

**REF: APP/C3105/W/20/3259189**  
**TOWN AND COUNTRY PLANNING ACT 1990**  
**SECTION 78 APPEAL**

**APPEAL BY GREAT LAKES UK LTD**

**LAND TO THE EAST OF M40 AND SOUTH OF A4095**  
**CHESTERTON, BICESTER, OXFORDSHIRE OX26 1TE**

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**CLOSING SUBMISSIONS FOR THE APPELLANT**

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**Introduction**

1. The Appellant adopts its Opening Submissions in full here as part of these Closing Submissions, but without setting them out again<sup>1</sup>.

**Overview**

2. In opening the case, I noted this Appeal Scheme would present a remarkable opportunity at any time, but no more so than the present. It delivers a new recreation facility, a huge number of jobs, great economic and social benefits, consistent with the aspirations of both local and national policy. It does so at a continuing time of national crisis, when the economy, and the hospitality and leisure sector in general, has been so badly affected.
3. You are very familiar with the Appeal Scheme now in all respects. I do not repeat what I said in opening about it. I stand by that in full at the conclusion of this inquiry. The inquiry process has reduced the issues further, with (for example): the resolution of drainage issues; the simplification of any concern related to Middleton Stoney Junction; and acceptance by both CDC's Planning Witness (Mr Bateson) and PAW's Planning Witness (Mr Sensecall) of the economic analysis and benefits in the Volterra reports (including Volterra's Rebuttal Report – Goddard Rebuttal Appendices 10) and the TVAC report (Goddard Appendix 11).

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<sup>1</sup> This is necessarily a summary only of the Appellant's case, set out in far more detail in all of the Appellant's inquiry documents, including in particular the written and oral evidence from the Appellant's witnesses. These cannot be set out in full here, but are relied upon in full.

For abbreviation purposes (and without intending any disrespect), advocates are referred to by initial (JSQC, DEQC/AGP SWQC/AF), witnesses by surname, written evidence by acronym (P/E – proof of evidence, Appces – Appendices, R/E – rebuttal proof of evidence) and oral evidence when it was given (XinC – examination in chief; XX – cross-examination; Re-X – re-examination).

These written submissions have been prepared without sight of the closing submissions on the part of the Council or PAW. They therefore necessarily cannot respond to points of dispute, inaccuracies or challenged evidence in those closing submissions. Issue is taken with anything in those documents that contradicts what is set out here as to what occurred or the evidence presented as summarised in this document.

4. I will therefore turn to deal directly with the main issues.

**(1) Implications for Sport and Recreational Facilities in the area, in particular golf<sup>2</sup>**

5. There is a disturbing feature of the reason for refusal itself. As confirmed by CDC through Mr Darlington<sup>3</sup>, CDC accept the Appeal Scheme of itself would provide a very significant new recreation facility, serving the residents Bicester, the residents of Cherwell and beyond. It will support and encourage active recreation by families (including young children in particular) in the way that policy seeks to encourage.<sup>4</sup> The range of recreational activities on offer for the target age groups will be significant. Indeed, there is no other equivalent recreational option for families in the whole of the District.
6. Despite acknowledging these benefits, CDC's well-being department ignored them. Mr Darlington candidly accepted that this was simply not taken into account. He said it was not "within his remit" specifically; but then accepted it was within the remit of CDC's well-being department, but not something addressed. He equally candidly accepted that although welcome, as it does not appear in the list of recreational facilities, it would never get consideration. This is a bleak prospect for CDC if diversity of recreation provision in its area is to be achieved. Anything which does not strictly conform to the Nortoft report list will never receive support despite any benefits it might yield. Mr Darlington himself used the example of an ice-rink. But the list of omitted activities would extend beyond that ranging from ice-rinks to climbing walls. Encouragement for new and innovative facilities strongly supporting active recreation as part of fun family activity of the type here proposed will simply be discounted under CDC's approach.
7. There is no justification for this approach in local or national policy. Neither the local plan policy in BSC10, nor national policy in the NPPF, support a restrictive definition of sports and recreational provision. Nor should they. To the contrary, the Government's emphasis on health and well-being, encouraging people to indulge in recreational activity, is consistent with supporting all forms of recreation, including the activities targeted for families with 2-12 year olds both in the indoor facility that it offers, but also in the creation of the northern parkland area which will become publicly accessible as part of this scheme. Both Mr Darlington and Mr Bateson accepted, this is a form of recreation provision that is within the definition of both Policy BSC10 and the NPPF.
8. Mr Bateson further confirmed his acceptance of the TVAC report attached to Mr Goddard's Appendices<sup>5</sup>. This deals with the benefits of delivery of active leisure in the

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<sup>2</sup> This issue arises out of reason for refusal 1 of the Council's Decision Notice.

<sup>3</sup> Darlington XX

<sup>4</sup> Darlington XX and Bateson XX.

<sup>5</sup> Bateson XX

facilities offered by the Appeal Scheme, along with the accessibility of those leisure activities for all: see section 6.1-6.10. It is regrettable that none of this has featured in CDC's consideration of what the Appeal Scheme would deliver.

9. It is against this backdrop that the issue of the effect on sport and recreational facilities, including golf, has to be considered. CDC's leisure services department was confined (as confirmed by Mr Darlington) to the question of golf, with no regard to the facilities offered by the Appeal Scheme itself and its use by up to 500,000 visitors per year for recreational purposes.

#### Policy BSC10

10. Policy BSC10 of the Cherwell Local Plan is a policy which is concerned with open space, outdoor sport, but also recreation<sup>6</sup>. As Mr Bateson confirmed, Policy BSC10 is concerned with not just existing provision, but also encouraging new recreational provision. Both Mr Bateson and Mr Darlington expressly confirmed that the proposed Appeal Scheme would be such recreation provision of the type covered by Policy BSC10 which this resort would reflect<sup>7</sup>.
11. Standing back for one moment, therefore, it is difficult to see how the proposal could possibly conflict with the underlying purpose of the policy: the protection of existing sites in such leisure use. In simple terms, the Appeal Scheme results in retention of the existing site in recreational use as Mr Bateson agreed.
12. Not only does it do that, it secures a significant new provision of recreational use of the site. What better way to test the overall compliance with the basic objectives and thrust of the policy than by the numbers of people that would actually be encouraged to use the site itself for recreational purposes? The Appeal Scheme would bring this site into recreational use for far greater, and a far more diverse cross-section of the community, than the current use achieved through its current use as part of an 18 hole traditional golf course, with a declining membership and a restricted demographic which England Golf is so keen to change. As it happens this then combines with the increase in golf participation that it would secure on the remainder of the golf course (as I will come to). Both Mr Darlington and Mr Bateson considered Policy BSC10 is not restricted in its application to outdoor recreational use, nor is the NPPF.
13. Notwithstanding this<sup>8</sup>, in its original Planning Statement and through Mr Goddard's evidence, the Appellant has considered the Appeal Scheme on the assumption that the loss of 9 holes from the 18 holes does involve the loss of an existing sport facility<sup>9</sup> for the purpose of Policy BSC10. It has considered the requirements of the NPPF/NPPG

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<sup>6</sup> See CD5 -3 and Darlington XX and Bateson XX.

<sup>7</sup> Darlington XX and Bateson XX.

<sup>8</sup> See Darlington and Bateson XX

<sup>9</sup> Paragraph 6.13 of CD1-22 and Goddard, P/E para 7.49 et seq.

in those circumstances (as paragraph B.150 of the Local Plan states, but also what is stated in paragraph B159 itself.

*Policy BSC10 and Paragraph B150*

14. The text of paragraph B.150 itself does identify that it permits loss of open space which is not of importance to the character or amenity of the surrounding area. Although there is a loss of 9 holes of the golf course and a diversion of the PROW, the golf course is a facility which is only available to golf course members, green fee players and hotel guests rather than the public at large<sup>10</sup>. The Appeal Scheme involves the creation of 5.8ha of what will become genuine public open space (the northern parkland), so providing significantly greater public access than the PROW, in addition to the retention of the existing 9 holes at BHGS. This actually results in both a quantitative and qualitative uplift in open space of public space provided in this location, without the loss of open space that is of importance to the character or amenity of the surrounding area in any event<sup>11</sup>.
15. In light of this in itself, the Appeal Scheme accords with Policy BSC10. Whilst there would be a change in the type of open space provided, from the existing 9 holes of the golf course crossed by the PROW, the new northern parkland itself delivers high quality public accessible open space. If one then takes account of the new indoor recreation activities on offer to so many visitors, the general compliance with Policy BSC10 becomes clear.
16. Secondly, and alternatively, paragraph B150 refers to permitting loss of open space if there is an assessment which demonstrates that the site is surplus to requirements. This test is equivalent to that in paragraph 97(a) NPPF and is dealt with below.
17. Thirdly, and alternatively paragraph B150 permits loss where a suitable alternative site of at least equivalent community benefit in terms of quantity and quality is provided. This would be satisfied where either paragraph 97(b) or 97(c) of the NPPF is met as also dealt with below.

Policy BSC10 and the NPPF

18. MR Darlington and Mr Bateson agreed<sup>12</sup> compliance with Policy BSC10 if any of three alternative tests in paragraph 97 of the Framework are met (see paragraph B150 of Policy BSC10).
19. Paragraph 97 is part of paragraphs 96-101 dealing with “Promoting healthy and safe communities”. Paragraph 91 of the NPPF identifies that planning decisions should aim to achieve healthy, inclusive and safe places by reference to the three objectives in

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<sup>10</sup> As identified by Mr Goddard at paragraphs 7.56- 7.57 of his P/E.

<sup>11</sup> See Goddard P/E paragraph 7.5.7-7.58.

<sup>12</sup> XX

paragraph 91(a)-(c). Mr Darlington accepted that the Appeal Scheme would in fact comply fully with each of the objectives in paragraph 91<sup>13</sup>. It is therefore difficult to see how the provision of this resort, dedicated to recreational physical activity for young children and their families, is in any way inconsistent with the purpose of the NPPF. To the contrary, it is a facility which will demonstrably widen access to such recreational facilities for both the local area and beyond, in addition to the further public open space that is now being created.

20. As defined in paragraph 97 of the NPPF<sup>14</sup>, it is common ground that the Appeal Scheme will satisfy it if any one of the three sub-paragraphs apply<sup>15</sup>. It unnecessary to demonstrate the Appeal Scheme meets each of them, even though in this case it is considered it does. We commend the evidence of Mr Ashworth, Mr Swan and Mr Goddard in this respect in its entirety, but summarise the position as follow.

#### NPPF Paragraph 97 Generally

21. The opening part of paragraph 97 makes it clear that it is concerned with situations where one is building on open space, sports and recreational buildings or land for other purposes (eg housing on a playing field etc). Paragraph 97 cannot have been intended to restrict or prohibit the building of sports and recreational buildings on open space, sports and recreational land. It was not intended to prevent, for example, the provision of indoor recreational facilities in principle. However, to the extent that it is necessary to show compliance with any of the three sub-paragraphs, the Appellant has done so.

#### Paragraph 97(a) of the NPPF

22. Paragraph 97(a) permits existing open space, sports and recreational buildings and land to be built on if an assessment shows the open space, buildings or land to be surplus to requirements.
23. CBRE were specifically commissioned to produce such an assessment for the purposes of Policy BSC10 and paragraph 97(a) of the NPPF<sup>16</sup>. The CBRE Report was completed on 7 November 2019<sup>17</sup>. It is far more up-to-date than the Nortoft assessment produced some years earlier (predating 2018) to which CDC has sought to refer.
24. The CBRE document considers the proposed loss of the 9 holes for what is proposed against golf trends, local golf club provision, identified need and future demand and

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<sup>13</sup> It would: (a) promote social interaction, including opportunities for meetings between people who would not otherwise come into contact with each other; (b) be safe and accessible; and (c) enable and support healthy lifestyles, including addressing well-being by providing this recreational facility to so many people in the area (including the wider area).

<sup>14</sup> See CD5.1

<sup>15</sup> Darlington XX and Bateson XX.

<sup>16</sup> See CD 1-22, Appendix 2, Scope of Report, Page 6

<sup>17</sup> CD1-22, Appendix 2.

trends at BHGS. As a result of the detailed research and analysis in that report, the conclusions as to a surplus are clear as summarised in the footnote<sup>18</sup>:

25. CDC asserted disagreement with these conclusions, but none of its evidence actually engages with research and findings of the CBRE report as an assessment under paragraph 97(a). Mr Darlington's evidence does not demonstrate why CBRE's report is not accepted. And Mr Bateson himself accepted that the CBRE report is indeed evidence that demonstrates that the 9 holes are surplus to requirements; all he did was assert reliance on the the Nortoft report, but without explaining what is wrong in principle with CBRE's assessment.
26. The CBRE assessment is and remains an assessment demonstrating that the 9 holes in question are surplus to requirements for the purposes of paragraph 97(a). Its analysis and conclusions are clear. It is based on a proper assessment of golf provision in the area and demonstration of why changing BHGS from 18 holes to 9 holes would still ensure supply of 18 hole facilities within the recognised drive time of 20 minutes for those within its catchment, including each and every member of the club itself.
27. In cross-examination of Mr Goddard, DEQC pointed to the fact that the CBRE report is a desk-based study. But it was not explained why that affects its validity as an assessment for the purposes of Policy BSC10 or paragraph 97(a). There is no reason why such assessments cannot be properly desk-based.
28. DEQC appeared to be suggesting that this meant it did not involve consultation with golf clubs. But that is clearly wrong. To the contrary, the CBRE Report demonstrates that it was based on CBRE research as to the membership position of the golf clubs in the Cherwell area (see page 17 of the Report). CBRE collated (amongst other things) data from the clubs as to their membership rates for the purposes of understanding the extent of the local club provision. This is in direct contrast to the earlier Nortoft report to which not a single golf club responded<sup>19</sup>.
29. In XX of Mr Ashworth, DEQC also appeared to suggest that the CBRE report was deficient in considering drive times of facilities around the golf course because it was

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<sup>18</sup> CD 1-22 Appendix 2, page 32. In particular: (1) With membership in decline in the Cherwell area, and using more accurate capacity estimates of facilities in the Cherwell area, there is significant excess capacity of golfing provision in the area, with no new courses required and even on the most conservative estimate adopted by CDC in its own assessment, there is very unlikely to be demand for any additional golf provision before 2030 (even allowing for best scenarios of membership growth); (2) There is an oversupply of 18 hole golf courses in the area around Bicester confirmed by England Golf. (3) There is significant 18 hole golf provision within an acceptable drive time for members that want it, with the demographic subset having access to a car and significant alternate 18 hole provision within a 20 minute drive time. (4) The 18 hole golf course at BHGS is providing an amenity to only a very small proportion of the total population of Cherwell and the wider area. (5) The retention of 9 holes would not constitute a material loss of amenity given the shift in demand to shorter formats of the game and it may be the more viable option for BHGS in the long term in any event.

<sup>19</sup> See Paragraph 11.13 of Part 2 of the Nortoft Report dated August 2018.

based on an assumption that members live on the golf course itself. However, that is also simply wrong on the facts. The CBRE report specifically considered the position at BHGS by collating membership information and addresses (so doing exactly the exercise that is required)<sup>20</sup>.

30. The research is comprehensive and the results irrefutable. Analysis of the membership numbers of golf clubs in the area demonstrates that there is far more capacity for further members of the golf clubs than is currently required or will be required in the plan period. All members will continue to enjoy the ability to access 18 hole golf courses within 20 minutes drive time of their addresses without BHGS. The provision of 18 holes, rather than 9 holes, is therefore very clearly surplus to capacity as CBRE demonstrated.
31. The CBRE also fully assessed future needs and demand for Cherwell District. They considered a range of different scenarios reflecting the current state of oversupply of golf course holes in the Cherwell district, considering the trends in participation for such facilities and then considering both general potential demands based on general population growth and (by way of robustness) assuming an increased demand if one were to take an over 60 population growth<sup>21</sup>.
32. All of these various scenarios demonstrated very clearly that there is ample capacity from existing provision of golf clubs as CBRE identified, so confirming the obvious surplus in capacity of relevance here.
33. At the end of the inquiry process, you have heard no meaningful evidence to contradict the specific research findings of CBRE as set out in that report.

*The Nortoft Analysis*<sup>22</sup>

34. As became clear, although CDC has not begun to explain why CBRE's assessment is not a relevant and robust assessment for the purposes of paragraph 97(a), Mr Darlington and Mr Bateson's reliance on the earlier Nortoft report is incapable of contradicting the later, more up-to-date and robust CBRE analysis for a number of basic reasons.

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<sup>20</sup> As set out on page 29 of their report, CBRE obtained and used anonymised address information of the BHGS members to identify the drive time for those members against the Cherwell district and other golf courses. This demonstrated that all members of BHGS were in fact within 20 minutes drive of a range of different other golf offers including several 18 hole offers.

<sup>21</sup> The different scenarios were modelled. For example, they considered demand and need against both an average of 460 members per club (reflecting the national average from England Golf figures at the time) They also considered demand and need in light of the previous average enjoyed by clubs in the past of 600 members per club, again reflecting an average of what club membership used to be when golf was more popular. As CBRE identified, Mr Ashworth explained and Mr Darlington conceded, both these figures used are simply average membership figures for golf club membership. They are very definitely not capacity figures (which would inevitably be much higher). They simply reflect current average membership of golf clubs, and past average membership of golf clubs, in circumstances where the greater capacity of such clubs would be higher and have not changed.

<sup>22</sup> See CD 7-2a-d for the series, but with particular emphasis below on CD7-2b.

35. First, and incontrovertibly, the Nortoft analysis from 2018 is subject to basic flaws which show it is impossible to rely upon it as contradicting the CBRE report. These are identified both in the CBRE report itself, and in Mr Ashworth's analysis based on his considerable experience and application of the Sport England's own guidance on how assessments are to be undertaken. I commend his analysis to you in full, but merely point the basic flaws he identified in more detail which Mr Darlington was unable to counter. Although three alternative models are used in the Nortoft report<sup>23</sup>, Nortoft itself suggests that none provides a complete "answer" to any needs assessment. That is hardly a convincing start.
36. The first two models are based upon assessing golf supply based upon the facilities within the administrative boundaries of Cherwell alone. As Mr Ashworth explained, that is completely misconceived<sup>24</sup>. Nortoft accept that its own first model is not a sound basis for future facility planning<sup>25</sup>. The position for its second model compounds this problem by purporting to use a "sub-area" approach, which makes the areas considered within Cherwell's administrative boundary even smaller. As Mr Ashworth explained, this is a nonsense.
37. The third model upon which Nortoft purports to rely is even more misconceived. This seeks to extrapolate an assessment of needs based on existing club membership in Cherwell's area (so again excluding consideration of drive times and other golf clubs in the area) and creating an average rate of golf membership per 1,000 population. This is then compared with a national average of golf club membership. This has at least five basic problems.
38. The first is that reliance on golf membership numbers is obviously illogical on this approach when looking at facilities only within Cherwell because one does not know whether members are living in or outside the District.<sup>26</sup>
39. The second flaw, and independently of the first flaw, is that the basic assumption underlying this model is irrational in principle. It is based on a proposition that national average club membership levels represent the capacity of golf clubs. This is absurd. National average membership levels are not the capacity of such clubs. An average is by definition simply a mid-point of the membership currently existing in those clubs,

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<sup>23</sup> See Nortoft Report, paragraph 11.30

<sup>24</sup> Golfers obviously do not access facilities by reference to administrative boundaries at all. The well-established approach (applied by both CBRE and England Golf itself in its own 2020 studies) is to look at what is available within a drive time catchment, where 20 minutes is a starting rule of thumb. Administrative boundaries are simply irrelevant. The first two models in the Nortoft report are therefore incapable of considering needs of relevance to the loss of the 9 holes at BHGS as a matter of principle.

<sup>25</sup> See Nortoft Report, paragraph 11.36.

<sup>26</sup> See Mr Ashworth, P/E para 3.5.



not a capacity. And moreover, average membership levels will simply reflect the current decline in interest in golf now anyway<sup>27</sup>.

40. When challenged about this, Mr Darlington had no answer in XX other than to say this is what Nortoft had done. No explanation was put to Mr Ashworth to explain how this approach can be reconciled with logic. Why on earth does a national average membership level represent a capacity?
41. But the patent absurdity of this approach was put expressly to Mr Darlington in his own analysis of where this leads. At the inquiry he produced a purported “update” of the Nortoft model<sup>28</sup> to reflect different changes in national average numbers. The first purported to look at a national average of 484 versus 460 and actual club membership. But this exposes the problem. If national average membership is going up, it makes it clear that national average is not a capacity figure at all! So why is it treated as such for Cherwell?
42. The second, version B, however, took an assumed lower national average of 341 members. This conclusively demonstrates the flaw in the whole model. If national average membership declines (so reflecting a continuing decline in the interest of golf), it is obvious as Mr Darlington accepted in XX that this would inevitably mean that the actual capacity from available golf courses increases and the need for new facilities therefore diminishes and results in an increasing surplus of such facilities. The logic of that is irrefutable and accepted by Mr Darlington<sup>29</sup>. Yet the Nortoft model (as Mr Darlington’s Version B of CD16-7) shows the exact opposite - if national average membership declines, the Nortoft model perversely shows an ever increasing need for new facilities<sup>30</sup>.

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<sup>27</sup> As CBRE report, current national average membership levels are well below historic average membership levels. The average membership level as it is now of 484, or 460 as used in the Nortoft report, is well below previous historic average levels of 600 identified in the CBRE report. This reflects a well-known decline in the interest of golf, not any reduction in capacity of golf clubs and their facilities. It is therefore irrational to assume that existing national average membership levels somehow represent the capacity of those clubs, and then to extrapolate this as representing the capacity of golf clubs in Cherwell District’s area. This is ‘nonsense on stilts’, where one misconceived assumption is built upon another. As Mr Ashworth also pointed out, it means the Nortoft model immediately becomes out of date as golf club national averages change.

<sup>28</sup> CD16C-7

<sup>29</sup> See Darlington XX.

<sup>30</sup> The perverse result of the Nortoft model used in the Nortoft report is that where actual capacity at golf course increases (because of declines in membership), the model is actually predicting the opposite and suggesting that more golf courses are needed to meet a declining number of people wanting to play. That emphatically demonstrates the basic flaw in the Nortoft approach. It is not only unreliable, it is perverse in principle. It results in showing an increase in need for facilities in a situation where the opposite is the case, namely a declining interest in golf demonstrating a decrease in the need for new facilities.

43. Mr Darlington was, understandably, unable to justify this. He sought refuge in the answer that the Nortoft approach was “endorsed” by Sport England and England Golf. However, that suggestion takes one nowhere for three reasons.
- a. Neither body did actually endorse the Nortoft approach as claimed<sup>31</sup>.
  - b. Even if they did “endorse” it historically, that obviously does not justify what is obviously a perverse result<sup>32</sup>.
  - c. Even if England Golf had endorsed such a perverse model in the past, it is patently not the model England Golf itself applies now in its own modelling work. To the contrary, England Golf have produced their own assessment for December 2020 of facilities in the area around BHGS<sup>33</sup>.
44. The third flaw in the Nortoft model is that the methodology it applies automatically becomes out of date very quickly, as Mr Ashworth explains<sup>34</sup>.
45. The fourth problem is that the Nortoft model of focusing on members ignores the nomadic element of golf where people pay on a subscription basis, rather than golf club membership<sup>35</sup>.
46. The fifth problem with the Nortoft model, which applies to all three models used, is that it simply fails to reflect an essential point, namely the basic change in the nature of interest in golf and the aspirations of England Golf to address that change by ensuring that one adapts to that changed interest by not continuing to provide 18 hole golf course formats which do not match that interest and inhibit the take up of the sport<sup>36</sup>. Decline in interest is demonstrated by totalling the numbers of members in the England Golf

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<sup>31</sup> The note produced by Nortoft (rather than from Sport England or England Golf) after Mr Darlington gave evidence merely indicates that those bodies were part of the steering group with opportunities to comment on the earlier drafts of the report, but neither body actually endorsed the final report or the perversity of the third model on which CDC now seeks to rely.

<sup>32</sup> It is no good saying someone endorses something if it is a nonsense in itself. CDC and Nortoft have to explain away the perversity of what it shows, which they do not attempt to do and cannot do.

<sup>33</sup> which, unsurprisingly, uses the established methodology applied by CBRE and recommended by Sport England of looking at facilities actually available to an area within a drive time catchment based on a rule of thumb of 20 minutes. The England Golf December 2020 report based on that analysis confirms the CBRE report submitted with the application that there is a surplus of 18 hole golf courses in this area available to members of BHGS and the general area.

<sup>34</sup> See Ashworth para 3.7. This means the Nortoft document cannot be an up-to-date assessment of need anyway, so the CBRE report supersedes it even using the methodology that Nortoft has attempted to use (ie membership figures as a proxy for looking at capacity) and based on population growth expectations that will fluctuate.

<sup>35</sup> As Mr Ashworth explained, the nomadic golf interest is greater than membership. Therefore membership is simply an unreliable proxy for assessment, in contrast to the basic model of looking at drive times from facilities which both CBRE and England Golf have done in this case when identifying the surplus in holes at BHGS in this area.

<sup>36</sup> . The Nortoft approach if applied mechanistically in the way suggested would simply replicate the continuation of 18 hole formats into the future, even though the availability of 18 holes has led to a decline in membership over the past 10 years, and even in the most recent years in Cherwell alone, no increase in membership despite an ever increase in population in Cherwell district.

December 2020 Report page 11-15.<sup>37</sup> Whereas some club membership numbers in the area have increased, others have declined (including BHGS), but in circumstances where population in Cherwell has exponentially increased<sup>38</sup>.

47. This, of course, reflects the very essence of England Golf's concern and that of Mr Ashworth and Mr Swan. It is the blinkered approach to provision of 18 hole facilities of a traditional type which is one crucial component in the continuation in the decline in the sport. Such a format no longer exclusively represents the future of the game, where shorter formats are required to encourage younger people, more diverse sections of society (including both men and women, and boys and girls) people with less leisure time (given other competing leisure / family and work demands) to take part in the sport. Retaining 18-hole formats simply perpetuates this decline. It may suit a hard core of the declining membership of golf clubs who represent traditionalists, but it does not represent the future of the game as England Golf's own strategy documents demonstrate and Mr Ashworth and Mr Swan (with their vast experience) have so eloquently explained.

48. This then brings one back to the second reason why CDC's reliance on Nortoft report is misplaced given the terms of the Nortoft document itself – the Nortoft document was itself, when properly read not in fact suggesting retention of all 18 holes facilities as being necessary to meet the future needs of the game. CDC has ignored the basic messages it contains as to why 18 hole formats are inhibiting golf and the need for different formats<sup>39</sup>.

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<sup>37</sup> CD 10-13

<sup>38</sup> Mr Darlington was unable to explain why that was the case when the Nortoft report is based upon the opposite assumption. An increase in population is supposed to lead to a corresponding increase in membership, with a corresponding increase in the number of new holes required in the area, yet the figures demonstrate the opposite. An ever-increasing population in Cherwell's area has not led to any overall increase in membership numbers at golf clubs, so representing a continuing decline in the interest in the sport per head of population.

<sup>39</sup> (1) Paragraph 11.9 advises in terms what England Golf evidence demonstrates: "England Golf latent demand analysis suggests there may be the potential for more demand, but in Cherwell the current 18 hole dominant format may be hindering this potential." It is impossible to understand why CDC has ignored this basic message. It is based on England Golf's own research. It reflects Mr Ashworth and Mr Swan's own analysis. The statistics demonstrate exactly this point. The oversupply of 18 hole golf course formats has not led to any increased participation in the sport as the population in Cherwell rises. The opposite is the case. That is because this format of the sport does indeed hinder participation. Mr Ashworth's research demonstrates this is the case. Future demand is based on the different shorter formats of the game. Mr Swan has explained why. (2) If that were not enough of a message, paragraph 11.29 of the Nortoft report makes the same point: "The objectives of sports development within the area are to increase rates of participation in sport and physical activity, especially among young people. As such the authority may wish to encourage new forms of golf aimed at younger people. Typically, shorter than 18 hole format will be more attractive to younger players. This would suggest a need for more Par 3 and other short format courses especially as there is only one 9 hole course in the district (and it is not a Par 3)." It is inexplicable why CDC has not heeded this message, particularly in the context of the current appeal. Consistent with that message, the same message from England Golf, Mr Ashworth and Mr Swan, the loss of 9 holes, but with the retention of 9 holes playable as 18, along with the provision of an Academy course, would in fact provide a direct and urgently needed response to the needs of golf in Cherwell's area. It is disturbing that this message has been completely overlooked in the response to this appeal (3) Paragraph 11.44 repeats the same

Therefore, the Nortoft report properly read does not in fact require retention of existing 18 hole facilities. The obvious alternative approach is identified in the Nortoft report itself to provide for the latent demand for shorter formats. Such provision can potentially be met by redeveloping existing 18 hole courses, as these may be hindering participation in the sport, by providing the shorter formats to meet the future needs.

49. Finally, there is the England Golf Facilities report itself dated December 2020<sup>40</sup>. As Mr Ashworth and Mr Goddard confirmed, this independent report from England Golf further confirms the CBRE analysis as to the surplus of 18 hole facilities in this area. It further demonstrates compliance with paragraph 97(a) of the NPPF. Mr Darlington's criticism of it in terms of the drive time analysis is flawed, as Mr Ashworth points out in his rebuttal evidence. Moreover, CDC has treated the 20 minute drive time analysis as some sort of absolute maximum limit, which it clearly is not. Again, such mechanistic analysis does no credit to CDC. Nor does it reflect reality on the ground. England Golf's own approach is to use drive time analysis, as CBRE has done in demonstrating that the 9 holes that would be lost are indeed surplus to provision.

Paragraph 97(b) of the NPPF

50. Paragraph 97(b) provides another alternative justification for the loss of the 9 holes. That is where the loss would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
51. The evidence of Mr Ashworth and Mr Swan fully demonstrates why that is exactly what is offered by enhanced provision that would be delivered at the remaining BHGS pursuant to the obligations embodied in the section 106 agreement.
52. In approaching Mr Swan's evidence, I cannot over-emphasise enough Mr Swan's expertise and credentials in this area. There is no one better placed in terms of expertise to provide evidence that the benefits in terms of quantity and quality of provision (represented by the whole package of measures) would be equivalent or better than the existing 18 hole traditional format<sup>41</sup>.

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message in respect of the Bicester sub-area, where notwithstanding the irrational conclusion that there is a need for more golf holes (based on the flawed model), even Nortoft recognise that future expansion may be "potentially with new shorter courses and/or new forms of the game"(4) Paragraph 11.49 in dealing with the needs of the future where, contrary to what CDC assume, Nortoft itself expressly recognise that the future needs may in fact be met by replacing or redeveloping "existing 18 hole courses to enable shorter game formats, to support and widen participation, where such proposals are likely to be viable."

<sup>40</sup> CD10-13

<sup>41</sup> He is an independent international expert in golf course design in making golfing facilities more attractive. He is an international expert in golf safety. And he is an expert and dedicated professional to promoting increased participation in the sport from all sections of society, young or old, male or female, privileged and disadvantaged and those who may be unfortunate enough to suffer from health conditions.

53. If one starts with a fair analysis of CDC's initial response to the principle of the loss of the 18 holes with an enhanced package of 9 holes and other facilities, you will actually see from Mr Almond's initial response that he was not opposed in principle to the ability to be able to mitigate the loss of 9 holes with such an enhanced package. His concerns related to the playability of what was initially proposed by EPR, rather than the principle itself<sup>42</sup>.
54. However, Mr Swan's redesign of the 9 holes, coupled with the additional facilities for the Academy and Driving range and the short course completely overcome all of Mr Almond's concerns as to playability and safety of the 9 holes as originally expressed, as well as providing an enviable package of measures overall.
55. I incorporate but do not repeat all of Mr Swan's evidence about the design, but simply summarise the position here:
- (1) Conflict between players playing overlapping holes of the 18 hole layout simply does not arise. It is based on misconception of how such courses operate. There would never be players attempting to play holes 1 and 10 (and so on for each of the two 9 hole circuits) at the same time<sup>43</sup>. Consequently there is no increase in playing time for 9 holes or 18 holes – both would continue to take 2hrs or 4hours respectively
  - (2) Concerns about crossing fairways and walk distances to tees were all addressed by Mr Swan, so there is no issue there<sup>44</sup>.
  - (3) The safety concerns are not well-founded, as one might expect given Mr Swan's expertise in golf safety. His redesign of the existing 9 holes: (a) improve current issues for third party safety (such as hole 1 where a footpath runs alongside the existing arrangement, and the rearrangement of bunkers will improve the safety of this layout to encourage shots to the left); and (b) is entirely safe based on industry safety standards he has applied for the proposed new holes<sup>45</sup>.

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<sup>42</sup> That was before receipt of the package that Mr Swan produced, once it became apparent that CDC wished to secure such a package. Mr Almond's proof of evidence did not deal with that package, as CDC took the matter to committee initially, and then again in December 2020, without actually engaging with the Appellant and responding to the letter of June 2020 in advance of the appeal. Mr Almond confirmed that despite the DP9 letter, he was not asked to engage with the Appellant at all.

<sup>43</sup> This is a basic error of understanding as to how such facilities work. There can be no concern over safety of play in this respect. There is a simple timetable for playing of such circuits for all such facilities. It would not be any different here. There would never be the conflict that Mr Almond suggested.

<sup>44</sup> In fact there were longer walk distances between certain tees in the existing 18 hole golf course format than there will be in the proposed redesign and so this issue fell away.

<sup>45</sup> In relation to hole 2/1 and its relationship with Tees 3 and 12, those latter tees are over 25 m from the green of tees 2 and 11 (the green is itself located forward to increase the margin), with natural mounding in between and a distance which is fully compliant with accepted safety standards as Mr Swan confirmed. In relation to Tee 8 and its proximity to the green for Tee 7 and 16, that simply replicates an existing tee relationship which already exists on the 9 holes which Mr Almond regarded as safe (although he also considered that simple low vegetation could be included if it were thought necessary to address that relationship) – this therefore cannot be

- (4) The length of the 9 hole course as an 18 hole facility complies with what Mr Almond considered to be competition requirements.
56. That then leaves the apparent criticism that this layout playable as 18 holes would be of lesser quality than the existing 18 hole arrangement. There are a number of basic problems with that unjustified criticism.
57. First, there is very clear evidence from Mr Swan himself as to why that is not the case. As he explains (as a golf course architectural expert), the design of golf course holes in terms of interest and diversity is about the strategy of the game itself<sup>46</sup>. This provides this the additional “wow” factor of the redesigned course. As Mr Swan explained, the existing 18 hole facility is of moderate interest. By contrast the redesigned 9 holes playable as 18 holes will create greater diversity and consequential diversity of strategy for the game. It was for these reasons that he fundamentally disagreed with the criticisms (made by non experts in golf course design) of what is provided.
58. Second, what these criticisms fundamentally overlook is the wealth of evidence from England Golf (including that reflected in the Nortoft report), from Mr Ashworth in the Golf Actives study, and the evidence from Mr Swan and Mr Ashworth as to the inherent attraction of 9 hole facilities in any event. Here there will be two 9 hole arrangements that can be alternatively played. Whilst hard core traditionalists may prefer traditional 18 hole course formats such provision does not reflect wider interests, nor indeed the future of the game, nor indeed the need to attract the other latent demand from players who want shorter formats to play<sup>47</sup>. Therefore provision of 18 holes within two 9 hole formats on the 9 hole courses provides an equivalence in the quantity of holes at BHGS, but in fact it is a better arrangement for the future of the game as all of that evidence demonstrates.
59. Third these criticisms ignore the package of measures. It is not limited to the existing 9 holes being retained, but with new holes on the course to create 18 playable holes. There is the provision of the academy course and the short course at the remainder of

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a criticism of the proposed new facility as it simply continues an existing arrangement; as Mr Swan explained, holes 7/16 are par 3 holes where players would clear the green anyway even if someone on tee 8 were concerned with proximity and this sort of relationship is standard on a golf course. In relation to Tee 16 and its relationship with holes 8 and 17, DEQC confirmed he was not pursuing that point and Mr Swan has confirmed (anyway) that the required cone of safety for play is fully met. There were no other safety concerns raised<sup>46</sup> If you start from different tee positions of the order identified, different clubs are required for each hole, a different approach strategy to the green is required and consequently each circuit requires a different attitude. It is this which is of importance to the golfer. For some holes this is achieved by the different lengths of the holes from the tee positions. For some this is achieved by the different axial alignment of the approach. But in each case the approach, the hazards and consequently the strategy to each hole varies.

<sup>47</sup> This can be seen very clearly in the Golf Actives analysis attached to Mr Ashworth’s evidence which shows what young people (for example) are interested in which are shorter formats and alternative formats – CD12-11, page 76 and the other types of facilities used by both adults and 6-17 year olds. The combined use of other other formats is significantly greater than that for full length courses.

the site. In terms of actual numbers of holes playable at BHGS (as Mr Bateson conceded) there will be an overall increase, with the Academy and Academy short course now providing additional short format holes where none exist. It is therefore fallacious simply to limit one's consideration of the 9 hole facility playable as 18. The package actually delivers additional short format holes on the Academy course. Given that provision of such shorter formats is actually recognised in the Nortoft report itself, but is also a fundamental part of England Golf's strategy, CDC's exclusion of these facilities as part of the overall package is wrong in principle.

60. In terms of quantity and quality it was suggested by DEQC that because there would be some consequential reduction in theoretical capacity of the BHGS to play 18 holes, this affects the analysis. This does not withstand any scrutiny on analysis. First, Mr Swan's circuit timetable demonstrates that if every person playing the reconfigured 9 holes only wanted to play 18 holes, then one cannot start new players on the circuit at all times (eg 10am-12noon or 2-4pm on the table). However, that does not result in any actual practical loss of real usage at BHGS or anything like it.
61. As Mr Ashworth demonstrated and was not contradicted, the total maximum usage of the existing golf course for 18 holes is in fact 16,000 rounds per annum. The capacity of the 9 hole facility if played solely as 18 holes is in excess of 43,000 (as Mr Swan demonstrated), even if every person only wanted to play 18 holes. The capacity far exceeds any actual usage ever required at BHGS. The notional theoretical reduction in capacity has no practical effect.
62. Second, all of that analysis is based on every single player playing 18 holes, whereas it is known as a matter of fact that many people only want to play 9 holes. For every 9 hole round, a corresponding ability to insert new players arises as soon as that 9 hole round is finished<sup>48</sup>. So the idea that no new players would actually be starting between the hours of 10-12 or 2-4pm is likely to be wrong in practice. There would be gaps in tee times reflecting the use of the facility for 9 hole play anyway.
63. Third, all of that analysis completely ignores the other provision in terms of the academy and short hole formats which will also now represent capacity for golf at BHGS under these arrangements. In consequence of this proposal, people will also be able to play on the Academy course during its opening hours, or on the short practice facility at any time. Given the importance of these shorter formats to the future of the game, the obsession with 18 hole formats to the preclusion of these advantages is inexplicable.
64. That then leaves apparent criticism of the fact that the academy course shares the use of the driving range. The two will not operate simultaneously. But this is already a

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<sup>48</sup> Eg if someone teeing off at 8.08 only plays 9 holes, a new set of 9 hole or 18 hole players can start their game at 10.08)

tried and tested formula at Stirling Golf Club. It is part of the innovative increase in shorter formats to encourage people to participate in the game. It is a matter of timetabling to reflect best demand. The club will have the ability for people to practise driving at the driving range during its opening hours, and then to use the academy course for practice of hole play during its opening hours, so providing a greater quantity of formats and greater diversity of practice ability than currently exists.

65. The evidence from Stirling Golf Club itself as to the success of this formula, as was explained by Mr Swan in oral evidence, is nothing short of compelling. The success has been remarkable<sup>49</sup>.
66. In addition to this, the enhanced facilities include an increase in the number of driving bays on the range and the introduction of technological analysis with mobile toptracer equipment secured by the section 106 arrangements. Given that increase in driving range bays is a recognised need and given the advantages of technological tracing, these benefits are important ones. Both the short game practice facility (putting, chipping and bunker play) and the Academy course will further increase the ability to participate.
67. It is for all these reasons that we have absolutely no hesitation in commending the conclusions of Mr Ashworth, Mr Swan and Mr Goddard that paragraph 97(b) is met.
68. The overall facilities will not simply be equivalent in terms of quantity and quality, they are manifestly better for the all the reasons identified. One can see that the existing golf club membership may be resistant to change (not least because their objections are tied into other objections to the Appeal Scheme anyway), but the fears are not well-founded. Even if existing traditionalists for 18 holes were to move to other clubs, CBRE demonstrates that there are such 18 hole formats within 20 minutes drive time of all BHGS members. By contrast, many others are likely to join BHGS or play there because of these enhanced facilities, whether residents in the local area, in Bicester itself, or visitors at BHGS or Great Wolf.
69. Mr Ashworth has very conservatively predicted on his own analysis, there will actually be an increase in golf rounds from 16,000 to 20,000 on the golf holes themselves. Moreover, golf visits to this site from 16,750 currently to 30,000 visits<sup>50</sup>. No challenge was made to his evidence in Section 4 of his analysis. No one has disputed that this will be the effect of the facilities (see Mr Darlington XX confirmed). Even on these most conservative assumptions, that will be a remarkable increase in participation in

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<sup>49</sup> By the introduction of this arrangement of an academy on its existing driving range, Stirling Golf Club has experienced huge benefits – see email from Mr Lindsay. That increase in membership and increase in diversity is corroborative evidence of exactly what England Golf, Mr Ashworth and Mr Swan have so cogently explained. These enhanced facilities are better in terms of quantity and quality, but also better in terms of result – greater participation in the sport is achieved. Whilst traditionalists are naturally averse to change, their attitudes cannot contradict the empirical evidence.

<sup>50</sup> See CD12-9 Ashworth P/E, paragraphs 4.11 and following and paragraph 4.25 -4.42 in particular.



the sport and use of this site for outdoor sports. This is exactly what all policy wants to achieve. Paragraph 97(b) is met in full.

70. The only other response proffered to these enhanced facilities is a completely artificial one. CDC/PAW suggest that the weight attached to these benefits which are secured by the section 106 is somehow diminished because they could physically be delivered anyway by the owner of the golf course. This is illusory in practice and, ultimately, irrelevant for the purposes of paragraph 97 in principle. It is illusory because it contradicts the evidence. Mr Ashworth expressly confirmed (by reference to his analysis of the golf club receipts and costs) that it is highly unlikely that such provision would occur. They require capital funding to be delivered. And their success in revenue terms depends upon patronage which comes in large part in his analysis from the presence of the Great Wolf guests. There is therefore no prospect that they will be delivered absent the Great Wolf scheme. The fact is that such facilities are not delivered absent external funding, as the Stirling Golf Course demonstrates and the fact that no such facilities have been delivered in Cherwell's area. It is therefore absurd to suggest that they will be delivered by BHGS in the absence of the appeal scheme.
71. It is also irrelevant in principle. There is no fallback plan for their delivery. BHGS is not proposing their delivery in the absence of this scheme. There is no financial reason to deliver them, given the cost of investment it would necessitate. And paragraph 97(b) is concerned with what is proposed and secured in terms of equivalence, not speculation on whether or not some other scheme might or might not come forward anyway<sup>51</sup>.

Paragraph 97(c) of the NPPF

72. In the alternative paragraph 97 is met where there is alternative sports and recreational provision provided, the benefits of which clearly outweigh the loss of the current use.
73. The Appeal Scheme's satisfaction of this paragraph on its own terms is overwhelming and CDC has never considered it properly (as Mr Darlington accepted for the well-being department and Mr Bateson accepted in his own evidence).
74. First, there is what is provided by the Appeal Scheme itself internally in terms of sporting and recreation provision. That undoubtedly includes indoor sporting activities of swimming and the indoor activities for 2-12 year olds such as climbing walls and mini-golf, but also recreational activities.
75. Second, it includes the delivery of the publicly accessible northern parkland area available to all with the enhanced public open space it provides.

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<sup>51</sup> Incidentally, both Mr Swan in his evidence and Mr Goddard at paragraph 9.6 identified that the works proposed are not anticipated to require planning permission, and there has been no challenge to that, but if they do that can be sought.

76. Third, both elements of these provision will be enjoyed by up to 500,000 visitors per year. The overwhelming benefits of such provision as compared with the far more limited use by fractionally smaller numbers of the existing 9 holes that would be lost (and PROW diverted) are obvious.
77. Fourth, there is the additional sporting provision in the enhanced golf facilities at BHGS secured by the section 106 agreement as identified above.
78. The combination of those measures represent an overwhelmingly alternative provision that would outweigh the loss of the traditional 9 holes at a golf club which has a declining membership and is becoming increasingly unviable (as BHGS has evidenced : see Goddard Appendix 1). It is the combination of those measures which show that the Appeal Scheme satisfies paragraph 97c in full.
79. Accordingly for all the reasons you have heard, reason for refusal 1 is not well-founded. The beneficial effects in terms of sport and recreation are overwhelming. Both Policy BSC10 and the NPPF are fully met by what is proposed.

## **(2) The effect on the safety and free flow of traffic on the highway network**

80. This relates to reason for refusal 3. CDC confirmed at the CMC that this issue, so far as it and the local highway authority OCC, is concerned solely relates to the effect of the proposal on Middleton Stoney Junction. Before turning briefly to that, it is worth pointing out the corollary of this acceptance. Both OCC and CDC are satisfied that there is no unacceptable effect from the Appeal Scheme on the safety and free flow of traffic on any other part of the highway network. That includes the roads of concern to locals and the access arrangements into the site. In that respect, the Appeal Scheme has been the subject of comprehensive assessment and scrutiny. You have the TA itself, and various other technical notes to supplement it.

### **Middleton Stoney Junction**

81. OCC and CDC's sole contention in relation to effects on safety and freeflow of traffic relate to the Middleton Stoney Junction alone.
82. For the purposes of assessing this point, it is important (a) to interpret the relevant policy correctly (as a matter of law); and (b) then to apply that correct interpretation on the facts.
83. It is common ground that the relevant policy for the purposes of this objection is that contained in paragraphs 108 and 109 of the NPPF.
84. It is common ground that paragraph 108 of the NPPF is therefore only concerned with significant impacts from development on the transport network. The Appellant's

position is clear and simple – there are no such significant impacts in light of the existing baseline traffic flows and daily fluctuations.

85. It is common ground that the applicable test in relation to OCC/CDC’s remaining concern of the effect on the MSJ is that set out in paragraph 109 of the NPPF (with emphasis added):

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

86. As confirmed in XX of Mr DeVenny, but more importantly as a matter of law in terms of the correct interpretation of those words, paragraph 109 of the NPPF is necessarily concerned with the residual cumulative impacts of the development in question (as referred to in the first word of that sentence). Paragraph 109 of the NPPF is not concerned with whether existing or projected congestion at a particular junction without that development would be severe. It is only concerned with whether the residual cumulative impact of the proposed development is severe.

87. This is also obvious as a matter of common sense. An existing road junction may already experience severe congestion, or be predicted to do so in the future regardless of proposed development. That is a pre-existing situation which will not be altered by the proposed development. That is clearly not a reason for refusing proposed development unless the residual cumulative impact of the development itself is severe.

88. Mr DeVenny necessarily accepted that principle anyway in XX in recognition of what he called the pragmatic approach. This was not defined, or explained in his evidence anywhere. He explained that it was not OCC’s position that any future development of any kind resulting in additional traffic at MSJ would be unacceptable. To the contrary, he referred to a pragmatic effect of accepting 3-5 additional vehicles in the peak hour as not creating any severe effects. This approach is, of course, based on the principle that it is the residual cumulative impact of the proposed development in question that is relevant, rather than simply the residual cumulative effect at the junction (which may continue to experience severe congestion whether with or without the development). It must be the additional impact of the development which can be categorized as severe for the purposes of paragraph 109 of the NPPF.

89. Unfortunately, it is evident this approach has not been applied at all to the scheme. To the contrary, OCC has objected not because the residual cumulative impact of the proposed development itself would be severe, but because in OCC’s view there will continue to be severe congestion at MSJ and also because it considers that the proposal involves development on an unallocated site. Neither is a proper basis.

90. The former approach is evident from OCC’s analysis in its response to CDC dated 15 September 2020 to the Great Wolf proposed scheme at MSJ<sup>52</sup>:
91. This flows throughout OCC’s objection. OCC accept that the modelling shows only a marginal effect on MSJ. However, the objection is based upon Great Wolf not alleviating the current severe congestion, or not improving upon the consented Heyford Park mitigation scheme. But there is no requirement under paragraph 109 of the NPPF, or anywhere else, for a development to alleviate existing congestion, or to improve the road network. Paragraph 109 of the NPPF is concerned with preventing development only if the residual cumulative impact of that development is itself severe.
92. The latter approach of registering objection to the development because it is unallocated is evident from Mr DeVenny’s written evidence, see paragraph 3.18 in referring to:  
“... already congested nature of the road network makes the addition of a development generated traffic a key consideration as OCC consider the junction unsuitable to “carry additional traffic from an unallocated development site.”
93. This is a point repeated in his evidence. But as he conceded in XX, this approach is flawed. Paragraph 109 of the NPPF is concerned with the effect of development, whether allocated or unallocated. It makes no difference as to whether a proposal is for development on allocated land or not, the same test applies of considering whether the residual cumulative impact of that development is itself severe. The objection by OCC against the scheme based on the creation of additional traffic from an “unallocated” development site is flawed in principle.
94. OCC’s remaining concern and Mr DeVenny’s evidence supporting it is therefore based on an incorrect interpretation of paragraph 109 of the NPPF. By contrast, Mr Bell has correctly approached the issue. In short, we consider the following questions:
- a. What is the residual cumulative impact of the Great Wolf development on MSJ? As part of that process, one is entitled to take into account the residual impact, so to consider mitigation inherent in, or which can form part of, the scheme itself?
  - b. Is the residual cumulative impact of the development severe?

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<sup>52</sup> This document is in a number of places, but including DeVenny Appendix I: ““The comparative outputs show that, despite the expansion of the junction to include a left turn only lane from the northbound B430, the performance of the junction remains over the theoretical capacity and is marginally worse with the Great Wolf generated traffic and mitigation. The Degree of Saturation (DoS) increases by just over 1% on the B430 southbound and B4030 westbound (title B4030(east) in the Tables), whilst the Mean Maximum Queue (MMQ) increases by 9% and 8% respectively.” Moreover, given the results of the analysis, it is not considered that the proposed Great Wolf mitigation scheme will reliably provide a signalised junction that will alleviate the current severe congestion or will improve upon the consented Heyford Park mitigation scheme.”

### The Residual Cumulative Impact on MSJ

95. The starting point for the analysis is to consider the predicted impact of the development on MSJ as set out in the TA even before one takes account of inherent mitigation that forms an inherent part of the development. As Mr Bell points out, if the worst case prediction of traffic generation from the development is, of itself, not creating any severe impact on the junction, then the actual impact taking account of other factors as to the reality of the traffic predictions in the TA cannot either.
96. In that respect, it is relevant to note the factors which make the TA prediction numbers a highly precautionary assessment and based very much a “worst case” (as agreed by DeVenny in XX) which mean that they will not occur in those numbers anyway. In particular:
- a. The TA is based on assessing the worst case in terms of traffic numbers from the Great Wolf in terms of peak occupancy – this obviously does not occur throughout the year, day after day.
  - b. The TA is based on assessing a worst case in terms of traffic numbers on that peak occupancy, ie on the assumption that none of the sustainable transport measures that are required for the development has any effect of any kind in relation to modal shift. For example, it assumes no use of the dedicated shuttle buses for guests or staff, when the reality is that OCC accepts that such measures will have some effect in reducing car-trips (as is obviously the case).
  - c. The TA modelling for its worst case modelling takes no account of the inevitable and obvious centre of gravity for employees from Bicester, where a significant number of employees will be expected to be drawn<sup>53</sup>.
  - d. The TA takes no account of mitigation which is readily delivered to reduce any flows of Great Wolf traffic through MSJ at peak hours, such as signage if it were required or even a condition in relation to check-in times (again if it were required).
  - e. The TA takes no account of the basic effect of dynamic satellite navigation systems which would divert traffic away from MSJ during peak hours of congestion in any event.

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<sup>53</sup> Such employees will not travel through MSJ in the way assumed in the trip distribution figures, but travel through other junctions which have been modelled and which have no capacity issues of any kind (and again ignoring the use of the shuttle bus or public transport bus). Indeed, this point about the origins of employees being different in terms of trip distribution is something OCC specifically recognised and required the Appellant to cover as part of the modelling in recognition that many employees would be drawn from Bicester (see OCC response to the TA Scoping Submission (CD10-10), first bullet point).

- f. The TA numbers are based upon an assumption of traffic growth and use of roads during peak hours that pre-date the current Covid-19 pandemic and the very clear shift in likely usage of roads, but more fundamentally peak hour usage of roads, in the future.

#### The Basic Position

97. The basic position, assuming this highly precautionary approach, itself demonstrates why there is no basis for objection under paragraph 109 of the NPPF. Even before one takes account of any of the factors above, one can see the absence of any material impact from the agreed figures set out in the TA, extracted in Mr Bell's evidence at paragraph 4.14 and Table 4.1. In 2026, the predicted flows at MSJ taking account of all committed development (including Heyford Park Phase 2) are 2,400 vehicles in the AM Peak and 2,125 vehicles in the PM peak. The Great Wolf development (absent any mitigation and assuming all of the worst case scenarios set out above) would add just 34 vehicles in the AM peak and 46 in the PM peak.
98. As Mr Bell points out, this is equivalent to less than one additional vehicle per minute during those peak hours, and the percentage increase in vehicle traffic of 1.4% in the AM peak and 2.2% in the evening peak will indeed be imperceptible<sup>54</sup>. Even without any mitigation measures, the predicted changes in traffic flow through MSJ in 2026 will be well within the daily variation of traffic on the B430. The level of increased traffic will be imperceptible to drivers and it is incapable of amounting to a severe impact on that that junction.
99. In addition, as Mr Bell explained, the levels of additional traffic generated by Great Wolf (unmitigated) at MSJ in the AM peak represents less than one year's natural growth in traffic at MSJ anyway<sup>55</sup>. This further demonstrates why it is impossible to describe such an effect as severe. It merely brings forward an existing situation by less than 1 year<sup>56</sup>.
100. Mr DeVenny sought to argue that the actual traffic numbers are irrelevant, it is only the consequential effect on the junction capacity that is important. But as he conceded in XX, that is not right. The actual numbers of traffic movements generated are not just relevant, but essential for any analysis. He also conceded, even on his own pragmatic approach, some level of absolute numbers are acceptable increases to the junction anyway (his 3-5 vehicles given in XX, although he did not explain why the numbers would be so low). As Mr Bell points out, the levels of increase to this

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<sup>54</sup> Indeed, the ATC survey on this road in May 2019 shows that the morning and evening peak hour two-traffic flows can typically vary by up to 17%.

<sup>55</sup> What this means is that the levels of traffic experienced at MSJ with Great Wolf in place (unmitigated) in 2026 in the AM peak will actually exist anyway later in that same year even if Great Wolf is not built, as a result of natural growth in traffic anyway.

<sup>56</sup> It is highly unlikely that such increases would occur anyway as the lasting effects of the current pandemic are likely to have the effect of delaying or even reversing the effects of traffic growth assumed in the analysis.

particular junction are imperceptible, well within daily variations and consequently it means that the effect on the capacity will itself be well within the daily variations. It is impossible in this situation to conclude that the residual cumulative impact of the proposal will be severe. You will experience any additional levels at MSJ created by Great Wolf anyway as a consequence of the fluctuation in the traffic flows. To suggest that such a consequence is severe is again an impossible application of the language of paragraph 109 of the NPPF.

101. As Mr Bell goes on to point out, however, the assumed levels of increase in the TA are based on assumptions which do not take account of any mitigation inherent in the scheme or in the TA assumptions themselves.
102. First, as set out in paragraph 4.18-4.24 of his evidence, the implementation of a signage strategy (pursuant to the section 106 obligation) to direct Great Wolf traffic away from MSJ (if required by OCC) could immediately have a significant effect in reducing Great Wolf traffic through the MSJ<sup>57</sup>.
103. Mr DeVenny's response to this was not comprehensible. OCC has already accepted in principle the reasonableness of a signage strategy for vehicles travelling from the south to the resort, in recognition that signage strategies are effective and reasonable mitigation. Yet inexplicably he was somehow unable to accept such a strategy for vehicles travelling from the north. This makes no sense at all and reveals an inconsistency of approach which is untenable.
104. Second, it was at least common ground with Mr Lyons that dynamic satellite navigation systems, particularly when combined with signage strategies, are effective in avoiding congestion. As both Mr Bell and Mr Lyons both agreed, Great Wolf traffic travelling from the north with such dynamic satellite navigation systems (as most vehicles now have, not least because it is available on mobile 'phones) would simply not join congestion at MSJ in the AM or PM peak, but take the signed route Mr Bell has suggested, not least because it is only 1 minute longer in free flow condition and it would be much quicker if there is congestion at MSJ.
105. It is therefore completely unrealistic to assume that Great Wolf traffic will in fact join queues at MSJ during the AM and PM peak when (a) there is no reason to do so, as the junction can be avoided for the Great Wolf traffic and its destination; (b) signage would obviously be effective in directing such traffic away from it; and (c) dynamic satellite navigation systems would similarly prevent such traffic joining the queue.

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<sup>57</sup> A signage strategy directing GW traffic from the A43 along the B4100 southbound towards Bicester, and then along the A4095 would (a) not result in any material journey time change; and (b) clearly be implementable; and (c) would itself be able to result in an immediate reduction of 16 vehicles in the AM and PM peak, so taking the adjusted flows to 18 in the AM peak and 25 in the PM peak, so becoming even more imperceptible (as set out in paragraph 4.22 and Table 4.2 of Mr Bell's evidence).

106. Third, the TA analysis and the increase in vehicles is based upon all of the highly precautionary assumptions which will not occur in reality anyway. In particular:
- a. It takes no account of significant employee origin at Bicester itself, but assigned trip distribution for all traffic based on likely guest arrivals<sup>58</sup>.
  - b. It takes no account of any sustainable transport measures affecting AM and PM travel by guests (ie it assumes not a single person travels by train to the resort and uses the dedicated shuttle bus, so avoiding car journeys through MSJ).
  - c. It takes no account of guest choice in light of traffic conditions. In reality guests are very unlikely to plan a journey to travel in the AM and PM peaks around Bicester or any other location at congested times if this can be avoided.
  - d. It takes no account of obvious mitigation measures that could be imposed if it were thought necessary<sup>59</sup>.
  - e. It takes no account of one of the most significant events of a lifetime that is bound to affect the usage of the road network in AM and PM peaks and, in any event, make the assumption of traffic levels in 2026 far too high anyway – namely the pandemic from Covid 19. Whilst the precise consequences of the pandemic cannot be known, as Mr Bell points out it is obvious that the levels of traffic predicted in the BTM for 2026 will not arise in the way that were predicted<sup>60</sup>.

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<sup>58</sup> As everyone acknowledges, employees which represent at least three quarters of vehicles assumed to be arriving at the site via the MSJ during the AM peak (see paragraph 3.9 of Mr Bell's rebuttal) are likely to be concentrated in Bicester itself, rather than following the trip distribution analysis for visitors. Even if one adopts the highly precautionary assumption that all such employees travel by car (rather than using the shuttle buses, the public bus or cycling to work), most would not be travelling through MSJ at all, but travelling from Bicester itself direct to the site not via the MSJ. This of itself will further cut the assumed traffic (arrivals and departures) in the critical AM peak by approximately 50%.

<sup>59</sup> As Mr Bell indicates at paragraph 4.38 of his evidence, even if there were any perceived problem of an alleged severe impact arising from AM and PM traffic in MSJ, then a condition on check-in times at the hotel can readily address this, so discouraging any guests from travelling through MSJ during the AM peak to arrive at Great Wolf resort. If they cannot check in until later, there would be no reason to arrive early. The Appellant is prepared to accept such a condition if there remains any legitimate residual concern about traffic through MSJ.

<sup>60</sup> As we know, the levels of Great Wolf unmitigated traffic at MSJ predicted at 2026 in the AM peak represent less than 1 year's natural growth in traffic at MSJ in any event. This means that the levels of traffic experienced at MSJ with Great Wolf in 2026 (as modelled) will be experienced at the same junction later in the year even if Great Wolf is not built. But it is obvious that the levels of growth in traffic in the BTM for 2026 take no account of the effect of the pandemic at all, and the fundamental shift in working patterns. Even if one were only to have the slightest impact on working patterns as a result, then the BTM model will be significantly over-predicting traffic levels in 2026 as compared with the reality in the post-pandemic world. And more pertinently, it is obvious that any marginal shift in working patterns is most likely to affect the AM and PM peak, where people will obviously seek to avoid the effects of congestion with the ability to be more flexible in working at home, or at least travelling to and from work at less congested times. Even if you only account for a very



### Junction Capacity Modelling

107. Notwithstanding the analysis above, the TA has modelled the junction capacity in any event. This has been done in various scenarios taking account of the proposed Great Wolf mitigation strategy for MSJ if it were to be required.
108. This modelling further confirms the absence of any material residual cumulative impact, let alone one which is severe. The relevant extracts from the TA and Technical Notes that followed are summarised in the Note that was produced to the inquiry<sup>61</sup>.
109. Despite this, however, during the application process OCC required Great Wolf to model the junction taking account of the potential additional housing to be provided as part of Heyford Park 2. However, in so doing, OCC's approach has become hopelessly inconsistent and unprincipled.
110. It is common ground that Heyford Park 2 will not be permitted absent mitigation of its effects on MSJ. It is a large residential scheme that will create very significant flows of traffic through MSJ (far in excess of anything created by Great Wolf). It is therefore artificial to consider Heyford Park 2's effect in any model as if they took place within the junction without mitigation, because this is not something that either CDC or OCC will allow to occur.
111. However, Heyford Park 2 did propose a mitigation package for their effects involving the creation of a bus gate on the western arm and restrictions of HGV traffic on the eastern arm (as described in more detail in the Heyford Park 2 committee report and set out in paragraph 4.30 of Mr Bell's evidence). OCC required Great Wolf to

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modest change in practices as a result of the pandemic, this will completely eliminate the effect of the sort of minimal predicted increase in traffic at MSJ in the AM and PM peaks from Great Wolf traffic.

<sup>61</sup> In short:

-Scenario 1 models the junction with the growth in traffic assumed in the BTM as at 2026, assuming Heyford Park 1 has been built, but the mitigation for Heyford Park 1 has not been implemented.

-Scenario 2 does the same, but also includes Heyford Park 2 unmitigated. MSJ is operating over capacity.

-Scenario 3 then takes Scenario 2 and models the effect of adding in Great Wolf unmitigated. It will be immediately apparent from a comparison of this with Scenario 2 that Great Wolf's traffic does not have any material impact, let alone a severe impact. The junction continues to operate over-capacity, but the changes in DoS on all arms, MMQ on all arm and indeed PRC are all minimal.

-Scenario 4 models the junction in 2026 with Heyford Park 1 traffic and its mitigation package. This is the mitigation package which is required as a result of Heyford Park 1 and involves the creation of a right hand turn lane for northbound traffic.

-Scenario 4 can then be compared against Scenario 6. Scenario 6 models the junction in 2026 with Heyford Park 1 traffic and its mitigation scheme in place, along with Great Wolf traffic with its mitigation scheme in place. As OCC and Mr DeVenny accepts, this demonstrates that Great Wolf traffic can be accommodated in the junction with nil detriment to the operation of the junction (albeit the relevant test to prevent development is the much higher one of the residual cumulative impact having to be severe). There is a reduction for every arm (save for one in the PM peak where there is no change) in the DoS and the MMQ and there is an increase in the PRC in both the AM and PM peak. The Great Wolf proposal, with its proposed mitigation package, can therefore be accommodated with all committed development and Heyford Park 1 with its mitigation scheme in place without any impact at all on the junction, save for a positive one.

model the effects of Great Wolf traffic on the assumption that Heyford Park 2 is permitted with this mitigation package in place. That is because OCC consider that the effects of that mitigation package for Heyford Park 2 are acceptable. As Mr DeVenny confirmed (but the Committee Report itself also states), OCC and CDC accept that Heyford Park 2's residual cumulative impacts on MSJ with that mitigation package in place are not severe.

112. As Mr DeVenny agreed, that means that you have a relevant benchmark as to what would not be a severe residual cumulative impact on MSJ represented by the change between Scenario 4<sup>62</sup> and Scenario 8<sup>63</sup>. This shows, for example, that OCC accept in principle an increase in the DoS of the B430(South) from 107.3% to 114.8%, with an increase in MMQ of 70.4 to 107 in the AM peak, as compared with the decreases shown in the other arms, and a resulting worsening of the PRC for the junction in the AM peak from 19.3% to 27.6%. None of this is considered to be a severe residual cumulative impact.
113. Great Wolf then modelled the effect of the introduction of its traffic into the junction with it mitigation in place, assuming both Heyford Park 1 and 2 were in place and mitigated in this way. This therefore involves comparing Scenario 8 with Scenario 9. This immediately reveals why there is no material impact, let alone any severe impact in that scenario. The PM peak has no real impact of any kind at all<sup>64</sup>.
114. One can immediately see the irreconcilable inconsistency of OCC's approach to this development which reflects the fact that they are not applying paragraph 109 of the NPPF as it states, but rather as indicated in the OCC response dated September 2020<sup>65</sup>. As set out above from that extract:
- a. OCC itself accepts that the changes from Great Wolf in this scenario are "marginal". That is obviously the case. OCC does not, and cannot sensibly allege, that these changes are themselves severe<sup>66</sup>.
  - b. OCC are in fact testing whether Great Wolf alleviates the congestion problems at the junction, whereas there is no such requirement for development to do this.

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<sup>62</sup> The junction with Heyford Park 1 and its mitigation, but no Heyford Park 2.

<sup>63</sup> The junction with Heyford Park 1 and its mitigation and Heyford Park 2 with its proposed mitigation.

<sup>64</sup> The B430(South) and B4030(East) change by 0.1% and 3.3% respectively, with a marginal increase in MMQ. By contrast the B4030 (north) DoS increases by 0.3%, but the MMQ reduces. There is no material change in the PRC for the PM peak (-3.0% to -6.0%). For the AM peak, the B430(south) changes from a DoS of 107.3% to 108.7% with an MMQ going from 107 to 117 (ie 10 vehicles only). For the other arms, there is very little difference of any kind, save for a reduction in the MMQ length for the B4030(north ahead). The PRC change is negligible : -19.3% to -20.8%.

<sup>65</sup> CD10-31, Appendix D of Mr Bell's evidence and Appendix I of Mr DeVenny's evidence which summarises these results.

<sup>66</sup> Such an allegation was not made by them in the report of September 2020 and its patently inconsistent with their approach to Heyford Park 2 where a far greater impact on the PRC in the AM peak was accepted and not considered to be severe.

- c. OCC are in fact testing Great Wolf to see if it improves the junction, whereas there is no requirement to achieve this.

115. Mr Bell also explained that whilst Great Wolf were required by OCC to model the Great Wolf proposal with its mitigation package as against the junction with both Heyford Park 1 and Heyford Park 2 in place with their respective mitigation packages, the Great Wolf mitigation package was devised to improve the junction arrangement with Heyford Park 1's mitigation in place. Great Wolf has never proposed the Great Wolf mitigation package (which introduces the left hand turn lane for northbound traffic) as being a requirement with the Heyford Park 2 mitigation scheme in place<sup>67</sup>.

116. Having done this modelling and established that Great Wolf's proposal has a "marginal" effect (as described by OCC), it is clear that there is no basis for saying that there is any material or significant impact (see paragraph 108 of the NPPF), let alone a residual cumulative impact which is "severe").

117. All of this modelling analysis, however, relies upon the same highly precautionary principles that govern the TA summarised above. It takes no account of the reality of the situation, or other mitigating effects inherent in the scheme or in the TA, or conditions which can be imposed.

118. Without setting out the same points again, but repeating them here for the avoidance of doubt, the "marginal" effect of the Great Wolf Scheme shown in Scenario 9 or Scenario 10 (ie with or without Great Wolf's mitigation) would all be correspondingly reduced by any or all of the measures identified by Mr Bell<sup>68</sup>:

119. The reality is that even if the predicted effects in Scenario 9 and 10 were adjudged to be severe (which we consider would be irrational for the reasons set out above), those effects will inevitably be reduced or eliminated by any or all of those factors.

#### Heyford Park 2 Mitigation

120. Despite the fact that OCC required the Appellant to model the effects of Heyford Park 2 with its proposed mitigation, at the inquiry Mr DeVenny in his evidence

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<sup>67</sup> As shown in Scenario 10 in the Note produced to the Inquiry, the Great Wolf mitigation package does not materially alter the analysis if Heyford Park 2 mitigation scheme is imposed, as there will be a bus gate on the eastbound link in any event, so obviating the need for a left hand turn lane. The Great Wolf mitigation package remains open to improve the situation if Heyford Park 1's mitigation proceeds and if Heyford Park 2 does not involve a bus gate on the eastern arm.

<sup>68</sup> See eg (1) A signage strategy, reducing traffic volumes by half; (2) The effect of the location of employees in Bicester (where employee traffic makes up approximately half of the assumed traffic at the MSJ during the AM peak hour); (3) the effect of dynamic satellite navigation systems and an alternative route that is only 1 minute longer in free flow conditions which would mean in practice people will not join any congestion if and when it exists at MSJ; (4) the effect of the sustainable transport measures (not least the employee shuttle bus and guest bus); (5) the effect of the pandemic in any event; (6) the ability to impose a condition on check-in times if it were thought necessary.

has now sought to backtrack from this. This is because he points to the fact that although the Heyford Park 2 mitigation package has been approved in principle by OCC and CDC officers, Heyford Park 2 has not been granted consent on the basis that a working group needs to look into the mitigation package and it has not been approved by CDC.

121. There is a very clear consequence to this which OCC and Mr DeVenny has not addressed. The position is simple:
- a. Great Wolf has already demonstrated, and OCC has accepted, that Great Wolf can proceed with its proposed mitigation added to that for Heyford Park 1 in a way which results in no detriment at all to the junction<sup>69</sup>.
  - b. If Heyford Park 2 mitigation package is no longer relevant for assessment purposes, then Great Wolf and the inquiry is necessarily entitled to proceed on the basis that whatever mitigation package does come forward for Heyford Park 2 (and nothing else has yet been identified), it will mitigate its effects<sup>70</sup>.
  - c. In the meantime, if Heyford Park 2 mitigation package is no longer relevant, no developer can model the results of an alternative package which does not exist. What the developer is entitled to assume, however, is that the mitigation package for Heyford Park 2 will ensure that there is no severe residual cumulative impact to what has already been approved for Heyford Park 1 with its mitigation package<sup>71</sup>.
  - d. It would be absurd to suggest (if this is suggested) that no development of any kind can come forward until such time as Heyford Park 2 is approved with a particular mitigation package that is unknown<sup>72</sup>.
122. For this reason, if consideration of Heyford Park 2's mitigation package is now to be set aside, then the necessary comparison for the purposes of determining this appeal is between Scenario 6 versus Scenario 4, which OCC and Mr DeVenny already accept demonstrates that the Great Wolf scheme will result in nil detriment.

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<sup>69</sup> Even if the traffic additions of Great Wolf are assumed to have an impact which requires mitigation which is not accepted. OCC and Mr DeVenny necessarily accept this in their analysis of Scenario 6 versus Scenario 4

<sup>70</sup> It is not clear when Heyford Park 2 alternative proposals may or may not come forward in the future, but they will need to deal with whatever the situation is at that time. That will include any consent granted for any development in the meantime, be it Great Wolf or any other development in the area.

<sup>71</sup> Therefore a developer and a decision maker must therefore proceed on the basis of comparing the proposed development as against the approved development in Heyford Park 1 with its mitigation package and other committed development and is entitled to assume (and has to assume) that Heyford Park 2 will need to mitigate its own impacts itself. Great Wolf has obviously done this through the assessment of Scenario 6 versus Scenario 4.

<sup>72</sup> No one knows when that would be or what the mitigation package would be. That is not how the planning system operates. Paragraph 109 requires one to consider residual cumulative impact of the development proposed, but does not and cannot require one to speculate as to specifics of other development's mitigation packages, save through the application of the principle that other development will be required to mitigate its own impacts acceptably and this applies as much to Heyford Park 2 as any other development. The fact of allocation does not affect this, as Mr DeVenny accepted.

### Other aspects of the Great Wolf Mitigation Proposal for MSJ

123. Mr Bell makes clear there is no material or significant impact, let alone a severe residual cumulative impact, that arises from its development on MSJ even without any works to MSJ. The Appellant's primary case is that additional works are simply not necessary at this junction, given the very low levels of traffic that the TA is predicting in the AM and PM peaks for this junction on the worst case scenario, and all the other factors that will mean that those levels of traffic will be much lower in practice.
124. If this is accepted, the details of the MSJ mitigation package itself are irrelevant as they would be unnecessary. It is only if the mitigation package is considered necessary (notwithstanding all the other factors and measures, such as signage etc), then the other issues that have been raised about its safety and acceptability become relevant. However the points that have been raised have all been demonstrated to be without substance.
125. First, there is the issue of safety that has been raised by OCC and Mr DeVenny. The reality is that OCC's position on this has shifted and unreasonably so. As set out in the September 2020 response from OCC<sup>73</sup>, OCC rightly recognised that the Great Wolf proposal involved a change to the pedestrian facilities for persons wishing to cross the B430. Their position about this was recorded in September 2020<sup>74</sup>.
126. OCC's position of neutrality in that letter was based upon a balance of the comparison between the existing pedestrian crossing arrangements and the proposed ones. In December 2020, however, it appears in anticipation of the inquiry, OCC purported to change its position and raised apparent issues over the safety of the proposal.
127. In reality, none of the concerns is well-founded, for any or all of the following reasons:

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<sup>73</sup> DeVenny, Appendix I, page 5 of 8

<sup>74</sup> "... With the current arrangement, which is largely unaltered in the Heyford Park mitigation scheme, the informal crossing point is behind the stop line for northbound B430 traffic, which means that pedestrians may have to cross between vehicles in a queue (two lanes in the case of Heyford Park mitigation) of stationary vehicles. The proposed Great Wolf mitigation incorporates a pedestrian refuge at the centre of the junction, allowing pedestrians to cross in two stages. However, the waiting area on the east side footway is very narrow, meaning that any waiting pedestrians would be uncomfortably close to passing or turning vehicles, particularly HGVs. Furthermore the footway to the north is even narrower as the kerblineline is particularly close to the highway boundary.

**It is appreciated that there is no identifiable pedestrian (or cyclist) crossing point that would accord with current standards. At this stage OCC are neutral about replacing the existing crossing point with one that allows improved crossing opportunities but has constrained access on one side.**

..."

- a. First, the GW mitigation proposal for MSJ has been the subject of comprehensive and independent safety scrutiny through a Stage 1 Road Safety Audit by independent auditors, comments, and a designer's response<sup>75</sup>.
- b. Second, in addition to the auditors being satisfied with the improved safety of what is proposed for pedestrians, Mr Bell is of a similar view and he addressed each of Mr DeVenny's concerns in the evidence he gave<sup>76</sup>.
- c. Third, as the further Joint Statement now confirms, all of the issues raised by Mr DeVenny regarding the GW proposals are all capable of being addressed in detailed design as Mr Bell said would be the case<sup>77</sup>.

128. At the conclusion of the inquiry, all of the points raised by Mr DeVenny in his written proof of evidence regarding the design of the junction in terms of safety have all been addressed, or are capable of being addressed in the details of the design. Despite this, Mr DeVenny has retained two points of dispute.

129. The first is in paragraph 2.7 of that Joint Statement in which OCC state that they still have "concerns" over the margins of error in terms of oversailing of white lines and what they consider to be an "unorthodox" movement of an HGV making the west to east movement. As a matter of principle, this concern is not well-founded. Design standards are based on showing a swept path analysis arrangement that can be achieved, not building in significant margins of error for every turning vehicle into every junction arrangement in the way that now appears to be suggested as required<sup>78</sup>.

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<sup>75</sup> All of the points raised in that audit are points which are capable of being addressed in the detailed design. Moreover, the independent safety auditors themselves have confirmed the comparative benefits of the junction arrangement for pedestrians, as compared with the existing situation (see CD10-23). OCC / DeVenny's concerns are therefore not shared by these independent auditors. What is more, those auditors had all of the same material to be satisfied of the safety arrangements, including the swept path analysis for HGVs which Mr DeVenny now claims to be of concern.

<sup>76</sup> Thus, for example, the concern that the swept path analysis shows some oversail of the footway or pedestrian refuge by HGVs is a commonplace situation (HGVs being designed to have some oversail of parts of their vehicles), but it is clearly wrong to think that this will actually cause any pedestrian/vehicle conflict. A vehicle making this turn will simply manoeuvre through the junction but obviously be aware of any pedestrians (if they happen to be there at the same time) in any such manoeuvre. There is nothing inherently unsafe in this.

<sup>77</sup> In particular: (1) the pedestrian refuge can be moved 1m to the west in the white lines to avoid any oversail of HGVs of either the pedestrian refuge or the footway on the eastern side of the junction, so addressing Mr DeVenny's concern whether in respect of HGVs or buses. The swept path analysis with this change show that the turn can be accommodated without any oversailing; (2) the taper lines for the junction arrangements can all be accommodated at the required standards in the junction arrangement in the detailed design. This was a bad point to take anyway in any event, given that OCC has already approved the Heyford Park 1 mitigation junction arrangement which has taper lines which GW were replicating; (3) the signal heads for the junction arrangements can all be safely accommodated within the existing junction on existing highway land (just as Mr Bell has said) in the detailed design arrangements without creating any unsafe arrangements. Again, this was a bad point to take given that new signal heads would have been required for the Heyford Park 1 mitigation scheme anyway.

<sup>78</sup> This is therefore the application of "double standards" and more fundamentally different standards to this scheme as compared with any other scheme, including in particular Heyford Park 1 and 2, both of which result in far more vehicles travelling through this junction than before. It also contradicts the independent findings of the road safety audit by the independent road safety auditors who are experts in road safety.

130. The second is that Mr DeVenny has now raised in the final Joint Statement: see paragraphs 2.8 -2.11, in which it is said that OCC considers that drawing number 1803047-TK68 indicates that there is an issue with the northbound swept-path showing oversailing of the footway to the north end of the junction as well as oversailing of the southbound right turning land and the opposing northbound carriageway. However, one only has to reflect for a moment to consider how unreasonable this is as a point against the Great Wolf proposal – as OCC itself allude to in the statement at paragraph 2.9: “OCC acknowledge that this may be an issue with the Heyford Park Phase 1 mitigation scheme”. This is mealy-mouthed wording. This is an issue (if it be an “issue”) with the Heyford Park Phase 1 mitigation scheme, not the Great Wolf scheme<sup>79</sup>.
131. The statement goes on to claim that new pedestrian island introduction of the left turn lane at the junction “exacerbates” the situation, and to claim the resultant position is not safe, but that is obviously incorrect. The Great Wolf scheme does not “exacerbate” the situation at all. The pedestrian refuge is not “oversailed”, nor is OCC suggesting it is. The oversailing that occurs is a consequence of the Phase 1 mitigation scheme and the white line right hand lane turning for that scheme. To suggest otherwise is factually incorrect.
132. OCC claim in the Joint Statement that the proposed pedestrian arrangements do not provide a betterment at the junction. Even if that were the case, that would not be a reason for objection. But it is contrary to that of the road safety auditors who are satisfied that there is a betterment, as well as the view of Mr Bell. OCC says that it introduces new road safety concerns, but that is simply not the case. All of the stated concerns of Mr DeVenny in his proof of evidence have been addressed or can be addressed through detailed design. His stated residual concern as to ‘margins of error’ is outside the scope of required design standards. His other concern about oversailing of white lines relates to the Heyford Parks Phase 1 mitigation scheme, not the Great Wolf junction arrangements.
133. For all these reasons, as set out in more detail in Mr Bell’s written and oral evidence, the Great Wolf mitigation scheme, if it is required, can be safely delivered and will result in an improvement of the junction for pedestrians, as the Road Safety Auditors have confirmed, and all matters raised by Mr DeVenny about oversailing, taper lines, signal heads can be addressed in the detailed design.

### Heyford Park 2 Mitigation Package

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<sup>79</sup> As is patently clear from drawing TK68, the Great Wolf scheme does not alter those aspects of the junction arrangement on the northern arm to which this comment is addressed. Any oversailing which occurs to which reference is made occurs as a result of the Heyford Park Phase 1 mitigation scheme which is approved in principle, not from the Great Wolf scheme. It is therefore both wrong in principle, as well as being deeply inappropriate and unfair, for this to be a point of objection to the Great Wolf scheme. This goes nowhere because even if there is such an “issue” as claimed, it is one that Great Wolf is not altering.

134. Mr Bell has demonstrated that there is no particular purpose in providing the Great Wolf mitigation package in the event that Heyford Park 2 proceeds with the mitigation package it proposed and OCC approved. This would involve the introduction of a bus gate and restriction on HGV movements anyway. This also makes any criticisms as to the safety of the Great Wolf mitigation package irrelevant<sup>80</sup>.

135. If, as OCC and Mr DeVenny now suggests, one has to ignore the Heyford Park Phase 2 mitigation package because it has not been approved, then the simple position remains as follows. The Great Wolf mitigation package does improve the junction capacity with Heyford Park 1 Phase 1 mitigation proposals in place (as can be seen from Scenario 6). It also involves improvements in the pedestrian safety arrangements as explained<sup>81</sup>. Any Heyford Park 2 approval that comes in the future will necessarily have to involve a scheme of mitigation for that additional traffic, in whatever form, which is safe<sup>82</sup>.

#### Great Wolf Mitigation Package – alleged other concerns

136. That simply leaves the question of any other issues arising from the Great Wolf mitigation proposal for MSJ which are not related to highway issues. OCC commented that they were not commenting on any consequential environmental impacts.

137. In reconsidering the planning application CDC has not identified any such material environmental impacts arising from what is envisaged in their committee report and there are none. All of the proposals can be delivered within existing highway land, so there is no requirement for additional planning permission or land for them to be delivered. There is nothing from CDC's heritage officer, environmental health officer or landscape officer raising any concern with what is proposed. The truth is there are no basis for any legitimate concerns and this is a contrived issue.

138. As set out in the evidence of Mr Waddell, there are no material effect in relation to landscape character, visual impacts or heritage impacts (as set out in the further heritage assessment that he provides). No additional landscaping has to be removed. The additional left hand turn land can be accommodated within the existing highway land. The creation of additional footway in the verge can only be beneficial. It is simply absurd (if you visit the junction) to suggest that these modest changes will result in any material change in terms of character or visual impacts. The junction is already signalised, so the existence of signal heads is a feature of the junction and this will

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<sup>80</sup> There was also a basic inconsistency in such criticisms in those circumstances anyway. For example, the criticism in relation to HGV oversailing in west-east movements becomes academic, as the bus gate, and HGV restriction would have meant no such movements anyway. It is therefore difficult to see what points are legitimately made in these circumstances.

<sup>81</sup> Any issues with oversailing of HGVs of the area of the north part of the junction is a feature of the Phase 1 mitigation proposal itself, not the Great Wolf mitigation package. It is incapable of being an objection to the Great Wolf proposals or the Great Wolf mitigation package.

<sup>82</sup> It is idle and impossible to speculate on what it would be, but the Appellant and you are both entitled to assume that it will be safe and will result in no severe residual cumulative impact on the junction.



remain the case (and is part of Heyford Park 1 proposal anyway). No material change in noise, vibration or air quality will arise (and none is asserted). For all the reasons given by Mr Waddell and Mr Bell, there are no additional environmental concerns that arise from what is proposed, even if it were to be required.

### **PAW Objections**

139. There is no other issue beyond the effects on the MSJ between the Appellant, OCC and CDC in relation to transportation matters, PAW through Mr Lyons sought to raise other concerns questioning the TA and the matters of agreement between the Appellant and OCC. Again, none of the points of criticism was well-founded, as has been tested at inquiry. I will take the miscellaneous points in turn.

### **Trip Generation**

140. Notwithstanding agreement between the Appellant and OCC and CDC as to the appropriateness of calculating the trip generation for the Great Wolf proposal based on three Great Wolf lodges in the United States (as set out in the TA), which has then been subject to a sensitivity test to demonstrate its robustness (as discussed further below), Mr Lyons has sought to question the reliability of such data. However, his premise for doing so is flawed. This refers to what Mr Lyons states in paragraph 6.29<sup>83</sup>.
141. As put to Mr Lyons in XX, his observation makes no sense as a basis for challenging the Great Wolf data. Even if UK families do take 19% more trips as compared with US families, that does not and cannot alter the reliability of using the US data which is based upon three Great Wolf resorts operating at peak<sup>84</sup>. As Mr Bell confirmed, the US data involves resorts for which the vast majority of all movements are car-borne, so it provides a highly robust basis for analysing trip generation to the site.
142. Mr Lyons suggests it is surprising and disappointing that the Appellant does not contemplate the impact of differences between patterns of leisure trip making in the US would have on the applicability of the US data, but it is neither surprising nor in the least disappointing. It is not surprising, because those differences Mr Lyons identifies are incapable of having any impact. It is not disappointing because there is no basis upon which one could adjust for differences in any way other than one which might

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<sup>83</sup> “That data source immediately raises the issue of whether, or not, it is a reasonable proxy for the assessment of a similar development proposition in the United Kingdom. I note from the eighth page entitled: Favourable Demographics from the Appellant’s Presentation to Cherwell District Council dated 5 February 2019 [Appendix RL-M] that one of the reasons that it believes that the opening of a Great Wolf Resort in the United Kingdom would be “very successful” is that: “Vacation Patterns: Due to the higher discretionary income levels, UK families are able to take more trips as compared to US families. UK families take 19% more trips annually than US families. Despite having fewer school holidays, UK families take as many trips as US families (when discretionary income levels are normalized).”

<sup>84</sup> The fact that UK families might go on holiday more often US families doesn’t affect the operation of a Great Wolf resort at peak levels, and consequently the trip generation. Mr Lyons does not explain how it could. More fundamentally, he does not offer any other reason as to why the US data would somehow be unreliable as a robust basis for assessing trip generation.

reduce the robustness of the use of the US data. Mr Lyons' evidence on this point is incoherent.

143. Having failed to identify any proper reason for rejecting the US data, what Mr Lyons the embarks upon a mystifying critique of the Appellant's data which then misapplies the sensitivity test data that is contained in the Transport Assessment in Appendix H, along with the explanation given for that sensitivity test.

144. As Appendix H makes clear, the sensitivity test performed in the TA at OCC's request was simply to check the robustness of the use of the US data. This was done by taking data used for a Center Parcs at Elveden Forest (used in a TA for Center Parcs at Woburn)<sup>85</sup>. There is a clear explanation in paragraph 2.12 of Appendix H in paragraphs and explanation omitted entirely from Mr Lyons' evidence<sup>86</sup>.

145. The Center Parcs data was only used as a sensitivity test because it provided a robust way to test the results of the US data. It was never suggested that the total daily trip generation could be calculated from that data, nor was it suggested that the modal split for Center Parcs would be the same for Great Wolf as the Center Parcs resort does not have the same ability and measures to attract sustainable modes of travel. It is a far more isolated location, away from any town like Bicester served by two railway stations, and without the connections and shuttle bus arrangements in place for Great Wolf. What was demonstrated, however, was that even using the Center Parcs data in the sensitivity test, the US data was very robust in terms of trip generation. As Appendix H, paragraph 2.25 demonstrated by way of comparison, the US data provided a robust assessment in comparison with the sensitivity test which had lower AM and PM peak hour traffic trips generated. Therefore, rather than use the Center Parcs sensitivity test data (which would have shown a lesser impact on the AM and PM peaks), the TA continued to use the US data.

146. Regrettably, this analysis overlooked by Mr Lyons in his presentation of his evidence. Ignoring these points, Mr Lyons then sets out an analysis in his evidence pointing to differences between the Center Parcs data and the Great Wolf data. But that is exactly the point. The Center Parcs data is different because it is a different type of resort.

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<sup>85</sup> As also explained in paragraph 2.10, a Center Parcs has fixed changeover days on Mondays and Friday so the total daily trip generation will not be comparable to the proposed Great Wolf site with flexible arrivals and departures on any day of the week. It was used as sensitivity test to provide a reasonable worst case comparison for guest mode share, car occupancy and arrival/departure profile.

<sup>86</sup> "... The Center Parcs data indicates only a small proportion of guests arriving by sustainable modes of travel. However, it is noteworthy that the proposed development will include sustainable modes of travel and reduce the number of car trips associated with the development. However, for the purpose of this assessment, it is considered that the above mode share provides a robust assessment of the likely trip generation of the development proposal in terms of overall vehicle numbers."

147. PAW and Mr Lyons also sought to criticise the TA on the basis of theoretical capacity if every bed were full. There is no basis for this. Even if every single bed were full in every family room, that does not amount to greater vehicle numbers (given the nature of the rooms). And no hotel operates on that basis in practice. As to the criticism as to the number of vehicles, as Mr Bell points out it is less on a daily basis than a modest supermarket. Again hyperbolic claims on behalf PAW misportray reality.
148. More unsatisfactorily, Mr Lyons then appears to criticise the TA for its very robustness. Mr Lyons claims that there is a “disconnect” highlighted by Motion in the TA in identifying that “first principles assessment demonstrates that the development would be expected to attract 28 guest vehicle trips during the weekday morning peak hour, 32 guest vehicle trips during the weekday evening peak hour” whereas those values are significantly less than the equivalent 113 and 154 trips resulting from the American Data. Mr Lyons has misunderstood the whole point being made. As the TA makes clear, it is the larger 113 and 154 trip generation in the AM and PM peak from the US data that the Appellant has gone on to use in the TA in order to be robust<sup>87</sup>.
149. Having misdirected himself on this, Mr Lyons created his own different weekday arrival and departure profiles based on his own different analysis and claimed “first principles” assessment which is completely divorced from any reality. This contains a fictional stay of all travellers staying only 1.6 nights (based on an average, whereas of course one cannot apply an average in this way as guests either stay 1 or 2 nights). It then builds in mixed assumptions from different data sources (such as 98% car borne profile from Center Parcs) but then a different profile for visitor stay etc. And it completely ignores the best evidence from the three US resorts which show how these facilities actually operate in terms of trip generation.
150. Mr Lyon’s approach is unprincipled and illogical and rejected as it been by OCC, CDC and the Appellant. The profiles fly in the face of the evidence that has been properly tested for sensitivity and correctly accepted by OCC as providing worst case scenario of trip generation for the Great Wolf resort (ie it does not build in any credit for the many sustainable transport measures which will be provided at the Great Wolf resort which will in fact serve to reduce the number of car trips to the Site).

#### Car-parking

151. In addition to the mistaken analysis on trip generation, Mr Lyons has sought to question the adequacy of the 902 car-parking spaces provided for the scheme, claiming it amounts to an under-provision for the requirements of the site, even though the amount is accepted by OCC and CDC as being the appropriate amount.

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<sup>87</sup> It has not sought to use the much lower figures that would have come from using the Center Parcs data. It has therefore assumed the worst against itself. It is little wonder that OCC accepted the robustness of the TA. It is regrettable that Mr Lyons has misunderstood what is clear from the face of the document.

152. The assessment of the amount of car-parking required for the Appeal Scheme has been fully explained and justified in the TA and agreed with OCC and CDC (correctly so), in the absence of any relevant car-parking standards in the development plan. This justifies the total level of 902 spaces, 56 of which will include disabled access and 90 of which will be designed at the outset for electric vehicle charging, but with the ability for all of the spaces to be converted for electric charging in due course.
153. The car-parking requirements for the Appeal Scheme were properly assessed based on a parking accumulation analysis that was presented in Appendix E of the Transport Assessment, applying the expected vehicle trip profile set out in Section 5 of the TA which is based on the actual operation of Great Wolf resorts. That parking accumulation analysis demonstrated that the peak parking demand would be 829 spaces (so 92% of the total parking capacity), so demonstrating an appropriate degree of spare capacity to allow for efficient turnover of spaces.
154. Mr Lyons has not produced any explicable basis for seeking to question the reliability of relying upon trip generation for Great Wolf resorts, other than to point out that they are in the US and to refer to the fact that in England it is believed that people take more holidays in the US which is a misconceived point as above<sup>88</sup>.
155. Accordingly, there is simply no reason for adopting a different parking assessment based on some different model. Despite this, that is exactly what Mr Lyons purports to do in building a series of basic errors which render the whole consequential assessment he creates flawed. In particular, as Mr Bell points out:
- a. Mr Lyons has assumed for his assessment (see paragraph 6.42) the average duration of stay is 1.6 nights, and consequentially he assumes that every guest will stay exactly 38 hours. This is artificial in the extreme<sup>89</sup>. By the same token, the notion that each guest stays exactly 38 hours is nonsensical for such a model.
  - b. Mr Lyons' assessment also builds into his model an assumption that trips start on Monday, with a corresponding departure 38 hours later and this profile is then applied across the board. Again, that is completely artificial: see Appendix O of Mr Lyons' evidence. It has the consequence that all of the 116 guests he estimates arriving at between 8am-9am on a Monday will all leave between 10-11pm on Tuesday. This makes no sense. By the same token, he has no guest departures occurring at all throughout Monday and the first half of Tuesday because of his strange starting point that the car-park begins as empty on Monday morning.

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<sup>88</sup> That is incapable of affecting the peak trip generation for the Great Wolf resort, wherever it is located. Even if people in England take more holidays than those in the US, that does not affect the maximum trip generation to the resort itself which is governed by it operating at maximum demand (which is what the Great Wolf resort figures used are based upon).

<sup>89</sup> The average duration of stay is an average, but reflecting that some people will stay one night and some people more than one night, but one cannot then use an average duration of stay to build up a proper picture of parking accumulation assessment.

- c. More bizarrely, Mr Lyons' approach with its rigid assumption of a 38 hour stay (come what may) leads to an absurd departure profile, with significant numbers of guests departing in the middle of the night<sup>90</sup>. Again, Mr Lyons' model is completely unrealistic.

156. All of this demonstrates that there is no proper basis for Mr Lyons' rejection of the parking assessment contained in Appendix E, nor purporting to conduct his own such analysis, nor for the assumptions Mr Lyons' he has made for the assessment which are artificial in the extreme and consequently his parking analysis is completely unreliable. The Appellant and OCC and CDC are clearly right in agreeing the parking assessment undertaken in the TA, based on real data of actual usage, all of which demonstrates that there is sufficient car-parking with sufficient excess spaces to allow for the proper use of the parking provision.

157. The scheme therefore provides sufficient parking to meet peak needs assuming a worst case scenario that the trip generation is predominantly car-based. In reality, the transport sustainability measures will all help to reduce the car-parking demand for reasons described elsewhere in Mr Bell's evidence

#### Routeing to the Site

158. Mr Lyons also disagreed with the Appellant and OCC and seeks to disagree with the Appellant and OCC's agreed analysis on the routeing to the site that will occur as set out in the TA.

159. The reality is that the routeing considered in the TA represents a worst case assessment of the traffic movements to and from the Site which have been robustly assessed by the Appellant, in consultation with both OCC and the Highways Agency. Mr Lyons' points of disagreement are not points of substance, nor are they consistently made with the evidence (including his own involvement in other proposals where, for example, signing is used successfully as a strategy to influence visitor behaviour to the tourist attraction at Legoland, as Mr Bell points out).

160. The TA movements are all explained and justified in the TA as representing that worst case assumption. Taking the points in turn, using for shorthand only Mr Lyons' terminology:

- a. As demonstrated above, the assumption of traffic routeing from the north via N1 or N2 routes, travelling through Middleton Stoney junction, is based on a worst case analysis for that junction. In reality, as Mr Lyons' himself accepts and advocates (like Mr Bell), traffic would not actually join congestion at Middleton Stoney Junction in the AM or PM peaks when such congestion

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<sup>90</sup> On his analysis, 44% of guest departures (these are, of course families with children aged 2-12) are assumed to be leaving the resort between the hours of 10pm-5 am, in contrast to the actual data for Great Wolf resorts which shows a total of only 7% departures occurring during that time.

occurs, due to the use of dynamic satellite navigation systems. In such circumstances, however, the natural alternative route is of course N3 (as Mr Bell explains). This is just 1 minute longer. If coupled with a signage strategy, it is a natural route. Moreover, the junctions affected by this route have all been assessed and operate well within capacity for the flows that would be generated by Great Wolf.

- b. For traffic coming from Junction 9 of the M40, Mr Lyons is concerned that it would route along S1 through Little Chesterton. However, this concern is not well-founded. As Mr Bell points out, there will be a signage strategy in place which will influence driver behaviour. In reality, drivers are very unlikely to use the single track route through Little Chesterton already, as it is already marked as a single track road. The signage strategy will further enhance this by including signs specifically stating No Access to Great Wolf Resort<sup>91</sup>.
- c. In addition, it should be remembered that the traffic being generated for the Great Wolf resort is largely generated outside the relevant AM and PM peaks when traffic congestion can occur and the routeing assumptions reflect the fact that people will readily be able to travel to the site along the signed routes that continue to influence driver behaviour. The fears are misplaced.

161. Mr Lyons' sought to raise a concern about the signing itself as a matter of principle from the M40. However the Highways Agency were specifically consulted about the scheme, including the signage strategy which formed part of it, and they have no objection to it. Mr Lyons' concerns are therefore illusory.

162. The fact remains that this is obviously a site which can be safely and appropriately accessed by non minor-roads, using direct and easy routes, where signage will guide people to the site in any event. If there had been any concern in this respect, this would have been raised by OCC as the local highway authority and it has not. OCC has confirmed and Mr DeVenny reiterated in evidence, that it has no objection to the amounts of traffic generated by Great Wolf travelling along the roads in question (the issue of the AM and PM peak at Middleton Stoney Junction having been addressed above). OCC are obviously right in this respect. The roads intended for access are self-evidently not minor roads for the purposes of Policy TR7 of the saved Local Plan – it

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<sup>91</sup> Mr Lyons' concerns are based on drivers ignoring signs altogether telling them not to use that road, ignoring the fact that it is obviously a single track, ignoring the sign of No Access to Great Wolf Resort and ignoring the signed alternative which is a better quality road and which is actually signed to the Great Wolf resort. As OCC itself recognise, this concern is unjustified and it is addressed by a signage strategy. With the signage strategy in place, people will naturally follow route N3 for traffic on the A43 and route S2 for traffic on the S4. The TA builds in a precautionary approach that some traffic approaching the site from the M40 junction 9 might not follow the signage in the assessment because there might be an instinctive approach to turn towards the site. This is an entirely reasonable and precautionary approach to reflect the potential for that instinctive reaction which, on a precautionary basis, is assumed to result in 50% of movements not following the signage, whereas the expectation is that it will be considerably more effective than that. Mr Lyons' contentions about signage not being effective are contradicted by their well-established use (not just by his own client Legoland), but generally. It is therefore not surprising that OCC has accepted this and there is no legitimate basis for objecting to the scheme based on Mr Lyons' contrary assumptions

is ludicrous to suggest that they are. The site itself is accessed from the A4095, a main road in status as its prefix suggests. There is ready access to the strategic road network. It is one of the reasons why the site is ideally located to ensure accessibility.

163. Mr Lyons raised some other points in his evidence, but which are similarly not well-founded<sup>92</sup>.

164. Accordingly, we have no hesitation in inviting you to agree with the Appellant, the Highways Agency (so far as the strategic road network is concerned) and OCC as the ability for the Site to appropriately accessed by appropriate roads for the level of traffic proposed, with the proposing routeing and signage arrangements that have been the subject of detailed consideration and agreement.

### **(3) The Effect on the Character and Appearance of the Area**

165. Turning to the effect on the character and appearance of the area, this has been the subject of very detailed analysis and consideration by both the Appellant's architect Nick Rayner and its landscape architect, Mr Waddell.

166. For the purposes of thematic analysis, I will deal with some of the evidence on the question of intrinsic design first, and then turn to consider the effect of the design on the character and appearance of the area in light of both landscape character and visual impacts. But by way of preliminary point, it is important to note that the design and the landscape are intrinsically intertwined, and have been in the collaborative approach adopted by EPR and BMD from the outset. Although Mr Huskisson and Mr Cook have attempted to claim that the approach has not been "landscape led", the evidence demonstrates the opposite. There has been comprehensive coordination between the architects and the landscape architects in promoting a landscape-led design for the Appeal Scheme, resulting in the very high quality scheme that is before you.

167. The thrust of the attempted criticism (principally from Mr Cook) appears to have been based on the fact that the Appeal Scheme inevitably has to contain certain elements for a waterpark hotel scheme. It is truism for any development proposal that it needs to contain the functional elements of the development proposed (be it as house, a hotel or a waterpark resort).

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<sup>92</sup> For example, he suggested that the agreed pedestrian and cycleway to be provided on the A4095 was sub-standard, but this is not the case. The 2.5m width complies with OCC's Cycling Design Standards, paragraph 3.4.9 and has been agreed with OCC. Mr Lyons talks of walking distance to the public transport bus services, but it is not clear why given that there are dedicated shuttle bus services for guests and employees that take one direct to the front door of the resort. Mr Lyons criticises the fact that the access drawing for the Site is based on OS mapping, yet this is standard practice and all critical dimensions on the site have been checked. Mr Lyons sought to raise questions about the delivery of the shuttle buses, but there is no reason to do as they are secured through the section 106 agreement. Mr Lyons sought to question traffic generation in relation to the conference facilities, but again he has misunderstood the data. The US resort data for the three US resorts includes traffic when the conference facilities were in use at those resorts and therefore includes traffic generated by them.

168. As Mr Rayner explained, there was the obvious requirement to provide the necessary hotel rooms, reception area, ancillary service areas, the FEC and the internal waterpark facility. Without these, it would not obviously provide the tourist hotel facility that it comprises. There is also the corresponding need for the necessary carpark. And for the waterpark, there is a need for a building of a certain height to achieve the gravity required for the slides that form the basic *raison d'être* of the resort, to provide the fun that the resort would provide to families with their children aged 2-12. And as part of that, it is necessary to have the elements in one building to provide continuous cover and security for the guests, along with the Great Wolf communal areas that are part of the essence of the resort. So in that sense, there are obvious functional requirements to fulfil as part of the design as with any development proposal.

169. The suggestion that EPR has selected some sort of off-the-shelf design, based on a US resort, is fanciful. Indeed, as Mr Cook's accepted, even inspection of the images he provided of a variety of different US resorts demonstrates very obvious key differences. The external design and materials vary widely; but perhaps the most obvious one is that of height. As Mr Cook conceded, the vast majority of the US illustrations he chose show multi-storey hotel buildings consistent for an urban environment (eg in the region of 8-12 storeys); yet that sort of height is completely absent from EPR's design which restricts the buildings to a maximum of just 4 storeys.

170. Indeed, it became apparent that Mr Cook quickly backtracked from this attempted reliance upon US examples when this was pointed out, along with the basic principle that the task here is to consider the acceptability of the specific scheme required by the plans for this particular site. Mr Cook was therefore unable to explain in any coherent terms what the relevance of the differing US designs in his Appendix 9 (CD14-4) had to that assessment<sup>93</sup>.

171. The second preliminary, but important, point to note is that what has been repeatedly articulated as an apparent criticism of the Appeal Scheme in various different ways, epitomized in PAW's opening in terms of comparing the size of the building, is in fact one of the greatest strengths of the Site and the Appeal Scheme designed for it.

172. Repeatedly, CDC and PAW sought to refer to the overall size of the building and the size of the car-park that accompanies it in the sense of pure numbers and

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<sup>93</sup> He expressly stated that he had "taken them into account" in assessing the effects of this proposal; yet when challenged on the relevance of this to assessment of the actual scheme before you, he could not articulate that relevance in any sensible way. This is a basic error of approach contained in Mr Cook's analysis in taking them into account. This appears to be some sort of attempt to suggest that the EPR building design should be assessed on the basis of other designs, even though they differ in basic elements such as height, materials, form etc. It is this sort of misinformation in approach which will no doubt have affected the perception of local residents, when told by Mr Cook that it is relevant to take into account the designs of other schemes in other locations which are different to what is proposed here, without actually focusing on the design for this location which Mr Rayner explained.



measurements. The physical dimensions of the building and the numbers and area of car-parking space are obviously not in dispute. There is also ready acceptance that they are both large in size. No one has suggested to the contrary. But what is remarkable in the analysis is that notwithstanding the repeated reference to the large physical size of the building and the car-park (in whatever figurative or illustrative examples are used, or whatever figure ground model is provided) is how well the site can accommodate it. It is a site in excess of 18 ha. Whilst the Appeal Scheme contains all the necessary building for the resort and the 902 car parking spaces for it, it still delivers nearly one third of the site as public accessibly open space in the northern parkland – over 5.6ha of space, in addition to the other landscaped areas surrounding the buildings. And what is particularly remarkable is how well-concealed the resulting building, car-park and presence of the resort will be.

173. At the conclusion of the inquiry, despite all the hyperbole, what Mr Huskisson and Mr Cook both conceded is that even on their own analysis, any impacts on character and visual impacts are localised. This is both a tribute to the inherent characteristics of the site in terms of its well-concealed nature, natural topography and border features (such as the M40 to the west). But it is also a tribute to the design and landscaping proposals that have been carefully formulated to enable a building of this size to be accommodated within the site without any material impacts beyond.

174. Repeatedly invoking the size of the building or the car-park in the abstract, but without explaining from where those sizes will actually result in any harmful impacts, simply makes the points in favour of the development<sup>94</sup>. As we stated at the outset, it is an ideal site in that respect. It is one of the great strengths of the site and the Appeal Scheme that the size of buildings and parking can be delivered achieving all those benefits to the economy, whilst not causing any such material impacts. I will come back to this shortly.

175. The debate came down to the effects of a potential view of the appeal scheme from the access road on the A4095 (a length of road of about 40m), views from the diverted PROW, and visual effects on residential amenity from two properties (in respect of both of which views CDC itself accept would not be a reason to refuse planning permission, CD3-3 paragraph 9.138). What is obvious from that debate is just how limited any effects on landscape character and visual impact must necessarily be. No one is able to point to any materially harmful views of what is proposed from any other location. I will come back to those particular views shortly.

176. Turning back to the question of design, you heard evidence from Mr Rayner as to the careful evolution of the architectural design concepts affecting the siting and form

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<sup>94</sup> It is able to accommodate a new recreational tourist facility that will generate huge numbers of jobs for the area, at the periphery of one of the two most sustainable towns in the District from where employees can be drawn, of size that will generate up to 500,000 visitors per annum in a safe and contained site, yet do so without causing any wider impacts to the landscape or visual effects of the area.

of the building itself, within a landscape led approach, along with the many pre-application consultation meetings that were held with CDC, along with pre-application consultation meetings with stakeholders.

177. In light of that evidence, I have no hesitation in commending to you the very high quality of the design of the building within its landscape. Full account of all constraints and opportunities of the Site and local context have been taken to assimilate the design into the landscape, from the selection of the location of the built form within the site, retaining the northern ponds with the creation of parkland, to the location of the highest parts of the building close to the M40 and away from the A4095, the two adjacent residential properties and the existing BHGS.
178. Claims are made of alleged significant “urbanisation”, but these are not justified on analysis. The elements of the building have been composed and articulated to present itself as a series of buildings (water park, hotel, FEC), broken down into distinct bays with different characters. The building is set in a contained countryside location with its own natural landscaping. It does not have the characteristics associated with a city, town, or village, or any other urban or urbanising environment.
179. The design of the building has prevented any adverse design effects to the character and appearance of the area. For example, the size of the building and its form cannot even be seen from the surrounding locations such as Chesterton. There is a strong degree of enclosure to the Site by virtue of the existing and proposed landscaping. Where the building is visible it will be perceived as a cluster of buildings glimpsed through broken views created by the proposed landscape features - a result of the landscape led design approach. The use of architectural forms and materials common to the area around Bicester and Chesterton result in a building that is established in its context and supports the character of the area.
180. These aspects of the architectural design therefore respond to and supports local distinctiveness. The proposal works in harmony with the existing established woodland and landscape features, as well as the proposed soft landscape enhancements, which serves to reinforce the local wooded landscape distinctiveness of the area.
181. The design also draws inspiration heavily from the character and materials of buildings in the local area. There is a significant use of local stone, pitched roofs of varying heights, and architectural details and features which are used locally, all of which root the development in its context. All of this is done in a way which ensure the building is still able to offer a fantastic hospitality destination, offering families a dynamic and unrivalled entertainment experience in the buildings themselves and in the northern parkland beyond.
182. There has been a thorough understanding of the context and character of its location, retaining the existing site landscape features of value where relevant, with the

creation of new landscape character zones around the site. The design ensures a screened and layered arrival sequence with the use of hierarchy of prominence of built form and materials, with typologies of manor house, lodge, outbuilding barn and stables. This is appropriate to the locality, with the use of a fragmented plan form and height – gables, varied ridges and eaves, roof forms, reducing the perception of scale, with materials of stone, stucco render, stone quoin and window surround detailing, brick, timber cladding, oak-frame detailing appropriate to the locality and its character. The building when seen on the site itself is therefore resonant in its materials of the character of materials buildings in this part of Oxfordshire and Bicester.

183. The building is set well back from the site entrance 150m away from the road. The view towards the building is softened and screened by significant landscape planting associated with the car park and landscape surrounds in the foreground; the building steps back in layout form and is well articulated so that where the building is seen, it is layered and reduces the perception of scale.
184. The design obviously is different in scale to buildings in Chesterton, but the site is not in the village, seeking to emulate a village building, nor intended to become perceptually or physically connected to the village. The design reflects the fact that the site is large and has the landscape and visual capacity to accommodate the proposed building within a highly characterful landscape and almost entirely screened by the perimeter planting from views beyond the site.
185. As to the effects on landscape character and visual effects, you have the benefit of the LVIA (CD1-13, Chapter 13) and the evidence from Mr Waddell (CD12-6) which I commend as a fair and accurate assessment.
186. CDC were engaged from the early stages of the project and provided input and agreement on: the scope of the LVIA and associated viewpoints; design input to enhance the appearance, massing, scale and detailing of built form; and, input to the strategy and detailing of landscape proposals for the scheme.
187. CDC subsequently confirmed that they had no concerns over the scope or judgements set out in the LVIA, indeed they reported that they considered it to be “*comprehensive and competently written, complying with relevant guidelines*” (CD3-3, Committee Report 9.92). I will come on to summarise the judgements of the LVIA shortly.
188. CDC also confirmed that the Landscape Officer considered the landscaping proposals to be “*largely satisfactory*”, with “*no objection based upon the landscape proposals.*” (CD3-3, Committee Report 9.134). I will also briefly summarise the landscape proposals shortly.

189. As we heard in evidence from Mr Waddell, the Site is a Golf Course, laid out in the style described by the golfing community as a parkland golf course. There is nothing rare or unusually distinctive about the golf course, it has no special cultural associations and has not been integrated into an historic or valuable area of parkland or designed to provide views out to the surrounding landscape. It has been laid out to facilitate the game of golf. According to the Arboricultural Impact Assessment (CD1-3), trees on the Site are largely laid out to serve this purpose of playing golf, with over 90% reported to be of low or very low value.
190. According to the Biodiversity Net Gain Assessment (CD2-1), 68% of the Site is also covered with low value amenity grassland. This is an appropriate surface for playing golf but provides very low ecological value and does not contribute to the character of the surrounding landscape. Although the trees and amenity grass surface may be considered to form a “parkland style golf course”, the Site is not parkland itself<sup>95</sup>. It is therefore simply wrong to treat it as such for the purposes of the Landscape Character Assessments which are concerned with parkland associated with historic houses or estates, not golf courses.
191. The Site and its surrounding landscape context are undesignated and the Site lies on an area of gently rising topography, where it is not in an elevated position on the horizon or overlooked from any nearby elevated positions. Substantial vegetation on the Site boundaries and in the landscape beyond result in a substantial degree of enclosure to the Site and this area of the landscape, limiting influence of the proposals to the Site itself and its immediate proximity. The CDC Landscape Officer acknowledges this in the Committee Report (CD3-3) and this was accepted in evidence from Mr Huskisson and Mr Cook.
192. As a result, aside from features along the boundary (of which the vast majority would be retained), the Site provides a very limited contribution to character of the surrounding landscape
193. In the wider context, the Site lies on the edge of the Cotswolds National Character area, as defined by Natural England, with a natural transition between this and the adjacent Thames Valley. The Cotswolds Area of Outstanding Natural Beauty (or AONB) lies over 13km to the west of the Site, clearly at more than sufficient distance that the Proposed Development would have absolutely no influence. As set out in the evidence of Mr Waddell, the character of the Cotswolds becomes very limited in this area and is certainly not considered to represent the ‘quintessential English landscape’ of the Cotswolds as absurdly claimed by Mr Cook – especially when compared to the stunning landscape along the Fosse Way that runs through the AONB or its beautiful settlements such as Stowe on the Wold or Bourton on the Water.

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<sup>95</sup> See Huskisson XX and Cook XX

194. As with much of the landscape across the country, the area within 3km of the Site contains Registered Parks and Gardens, with Kirtlington Park and Middleton Park some distance to the west and north-west, along with the undesignated Bignell Park to the north of the Site. These parks provide a contribution to the character of the landscape but are not considered to define that character. The LVIA undertaken by BMD confirms that any effects on these assets would be negligible.
195. Chesterton Conservation Area lies over 400m to the east of the Site, with the extensive vegetation of the eastern 9 holes of the golf course and the expanse of woodland on Bignell Park lying between the village and the Site. This precludes any visual interaction with the current Site or the Proposed Development.
196. Visually, the Site is also well contained by the vegetative cover and relatively flat topography, with views constrained to people on or immediately adjacent to the Site, or glimpsed views over very short distances from the nearby roads of the M40, Green Lane and Kirtlington Road A4095. All of these views would be substantially reduced in the long term by the proposed landscape strategy. Beyond the immediate proximity, the extent of enclosure prevents visibility of the Site or the Proposed Development.
197. Given this context, the Site and the surrounding area has the obvious capacity to accommodate the Proposed Development without resulting in a significant impact on the landscape and views. This is reported in the LVIA (CD1-13, Chapter 13) and reflected in the AVRs prepared by Vista3D and appended to the LVIA (CD1-13, Appendix 13.8).
198. The evidence of Mr Waddell has demonstrated that the proposals have been developed as part of a landscape-led approach, with careful regard to the landscape character, features and value of the Site, along with the landscape and visual context of the surrounding area.
199. The northern third of the Site was identified as containing the most features of value. On consideration of the enclosure on and surrounding the Site, the south-west third was identified as the most suitable location to incorporate the built form. Preferred access off the A4095 was identified as being more acceptable into the south-east third of the Site, away from the more sensitive northern areas, thus becoming the most suitable location for the siting of car parking and service vehicle access.
200. Development of the project layout included careful consideration and balancing in the retention of existing features against the efficiency of the layout. Existing vegetation is proposed for removal in some areas, with the benefit of maximising the overall footprint of space available for landscape proposals and subsequently the quality of the landscape strategy.

201. The evidence of Mr Rayner has demonstrated how the architectural proposals, including the height of built form, the massing have been adapted to suit the input taken from the LVIA, with architectural detailing designed to break up the façade of the hotel. Combined with the extensive and carefully considered landscape proposals, including those between the A4095 and the Hotel frontage, the evidence of Mr Waddell clearly sets out how this will break up views of the hotel, so it is perceived as a group of attractive buildings, not a large single mass as asserted by the evidence of Mr Cook and Mr Huskisson.
202. Turning to the landscape proposals, these were developed with careful consideration of the existing features of value on the Site and the character requirements of the surrounding context, along with the ecological requirements to achieve a Biodiversity Net Gain on the Site.
203. This resulted in the development of a bespoke design that responds specifically to the Site and the surrounding landscape. Existing features considered to be of the greatest value comprised: mature vegetation along the Site boundaries; existing plantation woodland toward the centre of the Site; and, a cluster of seven ponds in the northern part of the Site. Important ecological features in the new Northern Park would be retained and enhanced, whilst contributing to the loss of habitats and features elsewhere. This newly created parkland would include extensive areas of new native woodland, scrub planting and many scattered trees, along with improvements to existing ponds with aquatic planting, set within species-rich grassland meadows with wildflowers.
204. The green infrastructure along the boundaries of the Site would be substantially improved, with a broad wooded buffer along the south boundary connecting the east and west sides of the Site. Combined with the new areas of woodland in the Northern Park, these areas of woodland would contribute to enhancement of the existing wooded character of the surrounding landscape, as required by published character assessments and planning policy.
205. Over 2km of hedges are proposed in the car park, which would screen and soften views of cars and the car park surfacing throughout the year. Over 125 trees would be laid out across the car park in four rows, these would combine with new and retained vegetation around the hotel frontage to screen and soften views of the hotel. A strong boulevard of 12 trees would line the entrance driveway, framing a vista to the port cochere and contributing to the ‘gradual reveal’ of the resort frontage as visitors approach over a distance of more than 150m. A tall new hedgerow along the edge of the car park would combine with the existing boundary vegetation and additional trees and scrub to confine views to the narrow entrance off the A4095. The AIA identifies

the establishment of 660 extra-heavy standard or semi-matured sized trees, as well as more than 16,000 trees and shrubs creating the new woodland and woodland edges<sup>96</sup>.

206. As described in the evidence of Mr Waddell, overall the landscape proposals result in a substantial increase in high quality features within the Site boundary, forming a new publicly accessible parkland area and extensive network of green infrastructure comprising:

- An overall increase in woodland cover from 2.07ha to 3.67ha
- An increase in native shrub planting from 0.03ha to 0.48ha
- Replacement of amenity grassland to increase semi-improved grassland from 0.46ha to 3.07ha
- An increase in hedgerow from 182m (of which only 8.5m is species-rich) to 812.5m (of which 655m is species-rich), along with over 2km of new single species native hedgerow in the car park
- Enhancement of existing ponds with marginal and aquatic planting, along with creation of 0.63ha of marsh grassland

207. Mr Huskisson and Mr Cook have made various criticisms of the landscape design in their evidence. But as CDC Reported in their Committee Report (CD3-3 paragraph 9.134) that their Landscape Officer had “*no objection based on the landscape proposals*”. The evidence of Mr Waddell has also confirmed that these criticisms are unfounded and wholly incorrect. Mr Huskisson’s criticisms of the carpark arrangements, for example, which are not articulated anywhere by CDC, are misconceived. The detailed implementation of the design can address any of the minute points of detail raised by him (such as the specific electric car-charging points or the swales).

208. Lighting has been designed to meet functional requirements whilst enhancing the night time scene around the resort but limiting effects beyond the boundary of the Site. These limited effects are set out in the Illumination Impact Profile prepared by Hoare Lea, submitted with the application and comprehensively considered by the LVIA. Indeed CDC’s Environmental Health Officer noted in an email to Clare Whitehead on 19<sup>th</sup> December 2019 (CD10-24), that the lighting scheme “*seems to be a well thought out and sensitive scheme whilst providing the required lighting levels.*”

209. As to the PROW, current access to the majority of the Site is constrained to those paying to play golf. Public footpath 161/6/10 runs across the Site but is disconnected from the nearby villages or the wider rights of way network. As set out in the evidence of Mr Bell (CD12-12), a survey by Motion confirmed that this path is seldom used, likely due to this lack of connectivity and, as set out in Mr Waddell’s evidence (CD12-6), with the potential for its current alignment to reduce its amenity value due to the likely conflict with those playing golf.

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<sup>96</sup> CD1-3 paragraph 5.5.2.

210. As described in the evidence of Mr Waddell and Mr Bell, the Proposed Development would provide links to Chesterton village and out to the existing footpath network beyond the M40 to the north, along with a link to the proposed Northern Park, which would provide a substantial improvement to the public access of the Site.
211. AS set out in the evidence of Mr Waddell, the park would provide over 5ha of publicly accessible amenity space, with over 800m of surfaced paths, over 500m of mown grass paths, one large and two small picnic areas, other more intimate seating areas and educational material on a series of interpretation boards to inform the public about the wildlife and landscape to be found in the Park.
212. Combined with the re-routing of the footpath and improved connectivity, this would provide a substantial improvement to the public access and amenity of the Site.
213. The LVIA fully complies with the requirements set out in the current guidance of GLVIA3 (CD10-1), providing a clear and auditable narrative to support the judgements on landscape and visual value, susceptibility, sensitivity, impact and effect. The CDC Landscape Officer confirmed agreement with these judgements, as set out in the Committee Report (CD3-3), through “*testing the LVIA*”. We submit This is not the case with regard to the judgements set out by Mr Cook and Mr Huskisson. This clearly report an exaggerated value of the landscape on and surrounding the Site – with Mr Cook in particular seeking to make comparisons between the Site and the valuable parklands set out in the Oxfordshire Wildlife and Landscape Study (OWLS), whilst also untenably comparing this Site with that of the Cotswolds AONB
214. The evidence of Mr Waddell has demonstrated that the Site is not of high value - nor is it of high susceptibility, given the Site’s substantial degree of enclosure, the presence of the immediately adjacent M40 corridor, the ease of replacement of existing low value features on the Site and the opportunities for mitigation to limit the influence of the proposals on the landscape and views. Mr Cook’s evidence fails to take these factors into account, contrary to the requirements of GLVIA3, with his judgements of value and susceptibility bearing no relevance to the Site in question and resulting in an exaggeration of his judgements of sensitivity and overall effect of the Proposed Development.
215. The LVIA and evidence of Mr Waddell has demonstrated that the Proposed Development would not cause significant adverse effects upon the identified landscape character receptors or that of the landscape setting to the nearby villages including Chesterton or Little Chesterton.
216. In terms of views, the only adverse effects on the visual amenity of identified visual receptors are limited to those in close proximity to the Site, which would be substantially mitigated in the long term by the proposed landscape strategy. Views from



all other residential properties or settlements would be largely or completely screened by the extensive vegetation that encloses the Site and the effects are not identified as a basis for refusing permission in any event.

217. With regard to the landscape and visual impact on the village of Middleton Stoney, as a result of the proposed improvements to the junction of the B430 and B4030, the evidence of Mr Waddell demonstrates that the majority of effects would be as a result of the approved works required by Heyford Park Phase 1, with no more than a negligible effect resulting from the additional works proposed by Motion.
218. Turning back to the basic point of from where the Appeal Scheme could be seen, the evidence of Mr Waddell demonstrates that the substantial degree of enclosure to the Site would prevent any influence from on-site proposals on the surrounding area beyond the glimpsed views mentioned from Green Lane, at the entrance and overbridge of the A4095 and immediately to the south of the Site. These roads would remain rural in character following the incorporation of the proposed footways and footway / cycleway and highway improvements in the vicinity of the Site entrance. Therefore, the proposals would not result in a “*significant urbanisation and unacceptable harm to the area*” or the “*rural setting of the village*” as set out in the reason for refusal.
219. The levels of activity anticipated along the A4095 or in the wider area also would not result in the urbanisation or unacceptable harm asserted by the reason for refusal.
220. The evidence of Mr Waddell also demonstrates how the more suitable route proposed for the footpath that crosses the Site, along with improved connectivity and enhanced public amenity provided by the Northern Park would result in a substantial improvement to the amenity and public access of the Site. The criticisms made of this diverted PROW are not well-founded. Given that this is a PROW which currently has no surveyed use (in normal times), the provision of PROW which will actually be used, because it connects up to the PROW network with safe pedestrian access is a significant improvement in and of itself. But tracking the PROW as it travels along the southern boundary demonstrates how it would be an improved PROW. The bunding in this area is in fact not alien, but consistent with bunding that is a characteristic in the vicinity of the site (as to the south or along the M40). It will be covered by extensive woodland. And the PROW passes through a very substantial green buffer in making its way to the A4095. The fact that on the left it draws near the boundary fence and acoustic fence on the appeal scheme will not detract from its overall quality as off to the right will be substantial wooded green buffer area throughout. It is only as it approaches the A4095 that at its narrowest point this is 5m wide, elsewhere it lies in a considerably wider buffer as Mr Waddell described, but there is nothing unusual about narrowing of footpaths and it will remain considerably in excess of the minimum.

221. As to the amenity areas of BHGS to the north to which PAW referred, from viewpoint 3 with the bunding and woodland on it in place, it is obvious that these will continue to be significant amenity woodland areas. Whilst one will no longer overlook golf holes, there is no reason why these amenity areas overlooking a lake and woodland (which will screen the resort beyond) cannot continue to be enjoyed. They are substantial green areas in their own right.
222. Turning to external views, we invite you to test this yourself very simply against the evidence as it remained at the conclusion of the inquiry on character and appearance.
223. As Mr Huskisson and Mr Cook confirmed, they had no issue with the accuracy of the LVIA's accurate visual representations of the appeal scheme in place from various viewpoints that were agreed with CDC at the outset. Mr Huskisson confirmed, for example, that from the west the Appeal Scheme will be invisible. From the north, at year 15 from viewpoint 2, the Appeal Scheme will be invisible. From the A4095 as one travels down towards it from viewpoint 2, the Appeal Scheme will be invisible with the northern parkland and its planting in place. He suggested it might first become visible from the access point for the PROW, but Mr Waddell confirmed that it would not (as is obviously the case), given the orientation of the landscape and planting proposed on the site. Mr Huskisson then suggested that the car-park might become visible through the hedgerow at the point where it is nearest the road. However, as Mr Waddell explained, the new secondary species rich hedge within the site coupled with the existing hedgerow will make the car-parking invisible in the summer, and only the potential for heavily filtered views in the winter of a car or two in that location (not the appeal scheme). The effect is obviously minimal.
224. As to the very limited extent of view from the A4095 along the access road (some 40m in length) Mr Waddell has explained how glimpsed and limited this view will be. In the foreground will be all of vegetation that comes with the landscaping proposals before the buildings start some 150m distant down the access road. You will not actually be able to see the whole building anyway from this point, and it will be set down in the perspective at about half the height of the boulevard trees. Even if you can see the buildings, it is impossible to see what material harm results to the overall character and appearance of the area from such a limited view from the A4095.
225. As to views beyond the entrance along the southern part of the A4095, it will again be impossible to gain any material views through the existing and enhanced hedgerows to be created. Turning to Green Lane itself, you will struggle to get any views of the Appeal Scheme at all from this location and as Mr Huskisson accepts, the quality and condition of the foreground landscape is poor in any event. As to the view from the bridge of the M40, or views from the A40 itself, whilst views of the rooftops of the Appeal Scheme may be visible in principle in such views, it is impossible to see how such views result in a materially harmful effect for the viewer even if noticed, given the impact of the M40 itself and all of the other features in the view.

226. The reality of all this is very clear. Whilst CDC and PAW suggest some materially harmful effect on the character and appearance of the area, the highly concealed nature of the Appeal Scheme demonstrates the opposite. That is why there has been such focus on the glimpsed views from the A4095 from the access, but a proper appraisal of this view reveals why CDC itself did not ever request or consider it necessary at any point to provide AVRs of that view because of how little impact such a view can have on the character and appearance of the area.

227. We therefore commend the analysis of Mr Rayner and Mr Waddell in concluding that there is no material impact on the overall character and appearance of the area, which is a remarkable virtue of the Appeal Scheme itself, and a further strong reason for granting planning permission. If you consider there are any adverse impacts even of the localised sort that Mr Huskisson and Mr Cook are suggesting, we equally have no hesitation in suggesting that any such adverse impacts are very clearly and demonstrably outweighed by the many and significant overall benefits of the scheme as dealt with by Mr Goddard.

#### **(4) The Implications for Flooding and Drainage**

228. Reason for Refusal 5 relating to flooding and drainage has been withdrawn by CDC. This reflects the Statement of Common Ground<sup>97</sup> dated 15 February 2021. It is therefore no longer a principal issue for determination at the appeal. CDC and the Local Lead Flood Authority (LLFA), OCC, has expressly confirmed that it has all the necessary information to conclude that the appeal proposal is acceptable subject to the imposition of conditions.

229. For the avoidance of doubt, the Appellant continues to rely upon the written and oral evidence of Richard Bettridge. He is a well-established expert in relation to flooding and drainage issues. He deals with the flooding and drainage issues in his proof of evidence, rebuttal evidence and in the evidence he gave to the inquiry in light of questions for third party residents. As this is no longer an issue in dispute between the principal parties, I will deal with the issue more briefly, but addressing the residual concerns of those third party residents.

230. Reason for refusal 5 was never articulated as an objection in principle to the development. It was a contention that the submitted drainage information was inadequate in terms of calculations, methodology and the justification for the use of an underground tank as part of the drainage strategy.

231. The Appellant strongly disputes any suggestion that there is a lack of requisite information at any stage, as set out in detail in Mr Bettridge's Proof of Evidence and Rebuttal. In fact the planning application was accompanied by full information in

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<sup>97</sup> Statement of Common Ground (CD1-13)

relation to the drainage strategy (including a Flood Risk Assessment<sup>98</sup> and Drainage Strategy<sup>99</sup>) as part of the Environmental Statement<sup>100</sup> and planning application. The Appellant provided all requested additional information in the pre-application process. In reality, the objection stemmed from an unjustified and unrealistic insistence on only using surface drainage features, rather than an underground tank, despite the use of such a tank being accepted in other schemes and being appropriate for this site (given the anticipated higher levels of groundwater as explained by Mr Bettridge).

232. In the event, this issue has been rendered academic. CDC and the LLFA now accept that they have sufficient information to be satisfied of the proposal's compliance with the relevant local policy and national policy in terms of what is proposed, the tanking arrangements and the sustainability of the drainage strategy submitted. Even though not actually required, the Appellant has (for example), confirmed the outfall location to provide gravity drainage. Further modelling has been undertaken. The principles of the tanking system, intelligent rainwater harvesting system and standard principles of construction have been provided.

233. In summary, it is now clear in light of the Statement of Common Ground that:

- (1) The current flood maps for rivers and sea show that the Site is located within Flood Zone 1 and the surface water flood maps show that the Site is at very low risk of surface water flooding<sup>101</sup>. The requirements of the NPPF, and the sequential test in particular, have been fully met.
- (2) The proposed Surface Water Drainage Strategy, using SuDS, which will control the discharge of surface water from the site to Qbar will not only deal with the drainage requirements of the Appeal Scheme and the Site, but in fact serve to reduce the existing risks of flooding downstream to the villages of Little Chesterton and Wendlebury<sup>102</sup>.
- (3) It is common ground that the drainage strategy for the Site should not use infiltration drainage systems, but rather controlled discharge via the outfall, due to the shallow groundwater on the Site. There is therefore no objection

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<sup>98</sup> Flood Risk Assessment (CD1-15)

<sup>99</sup> Drainage Strategy (CD1-10)

<sup>100</sup> Environmental Statement (CD1-13)

<sup>101</sup> Rebuttal Proof of Evidence of Richard Bettridge (CD12-30). The current flood maps are shown in Appendix H of Mr Bettridge's rebuttal proof.

<sup>102</sup> Parts of Little Chesterton and Wendlebury have areas at medium and high risk from surface water flooding. Land at the highest risk would have an annual chance of flooding greater than 1 in 30 years. Parts of Wendlebury are shown to be located within Flood Zone 3. As explained in more detail by Mr Bettridge, while the Appeal Scheme will not address, and is not required to address all of those pre-existing separate flooding issues that exist in those areas, it not only ensures that there is no exacerbation of such issues, but it will in fact provide a substantive benefit. By reducing and controlling the run-off from the Appeal Site to QBar levels, the consequential discharge of water from the Site at times of stress will be significantly lower than is currently the case, which can only assist in reducing the existing flood risk in these areas. Therefore far from being any cause of concern, the Appeal Scheme will offer a substantive benefit by reducing some of the risk of extent of flooding downstream.

Given that this issue is demonstrably a matter of concern to many local residents, this is a significant benefit of the Appeal Scheme itself which will simply not exist without the Appeal Scheme proceedings.

from CDC or the LLFA to what is proposed in the drainage strategy in this respect. It is agreed that further testing will take place in respect of the implementation of any development to inform the final design, but that this is a matter properly controlled by condition.

- (4) The depth of the outfall for the existing site drainage system has been measured on the site and the hydraulic modelling conducted in light of its exact position. It demonstrates that the proposed surface water drainage can drain by gravity to the existing 450mm diameter pipe, which in turn drains to the existing pond on the golf course and then onwards into the wider land drainage network. Again any further verifications required in this respect are matters which are properly controlled by condition.
- (5) The final detailed design of the surface water drainage for the Appeal Scheme is a matter which again is properly controlled by condition with approval by the LLFA prior to any commencement of development in the ordinary way.
- (6) Restricting surface water discharge to QBar is agreed to be an acceptable and beneficial way of controlling the flow and mitigating risks of flooding downstream. The flood risk has been addressed for the 1 in 100 year event plus climate change, as required by the NPPF and the LLFA. In light of both local and national guidance, events up to the 1 in 1 year event will be restricted to the equivalent rate and this is a matter for control by condition in the detailed design.
- (7) The use of an underground storage tank is part of the delivery of the benefits of controlling the discharge from the Site to QBar. Neither CDC nor LLFA has any further objection to that (Mr Bettridge having demonstrated the advantages of such a system in light of groundwater in the area). The Appellant has therefore fully justified the use of such a tank to the LLFA and CDC<sup>103</sup>.
- (8) In conjunction with the tank, the Appeal Scheme will provide a rainwater harvesting system to deliver further benefits from the Appeal Scheme. This will reduce the water demand for the Appeal Site and also reduce the volume of runoff which would otherwise occur from the Site (including removing the first 5mm of rainfall), again providing a benefit in reducing the existing extent of flooding downstream.
- (9) Thames Water have been consulted about the appeal scheme have no objection in principle to the proposed additional foul water discharges which have been quantified and notified to them (as Mr Bettridge explained). Thames Water has confirmed (and it is required to do this as part of its statutory duties) that it will reinforce the foul water arrangements as necessary to accommodate the

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<sup>103</sup> It is a mechanism which has been used elsewhere and involves common industry engineering practice. For the reasons set out by Mr Bettridge, it is the ideal solution to ensure that no groundwater enters the system (as compared with additional surface features such as ponds which would require standing water and also be subject to groundwater issues, such as the anchoring of the lining of such features). Whilst the tank itself does not provide the same biodiversity of a surface feature such as a pond, the drainage strategy includes many such surface features as part of the overall SuDS arrangements and the Appellant has already demonstrated a significant biodiversity net gain achieved from the Appeal Scheme in any event.

Appeal Scheme if permission is granted (FRA<sup>104</sup> Appendix H).

234. The Appeal Scheme therefore complies in full with Policies ESD6 and ESD7 of the CLP and the NPPF in respect of the identified sequential approach, the demonstration that surface water will be managed effectively without increasing flood risk elsewhere (indeed it improves the position downstream) and with the provision of SuDS to manage the surface water run-off.
235. Turning to the remaining concerns of third party residents, it is understandable that those who are affected by existing flooding would be concerned about anything that would exacerbate the situation.
236. It became apparent that concerns about flooding have certainly influenced a significant number of the objections that have been expressed about the Appeal Scheme (as the evening session indicated and the written representations reveal). Many of the objections to the Appeal Scheme have been made in the belief that it will inevitably worsen the existing flooding downstream.
237. It is unfortunate that is the case because it is precisely the opposite that is the case. As demonstrated by Mr Bettridge, and now agreed by the LLFA and CDC, the Appeal Scheme will in fact only serve to reduce the risks of potential flooding downstream in those areas of concern to residents, rather than exacerbate them, for the reasons set out above. What has therefore been seen as a disbenefit of the Appeal Scheme is in fact not one at all, but rather a material benefit. The Appeal Scheme, through both harvesting rainwater that would otherwise enter the drainage system of the catchment at times of stress, and by limiting discharge to QBar levels of 31.3 l/s through its water retention systems on site, will mean a material reduction in volume and rate of discharge of water into the downstream arrangements at times of stress than is currently the case. The Appeal Scheme therefore will provide a material benefit for the area. The remaining points of concern are dealt with in the Note provided by Mr Bettridge of the session he provided<sup>105</sup>.

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<sup>104</sup> Flood Risk Assessment (CD1-15)

<sup>105</sup> (1) There was a concern that the NPPF requirements have not been complied with, but there is no basis for this. The requirement of the sequential test, the provision of a flood risk assessment and the need to avoid increasing risks of flooding downstream have all been demonstrated. (2) There are concerns about the levels of rainfall recently experienced in the area, but as Mr Bettridge pointed out, the Appeal Scheme has been robustly tested against the LLFA's specific requirements of 1 in 100 year events, plus climate change, using not just datasets from 1947-1970 records, but using FEH rainfall data as well, which includes the later rainfall records. (3) The drainage systems for the Appeal Scheme, including the outfall, is designed to operate in presence of high groundwater and to exclude it. The design is based on a robust assumption of the presence of high groundwater. (4) All necessary information and investigation to be satisfied as to the ability of the Appeal Scheme to have an effective drainage strategy has been acquired. (5) The drainage system will be maintained and has to be maintained. Indeed, the Appellant itself would be the first to experience any issues if it were not maintained. In contrast to public systems, this drainage system will benefit from continued maintenance as a result of the Appeal Scheme. (6) The use of a tank and intelligent rainwater harvesting system, applies well-established industry-recognised methods as part of the drainage strategy. (7) Thames Water has been provided with information about the rates of discharge into the foul water system and has no objection in principle. Wider concerns expressed

238. Accordingly not only has reason for refusal 5 been rightly withdrawn, there is now a material benefit arising from the Appeal Scheme which should be taken into account in terms of its beneficial effects in reducing the effects of existing surface water flooding downstream. As Mr Bateson confirmed, both he and CDC wrongly approached the Appeal Scheme in the way that the residents have done, in assuming that the measures would not adequately drain the site and would increase risk of flooding downstream which he and CDC treated as a “significant disbenefit” of the proposal in the planning balance (see Bateson P/E para 8.32 as confirmed in XX). Not only is there no such disbenefit at all, but as Mr Bateson accepted if (as is the case), it reduces the risk of such flooding, it involves delivery of material benefit to be taken into account. This is a further environmental benefit of significance that CDC has ignored.

**(5) Whether the proposal makes appropriate provision for the necessary infrastructure to meet the needs of the development**

239. As anticipated this reason for refusal has been addressed through the provision of an agreed section 106 agreement with CDC and OCC.

**(6) Whether the proposal conflicts with the provisions of the development plan and, if so, whether there are any material considerations that would outweigh that conflict**

240. The final main issue you identified is whether the proposal conflicts with the provisions of the development plan and, if so, whether there are any material considerations that would outweigh that conflict. That issue reflects the statutory requirements of section 38(6) of the 2004 Act in relation to the development plan and other material consideration. The assessment is dealt with in detail by Mr Goddard for the Appellant in his written and oral evidence, and I commend his analysis to you. As part of this consideration, I will also deal with the issue of transport sustainability that was covered by Mr Bell and Mr Goddard in their evidence, as part of the overall assessment of sustainability.

241. The issue of biodiversity has not been raised as an issue by CDC, but has been raised by PAW. The Appellant has demonstrated that the proposal will deliver a significant biodiversity net gain (whichever matrix is used). As this is not a main issue, the arguments raised by PAW are dealt with in more detail in an Appendix to these submissions.

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about Thames Water and its approach to the foul water drainage elsewhere are not of relevance to the Appeal Scheme. Thames Water as the relevant statutory undertaker in relation to foul water has statutory obligations to fulfil and the planning system operates on the basis that those obligations are fulfilled. The Appeal Scheme in this respect is no different to any other proposed development in the District.

### The Development Plan

242. As Mr Goddard identifies at para 7.2 of his P/E, the issue is that of compliance with the development plan as a whole, rather than compliance with each and every policy where they may pull in different directions<sup>106</sup>. In this Section I assess the Proposed Development against the relevant Development Plan policies. The principle of compliance with the plan as a whole is of some particular significance given the clear support for new tourism facilities the CLP expresses, policy T5 of the saved Local Plan, compliance with Policy BSC10 and an expressed principle an approach of directing development towards places like Bicester, and strict control of development in the countryside.

### The Use in this Location

243. It is common ground that the Appeal Scheme involves a commercial leisure use which would amount to a new tourist facility within the meaning of Policy SLE3 of the CLP. Mr Goddard also gave evidence, supported by TVAC's report in Appendix 11 the contents of which were expressly accepted by Mr Bateson for CDC, as to the way the tourist facility would in fact complement other destinations (such as Bicester Village, Bicester Heritage/Motion and BHGS) and enhance the tourist offer in the wider area.
244. The CLP1 recognises the *“growing role that tourism has to play in the local economy”* (paragraph B.62 supporting text to policy SLE3) adding that CDC *“will support new tourism provision that can demonstrate direct benefit for the local ‘visitor’ economy and which will sustain the rural economy”* (ibid.) and that *“... tourism has scope to play a significant wealth-creating role for the District”* (paragraph B.63). It identifies that: *“tourism can help support local services and facilities, provide employment, promote regeneration and help preserve the natural and historic environment. It can include day visits by local people through to visits from overseas. Tourism is a vital component in the make-up of the national economy. Currently tourism is worth over £300 million in Cherwell District and makes a significant contribution towards the development of a sustainable local economy”* (paragraph B.64).
245. CLP1 in the context of identifying SLE3 promotes new tourist attractions and development in Cherwell to capitalise on the fact that *“1.2 million people live within a 30-minute drive time of the District boundary”* (paragraph B.64). This is one of the reasons the location was chosen by the Appellant. It aligns with the way CDC itself promotes the development of new tourist attractions. In the context of a tourism facility which will inevitably include visitors who will travel by car, the site is also genuinely accessible by alternative means of transport which makes it sustainable as a

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<sup>106</sup> The Development Plan for the purposes of this Appeal comprises the Cherwell Local Plan Part 1 (CLP1), adopted by CDC in 2015 (CD5-3), and the saved policies of the Cherwell Local Plan 1996 (CD5-6). CDC adopted a Partial Review of the CLP 1 in September 2020 (CD5-4), although this relates principally to housing need, and the relevant policies of the CLP1 remain unchanged.



tourist/leisure destination.

246. CLP1 Policy SLE3 itself states that: *“The Council will support proposals for new or improved tourist facilities in sustainable locations, where they accord with other policies in the plan, to increase overnight stays and visitor numbers within the District”*.
247. It is now common ground that as a new tourist facility, it would inevitably increase overnight stays and visitor numbers within the District consistently with that part of the Policy and it would deliver a significant range of direct and indirect benefits to the local visitor economy, including attracting new overnight visitors into the area, supporting the creation of 460 FTE local jobs, and contributing £23m per annum to the local GDV.
248. As Mr Goddard identified, CDC has applied Policy SLE3 to support the benefits of new hotel development elsewhere outside the Bicester Town but close by, as in the Bicester Heritage hotel for 252 rooms and 92 aparthotel suites and 311 parking spaces, where travel by guests to that hotel was assumed to be solely by car (as confirmed by Bateson XX): see Goddard, Appendix 6. Despite what was suggested by DEQC in XX without reference to the Committee Report itself, the conclusion that this was a sustainable prospect was not based upon heritage considerations. Mr Bateson confirmed that he was not able to distinguish between Bicester Heritage’s location and the Appeal Scheme location in terms of the travel sustainability for the journey by car based on those assumptions .

#### *Sustainability*

249. Policy SLE refers to “sustainable” locations for new tourism facilities. As everyone came to accept (except Mr Lyons) – see Bateson XX and Sensecall XX – it is accepted that discretionary trips for holidays and leisure are an inevitability and promoted by policy; they involve the need to travel which is therefore not inherently contrary to policy (or paragraph 103 of the NPPF). And where new tourism facilities potentially reduce the need for some to travel further afield, this in itself can be sustainable. What Mr Bateson and Mr Sensecall accepted, however, was that in their analysis they had not addressed this point in terms of the ideal location of the Appeal Scheme to serve its market or catchment in order to reduce the need for individuals to travel further afield to access equivalent facilities.
250. Both Mr Bateson and Mr Sensecall accepted that the Appeal Scheme would in fact provide recreational facilities which did not exist in Cherwell already. It would consequently reduce the need for residents of Bicester, Cherwell and the 1.2 million visitors which the CLP seeks to attract into the District from travelling further afield to seek equivalent facilities. That is something that is already currently happening, as Mr Bateson himself confirmed by his own visit by car to Longleat Center Parcs.

251. Put in that correct context within both the objectives of the development plan (and of course the NPPF itself considered further below), the accepted evidence of TVAC (Bateson XX) is conclusive. The Site is an ideal location for sustainability purposes because it located within a comfortable distance between London and the West Midlands, serving a very large population catchment, along the M40 corridor, in circumstances where there is no readily equivalent facility nearby. There is a market need for this facility in this location. The nearest equivalent in terms of a waterpark offer is Center Parcs Woburn, on the M1 corridor some 35 miles away. At a stroke, the location of this resort here will immediately reduce the need for residents of Bicester, Cherwell and the surrounding closer catchment to travel by car further afield, making it a highly sustainable location as suggested.
252. As Mr Goddard points out, Policy SLE3 understandably does not attempt to define or prescribe what constitutes a sustainable location for tourism uses in the way it does for employment or housing. Defining sustainable locations for tourism is difficult, given the inherent nature of tourism. By its nature it entails discretionary travel, often over considerable distances by road and air, for leisure purposes. CDC encourage car-borne travel into its District, whether to Bicester Village, or Bicester Heritage and its hotel. The principle of attracting such visits into the District is based the ideal transport links that include the road network. That is why Bicester Heritage hotel, outside the town centre, where all guests would be car-borne, was described as *“sustainable location, on the edge of Bicester Town centre. With motor car manufacturing in Oxford and much of the UK’s motorsport industry, particularly F1 businesses, located in surrounding areas (particularly Banbury, Brackley and Silverstone) Bicester is ideally located to provide a hub for classic car businesses and enthusiast. Therefore, a hotel in this part of the District and close to a sustainable settlement is considered to comply with Policy PSD1.”*
253. The same report went on to deal with the location in terms of the NPPF by stating: *‘The proposal for a new hotel, **in a sustainable location such as on the edge of Bicester** (my emphasis) is also considered to comply with the objectives of the NPPF and NPPG, in particular sections relating to building a strong, competitive economy (Paragraph 8.8).’*
254. In addition, as Mr Bateson accepted, it went on to deal with employee accessibility in terms of potential access by public transport to and from Bicester to that site (rather than guests), noting that the nature of the jobs created was such that many employees might not have a car, and should be assumed as wanting to travel there by public transport: see paragraph 8.68. Mr Bateson accepted the same principle should apply to the Appeal Scheme, where there is a dedicated employee shuttle bus service that would directly meet and address that need.
255. The same approach characterises CDC’s acceptance of car-borne tourism to RAF Heyford Park, 6 miles outside of Bicester, where travel by car to that location is

seen as sustainable for the purposes of Policy SLE3.

256. This then needs to be coupled with the sequential approach that has been applied to this proposal for the purposes of Policy SLE2 of the CLP. CDC categorically accept that the Appellant has conducted a compliant sequential search approach to the location of a site for this tourism facility, looking at all appropriate in centre or edge of centre locations first to justify this out of centre location. CDC has confirmed previously, and Mr Bateson confirmed at the inquiry, that CDC is satisfied that there is no sequentially preferable site available for this tourism facility.
257. Mr Bateson confirmed that CDC is not able to identify any more sustainable site than this location. He expressly rejected a site which Mr Hardcastle proposed at Bicester 2 in a written representation to the inquiry – Mr Hardcastle has not come to give evidence to the inquiry about that site. CDC confirm it is not suitable and would not be accepted because it is proposed for employment purposes under Policy Bicester 2 and would be needed as such for those Class B employment needs. It is also, in any event, out of centre. As Mr Goddard confirmed (unchallenged) it would not be more sustainable than the Appeal Scheme anyway. It would not result in greater walking to the train station, given its distance from it and the unlikelihood of families with luggage attempting to walk the unappealing route and distance, including crossing the A41. So a shuttle bus would still be required. It would then travel a circuitous route which would not be materially shorter than the Appeal Scheme's route. So it would not result in any different modal split in reality to the Appeal Scheme.
258. Unlike CDC who are entirely satisfied with the sequential site search and the conclusions in it, Mr Sensecall has sought to criticise it on the basis that it may be out of date and that it does not look at all towns within a general search area. This is no proper basis for advancing criticisms of this kind. The first and most obvious point about any such criticism is that despite having been in possession of this document for over 1 year, and despite Mr Sensecall's own professed knowledge of this area and the South East (and the many clients his firm must have), he does not put forward a single competing site in terms of sequential preferability or sustainability which is suitable or available. He referred to Mr Hardcastle's proposal, but that has been confirmed by CDC as unsuitable in principle (see Bateson XX) as well as not being preferable (see Goddard XinC and XX in any event). He did not identify a single other site, in any other location, which he said had been omitted.
259. Secondly, although criticising which towns had been selected by the Appellant in agreement with CDC, he did not explain what other towns needed to be searched or why, consistent with the basic thrust of CDC's policy. For example, referring to locations to the West of London, or on the M1 corridor, would not be relevant to CDC's policy of sequential preferability, but it would also be in direct contradiction of the TVAC analysis as to the ideal location of a facility to avoid overlapping catchments with other facilities, such as Woburn Center Parcs.

260. The fact remains, therefore, that the Appeal Site is recognised by CDC (and no one has put forward any alternative site) to be the most sequentially preferable site (including no more accessible edge or out of centre site) in the whole District to provide a tourist facility of this kind.
261. Mr Bell dealt in detail with the question of locational sustainability from a transportation perspective in his evidence, in relation to a whole range of measures that the scheme entails, based on the requirements of sustainability as reflected in the NPPF. There is no dispute that Policy SLE3 in terms of identifying a sustainable location is to be read in light of the NPPF, as including a site which is or can be made sustainable by what is proposed, nor that the definition of “sustainable transport modes” in the NPPF is applicable. He explains how sustainability is achieved for this location by offering a genuine choice of sustainable transport modes<sup>107</sup> for both guests and employees alike which is what is required by the NPPF (see paragraph 3.13 onwards of Mr Bell’s evidence).
262. Mr Bell identifies the list of measures that would be secured by the scheme including: the new pedestrian and cycleway provision and linkage, the contribution to cycle improvements towards Bicester, £1.6 million to provide funding for 10 years to provide a public transport bus from Chesterton to Bicester capable of offering a new half-hourly service, improvements to the bus stop in Chesterton, the dedicated shuttle bus services for employees and guests to the Town Centre, sustainable day passes to encourage their use, in addition to the extensive electric vehicle parking from day 1 which can be provided for all car-parking spaces in the future. All of these measures will be secured in the details of the Travel Plan and monitored thereafter.
263. It is little wonder in light of that impressive and unprecedented package of sustainable transport measures (no other tourist facility recently approved offers anything like it) that OCC, as the relevant highway authority responsible for sustainable transport measures, is satisfied that the Appeal Scheme would be sustainable and accessible with those measures secured. Indeed, OCC reach that view without requiring the shuttle buses on offer. The Appellant’s commitment to those buses as explained by Mr Bell is further testament to how sustainable this proposal is.
264. Although OCC is now clearly satisfied, CDC has continued to claim a lack of sustainability, but it called no transportation evidence to support this claim. Mr Bateson is not a transportation witness. It became evident that his claims in this regard are contrary to CDC’s approach to other facilities (see eg Bicester Heritage) and unsupportable.

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<sup>107</sup> Sustainable transport modes include, for example, low and ultra low emission vehicles, car sharing and public transport which would encompass the provision of shuttle buses.

265. He does not explain why the Appeal Scheme is unsustainable with those measures in place. The mere fact that many people will travel by car to the resort does not make it inherently unsustainable, particularly given that it will reduce the existing need for residents to travel further afield to access such facilities. Nor does he explain how his assertion can be squared with the obvious benefits he accepts that the proposal will reduce out-commuting that currently occurs from Bicester for people to access jobs, with 600 new jobs being created on the doorstep of Bicester, with sustainable connections to the site, not least through the shuttle buses. In reality it appears that the main part of his claim of sustainability related to Policy TR7 of the Local Plan, and a claim that the Appeal Scheme would result in many vehicles travelling to the Site by A and B roads which he treated as “minor roads” for these purposes. That is a ludicrous suggestion, shunned by OCC and indeed Mr Sensecall who confined his concern in that respect to cars potentially travelling through Little Chesterton, something addressed by signage as OCC accepts.

266. The reality is that OCC’s satisfaction as to sustainability and accessibility of the Appeal Scheme in this location is obviously right, as Mr Bell points out, and CDC’s residual concern is utterly misguided, contradictory and unprincipled. This would undoubtedly be a sustainable scheme with the transport measures proposed, offering people a genuine choice to get there by sustainable transport modes as required, including both guests and employees. It is also the most sustainable location in the District for such facility (as Mr Bateson recognised) with no other more sustainable location being identified. That is yet another compelling reason for permission to be granted.

#### Wider Sustainability and other policies

267. The CLP1 identifies ‘sustainable locations’ for growth more generally (referring to policy ESD1) and states that Bicester and Banbury are “*the most sustainable locations for growth in the District...*” (paragraph C.4). Strategic Objective 4 (p.35 of the CLP1) seeks to focus development in sustainable locations “*making efficient and effective use of land, conserving and enhancing the countryside and landscape and the setting of its towns and villages*”. When considering the nature of the development and this context having regard to the Site’s proximity to Bicester as one of two of the “*most sustainable locations*” in the District, and the public transport proposals delivered through the scheme, Mr Goddard is right to view the site as a sustainable location for the proposed use.

268. CDC/PAW has sought to refer to the spatial strategy of directing growth to the main towns of Bicester and Banbury, but this cannot be artificially interpreted as preventing out of centre development (in accordance with SLE2) for tourism facilities supported under SLE3 where there are no in centre or edge of centre locations availability. If that were the case, then SLE3 quickly becomes a dead letter.

269. Moreover, this ignores the wider context of Policy SLE3 in supporting tourism

based on its ideal location for transport connections including the M40, and drive times based around the area. It also ignores policy T5 of the 1996 Local Plan<sup>108</sup>.

270. CDC has already previously supported the expansion of the BHGS itself in a countryside location on a leisure site. Although the GWR would be a separate, albeit complementary, facility to BHGS, the Site is already subject to the commercial use of BHGS and the co-location of these leisure uses, in an established leisure destination, is clearly relevant in this case. The established use of the Site is for commercial leisure purposes. As Mr Goddard pointed out, strictly controlling development in the countryside does not prohibit a tourist attraction from taking place on a leisure use site in the countryside where it can provide sustainable transport access (as OCC accepts), reduce out-commuting, attract visitors into the District and accord with both SLE2 and SLE3. The premise for the policy of T5 in terms of protecting the open countryside in this respect should be read with the supporting text clearly acknowledging that:

*“such proposals will need to be evaluated on the basis of their individual merits and the degree to which they conflict with other policies in this plan ... [recognising] ... that there may be exceptional circumstances that would justify setting aside policy T5 to allow the development of facilities of this kind”* (paragraph 7.17).

271. The supporting text recognises that that there is a general requirement that such development is adequately served in terms of roads and access and that it can be *“readily assimilated in the rural landscape without undue harm to its appearance and character”*. That is the correct way to approach any such development

272. Therefore whilst the Site is outside of a defined settlement and so within Open Countryside in policy terms, it is part of a leisure use. The acceptability of it for a new tourism attraction - consistent with Policy SLE3 - falls to be judged against Policy SLE2, along with the other aspects of sustainability, such as its effect on the character and appearance of the countryside area, in the ordinary area. The other issues on the appeal address such matters. Here the Proposed Development, as a new hotel (and resort), will in fact be replacing an existing commercial leisure use activity on the Site (ie part of the golf course). It is also located next to the M40 which clearly forms part of the context and setting. The effects on the character and appearance of the area have been addressed above.

273. Turning to Policy SLE2, as noted above, this requires the application of the sequential test. This has been performed and accepted by CDC as identified (see CD1-

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<sup>108</sup> Whilst this policy is over 20 years old (and superseded by the CLP1 and the NPPF), it states that *“beyond the built-up limits of a settlement the provision of new hotels ... will generally only be approved when such proposals would: be largely accommodated within existing buildings which are suitable for conversion or for such use; or totally replace an existing commercial use on an existing acceptably located commercial site”*. The policy goes on to say that *“proposals to extend existing hotels, motels, guest houses and restaurants will be acceptable provided they conform to the other relevant policies in this plan”*.

22 and Appendix 2). No one has contradicted this with any other site, save for Mr Hardcastle's late proposal which has been confirmed as unsuitable by CDC and not preferable anyway by Mr Goddard.

274. As the Proposed Development comprises a quantum of floorspace over the locally set threshold in CLP1 policy SLE2 (of 1,500 sq.m gross), an impact assessment was technically required to be undertaken. This was done in the Planning Statement. It was then done in more detail in Mr Goddard's evidence, even though it is unnecessary. Not even PAW, through Mr Sensecall, could see any fault with it and did not challenge it.

275. Undeterred, Mr Bateson claimed it was deficient, but he was unable to identify a single piece of other information that was required or could be provided and he was unable to identify what impact could occur on the town centre, let alone a significant impact on the vitality and viability of Bicester Town Centre at all. In oral evidence he clutched at straws in referring to a possible impact on the swimming pool, but this is not even in the town centre, nor can one articulate how any significant impact will occur. This was a particularly low moment for CDC. The stance adopted by CDC and Mr Bateson is simply unreasonable in principle. The Appellant has not only demonstrated no adverse impact, but has also demonstrated a positive impact on the town centre. Mr Bateson confirmed that he accepted in terms the economic statement of Volterra, the TVAC report and the Rebuttal Report of Volterra on impacts and jobs (as did Mr Sensecall). Far from creating any adverse impact on Bicester, the proposal will generate significant spin off benefits to the area, including the potential for linked trips into the town centre which Mr Goddard explained, as one might expect. This is also supported by the evidence as to what happens in the US.

276. There is therefore full compliance with Policy SLE2, even though both Mr Bateson's assessment for CDC and Mr Sensecall's assessment for PAW assumes conflict and significant weight against the proposal accordingly. This was wrong in principle.

277. As to Policy SLE1, both Mr Bateson and ultimately Mr Sensecall in XX accepted that this policy was irrelevant to the proposal and it obviously is. In addition, both accepted that they had been wrong to downplay the weight to be given to the creation of 600 new tourist jobs in the District from the proposal, the provision of such tourist jobs being part of the CDC Spatial Strategy and Objectives and Policy SLE3. The fact that there is also a requirement for B Class jobs and technological jobs does not in any way diminish the weight to be given to the delivery of tourism jobs (Bateson XX and Sensecall XX). Both accepted in terms that they had read the rebuttal evidence of the Volterra Report and it was correct and they had been wrong in their analysis as to the importance of such jobs to the job market, the extent of the job need and accepted the corresponding significant weight to be attached to those jobs (contrary to what is expressed in their evidence). In terms of principle, therefore, the Development Plan

lends strong support to what is proposed.

278. One then turns to specific policies that were raised under the other issues above, such as Policy BSC10 on the use of the 9 holes, the landscape and visual effects of the proposal, the biodiversity net gain, flood risk and drainage, amenity considerations and other issues all addressed in detail in Mr Goddard's evidence. For the reasons previously given and in his evidence at Section 7, the proposal complies with the relevant policies engaged by those issues (without repeating them all again here).

#### Other Material Considerations - the NPPF

279. As to other material considerations, in the form of the NPPF, this is covered in detail in the evidence of Mr Goddard at section 8. He explains in detail how delivery of this new tourist leisure facility strongly meets the three central tenets of sustainable development in economic, social and environmental terms, including the relevant paragraphs that deal with the above issues. I incorporate that analysis in full.

#### Other Considerations

280. By the same token, Mr Goddard also deals with the reasons for refusal and other objector comments in section 9 of his evidence which I incorporate in full

#### The Planning Balance

281. That simply leaves the planning balance, taking account of the public benefits of what is proposed as compared with any disadvantages as defined in the NPPG<sup>109</sup>.
282. In conclusion, the Appellant submits that the evidence of benefits is compelling. The Scheme will deliver significant, mutually supportive, economic, social and environmental benefits. I consider these in turn as set out in Mr Goddard's evidence at section 10. They include the following

- a. The delivery of a major new tourist facility, which will complement and support the existing tourist facilities in Oxfordshire and in the Cherwell area, drawing in approximately 500,000 visitors per annum, with the obvious potential for linked trips to nearby attractions, including Bicester Village, Bicester Heritage and the Town Centre.
- b. The meeting of an existing demand (and indeed a need as identified by TVAC, even though there is no need to demonstrate a need) fitting with changing trends, and in particular the opportunity for residents to stay within the UK for 'staycations' for short breaks. This is clearly also a potential sustainability benefit, as it supports the UK economy and provides more alternatives to less

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<sup>109</sup> It states that public benefits: '*could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework. Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and should not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits*' (Paragraph: 020 Reference ID: 18a-020-20140306).



sustainable international flights for recreation purposes.

- c. Delivery at an ideal location, being a site with an existing leisure use as a golf course, close to the motorway and strategic road network, with large market catchments to draw from and easily accessible from London, the Home Counties and Central England. TVAC identify a number of significant economic and social benefits. Their key conclusions are summarised below.
- d. The provision of popular recreational activities and entertainments aimed at families with younger children who want to have ‘active’ fun together and will provide a year-round, all weather, high-quality, short break, family staycation offer, and there is no provision of a comparable facility in the locality.
- e. The substantive economic benefits of jobs and money to the economy with the spin off benefits to the area. Volterra estimates the Proposed Development would generate 460 FTE local jobs, contribute £23m pa to GVA and generate spin off expenditure in other retail/leisure facilities in the area.
- f. A massive stimulus for jobs in the tourism and leisure sector for Cherwell generally, but this area and the country when it has been ravaged by the effects of the pandemic.
- g. The provision of recreational facilities contributes to social policy objectives, including health and well-being. The particular focus of the Great Wolf concept is to allow parents, grandparents, carers and family members to spend time with their children, grandchildren, family members or siblings in a safe and stimulating environment as part of a short UK break. The current experience of Covid illustrates the value and importance of opportunities to spend time together and the benefits of this type of facility.
- h. The provision of enhanced golf facilities to revive the ailing fortunes of golf in this area, and at BHGS in particular, making it more accessible and more inclusive for far more people.
- i. The delivery of the public accessible open space, and new enhanced PROW connections with cycleway links.
- j. The huge benefits of the public transport and shuttle bus improvements in stopping out-commuting, as well as improving the sustainability of Chesterton itself. This is coupled with the other sustainable transport measures secured by the section 106 agreement.
- k. The Provision of a minimum of 150 local construction apprenticeships or apprenticeship starts as part of a wider Employment, Skills and Training Plan – and progressing discussions with local construction apprenticeships facilitator, Ace Training, with the provision of local recruitment initiatives during the operational phase in accordance with CDC advice and working with developing contacts in specialist-course departments at UK Universities and Colleges.

1. The delivery of a significant biodiversity net gain from the site, plus improvements to the drainage and flooding in the area that result from the development.

### **Conclusions**

283. In opening, and now closing, we recognise the innovative nature of what is proposed (being the first Great Wolf resort in the UK) has led to objection to what is proposed by PAW and other objectors. We have addressed in detail all of the substantive concerns to demonstrate why those concerns are unfounded on objective analysis. Acceptance of change, particularly when novel, is difficult. We consider that the detailed appraisal of the concerns through this inquiry and the evidence has demonstrated why they are unjustified.
284. The overall compliance with the development plan and the NPPF create a strong presumption for approval. Notwithstanding this, Mr Goddard also gives evidence that even if the proposal does give rise to harms of the type being suggested, this is a case where there are indeed material considerations that would outweigh from any conflict with the development plan.
285. The huge benefits that this proposal would bring, whether individually, or collectively, in terms of things like delivery of tourism and leisure to the local area, providing a resort to serve many thousands of people in the catchment who would otherwise have to look elsewhere, the 600 new permanent jobs to Cherwell and this local area, the other significant economic benefits and other benefits (such as improvements in biodiversity, flooding and sustainability of the local area as a consequence) would very clearly outweigh that conflict.
286. I therefore invite you allow this appeal. If Bicester, Cherwell and the country generally is going to recover and thrive, this is exactly the sort of sustainable and important investment in its future it needs, fostering home-based, family-focused, leisure and recreation, in the right location and delivering huge opportunities for the guests and employees alike. We commend it to you.

**JAMES STRACHAN QC**  
**39 Essex Chambers**

**5 March 2021**