/APP/1b Mr Jones's supplementary proof
- INQ/APP/2 Mr Jones's Appendices
- INQ/APP/3 Mr Rech's proof
- INQ/APP/3a Mr Rech's summary
- INQ/APP/3b Mr Rech's supplementary proof
- INQ/APP/4&5 Mr Rech's Appendices
- INQ/APP/5a Enlarged versions of Figures 33-38 from Appendix 2
- INQ/APP/5b Corrected version of Appendix 2 Figure 5 RevA

INQ/APP/6	Dr Miele's proof
INQ/APP/6a	Dr Miele's summary
INQ/APP/6b	Dr Miele's rebuttal to Mr Robert's analysis (in Appendix 4 of RASE3)
INQ/APP/6c	Dr Miele's supplementary proof
INQ/APP/7	Dr Miele's Appendices
INQ/APP/8	Mr Zarebski's proof
INQ/APP/8a	Mr Zarebski's summary
INQ/APP/8b	Mr Zarebski's rebuttal to Mr Brown
INQ/APP/8c	Mr Zarebski's Addendum to 09/2252/PoE/SCH/rev1
INQ/APP/9	Mr Zarebski's Appendices
INQ/APP/10	Mr Ojeil's proof
INQ/APP/10a	Mr Ojeil's summary
INQ/APP/11	Mr Ojeil's Appendices
INQ/APP/12	Mr Boileau's proof
INQ/APP/12a	Mr Boileau's summary
INQ/APP/13	Mr Boileau's Appendices
INQ/APP/14	Email from Highways Agency dated 30 March 2012
INQ/APP/15	Letter to Shakespeare Birthplace Trust dated 23 March 2012
INQ/APP/16	Email from Shakespeare Birthplace Trust dated 3 April 2012
INQ/APP/17	Boyer Planning response to Stratford-on-Avon Third Core Strategy
INQ/APP/18	Opening submissions
INQ/APP/19	Letter from English Heritage dated 8 April 2010
INQ/APP/20	Comparative visual effects schedule
INQ/APP/21	Mr Boileau's rebuttal proof
INQ/APP/22	Mr Ojeil's rebuttal proof
INQ/APP/23	Environmental Statement National Planning Policy Framework Update April 2012
INQ/APP/24	Draft section 106 agreements (2no.)
INQ/APP/25	Note on the financial status of the Appellant Companies
INQ/APP/26	Evidence of Mr King relating to appeal on Land South of Kipling Road APP/J3720/A/10/2139071
INQ/APP/27	Bundle of responses to the Stratford-on-Avon Draft Core Strategy February 2012
INQ/APP/28	Stratford-on-Avon Planning Committee report on Land to the rear of 18 Salford Road, Bidford-on-Avon dated 17 April 2012 and decision notice dated 24 April 2012
INQ/APP/29	Appeal decision ref APP/R0660/A/09/2105034 Cardway Premises, Linley Lane, Alsager, Cheshire ST7 2UX
INQ/APP/30	Stratford-on-Avon Planning Committee report on Maudslay Park, Henley Road, Great Alne dated 12 April 2011
INQ/APP/31	Letter from Mr S and Mrs G Reed dated 23 April 2012
INQ/APP/32	FPCR Figure 29 Rev A Evesham Road Gateway Sketch
INQ/APP/33	Brookbanks Technical Note: Traffic Calming
INQ/APP/34	Brookbanks Technical Note: Low noise Surfacing
INQ/APP/35	Brookbanks Technical Note: Overhead Cables
INQ/APP/36	Housing Land Supply – response to Stratford-on-Avon District Council technical note April 2012
INQ/APP/37	Brookbanks Drawing No. 1363/HL/07 New Bypass/Site Access Illustrative Vertical Alignment
INQ/APP/38	Folder of Representations to Stratford-on-Avon Draft Core Strategy 2012
INQ/APP/39	Appeal Decision Ref APP/F1610/A/10/2130320 Land at Todenham Road, Moreton in Marsh, Gloucestershire
INQ/APP/40	Note on housing delivery in response to RASE comments
INQ/APP/41	Draft Section 106 Agreement
INQ/APP/42	Draft Section 106 Unilateral Undertaking

INQ/APP/43	Suggested additional planning conditions
INQ/APP/44	Note on parties to the Section 106 Planning Obligation
INQ/APP/45	Letter dated 29 June 2011 regarding Policing Contributions
INQ/APP/46	Heritage Plan
INQ/APP/47	Note responding to RASE's note on whether the environmental assessment information is capable of being regarded as an Environmental Statement
INQ/APP/48	Note on representations received on Environmental Statement National Planning Policy Framework Update
INQ/APP/49	Stratford Voice comments on Draft Stratford-on-Avon Core Strategy
INQ/APP/50	Stratford-upon-Avon Society's 'The Historic Spine' leaflet
INQ/APP/51	Extract from Stratford-upon-Avon Herald dated 10 May 2012
INQ/APP/52	S106 Agreement dated 14 May 2012
INQ/APP/53	S106 Unilateral Undertaking dated 14 May 2012
INQ/APP/54	London Borough of Bromley v SoSCLG and Castlefort Properties Ltd [2007] EWHC 2480 (Admin)
INQ/APP/55	Closing submissions

INQUIRY EVIDENCE AND SUBMISSIONS – RESIDENTS AGAINST SHOTTERY EXPANSION

INQ/RASE/1	Mr Ford's proof
INQ/RASE/2	Mr Ford's summary
INQ/RASE/3	Mr Ford's Appendices
INQ/RASE/4	Opening statement
INQ/RASE/5	Bloor Homes Limited Report and Financial Statements dated 30 June 2011
INQ/RASE/6	Hallam Land Management Limited Annual Report 2010
INQ/RASE/7	Mr Ford's supplementary proof
INQ/RASE/8	Comments on the statement of common ground between the local planning authority and the appellants
INQ/RASE/9	Mr Ford's second supplementary proof
INQ/RASE/10	J S Bloor (Tewkesbury) Limited Report and Financial Statements 30 June 2011
INQ/RASE/11	Arup notes of meeting of 10 July 2008
INQ/RASE/12	Letter from Commission for Architecture and the Built Environment dated 3 February 2010
INQ/RASE/13	Note on "A review of current research on road surface noise reduction techniques"
INQ/RASE/14	Note on the status of Stratford-on-Avon Neighbourhood Plan process and bundle of attachments
INQ/RASE/15	Note on whether the environmental assessment information is capable of being regarded as an ES
INQ/RASE/16	Barchester Healthcare Ltd v SoS and Sevenoaks [2010] EWHC 2784 (Admin)
INQ/RASE/17	Letter from Shakespeare Birthplace Trust dated 8 May 2012 to Mrs Jean Chollerton
INQ/RASE/18	Annotated copies of draft planning obligations
INQ/RASE/18a	Suggested additional condition
INQ/RASE/19	Closing submissions

INQUIRY EVIDENCE AND SUBMISSIONS – WARWICKSHIRE COUNTY COUNCIL

INQ/WCC/1	Statement addressing the planning obligations offered by the Appellants
INQ/WCC/2	Appeal Decision Ref APP/P1805/A/11/2152467 Land at St Godwald's Road, Bromsgrove

INQUIRY EVIDENCE AND SUBMISSIONS – THIRD PARTIES

INQ/TP/1	Statement by Nicholas Butler for The Campaign to Protect Rural England
INQ/TP/1a	CPRE Warwickshire comments on Stratford-on-Avon Draft Core Strategy 2012
INQ/TP/1b	Letter from CPRE Warwickshire dated 15 May 2012
INQ/TP/2	Statement by Milan Turšner
INQ/TP/3	Statement by Councillor Jenny Fradgley
INQ/TP/4	Statement and presentation by Debbie Griffiths
INQ/TP/4a	Email from Quedgeley Area Conservation Association to Debbie Griffiths dated 10 April 2012
INQ/TP/5	Statement by David Bowie for Stratford Voice
INQ/TP/6	Presentation by John Condés
INQ/TP/7	Statement by James Philpotts
INQ/TP/8	Statement by Councillor Ron Cockings
INQ/TP/8a	Additional statement by Councillor Ron Cockings
INQ/TP/9	Statement by Councillor Bill Dowling
INQ/TP/10	Statement by James and Kirstin Greygoose
INQ/TP/11	Article from Financial Times dated 24 January 2012, submitted by Gordon Brace
INQ/TP/11a	Photographs submitted by Gordon Brace
INQ/TP/11b	Statement by Gordon Brace
INQ/TP/12	Statement by Robert Harding
INQ/TP/13	Statement by Roy & Kathleen Massey
INQ/TP/14	Statement by Donald Cowan
INQ/TP/15	Statement by Bob Malloy
INQ/TP/16	Statement by Councillor Valerie Hobbs and attachment
INQ/TP/17	Statement by Councillor Peter Moore
INQ/TP/18	Statement by Peter Emmerson
INQ/TP/19	Statement by Jean Chollerton and attachments
INQ/TP/20	Statement by Paul Stanton
INQ/TP/21	Statement by Yvonne Wiggins and attachments

INSPECTOR'S DOCUMENTS

INSP/1	Folder of appeal representations
INSP/2	Pre-inquiry meeting notes
INSP/3	Council's notification letter
INSP/4	Bundle of representations responding to consultation on Appellants' Environmental Statement National Planning Policy Framework Update April 2012

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

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



Department for
Communities and
Local Government

Our Ref: APP/Z2830/A/12/2183859

Tim Coleby
Roger Tym & Partners
3 Museum Square
LEICESTER
LE1 6UF

24 July 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY BARWOOD LAND AND ESTATES LTD
AT CATCH YARD FARM, TOWCESTER ROAD, SILVERSTONE, NN12 8UB
APPEAL REF: APP/ Z2830/A/12/2183859**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Andrew Pykett BSc (Hons) PhD MRTPI, who held a public local inquiry between 5 and 13 February 2013 into your clients' appeal against the refusal of South Northamptonshire District Council (the Council) to grant outline planning permission for residential development of 220 dwellings, new vehicular and pedestrian access and associated road infrastructure, public open space and landscaping, including flood alleviation measures, at Catch Yard Farm, Towcester Road, Silverstone, in accordance with application reference S/2012/0560/MAO, dated 8 May 2012.
2. On 31 October 2012 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because it involves a proposal for residential development of over 150 units, and is on a site of more than 5 hectares, which would have a significant impact on the Government's objective to secure a better balance between housing demand and supply, and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed and planning permission granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and recommendation. A copy of the

Jean Nowak
Planning Casework Division,
Department for Communities and Local Government
1/H1, Eland House
Bressenden Place
London
SW1E 5DU

Tel: 0303 444 1626
Email: PCC@communities.gsi.gov.uk

Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Procedural Matters

4. The application for costs (IR1) made by your client at the Inquiry is the subject of a separate decision letter, also being issued today by the Secretary of State.
5. The Secretary of State notes (IR2) that the Inspector has considered the appeal on the basis of attaching a condition citing the Illustrative Masterplan (Drawing No: SK014 Rev A) as the foundation for the development of the site, and he is satisfied that no interests have thereby been prejudiced.
6. In determining this appeal, the Secretary of State has had special regard to the desirability of preserving the Grade II listed Catch Yard Farm farmhouse, its setting and any features of special architectural or historic interest the building possesses, as required under the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Secretary of State has also taken into consideration planning permission (ref: S/2009/0759/FUL) and listed building consent (ref: S/2009/0760/LBC) approved by the Council on 16 April 2010.

Matters arising after the Inquiry

7. The Secretary of State received representations from those listed at Annex A which were not considered at the inquiry. The Secretary of State has given careful consideration to this correspondence and is satisfied that it raises no new issues not covered at the inquiry and upon which he requires further information. Copies of this correspondence may be obtained, on written request, from the address at the bottom of the first page.
8. The East Midlands Regional Plan (RSS) was revoked in March 2013, shortly after the closure of the inquiry. The Secretary of State notes (IR14) that the parties were then asked whether they wished to make additional representations in the light of the new circumstances and that they all indicated that they did not wish to amend or update their cases. The Secretary of State is therefore satisfied that the revocation of the RSS does not raise any matters that would require him to refer back to the parties for further representations prior to reaching his decision on this appeal, and he is satisfied that no interests have thereby been prejudiced.

Policy considerations

9. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. The Secretary of State recognises that, as a result of the revocation of the RSS (see paragraph 8 above), the development plan now consists of the saved policies in the South Northamptonshire Local Plan 1997. He considers the relevant policies to be those identified by the Inspector at IR15-18.

11. Other material considerations which the Secretary of State has taken into account include the Council's Interim Rural Housing Planning Policy July 2009 (IRHP); the National Planning Policy Framework (The Framework); Technical Guidance to the National Planning Policy Framework; Circular 11/95: Use of Conditions in Planning Permission; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended. He has also had regard to the draft West Northamptonshire Joint Core Strategy, but agrees with the Inspector (IR26) that it can only be afforded limited weight in his decision.

Main issues

12. The Secretary of State agrees with the Inspector that the main considerations regarding this appeal are those listed at IR156, (of which the education contribution is considered as part of the Unilateral Undertaking at paragraph 20 below).

Whether a 5-year supply of deliverable housing land is locally available

13. For the reasons given at IR157-179, the Secretary of State agrees with the Inspector's conclusions at IR228-229 that the policies of the local plan which guide housing development are not up-to-date and, although the Council has sought to address the undersupply of housing by the publication and use of the IRHP, that does not form part of the development plan and therefore carries only limited weight (IR179). In coming to these conclusions, the Secretary of State has taken particular note of the Inspector's conclusion at IR167, and the reasoning behind it, that supply has so consistently failed to reach its former target that a 20% buffer should apply as required by paragraph 47 of the Framework. He also agrees with the Inspector's conclusion at IR169, and the reasons for it, that a 5-year supply of housing land has not been demonstrated. Like the Inspector, the Secretary of State recognises that the appeal scheme is in conflict with several local plan policies including policies H5 and H6 (IR169-172). However, he agrees with the Inspector (IR229) that, even where relevant, these policies are not up-to-date.

14. Overall, therefore, the Secretary of State concludes that the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged in his consideration of this case and the failure to demonstrate a 5 year supply of deliverable housing sites is a matter to which substantial weight must be accorded.

Whether Silverstone is a suitable and appropriate location

15. For the reasons given at IR180-190, the Secretary of State agrees with the Inspector's conclusion at IR191 that the appeal scheme complies with the sustainability criteria included in the Framework and would not compromise the distinctive character or vitality of the settlement. In coming to this conclusion, the Secretary of State agrees with the Inspector (IR183) that, while the appeal scheme is large in relation to the size of Silverstone and would represent a substantial change to the character and appearance of the area, the site has been carefully and sensitively planned to respond both to the topography of the land and to the traditional form of the original village and would compromise neither the settlement's character nor its vitality.

16. The Secretary of State also agrees with the Inspector that the motor racing circuit would be largely unaffected by the proposed development (IR186) and that, for the reasons given at IR187-188, the housing proposed need not be incompatible with the plans for Towcester and Brackley nor should the difference in the time-scales of the appeal proposals and the further development at the motor circuit weigh against the appeal scheme. He agrees with the Inspector (IR188) that the appeal scheme proposes a benefit in increasing the number of dwellings in close proximity to the circuit, some of which would be likely to be available as the components of the circuit projects are delivered; and he further agrees with the Inspector (IR189-190) that the noise experienced at the new dwellings would not constitute a threat to the circuit.

Whether the appeal site is suitable and appropriate for residential development

17. For the reasons given at IR192-195, the Secretary of State agrees with the Inspector that, although Silverstone as a whole, including the appeal site, falls within the Whittlewood Forest and Hazleborough Forest Special Landscape Area, the purpose of LP Policy EV7 is to conserve and enhance the quality of the landscape in the designated areas and does not constitute an embargo on development - nor did it frustrate the permission to enlarge the racing circuit on the opposite side of the A43. Furthermore, for the reasons given at IR196-197, the Secretary of State agrees with the Inspector that, having regard to the full extent of the designated area, the impact of the scheme would be insignificant, with little significant conflict with policy EV7.

18. For the reasons given at IR 198-206 and IR209, the Secretary of State agrees with the Inspector that the appeal scheme would provide a high quality design solution for the site in accordance with the importance attached to good design as a key aspect of sustainable development in paragraph 56 of the Framework. He also agrees that, for the reasons given at IR208, the effect of the appeal scheme on the setting of the village would not result in significant harm. Turning to the Grade II listed Catch Yard Farm farmhouse (IR207), the Secretary of State agrees with the Inspector that, although some of the isolation of the building in its agricultural setting would be lost, this would constitute less than substantial harm which would be substantially outweighed by the benefit of securing the repair and renovation of the building.

Conditions

19. The Secretary of State has considered the proposed conditions and the Inspector's comments at IR126-142. He is satisfied that the conditions proposed by the Inspector and set out at Annex B to this letter are reasonable, necessary and comply with the provisions of Circular 11/95.

Obligation

20. The Secretary of State has considered the unilateral undertaking submitted by the appellant and the Inspector's comments at IR143-146 and (with regard to the Education contribution) at IR210-217. He agrees with the Inspector that the contributions and obligations secured are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development; and can therefore be considered to be compliant with CIL Regulation 122.

Overall Conclusions

21. The Secretary of the State gives significant weight to the fact that the Framework indicates that, in the absence of a 5 year housing land supply in an up-to-date, adopted development plan, planning permission should be granted for the proposal. The proposal would boost the supply of housing in the village of Silverstone, and in the wider area, at the same time as securing a more effective barrier between the settlement and the A43. It would provide a degree of interdependence between the growth of the circuit and the growth of the village and provide a range of benefits including the provision of affordable housing. The Secretary of State is therefore satisfied that the appeal site is in a sustainable location for housing development and, as the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole, he does not consider that there are any material considerations of sufficient weight to justify refusing planning permission.

Formal Decision

22. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for: residential development of 220 dwellings, new vehicular and pedestrian access and associated road infrastructure, public open space and landscaping, including flood alleviation measures in accordance with application reference S/2012/0560/MAO, dated 8 May 2012 subject to the conditions listed in Annex B to this letter.

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

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

Right to challenge the decision

25. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

26. A copy of this letter has been sent to South Northamptonshire District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Post-Inquiry Representations

Correspondent	Date
Ann and Richard Lester	01/02/2013
Ann Potter	04/02/2013
Charles Challinger	04/02/2013
Councillor Dermot Bambridge	04/02/2013
David Lofty	04/02/2013
Fiona Evans	04/02/2013
G Evans	04/02/2013
Heather DeRitter	04/02/2013
John and Moira Firth	04/02/2013
Kelly Gilbert	04/02/2013
Mandy Hollis	04/02/2013
Mr M McElhinney	04/02/2013
Mr M A Hollis	04/02/2013
Mrs Carolle Walker	04/02/2013
Mrs Jane Briar	04/02/2013
Rob and Jane Green	04/02/2013
Mrs P M Holton	04/02/2013
Anthony Bradshaw (Vice-Chair, Silverstone Parish Council)	05/02/2013
Catherine McCulloch	05/02/2013
Corinne Tompkins	05/02/2013
Gemma Birch	05/02/2013
Nicholas May	05/02/2013
Rebecca Damsell	05/02/2013
Simon Page	05/02/2013
Stu and Ruth Tilley	05/02/2013
Denise and Paul Larkin	06/02/2013
Mrs Margaret and Mr Ivor Floyd	07/02/2013
Stephen Collis	07/02/2013
John Godfrey	11/02/2013
Matthew Taylor	11/02/2013
Carol and Roger Tosh	12/02/2013
Lucy Yarrow	12/02/2013
Margaret E. Bamford and Richard Bamford JP	12/02/2013
Mary Jane Branch	12/02/2013
Mrs L Collis	12/02/2013
Councillor Dermot Bambridge	13/02/2013
Jakob, Elizabeth, Joseph and Eliza Ebrey	13/02/2013
Mr and Mrs M Redford	13/02/2013
Rebecca Hayes	13/02/2013
Chantry Communications	14/02/2013
Councillor Dermot Bambridge	14/02/2013
Carol Mason	15/02/2013
Annie and Paul Rickard	17/02/2013
Geraldine Goodman and Trevor Goodman	17/02/2013

Linda Paice (on behalf of Silverstone Parish Council)	18/02/2013
Jan Hamer	19/02/2013
Nick Broomhall	19/02/2013
Beryl Crooks	21/02/2013
Ingrid Hardacre	22/02/2013
Georgie Sargeant and Jonathan Davies	25/02/2013
Nigel Riley	25/02/2013
P J Goodall	25/02/2013
Raymond K Hardacre	25/02/2013
Kate Van Kampen	27/02/2013
Ray O'Shea MCIPS	27/02/2013
Mrs Anne Pullen	28/02/2013
Tim Coleby (Peter Brett Associates LLP)	09/03/2013
John and Heather Illingworth	14/03/2013
Cathleen Wilson Dolman	19/03/2013
Mr Thomas Hillary	27/04/2013
Mr A W Smith	07/05/2013
Andy Darcy (South Northamptonshire Council)	09/05/2013
Nigel Ozier (Brian Barber Associates) in the behalf of Silverstone Parish Council	10/05/2013
Nora Galley (Peter Brett Associates LLP)	14/05/2013
Nora Galley (Peter Brett Associates LLP)	03/07/2013

Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called ‘the reserved matters’) shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans – Drawing Nos: SK019 Rev A (Application Site Boundary; SK014 Rev A (Illustrative Masterplan); and SK018 Rev A (Illustrative Movement and Access Plan).
- 5) The development hereby permitted authorises the erection of no more than 220 dwellings.
- 6) No building works which comprise the erection of a building required to be served by water services shall be undertaken in connection with any phase of the development hereby permitted until full details of a scheme, including phasing, for the provision of mains foul sewage infrastructure on and off the site have been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved scheme.
- 7) No development shall take place until details of the implementation, maintenance and management of the flood risk alleviation and sustainable drainage scheme as detailed in the Flood Risk Assessment (dated May 2012) have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These details shall include: (i) a timetable for implementation, and (ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 8) No development shall commence until a detailed surface water drainage scheme for the site in accordance with the Flood Risk Assessment (dated May 2012), including a timetable for the implementation of the works, has been submitted to and approved in writing by the local planning authority. The detailed scheme shall be implemented in accordance with the approved details.
- 9) Other than in the recreation space as defined in the associated obligation dated 12 February 2013, all planting shall be maintained for a period of 5 years from the agreed date of completion of the scheme and any trees and plants which die, are removed or become seriously damaged shall be replaced in the next planting season with others of similar size and the same species.
- 10) Prior to the commencement of any development, full details of the proposed access junctions from the site onto the Towcester Road carriageway shall be agreed, including full engineering, drainage and constructional details. The accesses shall be constructed in accordance with the approved details.

- 11) Details of the two new or improved bus stops to serve the development hereby permitted shall be submitted to and approved in writing by the local planning authority prior to first occupation of the development. The details shall include a timetable and the works shall be implemented accordingly.
- 12) Notwithstanding the submitted details and prior to the first occupation of the development hereby permitted, details of the proposed traffic calming measures to Towcester Road in the vicinity of the site shall be submitted to and agreed in writing by the local planning authority. The details shall include a timetable and the works shall be implemented accordingly.
- 13) Details of the access roads, footways, cycle ways and connections within the site to the existing highway, footpath and cycle network shall be submitted to and agreed in writing by the local planning authority prior to first occupation of the development. The details shall include a timetable and shall be implemented accordingly.
- 14) Prior to the first occupation of the development hereby permitted, a detailed Travel Plan shall be submitted to and approved in writing by the local planning authority. The submitted Travel Plan shall accord with the Framework Travel Plan and the development shall be implemented accordingly.
- 15) No development shall take place until a Construction Environmental Method Statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - (i) the parking of vehicles of site operatives and visitors;
 - (ii) the loading and unloading of plant and machinery;
 - (iii) the storage of plant and materials used in the development;
 - (iv) details of soil stock piling and materials crushing and sorting;
 - (v) wheel washing facilities;
 - (vi) measures to control the emission of dust and dirt;
 - (vii) a scheme for recycling/disposing of waste;
 - (viii) working hours;
 - (ix) noise and vibration control measures in accordance with the submitted Noise Assessment.
- 16) No development shall commence until a detailed scheme for protecting the residential plots on the proposed development from traffic noise from the A43 has been submitted to and approved in writing by the local planning authority. The scheme shall ensure maximum internal levels of 30 dB $L_{Aeq(8\text{hour})}$ and 45 dB L_{AmaxF} in all sleeping areas between 23:00 hours and 07:00 hours with windows shut and other means of ventilation provided. An internal maximum level of 40 dB $L_{Aeq(1\text{ hour})}$ shall be achieved in all habitable rooms of the buildings and an external maximum level of 55 dB $L_{Aeq(16\text{ hours})}$ shall be achieved in garden areas and balconies. Any works which form part of the scheme shall be completed in accordance with the approved details before any of the permitted dwellings to which the scheme relates are occupied.
- 17) No development shall take place until a comprehensive contaminated land site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before the

development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site and prevent any pollution of controlled waters so as to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If during the course of development any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall include the approved additional measures. On completion of remediation, two copies of a closure report shall be submitted to the local planning authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved report. Post-remediation sampling and monitoring shall be included in the closure report.

- 18) No development shall take place until there has been secured the implementation of a programme of archaeological work and publication in accordance with a written scheme of investigation including a timetable which has been submitted to and approved in writing by the local planning authority.
- 19) Before the commencement of development, details of the finished floor levels of the buildings shall, concurrently with the reserved matters application(s), be submitted to and approved in writing by the local planning authority. The details shall also include finished site levels for all hard surfaced and landscaped areas in relation to existing ground levels. The development shall thereafter be implemented in accordance with the approved details.
- 20) Before the commencement of development, an Arboricultural Method Statement including a plan of all existing trees and hedgerows on the site shall be submitted to and approved in writing by the local planning authority. The statement shall include details of all the trees and hedgerows to be removed and those to be retained, and the method of protection for the latter during the course of the development. The statement shall be prepared having regard to the approved Arboricultural Impact Assessment. Tree and hedgerow retention and protection shall be implemented in accordance with the approved statement.
- 21) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority; which may be given for those parts of the site where it has been demonstrated there would be no resultant unacceptable risk to groundwater. The development shall be implemented in accordance with the consented details.
- 22) Before the first occupation of the development, details of fire hydrants shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the submitted details.
- 23) The proposed development shall follow a Design Code which follows the design objectives set out in the illustrative masterplan (Drawing No: SK014 Rev A). The Design Code shall be submitted to and approved in writing by the local planning authority before the approval of any reserved matters application(s). The Design Code shall set out the design principles and objectives of the development, and the reserved matters application(s) shall be in accordance with the approved Design Code.
- 24) Before the approval of any reserved matters application(s), a Landscape Strategy Plan for the site shall be submitted to and agreed in writing by the local planning authority. The Plan shall include the positions of all areas of open space (including allotments, community orchards, children's play space, recreation

space, pocket parks, water features, and earth movements (bundings) within the site together with details of the existing and proposed contours of the land, hard and soft landscaping, use of materials, street furniture, fencing and lighting, and a timetable for the implementation of these works. The timetable will clearly record how the works are to be implemented in a phased manner as the new housing is developed. The reserved matters application(s) shall be designed and subsequently implemented in accordance with the approved Landscape Strategy Plan.

- 25) Before the approval of any reserved matters application(s), an Ecological Management Plan for the enhancement and creation of biodiversity (including long-term design objectives, the protection of existing species, management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens) shall be submitted to and approved in writing by the local planning authority. The Plan shall be implemented as approved.
- 26) No more than 176 dwellings shall be occupied before the works at Catch Yard Farm granted planning permission under Ref: S/2009/0759/FUL and listed building consent under Ref: S/2009/0760/LBC have been completed.



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by Andrew Pykett BSc(Hons) PhD MRTPI

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

Date: 30 May 2013

TOWN AND COUNTRY PLANNING ACT 1990

SOUTH NORTHAMPTONSHIRE COUNCIL

APPEAL BY

BARWOOD LAND AND ESTATES LTD

Inquiry opened on 5 February 2013

Catch Yard Farm, Towcester Road, Silverstone NN12 8UB

File Ref: APP/Z2830/A/12/2183859

File Ref: APP/Z2830/A/12/2183859

Catch Yard Farm, Towcester Road, Silverstone NN12 8UB

- 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 Barwood Land and Estates Ltd against the decision of South Northants District Council.
- The application Ref: S/2012/0560/MAO, dated 8 May 2012, was refused by notice dated 6 September 2012.
- The development proposed is residential development of 220 dwellings, new vehicular and pedestrian access and associated road infrastructure, public open space and landscaping, including flood alleviation measures (outline).
- The inquiry sat for 6 days on 5 - 8 and 12, 13 February 2013.

Summary of Recommendation: That the appeal is allowed and that outline planning permission be granted.

Procedural Matters

1. At the Inquiry an application¹ for a partial award of costs was made by Barwood Land and Estates Ltd against South Northants District Council. This application is the subject of a separate Report.
2. The application was made in outline form, but including details of the means of access off Towcester Road which forms part of the A413. All other matters – appearance, landscaping, layout and scale – are reserved for subsequent approval. The application was however accompanied by a comprehensive range of statements and reports, including a Design and Access Statement. The submitted plans include a Movement and Access Plan (Drawing No: SK018 Rev A) and an Illustrative Masterplan (Drawing No: SK014 Rev A). In spite of the latter's title, the appellant raises no objection to the imposition of a condition citing the plan as the foundation for the development of the site². I have considered the appeal on this basis.
3. A unilateral undertaking dated 12 February 2013 has been executed under section 106 of the above Act³. Amongst other matters, it makes provision for affordable housing, improvements to the bus service, the implementation of a Travel Plan, the payment of an education contribution, the payment of a health contribution, the installation and maintenance of a children's play space, the installation and maintenance of a recreation space, the payment of a strategic leisure contribution, the payment of a kerbside recycling contribution, the payment of a fire and rescue contribution, and the payment of the council's monitoring costs. I understand the recreation space would be as identified on the Illustrative Masterplan (Drawing No: SK014 Rev A)⁴. The obligation is the subject of further consideration later in this Report.
4. As the proposed development envisages the development of over 150 dwellings on a site of over 5 ha, the appeal was recovered for the Secretary of State's own determination by letter dated 31 October 2012. On 14 November 2012 the

¹ Document 42

² Draft condition 3 in Document 37

³ Document 39

⁴ Document 40

Silverstone Parish Council was granted Rule 6 status under the appropriate Inquiries Procedure Rules. It was legally represented at the inquiry and took a full part in the proceedings.

5. A Statement of Common Ground⁵ has been prepared by the appellant and agreed by the council. The statement records the description of the proposed development and the agreed refusal reasons (which differ slightly from those recorded in the Notice of Refusal). Both the application site and the proposal are described, and the documents and reports accompanying and supporting the application are recorded. The planning history of the site is noted, together with the relevant development plan policies and other material considerations. It was agreed that the revised and detailed refusal reasons indicate the differences between the principal parties, and a list of draft conditions is also included.

Silverstone and the Appeal Site

6. Silverstone occupies a site in the Northamptonshire countryside, about 7½ kms south-west of Towcester and some 11½ kms north-east of Brackley. All three settlements lie on the A43 – a busy high speed dual carriageway which links the M40 Motorway north of Bicester to the M1 Motorway near the outskirts of Northampton. The famous motor racing circuit occupies the large site of a former military airfield to the south-east of the village on the opposite side of the A43.
7. The settlement falls within the area of the River Nene Regional Park project which included a landscape character assessment. Silverstone is within the 'low wooded clay ridge' area identified in the project. Amongst other identifying characteristics, the area is described as a broad elevated plateau with extensive areas of ancient woodland, with mixed use pasture and arable farmland in medium sized fields defined by full hedges containing numerous hedgerow trees⁶. I agree with this characterisation of the area surrounding the village. The landscape is gently undulating with only limited prospects even from the higher land. The settlement itself lies generally between 100m and 140m AOD, and the land drains to the north. Silverstone Stream is a tributary of the River Tove, which it meets to the east of Towcester.
8. The heart of the nineteenth century village is centred on Stokes Hill, with little change being identified between then and the OS extract for 1958. A local authority housing scheme at Kingsley Road (between Towcester Road and Whittlebury Road) is however shown to the north-east of most of the settlement. Also, a by-pass had by then been constructed passing to the south-east and east of most of the village, but not including Kingsley Road. Significant residential development evidently occurred in the 1970s and 1980s between the original village and the then by-pass. The *South Northamptonshire Local Plan* was adopted in 1997 and Inset 82⁷ shows that by that time residential development had extended up to the western side of the old by-pass. The route of a new by-pass is also indicated.

⁵ Document 3

⁶ See paragraph 2.21 of BL1

⁷ Document 18

9. By 2007 the old by-pass had evidently been found to be inadequate, and the remaining areas of open land or under-developed land had also been the subject of more residential development – including Baines Close and The Old Woodyard. Most recently, two areas of open land between Kingsley Road and Towcester Road (which forms part of the old by-pass) have been developed as Lime Kiln Close and Paddock Close.
10. The new A43 is built to a much higher standard than the old by-pass. It is a 4 lane dual carriageway with limited access and extensive embankments and cuttings. At its closest to the village (in the vicinity of the Winterhills Road bridge) it is about 200m from the old by-pass. The appeal site falls within the area defined by 4 roads – the new A43 to the south-east; the old by-pass (Towcester Road) to the north-west; Whittlebury Road to the north; and Winterhills Road to the south-west. The site extends to some 11 ha of this area, with a limited number of existing properties just beyond the boundaries of the land to the north and the south-west. There is also a terrace of 4 cottages just outside the appeal site boundary in that part of Murswell Lane severed by the old by-pass. For the most part however the site boundary abuts the south-east side of Towcester Road and the north-west side of the A43. To the north-east and south-west, the boundary mainly abuts fields which also lie within the area defined by the roads to which I have referred.
11. There are three landscape character areas within the boundaries of the appeal site itself. The most distinctive area comprises a shallow valley centred on a stream which passes through the site from south-east to north-west. The stream enters the site from a culvert under the A43 and it leaves the site via another culvert under Towcester Road – opposite houses in Baines Close and Acorn Way. About half way along its route the old Catch Yard Farm building remains together with the former farm yard. It is a relatively small building – described as a cottage in the notice of listing⁸ – and built in 1780. It is in very poor condition with bricked-up windows and surrounded by a steel security fence. The land rises on either side of the stream – from a minimum of some 120m AOD to a maximum of about 137m AOD at the eastern extremity of the site. Apart from the footpath adjoining the stream, the site is open grazing land. At the time of my visit it was quite wet especially close to the A43 embankment. About half the frontage with the A43 is embankment, but towards the eastern and southern corners of the site the land rises so that the road is contained by cuttings. The prospect to the south-east from the appeal site is dominated by the A43 embankment, and, although the road surface itself is not visible, the passing vehicles are all too present.
12. The character area to the north comprises gently sloping agricultural land, and, to the north-west, a disused quarry and former works site. The latter area is heavily overgrown. The south-west corner of the appeal site forms a third character area. It is a relatively level agricultural field with more of a prospect to Towcester Road than to the valley of the stream described above. It does however slope down towards a small pond and the terrace of cottages in Murswell Lane.

⁸ Document 17

13. The Silverstone racing circuit occupies an area about two to three times that of the village from which it takes its name. It lies to the south of the settlement, but its principal means of access is obtained off the A43 and the A413 (Brackley Road and Dadford Road). Motor racing started after the war in 1948, and the circuit is the home of the British Grand Prix. More recently, outline planning permission has been granted for mixed use development of the site comprising: offices, workshops and distribution facilities (Use Classes B1, B2 & B8); education campus including student accommodation (D1 & C2); 3 hotels (C1); ancillary spectator facilities, including welcome centre and museum of motorsport (D2) and a non-retail promotional automotive display space (sui generis); leisure and event spaces; reconfiguration and provision of additional grandstands; the siting of hospitality units during major events; revised parking and access arrangements, including a new access off the A43 and/or improvements to the A43/Dadford Road junction – all in accordance with the Silverstone Circuit Masterplan. The masterplan shows, closest to the appeal site, both the proposed access improvement between Brackley Road and the A43, and a range of business units on the opposite side of the dual carriageway⁹.

Planning Policy

14. At the time of the inquiry the development plan comprised the saved policies of the *South Northamptonshire Local Plan* and the *East Midlands Regional Plan* (RSS). However, the RSS was revoked in March 2013, soon after the closure of the inquiry. Amongst other matters, the parties' closing submissions referred to the contents and policies of the former RSS and these references are recorded in the cases of the parties later in this Report. The parties were asked after the closure of the inquiry whether they wished to make additional representations in the light of the new circumstances. They all indicated that they did not wish to amend or update their cases, which in many respects anticipated the change to the development plan. I record the relevant policies of the development plan below, but I also refer to other relevant policy considerations in chronological order.
15. The *South Northamptonshire Local Plan*¹⁰ was adopted in 1997. It was prepared within the general framework of the Secretary of State's then Regional Planning Guidance for the East Midlands of 1994 and the County Structure Plan approved in 1992. Local plan policy G2 seeks to concentrate new development in Towcester, Brackley and the Northampton Borough boundary. Elsewhere, new development will be limited in villages, and severely restrained in the open countryside. Policy G3 is a criteria-based positive policy which, amongst other matters, promotes the compatibility of new development with its surroundings, protects undeveloped land which is of particular significance to the form and character of settlements, is sympathetic to listed buildings and their settings, and incorporates suitable landscape treatment.
16. Silverstone is recorded in Policy H5 as a restricted infill village, where, within the village confines, residential development will normally be permitted for the infilling of small gaps. In addition, small groups of dwellings will also be

⁹ See the plan attached to Document 23

¹⁰ Document 9

- permitted. Policy H6 essentially confines the construction of new houses in the open countryside to agricultural dwellings. Policy H8 recognises that permission may be granted for affordable houses as an exception to the normal policies of restraint.
17. In the Environment chapter of the local plan, Policy EV2 seeks to protect the open countryside from development. The appeal site falls within the Whittlewood Forest and Hazelwood Forest Special Landscape Area identified in Policy EV7. The policy seeks to avoid development which would have a detrimental impact on its character and appearance, with particular attention being paid to the design, materials and siting of buildings, and the use of land. Most of the appeal site (with the exception of a small area at its northern end) also falls within the area defined by Policy EV8. It is described as an important local gap between the village and the A43 by-pass/Silverstone Circuit. Paragraph 4.23 of the plan records that the (then proposed) by-pass would provide a clear and defensible boundary for circuit related development. It would thus prevent coalescence (between the village and the circuit) and maintain the open setting to the south of the settlement. Where a scheme is otherwise acceptable, the purpose of Policy EV29 is to secure high quality landscaping proposals.
 18. Local plan Policy IMP1 provides a policy basis for the expectation that prospective developers should make provision for related infrastructure and community facilities where the need arises from the development. Such matters would form the basis of planning obligations. Paragraph (g) of Proposal RRC2 records that planning permission will be granted for appropriate recreation and tourism related developments, with necessary infrastructure improvements, at Silverstone Circuit.
 19. In September 2007 the Secretary of State saved many of the policies (including all those reported above) of the local plan¹¹. However, the saving letter indicates that the saved policies should not be regarded as an opportunity to delay the preparation of DPDs. Policies were extended in the expectation that they would be replaced promptly, and that maximum use should be made of national and regional policy. Emerging national and regional policy and new evidence will be afforded considerable weight in decisions.
 20. In 2009, the council recognised that, in conflict with the terms of the former Planning Policy Statement 3: *Housing*, it could not demonstrate the availability of a 5 year supply of housing land. As a consequence it adopted an Interim Rural Housing Planning Policy (IRHP)¹² in July 2009. Although the policy was prepared having regard to national advice, it was recognised that it fell outside the statutory procedures for adoption as part of the development plan. It was intended nevertheless that it should inform progress towards the emerging *West Northamptonshire Joint Core Strategy*, and that it should be a material consideration in the determination of planning applications. In due course, the IRHP would become superseded by the joint core strategy.
 21. In order to address the shortfall the IRHP identified two categories of villages in South Northamptonshire according to their level of sustainability – the ‘most sustainable villages’, and the ‘reasonably sustainable villages’. Silverstone was

¹¹ Document 21

¹² See Appendix 1 of Mr D’Arcy’s Proof

- included in the latter group. Other than a requirement that land should be outside but adjoining the village confines, the policy did not identify specific sites. In addition, sites would need to consolidate an existing boundary or identify a sound alternative. Nor should the scale of the proposal exceed 5% of the existing number of dwellings within the village, except where: previously developed land would be used with best practice in density and design terms; the development is required to support the retention of or improvement to local services that may be under threat (in particular the local primary school or primary health services); and the scheme has been formulated following meaningful discussions with the parish council at the pre-application stage. On sites of 15 or more dwellings and subject to viability testing, developers are required to provide up to 40% affordable housing. Developers are also required to alleviate infrastructure deficiencies and adverse impacts.
22. In March 2012 the Government published the *National Planning Policy Framework* (the Framework). Amongst its core planning principles are the requirements to proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. High quality design should be sought with good standards of amenity for the existing and future occupants of land and buildings. Heritage assets should be conserved, and growth should be managed to make the fullest possible use of public transport, walking and cycling. Significant development should be focused at locations which are or can be made sustainable, and sufficient community facilities should be delivered to meet local needs.
 23. In relation to the delivery of a wide choice of high quality homes, paragraph 47 seeks a significant boost to the supply of housing. Local plans should meet the full, objectively assessed needs for market and affordable housing. To this end, authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of housing against their housing requirement, together with a buffer of 5% to ensure choice and competition in the housing market. A buffer of 20% would be necessary where there has been a record of persistent under-delivery.
 24. Annex 1 of the Framework records that, for 12 months from the day of publication (27 March 2012), decision-takers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with the Framework. In other cases and following the 12 month period, due weight should be attached to relevant policies in existing plans according to their degree of consistency with the Framework. Policies adopted under the local plan fall into the second category.
 25. At the heart of the Framework however is the presumption in favour of sustainable development included in paragraph 14. In relation to the management of development this means approving proposals which accord with the development plan, or where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless either any adverse impacts would significantly and demonstrably outweigh the benefits (when assessed against the policies of the Framework as a whole), or where specific policies of the Framework indicate that development should be restricted.
 26. Four councils (Northamptonshire County, Daventry District, Northampton Borough, and South Northamptonshire) have combined to prepare a strategic

plan for their area – the *West Northamptonshire Joint Core Strategy*¹³. The plan has been submitted to the Secretary of State for examination but it is still subject to objections. Although I understand the housing figures included in the plan have been adopted by the council (in August 2012) for development management purposes, the weight which can be attached to the plan is limited in accordance with paragraph 216 of the Framework.

27. Compared with the 62,125 dwellings proposed in the former RSS for 2001-2026, Policy S3 (Scale and distribution of housing development) of the draft core strategy proposes 50,150 dwellings. For South Northamptonshire however the total provision would be 8,340 dwellings in the same period – marginally more than is proposed in the former RSS. As with the former RSS, most of this housing development would be focused on Brackley (2,510 dwellings) and Towcester (2,225 dwellings). A total of 3,605 dwellings would therefore be allocated to the South Northants rural areas. Policy S1 (The distribution of development) is very similar in relation to rural areas to former RSS Policy 3. Policy S2 (Hierarchy of centres) is largely concerned with retail, leisure, office and cultural development.
28. Of the local plan policies cited above, it is intended that Policies G3, H6, EV2, EV7, EV8, EV29 and RRC2 would remain in force after the adoption of the joint core strategy¹⁴. The joint core strategy also includes a policy specific to the existence and potential growth of Silverstone Circuit – Policy E5. It records that the circuit has become synonymous with excellence, not only in motor sport, but also in education, employment, high performance, technology and engineering skills. The policy seeks to make provision for an eclectic range of uses in conformity with a development brief (prepared jointly with Aylesbury Vale District Council), provided functional and sustainable links with Towcester and Brackley are demonstrable. Outline planning permission for a wide range of development at the circuit was granted in August 2012¹⁵, with full planning permission for the erection of a University Technical College (UTC) following in December 2012¹⁶.

Planning History

29. In 2008 outline planning permission was refused for the erection of 58 houses, 12 flats and a doctor's surgery on the appeal site. The council considered the scheme constituted an unjustified and undesirable intrusion into the open countryside beyond the confines of the village. The development would have been detrimental to the rural character and appearance of the area and to the setting of the village, identified as an important local gap and a special landscape area in the local plan.

¹³ Document 19

¹⁴ See Document 18

¹⁵ Document 22

¹⁶ Document 23. The appellant's Document BL3 records that the UTC is sponsored by the University of Northampton, Tresham College of Further and Higher Education, and Silverstone Circuits Ltd. It has been designed for 14-19 year olds to provide skills training in high performance engineering, motorsport, and events management. It is designed for up to 576 students from a distance of up to 45 minutes travelling time.

30. In 2009 outline planning permission was refused on the appeal site for the erection of up to 260 dwellings (including affordable homes), an 80 bed care home and community/health facilities with public open space, community orchards and allotments, access works, pedestrian and cycle works, and environmental and ecological enhancements. The application was refused on planning policy grounds together with reasons referring to drainage, noise, transport and infrastructure provision.
31. Planning permission and listed building consent were granted in 2010 for the demolition of part of an existing boundary wall, the construction of a detached garage, and the refurbishment of the existing farmhouse at Catch Yard Farm.

The Proposals

32. The proposal envisages the erection of up to 220 dwellings in a mix of 2, 3, 4 and 5 bedroom houses at an average density of 36 dwellings/ha on the western half of the site. The illustrative masterplan indicates that the land lying principally on the eastern half of the site, but including the area adjoining the stream, would involve changes to the land forms to assist in noise (from the A43) attenuation¹⁷, the creation of a permanent water feature (which would also assist in floodwater retention and water attenuation), informal play areas, greens and spaces with improved public access and associated ecological enhancements, allotments and community orchards, woodland planting. The existing hedges would be largely retained with new hedge planting as necessary. Large specimen trees would be retained. The existing footpaths would be retained and enhanced by additional footpaths. The green areas and spaces would comprise about 44% of the appeal site area.
33. There would be two new points of vehicular access off Towcester Road – to the north opposite houses in The Slade, and to the south opposite houses at The Old Woodyard. It is intended that Towcester Road itself would be remodelled where it passes the site to slow the speed of traffic and ease pedestrian crossing. The masterplan indicates two new bridges over the stream – a vehicular bridge to the north-west of Catch Yard farmhouse, and a pedestrian bridge closer to Towcester Road.
34. One of the characteristics of the older parts of Silverstone is the discrete groupings of buildings around junctions known as 'ends'. In contrast to much of the post-war residential development, it is intended to recreate this layout with Catch Yard and Forest End to the north, Murswell End in the centre, and Stone End to the south¹⁸. The Movement and Access Plan (Drawing No: SK018 Rev A) shows the intention to provide a hierarchy of routes within the site. This comprises: two lengths of 5.5m carriageway with two 1.8m footways; two lengths of 4.8m carriageway with a single 1.8m footway; a network of 4.8m shared surface carriageways providing access to most of the proposed dwellings; with a complementary network of footpaths.

¹⁷ As shown in Fig 129 of Mr Rummey's Proof.

¹⁸ See paragraph 3.3.7 and Fig 100 of Mr Rummey's Proof.

The Case for the Appellant

I have reported the case on the basis of the advocate's closing submissions¹⁹ with additional references to the evidence submitted before and during the inquiry as necessary. The material points are:

Site characteristics

35. In this case the appellant has sought to provide substantial evidence as to the character, appearance or historical significance of the appeal site, including the historical evolution of Silverstone. The appellant's evidence in relation to these matters has not been questioned.
36. As a result of the landscape characterisation work, two key considerations emerge. These are first, that the local gap is different from the others included in local plan Policy EV8 – it is not designed to preserve the separate identities of nearby settlements, but rather to prevent Silverstone being overwhelmed by the expansion of the circuit. Secondly, the appeal site 'belongs' much more to the village than to the open countryside. The design work which has been carried out has been based on understanding 'the essence' of Silverstone.
37. The key features of the site are: the stream; the land form; the redundant Catch Yard Farm buildings; ponds, trees and woodland. The zone of visual influence is very small, and thus the visual case is necessarily limited. The masterplan for the development of the site has been well received, and the scheme would contrast favourably with the post-war infill sites. It has been designed around the 'ends' which characterise the village, and the scheme would reintroduce the local character. The other principal parties found it difficult to articulate the harm which would result from the sight of houses.
38. It is acknowledged there would be a change in the character of the site. But the change would be both appropriate and beneficial. The view which would be available through the site and along the stream would be enhanced not just for the future residents, but for the whole of Silverstone. The proposed enhancement to Towcester Road would assist in screening the impact of the A43 by-pass. Much of the proposed residential development would be hidden from view on walking through the site. There has been no criticism of the proposed land form alterations of some 3-4m in height. These too would assist in screening the proposed dwellings from the A43, and they would also be of benefit to other dwellings in Silverstone.
39. The scheme would result in a development which would be an integral part of the village and not result in dwellings closer to the by-pass than already exist. It would continue a form of development in relation to the line of the A43 which has already been established by Kingsley Road, Lime Kiln Close and Paddock Close to the north, and the houses fronting onto Brackley Road to the south-west²⁰. The existence of the A43 by-pass, and the proposed retention of the undeveloped landscape in the eastern half of the site, would self-evidently ensure that the coalescence between the village and the circuit would not occur. The clear and

¹⁹ Document 41

²⁰ Attention is drawn in this context to Fig 97 in Mr Rummey's Proof.

defensible boundary of the village which the A43 comprises would not be put at risk by the appeal scheme.

40. As far as local plan Policy EV7 is concerned, it is out-of-date and inappropriate. The area defined by the policy is very large, and, as a local designation, it has been inconsistent with national policy since the publication of Planning Policy Guidance (PPG) 7: *The Countryside – Environmental Quality and Economic and Social Development* in 1997. In this case there is no identifiable feature of the local countryside which is sought to be protected by the policy, and it is unduly restrictive. The opposition to local designations was strengthened in Planning Policy Statement (PPS) 7: *Sustainable Development in Rural Areas*, which replaced PPG7 in 2004. Paragraph 113 of the Framework promotes criteria-based policies against which proposals for development affecting a landscape area should be judged.
41. Policy EV7 is inconsistent with the Framework and the accepted approach to landscape character assessment and the criteria-based approach. Where a special landscape area is as extensive as that defined by Policy EV7, it cannot have other than a severely restraining effect on economic activity. The Secretary of State's saving letter is clear that reliance should not be placed on out-of-date policies, and it is evident that the expedition sought in the letter has not occurred.
42. It is recorded that it is common ground between the principal parties that there would be no adverse effect on: habitats or ecology; trees; agriculture, including soils and ground conditions; archaeology; historic assets; noise; and infrastructure, including the requisition of sewerage.

Silverstone

43. Silverstone is not Towcester or Brackley, but it includes a number of community facilities – places of worship, a public house, a convenience store, primary school, doctor's surgery, post office, village hall and a bus service. Permission has been granted for the erection of a University Technical College on the circuit. All, except the college, are within a 10 minute walking distance. The level of containment for work trips is similar to Towcester and Brackley. The appeal scheme would strengthen and maintain the facilities.
44. The grant of permission for development at the circuit (generating an estimated total of 8,400 jobs in the area) amounts to a significant change in the spatial strategy of the area. It is acknowledged that much of the permitted development would take time to come forward, but the council's case fails to recognise the benefit in sustainability terms of the juxtaposition of the appeal site and the circuit for cycling. There would be a real and beneficial synergy, with, for example, 55 FTE posts available at the UTC. The residential development of the appeal site and the development permitted at the circuit would give confidence to both developers. The construction of the technical college is underway, but the council's negative argument is that the jobs will be filled before the houses at the appeal site could come forward. This is short-sighted and would amount to a lost opportunity to co-ordinate development for the benefit of those seeking employment or places in secondary and further education.

The need for housing

45. It is the Government's aim to boost significantly the supply of housing. It seeks to ensure that sufficient land of the right type is available in the right places and at the right time to support growth. The identification and co-ordination of development requirements can contribute to building a strong, responsive and competitive economy.
46. The council has repeatedly failed to provide for the specific and identified housing needs of the district. In its submitted joint core strategy it has adopted a housing trajectory which denies the past failures, and now seeks to aggravate this by seeking to significantly under-provide during the early years of the plan period. If found to be acceptable, this would become a self-fulfilling prophecy which would drive the supply of housing land even lower. It is inappropriate to refer to the total core strategy housing provision figure. Such an approach fails to address the housing requirements of people in the interim. The council's preferred trajectory is manifestly inconsistent with the requirement to ensure a 5 year housing supply.
47. Even on its own calculation, with every assumption in its favour, the current supply is no greater than 4.99 years. The shortfall between 2001 and 2012 amounted to 56 dwellings per year. If a 20% buffer is added to the current 5 year requirement there is a total annual need for 544 dwellings. Windfalls are a doubtful source of dwellings, and the current deliverable supply falls short of the current requirement by some 752 dwellings (including a 20% buffer). This is equivalent to a supply sufficient for only 3.62 years.
48. The council ought to be accounting only for those sites which enjoy the benefit of planning permission. It is evident that the urban extensions planned for Towcester and Brackley are subject to substantial delays. For example, the site at Green Lane, Towcester was allocated in 1997 and it is owned by the council. However, an application for planning permission was not made until last year, and there is still no permission in place. In the Chapel-en-le-Frith case²¹ the Inspector clarified footnote 11 to paragraph 47 of the Framework, to the effect that only those sites with planning permission should be included in the 5 year supply calculation.
49. It is acknowledged that the IRHP is a material consideration. It has been given weight in other Inspector's decisions. However, the appellant considers it should attract little weight because it does not form part of the development plan and has not been subjected to strategic environmental assessment, and it has not been properly examined. Furthermore, it is inconsistent with the Framework in so far as it does not take account of the economic and social components of sustainable development. In terms of its outcome, it has had the unfortunate consequence of promoting an excessive level of infilling within rural villages.
50. Although 75% of the recent completions have resulted from the application of the IRHP, this is a strong indicator of what the market would be able to deliver. But the council is now excessively reliant on the delivery of land from a limited number of sites. Appeal decisions at Firs Field, Bugbrooke²², Peace Hill,

²¹ Appellant's Document BL18

²² Appellant's Document BL8

Bugbrooke²³, and John's Road, Bugbrooke²⁴ all cast doubt on the reliability of the council's claimed 5 years supply.

51. Although Silverstone has already exceeded the 5% limit set on its expansion in the IRHP, this maximum proportion is arbitrary. It does not appropriately address the question of harm. In the case of the appeal proposal, it would not harm the spatial vision of the area. The scheme would amount to about 5% of the total requirement – this would not jeopardise the spatial vision. But the real question should be focused on the sustainability of the village. The scheme would enhance and enrich the village, and it would co-ordinate the housing and employment opportunities on both sides of the A43.

Unilateral Undertaking

52. In relation to the obligation, the heads of terms sought by the council have been acknowledged and recognised. There are no complaints about the range or quantum of the provisions. Although the 40% affordable housing provision is subject to viability testing, this clause has been used elsewhere. It is not suggested by the council that the obligation is incapable of enforcement or delivery.
53. The obligation provides for a substantial boost to public transport with some £250,000 being allocated to the improvement of the bus service. Provision is also made for some funding of the doctor's surgery, although this might be achieved by longer opening hours. It is recognised that the existing infants and junior schools are full and that the development proposed would yield sufficient children to necessitate the construction of a new school.
54. To this end, the appellant offers some £1.8m to fund a significant proportion of the new school. The planning witnesses at the inquiry agree that two suitable sites are available within the village where planning permission would be forthcoming. Evidence was given to the inquiry²⁵ by officers of the county council indicating that there should be no doubt as to the county's commitment to the provision of a new school. Attention was drawn in particular to two other sources of capital funding, and provision has already been made for the provision of a two form entry school in the county's financial planning. The local planning authority's argument that the £1.8m should be made available before any of the proposed houses are occupied is commercially unrealistic. It is not supported in this regard by the county council acting as local education authority.

Other matters

55. Reference has been made by interested persons²⁶ and those making written representations to the possibility that noise from the circuit could have an adverse impact on residential amenity at the appeal site. It is suggested that if this resulted in objections, there would be a threat to the circuit itself. However, this matter has been considered by the council's Environmental Health Officers and they do not support the argument. The acoustic report submitted with the

²³ Appellant's Document BL9

²⁴ Appellant's Document BL10

²⁵ Document 48

²⁶ Documents 47 and 50

application also considered the point, but it has been neither referred to nor criticised. In any event, the scheme includes noise attenuation measures to mitigate the effect of traffic noise from the A43 on residential amenity.

56. The council has referred to 'the spirit of localism' and the Localism Act, but there is no support in either the legislation or the Framework for the refusal of planning permission on the basis of a plebiscite. Localism can be achieved by the appropriate participation of people in the choices which are made in the objectively assessed needs of the area. It is not the purpose of localism to turn away development which is needed and is otherwise acceptable in planning terms.

The Case for the Local Planning Authority

I have reported the case on the basis of the advocate's closing submissions²⁷ with additional references to the evidence submitted before and during the inquiry as necessary. The material points are:

57. Permission is sought for 220 houses on a greenfield site, in a special landscape area and an important local gap. The proposal is contrary to local plan policy, the RSS, the emerging core strategy, and the Framework. The site is outside the village boundary taking the total number of such dwellings in Silverstone to 315 since 2009. It would represent an approximate 25% increase in the housing stock of the settlement.

Spatial vision and employment opportunities

58. The purpose of the development plan, the emerging core strategy and the Framework is to concentrate development primarily in urban areas and rural service centres – Brackley and Towcester. In the remainder of the rural areas development is strictly controlled to provide sustainable growth and protect the intrinsic character of the countryside.
59. It is not the council's case that development cannot take place in rural areas, but it should be delivered in a controlled manner which is suitable in terms of both scale and location. The local planning authority has brought forward significant development in villages to the extent that the target figure in the emerging core strategy will be exceeded.
60. The appellant has emphasised the employment opportunities being promoted at the circuit. However, the majority of these opportunities will not come forward for many years. The new jobs will be needed to meet the demand from major housing schemes in Towcester and Brackley. There is no evidence that the jobs may be brought forward more rapidly – indeed, the circuit's own evidence²⁸ confirms the council's position. The programme for the creation of employment opportunities at the circuit does not coincide with the appellant's building programme. Furthermore, the jobs that will become available at the UTC will have been filled before the proposed houses would have been built. The

²⁷ Document 24

²⁸ See the written representation dated 9 November 2012 in Document 2.

development of the circuit cannot therefore be used as a justification for the appeal proposal.

Environmental policies and impact on character

61. The proposal is contrary to saved local plan Policies EV7 and EV8. The former is an environmental policy to protect the character and appearance of the area as open countryside. Development within the defined area would have a detrimental impact where it is extensive and intrusive, or where it would introduce an artificial character to the landscape – including earth bunds or formations of at least 4m in height. Whatever the quality of its design, the second sentence of Policy EV7 does not imply that housing of the scale proposed would be acceptable.
62. The appellant has referred to the preference in paragraph 25 of the former PPS7 for criteria-based policies over local landscape designations. However, this is guidance rather than legislation, and its content and purpose would have been taken into account both prior to adoption and before saving in 2007. It has been upheld at recent inquiries – most recently at Main Road, Middleton Cheney²⁹.
63. It was accepted on behalf of the appellant that the development would change the character and appearance of the area. The long views within the site would not be of open countryside if the development took place. The prospect would be one of development, allotments, allotment sheds, netting, greenhouses, compost bins, parks, and significant earth works. However well designed the scheme, their combined impact would be devastating on the character and appearance of the area. It would create a fundamentally different environment to that which the policy seeks to protect. In policy terms the scheme conflicts with the contents of paragraphs 17³⁰, 109³¹ and 126³² of the Framework. On these grounds the scheme is unacceptable and harmful. The appellant appears to have attached little weight to saved Policy EV7, but not only is it consistent with paragraph 113³³ of the Framework, it is also currently proposed that it should be carried forward into the emerging core strategy. The existence of the A43 (the route of which was known at the relevant time) does not diminish the designation.
64. Similarly, the route of the new A43 by-pass was known at the time when Policy EV8 was adopted. It was accepted on behalf of the appellant that the development would constitute a significant intrusion into the gap.
65. The council has not objected to the scheme on the basis that there is a heritage asset on the land, but it has referred to the character of the area and the historic environment. This includes the listed farmhouse (which enjoys the benefit of planning permission and listed building consent for its renovation) in its

²⁹ See Appendix 3 to Mr Ozier's Proof.

³⁰ The 5th bullet point recognises the intrinsic character and beauty of the countryside.

³¹ The 1st bullet point refers to the protection and enhancement of valued landscapes.

³² This paragraph encourages the conservation and enhancement of the historic environment, including heritage assets.

³³ This paragraph refers to the need for criteria based policies against which development proposals affecting landscape areas will be judged.

countryside setting. In this case, the significance of the heritage asset is its open countryside setting. This would be eroded by the proposed development.

The housing land supply

66. The appellant argues that a 5 year housing land supply is not available and seeks to diminish the effect of Policies EV7 and EV8. However, paragraph 49 of the Framework is concerned with housing policies, and Policies EV7 and EV8 do not therefore fall within its terms. The appellant cites an appeal decision at Sapcote, Leicestershire³⁴, where in similar circumstances a protective separation policy was also held to be out-of-date because it was acting as a restraint on land supply. Notwithstanding this decision, it is inappropriate to stretch the meaning of the housing supply policies referred to in paragraph 49 of the Framework. In any event, the council considers that a 5 year supply of deliverable housing land exists, and, if the Secretary of State disagrees, the IRHP ought to be applied.
67. The council has given detailed consideration to the relative merits of the housing requirements of the RSS and those of the emerging core strategy. The former provides an overall housing target for South Northamptonshire of 8,250 houses (2001-2026), while the latter provides for 8,340 dwellings. The key difference is in the trajectory. The RSS seeks an average supply of 330 dwellings per year, whereas the approach in the core strategy is based on up-to-date figures which take account of the economic downturn (and the actual performance of the housing industry) and the future anticipated recovery. The council favours the approach included in the emerging core strategy. It is considered the RSS delivery rate imposes an unrealistic housing target which both could not be met, and which could lead to inappropriate development harmful to the countryside and its villages.
68. In contrast to the cited appeal cases at Worsley³⁵ and Honeybourne³⁶, the council has not sought to reduce the overall housing requirement. In those cases the overall target figures included in the emerging core strategies were lower than those included in the relevant RSSs, they were untested and subject to objection, but the same does not apply in this case. In any event, in this case the emerging core strategy figures are in general conformity with the RSS figures. This is no more than is required in section 24 of the Planning and Compulsory Purchase Act 2004³⁷. In considering whether a core strategy is in general conformity with the 2004 Act it is necessary to review planning matters (including taking account of the current economic downturn), and the need to modify and take account of anything thought relevant. 'General conformity' neither requires nor implies strict conformity.
69. The overall housing targets in the two plans are very similar, and the trajectory approach in the emerging core strategy is not unrealistic. It is based on sites which are being progressed and which it is certain will come forward within the next 5 years. They are either permitted, or have section 106 Agreements pending, or are the subject of applications, or part of an adopted masterplan with local support. They are not based on hope.

³⁴ Document 33

³⁵ Appellant's Document BL14

³⁶ Appellant's Document BL13

³⁷ Document 20

70. In the event of the revocation of the RSS pre-dating the adoption of the core strategy, its provisions could not be made to apply. What will then be left is the council's adopted approach as included in the emerging core strategy. The approach will comply with the Framework as recommended in paragraph 47. There is no point in seeking to apply the RSS figures in managing the shortfall over a 5 year period when the life of the RSS is so limited. In any event, the difference is confined to the trajectory. The Strategic Housing Land Availability Assessment for West Northamptonshire confirms that there are more than sufficient sites to come forward over the plan period, and it too uses a trajectory approach.
71. Attention is drawn to the council's Housing Land Supply Report considered in August 2012. This concludes that the council has a 5 year supply with a 20% buffer. The council's planning policy witness calculates that the council has a 6.19 year supply, increasing to 7 years taking account of new evidence from a major builder. These figures are not seriously challenged by the appellant. The council has taken account of the cited appeal decision at Johns Road and Pilgrims Lane, Bugbrooke³⁸, and reduced the projected completions. The appellant has no evidence of likely completion rates, nor carried out detailed assessments of the sites.
72. In contrast the council cites: the developer's own evidences of likely completion rates at Radstone Fields and Towcester South SUE; the agent's evidence (Mr Ozier) concerning the completion rates for Turweston Road South, Brackley and Pianoforte site, Roade; that the land at Green Lane, Towcester will come forward with the Moat Lane site – both sites being in the council's ownership and the subjects of detailed planning applications.
73. In contrast to the generality of the appellant's argument, its own planning witness considers the appeal site would be delivered in 3 years (75 dwellings per year). But it has neither consent nor a developer, and it is therefore difficult to see how it differs from the sites at Chaplin's Road or Turweston Road.
74. The appellant has sought to rely on appeal decisions at Chapel-en-le-Frith³⁹ and Wincanton⁴⁰ in the interpretation of footnote 11 to paragraph 47 of the Framework – to the effect that sites without planning permission cannot be included in the 5 year supply calculation. The council contends that, if this had been the case, it would have been in the body of the document in plain unambiguous language. The council considers the appellant's interpretation of footnote 11 is not rational.

The Interim Rural Housing Policy

75. In the event that a 5 year supply of housing land is considered to be absent, the IRHP should be applied. The policy was adopted due to a shortfall in the housing land supply in 2009. Subject to tight control, it permits residential development outside but adjoining village boundaries. It provides indicative targets (of 10% and 5% of the existing number of dwellings for the 'most sustainable' and 'reasonably sustainable' villages respectively), but these can be exceeded where:

³⁸ Appellant's Document BL10, paragraph 21

³⁹ Appellant's Document BL18, paragraph 10

⁴⁰ Document 32, paragraph 29

brownfield land is being used; it is required to support essential local services which are under threat; and following meaningful discussions with the appropriate parish council.

76. The appellant has made much of the lack of an evidence base for the indicative targets in the IRHP, but: (a) the sites would not normally be considered suitable in any event; (b) the appeal scheme (with the 95 dwellings already permitted under the policy) would result in the indicative target for Silverstone being exceeded by 615%; and (c) the scale of the scheme is unacceptable and would be an unjustified intrusion into the countryside.
77. The council now considers it has a 5 year land supply available. There are now approximately 30 more dwellings to come forward under the IRHP, but the council has resolved nevertheless to allow the allocated development to continue.

Education

78. There is no dispute that the existing infant and primary schools at Silverstone are at capacity and incapable of extension. The appeal proposal would yield approximately 80 children of infant and primary school ages. However, the obligation restrains the commencement of the first contribution until the 75th dwelling is occupied. It is therefore unlikely the new school could be provided in time to meet the demand, and there are always other demands on the county council's budget. There is therefore a danger that the educational needs of children would have to be met outside Silverstone. The situation would have been more satisfactory had the developer agreed to fund the entire contribution upfront. It is noted the appellant considers this would render the scheme unviable, but meeting the educational demands of primary age children outside Silverstone is not sustainable.

Aging population, travel and housing need

79. The appellant claims the population of Silverstone is aging at a greater rate than the rest of the UK. The council disputes this – it considers the age profile of the village is the same as the UK generally. In any event, the appellant's calculations do not take account of the 95 dwellings permitted (and built) under the IRHP.
80. The appellant suggests Silverstone is as contained as Towcester and Brackley in terms of travel to work. The council disputes this. It considers the proportion who travel more than 5kms to work is 64%, compared with 46.9% in Brackley and 42.9% in Towcester.
81. The appellant has not carried out an objective assessment of the need for affordable housing in Silverstone. The council's Housing Needs Survey of 2012 records a need for only 5 affordable houses.

Localism

82. The proposal is contrary to the development plan and is not needed by local people. A 5 year supply of housing land exists, and the scheme conflicts with local plan Policies G2, G3, EV7 and EV8 and the spatial vision included in Policies S1 and S2 of the emerging core strategy. There is no local need for new housing which cannot be met through infill development, and the proposal is not wanted by the residents of the village. The appeal should therefore be dismissed in the spirit of localism.

The Case for the Silverstone Parish Council

I have reported the case on the basis of the advocate's closing submissions⁴¹ with additional references to the evidence submitted before and during the inquiry as necessary. The material points are:

83. The proposed development is contrary to the development plan and to many of the aims and objectives of the Framework. Whatever benefits might accrue from the provision of the houses are significantly and demonstrably outweighed by the adverse impacts of the scheme on the open countryside outside the village confines, within a special landscape area, which also functions as an important local gap.

The development plan and the Framework

84. Although the Framework is a material consideration it does not and cannot change the operation of section 38(6) that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. In accordance with paragraph 215, the weight to be attached to policies after March 2013 will vary according to their consistency with the Framework. Also, under paragraph 49, relevant policies for the supply of housing should not be considered up-to-date if a 5 year supply of developable housing land cannot be demonstrated.

85. Thus, the extracts indicate that, although policies for the supply of housing may become out-of-date, other policies (which may be very old) may be up-to-date. The paragraph 49 restriction only applies to a limited number of policies. The spatial and environmental policies relevant to this case should attract significant weight; noting that the sustainable distribution of development and the protection of the environment are both fundamental aims of the Framework.

The Regional Plan

86. Amongst other matters, Policy 11 of the RSS records that the quality of villages should not be degraded by inappropriate growth. Growth should be focussed on Towcester and Brackley. In the rural hinterlands development should be limited with the emphasis being on local needs and the retention of basic services and facilities. It was accepted on the appellant's behalf that urban focussed spatial strategies were a longstanding general principle of planning policy.

87. The proposal is not 'limited'. It seeks to place 66% of the annual requirement in a rural settlement away from urban or rural service centres, and it would outstrip local need. There is no explanation from the appellant why a development of this size is required to meet a small identified need, or why Silverstone should be required to meet the wider district need – in conflict with the content and purpose of local plan Policy G2. The council's Housing Need Survey identifies a requirement for only 5 affordable dwellings in Silverstone.

88. In the event of the revocation of the RSS, it would attract no weight in the determination of the case. However, the local plan includes saved policies derived from the RSS, and many of the policies of the emerging joint core strategy are in line with both it and the Framework. The trajectory approach is

⁴¹ Document 46

both appropriate and endorsed by the Framework, and most of the outstanding objections relate to the housing land supply in adjoining district council areas.

The Local Plan

89. Although the local plan pre-dates the RSS, it shares the spatial aims of focussing development on Towcester and Brackley. It also seeks to restrain development in 'restricted infill villages' and the open countryside. The appellant accepts the proposed development conflicts with Policies G2, H5, H6, EV2 and EV8.
90. In appeal decisions at Earls Barton⁴² and Bugbrooke⁴³ it was recognised the spatial strategy and settlement hierarchy which directs growth to urban areas and restrains development outside settlement boundaries, was consistent with the Framework. The parish council considers there is also conflict with local plan Policies G3 and EV7, both of which bear a resemblance to criteria-based policies. They are also compatible with the Framework because they allow development of the right scale in the right place while recognising the different roles and characters of different areas and how they can be protected.
91. The appeal proposal is entirely out of scale with Silverstone. It would increase the housing stock of the village by 25%; in addition to the 95 dwellings granted permission outside the village boundary since 2009. This would have a negative impact on the character of the village. The scale of the scheme would also go beyond anything anticipated in the IRHP.
92. As far as Policy EV7 is concerned, this was found to be broadly consistent with the objectives of the Framework at an appeal in Middleton Cheney⁴⁴. Although the reasoned justification to the policy records that development proposals which are sympathetic in terms of form, scale, materials and design may be acceptable in special landscape areas, built development should be kept to a minimum. The purpose of the policy is to conserve and enhance the quality of the landscape, and, even with the landscaping proposed, this could not be achieved.
93. It is accepted by the appellant that the scheme conflicts with local plan Policy EV8. The policy envisages the circuit extending up to the A43 by-pass. The appellant argues that the landscaping proposed would provide the necessary buffer, but the site would be filled with houses and their associated paraphernalia. Both the gap and the village setting would be lost, leading to a factual and perceived coalescence.

Interim Rural Housing Policy

94. The policy is highly material where a 5 year supply of deliverable housing sites cannot be demonstrated. It has been successful in boosting the supply of housing land, and it is therefore in conformity with the Framework. Although the methodology may be crude in some respects, it allows settlements to be compared to each other and to distribute development in an equitable way, whilst taking account of environmental concerns. It has been consistently applied by Inspectors at appeals, and it has led to the siting of new residential development in Silverstone.

⁴² See Appellant's Documents BL19, paragraph 11

⁴³ See Appellant's Documents BL9, paragraph 9

⁴⁴ See Appellant's Documents BL7, paragraph 25

95. There are criteria to be satisfied even when the additional houses are delivered. All cases are required to demonstrate environmental improvements, that the development is necessary to support or retain essential local services, and that they should follow meaningful discussion with the parish council. In addition, projects are also subject to saved local, national and regional policies. But the proposed environmental improvements are mitigation measures rather than improvements. The appeal site would lose its openness, and the phasing proposed would be incompatible with the educational needs which the site would generate. The doctor's surgery is also at capacity.

Housing supply

96. The parish council supports the council in relation to housing land supply. Indeed, in relation to two sites (Pianoforte site, Roade and Radstone Fields, Brackley) the council has taken a cautious approach in respect of expected completions. The RSS will soon be revoked, and the housing requirement included in the emerging joint core strategy is preferable. They are based on more up-to-date evidence, and the trajectory is a realistic response to the prevailing economic conditions. It complies with the advice in paragraph 154 of the Framework that plans should aspirational but realistic.

97. There are 3 indicators that paragraph 47 of the Framework does not exclude sites without planning permission from the housing land supply calculation. First, if it had meant to, it would have said so. Secondly, windfall sites can be included, and, by definition, they do not have permission. Thirdly, there would be no purpose to the second sentence of footnote 11 (to paragraph 47) if the policy related only to sites with planning permission.

98. Even if there is found not to be a 5 year supply of housing land, the spatial and environmental policies are not diminished. The Framework recognises as a core principle that account should be taken of the different roles and characters of different areas. In this regard the appeal decision at Sapcote⁴⁵ is incorrect. The protective role of environmental policies is not extinguished because there is a need for housing land. The Framework is clear that the purpose of the planning system is to contribute to the achievement of sustainable development – one dimension of which is its environmental role. Indeed, the economic, social and environmental roles of sustainable development are mutually dependent.

The Landscape

99. The size of the scheme is not derived from its landscape location, but rather from the need to provide benefits. The reduction in the number of houses from the 2009 scheme is inconsequential. It still includes houses on the south facing slopes of the more northerly area, and on the higher ground of the more southerly area. The layout evidently takes account of noise from the A43, but the scheme would not be sensitive to the landscape.

100. The local landscape area has not, as is suggested by the appellant, been severed by the A43. Both the appeal site and the land to the east of the A43 by-pass share common features which warrant them being joined together. The appellant's landscape witness gives little consideration to the role of the site as

⁴⁵ Document 33, paragraph 48

part of the setting of the village, despite its planning witness recognising this quality. The parish council considers its function as part of the setting is vital to the form and character of Silverstone. The development would breach the long established barrier of the Towcester Road, and it would be a significant intrusion into the countryside.

Balance

101. On the basis of paragraph 14 of the Framework there is a balance to be struck between harm and benefit. The factors which weigh against the appeal scheme are recorded above. In addition, the Framework identifies community engagement at the heart of Government policy. The appeal and adversarial inquiry process and the appraisal of only one option cannot compensate for a proper participation in the development plan process.

Planning Obligation – Education

102. It is recognised the present schools are incapable of expansion, but there is no certainty the proposed new school would be delivered in the appropriate timescale. The school would cost approximately £6m, but the obligation would contribute £1.8m. If the development of the appeal site and the school cannot be co-ordinated, pupils would have to be sent to school in Towcester and Buckley. The phased contributions would be such that the final amount would not be paid until a yield of approximately 73 children from the appeal site.

103. The possibility of the earlier financing of the proposed new school was raised with the representative of the local education authority, but she was unable to provide a guarantee of funding. There is no evidence that other sources of finance would be available, and, if other sources are available, there is no need for the contribution included in the obligation. It is likely the 80 children yielded by the proposed development would have been found school places elsewhere by the time a new school in Silverstone could be contemplated.

Planning Obligation – Recreation space

104. The maintenance of the appeal site which would remain undeveloped would require a great deal of attention. However, the area and boundaries involved are not clear from the definition included in the obligation⁴⁶. The area so defined is therefore uncertain, and it is possible that a future housebuilder may wish to distance itself from obligations with unfortunate consequences. To ensure proper maintenance, the whole undeveloped area should have been included. The area could be further refined at reserved matters stage, but the parish council is concerned that should permission be granted, the commitment should be comprehensively followed through.

Socio-economic profile

105. The appellant argues that the appeal scheme and the development of the circuit assist one another in their sustainability credentials. But there is uncertainty about when and how the circuit development might come forward. It is phased to be completed by 2030, with most of the jobs being generated

⁴⁶ See Definitions and Interpretation in Document 39. This refers to 'land identified as such in plans to be submitted by the Owner'.

towards the end of the period. The permitted circuit development cannot therefore provide a justification for the appeal scheme. In terms of their timing, the two schemes are incompatible. Similarly, there is no evidence that the circuit would have difficulty in attracting a high-skilled, specialist workforce without the appeal scheme.

106. It is recognised there would be limited benefits associated with the scheme, but there would also be overwhelming disbenefits – intrusion into the open countryside, harm to the character and setting of the village in a special landscape area. These effects would be irreversible. The proposal is therefore contrary to both the development plan and the Framework, and the appeal should be dismissed.

The Cases of Interested Persons

107. **Cllr Dermot Bambridge** is the district councillor for Silverstone and a member of the parish council⁴⁷. In the past he has worked at the circuit. Both the Prime Minister and the Government seek to promote localism, but the residents of Silverstone are not 'nimbyists'. The village has taken more than its fair share of recent housing growth and two local surveys indicate that over 90% of respondents are opposed to the appeal scheme. There is no guarantee a new school would be built; there is no spare capacity at the doctor's surgery; and, the development would threaten the future of the circuit.
108. Because of the motor racing circuit, Silverstone is probably the best known village in the world – a status which translates into the financial value of houses. But it only has about 950 dwellings and a population of some 2,500. Even so, there was no outcry against the development at Lime Kiln Close and Paddock Close. These schemes complied with the provisions of the IRHP. Similarly, only 4 letters of objection were submitted against the recently permitted development proposals at the circuit.
109. A growth of 23% (in terms of housing) or 24% (in terms of population) would be unprecedented and unacceptable in relation to its impact on the community. Although the appellant refers to the aging population of Silverstone, there are many young families with small children in the new houses on the opposite side of Towcester Road from the appeal site. Notwithstanding the growth of the village, some local services have been lost. It is recognised the appellant seeks to enhance the local bus service, but the utility of this benefit would be questionable without significant improvements in routes, speed and destinations.
110. Rather than supporting the development of the racing circuit, the appeal scheme would be a threat to its successful operation. In addition, the programmes for the two schemes would render them incompatible. One of the purposes of the significant planned residential growth of Towcester and Brackley is to secure sufficient new dwellings as the circuit activities expand. The Managing Director of the circuit is specifically and solely concerned that the appeal scheme would be a threat as residents would be likely to object to the noise. A particular concern would be 24 hour races, or at other times during

⁴⁷ Document 47

summer afternoons. Attention is drawn to the noise management plan which is being prepared for the circuit. The proximity of racing circuits and dwellings has already led to restrictions to the sport at other circuits – mostly since 2005. Any limit to the number or duration of racing days would be a threat to the financial viability of the circuit. The case of *Coventry (T/A RDC Promotions) & Others v Lawrence & Others* [2012] EWCA Civ 26 illustrates the danger, even though in the end the Court of Appeal determined that the relevant circuit was ‘an established part of the character of the locality’.

111. There is no spare capacity in Silverstone for health care. A new school could only be justified in association with the appeal scheme, but a two-form entry school would be too big for the village (with the additional children from the appeal scheme site) and it could only be filled by additional children travelling into the settlement. The appellant’s offer is sizeable, but it nevertheless covers barely a quarter of the costs and the local education authority is unable to commit itself. The general view in the village is that, though a new school would be very desirable, the impact of 220 new houses would be too high a price.
112. **Mr Kevin Broadhurst** has lived in Silverstone for 27 years⁴⁸. The name of Silverstone is a local marketing bonus. Although the population of the village is about 2,500, it expands on a number of occasions each year to some 100,000. It then becomes a totally different place, but this is not cited in house sales particulars.
113. A total of 365 houses have been built over the past 20 years, and although there have been concerns expressed about the overall scale of development, the construction of large scale sites on protected areas has always been met with intense opposition. The appeal scheme would perpetuate the excessive growth of new residential development confined to the eastern quarter of the village. Notwithstanding this growth the village has been losing facilities since 1975, such that regular trips are now necessary to Towcester, Brackley, Milton Keynes, Northampton and Banbury. The infant and junior schools are now over-subscribed, but the growth of population does not appear to have been taken into account in previous residential proposals. In any event, the children would still have to travel to Towcester for secondary education.
114. The appeal scheme would generate more traffic in the village centre. The council has implemented the Government’s objective of more house building by permitting over 2,750 houses in Towcester and over 2,000 in Brackley – with potential for more resulting from the future development at the racing circuit. There remains some doubt about the realisation of the circuit masterplan, and, in any event, race meetings do not result in the creation of full-time jobs.
115. The Prime Minister has sought to avoid sprawling housing estates on the edges of villages against the wishes of local people. He has also indicated that at the heart of the Government’s planning reforms is more local control.
116. **Mr Philip Goodall** seeks to avoid major change to the character of the village⁴⁹. In addition, he fears the proximity of the appeal site to the circuit could result in numerous complaints regarding noise and give rise to a restraint on

⁴⁸ Document 49

⁴⁹ Document 50

- racing in the future. The circumstances would be analogous to those which exist around airports, where new house building can become a threat to the viability and growth of the facility. The circuit at Silverstone is likely to make a major contribution to the UK economy and its future should not be jeopardised.
117. **Mr Michael Poulton** is concerned about the maintenance of the proposed recreation areas including the orchard, other trees and grassland. He also wonders how the proposed allotments would be distributed.
118. **Mrs Kay Ringwood** is the Capital Programme Manager for Northamptonshire County Council⁵⁰. She was assisted by **Mr Ben Hunter**. The county council has a statutory duty under the Education Act 2006 to secure sufficient school places in its area. The council has a strategic role in planning the educational estate and it must take account of 3 particular factors – a national rise in the birth rate; high levels of in-migration; and new housing development. There has been a 10% increase in reception numbers in Northamptonshire between 2010 and 2012, and the council capital programme seeks to add over 9,000 primary places across the county by September 2015.
119. The council considers the appeal scheme would generate approximately 80 primary age pupils – not enough to justify a new school on the site, but too many to be accommodated in other village schools. The existing schools (infant and junior) are at capacity and neither site is suitable for building an extension. Both occupy physically restricted sites with poor access and inadequate playing fields. There are other new houses in the village, and demand for places in future years will remain high.
120. Taking account of the appeal proposal, the council's preferred option is for a new primary school to serve the village. It would replace the existing buildings and use land already in the county council's ownership. Two specific sites have been considered, and both are considered viable options. Early commitment within the council has been established through the Director of Customers, Communities and Learning and the Cabinet Member with responsibility for Learning, Skills and Education. Similarly, the Headteacher and Governing Body of the existing schools support the prospect of a new school.
121. There is a long list of locations throughout the county which aspire to the provision of new schools. If allowed, the appeal proposal would act as a trigger for the council to bring a new school forward, and the associated section 106 contribution is the key piece in the funding jigsaw. The initial size and growth of a new school would be carefully planned so that it would not become a threat to neighbouring schools. Detailed planning for the provision of a new school could not start unless and until the appeal scheme is successful, but significant work has already been undertaken in site surveys and feasibility studies.
122. The section 106 contribution would cover approximately a third of the total cost. The remainder would be funded by other capital funding sources: Government grant, other section 106 receipts, other capital resources or borrowing. A new school for Silverstone has been included in the council's financial planning, and it would not be dependent on the disposal of the existing school sites. On the basis of the proposed illustrative housing mix the

⁵⁰ Document 48

contribution would amount to approximately £1.8m. The respective profile and trigger points for payments have been agreed. In the council's view the mitigation proposed meets the tests included in paragraph 204 of the Framework.

123. The county council is committed to the delivery of a new school in Silverstone in the event of the proposed new housing coming to fruition. As far as the planning merits of the appeal scheme are concerned, the county council is neutral, but it does not consider there to be educational grounds for the rejection of the proposed development.

Written Representations

124. Discounting those reported above, there are a total of 33 written representations (letters and emails) from 43 interested persons⁵¹. They are all objections to the appeal scheme. Many of those objecting refer to the refusal of planning permission and the council's objections. In addition, reference is made to the adverse effect of the additional traffic the scheme would generate on the streets and roads within the village. Many objectors also express the concern that the proximity of the site to the racing circuit would result in complaints which would become a threat to the viability of the circuit. Reference is also made to the desirability of the route of the A43 between Brackley and Towcester being protected as a green corridor.
125. At the application stage the council received a total of 98 written representations. With the exception of the Silverstone Schools Federated Governing Body, all were opposed to the proposed development. Additional matters not cited above comprise surface water drainage issues, sewerage capacity, highway visibility, and the effect on wildlife.

Conditions and Obligation

Conditions

126. The draft conditions were initially discussed on the basis of their appearance in the Statement of Common Ground⁵². The conditions were amended as a result of the discussion and a revised set was prepared by the appellant⁵³. I have considered the conditions in the light of the discussion at the inquiry and the contents of DoE Circular 11/95: *The Use of Conditions in Planning Permissions*. I have considered the obligation⁵⁴ in the light of the discussion at the inquiry and against the contents of paragraph 204 of the Framework.
127. Draft conditions 1, 2 and 3 are standard outline conditions – subject to the omission of reference to the means of access to the site which is not reserved for subsequent approval. Draft condition 1 also refers to the illustrative masterplan (Drawing No: SK014 Rev A). During the inquiry the appellant attached significant weight to the content and quality of the illustrative masterplan. It

⁵¹ Document 2

⁵² Document 3

⁵³ Document 37

⁵⁴ Document 39

- forms an essential component of the Design and Access Plan⁵⁵, and, as recorded in paragraph 2 above, the appellant raises no objection to its being incorporated into the draft conditions. However, draft condition 4 also refers to the illustrative plans submitted at the application stage and I therefore see no purpose in the reference to the masterplan in draft condition 1. I have omitted the tailpiece to draft condition 4 on the grounds of uncertainty and the danger of sidestepping the statutory process. I consider such a provision would conflict with the precision and reasonable tests included in Circular 11/95.
128. Draft condition 5 is necessary and reasonable to secure the co-ordination of the development with the provision of mains foul sewage infrastructure. The purpose of draft condition 6 is to secure the provisions of the submitted Flood Risk Assessment. In view of the location and topography of the site, I consider this would be both necessary and reasonable. It would be complemented by draft condition 25 requiring a detailed surface water drainage scheme for the site as a whole.
129. With the exception of the tailpiece for the same reasons as recorded above, draft condition 7 is necessary and reasonable. However, in the interests of clarity and consistency I have amended the condition by the exclusion of the recreation space (as defined in the obligation). The obligation provides for the maintenance of this space in perpetuity.
130. Draft condition 8 requires details of the proposed junctions off Towcester Road. Subject to the omission of the tailpiece for the same reasons as recorded above, the condition is necessary and reasonable. I raise no objection to draft condition 9 (provision of bus stops) or draft condition 11 (traffic calming measures).
131. There is a degree of overlap between draft conditions 4 (in so far as it refers to the illustrative Movement and Access Plan) and 10. I raise no objection to details of the access roads, footways, cycle ways and connections being made available, but without knowledge of the standards which apply to routes intended for adoption, it would be unreasonable to impose the draft condition in its totality. I have amended it accordingly.
132. Although a Travel Plan has already been submitted to the council by the appellant, I raise no objection to draft condition 12. It requires the submission of a Travel Plan regardless of the ownership of the site. The submitted Travel Plan is cited in the obligation which also includes some financial provisions.
133. In view of the proximity of the site to existing dwellings, I consider draft condition 13 (construction environmental method statement) to be both necessary and reasonable and in the interests of local amenity. In view of the proximity of the site to the A43 by-pass and the Silverstone Circuit, I consider draft condition 14 (noise protection) to be necessary and reasonable and in the interests of local amenity. Draft condition 15 (contamination remediation) is essentially precautionary, but is nevertheless both necessary and reasonable – especially as I understand the northern part of the site has been used for an industrial process in the past. Draft condition 17 (archaeology) is also essentially precautionary but necessary.

⁵⁵ Figure 31

134. The topography of the site is varied and undulating, and the details of finished floor levels would therefore be necessary as required by draft condition 16. The purpose of draft condition 18 (arboricultural method statement) is to secure the retention and enhancement of trees and hedgerows. These are an important attribute of the site and I raise no objection to the purpose or content of the condition.
135. In the event of the development proceeding, account would need to be taken of the proposed facing and roofing materials of buildings within the context of the reserved matters for the appearance of the site. I therefore see no purpose to draft condition 19 (submission of samples).
136. The purpose of draft condition 20 (the regulation of piling) is to protect groundwater. I consider it would be both necessary and reasonable. The purpose of draft condition 21 is to secure the installation of fire hydrants. I consider it would be necessary and reasonable.
137. Draft condition 22 requires the submission and implementation of a Design Code in accordance with the illustrative masterplan (Drawing No: SKO14 Rev A). The code would set out the design principles and objectives for the development and it would thus provide a firm basis for the submission of detailed applications for the approval of reserved matters. It would provide extra security for the submission of a high quality scheme, and I consider it would be both necessary and reasonable.
138. Similarly, draft condition 23 would require the submission of a landscape strategy plan to secure the installation and provision of all the areas of open space (including allotments, community orchards, children's play space, recreation space, pocket parks, water features, and earth movements (bundings)) within the site. These components of the scheme would have to be implemented in accordance with the phasing of the housing. In view of its importance to the scheme, I consider the condition to be necessary and reasonable. The condition would be complemented by both draft condition 24 (submission and implementation of an ecological management plan) and the contents of the obligation which refer to the recreation space. I have however, omitted the tailpiece to draft condition 24 for the same reasons as recorded above.
139. With the omission of the tailpiece, draft condition 26 would be necessary and reasonable to secure the repair and refurbishment of the listed building on the land. Planning permission and listed building consent for the works have already been obtained.
140. Draft conditions 27 (the siting of external meter boxes, and external oil or LPG tanks) and 28 (bin storage) have been suggested by the council. I agree with the appellant however that these are matters which would fall to be considered in the context of applications for the approval of reserved matters required under draft condition 1. Nor do I see any reason to depart from the presumption against the restriction of domestic permitted development rights included in paragraphs 86-88 of Circular 11/95.
141. In view of the size of the appeal site and the area which would be left undeveloped, a condition would be both reasonable and necessary which limited the number of dwellings on the land to the number specified in the application.

142. In the event of the appeal succeeding a schedule of conditions as reported above is attached to the end of this report.

Obligation

143. A draft unilateral undertaking⁵⁶ was discussed at the inquiry and its contents were subsequently amended. The appellant provided a summary of the amendments⁵⁷ together with a reasoned justification for the contents of the obligation⁵⁸, and an explanation of the 3 Dragons Viability Assessment Toolkit⁵⁹. A final version⁶⁰ of the undertaking dated 12 February 2013 was submitted during the inquiry. I have considered the contents of the obligation in relation both to the observations of the parties and the tests included in paragraph 204 of the Framework.

144. The council observes that it is not a party to the obligation and that Clause 13 (Disputes – expert determination) cannot be applicable. The appellant recognises that the council is not a party and that it cannot therefore be bound by the terms of the clause. I recognise the provision may be superfluous, but this would not detract from the covenants included in the obligation. In the circumstances I raise no objection to the inclusion of the clause.

145. Paragraph 1.1(a) of the schedule records the appellant's intention to provide 40% of the dwellings as affordable units. However, under paragraphs 1.1(d) and 1.2 this intention is effectively made subject to both a viability assessment and the Secretary of State finding conformity with the Community Infrastructure Levy Regulations. The council is concerned that a viability assessment could, in theory, entirely extinguish the affordable housing provision proposed.

146. The proportion of affordable housing units proposed would amount to 88 dwellings. However, according to the council, the latest housing needs survey records the demand for affordable units in Silverstone totals only 5 dwellings⁶¹. In the circumstances the proposed provision appears excessive even without a viability assessment, and the potential benefit derived from satisfying the need for more affordable houses must be correspondingly limited. The 40% proportion is derived from the IRHP⁶², but the policy itself refers to the identified local need and it also recognises that a reduction may be necessary on viability grounds. I am conscious in this context of the relevance of the Government's initiative of March 2011 (Planning for Growth). Amongst other matters, this recognises the potential for tension between section 106 obligations and the viability of building schemes. In view of the limited actual demand and the contents of the IRHP, I see no objection to the inclusion of the viability assessment in the obligation. I

⁵⁶ Document 28

⁵⁷ Document 35

⁵⁸ Document 30

⁵⁹ Document 31

⁶⁰ Document 39

⁶¹ See paragraph 81 above

⁶² The 40% proportion appears to originate from the Affordable Housing SPG (2003).

However, it was not carried forward into the Developer Contributions SPD (2010). The SPD does refer however to the significance of viability testing. Both documents are included in the appendices to Mr Connell's Proof.

also consider the provisions concerned comply with the tests included in paragraph 204 of the Framework.

147. The council also expresses concern in relation to the detail of the affordable housing provisions of the undertaking – the tenure split, provision for the transfer of property to a registered provider, and, in the event of default, the circumstances which would apply to a mortgagee in possession. In response, the appellant refers to the Affordable Housing Scheme cited in paragraph 1.1(c) of the schedule. I acknowledge that such a scheme could address the matters to which the council has referred. In addition, the paragraph was amended to include the split sought between affordable rented property and intermediate property.
148. The council expresses concern in relation to the aftercare of the proposed children’s play space (paragraph 6 of the schedule) and the recreation space (paragraph 7 of the schedule). It was made clear on behalf of the council that it would not be able to receive or be responsible for either of the relevant spaces. In the circumstances the appellant agreed to amend the undertaking and to retain the spaces in perpetuity.
149. The parish council has referred⁶³ to the definition of recreation space included in the obligation. At the inquiry the appellant submitted a copy of the illustrative masterplan⁶⁴ to show the area defined. This shows, outlined in red, the area between Towcester Road and the A43 boundary which would remain undeveloped by housing. The proposed pocket park to the south of Murswell Lane (on the south-east side of Towcester Road) is also included. The areas defined coincide with areas 01 (3.59ha) and 04 (0.10 ha) shown on Figure 32 of the Design and Access Statement.
150. Paragraph 4 of the schedule refers to the education contribution cited elsewhere in this Report⁶⁵. Both the local planning authority and the parish council refer to the potential discordance between the yield from the proposed development and the programme for the construction of a new school. I recognise that a front-loaded contribution would be desirable, but I believe this would be an unrealistic expectation. In any event, the county council (acting as local education authority) is satisfied with the trigger points included in paragraph 4, and I raise no criticism of the obligation in this respect.
151. I have referred (in footnote 59 above) to the origin of the affordable housing provisions of the obligation, and I have also considered the other provisions of the obligation against the tests now included in paragraph 204 of the Framework. The development would inevitably generate greater demands on the local health service (as recognised in the council’s Developer Contributions SPD), and I also consider the contribution would be fair, reasonable and necessary to make the proposed development acceptable.
152. Similarly, the development would generate demand for children’s play space and for recreation space, as recognised in the council’s Developer Contributions

⁶³ See paragraph 104 above.

⁶⁴ Document 40

⁶⁵ At paragraph 54 by the appellant; paragraph 78 by the council; paragraphs 102-3 by the parish council; and paragraph 118-123 by the county council.

SPD. I consider the provisions of the obligation to use substantial parts of the site for these purposes would be proportionate and necessary. The scheme would also generate a strategic leisure requirement, as recognised in the council's Developer Contributions SPD, and I consider the contribution would be fair, reasonable and necessary. The scheme would generate a requirement for kerbside recycling facilities, as recognised in the council's Developer Contributions SPD, and I consider this contribution would also be fair, reasonable and necessary.

153. The undertaking includes obligations in relation to the services of the county council. I return to the proposed education contribution later in this report. There was no dispute however between the principal parties in relation to the bus services improvements contribution, the covenants applying to a Travel Plan, or the fire and rescue contribution. I understand⁶⁶ all the provisions are based on the county council's Planning Obligations Framework and Guidance (2011), and I consider each to be fair, reasonable and necessary, and directly related to the development proposed.
154. The range of contributions included in the undertaking is wide and the contributions would be important for the services involved. A monitoring fee would therefore be necessary, as recognised in the Developer Contributions SPD. I believe the amount identified would also be fair and reasonable.
155. It follows that, subject to the education contribution which I consider later in this Report, I believe the contents and provisions of the obligation comply with the tests included in Regulation 122 of the Community Infrastructure Levy Regulations 2010.

⁶⁶ From Document 30

Conclusions

The following conclusions are based on my report of the evidence submitted to and heard at the inquiry, and my inspections of the site and its surroundings. It also takes account of the revocation of the RSS following the closure of the inquiry. The numbers in square brackets refer to preceding paragraphs of the report.

156. The Secretary of State's recovery letter refers to both the size of the proposal and of the site, and the significant impact the scheme could have on the Government's objective to secure a better balance between housing demand and supply and the creation of high quality, sustainable, mixed and inclusive communities. Taking this into account, together with the evidence I have received and my observations of the site and its surroundings, I believe the main considerations on which this case turns are as follows:

- Whether a 5 year supply of deliverable housing land is locally available;
- Whether, taking account of the development plan and other material considerations, Silverstone is a suitable and appropriate location for residential development on the scale proposed;
- Whether, taking account of the development plan and other material considerations, including the landscape setting of the settlement, the appeal site is suitable and appropriate for residential development; and
- Whether the education contribution included in the unilateral undertaking would sufficiently mitigate the impact of the scheme.

Housing land supply

157. Paragraph 6 of the Framework records that the purpose of the planning system is to contribute to the achievement of sustainable development. It goes on to define sustainable development by reference to three dimensions: economic, social and environmental roles; and it records a presumption in favour of such development. In relation to decision-taking, the essential role of the development plan is recognised and acknowledged. At a more detailed level, paragraph 17 identifies 12 core planning principles which, amongst other matters: further emphasises the importance of plans; keeping them up-to-date; the delivery of houses; high quality design; recognising the intrinsic character and beauty of the countryside; supporting thriving rural communities; and actively managing patterns of growth [22].

158. Paragraphs 47-55 are specifically concerned with delivering a wide choice of high quality homes, and the purpose of paragraph 47 is to boost significantly the supply of housing. To this end the Framework requires the identification of a housing target or requirement, and the identification of specific deliverable sites sufficient to provide 5 years worth of housing – with an additional buffer of 5%; or 20% where there is a persistent record of under-delivery. Footnote 11 includes advice on the meaning of 'deliverable' [23].

159. Extensive reference was made during the inquiry to the contents of the Framework, and to the effect of various interpretations made by my colleagues in other appeal cases. The appellant draws attention to a case in Chapel-en-le-Frith in which it was suggested that planning permission is a pre-requisite for inclusion in the 5 year supply calculation [48]. The council considers this to be an unjustified interpretation of footnote 11 [74], and it is supported in this regard by the parish council [96].
160. In relation to this matter, I agree with the two councils. There is no doubt that to be delivered a site must enjoy the benefit of planning permission, and many sites which are included would have the necessary permission. Indeed, the double reference to 'now' indicates a distinct preference that planning permission should exist. However, I consider that not all sites which are deliverable must necessarily have planning permission, and, the clear implication of the second sentence is that not all sites with planning permission should be considered deliverable – such sites may not be viable for example. I read from the first phrase in the second sentence that, in relation to the first sentence, there can be sites which are deliverable but for which there is no planning permission. One consequence of this interpretation is that the identification of sites critical to the delivery of housing strategies can be a complex process with significant opportunities for disagreement.
161. The 5 year requirement is further complicated by the need to illustrate the expected rate of housing delivery through a housing trajectory for the relevant plan period. In this respect also the principal parties took different approaches. The appellant draws attention [46] to the council's preferred trajectory, which it considers to be inconsistent with the annual average rate of housing provision required by the former RSS. In contrast, the council emphasises the approach taken in the emerging core strategy [67]. It recognises that, as a result of the economic downturn, the 330 dwellings per year sought in the former RSS has not been achieved, and lower, more realistic completion figures for the 5 years between 2012/3 and 2016/7 should be 305, 300, 290, 300 and 393 respectively⁶⁷.
162. As far as the overall target is concerned, there is little difference between the former RSS figure of 8,250 dwellings (2001-2026) and that included in the emerging core strategy of 8,340 [67]. The key difference is what is described by the council as the 'trajectory approach' [70]. The council is supported by the parish council. It holds that the trajectory is a realistic response to the prevailing economic conditions. It further considers the approach complies with the guidance included in paragraph 154 of the Framework, that plans should be aspirational but realistic [96].
163. In the hope that the economy will have revived after 2016/17, the council's annual target for the following 9 years varies between 390 and 440 dwellings. Of course, prediction becomes increasingly difficult as the horizon recedes, but, as far as the next 5 years are concerned the difference between the parties amounts to a total of 62 dwellings. I recognise there is a difference between the flat trajectory deployed in the former RSS and the council's much more varied

⁶⁷ From Appendix 2a (Appendix 2) to Mr D'Arcy's Proof

trajectory, but I believe that, considered in association with the initial period of the former RSS, the shortfall in completions is significant.

164. However, the former RSS no longer forms part of the development plan, whilst the emerging joint core strategy is still the subject of objections and has yet to be considered at examination [26]. In spite of the council adopting it for development management purposes, the weight it can attract is limited by reference to paragraph 216 of the Framework.
165. I recognise that the IRHP is of relatively recent origin [20], and it has been given appreciable weight in other housing appeal decisions [49]. I refer to these towards the end of this Report, and draw comparisons as far as these are relevant. Although it is therefore up-to-date, the council recognises⁶⁸ it does not form part of the development plan, and it only becomes operative when a 5 year land supply is absent [75]. I acknowledge that since its preparation the IRHP has boosted the supply of housing land, but, like the emerging joint core strategy, it cannot carry the same weight as development plan policies.
166. In the current case the council argues that a 5 year supply of housing land is available, and there should therefore be no need to invoke the IRHP. I understand nevertheless that there are only about 30 more dwellings to come forward under the policy, and the council has resolved to allow the development so allocated [77]. I do not regard this apparent inconsistency as a weakness in the council's case, but more a means of securing the choice and competition in the market promoted by the Framework. It appears that as time passes and progress is made with the emerging joint core strategy, the utility of the IRHP will diminish. I also note that the IRHP does not identify *specific* deliverable or developable sites, and the extent to which it can contribute to the land required within the terms of paragraph 47 of the Framework must therefore be limited. I do recognise however that it has effectively provided the process whereby additional housing land has come forward for development (at Lime Kiln Close and Paddock Close) in Silverstone [9].
167. Although I do not adopt the appellant's argument that planning permission is a prerequisite for inclusion in the 5 years supply calculation, a substantial part of the rationale for the preparation of the IRHP was derived from the shortfall of 2.25 years in the supply as calculated for the period 2009-14⁶⁹. Even during the years of the last housing boom the average annual rate of completions (284) was below the target subsequently adopted in the former RSS. I do not therefore dispute the council's implied contention that the former RSS target may be characterised as more aspirational than realistic [67], but, since the publication of the Framework, the Government's policy in relation to house building has been to achieve a significant boost in supply [45]. Where the supply of housing has so consistently failed to reach its former target, and even though this target no longer enjoys development plan status, I am bound to conclude that a 20% buffer should apply – as required by paragraph 47 of the Framework [47]. Notwithstanding its diminished status, the former RSS target is the most up-to-date and objectively based figure which has been subject to examination.

⁶⁸ See the Notes on page 1, Appendix 1 to Mr D'Arcy's Proof.

⁶⁹ See paragraph 2.2 in the IRHP, Appendix 1 to Mr D'Arcy's Proof.

168. I have considerable sympathy with the council in relation to the requirement for an annual 5 year housing land supply report, against a background of changing policy, and the decisions of individual house-builders as they seek to adjust to an uncertain economy. The council's case is based on its 2012 housing land supply report, together with updates in relation to some of the larger sites. However, I believe excessive reliance has been placed on actual completion rates in substitution for the rate included in the former RSS. I note, for example, that paragraph 3.23 of the council report (Agenda Item 4) dated 15 August 2012⁷⁰ considers it unreasonable to retrospectively apply the (then) RSS targets. Similarly, I have taken account of paragraph 3.14 of the council report (Agenda Item 3) of the same day⁷¹. It records that the joint core strategy housing figures will, as a minimum, meet the natural growth requirements of the existing population. This is a theme which is cited in other reports⁷², but I note that in the review undertaken by DTZ on behalf of the West Northamptonshire Joint Planning Unit in 2010, reference is also made to the possible impact of net immigration⁷³ – the second significant driver in the requirement for housing land. I am sceptical that the approach adopted complies with the requirement in paragraph 47 of the Framework that the housing land supply should meet the full, objectively assessed needs of the area.
169. The council estimates that there is a sufficient housing land supply for 6.19 years⁷⁴. If increased delivery rates on large sites were brought forward this would be increased to 6.9 years⁷⁵. However, as I have recorded above, these calculations are based on the adoption of a trajectory which effectively transfers under-performance to the later years of the plan period; it is based on only a 5% buffer; and, in contradiction to paragraph 47 of the Framework, it includes IRHP allowances which are not site specific. The appellant estimates the supply of housing land is equivalent to only 3.62 years worth [47]. Even without questioning the windfall allowance, the lapse rate, and the actual performance on individual sites, I agree with the appellant that the specific deliverable sites required by paragraph 47 of the Framework would be insufficient to provide 5 years worth of housing. It follows that, although I do not agree with the appellant's interpretation of Footnote 11 in the Framework, the council's approach to the identification of a 5 year housing land supply is incompatible with the requirements of the Framework. I therefore further conclude that a 5 year supply of housing land has not been demonstrated. It further follows, in accordance with paragraph 49 of the Framework, that the relevant policies for the supply of housing land cannot be considered to be up-to-date. I acknowledge that the effect of this conclusion relates primarily (but not exclusively) to the housing chapter of the local plan, and especially to saved Policies H5 and H6.
170. Notwithstanding the saving of the plan, my conclusion in relation to the datedness of its housing policies is reinforced by noting that the plan period finished in 2006. The strategic guidance for the plan is derived from the former

⁷⁰ Appendix 2 to Mr D'Arcy's Proof

⁷¹ Appendix 2 to Mr D'Arcy's Proof

⁷² Paragraph 10.4 of Appendix 4 to Mr D'Arcy's Proof (and paragraph 6.4 of the 2012 Update)

⁷³ Paragraph 6.2 of Document 38

⁷⁴ Table 3 of Mr D'Arcy's Proof

⁷⁵ Paragraph 6.28 of Mr D'Arcy's Proof

County Structure Plan – a plan largely replaced by the former RSS in 2009. Both plans (the former RSS and the local plan⁷⁶) identify Towcester and Brackley as settlements where planning applications for residential development would normally be permitted. Silverstone is cited as a restricted infill village under Policy H5 where, within the village confines, residential development will normally be permitted for the infilling of small gaps in an otherwise built-up frontage, or additionally, for small groups of dwellings. The purpose of Policy H6 is to confine the construction of new houses in the open countryside to those required for the pursuit of agriculture [16].

171. It is acknowledged on behalf of the appellant that the appeal scheme is in conflict with saved local plan Policies H5 and H6⁷⁷. However, the extent to which this conflict is determinative has to be tempered by my conclusion that the relevant housing policies are not up-to-date. The general development policies of the saved local plan are Policies G2 and G3. The former records that new development will be limited in the villages and severely restrained in the open countryside. The latter is generally permissive, subject to satisfying a number of important, but local, criteria [15]. Although the policies refer to development in general, all are relevant to housing proposals in particular. Notwithstanding their generality, they combine to provide wider controls which have a governing effect on where development may or may not take place.
172. My attention was drawn at the inquiry to a 2012 appeal decision in respect of residential development at Wincanton⁷⁸. The decision post-dates the publication of the Framework, and, having found that a 5 year supply of housing land was not available, my colleague concluded (at paragraph 35) that the restraint on development outside settlement boundaries, in so far as it is a restraint on the housing supply, should also be considered to be out-of-date. The parish council argues the consequences which result from an inadequate housing land supply would apply to only a limited number of extant policies [85]. In my view however, the effect of paragraph 49 of the Framework is broader than this. Although there must be a direct effect on relevant housing policies, I agree with my colleague that the effect extends to other general development policies which are relevant to the supply of housing. There would thus be some effect on relevant environmental policies, but a greater impact on the restraints included in local plan Policies G2 and G3.
173. The council has drawn attention to a number of local appeal decisions in which reference is made to both the need for a 5 year supply of housing land, the IRHP, and the acceptability (or otherwise) of sites on the edges of villages. I refer to these cases collectively later in this Report, with a view to identifying the similarities and differences from the current case. My purpose in turning to the IRHP now derives from its objective of seeking to address the under-supply of housing land [75].
174. The policy was devised and adopted largely in response to a successful appeal decision in 2009 for the erection of 23 dwellings at Potterspury⁷⁹. I gather in this case that the Inspector concluded a 5 year supply of housing land was absent,

⁷⁶ Policy H3

⁷⁷ Paragraph 7.24 of Ms Galley's Proof

⁷⁸ Document 32

⁷⁹ Appendix 1 to Mr D'Arcy's Proof

- and that this weighed in favour of the proposed development. Following the decision the council assessed the sustainability credentials of all the 80 villages in its area, and, by the adoption of a scoring mechanism, concluded that 16 were sufficiently sustainable to justify further growth. Three villages were identified as the 'most sustainable', and the remainder were identified as 'reasonably sustainable'. In the former group a 10% enlargement in the numbers of dwellings was considered suitable, whilst the latter group would be confined to 5% growth [21].
175. The policy itself is permissive in relation to sites outside but adjoining the village boundary, but this is subject to other considerations [21]. A number of these are relevant to the current case. The extension to the settlement should be appropriate in terms of the village form and the identification of a sound alternative boundary. The scheme should exhibit best practice in terms of density and design, or be required to support the retention or improvement of local services (especially primary schools and health services). It should also follow meaningful discussions with the parish council concerned at the pre-application stage. Where 15 or more dwellings are proposed up to 40% should be affordable houses where there is an identified local need, but subject to viability testing. Developers will be expected to mitigate environmental or community impacts by means of specified works or contributions, and all schemes would be subject to saved local plan and appropriate national and (at the time) regional policies. I return to these matters later in this Report.
176. Most significant in relation to Silverstone however is the 5% ceiling for the additional numbers of dwellings. This equates to a maximum of 44 dwellings, but a total of 95 dwellings have been permitted under the policy (at Lime Kiln Close and Paddock Close). The council records that, with the 220 dwellings proposed in the appeal scheme, the total for Silverstone would be substantially exceeded [76].
177. However, under paragraph 7.20 of the policy the 5% limit may be exceeded if it would result in environmental improvements or best practice in relation to density and design; if it is required to support the retention or improvement of essential local services; and if meaningful discussions have taken place with the parish council [21].
178. The policy itself therefore includes some flexibility – especially taking account of the design matters to which I refer later in this Report, and the provisions of the Unilateral Undertaking in relation to education and health. In addition, although the appeal scheme is the subject of objection by the parish council, I have no reason to doubt the extent of the appellant's contact with both the parish council and the community generally⁸⁰.
179. I acknowledge the utility of the IRHP in addressing the under-supply in housing land supply in the area [75], but I do not consider it can be regarded as a complete or comprehensive response. As the council itself recognises [20], it remains a temporary measure which does not form part of the development plan, and it was prepared and adopted well before the publication of the Framework. Notwithstanding its adoption and use by the council, I am unable to allocate more than limited weight to its contents.

⁸⁰ See the Statement of Community Involvement (May 2012) in the Appellant's Folder 1.

Location of Silverstone

180. It is on the basis of an inadequate 5 year supply of housing land that I have concluded, as far as the location of the site is concerned, the case falls to be assessed against the principles principally included in the presumption in favour of sustainable development included in paragraph 14 of the Framework.
181. I recognise that in relation to the size of Silverstone, the scheme is large [57, 76, 87, 109]. Many of those who have made written representations in relation to the appeal scheme, including the interested persons reported above, have referred to the distinctive character of Silverstone and its community [109, 116, 124]. The settlement has evidently seen substantial residential development over the past 50 years. The racing circuit, which derives its name from the village, has an almost uniquely specialised function and covers about 2 or 3 times the area of the village [13]. In my view the separation of the village and the circuit is derived in part from the local topography, but the existence of the A43 by-pass is now paramount. It provides an almost direct means of access to the circuit which must serve to preserve a degree of separation, but I anticipate that with the development of other activities for which permission has already been granted, the extent of contact between the village and the circuit must grow.
182. The circuit has been developed to cater for many thousands of visitors, and it is due to become even larger and more diverse. Nevertheless, in comparison with its size and functions it must frequently appear to be under-utilised. In contrast, I saw on my visit that the village has a distinctive character and vitality of its own. The council is fearful that the appeal scheme would have a devastating effect on the character and appearance of the area generally, and I do not dispute that the housing stock of the village would increase by about 25% [63, 91]. It would be a substantial change. The appellant acknowledges that the character of the site would change [38], but also argues that the development would form an integral part of the settlement [39]. I have no reason to doubt the views of those who have expressed opposition to the scheme, but I agree with the appellant that some of this may be derived from unimaginative post-war infilling which pays little regard to the more distinctive, and older, parts of the village [40]. Much of the infill residential development between Towcester Road and the village centre is typical of its period, and although I do not doubt it provides high levels of residential amenity, I regret that the resultant environment is frequently dominated by the needs of the motorcar at the expense of the street scene.
183. In contrast, I believe the appeal site has been carefully and sensitively planned to respond both to the topography of the land and the traditional form of the original village, whilst avoiding an excessive or dominating impact on Towcester Road itself. It is a comparatively large scheme, but I believe it should be considered an appropriate and thoughtful addition to the settlement which would compromise neither its character nor its vitality.
184. Although I do not disagree with the description of Silverstone as a village, it is now quite a large village in Northamptonshire terms⁸¹, and, for better or worse, it has a direct relationship with the international circuit on the opposite side of the

⁸¹ The IRHP records a population of 2190 in 2008 – exceeded only by Middleton Cerney (3850), Deanshanger (3756), Bugbrooke (2924) and Roade (2294).

by-pass. It is on the basis of this relationship that the appellant argues the scheme would facilitate the co-ordination of housing and employment opportunities, and hence secure mutually compatible sustainable development in conformity with the presumption included in paragraph 14 of the Framework [44, 51].

185. Paragraph 34 of the Framework records that decisions should ensure developments that generate significant movement are located where the need to travel would be minimised, and where the use of sustainable transport modes could be maximised. It is a central component of the appellant's case that the appeal scheme would complement the permitted enlargement of the circuit at a sustainable location [43, 44]. The outline planning permission at the circuit [28] comprises an extensive range of uses [13]. In its comprehensive report to committee on the application the council recognises the development of the circuit would provide the primary source of jobs in its area for the following 25 years⁸².

186. The racing track itself would be largely unaffected by the proposed development. Most of the new development would be sited on currently undeveloped land to the west and north-west of the circuit⁸³. The area to be developed would therefore extend up to the south-eastern edge of the A43 by-pass. I note the scheme is so substantial the proposal warrants a specific policy in the emerging joint core strategy (Policy E5) in which the site is described as a knowledge-based cluster at an iconic destination⁸⁴. The appellant records the estimated gross number of jobs generated by the project would be 8,400; with a net figure of 4,400⁸⁵.

187. The council argues that the new jobs at the circuit will be needed to meet the demand for the major housing schemes in Towcester and Brackley. In any event, either the jobs at the UTC (the first phase of the circuit development) will have been filled before the houses at the appeal site become available, or, the site would have been completed well before most of the other jobs would be advertised. The two schemes would be uncoordinated [60]. The parish council supports the council's view [106]. Many of those who have made written representations and the interested persons who gave evidence at the inquiry go a stage further [110, 116, 124]. They fear that if the appeal is successful and the scheme is implemented, an unintended consequence could be that noise objections from future residents could constitute a threat to the circuit and its further growth.

188. It is evident from the projected numbers of jobs involved at the circuit that the appeal scheme could not provide anything more than a limited proportion of the accommodation required. In this regard however I do not see the scheme as being incompatible with the plans for Towcester and Brackley. Nor do I consider the difference in the time-scales of the two projects to be such as to weigh against the appeal proposal. The two sites are indisputably close to each other – raising the prospect of access by foot or bicycle [43, 44]. This would be a benefit

⁸² See paragraph 11.2 in the Appellant's Document BL2

⁸³ See Masterplan attached to Document 22

⁸⁴ Document 19, paragraph 8.20-29

⁸⁵ The net calculation takes account of deadweight, displacement, leakage, and the multiplier value of the jobs. See Footnote 4 in Ms Galley's Proof.

in comparison with the existing and proposed housing schemes at Towcester and Brackley. As far as the delivery of the schemes is concerned, I do not dispute the attraction the circuit may hold for the range of uses now permitted, but the uses and the site are very specialised, and I anticipate the completion of the project may indeed take many years. In contrast, the delivery of the appeal scheme could be a comparatively rapid process. Ideally, the two schemes would be delivered simultaneously, but I believe this would require a degree of planning intervention which it would be impossible to deliver. The benefit of the appeal scheme in relation to the circuit project is that it would at least increase the numbers of dwellings in close proximity to the circuit, some of which would be likely to be available as the components of the circuit projects are delivered.

189. I have considered the possibility raised by third parties that the appeal scheme could have an unintended adverse effect on the utility of the circuit through objections to noise generating activities [107, 110, 117, 124]. I have taken account in particular of the representation made on behalf of Silverstone Holdings Ltd and the British Racing Drivers Club⁸⁶. This refers to the Acoustics Report submitted at the application stage, which, it is considered, does not sufficiently address the particular characteristics of the noise generated by the use of the circuit.
190. The assessment and report was conducted by acoustic consultants on behalf of the appellant. I heard on my site visit that the appeal site is subject to traffic noise from the A43, but although the consultants acknowledge that noise from events at the circuit is audible, they consider it does not make a significant contribution to the overall measured noise level. The report notes that the distinctive nature of motor sport noise may be distinguishable from the dominant traffic noise, but in any event, the noise of the circuit is long established and forms part of the existing character of the local area. A condition has been drafted to secure appropriate levels of noise protection at the proposed dwellings and it is considered this would be sufficient to ensure compliance with the noise constraint included in paragraphs 109 and 123 of the Framework. The evidence indicates that the measures proposed provide a reasonable basis to conclude that the noise experienced at the new dwellings would not constitute a threat to the circuit.
191. I conclude in relation to this main consideration that the scheme complies with the sustainability criteria included in the Framework. Nor do I consider it would compromise the distinctive character or vitality of the settlement. In comparison with the size and extent of housing development permitted in Towcester and Brackley, the scheme is comparatively modest, and I therefore see no insuperable incompatibility with the general thrust of Policy S1 of the emerging core strategy. I recognise there is conflict with the general strategy of the local plan (as expressed in Policies G2 and G3 (C)), but the weight which these can carry is lessened by the inadequacy in the 5 year supply of housing land. Paragraph 7 of the Framework refers to the 3 dimensions of sustainable development: economic, social and environmental. The proximity of Silverstone to the circuit ensures the proposed development would contribute to the first two roles. In addition, while the village enjoys a high level of accessibility, it also includes a range of services. It is far from being merely a dormitory settlement.

⁸⁶ See Document 2

I therefore further conclude that Silverstone is a suitable and appropriate location for residential development on the scale proposed. I consider the environmental role of sustainable development under the following heading.

The local impact of the scheme

192. Both the appeal site and Silverstone as a whole fall within the Whittlewood Forest and Hazelborough Forest Special Landscape Area. This is one of 6 special landscape areas defined in the local plan⁸⁷. The area extends from Pottesbury in the east, through Whittlebury and Silverstone, to Syresham in the west. I saw on my visit that it does indeed include a number of woodlands, although most of the defined area appears to be open, agricultural land. To the south-east of the A43 by-pass the area of the racing circuit is excluded, but the land between the circuit and the A43 is included⁸⁸.
193. The purpose of local plan Policy EV7 is to conserve and enhance the quality of the landscape in the designated area. Paragraph 4.22 of the reasoned justification to the policy refers to a number of forms of development which are considered to be generally inappropriate – garden centres, tourist caravan and camping sites, intensive food production units, and sand and gravel extraction. Caution is urged in relation to possible golf course development.
194. The appellant has drawn my attention to the opposition included in national planning policy since 1997 to local landscape protection designations, and paragraph 113 of the Framework indicates that assessments of the effect of development proposals on landscape areas should be derived from criteria-based policies [40]. Notwithstanding the appellant's contention, both the council and the parish council place significant weight on the policy [61, 62, 92]. It forms part of the development plan, and it therefore carries statutory weight, and it also complies with the thrust of paragraph 113 of the Framework [63]. It has also been supported on a number of occasions at appeal [62, 92].
195. As I have indicated above, the defined area is quite extensive, and, with the exception of its northern extremity, it includes the built-up area of Silverstone itself. In circumstances presumably where development is considered acceptable, the second sentence of the policy requires that special attention is paid to the design, materials and siting of buildings and the use of land. The policy does not therefore constitute an embargo on development, and I note in particular that it did not frustrate the enlargement of the circuit on the opposite side of the by-pass.
196. The parish council has drawn attention to the comparability of the landscape within the appeal site with that on the other side of the A43 [100]. It notes that common features exist which warrant them being joined together. However, I do not agree with this assessment. The new road is a major feature of the local landscape. Where it is in a cutting, it is wider than might have been expected; and where it is on an embankment, it is higher than expected. As it passes the site the road is in both forms of construction. As a high speed dual carriageway it is a substantial engineering and landscape operation, the existence of which is emphasised by the considerable weight of traffic. It is a dominant component of

⁸⁷ See Document 14

⁸⁸ See Insets 82 and 83 to Document 14

the landscape, and I agree with the appellant that one of its effects is to render the appeal site a component part of the village, rather than a natural part of the surrounding landscape [36].

197. There can be no doubt the proposed development on the appeal site would have a significant impact on the character and appearance of the land itself. As far as the whole designated area is concerned however, I believe the impact of the scheme would be insignificant. The submitted masterplan indicates a detailed attention to the siting of buildings and a use of land which pays close attention to the local topography, and I have no reason to suppose furthermore that the same attention would not extend to the design of the buildings and the use of materials. There is no reason to suppose that buildings *per se* must be detrimental to the character and appearance of land. I conclude the scheme would not necessarily have a *detrimental* impact on the character and appearance of the land. I note it is intended the policy should continue after the joint core strategy is adopted⁸⁹, but I consider any detriment to the special landscape character of the area would, at worst, be limited, and considerably less than that inflicted by the A43. I conclude there would be little significant conflict with local plan Policy EV7.
198. The purpose of local plan Policy EV8 is to avoid the coalescence of the village and the circuit. The importance of preserving the gap is to protect both the identity of Silverstone and the open setting to the south of the village. The appellant acknowledges that the scheme conflicts with local plan Policy EV8 and the more general Policy EV2⁹⁰. The latter policy comprises an all-purpose restraint, on environmental grounds, against development in the open countryside. Together with paragraph (c) of local plan Policy G3, they reinforce the particular protection provided on the south-east side of Silverstone by Policy EV8 [15, 17].
199. The appellant's landscape witness considers the appeal site does not form part of the open countryside – it is enclosed to the west by Towcester Road and the built-up area of the village, and (more impenetrably) to the east by the A43⁹¹. Although I understand the point which is being made by the appellant, I recognise that, in planning terms, the 'open countryside' signifies undeveloped land outside the built-up area of settlements and their boundaries. However, I also consider the efficacy of local plan Policies G3 and EV2 (which are very general in the geographical extent of their applicability) to be diminished by paragraph 49 of the Framework.
200. I agree with both the council and the parish council that the preservation of a gap between the village and the circuit is desirable. I note however that part of the gap would be lost to the proposed new slip roads and access to the circuit off the north-bound carriageway of the A43⁹². Of greater significance in my view is the extent to which the built-up area of the village already extends to the east side of Towcester Road. Apart from the frontage development along the south-east side of Brackley Road, more substantial residential development was sited to the east of Towcester Road with the construction of Kingsley Road at the

⁸⁹ See Document 18 (Inset 82)

⁹⁰ Paragraph 7.24 of Ms Galley's Proof

⁹¹ Paragraph 2.16.6 of Mr Rummey's Proof

⁹² See Masterplan attached to Document 22

northern end of the village [8]. More recently, the undeveloped land between Kingsley Road and the northern extension of the village has been infilled (under the provisions of the IRHP) by the development of more housing in Lime Kiln Close and Paddock Close [9]. There is thus already a substantial area of housing development between Towcester Road and the A43, whilst retaining an area of open landscape between Kingsley Road and the by-pass.

201. I agree with the appellant that one of the benefits of the appeal scheme would be that it would continue, on the south side of Whittlebury Road, the built form of the settlement established by Lime Kiln Close and Kingsley Road on the north side of Whittlebury Road [39]. There are open fields between these residential developments and the A43. While much of the equivalent landscaped area in the appeal scheme would not be in the form of open fields, I believe nevertheless that the illustrative masterplan indicates a close attention to the detail necessary to render the site an attractive and environmentally successful residential area. Although no doubt the change would appear substantial in the first instance, I am confident that the visual impact of the development would be ameliorated both by the frontage hedgerow trees along Towcester Road, by additional trees within the site, and by avoiding excessive concentrations of new building along the frontage.
202. Paragraph 56 of the Framework records that the Government attaches great weight to the design of the built environment. It is a key aspect of sustainable development which is indivisible from good planning. In this case I believe careful attention has been paid to securing a high quality design solution for the site. Although the council refers to the proposed earth works as artificial [61], and the parish council considers the scheme to be insensitive to the landscape [99], I do not agree.
203. There are two locations where it is intended significant alterations to the existing landforms would be made⁹³. The first would take the form of an earth bund extending from the southern boundary of the site towards the existing Catch Yard farm building in the centre of the land. The southern and northern parts of the bund would be up to about 4m in height above existing ground level, with woodland tree planting on the side facing the A43. The second area identified would take the form of terraces on the south-west facing slope overlooking the stream. At the foot of the slope the existing stream bed would be deepened to create a small water feature.
204. One of the principal purposes of the earth works would be to enhance the separation of the areas proposed for residential development from the appearance and noise of traffic on the A43. I saw on my visit that, from the south-western part of the site the works would hide the road from ground level, and trees would have a similar effect from the upper levels of houses. Although the distance to the road is rather greater, the proposed terracing to the north-east side of the stream would have a similar beneficial effect in relation to the proposed houses to the north of Catch Yard farmhouse. The higher ground in the eastern extremity of the site would be an area of significant new woodland planting.

⁹³ The proposed bunds are best illustrated at Figures 61 and 62 of the Design and Access Statement.

205. It would be impossible to totally disguise the presence of the A43, but I believe the submitted illustrative masterplan demonstrates a close attention to the opportunities and constraints of the appeal site. The proposal as a whole would conflict with the letter of local plan Policy EV8, but I do not consider it would undermine its purpose. On the contrary, the landscape works would ensure that the separation between the built-up area of the village and the enlarged circuit would have been strengthened.
206. I consider the high quality of the landscape design work is also evident in the layout planning of the remainder of the site⁹⁴. While the layout of the site remains a reserved matter, the illustrative masterplan indicates an intention to create a network of shared surfaces and footpaths. These would link a fairly complex and informally planned series of short terraces and other forms of linked dwellings. With appropriate and close attention to the other outstanding matters, the resultant residential environment would form an attractive and beneficial addition to the village. I do not believe the scheme would result in the sprawling housing estate feared by third parties [115, 124]. On the contrary, the scheme demonstrates the attention to best practice in design sought by the IRHP, as well as effectively establishing a new and sound alternative boundary. Indeed, I consider a significant attraction of the scheme to be the manner in which it would both take advantage of and utilise the topography of the site and Towcester Road. The illustrative masterplan indicates how the layout could both express the slopes leading down to the stream, and reclaim Towcester Road for the village. The scheme would effectively change the character of the road so that it ceased to have the appearance of an over-engineered and redundant by-pass, and became instead, an integral part of the settlement.
207. As part of the scheme, the existing listed farmhouse would be renovated and brought back into use as a dwelling. The council has drawn attention to the importance of the open countryside setting to the significance of the asset, and to the contribution which this makes to the character of the area [65]. I do not disagree with this assessment, but, although some of the isolation of the building in its agricultural setting would be lost, I consider this would constitute less than substantial harm. I consider this would be substantially outweighed by the benefit of securing the repair and renovation of the building.
208. The parish council has also referred to the effect of the scheme on the setting of the village [106]. I saw on my visits however that the visibility of the site is fairly limited⁹⁵. Parts of the land can be glimpsed from Towcester Road, but much is hidden by roadside vegetation and field boundaries. It is also possible to see parts of the land from Whittlebury Road to the north, Winterhills Road to the south, and from the footpath on the opposite side of the A43. The best external vantage point is probably from the Winterhills Road bridge over the A43, but even from here the visibility of the site is fragmented by trees and hedges. The vast majority of those who see the land and the village must be passengers in vehicles on the north-bound carriageway of the A43. The farmhouse is visible from here but the experience is fairly fleeting, and I do not believe the loss of its setting would result in significant harm.

⁹⁴ More detailed plans are included at pages 57-64 of the Design and Access Statement.

⁹⁵ Figure 30 in Mr Rummey's Proof shows the zone of visual influence of the site.

209. I have concluded the scheme would conflict with the letter of saved local plan Policies EV8 and EV2. However, I do not consider the development would constitute inappropriate growth which would degrade the quality of the village. The weight I attach to the conflict with Policy EV2 is reduced because of the conclusion I have reached in relation to the first main consideration. Furthermore, the extent of the conflict with Policy EV8 is limited in recognition of the confinement of building operations to the western side of the site and the landscaping proposed for the eastern side. I consider the scheme would comply with paragraphs A, B, D, F, G, I, L and M of local plan Policy G3. The scheme also complies with local plan Policy EV29. I conclude the land is suitable and appropriate for the development proposed. For the reasons recorded above, there would be little significant conflict with local plan Policy EV7.

Education contribution

210. I turn now to the last of the 4 main considerations – the education contribution of the Unilateral Undertaking. There is no dispute between the parties that the existing infants and junior schools are at, or close to capacity, and that their extension is not feasible. Similarly, there is agreement that, when completed, the proposed development would yield approximately 80 children [53, 78, 102]. The agreement was confirmed at the inquiry on behalf of the local education authority [120].

211. The dispute between the principal parties essentially turns on the quantity of the contribution and its timing in relation to the development of the site. The education contribution comprises a primary contribution and a secondary and sixth form contribution. The amounts are calculated according to a scale which is derived from the number of bedrooms in each house, and based on the indicative housing mix of: 25 x 2 beds; 79 x 3 beds; 70 x 4 beds; and, 16 x 5 beds.

212. The evidence submitted on behalf of the county council indicates that the liaison between it and the appellant has taken the form of a negotiated dialogue, in which the point has been reached whereby the education contribution would be used to partially finance the construction of a new primary school for Silverstone [120, 122]. The Unilateral Undertaking is a legally binding and enforceable document, but I acknowledge and recognise that it is part of a process rather than a complete solution. There are uncertainties on both sides of the obligation. The housing mix on the site for example is currently indicative. However, the application is made in outline form and I would not expect an irrevocable decision to be made about the mix by the prospective developer, and approved by the council, until later in the process. Similarly, although the county council regards the contribution as a key component in the funding of a new school [121], it is recognised that the remainder would have to be funded from other sources [122]. Nevertheless, on the basis of the current mix the contribution would amount to some £1.8m – equivalent to approximately a third of the total cost.

213. In accordance with paragraph 4 of the schedule to the obligation, the contribution would be made in stages on the occupation of the 75th, the 150th, and the 200th dwelling. In view of other uncertainties in financing and managing a housing project, I do not regard this arrangement as unreasonable. There is a 5 year limit on the contribution, but this is a normal provision of such an offer. I understand two potential sites have been identified and both are in the county council's ownership [120]. Although this would of course be a matter for the

authorities concerned, on the basis of evidence submitted by the council, I anticipate no insuperable planning difficulties on the land identified⁹⁶.

214. I do not disagree with either the council [78], or the parish council [103], or the third parties [111, 124], that a larger or earlier contribution would have been preferable, but the contribution would still be sizeable. I also recognise that the co-ordination of the new school with the construction of the new houses may not be entirely successful. However, the obligation is regarded by the county council as acceptable, and I have no reason to suppose it (the county council) would not in due course make a significant contribution towards the costs of providing a new school.
215. I have considered this part of the obligation against the tests included in Regulation 122 of The Community Infrastructure Levy Regulations 2010, as reproduced in paragraph 204 of the Framework. Where planning permission for development is being granted, an obligation may only constitute a reason for granting permission if it is: necessary to make the development acceptable in planning terms; directly related to the development; and, fairly and reasonably related in scale and kind to the development.
216. Without the contribution there would have been a significant mismatch between the size of the village and the capacity of its primary education provision. I consider the refusal of planning permission would have been justified on these grounds. The contribution is directly related to the development on the grounds that the scheme would, in part, be occupied by children for whom the preferable site of their primary education would be Silverstone. Finally, and for the reasons I have given above, I consider the scale of the contribution fairly and reasonably relates to the proposed development. It is substantial, but not excessive.
217. I conclude the education contribution of the Unilateral Undertaking appropriately mitigates the impact of the scheme and that it complies with the tests included in the Regulations and the Framework.

Other appeal decisions

218. My attention was drawn at the inquiry to a number of other appeal decisions said to be relevant to this case, and I have referred to some of these in the preceding paragraphs of this Report. I have paid particular attention to those cited by the council and the parish council. Although each site is of course different, there are a number of circumstances where comparable issues have been raised.
219. At Paulerspury an appeal for the erection of 14 dwellings was dismissed in July 2011⁹⁷. The Inspector was satisfied that a 5 year supply of housing land was available, but concluded in any event that the proposal would constitute an intrusive incursion into the rural area beyond the settlement boundary. In the current case the appeal site also lies beyond the settlement boundary, but I have concluded a 5 year supply of housing land has not been demonstrated, and, because of the particular characteristics of the land, the development would not

⁹⁶ The two sites are shown at LPA9 in the Appendices to Mr Connell's Proof.

⁹⁷ Appendix 11 to Mr D'Arcy's Proof

constitute such an unacceptable incursion. The two cases are not therefore directly comparable.

220. At Old Stratford an appeal for the erection of 15 dwellings was dismissed in January 2012⁹⁸. In this case the Inspector also concluded that a 5 year supply of housing land existed. He also held that the scheme would unacceptably harm the character and appearance of the countryside surrounding the village. It is therefore readily distinguishable from the current case.
221. At Bugbrooke⁹⁹ an appeal for the erection of some 68 dwellings was successful in March 2012. In this case the Inspector concluded that a 5 year supply of housing land was absent, and he therefore applied the IRHP. Notwithstanding the location of the site in the open countryside immediately outside the boundary of the settlement, he concluded the scheme would conform to the site identification criteria included in the IRHP. The Inspector may have put greater weight on the IRHP than the evidence put to the current case suggests is appropriate, but it also indicates circumstances where a site outside a settlement boundary may be deemed to be acceptable.
222. Another appeal at Bugbrooke¹⁰⁰ for the erection of 70 houses was dismissed in February 2012. In this case the 5 year supply of housing land was also found to be absent, but although the IRHP was also afforded significant weight, the case was nevertheless dismissed for site specific reasons concerned with its character and appearance in relation to the settlement. I consider this case is also therefore readily distinguishable from the current appeal.
223. An appeal was dismissed in November 2012 for the erection of 54 dwellings at Middleton Cheney¹⁰¹. The Inspector in this case expressed misgivings in relation to the council's departure from the (then) RSS and the requirement for a 5 year supply of housing land. Although she too took account of the IRHP, she concluded nevertheless that the development of the appeal site would appear to be a very substantial incursion into open countryside which would be harmful to the character and appearance of the village and its rural setting. Again, I consider this conclusion renders the circumstances significantly different to those which apply in the current case.
224. A third appeal at Bugbrooke¹⁰² for the erection of 17 dwellings was dismissed in August 2012. Again, the Inspector in this case found that a 5 year supply of housing land was absent. The site appears to be comparable to the current case in the sense that it lies in the open countryside but adjacent to the settlement boundary. On the basis of my colleague's conclusion it appears the appeal would have been successful but for the failure of the appellant to submit an appropriate obligation under section 106 of the above Act.
225. An appeal was dismissed in September 2010 for the erection of 12 dwellings at Blakesley¹⁰³. The Inspector in this case concluded that a 5 year supply of

⁹⁸ Appendix 11a to Mr D'Arcy's Proof

⁹⁹ Appendix 11b to Mr D'Arcy's Proof

¹⁰⁰ Appendix 11c to Mr D'Arcy's Proof

¹⁰¹ Appendix 11d to Mr D'Arcy's Proof and Appendix 3 to Mr Ozier's Proof

¹⁰² Appendix 11e to Mr D'Arcy's Proof

¹⁰³ Appendix 11f to Mr D'Arcy's Proof

housing land did not exist at the time, but he also considered the village was in an insufficiently sustainable location and too small to justify allowing the appeal. I believe the circumstances are significantly different from the current case.

226. An appeal was dismissed in February 2011 for the erection of up to 31 dwellings at Old Stratford¹⁰⁴. The parties agreed in that case that a 5 year supply of housing land did not exist. The utility of the IRHP was recognised as a short-term policy instrument, but in any event, the Inspector concluded the scheme would harm the rural character and appearance of the area. Again, I therefore consider the circumstances in the two cases are distinguishable.

227. An appeal was dismissed in October 2010 for the erection of approximately 9 dwellings at Greens Norton¹⁰⁵. The Inspector concluded in this case that a 5 year supply of housing land did not exist and he allocated material weight to the IRHP. However, he also concluded that although the appeal site lay close to the village, it formed part of the surrounding countryside rather than part of the built-up area. I consider the opposite applies in the current case, and in this respect the two cases are not incompatible.

Overall conclusion

228. Most of the appeal cases cited above pre-dated the publication of the Framework, which, amongst other matters, seeks to significantly boost the supply of houses. All the sites fall within the council's area and they do, for the most part, indicate a pattern of inadequate housing land supply. This has to be considered incompatible with this important part of the Framework. I recognise that the council had sought to address the under-supply of housing land by the publication and use of the IRHP in July 2009, but it does not form part of the development plan. Notwithstanding the observations of some of my colleagues concerning its utility, I consider the weight which it can carry is limited.

229. Similarly, and for the reasons I have given, the policies of the local plan which guide housing development are not up-to-date. The presumption in paragraph 14 of the Framework is therefore a central consideration. In addition, I consider the circumstances of both Silverstone and the appeal site to be exceptional.

230. The presence of the circuit is perhaps the village's most distinctive characteristic, and I expect this will have contributed in no small measure to the growth of the settlement over the past 50 years. Its position on the A43 is another distinctive characteristic; necessitating the construction of two by-passes in the same period. It was the construction of the second by-pass which in my judgement effectively isolated a small area of countryside between the road to the east and the built-up area of the village to the west. Far from its development for residential use being harmful to the character and appearance of the village, I believe a scheme of the sensitivity proposed would – provided this is carried forward at the detailed stage – enhance the settlement. Not only would it boost the supply of houses in the village and in the area, but it would also secure a more effective barrier between the settlement and the A43. It would provide at least a degree of interdependence between the growth of the circuit and the growth of the village, whilst, under the terms of the obligation,

¹⁰⁴ Appendix 11g to Mr D'Arcy's Proof

¹⁰⁵ Appendix 11I to Mr D'Arcy's Proof

providing a range of necessary benefits, of which the education contribution would be the most substantial.

231. The Statement of Common Ground records the relevant development plan policies on which the principal parties have based their cases. They are effectively in agreement that the scheme would, to a greater or lesser extent, conflict with saved local plan Policies G2, H5, H6, EV2 and EV8. I have concluded there would be little significant conflict with local plan Policies G3 and EV7, and the scheme complies with the purposes of local plan Policies EV29 and IMP1. The obligation includes provisions for the supply of affordable housing and local plan Policy H8 (the affordable housing exception policy) does not apply. Finally, I consider that taking account of the extent to which the scheme conflicts with development plan policies; these would be significantly and demonstrably outweighed by the benefits.

232. I have taken account of the implementation provisions of the Framework included in paragraphs 214 and 215. The only post 2004 development plan policies which were relevant to this case were those included in the RSS, but this has now been revoked. I have identified conflict with some local plan policies and these still form part of the development plan and thus a starting point against which to consider the appeal scheme, but the significance of this conflict is diminished by the contents of paragraphs 215 and 49 of the Framework. Furthermore, paragraph 14 of the Framework records the presumption in favour of sustainable development. In association with the requirement to boost the supply of housing and the status afforded good design, I believe, on balance, that there is no unacceptable conflict with the contents of paragraphs 17, 109, 113 or 126 of the Framework cited by the council.

Recommendation

233. I recommend that the appeal should succeed and that outline planning permission should be granted subject to the conditions included in the schedule at the end of this Report.

Andrew Pykett

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ms Caroline Bolton	of Counsel, instructed by Mr Kevin Lane, Head of Legal and Governance Services, South Northamptonshire Council
She called:	
Mr Andrew D'Arcy BA(Hons) MRTPI	Lead Officer: Planning Policy
Mr Stephen Connell BA(Hons) DipTP MRTPI	Director, GC Planning Partnerships Ltd
Mr Robert Fallon MRTPI	Development Services Manager
Ms Chetna Nathasingh	Legal Services Manager
Ms Jacqueline Brooks	Team Leader Strategic Housing

FOR THE APPELLANT:

Mr Richard Kimblin	of Counsel, instructed by Mr Jonathan Dawes of Barwood Land and Estates
He called:	
Mr Robert Rummey BA(Hons) RIBA DipLA CMLI FRSA	Principal and Managing Director, Rummey Design and Rummey Environmental Ltd
Ms Nora Galley BA, MA, MPhil, MRTPI, FRSA	Partner, Peter Brett Associates LLP

FOR THE SILVERSTONE PARISH COUNCIL:

Ms Thea Osmond-Smith	of Counsel, instructed by Brian Barber Associates
She called:	
Mr Nigel Ozier BA(Hons) MRTPI	Managing Director, Brian Barber Associates

INTERESTED PERSONS:

Cllr Dermot Bambridge	Member of South Northamptonshire Council and local resident
Mrs Kay Ringwood and Mr Ben Hunter	for Northamptonshire County Council as Local Education Authority
Mr Kevin Broadhurst	Local resident
Mr Philip Goodall	Local resident
Mr Michael Poulton	Local resident

DOCUMENTS

- 1 Council's Notice of Inquiry and circulation list
- 2 Letters and emails of representation
- 3 Statement of Common Ground

Proofs of Evidence and Appendices

For the Council

- 4 Mr D'Arcy's Proof and Summary, and Appendices
- 5 Mr Connell's Proof and Summary, and Appendices

For the Appellant

- 6 Mr Rummey's Proof and Summary
- 7 Ms Galley's Proof and Summary, and Appendices

For Silverstone Parish Council

- 8 Mr Ozier's Proof and Appendices

Documents submitted by the Council during the Inquiry

- 9 *South Northamptonshire Local Plan, Saved Policies, September 28, 2007*
- 10 Email trail concerning Radstone Fields, Brackley. Section 106 Obligation
- 11 Letter of objection and plans dated 4 February 2013
- 12 Bundle of objection emails and letters
- 13 Bundle of objection emails and letters
- 14 Local Plan Proposals Map, with Insets 82 (Silverstone) and 83 (Silverstone Circuit)
- 15 Email dated 10 January 2013, with draft conditions
- 16 *West Northamptonshire Joint Core Strategy*
- 17 Notice of Listing dated 22 June 1987
- 18 Local Plan Saved policies, Overall Map and Legend, with Map 3 and Insets SNC 82 (Silverstone) and SNC 83 (Silverstone Circuit).
- 19 *West Northamptonshire Joint Core Strategy – Possible Changes*
- 20 Planning and Compulsory Purchase Act 2004 – extract Section 13 - 27
- 21 Secretary of State's saving letter dated 21 September 2007
- 22 Outline planning permission dated 22 August 2012 with Masterplan, Development at Silverstone Circuit
- 23 Planning permission dated 5 December 2012 and location plan, University Technical College at Silverstone Circuit
- 24 Closing submissions for the local planning authority

Documents submitted by the Appellant during the Inquiry

- 25 Opening Statement
- 26 PPG7: Countryside - extract
- 27 Email and attachments dated 10 January 2013, concerning draft conditions with appeal decision and Inspector's Report dated 28 July 2011.
- 28 Draft Unilateral Undertaking (Superseded)
- 29 *East Midlands Regional Plan*, March 2009
- 30 Summary of Planning Obligations
- 31 The Development Control Toolkit (3 Dragons model)
- 32 Appeal Decision dated 29 August 2012
- 33 Appeal Decision dated 9 October 2012
- 34 Draft Unilateral Undertaking (Superseded)
- 35 Summary of amendments to Unilateral Undertaking
- 36 Draft Unilateral Undertaking (Superseded)
- 37 Draft conditions
- 38 Review of Demographic and Housing Projections for West Northamptonshire, dated 12 November 2010 by DTZ
- 39 Unilateral Undertaking, dated 12 February 2013
- 40 Illustrative Masterplan, Drawing No: SK014 Rev A, with recreation space indicated as recorded in the definitions and interpretation section of Document 39.
- 41 Closing Statement (annotated by the appellant's advocate)
- 42 Costs Application

Documents submitted by the Parish Council during the Inquiry

- 43 Opening Statement
- 44 Illustrative Masterplan, Drawing No: SK014 (A4)
- 45 Illustrative Masterplan, Drawing No: SK014 (A3)
- 46 Closing Statement

Documents submitted by Interested Persons during the Inquiry

- 47 Submission to Catch Yard Public Inquiry by Dermot Bambridge
- 48 Statement from Northamptonshire County Council: Education implications of proposed Catch Yard farm development
- 49 Presentation to Catchyard Farm Inquiry by Kevin Broadhurst
- 50 What is important in the future? By Philip Goodall

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the approved plans – Drawing Nos: SK019 Rev A (Application Site Boundary; SK014 Rev A (Illustrative Masterplan); and SK018 Rev A (Illustrative Movement and Access Plan).
- 5) The development hereby permitted authorises the erection of no more than 220 dwellings.
- 6) No building works which comprise the erection of a building required to be served by water services shall be undertaken in connection with any phase of the development hereby permitted until full details of a scheme, including phasing, for the provision of mains foul sewage infrastructure on and off the site has been submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the works have been carried out in accordance with the approved scheme.
- 7) No development shall take place until details of the implementation, maintenance and management of the flood risk alleviation and sustainable drainage scheme as detailed in the Flood Risk Assessment (dated May 2012) have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These details shall include: (i) a timetable for implementation, and (ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.
- 8) No development shall commence until a detailed surface water drainage scheme for the site in accordance with the Flood Risk Assessment (dated May 2012), including a timetable for the implementation of the works, has been submitted to and approved in writing by the local planning authority. The detailed scheme shall be implemented in accordance with the approved details.
- 9) Other than in the recreation space as defined in the associated obligation dated 12 February 2013, all planting shall be maintained for a period of 5 years from the agreed date of completion of the scheme and any trees and plants which die, are removed or become seriously damaged shall be replaced in the next planting season with others of similar size and the same species.

- 10) Prior to the commencement of any development, full details of the proposed access junctions from the site onto the Towcester Road carriageway shall be agreed, including full engineering, drainage and constructional details. The accesses shall be constructed in accordance with the approved details.
- 11) Details of the two new or improved bus stops to serve the development hereby permitted shall be submitted to and approved in writing by the local planning authority prior to first occupation. The details shall include a timetable and the works shall be implemented accordingly.
- 12) Notwithstanding the submitted details and prior to the first occupation of the development hereby permitted, details of the proposed traffic calming measures to Towcester Road in the vicinity of the site shall be submitted to and agreed in writing by the local planning authority. The details shall include a timetable and the works shall be implemented accordingly.
- 13) Details of the access roads, footways, cycle ways and connections within the site to the existing highway, footpath and cycle network shall be submitted to and agreed in writing by the local planning authority prior to the first occupation. The details shall include a timetable and shall be implemented accordingly.
- 14) Prior to the first occupation of the development hereby permitted, a detailed Travel Plan shall be submitted to and approved in writing by the local planning authority. The submitted Travel Plan shall accord with the Framework Travel Plan and the development shall be implemented accordingly.
- 15) No development shall take place until a Construction Environmental Method Statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide for:
 - (i) the parking of vehicles of site operatives and visitors;
 - (ii) the loading and unloading of plant and machinery;
 - (iii) the storage of plant and materials used in the development;
 - (iv) details of soil stock piling and materials crushing and sorting;
 - (v) wheel washing facilities;
 - (vi) measures to control the emission of dust and dirt;
 - (vii) a scheme for recycling/disposing of waste;
 - (viii) working hours;
 - (ix) noise and vibration control measures in accordance with the submitted Noise Assessment.
- 16) No development shall commence until a detailed scheme for protecting the residential plots on the proposed development from traffic noise from the A43 has been submitted to and approved in writing by the local planning authority. The scheme shall ensure maximum internal levels of 30 dB $L_{Aeq(8hour)}$ and 45 dB L_{AmaxF} in all sleeping areas between 23:00 hours and 07:00 hours with windows shut and other means of ventilation provided. An internal maximum level of 40 dB $L_{Aeq(1 hour)}$ shall be achieved in all

habitable rooms of the buildings and an external maximum level of 55 dB $L_{Aeq(16 \text{ hours})}$ shall be achieved in garden areas and balconies. Any works which form part of the scheme shall be completed in accordance with the approved details before any of the permitted dwellings to which the scheme relates are occupied.

- 17) No development shall take place until a comprehensive contaminated land site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before the development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site and prevent any pollution of controlled waters so as to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If during the course of development any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall include the approved additional measures. On completion of remediation, two copies of a closure report shall be submitted to the local planning authority. The report shall provide verification that the required works regarding contamination have been carried out in accordance with the approved report. Post-remediation sampling and monitoring shall be included in the closure report.
- 18) No development shall take place until there has been secured the implementation of a programme of archaeological work and publication in accordance with a written scheme of investigation including a timetable which has been submitted to and approved in writing by the local planning authority.
- 19) Before the commencement of development, details of the finished floor levels of the buildings shall, concurrently with the reserved matters application(s), be submitted to and approved in writing by the local planning authority. The details shall also include finished site levels for all hard surfaced and landscaped areas in relation to existing ground levels. The development shall thereafter be implemented in accordance with the approved details.
- 20) Before the commencement of development, an Arboricultural Method Statement including a plan of all existing trees and hedgerows on the site shall be submitted to and approved in writing by the local planning authority. The statement shall include details of all the trees and hedgerows to be removed and those to be retained, and the method of protection for the latter during the course of the development. The statement shall be prepared having regard to the approved Arboricultural Impact Assessment. Tree and hedgerow retention and protection shall be implemented in accordance with the approved statement.
- 21) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority; which may be given for those parts of the site where it

- has been demonstrated there would be no resultant unacceptable risk to groundwater. The development shall be implemented in accordance with the consented details.
- 22) Before the first occupation of the development, details of fire hydrants shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the submitted details.
 - 23) The proposed development shall follow a Design Code which follows the design objectives set out in the illustrative masterplan (Drawing No: SK014 Rev A). The Design Code shall be submitted to and approved in writing by the local planning authority before the approval of any reserved matters application(s). The Design Code shall set out the design principles and objectives of the development, and the reserved matters application(s) shall be in accordance with the approved Design Code.
 - 24) Before the approval of any reserved matters application(s), a Landscape Strategy Plan for the site shall be submitted to and agreed in writing by the local planning authority. The Plan shall include the positions of all areas of open space (including allotments, community orchards, children's play space, recreation space, pocket parks, water features, and earth movements (bundings)) within the site together with details of the existing and proposed contours of the land, hard and soft landscaping, use of materials, street furniture, fencing and lighting, and a timetable for the implementation of these works. The timetable will clearly record how the works are to be implemented in a phased manner as the new housing is developed. The reserved matters application(s) shall be designed and subsequently implemented in accordance with the approved Landscape Strategy Plan.
 - 25) Before the approval of any reserved matters application(s), an Ecological Management Plan for the enhancement and creation of biodiversity (including long-term design objectives, the protection of existing species, management responsibilities and maintenance schedules for all landscaped areas, other than privately owned domestic gardens) shall be submitted to and approved in writing by the local planning authority. The Plan shall be implemented as approved.
 - 26) No more than 176 dwellings shall be occupied before the works at Catch Yard Farm granted planning permission under Ref: S/2009/0759/FUL and listed building consent under Ref: S/2009/0760/LBC have been completed.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

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