



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

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

Date 20 July 2009

TOWN AND COUNTRY PLANNING ACT 1990

PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990

APPEALS BY

NORTH OXFORDSHIRE CONSORTIUM LTD

AGAINST THE FAILURE TO DETERMINE AN APPLICATION FOR PLANNING  
PERMISSION AND

REFUSALS OF APPLICATIONS FOR CONSERVATION AREA CONSENT BY

CHERWELL DISTRICT COUNCIL

Inquiry held on 30 September – 24 October, 16 and 17 December 2008, 12 January and 16 March 2009  
and then adjourned to 1 December 2009.

Sites at Heyford Park, Camp Road, Upper Heyford, Bicester, OX25 5HD

File Refs: APP/C3105/A/08/2080594 and 24 Conservation Area Consent appeals (a further 41 appeals  
are linked but in abeyance).

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**File Ref: APP/C3105/A/08/2080594**

**Site at Heyford Park, Camp Road, Upper Heyford, Bicester, Oxfordshire, OX25 5HD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by North Oxfordshire Consortium Ltd against Cherwell District Council.
- The application Ref 08/00716/OUT is dated 3 March 2008.
- The development proposed is a new settlement of 1075 dwellings, together with associated works and facilities, including employment uses, community uses, a school, playing fields and other physical and social infrastructure.
- The reason for recovery of the appeal for the Secretary of State own decision was that the appeal involves development of more than 150 dwellings which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

**Summary of Recommendation: That subject to resolution of the two matters identified in my conclusions, the appeal be allowed, and planning permission be granted subject to conditions.**

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**File Refs:**

**APP/C3105/E/08/2069311: Buildings 21 and 23 Trenchard Circle, Heyford Park**

**APP/C3105/E/08/2069313: Buildings 53, 54 & 56 Heyford Park**

**APP/C3105/E/08/2069314: Building 59 Heyford Park**

**APP/C3105/E/08/2069315: Building 79 Heyford Park**

**APP/C3105/E/08/2069316: Buildings 101 & 102 Heyford Park**

**APP/C3105/E/08/2069318: Buildings 106, 107 & 108 Heyford Park**

**APP/C3105/E/08/2069321: Buildings 113, 113a, 113b & 114 Heyford Park**

**APP/C3105/E/08/2069324: Building 115 Heyford Park**

**APP/C3105/E/08/2069327: Buildings 117, 118 & 119 Heyford Park**

**APP/C3105/E/08/2069329: Building 130 Heyford Park**

**APP/C3105/E/08/2069331: Building 131 Heyford Park**

**APP/C3105/E/08/2069333: Building 132 Heyford Park**

**APP/C3105/E/08/2069334: Building 133 Heyford Park**

**APP/C3105/E/08/2069335: Buildings 145, 146, 147, 148, 149 Heyford Park**

**APP/C3105/E/08/2069337: Buildings 442, 460, 465, 467, 470, 481, 492, 493, 529 and UH11 Heyford Park**

**APP/C3105/E/08/2069339: Buildings 593, 594, 598 Heyford Park**

**APP/C3105/E/08/2069340: Buildings 449, 461, 466, 468, 471, 472, 474, 475, 483, 484 & 486 Heyford Park**

**APP/C3105/E/08/2069341: Buildings 441, 445, 446, 485, 487, 488, 491, 500, 502, 596, UH10 & UH9 Heyford Park**

**APP/C3105/E/08/2069343: Buildings 440, 440b, 443, 444, 450, 454, 476, 480, 489, 498 & UH8 Heyford Park**

**APP/C3105/E/08/2069345: Buildings 530 – 534 Heyford Park**

**APP/C3105/E/08/2069346: Buildings 640 – 692 Heyford Park**

**APP/C3105/E/08/2069347: Buildings 700 – 757 Heyford Park**

**APP/C3105/E/08/2069349: Buildings 759 – 780 Heyford Park**

**APP/C3105/E/08/2069350: Buildings 291, 542, 546 – 548, 550 – 565, 568, 573, 588 & UH2 Heyford Park**

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## **All at Heyford Park, Camp Road, Upper Heyford, Bicester, Oxfordshire, OX25 5HD**

- The appeals are made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the refusal of Conservation Area Consent to demolish buildings.
- The appeals are made by North Oxfordshire Consortium Ltd against Cherwell District Council.
- The applications Refs 07/: 02287, 02299, 02342, 02346, 02352 - 54, 02358-60, 02303, 02307, 02332, 02337, 02347 - 51, 02355, 02357, 02294, 02295 and 02296 (all suffixed CAC) are dated 6 November 2007.
- The development proposed in all cases is demolition.

**Summary of Recommendations: That, subject to the lead appeal being allowed, all of these appeals also be allowed and conservation area consent be granted.**

### **Section 1**

#### **1 Preliminary Matters**

- 1.1 At the Inquiry an application for costs was made by the Appellant against the Local Planning Authority. This application is the subject of a separate Report.
- 1.2 Elizabeth Hill, BSc(Hons), BPhil, MRTPI has assisted me in consideration of matters concerning contamination of the site, including the adequacy of the Environmental Statement following submission of further information and on conditions on those matters that should be imposed if the lead appeal is allowed.
- 1.3 I am also grateful for the advice of Douglas Morden, MRTPI on the linked enforcement appeals that are currently in abeyance, including at the Pre Inquiry Meeting.
- 1.4 I made accompanied visits to the site and surroundings on 20 August and 7 November 2008 and unaccompanied tours of the surroundings on several other occasions.
- 1.5 Matters on which the Secretary of State wished to be informed:
- 1.5.1 *the extent to which the proposed development would be in accordance with the development plan for the area;*
- 1.5.2 *the extent to which the proposed development would be consistent with Government policies in Planning Policy Statement 1: Delivering Sustainable Developments, and accompanying guidance The Planning System: General Principles with particular regard to whether the design principles adopted in relation to the site and its wider context, including the layout, scale, open space, visual appearance and landscaping, will preserve or enhance the character and appearance of the area, having regard to the advice in paragraphs 33 to 39 of PPS1;*
- 1.5.3 *the extent to which the proposed development is consistent with Government planning for housing policy objectives in Planning Policy Statement 3 (PPS3) Housing, with particular regard towards delivering:*



*that the conservation of heritage resources, landscape, restoration, enhancement of biodiversity and other environmental improvements will be satisfactorily achieved across the whole of the former air base in association with the provision of a new settlement.*

- 1.7.3 *The Environmental Statement as submitted has omissions and inadequacies and therefore does not adequately provide the information required to ensure likely significant environmental effects from the development to be identified and necessary mitigation measures to be secured and as such is contrary to the requirements of the RCPB.*
- 1.7.4 *The proposed development would be likely to generate inappropriate employment opportunities in terms of scale, type and location across the flying field outside the proposed settlement area that could adversely affect the character and appearance of the conservation area and settings of listed and scheduled buildings contrary to the RCPB and Structure Plan policies G1, G2, E1, E32, EN4 and H2.*
- 1.7.5 *The proposed development, the submitted base management plan and the proposed mechanisms for the future management and maintenance of facilities would fail to deliver and maintain the scale of the environmental improvements required by the RCPB 2007 SPD, OSP 2016 Policies G1 EN2, H2 and R2 and Non Statutory Cherwell Local Plan Policies UH1 UH2, UH3, EN22 and EN28.*
- 1.7.6 *The proposed development would be contrary to the principles of sustainability in that it would result in development that is likely to encourage the use of the private car due to the sites inherently unsustainable location in transport terms and the location if significant employment beyond the proposed settlement are where it could not be conveniently accessed by public transport or other non car modes of travel and as such is contrary to PSP 2012 Policies G1, G2, T1, T8, H2, E1 and R2 and Cherwell Local Plan Policies TR1, TR7, TR10, Non Statutory Cherwell Local Plan Policies UH1, UH2, UH3, TR1, TR2, TR4, TR5 and R4 and the provisions of the RCPB 2007 SPD.*
- 1.7.7 *The range of transport and non-transport items listed in the applicant's draft Head of Terms and the scale of the overall package would not be sufficient to mitigate the full impact of the development and achieve the necessary infrastructure for a satisfactory living environment for the residents of the site in accordance with OSP 2016 Policies G3 and H2.*
- 1.7.8 *The proposed car storage/staging use on land outside of the 7 hectares area shown in the new settlement in the RCPB 2007 SPD, as indicated in the submitted proposals, is unacceptable as it would damage the character and appearance of the Conservation Area and perpetuate adverse landscape and visual impact. The car storage/staging use would unacceptably perpetuate the visual and functional separation of the settlement from the flying field and open countryside and as such would be contrary to OSP 2016 Policies G2, EN1, and EN, Cherwell Local Plan Policies C7 and C10 and Non Statutory Cherwell Local Plan Policies UH1, UH2 , UH4 and EN40.*
- 1.7.9 *The application fails to deliver an acceptable lasting arrangement and a comprehensive approach to the whole site as required by OSP 2016 Policy H2 and the RCPB 2007 SPD. The proposed development would be likely to perpetuate and exacerbate the current unacceptable use of the wider flying*

*field for inappropriate employment uses with inadequate controls and it does not deliver the balance of environmental improvements, conservation and satisfactory living environment sought by OSP 2016 Policy H2, the RCPB 2007 SPD and the Non Statutory Cherwell Local Plan Policy UH1.*

- 1.7.10 *The application does not deliver: an adequate reinstatement of the public access across the flying field; clearance of buildings of particular landscape impact or of lesser historic interest across the flying field; an appropriate management regime for the future of the wider site; nor does it adequately tie approximate employment levels to the likely new settlement population or deal adequately with sustainability or give adequate explanation and justification of the principles behind the intended appearance of the new settlement as required by OSP 2016 Policy H2 and as required in the RCPB 2007 SPD and Non Statutory Cherwell Plan Policy UH1.*
- 1.7.11 *The submitted Design and Access Statement fails to explain and justify the principles behind the intended layout and appearance of parts of the site, particularly in relation to the context of the site, as required by Circular 01/06 and it has not been demonstrated that the proposed development would provide a satisfactory living environment particularly in relation to the employment buildings relative to the residential areas [to] meet the requirements of the RCPB 2007 SPD or preserve or enhance the character or appearance of the conservation area as required by OSP 2016 Policy EN4.*
- 1.8 Putative reason for refusal 3 was not pursued following the receipt of the additional environmental information from NOC requested under Regulation 19. The Local Planning Authority is now satisfied that the relevant mitigation matters can be addressed by condition and under the Unilateral Undertaking.
- 1.9 The Local Planning Authority is also now satisfied as a result of continuing discussions during but outside the inquiry that the element of reason 2 relating to enhancement of biodiversity has now been satisfactorily addressed, as reflected in the Ecology Statement of Common Ground (SOCG) and in the final version of the Base Management Plan.
- 1.10 In relation to reason 6 there has been agreement with NOC on a Transport Strategy as set out in the Transport SOCG but that is without prejudice to the Local Planning Authorities' case that the site is in an inherently unsustainable location unsuited to the scale of development proposed. The SOCG signals the Councils' agreement that if their case fails then the Transport Strategy is a realistic assessment of what could be achieved in making the site more accessible by modes other than the private car.
- 1.11 With regard to reason 7, it appeared to the Councils that evidence would need to be called on a number of matters where agreement had not been reached with NOC. During but outside the inquiry negotiations continued and it was not then necessary to call the witnesses on affordable housing, education and community facilities. The Councils do not however consider that the benefits arising from the extensive Unilateral Undertaking now completed would outweigh the objections to the proposal.
- 1.12 I address the Conservation Area Consent appeals towards the end of my report and the three categories of reasons for refusal of these applications by the Local Planning Authority are set out there.

## 2 Procedural and Background Matters

The nature of the lead proposal

- 2.1 This is described as an outline application, but it proposes both operational development to create a new settlement and associated facilities and also the change of use of a very large number of existing buildings within both the new settlement area and on the wider Flying Field and of 17ha of the southern taxiway and adjacent hard standings of this airbase. Accordingly it is agreed by the parties that this is a hybrid application.
- 2.2 In August 2008 the Appellant spotted an error on the “red line” application plan. The latter was amended to delete 0.027 ha of land on the southern boundary and outside their control. This is shown as revised on plan N.0111\_16e.
- 2.3 The lead application (ref 2080594) was revised in June 2008 and these amendments were advertised by the Local Planning Authority. Further changes were made subsequently in September which the Local Planning Authority accepted and some were proposed during the inquiry. It is common ground between the Local Planning Authority and appellant that all these are minor and that the public would not be prejudiced by their not being consulted upon them. The accompanying Design and Access Statement has similarly been updated during the inquiry to take account of those changes.
- 2.4 Because of the complex nature of the lead proposal and because the above description of development did not seem to me to adequately convey the scope and nature of the proposed development I asked for further information on the buildings proposed for change of use and their floorspace by proposed use class. The Planning Statement of Common Ground<sup>1</sup> includes that amplification at section 5 together with a minor agreed change to the main description of development to clarify that change of use is also included. I set those out below under “The Proposals” and at the Schedule that should be annexed to any grant of planning permission for this hybrid proposal.
- 2.5 In addition and in recognition of the large number of plans and documents some of which were revised several times during the inquiry I asked for a definitive compendium of what are agreed to be the appeal plans on which the appellant relies. Those are contained in ring binder Document A3.
- 2.6 A signed Unilateral Undertaking<sup>2</sup> dated 23 January 2009 covers a very large number of matters which reflects the large size of the site and its physical and policy complexity. I describe its contents after the Cases for the parties and assess the weight it should be afforded in my Conclusions.
- 2.7 Twelve Conservation Area Consent (CAC) appeals on grounds of “failure to determine” were withdrawn during the inquiry on 15 October 2008. These appeals related to demolition of two groups of hardened aircraft shelters (HASSs) and two associated buildings, in the north west and south east of the “Flying Field” (FF) to the north of Camp Road. Demolition of these

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<sup>1</sup> Document 4c

<sup>2</sup> Document 6

buildings was proposed as part of the appeal current at the time I held the Pre Inquiry Meeting. On acceptance of this lead appeal that appeal was withdrawn in July 2008. This lead appeal would retain those HASs.

- 2.8 The list of 108 no prejudice conditions<sup>3</sup> and the Unilateral Undertaking had not been discussed at the end of the period programmed for the inquiry necessitating an adjournment on 24 October. Resumption was delayed until 16 December owing to Counsel being otherwise engaged in the interim. The two days in December did not prove sufficient and a further day on 12 January completed those discussions. Another on 16 March addressed Closing Submissions. The Appellant's Costs Application and the Local Planning Authority response had been circulated in advance. With the time being 18.10 on the latter date and in order to expedite the business of this part of the inquiry, it was agreed that the Appellant's final response would be made in writing by 23 March 2009, which was achieved.

The nature of the Conservation Area Consent proposals

- 2.9 Consent for demolition is sought for the large number of buildings included in the proposals. They include buildings that make a positive contribution to the Conservation Area. No detailed proposals are available of the replacement development.

Other linked Appeals

- 2.10 On completion of evidence on the lead and CAC appeals, the inquiry was adjourned on 16 March to 1 December 2009 for consideration, if necessary of the other 41 appeals linked to the lead appeal. All participants accepted that this may prove to be a provisional date.
- 2.11 Those 41 other appeals (a few of which are by appellants other than the North Oxfordshire Consortium) are for continuation of temporary uses of buildings and land and associated enforcement notices where the use has continued without complying with a time limiting condition, together with one other appeal for planning permission.
- 2.12 Before the inquiry opened it was decided that the case for the lead appeal and CAC appeals would be heard first; that this report would then be prepared and that the Secretary of State decision on the lead appeal and CAC appeals should be issued prior to resuming the inquiry to hear the other appeals. This was considered the most efficient way forward, bearing in mind that if the lead appeal were to be allowed then NOC considered it likely that most if not all of these other appeals would be withdrawn because those uses would be accommodated within the lead appeal proposal. If the lead appeal was dismissed then the inquiry would resume for the other appeals to be heard. A table of all those other appeals is at Appendix 2.

Other relevant consents and statutory designations

- 2.13 Conservation Area Consent has been granted for demolition of a large number of buildings and structures within the site<sup>4</sup>, including water towers, the hospital, gymnasium, supermarket, the airbase's school buildings (south

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<sup>3</sup> Document 5a

<sup>4</sup> Document NOC MD2 Appendix 1

- of Camp Road) and a large modern building (no.3135) on the north west boundary of the Flying Field.
- 2.14 Of the 315 existing dwellings on the site, 43 have Certificates of Lawful Use. These are among the 70 or so dwellings proposed for retention.
- 2.15 Three buildings on the site have a permanent planning permission: Heyford House offices, the Innovation Centre and one further dwelling.
- 2.16 The lead appeal site is coterminous with the boundary of the RAF Upper Heyford Conservation Area designated in April 2006, except insofar as the site includes as well a sewage treatment works a short distance to the south east of the site.
- 2.17 The following buildings were Scheduled as Monuments in December 2006: The Quick Reaction Alert Area (QRAA) (including 9 hardened aircraft shelters north of the main runway and towards the north west of the site); the Northern Bomb Stores; the Hardened Telephone Exchange; the Battle Command Centre and the Avionics Maintenance Building.
- 2.18 The following buildings were Listed Grade II in April 2008: the three Nose Docking Sheds; the Control Tower and the Squadron Headquarters building associated with the QRAA.

#### The Environmental Statement<sup>5</sup>

- 2.19 An Environmental Statement (ES) under The Town and Country Planning (Environmental Assessment) (England and Wales) Regulations 1999 (SI 1999 No 293) was submitted with the application and comments received from the statutory consultees.
- 2.20 Updates to four chapters of the ES were made in June 2008<sup>6</sup> reflecting the changes made to the proposal.
- 2.21 Further information was required of the appellant on 21 August 2008 under Regulation 19 of the above Regulations. The relevant extract from the letter is as follows:
- 1.32.1 *" .... to comply with Schedule 4 of the Regulations (Information for Inclusion in Environmental Statements) she requires the appellant to supply the following 'further information' for the purposes of a public inquiry to be held in accordance with The Town and Country Planning Appeals (Inquiries Procedure) (England) Rules 2000:*
- 1.32.2 *The Geology Soils and Contamination section relies heavily on a ground investigation carried out 10 years ago. Although details of the locations of the boreholes, trial pits and soil vapour survey points have been given, together with a brief summary of the results, the actual logs and results obtained are not provided as part of the Environmental Statement. It is considered that contamination of soils and the water environment has the potential to be one of the most significant impacts on the environment at this site.*
- 1.32.3 *Although such contamination would have arisen as a result of previous use of the site, the method of dealing with any such contamination is critical to*

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<sup>5</sup> Document A1.4 (Volumes 3a to 3e of Application Documentation)

<sup>6</sup> Document A2.1 Section 4

*limiting any further impact on the soil and water environment. It is noted that part of the petrol, oil and lubrication (POL) system of the former RAF site passes through critical parts of the appeal site. Bearing in mind the high potential for contamination to travel along the route of buried services, the presence of a major aquifer, and the potential links between contaminated soil and the water regime this is a topic which needs to be more closely assessed than merely referring to the results of a 10 year old survey and stating that the risk can be reduced to a low potential if current best practice is adopted”.*

- 1.32.4 Prior to this request the Local Planning Authority had indicated to the appellant that it was concerned about the adequacy of the ES in some other regards. In summary: matters of consistency with amendments made to the proposal in June 2008; clarity; dependence on subsequent actions for the full impact of development to be discernible; insufficient detail on some mitigation measures; an implied baseline that includes uses with only temporary planning permission which should be excluded; inadequate consideration of the implications of reuse of historic buildings, particularly in connection with any services they would need. The Appellant was urged to address these matters prior to the inquiry.
- 2.22 Those matters were not included in the request for further information under Regulation 19. The Council's concerns were not pursued further as a matter of inadequacy of the ES at the inquiry.
- 2.23 Further information as requested was supplied in September 2008 and the non-technical summary was also amended<sup>7</sup>.
- 2.24 A summary of matters addressed in the ES is given later in this section. My view on its adequacy is addressed early in my conclusions.

### **3 The Site and Surroundings**

- 3.1 The appeal site of about 505ha comprises the whole of the former RAF Upper Heyford together with the sewage treatment works just to its south.
- 3.2 The airbase is bisected by Camp Road and via its junction with the B430, is about 5km from Junction 10 of the M40. Bicester is about 8km to the east south east via the B4030. Via the A4260 and the small villages in between, Banbury is about 21km and Oxford about 25km away. Brackley is about 11km via Junction 10 and the A43. The western end of the main runway almost abuts Upper Heyford village and Lower Heyford rail station is about 4km away.
- 3.3 The airbase is at the top of a plateau at about 130m and is set within otherwise open countryside. Land to the west falls fairly sharply to the Cherwell valley and Oxford Canal both of which run roughly north/south here. The Grade 1 listed Rousham Park is in the valley to the south west of the site. A number of small villages are within 2-4km, some of them at a similar height to the airfield but across the Cherwell valley.
- 3.4 The area of the proposed new settlement (NSA) south of Camp Road comprises a wide variety of buildings dating from the 1920s onwards and

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<sup>7</sup> Document A2.2

includes former barrack blocks, bungalows and houses, mess buildings, shops and other uses ancillary to the primary use of the airbase. Most are proposed for demolition and redevelopment for housing and ancillary uses including a primary school. Much of the existing housing and a number of other buildings on the site both south and north of Camp Road (and part of its taxiways and aprons between buildings) are rented out pending a lasting solution for the future of the airbase.

- 3.5 North of Camp Road at the east of the site are houses formerly occupied by more senior personnel. All but two of those would be retained. There is also here the former officers' mess (proposed for a hotel) and office buildings that would be retained. Otherwise most of the buildings north of Camp Road within the NSA are of mainly military types. These include some very large former aircraft hangars (A-type) dating from World War II within the "Trenchard Trident" area. On both sides of Camp Road there are in addition many buildings of a utilitarian appearance of varied sizes.
- 3.6 Beyond the NSA the dominant feature of the Flying Field (FF) is the main east/west runway of about 3.4km long. There are a great many buildings dispersed over the Flying Field (FF) dating from the various periods of the Cold War, including large open sided (Victor Alert) hangars and enclosed hardened aircraft shelters (HASs). There are also two large groups of bomb stores (south east and north of the main runway) formerly used for both conventional and nuclear weaponry. There are a very few buildings approximating to a more conventional industrial style used for maintenance or other service functions, such as that used at present by the Thames Valley Policy Authority for training purposes. There are also 2 secondary runways/taxiways running approximately north/south and northwest /southeast that cross the main runway and a long southern taxiway. These areas of concrete adjoin many aprons and dispersal areas (also concrete). There are many smaller structures associated with military purposes including mounds with tanking and an extensive network of underground pipe work which distributed petrol, oil and lubricant (the POL system) around the flying field. The eastern third or so of the main runway and its adjoining expanses of grassland is a County Wildlife site.
- 3.7 A public footpath runs east/west for much of the length and to the immediate north of the northern perimeter fence. A bridleway (Portway) and another public right of way (Aves Ditch) did run north/south at the western and eastern ends of the site respectively. Construction of the airbase truncated them, so that they now stop at the boundaries of the site.

## **4 The Proposals**

- 4.1 As amplified and now agreed between the parties this is a hybrid lead proposal for a mixed use new settlement of about 1,000 new dwellings and employment buildings within the New Settlement Area (NSA) (north and south of Camp Road) together with some retained buildings and structures there and on the Flying Field that are proposed for permanent changes of use.
- 4.2 To the south of Camp Road the NSA would comprise mostly housing together with most elements of a small local centre and a new primary school. To its north including the older "Trenchard Trident" area would be

mixed housing and business uses. An area to the east of that and also a smaller area to the west of the site north of Camp Road would be for housing. Beyond all these to the north, changes of use are proposed to most of the main structures on the Flying Field (FF) for business uses mostly, together with use of 17ha of the southern taxiway and adjacent land and nearby buildings for car processing. Some buildings including 11 of the 56 HASs would remain in nil use.

4.3 The amplified details of the development together with the floorspace of buildings proposed for change of use are as follows.

4.4 The proposed New Settlement Area includes the following uses and development: -

1) Class C3 (residential dwelling houses): up to 1,075 new dwellings (including the retention of some existing military housing), to be erected in 2 and 3 storey buildings, together with change of use of Building 455 (1177 sq.m);

2) Class D1 (non residential institutions): change of use of building 457 (224 sq.m) to a nursery/crèche, building 549 (580 sq.m) to provide accommodation for a Community Hall and building 572 (680 sq.m) to provide accommodation for a Chapel; Buildings 126 (869 sq.m), 129 (241 sq.m) and 315 (3,100 sq.m) to provide a Heritage Centre up to 4,200 sq.m, together with associated car parking.

3) Change of Use of Building 74 (4,020 sq.m) to Class C1/D1 use as a hotel/conference centre of up to 4,150 sq. metres.

4) Class A1 retail provision of up to 743 sq.metres floorspace, and change of use of Building 459 (270 sq.m) to Class A1 retail.

5) Change of Use of Building 103 (312 sq.m) to Class A4 Public House, provision of up to 340 sq.metres of Class A4 floorspace in total.

6) Provision of 1 no. Primary School on 2.2 hectares.

7) Erection of 6 no. Class B1 (a), (b) and (c) buildings comprising up to 7,800 sq.metres of floorspace, together with change of use of Buildings 100 (557 sq.m) and 125 (897 sq.m) to Class B1.

8) Change of Use of Buildings 80 (2198 sq.m), 151 (3,100 sq.m), 172 (5,135 sq.m), 320 (3,600 sq.m), 345 (3,600 sq.m), 350 (3,200 sq.m) to mixed Class B2/Class B8 use.

9) Change of Use of Building 158 (50 sq.m) to Class B8 use.

10) Change of use of Structure 89a (10 sq.m) to a petrol pump station (sui generis use)

- 11) Provision of playing pitches and courts, sports pavilion plus incidental open space including NEAPS and LEAPS<sup>8</sup>.
- 12) Provision of all infrastructure to serve the above development including the provision of the requisite access roads and car parking to District Council standards.
- 13) Removal of boundary fence to the south of Camp Road.
- 14) Removal of buildings and structures within New Settlement Area as detailed in separate schedule (Demolitions Schedule Table RD 4bd).
- 15) Landscaping alterations including the removal of identified trees within the Conservation Area (see separate schedule) and planting of new trees and offsite hedgerows and access track.

4.5 The Flying Field area will include the following proposed uses and development:

- 1) Change of Use for vehicle preparation and car processing comprising 17 hectares.
- 2) Change of Use of Buildings 205 (111 sq.m), 234 (1195 sq.m), 1109 (200 sq.m), 3205 (142 sq.m), 3208 (142 sq.m), 3209 (142 sq.m), 3210 (142 sq.m) to Class B1 (Business) use.
- 3) Change of Use of Building 350A (10 sq.m) to mixed Class B1 (Business)/B8 (Storage) use.
- 4) Change of Use of Buildings 259 (372 sq.m), 260 (372 sq.m), 336 (800 sq.m), 337 (1388 sq.m), 354 (336 sq.m) and 1011 (239 sq.m) to Class B2 use.
- 5) Change of Use of Buildings 209 (1624 sq.m), 324 (397 sq.m), 3140 (408 sq.m) to mixed Class B1/Class B2 use.
- 6) Change of Use of Buildings 221 (2391 sq.m), 325 (692 sq.m), 327 (702 sq.m), 328 (725 sq.m), 335 (769 sq.m), 366 (1656 sq.m) to mixed Class B2/Class B8 use.
- 7) Change of Use of Building 249 (3259 sq.m) to Class D1/Class B2/Class B8 use.
- 8) Change of Use of Buildings 210 (177 sq.m), 211 (378 sq.m), 212 (271 sq.m), 226 (169 sq.m), 237 (373 sq.m), 238 (119 sq.m), 239 (178 sq.m), 279 (169 sq.m), 292 (2070 sq.m), 1001-1005 (193 sq.m each), 1006 (524 sq.m), 1007 (524 sq.m), 1008 (318 sq.m), 1009 (24 sq.m), 1023 (372 sq.m), 1026-1038 (97 sq.m each), 1041-1048 (75 sq.m each), 1050 (144 sq.m), 1100 (34 sq.m), 1102 (138 sq.m), 1103 (177 sq.m), 1104 (89 sq.m), 1105-1106 (138 sq.m each), 1108 (348 sq.m), 1111 (367 sq.m),

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<sup>8</sup> Neighbourhood and local areas for play

1112 (60 sq.m), 1113 (177 sq.m), 1114 (37 sq.m), 1115 (149 sq.m), 1159 (156 sq.m), 1160-1167 (201 sq.m each), 1168-1185 (156 sq.m each), 1372 (600 sq.m), 1601- 1625 (139 sq.m each), 2001-2009 (595 sq.m each), 3001-3035 (930 sq.m each), 3043-3051 (930 sq.m each), 3056 (930 sq.m), 3200-3202 (169 sq.m each), 3203 (60sq.m) to Class B8 use.

9) Change of use of Building 299 (2676 sq.m) to a sui generis use as computer data storage.

10) Demolition of Building 3135 in the north-western corner of Airfield (also subject to Conservation Area Consent application).

11) Removal of identified parts of the boundary fence and partial replacement with 1.5 metre fencing in locations as identified on the Landscape Master Plan (also subject to Conservation Area Consent applications).

12) Provision of all infrastructure to serve the above development, including the provision of the defined access arrangements and car parking to Cherwell District Council standards.

13) Landscaping alterations including the removal of some trees within the Conservation Area (see separate schedule).

14) Reopening of Portway and Aves Ditch as public rights of way across the Airfield.

- 4.6 The application does not include the removal of the Petrol Oil Lubricant (POL) System which the Appellant proposes to retain and stabilise (probably with a foam fill).
- 4.7 The proposals are described in the following plans and documents:
- 4.8 Plan N.0111\_16e is the "red line" site plan as amended. Five Parameter drawings 1135\_: 060C, 061C, 062D, 065C and 064 define the New Settlement Area (NSA) and Flying Field (FF) (64); the Street Structure of the New Settlement (60C); development uses in parcels and buildings for retention in the NSA (61C); building heights in the NSA (62D) and (NSA) Development area Open Space;
- 4.9 Although illustrative the following plans are understood to be a clear indication of what is intended: a Phasing plan (N.111\_35); a Landscape Masterplan for the NSA (L14) and a Built Form Masterplan (submitted as revision L and updated during the inquiry to revision N and included in the Design and Access Statement).
- 4.10 The application documentation also includes at Volume 2: a Building Appraisal<sup>9</sup> where the numerous buildings and structures on the former airbase are described, numbered and mapped; a Design and Access Statement (DAS); Tree Retention and Removal Schedule and Plan (bound together in A3 format).

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<sup>9</sup> Document A1.3 includes at tab 2 the Building Appraisal along with the Design and Access Statement (tab 1) and Tree Survey (tab 3)

- 4.11 From the above material a clear indication is given of the proposed uses, amount of development, indicative layout, scale parameters and indicative access points for the outline proposals for the New Settlement area.
- 4.12 The application plans also include a plan showing the proposed Use Class of all buildings proposed for change of use (COU) (Plan N.0111\_22-1C). This was amended in June 2008 (-1H) to add the car processing area and was amended again during the inquiry. That latest Change of Use (COU) plan (N.0111\_22-1L) shows an area in the north west of the Flying Field as a Cold War Heritage Park (including the 4 Hardened Aircraft Shelters to remain in nil use) and the footprint of the large modern building 3125 to be demolished). The exact nature of this use remains to be decided but it would supplement the intention that one of the A-type hangars (building 315) and the adjacent command building (126) and hardened telephone exchange (129) in the Trenchard Trident area would be made available for a Heritage Centre (shown on that plan as for non residential institutions Class D1). That public access to these would be afforded is included in the Management Plan for the Flying Field attached and forming part of the Unilateral Undertaking. The area for outdoor car processing is also shown on Landscape Plans L10 A and B.
- 4.13 Many other indicative plans were also submitted with the application including a Principal Heritage Features Plan (N.0111\_18-1c), a Building Status Plan and table (N.0111\_17-1c, which was updated to version 1d in June 2008); County wildlife site and ecological importance plan and commentary; footpaths and access plans and a plan showing internal circulation within the Flying Field.
- 4.14 I have noted since the inquiry that Parameter Plan 64 has not been amended to reflect the intention in this lead appeal that the north west and south east Hardened Aircraft Shelters would be retained (in nil use). That intention is clear from other documents, in evidence to the inquiry and as shown on COU plan 1L. The latter should be taken as showing the intention.
- 4.15 Other explanatory material submitted with the application is text and illustrative plans including: a statement that NOC is committed to providing 30% of affordable housing (now included in the Unilateral Undertaking); a stakeholder engagement report; a waste minimisation strategy; a supporting planning statement; Heads of Terms for an agreement/undertaking under S.106 of the Act; sustainability statement; employment statement and a statement on the Petrol Oil and Lubricant (POL) system.
- 4.16 The June 2008 update includes the application forms for this appeal proposal; amendments to the Design and Access Statement (subsequently further amended during the inquiry with the 12 March 2008 version being that intended as the appeal document) and amendments to the Planning supporting statement, the Environmental Statement, Base Management Plan, demolitions arisings, employment schedule. It also includes a letter setting out the intended scope of (at that time) two Unilateral Undertakings (now combined in one document).
- 4.17 The demolitions for which CAC is sought are necessary for the above development to proceed. The buildings comprise a wide variety of domestic and military buildings. It is not disputed that most of the 244 dwellings that are proposed for demolition are not of a standard or type of construction that would lend them to economic refurbishment to modern standards.

Demolition of two other dwellings would allow access into one of the new housing areas.

## **5 Planning Policy**

### *The Development Plan*

- 5.1 At the time of the inquiry this comprised Regional Planning Guidance 9 for the South East (2001) (interim RSS)<sup>10</sup>, Oxfordshire Structure Plan 2016 of 2005 (OSP)<sup>11</sup> and Cherwell District Council Local Plan 1996 (CLP)<sup>12</sup>. The policies considered relevant by the Appellant and Cherwell District Council are in the Planning SoCG<sup>13</sup> (section 6 page 13).
- 5.2 Policy H2 of the Structure Plan (page 57) is the key policy in this case and was "saved" along with some other policies in September 2008. Policy H2 states:
- a) Land at RAF Upper Heyford will provide for a new settlement of about 1000 dwellings and necessary supporting infrastructure, including a primary school and appropriate community, recreational and employment opportunities, as a means of enabling environmental improvements and the heritage interest of the site as a military base with Cold War associations to be conserved, compatible with achieving a satisfactory living environment.
  - b) Proposals for development must reflect a revised comprehensive planning brief adopted by the district council and demonstrate that the conservation of heritage resources, landscape, restoration, enhancement of biodiversity and other environmental improvements will be achieved across the whole of the former air base in association with the provision of the new settlement.
  - c) The new settlement should be designed to encourage walking, cycling and use of public transport rather than travel by private car. Improvement to bus and rail facilities and measures to minimise the impact of traffic generation by the development on the surrounding road network will be required.
- 5.3 The CLP 1996 does not contain a site specific policy for the airbase.

### *National policy and guidance<sup>14</sup>*

- 5.4 The following national policy and guidance is most material to the appeals: Planning Policy Statements 1, 3, 6, 7, 9 and 23 and Annex 2 to PPS23; Planning Policy Guidance 4, 13, 15, 16 and Circulars 11/95, 05/05 and 01/06. The inquiry also had regard to the "Consultation Paper on a new Planning Policy Statement 4" as indicating the direction of travel of national policy but not of course to the formal consultation "Draft PPS4" of 5 May 09.

### *Emerging Development Plan policy and Supplementary Planning Documents*

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<sup>10</sup> CD20

<sup>11</sup> CD28

<sup>12</sup> CD30

<sup>13</sup> Document 4c

<sup>14</sup> CDs2-19

- 5.5 The Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South East (emerging RSS)<sup>15</sup> were published in July 2008. The agreed policies of particular relevance are H2 (scale and distribution of housing) and RE3 (employment and land provision). The change proposed in RE3 (previously RE2 in Draft RSS<sup>16</sup>) adds emphasis to the need for regard to business needs and flexibility of land supply. The parties have not of course had the opportunity to comment on any further changes found in final RSS9 published in May 2009.
- 5.6 As required by Structure Plan policy H2, a RAF Upper Heyford Revised Comprehensive Planning Brief (RCPB)<sup>17</sup> was prepared and was adopted by the Local Planning Authority as a Supplementary Planning Document in March 2007. It replaced the Comprehensive Planning Brief of 1999<sup>18</sup> and superseded the Supplementary Planning Guidance of 2004 addressing Temporary Uses of Land and Buildings<sup>19</sup> at the airbase.
- 5.7 In contention in this appeal with the Appellant and also (as regards the buildings on the site and their use) with English Heritage are the RCPB's provisos regarding the following: demolition of substantial numbers of buildings including unlisted buildings identified in the RCPB and confirmed at the inquiry as being of national significance (the latter being mainly the groups of HASs in the north west and south east of the site); "monumentalisation" of a large number of buildings in the north of the Flying Field (mainly hardened aircraft shelters) to be given a nil use; removal of most of the security fence; removal of the concrete nibs at both ends of the runway; the contraction of outdoor vehicle standing associated with the car processing use to 7ha of the site; employment levels (intended to match the expected number of economically active residents of the new settlement) to be restricted to about 1300 jobs; limitations on use of buildings whereby changes of use on the flying field would be constrained both in vehicle movements and restricted to those uses needed to generate sufficient income to conserve the heritage and ecological interest of the site, thus requiring a viability assessment. The latter is linked to the debate at the inquiry around whether the Structure Plan policy H2 is an "enabling policy" or one that requires only such development at the appeal site as would be "enabling development" in the sense used by English Heritage.

*Other planning documents*

- 5.8 The non-statutory Cherwell District Council Local Plan (2011) was approaching inquiry stage in December 2004 when it was withdrawn as a replacement plan as it was likely to be "overtaken" by the later Structure Plan, but it was approved for development control purposes<sup>20</sup>. It contains site specific policies for the former airbase (UH1, UH2, UH3 and UH4) which were prepared in the context of the previous OSP 2011 (1998). The general

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<sup>15</sup> CD25

<sup>16</sup> CD21

<sup>17</sup> CD44

<sup>18</sup> CD14

<sup>19</sup> CD45

<sup>20</sup> CD31

thrust of those policies, highlighting particularly those matters at issue in the lead appeal is as follows.

- 5.9 Policy UH1 allows for a new village subject to 12 provisos including allowance within the village for a level of jobs broadly comparable to the anticipated number of economically active residents and that there should be no further growth of housing or jobs; it should incorporate proposals for the preservation of buildings of national importance. Text at paragraph 2.11 estimates there would be about 1500 economically active residents. UH2 seeks landscaping and environmental improvement across the whole airbase comprising 8 elements including demolition of those buildings and the perimeter fence which are unacceptably intrusive having regard to their impact on views from outside the airbase and the setting of the new village (except for nationally important buildings as identified by English Heritage); sets out the approach to demolition and waste arisings and seeks landscaping and after use for pasture and passive recreation. UH3 allows for development on the airbase only where it would have levels of traffic and other aspects compatible with a new village that could be absorbed into the wider landscape. UH4 requires the design of the new village to ensure its successful integration into the local countryside. The Proposals Map shows that all the Flying Field apart from buildings and areas now Scheduled or Listed is "to be cleared of former military infrastructure and restored to provide pasture and "common land". The area indicated there for the new village has slightly different boundaries to north and west than proposed in the lead appeal.
- 5.10 A detailed informal "Conservation Plan"<sup>21</sup> in three volumes was prepared in 2005 to inform the debate on the future of the Cold War part of the site (north of Camp Road and the "Technical Area"). It was prepared for a steering group comprising representatives of North Oxfordshire Consortium, English Heritage and Cherwell District Council.
- 5.11 A Conservation Area Appraisal<sup>22</sup> was published in 2006. The latter explains the justification of designation as being the historic military landscape with several sub areas of distinct landscape character, buildings representative of different periods of the airbase's expansion some of which were then proposed (now confirmed) for Scheduling or Listing. The need for careful management is identified and it is confirmed that designation is based on the interest of an area and is not reserved for the picturesque and its purpose is to provide a statutory framework to ensure the appropriate levels of protection and development within the site.
- 5.12 The Cherwell Core Strategy remains at an early stage following consultation on an Issues and Options Paper in 2006. In October 2008 it was anticipated that there would be a further round of consultation in Spring 2009 on the preferred approach for the Core Strategy. An Issues and Options consultation on the Banbury and North Cherwell Site Allocations DPD took place in July/August 2006. That document set out the current Structure Plan Policy H2 and referred to the then emerging Revised Comprehensive Development Brief which would inform the development of a local site specific policy for Upper Heyford.

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<sup>21</sup> CD64

<sup>22</sup> CD57

## 6 Planning History

- 6.1 The airbase was operational from the end of World War 1 by the Royal Air Force and by the United States Air Force from the 1950s. It closed and was declared surplus to Ministry of Defence requirements in 1994. The military history of its development is set out in Dr Edis's, Mr Munby's and Dr Barker's evidence<sup>23</sup>, the Conservation Plan<sup>24</sup> and also the Inspector's report<sup>25</sup> regarding the NOC appeal in 2002/3. Dr Barker also provides historic photographic evidence in his appendices. I do not repeat their accounts here but is helpful background to understand the military landscape and its many and varied buildings.
- 6.2 The appellant leased the site from the MOD in 1996 and completed its purchase in 2006.
- 6.3 A planning application for a new settlement was made in 2000 and an appeal made against its non determination was dismissed in 2003<sup>26</sup> by the Secretary of State. This was mainly on the grounds that it failed to comply fully with the then Oxfordshire Structure Plan's policy H2, especially because it did not address the future of the airbase site as a whole. That proposal was held to comply with two of the policy's criteria but not the other two.
- 6.4 Since the USAF left the base, suitable housing on the site has been let out to civilians. A variety of temporary employment uses has been permitted in some of the buildings and structures and on parts of the runway and taxiway. Since 2006, 22 planning permissions for renewal, change of use or variation of conditions relating to buildings on the Flying Field were granted for temporary periods of 2 or 3 years. A further 27 were granted in 2007 for one year. The 41 appeals (enforcement and for planning permission) currently in abeyance pending the decision on this lead appeal relate to such temporary uses, including that for use of part of the southern taxiway for outdoor car processing. About 1000 people were employed on the airbase at the time of the inquiry, up to half of them in the car processing concern. Two appeals for car storage (by different occupiers no longer present) on different parts of the runway and taxiways were dismissed in 2007 and 2008 because of harm to the Conservation Area and setting of Scheduled monuments<sup>27</sup>.
- 6.5 This current lead appeal proposal was a duplicate application of that submitted to the Local Planning Authority in November 2007 and on which an appeal was lodged and then withdrawn in favour of this appeal. During the negotiations on these applications a major material change is made in the second proposal now subject to appeal in that it is not now proposed to demolish two groups of Hardened Aircraft Shelters, one in the north west and another in the south east of the Flying Field.
- 6.6 Conservation Area Consent has been granted for demolition of a large number of buildings, structures and sections of the perimeter security

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<sup>23</sup> Documents CDC JE1 pages 17-22, NOC JM1 pages 7-9 and EH NB1 pages 6-17

<sup>24</sup> CD64

<sup>25</sup> CD48 page 11

<sup>26</sup> CD48

<sup>27</sup> CDs 49 and 50

fencing<sup>28</sup>. These consents include all of the school room huts, the hospital and buildings associated with recreation and sports facilities. All these are south of Camp Road at the south west part of the appeal site. Also granted CAC is demolition of some buildings where housing north of Camp Road towards the west of the site is proposed.

- 6.7 The temporary planning permissions relating to change of use of buildings within the site were granted with regard to the Local Planning Authority's Temporary <sup>Uses</sup> Supplementary Planning Guidance pending a lasting solution being found for the future use of the site. With adoption of the Revised Comprehensive Development Brief in 2007, the Local Planning Authority decided that to allow further such temporary permissions was no longer in the public interest in achieving that long term solution.

## **7 Summary of the Environmental Statement (ES)**

- 7.1 After setting the context for the ES, describing its methodology, describing the proposals (and alternatives considered) and planning policy context, the ES goes on to assess the development's socio-economic impact; traffic access and movement; utility services and waste; construction waste; noise; air quality; water quality; geology, soils and contamination; surface water drainage, hydrology and hydrogeology; landscape and visual impacts; ecology and nature conservation and cultural heritage. A Transport Assessment and Flood Risk Assessment are in separate volumes.
- 7.2 The Transport Assessment (TA)<sup>29</sup> was carried out based on existing traffic conditions in 2006 (which includes traffic associated with the then temporary uses), an opening date for the development in 2013 and on the following elements of the proposal: 1075 dwellings; 15,658 sq.m B1 office; 17,996sqm B2; 86,113sq.m B8 (including 10,452sq.m used for car processing that was assumed to have a similar trip generating character); 4195sq.m Heritage Centre; 4150sq.m Conference Centre. Parking would follow OCC guidance. A number of other uses proposed for the site were not assessed as they were assumed to generate largely internal or pass-by traffic (retail of 743sqm; church 680sqm; community centre 580sqm; bar/restaurant 340sqm; nursery 224sqm and primary school. The TA notes that 315 existing dwellings on the site are occupied.
- 7.3 Trip generation was derived from TRICS data and agreed with Oxfordshire County Council. Six junctions on the local highway network plus Junction 10 of the M40 (southern roundabout only) were assessed for capacity in 2013 with and without the full development and a 15 year after opening test for Junction 10 was conducted. One of the six local junctions (the signalised B430/B4030 at Middleton Stoney) did not operate within capacity but its performance in the opening year of the development could be mitigated by optimisation of signal staging and changes to geometry. The J10 southern roundabout was modelled at just over theoretical capacity in the opening year and significant deterioration in performance at 2028. The impact of development traffic can be negated by proposed changes to the carriageway markings. An accident analysis was undertaken and 5 locations with slightly higher than average rate were identified for further investigation.

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<sup>28</sup> See Document CDC JB2 Appendix L and NOC MD2 Appendix 1

<sup>29</sup> Document A1.4 Volume 3d

- 7.4 A series of measures that the developers would implement are identified: enhancement of existing bus services; implementation of HGV routing agreements; minor improvements to Middleton Stoney crossroads and Junction 10; consideration of village traffic calming and implementation of a travel plan.
- 7.5 A further test 5 years after opening of the development (2018) for three junctions was requested. ARCADY analysis of the modified junction 10 southern roundabout would operate with acceptable queues and at an acceptable theoretical flow to capacity ratio.
- 7.6 It is not challenged that the associated traffic of the new settlement and the changes of use could be accommodated on the local network with only minor improvements required. These measures are progressed and detailed in the Unilateral Undertaking and in the proposed conditions.
- 7.7 The TA assessed traffic impact assuming that traffic generation is not affected by the implementation of the Transport Strategy included as part of the Unilateral Undertaking. Any improvements achieved by the latter would bring capacity benefits over and above those in the TA.
- 7.8 The Flood Risk Assessment (FRA)<sup>30</sup> states the site is elevated about 60m above any watercourse. It demonstrates that the whole site is within Flood Zone 1, i.e. that of lowest probability of flooding. It also shows that its development will not adversely affect on-site, neighbouring or downstream developments or their flood risk and sets out mitigation measures. The area of impermeable surfaces would be reduced. All surface water including overland flows would be managed by a new sustainable drainage infrastructure which will manage storm events up to a 1% return event probability plus 30% allowance for climate change. Storage of surface water and flow controls for discharge to watercourses have been calculated and complex flow control will be achieved by staging a series of Hydro Brakes in bespoke chambers.

## **8 Statements of Common Ground**

- 8.1 No Statement of Common Ground was produced in advance of the inquiry. Six Statements of Common Ground between the NOC and CDC/OCC were produced (and in some cases revised) during the inquiry. They address the following topics: Planning, Landscape and Visual Issues, Ecology, Transport Assessment, Sustainable Transport and Affordable Housing. A brief SoCG was also agreed with English Heritage (CD123g) regarding the Management Plan for the Flying Field.
- 8.2 The Planning SoCG<sup>31</sup> was updated during the inquiry and describes the former airbase and its location, its surrounding context, planning history and sets out at section 5 what is intended to be included within the application. I have reproduced that in my description of the proposals above. The SOCG also confirms that it is not intended to remove the Petrol Oil and Lubricant system but to retain and stabilise it. The Management Plan for the former Flying Field indicates the means of accessing buildings on the Flying Field. The SoCG then reviews Planning Policy from the many national statements

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<sup>30</sup> Document A1.4 Volume 3b

<sup>31</sup> Document 4c

that are material to the appeals through the three elements of the Development Plan and then the Non-Statutory Local Plan, the Revised Comprehensive Planning Brief (RCPB) Supplementary Planning Document. Matters not in dispute and Matters in Dispute are then summarised.

8.3 Matters Not in dispute:

- a. The principle of developing a small new settlement of about 1000 dwellings and an appropriate level of support facilities in accordance with Structure Plan policy H2;
- b. The scale and location of the 1075 dwellings broadly accords with the Structure Plan and RCPB;
- c. The broad distribution of land uses in the new settlement area as shown on the Masterplan.
- d. That the Local Planning Authority's remaining concerns about the ES can be addressed by Conditions and within the Unilateral Undertaking.
- e. That if buildings on the Flying Field are to be reused then a robust and agreed Management Plan secured via the Unilateral Undertaking and conditions is an acceptable way of controlling external storage, lighting, signage, waste storage and painting.
- f. The off site highway improvements required as a result of traffic from the NS have been agreed.
- g. The Landscape strategy submitted with the application is generally acceptable and could provide appropriate new planting, subject to details and retain the character of the Flying Field.

8.4 Matters in Dispute:

- h. Whether the proposal would deliver the required balance of historical/cultural objectives, environmental improvements, ecological benefits and public access as required by Structure Plan policy H2.
- i. Whether the proposals provide a sustainable framework for the site and would be contrary to Structure Plan policy G1.
- j. Whether the scale, type and location of employment proposed for the Flying Field would harm the character of the Conservation Area and setting of Listed Buildings.
- k. Whether adequate opportunities for travel other than by the private car would be delivered.
- l. Whether the Unilateral Undertaking would be adequate and mitigate the full impacts of development and achieve the necessary infrastructure.
- m. Whether the proposals would deliver an acceptable lasting and comprehensive approach to the whole site.

- n. Whether an adequate length of perimeter fence would be delivered as required by the RCPB.
- o. Whether the non-demolition of the groups of Hardened Aircraft Shelters in the north west and south east of the site is satisfactory.
- p. Whether it is acceptable not to scarify the taxiways on the eastern part of the Flying Field to achieve the ecological benefits identified in Policy H2.
- q. Whether adequate public access would be allowed.
- r. Whether it is acceptable to promote reuse of buildings on the Flying Field in locations where the RCPB would only permit their "monumentalisation"
- s. Whether there is a justification for employment use of buildings on the Flying Field when the RCPB requires this to be "enabling development".
- t. Whether the proposals fail to give adequate information regarding the retention of the Petrol, Oil and Lubricants system (POL).
- u. Whether the proposal that car processing should occur on 17ha of the southern taxiway (compared to the 7ha in the RCPB) would harm the character and appearance of the Conservation Area.
- v. Whether the Management Plan is adequate.

8.5 Appendix 1 to the SoCG provides a schedule of the large number of drawings, plans and photographs submitted with the appeal application.

8.6 The Landscape and Visual Issues SOCG<sup>32</sup> is largely a statement of mutual understanding of NOC's landscape design and management proposals and explicitly does not imply CDC's agreement to them. The SOCG sets out the proposals as follows.

The Western nib of the runway: removal of security fence around it and landing lights; a restored link to Portway footpath/bridleway separated from the Flying Field by a fence of maximum 1.5m.; removal of tarmac overrun area and perimeter road and its infilling with alkaline material and management to meet ecological aims for low fertility grassland.

The eastern nib: removal of eastern loop of perimeter road and tarmac overrun area and (if not limestone substrate) alkaline infill. Ponds for Great Crested Newts to be created; management as per Ecological Management Plan.

North West Hardened Aircraft Shelters (NW HASs): these are to be retained and nearby building 3135 to be removed. The area around the HASs to become a Cold War Park (CWP). Its eastern side would be fenced in. Details of the CWP to be agreed. Subject to detailed discussion, alien and nurse species of trees along the boundary would be gradually replaced with native

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<sup>32</sup> Document 4d

species and gaps infilled. Management would be in accordance with the Base Management Plan (now part of the Unilateral Undertaking) and a Landscape Management Plan would be prepared.

The South East HASs: a low screen fence would be placed between the HASs 3036 and 3037 to visually enclose car processing in the "Christmas tree" area between this group of HASs. A 10-30m strip of indigenous planting is proposed to the west of Chilgrove Drive (the extension of Aves Ditch) to give visual enclosure to the site when seen from the south and south east. New planting would also supplement existing trees to the south of the southern (conventional) bomb stores.

E-W northern footpath outside the northern fence is to be part of the Heyford Trail and upgraded as necessary by donation to the County Council.

Aves Ditch to be reconnected across the runway as on plan L10A and defined by two stock proof fences 28m apart (or as otherwise agreed) and a maximum of 1.5m high to prevent access to the County Wildlife Site and provide security to the commercial area and runways. A viewpoint would be provided to look west down the runway.

An alternative route to Aves Ditch (preferred by NOC) shown on Plan L10B would follow the eastern periphery with the fence to the southern bomb stores retained and a new fence built on the inside of the perimeter road. A viewpoint west down the runway would be provided in a position to be agreed.

Footpaths: site footpaths are shown on plan L10A and the wider network on the plan at Appendix 1 of the SOCG. In addition NOC will seek to achieve off site links to existing rights of way by entering discussions with OCC.

This SOCG also sets out proposals for peripheral planting around new housing areas including replacement of existing conifers where relevant.

Land would be returned to grassland on the most westerly field south of Camp Road and all the buildings demolished to their east. This area and the retained USAF sports facilities will be used for sports and recreation (as in the UU) and enclosed by new hedges.

The location of fences of different types is shown on Appendix 2 "Fence Plan".

A revised tree plan and schedule<sup>33</sup> has been prepared on the basis of the draft Masterplan revision N. Wherever possible all A and B graded trees would be retained except alien conifers unless they are important on character grounds.

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<sup>33</sup> NOC JC6 App2

The above are as shown on Plan L10A<sup>34</sup> (except where L10B or Appendix A is referred to) and would be subject to detailed design, secured by condition or in some limited cases by agreement with the adjacent landowner.

The Landscape Management will be in accordance with the Base Management Plan attached to the Unilateral Undertaking.

A compendium of agreed viewpoints is at Appendix 3 (plan L2). Illustrative photomontages of Aves Ditch<sup>35</sup> are prepared by photorendering software and area agreed as giving a reasonable representation of daytime impact of cars of height 1.45m. For taller vehicles (e.g. 4x4s and car transporters) the representation is indicative only of their horizontal extent.

Agreed rates and heights of tree growth are given. The current height of trees on the northern boundary is agreed as at 7-8m and on the north west at 12m.

Regarding the Paragon Visual Assessment<sup>36</sup>, agreement was reached on the assessment viewpoints except on points 9 and 12 where CDC considered the impact would be "slight" rather than "negligible". The assessment does not take account of vehicles taller than 1.45m. Security buildings, lighting and transporters are not assessed. It was not possible for CDC to check the Zone of Visual Influence data in NOC document JC2 by running their own version but they have no reason to doubt the technical accuracy of Paragon drawings 4, 5 and 6 or the principles of the comparative ZVI set out in Paragon L10 1802-88 therein.

- 8.7 Ecology SOCG<sup>37</sup>: The main ecological issues raised by the proposals for the site are agreed. It is also agreed that implementation of the measures set out in the text and plans of the Ecological Mitigation and Management Strategy (within the Management Plan for the Flying Field secured at Schedule 4 of the Unilateral Undertaking and at Appendix 2 thereof) will ameliorate potential impacts on the relevant ecological issues. Protected species matters can be dealt with under the Natural England licensing system. The design of the cat proof fence between the flying field and the development area can be agreed through a condition to the planning permission.
- 8.8 As a result of this agreement the ecological evidence of Drs Shepherd and Clarke was put before the inquiry as written submissions.
- 8.9 The Transport Assessment SOCG<sup>38</sup> confirms that the Highway Authority and Highways Agency agree the analysis and mitigation proposals of the Transport Assessment as set out above. The TA has assessed traffic impact assuming that traffic generation is unaffected by the implementation of the Transport Strategy which aims to reduce dependence on private car use.

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<sup>34</sup> Plan L10A and L10B are at NOC JC3

<sup>35</sup> NOC JC6

<sup>36</sup> Document NOC JC2

<sup>37</sup> Document 4e

<sup>38</sup> Document 4b

- Any improvements achieved by the TS would bring capacity benefits over and above those in the TA.
- 8.10 The Sustainable Transport SOCG<sup>39</sup> agrees that Heyford Park is not well located for public transport but that the CDC and OCC support the principle of development on the site that would achieve an appropriate balance of environmental improvements to a rural part of the county, conservation of the Cold War heritage interest of the site and reuse of some existing buildings and previously developed land in the former technical and residential core of the base (NB such use on the wider Flying Field is not agreed). Whilst the location cannot be changed the Transport Strategy will provide opportunity to use non car modes, encourage local travel patterns and use of active modes that support healthy living.
- 8.11 The Transport Strategy includes proposals to improve public transport and to implement sustainable transport measures. The bus service proposals would include providing good access to Bicester North station for onward travel to London and Birmingham.
- 8.12 A draft Transport Strategy is attached (the final version is now committed as part of the Unilateral Undertaking and its implementation would be the responsibility of the Base Management company). A Transport Coordinator would be appointed to prepare, implement and monitor the Transport Strategy, the latter in conjunction with a Transport Steering Group. The Strategy contains funding proposals for a Site Wide Travel Plan for residential and commercial occupiers, the primary school and other measures that support sustainable travel. The Strategy also proposes and would fund enhanced bus services to and from the site which would become viable commercially within 7 years. Measures to encourage pedestrian and cycle use would be included as part of the development. Funding will be allocated to allow supplementary measures if car driver trip generation exceeds targets set in the Strategy.
- 8.13 The County Council agrees that the Transport Strategy represents best practice in the preparation, implementation and management of sustainable transport strategies, is likely to improve sustainable travel options and travel patterns to, from and within the site. The TA has assessed traffic impact assuming that traffic generation is not affected by the implementation of the Transport Strategy. Any improvements achieved by the latter would bring capacity benefits over and above those in the TA.
- 8.14 Not entirely agreed are access to the proposed additional employment on the Flying Field (FF) and the alignment of the new/restored link in Aves Ditch footpath.
- 8.15 The County Council contends that the number of jobs on the site would be higher than the 1777 that NOC foresees. However, assuming the latter, 403 of the 478 extra to the 1300 envisaged in the RCPB would be on the Flying Field. Concern focuses on the environmental effect of the additional traffic travelling around the local villages although the numbers are agreed as acceptable from the traffic management point of view. Some people working near the gates to the FF would be within 400m of a bus stop. A cycle pool and a shuttle bus would be provided for others by the developer

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<sup>39</sup> Document 4a

for movement within the FF. Those are agreed as practical sustainable transport options and the Transport Coordinator will be charged to encourage their use. It is also agreed that there would be a benefit from the 200 occupiers of the 70 dwellings not proposed for demolition having access to the improved transport options and this would help counteract disbenefit from the 400+ extra jobs on the FF.

- 8.16 NOC proposes the alignment of the new/restored link in Aves Ditch footpath around the eastern periphery of the airfield which they consider suitable for a leisure route whereas OCC still support a direct route across the runway. It is recognised that a security fence would be needed and that this would have an impact on the historic character of the site if it ran across the runway.
- 8.17 NOC do not agree to contribute to repair of the Oxford Canal towpath to enhance this as a route to Lower Heyford Station as they consider it too remote from any planning need arising from the development.
- 8.18 Affordable Housing SOCG<sup>40</sup>: it is agreed that 30% of the total number of dwellings will be affordable units (as defined in Planning Policy Statement 3). The mix of such dwellings by size is agreed but not by tenure. The latter would be decided subsequently. The affordable units will be offered for transfer to Affordable Housing Provider(s) accredited by the Housing Corporation at the designated transfer price of £1450 per square metre. The affordable units will be delivered in clusters of 10-30 dwellings distributed across the development and Phase by Phase. It will initially be targeted to meet the needs of those existing residents of the airbase who are demonstrably in need of such housing and whose existing housing will be redeveloped as part of the appeal proposal. A survey of existing residents will be made to assess their needs by tenure and type of housing.
- 8.19 The Unilateral Undertaking will include fallback arrangements for the provision of affordable housing in the event that no affordable housing provider is willing to purchase at the identified build price.
- 8.20 Such points remaining to be resolved when the SoCG was signed were largely resolved by the end of the inquiry. Schedule 5 of the Unilateral Undertaking addresses affordable housing.
- 8.21 A brief SOCG with English Heritage<sup>41</sup> (18 December 2008) states that the latter considers the Management Plan for the Flying Field – version 25 is an appropriate and acceptable document in respect of the proposed future management of the FF except in respect of Action HA17 relating to the Paragon car processing area on which EH reserved its position. Their objection to this part of the proposal was not overcome.

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<sup>40</sup> Document 4f

<sup>41</sup> Document 4g

## Section 2

### The Cases for the Parties

#### 9 For the Appellant

- 9.1 Evidence was given at the inquiry on the following matters: Planning, Landscape, Heritage, Employment, Sustainability, Urban Design, Transport and Travel Plan and, at my request Contamination. Other proofs on Education and Affordable Housing remain in evidence as written representations but were not heard at the inquiry owing to these matters being addressed in the Unilateral Undertaking.
- 9.2 I summarise the main points for the Appellant here, based on the closing submissions.
- 9.3 There is a large measure of agreement as identified in the SoCGs. Proposals for the future of the airbase have been under consideration for a long time including in the earlier Structure Plan and at an earlier appeal determined by the Secretary of State in 2003. Both the District and County Council's consideration of this proposal has been informed by those and firmly wedded to them, to the extent that they have not had proper regard to significant changes that have occurred since then.
- 9.4 Those material changes are:
- 9.5 Significant changes to national planning policy now in PPS1 and PPS3. The sequential test in the context of site sustainability to which the earlier inspector gave great importance (see CD48 paragraph 10.7) has now gone. PPG4 is in revision with Draft PPS4 and PPS7 has replaced PPG7. The latter gives a clear emphasis to reuse of buildings in rural areas for employment purposes (paragraphs 5 and 17). Mr Brisbane's<sup>42</sup> evidence addresses this.
- 9.6 The whole of the site was designated a Conservation Area in 2006 following the continuing appreciation of the heritage importance of the site and the preparation of the Conservation Plan (CD64). The latter identified what was important to retain the historic significance of the Flying Field. The Conservation Area Appraisal (CD57) makes plain the importance of the buildings there and in particular the Hardened Aircraft Shelters. It points out that each area of the airfield has a distinct and identifiable landscape character and contributes to the sum character of the military site, which is greater than a collection of its parts and each area is crucial to its functioning.
- 9.7 In December 2006 five areas were designated Scheduled Ancient Monuments. The settings, as well as the monuments themselves need to be preserved. That includes buildings that the Local Planning Authority suggests are clutter and should be cleared. The Council's witness Dr Edis in cross examination accepted that the examples he quoted are functionally and visually related to the Scheduled Monuments – in that case to the Quick Reaction Alert Area - and part of its setting.

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<sup>42</sup> Document NOC BB1

- 9.8 In March 2007 the District Council published its RCPB. In the light of evidence given at the inquiry there can be no doubt that it was neither prepared in a satisfactory way nor in substance is satisfactory.
- 9.9 In April 2008 five buildings were Listed as buildings of architectural or historic merit.
- 9.10 On 21 October 2005 the Oxfordshire Structure Plan 2016 (CD28) was adopted with a materially revised Policy H2. The previous Inspector considered the earlier proposal turned on its earlier version. That material change means one should not rely on those earlier conclusions. The earlier policy H2 (see CD27 p.88 and Policy H2c) made no reference to the importance of heritage issues. It required substantial landscaping that would be inappropriate to those heritage interests as both Councils accept. That has not prevented them relying repeatedly on the earlier decision.
- 9.11 The designation of the Conservation Area engages the statutory duty arising from s.72 of the Planning (Listed Buildings and Conservation Areas) Act to have regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The advice in PPG15 on the approach to be taken to buildings which make a positive contribution to a Conservation Area is also highly material both to the appeal proposals and to the Council's approach in the RCPB.
- 9.12 The Inspector in the earlier appeal concluded on the unsustainability of the location and the Councils have repeatedly much relied on that. However as Mr Semple and Ms Barker accepted in cross examination, the concept of sustainability in PPS1 extends beyond transportation issues and includes heritage and economic sustainability. In any case the Sustainable Transport SoCG considers with one exception (addressed below) that the measures proposed by the appellant would produce sustainable and practical options for non private car travel.
- 9.13 The previous Inspector linked sustainability, transportation sustainability and the (then) sequential test for housing in the reasoning in his report. The latter test postdated the then Structure Plan.
- 9.14 The formulation of the current Structure Plan Policy H2 and its inclusion in the Plan would as Mr Semple accepted, have taken account of all the other relevant general background policies in the plan in deciding to include the site specific policy and its contents. The debate about the appropriateness of the location took place then and it should not be reviewed now. The present role is to apply it in the context of all the up to date material considerations. The continuing relevance of the policy was confirmed by its being "saved" from expiry on 20 October 2008<sup>43</sup>.
- 9.15 It is very obvious that the District Council and perhaps also the County Council have entrenched positions on the airbase. That has its genesis in the District's original intentions for the site that live on in their continued reliance on the Non-Statutory Local Plan 2004 (CD31) and its policies UH1-4, as referred to in their Pre-Inquiry Statement and proofs of evidence. As set out in Inset Plan 51, that plan seeks the clearance of all of the Flying Field except the QRAA and northern bomb stores considered as of national

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<sup>43</sup> *Inspector's note: the "saving letter" at CD122 is dated 16 September 2008*

heritage interest. That approach has permeated every aspect of their case from their seeking “monumentalisation” in the face of clear advice in PPG15 and PPS on reuse to their attempt to persuade the Environment Agency that conditions are needed that occupied buildings be vacated related to a requirement to address non-existent contamination. The benefits of reusing buildings for business are clear from the evidence and they extend to economics, conservation and sustainability considerations. Instead they seek demolition of buildings of national significance or to prevent their reuse by “monumentalisation”.

The Secretary of State’s Matters

The extent to which the proposed development complies with the Development Plan:

- 9.16 The Council has referred to a range of policies in the Structure Plan as well as the site specific Structure Plan policy H2 in an attempt to establish conflict with them. However Policy H2 is the starting point as it is specific to the Upper Heyford airbase site. Other relevant policies are reviewed in evidence but it is this policy that is central and should not be undermined by other general policies. To do so would make the Structure Plan inconsistent. The objectives of the site specific policy will have been formulated against the background of the general policy. That approach is consistent with the view of the Courts in *R (on the application of Cummins) v London Borough of Camden and Others* (2001) EWHC 1116<sup>44</sup> (CD117). The locational characteristics of the site were taken into account when the Structure Plan policy was included.
- 9.17 The Cherwell Local Plan (CD30) lacks any site specific policy to the airbase and in many respects is out of date. Its policy EMP4 on proposals for employment in rural areas is however consistent with current national guidance and for the reasons set out in Mr Dobson’s evidence<sup>45</sup> supports the reuse of buildings for employment purposes. The Council ignored that in their reports to Committee and evidence to the inquiry. They did not challenge Mr Dobson’s evidence that the buildings on the airbase fell with criterion B of EMP4; they focused instead on whether this was an acceptable employment site. That was defined by what their RCPB says about it not whether (re EMP4) the proposals could be carried out without undue harm to the appearance and character of the rural landscape, the amenities of nearby settlements or the special character and interest of the buildings. That is best addressed by having regard to the fact that the site is now a Conservation Area and the proposals for reuse have the support of English Heritage on the basis of their appropriateness in the context of the airbase landscape.
- 9.18 Notwithstanding the Council’s reliance on the Explanatory Memorandum of the Structure Plan, it is only the requirements of Policy H2 that is part of the Development Plan. Mr Semple accepted for the County Council that the former is only an expression of the County Council’s view.

OSP Policy H2a:

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<sup>44</sup> CD117

<sup>45</sup> Document NOC MD1 paragraphs 4.22 to 4.31

- 9.19 That the 1075 dwellings proposed is consistent with the policy is uncontentious as is the following part regarding provision of associated social infrastructure except regarding employment. The Council wish to limit jobs to the 1300 in the RCPB (CD44) aimed at providing one job for each economically active resident. There is no adequate justification for that figure having been reduced from the 1500 jobs accepted in the earlier appeal by the Local Planning Authority, the Inspector and the Secretary of State. The figures in the 2001 Census do not do so as is claimed (see Mr Brisbane's evidence<sup>46</sup> at Appendix 12 in particular).
- 9.20 Mr Semple accepted for the County Council that the base would not operate as a sealed environment but as part of the rural area in which it lies where PPG13 (paragraph 43) wishes to see long distance commuting reduced. The 1300 jobs of the RCPB has not been justified nor have the Councils based their position on any analysis of how the new settlement would operate. In contrast Mr Brisbane analyses the current position in the area, its local labour market, the propensity to take employment locally and the opportunities that should be provided to address the local labour market. Those details in his Appendices 4 and 8 were not substantially challenged. So far from over-providing, with the anticipated job provision of 1677 this is a figure that is less than needed to maintain the sustainable local job balance (see NOC BB1 paragraph 5.11).
- 9.21 The Council also fails to take into account that there are already 1000 jobs on the base most for several years although under temporary permissions. They are an important part of the local economy and they should continue. Some of those workers already live at Heyford Park. There are already established travel patterns. The net increase would be 650 jobs – significantly less than the likely number of people attracted to the 1000 new homes even allowing for some re-occupation by those currently renting on the site. The Council have not commented on this because they want most buildings on the Flying Field demolished.
- 9.22 The Council challenge the accuracy of the predicted numbers of jobs bearing in mind the total floorspace. Mr Brisbane in his rebuttal evidence<sup>47</sup> points out that one should distinguish the "special" from "non-special" buildings. Of the 188 buildings (or 189 in the Council's view) some 155 are "special" and their employment potential is constrained by virtue of their construction, lack of ventilation and WCs or other features. The Council's assumption that they would still have 50% useable floorspace is highly questionable. For example, the Bomb stores themselves would not generate any employment because they lack natural light and have no WCs or disabled access. Only their 4 ancillary buildings should count for job generation purposes. Secondly the large floorspace of each of the 45 Hardened Aircraft Shelters (930sqm each) is windowless, lacks service facilities and cannot support jobs within them. One worker per HAS is reasonable for their use as "dead" (long term and infrequently accessed) storage. It is the associated administration buildings that would generate jobs and that has been taken into account in NOCs calculations. Thirdly,

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<sup>46</sup> Document NOC BB1-3

<sup>47</sup> Document NOC BB4

- seven of the Victor Alert Shelters are open sided and wholly without service facilities. (Paragon have enclosed two others and those have services).
- 9.23 This application proposes no operational development to any of the almost 64,000m<sup>2</sup> of "special" buildings. Very low employment densities should thus be attributed to them not the 50% proposed in the "Crutcher Note"<sup>48</sup>. Building 249 is accounted for separately.
- 9.24 The non-special B8 buildings have been given a lower density (100sqm per worker) than for purpose built (80sqm per) B8 space because these are converted A type hangars dating from about the 1930s which are less efficient and have loading/parking areas below modern standards. Again the Crutcher Note overestimates their potential for jobs without rational justification and without regard (as NOC has had) to experience during the time buildings have been used on the site. No material weakness to any part of Mr Brisbane's evidence was shown in cross examination. In fact the RCPB itself notes at paragraph 5.5.2 p.51 that most of the buildings on the FF have no services or drainage and would not provide a suitable working environment, a matter jettisoned by the Council when they came to quantify their job potential.

Policy H2a "as a means of enabling environmental improvements and the heritage interests of the site as a military base with Cold War associations to be conserved, compatible with achieving a satisfactory living environment"

- 9.25 The Local Planning Authority say that requires an approach to development which treats it as "enabling development" - with an open book accounting approach that shows that the level of development proposed is necessary to achieve the objectives set out. This approach is in the RCPB, in relation to the Flying Field buildings, where it is said that NOC should show their reuse is needed to fund the Management Plan for the site.
- 9.26 Mr Semple accepted for the County Council that there is no basis in Policy H2 for a viability test because the number of dwellings is permitted by the policy and the balance of the other interests is a matter for the Local Planning Authority to establish, not requiring open book accounting at this stage. The Local Planning Authority took this view in rejecting OTCH's proposal for open book accounting in the consultation on the draft RCPB (see CD43 paragraph A7.32 p15). The RCPB is truly muddled on this: paragraph 6.3.1 (p54) saying that open book accounting would be sought if it was claimed that the Structure Plan and RCPB proposals are unaffordable. In effect the Local Planning Authority does wish to impose a viability test treating the development as enabling development on a basis that is admitted to lack any policy support and which has more to do with their wish to limit the reuse and promote demolition of buildings on the FF.
- 9.27 The Local Planning Authority accept the English Heritage definition of enabling development in their June 2008 publication "Enabling development and the conservation of significant places" (CD76) which is development that is not in accordance with the Development Plan or not otherwise acceptable but permitted to achieve some other desirable objective. As this development is so permitted (in principle) by Policy H2 it is perverse to suggest it is enabling development. H2 is indeed an "enabling policy" as Mr

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<sup>48</sup> Document CDC JB2 appendix A

- Semple described it in his evidence for the County Council. There is no justification for requiring financial viability calculations.
- 9.28 What the policy seeks to enable is a balance between environmental improvements and the heritage interest of the site. Those two are not however inconsistent as they engage each other. Making long term provision to preserve the Cold War heritage is clearly an environmental improvement.
- 9.29 The only substantive issue arising is with the Local Planning Authority's requirement arising from the RCPB that the 4 HASs in the north west of the site and the 7 HASs in the south east should be demolished to achieve a substantial environmental improvement. The approach to demolition of unlisted buildings in a Conservation Area is set out in PPG15. The Local Planning Authority accepts that such demolition should meet that test. Paragraph 4.27 requires the approach set out at paragraphs 3.16 to 3.19 for demolition of listed buildings should also be applied in a Conservation Area. There should be decisive benefits from demolition and a "decisive outweighing". The merits of alternatives should also be weighed including the reuse. It is claimed there would be decisive landscape benefits from an improvement of the view if the buildings were demolished.
- 9.30 Mr Goodrum's<sup>49</sup> evidence however simply showed that: there are some limited views of some buildings within the Conservation Area from outside it; that those views are already being obscured by existing tree planting; that within 18-21 years (as he agreed with NOC's Mr Cooper) those views would be entirely obscured by trees and that views of other buildings that the Local Planning Authority does not seek to have demolished would remain in the longer term.
- 9.31 The argument for demolition of nationally important buildings (some with special features as noted in the Conservation Area Appraisal (CD57) at paragraph 9.4.4<sup>50</sup>) within a nationally important Conservation Area relies upon a limited and declining view of the buildings for a maximum of 21 years. That is neither substantially beneficial nor decisively outweighing the loss resulting. It also relies on subjective claims as to the merits of the alternative view with the buildings demolished. Even without additional planting Mr Goodrum's supplementary viewpoints<sup>51</sup> do not indicate there is any significant adverse visual impact arising from these buildings. With such planting Mr Cooper's supplementary photomontage<sup>52</sup> shows without doubt there is no foundation to there being any substantial benefit.
- 9.32 At various stages of the inquiry the Local Planning Authority claimed substantial public support for their position. The Regulation 17 Consultation Statement on the draft RCPB (CD42) does not support this. Although Councillor Macnamara suggested there may be some consultation fatigue, 200 people attended a public exhibition and consultation event in summer 2006 although 150 of them did not provide formal responses via a

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<sup>49</sup> Document CDC CG1

<sup>50</sup> *Inspector's note – paragraph 9.9.4 may instead be intended here as it is the latter that applies to the HASs*

<sup>51</sup> Document CDC CG3

<sup>52</sup> Document NOC JC6

- questionnaire. Perhaps his comment was opportunistic having heard the Inspector seeking views of parties as to possible reasons for the low level of public interest at the inquiry and for information sources supporting the reported extent of public concern about the future of the base.
- 9.33 There is no evidence that the public was unwilling to engage with the proposals in CD42. Appendix 10 thereto provides the questionnaire and Appendix 11 its outcome. In response to question 1 regarding a lasting arrangement, 48% sought a conservation plan approach (paragraph 3.33) which involves the retention of buildings. Only 27% sought minimal building retention. Similarly 48% supported low key reuse of retained buildings and 35% permanent reuse of retained buildings, giving a total of 83% supporting the essence of the NOC approach to reuse. There is no basis in CD42 of support for demolition on the basis of the buildings being an eyesore.
- 9.34 The Conservation Plan (CD64) was jointly commissioned by the Local Planning Authority and NOC. That considered views of the site by character area (paragraph 2.12.8 onwards). To the extent that views were of concern, planning proposals would address them. That predated designation of the Conservation Area.
- 9.35 It is fundamental to the Council's concerns that the countryside around the site is harmed by the views from it of buildings in the Conservation Area. That approach is not consistent with the approach in PPG15 at paragraph 4.14 and simply does not respect the fact that those buildings are in a Conservation Area. Opinions may differ on whether those are pleasant views or not but it is not open to the Local Planning Authority to determine that views from an undesignated area of countryside should be allowed to produce significant changes in a nationally important Conservation Area, particularly where those changes would destroy buildings of agreed national significance. The only area of significance to which attention was drawn was the Rousham Conservation Area. It is agreed that the removal as planned of the taller elements of infrastructure (principally the water towers) would result in no remaining impact on the character or appearance of that Conservation Area or the views associated with it.
- 9.36 The principal detractors are identified in the Conservation Plan (see paragraph 2.11.10 of CD64 Volume 1) as the water towers, the old school buildings and the perimeter fence as well as lighting. The removal of the skyline features (the towers) and also the school buildings and large sections of the fence including that close to Upper Heyford and along parts of Camp Road would clearly be an environmental improvement. Those would not affect the heritage interest.
- 9.37 The Council's promotion of removal of the fence around the northern part of the site which is essentially the Cold War landscape area has no rational basis. As the CAA (CD57 makes clear), the fence is modern and defined by the needs of the site. The evidence of Mr Munby<sup>53</sup> for NOC, Dr Barker for English Heritage and also Mr Scharf for OTCH endorses its importance. The reality of the Council's approach is it is part of their continued attempts to prevent reuse of buildings: removal of the fence would lower levels of

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<sup>53</sup> Document NOC JM1-3

security and make reuse less attractive. Given the heritage significance of the fence to the Cold War landscape, to seek its removal is perverse. It would not be an environmental improvement if the environment of the Cold War heritage and its contribution to understanding how the base functioned was harmed.

- 9.38 The appellant relies on the evidence of Mr Munby and the support of English Heritage as to whether the appeal proposals would enable the heritage interest of the site as a military base with Cold War associations to be conserved.
- 9.39 There is now no issue between the appellant, English Heritage and the Local Planning Authority on the demolition of buildings in the new settlement area (away from the Cold War part of the Conservation Area). English Heritage previously did not consider that adequate justification for demolition had been given on many of the buildings with regard to PPG15 paragraph 3.19. The appellant has now assessed all the buildings against the tests in PPG15 paragraph 3.19 relating to:
- the condition of the buildings and costs of repairing and maintaining them in relation to their importance and to the value derived from their continued use;
  - the adequacy of efforts made to retain them in use and
  - the merits of alternative proposals for the site;
- 9.40 That is set out in Mr Munby's revised Annexe 2<sup>54</sup> and has satisfied English Heritage that the buildings can be demolished without harm to the character or appearance of the Conservation Area, bearing in mind the Parameters set for the new development in the application and to the principles set out further in the DAS.
- 9.41 The removal of the buildings will in addition satisfy the final element of Policy H2a, this is to produce a new settlement which is in a form compatible with achieving a satisfactory living environment.
- 9.42 There remains in dispute with English Heritage on conservation matters the issue of the car processing use and its relocation on the southern part of the flying field. Car processing is appropriately summarised as being "the provision of specialist services involving market support and technical services and training to the automotive industry" as at p.3 of Mr Maltby's proof for Paragon<sup>55</sup>. Their use was originally introduced to the FF at the behest of the Local Planning Authority 10 years ago and has continued on the basis of a series of temporary permissions. It has created nearly 500 jobs in a thriving activity important to the local economy. The proposal in this appeal is that 17ha of the outdoor area of the Conservation Area (of over 500ha) should be devoted to this use (together with several buildings nearby). That outdoor area is a substantial reduction on what is presently used by Paragon and is the minimum area from which they could operate. The Local Planning Authority either ignores or considers their operational needs as of little concern.

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<sup>54</sup> Document NOC JM3

<sup>55</sup> Document PSM1

- 9.43 The principle of the use is accepted in the RCPB as both the Local Planning Authority and EH accept, but on a much smaller area of 11ha. The question therefore is whether the location and extent in the appeal proposal would harm the Conservation Area.
- 9.44 Cross examination of Dr Barker (EH) revealed that the concern is the visual impact arising from views of parked vehicles and the extent to which those views would harm a consideration of the character of the airfield.
- 9.45 In that regard it has been accepted (see the Landscape SoCG, landscape evidence of NOC and Local Planning Authority and in cross examination of Mr Goodrum and Dr Barker) that there would be no views of vehicles from outside the Conservation Area.
- 9.46 From within the Conservation Area it is accepted that the only views would be by persons admitted to the FF as part of the proposed heritage tours, with those views limited to the entry point on to the FF and the subsequent exit with limited glimpses from a very limited locations including the reinstated Aves Ditch path.
- 9.47 The difference in impact between the RCPB proposals that EH is content with and the Appellant's proposals is marginal as can be seen from Mr Cooper's Paragon plan L10<sup>56</sup> and his cross examination.
- 9.48 To the extent that the cars could be seen they would be seen "end on" and are not of such height as to prevent views down the taxiway albeit that the taxiway itself would be obscured.
- 9.49 The area chosen is agreed to be that most suitable for Paragon's minimum needs. No one has suggested a better area of the site.
- 9.50 The southern taxiway (the area chosen for Paragon) is an area specifically identified within the Conservation Plan as an area lacking landscape coherence (see CD64 Figure 19 and area C's notation) and it is well away from the most coherent area north of the main runway (see CD57 paragraph 9.1.1).
- 9.51 Therefore there would be limited impact on the Conservation Area's appearance as perceived at limited locations on the proposed Heritage tour route and it would have no impact on appreciation of the important elements of the Cold War landscape - as Mr Munby for NOC concluded. The benefits of the proposal in heritage terms as now set out in the Base Management Plan (Appendix 2 to Unilateral Undertaking) are very substantial and should be seen as heavily outweighing such limited disbenefit as arises from views of parked vehicles.
- 9.52 The areas for car storage in the two earlier appeals for such and in the earlier NOC proposal were wholly different. Their impact and context was different. To rely on findings in those dismissed appeals when assessing this element of this appeal proposal is therefore not appropriate and the purpose of doing so is unclear.
- 9.53 The car processing operations would thus cause no material harm to the heritage interest of the site. The very limited harm is heavily outweighed by the very significant employment and economic benefits arising from

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<sup>56</sup> Document NOC JC2

Paragon's operation as set out in the two Paragon proofs of Mr Brown and Mr Maltby and they are endorsed by NOC's Mr Brisbane and by SEEDA. Paragon's activities also make an appropriate reuse of clear span buildings wholly in accordance with PPG15 (paragraphs 3.8 and 3.9).

Policy H2a and achieving a satisfactory living environment

9.54 Two considerations arise.

9.55 Firstly, the Local Planning Authority contend that retention of the south east group of HASs would have an adverse impact. They could not sustain this bearing in mind that existing housing and that to be retained is closer to them than any new housing.

9.56 Secondly there is the relationship of new housing with the A-type hangars and with building 292 in the north western housing area. Mr West fully addressed both of those in his evidence<sup>57</sup> and it is considered in the DAS. There is no basis that the impact of the retained buildings in either case would be overbearing. The proposals are of course in outline and there is ample opportunity to ensure that the matters of orientation and outlook can be fully addressed. Given the multitude of complex issues and relationships in terms of built form existing and proposed, the only elements identified are relatively minor and capable of being addressed. That testifies to the quality of the proposals and the care taken in producing them.

Policy H2b

9.57 The major issue here is the extent to which the proposals comply with the RCPB adopted in 2007 (CD44)

9.58 Ms Barker agreed in cross examination that fundamental to the weight that it should be accorded was that it was a product of effective consultation and that it should have proper regard to and be consistent with the Development Plan and relevant national policies.

9.59 PPS12 of September 2004 (CD8) was the relevant national guidance at the time. Regarding SPDs, they would not be subject to independent examination and would not form part of the statutory Development Plan but they should be subject to "rigorous procedures of community involvement" (paragraph 2.42). They were also required (paragraph 2.43):

- to be consistent with national and regional planning policies and Development Plan documents;
- to be clearly cross referenced to the relevant Development Plan policy supplemented;
- to be reviewed regularly alongside reviews of the Development Plan and
- the process by which SPD was prepared must be clear and a statement of conformity with the Statement of Community Involvement should be published with it.

9.60 Ms Barker agreed that in relation to effective consultation or community involvement, the person consulted must be able to see and understand the

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<sup>57</sup> Document NOC RW1 and RW2

- substance of what is being proposed in the document and have a fair opportunity to comment on that substance.
- 9.61 She also agreed that it would not be fair consultation to consult on one set of proposals, then radically alter them and then adopt the latter without further consultation.
- 9.62 The Council did consult on a version of the RCPB (CD42A) and that resulted in a report to Committee on 4 December 2006 (at Appendix 6 of CD43) which reports on the representations received on the Draft. Appendix 7 of CD43 sets out the significant range of amendments proposed, some set out in some detail and others in summary. Although the amendments are very difficult to follow in the report they are clearly very substantial. The process was further complicated by a further consultation on the Paragon operations reported back on in February 2007.
- 9.63 The result of that process is that the only time a document was available to enable consideration of the amendments was shortly before the 5 March 2007 meeting when the RCPB was adopted. Prior to that the only "Figures" produced for the public were nos. 2 and 7 so it was very difficult to follow what the Local Planning Authority was proposing.
- 9.64 The extent and fundamental nature of the revisions can be seen from the blue text in CD120 (RCPB version with track changes). The blue text is the new text added as a result of the December and February Council Executive's meetings. Ms Barker agreed that the new text introduces:
- a substantial volume of changes to the text reflecting a substantial reordering of the document and adding many new matters and
  - substantial changes to the document with far reaching changes to the approach adopted.
- 9.65 She agreed that none of the substantial changes were consulted upon so there was no effective opportunity for an interested party to engage with a document that was anything like the document that the Council adopted as the RCPB.
- 9.66 Ms Barker's attention was drawn in cross examination to a series of sections of the adopted version where substantial changes were made. These included sections 2.4.1.3 and 2.4.1.5 with the implications for demolition of some of the HASs which could not be reconciled with the Conservation Area Appraisal's assessment at CD57 9.9.6/7 where they are considered of national significance. No one outside the Council had any idea of which were to be kept and which demolished or how they related to 2.4.1.5 and no one had any chance to comment upon the approach being taken.
- 9.67 Ms Barker agreed that the implications of such an approach were significant both commercially and environmentally: commercially because of the large number of buildings involved that were valuable as structures and would be costly to remove and environmentally because of the conservation implications of demolishing buildings of national significance (PPG15 paragraph 3.19 tests) and the implications of the removal of vast quantities of demolition materials.
- 9.68 Some of the blue text might be small in the number of words but could have significant implications, e.g. paragraph 3.1.4 with its implications for the FF

and priorities for reuse; section 3.4 (re striking a balance) and 3.5 (securing environmental improvements) which introduced for the first time removal of the perimeter fence (i), removal of structures within and adjacent to the new settlement (iii), removal of 5 buildings in the north west corner of the FF(v) and also (vi) and (x). Ms Barker agreed that these and the additions at 3.6 (iii) and (xv) would have significant implications and be matters on which the site owner would be likely to have a view.

- 9.69 The Appellant also drew Ms Barker's attention to the significant changes to the "policy" upper case text in section 4 with 4.2 and Figure 5 being of fundamental importance and with new and significant changes to the text at 4.4.1/2/4. New detail was added on the character areas (4.4.5.1). These and other changes (e.g.4.7.4) had implications for the viability of any scheme to be produced. 4.7.4/5/6 were agreed to be very commercially sensitive with clear implications for viability and the proper planning of the area. 4.7.4.8 could be expected to be controversial. Section 5 re the wider FF was also subject to substantial change and has major implications for the continuation of and future employment uses on the site. Ms Barker admitted that there were new and substantial changes to this section including 5.2.3 with its new "priority" given to removal of the perimeter fence (without a PPG15 paragraph 3.19 test); 5.2.9 and its weighty implications for landscape mitigation; 5.3.1 which adopts a core area approach and a viability test (and cross refers to stringent criteria at 5.5.2 for reuse) and in the third paragraph of the policy text introduces a requirement to demolish. These have a fundamental effect on the management of the FF and place substantial obligations on owners by for example the requirement to monumentalise.
- 9.70 None of these were consulted upon although with there being only one land owner that was ready, willing and able to engage, a further consultation would have been straightforward. Mr Dobson's evidence<sup>58</sup> demonstrates the latter and also the attempts that NOC made after the December 2006 Committee meeting to engage with the Council on the proposed revisions.
- 9.71 In relation to particular buildings the Appellant drew attention to no.249. CD120 at p.6 section 6 makes for the first time the Council's approach on unlisted buildings in the Conservation Area. That approach "concluded that there is insufficient justification for retention of the building". CDC's witness Dr Edis made clear in cross examination that the brief is in clear and direct conflict with national policy guidance in PPG15. Much of that conflict arises from the changes made to the Brief after the consultation was concluded.
- 9.72 The changes made also included detailed and prescriptive approaches (5.3.2/3) relating to the north and west periphery (including the monumentalisation and demolition of the HASs) and to the interface with the settlement in the south east (including demolition of the 7 HASs) that were not in the consultation draft.
- 9.73 Section 5.5 (the future of the wider airfield) is clearly dealing with matters of fundamental importance not only commercially but from a heritage point of view including the future management of the site and the ability to produce a lasting arrangement consistent with its designation as a

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<sup>58</sup> Document NOC MD1

Conservation Area and the importance of a large number of its buildings in themselves and as contributing positively to the character of the Conservation Area.

- 9.74 It is thus quite clear from the revised post-consultation RCPB, in summary, that:
- there were radical and far reaching changes made at a late stage and without effective consultation;
  - the changes were made in a Committee report that was hard to follow especially given the absence of the relevant figures;
  - the changes would have significant implications for the management of the site, its redevelopment, the proper consideration of the heritage aspects and future commercial management;
  - there was no effective consultation on the changes and the Council refused to give the appellant the chance to comment despite their being the single owner of the site and Conservation Area;
  - there is no guidance in PPS12 as then applied to support such an approach.
- 9.75 In seeking to defend its approach the Council referred to PPS12 (September 2004) paragraph 4.42/43 and the timescales therein and that having considered the representations and made any amendments they should adopt the document. That contrasts with Ms Barker's acceptance that effective consultation involves consultation on the substance of what is to be adopted which they failed to do. PPS12 does not advise consultation on one set of proposals, then a radical change to them, then adoption. That approach should be rejected.
- 9.76 As stated earlier the Council at various stages of the inquiry was apt to imply that its revised approach was a consequence of public support but this is false. CD42 (the Regulation 17 Consultation Statement) does not support that and there is no suggestion from the Local Planning Authority that the exhibition and consultation was unsuccessful. Two hundred people attended the exhibition and 150 formal responses were received. On the management of retained buildings, 83% supported low key reuse. The RCPB as revised post consultation and as now adopted could thus not claim to be based on public consensus.
- 9.77 The RCPB is also substantially in conflict with guidance in PPG15 on the retention and reuse of buildings on the Flying Field.
- 9.78 Against all the above considerations the RCPB should be given very limited weight and the Council's entrenched reliance upon it is unreasonable.
- 9.79 There are no substantial conflicts with the RCPB regarding the proposals for the new settlement area.
- Policy H2b re the conservation of heritage resources:
- 9.80 There is a necessary duty under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving or enhancing the character or appearance of the area. In all but one respect (regarding car processing on the taxiways), the appellant's approach is supported by English Heritage. That includes the use of the

buildings, the identification of those to be retained and the approach to the management of the site. That is a testament to the substantial amount of work undertaken.

- 9.81 The Council's approach which would involve significant demolitions of nationally significant buildings is indefensible on the basis of its own consultant's evidence and the total lack of compliance with PPG15. At no stage has the Council sought to justify departing from PPG15 in either the RCPB or in its consideration of this and the now withdrawn appeal proposal, despite NOC's requests. Their approach to the demolition of HASs demonstrates this. They claim it is needed in the interests of landscape restoration. They accept however that the views of the HASs would be wholly obscured within 18-21 years even if one accepts that those views are undesirable (which NOC does not). It is at odds with the reasons the Conservation Area was designated to seek to demolish nationally important buildings, especially for so slight a landscape benefit and without applying the test in PPG15.
- 9.82 In contrast to PPG15 their approach is to require demolition unless retention can be justified, which is led by an entrenched desire to prevent reuse and remove buildings. How that approach would comply with H2b as conservation of heritage resources has not been explained. There is no explanation consistent with the statutory duty or with PPG15 or PPG16.

The Paragon car processing use:

- 9.83 This is the only part of the proposal not supported by English Heritage. The appellant makes the following observations.
- 9.84 There is no objection in principle to the use but to the amount.
- 9.85 The impact of the proposed area for this use is limited to views only obtainable within the site.
- 9.86 The Conservation Plan (CD64 Vol.2 Fig. 19) identifies this part of the site as having a fragmented landscape character.
- 9.87 There is no materially greater impact in landscape terms than the area included in the RCPB.
- 9.88 The Paragon use has significant economic benefits as described in Messrs Brown and Maltby's written representations<sup>59</sup> for Paragon and also by SEEDA who, exceptionally, decided that they should give independent evidence to the inquiry in opposition to the Councils' approach.
- 9.89 This part of the proposal does not cause harm for the reasons Mr Munby explained<sup>60</sup> but even if one accepted others' views about the Paragon element, the much greater heritage benefits from the overall proposal easily outweigh that.

Policy H2b re landscape restoration

- 9.90 The punctuation in the Structure Plan is clearly in error ("...the conservation of heritage resources, landscape, restoration, enhancement of biodiversity ..."). As to what landscape restoration is aimed at, it should be shaped by

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<sup>59</sup> Document PRB1 & 2 and PSM1

<sup>60</sup> Document NOC JM1-3

the Conservation Area designation and national advice. It should not include demolition of the HASs. It should relate to matters such as in Mr Cooper's evidence: the selective removal and replacement of some of the conifer planting and planting of a tree belt along the track Chilgrove Drive to the east of the south eastern group of HASs. There is no basis for restoring the area to its pre-airbase form notwithstanding the Council relies upon the non-Statutory Local Plan policies UH1-4 (which seeks a scheme for landscaping and environmental improvement across the whole of the area occupied by the former airbase). That is an outdated approach that takes no account of CDC's own decision to designate the Conservation Area. The only justifiable elements for removal are the taller structures of the water towers that do not make a positive contribution to the Conservation Area and harmfully intrude on the wider landscape and views within it. The proposals would make appropriate landscape restoration including the new settlement area.

#### H2b re enhancement of biodiversity

9.91 This is now substantially addressed in the Ecology SoCG and in the accompanying Mitigation and Management Strategy and that part of the policy requirement is met.

#### H2b re other environmental improvements

9.92 In considering what here should be included, heritage interests must fall within that description. Together with the landscape and ecology measures they are significant. There is also a Management Plan that will ensure the benefits will remain for the long term and that the use and occupation of the buildings will be fully and appropriately controlled. It is regrettable that the negotiations on the Management Plan were delayed until the start of the inquiry but they are agreed now.

#### Policy H2c re design of the new settlement to encourage walking, cycling and use of public transport rather than travel by private car

9.93 These are comprehensively addressed in the Sustainable Transport SoCG, which demonstrates substantial agreement between NOC and the District and County Councils. In particular:

- the transport measures are designed to encourage local movement by sustainable modes and encourage greater use of public transport (paragraph 11);
- It is agreed with OCC that the Transport Strategy represents best practice for such Strategies and that it is likely to improve the sustainable transport options available and encourage more sustainable travel plans to from and within the site (paragraph 13);
- The submitted Transport Assessment has assessed the impact of traffic without taking the potential effects of the Sustainable Transport Strategy into account. Any improvements from the latter would bring capacity and sustainability benefits beyond those assessed in the TA (paragraph 14).
- The Transport Strategy will benefit not only the new development proposals but also the existing residents and employers (paragraph 15);

- With regard to OCCs one remaining concern with regard to jobs on the Flying Field, it is agreed that those around 400m from the main bus stop are within easy walking distance therefrom. A pool of cycles will be made available to enable cycle access to more distant locations (paragraph 22);
- For those who do not wish to cycle, the strategy provides for a shuttle bus connecting to the main bus route, the timetabling for which has been checked to be feasible (Mr Mitchell's additional evidence). Hence although there would be about 400 more jobs on the Flying Field than at present, those employed would have access to practical sustainable options and will be encouraged to use them through travel plans by the Travel Coordinator (paragraphs 23 and 24).

9.94 Aside from asserting that the location is an unsustainable one, the Council has produced no evidence to demonstrate the policy requirement will not be met and pays scant regard to the evidence to the inquiry. It is agreed that there is no basis for any improvement to rail services. The TA addresses the impacts on the surrounding road network and with the minor improvements agreed there would be no materially adverse impact. The above measures and the agreed supplementing of existing bus services to appropriate locations will ensure that the requirements of policy H2c and PPG13 have been fully met.

#### Summary regarding Policy H2

- 9.95 Policy H2 is site specific and recently "saved" and the proposals substantially comply with it. Insofar as the Council generates a case that they do not comply, that is more about their view as to what should happen rather than being to do with what the policy actually requires. For example in the Council's interpretation of "appropriate employment opportunities", they clearly have preconceived and entrenched views not supported by the policy wording and in the context of their wishing to see buildings demolished and avoiding reuse.
- 9.96 The Appellant in contrast has approached the proposals by seeing no inherent conflict between the different parts of the policy, a process that is easier if one does not seek to demolish nationally significant buildings in a nationally significant Conservation Area but to retain and reuse them as a way of ensuring environmental improvements.
- 9.97 The proposals comply with this highly important policy and in that context show a substantial compliance with the Development Plan in terms of s.38 of the 2004 Act.

#### Other policies referred to in the "reasons for refusal":

- 9.98 Such claimed conflicts by the Council have been shown in evidence to stem from an inappropriate view as to how the Development Plan should be interpreted. The general policies of the Structure Plan will have been taken into account in the formulation of Policy H2. It is wrong then to rely upon them and this approach should be rejected as it was at the earlier inquiry. Outside the Structure Plan, the Local Plan policy EMP4 (employment in rural areas) was considered by Mr Dobson who showed it is consistent with PPG15 and also with Policy H2 that post dates the Local Plan. The proposals comply with EMP4.

The Secretary of State's Issue 2: the extent to which the development is consistent with PPS1, the design principles and the wider context

- 9.99 A great deal of evidence was tendered by the Local Planning Authority on Design issues. In particular the adequacy of the Design and Access Statement (DAS) was lengthily considered.
- 9.100 In cross examination of Mrs Rand (CDC) however it was established that
- The Local Planning Authority were not suggesting that the appeal should be dismissed on the basis of the inadequacy of the DAS;
  - The Council was not suggesting that the appeal should be dismissed because of failure to comply with either PPS1 or PPS3;
  - Their Reasons for Refusal (the eleventh of which refers to the inadequacy of the DAS) were full complete and specific and had not been amended to embrace any further complaints related to national or other policy guidance on design;
  - They had no objection to the hybrid nature of the application and in particular no objection to the fact that part of it is in outline;
  - The Council had not sought, pursuant to either the GDPO or the Planning Application Regulations, any further details of any aspect of the proposal because of a difficulty in deciding what was being proposed;
  - It was appropriate to distinguish between firstly a failure to meet the requirements of the Regulations which was not being alleged and secondly arguments or disagreements over for example, the assessment of or identification of the context for proposals or their merits where professional judgment issues might reasonably arise.
- 9.101 In view of the acceptance that there was no basis to refuse based on the DAS, Mrs Rand's other answers on this in cross examination will not be rehearsed. Instead the Secretary of State's consideration of the DAS might now be focused on whether any further supplementing of the DAS is required.
- 9.102 As Mr West demonstrated in his evidence<sup>61</sup>, the DAS has entirely appropriately been the product of an iterative process with which largely the Local Planning Authority has cooperated. For reasons inadequately explained there was a point where the Local Planning Authority ceased to cooperate and instead decided that it was uncertain what is proposed. Either questions were then asked and answered or not raised at all. Typical in that respect is the approach to Design Coding which remains explicitly to be addressed at the next stage and referred to in the DAS. The Local Planning Authority professes to be unclear on what the appellant intends. Section 4.7 and in particular 4.7.1 could not be clearer that Design Codes will be provided.

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<sup>61</sup> Document NOC RW1

- 9.103 There is overlap between Mrs Rand's evidence and that of others on planning and heritage issues. Mr West's Rebuttal and oral evidence addresses those and there is no need to repeat the position on those topics.
- 9.104 The site and its wider context is addressed in the DAS and the design principles for the edges of the settlement are apparently uncontentious despite the tenor of some of the evidence. The concern appears to be more about the fact that the spaces created at the edge of the new settlement might be subject to future development pressure. The DAS fully justifies that edge treatment approach and it is difficult to see what more could be done unless an inappropriate edge solution was to be adopted as a means of avoiding something that would in any case be subject to normal development control procedures.

The Secretary of State's Issue 3: PPS3 issues

- 9.105 There is nothing in the proposals which could be said to be contrary to the PPS3 approach to high quality housing, well designed and built to a high standard. This is an outline application supported by a DAS which would be progressed via a regulating plan and design codes. The relationships between elements will be considered in that context and there is no evidence to suggest other than high quality housing would be delivered. Mrs Rand sought to establish inappropriate relationships but Mr West in rebuttal shows why that is wrong. The Council's approach again appears to be about seeking more demolitions than about the quality of the development. That is most demonstrated by the criticism of the proximity of part of the new settlement to the south east HASs. The nearest housing to them is the existing housing not new housing and that relationship has not been claimed as inappropriate.
- 9.106 As to the mix of housing, there is no issue that the proposals will offer a satisfactory range of market housing and that the affordable housing will make a valuable contribution to subsidised housing in the area by way of a scheme that would provide for appropriate and locally sensitive nomination rights.
- 9.107 The quantity of housing is governed by the Structure Plan policy, in respect of which there is no issue. Whether need and demand are properly reflected the Local Planning Authority has raised no issue on this and the 30% affordable housing will make a valuable contribution to local needs.
- 9.108 As to whether this is a suitable location offering a good range of community facilities and good access to jobs, services and infrastructure, again the starting point has to be Structure Plan Policy H2 which has endorsed this as a suitable location for about 1000 dwellings and other development. No issue is taken with the range of community facilities and there would be good access to jobs, services and infrastructure. With regard to the proposed retail and hotel and conference facilities, the Local Planning Authority takes no issue with them. Mr Dobson submitted an additional note<sup>62</sup> on those in response to the Inspector's request regarding how they stand with regard to PPS6. He explained that the scale of these facilities would meet a specific local need for both shopping and overnight accommodation. The proposed retail space at 1325sqm is considerably less

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<sup>62</sup> Document NOC MD3

than the PPS6 threshold and will not become a destination in its own right. The proposed hotel in the "technical area" of the airbase is a short distance away from the proposed new local centre just north of Camp Road. However it would reuse the only existing building contributing positively to the character of the Conservation Area that is of sufficient size (4000sqm) for a hotel /conference centre (building 74, the former officers' mess). PPG15 considerations as well as those of PPS6 also come into play.

- 9.109 As to a flexible and responsive supply of land, managed in a way that makes effective and efficient use of land including previously developed land, it is undeniable that the proposal makes full use of the latter. It is previously developed land in a Conservation Area and its reuse preserves and enhances the appearance of the Conservation Area in a way that is efficient and effective. The supply of housing will be flexible and responsive to both market and affordable housing needs.

#### The Secretary of State's issue 4: PPG13 Issues

- 9.110 The only additional matter to those considered earlier is the Council's repeated insistence that this is an unsustainable location, an assertion that they were forced to admit does not have regard to current policy and other circumstances but depends on those current at the time of the earlier appeal 6 years ago. The Sustainable Transport SoCG and Transportation Strategy has already been referred to. The evidence has shown that the only remaining issue about the accessibility of jobs on the further parts of the FF can be addressed so that a range of non car modes will be available there as well so that the PPG15 guidance on reuse can be fully respected alongside PPG13 considerations.

#### Conditions and Obligations

- 9.111 There is now a substantial list of conditions most of which are uncontroversial. It is self evident that development on a site of this kind should be regulated by conditions and also by an Undertaking of the kind that is proffered by the Appellant. The conditions and Undertaking are supported by and linked to a comprehensive Base Management Plan, the substance of which is uncontroversial. That is a highly significant matter in the light of the desirability and appropriateness of securing consistent high quality management of the site in the longer term.

#### The aims of the Development Plan and national policy with regard to Scheduled Monuments, Listed Buildings and Conservation Areas

- 9.112 The Appellant's and English Heritage's cases attach due importance to these and have regard to PPG16 paragraph 8 re Scheduled Ancient Monuments and PPG15 regarding Listed and unlisted buildings in Conservation Areas and to a Conservation Area itself. On the Council's own consultant's evidence the Local Planning Authority's position is not consistent with PPG15 and seems to be explained only by their desire to remove as many buildings as possible and prevent their reuse.
- 9.113 The Structure Plan and in particular its policies EN4 (historic and cultural heritage) and EN6 (archaeology) make clear the importance placed upon conservation of historic buildings, landscapes and monuments as irreplaceable assets and that the settings are important as well as the structures. At Heyford Park the setting of the listed buildings and scheduled

monuments within the Conservation Area includes large numbers of unlisted buildings that are important to the Cold War landscape.

- 9.114 Both national and Structure Plan policy is thus at one with the Appellant and English Heritage in seeking to preserve and enhance the important buildings and Cold War landscape that are essential features at Upper Heyford airbase. The Council's desire to destroy the Cold War landscape by unjustified and almost indiscriminate removal of buildings in pursuit of an objective that is inconsistent with national policy should be firmly rejected.

#### Change of use, outline applications and demolitions in Conservation Areas

- 9.115 The Council does not object to the hybrid nature of the application or that the new settlement proposal is in outline albeit within a Conservation Area. It is agreed that there is no difficulty in the approach subject to appropriate conditions to regulate the change of use and the submission of subsequent details. PPG15 regarding outline applications in Conservation Areas is clear (paragraph 4.18). In many cases that is apposite and can be readily and effectively applied. However on a site of over 500ha including hundreds of buildings, the practicalities of applying the guidance militate against its literal and rigid application. Also the scale of the new proposals is such that it would not be appropriate to require all details to be provided at this stage. There is nothing as a matter of law or good practice that requires that approach.
- 9.116 The aim of that approach is essentially to avoid granting planning permission where there might be demolitions without the approval of a suitable replacement. That could be addressed by condition given the high degree of confidence given by the DAS that a suitable design will be achieved.
- 9.117 If any other approach was taken it would effectively sterilise not only this site but others of its scale because the work needed would be so extensive as to deter developers even in more buoyant times than now. The matter is one of ensuring appropriate control and phasing rather than not permitting them at all. The latter would further delay the redevelopment of a substantial area of previously developed land which stands ready to make a valuable contribution to housing and economic development at a time when these are sorely needed.

#### Appellant's Conclusions

- 9.118 Much time and effort at the inquiry was wasted by attempts to confuse this proposal and the current policy context with the appeal proposal dismissed in 2003 and the different facts and policies that applied then. There is now a site specific and use specific Development Plan policy (adopted in October 2005) against which the proposal can be tested. That policy was adopted having taken into account national guidance applicable at the time such as PPG13 and the proposal does not therefore need to be separately considered against PPG13. Likewise the proposal does not need to be measured against other more general Structure Plan policies which would have been taken into account in formulating the site specific Policy H2.
- 9.119 The proposals are readily compliant with not only the letter of Policy H2 but its objectives. Those objectives draw on broad themes of sustainability which engage not only with previously developed land and sustainable modes of transport but with Scheduled Monuments, Listed Buildings and

Conservation Areas. All of those latter at the airbase were designated after the adoption of the Structure Plan and underline the importance of conservation objectives in the future of the appeal site.

- 9.120 It is a singular feature of the current proposals that other than in one respect they have the support of English Heritage. The one remaining issue (regarding the outdoor parking associated with car processing) is not one of principle but of degree. As to the latter English Heritage has readily acknowledged that there are other important social and economic considerations that need to be taken into account. On that only matter, the Appellant has the support of another public body, the Regional Development Agency (SEEDA).
- 9.121 The Council's position is inextricably linked to its view of the centrality and importance of the RCPB. With collapse of its case in relation to its compliance with PPG15 and the demonstration and acceptance in substance of the lack of compliance with regard to effective public consultation, the RCPB has become of very limited weight and utility. It stands as a testament to the Council's entrenched position, especially in attempting to either demolish nationally important buildings or prevent the reuse of buildings on the flying field. It is also irrational regarding the buildings that the RCPB would see retained and reused. That approach is what the Appellant and English Heritage suggest should be adopted. This mainly involves low key uses but not just restricted to storage and regulated by the Management Plan and subject to regular monitoring as part of a process that the RCPB itself anticipates would be effective.
- 9.122 There are therefore not only no satisfactory reasons for refusal of planning permission in this case but there are powerful arguments in favour of granting permission for the current proposals subject to the conditions and obligation which have been tendered.

Further comments arising from the closing submissions of other parties:

- 9.123 OTCH says that Councillor Macnamara represents the public but responses to the consultation on the RCPB indicated otherwise. The public view then accorded with that of NOC and EH now.
- 9.124 OTCH refer to this as a distribution centre. There is no record of Mr Dobson ever saying it would be that.
- 9.125 As to whether H2 should be given any greater weight than any other Development Plan policy the Courts have found (see *Laura C and others v London Borough of Camden, Secretary of State for the Environment and Transport and Barratt Homes Ltd* ([2001] EWHC Admin 1116) that for a proposal to accord with the Development Plan it does not have to accord with every relevant policy of it. Policies often do pull in different directions but the duty is to assess all the relevant policies and then, in the light of the whole plan reach a view, having considered if there is a dominant policy. In this case there is a site specific policy that is the clear guidance for the future of the airbase.
- 9.126 Contrary to OTCH's view that the Secretary of State should resist the retention or creation of jobs in buildings or land with Cold War heritage interest, that does not sit easily with PPG15 guidance that wherever possible uses should be found for buildings and that in this case employment is most suitable.

- 9.127 At their section on “Case Creep” occurring during the inquiry arising from the amendments made to the Change of Use plan and to the DAS and Flying Field Management Plan, none of those made material changes to the substance of the proposals nor have there been any such since July 2008.
- 9.128 At Counsels’ insistence draft conditions and the draft Undertaking have been made available for comment by any interested party. There has been extensive public and open debate to which any party was able to contribute.
- 9.129 At all stages of the inquiry NOC made clear that they were willing and able to either provide further information or answer questions either in the inquiry or informally outside it.
- 9.130 On each and every adjournment the Inspector announced adjournments and the arrangements for resumption clearly so no one could have had any reasonable doubt about how they were to proceed.
- 9.131 Most of English Heritage’s closing submissions are welcomed including their views on the RCPB and Development Plan.
- 9.132 Regarding car processing, the Appellant never said the previous two decisions on car storage were of no relevance but does say that those were locationally specific to other parts of the Flying Field as were the then Inspectors’ decisions. It would not be the case in the area shown for the outdoor part of car processing in this appeal that “glinting windscreens” would be seen, as in those other appeals. The location of those areas is materially different.
- 9.133 Regarding the points made about Mr Munby’s evidence and the effect on the character and appearance of the Conservation Area, on the first EH point, Mr Munby refers to conservation significance. The Appellant argues that the southern taxiway is of lower significance for the reasons set out in the Conservation Area Appraisal and Conservation Plan.
- 9.134 On their second point, re the alleged “absurd position” taken re views of the tops of vehicles, Mr Munby said it was no part of his evidence that the cars would not be seen. His point was that one would still see the scale of the Flying Field and the opportunity to appreciate that would not be lost.
- 9.135 On the third point, Mr Munby did not say it wasn’t a permanent use. The point re “temporary” was that there would be no permanent physical change. Cars would come and go and be transitory.
- 9.136 On the fourth concluding that harm would arise to the character and appearance of the Conservation Area, Messrs Dobson and Munby for the Appellant both referred to the enhancements that would arise: the provision of a Heritage Centre; the removal of the large modern building 3135 that is visible from public viewpoints; improved public access across the Flying Field and a comprehensive Management Plan for long term management and maintenance of the base. Those need to be weighed if harm does arise.
- 9.137 In their comments on the Appellant’s visual impact of car processing, EH called no such evidence of their own. The staging of vehicles over 1.45m high would be regulated via condition or the Management Plan.

- 9.138 In EH's conclusion on car staging, they do not make the right comparison which should be between the RCPB with its 11ha<sup>63</sup> and a tree belt to the side of the taxiway to which EH do not object and Paragon's minimum 17ha disposed as in the Appellant's evidence.
- 9.139 Regarding the Local Planning Authorities' closings:
- 9.140 In addressing Policy H2 and achieving an appropriate balance of the several interests, they quote from the Inspector's report on NOC's earlier proposal. It must be recalled that not only has the proposal changed but since then material changes have occurred re every relevant policy both in national and Structure Plan policy and the Conservation Area has been designated.
- 9.141 The reference to a section of the 2003 Inspector's report saying this site is not one which would feature highly in the search sequence in PPG3 is not relevant. The sequential test for housing has gone from PPS3 and the site is addressed by the site specific policy H2 in the Structure Plan adopted in 2005. That policy now specifically refers to the need to conserve the heritage interest of the site which its predecessor policy H2 did not. That appeal was also made in the context of the then emerging (now abandoned) Local Plan approach of "demolition of the Cold War detritus and landscape the site". Not even the Local Planning Authority now argue that approach.
- 9.142 Regarding the references in that Report to the inherent unsustainability of the location, sustainability is about much more than transport, as was accepted by the Council in cross examination. Preserving heritage interest by reuse for employment is a sustainable approach.
- 9.143 In addressing the RCPB's enabling development approach if unaffordability was argued for the other elements of fulfilling H2's requirements, it must be remembered that Mr Semple (OCC) and Ms Barker (CDC) both accepted that approach was not supported in the Structure Plan, PPG15 or PPS7. EH also find the approach unacceptable.
- 9.144 Regarding the points on whether "low key" B8 uses could be ensured, the paucity of services in many of the buildings is recognised in the RCPB (page 51 paragraph 5.5.2, first lower case paragraph) and by EH as well as NOC.
- 9.145 The reference to a letter from Paragon setting out the areas where their employees live and the mode of travel to work does not mention that Paragon has operated on a series of temporary permissions. It would not be fair or sensible to expect their employees to move their families given the Local Planning Authority's attitude. If Paragon cannot get permission on 17ha they will move elsewhere.
- 9.146 On the potential for a higher employment capacity than NOC has said, the Local Planning Authority are simply wrong for the reasons stated by NOC.
- 9.147 Regarding the material impact on the appearance of the Conservation Area from matters such as car parking, signage, external lighting, this would be adequately controlled through the Base Management Plan. The figures given are theoretically possible but it is not likely given activity at say the fireworks storage in the bomb stores and data storage in the HAS.

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<sup>63</sup> *Inspector's note – the RCPB in fact refers to 7ha not 11ha (paragraph 4.7.4.6)*

- Transport activity is not inherently alien to the FF bearing in mind the very large numbers of people who were employed on the base in its military use.
- 9.148 SEEDA's appearance at the inquiry should be taken to indicate the importance they place on Heyford Park within the regional employment context. They said it was the first time they had appeared at an inquiry to oppose the Local Planning Authority. Everything in the Council's approach for example in the RCPB and the enforcement notices suggests they want employment to fail.
- 9.149 All the comments regarding further justification for possible demolition of the HASs in the Conservation Plan pre-date Conservation Area designation. The criticism of Mr Munby's approach to retain any building that makes a positive contribution is wrong. His approach is consistent with PPG15 and there has been no PPG15 assessment from the Local Planning Authority to justify a different approach.
- 9.150 Mr Cooper's is criticised for his change of view between firstly his finding in the Conservation Plan where demolition of the NW and SE HASs was seen as a practical and sensible compromise and secondly his advice to this inquiry on their retention. That is unfair. As he said, Mr Cooper in the CP was "brokering a compromise" between the parties at that time.
- 9.151 Regarding the submissions on Ms Barker's points re the guidance in PPS12 when the RCPB was adopted, her responses in cross examination on what would be fair and proper consultation do not support the submissions made.
- 9.152 The submissions on PPG15 need to be read also in the context of Dr Edis's replies in cross examination on compliance of the RCPB with PPG15. The Council's quotations from the RCPB paragraphs 5.3.1, 5.3.3 and A7.30 attempt to suggest that a "paragraph 3.19" assessment in PPG15 was done. It was not.
- 9.153 In submissions about why NOC did not apply for judicial review of the RCPB but challenge it through the inquiry, no authority is cited that says the Appellant is not entitled to argue at this inquiry that the RCPB should be given little weight for the reasons given by the Appellant.
- 9.154 In respect of submissions regarding removal of the perimeter fence, it needs to be retained in the disputed area precisely because it conveys the Cold War character of the Flying Field.
- 9.155 The context for the Conservation Area Appraisal's noting of the negative factor of car storage was its then location in a different area of the base to where it is now proposed.
- 9.156 Mr Cooper's Zone of Visual Influence methodology (with target points and assumed vehicle height) is criticised but the Local Planning Authority produced nothing to suggest a materially different impact of the car processing area.
- 9.157 The Appellant's evidence is that Paragon could not simply scale down their operations from 17ha to 11ha as the Council suggests.
- 9.158 Regarding NOC not claiming that the retention of car processing is required to secure a sustainable future for the base, the Base Management Plan would provide a general improvement to this nationally important set of buildings in a nationally important Conservation Area.

- 9.159 On the Design/DAS submissions, they do not have regard to Mrs Rand's answers in cross examination when she said none of the matters should result in dismissal of the appeal.
- 9.160 Regarding the interpretation of "infrastructure" in the description of development as far as the FF is concerned, the BMP is adequate to regulate matters such as infill panels, car parking and the other items referred to.
- 9.161 Mr West's concessions regarding any shortcomings of explanation and justification regarding the location of the Cold War Park and the extension of car processing on to the southern taxiway and the other design matters (including lack of dimensions of buildings and relationship of new uses with A-type hangars) were given in the context of Mrs Rand's replies in cross examination.
- 9.162 Regarding internal inconsistencies in the DAS between six different but complementary character areas and the lack of their differentiation in the "principles for architectural expression", Mr West explained clearly in evidence the design approach to the new settlement development.
- 9.163 The conclusion that shortcomings in the DAS are another reason to dismiss the appeal is flatly contrary to Mrs Rand's replies in cross examination.
- 9.164 Regarding Conditions and the Undertaking, these were discussed on three inquiry days.
- 9.165 NOC maintains that the Unilateral Undertaking runs with the land. It is not necessary to have an express covenant with future owners. On the matter of performance bonds, the circumstances when the Secretary of State should require these is set out in national guidance: they are required or necessary when there are substantial obligations on what may be a wasting asset for example a minerals permission. This site is not a wasting asset and a bond is unnecessary.
- 9.166 If the Local Planning Authorities were correct then almost all planning permissions for housing would need a bond. In the current state of the banking system, such a requirement would be a substantial impediment to implementation of a planning permission which is not what Secretary of State should look to achieve.

## **10 The Case for the Cherwell District and Oxfordshire County Councils**

- 10.1 Evidence on the following matters was given at the inquiry:
- By OCC: strategic planning and transportation
  - By CDC: local planning, built heritage, landscape and visual issues and urban design.
- 10.2 Additional proofs were prepared on matters now included in the Unilateral Undertaking. Those remain in evidence as written representations.

### Introduction

- 10.3 This inquiry has heard the Main Appeal by NOC against the non-determination by CDC of an application for outline planning permission for a new settlement of 1,075 dwellings together with associated works and

facilities, including employment uses, community uses, a primary school, playing fields and other physical and social infrastructure at the Site.

- 10.4 In addition to the Main Appeal, there were originally 36 appeals against CDC's refusal or non-determination of conservation area consent for the demolition of buildings, but 12 of these were formally withdrawn during the course of the inquiry as they related to the demolition of the NW HASs, SE HASs and building 3204, all of which NOC now propose to retain. The remaining 24 Conservation Area Consent appeals have been heard at the inquiry.
- 10.5 There are a further 18 appeals against the refusal of temporary planning permission in respect of specified areas of land and buildings and 21<sup>64</sup> enforcement appeals relating to various unauthorized uses. These appeals have been conjoined with the Main Appeal but following agreement between the parties on the opening day of the inquiry, the Inspector stayed the further appeals, pending a decision on the Main Appeal.
- 10.6 An outline of the Councils' case at the outset of the inquiry was provided in their opening submissions. Those submissions are not repeated here, but should be read in conjunction with these closing submissions, which focus on specific issues considered at the inquiry.

#### The Issues

- 10.7 The Councils agree with the formulation of the main issue by the Inspector at the start of the inquiry, namely whether the proposal strikes an acceptable, sustainable balance between securing the long-term future of the Site and its built and natural heritage, achieving general environmental improvement and providing a level of employment that is consistent with the location of the land away from public transport and where there are limited walking and cycling opportunities. Central to this issue is whether such extensive use should be made of the Flying Field and its buildings as the Appellant proposes. A necessary part of this assessment, as the Inspector highlighted, is to ask how the proposal stands against the national guidance and the development plan, in particular SP policy H2 with its requirement that the proposal comply with the adopted RCPB. The Inspector further noted the Councils' concern that the proposal as it stands would not lead to high quality design.
- 10.8 This is a neat summary of the matters arising in the ten reasons given by CDC for refusing the main application that are still outstanding. A further reason for refusal referring to omissions and inadequacies in the ES was not pursued in the light of correspondence from NOC prior to the inquiry and the letter from PINS dated 21 August 2008 requiring further information on the ES. The Councils consider that their remaining concerns pursuant to this reason for refusal, relating to proposed mitigation measures, are capable of being addressed subject to the imposition of suitable conditions and obligations. However, as the application was not determined by CDC, the adequacy of the ES is a matter to be determined by the Secretary of State. In particular, an Assessor has been appointed to assist the Inspector as to whether the proposal makes adequate arrangements in respect of any

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<sup>64</sup> *Inspector's note – there are now 41 linked appeals*

contamination on the Site. Conditions dealing with contamination have now been agreed between the parties.

10.9 Agreement has also been reached in relation to other elements forming part of CDC's reasons for refusal:

- (1) The second reason for refusal stated, amongst other matters, that the proposals would not result in the "enhancement of biodiversity" at the Site. The Councils are now satisfied that this aspect of the second reason for refusal has been satisfactorily addressed by agreement between the parties, as reflected in the SoCG: Ecology and reinforced in the final BMP. It follows that the Councils need make no submissions on this issue at the close of the inquiry.
- (2) In relation to the sixth reason for refusal, which raised concerns about the accessibility of the proposal to public transport and other non-car modes of travel, the Councils note that there has been agreement with NOC on a Transport Strategy should the Main Appeal succeed, as set out in the SoCG: Transport. Importantly, however, this agreement is without prejudice to the Councils' case that the Site is in an inherently unsustainable location and hence not suitable for the scale of development proposed in the Main Appeal, and that issues remain as to the adequacy of the funding to be provided (as explained on 17 December and the note sent by Julia Taplin on 23 December and updated on 7 January 2009). The SoCG: Transport signals the Councils' agreement that if their case on unsustainability does not prevail, the Transport Strategy represents a realistic assessment as to what could be achieved in terms of making the Site more accessible to transport modes other than the private car. Moreover, whilst the SoCG: Transport does set out proposed improvements to footpaths, cycleways and bridleways that are welcomed by the Councils, the Councils still disagree with NOC as to how the Aves Ditch footpath to the east of the Site should be aligned. The Councils' final submissions on this aspect are set out fully below.
- (3) As for the seventh reason for refusal relating to the Appellant's draft section 106 obligations, it seemed originally that evidence would have to be called on a range of matters in respect of which the parties had been unable to agree, including in relation to affordable housing, but negotiations in the run up to and during the course of the inquiry were fruitful and no evidence needed ultimately to be called. Although many matters have been agreed, there remain a number of concerns as to the adequacy of the draft Unilateral Undertaking, as the inquiry heard on 17 December 2008 and 12 January 2009. Further, and in any event, the Councils reiterate the point made in opening that any benefits that would be brought about by these obligations would be outweighed by the adverse impacts of the proposal, as set out below.

10.10 Accordingly, these closing submissions focus on those issues still outstanding between the parties at the close of the inquiry. Drawing on the Inspector's formulation of the main issue in the case, the submissions are made under four main headings:

- Sustainability
- Conservation
- Landscape
- Design

- 10.11 During the course of the inquiry, NOC has submitted a number of amended and revised drawings and plans, including for example, to provide details of the Cold War Park. The Councils are satisfied that where NOC has sought drawings or plans to be accepted in substitution for application documents, or otherwise relied upon them as illustrative, no prejudice to any party or the public interest arises. It has not been the Councils' case that any of the changes, either individually or cumulatively, are so substantial as to warrant the submission of a new application.

## Sustainability

- 10.12 Pursuant to s.38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 10.13 The starting point in considering any application for development at the Site is Policy H2 of the SP. It provides (the Councils' emphasis):
- “(a) Land at RAF Upper Heyford will provide for a new settlement of about 1000 dwellings and necessary supporting infrastructure, including a primary school and appropriate community, recreational and employment opportunities, as a means of enabling environmental improvements and the heritage interest of the site as a military base with Cold War associations to be conserved, compatible with achieving a satisfactory living environment.
- (b) Proposals for development must reflect a revised comprehensive planning brief adopted by the district council and demonstrate that the conservation of heritage resources, landscape, restoration, enhancement of biodiversity and other environmental improvements will be achieved across the whole of the former air base in association with the provision of the new settlement.
- (c) The new settlement should be designed to encourage walking, cycling and use of public transport rather than travel by private car. Improvements to bus and rail facilities and measures to minimise the impact of traffic generated by the development on the surrounding road network will be required.”
- 10.14 Turning first to H2(a), the Councils take no issue with the number of dwellings, 1075, proposed in this application: it is consistent with H2's provision for “about 1000 dwellings”. However, when assessing what is required by way of “*necessary* supporting infrastructure” in respect of those 1075 dwellings, MD agreed in XX that the use of the word “appropriate” in H2(a) is key. In particular, when assessing whether the “community, recreational and employment opportunities” put forward in the proposal are consistent with H2, MD agreed that they will only be so insofar as they are *required* to:
- support a settlement of some 1000 dwellings;
  - enable environmental improvements on the Site;
  - conserve the heritage interest of the Site as a Cold War base; and
  - achieve a satisfactory living environment.
- 10.15 The need for an “appropriate balance” between these interests is made clear in paragraph 7.7 of the explanatory text supporting H2. It is required in view of the “relatively isolated and unsustainable rural location” of the Site. MD in XX took exception to the description of the location of the Site as “unsustainable” and sought to dismiss the explanatory text on the basis that

it is not part of the development plan<sup>65</sup>. In doing so, however, he was at odds not only with the view of CDC and OCC, but also with the First Secretary of State who, in the context of the previous proposal put forward for the Site, noted with approval the conclusion of his Inspector that [CD 48, paragraph 7]:

“... the provisions of OSP Policy H2 should be regarded as an exception to normal sustainability objectives as a means of facilitating the remediation of the former airbase to enable the site to present a more environmentally acceptable face than it does now (IR 10.17).”

10.16 The First Secretary of State’s decision built on the advice of his Inspector that “had there been no airbase [at Upper Heyford] it would be very difficult to justify development on the scale proposed in this location” [CD 48, ‘Conclusions’, paragraph 10.15]. These decisions on the previous proposal were made in relation to an earlier version of H2 in the previous Oxfordshire Structure Plan 2011 [CD 27]. Policy H2 in the SP 2016 is in a different form to the 2011 version and in particular makes specific reference to the need to conserve the heritage interest of the Site, but NOC has not sought to argue that any of these changes has effected a change in the function of H2 as a policy enabling residential development on the Site. The Inspector went on to comment on the enabling nature of H2 in these terms in his advice to the First Secretary of State:

“10.15 ... In light of the site’s shortcomings in locational terms the proposal cannot draw much support from the guidance in PPG13, which makes clear that the availability of previously developed land is not itself sufficient reason to develop in rural locations while, as previously developed land in rural surroundings, it is not a site which features highly in the search sequence in PPG3 (4.83-4.84).”

10.17 MD sought to make much of the fact that the sequential test in PPG3 has been overtaken by PPS3, which does not contain such a test, but notwithstanding this change, the Site’s “shortcomings in locational terms” when judged against the still extant PPG13 stand. The Inspector continued (the Councils’ emphasis):

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<sup>65</sup> During the adjournment, the Inspector asked the parties to address in submissions the current status of the explanatory memorandum of the Structure Plan, post the “saving” of a number of its policies. When OCC applied to GOSE for policies in the OSP to be saved, it also applied for the text to be saved, on the basis that it provides important accompanying explanatory text to be read with the policies themselves. OCC have been informed by GOSE that it considers the current status of the explanatory memorandum to be the same as it has always been insofar as it relates to saved policies and how they are to operate. (There is no issue that the explanatory text does not form part of the Development Plan). The Secretary of State’s direction can only save a Policy, and the Councils submit that the explanatory text is therefore a material consideration, the weight to be afforded being a matter for the decision-maker in each particular case. As Policy H2 (and the other SP policies relevant to this appeal) has been saved and the relevant explanatory text contains important and relevant detail, the Councils submit that the Inspector and the Secretary of State should continue to regard the explanatory text as relevant to a proper consideration of the Policy and attach considerable weight to the text as part of that analysis.

"10.16 For the development to be justified irrespective of its locational shortcomings against current Government policy, therefore, there needs to be some special reason for permitting it. The reuse and recycling aspects of the scheme are positive factors. However similar features would be present to some degree on virtually any proposal for the redevelopment of previously developed land.

10.17 The contribution it would make to housing supply is a further factor notwithstanding the site's inherent locational unsustainability. However, as far I can see the principal reason for accepting development has to be that advanced by the Councils, that the scheme is regarded as enabling development supported in the OSP as a means of facilitating the remediation of the former airbase to enable the site to present a more environmentally acceptable face than it does now. Accordingly I consider that there are grounds for endorsing the position taken by the Councils that the provisions of OSP policy H2 should be regarded as an exception to normal sustainability objectives devised to deal with the situation presented by the past circumstances of the site and the reality of the developed area's characteristics."

10.18 The Secretary of State (DL paragraphs 7 and 8), noted the Inspector's conclusions at 10.1 and 10.16-10.17 and agreed with the Inspector's conclusions in 10.18 that "a key factor on which the acceptability of this proposal turns is a judgment as to whether it interprets Policy H2 in a way which would secure a level of environmental improvement as a justification for permitting the development the policy endorses."

10.19 In response to the Councils' reliance on this description of H2 as an "exception to normal sustainability objectives", MD sought to argue that the Councils were taking an unduly narrow approach to sustainability and that the efforts in the proposal to conserve the Site's heritage interest were an aspect of sustainability that ought to be given weight. However, it remains the case that:

- The location of the Site is the same now as it was when policy H2 was first adopted and when the First Secretary of State considered the last proposal. Efforts to conserve the Site's heritage interest cannot render sustainable what is an inherently unsustainable location.
- The Transport Assessment submitted with the application acknowledges that the location of the Site is likely to preclude residents and visitors from cycling and walking to and from the Site (paragraph 15.6.1).
- The SoCG: Transport proceeds on the basis that the Site is not well-located for public transport (paragraph 2).
- The EiP Panel rejected a proposal that H2 should make provision for a much larger settlement at Upper Heyford on the basis that it would be unsustainable in transport terms given the Site's inaccessible location. It concluded in its report (see PS, App 6):  
"4.39 ... We accept that a larger settlement could in terms of 'critical mass' enable a mix of housing and employment development to be provided at the airfield site that would give the

settlement a degree of self-sufficiency. However we cannot see that this would be achieved on such a scale as to preclude a large number of car-borne journeys to work, both by people living in Upper Heyford and working elsewhere and by those commuting into Upper Heyford to work. The prospects that such a larger settlement might raise of good bus services, improved train services through Heyford rail station or even the establishment of a new park and ride rail station at Ardley are not in our view sufficiently convincing, on the evidence before us, to dispel the view we have reached that such a settlement would be less sustainable than other options for accommodating the overall level of growth proposed in the DSP [Draft Structure Plan]."

- Moreover, the EiP Panel reinforced the First Secretary of State's description of H2 as an "exception to normal sustainability objectives" by describing the circumstances at Upper Heyford as "if not unique", then "sufficiently unusual to justify a Structure Plan policy" [paragraph 4.41].

- 10.20 For these reasons, the Councils submit that the proposal is clearly to be assessed against the background of H2 authorizing development exceptionally on the Site given its unsustainable location. The strategic policy for the former airbase enables a limited amount of development, as an exception to normal sustainability objectives, to achieve the objectives set out in H2. It follows that the proposal should not be permitted if it goes materially beyond the limits of what is authorized by H2. Contrary to the argument made by MD, therefore, it is not "patently absurd" for the Councils to submit that the proposal is contrary to policy G1 of the SP "when the subsequent Policy H2 of the OSP identified Upper Heyford for a small new settlement of about 1000 dwellings" (MD paragraph 6.26). G1 sets out in general terms *inter alia* the need to "deliver the level of development required to meet the objectives of this Plan while protecting and enhancing the environment, character and natural resources of the county" (our emphasis). Accordingly, and as MD ultimately accepted in XX, if the level of development put forward in the proposal goes beyond the parameters of H2, it follows by necessary connection that G1 is also breached.
- 10.21 It is against this background that the question of whether H2 makes provision for "enabling development" on the Site should be approached. During XC, MD agreed that H2 is an "enabling" policy in the sense of enabling environmental improvements on the Site and the conservation of its heritage interest. However, he stopped short of characterizing H2 as providing for "enabling development" because, by definition, H2-compliant development would not be contrary to the development plan. In making this point, MD drew on the definition of "enabling development" put forward by EH in its own guidance as "by definition contrary to policy" (see MD 4.17; CD 76, p. 12).
- 10.22 The first point is that, as paragraph 10.17 of his conclusions made clear (see paragraph 13 above), the Inspector in the previous appeal expressly approved the Councils' description of the development authorized by H2 as "enabling development". This was notwithstanding the fact that, as MD

agreed in XX, EH's guidance at that time<sup>66</sup> defined "enabling development" in similar terms as development that is contrary to policy.

- 10.23 Secondly, it is submitted that MD has taken an unduly narrow approach to the definition of "enabling development" in EH's own current guidance [CD 76]. "Enabling development" is defined as (paragraph 1.1.1): "... development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out, and which could not otherwise be achieved."
- 10.24 This description applies without qualification to the development that is authorized by H2. What would otherwise be "unacceptable in planning terms" on PPG13 grounds is rendered acceptable in H2 by the enabling of three "public benefits": environmental improvement, heritage conservation, and the achievement of a satisfactory living environment. The essential characteristics of 'enabling development' are present. The 'enabling' character of the development is not lost simply by virtue of the fact that, unusually, it is authorized directly by a development plan policy, the predecessor to which in the 2011 SP was expressly accepted by the First Secretary of State to be an "*exception* to normal sustainability objectives" (our emphasis).
- 10.25 This analysis is further supported by two letters from EH to the District Council which MD appended to his proof of evidence:
- *21 December 2007* (MD, App 6, p. 69): In the second sentence of the sub-section titled 'Uses' on p. 72, EH noted that whilst they "do not regard the application for Upper Heyford as being Enabling Development as set out in our Policy Guidance because it does not appear to be contrary in principle to development plan policy", they added in relation to H2 that "its remit is wider than the more narrowly focussed English Heritage policy, which would not facilitate the other objectives established in H2".
  - *10 March 2008* (MD, App. 6, p. 62): EH repeated the same point in this more recent letter to LR, under the heading 'Enabling Development': "At Upper Heyford the objectives of the enabling development approach are wider and embedded in Policy H2. Thus there is a policy background which provides for a lasting future for the heritage assets and we thus have to judge proposals for those assets (SAM's, Listed Buildings and Conservation Area) against the normal guidance as one part of the approach, because the desirable objectives relate to the wider environment, employment, housing etc. In other words the development is not solely driven by a conservation deficit."
- 10.26 In the Councils' submission, these statements are a recognition by EH that its policy guidance, which defines 'enabling development' in the context of its own area of interest – heritage conservation – is not an appropriate benchmark where other interests, such as environmental improvement and

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<sup>66</sup> CD75 Enabling development and the conservation of heritage assets (English Heritage, June 2001)

the achievement of a satisfactory living environment, are enabled. In this context, for MD to insist on a rigid application of the EH definition such as to prevent an H2-compliant proposal from being considered enabling development is, in the Councils' submission, wrong.

- 10.27 As to the issue of viability, JB explained (in her proofs and in XC and XX) that the RCPB (section 6.3) makes it clear that if it were argued that the proposals in the SP and the RCPB for environmental improvements, conservation of heritage assets and achieving a satisfactory living environment, are unaffordable, details of the financial viability of the scheme would be sought through open book accounting to demonstrate the funding available. No open book has been sought in the case of the Main Appeal because no such viability claim has ever been made by NOC. As JB explained, it is appropriate for the RCPB to consider the Flying Field in particular detail because the Brief needs to ensure the long term maintenance and management of the Flying Field (as part of the lasting arrangement for the whole site). The RCPB seeks to facilitate that maintenance and management by the low-key reuse of some buildings, sufficient to enable that objective.
- 10.28 MD's approach to H2 was not the only misapplication of policy and guidance by MD during the inquiry. Much emphasis was put by MD on the claim that in proposing the extensive reuse of the military structures on the Flying Field for employment purposes, the application complies with policy EMP4 of the LP and, in particular, EMP4(B), which provides that "in the rural areas", proposals for employment-generating development of the following type will be permitted:
- "(B) Conversion of an existing building or group of buildings (provided that the form, bulk and general design of the buildings concerned is in keeping with the surrounding area and, in the case of a building beyond the limits of a settlement, can be converted without major rebuilding or extensions)."
- 10.29 As MD expressly concedes in his proof, however, the supporting text to EMP4 makes clear that (B) is "intended to apply mainly to farm buildings of traditional construction... which are no longer suitable for agricultural use but are worthy of retention" (paragraph 3.53). JB added that the reuse of a large number of military buildings is simply not envisaged by EMP4(B), which is addressing an entirely different kind of structure. If further clarification were needed, the agricultural context of EMP4(B) is again brought out by the references to yards in paragraph 3.55 of the supporting text:
- "The Council will need to be satisfied that the nature of the future employment use is compatible with the rural environment in which it is situated and will wish to ensure that activities in yards and parking and servicing areas are well screened. The conversion of buildings, or groups of buildings, that form part of a yard that is enclosed or screened are less likely to harm the landscape, and are consequently more likely to be approved, than conversions of single buildings."
- 10.30 The approval of converting buildings that form part of an enclosed or screened "yard" also makes clear that EMP4(B) is contemplating a much smaller scale of reuse than what is put forward in this proposal. In this

connection, MD was taken in XX to Supplementary Planning Guidance produced by the District Council entitled *RAF Upper Heyford: Temporary Use of Land and Buildings* (September 2004) ("SPG") [CD 45] (now superseded by the RCPB). Policy TU1 of the SPG states that the Council will permit the re-use of land and buildings for employment or storage purposes "within that area shown on the draft Cherwell Local Plan 2011 Proposals Map (Inset Map 51) attached hereto, being the proposed envelope for a new village pursuant to Structure Plan Policy H2..." (our emphasis). The attached Inset Map 51 shows clearly that the wider Flying Field is not within the then "Proposed new village envelope". Insofar as it might be said that EMP4(B) leaves open the question of the extensive reuse of buildings on the Flying Field, therefore – which is not accepted – the Councils' case is that the SPG removed any uncertainty: neither in the development plan nor in supplementary guidance was there any support for the proposition that there should be extensive reuse of the military structures on the Flying Field for employment purposes.

- 10.31 As for national policy guidance, MD referred to the requirement in draft PPS4 for local planning authorities to plan to encourage economic growth (paragraph 12), (a point which was also emphasized by SEEDA in its representations to the inquiry). MD also pointed out that draft PPS4 encourages local planning authorities to seek the use of buildings in rural areas as this can contribute positively to regeneration, provide wider economic benefits, help to preserve historic assets and reduce the need for greenfield development (paragraph 25). The Councils' response is that the RCPB *does* enable the reuse of some of the vacant buildings on the Flying Field to enable heritage conservation. However, there is nothing in paragraph 25 of draft PPS4, or elsewhere in that document, to support the proposition that *every* building (or even most buildings) on the Site should be reused. Rather, as MD accepted in XX, the emphasis is on the positive contribution that such reuse might achieve. In this respect, a key factor to weigh in the balance when deciding what level of reuse is appropriate is the fact that the Site is in an unsustainable location.
- 10.32 The same points apply in relation to PPS7. MD put great emphasis on paragraph 17 of PPS7 which sets out five principles to guide local planning authorities when setting policy criteria for "the reuse of appropriately located and suitably constructed existing buildings in the countryside where this will meet sustainable development objectives" (MD paragraph 5.24) (our emphasis). The underlined words are consistent with the Councils' emphasis on the proportionate reuse of the military structures, and the five guiding principles set the framework within which that proportionality is to be assessed:
- "1. the potential impact on the countryside and landscapes and wildlife;
  2. specific local economic and social needs and opportunities;
  3. settlement patterns and accessibility to service centres, markets and housing;
  4. the suitability of different types of buildings, and of different scales, for re-use;
  5. the need to preserve, or the desirability of preserving, buildings of historic or architectural importance or interest, or which otherwise contribute to local character."

- 10.33 As MD accepted in XX, all of these principles are important in the determination of this appeal. A balance is to be struck by reference to these principles, and it is the Councils' case that the appeal scheme does not achieve that balance. In particular, the Councils note, against the background of the Site's inherently unsustainable location, the emphasis on "accessibility" in guiding principle 3. It is submitted that the significance of this as a constraint on the level of appropriate reuse of buildings on the Flying Field has not been properly considered by NOC.

#### *Employment*

- 10.34 As for the impact of the proposal in employment terms, the parties agree that 1075 dwellings are likely to generate some 1350 economically active persons (based on there being 1.25 economically active persons per household) (MD, paragraph 6.53). NOC estimates that its proposal would generate a maximum of 1,777 new jobs (MD, paragraph 6.54, Appendix 5). This is in the context of the RCPB seeking the provision of some 1300 jobs on the Site as an appropriate balance between the number of jobs and the resident workforce. Although Policy H2 does not impose a limit, the explanatory text (paragraph 7.7) states that the scale of development must be appropriate to the location and surroundings.

- 10.35 MD's Appendix 7 sets out the changes of use proposed on the Site. During XC, MD claimed that the lack of services would operate as a constraint on the level of use put forward, but the Councils are not persuaded by this argument:

- Both the northern and southern bomb stores and the HASs have an electricity supply and ventilation (see further below).
- The majority of the buildings sought to be reused would be put to a B8 use. As JB explained, if such a change of use were permitted, it would then be difficult in planning terms to refuse subsequent applications for further operational development relating to those B8 uses and which could facilitate more intensive use than the claimed "low-key" uses as described by MD.
- The 'Supporting Planning Statement' submitted with the application (see Planning Application Documentation Update file, tab C) (June 2008) provides within the description of development for (paragraph 2.3) (our emphasis):

"12. Provision of all infrastructure to serve the above development, including the provision of the defined access arrangements and car parking to Cherwell District Council standards."

LR expressed concern about the ambiguity of the phrase "Provision of all infrastructure" and it is submitted that it remains ambiguous at the end of the inquiry. What is clear, however, as MD agreed in XX, is that NOC is seeking permission for the installation of further services on the Site but that the precise scope of this is not explicit (and is not proposed to be limited by condition). The suggestion that the existing level of services on the Site somehow necessarily acts as a constraint on the future intensity of use is misconceived.

- 10.36 MD also seeks to qualify his estimate of 1777 new jobs being created by the proposal by noting that this represents “an increase of less than 800 over current employment levels on the site” (MD, paragraph 6.55). The Councils query the usefulness of that statement given the likelihood that the proposals, if implemented, would lead to some of the current residents living off-site permanently following the demolition of their homes. Beyond the 30% of new dwellings that would be offered as affordable housing (comprising social rented and shared equity in as yet undetermined proportions), MD explained that NOC would sell rather than rent the new dwellings. Given that virtually all of the existing residents are renting their properties, MD accepted in XX that a turnover of residents would be very likely were the scheme permitted. The Housing Needs Survey Report by the Oxfordshire Rural Communities Council (dated 14/8/06 at Fiona Brown’s Appendix 6, p.15) found that 20% of respondents had a member of the household whose main place of employment was on the Site. In short, it cannot be assumed that even all those who work on the Site and who also currently live there will continue to do so if the proposal were permitted. To suggest that the proposal would lead to “less than 800” new employees on the Site, therefore, with the implication that this should be the basis for assessing the additional impact of those travelling to the new jobs from their homes off-site, is again misconceived.
- 10.37 MD’s estimate of 1777 new jobs must also be read alongside the RCPB seeking a lower figure of 1300 jobs in the context of the Site’s “unsustainable location” (RCPB, paragraph 4.7.4.1). The RCPB does not envisage the creation of employment beyond that which is necessary to sustain the resident population at the Site, as is made clear later in paragraph 4.7.4.1:
- “However, to create a sustainable settlement, the opportunity for employment accessible to the residents should be provided. To maximise the opportunities for residents to work close to where they live a range of employment opportunities will be sought.” (our emphasis)
- 10.38 This is reinforced in the section headed ‘The location of employment’ (paragraph 4.7.4.3), in which it is stated that “the first principle” is that “the predominant location for employment uses is within the area identified for the settlement area itself, sufficient to provide the level of employment sought to achieve the balance”.
- 10.39 A note written by George Crutcher on behalf of the Councils (JB Appendix A) [“the Crutcher Note”] explained that the RCPB figure of 1300 is very robust, because if the propensity of people to take up employment opportunities elsewhere is factored in, there would be a range of between 337-1033 people seeking jobs on the Site (paragraph 20). The Councils consider that 1300 remains an appropriate figure because it represents an aspiration for a very high level of self-containment - an appropriate balance. The RCPB seeks a range of employment opportunities to meet the needs of a socio-economically diverse population, the majority of which should be within and part of the proposed new settlement (paragraph 4.7.4.4) and seeks to avoid an over-reliance on one employer, or one type of employment.
- 10.40 MD’s response to the level of employment set by the RCPB is to note that “In many respects the more jobs that are available, the more self contained

the New Settlement is likely to become with less outward commuting" (MD, paragraph 6.58). He also claims that the significantly higher level of employment put forward in the proposal "meets objectives set out in the RES and the emerging RSS of securing suitable economic growth in the region" (paragraph 6.61). However, as MD and BB accepted in XX, nowhere in the RES, SP or the emerging South East Plan is it suggested that the level of employment at Upper Heyford should exceed that which is capable of being sought pursuant to the limits of H2.

- 10.41 As the Crutcher Note (p. 26) makes clear, an increased capacity of 1777 jobs would be likely to attract workers from a wide rural area as well as from centres such as Banbury and Bicester, most of whom will be likely to travel to the Site by private car. (Unsustainable travel patterns were also a clear matter of concern to the Inspector in 2002 - see paragraph 10.8 of the report). The impact in sustainability terms of allowing the level of employment sought by the proposal can be gauged with reference to the employee demographics provided for the Site's largest employer, Paragon. By letter dated 9 July 2008, Drivers Jonas as agent for Paragon provided information on where Paragon's employees currently live (see PS, App 10, pp 9-11). The total number of Paragon employees at that date was 510, of whom only 3 live in Upper Heyford. Of the remainder, 107 live in Banbury and 121 live in Bicester. Most significant of all, however, is that 265 (i.e. 206+59) (51.8%) do not live in the District at all, and of that figure, 206 (40.3%) live outside Oxfordshire. 82% of employees travel to the Site privately by car and a further 12% share a car with other employees, leaving only 6% of employees travelling to the Site by non-car means. Drawing on these data, it is the Councils' case that increasing the number of jobs on the Site to the level proposed by NOC would be likely to increase the level of inward commuting to the Site to an unsustainable level. If 1075 dwellings are likely to yield only some 1350 economically active persons then, even on the generous assumption that all those residents will work on the Site, this leaves at least some 400 of the new vacancies proposed by NOC to be filled by those who do not live on the Site. In reality, of course, the number of employees resident off-Site would be significantly greater because, as the Paragon data show, an assumption that all of the Site's economically active residents would work at the Site is unwarranted. This is why it is critical to ensure that the balance sought by H2 – an "appropriate" level of employment opportunities – is struck because failing to do so would lead necessarily to an unsustainable result.
- 10.42 As JB explained in her proof and XC, the Crutcher Note reveals that the buildings on the Flying Field have more capacity than asserted by MD and BB, and could accommodate more employment than is predicted. Reference was made in particular to the B8 buildings. In relation to the B8 Non-Specials (including the A-type hangars), MD assumed an increased floorspace/jobs ratio (by 25%), without any clear evidence that there would be likely to be a 25% reduction in useable floorspace when the buildings are adapted. As for the B8 Specials, NOC propose to retain 148 buildings totalling 63,871sqm of gross external floorspace, which are estimated to have an employment capacity of only 45 jobs. The HASs and bomb stores have electricity, lighting, ventilation, level access and useable space (XX of BB). As Supporta Datacare's past use of some HASs shows, several employees can be accommodated within the HASs. The provision of lavatory

facilities, drainage etc (and the application includes the provision of infrastructure - see XX of MD) would plainly enable a higher employment capacity, as would the employment use of the HASs/ bomb stores in conjunction with ancillary buildings which have such facilities.

- 10.43 The Crutcher Note (paragraph 65) estimates the employment capacity of the appeal scheme to be in the range of 2,206-2,680 jobs, a figure substantially in excess of the figure in the RCPB which seeks to achieve an appropriate balance between the number of economically active residents and jobs on the Site. (In this context, and the objective of seeking sustainable transport patterns, it is important to note that the Transport Strategy Framework (p9) contemplates achieving a 10% reduction in employment and a 6% reduction in residential car driver mode share.)
- 10.44 It is not only the level of commuting to and from the Site that would increase if this proposal were permitted. The application, which in essence converts the greater part of the Flying Field into employment land, would also lead inevitably to the greater use of cars within the Site itself. As MD acknowledged in XX, the majority of the proposed employment locations on the Flying Field are not within reasonable walking distance of the NSA and so an increase in the amount of vehicular traffic on the Site is "likely". He further stated that if all employment buildings were functional at the same time, there would be in excess of 500 people working out on the Flying Field.
- 10.45 It was MD's contention in XX that this increase in the level of vehicular activity on the Site would have no material impact on the character and appearance of the Conservation Area. He also said that it was no part of the application to provide the employment buildings on the Flying Field with outdoor storage ("I accept that could have an impact on character"). The Councils' submission, however, is that many users of these buildings as employment units would seek provision for storage outside. A case in point is Boise, the occupier of an A-type hangar (Building 345), which has been the subject of enforcement action in the past because of the amount of wood it stored outside. Similarly, a crane-operating company based in one of the nose-docking sheds (Building 325), Terra Nova, had cranes parked outside the building, sometimes with their beams fully raised. MD conceded that their current level of external storage is "not appropriate in the Conservation Area as it is now designated". It might be claimed that the storage requirements of Terra Nova are an exception to the rule, but this is evidently one type of company that found the employment accommodation on the Site suitable for its purposes. At the very least, its decision to establish itself on the Site suggests that companies with similar requirements would be likely to be drawn to any further such accommodation that might be made available.
- 10.46 In addition to a storage requirement, new employment uses will require facilities for bins, waste disposal, car parking, signage and external lighting etc. Whilst these are proposed to be the subject of control by way of strategies appended to the BMP, MD still accepted that they will result in "changes" to the appearance of the Conservation Area. He did not anticipate that these "changes", when considered together, would be material, but the Councils consider this position untenable. In particular, one of the elements controlled by the BMP is the number of HGVs that will access the Flying Field

on a daily basis. The BMP limits this to 4 HGV movements per day per building which is subject to an approved use (to be measured on a monthly basis) [action PA7], which MD accepted in XX is equivalent to a potential maximum of 756 HGV movements a day to and from the Flying Field. This, it should be stressed, is (1) in addition to the additional movements by other vehicles; and (2) is in respect of the Flying Field alone and so is also in addition to any HGV movements generated by Paragon. Whilst reluctantly conceding in XX that, at the maximum level of 756 movements, the impact on the Conservation Area would "probably be material", MD denied that they would be material at a lower, although still "substantial", level of say 500 HGV movements. The Councils respectfully submit that this is unarguable: even an additional average of 500 daily HGV movements across a site of this scale cannot on any analysis be considered a marginal increase, especially when the BMP would allow significant fluctuations on a day to day basis. Moreover, the BMP would allow vehicles entering the Flying Field to be parked for up to two days.

- 10.47 On the question of sustainability more broadly, NOC called LW to set out what she considered to be the benefits of the proposal in sustainability terms, but it is submitted that this was done at such a high level of generality that the evidence is of limited use in resolving the issues at the heart of this appeal. In particular, LW agreed in XX that her proof only touched briefly on several matters, such as employment, heritage, transport and environmental enhancement, which were dealt with in significantly more detail by other witnesses. Moreover, she conceded that whilst she set out the sustainability benefits of the scheme in general, she at no point sought to ask whether the proportionality that is sought by H2 in terms of providing "necessary supporting infrastructure" and "appropriate community, recreational and employment opportunities" would be achieved. Insofar as this appeal rests on whether the proposal achieves this balance, LW conceded in XX that her evidence would not assist the Inspector.
- 10.48 Also of very limited assistance to the Inspector, it is respectfully submitted, was the evidence given by the two representatives from SEEDA, JG and RM. Despite the fact that SEEDA had, by email to CDC dated 8 September 2006, endorsed the level of employment provision at the Site proposed in an earlier draft of the comprehensive planning brief, both witnesses at this inquiry expressed concern as to the impact of the RCPB, if implemented, on local employment. However, both admitted in XX that they had not read the Council's evidence to the inquiry. Indeed JG said she had only read the RCPB and RM said that in addition to the RCPB, he had read the *Summary Proofs* only for BB and Mr Brown on behalf of Paragon (although he later claimed to have also read some of Mr Brown and Mr Dunnett's proofs). It is simply astonishing that witnesses giving evidence on behalf of the Government's Economic Development Agency for the South East should consider it appropriate to appear at the inquiry and give evidence in support of the scheme and to be critical of the Councils (including the complaint that CDC has failed to adopt a constructive approach), without troubling to read the detailed employment and planning evidence on behalf of either the Council or the Appellant.
- 10.49 Furthermore, both accepted in XX that they had not sought in their evidence to strike the balance between competing interests that is required by policy H2 of the SP. Rather, they had simply concentrated on the issue of

employment, alleging wrongly in JG's case that CDC's report to its members on this appeal failed to refer to draft PPS4. Not only was this policy mentioned clearly in the report, but it was also applied and discussed fully in JB's evidence, which JG had not read prior to her appearance. As an indication of the broad-brush nature of the assumptions made by JG, it transpired that JG was also under the impression that the RCPB, if implemented, would jeopardize some 1200 to 1500 jobs at the Site and that Heyford Park would be "destroyed" as a location for employment (JG p.3 and XX). This was the view expressed by SEEDA in an email to CDC dated 19 February 2008, but as was put to JG in XX, the RCPB envisages the provision of some 1300 jobs on the Site and would not result in the destruction of the Site as an employment location. Additionally RM's evidence as to potential job loss numbers (paragraph 34) relied upon data based on various assumptions and inputs, none of which was in evidence before the inquiry (as confirmed in XX). Accordingly little weight should be given to the remarkably blinkered evidence submitted by SEEDA to the inquiry.

10.50 The Councils recognise that there are some users of buildings on the Flying Field that would need to move to more suitable accommodation in the NSA and some which are incompatible with the objectives of the RCPB. As JB explained, the RCPB makes provision for transitional arrangements (e.g. paragraph 5.5.3) to address that situation. Where a use is incompatible, it is important to note that economic development is not the only consideration; it is necessary to balance such users with the impact that the use and occupation has on the Conservation Area and the other elements of Policy H2. The approach in the RCPB is both measured and reasonable and accords with the advice at paragraph 12 of PPG18 Enforcing Planning Control.

10.51 For all these reasons, the Councils submit that the proposal would:

- fail to meet the requirements of OSP policy H2 in not satisfactorily reflecting the RCPB, in particular the need to deliver an appropriate balance between conservation objectives and the creation of a satisfactory living environment [*Reasons for refusal 2, 9 and 10*];
- fail to provide a sustainable planning framework for the Site contrary to OSP policy G1 [*Reason for refusal 1*];
- generate an inappropriate level of employment activity outside the New Settlement Area in a manner adversely affecting the character and appearance of the Site, contrary to the RCPB and OSP policies G1, G2, E1, E3, EN4 and H2 [*Reason for refusal 4*];
- encourage excessive reliance on the private car given the Site's unsustainable location, contrary to: OSP policies G1, G2, T1, T8, H2, E1 and R2; CLP policies TR1, TR7, TR10; Non-Statutory LP policies UH1, UH2, UH3, TR1, TR2, TR4, TR5 and R4; and the RCPB [*Reason for refusal 6*].

## Conservation

10.52 The CP for the Site (September 2005) [CD 64] was jointly commissioned by CDC, English Heritage and NOC. The parties agree that it puts forward a course of action for the future treatment of the Site which is summarized in

the 'Indicative Proposals' depicted in its Figure 19 (Volume 2). To the satisfaction of EH, the proposals in Figure 19, including the delineation of the 'Nationally-significant core of historic landscape', are followed through in the extant RCPB. They are described in the text of the CP at section 6 [CD 64, Vol. 1, p. 95], and expressly refer to the areas shown by two greens on Figure 19 as being "of lower overall significance and may be able to accommodate change". In particular, the NW and SE HASs are shown in Figure 19 to be in an area of "moderate overall significance": whilst the HASs are shown as "nationally important buildings", the CP does contemplate their "possible demolition" with the caveat that "footprints of buildings and hard surfaces should be commemorated where feasible".

10.53 Further justification for the "possible demolition" of the HASs is provided elsewhere in the CP. In particular:

- Contrary to JM's claim that the HASs each had a "unique" quality that ought to be preserved, the CP notes that "it is clearly not necessary to retain 56 largely identical HASs and other repeated structures" to preserve "a representative collection of buildings" on the Site [CP, paragraph 4.4.3].
- Under the heading '*Protected Buildings and Groups of Buildings*', whilst the QRA, Northern Bomb Stores, Avionics Maintenance Facility and nose-docking sheds are named as "intended for Listing/Scheduling" and that "this report recommends that the Control Tower and a squadron HQ also be protected", no mention is made of protecting any of the NW or SE HASs, as JM confirmed in XX [CP, paragraph 6.2.1].
- In respect of the SE HASs, whilst it is noted that the area has a "distinctive character because the HASs and ancillary structures are relatively close together", the "visual link with the major part of the Landscape of Flexible Response is poor and it lacks the simplicity and openness of area 1 [*i.e. the central airbase*]" [CP, paragraph 2.10.24]. This comment is reiterated later in the CP when it is said that whilst the SE HASs are a "distinctive visual unit", they "do not read as part of the historic core" [CP, paragraph 6.2.3].
- The demolition of both the NW and SE HASs is expressly contemplated as an "alternative" to implementing a planting screen "if there are positive environmental benefits" of doing so [CP, paragraph 6.5.3].

10.54 Both MD and JM sought to stress in XX that these statements ought to be interpreted in the context of preceding the designation of the Site as a Conservation Area, but as JM agreed in XX, this designation was expressly contemplated in the CP at paragraph 5.3.3 under the heading 'Conservation Objectives':

*"Objective 7: To seek a national, area-based conservation designation for the site that maintains the character of the landscape.*

Reason: Area-based conservation designations are currently under review by EH. The site requires such a designation to ensure that the historic landscape and significant buildings and structures that are not appropriate for Listing or Scheduling are safeguarded...."

- 10.55 Moreover, the CAA in putting forward the justification for the Conservation Area designation made clear that whilst there “should be a general presumption in favour of retaining buildings which make a positive contribution to the character or appearance of a conservation area unless it can be demonstrated that the removal of a particular building will facilitate enhancement. Opportunities for enhancement should be identified and there should be desirability for change within sections of the site outside the area of national importance” (p.83). This clear steer from the CAA, which was followed through in the RCPB’s proposal to remove the NW and SE HASs, sits uneasily with JM’s broad-brush view that the removal of any structure that makes a positive contribution to the character and appearance of the Conservation Area “cannot in any way be seen as an ‘environmental improvement’” [JM, paragraph 6.2.6]. The CAA, the RCPB and SP policy H2 call for a nuanced approach, striking a balance between conservation objectives and the need to ensure long-term environmental enhancement. In the Councils’ submission, JM’s failure even to attempt to strike that balance must affect the weight that the Inspector can give to his evidence.
- 10.56 In addition, whereas NOC may now seek to distance itself from the position it previously espoused, prior to June 2008, when the proposal was amended, it too sought the demolition of the 11 HASs in the north-west and south-east of the Site as contemplated by the CP. This is clear from the text that is struck out of the amended ES, which at paragraph 3.3.3 provides (Planning Application Document Update file, June 2008, tab D):
- “[...] Demolition of Buildings ~~3052-3055~~ [*i.e. north-west HASs*] and 3135 in the north-western corner of the Airfield.
- ~~Demolition of Buildings 3036-3042 [*i.e. south-east HASs*] in the south-eastern corner of the Airfield”~~
- 10.57 When these demolitions were part of the proposal, NOC clearly considered this consistent with the Conservation Area designation, as is made clear when NOC sets out its “Design Approach” later in the ES at paragraph 3.4.1 (our emphasis):
- “The masterplanning approach is based on an understanding of the special historic and landscape context of the former RAF Upper Heyford, embracing the special open setting, military context and modern history of the airbase and expressing this in a way that affords a taste of its heritage to everyone living and working there. It is informed by considerable analysis undertaken over many years, which is brought together in CDC’s Comprehensive Planning Brief. Special note has also been made of the designation of the site as a Conservation Area in April 2006, the supporting Conservation Area Appraisal Statement, and the designation of two scheduled monuments within the settlement area.”
- 10.58 In case there should be any doubt as to NOC’s position prior to the June 2008 amendments, it made the same point even more clearly at paragraph 3.5.5 of the ES (uncorrected):
- “The masterplan seeks minimal impact on the landscape of the Flying Field Area. It seeks to mitigate some of the impacts of the existing airfield, such as

the removal of the most visually obtrusive hardened aircraft shelters and restoration of the historic routes of Aves Ditch and Portway..."

- 10.59 Similarly, paragraph 14.1.7 of the ES, when outlining the "Landscape and Visual Objectives of the Proposals", included as follows before being struck out in the June 2008 amendments:
- "reduce visual impact by the removal of the 25m water towers, ~~selected HASs~~ and other buildings, so far as this is possible within the need to retain structures and buildings of historic interest"
- ~~"demolish the northwest and the southwest [sic: southeast<sup>67</sup>] HASs, which are to be removed for visual reasons"~~
- 10.60 Plainly the demolition of the HASs was described as one of a number of "benefits", but it is clear from the text above and the other sections put to MD and JC in XX, that the removal of the HASs was considered to be a significant element of the scheme then proposed.
- 10.61 These sections of the amended ES were also put to JC in XX, who confirmed that the document was the product of careful analysis and assessment by NOC and its consultants. He confirmed that his original view, as set out in his proof, was that the removal of the NW HASs achieved a "practical and sensible compromise" between the views of CDC and EH "which could be properly supported in professional terms" [JC, paragraph 5.5]. JC's original advice to both these parties was that "the limited visual impact arising from the HASs could be eliminated by their demolition" [JC, paragraph 5.6]. It was also JC's professional opinion at this time that the SE HASs could be removed in response to CDC's concerns about their visibility [JC, paragraph 5.9].
- 10.62 Whatever the argument now being put forward by NOC in favour of the retention of the NW and SE HASs, it promoted the position advanced by the RCPB and the Councils in relation to the HASs until June 2008. The Councils' position on the demolition of the HASs is supported by the professional opinion of an experienced heritage expert, JE, that the NW and SE HASs ought to be demolished on the grounds that they are visually obtrusive [JE, paragraphs 5.20, 5.31], in addition to the evidence of CG and JB.
- 10.63 It is also important to note that EH's position as to the demolition of the HASs has changed. EH withdrew its objection to the RCPB (see letter dated 8 November 2006 at Dr. Barker App 10) on the basis that having looked "particularly carefully at the arguments now being made in favour of demolition in both the south-east and north-west areas of the site taking into account that the brief has to balance heritage interest with environmental improvement and achieving a satisfactory interface between the settlement and the retained structures", it noted that the justification for all of the proposed demolitions had been re-examined in light of further visual assessment and appraisal work and had incorporated the findings of the CP. EH made clear that it was concerned that it was still proposed to demolish the four NW HASs which "clearly make a positive contribution to the special character of the conservation area", but believed that "the

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<sup>67</sup> MD confirmed in XX that "southwest" should have read "southeast".

consideration of issues that have led your officers to the conclusion that the balance remains in favour of demolition is now more cogently argued in principle and therefore accords with the approach outlined in the [CP]". The letter then concluded: "As stated in our earlier letter, EH supports the overarching vision for the site and recognises that your council has to balance a number of complex issues in order to achieve a lasting future for Upper Heyford. Whilst we regret that the Brief has come down on the side of demolition of 4 nationally significant Cold War Structures, it is our judgement that this will not fundamentally undermine the coherence of the Cold War Landscape. EH believes that these structures could remain and form part of the monumentalised landscape but we are now prepared to withdraw our formal objection to the brief".

- 10.64 In seeking to explain the conflicts between the proposal and the approach set out in the RCPB, a major part of NOC's case at the inquiry was an attempt to highlight alleged inadequacies in the process leading to the adoption of the RCPB. MD starts by alleging that NOC were not invited to participate in the drafting of the document (MD, paragraph 4.66), but JB in her rebuttal proof sets out a list of the many working group meetings on the draft prior to its adoption that were attended by NOC (see section 2.2 and in XX). MD was unable in XX to deny the accuracy of these details, admitting that he was not actively involved in the process at that stage. Moreover, he accepted in XX that NOC did make "detailed comments" on the draft RCPB and that those comments and proposed changes were considered by the Executive Committee at its meeting in December 2006. It is common ground between the parties that the draft RCPB was then revised in the light of the representations made by NOC and others and that there was no further round of consultation on those changes, other than in relation to the issue of car processing. The Councils' case, as explained fully by JB in her rebuttal (see section 2.2), is that there was no requirement in the version of PPS12 extant at the time of adoption of the RCPB that local planning authorities undertake more than a single round of consultation on supplementary planning guidance [paragraphs 4.42-4.43]. This is clearly sensible: if all changes made to such guidance in the light of consultation needed to be resubmitted for further consultation, the process would be hopelessly drawn out and the administrative convenience of putting the local planning authority in the position of decision-maker would be effectively eliminated.
- 10.65 It was put to JB in XX nevertheless that the number of changes inserted without being subject to consultation fell foul of the instruction in paragraph 2.42 of the then extant PPS12 [CD 8] that supplementary planning documents "should be subjected to rigorous procedures of community involvement". In particular, NOC sought to make much of the volume of blue text indicating changes made in the revised draft [CD 42], but as JB explained during RX, although there were substantive changes made (including inter alia, less demolition and an area specifically identified for car staging) much of the blue text related to reordered as opposed to new text. Furthermore, MD was taken to the version of PPS12 in question during his XX. The "minimum" required of local planning authorities during the "Supplementary Planning Document Consultation Process" was set out in a box on p. 47. MD agreed that he was not in a position to argue that CDC had failed to comply with the five requirements listed in the box.

Furthermore, the guidance in paragraph 4.43 that follows could not have been clearer:

"Once the local planning authority has considered the representations on the draft supplementary planning document and made any changes as a result, they should adopt the document."

- 10.66 It is submitted that CDC acted entirely consistently with this instruction, a point implicitly recognised by MD in RX after it was put to him in XX that the version of PPS12 extant at that time only obliged CDC to carry out one consultation. MD was asked "if the document adopted was not the one consulted upon, what do you say about that suggestion?" MD replied "It is difficult to accept, particularly as NOC is the single owner". The draft RCPB was the subject of public consultation (including consultation with EH and NOC who submitted detailed comments). The consultation responses resulted in amendments being made to that document (as PPS12 anticipated) and the responses were reported to Committee in December 2006, together with proposed changes. The RCPB was adopted as SPD and OCC has confirmed it is in general conformity with SP Policy H2. Accordingly, the RCPB is a highly material consideration in the determination of the appeals.
- 10.67 It is also worth noting that the current version of PPS12 is much less prescriptive than its predecessor about what is expected in the process of producing supplementary planning documents (see paragraphs 6.1-6.2). It does not address consultation directly – the box of "minimum" requirements has been deleted – but rather speaks generally of the "wide benefits in terms of deepening community involvement and increasing a sense of belonging and of ownership of policy" that are offered by the preparation of supplementary planning documents (paragraph 6.2). When the Inspector comes to consider the significant emphasis that NOC has put at this inquiry on the consultation for the RCPB, the Councils submit that her assessment must necessarily be informed by the fact that, far from asking more of the local planning authority than the single round of consultation previously required, current guidance from central government appears to favour a less dogmatic approach.

#### *PPG15*

- 10.68 Paragraphs 3.8 and 3.9 of PPG15 give guidance on the "Use" that should be made of historic buildings. Paragraph 3.8 starts with the proposition that "generally the best way of securing the upkeep of historic buildings and areas is to keep them in active use". The Councils note the use of the word "generally" as indicating that PPG15 does not require that all historic buildings be kept in active use. This is clearly NOC's understanding as well, for example, in proposing the demolition of building 3135 on the Flying Field. Moreover, in the context of a site of this size, MD accepted when asked by the Inspector whether "all" of the buildings should be retained that "you may look at some individually and find some of lesser importance".
- 10.69 Paragraph 3.17 of PPG15 then makes clear that the Secretaries of State would not expect consent to be given for the total or substantial demolition

of any building in a Conservation Area<sup>68</sup> unless at least one of three criteria is met:

- “clear and convincing evidence that all reasonable efforts have been made to sustain existing uses or find viable new uses, and these efforts have failed”;
- “preservation in the form of charitable or community ownership is not possible or suitable”;
- “redevelopment would produce substantial benefits for the community which would decisively outweigh the loss resulting from demolition”.

10.70 There is no requirement that all three criteria have to be met before a building in a Conservation Area may be demolished in accordance with PPG15. As explained by JB and JE (the latter an experienced expert in the field of conservation and heritage), it is the third criterion, the provision of “substantial benefits”, that the Councils submit justifies the RCPB’s proposal to demolish the NW and SE HASs. In this connection, it is necessary to refer to paragraph 3.5 of PPG15 (“General criteria”) in which “substantial benefits” are said to be brought “in particular by contributing to the economic regeneration of the area or the enhancement of its environment...” (our emphasis).

10.71 Paragraph 3.19 of PPG15 then sets out additional considerations that the Secretaries of State “would expect” the local planning authority to consider before granting permission for the total or substantial demolition of a building in a Conservation Area. Summarized above, they are set out in full by MD at paragraph 5.51 of his main proof. The first requires an assessment of “the condition of the building, the cost of repairing and maintaining it in relation to its importance and to the value derived from its continued use”. Although JM produced some paragraph 3.19 assessments for some of the buildings in the NSA, MD’s proof makes clear the difficulties arising in relation to the Site with regard to the tests in 3.19(i) and (ii), and focuses on 3.19(iii) (“the merits of alternative proposals for the site”): see MD’s proof at pp.59-62. Indeed, MD’s approach is consistent with JM’s building-by-building assessment, which still puts forward some buildings for demolition even though only one or two of the paragraph 3.19 limbs are satisfied (e.g. Buildings 488 and 498 in JM’s Revised Text of Annexes).

10.72 Applying PPG15 to the case put forward by the Councils, they do not shy away from JE’s concession during XX that the RCPB is not consistent with PPG15 in seeking the demolition of the NW and SE HASs without carrying out a 3.19 assessment. JB accepted that no such assessment is to be found in the RCPB (XC and XX). Nevertheless, insofar as NOC claim that the RCPB fails to engage with PPG15 and so fails to provide a justification for the demolition sought with reference to the heritage significance of the Site and its structures, the Councils point to the following sections of the document [CD 44]:

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<sup>68</sup>Although the test in paragraph 3.17 is stated with reference to listed buildings, PPG15 makes clear that proposals to demolish buildings which make a positive contribution to the character or appearance of a Conservation Area “should be assessed against the same broad criteria as proposals to demolish listed buildings” (paragraph 4.27).

- 5.3.1 (p. 43, third column): It is noted, accurately, that “conservation area designation does not prevent demolition of buildings”. It goes on to refer expressly to the presumption in favour of retention in PPG15:

“Whilst PPG15 states that there should be a presumption in favour of retention of buildings that make a positive contribution to the character and appearance of the conservation area, it also states that the prime consideration should be to pay special attention to the desirability of preserving or enhancing the character or appearance. PPG15 should not be cited in isolation of other policies appertaining to the site. Policy H2 clearly places the preservation of the heritage interest alongside environmental improvement and the creation of a satisfactory living environment and seeks a balance between the three objectives.”

- 5.3.3 (p. 45, third column): The Councils further point to the paragraph in upper case at the start of section 5.3.3 of the RCPB which, although not referencing PPG15 expressly, still provides the justification for the demolition of the NW HASs in a manner consistent with setting out the “substantial benefits” of doing so for environmental enhancement:

“IN THE SOUTH EAST, BEYOND THE CORE AREA OF HISTORIC SIGNIFICANCE AT THE INTERFACE WITH THE SETTLEMENT, THERE IS A NEED TO CREATE A SATISFACTORY LIVING AND WORKING ENVIRONMENT FOR THE RESIDENTS OF THE NEW SETTLEMENT, TO SECURE ENVIRONMENTAL IMPROVEMENTS WHERE COMPATIBLE WITH THE CHARACTER AND APPEARANCE OF THE CONSERVATION AREA, WHILST RETAINING PROTECTED BUILDINGS, THOSE OF INTERNATIONAL SIGNIFICANCE AND THOSE WHICH HAVE BEEN IDENTIFIED AS NATIONALLY IMPORTANT.”

- 5.3.3 (p. 47, second column): As for the SE HASs, it is submitted that the “substantial benefits” of their removal pursuant to the test in paragraph 3.17 of PPG15 are made clear in the first paragraph of this column whilst at the same time recognizing the heritage significance of the structures:

“Whilst buildings 3036, 3037, 3038, 3089, 3041, 3041, 3042 (HASs) in Area 6 are buildings of national interest, they are set within landscape of local/regional significance; they are visually divorced from the main groups of HASs and do not contribute to the special atmosphere; in this respect they differ from the nationally significant HASs in Area 5B2 in that they do not contribute to the setting of the Core Area of Historic Landscape; once the settlement is built they will be functionally split from the other HASs; they represent 79 squadron and their demolition would leave the other squadron groups unaffected; they are in close proximity to Chilgrove Drive, which is to be re-opened as a public right of way, and several other existing public rights of way to the east of the site; several of them are highly visible when approaching the site from the B430. It is therefore proposed that these 7 HASs and their associated squadron HQ

buildings should be demolished and their building footprint retained. English Heritage has accepted this proposal."

- 10.73 These matters enabled JB to conclude in RX that, whilst the RCPB may not present an explicit application of the criteria for demolition in PPG15, its approach was consistent with those criteria and both JB and JE gave clear evidence that the RCPB objectives would result in substantial public benefit. This is reinforced by the statutory Consultation Statement for the RCPB [CD 43], produced in tandem with that document in March 2007, which at paragraph A7.30 (p. 15) provides:
- "... The purpose of the SPD is to strike the balance required by policy H2. Extensive work, careful assessment and consultation have been undertaken to inform the balance struck. The ability to achieve environmental improvements and to create a satisfactory living environment for the settlement as required by policy H2 has been balanced against the conservation of the heritage interest required by H2 and the preservation and enhancement of the conservation area has been weighed carefully on a case by case basis. The balance struck is entirely consistent with paragraph 3.19(iii) of PPG15 in that the Secretary of State would expect the local authority, in considering proposals for demolition of a listed building and certain buildings within Conservation Areas, to give consideration to the merits of alternative proposals for the site. One material consideration would be whether the proposed works would bring substantial benefits to the community, which have to be weighed against the arguments in favour of preservation."
- 10.74 A7.30 goes on to set out the "substantial benefits" that would be brought by the demolition of the NW and SE HASs:
- "In this case the environmental improvement achieved through the demolition of 4 unlisted buildings of national interest in the extreme north west corner (4 out of 40 existing hardened aircraft shelters north of the runway), in response to public expectation for environmental improvement after careful technical assessment, together with the demolition of a group of visually and functionally unrelated hardened aircraft shelters adjacent to the proposed settlement area to create an appropriate setting for the settlement, is considered to be of substantial benefit to both the existing and future community."
- 10.75 Taking all of these elements together, whilst accepting that the RCPB itself does not explicitly go through the criteria in paragraph 3.19, JB explained in XC that "it is clear that consideration of the conservation area and the importance of the buildings identified on the Site were part and parcel of the consideration in the brief" given that there are "references throughout to preserving and enhancing the character of the Conservation Area". In particular, with reference to paragraphs 4.4.2 and 5.3.1 of the RCPB, she noted that the document clearly grappled with the value of the buildings on the Site and whether their removal would be beneficial. In doing so, JB concluded, the RCPB was consistent with the test set by paragraph 3.19(iii) of PPG15.
- 10.76 As to OCC's approach when consulted on the RCPB, although PS in XX agreed that there was a "fatal flaw in the credibility of OCC's consultation response", he did so on the basis that it was put to him that there was a

complete absence of consideration of national advice in relation to the demolition of buildings. In RX, and upon considering the documents attached to the consultation response, PS withdrew the concession and gave clear evidence (1) that this advice was considered by OCC in its response (Annex 3, paragraph 20); (2) that he did not accept that the RCPB had been prepared in a way that was not in accordance with PPS12 or other relevant national policy guidance, and (3) that OCC had struck the proper balance.

10.77 However, insofar as NOC now seek to challenge the validity of the RCPB in this inquiry, a significant consideration for the Inspector is why this was not done earlier. The RCPB is unusual in that it is a supplementary planning document that is expressly required by a site-specific policy in the SP: proposals for development on the Site "must" reflect the RCPB adopted. It is the Councils' case (see XC of PS and JB) that this significantly increases the weight that should be accorded to the RCPB. Moreover, the position of OCC, as SP authority, is that the adopted RCPB meets the requirements of H2. SEERA confirmed that the draft RCPB was in general conformity with adopted RSS (RPG and alterations) and also the emerging RSS (the draft SEP), and GOSE made a number of detailed comments on the draft RCPB. Against this background, it is the Councils' strong contention that it was incumbent on any stakeholder who sought to challenge the validity of the RCPB to do so promptly. The obvious course that was open to NOC if it sought to argue that the RCPB was deficient was to apply to have the District Council's decision to adopt it judicially reviewed. It did not do this within with the maximum period of 3 months from the date of adoption on 5 March 2007. As professional developers, NOC could not claim, and have not sought to claim, that they were unaware of this limitation period for challenging governmental decisions. (Indeed, in XX, MD said that NOC had taken advice on a possible challenge from Leading Counsel). In any event, as JB made clear, CDC published an Adoption Statement when it approved the RCPB, in accordance with Regulation 19 of the Town and Country Planning (Local Development) (England) Regulations 2004 and Regulation 16 of the Environmental Assessment of Plans and Programmes Regulations 2004, the last paragraph of which stated (our emphasis):

"Any person aggrieved by the Supplementary Planning Document may apply to the High Court for permission to apply for judicial review of the decision to adopt the SPD and any such application for leave to apply must be made promptly and in any event not later than 3 months after 5 March 2007, the date on which the SPD was adopted." [JB, App. H]

10.78 The advice to those in any way aggrieved by the adoption of the RCPB could not have been clearer. As the courts have repeatedly held, and put this way by Lord Diplock in the House of Lords in *O'Reilly v Mackman* [1983] 2 AC 237 at 280H-281A:

"The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

- 10.79 It is also established that the need for promptness “applies with particular force”<sup>69</sup> in planning cases so that people “should be allowed to implement the benefits of favourable administrative decisions with reasonable promptness and not have to fear that their expenditure will be wasted by reason of belated challenge to the validity of the decision in the courts”<sup>70</sup>. Against this backdrop, NOC has in this inquiry sought to circumvent the maximum 3-month limitation period in public law by claiming, as MD did in XX, that this process gives it “another opportunity” to challenge the validity of the RCPB. This claim is plainly wrong and the Councils submit in the strongest terms that it should be rejected.
- 10.80 Much as NOC may wish to impugn the RCPB, where convenient to do so, this is not an appeal against the adoption or validity of the SPD. Rather, the appeal scheme falls to be assessed against Policy H2, which requires the proposed development to reflect the RCPB.
- 10.81 In conclusion on the question of conservation, the Councils submit that the proposal would, by retaining the visually obtrusive NW and SE HASs, fail satisfactorily to reflect the conservation objectives of the adopted RCPB, contrary to Policy H2 of the SP [Reasons for refusal 2, 4 and 9].
- 10.82 Although EH clearly now opposes the demolition of the HASs, it is important to recognize (as explained above) that its focus is necessarily on heritage. CDC as the local planning authority has to balance a much wider range of issues when assessing the merits of the proposed development against Policy H2 and the RCPB.
- 10.83 In addition to the retention of the NW and SE HASs, there are several other aspects of the scheme put forward in the Main Appeal that, in the Councils' submission, neither preserve nor enhance the character of the Conservation Area and which are dealt with in more detail elsewhere in these closing submissions as they also raise concerns in other areas. They include:
- The widespread use of cars within the Conservation Area as a result of the conversion of the greater part of the Flying Field into employment land (paragraphs 43-44 above) Further, the existing level of use of buildings on the Flying Field, which is (mostly) controlled by temporary permissions, demonstrates that the changes to the buildings and the activities associated with their use are detrimental to the character and appearance of the Conservation Area. The far greater level of use now promoted by NOC will result in a more significant and more adverse impact;
  - The retention of buildings in the Conservation Area with little or no historic significance and which give rise to visual clutter (paragraph 2.261 below);
  - The retention of large sections of the perimeter fence (paragraphs 2.263-2.265 below);

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<sup>69</sup> See, for example, R v. North West Leicestershire District Council, ex p Moses [2000] Env LR 443 at 450, per Simon Brown LJ

<sup>70</sup> R v South Northamptonshire District Council, ex p Crest Homes plc [1993] 3 PLR 75 at 92B-C, per Brooke J

- The use of a large area for car processing within the Conservation Area and extending onto the Flying Field (paragraphs 2.266-2.280 below).

- 10.84 As to the Conservation Area consent appeals, PPG15 makes clear that “consent for demolition should not be given unless there are acceptable and detailed plans for any redevelopment” (paragraph 4.27). CDC is not satisfied that the proposed demolition would preserve or enhance the character or appearance of the Conservation Area, because there is no certainty regarding the provision and implementation of acceptable and detailed plans for redevelopment. Therefore, the Conservation Area consent appeals must also fail.
- 10.85 An important footnote to these submissions on conservation relate to the submission by OTCH that alleged deficiencies in the RCPB render CDC in breach of three international conventions, namely the European Cultural Convention Paris 1954 [CD 112], the Granada Convention for the Protection of the Architectural Heritage of Europe 1985 [CD 113] and the Valetta Convention on the Protection of the Archaeological Heritage 1992 [CD 114]. It should be noted that none of these conventions is directly enforceable in English law; rather, they represent attempts by governments to work together under the auspices of the Council of Europe towards common policies on heritage matters. They function at a state level in requiring governments to have systems in place to safeguard heritage – for example, by having a system of Conservation Area designations – and then requiring them to report at regular intervals to a central body on progress that is being made to fulfil the heritage objectives of the Convention. For example, Article 20 of the Granada Convention requires “periodic reports” by all signatory states to be sent to a Committee of Ministers on the heritage conservation policies in their state, and how they are being implemented. The conventions are concerned with heritage policy at a high level of abstraction and do not relate to site-specific development. Moreover, unlike the European Convention on Human Rights, which is enforceable against both central and local government in the UK by virtue of the Human Rights Act 1998, there is no legislation rendering any of the three conventions cited directly enforceable by citizens. To ask the Inspector to adjudicate on whether CDC is ‘in breach’ of any of these conventions is thus a legally meaningless exercise. It was suggested by MK during the inquiry that breaches of these European conventions could be addressed by way of infraction proceedings before the European Court of Justice, but as these are conventions of the Council of Europe, and not the European Union – two different institutions – the European Court of Justice would have no jurisdiction to hear a complaint in relation to these conventions. Censure for non-compliance comes only in the form of a critical response from the Committee of Ministers to the periodic reports, and is then only directed at the national government.
- 10.86 OTCH also claims that the absence of feasibility studies into the tourism potential of the Site means that the RCPB is flawed [Mr. Scharf’s evidence dated 13 October 2008 at paragraph 3 “Additional points”]. SP Policy H2 does not require feasibility studies into tourism (let alone “dark tourism”) to be carried out, but the Conservation Plan [CD64] inter alia considered the level of likely interest in tourism at the Site, concluding that such interest

would be likely to be of a relatively low-key nature. The Councils consider that sufficient information on the tourism potential informed the RCPB and therefore reject OTCH's contention that the RCPB is flawed.

## Landscape

- 10.87 In addition to justifying the approach in the RCPB in conservation terms, the Councils also advanced detailed evidence through CG of how this would benefit the landscape. In his proof, CG had commented on several shortcomings in the proposal vis-à-vis the requirement in the RCPB to remove parts of the runways, taxiways and hardstanding on the Site. These mainly related to a lack of certainty and detail in the application documents. As CG explained in XC, however, satisfactory progress was made on this issue in negotiations between CG and JC which means that it is no longer live. The SoCG: Landscape at section 2 sets out the detail that was previously lacking on this aspect and now supersedes section 4.2 of CG's main proof.
- 10.88 Other aspects of the proposal continue to be unacceptable in landscape terms. Turning first to the NW HASs, CG explained they are outside the Core Area of Historic Significance ("CAHS") as identified in the CP and RCPB (Fig. 12) [CG, paragraph 4.8.7]. As a result, their loss would not adversely affect the character of the airfield because that is defined in the main by the CAHS, in particular the more "sharply defined HAS character areas" within it and the QRA. To the contrary, the removal of the NW HASs would result in "significant environmental improvements to the landscape character and visual amenity of the surrounding areas" because "they would no longer be alien intrusions into otherwise well defined rural landscapes" (CG, paragraph 4.8.8). JC sought in XC to criticise CG for coming to this judgment, but this sits uneasily with the fact that JC himself was, prior to June 2008, advocating the removal of the NW HASs to improve the landscape. This is reflected in a series of photomontages in a draft document produced by JC [CD 119] that, by his own admission in XC, was intended to provide a "justification" for the removal of the HASs. JC sought in XX to qualify that statement by saying that CD 119 had been produced solely as "information" to assist negotiations between the parties at an earlier stage, but it is clear from the covering letter attached to it that the photomontages were prepared in the context of "recommended demolitions".
- 10.89 Further, JC was responsible for the landscape sections of the ES. His clear professional judgment until June 2008, was that the demolition of the HASs would be a benefit. Neither his written nor oral evidence to the inquiry provided a clear explanation to justify any significant change to that professional assessment.
- 10.90 NOC has produced a visual impact assessment as part of the ES and the parties agree that the NW HASs are visible from viewpoints 14, 15, 16, 18, 19, 27, 28 and 29. Accordingly, as CG noted, the proposed retention of these buildings would not achieve the improvements to visual amenity sought in the RCPB as part of a programme of environmental enhancement [CG, paragraph 4.5.9].
- 10.91 As for the SE HASs, CG supported the Councils' view that these structures are "visually intrusive" and that their removal would also lead to an improvement in the distinctive rural landscape character of the Site and its

surroundings (CG, paragraph 4.8.14). JC agreed when taken in XX to viewpoint 36A that the SE HASs are visible when approaching the Site from the west. Viewpoints 25A, 25B appended to the SoCG: Landscape also show the skyline presence of the SE HASs when viewed from public footpaths to the west of the Site. Of even greater prominence is the view of the SE HASs from point 26A from Green Lane. In their original ES (Landscape Impact Sheet 6), NOC agreed that the character of the Flying Field would benefit from the removal of the SE HASs, noting that they are visible on the skyline when viewed from Ardley Road (original ES, section 14.7.33). In particular, the original ES set out at section 14.7.15 four important viewpoints where these buildings are visible, namely:

- the road between Somerton and Ardley;
- the road between Upper Heyford village and Somerton;
- the road between the former airbase and the B430;
- the road between Steeple Aston to North Aston via Middle Aston.

- 10.92 NOC has proposed various areas of new woodland and hedge planting to the west, south-east and south-west of the Site in an attempt to screen the views outlined above. Some of the current planting on the Site is the result of a considerable period of growth, yet still the HASs are visible over the trees in views from the west. On the assumption that appropriate species of trees are chosen and that there is good management, CG accepted that a satisfactory level of screening could be achieved in some 21-25 years (JC considers c.18 years would be required), but the Councils consider this an unduly long period for the present harm to continue. Moreover, CG contemplated the need to import a large quantity of superior soil onto the Site to ensure successful growth within this timeframe, which he did not consider consistent with the emphasis in H2 on securing a long-term sustainable outcome.
- 10.93 There is also a difference of view between CG and Mr Masters for EH on the impact of the NW HASs from viewpoints outside the Site, as to which the Councils invite the Inspector and the Secretary of State to prefer the evidence of CG for the reasons summarized above. It is notable however that (i) as the ES at 14.7.38 records, prior to June 2008, it had been agreed between NOC, CDC and EH that the NW HASs would be demolished due to their visual impact, and (ii) Mr Masters provided no landscape evidence in relation to the SE HASs to support EH's case.
- 10.94 It is not only the visual impact of the HASs that CG considered harmful. In XC, he elaborated on the harm that is already caused to the landscape by the frequent car and lorry movements to and from the buildings in employment use on the Site. These vehicles are visible from a range of viewpoints in the ES – notably 1, 4, 27, 28 and 36 – and are a further illustration of how the starkness and austerity of the Conservation Area are not being preserved or enhanced. As NOC propose a substantial increase in the use of buildings on the Site for employment purposes, this adverse impact would be exacerbated. (Indeed, the RCPB (paragraph 5.3.2) seeks to monumentalise some of the HASs, to avoid the visual intrusion associated with their re-use.)

- 10.95 In addition to justifying the removal of the HASs, CG expounded the benefits in landscape terms of removing other buildings on the Site, in accordance with the RCPB, that have little or no historic significance and which give rise to visual clutter. He referred in particular to buildings 221 and 249, the latter of which JC accepted in XX is visible from outside the Site. (As set out above, JE took a similar position in relation to the benefit the removal of such buildings would have on the character and appearance of the Conservation Area). The Councils' case is that the removal of these buildings would result in a significant improvement in the landscape, as would the demolition of other smaller buildings as set out in the RCPB, for example, building 3127A (a disused office) and 5066X (a disused, metal-clad store). JC accepted in XX that these were examples of structures on the Site that are "not in a good condition".
- 10.96 In this connection, a key part of JC's case was that CDC considers it "appropriate" to promote in the RCPB a scheme of environmental improvements that, if implemented, would "subdivide the Flying Field" [JC, paragraph 3.13; RCPB, Fig. 7]. He based the comment on the area shaded light green in Fig. 7 of the RCPB labelled '*Areas cleared of buildings of less than national significance*', claiming in XX that the removal of buildings in this area would lead to a "physical subdivision" between the NSA and the southern taxiway. Fig 7 does not depict any physical subdivision, and it was put to JC that, far from creating a physical subdivision, the removal of buildings would increase the openness of the Site, to which he responded that "you don't increase the openness of the Flying Field area by demolishing buildings within it". The Councils respectfully submit that this argument is illogical. First, the inevitable consequence of removing buildings is that land becomes more open. Secondly, a "physical subdivision" would surely need to manifest itself physically in some way: it is not apt to describe the proposal put forward in Fig. 7 which advocates a reduction, not an increase, in the built form. By contrast, the appeal proposal promotes an area of the Flying Field to be subdivided by the creation of the Cold War Park in the NW of the Site.

#### *Perimeter fence*

- 10.97 The Councils remain of the view that the removal of the fence around much of the perimeter of the Site as set out in the RCPB is a highly important element of the environmental improvements sought. The CP acknowledged that the fence is seen as a detractor by many people and is of local significance except in a few sections (p. 92). Section 5.2.3 of the RCPB notes (our emphasis):

"THE SECURITY FENCE THAT RUNS AROUND THE PERIMETER OF THE SITE IS A PRIORITY FOR REMOVAL, EXCEPT IN THE AREA ADJACENT TO THE NORTHERN BOMB STORES AND SPECIAL WEAPONS AREA WHERE IT CONTRIBUTES TO THE SETTING OF THE SCHEDULED ANCIENT MONUMENT.

The removal of the security fence has long been sought by local residents. It is clearly visible and intrudes into views from the village of Upper Heyford where it encloses the western end of the runway. Where public footpaths run adjacent to it along the western and northern boundaries of the site its impact is unavoidable... The security fence is a feature that is not characteristic of a

rural landscape, it highlights the exclusion and secretive nature of places and could be considered foreboding or threatening.”

10.98 The harm caused by the existing fence was identified by the Inspector in the 2002 Appeal when he noted in relation to the Portway footpath to the west of the Site that “views to the east are unlikely to do much to uplift the spirits of those walking the path” (paragraph 10.40). He went on to find that the retention of much of the perimeter fence in the proposal was not justified:

“However, the security fencing around the runway would not be dismantled and, notwithstanding the screen planting some lengths of it would be given, it would retain a hostile aura. Its retention would be a continuing reminder of the separation of the land of the former airbase from its countryside surroundings.”

10.99 JC noted in his proof of evidence that one of NOC’s “landscape objectives” was to “(iv) remove the security fencing, where this complies with cultural heritage objectives”. It is now proposed to remove the perimeter fence around the western nib of the Flying Field, south of Camp Road and east of the NSA (see JC3, Plans L10A and L10B). JC specifically highlights as a “long term visual benefit” the “improvement in views from... (vii) Camp Road, as a result of the removal of fences” [JC, paragraph 4.8]. For the removal of the fence to be a “visual benefit”, JC must be accepting that its retention would be harmful. By the same logic, the Councils submit that the removal of the fence in the other areas set out by the RCPB would lead to “long-term visual benefits” and that it is sufficient in heritage terms to retain it only where it is adjacent to the Northern Bomb Stores, where a special case can be made that it contributes to the setting of this scheduled monument. As CG explained in his proof and in XC and XX, the fence is not necessary to maintain the Conservation Area boundary: natural features, such as the hedges, and differing adjacent land uses, and physical features, such as the Southern Bomb Stores, would make the extent of the Conservation Area clear. NOC’s approach boils down to an assertion that the partial fence removal it seeks is acceptable, but that the removal of further parts as sought by the Councils is unacceptable. That approach reveals an inconsistency and a lack of rigour and is in reality simply disagreement as to the extent of the fence that should be removed. By failing to take the proportionate approach to the retention of the boundary fence set out in the RCPB, and in particular, by failing to give due weight to the visual harm caused by the fence as identified by the 2002 Inspector and the RCPB, the Councils submit that the proposal is unacceptable.

### *Car Processing*

10.100 The defining characteristic of the Cold War landscape of the Site is its openness, which the Conservation Area seeks to preserve or enhance<sup>71</sup>. MD agreed in XX that there was a need to ensure that the character of the Conservation Area would not be adversely affected by the use of the Site by

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<sup>71</sup>See for example paragraph 10 of the Walon Appeal Decision [CD49].

Paragon for car processing (as shown on the area of land coloured blue on Drawing L10B, at JC Appendix 3).

- 10.101 JB's rebuttal Appendix E included an aerial photograph of the Site when in active use in 1981, showing that the area of the Flying Field was kept largely clear so as not to obstruct the movement of aircraft around the base. This is also clear from JC's Photosheet 2 in JC3. Accordingly, activities carried on the Site were concentrated in the area now corresponding to the NSA. The fact that vehicles can be discerned on the taxiways and near some Flying Field buildings in some of the old aerial photos relied upon by JC, does not alter that position; such vehicles were there to service airplanes (or to facilitate the running of the airbase in other ways) and apart from providing such services, the runways and taxiways were required to be kept clear.
- 10.102 Several proposals for car storage – alternatively known as car staging – have been the subject of decisions by other Inspectors, which are relevant and material to the determination of the appeal proposal. The various areas of the Site proposed in these applications are set out in JC's Appendix 2 at drawing Paragon L9. An extensive area for car storage involving most of the main runway was proposed for retention as part of NOC's earlier proposals in the 2002 appeal, but the Inspector considered this unacceptably harmful:
- "10.35 The continuation of the uses on the wider site beyond the development area... would... mean the continuation of a number of additional undesirable visual impacts. These include the night time glare of the security lights associated with these uses and the visual intrusion of sunlight glinting on the parked cars on the runways. While continuation of these uses is within CDC's control, I do not consider that the scheme proposed can be said to exhibit compliance with policy H2 if it does not clarify and resolve the intended future of the whole site, including that beyond the area proposed for development, in a way which would be acceptable in the long-term if needs be."

This was upheld by the First Secretary of State in his decision (at paragraph 14):

"The Secretary of State also agrees that the scheme proposed cannot be said to exhibit compliance with Policy H2 if it does not clarify and resolve the intended future of the whole site, including beyond the area proposed for development, in a way which would be acceptable in the long term (10.35)."

- 10.103 The need to eliminate the adverse impact of the car storage use was followed through in the CP issued later in 2005. "Objective 19" in the list of "Conservation Objectives" in section 5 of the CP was stated to be:
- "... To remove permanently site uses which have an adverse impact on the landscape of the airbase and intrude into the surrounding landscape.*
- Reason: Some of the current temporary uses of the airbase, notably the car storage and other external storage detract from the character of the landscape and are regarded as eyesores by local residents when seen from the outside."
- 10.104 Similarly, in 2006, the CAA listed as one of nine "Negative factors" on the Site in section 1:

“Current use of the base; particularly the car storage which draws attention to the site from afar (the illumination of car windscreens by the sun)....”

10.105 As for other decisions by Inspectors, drawing Paragon L9 shows a smaller area that was the subject of an appeal by Walon in May 2006 to continue car storage on the runways and hard standings for a further 2 years. Again, the Inspector refused the appeal on the basis that this would have an adverse impact on the character and appearance of the recently designated Conservation Area [CD 49]:

“11. The presence of large areas of closely packed ranks of cars parked on the tarmac between the buildings – together with the associated security fencing, signage and lighting – gives the area a cluttered provisional appearance that is out of keeping with the stark austere sense of military order and openness that would provide the intended setting of the Avionics Building – a Scheduled Ancient Monument next to the site. To my mind the continued use of this large area of land for the open storage of cars would neither preserve nor enhance the character or appearance of the Conservation Area nor would it safeguard the setting of the Ancient Monument.

[...]

13. [...] The designation of the Conservation Area and the Scheduling of the Ancient Monument... are significant changes in the planning environment which, together with the prospect of an imminent planning application to develop a new settlement at the base, warrants the refusal of the appeal scheme which would further perpetuate, albeit for a short period, this temporary use which would conflict with the aims of Structure Plan Policy EN4, Local Plan Policy C22, Local Plan Policy C10 and SPG Policy TU2.”

10.106 A further appeal, relating to a different part of the Site was heard in 2007. That appeal,, by Mr M Loveland was against an enforcement notice served on him in relation to, amongst other matters, the storage of HGV vehicles and trailers on land adjacent to the QRA area on the Flying Field. Whilst noting that “the storage here is not of cars so there is less of a problem due to the sun reflecting off windscreens”, still “the HGV vehicles and trailers generally stored here are much larger and easily seen as one travels around the airfield” [CD 50, paragraph 8]. Accordingly, the Inspector decided that “the use neither conserves nor enhances the Conservation Area; it has a materially harmful effect on its character and appearance and is contrary to the objectives of the relevant policies in the Development Plan. The large area given over to open storage is clearly contradictory to the objective of conserving the open nature of the character of the Conservation Area” [paragraph 9].

10.107 Therefore, although the areas used for car storage/ staging/ processing have varied over the years, both CDC assessments and all of the relevant appeal decisions, before and after the designation of the Site as a Conservation Area, have concluded that the use has a harmful impact on the character and appearance of the area.

10.108 JC sought to address the Councils' concerns about the visual impact of car processing by producing a revised drawing, 'Paragon L10A', comparing the Zones of Visual Influence (“ZVI”) of NOC's proposal for car processing on the Site with that set out in the RCPB. As CG stated in XC, however, the ZVIs indicated on Paragon L10A are of limited assistance to the Inspector

given that they reduce the assessment of impact to an assessment of how many selected 'target points' are visible or not. As CG explained, the ZVIs do not assess the *extent* of visibility of the vehicles that would actually be parked in these areas. The diagrams attempt to summarize the visual impact of car processing across the whole Site, in a somewhat broad-brush analysis that cannot compare with an assessment of visual impact on the ground (see XX of CG). For example, the ZVIs assume a maximum vehicle height of 1.45m, when as JC acknowledged in XX, vehicles such as people carriers and 4x4s, and of course larger vehicles such as vans and transporters, are materially higher. ZVIs also do not allow for ancillary structures, for example for lighting or security, that will almost certainly be required and will be visible. Further, although the L10B layout (JC App 3) for car processing moves it from Aves Ditch, it extends it further north into the Flying Field, between the Victor Alert Area buildings (most of which are open-ended), north of the southern taxiway and between the SE HASs.

- 10.109 Despite JC's rejection (in XX) of the suggestion that the Paragon use would comprise ranks of cars on the Flying Field, it is plain that the proposed car processing would indeed involve a large area containing closely packed ranks of cars that would clearly and adversely impact upon the openness that is the defining characteristic of the Cold War landscape of the Site and which the Conservation Area seeks to preserve or enhance. JM's claim in XX that openness would be preserved because there would be views over the tops of vehicles is remarkable; the openness of this part of the Conservation Area would plainly be materially harmed by the presence of so many cars. The Councils invite the Inspector and the Secretary of State to prefer the evidence of CG (and, on this point, the assessment of Dr Barker (in his proof and in XC)). Moreover, JM's subsequent claim that the processing would only constitute a temporary effect that would be minimal or neutral has to be assessed against the nature of what NOC seeks to secure - a permanent planning permission for car processing (including the requisite lighting, security, activity etc) over a 17ha area. The impact would be permanent and adverse.
- 10.110 Accordingly, the Councils remain of the view that the use of the Flying Field for the processing of cars is not acceptable as part of a lasting arrangement for the Site. The RCPB identifies an area in the north-east of the settlement area, between Letchmere Farm and the retained A-type hangars currently occupied by Paragon, as suitable for car processing (p. 26; Fig 7). This area contains no buildings of national importance, is a landscape of only local significance, is partly screened by existing buildings and is capable of being further screened by additional planting without causing adverse impact to the character or appearance of the Conservation Area because of the different characteristics of the former technical area and the Flying Field. The Councils submit that containing the car processing use within this area strikes the necessary balance between allowing Paragon to continue operations on the Site and ensuring that the character and appearance of the Conservation Area is not adversely affected.
- 10.111 The Councils recognise the contribution Paragon makes to the local economy, but consider that the harmful impact of a car processing use on the Flying Field has been established in a series of decisions and see no reason to depart from that position in this appeal. Paragon has always occupied the Site on the basis of temporary consents only, and the RCPB

has reached an appropriate balance in seeking to accommodate such a use within an acceptable area. Moreover, it is not suggested that the retention of car processing is required to secure a sustainable future for the Site. To permit the proposal would be to make permanent what the Inspector in the Walon appeal characterized as the “cluttered provisional appearance” that stored cars bring to the Flying Field, to the detriment of the austerity and the openness that the Conservation Area designation seeks to protect.

- 10.112 Neither MD nor JM sought to claim that the proposed reuse of buildings on the Flying Field would enhance the Conservation Area, rather that it would preserve it (or, as MD put it at paragraph 6.117(ii), would be “neutral”). In respect of what he described as “low key” uses across the Flying Field, JM claimed that there would be no material change to the character of the Flying Field. Yet, as set out above and as CG, JE and Dr Barker made clear, car processing would cause material harm to the character and appearance of the Conservation Area and would not therefore preserve it.
- 10.113 Whilst critical of the Council for seeking to balance heritage and other interests (see for example JM proof at paragraph 6.2.6), in respect of car processing JM was happy to state that any negative effects would be outweighed by the general improvement from providing a sustainable future for the historic Cold War Flying Fields (paragraph 6.3.9 and XX by EH). However, as set out above it is not claimed by NOC that the retention of car processing is required to secure a sustainable future for the Site.
- 10.114 As to the remarkably leading RX of JM, listing the “benefits” in the BMP against which the processing use might be balanced, the need for those “benefits” would exist if car processing did not form part of the appeal scheme and there is no evidence to suggest that they would not come forward without car processing. Further those “benefits” do not mitigate the harm to the character and appearance of the Conservation Area from car processing. Therefore, the extent of car processing proposed would not only fail to preserve or enhance the character or appearance of the Conservation Area, but would cause clear and material harm.

#### *Aves Ditch*

- 10.115 The Councils have welcomed in principle NOC’s proposal to reopen the pathway at Aves Ditch, but as CG explained in XC, they have several concerns over the detail of what is proposed (see JC3, Plan 10A). In particular:
- The proposed alignment has an undesirable ‘kink’ towards the southern end of the Flying Field which leads to an unnecessarily convoluted route. This was not part of the historic route of Aves Ditch. JC sought to argue in XC that the historic alignment was uncertain, but it is clear from the pre-airfield maps [see Heritage section of the ES] that the track ran directly in a straight line across what later became the airfield. JC conceded in XX that the path “certainly did not kink” in the past.
  - The effect of the kink would be to give the walker the appearance of layers of fencing as he approaches it from the south along Chilgrove Drive. CG explained that this would again create a cluttered appearance at odds with the stark and open character of the airfield [CG, paragraph 4.7.4].

- That sense of austerity and openness would also be compromised by clear views from the route alignment of the massed ranks of parked cars and associated security structures and lighting [CG, paragraph 4.7.2]. The kink would exacerbate this harm by directing walkers, particularly those walking from north to south, to look directly onto the area of car storage.
- The straight alignment sought by the Councils would require the removal of some of the fencing and, at most, the removal of some of the portacabin-type buildings associated with the Southern Bomb Stores, but would not impact upon the Bomb Stores themselves.

10.116 NOC has proposed an alternative route [see JC3, Plan L10B] which largely circumnavigates the eastern end of the Flying Field, but as JC agreed in XX, this would “substantially increase” the length of the journey. The Councils consider this alignment less satisfactory in comparison with the option to traverse the Flying Field directly. Moreover, another aspect of the Plan L10B alternative is that the eastern boundary of the proposed car processing area on the southern boundary is moved some 200m<sup>72</sup> to the west, which means that the cars are, to cite JC, “much less visible to users of the new Aves Ditch than that shown on Plan L10A” [JC, paragraph 9.8(v)]. It is submitted that this is tantamount to an acceptance by JC that the views of the car processing area from Aves Ditch on the L10A route are, at the very least, undesirable. However, to achieve this benefit, as set out above, the L10B proposal makes up for the loss of car processing area to the east of the southern taxiway by occupying two additional parcels of land around the Victoria Alert shelters, immediately north of the southern taxiway and between the SE HASs. As JC accepted in XX, this results in the car processing area penetrating into the Flying Field even further. He sought to argue that this did not increase the visibility of the car processing area from the main runway because of the screening effect of the aircraft shelters, but the Councils note that the shelters are open-ended in this area and do not form an unbroken line: they fall short, therefore, of providing a complete screen.

10.117 This relates to a wider concern of both Councils that the cars proposed to be processed on the southern taxiway would be visible to visitors, including those taking a bus tour of the Site as proposed in the final version of the Heritage Management Plan. As part of the route, the bus would travel across the main runway, and JC agreed in XX that visitors would see the car staging area at that point, albeit that in his judgment the impact would be “negligible”. The Councils do not accept this and prefer CG’s assessment of the impact as “moderately significant” and to be avoided given that it compromises the austerity and openness that the designation of the Site as a Conservation Area seeks to preserve. (See also Dr Barker’s evidence on the harm caused by car processing).

10.118 JC has sought to justify the visibility of the car processing from, for example, Aves Ditch, on the basis that such views are “part of the

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<sup>72</sup> JC’s proof originally stated this distance to be 400m, but in XX, he accepted that given the scale of Plan 10B, the distance would be closer to 200m.

interesting and varied experience of crossing the Cold War airfield, where they would not appear out of place" [JC, paragraph 9.8(vi)]. Given that car processing, involving closely packed ranks of thousands of cars did not at any time form part of the Cold War history of the airfield, the Councils respectfully submit that this argument is without merit.

10.119 For these reasons, the Councils submit that the proposal would:

- fail to preserve or enhance the character and appearance of the Conservation Area by perpetuating adverse visual impact contrary to: SP policies G2, EN1 and EN4; LP policies C7 and C10; and Non Statutory LP policies UH1, UH2, UH4, EN34 and EN40 [*Reasons 4 and 8*]
- fail to satisfy SP policy H2 in not adequately reflecting the RCPB, in particular the need to balance the conservation of heritage resources with the need to ensure environmental enhancement and the achievement of a satisfactory living environment on the Site [*Reason 9*].

## Design

10.120 LR, CDC's Design and Conservation Team Leader, gave detailed evidence on behalf of CDC to support the eleventh reason for refusal, namely that the DAS submitted with the application failed to explain and justify the principles behind the intended layout and appearance of the Site, particularly in relation to its context, as required by DCLG Circular 01/06. As a result, it has neither been demonstrated that the proposal would provide a satisfactory living environment in accordance with the RCPB, nor has it been shown that character and appearance of the Conservation Area would be preserved or enhanced as required by SP policy EN4.

10.121 During the inquiry, NOC were anxious to be reassured that, as MK put it, the Council "was not doing a Filton", and was not claiming that there had been such a serious failure to comply with Circular 01/06 that the proposal ought to be refused on that basis alone. The Councils gave this assurance. CDC did register the application as valid and has not sought to argue that the DAS was so deficient that it failed to comply with the basic requirements for such a statement as set out by Article 4C of the GDPO. Nevertheless, as LR explained, the Councils do consider the DAS, and the design process set out therein, inadequate in several respects such that it cannot be said that it has resulted in a "high quality design" as required by PPS1 and PPS3. It is submitted that this failure militates further in favour of refusing this appeal when considered alongside the other shortcomings set out in the reasons for refusal.

10.122 LR gave a detailed breakdown of the inadequacies in the DAS in her main proof. In XC, she set out what she considered to be her five major concerns.

10.123 First, she referred to the failure of the DAS to deal with the whole site. In his rebuttal proof, RW argued that because neither the GDPO nor Circular 01/06 requires a DAS in respect of an application for a change of use [see RW, cell entry 6.2.3], the DAS for this application could legitimately limit itself to the proposals for operational development in the NSA. As LR explained, this sits uneasily with several matters:

- The application is made in respect of the whole of the former air base, as is clear from the boundary line on all plans supporting the application.
- SP policy H2(b) expressly provides that “proposals for development must reflect a RCPB adopted by the District Council and demonstrate that the conservation of heritage resources, landscape, restoration, enhancement of biodiversity and other environmental enhancements will be achieved across the whole of the former air base in association with the provision of the new settlement.”
- In his decision on the 2002 appeal, the Secretary of State stated that “the scheme proposed cannot be said to exhibit compliance with Policy H2 if it does not clarify and resolve the intended future of the whole site, including that beyond the area proposed for development, in a way which would be acceptable in the long term” [CD 48, paragraph 14].
- Several figures in the DAS do seek to address the Site as a whole – for example, figures 1.2, 2.1 and 2.2 – and yet this is not followed through in the text.
- Most critically of all, however, RW appeared to have misinterpreted Circular 01/06 as *never* requiring a DAS for a change of use whereas paragraph 69 of the Circular (‘When a Design and Access Statement is Required’) makes clear that this exception does not apply if the application “also involves operational development”. In these circumstances, where both types of development are proposed, a DAS is required for the whole proposal: as RW agreed in XX, nowhere in legislation, the Circular or other guidance is there any instruction to the effect that it is legitimate to disaggregate the proposal and submit a DAS for only part of it. RW agreed in XX that in this regard, the DAS does not comply with Circular 01/06.
- In any event, as RW accepted in XX, MD’s comment in his letter to JB dated 4 July 2008 that “virtually no new build is proposed outside” the NSA [LR, App F, p. 6] was not correct. Page 4 of the DAS makes clear that in addition to seeking permission for replacement fencing on the boundary of the wider Site, the application also includes the “Provision of all infrastructure to serve the above development...”. The Councils consider the use of the word “infrastructure” nebulous, but RW agreed in XX that LR had correctly anticipated in her Appendices B, C and D the types of supporting development that would be required on the wider Flying Field if the proposal were permitted, namely infill panels, signage, additional storage and car parking facilities. RW further agreed in XX that it would be extremely unlikely, were the proposal permitted, that the changes of use could take effect without material changes in how these buildings and their immediate surroundings would appear. In this respect, he conceded that the DAS was deficient in that it ought to have ‘explained’ and ‘justified’ those changes in appearance in accordance with paragraph 60 of Circular 01/06.

- 10.124 LR submitted that the failure of the DAS to address the Site as a whole is also brought into sharp focus when tested against the requirement in paragraph 97 of the Circular to follow a four-stage design process: Assessment, Involvement, Evaluation, Design. For 'Assessment', paragraph 97 requires an "Assessment of the site's immediate and wider context in terms of physical, social and economic characteristics and relevant planning policies". RW agreed in XX that this discussion was limited in the DAS to a 10-line paragraph on page 15, largely deferring to the CAA, that did not attempt an assessment of the Site's "wider context" as required.
- 10.125 As for 'Evaluation', paragraph 97 of the Circular requires an "Evaluation of the information collected on the site's immediate and wider context, identifying opportunities and constraints and formulating design and access principles for the development". RW conceded in XX that in failing to 'explain' or 'justify' (1) the proposal to locate the Cold War Park outside the Core Area of National Significance and (2) the proposal to extend the area of car processing further north-westwards into the southern taxiway and beyond, the 'Evaluation' aspect of the design process had been deficient.
- 10.126 LR's second concern related to the final 'Design' element of the design process, in particular the relationship between the business and residential areas in the NSA. Whilst some progress was made on this issue in an addendum to the DAS dated 21 August 2008, LR was still concerned about the failure of the DAS to 'explain' or 'justify' the proposal to retain two A-type hangars in this area, buildings 151 and 315, the demolition of which is sought by the RCPB "to assist in integrating [the retained four outer hangars] into the new settlement and the creation of a satisfactory living environment" [RCPB, paragraph 4.4.2]. RW accepted in XX that no such explanation or justification had been provided in the DAS for why this opportunity to assist in creating a 'satisfactory living environment' had not been taken.
- 10.127 Thirdly, again in relation to 'Design', LR explained that the scale of the proposed new buildings in relation to those retained had not been adequately explained, as required not only by paragraphs 88 and 89 of the Circular, but also by CABE guidance [CD 84, p. 16]. RW conceded in XX that it is generally the case that the DAS does not, as is required, provide the dimensions of existing buildings that are to be retained. As for the new buildings, RW further conceded that:
- The DAS does not 'explain' or 'justify' the decision to juxtapose the proposed new 3-storey buildings in the NSA against retained buildings 100, 103 and 52, which are in the main 1-storey with only some 2-storey elements.
  - The DAS was likely to have led to confusion by showing the proposed retail unit as 3-storey, potentially rising to 4-storey at the corner (Fig 4.14 DAS, p. 77) whereas the Height Parameters Plan in the same document shows it as 2-storey (Fig 4.9). Insofar as the DAS at outline stage is expected to give an indication, even if only within parameters, of what scale of development is proposed [Circular, paragraph 89], RW agreed that it was inadequate in this respect.
  - The DAS does not give the lower dimensions of height, width and length of the proposed buildings, contrary to paragraph 89

of the Circular. Indeed, in the vast majority of cases, the lengths of the proposed houses is not provided at all as only the measurements for blocks of housing are given, contrary to the instruction in paragraph 89 to “indicate parameters for the.... length of each building proposed”.

- Nowhere in the DAS are the height, width or length parameters provided for the retail units.

- 10.128 Fourthly, LR expressed serious concern that it was not clear how the appearance of the proposed buildings had been derived. Whilst the Circular notes that no “specific information” is required about appearance at the outline stage, the DAS should still “explain and justify the principles behind the intended appearance and explain how these will inform the final design of the development” [paragraph 95]. In this DAS, RW agreed that insofar as it seeks to set out the “intended appearance” of the proposal at this stage, it is proposing six different, although complementary, character areas [DAS, pages 56-57]. However, when the DAS later seeks to elucidate ‘Principles for Architectural Expression’ for the scheme, RW accepted that there is no attempt to do so by reference to the six intended character areas as earlier identified. This lack of continuity cannot, in the Councils’ submission, be said to exhibit a commitment to high quality design because if these “principles” were taken forward, they would result in a homogeneity of design across all 1075 houses that is clearly undesirable. NOC’s response at the inquiry was to say such homogeneity is clearly not what is sought or intended, but the DAS is silent on what other ‘principles of architectural expression’ might be applied to avoid this outcome.
- 10.129 A fifth and related point made by LR is that the DAS unreasonably defers consideration of important issues until the latter stages of the design process, when ‘Design Codes’ would have to be submitted and approved by CDC (and the conditions sought by NOC would involve Codes coming forward on a phase by phase basis, rather than comprehensively at the outset). RW seeks to deal with several of LR’s concerns in this way, suggesting that she is requiring too much in the way of detail at the outline stage, but RW agreed in XX that if a high-quality design is to be achieved in accordance with PPS1 and PPS3, a proper balance must be struck between what is required at the DAS stage, in which the design principles are explained and justified, and the Design Code stage, when those principles are implemented in detail on the Site. It is the Councils’ case that the DAS has failed to strike that balance: not enough groundwork has been done at this stage to give them confidence that the proposal, if permitted, would lead to a design of a high quality.
- 10.130 NOC distributed a revised DAS on 7 January 2009, with the aim of addressing changes made to the application and various inconsistencies (but not addressing LR’s substantive concerns, as summarised above). CDC responded on 12 January and 14 January 2009, identifying a number of inconsistencies that remain. No response was received from NOC. As JB made clear in the inquiry on 12 January 2009, where there are inconsistencies between the revised DAS and the latest SoCG (9/1/09), for example in relation to floorspace areas, the SoCG is the accurate document and should be relied upon.

- 10.131 By reason of these matters, the Councils submit that the DAS fails to comply with PPS1 and PPS3, the Circular, SP policy H2 by failing satisfactorily to reflect the RCPB and also SP policy EN4 by failing to preserve or enhance the character or appearance of the Conservation Area [*Reason 11*]. These failures give another reason why this appeal should not succeed.
- 10.132 On Friday 13 March the Local Planning Authority received a further revised DAS, unannounced and without identifying where the changes were made. In the time available to the Local Planning Authority it appears that the main areas of change, apart from the description of development are in relation to the Flying Field where paragraphs 4.6.8 to 4.6.12. have been expanded. They now more closely reflect the Base Management Plan and the Ecological Management Plan, although there are still some inconsistencies. That is a further indication that the DAS has needed retrospective adjustment rather than leading and adequately explaining the design process.

#### Conditions and Unilateral Undertaking

- 10.133 The conditions and the unilateral obligation sessions occupied three and a half days of inquiry time. Although many issues relating to conditions and the s.106 obligation have been the subject of successful negotiation both before and during the inquiry, there remain a number of matters where there is significant disagreement between the parties.
- 10.134 For the purposes of these closing submissions, the Councils do not seek to reiterate the detail of the concerns raised during those sessions and set out in detail in the Notes produced by Julia Taplin, but make the following observations, to address the specific matters for submission raised by the Inspector:
- Conditions: Where there is a difference between the parties (see JB's revised schedule sent 6 January 2009), the Councils invite the Inspector and the Secretary of State to prefer the Councils' suggested conditions, for the reasons explained by JB and others on behalf of the Councils during the conditions session.
  - Where there is any material difference between the Councils' suggested conditions and provisions of the BMP, then the conditions should take precedence, in accordance with the general advice in Circular 11/95. As JB explained, the Councils are not satisfied that the BMP provides appropriate controls or that it would in all instances be possible expediently to enforce the terms of the BMP, as the majority of the actions are positively worded. Many actions, such as the implementation of strategies, rely on such strategies being first agreed with CDC, but there is no restriction on continued occupation of buildings if such strategies are not adequate and cannot be agreed. There is therefore no adequate incentive for the site owners to produce appropriate strategies and comply with them. In particular, the Councils are concerned that the problems that would be likely to arise would become more difficult to address once occupiers have become established on site. Appropriately worded conditions, as suggested by JB, would therefore assist in remedying this serious deficiency.

- The Councils have serious concerns as to the adequacy of the s.106 obligation, as explained by Julia Taplin and others on 17 December and summarised in her subsequent note (23 December 2008 and updated 7 January 2009 and see also the summary note of Outstanding Issues sent to PINS on 28 January 2009). The 28 January note lists the remaining issues of concern which are explained in detail in the Taplin Note dated 23 December 2008 and 7 January 2009, which the Councils consider constitute important deficiencies in the unilateral undertaking and which cannot be satisfactorily covered by conditions<sup>73</sup>.
- As to the Inspector's request that the Councils identify the "show-stoppers" which justify the appeal being dismissed, without prejudice to the Councils' contention that all of the matters set out therein, individually and cumulatively, are material deficiencies, the Councils in particular regard items (1)-(3), (6), (9), (12) and (13) under the heading Key Issues in the 28 January Note as matters that justify the dismissal of the Main Appeal.
- Restriction against disposal – commitments (or certificates of compliance) are required from the controllers of the land (who are all shareholders in or an associated company of NOC), in order to ensure performance of the land transfer commitments to CDC and OCC. The land transfers contemplated by the s.106 are of major significance, since they relate to the transfer of the site for a new primary school, sports pitches, community hall, play areas etc.
- Bonds – bonds provide security for payment and that payment is made at the due date. The Councils wish to use performance bonds to ensure that in the event that agreed obligations are not delivered, (for example because of underperformance or financial default) OCC is nevertheless provided with the necessary finances. Unlike the nature of the payments and the much smaller sum (c.£1.7m) in the Bishop's Cleeve case relied upon by Mr. Bull, the monetary payments to OCC amount to £12,374,300 (£11m of which is required to provide school places for children of the new development, by virtue of positive covenants to pay linked to the timetable for letting construction contracts) and to CDC £3,482,712. (NOC has offered only to provide a bond for £430,000 in relation to bus services.) Moreover, the Councils have accepted that education payments should be deferred until a significant amount of development has taken place. As to monies for the Flying Field, it is essential that there is certainty that funding will be available to allow essential works to be carried out. It is therefore crucial that the Councils can be satisfied that the necessary funding will be available and so require the security of a bond from a reputable financial institution.

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<sup>73</sup> All to be found in Document U1

- Lack of enforceability against successors in title – NOC should only be released from liability when it disposes of all its land interest, if it has secured a replacement deed of covenant from a major landowner at the site who agrees to take on responsibility for outstanding commitments. Matters such as the implementation of the transport strategy would require the ongoing active involvement of a major landowner. This approach has been agreed on other major developments and provides flexibility for the original landowner so that it can make arrangements for release on disposal and secures the release of individual owners and occupiers, whilst safeguarding the Council's ability to enforce commitments effectively.
- Lack of safeguards regarding future management of facilities – if facilities for residents, such as the community hall, sports pitches and pavilion and open space do not transfer to CDC, there would be a lack of safeguards for the residents, regarding future ownership, management and availability of facilities.
- Base Management Plan – The Councils are not satisfied that the BMP provides appropriate controls or that it would in all instances be possible expediently to enforce the terms of the BMP as the majority of the actions are positively worded. (See Paragraph 10.134 point 2 above as to the Councils' concerns as to the agreement and implementation of strategies after buildings are occupied.) Therefore, the Councils seek the imposition of appropriately worded conditions, as explained by JB on 17 December 2008.
- Duration of developer's subsidy of bus services and (13) timing of transport measures. The Site is in an unsustainable location in transport terms. The improved bus service is the main measure which improves the sustainability of the Site and it is therefore essential that it is secured in the long term. The s.106 obligation proposes that the bus subsidy would finish at the Transport Strategy End Date. However, the SoCG [paragraph 10] provides that the developer will provide revenue support until the agreed service is viable. The position in the SoCG is not reflected in the drafting of the s.106 obligation. As to timing, the Councils' concern is that the delivery of the improved bus service would not be triggered if the residential development is delayed, but the existing buildings of the Flying Field are occupied. The Councils consider that there should be a limit on the amount of floorspace that can be occupied on the Flying Field before the projected date for starting the bus service, and that there will also need to be a robust monitoring process.

10.135 Accordingly, the Councils' case is that the s.106 Obligation is inadequate in material respects and therefore planning permission and Conservation Area consent should not be granted.

#### Conclusions of the Councils

10.136 For the reasons set out above, the Councils consider that the appeal proposal would be contrary to national, regional and local policy and that

there are no material considerations of sufficient weight to justify the grant of permission. Accordingly, the Councils respectfully submit that the Main Appeal and the remaining Conservation Area Consent appeals should be dismissed.

## **Rule 6 Parties**

### **11 The Case for English Heritage**

#### Introduction

11.1 These submissions deal in turn with the issues set out in EH's opening submissions. EH has of course been concerned with the appeal scheme's heritage issues. The appropriateness of the proposed re-use of the flying field has been the dominant issue at the inquiry; in comparison very little time has been taken up dealing with the residential element of the scheme – a remarkable fact given that some 1000 houses are proposed.

#### The demolition of buildings south of Camp Road

- 11.2 NOC proposes the demolition of a large number of buildings south of Camp Road in connection with the residential-led mixed use redevelopment of this part of the appeal site.
- 11.3 EH was consulted by CDC in respect of the proposals and objected to the demolition of a number of the buildings<sup>74</sup>.
- 11.4 The basis of the objection was set out in detail in Dr Barker's written evidence<sup>75</sup>. The objection related to five C-Type Barrack Blocks (buildings 450, 466, 471, 480 and 483), the Dining Room & Cookhouse (building 474), the Ration Store & Shop (building 475), the Lamplighter Building (building 488) and the three H-Type Barrack Blocks (buildings 489, 498 and 500).
- 11.5 EH considers that each of these buildings makes a positive contribution to the character and appearance of the Conservation Area. Paragraph 4.27 of PPG15 provides that their demolition therefore has to be considered against the tests set out in paragraphs 3.16-3.19 of PPG15. As at the start of the Inquiry NOC had not provided an adequate assessment of the proposed demolitions against the criteria set out in paragraphs 3.16 – 3.19 of PPG15.
- 11.6 In order so far as possible to narrow the issues between the parties EH then had a series of lengthy meetings discussing this matter with NOC. NOC undertook to provide further information to address the matters set out in paragraphs 3.16-3.19 of PPG15. That information was finally collated into a supplementary appendix to Mr Munby's evidence, submitted to the Inquiry on 10 October 2008. That information enabled EH to withdraw its objection to the proposed demolition of the above buildings. This was confirmed by Dr Barker in his evidence in chief.

#### The demolition of buildings north of Camp Road

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<sup>74</sup> Letter dated 17 December 2008, CD78

<sup>75</sup> Document EH NB1 page 38 and NB3 page 1 and annex 1.

- 11.7 NOC proposes the demolition of a large number of buildings north of Camp Road in connection with the proposed redevelopment of these parts of the settlement and technical areas.
- 11.8 EH objected to the demolition of some of these buildings in its consultation response to CDC<sup>76</sup>. As set out in Dr Barker's Rebuttal Evidence, EH considered that building 101/2 (offices/workshop), building 117 (workshop), building 118 (flight simulator building), building 133 (workshop) and building 146 (lubricant store) were all buildings making a contribution to the character of the Conservation Area sufficient to trigger the application by paragraph 4.27 of PPG15 of the tests set out in paragraphs 3.16 – 3.19 of PPG15.
- 11.9 NOC took the view that none of these buildings made such a contribution.
- 11.10 Further discussions with NOC ensued and further information was provided by NOC to EH. EH reconsidered the matter (including undertaking a further detailed site view) and concluded that it would not object to the characterisation of these buildings as making "little" contribution to the character of the Conservation Area. It follows from this that, in EH's view, there is no presumption against the demolition of these buildings and no requirement to apply the tests set out in paragraphs 3.16 – 3.19 of PPG15. This was confirmed by Dr Barker in his evidence in chief.

The Hardened Aircraft Shelters (HASs).

- 11.11 There are 56 HASs on the flying field. NOC proposes:
- B8 use for 45 HASs: (buildings 3001 – 3035 inclusive, buildings 3043 – 3052 inclusive and building 3056<sup>77</sup>); and
  - Nil use for 11 HASs: (Buildings 3052 – 3055 and 3036 – 3042 inclusive)<sup>78</sup>.
- 11.12 The Council's position, set out in the 2007 Revised Comprehensive Planning Brief (RCPB) is that:
- 11 HASs should be demolished (buildings 3052 – 3055 and 3036 – 3042 inclusive)<sup>79</sup>;
  - 13 HASs should be monumentalised (buildings 3010 – 3014 inclusive, 3022, 3024 – 3027 inclusive, 3033 – 3034 inclusive and 3056)<sup>80</sup>; and

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<sup>76</sup> Letter dated 17 December 2007, CD 78

<sup>77</sup> NB Whilst NOC formally applies for permission for B8 use for each of these buildings, it does not propose to use 2 of the HASs in the Quick Reaction Alert Area, i.e. 3008 and 3009, but will instead keep them permanently in nil use to enable the public to visit them as part of the proposed heritage tours: see cross examination of Mr Dobson by EH and, subsequently, Action HC2 of the Heritage Centre Management Plan at Appendix 1 of the s.106 Obligation (Document 6).

<sup>78</sup> Buildings 3052 – 3055 will be in nil use but will form central features of the proposed "Cold War Heritage Park": see drawing N.0111\_22-1L.

<sup>79</sup> CD44 page 44 paragraph 5.3.2 in the 2<sup>nd</sup> capitalised paragraph and under the heading "Area 5D1" and figure 7 on page 39 showing, inter alia, "Buildings of national significance to be demolished, footprint retained".

<sup>80</sup> CD 44 page 44 paragraph 5.3.2 and Figure 8 on page 46 - showing, inter alia, "Unlisted buildings of national significance to be monumentalised".

- The remaining 32 HASs can be retained in low key storage use “as necessary to fund the management of the site, subject to stringent criteria”<sup>81</sup>.

11.13 Before turning to the detail of NOC’s proposals for the HASs and the Council’s position as set out in the RCPB, it is important to note that it is common ground between all parties to the Inquiry that all 56 HASs are nationally important buildings which make a positive contribution to the character and appearance of the Conservation Area<sup>82</sup>. That is the starting point for the assessment of any proposals for their demolition.

The proposed B8 use of 43 of the HASs<sup>83</sup>

- 11.14 National Planning Policy strongly supports the re-use of historic buildings: see for example PPS1 paragraphs 4 and 5, PPG 15 paragraph 3.8 and PPG16 paragraph 8.
- 11.15 Each of the 43 HASs proposed by NOC for active B8 use is capable of re-use.
- 11.16 EH considers that the proposed B8 use of these buildings would be acceptable in planning terms subject to the imposition of a robust mechanism to ensure that the uses would not harm the character and appearance of the Conservation Area. EH considers that the Base Management Plan<sup>84</sup>, coupled with the proposed conditions<sup>85</sup>, provides such a mechanism.
- 11.17 It should also be noted that the RCPB says that “most buildings [on the wider flying field] have no services or drainage and would not provide a suitable working environment”<sup>86</sup>. Thus the nature of the buildings

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<sup>81</sup> See CD 44 at page 43 paragraph 5.3.1. The “stringent criteria” are set out in paragraph 5.5.1 on page 50.

<sup>82</sup> It is necessary to note that the 2007 RCPB does not list the HASs as making a positive contribution to the Conservation Area: see CD 44 page 5 at paragraph 2.4.1.5. They are however listed as making such a contribution in the Conservation Area Appraisal: see CD 57 page 43-4 at paragraphs 8.2 – 8.2.1. No explanation was sought or offered as to the cause of this difference but CDC accepted in cross examination that the HASs do make a positive contribution to the character and appearance of the Conservation Area.

<sup>83</sup> 45 HASs are proposed for B8 use (see Land Use Plan N.0111\_22-1L, but 2 of these (buildings 3008 and 3009, in the QRA) are to be kept empty to allow the proposed heritage tours to visit them: see Action HC2 of Heritage Centre Management Plan at Appendix 1 of the s.106 Obligation.

<sup>84</sup> Appendix 2 of the s.106 Obligation

<sup>85</sup> EH notes the Secretary of State’s policy, set out at paragraphs 12-13 of Circular 11/95 that conditions should be used in preference to s.106 obligations where both mechanisms would meet a planning objection equally well. EH considers that there would be greater scope for the use of conditions in this case than has been proposed by NOC, but is content that the end product provides a workable and appropriate mechanism to control the planning harm that would otherwise arise. EH consider that the mediation mechanisms contained in the s.106 Obligation are of particular importance here given the very clear differences of approach and opinion between CDC and NOC in particular.

<sup>86</sup> CD 44 at page 51 paragraph 5.5.2 (1<sup>st</sup> sub-paragraph after the capitalised text).

themselves will act as an additional restraint on the type and extent of the operations that can be take place within the buildings.

The RCPB's requirement for "monumentalisation"

- 11.18 The RCPB requires 13 of these HASs to be "monumentalised", i.e. permanently mothballed in nil-use<sup>87</sup>.
- 11.19 Plainly, NOC's proposals do not accord with the requirements of the RCPB in this regard.
- 11.20 The Council considers that the scheme should be refused because it is not in compliance with the RCPB.
- 11.21 EH considers that the scheme's non-compliance with this aspect of the RCPB does not warrant the refusal of permission.
- 11.22 This is because, as all parties agree<sup>88</sup>, all of these buildings are nationally significant buildings which are capable of re-use. It follows that the RCPB's requirement does not accord with PPG15<sup>89</sup>, which strongly encourages the re-use of historic buildings. The re-use will be adequately controlled: see the draft conditions and the s.106 Obligation. In short, there is no good reason why they should be mothballed. EH therefore concludes that the scheme's non-compliance with this aspect of the RCPB<sup>90</sup> could not properly justify the refusal of the scheme.

Demolition of the NW and SE HASs

- 11.23 The procedural background to this issue needs a little explanation.
- 11.24 In its previous application for the site (the now withdrawn "first application"<sup>91</sup>) NOC proposed the demolition of the four NW HASs (buildings 3052-3055 inclusive) and the demolition of the seven SE HASs (buildings 3036-3042 inclusive).
- 11.25 NOC also sought the necessary Conservation Area Consents for the demolition of each of these 11 HASs.
- 11.26 NOC subsequently appealed against the Council's non-determination of the first application and its non-determination of each of these 11 Conservation Area Consent applications<sup>92</sup>.
- 11.27 EH strongly objected to the proposed demolition of these nationally significant structures, all of which make a clear-cut positive contribution to the character and appearance of the Conservation Area<sup>93</sup>.

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<sup>87</sup> See the 2007 Revised Comprehensive Planning Brief (CD44) on page 44 at paragraph 5.3.2 and (e.g.) figure 8 on page 46.

<sup>88</sup> This was accepted by the Council in cross examination; see also the RCPB at CD 44 at page 43 paragraph 5.3.1 in respect of the re-use of 32 of the HASs.

<sup>89</sup> The Council accepted this to be the case: see cross examination of Dr Edis by NOC.

<sup>90</sup> I.e. the requirement that 13 HASs be monumentalised (CD 44 page 44 paragraph 5.3.2 in the 2<sup>nd</sup> capitalised paragraph and under the heading "Area 5D1" and figure 7 on page 39 showing, inter alia, "Buildings of national significance to be demolished, footprint retained").

<sup>91</sup> Ref 07/02291/OUT

<sup>92</sup> Appeals E/08/2069351, 53, 60, 63, 65, 66, 69, 71, 75, 76, 77.

<sup>93</sup> EH letter dated 17 December 2007 at CD 78

- 11.28 NOC changed its proposals in the light of EH's objection.
- 11.29 In the second application (i.e. the lead appeal currently before the Secretary of State<sup>94</sup>) all 11 HASs are to be retained<sup>95</sup>.
- 11.30 NOC's appeal against the Council's non-determination of the first application was withdrawn before the start of the Inquiry.
- 11.31 Strangely, however, NOC continued with its appeals against the Council's non-determination of the CAC applications before finally withdrawing all 11 CAC appeals by letter dated 15 October 2008, submitted to the Inquiry the following day.<sup>96</sup>
- 11.32 The question that falls to be determined is whether the proposal to retain the 11 HASs is acceptable in planning terms.
- 11.33 The RCPB requires each of the 11 HASs to be demolished<sup>97</sup>.
- 11.34 However, it is now clear that the RCPB conflicts with the Secretary of State's clear policy on the demolition of buildings that make a positive contribution to the character and appearance of a conservation area, as set out in paragraphs 4.27 and 3.16-3.19 of PPG15.
- 11.35 This is because:
- (a) It is common ground that all of the 11 HASs make a positive contribution to the character and appearance of the Conservation Area;
  - (b) Paragraph 4.27 of PPG15 provides that the demolition of unlisted buildings that make a positive contribution to the character or appearance of a Conservation Area can only be sanctioned following consideration of the tests set out in paragraphs 3.16 – 3.19 of PPG15;
  - (c) It is common ground that the requirement in the RCPB for the demolition of the NW and SE HASs was adopted without any proper consideration of the tests set out in paragraphs 3.16 – 3.19 of PPG15;
  - (d) No analysis has been put forward in evidence by any party to the Inquiry that could be said to come close to addressing the issues set out in paragraphs 3.16 – 3.19 of PPG15. In particular:
    - i. Paragraph 3.17 of PPG 15 makes clear that consent should not be given for the demolition of any building which makes a positive contribution to the character or appearance of a conservation area without clear and convincing evidence that all

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<sup>94</sup> ref 08/00716/OUT

<sup>95</sup> See Drawing N.0111\_22-1L

<sup>96</sup> Letter from Mervyn Dobson of Pegasus Planning Group, to Sian Evans of PINS dated 15 October 2008. The letter also withdraws CAC Appeal E/08/2069378 relating to Building 3024 (situated immediately adjacent to the SE HAS group).

<sup>97</sup> CD 44 page 44 paragraph 5.3.2 (NW HASs) and page 45 paragraph 5.3.3 (SW HASs).

reasonable efforts have been made to sustain the existing uses or find viable new uses, and these efforts have failed. No such evidence has been provided to the Inquiry;

- ii. With regard to paragraph 3.19(i) of PPG15, there is no reason in principle why the 11 HASs could not be re-used and all the buildings are all in a condition that would allow their re-use. Indeed, three of the SE HASs are currently in use<sup>98</sup>;
- iii. With regard to paragraph 3.19(ii) of PPG15, NOC propose that the NW HASs should stand as central features of the proposed Cold War Park. There will be no access to the HASs<sup>99</sup>. So, whilst the HASs will not themselves be put in active use they will be an important part of the proposals to allow increased public access to the site;
- iv. With regard to the SE HASs, NOC do not propose any use for these buildings but there is no evidence whatsoever that suggests "real efforts have been made without success to ... find compatible alternative uses for the building". Indeed, as stated above, three of the SE HASs are currently in active economic use<sup>100</sup>.
- v. With regard to paragraph 3.19(iii) of PPG15 it could not realistically be said that the demolition of any of the 11 HASs could be said to bring with it "substantial benefits for the community" so as to justify such an exceptional course of action. NOC previously proposed the demolition of these buildings on landscape grounds, but EH considers that the landscape benefits that would result from the destruction of these buildings are at best slight. Such improvements as would arise could not properly be taken to justify the demolition of these nationally important structures.
- vi. It is of course true that the NW HAS can be seen from a number of vantage points outside the CA. But any understanding of the significance of these views must be reached in the context of the fact that the NW HASs are nationally significant buildings which make a positive contribution to the Cold War character and appearance of the conservation area and the NW HASs stand in an area which "has a distinct and identifiable landscape

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<sup>98</sup> See paragraph 4.3 of Proof of Richard Brown (Paragon)(PRB1 and Plan at Appendix PRB2).

<sup>99</sup> Drawing N.0111\_22-1L shows them in nil use; Paragraph 3.1 of the Heritage Centre Management Plan (Appendix 1 of the s.106 Obligation) states that the 4 HASs in the Cold War Park "will not themselves be open for public access".

<sup>100</sup> See PRB1 page 7 paragraph 4.3 and Appendix 1 showing the use of buildings 3038, 3039 and 3040. See also Mr Brown's proof at page 36 paragraph 7.9: "The quality and type of hangar buildings that are available also suits the business very well providing large open plan and secure buildings at affordable rental levels".

character which contributes to the sum character of the military site" and which is "crucial to the functioning of the site"<sup>101</sup>.

- vii. It follows that the views of the NW HASs from outside the site are views of buildings which are an integral part of the distinct and powerful Cold War landscape which is central to designation of the Conservation Area. The desirability of preserving or enhancing views into Conservation Areas is a material planning consideration: see PPG15 paragraph 4.14. Views of the Conservation Area from outside the site would be significantly harmed in the event that the NW HASs were to be demolished.
- viii. With regard to the Council's argument that the NW HASs are harmful in terms of their impact on views from outside the site, EH relies on the evidence of Dr Masters, who analyses the impact of these structures in short, medium and long range views, and who comments on the likely efficacy of landscape planting<sup>102</sup>.
- ix. The extent of any landscape improvements needs to be judged against the harm that would be caused as a result of the demolition. There is no evidence before the inquiry to suggest that the landscape benefits could properly be justified as "substantial" in the terms envisaged by paragraph 3.19(iii) of PPG15 such as to override the presumption against the demolition of these buildings that all parties agree is established by paragraph 4.27 of PPG15. Indeed, Mr Goodrum conceded under cross examination that the landscape benefits resulting from the demolition of the NW HASs would not be substantial. There is therefore no proper basis on which to conclude that the demolition could be justified by reference to the tests set out in paragraph 3.16 – 3.19 of PPG15.
- x. With regard to the SE HASs, the justification put forward by the Council is that these structures would have an unacceptable impact on the "interface"<sup>103</sup> between the flying field and the new residential areas. No real explanation was given as to what was meant by this concept. It is difficult to understand because the residential units that will be nearest to the SE HASs will be the already extant "tobacco" houses<sup>104</sup>, i.e. there will be no change in the "interface" (if this is what is meant by the term).
- xi. The Council also argues that the demolition of the SE HASs would enhance views into the site. But demolition would harm views of the Conservation Area. EH refers again to the

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<sup>101</sup> Conservation Area Appraisal (CD 57) at page 4 left hand column.

<sup>102</sup> See Document EH PM1 at paragraphs 4.5 – 4.12 (impact) and paragraphs 5.1 – 5.3 (planting).

<sup>103</sup> Document CDC JE1 pages 30-31 and paragraph 5.27 in particular.

<sup>104</sup> See Area 7 on the "Built-Form Masterplan of Settlement Area" (Drawing number 1135-045 Rev. N)

desirability of preserving external views of Conservation Areas<sup>105</sup>.

xii. Finally, with regard to the NW HASs and the SE HASs, there is general agreement that external views of these buildings would be screened within about 20 years<sup>106</sup>. It follows that, even ignoring the Secretary of State's policy as to the importance of preserving views into Conservation Areas<sup>107</sup>, any landscape harm that is caused by these nationally important buildings will diminish to nothing within a relatively short period of time.

(e) It follows that it would have been flatly contrary to national policy as set out in paragraphs 4.27 and 3.16 – 3.19 of PPG15 to have allowed the CAC appeals that sought authorisation for demolition of the NW and SE HASs. NOC's withdrawal of these CAC appeals was made in recognition of this.

(f) It also follows that it would be flatly contrary to the same paragraphs of PPG15 to cite non-compliance with the RCPB's requirement for demolition of the NW and SE HASs as a reason for refusal of the appeal scheme.

11.36 The Cold War Park. NOC proposes that the 4 NW HASs should be retained in nil use as central features of a "Cold War Heritage Park"<sup>108</sup>. EH is content with the proposals for the "Cold War Park", the precise details of which will be agreed pursuant to Action PA6 of the Base Management Plan<sup>109</sup>.

11.37 The South East HASs. No use is currently proposed for the SE HASs. EH does not object to the fact that no use has currently been identified for these buildings, but it must be noted that the proposed use of the area between the SE HASs for car storage effectively precludes their use for any other purposes.

#### Demolition of the Perimeter Fence

11.38 There are in fact no appeals before the Secretary of State relating to the demolition of the Perimeter Fence. This is because CDC has already approved each of the four applications made by NOC in this respect. The applications are:

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<sup>105</sup> PPG15 paragraph 4.14

<sup>106</sup> (a) Landscape Statement of Common Ground (Document 4d) at paragraph 8 for growth rates on the northern boundary; (b) the June 2008 ES Section 14 photomontage sheets 5A/9, 7A/9 and 6A/9, read together with Mr Cooper's "Errata" document JC8; and (c) with regard to the SE HASs only, the photomontages agreed between Mr Goodrum and Mr Cooper showing viewpoints 36a, AD1, and 25b, handed in to the inquiry on 16<sup>th</sup> October 2008 (Document NOC JC7).

<sup>107</sup> PPG15 paragraph 4.14

<sup>108</sup> See Drawing N.0111\_22-1L; and replacement page 52 of the Design and Access Statement submitted to the Inquiry by NOC on 15.10.08 and Plan L10B at Appendix 3 of Mr Cooper's rebuttal evidence.

<sup>109</sup> Appendix 2 of the s.106 Obligation

		<b>EH position</b>
07/02381/CAC	Tab 85	Content
07/02380/CAC	Tab 86	Content
07/02382/CAC	Tab 87	Concern
07/02383/CAC	Tab 88	Concern

- 11.39 The effect of these consents, if implemented, would be to remove a large part of the fence<sup>110</sup>.
- 11.40 EH was not consulted on the CAC applications relating to the demolition of the fence.
- 11.41 EH's position is that it would not object to the removal of the fence in the following locations:
- around the western end of the runway<sup>111</sup>;
  - to the south of the new residential area to the south of Camp Road<sup>112</sup>; and
  - to the east of the technical area, between Camp Road and the Tanker Storage Area<sup>113</sup>.
- 11.42 The removal of these parts of the fence would bring with it substantial benefits, particularly in terms of improvements to the existing outlook from Upper Heyford.
- 11.43 NOC has undertaken not to implement the Conservation Area Consents to the extent specified in schedule 16 of the s.106 Obligation<sup>114</sup>. This corresponds precisely with EH's position set out in paragraph 11.41 above and EH welcomes this undertaking.
- 11.44 NOC proposes to remove all the razor wire from the top of the fence around the entire site, except around the northern bomb stores and the QRA<sup>115</sup>. Again, this is acceptable to EH.
- 11.45 In contrast, the RCPB seeks the removal of almost all the perimeter fence<sup>116</sup>. Under its provisions, the only part of the fence that would remain would be the external fencing along the outside edge of the northern bomb stores<sup>117</sup>.

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<sup>110</sup> CAC consents 07/02380, 81, 82 and 83: see summary at page 9 of Mr Dobson's Appendix 1 and accompanying plan.

<sup>111</sup> Approved under CAC ref 07/02380/CAC: see application documentation at tab 86 of Vol 6 of the 2007 Application Documentation, the summary of CACs granted at page 9 of Mr Dobson's Appendix 1 and accompanying plan.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Section 106 Obligation: Schedule 16 and Plan NO111\_72-1C

<sup>115</sup> Ibid.

<sup>116</sup> CD 44 figure 7 on page 39

<sup>117</sup> CD 44 figure 8 on page 46

- 11.46 EH considers that the removal of the fencing as proposed in the RCPB would be materially harmful to the character and appearance of the conservation area.
- 11.47 The fence contributes very significantly to the Cold War character and appearance of the Conservation Area. It goes without saying that it was essential to the security of the base and that it gives the Conservation Area much of its hostile appearance, physically dividing the base from the very different surrounding landscape.
- 11.48 It follows that it would be wrong, in EH's submission, to refuse permission for the appeal scheme on the basis that it does not include the demolition of the fence as envisaged by the RCPB.

#### Fencing within the site

- 11.49 NOC proposes to divide the "new settlement area" from the flying field by the erection of new fencing / panelling<sup>118</sup>.
- 11.50 EH considers that this is acceptable, subject to the approval of the detailed design of the fencing. This can be secured by condition.
- 11.51 EH is concerned about the possibility of fencing being erected across the eastern end of the runway in connection with the reinstatement of the Aves Ditch footpath (for which see below).
- 11.52 EH is similarly concerned about the proposal to enclose the proposed 17ha Paragon car staging area with a "security barrier"<sup>119</sup>. The details of the barrier are unknown but its effect would be to subdivide the flying field, such subdivision being harmful to the flying field's essential characteristic, i.e. its openness<sup>120</sup>.

#### Public Access

- 11.53 Public access to the site can be divided into 3 issues:
- (a) Rights of Way;
  - (b) Cold War Park; and
  - (c) Museum.
- 11.54 With regard to *rights of way*, EH is content with the proposals to reinstate Portway, both in terms of its alignment and in terms of the proposed means of enclosure.
- 11.55 EH considers that the Aves Ditch "optional route" is preferable to the route that would go straight across the runway<sup>121</sup>. This is because the "optional route" would give walkers a view along the full length of the runway from an elevated viewing platform and avoids the need to erect two lines of fencing across the runway. Again, the proposal to erect two lines of fencing across the runway is harmful to the openness of the flying field, its essential characteristic. EH acknowledges that the route across the runway

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<sup>118</sup> Plan L10B at Document NOC JC5 Appendix 3.

<sup>119</sup> See Document NOC JC8 (letter from Drivers Jonas dated 15 October 2008 to Mervyn Dobson, Pegasus Planning).

<sup>120</sup> See e.g. conclusions of Inspector Yuille at CD 49 paragraph 10.

<sup>121</sup> Plan L10B at Appendix 3 of Mr Cooper's JC6.

corresponds to the original route of the footpath but refers to its "Conservation Principles Policies and Guidance" (CD 72) which provides at paragraph 121 that:

"Sometimes, the action necessary to sustain or reinforce one heritage value can be incompatible with the actions necessary to sustain others. Understanding the range, inter-relationships and relative importance of heritage values associated with a place should establish priorities for reconciling or balancing such tensions".

11.56 The same document defines "restoration" as "intervention with the deliberate intention of revealing or recovering a known element of heritage value that has been eroded, obscured or previously removed, rather than simply maintaining the status quo"<sup>122</sup>. That definition would obviously apply to the restoration of the heritage value of Aves Ditch, a route along a historic boundary. The Guidance goes on to say:

"Restoration to a significant place should normally be acceptable if ... the heritage values of the elements that would be restored decisively outweigh the values of those that would be lost".

11.57 Given the availability of the alternative route, and given the harm that would be caused to the openness of the runway, it could not be said that the reinstatement of the Aves Ditch route across the runway would "decisively outweigh" the values that would be lost, most obviously the openness of the runway.

11.58 As stated above, EH welcomes the proposals for the Cold War Park.

11.59 The Museum is also to be welcomed in principle. EH is content with the delivery mechanism set out in the Heritage Centre Management Plan<sup>123</sup>.

#### Car staging

11.60 NOC proposes to use the land shaded blue on drawing L10B<sup>124</sup> for car staging.

11.61 EH considers that the proposed use would be materially harmful to the character and appearance of the Conservation Area.

11.62 The essential characteristic of the military landscape at Upper Heyford is its openness. This is agreed by all parties to the Inquiry and is confirmed by Inspector Yuille in the recent Walon appeal<sup>125</sup>:

"Despite the presence of numerous big, forbidding military buildings, the defining characteristic of this Cold War landscape, a characteristic that the Conservation Area seeks to preserve or enhance, is its openness".

11.63 The taxiways played a crucial role in the functioning of the airfield<sup>126</sup> and were kept open at all times. This can most easily be seen from the photographs of the operational airbase provided by Dr Barker<sup>127</sup>.

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<sup>122</sup> CD 72 at paragraph 127.

<sup>123</sup> S.106 Obligation: Document 6 Appendix 1

<sup>124</sup> Plan L10B at NOC JC5 Appendix 3

<sup>125</sup> CD 49 at paragraph 10.

11.64 Car staging at Upper Heyford has been considered on a number of occasions already. It is of course true that the areas under consideration were different to that now proposed, but it is fanciful to argue, as NOC has attempted to do, that these previous considerations are of no relevance now. Every assessment that has previously been undertaken has concluded that car staging is harmful<sup>126</sup>. Of these, the most relevant is Inspector Yuille's assessment in respect of the recent Walon appeal<sup>129</sup>. The area under consideration even included a small part of the area currently proposed for Paragon's car staging use<sup>130</sup>. The Inspector concluded that:

"The presence of large areas of closely packed ranks of cars parked on the tarmac between the buildings – together with the associated security fencing, signage and lighting – gives the area a cluttered, provisional appearance that is out of keeping with the stark, austere sense of military order and openness that would provide intended setting of the Avionics Building – a Scheduled Ancient Monument next to the site. To my mind, the continued use of this large area of land for the open storage of cars would neither preserve nor enhance the character or appearance of the Conservation Area nor would it safeguard the setting of the Ancient Monument"<sup>131</sup>

11.65 It is of course true that the setting of the Avionics Building is no longer in issue, but the conclusions as to the harm to the character and appearance of the Conservation Area remain entirely valid. Similarly, Inspector Morden's conclusions as to the impact of car staging on a smaller area elsewhere on the site remain directly applicable here<sup>132</sup>:

"From what I saw on site the use neither conserves nor enhances the Conservation Area; it has a materially harmful effect on its character and appearance and is contrary to the objectives of the relevant policies in the Development Plan. The large area given over to open storage is clearly contradictory to the objective of conserving the open nature and character of the Conservation Area".

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<sup>126</sup> Cooper cross-examination by EH and (e.g.) Figure 7 of the Conservation Plan (CD 64)

<sup>127</sup> See photos 6, 15, 16, 23, 26, 30 and 31 at Document EH NB1 Appendix 1. NOC suggested to Dr Barker in cross examination that photograph 16 provided "clear evidence" that vehicles were parked on the taxiways when the base was operational. In fact, photograph 16 dates from 1999, when the base was closed. It demonstrates the impact of car storage on the taxiways, and can be compared with photograph 26 which shows the same area being crossed by a fighter plane. There is in fact no evidence at all that the taxiways were ever used for any storage or parking of any vehicles when the base was operational.

<sup>128</sup> See e.g. the Conservation Plan Vol 1 at CD 64 page 92 paragraph 5.6.1; the Inspector's Report and Secretary of State's Decision into application 00/02291/OUT at CD 48 paragraph 10.35; the Inspector's Report into the Walon appeal at CD 49 paragraph 10-11; and the Inspector's Report at CD 50 paragraphs 8-9.

<sup>129</sup> CD 49 at paragraph 11

<sup>130</sup> See NOC JC2 at document "Paragon L9" and compare "Walon Application Car Processing Area" with "2008 Application Car Processing Area, Plan L10B".

<sup>131</sup> The Walon appeal concerned 15ha of car storage (CD 49 at paragraph 3), whereas the Paragon site is larger at 17ha.

<sup>132</sup> CD 50 at paragraph 9. The area in question is shown on the plan attached to the decision letter (the area is between HASs 3015 – 3023 in the squadron group to the east of the QRA)

11.66 Dr Barker's unchallenged assessment is that:

"Central to the sense of military landscape is the runway and its associated taxi-ways which provide the open and ordered character of the flying field and are key features of the conservation area"<sup>133</sup>.

11.67 Further, whilst it is accepted that the southern part of the flying field has less coherence than the more open areas to the north, it is equally common ground that the sum historic character or Upper Heyford is greater than a collection of parts "as each area within the airbase is crucial to the functioning of the site"<sup>134</sup>. NOC's argument that the proposed vehicle staging area is somehow less important than the remainder of the Conservation Area must be considered in the light of the agreed position.

11.68 The validity of NOC's position with regard to the harm that would be caused to the character and appearance of the Conservation Area is best revealed by an analysis of Mr Munby's evidence. He dealt with this issue very briefly at paragraphs 6.3.8 and 6.3.9 of his proof. The following points may be made in respect of the points made in these paragraphs of Mr Munby's evidence:

- (i) Mr Munby's argument that "any impact" will be contained to areas of "Medium and Lower Significance" is manifestly wrong. It is directly contrary to Mr Cooper's evidence. Mr Cooper's analysis shows harm to views from areas of national significance. To take an example, Mr Cooper concludes that there will be long term harm to views from the southern taxiway to the west of the proposed vehicle processing area, such views being taken from an area of national importance<sup>135</sup>. There are also close range views of the car staging from around the listed control tower, situated within the historic core of the site, and longer-distance views from the main runway.
- (ii) Mr Munby then says that "the open character of the flying field will not be obstructed" and that "this use does no harm to those parts of the Conservation Area in which it is proposed". It goes without saying that this is manifestly wrong. In cross examination by CDC Mr Munby suggested that the openness of the CA would be preserved because there would be views over the top of the vehicles. This is, frankly, an absurd position to adopt. The southern taxi-way forms an integral part of the flying field and the proposal to pack it with closely-ranked<sup>136</sup> parked vehicles surrounded by a security barrier will very obviously obstruct its openness to a very significant degree. The openness of this 1km stretch of taxiway will be entirely destroyed.
- (iii) Mr Munby then argues that the use has "no permanent physical effect on the character and appearance of the Conservation Area and a temporary effect that is minimal or neutral". This ignores the fact that NOC seeks a permanent permission for the Paragon car staging use,

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<sup>133</sup> Document EH NB1 page 53 paragraph 10.6

<sup>134</sup> Conservation Area Appraisal, CD 57 page 4 paragraph 2.1.2 (2<sup>nd</sup> paragraph).

<sup>135</sup> See e.g. viewpoint 16 at Document NOC JC2 "Paragon L3" which is in an area of national significance – for which see Figure 18 at Volume 2 of the Conservation Plan (CD 64).

<sup>136</sup> NOC's reluctance to face up to the reality of the Paragon proposals was most vividly demonstrated by Mr Cooper's refusal to accept that it even involved "ranks" of cars (see cross examination by CDC). It plainly does, as recognized by Inspector Yuille: CD49 paragraph 11.

which will comprise 17 ha of open car storage, together with its associated infrastructure (security fencing, lighting etc). The physical manifestations of the use will obviously have a permanent adverse effect on the character and appearance of the Conservation Area. Mr Munby's assessment that the impact will only be temporary is simply nonsensical.

- (iv) Finally, Mr Munby argues that "any negative effects from this proposed use ... would be outweighed by the general improvement from providing a sustainable future for the historic Cold War flying field". First, none of the wider proposals could be said to mitigate the harm caused by the car staging<sup>137</sup>. Second, there is no evidence that the flying field is unlikely to have a sustainable future absent the car staging. Third, the proposals for the re-use of the buildings on the wider flying field would not enhance the character and appearance of the Conservation Area – they would only preserve it. This was the view advanced by both Mr Dobson and Mr Munby under cross examination by CDC<sup>138</sup>. It must follow, in EH's view, that taken as a whole the scheme harms the character and appearance of the Conservation Area by reason of the inclusion of the car staging. The test is whether the character and appearance of the Conservation Area, taken as a whole, is preserved or enhanced. Plainly, in circumstances where no-one suggests that any aspect of the scheme will enhance the character and appearance of the CA, the introduction of a harmful use (the vehicle processing) means that overall the character and appearance of the CA will be harmed.

11.69 The proposed Paragon processing area forms part of the nationally-significant core of historic landscape<sup>139</sup>. The majority of the site comprises the southern taxi-way, a crucial component of the flying field's functionality. It also includes the area between the SE HASs and the buildings of the former Victor Alert Area. To pack this area with closely-parked ranks of vehicles is, inescapably, seriously harmful to the character and appearance of the conservation area. The Inspector and the Secretary of State are respectfully asked to prefer the overwhelming evidence against the position adopted by NOC on this matter.

11.70 Added to this harm is the harm caused by the visual impact of the car staging. EH does not challenge the methodology or findings of Mr Cooper's analysis of this issue, but the following points need to be made:

- (i) Mr Cooper's analysis assumes that the area in question will be used for the staging of vehicles of no more than 1.45m in height (taken to be the height of a saloon car). Plainly, the use involves the parking and use of other significantly taller vehicles, including vans and transporters<sup>140</sup>;

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<sup>137</sup> Cooper cross-examined by EH

<sup>138</sup> Mr Munby's view with regard to the impact of the new "low-key" uses across the flying field was that whilst the character of the flying would change, it would not be a material change. He did not come close to suggesting it would be an enhancement. Similarly, Mr Munby argued that the re-use of the buildings across the flying field would not change the character of the Conservation Area, i.e. he argues that the re-use of the buildings scheme will not harm the character of the CA, a view with which EH concurs.

<sup>139</sup> See Figure 19 of Vol 2 of the Conservation Plan at CD 64

<sup>140</sup> See NOC JC8, letter from Drivers Jonas to Mervyn Dobson dated 15 October 2008

- (ii) Mr Cooper's analysis takes no account of the impact of the external lighting that will be introduced as part of the proposals<sup>141</sup>.
- (iii) Mr Cooper's analysis takes no account of the impact of the proposed security barrier which will enclose the external processing area, the design of which is unknown<sup>142</sup>.
- (iv) Mr Cooper's analysis takes no account of the fact that buildings 2001 – 2009 are to be used as part of the Paragon operation<sup>143</sup>. These are the "open-ended" / "non-hardened" hangars within the Victor Alert Area.

- 11.71 The Inquiry has only the most general information as to how these important matters would manifest themselves on the ground (and none in relation to the new security fence).
- 11.72 What is known, however, is that the car staging will impinge substantially on important views.
- 11.73 The western end of the car processing area will extend right up to the main access point to the flying field from the new settlement area: see Plan L10B<sup>144</sup>. Thus the car staging will be in full view of all those who approach the flying field along this limb of the Trenchard Trident. NOC sought to play down the extent of visibility, suggesting initially only that it would be "almost inevitable that the car staging would be visible": see cross examination of Dr Barker by NOC. The reality is that it would be impossible to miss the ranks of vehicles that would extend right up to the access point to the flying field. Those greeted on their entry to the flying field by a wall of closely parked vehicles guarded by a security barrier would include all those accessing the flying field for work purposes (whether in a vehicle, on a bicycle or on foot) and all those being taken round the site on the proposed heritage tours<sup>145</sup>. Members of the public using the proposed "Heyford Trail"<sup>146</sup> would also have their views through to the flying field curtailed. The notable "views out" recorded in the Conservation Plan<sup>147</sup> would be very seriously harmed. Without the cars, those entering the flying field would have an uninterrupted view right along the southern taxiway and out onto the flying field towards the eastern end of the runway. The operation would be visually harmful and the removal of this openness would be materially adverse to the character and appearance of the conservation area.

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<sup>141</sup> Cooper cross examined by EH; and cf JC7 item (c)

<sup>142</sup> Ibid

<sup>143</sup> The use by Paragon of buildings 2001-2009 for a B8 use was confirmed by Mr Dobson under cross examination by EH. Mr Cooper's visual assessment was limited to the use of the area edged blue on Plan L10B (Appendix 3 to JC6)

<sup>144</sup> L10B is to be found at Appendix 3 of Mr Cooper's Rebuttal (JC6). It must be noted that the indicative access route, shown as a thick dashed line running from Camp Road through to the southern taxiway, does not actually follow the line of the road on the ground. This can easily be seen by cross referencing L10B with the "Built-Form Masterplan of Settlement Area" (Drawing number 1135-045 Rev. N).

<sup>145</sup> See Heritage Management Plan (at appendix 1 to the s.106 obligation): Action HC2 and drawing N0111-79-1b.

<sup>146</sup> As shown in the inset on Plan L10B (Appendix 3 to Mr Cooper's rebuttal (JC6), which takes in viewpoint 21 analysed by Mr Cooper in JC2 at document "Paragon L3".

<sup>147</sup> Figure 10 "Visual Analysis of the Technical site and officers' housing" (CD 57, page 26)

- 11.74 The visual harm would also extend westwards along the southern taxiway. Mr Cooper concedes that there would be long term adverse visual impacts from this part of the site<sup>148</sup>. Everyone leaving the site would experience this head-on view of the vehicle staging, extending right across and beyond the full width of the taxiway<sup>149</sup>. The impact of the vehicles would only increase as the viewer's proximity to the processing area increased<sup>150</sup>. This is, of course, to be contrasted with the situation that would result if no vehicles were stored in this area - an uninterrupted view along approximately 1km of open taxiway towards the eastern end of the runway.
- 11.75 The vehicle processing area will also have a detrimental visual impact on the area around the listed control tower, which will be part of the heritage tour<sup>151</sup>. NOC propose to park vehicle transporters in the most westerly part of the vehicle processing area within the Victor Alert Area. These will be clearly visible in close proximity from around the control tower.
- 11.76 The visual impact of the proposed Paragon vehicle processing area would also extend further across the wider flying field and be more detrimental in views than the area proposed for vehicle processing set out in the Council's RCPB<sup>152</sup>. The analysis is set out in Mr Cooper's evidence, subject to the caveats set out in paragraph 70 above.
- 11.77 Finally, EH considers that it would be wrong to weigh the harm caused by the car staging against the benefits of wider public access to the site, as suggested by Mr Cooper in his written evidence<sup>153</sup>. There is simply no evidence to suggest that the wider benefits associated with the scheme could not be brought forward without the vehicle processing. Further, Mr Cooper confirmed that none of the wider benefits (e.g. hedge planting to the south of the new settlement area) mitigated the visual impacts of the vehicle processing.

#### Conclusions for English Heritage

- 11.78 In conclusion, EH's position in respect of the above issues is as follows:
- (a) Demolition of buildings south of Camp Road.  
Buildings proposed for demolition make a positive contribution to the Conservation Area but demolition justifiable by reference to

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<sup>148</sup> See Mr Cooper's analysis of viewpoint 16 on "Paragon L3" in NOC JC2 and page 5 of Appendix 1 to JC2 "Visual Assessment Table".

<sup>149</sup> See photograph from viewpoint 16 at Appendix 2 of JC2. N.B. viewpoint 16 is some 200m from the vehicle processing area, and the evidence is that all users would move from viewpoint 16 towards the vehicles before exiting the flying field immediately adjacent to the western end of the processing area. As to the width of the processing area see Plan L10B at Appendix 3 of Mr Cooper's JC5.

<sup>150</sup> Mr Cooper's viewpoint 16 is some 200 metres from the western end of the vehicle processing area: see "Paragon L3" and page 5 of Appendix 2 in JC2. All users exiting the flying field would progress eastwards from viewpoint 16 to the top of the Trenchard Trident, immediately adjacent to the vehicle processing area.

<sup>151</sup> See Heritage Management Plan (at appendix 1 to the s.106 obligation): Action HC2 and drawing N0111-79-1b

<sup>152</sup> See figure 6 at page 26 of the RCPB (CD44). N.B. It is to be understood that figure 6 is to be preferred to the smaller area shown on figure 4 on page 13 of the same document.

<sup>153</sup> See Document EH NB1 page 23 at paragraph 9.8(viii).

- tests set out in paragraphs 3.16 – 3.19 of PPG 15, as applied by paragraph 4.27 of PPG15
- (b) Demolition of buildings north of Camp Road.  
Buildings make only a little contribution to the Conservation Area, so no requirement under paragraph 4.27 of PPG15 to consider test set out in paragraphs 3.16 – 3.19 of PPG 15.
  - (c) Hardened Aircraft Shelters.
    - (i) Re-use of 43 HASs for B8 use acceptable in light of their heritage importance, the fact that they are all capable or re-use and the strict control mechanism set out in the Base Management Plan;
    - (ii) Council's requirement for monumentalisation of 13 HASs contrary to national policy;
    - (iii) Council's requirement for demolition of NW and SE HASs contrary to national policy;
  - (d) Removal of perimeter fencing  
Acceptable only to the extent proposed in Schedule 16 of the s.106 Obligation
  - (e) Fencing within the appeal site
    - (i) Fencing between New Settlement Area and Flying Field acceptable in principle – detailed design to be secured by condition;
    - (ii) Fencing across runway in connection with reinstatement of Aves Ditch would be harmful. Alternative Aves Ditch route acceptable;
    - (iii) Security barrier around Paragon Car Staging would be harmful.
  - (f) Public Access
    - (i) Reinstatement of Portway acceptable
    - (ii) Reinstatement of Aves Ditch on alternative route acceptable; reinstatement along original alignment harmful because of need for fencing;
    - (iii) Cold War Park acceptable;
    - (iv) Museum acceptable;
  - (g) Car Staging  

Serious harm to the character and appearance of the conservation area. Strong presumption against the grant of permission (for which see below).

11.79 In the light of the above, EH is therefore now able to support the scheme with the exception of the proposed car staging.

11.80 EH considers that the proposed car processing use would seriously harm the character and appearance of the Conservation Area. EH accept, of course, that in exceptional circumstances development may be permitted even where it is visually harmful and/or causes harm to the character or

appearance of the Conservation Area. PPG15 provides at paragraph 4.19 that:

“The Courts have recently confirmed that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though in exceptional circumstances the presumption may be overridden in favour of development which is desirable on the grounds of some other public interest”.

- 11.81 It follows, in EH’s view, that as a matter of policy there is a strong presumption against the grant of planning permission here. EH recognises of course that other material planning considerations may outweigh the desirability (enshrined in statute and policy<sup>154</sup>) of preserving or enhancing the character or appearance of the Conservation Area. EH makes it plain that it has not attempted to strike the overall planning balance here, nor would it be appropriate for it to have done so. It follows that it is ultimately for the Inspector to recommend, and for the Secretary of State to decide, whether there are exceptional circumstances here sufficient to override the strong presumption against the grant of permission. Plainly the harm that is caused to the character and appearance of the CA and the harm caused by the visual impact of the vehicle processing use are both highly relevant material planning considerations which must be taken fully into account in the determination of these appeals<sup>155</sup>.

## 12 The Case for the Oxford Trust for Contemporary History

### Introduction

- 12.1 The lead appeal proposal is not in accordance with the development plan, no reasons have been advanced by the appellant why the development plan should be set aside and there are no other material considerations which favour the grant of planning consent. Accordingly, the appeal should not be upheld. As explained later upholding the appeal may also be unlawful.
- 12.2 The Secretary of State (Secretary of State) should be aware of, and base his decision on the premise, that the former Cold War air base at Upper Heyford is of international heritage importance. He also has what the Trust believes to be uncontested evidence (from the Department of Culture Media and Sport (DCMS)<sup>156</sup>, English Heritage (EH), Dr Edis<sup>157</sup> and the appellant North

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<sup>154</sup> Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and PPG15.

<sup>155</sup> In this regard, it must be noted that, under cross examination by EH, SEEDA withdrew its argument that economic issues are “paramount” here (page 1 of proof of Mrs Griffin, SEEDA’s Senior Regional Planner). Mrs Griffin also withdrew her inappropriate and entirely unsupported allegation that “the harm to the conservation area ... may be exaggerated” (SEEDA JG1 page 3).

<sup>156</sup> email to OTCH of 13<sup>th</sup> October 2006 – OTCH DS1 paragraph 6.09

- Oxfordshire Consortium (NOC)<sup>158</sup> that the air base is not just of international significance but is unique and pre-eminent as a Cold War monument.
- 12.3 The Oxford Trust for Contemporary History (OTCH) was, and remains, very grateful for having been made a 'main party' in recognition of the part that it has played in advancing the case for securing the heritage interest of the Cold War air base over the last 13 years (not least in the adoption of Oxfordshire Structure Plan Policy H2 (OSP H2)).
- 12.4 Mr Munby (appearing for NOC) was asked to explain the change in his approach to the site from when he was involved with Oxford Archaeology in the preparation of the Conservation Plan in 2005 to the present time.
- 12.5 The Conservation Plan had suggested that some demolition of nationally significant buildings could be considered by Cherwell District Council (CDC), one of the parties commissioning the report. Mr Munby said that CDC was '*vociferous about wanting to remove everything*', but that he was now supporting the scheme that retained all the buildings he once thought should be removed.
- 12.6 Mr Munby's explanation was that 'all parties had been involved in a learning and developing process.' This is undoubtedly true for OCC, CDC, NOC and EH, but not in the case of OTCH, who had been the first in 1995 to recognise the international significance of the heritage asset and has consistently since then argued for the conservation of the heritage interest.
- 12.7 Mr Munby also confirmed to the inquiry that all the other parties had moved, and continue to move, towards the position that had been advocated by OTCH. The trust hopes that the case to be presented by NOC on historical and cultural matters does not dissent from this opinion from Mr Munby.
- 12.8 OTCH has attended the whole of the inquiry and has now made every reasonable effort to base these closing submissions on the evidence presented, including that in the application documents (and the very many revisions), the expert proofs of evidence, and the answers given in cross questioning and re-examination.
- 12.9 The case for OTCH remains that set out in the proof of evidence given by Mr. Scharf, together with his 'additional points', personal details, and comments added when giving evidence-in-chief. Although questioned on this evidence, none of this was retracted and clarifications were given in respect of the need for feasibility studies and the requirement within OSP H2 for the new settlement to be enabling development.
- 12.10 In so far as the credibility of the parties and their expert witnesses needs to be taken into account in deciding which course of action being advocated is most reliable and most likely to provide a proper basis for conserving "*...the heritage interest of the site as a military base with Cold War associations to be conserved.*"<sup>159</sup> something more has to be said about the role of OTCH.

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<sup>157</sup> for Cherwell District Council and Oxfordshire County Council per Cross Examination by OTCH

<sup>158</sup> e.g. 3.3 of the North Oxfordshire Consortium (NOC) Management Plan for the Flying Field

<sup>159</sup> OSP H2

- 12.11 Having helped set up OTCH in 1995, and being ‘wished luck’ by English Heritage<sup>160</sup> in his ‘...*efforts to conserve the site,*’ Mr Scharf has been involved at every subsequent stage in the planning process, arguing that Upper Heyford represented the best opportunity for this country (and NATO/EU countries) to explore international Cold War heritage. He and OTCH have watched English Heritage, CDC and OCC gradually shift from their positions of indifference and hostility to a one of some modest support for the conservation of the heritage interest. However, it can readily be seen that none has yet adopted a position which reflects the importance which they all say attaches to the site.
- 12.12 In practice it is the position of NOC and its proposals that stand to be judged by how they harm and do not conserve the heritage interest as required by OSP H2.
- 12.13 The analysis of the evidence given to the inquiry demonstrates that the proposals do no more than satisfy the minimum to persuade English Heritage (EH) to withdraw objections to the application/appeal (only the EH objection to car storage is being maintained). The EH position will be analysed to demonstrate that this is not a reliable measure of the adequacy or acceptability of the proposals in terms of European Conventions, national planning advice or the development plan and, given the importance that EH says attaches to the site, its support for the Management Plan for the Flying Field shows a disappointing poverty of ambition.
- 12.14 It should go without saying, and the point made by Mr Scharf was not contested<sup>161</sup>, that through either Mutually Assured Destruction or Flexible Response, ‘...this is where the world might have ended.’ The challenge facing the Secretary of State is to ensure that whatever decision is reached, it properly reflects the unique importance and potential of a site that represents the best opportunity to remember and understand the most important event in the history of mankind.
- 12.15 This is the context in which the proposals for housing (particularly that to the North of Camp Road), commercial uses (particularly those on the land and in the buildings on the flying field), the extent of demolition (including the perimeter fences and runways) and ecological interest (the protection of ground nesting birds) need to be judged. In considering the relative importance of the houses, the jobs, the birds, the possibility of recreating footpaths or softening the impact of the Cold War air base on the landscape, it should be clear from a reading of both the Inspector’s report and resulting decision letter from the Secretary of State, that precedence and greater weight has been given in every case to the desirability of conserving the Cold War heritage interest. It should be noted at this point that the conservation of the heritage interest is entirely compatible with the provision of about 1000 houses, all with a satisfactory living environment, and an appropriate level of jobs (1300). Additional weight should be given to the evidence given by OTCH that demonstrates how these planning objectives set out in development plan policy OSP H2 can all be achieved.

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<sup>160</sup> Document OTCH DS1 paragraph 5.20 (DS 5.20)

<sup>161</sup> OTCH DS1 paragraph 3.16

- 12.16 The pre-eminent importance of the heritage interest also forms the context in which the adequacy and appropriateness of the NOC heritage 'offering'<sup>162</sup> must be judged.
- 12.17 Prior to the sessions allocated to the discussion of conditions, OTCH tried again to explore the possibility of an agreement between the parties on the conservation of the heritage interest required by OSP H2. The proposition was put to NOC that the main cause of incompatibility between the conservation of the heritage interest and the commercial use of the flying field would be the conflict between visitors on foot or bike and commercial traffic, including LGVs and HGVs. It was suggested to NOC that this could be overcome by time limiting all commercial traffic (not the use of the buildings) to after 5pm and before 10pm thus allowing safe access by visitors during the day. Mr Dobson rejected this suggestion out of hand on grounds of cost. Mr Bull declined to comment and it is particularly disappointing that EH also declined to comment as the suggestion appeared to secure greater level of public access without prejudicing the appropriate commercial re-use of some of the buildings. This suggestion stands as an example of how the objectives in OSP H2 could be made to work when greater priority is given to the heritage importance of the site.
- 12.18 As well as seeking to advance arguments in favour of protecting the heritage interest of the site in accordance with policies at international, national and local levels, OTCH has been involved in the application and appeal/inquiry to explore every opportunity to broker agreement between the parties to see whether a conditional permission could be granted. Now, at the end of an inquiry and a year since OTCH first wrote to NOC and CDC regarding the current proposals (e.g. the deficiencies of the description of the development and the absence of reference there to any change of use of the Flying Field including for heritage purposes) it is very disappointing that there is no way in which OTCH could even begin to support the appealed proposals. In fact, these submissions explain why the proposals themselves are unacceptable but also how the procedure has failed to protect the interests of the public who are concerned about the future of the site.
- 12.19 Finally, there was the important comment from Cllr Macnamara representing the public, about how inappropriate it seemed to be proposing 'haphazard' commercial use of the flying field that had only been saved from demolition for its heritage potential.

The development plan (Oxfordshire Structure Plan 2016)

- 12.20 The appeals will be decided in accordance with s.38(6) and these submissions will start by addressing the approved structure plan but not the Local Plan which is now of marginal relevance.
- 12.21 In the Flying Field Management Plan prepared by NOC<sup>163</sup>, OSP H2 is described as an 'overarching policy'<sup>164</sup>. There is no basis for placing this policy in a position where it is given any greater weight than any other

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<sup>162</sup> Flying Field and Heritage Centre Management Plans (in Unilateral Undertaking Document 6)

<sup>163</sup> MPFF Version 25

<sup>164</sup> MPFF paragraph 1.3

- relevant development plan policy and this is one of a number of indications which cast doubt on how NOC has addressed the application and appeal.
- 12.22 In deciding this appeal the Secretary of State must first identify all the relevant development plan policies.
- 12.23 Before looking at OSP H2 that specifically applies to the appeal site, it might be helpful to look at OSP EN4 that effectively repeats the advice found in PPG15 in respect of the preservation of the character and appearance of listed buildings and their settings as well as conservation areas and historic landscapes. The Secretary of State will have to consider whether the freight distribution centre and business park being proposed by NOC will be an appropriate setting for the SAMs and Listed Buildings.
- 12.24 OSP EN6 repeats the presumption in PPG16 in favour of preserving in situ nationally and internationally important archaeological remains. Clearly the extent of the demolition of buildings and fences proposed by CDC/OCC is in serious conflict with this development policy.
- 12.25 Whilst neither of these policies are referred to in Mr Dobson's evidence, and do not appear in the list of principal planning policies in the Design and Access Statement (DAS) 6 October 2008 (Appendix A) the Secretary of State must give these development plan policies due weight. He must also consider whether, as a Supplementary Planning Document, the RCPB can be given weight where, as a consequence of the extensive demolition being proposed, it clearly conflicts with the development plan rather than fulfilling the role of SPD in providing detail and amplification.
- 12.26 Again, considering Appendix A and Table A1 of the DAS, NOC includes OSP T4 as a 'principal planning policy' that states: "The carriage of freight by rail, pipeline or other means rather than road will be encouraged. The impact of freight operations on people and the environment will be reduced through partnership arrangements between the County Council and operators – Freight distribution centres will be permitted only if located with good access to the freight networks and in or adjoining a major settlement."
- 12.27 Mr Dobson<sup>165</sup> confirmed that the site is not a "major settlement" and the primary use of the Flying Field as a "Freight distribution centre". The approximate one million square feet of B8 use generating between 500 and over 700 heavy road freight vehicle movements would clearly put the location of Upper Heyford outside policy OSP T4. In attempting to comply with OSP T4 in the DAS, NOC say that: 'The development at Heyford Park will at all stages encourage the use of non-road based carriage where possible.'
- 12.28 No evidence was brought as to what non-road modes could be made available.
- 12.29 The only reasonable conclusion to draw is that the proposals for the internationally *important flying field are contrary to the development plan, whatever conclusion is reached in respect of compliance with OSP H2.*
- 12.30 There are a number of elements to OSP H2 that need examination. They will be dealt with in turn.

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<sup>165</sup> In XX by OTCH

“About 1000 houses”

- 12.31 Although this appeared to be the principal reason for the recovery of the appeal, there does not appear to be any dispute between the developer NOC, the Councils, English Heritage or OTCH on the provision of the 1000 houses referred to in OSP H2.
- 12.32 OTCH has made the point that building about 160 of the 1075 houses to the north of Camp Road would appear to be an unfortunate and unnecessary severance of the new settlement, would intrude into the Cold War landscape and conflict with the retention and possible re-use of existing buildings. It would also affect the setting of Listed Buildings and SAMs contrary to OSP EN4.
- 12.33 While Mr Dobson<sup>166</sup> suggested that relocating these units to the land to the south of Camp Road would give rise to unacceptable densities, he had produced no calculations to show that this would be the case. Mrs Rand, on the other hand, had calculated that there was room for at least another 125 houses in the area that was home to 6000 Americans until 1993.
- 12.34 For NOC Mr West explained<sup>167</sup> that housing was deliberately spread to the north of Camp Road to create a gateway to the new settlement. To OTCH this is another stark reminder of how NOC and CDC (who have not objected to this aspect of the outline application) have elevated the design of the settlement over the unique and pre-eminent Cold War site. In considering the outline housing proposals the Secretary of State is asked by OTCH to prevent a precedent being set for extending new residential development to the north of Camp Road as this would neither conserve the heritage interest nor provide a satisfactory living environment in accordance with OSP H2. Housing in this inappropriate location would, incidentally, require the loss of buildings characteristic of the military site and with potential for future use.<sup>168</sup>

Community opportunities

- 12.35 Briefly, the formal description of the application includes ‘community facilities’, which are described in the DAS (at “2.6.8 Community facilities”) referring to the chapel annex, hardened aircraft shelters being used by a dance company and as a skate park. The DAS goes on to describe nearby opportunities for informal recreation; boating, walking and cycling. On reading the description of the development in the 2007 application OTCH immediately questioned CDC on what provision was being made for the conservation of the heritage interest in terms of the change of use of land or buildings. NOC may argue to the contrary, but it seems that any heritage proposals are outwith the formal scope of the outline/hybrid application as could be understood by the public<sup>169</sup>. The description of the development as advertised to the public would have given no clue about how the heritage interest was to be conserved. Only by examining the plans would the

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<sup>166</sup> In XX by OTCH

<sup>167</sup> Answer to question from Inspector

<sup>168</sup> e.g. subject to feasibility studies, building 300 could be used for heritage purposes or possibly by TVP

<sup>169</sup> see also comments on ‘case –creep’ paragraph 1.21 of Planning for a sustainable future White Paper Cmnd 7120 May 2007 in DS ‘Additional Points’

heritage centre proposal (a community facility) have come to light. Only by attending the whole of the inquiry and reading innumerable versions of management plans<sup>170</sup> and planning obligations, could the public have been made aware of any of the details, including those regarding public access.

### Employment

- 12.36 The type and scale of employment is not specified in OSP H2. The only qualification is that it should be '*appropriate*'. NOC has calculated that about 1250 jobs could be found in the proposed settlement area to both sides of Camp Road. This would include some useful employment opportunities for the residents of the 1000 dwellings and, although it would also be likely to generate significant in commuting,<sup>171</sup> OTCH would not argue that this level of employment in itself needs to be seen as contrary to OSP H2. However, the Secretary of State should resist any claims that jobs should be retained or reasonably need to be created through the use of land and buildings of Cold War heritage interest.
- 12.37 The Secretary of State should also note the unsatisfactory way in which the potential of heritage jobs has been dealt with at the appeal.
- 12.38 The employment statement prepared by Mr Brisbane for NOC specifies 84 heritage related jobs, but without any explanation or analysis. SEEDA appeared at the inquiry to give evidence in support of the proposal to maintain jobs at the former air base, expressing particular concern about possible loss of jobs at Paragon's car storage operation. Remarkably, until being asked the question by OTCH, Mrs Griffin of SEEDA had given no thought to the potential of jobs in heritage and tourism.<sup>172</sup> She said that this was because she had not appreciated that this was part of the application. That is a further reflection of how the Appellant has neglected the heritage importance and potential. Although Mrs Griffin happily accepted that tourism was the largest employment sector in the national economy, no thought had been given to the positive and negative impacts of the NOC proposals on the potential attractiveness of the site to visitors, and the Secretary of State has no evidence on this point.
- 12.39 The evidence of Mr Mackay from SEEDA was also helpful in pointing to the weak position of Cherwell District in respect of tourism. He described tourist facilities in Cherwell as being 'like the hole in the middle of a doughnut.' There were attractions to N, S, E & W but nothing to attract or keep tourists in the Cherwell District. He said that a major tourist attraction "...would be a benefit a priori." How disappointing that SEEDA had not done anything (nor had NOC) to investigate the potential of jobs in heritage and tourism while promoting a use of the site that would be damaging to the realisation of that potential. It would be difficult to create a sustainable tourist attraction out of what NOC is now offering for the same reason that it would be difficult to attract a voluntary group (like OTCH) to manage it.
- 12.40 In fact it did not need Mr Mackay to point to the tourism potential given the proximity to Oxford, Stratford and Blenheim, the mainline railway stations at Banbury, Bicester and Lower Heyford, and junction 10 on the M40. The

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<sup>170</sup> The Flying Field Management Plan was on Version 25 on 12 January 2009

<sup>171</sup> 'self evident' said Mr Semple for OCC

<sup>172</sup> as per paragraph 1.5 PPG15

heritage and tourism employment potential is a matter that could only properly be dealt with as part of the feasibility studies discussed below, although the Secretary of State could safely decide that jobs in heritage could not be more *'appropriate'* in the terms required by OSP H2.

OSP H2 "...as a means of enabling..."

- 12.41 The question of whether OSP H2 is an "enabling policy" (case for NOC) or requires the new settlement to be "enabling development" (case for CDC/OCC and OTCH) is one of the main areas of dispute to be resolved by the Secretary of State. Whilst the term "enabling development" is reasonably well understood, both in normal English usage and as a term used in planning, there is no accepted use of the NOC term "enabling policy". Of course OSP H2 does enable specifically defined development at Upper Heyford by making a conditional housing allocation,<sup>173</sup> but the NOC use of this term "enabling policy" to describe what is more accurately a carefully conditioned allocation confuses a relatively simple issue.
- 12.42 We can agree with Mr Kingston<sup>174</sup> that Mr Scharf has been relatively unsuccessful in persuading the LPAs to accept his interpretation of OSP H2. However, paragraph 4.46 from the Examining Panel's report of the Draft Structure Plan appears in Mr Dobson's proof<sup>175</sup> and states: ... "it is difficult to make a judgement as to what scale of development is 'necessary' to enable the heritage potential to be realised...(emphasis in original)."
- 12.43 Clearly the Panel were expecting the development to be enabling development but expected some help or evidence on whether 1000 houses were too many or too few to achieve the planning objectives. As *'...no party to this matter has seriously disputed.'* that this level of housing was *'necessary'*, the 1000 dwellings were accepted by the Panel; a conclusion that did not change its view that it should be 'enabling development' as then expressed in OSP H2. Once this principle was established in the development plan, Mr Scharf explained to Mr Kingston that there would be no need for viability studies. The Secretary of State should, therefore, give no weight to the arguments put by NOC that the absence of a requirement within OSP H2 for viability studies somehow changed the true meaning of OSP H2, or that the Panel's report is not material (it is being relied upon by Mr Dobson) or that the level of development would have to be disputed or tested before it can be accepted as "enabling".
- 12.44 This issue came up again when Mr Dobson gave his evidence. His surprising view was that "enabling development" could only be used in the way that it appears in English Heritage publications. It was noted by CDC/OCC and OTCH that in fact English Heritage had taken some care to point out, "That policy framework itself may well be regarded as 'enabling' but its remit is wider than the more narrowly focussed English Heritage policy, which would not facilitate the other objectives established in H2."<sup>176</sup> (emphasis added).
- 12.45 For reasons that are even more difficult to understand, Mr Dobson suggests that the effect of OSP H2 is also affected in some way by the designation of

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<sup>173</sup> Conditional upon it enabling three clearly stated planning objectives

<sup>174</sup> Counsel for NOC

<sup>175</sup> At paragraph 4.15

<sup>176</sup> EH letter to CDC 21 December 2007

the Conservation Area. Clearly, the purpose of the original enabling development policy H2 in the Structure Plan 2011, that envisaged wholesale clearance of the site, would have been substantially affected by the Conservation Area designation. However, the enabling requirement of OSP H2 in the Structure Plan approved in 2005, with its different but no less onerous obligations to conserve the interest in Cold War heritage, is absolutely consistent with the Conservation Area designation.

- 12.46 In the absence of a S.106 planning obligation providing financial contributions to environmental improvements, Cold War heritage and appropriate and reasonable infrastructure requirements, equal to the value of the land to be developed for housing and jobs (less of course build costs, other S.106 contributions and reasonable developer's profits), the application/appeal proposals are contrary to OSP H2.
- 12.47 This is the policy that would have informed the parties when the site was purchased from the MoD in 2006 for £24.4 million, a price that amounted to about £80,000 for each of the 315 existing and serviceable dwellings included in the sale. Even allowing for infrastructure costs and other S106 contributions this would seem to place a nil value on the remainder of the land and buildings, including the internationally significant flying field and its hardened aircraft shelters. In this case it is entirely reasonable to assume that the MoD clearly accepted that the new settlement would be permitted as set out in OSPH2 "...as a means of enabling...". It is equally reasonable to assume that the public would be concerned were the enhanced development value of the land to go to private developers instead of being used to meet the objectives clearly set out in OSP H2. The double whammy would be if the development itself privatised and enclosed the most important and best preserved Cold War landscape in the country, save for heritage tokenism<sup>177</sup> and grace and favour access to its 'valued Heritage Business Park'<sup>178</sup> at the sole discretion of NOC or its successors.

#### The Revised Comprehensive Planning Brief (RCPB)

- 12.48 In the second limb of the policy, OSP H2(b), lies the source of another major area of dispute between the parties, the weight to be given to the CDC RCPB. OTCH share the complaint made by NOC expressed by Mr Dobson that 'consultation' on a matter as important and complex as the redevelopment of the pre-eminent Cold War remains in the Country should involve more than what has amounted to submission of written reports and correspondence. However, OTCH has a much more specific complaint that the RCPB was produced and adopted by CDC in the absence of the feasibility studies referred to by the Structure Plan Examining Panel at paragraph 4.45 of its report. The Inspector will have noted that although NOC has tried strenuously to find fault with the RCPB on many grounds, in questioning Mr Scharf, Mr Kingston suggested that he did not share the OTCH view that the absence of feasibility studies was a flaw in the RCPB. As far as OTCH could understand this defence of the RCPB by NOC, it was because it was only the 'question' of feasibility studies that had to be addressed rather than the carrying out of the studies themselves. Even if that were the case, the

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<sup>177</sup> Management plans for the flying field and heritage centre both entirely free of any evidential base.

<sup>178</sup> Paragraph 1.2 of Flying Field Management Plan

Secretary of State has no evidence that the 'question' of feasibility studies was ever addressed by the main parties.

- 12.49 The only evidence on this aspect of the case is that from Mr Scharf in that he regarded these studies as an expectation if not a requirement of the Examining Panel (paragraph 4.45) and that interested parties (undoubtedly including OTCH) would be involved. In chief, Mr Dobson commented that the Examining Panel had expected the preparation of the revised brief to engage with English Heritage and OTCH, the failure to do so being a flaw in the RCPB. This Panel expectation specifically and exclusively related to feasibility studies, the absence of which is a further reason<sup>179</sup> little weight should be given to the RCPB.
- 12.50 Incidentally, Regulations<sup>180</sup> set out the statutory procedure planning authorities must follow if intending not to accept a Panel recommendation. In this case the Panel recommendation should be afforded its full weight as no publicity or consultation was carried out and OCC never resolved that feasibility studies would be unnecessary. Even if that were not the case, it is plain that the lack of feasibility studies has severely affected the weight that the Secretary of State can now give to both the RCPB and what NOC contend conserves the heritage in accordance with OSPH2.
- 12.51 In considering the development plan as a whole, there would appear to be partial compliance with structure plan policy EN6 but substantial conflict with policies EN4, T4 and H2.

#### The Heritage interest and feasibility studies

- 12.52 It would of course have been possible for NOC to identify the need for feasibility studies and for these to be prepared as material considerations to balance against the conflict that their omission from the RCPB had created with the structure plan policy H2(b). However, despite voluminous documentation on a wide range of matters of varying degrees of importance it is both surprising and disappointing that NOC has failed to provide any evidence in support of proposals in respect of the conservation of the, '...heritage interest of the site as a military base with Cold War associations...'<sup>181</sup>
- 12.53 There should be no need for a reminder of the importance that the Secretary of State attaches to, '...a robust evidence base to underpin ...decisions'.<sup>182</sup> This principle has also been supported by the courts.<sup>183</sup> Given that development at Upper Heyford is predicated on the conservation of the heritage interest, the Secretary of State should find the lack of any evidence to support the NOC proposals to be a compelling reason for refusing permission.
- 12.54 By looking at the NOC proposals it is clear that the appellants have failed to afford this matter sufficient importance. The heritage proposals being offered by NOC appear in the evidence of Mr Cooper who was actually

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<sup>179</sup> See also conflict with OSP EN4 and EN6

<sup>180</sup> Town and Country Planning (Development Plan) Inquiry Regulations 1999 (No 3280)

<sup>181</sup> OSP H2

<sup>182</sup> Ministerial Foreword to Consultation on PPS4

<sup>183</sup> *Blyth Valley Borough Council v Persimmon Homes (North East) Ltd EWCA Civ 861[2008]PLSCS 225*

appointed to provide 'landscape and visual evidence'. While Mr Cooper was clearly enthused by the potential of the Cold War landscape he did not pretend to have any expertise in the presentation of heritage to the public. Nor did he provide any evidence to support his proposal. In fact he honestly described the proposals as '...his suggestions and there may be other alternatives.' This is plainly true, and were feasibility studies carried out by those properly qualified in this specialist area, OTCH would expect some very different alternatives to emerge.

- 12.55 Mr Cooper explained that he had gone further than most to seek a meeting of minds about the landscaping of the site that had implications for its heritage potential. It seems that he had gone to some effort to appease CDC through proposing the removal of structures against his professional judgement, until becoming aware of the position being adopted by EH.
- 12.56 It now seems that his evidence is tailored to supporting the NOC position despite this appearing to offend his opposition to the flying field being 'broken into bits'. The car storage use being made secure in the SE corner and with a Cold War Park being fenced off in the NW, together with some runway removal and new fencing at either end. This clearly amounts to the fragmentation which Mr Munby, relying on EH publication CD73, that raises the vulnerability of air bases to sub-divisions, says should be avoided. Mr Cooper explained that new fencing was necessary for NOC to maintain security of the site for the commercial tenants, confirming the priority given to the commercial uses described in the DAS. Mr Cooper had thought that he was supporting a scheme that would be providing for public access across the whole site. He had to be corrected by Mr Kingston in that NOC were actually proposing limited access to certain specific locations within the flying field, by prior arrangement with them, rather than access to any part of the fenced-in flying field.
- 12.57 NOC might claim that its heritage expert Mr Munby supports some of Mr Cooper's suggestions. However, OTCH would question the weight that should be given to evidence from an adviser on the historic environment who claims that '...The heritage interest of Upper Heyford has been studied with care and is well understood...' <sup>184</sup>
- 12.58 This is an extraordinary suggestion. It is and should be widely understood that one of the primary functions of heritage sites is to enable investigations into the past which might reveal different interpretations of events.
- 12.59 In looking for advice on the conservation of the historic interest, the Secretary of State should discount evidence given on the basis that this aspect is 'done and dusted'. In fact the process of remembering and interpreting the Cold War has only just started and the heritage proposals required to satisfy OSPH2 should be able to respond to the growth in demand which the site should be designed to encourage and not suppress.
- 12.60 Mr Munby can be relied on where he agrees with Mr Scharf <sup>185</sup> and English Heritage <sup>186</sup> that '...the highest priority for staffing would be for a curator to look after collections, and an education officer to develop school visits.' <sup>187</sup>

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<sup>184</sup> NOC JC1 at paragraph 7.1.1

<sup>185</sup> OTCH DS1 paragraph 1.18

- 12.61 Mr Scharf made the point that such appointments are long overdue and should be made voluntarily now (e.g. in accordance with the CSR policies of the applicant companies) or as a planning obligation in the S106 drafted to come into effect whether or not permission is granted. Without this commitment from NOC even less weight can be given to Mr Munby's evidence.
- 12.62 In fact the suggestion of the appointment of both curator and education officer appears to conflict with the NOC proposal<sup>188</sup> to have a Heritage Centre Manager employed for 4 days per month. Professing no particular expertise in these matters, Ms Barker for CDC found it difficult to believe that this level of commitment would be sufficient to accomplish the wide job description of work set out in the management plan.
- 12.63 Mr Scharf agreed with this assessment, and suggested that the Plan was 'designed to fail', making the point that feasibility studies would be necessary to identify a sustainable heritage operation. He had previously referred to OTCH attempting to negotiate a brief for a feasibility study to be carried out by Oxford Brookes University to present to CDC, but were not satisfied that Oxford Brookes University had the capability to carry out this work. Given the specialised nature of the site and its apparent potential, OTCH then recommended that CDC instruct Professor Dr John Lennon at the Moffat Centre for Travel and Tourism at Glasgow Caledonian University<sup>189</sup>. The response by CDC to this suggestion was not positive.
- 12.64 Mr Scharf explained to the Inspector that it was the Cold War remains that comprised the primary heritage asset at Upper Heyford. There are already a number of museums (including Imperial War Museum) but heritage sites are different. It is the Cold War landscape that makes this site so special to which a heritage centre would be ancillary to provide facilities and interpretation. NOC has presented its case in reverse. A heritage centre is being proposed and public access to the airfield would be 'ancillary' (or de minimis).
- 12.65 This is offered to explain why, apart from the Cold War Park, no heritage use of the flying field is formally proposed in the appeal.<sup>190</sup> This approach has a number of difficulties. Ancillary and primary uses should be contained within the same planning unit, which would not be the case in respect of the physically separate heritage centre and flying field. If the relationship was 'ancillary' the tours could not take place without the primary use of the heritage centre.
- 12.66 Thus the tours that are the most profound heritage experience, justifying the preservation of the landscape, could not take place when the heritage centre was closed. Mr Dobson can suggest that NOC would allow tours before, during and after a heritage centre opened its doors, but this would only be the case if there was a primary heritage use of the flying field that is clearly necessary given its acknowledged pre-eminence.

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<sup>186</sup> EH letter to CDC of 21 December 2007

<sup>187</sup> CDC JM1 paragraph 6.6.5

<sup>188</sup> Heritage Centre Management Plan paragraph 5.6

<sup>189</sup> Co-author of Dark Tourism – the attraction of death

<sup>190</sup> see application forms and change of use plan – the Cold War Park is referred to in the appeal but not the application

- 12.67 When considering the potential of a museum or heritage centre, it should be borne in mind that Cold War history in the US is to be found in 11 Presidential Libraries, the combined floorspace of which almost infinitely exceeds the part of a 3000 sq m hanger being offered.
- 12.68 Mr Scharf said that it was essential to carry out feasibility studies before any permission was granted which could limit the heritage potential of Upper Heyford as an 'instructional monument'.
- 12.69 The Inspector asked Mr Munby about the provisions to meet any demand not catered for in the original management plans/planning obligations. The response that NOC would not oppose an intensification of heritage use and activity is very different from this being secured under the terms of a planning permission. The Secretary of State should not allow heritage to be privatised in this way with access to the flying field left in the gift of the owners.
- 12.70 The Secretary of State should take particular note of Mr Dobson's defence of the adequacy of the management plans that it was acceptable to "suck it and see."<sup>191</sup> As the Examining Panel, relied on by Mr Dobson, made clear, conservation of the heritage interest was a matter that was suitable for feasibility studies involving a number of interested parties. 'Suck it and see' is not an approach that equates with the robust evidence base to be expected by the Secretary of State and the courts on such a fundamental matter.
- 12.71 To understand the NOC approach it is helpful to look at the last bullet point at paragraph 4.1 of the Flying Field Management Plan: "To facilitate a management regime that allows...Public access to parts of the Base with historic significance, commensurate with the need to maintain adequate security to occupants and ecological interest (emphasis added)"<sup>192</sup>
- 12.72 It unlikely that a reliable, coherent and approvable application to re-develop the most important Cold War site in the Country could be designed if based on this Aim. The need is to conserve the heritage interest and, commensurate with that overriding objective, it might be possible to re-use some of the buildings for commercial purposes.
- 12.73 It would be a very serious decision, were the Secretary of State to sacrifice the best preserved and best located Cold War remains to a badly located (contrary to the Structure Plan) freight distribution centre of unproven need.
- 12.74 Version 19 of the Base Management Plan (BMP v.19) emerged in the fourth week of the inquiry. That, and the latest version produced for 12 January 2009, runs to 54 pages of 'good intentions' purporting to avoid the worst effects of a development that seeks to maximise the financial returns from the commercial use of the unique<sup>193</sup> Cold War landscape.
- 12.75 The only concession to heritage interest in the management of the site is the suggestion that a representative from English Heritage be invited to sit on a Liaison Group with 9 others, all having different interests. The obvious point to make is that the pre-eminent Cold War heritage site in the country

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<sup>191</sup> submission on 17 December 2008

<sup>192</sup> BMP v.25 paragraph 4.1

<sup>193</sup> BMP v.25 paragraph 3.3

should be placed under management (e.g. a charitable trust) that has heritage as its primary objective. In these circumstances the need for overcomplicated and unenforceable suggestions, conditions and obligations could be dispensed with.

#### Cold War Park

- 12.76 The Secretary of State may have some difficulty in deciding what weight if any to give to the proposed Cold War Park carved out of the North West corner of the air base. It is not part of the application submitted to CDC although it is referred to as a possibility in some of the plans in versions of the DAS.
- 12.77 For the first four weeks of the inquiry no change of use of this area was shown on plan N.0111 22-1K. Then, at the instigation of EH, whose support for the re-development is predicated on this facility, NOC was persuaded to produce version L (22 October 2008) that proposes the change of use of the land to Cold War Heritage Park, but with the enclosed 4 HASs in 'nil use', as if they are not to be included in the heritage experience. NOC are right to be concerned at these late changes; being damned if the plan was changed, but damned by EH if it was not. In fact the complete absence of supporting information and the fact that this area is visually divorced from, and has very limited views of, the remainder of the flying field are two further reasons why this proposal adds no merit to the proposals.
- 12.78 It would be very surprising if this proposal to change the use of about 18 acres of land in a conservation area of international importance, including 4 buildings also of at least national importance, could be accepted at the tail end of a public inquiry. However, if deleted, it must be assumed that EH would find the heritage proposals to be inadequate.

#### European Conventions

- 12.79 Judging by the evidence given by the experts in the historic environment appearing on behalf of the Councils, NOC and EH, European Conventions<sup>194</sup> have no bearing on this case and can be disregarded by the Secretary of State.
- 12.80 Section 5 of Mr Scharf's proof explains why this is not the case, and points to a number of important commitments made by the Government that are fundamental to both the conservation of, and public access afforded to, historic remains of international importance. It is difficult to think of a development proposal where it would be more necessary to consider the Government's duties to the conservation of heritage.
- 12.81 Mr Kingston suggested, and Mr Scharf agreed, that these European Conventions gave greater weight to the provisions of PPG15. This would apply to all paragraphs; those relating to general principles, tourism potential, re-use and demolition of buildings and structures.
- 12.82 In answer to the Inspector, Mr Scharf agreed that PPG16 was also part of the national planning framework that brought the Conventions into effect.

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<sup>194</sup> European Cultural Convention signed in Paris in 1954 (ECC), the Convention for the Protection of the Architectural Heritage of Europe signed in Granada in 1985 (ECPAH) and the European Convention on the Protection of the Archaeological Heritage (Revised) signed in Valetta in 1992 (ECPAHR).

12.83 However, Mr Scharf also explained how these international obligations would apply directly to the issues raised by the NOC proposals, not only emphasising the advice in the PPGs. In dealing with a site of international significance the Secretary of State could reasonably be expected to have international obligations in respect of building preservation, public access, education and the engagement of the public in these processes very much in mind. Mr Scharf explained how a process of establishing international cooperation in Cold War heritage was already in train (giving examples in the former USSR and the US) that would be thwarted if this Country failed to live up to its responsibilities.

#### The re-use of buildings and the historic environment

12.84 Together with the presumption against the demolition of the Cold War structures<sup>195</sup>, the most relevant guidance in PPG16 in deciding this appeal is probably the reference to the role of physical remains ‘...in education, leisure and tourism...’<sup>196</sup> The Secretary of State will consider whether supervised access to the heritage site on just 2 weekends a month goes anywhere near to what the Government would reasonably expect for a site of this importance.

12.85 The law and policy relating to the re-use of historic buildings formed a very substantial part of the case being argued by NOC and this has to be looked at in some detail. The penultimate version of the Flying Field Management Plan<sup>197</sup> described the ‘rationale for the objectives’. The most important statutory responsibility arising from the Conservation Area designation was said to be the retention and maintenance of buildings and structures. The NOC case for reuse of buildings was presented on this false premise that ‘maintenance’ was a statutory duty, and no change to the management plan was proposed (it was too late to change any evidence) when the mistake was corrected.

12.86 In his expert evidence Mr. Munby gave strong support for the re-use of buildings. Looking at his analysis of ‘Planning Policy’ (JM1 6.2) he does not apparently believe that the structure plan and development plan policies OSP H2, OSP EN4 or OSP EN6 are worth considering. Although, as an author of the Conservation Plan, Mr. Munby recognizes the international importance of the site, there is no evidence that he has considered the European Conventions that would seem to apply.<sup>198</sup> His evidence in respect of the re-use of buildings seems to be based on a misreading of the advice in PPG15 that does not specify ‘requirements’ (emphasis added) (JM1 6.3.3 and 6.3.5 and repeated in JM2 Appendix 2) but more general advice. This evidence appears to be both unreliable and incomplete.

12.87 Mr. Munby does say that general planning concerns are dealt with by Mr. Dobson, but his evidence is no more reliable as it refers back to Mr. Munby having drawn ‘...attention to the various references in PPG15 to the need to re-use protected buildings.’(MD 5.30) (emphasis added).

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<sup>195</sup> Paragraph 9

<sup>196</sup> Paragraph 6 and OTCH DS1 at 3.12

<sup>197</sup> Paragraphs 4.3 and 4.4 of version 24 of 15 December 2008

<sup>198</sup> (see DS1 section 5 pp16 to 26).

- 12.88 Notwithstanding OTCH's belief that the LPAs have failed in their duty to properly consider development plan policies OSP EN4, OSP EN6 and OSP H2, or to carry out feasibility studies in the preparation of the RCPB, the extensive criticism made by NOC of the alleged failure of CDC to apply the correct test for demolition and use of buildings in conservation areas is surprising given the failure of its own experts in this regard.
- 12.89 The Secretary of State must have regard to the advice in PPG15 in respect of both demolition and re-use but should start by referring to paragraphs 1.1 and 1.5 that explain the principles behind the more detailed guidance. OTCH would suggest that whilst some demolition and even some commercial re-use might be consistent with these principles, these developments should arise from decisions taken by management of the site giving priority to heritage concerns.
- 12.90 Mr. Munby has interesting things to say about the Conservation Area designation relied on by NOC for the re-use of buildings on the Flying Field. Under XX he pointed out that the CA at Upper Heyford with steel and concrete buildings was rather different from the normal case that contained medieval buildings needing to be protected and clutter to be removed. The LPAs and OTCH had made a similar distinction between the common cases where the re-use might benefit the repair and future maintenance of old and complex structures, but that paragraph 3.19 of PPG15 should not be cited in support of the re-use of the indestructible HASs. In fact the character and appearance of the predominantly steel and concrete Conservation Area is, in its way, just as sensitive as any other, and the site which Mr. Munby described as 'unique' in the role played by it in the Cold War is most vulnerable to fragmentation and the insertion of inappropriate uses.
- 12.91 Mr. Munby was concerned about constructing a fence along the line of Aves Ditch and the impact it might have on the archaeology of the site, but expressed no concern about the proposed fence dividing off the Cold War Park. He claims to take a holistic view of the site, but seems unconcerned about the preventing of public access to the area around the original Victor Alert and the SE HASs that he says includes wall art and special architectural and functional features. He graphically described the vast openness of the airfield that was best experienced from the middle of the site, from which the public are to be excluded when a mini bus and driver are unavailable i.e. most of the time.
- 12.92 The Secretary of State will note the Statement of Common Ground signed by EH and NOC. This does not apparently relate to the Heritage Centre Management Plan that might reflect reservations which must remain in the absence of any feasibility studies.
- 12.93 In his 'Additional Points' Daniel Scharf set out extracts from correspondence with EH and Dr Barker's confirmation that the significance of the impressive and inspiring landscape '...has yet to be understood...'. This would suggest a degree or more of caution before allowing the privatization and commercialization of this precious landscape. A number of reasons have been given why the Cold War Park on which EH rely should not be approved. The crucial point is that in response to OTCH concerns about heritage options being closed-off before feasibility studies have been carried out, Dr

Barker believes<sup>199</sup> that, '...there might be a long term game to be played out here...'. It may be that Dr Barker did not on 29 August 2008 fully understand that a planning permission granted for the development described in the application would limit if not completely rule out any long term game. In these circumstances it is difficult to see the position of EH as properly protecting the national or international heritage or avoid the conclusion that it suffers from a poverty of ambition that contrasts with the importance it attaches to the site.

- 12.94 OTCH would ask the Secretary of State to find that the only accurate reading and application of the law and policy in respect of the conservation of historic landscape and buildings (including European Conventions) is to be found in the evidence provided by Daniel Scharf. Whilst this supports the refusal of NOC's 'Heritage Business Park', in the absence of feasibility studies he has not come to any conclusions of his own as to what a scheme properly conserving the heritage interest of the site would comprise. He thought that what is being offered would be insufficient, would be unlikely to attract support and would reflect badly on those becoming associated with such a scheme.

#### Sustainability

- 12.95 NOC argued that the (conditional) allocation of housing at Upper Heyford made it unnecessary or inappropriate for CDC/OCC to describe the location as 'unsustainable'. However, the allocation was not made due to, but in spite of, the unsustainable location, specifically in order to achieve planning objectives as set out in OSP H2, including the conservation of the heritage interest.
- 12.96 However, in pursuing its case, NOC called on evidence from Ms Walker an expert in this field. From the point of view of OTCH and the heritage aspects of the 'sustainable development' case, it is interesting that she found many aspects of the former Cold War air base to be 'unique'<sup>200</sup> which firmly underline the reason that precedence should be given to sustaining its historical character over other matters such as housing, employment and ecology which are important but not unique.
- 12.97 Ms Walker relies on but does not explain how the Conservation Area designation is the material change of circumstance that justifies departing from the conclusions of the Secretary of State finding in 2003 that the site is in an unsustainable location. She seems to be supporting the 'small tourist facility' being proposed by CDC<sup>201</sup> without any evidence that this, or a much larger facility more related to the important and unique heritage value of the site, would be sustainable.
- 12.98 On the traffic issue she suggests that the '*development proposals go some way to mitigating the negative effects of car and lorry traffic over the longer term.*'<sup>202</sup> This agrees with the OCC view<sup>203</sup> that it was '*self evident*' that in

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<sup>199</sup> DS3 paragraph 11

<sup>200</sup> NOC LW1 at paragraphs 3.33, 3.65 & 3.68

<sup>201</sup> LW1 paragraph 3.69

<sup>202</sup> LW1 paragraph 3.92

<sup>203</sup> OCC Mr Semple under XX and OCC Mr Staley

this relatively isolated location, the development (mainly the large scale of employment floorspace) would generate excessive traffic.

#### Case-creep

- 12.99 During the inquiry OTCH has become aware of a number of significant changes to the proposals that it had inspected before the submission of the evidence and the start of the inquiry. There have been several amendments to the 'Change of Use Plan N.0111 2-1'<sup>204</sup>, detailing the extent of the use of the buildings and land proposed for heritage purposes. The extent of the demolition of HASs proposed in the Design and Access Statement has changed. The Flying Field Management Plan that is intended to be fundamental to the management of the site is on version 25, many versions of which surfaced during the inquiry. Something branded a 'Cold War Heritage Park' has now appeared in various documents<sup>205</sup>. However, this is not anything that was found by OTCH in its examination of the application. A contribution of £300.000 seems to have come and gone. Schedules of conditions were being produced in the 4th week of the inquiry as was a draft of the S106 unilateral undertaking that was still under discussion on 16/17 December and 12 January 2009.
- 12.100 OTCH cannot claim to have examined and understood all these documents (CDC were pointing out further discrepancies on 12 January 2009) and it is most unlikely that the public less engaged in the appeal process would have any real idea of what is being proposed at its conclusion. Whilst the start of the inquiry was advertised, the public would have no reasonable way of knowing that it was continuing through December 2008 and into January and March 2009. Had the public been aware of the shifting and building and re-building of goal posts it is understandable that they would have lost confidence that they could understand or contribute meaningfully to this process.
- 12.101 On Friday of last week, 13th March with less than half a working day ago, a revised Design and Access Statement was provided to OTCH. Time constraints have prevented even the most cursory examination of this amended document.
- 12.102 There may be an element of 'consultation fatigue', the risk of which was flagged by the Inspector. However, there is real evidence of 'case-creep' and both the Inspector and Secretary of State should remind themselves of the following advice from 'Planning for a Sustainable Future' White Paper Cmnd 7120 May 2007 Executive Summary, referred to by Mr. Scharf,<sup>206</sup>

*"Individuals and communities find it difficult to be heard*

*1.21. Long, drawn out planning processes do not necessarily provide the best opportunities for people or communities to have their say or deliver the best outcomes in terms of social justice. Complex and lengthy consultation on local plans can lead to consultation fatigue while still failing to engage citizens*

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<sup>204</sup> Currently version L that superseded K towards the end of the inquiry

<sup>205</sup> e.g. Mr Cooper JC5 and on a plan inserted in the DAS that was inconsistent with those showing the demolition of the NW HASs

<sup>206</sup> DS3 Additional Point 9

*effectively. The adversarial nature of the inquiry system for major infrastructure projects can be intimidating and make it difficult for local government, non- governmental organisations (NGOs) and members of the public to participate effectively. The time and costs involved means it often favours the well-resourced and well-organised over less well-off communities and citizens."*

*"Recommendation 27 Efficiency of the appeals system*

*There should be a series of reforms to improve the efficiency of the appeals system. These should include: ...*

*... and Communities and Local Government revising regulations on appeal processes to reduce the potential for case-creep. This would limit the issues and material considered to those that were before the local planning authority when it made its decision, subject to the inspector retaining the power to ask for additional information as he or she sees fit in order to make a proper decision. ...." (Annex B, p. 219)*

- 12.103 Not only has the application evolved to an extent that there must be significant uncertainty as to whether the public could be expected to know what is being presented to the Secretary of State, but the Base Management Plan intended to have effect through S.106 Undertakings would create a most extraordinary, unsatisfactory and probably illegal effect if permission were granted. NOC confirmed to OTCH that the absence from the application of any proposal to change the use of the flying field to anything other than commercial purposes was deliberate<sup>207</sup>. This position had not been changed by the Plan no. N.0111 22-1K of 1st October 2008. This would have meant that any heritage use of the flying field including the suggested tours and the Cold War Park would be unlawful if used at more than de minimis levels. Yet, on the grant of the planning permission on the terms being proposed by NOC, there would be planning obligations requiring these unauthorized and unlawful developments. The enforcement against the lack of say the Cold War Park by injunction would be requiring the making of a material change of use that does not have the benefit of a planning permission. The enforcement against an unauthorized Cold War Park would cause NOC to be in breach of its planning obligation. Clearly the Secretary of State cannot place the LPA in this contradictory position.
- 12.104 The descriptions of the 'development' have evolved<sup>208</sup> to include a number of cases that say "provision of..." Development can only be 'operational' or a 'material change of use'. This is important in the case of 'provision' of infrastructure, access roads and car parking. As there is no change of use shown on the relevant plan ref N.0111 22-1K so this can only imply that permission is being sought for operational development the details of which have not been made clear or discussed. This could be very important in this historic landscape.

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<sup>207</sup> OTCH DS1 paragraph 1.01

<sup>208</sup> Planning Statement of Common Ground (Document 4c) and Unilateral Undertaking (Document 6)

- 12.105 Given that even the 'heritage centre' was not clearly described in the application, there might be no aspect of the heritage offer made to satisfy OSP H2 that can properly be granted planning permission.
- 12.106 This disjointed and irregular approach to preparing proposals to conserve the heritage interest required by the development plan reflects an approach by NOC that is most concerned about the income from the commercial use of the site (the houses are uncontentious apart from the intrusion to the north of Camp Road) such that its response to the requirements of OSP H2 in respect of Cold War heritage simply lack any evidence and appear to be inadequate. The proposals are presented as a 'lasting arrangement' that would deprive both the international community and this and future generations, reasonable access to the best site at which to explore its Cold War heritage.
- 12.107 The sheer volume of documents being produced towards the end of the inquiry could not be considered to be in the public domain. OTCH has tried to 'keep up' but does not feel that it has been able to comment fully on these complex and related documents.
- 12.108 The very strong impression has been created that the length and complexity of the schedule of conditions, legal undertakings and management proposals reflect the fact that NOC need to both modify and mitigate proposals that are intrinsically wrong for this uniquely important site. The sheer scale of the 'controls' that have emerged from the discussions between the main parties make them unwieldy and effectively unenforceable.
- 12.109 The OTCH suggestion creating a logical division of uses along Camp Road, because it is both simple and appropriate, could be proposed without any further delay and would require very little in the form of conditions or other controls.

"S.38(6)"

- 12.110 The appeal will be decided in accordance with the development plan unless material considerations indicate otherwise. The evidence given to the public inquiry has shown that the proposed development is contrary to the following development plan policies: -
- T4 due to freight traffic;
  - EN4 due to the impact of inappropriate uses and unknown users on the setting of SAMs, Listed Buildings, the Conservation Area and Cold War landscape
  - EN6 due to unjustified fence removal (including the barbed wire)
  - H2 due to inappropriate employment provision and no account of appropriate potential of jobs arising from the heritage site. Failure to show how the new settlement would 'enable' the three stated objectives, particularly the conservation of '...heritage interest of the site as a military base with Cold War associations...' There was also a failure by CDC to carry out feasibility studies to provide an evidential basis for its RCPB required by H2(b), a failure that NOC did nothing to remedy at the time of the Draft Brief or in the context of applications and appeals.

The application may be considered to comply with H2 in the scale of the new housing but in proposing substantial residential development to the North of Camp Road the heritage interest is not conserved.

12.111 Other material considerations must be examined to see whether any are sufficient to override the extent to which the appeal conflicts with the development plan.

- The proposal conflicts with the advice in PPG15 relating to the preservation or enhancement of the appearance and character of the Conservation Area through the fragmentation of the flying field, introduction of inappropriate and unknown uses, exclusion of the public, and its inability to develop the interest in the heritage of the site and the development of tourism potential.
- For the same reasons the proposals conflict with the three European Conventions referred to in the evidence given by Mr Scharf that according to Mr Kingston give greater force to the advice in PPGs.
- The proposals do not represent a 'lasting arrangement' as there is no mechanism to accommodate any increase in interest shown in the heritage of the pre-eminent Cold War site in the country.
- The proposals emerging out of the end of a 4 week public inquiry contain a number of significant proposals that are substantially different from those that were available to the public and considered by OCC and CDC at the application stage.
- The proposals are confused as to what is being applied for, particularly in respect of what is being called a Cold War Park.
- The use of the QRA scheduled ancient monument as part of the larger storage and distribution centre will either lead to inappropriate internal works to the HAS's to accommodate the use or a cost burden on the public purse. Section 7(2)(b) of the Ancient Monuments and Archaeological Areas Act 1979 provides for compensation to be paid should scheduled monument consent be withheld for works which do not constitute development, or constitute development such that planning permission is granted therefore by a general development order.
- Further, should the appellant or successor in title ever secure planning consent where express consent is necessary, for example to modify the doors of the HASs and scheduled ancient monument consent is withheld then compensation is payable under section 7(2)(a).

Given these circumstances allowing the use of the QRA scheduled ancient monument for storage and distribution purposes would appear to be foolhardy.

12.112 All these material considerations add weight to the reasons why permission should be refused.

- 12.113 The understandable desire to build 1075 houses on this site cannot override these objections as the housing could very simply have been proposed in a way that fully accorded with the development plan. Allowing the appeal would not secure the development of any of these houses but would have the effect of establishing inappropriate scale and type of commercial activity in the uniquely important Cold War landscape.
- 12.114 The Secretary of State should make it clear in dismissing the appeal that permission would be granted for a 1000 dwelling development to the south of Camp Road and that such a proposal, covering the whole of the former military base, should include a heritage site reflecting its international importance, in accordance with Government obligations under the relevant European Conventions. Either NOC could simply place the land to the north of Camp Road in the hands of an organisation set up with that as its main objective, or feasibility studies should be carried out before any further applications are made on the site.
- 12.115 Publicly available filed annual accounts suggest over £7m gross income is received by the site owners from residential and commercial lettings (NOC did not provide records of the expenditure to deduct from the rental income). This would enable the £24.4 million paid to the MoD to be recovered in between 3 and 4 years.
- 12.116 Although a combination of the enforcement action being taken by CDC and the economic climate raises questions about the commercial rents, the residential rents of £2,649,148 pa would appear to be secure. Mr Scharf considered that the consequences of the decision made on this appeal were a material consideration i.e. the fall back position of the appellant. It seemed to him that the rental income would be a disincentive to the company (being responsible to its shareholders) to develop the site were this to be financially undesirable.
- 12.117 In these circumstances (i.e. an income flow of up to £7.00 million p.a.) the Secretary of State should not regard the grant of permission as likely to result in the early provision of the 1000 houses. The provision of the (long awaited) houses would most likely only be expedited were the commercial rents reduced and the housing development made conditional on fulfilling of obligations to properly conserve the heritage interest.

#### Paragon

- 12.118 Although OTCH had little to contribute to this inquiry in respect of the car storage use, there had seemed to be a compelling case presented by EH and the Council's against its permanent presence in the Cold War landscape designated a conservation area. However, the company accounts presented by Mr Scharf and those relating to the financial position of the appellants raise an issue that is likely to concern the Secretary of State. The financial climate is very different now to what it was when the MoD sold the site to NOC and even since the submission of the first application in December 2007. This has implications for the 'enabling development' that OTCH say is a requirement of OSP H2 and may also have increased the importance of the jobs that are currently on the site.
- 12.119 Although the letter from the Secretary of State recovering the appeal reflected the concern of the Secretary of State to see houses built on the site, even were permission to be granted, this does not seem to be likely in

the immediate future. A permission is likely to have the very unfortunate consequence of delaying even the limited heritage proposals to be provided under the S.106 (excepting any voluntary agreements by the landowner). In these circumstances the Secretary of State might see some merit in allowing Paragon to continue with its car storage and processing uses on a temporary basis. This should be subject to financial contributions towards the planning objectives now set out in OSP H2 being made from this (and other) permitted temporary use(s), as they should have been from when the uses commenced.

- 12.120 Were the Secretary of State to permit this and any other temporary uses against policy but for the reason that it would secure jobs in the short term, conditions could be applied and obligations negotiated to allow the conservation of the heritage interest to begin. It should be made clear by the Secretary of State that the permission will not be renewed after say 5 years. Circumstances might then have changed to allow housing development to take place (subject to a fresh application) again, as enabling development. OTCH have suggested that TVPA could remain on the site and Datacare would not be a problem if relocated away from the most important part of the Flying Field (i.e. from in and around the QRA SAM) or subject to the time restrictions on vehicle movements suggested by OTCH.

#### The heritage process

- 12.121 Mr Scharf reminded all of us involved in deciding the future of the Cold War air base that we are inescapably part of Cold War heritage (that will be imprinted on the site and written up in a journal of international heritage studies). He has asked all parties to contribute full sets of their evidence to the Upper Heyford archive so that visitors will have the opportunity to understand and apportion credit and blame for both its condition, and presentation of the heritage interest.
- 12.122 OTCH have not given up on the idea that the future of this site could be decided through constructive engagement between the parties and even while the Inspector and the Secretary of State review the appeal papers there will be encouraging discussions to explore some alternative resolution to the areas of dispute.

#### Conclusion

- 12.123 The proposal to settle the future of the Cold War airbase by using it as a freight distribution centre contrary to the development plan may seem to be somewhat audacious given that the OSP provides for the future of the base under a policy to allow a settlement of about 1000 houses.
- 12.124 However, the income flow of about £7 million p.a. which is being generated by the site in its present form far outweighs the commercial attraction of merely developing a settlement of about 1000 houses.
- 12.125 Hence NOC's need to advance a proposal which will provide an equal or greater financial outcome.
- 12.126 One must suspect that the proposal has been put forward as something of a gamble because the NOC fall back position of continuing to collect rents, even just from the existing housing stock, is a more than satisfactory return on capital employed. Mr Kingston offered to provide financial information to refute this suggestion but in the event it did not materialise.

- 12.127 Granting planning permission under these circumstances will not guarantee a single new house or a single new job; and should the permission be implemented it will provide a lasting arrangement, but not the one envisaged by the policy makers.

### **13 The Case for the Environment Agency**

- 13.1 The Environment Agency prepared a proof of evidence in support of its objections to the proposal. They considered that the proposals had not been sufficiently risk assessed via the necessary assessment and investigations required by national policy in Planning Policy Statement 23 Annex 2 (paragraphs 2.18, 2.23, 2.44, 2.49, 2.51 and 2.55 in particular). In the absence or inadequacy of these, the risks arising from the proposal, particularly to controlled waters were considered unacceptable (Document EA GD1 refers). The above sections of Annex 2 relate mainly to protecting sensitive receptors from the adverse effects of development which might create pathways for contamination to reach them. Central to their concerns on contamination is that arising from the Petrol Oil and Lubricant (POL) system and its satisfactory mitigation.
- 13.2 At the inquiry and after a considerable amount of further discussion during but outside it, the Environment Agency accepted that the work set out in the ES and the further information to the ES supplied under Regulation 19 was sufficient to amount to a preliminary risk assessment of the site under their CLR11 "Model Procedures for the Management of Contaminated Land". Their other concerns could be addressed by conditions. Its objection was withdrawn, subject to imposition of a number of conditions.
- 13.3 Its witness Dr Davies was not therefore called to give her evidence but it remains before the inquiry. The relevant matters were examined in the discussion of conditions to which Dr Davies and her colleagues contributed. The relevant matters are considered at some necessary length under Conditions in my Conclusions.

#### **Other Parties appearing**

### **14 South East England Development Agency (SEEDA)**

- 14.1 SEEDA considers the economic implications of the proposal and that of the alternative Revised Comprehensive Planning Brief approach to be of paramount importance.

Planning matters:

- 14.2 SEEDA expressed concern as a statutory consultee on the approach taken in the RCPB considering that it paid insufficient regard to the importance of Heyford Park businesses and jobs to the area.
- 14.3 In assessing the planning application the Local Planning Authority paid insufficient regard to Draft Planning Policy Statement 4 and the need to protect existing jobs and businesses, despite the views of its Economic Development Officer. Neither did the report refer to the Regional Economic Strategy or PPS1 with their increased priority to economic issues. The proposal for 17ha of car storage is compared to the 7ha in the RCPB although the latter was never agreed with the current occupiers. Although the PPG15 advice that the best way to secure upkeep of historic buildings is

to keep them in active use is noted the report is concerned about the extent of reuse proposed and its associated significant activity. Most buildings however are proposed for storage with insignificant activity.

- 14.4 The Local Planning Authority's Employment Land Review does not mention Upper Heyford despite its being a major employment area in the District. This is because it is not considered a suitable location at a level above that needed to fund long term management and maintenance.
- 14.5 The Local Planning Authority's position is simplistic and fails to recognise the contribution of the existing businesses to the local and sub regional economy. It is already well established and should be further developed not destroyed. The level of employment proposed by NOC would help create a range of jobs and a sustainable community for the new residents. The history of the site was after all an employment use.
- 14.6 No objection exists regarding impact on employment growth in the more sustainable location of Bicester. Significant growth there is delayed until improvements are made to Junction 9 of the M40. There is no similar constraint on Heyford Park, only the Local Planning Authority's SPD constraint that is not part of the Development Plan.
- 14.7 Potential harm to the Conservation Area and Listed Buildings is exaggerated and could be mitigated. There is too much emphasis on the SPD and too little to the Structure Plan policy.

#### Economic Development matters

- 14.8 The purpose of the RCPB is set out as seeking "to establish a balance between creating environmental improvements and conserving the heritage interests, whilst achieving a satisfactory living environment". There is no recognition there of the 26 businesses at Heyford Park and the 1000 people employed.
- 14.9 The RCPB seeks a blank slate approach and that is reinforced in the 7th putative reason for refusal that refers to "inappropriate employment opportunities" contrary to RCPB and Structure Plan policies.
- 14.10 That approach implies disruption to jobs at Heyford Park or to those whose jobs are dependent on activity there. The RCPB approach would lead to substantial job losses and the loss of associated facilities such as day care, arising from the critical mass provided by the existing 1000 jobs. What was left would become less sustainable as a result. This is particularly concerning in an economic downturn with fewer alternatives elsewhere in the District or nearby.
- 14.11 Contrary to the impression given by the list of preferred employment sectors in the RCPB, the Regional Economic Strategy and other quoted sources make little reference to sectors or do so in a different context. This weakens the RCPB's listed priorities for types of business at Heyford Park.
- 14.12 Those listed (e.g. science based industries, high technology) have many other options whereas Heyford Park is particularly suited to the types of activity already based there. Those are firstly, the small start up and developing businesses supported by the Innovation Centre and secondly, those buildings for whom the setting and special types of buildings at Heyford Park give passive security and large internal and external spaces. Paragon Automotive was specifically courted by Cherwell in the mid 1990s

to help counteract job losses when the USAF base closed. In the mid 1990s it was estimated that there were 12,000 base personnel and 1000 civilians employed at the site. With only 320 base homes, most of the airmen were living elsewhere and travelling into the base.

- 14.13 The use of largely unaltered former military buildings is an efficient way of addressing previously developed land. Fitting out costs however can be high and are a significant investment.
- 14.14 Cherwell's economy has suffered significant job losses in recent years (1100 of them during the 2 year emergence of the RCPB) and has consistently lower income ranges than other parts of the county.
- 14.15 The prospects for retaining and attracting new jobs at Heyford Park would be undermined by the Local Planning Authority's discouragement of business activity there. This would also have a negative effect on the Cherwell area's reputation and competitiveness more widely, particularly important given the proximity of the South Midlands and Milton Keynes growth area. The RCPB target of 1300-1500 jobs could then take considerable time to achieve and lag behind the new housing and population growth. This without taking current "credit crunch" impacts into account.
- 14.16 Contrary to CDC's view not all existing firms on the site could adjust to what the RCPB seeks for the site, particularly those who benefit from the special buildings and security offered by it being a former military base. Paragon Automotive and Supporta Datacare are two such examples.
- 14.17 Paragon are in the specialist fleet management sector for several high profile motor manufacturers, not (as CDC persist in saying) "car storage and logistics". They play a vital role in the overall activity of the UK automotive sector which has seen considerable difficulties in recent years. The closure of Rover (Longbridge) and Peugeot (Ryton) has caused economic ripples out into Oxfordshire in terms of supply chain impact.
- 14.18 Paragon's cars must be prepared to high standards for press demonstrators, VIP and executive fleets and they are then repaired and refreshed for sale. Their processing is high skill and high technology dependent. They manage several thousand cars and it is as "knowledge driven" as any science and technology firm. They employ 500 people in technical and office based activities and need a minimum of 17ha of outdoor space as well as the buildings to operate efficiently. That implies a gradual reduction and operational changes from their present activities. The 7ha for them in the RCPB (some of it currently grass or scrub) mean substantial downscaling, rescinding of contracts, disproportionate overheads and the business would very likely become unviable. There is no suitable alternative site: the owners of the former quarry suggested by the CDC have other plans for it.
- 14.19 Supporta provide secured data storage for customers such as NHS Trusts. Security is of prime concern and the firm has developed a system for using the Hardened Aircraft Shelters without affecting their fabric (at a cost of about £250,000+ per HAS). 24 hour access is required which would not be permitted under the RCPB with its exceptionally onerous restrictions of vehicle movements on the Flying Field where the HASs are located.
- 14.20 Job losses have already occurred because of uncertainty (e.g. Boise Building Products is ending its lease at Heyford Park and making 30 redundant) and if the RCPB and CDC's application of it continues about 600-800 more direct

job losses could reasonably be expected dependent on the outcome of occupiers individual appeals against enforcement notices). Those figures take account of the permanent permission at the Innovation Centre and the assumption that smaller companies can be retained in the core employment area (closer to Camp Road). In addition to these direct losses other indirect and induced losses would follow. Based on the Scottish Executive's methodology and using the lower (600) direct figure, potentially a further 260 jobs would be lost elsewhere (or an extra 480 on the 800 estimate). Cherwell has a largely self contained economy (a job density figure of 0.9 in 2005) so a disproportionate impact would be felt in the District.

- 14.21 The Regional Economic Strategy's<sup>209</sup> Objective 2 is particularly pertinent and three of the "actions" within that Smart Growth Objective have a bearing on Heyford Park (9.4, 9.5 and 9.6). The RCPB takes insufficient account of Heyford Park's potential economic contribution. It is former public agency previously developed land with potential for economic success and sustainable prosperity.
- 14.22 At County level the Economic Development Strategy for Oxfordshire also seeks to review and optimise use of previously developed land whilst seeking a sustainable balance with protection of the rural environment. Oxfordshire Economic Partnership recognised the value and potential of Heyford Park as PDL and the importance of retaining jobs there in a letter to CDC in January 2008.
- 14.23 Cherwell Community Strategy prepared by CDC provides high level outline of priorities and direction of travel within which other specific plans are developed. Its Theme 4 includes creation of 6,200 net new jobs to meet increases in the working population; promotion of a diverse sustainable economy to help "recession proof" the local economy and the creation and maintenance of business infrastructure.
- 14.24 Cherwell Economic Development Strategy includes under "property and premises" (and in the context of an Inspector's findings re land at Gavray Drive, Bicester) an aim to balance the need for new land against the opportunity to re-use previously developed land and improve the efficiency of land use.
- 14.25 In conclusion, dismissing the lead appeal would mean loss of a further 1000+ jobs, contrary to the CDC's own Economic Development Strategy. The absence of suitable alternative sites, the specialist nature of the work of some occupiers and the cost and disruption of possible relocations would mean firms would cease rather than relocate. This would make the site increasingly unsustainable as critical mass was lost and with it the potential for a reasonable degree of self sustainability at the wider site. The RCPB approach is unbalanced. Contrary to the Regional County and Cherwell Economic Development Strategies, it gives too little weight to economic sustainability compared to architectural, heritage and environmental issues. Those types of jobs that are targeted in the RCPB are also illogical and incoherent as they are better addressed in Bicester whereas Heyford Park is particularly suited to other types of employer.

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<sup>209</sup> CD22

## **15 Campaign to Protect Rural England (CPRE) Oxfordshire**

- 15.1 The present proposal is counter to the CPRE's ambition for the site and is opposed strongly.
- 15.2 The county branch has been involved in the future of the site since 1994. It is accepted that some development would be needed to finance environmental restoration. A lasting comprehensive plan is needed not piecemeal development. The Structure Plan strategic framework and its requirement for Cherwell DC to prepare a Comprehensive Planning Brief were welcomed as were the proposals for a limited number of houses, clearance of structures beyond the proposed settlement and restoration of the land. That parts of the airfield should be retained as a Museum of the Cold War was a surprise but not of concern. CPRE supported the RCPB and felt it reflected English Heritage's proposals to retain key buildings within an open landscape.
- 15.3 The local community's ambition (for the site) must be for an area of countryside which has within it defined buildings and features as a memorial to military uses, a defined area of housing and some buildings to be retained to be used, the income from which would finance maintenance of the site.
- 15.4 The perimeter fence should be removed as it prevents the aim of an open landscape here. It is recognised that individual buildings and areas within the site may need to be fenced in, including the car park areas.
- 15.5 All buildings that do not make a positive contribution should be removed. That includes all the HASs not shown for retention in the RCPB.
- 15.6 Certain parts of the runways should be returned to grassland as shown in the RCPB.
- 15.7 The level of reuse of buildings must be specific and not left open for opportunistic exploitation. The site is an unsustainable location for development and so only such development as is needed to maintain the military legacy should be allowed. Bicester is a much more sustainable location for employment growth.
- 15.8 Car storage on more than 7ha is particularly opposed, on landscape grounds but also in terms of traffic and congestion. If permanent arrangements to store cars are made, the numbers of cars and the area permitted should be very specifically defined.
- 15.9 Another special plea is that, contrary to the intention in this proposal, health facilities should be provided on the site. Such facilities in Deddington are under strain since those on the base closed down as Heyford Park residents now have to go there instead.
- 15.10 It is recognised that the solution for the base has to be a compromise. It cannot just be a trading estate, it will have 1000 houses, it cannot all be kept as a Museum and it is part of the North Oxfordshire countryside. A compromise of all these competing interests is sought by CPRE. Overall the RCPB is felt to provide a suitable compromise. The NOC proposals are inconsistent with the vision for certain historical buildings and limited enabling development within an otherwise open countryside.
- 15.11 The RCPB proposals or something close to them are needed to end the 14 years of uncertainty about the future of the Upper Heyford airbase.

## **16 Cllr Macmamara**

- 16.1 As District Councillor for Astons and Heyfords Ward (and Parish Councillor for Lower Heyford) he represents the villages around the site (except for Middleton Stoney) with their 3500 electors. He has served on the Upper Heyford Working Group. He spoke to and amplified his letter of 19 August 2008 (found in the red folder with the case file). The summary below is from his oral presentation.
- 16.2 The Working Group hammered out the RCPB which is understood by local people and they expect that to be the outcome. It went through the consultation process and it is very disappointing that the proposal does not follow it. There would be 7.5% extra housing (equivalent to twice those in nearby Caulcott); more jobs; and the associated extra car and HGV movements. If it was an empty plateau we wouldn't put the 75 extra dwellings here. It is only justified if there is a financial justification. The "about" 1000 dwellings in the Structure Plan gave "wriggle room". The nearby villages are mostly less than 200 dwellings and less in nearby Somerton.
- 16.3 Whatever figure of housing is decided it should be final, with no further infill or adding at the boundary. People want a once and for all figure for the settlement.
- 16.4 The relocation of the existing community living on the base must be a priority. Some people have raised their children there. Full credit should be given to NOC for their community development activities.
- 16.5 Present residents should be allowed for within the 30% affordable housing but the rent on the base at present falls between affordable and market rental. They may not get first choice. There are presently a significant number of Zimbabwean refugees housed there.
- 16.6 A local lettings plan is needed for the Affordable Housing. There should be no ambiguity on what is meant by this – it should be Registered Social Landlord for rent or shared ownership and it must not just be flats rather than the spacious dwellings with good gardens that are there at present. The residents of nearby Heyford Leys mobile home park (to the east of the site) need consideration as many are retired and some are vulnerable.
- 16.7 There should be a GP in the new settlement rather than rely on the practice at Deddington on the far side of the valley.
- 16.8 A dowry for maintenance of the chapel and community building should be considered in accordance with the RCPB requirements for community facilities.
- 16.9 The extra traffic is a major worry for the surrounding villages and as with the previous application traffic calming and HGV routing agreements are needed.
- 16.10 The main traffic flows in the area are through the valley from Banbury to Oxford and there is a missing link from the base to those routes. Chiltern Railways run a taxi link as far as Middleton Stoney from Bicester which should be funded to extend to Upper Heyford.
- 16.11 The security fence around the base is very unpopular locally. People want public access but removal of the fence near the western nib bordering Upper

Heyford is welcomed. Portway and Aves Ditch used to be bridleways and they should not just be rejoined as footpaths and should not become byways open to all traffic. It would be wrong for the ancient route of Aves Ditch to be diverted round the eastern end.

- 16.12 The details of the proposed liaison body are not known but it should include the local residential communities and those working on the base. It should have power rather than influence.
- 16.13 Demolitions should take account of the fact that the NW HASs (buildings 3052 – 3055) are a visible presence from houses at Aston View. There are 54 HASs on the site and provided their footprint was left, demolition of those HASs would not diminish the Cold War heritage or diminish the terrifying scale of it all. Those HASs emphasise the large amenity impact of the base.
- 16.14 If the base was not there one would not locate an industrial estate here. The employment numbers should be limited to that which would be associated with the number of houses. Phasing should ensure that employment does not run ahead of the housing.
- 16.15 The associated signage, lighting, vehicle movements from employment use would diminish the appearance of the Cold War Airbase. Some uses are appropriate, e.g. Supporta Datacare who do not want to be signposted. The HASs could also suit library stacks for the Bodleian as the site is well away from the floodplain.
- 16.16 There seems no justification for a hotel and conference centre as there are others locally encircling the base.
- 16.17 Water supply and surface water drainage needs careful attention. There have been shortages of the former in drought years and a brook to the south of the site overflows.
- 16.18 After the USAF left in 1994 there was a clear pressure for complete clearance of the site that was seen as dominating the plateau with an alien environment. There was a grudging acceptance that there would have to be 1000 houses to clear the site. Also it is now accepted that will not happen as it is now a Conservation Area and there are Scheduled Monuments and Listed Buildings.
- 16.19 There have been so many planning processes and people have been consulted so many times; the passion has been worn away. There is an element of consultation fatigue. People want a long term resolution of the future of the base but their feelings should not be underestimated or ignored.

## **17 Written Representations**

- 17.1 As a result of productive negotiations outside but during the inquiry a level of agreement was reached on the matters requiring contributions via a Unilateral Undertaking and on the mechanisms to achieve them. Consequently, evidence contained in several proofs in support of the need for such contributions did not need to be called, but they remain as written evidence to the inquiry.

- 17.2 One such proof, seeking a contribution to provide Closed Circuit Television on the whole of the site was withdrawn by the Local Planning Authority as they no longer wished to pursue this matter.
- 17.3 Fiona Brown, a Strategic Housing Officer with the District Council addresses<sup>210</sup> the need for affordable housing, its tenure and the desired mechanism to assure the Council that the tenure mix would meet the needs of both the existing residents at the airbase and the wider and long term needs of the District. I address what is proposed via the Unilateral Undertaking and the Local Planning Authority concerns later in the report.
- 17.4 Another such proof addresses ecological matters (Peter Shepherd)<sup>211</sup>. Others wholly taken as read address children's services (including education); ecology; open space and play; leisure and community facilities; the Heritage Centre; the Base Management Plan (now the MPFF), local centre and place of worship.
- 17.5 Similarly as a result of the measure of agreement reached the Appellant's witnesses on affordable housing and education and that of English Heritage on landscape matters were not called but their proofs remain before the inquiry as written representations.

Rule 6 party: The Thames Valley Police Authority<sup>212</sup>

- 17.6 The police authority has used Building 249 and associated land at the north west of the flying field and the northern part of the north/south taxi/runway for training purposes since 1994. The most recent of a series of temporary planning permissions was granted for 1 year in August 2007.
- 17.7 The building is a 3 bay steel framed structure (described in the MOD asset register and Revised Comprehensive Planning Brief as a hangar). Its area is about 3273 square metres and it has very large access doors and a wide apron outside them. It is proposed for demolition in the Revised Comprehensive Planning Brief. It is a short distance to the north of the Quick Response Area group of Hardened Aircraft Shelters that are a Scheduled Monument. Other HASs lie to its north and west.
- 17.8 The five main activities area: Public Order Training, Driver Training, Police Dog Training, Firearms Training and Chemical, Biological, Radiological and Nuclear (CBRN) Incident Training.
- 17.9 The size of the building allows internal mock-ups to be constructed to emulate varied challenging scenarios. There are also associated classrooms, offices, storage, changing and eating areas. Driver training takes place within and outside the building.
- 17.10 The lack of general public access and distance from habitation (that would remain the case if the new settlement were permitted) are of considerable value to the TVPA. The location allows a wide range of sometimes sensitive training activities without hazard to the public or the constraints that may need to be applied in a less secluded location. Those activities cannot be undertaken within an urban area. The wider NOC proposals for employment uses on the flying field, vehicular access thereto and for renewed public

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<sup>210</sup> CDC FB1 and FB2

<sup>211</sup> CDC PS1

<sup>212</sup> Summarised from Document PA1

access within secured boundaries would not impinge on TVPA's use of the building or its use of the northern part of the taxiway.

- 17.11 The facility at Heyford Park is recognised nationally as a centre of excellence for Policy training and the geographical location is strategically significant in respect of responding to CBRN incidents within England and Wales. It is close to key strategic transport corridors and is identified as a key central location for the emergency services to assemble in the event of such a CBRN incident.
- 17.12 TVPA provides an important income stream to NOC and their presence increases the sense of security of the wider Heyford Park.
- 17.13 In the event that it is unable to remain at Heyford Park, the TVPA has given high priority to searching for alternative training accommodation because of the importance of those activities. The Local Planning Authority in the Revised Comprehensive Development Brief has no objection to the TVPA remaining on the base for some of its activities in buildings within the settlement area. The A-type hangars nearer to Camp Road suggested by the Local Planning Authority are however too close to housing.
- 17.14 Two areas of the training role in particular are targeted for alternative sites if necessary: Public Order and Tactical Support training and Driver training. A comprehensive open market search in the Thames Valley has been made via written approaches to the relevant 16 local authorities, adverts in the property press and contacts to all commercial property agents in the Thames Valley region and in central London and direct approaches to major public sector and private property owners in the Thames Valley area. A flexible approach to tenure, new or older buildings, splitting activities and sites has been taken. Of 40 sites that came to light, 9 showed some potential from a desk top review and 5 were visited. No single site capable of accommodating TVPA's needs is available before 2012 when the RCPB would require the police to vacate. Functions would have to be split between two sites. Negotiations are ongoing on those. The Driver training potential site is outside TVPA's area and both are further from the TVPA operational HQ at Kidlington. Operationally they would be less efficient and involve greater travel costs than remaining at Heyford Park.
- 17.15 TVPA therefore strongly supports NOC's proposed Use Class D1/B2/B8 proposal for the building. Those uses are broader than TVPA's use would require which falls within D1 (non-residential institution). Restriction to the latter use by condition would be acceptable, as would a condition personal to the TVPA.

Does the TVPA proposal accord with the Development Plan and the Revised Comprehensive Planning Brief Supplementary Planning Guidance?

- 17.16 Structure Plan Policy H2 (in bald summary) allows for redevelopment of the site for around 1000 dwellings in a way that combines environmental improvements and heritage conservation consistent with a satisfactory living environment and also sustainable travel patterns. Supplementary Planning Guidance should guide how this is achieved.
- 17.17 Within the RCPB, Building 249 is within the Core Area of Historic Significance which comprises most of the Flying Field. It is one of only two buildings within the historic core (with no.221) identified for demolition. Numerous other unlisted buildings within the Core Historic Landscape would be

retained. There is little to justify demolition in the Brief. If a building makes a positive contribution to the Conservation Area then every effort should be made to retain it in its existing or another use. Where as here a viable use exists the presumption should be in favour of its retention. The Brief identifies 249 as within area 1B the central plateau which the 2005 Conservation Plan<sup>213</sup> considers to contain a nationally significant core of historic landscape where priority should be given to conservation of buildings and landscape. The Conservation Area Appraisal 2006<sup>214</sup> finds similarly. Conservation should be in the context of the justification for the site's designation, i.e. the special interest of the airbase as a historic landscape and backdrop to specific elements of this Cold War military site. Building 249 is within the core of the historic landscape and close to Scheduled buildings. The landscape identified as nationally important is a landscape of buildings and structures that formed the airbase. There is no compelling reason for their demolition or for the restoration of the landscape to its pre-airbase condition.

- 17.18 The Brief says building 249 is of no specific type although it refers to it as a hangar suggesting its role was with aircraft rather than ancillary purposes. Built in the 1970s it is contemporary with the Quick Response Area shelters and other HASs built during the period of "sustained deterrence" when the 3 Tactical Fighter Wings of F111 aircraft were based here. The role and purpose of 249, as confirmed by interviews with former staff at the base was to arm and prepare the aircraft being moved from the HASs to the QRA for rapid despatch if needed. That role clearly links to the role of the Scheduled QRA and Northern Bomb Stores and it thus contributes materially to the character of the base and Conservation Area. It can also be considered to be part of the setting of the nearby QRA.
- 17.19 The Brief considers that on balance other objectives arising from the visual impact of building 249 argue for its demolition. That would be wholly contrary to its important role in the character of the Conservation Area. Contrary to what is said in the Brief the building has insignificant visual impact beyond the site. Any view is filtered by the HASs closer to the perimeter fence and further landscaping as intended would reduce that further. The external decoration could also be more muted if felt necessary. The Council's own landscape assessment appended to the RCPB itself does not consider the base to have a major influence on the nearby character areas except in two such areas. Building 249 is not seen from one of them and is only seen within the context of other buildings identified for retention from the other. The building is not a visual detractor.
- 17.20 There is also a long term use for the building from its existing occupier which can guarantee its continued viability. That general position is taken by English Heritage. There is thus no clear case to demolish it.

Do the proposals comply with PPG13?

- 17.21 The TVPA site is fairly central for those who access its training facilities and close to transport corridors. As set out above there are no alternative facilities capable of serving both Tactical training and Driver training and the

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<sup>213</sup> CD64

<sup>214</sup> CD57

potential alternative for the latter is outside the TVPA area. The training activities undertaken would not be compatible with a built up area; a fairly isolated location with external space is needed. That, together with the catchment area of those attending training, makes non car modes of transport unlikely. However, its fairly central location to the TVPA area and access to major roads means the length of car journeys would be minimised. The series of temporary permissions granted does not suggest the site is considered fundamentally objectionable on sustainability grounds and it would be preferable here to the more remote split site possibility.

- 17.22 Provision of a neighbourhood police facility within the new settlement has now been agreed by the appellant and included in Schedule 19 of the Undertaking, the provisions of which are acceptable to the Thames Valley Police Authority.<sup>215</sup>

#### British Waterways

- 17.23 The Oxford Canal and its towpath are not mentioned in the otherwise welcome intentions to enhance green links within the settlement and to the countryside and to support sustainable transport. It should be included as a strategic part of the transport links to and from the proposed development.
- 17.24 The canal is close to the western edge of the application site. Although the towpath is on the far side from Heyford Park there are bridges in the Upper Heyford area. The towpath is important to recreation and importantly it gives pedestrian and cycle access to Lower Heyford rail station. The Heads of Terms of the "Section 106" suggests there would be payments to enhancements to off site public rights of way.
- 17.25 Inclusion of a sum is sought to improve and maintain the towpath and bridges between Upper Heyford to Lower Heyford Station as they will have more traffic using them as a result of the development.

#### The Highways Agency (HA)

- 17.26 Subsequent to earlier letters the HA indicates that it has agreed necessary conditions with the appellant to cover the vehicle preparation part of the car processing use and thus no longer objects to the proposal.
- 17.27 Were the site to be used by car hire companies the associate trip rates would be much higher than those inferred for the existing (Paragon) car processing use at 100 of the 554 morning peak hour trips surveyed.
- 17.28 Two Conditions agreed with NOC are set out to control the 17ha proposed for the car processing use.
- 17.29 A further "Grampian" type condition is required to secure the minor improvements necessary to junction 10 of the M40 necessitated by the development.

#### Mrs Ruth Power

- 17.30 Traffic along Ardley Road is already heavy and fast moving. The proposed development at Heyford Park will increase that traffic. Funding for traffic calming adjacent to Troy Farm along Ardley Road should be included in the Section 106 agreement.

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<sup>215</sup> Document PA4

### Paragon Fleet Solutions

- 17.31 Proofs and Appendices<sup>216</sup> were submitted in support of Paragon's planning and enforcement appeals that are presently in abeyance. They were referred to in the inquiry in support of the lead appeal and so I summarise them here.
- 17.32 Mr Maltby as Managing Director describes their business as a specialist provider of market support, technical services and training to the automotive industry. It has been at the site for 13 years. The processes carried on at Upper Heyford and the skills of the 510 employees based there are described. Over 10% are skilled technicians. The company has a highly regarded apprenticeship scheme. New cars are prepared prior to despatch to fleet operators and demonstrators, company cars and ex rental vehicles are refurbished ready for resale. The form of the hangar buildings are particularly well suited as is the location close to customers and the M40. 9000 cars can be on site at present. An individual vehicle is processed in the workshops and is on site for 43 days. The company has strong links with the local community including schools and colleges in Bicester and through support for local charities and events. 48% of employees live in Cherwell District and a further 10% in nearby Brackley (in Northants). The appeal proposal for 17ha would contract the outdoor area used by one third and entail greater concentration on processes with a high workshop to outdoor space requirement. Present use of buildings comprises 254,000 square feet.
- 17.33 Ways of making on-site efficiencies have been considered which would reduce the space needed from 60 acres (24.3ha) but 40 acres (16.2ha) is the minimum needed. Doing some operations off site is not practical because operations are an integrated process and it would be costly in time as well as financially for vehicles to be parked elsewhere and then brought to the airbase for processing. Paragon's other sites are at or near capacity in any case. Outsourcing would not be practical – local dealers could not cope with the volume and complexity of the work. Other sites at Bicester airfield and Shipton on Cherwell quarry have been considered but rejected owing to restrictions applying or their current condition. It would be prohibitively expensive to relocate from Upper Heyford which in effect is "tailor made for our business".
- 17.34 Mr Brown addresses the reasons for refusal of Paragon's applications to extend temporary use, relating to the impact on the ability to implement OSP Policy H2 and the RCPB; inappropriate level of business use in an unsustainable location and damage to the character and appearance of the Conservation Area. The material points are also made by Mr Dobson for the lead appeal and so I do not repeat them here.

### Supporta Datacare

- 17.35 Proofs and Appendices<sup>217</sup> were submitted in support of Supporta's linked appeals. Mr Dunnnett describes the firm's use of the site over the past 10 years. Their business is data storage. He addresses this company's planning appeal for the use of 10 buildings on the Flying Field for B8 and

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<sup>216</sup> PRB1, PRB2 and PSM1

<sup>217</sup> SRD1 and SRD2

associated office uses for a period of 3 years. The Hardened Aircraft Shelters are particularly well suited to this use and considerable investment (£250,000 to £300,000 per HAS) has been made into racking which does not need to attach to the fabric of the building. The anonymity of the buildings and remote location have significant security advantages. Activity around the buildings is low as the storage is long term and retrieval is infrequently needed. Provided additional space in HASs is made available the company is content to vacate Building 3135 proposed for demolition. There is no advantage in monumentalisation of the relevant HASs as proposed in the RCPB. They should continue to be put to a suitable productive low key use which would not affect their appearance or impact on the landscape.

### Carrenza

- 17.36 An e-mail and brief appearance at the opening of the inquiry sought an opportunity to speak about this company's proposed alternative commercial use for the airfield. This was said to be highly sustainable and generate sufficient income to safeguard the important heritage and wildlife interest of the site. Details of this were stated to be highly commercially confidential. In the event Carrenza did not appear nor were further written details submitted.

## **18 Conditions and the Unilateral Undertaking**

- 18.1 As will be apparent the lead appeal is a complex proposal and a very large number of conditions are proposed. I address them towards the end of my Conclusions. Annex A contains those I recommend.
- 18.2 A schedule of conditions for the Conservation Area Consent appeals was also discussed. Annex B lists those I recommend.

### The Unilateral Undertaking

- 18.3 The Undertaking is given to the District and County Councils by the North Oxfordshire Consortium Ltd as the landowner and Paragon Fleet Solutions Ltd as leaseholder of the central part of the main runway and land to its south including most of the southern taxiway, adjacent land and over 20 substantial airfield buildings to the south. The intention is that the obligations contained therein may be enforced by the CDC and OCC against the landowner and Paragon or their successors in title. A signed version was submitted on 23 January 2009. The Unilateral Undertaking sets out the detailed description of development and floorspace at Schedule 1.
- 18.4 As stated in paragraph 2.2 of the Undertaking the District Council is the local authority with powers to enforce the undertakings in Schedules 3-17 inclusive and the County Council has the same powers regarding Schedules 18- 23 inclusive. The matters addressed therein are:
- 18.5 Schedules 3-17:
3. The Heritage Centre
  4. The Flying Field Management Plan
  5. Affordable Housing
  6. Informal Open Space

7. Sports pitches and Pavilion
8. Play Areas
9. Indoor Sports
10. Local Recycling Banks
11. The Nursery
12. Local Centre and Hotel
13. Provision of Bins
14. Community Hall and Community Development Officer
15. Public Art
16. Security Fence
17. Monitoring Sum

18.6 I outline numbers 3 to 5 and 20 and 21 (to the County Council) below and discuss the Unilateral Undertaking and the weight it should be accorded in my conclusions:

The Heritage Centre and Management Plan (Schedule 3 and Appendix 1 to Unilateral Undertaking)

- 18.7 This was in working draft form during the inquiry and its final version was agreed with English Heritage on 9 December 2008. Through a series of "Heritage Actions" the following would be provided.
- 18.8 The Heritage Centre would comprise building 315 (an A type hangar) or such other building as may be agreed with the Local Planning Authority in consultation with EH and be provided with a variety of modern "museum" (this word is not used) facilities. Access to the outside of buildings 126 (Battle Command Centre), 129 (Hardened Telephone Exchange) would also be available on the minimum 4 days per month. Pre-arranged visits to the Flying Field are also offered. These would allow internal views of 2 Hardened Aircraft Shelters (buildings 3008 and 3009) in the Scheduled Quick Reaction Alert Area that would be left in nil use and the route would also include external inspection of the other Scheduled and Listed buildings on the site as well as the main runway.
- 18.9 A Cold War park would be provided in the north west of the site (as shown on Change of Use Plan version L) and accessible for public inspection from the Portway public right of way. Details of this are to be agreed (as committed in Public Access Action 6 in the Management Plan for the Former Flying Field. An Upper Heyford Trail around the periphery of the site using Camp Road and existing rights of way (shown on Landscape Plan 10B) would be provided and interpretation boards and two new vantage points established would be funded via Public Access Action 2. Commitments are made to put buildings 315, 126 and 127 in weather-tight condition within 6 months of completion of a building condition survey (HC Action 4) and they will be surveyed on a 5 yearly basis thereafter together with the Building 315 and necessary external maintenance undertaken (HC Actions 5 and 6). HC7 addresses the possible transfer of HC buildings 315 and 126 to a capable and willing operating organisation if one can be identified and HC8 that failing such a body being found after 5 years and 3 months that NOC would take back the buildings and apply for their change of use for other

purposes. HC9 would fund a part time Heritage Centre manager and a suitable vehicle for tours both for an initial 5 years.

The Flying Field Management Plan (FFMP) (Schedule 4 and Appendix 2)

- 18.10 This was previously referred to as the Base Management Plan and its internal pages are headed Management Plan for the Flying Field (MPFF). It has had many drafts before and during the inquiry, the final version being no.25, which was agreed with English Heritage on 18 December 2008.
- 18.11 The FFMP includes a series of Actions addressing Heritage (20 Actions ranging from maintenance arrangements for the perimeter fence to control over any external air conditioning units), Landscape (3 Actions addressing long term landscape maintenance, prevention of subdividing fencing within the FF and submission of a schedule of retained trees and an arboricultural impact assessment and construction mitigation measures); Ecology (2 Actions including implementation of the appended Ecological Mitigation and Management Plan that was agreed during the inquiry between the main parties and its review after 5 years); Public Access (6 Actions relating to reinstatement of Aves Ditch and Portway, twice monthly weekend minibus tours of the FF, preparation and application of Access and Parking Strategies) and Management (2 Actions - firstly establishing a consultative Liaison Group comprising the several local and public authorities as well as the freeholder and managing agents and secondly an arbitration arrangement if recommendations from the Liaison Group are disputed.) I have referred to some aspects of these Actions in relation to the proposed conditions above.

Affordable housing (Schedule 5 and Appendix 3)

- 18.12 It is undertaken that 30% of the 1000+ dwellings would be affordable and be transferred on a "tenure neutral" basis to an Affordable Housing Provider (AHP) accredited by the Housing Corporation. Tenure would be agreed between the AHP and the Council subsequent to a full appraisal of the needs of existing residential tenants whose homes would be demolished. All such dwellings would be provided on site, in phases and within clusters not exceeding 30 dwellings. The mix by type of dwelling, number of bedrooms and floor areas is set out. The Local Planning Authority agrees that this would accord with their policy objectives.
- 18.13 The Undertaking would allow for a "local lettings" scheme to give priority to existing residents held to be in need in the allocation of the new affordable housing. The need for decanting of existing residents of dwellings to be demolished is recognised and early provision of affordable housing will be made. The affordable housing in any phase would be offered to an AHP before 50% of the open market dwellings are occupied. The Council is given discretion on which of a selection of "fallback" options should be taken should the AHP be unable to proceed with the purchase of any phase. All affordable dwellings would meet the Housing Corporation's Design and Quality Standards including Level 3 of the Code for Sustainable Homes.

Other CDC matters

- 18.14 The Unilateral Undertaking would amongst its many other provisos also secure appropriate open space provision, improved and informed access to the surrounding countryside as well as re-establish bridleway links around and through the site, a neighbourhood police office, public art and the other

associated facilities necessary for a new settlement of this size with a significant employment area.

18.15 Schedules 18-23:

- 18. County Council Contributions
- 19. Neighbourhood Police Facility
- 20. Transport and Sustainable Travel
- 21. Education
- 22. Countryside Access - On-site Measures
- 23. Countryside Access - Off site Measures

Education (Schedule 21 and Appendices 12 and 13)

18.16 A serviced site for a new primary school site of 2.2ha would be reserved and transferred at nil cost to the OCC. Funding for 300 pupil places would be provided together with 48 additional child care places and also transport costs for 2 years. Should a new school not be approved, funding for 280 places elsewhere would be made. Funding for off-site secondary school places (in Bicester) would be made. Early years education would also be funded.

Transport (Schedules 20 and Appendices 9, 10, 11, 20, 21 and 22)

- 18.17 Public bus services would be supported and a performance bond of £480,000 provided. Various other measures to promote use of travel modes other than the private car are to be funded and organised by a Travel Coordinator.
- 18.18 Negotiations during the inquiry with the Thames Valley Police Authority<sup>218</sup> resolved some matters at issue so that Schedule 19 now meets their requirements. Changes to Schedule 20 now satisfy the OCC.
- 18.19 Concerns are raised by the Local Planning Authorities such that they consider the Unilateral Undertaking would not secure the intentions covered or otherwise overcome objections to the proposal. I address those in my Conclusions.

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<sup>218</sup> PA3 and PA4

### Section 3

#### 19 Inspector's Conclusions

- 19.1 Before addressing the main considerations I assess some matters that set a context for them and some that are not in dispute with the Councils or English Heritage but which raise some issues in relation to national policy and advice.

#### Preliminaries

- 19.2 I concur with the view of the Councils, Appellant and English Heritage that the amendments made to the proposal shortly before and during the inquiry (principally to the Design and Access Statement and the Change of Use Plan) are of a minor nature and that the public would not have been prejudiced by those late amendments not being advertised.
- 19.3 As reviewed in Section 1 above, the application is described as in outline but includes change of use of large numbers of buildings. Although a hybrid proposal combining outline and full permission elements is unusual, there is no statutory obstacle to the lead appeal being considered as such: it comprises an outline proposal for new operational development in the New Settlement Area (NSA), changes of use within the NSA and changes of use on the Flying Field (FF). Both OSP Policy H2 and the RCPB SPD require the site to be addressed comprehensively. The hybrid nature of this lead proposal should be seen in that context. I agree with the Appellant, Local Planning Authority and English Heritage that the proposal can be considered in this way.
- 19.4 The sheer number of buildings and the amount of floorspace of each does in my view require both to be clearly specified. At my request that has now been done. If permission is granted it should be linked to the Schedule setting out those amplified details of the proposal annexed to this report.
- 19.5 I address the Conservation Area Consent appeals towards the end of this report and address there the matter of whether demolitions should be permitted without detailed plans for their replacement.

#### The Adequacy of the Environmental Statement

- 19.6 The adequacy of the Environmental Statement (ES) was assessed prior to the opening of the inquiry. The Appellant was notified under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 that further information was required to comply with Schedule 4 of the Regulations (Information for Inclusion in Environmental Statements). The Geology, Soils and Contamination chapter of the ES was to be amplified with details of the original survey and those were to be supplemented by an update survey at least in the vicinity of areas of the site where high levels of contamination were noted previously.
- 19.7 The material that had been submitted relied heavily on a survey carried out by Aspinwalls in 1997 and previous work undertaken in 1996/7 by ERM. The area is highly sensitive in respect of possible groundwater contamination. The site is at the top of a plateau, there is little cover over the major aquifer beneath the site and there is potential for contamination from a number of sources on the site.

- 19.8 Further information was submitted in September 2008 relating to the trial pit and borehole logs from the 1997 survey by Aspinwalls and surface water and groundwater monitoring results dated May 2008 by Enviro. The risks to human health and the environment were assessed and the Appellant's proposed approach to mitigating the risks was set out. The non-technical summary was similarly amended<sup>219</sup>.
- 19.9 Paragraph 48 of Circular 02/99: Environmental Impact Assessment requires that even with outline planning applications the Regulations in respect of EIA must be fully met. This is enlarged upon in paragraphs 2.47 and 2.48 in Annex 2 Development on Land Affected by Contamination to Planning Policy Statement 23: Planning and Pollution Control (PPS23). The emphasis of Schedule 4 of the above Regulations requires the examination of the main or significant environmental effects which might arise as a result of the development. However, paragraph 2.48 points out that the ES may not be the sole source of information on the consequences of development of a potentially contaminated site, since it is also necessary to understand the implications of the current condition of the site.
- 19.10 The submitted ES, together with the material submitted under Regulation 19 includes: a detailed desk-based assessment and site investigation, both carried out in 1997, an updated assessment of the adequacy of the 1997 investigation undertaken in 2005, taking into account changes in land use and an updated risk assessment carried out in the initial ES. Supplementary information was also supplied to the Cherwell District Council in February 2008 relating to the Petrol Oil and Lubricant (POL) system.
- 19.11 The material already submitted has provided sufficient information for the environmental impacts of the proposed development on the site to be assessed. Further work will be needed, including soil and groundwater sampling, to inform the detailed design of development on the site and inform the remediation of areas of contamination within the settlement area. Despite further site investigations being required, sufficient work has been undertaken to provide a preliminary risk assessment for the proposed New Settlement Area, in accordance with the Model Procedures for the Management of Land Contamination (CLR11) issued by DEFRA and the Environment Agency (EA). Although some of the references to the legislative background and Government policy in the ES are out of date, the policy thrust has remained similar.
- 19.12 As such, I consider that the ES is adequate now for the risks to human health and the environment associated with contamination and the development proposed to be understood and it sets out the appellants' proposed approach to mitigating these risks.
- 19.13 As was the view of the Local Planning Authority there are some areas where the ES could have been fuller and clearer. Some of the June 2008 amendments to the ES are indeed clumsily executed with perhaps over-hasty cross-throughs and emboldened substitutions. Nonetheless the latter has not unduly affected meaning. The ES has been an adequate guide to the major effects of the development and need for mitigation and it is

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<sup>219</sup> Document A2.2

supplemented by information included in other evidence to the inquiry. That being so I consider that the ES as a whole is adequate.

The 2003 Appeal decision and Changes of Circumstances since then

- 19.14 The appeal dismissed by the then First Secretary of State<sup>220</sup> in 2003 for a previous NOC proposal for a new settlement of about 1000 dwellings and associated development at the site is of course an important material consideration in this appeal. Some of the circumstances and findings then remain highly pertinent but there have also been some significant changes since then.
- 19.15 It remains highly material that the Secretary of State then considered that the whole of the airbase should be addressed comprehensively. It is also important if obvious to confirm that the location of the site in relation to the nearest major centre has not changed (about 8km from Bicester).
- 19.16 A new Structure Plan was approved in 2005 with a revision to the previous Structure Plan's site specific policy H2<sup>221</sup> for the airbase. In contrast to its predecessor it requires any proposal to address the heritage interest of the site and that the site should be addressed as a whole.
- 19.17 Little progress has been made on replacing the 1996 Local Plan but many of its policies are saved. The draft replacement Local Plan that was fairly well advanced in 2002/3 has since been abandoned but retained as a non-statutory plan for development control purposes.
- 19.18 In contrast to the "2002 appeal" scheme (submitted to the CDC in 2000), this lead appeal proposal addresses the whole of the airbase. It includes a new mixed use new settlement area both north and south of Camp Road and on the Flying Field changes of use are proposed to most of the main buildings and part of the southern taxiway and nearby land. Amongst many other commitments in a Unilateral Undertaking, there is an extensive Management Plan for the Flying Field aimed at securing its long term management and maintenance and there is recognition by the Appellant that there is a need for a great many conditions to regulate this complex proposal, should it be permitted.
- 19.19 Some elements of relevant national policy are unchanged since 2003 (PPG4, PPG13, PPG15 and PPG16) but others have changed significantly: PPS1 with its emphasis on high quality design and addressing climate change; a shift on how provision of housing should be addressed (PPS3), the Rural Economy (PPS7), Biodiversity (PPS9), Planning and Pollution Control (PPS23 and Annexes). A consultation paper on a new PPS4 was issued to guide sustainable economic development. Draft PPS4 of 5 May 2009 was not issued until after the inquiry adjourned.
- 19.20 The entire airbase was designated a Conservation Area in 2006. Several individual and groups of buildings are now Scheduled Monuments (December 2006) and others have been Listed (April 2008)<sup>222</sup>.

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<sup>220</sup> CD48 (APP/C3105/A/02/1082800)

<sup>221</sup> I understand that OSP Policy H2 is not replaced by the approval of RSS9 in May 2009.

<sup>222</sup> See page 8 above

- 19.21 The RAF Upper Heyford Revised Comprehensive Development Brief (RCPB) was adopted as a Supplementary Planning Document (SPD) by the Cherwell District Council in March 2007. In common with the OSP it requires the site to be addressed comprehensively. It replaced the 1999 Comprehensive Development Brief and the RAF Upper Heyford Temporary Uses Supplementary Planning Guidance that applied in 2002/3.

The Main Considerations on the Lead Appeal

- 19.22 The scale of housing proposed at 1075 dwellings together with the community buildings are uncontentious provided that the other requirements of the OSP Policy H2, the RCPB and that for high design standards are met.
- 19.23 On opening the inquiry I summarised the several strands to be considered, to which there was general assent. Having heard all the evidence the main considerations appear to me to be:
- 19.24 Having regard to the Development Plan and other material considerations, whether the proposal strikes an acceptable, reasonably sustainable balance between securing the long-term future of the Site and its built and natural heritage, achieving general environmental improvements, achieving high quality design and providing a level of employment that is appropriate within the context that the site is about 8km from Bicester and has limited bus services, shops and other services.
- 19.25 The implications of designation of the whole site as a Conservation Area with Scheduled Monuments, Listed buildings and many other buildings accepted by all as of national significance is also a key consideration in assessing the need for and nature of the "environmental improvements" on which the site specific Oxfordshire Structure Plan policy H2 is also predicated and the level of reuse of buildings on the Flying Field.
- 19.26 I shall approach these considerations via the list of Matters on which the Secretary of State wished to be informed.

*Secretary of State's Matter 1: The extent to which the proposed development would be in accordance with development plan for the area, in particular Oxfordshire Structure Plan policy H2 with its requirement that the proposal must comply with the now adopted RAF Upper Heyford Revised Comprehensive Planning Brief(RCPB) Supplementary Planning Document (SPD).*

- 19.27 Unusually, the Structure Plan contains a site specific policy for Upper Heyford. Policy H2 is set out in full under "Planning Policy"<sup>223</sup> above.
- 19.28 It appears to me unanswerable that where, unusually, a Structure Plan has a site specific policy, then one must assume that other general policies have been held to be complied with or are outweighed by other site specific considerations – in this case the need for an acceptable lasting solution to the future of the former airbase. That principle was accepted at the last appeal. It cannot be right that if a proposal would satisfy a site specific policy it should fail if it does not meet others. I return below to Structure Plan G1 which sets out the general strategy for development to sustain economic prosperity and meet development requirements (as summarised

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<sup>223</sup> Page 15 of this report

in the Planning SoCG<sup>224</sup>) after considering the proposal against H2 and the main other relevant Development Plan policies.

- 19.29 I now address the aim and several provisos of Policy H2 and those of the RCPB SPD which was produced as required by Policy H2b.

Is H2 an enabling policy or does it provide only for enabling development to secure other aims?

- 19.30 There was much discussion at the inquiry on whether Policy H2 is an “enabling policy” or one that sees the housing and associated development as “enabling development” in the more restricted sense of “development that would be unacceptable in planning terms but for the fact that it would bring public benefits sufficient to justify it being carried out, and which could not otherwise be achieved.”<sup>225</sup>
- 19.31 It was never claimed by the Appellant that the extent of reuse of buildings proposed was needed to finance the environmental improvements and secure the heritage interest and so the Local Planning Authority did not seek the open book accounting that their RCPB indicates may be required.
- 19.32 If one were to take the narrower view that enabling development is development that otherwise would be contrary to policy, then OSP H2 is a site specific Development Plan policy and development in accord with it would not be an exception to policy.
- 19.33 The Councils’ concerns that the site is in an unsustainable location relates mainly to its being in a rural area about 8km from Bicester and its major centre of employment, shops and services. It is possible to partially mitigate the implications of the location. It is also necessary in my view to see “sustainability” in a wider sense than accessibility by non car modes. I return to that in discussing Policy G1 below. However the location of the airbase in an otherwise rural location cannot be changed and but for the need to address its legacy, such a proposal as this seems most unlikely to be supportable in policy terms.
- 19.34 As OTCH more clearly and simply puts it, Policy H2 makes a “carefully conditioned allocation” of housing and supporting infrastructure. The policy makes the allocation conditional upon achieving “environmental improvements and the heritage interest of the site as a military base with Cold War associations to be conserved, compatible with achieving a satisfactory living environment”.
- 19.35 From the policy itself and from paragraph 7.7 of its explanatory memorandum (which remains an important material consideration on its interpretation), it is clear to me that the scale of development should be limited to that necessary to secure those interests. The policy enables compliant types of development. Whilst some aspects of the context have changed since the 2003 appeal decision, I have no doubt that the current version of Policy H2 allows for a small new settlement and only such necessary “infrastructure” as required to support it. The policy offers no encouragement to development beyond that needed to meet its stated

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<sup>224</sup> Document 4c

<sup>225</sup> CD76 paragraph 1.1.1 (EH Enabling Development and the conservation of significant places)

aims. Other considerations may justify development beyond that needed to support "about 1000 dwellings" but Policy H2 does not do so directly.

Policy H2a: Does the proposal offer "appropriate employment opportunities"

- 19.36 For the avoidance of doubt there is no objection to the proposal based on adverse impact on the strategic objectives for employment in Bicester in the Structure Plan or draft RSS.<sup>226</sup> Significant growth there is delayed until improvements are made to Junction 9 of the M40.
- 19.37 The wording of H2a includes employment opportunities as part of "necessary supporting infrastructure" for the new settlement. The text indicates that the "appropriate balance" would include re-use of some existing buildings and previously developed land located in the former technical and residential core of the base. The latter comprises the area of the NSA in this proposal, not the wider Flying Field where are found most of the buildings proposed for change of use in the lead appeal.
- 19.38 Policy H2a does not set out what level of jobs would be appropriate. The RCPB, based on a prediction of the economically active population resident in 1000 dwellings in the NSA allows for 1300 jobs. Using the same multiplier, 1075 dwellings would represent about 1350 people seeking work. There is no assumption that anywhere near self sufficiency could be obtained but providing job opportunities about equivalent with the likely level of economic activity for residents appears to me consistent with the aim of the site specific Development Plan policy.
- 19.39 The Appellant estimates 1777 jobs arising from their proposal or nearly 480 more than that of the RCPB, or about 430 over that for 1075 dwellings.
- 19.40 At the time of the 2003 appeal, the then Comprehensive Planning Brief (based on the earlier Structure Plan and the then Draft Local Plan now the non-statutory plan policies) envisaged up to about 1500 jobs (CD41, paragraph D2.2.1) as a reasonable balance with about 1000 dwellings. The modest implied reduction in economic activity rates in the 2001 Census does not fully explain the reduction to 1300 jobs included in the RCPB<sup>227</sup>. If one allowed the additional flexibility and higher multiplier in that withdrawn CPB of 1999 (now of no weight in itself of course), then an excess of 277 would result from this lead appeal proposal - still a significant excess over the potential number of jobs needed by occupiers of the NSA.
- 19.41 The Councils also maintain that the 1777 is itself a significant underestimate given the floorspace involved.
- 19.42 This number is much lower than might otherwise be expected taken on the floorspace of the buildings alone. As set out in NOC: MD1, BB1 and BB3, this arises from the fact that a high proportion (63,870sq.m.) of the proposed Use Class B8 floorspace is in the "special" buildings (essentially the hardened and open sided hangars and the northern and southern bomb stores), which are intended for what was termed "low key" B8 storage use. The Appellant's evidence is that these have few or mostly no services provided to them and are of a design unsuited to conventional distribution use. From my own observations of most of these types (I did not see the

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<sup>226</sup> Document OCC PSe paragraph 10.1

<sup>227</sup> Documents CDC JB1 paragraph 18.3.13, JB10 and NOC BB3 section 4

southern bomb stores), that is the case. They fall very far short of what even a lay person would regard as a healthy or safe permanent workplace. The figure of 1777 assumes full occupancy of the buildings, whereas Mr Brisbane at BB3 section 4 says the Cherwell vacancy rate would imply 1670.

- 19.43 Electricity is supplied in some cases to the special buildings but none has WCs, most are without windows and some have only two walls. They would need considerable work to make them suitable for staff to be permanently based in them. Much more likely is that, as in the case of Supporta, one rather more conventional building would act as an office hub whilst the HASs are used for a specialist use, in their case long term document storage which is visited quite rarely.
- 19.44 Other concerns of the Local Planning Authority relate to the fact that the amplified wording of the application does indeed remain unclear regarding "provision of all infrastructure to serve the above development", which is included for the Flying Field part as well as the NSA. Proposals for the FF are however supported only by the plan captioned "Change of Use". There are no details of any operational development associated with the buildings within this part of the proposal except the indication of access arrangements on other plans which would use existing roadways. The only other "infrastructure" discussed was the minor works associated with the needs for parking, signage, waste storage and similar matters, none of which is included in this proposal. Those would need careful control by the Local Planning Authority if they are not to facilitate more intensive use. I address those further under Conditions and the Unilateral Undertaking below. In short, those and any other operational development would require a separate permission. I noted on my post inquiry visit that one of the Victor Alert open sided hangars has been enclosed for the Paragon use and do not know what circumstances led to that.
- 19.45 If such further proposals come forward then the interests of preserving or enhancing the Conservation Area would be an important consideration. Given those aims, I disagree with the Local Planning Authority that it would be difficult to refuse applications for additional services, ancillary buildings or alterations that would allow more intensive use of the special buildings.
- 19.46 The Local Planning Authority makes allowance for the unusual nature of the buildings but considers that a 50% reduction on normal employment density would be appropriate. This seems to me to significantly over-estimate their suitability for other than "low key" storage. For the above reasons I therefore consider that the Appellant's estimate of 1,777 jobs is likely to be much closer than the 2,206-2,680 calculated by the Local Planning Authority (the Crutcher note at Appendix 1 to CDC JB2). NOC concedes that the nature of the buildings means their figure cannot be considered precise. Occupancy rates do seem very low even considering the nature of the "special" buildings but then it seems unlikely that the buildings would ever be fully occupied. Overall, I consider it is a reasonably reliable guide, subject to stringent controls being exercised over associated development that would facilitate higher employment densities.
- 19.47 In view of the fact that there are no dwellings for sale on the airbase at present it is unsurprising that so few existing employees in the "temporary uses" live locally. Only a quarter or so of those working at Paragon in 2008 (the major existing employer) even live in Bicester (OCC PS Appendix 10

pages 9-11), and the rest live further away. 35% of those in the local labour market of 4 adjoining wards already work at Heyford Park (NOC MD1 paragraph 6.53 correction and BB1 Appendix 8 Table 1.2). I have also noted the estimate of the Heyford Park Residents' Association in 2007 that "3 out of 10 households are currently employed by existing employers whose planning permission to continue trading is under threat" (CD43 Appendix 7) and the Appellant's estimate that those living and working at Heyford Park are 20% of those economically active. With a greater choice of housing and greater security from firms having a permanent permission this proportion may well rise.

- 19.48 There is no dispute that the highway network is adequate to cope with additional traffic with minor improvements. Those living close to the improved public bus service to/from Bicester (committed in the Unilateral Undertaking) may choose that mode and the Travel Plan would encourage some to use a shuttle bus or perhaps a communal cycle scheme within the FF. Nonetheless these figures indicate that it is inevitable that many would travel to the site by private car.
- 19.49 The reduction in the RCPB from the 1500 jobs in the earlier SPD is not, as claimed by the Local Planning Authority justified by demographic changes in the 2001 Census. Applying the implications of those changes, economic activity rates for 1000 dwellings would be closer to the 1446 jobs at Mr Brisbane's (BB3) section 4. The 1777 jobs are contrary to the RCPB SPD and would worsen rather than improve the "travel to work" aspect of the "sustainability credentials" of the development.
- 19.50 The RCPB in common with the explanatory memorandum of the Structure Plan also expects that the employment would be within the NSA not on the Flying Field. Given the number of buildings proposed for change of use on the FF, the proposal is also contrary to the aims of policy in that regard.
- 19.51 I conclude that the proposals run counter to the aim of a level of jobs being in line with the likely number of economically active residents of the new settlement, which arises from OSP Policy H2a and also to the explanation in the Structure Plan memorandum that jobs should be in the NSA which is reflected in the SPD.
- 19.52 I return below to how the level of employment proposed stands against policy for the reuse of buildings in the Conservation Area and rural areas but I find no direct support in Policy H2a for a level of employment beyond that needed to support a community living in "about 1000" dwellings.

Policy H2a: Would the proposal provide the "other necessary infrastructure" for the new settlement?

- 19.53 Arrangements to provide a primary school, community and recreational facilities including formal and informal open space are committed in the Unilateral Undertaking and shown on the Open Space Parameters Plan (063 C). I address the Council's concerns about delivery of these under Conditions and Unilateral Undertaking below but otherwise there is no issue that such facilities would be adequately provided.

Policy H2a How would the proposal achieve environmental improvements and secure the heritage interest of the site compatible with a satisfactory living environment?

- 19.54 For convenience I address this with H2b below.

Policy H2b Does the proposal reflect the RCPB and demonstrate that the conservation of heritage resources, landscape restoration enhancement of biodiversity and other environmental improvements would be achieved across the whole or the former airbase?

- 19.55 The nature of environmental improvements required or what would constitute a satisfactory living environment is not set out in Policy H2 and is thus interpreted in the RCPB which OSP H2b says "development must reflect".

The extent of demolitions required by the RCPB to achieve environmental improvements

- 19.56 The character of the site and Conservation Area is defined by its military buildings and the associated former activities in defence of the United Kingdom and Western Europe. The site contains many buildings that are themselves evocative of the Cold War. They are set within an important landscape of that period. It is primarily for its Cold War importance that the site was designated a Conservation Area<sup>228</sup>.
- 19.57 Eleven Hardened Aircraft Shelters (HASs) that are proposed for demolition in the RCPB in the interests of environmental improvements would be retained in nil use in the lead appeal proposal. These 11 HASs survive intact and as part of their original cluster. Along with 45 others on the site, they are considered of national significance by English Heritage. The Conservation Area Appraisal (CD57 p.71) notes this but the RCPB does not.
- 19.58 As set out in the RCPB at section 5.3.2 (Area 5D1) the 4 NW HASs can be seen and they are of later date than the others though of essentially similar appearance. Public views of them and others near the northern boundary are gained from Somerton/Ardley Road but those are across an intervening field about 250m away and there are some trees along the boundary of the site. The NW HASs can be seen in lateral views from a very few dwellings (or their gardens only) about 600m away (Manor Farm Cottages/Aston View). They are seen "end on" at close quarters from Portway bridleway and from the northern peripheral public footpath, again through varying degrees of vegetation. They and others at the west can be glimpsed on the road between Upper Heyford village and Somerton and can just be discerned from across the Cherwell valley between Middle and North Astons. With removal of the tall water towers and radio tower the eye would not be drawn to the existence of the HASs in these more distant views.
- 19.59 From my own observations I do not agree with the RCPB that from any of the viewpoints listed "they can appear oppressive". Certainly building 3135 is visually intrusive from Mudginwell Lane, which links with the Portway bridleway. That building is of no historic interest and has consent for demolition.
- 19.60 If one accepts that views of such buildings that are characteristic of the Cold War landscape can be harmful to other interests, then as indicated on landscape plan L10A there is scope to interplant and manage the existing trees. As agreed such planting would reach a suitable height within 20 years to fully screen such views from Somerton/Ardley Road. Given the

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<sup>228</sup> CD57 Conservation Area Appraisal page 1 fifth paragraph

limited adverse impact in the surrounding landscape I consider that such planting and growth rate would be adequate to secure an acceptable environmental improvement. I thus also disagree with the RCPB that further landscaping would be “relatively ineffective” (both quotations from paragraph 5.3.2 area 5D1).

- 19.61 I do not accept that the close views from Portway of buildings of national interest is seriously harmful. They have an interest of their own and can be seen as complementing the rural views to the west. Neither the rather tentative statements in the RCPB nor its somewhat scanty assessment of other aspects of the significance of the buildings, nor the small benefits that would arise to appreciation of the site within a rural landscape amounts to the substantial benefits that are required in PPG15 at paragraph 3.19 to justify demolition. When the opportunity to create a Cold War Park with these 4 HASs and the cleared site of building 3135 (as was added to the proposal during the inquiry) with its opportunity for the public to approach and view the HASs is also considered, the case for demolition becomes even weaker.
- 19.62 Because of the topography, on approach along Camp Road from the east, the 7 SE HASs are seen but that is a transitory view. Paragraph 5.3.3 of the RCPB addresses them. I do not understand how this group can be considered “at the interface with the settlement” assuming that to mean its new elements. The latter would be separated from the SE HASs by existing housing which the RCPB and the lead appeal would retain. The existing housing has co-existed with these HASs for many years and is about 250m away from the closest HAS. Their removal is not needed to create a satisfactory living environment. To the other side there is opportunity to reinforce existing planting along Chilgrove Drive as part of the reconnection of the Aves Ditch footpath. This may take time to develop but screening of the Paragon car storage amongst the 6 closest HASs here would be achieved fairly quickly and there is the potential to use screening between the HASs in the meantime. The glimpses of the HASs from the main road to the south seem unlikely to be eliminated altogether. The sight of nationally important buildings that evoke the character of the Conservation Area should be accepted in the meantime considering that their adverse impact in the rural landscape is not in my view significant. The RCPB does not convince that there would be “substantial benefits” from demolishing these 7 HASs.
- 19.63 The HASs evoke a period of recent history and would remind people of the threats to their security at that time – though perhaps to some they may also have given some reassurance. That period is thankfully past and it may be that the sense of foreboding arising from them to which my colleague alluded in his report in 2002/3 has now receded. That there are many other such buildings on this site does not of itself warrant demolishing some of them. All are recognised as of national importance and it went unchallenged that this is the most complete example of such a Cold War landscape in Britain.
- 19.64 The RCPB does draw heavily on the Conservation Plan and Conservation Area Appraisal in its references to the significance of the buildings and of the different sub areas of the landscape. That does not however show the rigour required by the tests in paragraph 3.19 of PPG15 before demolishing a building of national significance that makes a positive contribution to a

Conservation Area. The RCPB envisages limited reuse of some buildings but it does not address whether viable new uses for the 11 HASs are feasible. That element of paragraph 3.17 of PPG15 is bypassed in the RCPB.

- 19.65 The RCPB proposes that an arc of HASs to the north of the runway and the “core area of historic significance” should be monumentalised (the concept being that they are left without a use with the aim of blending in time into the landscape). The Appellant proposes their reuse for B8 storage. These HASs are dispersed rather than grouped in “Christmas tree” formation, the aim being to limit damage from a single bomb run. Grassland on this outer northern part of the site is proposed for public recreation in the RCPB but no such access is offered by the Appellant. Subject to close control over parking, lighting, outdoor storage etc I consider that reuse for “low key” purposes would be neutral on the matter of environmental improvement.
- 19.66 The RCPB also envisages removal of the two “inner” A-type hangars (151 and 315) in the “inter World Wars” Trenchard Trident area. These are identified in the Conservation Area Appraisal as making a positive contribution to the character or appearance of the Conservation Area. The lead appeal would retain these, the former for B2/B8 and the latter for D1 use (specifically for the Heritage Centre). The RCPB seeks retention of “representative buildings” for the phases of development of the base within the proposed settlement (paragraph 3.6). Paragraph 4.4.2. acknowledges the historic significance of these interwar hangars and that Upper Heyford is unique in having 6 of them but considers retention of the outer 4 only would “assist in integrating into the new settlement”. That falls far short in my view of the tests in PPG15 at paragraphs 3.17 and 3.19 in judging whether such buildings should be demolished.
- 19.67 Two other substantial buildings (249 and 221) are retained in the lead proposal whereas the RCPB seeks their removal. These buildings do not have the distinctive and clear character of the A-type hangars, the Victor Alert open sided hangars or the HASs. They are however large buildings with open spans. They approximate more closely to older style industrial buildings than most others on the airfield.
- 19.68 Unlike the HASs, their type of construction needs regular painting and maintenance. They appear to have functioned as maintenance buildings for the squadrons they served. As such they were an intrinsic part of the operations at the airbase. Building 249 can be discerned from Portway but beyond and within the context of the nearer HASs and close to the QRAA Scheduled group of HASs. Building 221 is not visible from public viewpoints. CDC’s landscape witness judges that an improvement to landscape from their removal would result<sup>229</sup>. My own assessment however is that these large buildings are in character in this open military landscape and I see no significant benefit from their demolition, provided they are kept in good repair. Reuse would help ensure that and thus help preserve the appearance of the Conservation Area.
- 19.69 The proposals do not include demolition of many smaller structures on the site as again sought in the RCPB. Some that I saw are much in need of at least stabilisation. In a minor way many of these appeared to me to

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<sup>229</sup> Document CDC CG1 paragraph 4.3.8

contribute to Cold War character. Clearance of those in the north of the site as sought in the RCPB would indeed increase its openness and put into relief the HASs proposed in the RCPB for monumentalisation. The small buildings do not to my mind have any significant adverse visual impact from any public views. The Unilateral Undertaking (in the Management Plan for the Flying Field - Action HA7) provides for a process of survey and maintenance to weatherproof such buildings. That process would involve both CDC and English Heritage. I see no significant benefit from their removal.

- 19.70 The RCPB at A7.30 refers to public expectation for environmental improvements at the airbase. There is no dispute that such are necessary and the Development Plan endorses that. However, despite my requests for clarification on whether there was substantial public pressure for the scale of demolitions sought in the RCPB and if so where it is expressed, there is very little evidence in published documents of such public feeling. It certainly does not come across in the summaries of the consultation responses to the Draft RCPB at the Regulation 18 Consultation Statement (CD43). None of the consultation responses to the CDC on this application<sup>230</sup>, object on the specific grounds that any or all of the 11 HASs (or other buildings) should be removed.
- 19.71 More significantly, the landscape evidence to the inquiry and my own observations on several unaccompanied as well as the accompanied visits to the surroundings gives very little or no support to the need for the scale of demolition to secure environmental improvements.

#### The perimeter fence

- 19.72 The RCPB seeks removal of the fence all around the site except adjacent to the Northern Bomb Stores and Special Weapons area where it is held to contribute to the setting of that Scheduled Ancient Monument.
- 19.73 The proposal would remove the security fence south of Camp Road but retain it to parts of the north side. The security fence on the west side close to Upper Heyford village would be removed and a new fence along the line of the reinstated Portway across the western nib of the runway would be erected. The section from Camp Road north to the "tanker" area would also be removed. Otherwise the perimeter fence would be retained with its razor/barbed wire removed except the latter would be kept around the Northern Bomb stores.
- 19.74 Conservation Area Consent for removal of further lengths of security fence was given in compliance with the RCPB. EH was not consulted upon those applications. Following negotiations with EH, at Schedule 16 to the Unilateral Undertaking the Appellant now undertakes not to remove the perimeter fence other than razor or barbed wire) without the written consent of EH unless the Secretary of State expressly requires otherwise. It is clear however that EH does not object to the current intentions as above.
- 19.75 For the avoidance of doubt the amplified description of development clearly includes removal of identified parts of the boundary fence and I have taken plan N.011\_72-3 dated 21 October 2008 to be definitive as to what is now intended.

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<sup>230</sup> With the Appeal Questionnaire

- 19.76 As all parties now agree there would be substantial environmental benefits, particularly to those living in Upper Heyford village and passing along the road there from removal of the security fence around the western nib of the runway and its replacement there and along the replacement link of Portway with a much lower and less "hostile" appearing fence that also affords views over the runway. The pleasantness of the living environment of the new settlement south of Camp Road and appreciation of the intended high quality urban design also requires its removal around all parts of this area.
- 19.77 Retention of all the northern and north west perimeter fence appears to me essential to maintaining the Cold War character of the Conservation Area. Nowhere does it impinge at close quarters in views for local residents or passers by (except at Village Farm). The length along the north side of Camp Road is not a section where the fence harms the rural appearance of its surroundings and at its western end it is intrinsic to the military history of the site. Approaching from the west on Camp Road, the fence should be retained up to the small proposed housing area (although its razor/barbed wire should be removed), then retained for a short length of the arc of the Trident area where it is close to Camp Road and then be removed for the rest of its length where new housing and offices are proposed and along the length of the existing housing. This is what I understand is now intended.
- 19.78 The fence to the east of the "Technical Area" between Camp Road and the former Tanker Storage Area has a less significant role in preserving the character or appearance of the Conservation Area in my view and the living environment of those living adjacent would be enhanced by its removal. I uphold the RCPB aim for its removal there as now proposed.
- 19.79 I have considered carefully my colleague's view in his 2002 report (CD48 paragraph 10.40) that even with additional landscaping the perimeter fence would still retain a "hostile aura". With designation of the Conservation Area for its Cold War importance that aura is one that, other things being equal, should be preserved. The lead appeal would remove the sections where there are substantial benefits to the outlook from Upper Heyford village or to the urban design of the NSA, which outweigh that. Subject to additional tree planting, retention of the fence around the north west and northern boundaries would achieve an appropriate balance of Cold War and wider rural landscape benefits in my view.

#### The car processing use

- 19.80 At the time of my visits Paragon were using a much larger area of runways, taxiways and adjacent areas than the 17ha now proposed. The RCPB indicates 7ha in an overlapping area as the maximum potentially acceptable for this or car storage use.
- 19.81 The application Change of Use plan N.0111\_22-1f did not show the area proposed for car processing. This was added in the June 2008 application update file with COU plan N.0111\_22-1h. For the inquiry the area shown was changed to leave out the eastern 200m or so of the taxiway and the northerly part of the area adjacent to the SE HASs and replace that by using the land to the south of the two easterly trios of Victor Alert open ended hangars (as now shown on COU plan version 1L (and on 1k on 1 October 2008) and plans L10A and L10B).

- 19.82 The core business of Paragon is to refresh a changing stream of “nearly new” cars from fleets and other sources. It is not purely to store them pending sale. In that sense they differ from the activities of the two firms whose appeals for use of other parts of the airfield for storage were dismissed<sup>231</sup>. The fact remains however that a large number of tightly ranked vehicles are parked outside pending and after the various processes carried on inside the relevant buildings on the site. Whilst outside they have the same appearance as stored vehicles.
- 19.83 The defining characteristic of the FF is its openness. I agree with EH that the southern taxiway relates closely in character and purpose to the main runway and that they are both key features of the Conservation Area<sup>232</sup>. Those features with their ultimate purpose of delivering “flexible response” and all the earlier concepts of Cold War airborne deterrence is the essential element in the Conservation Area. I saw that Paragon’s present use of the main runway is highly destructive to the character of the site.
- 19.84 Certainly there would have been military vehicles, including large ones using the base when it was active as shown in some of the photographs (e.g. Dr Barker’s 1989 Photo 15 in Appendix 1 of EH NB2 and Mr Cooper’s photosheet E at NOC JC4) but they were mainly clustered around buildings and not in close ranks on the southern taxiway (or elsewhere). The Paragon vehicles are of a different character altogether.
- 19.85 The cars cannot sensibly be viewed as a transitory impact. When one leaves the ranks it is replaced by another awaiting processing.
- 19.86 My view on how Policy H2 should be applied is that changes of use should serve and be subservient to achieving environmental improvements, securing the heritage interest of the site and achieving a satisfactory living environment (and within those, provide some employment and some of the other necessary infrastructure). Whilst it would not impact adversely on the living environment of the NSA, the 17ha of outdoor car staging would not achieve an environmental improvement and it would seriously harm the character of the Conservation Area.
- 19.87 Regarding the effect on appearance of the Conservation Area, the defined area for outdoor processing is outside the Core Area of National Significance in the RCPB. In the Conservation Plan the area proposed is identified as of regional rather than national or international significance and though within the nationally significant core of landscape it is in “sub area C” where there are nationally significant buildings but “the landscape has no coherence” (CD 64 Figures 18 and 19). The two areas previously dismissed for car storage by Walon (CD49) and Dawsons Rentals (CD50) (boundaries shown at Appendix 4 to Mr Brown’s statement<sup>233</sup>) are well removed from that proposed by Paragon and closer to more Scheduled and Listed buildings.
- 19.88 The area for car processing in the lead appeal is away from most of the Scheduled and Listed buildings but the Listed Control Tower is about 100m away and its setting would not be enhanced by its association with outdoor staging/storage of vehicles. It seems to me though that if one accepts

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<sup>231</sup> CDs 49 and 50

<sup>232</sup> Document EH NB1 paragraph 10.6

<sup>233</sup> Document PRB2

Paragon's need for a far greater area than the 7ha in the RCPB, then the Appellant's selection of the proposed part of the southern taxiway and adjacent areas has attempted to reduce the visual impact of parked vehicles by using the least sensitive part of the wider site.

- 19.89 In making my own appraisal I have had careful regard to the agreed landscape evidence and the small remaining area of dispute on the extent of visibility of outdoor parking of cars and other vehicles from public views. I have assumed that as proposed, public footpath links on Portway and Aves Ditch would be re-established.
- 19.90 From public viewpoints on Portway one would be unaware of the outdoor parked vehicles in the proposed Paragon area.
- 19.91 From much of the direct route reinstatement of Aves Ditch crossing the main runway, vehicles would be at least about 500m away and there would be little or no view of them. From the alternative, more peripheral route shown on Landscape Plan 10B, there would be virtually none. Approaching the southern bomb stores "dog leg" on either route walkers would be closer to the car processing area at about 150m away. On both the CDC's preferred route and the optional more peripheral route, the HASs would offer a fair degree of concealment. As shown on NOC JC5 viewpoints 14 montages, a "sensitively designed fence" between HASs 3036 and 3037 would conceal the remaining views. That sensitivity needs to be reflected in the height of the fence so as not to detract from this imposing view of the HASs. Segregation as now proposed of vehicles over 1.45m would also assist in this. On neither route do I consider there would be the "sun glinting on windscreens" harmful effect referred to in the earlier appeals. By segregating vehicles over 1.45m to secluded parts of the area as is now proposed such slight views could be reduced further.
- 19.92 The use of the areas partially enclosed by the Victor Alert hangars would render the cars visible to those on the proposed organised tours when travelling down the main runway, but this would be at a minimum distance of about 250m and be a transitory impact.
- 19.93 Provided that car transporters were required to load, unload and, if necessary, park up on the less visible parts of the Paragon area, the small degree of harm that I consider would arise to the appearance of the Conservation Area from the above viewpoints would be further reduced. The areas proposed for segregating larger vehicles are now shown on plans 84-1 (for transporters and other HGVs) and 85-1 (for vehicles over 1.45m) (found near the end of section 2 of the Compendium at document A3).
- 19.94 Overall and taking account of the slightly longer view available to those taller than my own 1.62m (and subject to the mitigating means above), I conclude that the glimpses of parked cars from Aves Ditch on the direct alignment would cause some slight adverse visual impact. Such glimpses would be readily absorbed in the vastness of the base landscape however and the appearance of the Conservation Area as a whole would be preserved. On the alternative peripheral alignment vehicles would scarcely be perceived at all and no harm would arise.
- 19.95 With the additional landscaping proposed along Chilgrove Drive I consider it unlikely that cars parked amongst the SE HASs would be seen from Camp

- Road. Otherwise no public views from outside the site would be affected or have any material impact on appreciation of the Conservation Area.
- 19.96 Turning to semi-public views, all employee and visitor vehicles would enter and circulate around the FF via the Trident gateway (shown indicatively on plan N.0111\_23-1h) and join the Flying Field opposite the western end of the outdoor car staging area. Contrary to the indicative arrow for access on Plan L10B, the actual existing roadway between the two A-type hangars is on a slightly different alignment (best seen on the A1 sized plans at NOC JC5 Appendix 3). For all those arriving and leaving on the existing route there would be a direct view of the western end of the car processing area. Photographic views closest to these are viewpoints 16 and 21 on plan Paragon L3 (NOC JC2).
- 19.97 This view would also be gained on the occasional guided tours of the FF from the indicative route and stopping points (see page 3 of Appendix 1 to the Unilateral Undertaking, shown on plan N.0111\_79-1b and committed in Action HC2). The route on that A3 plan follows the existing road pattern approaching the entry to the FF. If the parked vehicles awaiting processing or despatch and any visiting transporters are ranked up to this western edge of the area shown on Change of Use plan 22-1L they would be harmfully prominent on entering the FF. There would also be a direct view of these on approaching from the west down the taxiway at the end of a tour, detracting from that more coherent part of the landscape of national significance and from the appearance of the Conservation Area as a whole.
- 19.98 The gateway to the FF is where visitors and employees should be able to appreciate the vastness of this Cold War landscape that is so important to the character and appearance of the FF, the latter being a major reason for designation of the Conservation Area as a whole. Instead, the area shown buff on COU plan N.0111\_221L for car processing would allow the first and last impressions there to be dominated by cars staged in dense rows at the western end of the Paragon area. The large military buildings to either side would not distract from that undue dominance.
- 19.99 For those solely interested in the Cold War interest of the site that would be perceived as an adverse visual as well as character impact. For others with a wider interest it may be a transitory impact but it would not help their interpretation of the site as important national heritage. The appearance as well as the character of the Conservation Area would be harmed.
- 19.100 The boundary treatments of the periphery of the car storage area, especially security arrangement at entry would need careful thought to minimise their own adverse visual impact. Lighting including security lighting at other than ground level is also likely to be harmful and require strict control. I am satisfied however that those and the details of areas to be defined for taller vehicles and transporters could be adequately addressed by Conditions and by the "Actions" set out as part of the MPFF in the Unilateral Undertaking.
- 19.101 Taking the desirability of preserving or enhancing the character or appearance of the Conservation Area as a whole and bearing in mind the importance of the FF to that whole, I conclude that both its character and appearance would be harmed by the Paragon outdoor use of the 17ha proposed.

19.102 As set out in PPG15 at paragraph 4.19, preservation or enhancement of the character or appearance of a Conservation Area must be given high priority and there is a presumption against granting permission that would conflict with that objective. In exceptional circumstances that may be overridden where the development is desirable on the ground of some other public interest. I return to that and whether there are ways not discussed at the inquiry that could partially mitigate the impact on appearance.

The Impact of traffic using the Flying Field on character and appearance

19.103 With the number of jobs expected and even allowing for improved use of public transport and the Travel Plan schemes on arrival at the Flying Field, there would undoubtedly be large numbers of vehicles arriving, transiting to a particular building and then leaving later.

19.104 The Management Plan for the Flying Field (MPFF) limits traffic to 4 HGV movements per day per building where change of use is proposed yielding a potential maximum of 756 per day to and from the FF. That amounts to just over one HGV per minute averaged over a 10 hour period. That is in addition to other traffic. Bearing in mind the large numbers who worked on the FF when it was an active Cold War military site and that they would have come to and fro in (unknown) numbers of trips, I consider it unlikely that the number of vehicles using the FF would be harmful to the character or appearance of the Conservation Area as a whole.

The effect of some existing uses that would continue if the lead appeal was allowed

19.105 The training activities of the Thames Valley Police Authority (TVPA) at building 249 appear to me to be in character with the former use of the site. The building is not seen in close public viewpoints and is quite well contained from outside Heyford Park including from existing and proposed public paths. The training activities require a location remote from housing and a degree of security and privacy. Associated parking areas for course participants are needed. Provided car parking is kept close to the building the open military character of the site would not be harmed by this use, which would also ensure the building is maintained. Police driver training occurs on the north south runway but that is not part of this appeal proposal and I have not included that in my considerations or my conclusion that the police use of Building 249 does not detract from the nationally important Cold War landscape or from the setting of the nearby Scheduled QRAA.

19.106 I agree with the Local Planning Authority that a different Class D1 use could be one attracting a level of traffic incompatible with the Conservation Area or otherwise unsuitable. Whilst restricting the level of parking as can be achieved via the Strategies (as discussed under Conditions below) would tend to limit such options I consider it would still be necessary to restrict the use to police training or B2/B8 uses.

19.107 Building 221 is a similar large building though of two bays rather than three and is proposed for B2/B8 use. That would be consistent with one of the linked appeals against refusal of renewal of a temporary permission for timber machining and fabrication.

19.108 I do not consider that the associated traffic or employment levels of B2/B8 uses in these two buildings would be so intensive that they would be likely to harm the character or appearance of the Conservation Area as a whole,

subject to the controls that can be imposed by condition or are included with the Management Plan.

- 19.109 Supporta Datacare is another concern where the security and anonymity of the FF in general and the HASs in particular are highly valued. Their racking system shows that the long term storage of documents can be achieved without affecting the integrity of the buildings, though I saw that careful control over any external alterations is necessary. I consider that can be achieved through conditions and the Actions in the MPFF.
- 19.110 I saw that some of the northern bomb stores are used for firework storage. This is another use for which a remote and secure location with near "tailor made" blast limiting structures is particularly well suited and where the reuse is in character with the history of the site.

Policy H2b – would the proposal enhance bio-diversity?

- 19.111 As indicated in the Ecology SoCG (Document 4e) an Ecological Mitigation and Management Plan has been agreed and forms part of the Unilateral Undertaking. That would include some extension of and improvements to grassland habitat on the Flying Field and additional features for amphibians, removal of tarmac at the western nib and removal of the perimeter road at the eastern end. A Condition is proposed to safeguard ground nesting birds that might otherwise be threatened by cats and dogs from new settlers. As a result the Local Planning Authority did not pursue the scarification of the runway nibs in the interests of ecology as proposed in the RCPB. With the measures in the EMMS there is no dispute that this aim of Policy H2b would be met.

Policy H2b – landscape restoration

- 19.112 This part of the policy has a comma between the above two words. As all agreed this appears to be a typographical error.
- 19.113 The demolition of the unsightly school buildings and the other institutional buildings (including the hospital chimney) and a prominent high water tower south of Camp Road at the west of the site (already permitted) and their replacement by playing fields and suitable landscaping would be a major improvement to the site. Demolition of other high water towers (as proposed) would remove the other features in plain view from villages around the site and much improve how the airbase sits within the wider rural landscape. The replacement of the security fence close to the boundary with Upper Heyford village would also help restore the landscape. Other buildings of little Cold War significance just north of Camp Road would be demolished to make way for one area of housing. These are already subject to CAC. Proposed conditions on the lead appeal would address phasing of demolition along with each phase of the NSA.
- 19.114 The NSA outline proposals include a Landscape Masterplan and there is ample opportunity to ensure that suitable landscape treatment is achieved along those lines. The Built Form Masterplan shows at the south and south east of the site housing on three sides in each group with an open side to playing fields or adjacent hedges and farmland. That would provide a more sensitive edge treatment than at present. As well as substantial areas of new landscaping, there would be selective removal of non native trees and their replacement. Similarly on the FF there are opportunities to interplant trees along the boundary. That would achieve an acceptable balance

between preserving the Cold War landscape and giving it a softer face to the countryside and those in the nearest hamlets to the site.

- 19.115 I have already indicated that I consider the preservation or enhancement of the Cold War landscape for which the Conservation Area was designated and a significant number of buildings Scheduled or Listed, should have clear precedence over the very minor improvements to the appearance of the site as part of the surrounding countryside that would arise from the demolitions envisaged in the adopted RCPB.

#### H2b – other environmental improvements

##### Public Access

- 19.116 The proposal includes the reinstatement of public rights of way that were broken when the main runway was built.
- 19.117 The history of Aves Ditch is not entirely clear but it may have been a boundary feature rather than a Roman road as previously thought. Of the options outlined for the reinstatement of the link broken by the air base, both would entail a “dog leg” around the western nose of the southern bomb stores before joining the re-opened end of the track known as Chilgrove Drive down to Camp Road and beyond. In principle the direct route using the other side of this triangle would be desirable as that was the historic route and it would avoid close views of dense wire fencing. The diversion would however be minor with minimal impact on the convenience of users. I do not consider that the major work required to enable an entirely direct route here would be justified by the public benefit that would result.
- 19.118 More important is the question of whether the re-linking of the sections of Aves Ditch should be a straight route across the main runway or be diverted around the eastern perimeter road. The former would be more direct and convenient to walkers and reflect its historic route. However it would cut across the main runway spoiling its integrity and its vast length and critical importance to the character of the Conservation Area as a whole would not be fully appreciated. It would also require two new fences to ensure security. Whatever their form they are likely to be intrusive and harmful to openness and the historic character of the site. That recent history appears to me more important than that before the airbase. Though longer, the peripheral route would still be reasonably convenient and would better allow appreciation of the airfield and its history, subject to an interpretation panel and an “inside” fence and viewing place of a form and height to allow a clear view as illustrated in NOC JC3 sheet 5. That option would also allow for a short potential future link to a footpath to Ardley.
- 19.119 That this longer route would also be more distant from the proposed car processing use has added some modest weight in my conclusion that the peripheral route is to be preferred as virtually no view of “Paragon” cars would then arise from the footpath. That preferred route is that shown on Plan L10B as “Aves Ditch optional route” and as points 2-33-4-44-22 on unnumbered plan “RAF Upper Heyford On-site access measures” at Appendix 19 to the Unilateral Undertaking (Document 6).
- 19.120 The reinstatement of Portway at the west also offers significant public access benefits. The vantage point, interpretation board, long view down the runway and with angled views of the heavily fenced group of HASs

comprising the QRAA Scheduled Monument, appreciation of the Cold War character of the Conservation Area would be greatly enhanced.

- 19.121 Access is now also proposed to a "Cold War Park" from Portway near its junction with the west/east public footpath. A new gate and enclosed area with interpretation boards would allow an overview of the 4 NW HASs as shown on the latest Change of Use Plan (N.0111\_22-L).
- 19.122 With the Portway and Aves Ditch links there is also opportunity to establish an Upper Heyford Trail around the airbase (for which £25,000 is committed in the Unilateral Undertaking via the MPFF at Public Access Action 2 for a circular footpath walk with a minimum of 8 interpretation boards and 2 vantage points). A contribution of a further £172,000 for "footpath links in the vicinity of the Base" is also committed (Public Access Action 5) to facilitate links being created to other nearby public footpaths.
- 19.123 Public views over the near parts of the flying field could be provided as illustrated (at NOC JC5 tab 3) by use of glass panels between the A-type (or A-frame) hangars close to the Heritage Centre. In the form shown this could also contribute to the commitment to public art in the Undertaking.
- 19.124 A Heritage Centre in an A-type hangar (building 315) and at associated Scheduled buildings 126 (the battle command post) and 129 (the hardened telephone exchange which is still in use) is proposed within the "Trident" area, not far from the main entrance from Camp Road. Part of building 315 is allocated in the first instance with the hope that an F-111 or one or more other aircraft associated with the base could be borrowed to occupy the remainder. The Unilateral Undertaking commits the Appellant to operating the Heritage Centre for 5 years. There is at present no voluntary group ready to take on the project (OTCH expressly rejected the idea when I enquired whether they were interested in doing so).
- 19.125 Public tours would also be offered twice a month to coincide with the openings of the Heritage Centre or by pre-arrangement at other times.

#### Other environmental improvements

- 19.126 In addition to the heritage, landscape and ecology matters and the benefits of improved public access, the removal of the large modern warehouse type building (3135) at the north west edge of the site would improve the environment for those with views towards it and it would benefit the appearance and character of the Conservation Area.
- 19.127 The replacement of dwellings incapable of cost effective modernisation with housing to modern standards would be a further environmental improvement.
- 19.128 The RCPB seeks the removal of the Petrol Oil and Lubricant (POL) system. As I discuss in relation to conditions below intrusive operational development is not proposed on the FF as part of this proposal. It thus appears likely that an alternative means of stabilising and isolating sections of the system may suffice. Ensuring that risks to the environment and the water supply in particular from the POL system are minimised would also be an important environmental improvement.
- 19.129 The Management Plan for the long term management and maintenance of the FF is also significant to help ensure the lasting solution for the airbase. The "Actions" secured there as part of the Undertaking or the imposition of

conditions would ensure that the fabric of the airbase was maintained and potential ancillary development is closely controlled. There is no mechanism to ensure the former at present and a comprehensive approach to the latter can be secured via the Undertaking and through conditions.

Policy H2a - other considerations relating to enabling the heritage interest of the site to be conserved

- 19.130 Whilst adopted SPD is an important material consideration it has not been subject to independent examination and the weight accorded to it is less than for a Development Plan policy. How it stands against national guidance is significant in refining the weight it should be accorded. I have referred above to there being insufficient justification for the extent of demolitions required by the RCPB. I have also drawn on some examples of current temporary uses to assess their impact on the Conservation Area.
- 19.131 National guidance is clear that "new uses may often be the key to a building's or area's preservation" (paragraph 2.18). Paragraph 3.8 says that "generally" the best way of securing upkeep of historic buildings and areas is to keep them in active use. Neither of these require such uses to be permitted however. The nature of construction of some of the buildings including the 45 (out of 56) Hardened Aircraft Shelters proposed for B8 use is such that they are unlikely to rapidly deteriorate. Nonetheless and as paragraph 3.9 goes on to say finding an optimum use that balances viability and the changes to the character or appearance of a building or area is required. It seems to me essential that strict control is exercised to prevent harmful impact to appearance from adaptation of the buildings and on such matters as car parking, lighting and outdoor storage. I return to those under Conditions below. Overall though, I consider that the development proposed, with the exception of the outdoor areas for the car processing use, would ensure that the character and appearance of the airbase as a whole and the FF in particular would be preserved. That English Heritage is content on this, subject to the matters in the MPFF and in conditions, strengthens my view.
- 19.132 Bearing in mind that the FF comprises a most unusual if not unique assembly of Cold War buildings including several that are now Scheduled or Listed and the HASs that are unlisted but of national significance, I find that the preservation of its character and appearance (as the dominant reason for designation of the Conservation Area as a whole) over the long term that would be achieved through reuse of the buildings, as proposed, would outweigh the harm to the aim of Policy H2b to limit the number of jobs to those supporting the needs of occupiers of the new settlement. My conclusion on that is on the understanding that the excess is unlikely to exceed 500 above the RCPB figure and is reinforced by the fact that many of these buildings are particularly suited to specialised uses.
- 19.133 This being my conclusion I do not here consider the arguments put by SEEDA to support reuse except to say that they favour doing so to diversify and strengthen the local economy. I return to them later in my report as a consideration to be weighed against the harm to the character and appearance of the Conservation Area from the 17ha for car processing.
- 19.134 Except in respect of the car processing use, I thus consider that the lead appeal reaches an acceptable balance of environmental improvements and securing the heritage interests of the site. An acceptable living environment

for those living nearby would also result. The interests expressed in policy H2 of the Structure Plan would be balanced in an appropriate way.

Other matters relating to implementation of policy H2 via the RCPB: the weight to be accorded to this SPD.

- 19.135 A very large number of changes were made to the document post consultation as evidenced in the "blue" text in CD120. Many of those were in the ordering and organisation of the document. Others, as conceded by CDC were more substantial, including to the sections relating to buildings to be retained or demolished, those judged to make a positive contribution to the character or appearance of the Conservation Area and the extent of reuse on the Flying Field.
- 19.136 Given the scope of those changes and that the site is in one ownership, the view might well have been taken that the smooth implementation of the document would warrant a further round of consultation to try to narrow the gap between the Councils' and the Appellant's aspirations for the site. That would more readily have suggested to me the "rigorous process of community involvement" sought in the then version of PPS12 (2004) at paragraph 2.42.
- 19.137 Appendix 7 to CD43 summarises consultation responses and the proposed response. The detail of changes proposed is not always clear however. It was only shortly before the relevant committee meeting that the document proposed for adoption with its extensive changes was available. Some of its "Figures" were only produced at the meeting. It seems unlikely to me that the post consultation process of making the changes described to the inquiry would have been clear to consultees and there was not then a fair opportunity to comment on the changes even in an informal way.
- 19.138 However CDC considered representations on the draft, produced a full report of them, made changes and then adopted the document. I am not entirely convinced that all those changes were "as a result" of representations (paragraph 4.43 of PPS12 (2004)). I do not consider that the process was in the spirit of intended consultation in PPS12 but it does not appear to me to have been so defective as to fail to meet its minimum requirements.
- 19.139 The Appellant did not seek Judicial Review of the RCPB but instead submitted the duplicate applications, with a recognition that if an appeal was made the merits of the RCPB's approach would then be tested.
- 19.140 Structure Plan policy H2 says that the development "must" reflect a revised comprehensive planning brief. That wording appears to intend that great weight should be given to the then yet to be prepared revised SPD. It does not however alter its status as a material consideration which, though subject to consultation was not subject to the rigour of independent scrutiny. Because of the substantial changes made post consultation I give it less weight than Structure Plan Policy H2 appears to attempt to anticipate.
- 19.141 Of far greater significance regarding the weight to be given to the RCPB is that it conflicts in material ways with national guidance in PPG15. The case has to be made for demolition of buildings that make a positive contribution to the character or appearance of a Conservation Area, not a case for their retention, which seems to have been the approach in some examples on the FF. The process of emergence of the RCPB seems to me to suggest that the CDC worked from an initial assumption that "environmental improvement"

would require removal of buildings on the FF, which is the burden of Policies UH1-4 and the Proposals Map of the non-statutory Local Plan (prepared during the currency of the earlier Structure Plan).

- 19.142 There is no direct support for that approach in the current Structure Plan. Once the site was designated as a Conservation Area, conservation interests should have been afforded greater weight in the balance being sought than appears to have been the case. I have therefore given much greater weight to PPG15 than to the RCPB where they appear to be at odds.

#### Other Development Plan policies

##### Cherwell Local Plan Policy EMP4

- 19.143 The airbase is not an identified employment site under policy EMP1 but policy EMP4 allows for employment generating development in rural areas subject to its being within an acceptable employment site and/or being a conversion that is in keeping with the surroundings and does not need major rebuilding or extension. The remainder of the policy refers to within or adjacent to a (rural) settlement and does not therefore apply here.
- 19.144 The airbase is set within a rural area and although not an authorised permanent employment site there is an acceptance that a significant level of employment there is justified in Policy H2 of the Structure Plan and the RCPB. The second part of the policy could also apply to buildings on the airbase. The text at paragraph 3.53 however states that the "policy is intended to apply mainly to farm buildings of traditional construction." The general thrust and aim of this policy aligns with national policy in PPS7 to allow reuse of appropriately located and constructed rural buildings, preferably for employment purposes where the buildings contribute to the rural character of the area and meet sustainable development objectives.
- 19.145 Policy EMP4 may give a very modest support in principle to the lead appeal but it seems unlikely that the writers of this policy or of PPS7 had in mind the reuse of 189 mostly very large military buildings that have a very definite character of their own but not one that sits easily with "in keeping with the surrounding area". The latter must in my view refer to the "rural area" not the Conservation Area. Other policies and guidance are much weightier considerations than this policy.

##### Structure Plan policies EN4 and EN6 and Cherwell Local Plan policies C18, C21, C22 and C25.

- 19.146 These echo longstanding national guidance in PPGs15 and 16. Policy EN4 aims to preserve historic buildings and their settings and to preserve or enhance the character or appearance of Conservation Areas. Policy EN6 aims to preserve nationally and internationally important archaeological remains. The Local Plan policies seek the same aims. Subject to conditions and the weight to be given to the Unilateral Undertaking and with the exception of the car processing use, the aims of these policies can be safeguarded.

##### Structure Plan Policy G1

- 19.147 This policy amongst other things seeks to concentrate development in locations where a reasonable range of services and community facilities exist or can be provided and the need to travel particularly by private car can be reduced and use of other modes encouraged. It is against these

- elements of the policy mainly that the Councils consider the lead proposal must fail as they consider the proposal does not comply with Policy H2.
- 19.148 Nonetheless on examining OSP Policy G1 it appears to me that many of its elements would be met. The proposed development would help meet market housing, affordable housing and employment requirements whilst protecting and in some respects enhancing the environment of the Conservation Area and the natural resources of the area, including the County Wildlife Site.
- 19.149 The lead proposal would provide homes and jobs in an area where a reasonable range of local services and community facilities can be provided, via its design features and by improvements to the bus service and by a Travel Plan. Accessibility by non car modes would be improved and walking and cycling (mainly within the NSA) would be facilitated.
- 19.150 It would make good use of a very large previously developed site that includes many substantial buildings (with high embedded energy costs) that are suited to fairly specialist and low employment generating uses and/or which require the security and distance from habitation of the flying field part of the site. It would ensure that jobs are retained in the district to help sustain its economic prosperity. It would not permit development on important open spaces but create some new ones.
- 19.151 Adding a little to this “general sustainability” policy, from national policy and guidance, the proposals would also avoid the very significant waste arisings implicit in an approach relying on demolitions of large and heavily built specialist hangars and other buildings. It is also intended that wherever possible materials from demolitions of other buildings would be reused within the site. For disposal of the remainder Ardley Landfill site is 2-3km away. Improved public access through and around the site (including to its Cold War Park corner), to the Heritage Centre and via arranged visits as well as provision of formal and informal recreation space would be achieved. Landscaping of the site can reconcile maintenance of the Cold War landscape whilst softening the impact of the closest HASs on occupiers of existing and proposed dwellings. The views and needs of the existing local community, including occupiers of the occupied dwellings among the 315 existing dwellings at the site (many of which would be demolished) have been invited by the Appellant and taken into account and those in housing need would be accommodated in affordable housing to be built as part of the development.
- 19.152 The geographical location of the site in relation to major centres such as Bicester cannot be changed but improvements to accessibility could be achieved through the sustainable transport elements of the Undertaking, going some way to achieve the objectives of CLP Policy TR4. Such minor road improvements as are required are included in the Undertaking or can be secured by condition, meeting other Development Plan transport policies.
- 19.153 Taking account of a wider definition of sustainability than travel alone, the components of the lead proposal itself, the mitigation works included in the Unilateral Undertaking and other matters that can be secured by condition, then I consider that the weaker elements of the “sustainability credentials” of the site would be acceptably addressed.

- 19.154 Many other Development Plan policies are mentioned in the Planning SoCG but no others formed a substantial part of the Councils' case.
- 19.155 OTCH found Structure Plan policy T4 (freight distribution centres) to bear on the proposal. Such a centre in this location would be contrary to the aims of this policy. As can be seen from the amplified description of development, the proposal includes a very large floorspace for Class B8 uses<sup>234</sup>. The vast majority of this is in the "special" buildings that have severe operational constraints upon the type of B8 use to which they are likely to be put. HGV traffic would be limited to 4 vehicles per day per building via the Unilateral Undertaking. Such uses as are implied by this are not what I consider Policy T4 is intended to address.
- 19.156 *The Secretary of State's Matter 2: the extent to which the proposed development would be consistent with Government policies in Planning Policy Statement 1... with particular regard to whether the design principles adopted in relation to the site and its wider context, including the layout, scale, open space, visual appearance and landscaping, will preserve or enhance the character and appearance of the area, having regard to the advice in paragraphs 33 to 39 of PPS1.*
- 19.157 Parameter plans indicate the street structure, layout, scale, open space and landscape structure for the New Settlement Area. A Design and Access Statement (DAS) was submitted with the Application and principally addresses the NSA where much of the proposal is in outline. Its Built form and Landscape Masterplans amplify the Parameter plans. The DAS has been revised several times during the inquiry. The 12 March 2009 DAS<sup>235</sup> should be taken as the Appellant's intention in substitution of earlier versions. Its Built form Masterplan is included at A0 size in the Compendium (and at A3 in Fig 3.1, page 34 in the DAS) and the Landscape Masterplan is at A2 size in the Compendium (and at much smaller scale at fig.4.7 in the DAS).
- 19.158 The DAS has an important role in assessing whether the development would create the "satisfactory living environment" sought in Policy H2 and the RCPB as well as indicating whether the standard of design expected in PPS1 is likely to be achieved.
- 19.159 The Local Planning Authority accepted the application as valid and thus that the requirements of Article 4C of the GDPO regarding information to be included in a DAS had been met. The Local Planning Authority conceded in cross examination that what it sees as inadequacies in the DAS would not, on their own have justified refusal. They do however consider they are a contributory indication that the proposal has not been shown to preserve or enhance the character or appearance of the Conservation Area as required by Structure Plan policy EN4 or that a satisfactory living environment would result. I address those concerns in turn.
- 19.160 The DAS principally addresses the NSA not the whole site, though the "red line" plan of the latter (Fig.1.2) and an aerial view of the whole (Fig. 2.1) are included in the DAS. A DAS is not required for change of use proposals unless it also entails operational development (paragraph 69 of Circular 01/2006). The DAS's assessment of the site's immediate and wider context

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<sup>234</sup> Given as 72,521sq m in Document NOC BB3 Annex B

<sup>235</sup> Document A2.3

is set out in its section 2. The DAS identifies at section 1.2 the detailed elements of the proposal, including that permission is sought for replacement fencing on the boundary of the wider site (beyond the NSA) and that the application includes "all infrastructure to serve the development" on the Flying Field as well as the NSA. In addressing the "main development uses", it addresses the NSA only and does not explain or justify the changes of use including the proposal for car processing or the Cold War park in the NW corner of the site.

- 19.161 The DAS includes an indicative access plan (Figure 3.13) for the FF with a key that includes "parking areas". I have found the latter cannot be discerned even on the slightly larger (1:10000) version of this plan at N.0111\_23-1h. The DAS is of thus of no help in assessing the likely impact of these. The proposal does not include any excavations nor any alterations to buildings on the FF, where only the change of use of buildings (and land) is proposed. The Appellant's witness Mr West accepted that "infrastructure" here would include infill panels, signage, additional storage and car parking on the FF. He also accepted that some changes affecting the appearance of the buildings and their immediate surroundings would be likely to be implied by the changes of use. The DAS does not evaluate the impact of these. These types of development would require permission from the Local Planning Authority and will need firm control. Conditions are proposed to address these as well as "Actions" in the Management Plan for the FF within the Unilateral Undertaking.
- 19.162 Analysis of the relationship of the northern NSA and the car processing use is a surprising omission. The Cold War Park came late to the proposals during the inquiry. That would retain the 4 HASs in nil use and they are remote from the NSA.
- 19.163 The other documentation submitted with the application and subsequent amendments do clearly address the whole site as required by OSP Policy H2. The DAS allows one to understand what is proposed for the NSA and there is some limited attention given to relationships with the wider site. References are made to the FF and its buildings and landscape at several points. This is a proposal with a considerable amount of other supporting information including the Environmental Statement, which further aid understanding of what is proposed and its impacts.
- 19.164 Given that development on the FF is for change of use, I consider the DAS is adequate in understanding what is otherwise proposed.
- 19.165 The second general concern relates to relationships between some retained buildings and adjacent proposed new buildings.
- 19.166 In terms of the scale and relationship of buildings, examination of the DAS suggests to me the need for some review. Examples include the following.
- 19.167 The three storey and highest density housing is proposed near to the main entrance from Camp Road in the Trenchard Trident area (see Figs, and 3.16 and 4.21), Near that entrance it will be important to ensure that the new buildings are disposed and of a scale to respect the modest proportions of the gatehouse and the nearby other single and two storey attractive unlisted buildings (100, 103 and 52) that are to be retained and which contribute positively to the appearance of the Conservation Area. The justification for that relationship is unclear in the DAS.

- 19.168 Some other potentially difficult relationships include the northern edge of housing to the north west of Camp Road. It is shown 30m away from the large building 292 (one of the few on the site with a conventional industrial appearance). Boundary planting as indicated would assist after 10 years or so and the "cone of vision" diagram<sup>236</sup> shows that a direct view from dwellings could be avoided. That would not be so from their gardens.
- 19.169 The relationship of the north east area of new housing and the group of SE Hardened Aircraft Shelters has also been questioned. Whilst the HASs are very large and (seen purely in a residential context) rather unlovely structures, they would be about 350m away at the closest. The Landscape Masterplan (L14) does not show tree or shrub planting along that boundary but there appears no reason why this could not be done. If the Paragon use of land there was permitted it would also be needed to screen the cars from housing there.
- 19.170 It will also be important to ensure that housing is sited away from any noisy uses (or that the latter are closely controlled or moved elsewhere). I heard on my November visit that the Paragon car washing plant is indeed quite noisy and is fairly close (about 100m) to the western edge of the north eastern block of new housing. It may be that a noise assessment will be needed if the subsequent details of exact siting give cause for concern. It may also be within the control of the Appellant as landlord to ensure this plant is modified to ease such concerns.
- 19.171 These potentially uneasy relationships of buildings have been highlighted by the DAS. It is to be hoped that these and the detailed design of each Phase will be subject to Design Review. They will also be subject to the detailed scrutiny of the Local Planning Authority at reserved matters stage.
- 19.172 There are some internal inconsistencies in the DAS for example in showing the corner retail unit rising above the others to 3 storeys in the local centre area (Fig. 4.14) but the whole block as 2 storeys in the NSA-wide heights parameter plan at Fig 4.9.
- 19.173 Lengths of blocks of buildings are indicated but not those of individual buildings as paragraph 89 of Circular 01/2006 advises.
- 19.174 The DAS states the intention to create six different but complementary character areas (set out in paragraph 3.9.4 and the following tables) but the "Principles for Architectural Expression" (sections 4.8 and 4.9) do not refer to how those would be expressed, being more generic in their approach.
- 19.175 The DAS does not include Design Codes for the different phases of development. This seems to me on a site of this size to imply a level of detail inappropriate to a DAS. On the other hand leaving these to be agreed on a phase by phase basis does risk that the phases would be different but not complementary within the whole. The DAS does however persuade me that detailed consideration has been given to the different character of the areas, street plans and buildings that would be retained and, in the absence of any more detailed material that is sufficient to set the context for Design Codes for those areas. Provided that the Design Code for the first phase includes a general overview for the others, I have concluded on the matter

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<sup>236</sup> Document NOC RW2

of conditions below that a phase by phase basis would suffice to ensure that high quality design across the NSA would be achieved.

- 19.176 The DAS has been an iterative process including during the inquiry. Some of those iterations reflect the further minor changes to the proposal and others better aid understanding. The DAS has served to highlight particular issues. It has not fully resolved them.
- 19.177 Circular 01/2006 advises that the above types of matters should have been addressed. It does not appear to me however that the ability of the Local Planning Authority to control them at reserved matters stage would be impeded, subject to conditions imposed on any planning permission. The Management Plan for the Flying Field secured in the Unilateral Undertaking would provide a further layer of landlord's control on some matters and I address that later in the report.
- 19.178 As the Circular states, the amount and quality of the information needed in a DAS will vary from scheme to scheme. The DAS is of an appropriate level of detail for this large and complex proposal. I am not surprised that it runs to 117 pages or that some matters are addressed better than others. Its limitations do not go to the heart of the proposal and the DAS is sufficient to act as a link between an outline application and the many detailed submissions that would follow a grant of planning permission.
- 19.179 The DAS is also consistent with (and specifically addresses) the advice in CABE guide "Design and Access Statements – how to write, read and use them" (CD84) and asks and responds to 14 of the 20 questions set out in CABE's "Building for Life" (the other questions in CD 86 not being relevant to an outline proposal). Taken overall, the DAS appears to me to have due regard to the matters set out in Section 3 of Circular 01/2006.
- 19.180 Having regard to the parameter plans, the DAS and the large amount of supporting and indicative material and subject to necessary conditions, I consider that the layout, access, scale, open space, visual appearance and landscaping of development in the NSA would preserve or enhance the character and appearance of the area, including that of the Conservation Area as a whole, and in the context of OSP Policy H2 achieve a satisfactory living environment for residents.
- 19.181 The proposal can achieve the aims set out in paragraphs 33 to 35 of PPS1 during the period when the Local Planning Authority is developing its up-to-date design policies to ensure their consistency with paragraphs 36 to 39. Controls over any subsequent ancillary operational development on the Flying Field can be addressed through conditions and by the "Actions" set out in the Management Plan forming part of the Unilateral Undertaking.

*The Secretary of State's Matter 3: PPS3 considerations: quality, tenure, quantity, location, effective use of land*

- 19.182 Other than as highlighted above, there is no dispute that the development of the NSA can deliver housing that is well designed and built to a high standard. I am satisfied that can be the case.
- 19.183 The proposal would deliver 30% affordable housing as secured in the Unilateral Undertaking (Schedule 4). Its size mix has been agreed with the Local Planning Authority. The split between social rented and intermediate housing would be decided subsequent to a housing needs assessment by an

Affordable Housing Provider (or other body agreed with the CDC) of NOC's existing residential tenants on the site who would be displaced by demolition of their homes. The intention is that a Local Lettings plan would enable "eligible occupiers" amongst them (those that would qualify for CDC's housing register) to have access to the affordable units with the balance going to others in local housing need. As I discuss below, the Local Planning Authority considers tenure should have been agreed at this stage. Affordable housing would be provided in each phase in clusters of between 10 and 30 dwellings set amongst the market housing.

- 19.184 There is no dispute that "about 1075" dwellings is consistent with OSP policy H2 (which has not been cancelled by RSS May 2009). It is also undisputed by the Local Planning Authority that those net additional 700+ dwellings (there are 315 on the site at present) are needed to allow it to meet its 5 year housing requirement from the OSP and to help meet the needs of the whole District.<sup>237</sup> That is a matter of considerable weight although the timetable set out in that Annual Monitoring Report will have slipped. The Panel Report on RSS recommended raising housing numbers in this part of Cherwell by 1000 (to 7000) and the Secretary of State's Proposed Changes raised the figure for the whole of the District further (from 12,800) to 13,400. My report does not of course take account of the figures in the final May 2009 RSS.
- 19.185 After meeting the considerable number of "conditions precedent" necessary to permit this development, the development would proceed in phases over at least 5 years allowing flexibility and responsiveness. The entire site is previously developed land, including the NSA. The density at just over 30 dwellings per hectare<sup>238</sup> is consistent with the minimum in national policy to make effective use of land.
- 19.186 Job opportunities would arise from new offices and service uses within the NSA and from the reuse of retained buildings there and on the Flying Field. Day to day shopping needs, a primary school, day nursery and public house form part of the proposal. An improved bus service to Bicester and Oxford would be provided until it is viable thus improving the sustainability credentials of the location.
- 19.187 I conclude that the development is capable of delivering the aims of PPS3.
- The Secretary of State's Matter 4: with regard to PPG13. Is the development located in a way which helps to promote more sustainable transport choices; promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling; reduce the need to travel, especially by car and would the proposal comply with local car parking standards and the advice in paragraphs 52 to 56 of PPG13.*
- 19.188 The Built Form Masterplan indicates that detailed design would take account of the needs of pedestrians, cyclists and bus users. The scrutiny of reserved matters submissions would ensure this is achieved at that stage.

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<sup>237</sup> CD32 Table 25 page 103

<sup>238</sup> Document A1.2 tab 6 paragraph 3.49

- 19.189 The site is 7km from Bicester with only the small village of Upper Heyford nearby. The OSP recognises that a small new settlement is justified here however to address the legacy of the airbase.
- 19.190 As set out in the Sustainable Transport SoCG<sup>239</sup>, there is a commitment in the Unilateral Undertaking (at Schedule 20) to improve the bus service to/from Bicester and Oxford via Camp Road (including services that link Bicester North railway station) and to underwrite it until it is viable. A site-wide Travel Plan is to be prepared and a Coordinator appointed to help maximise use of non-car modes. A shuttle bus service is committed linking the NSA and FF. Employees from elsewhere could leave their cars near the FF entrance to join the shuttle (subject to agreement on location of the car park. A pooled cycle scheme for the FF was also discussed and could be included in the Travel Plan.
- 19.191 No proposals are made to support improved rail services from Lower Heyford station (to Birmingham and Oxford) which is over 3km from the site. There is no objection from the Councils that the latter is not included.
- 19.192 The above measures appear to me to go as far as is practical in this location to meet the Secretary of State's objectives in PPG13 to promote more sustainable transport choices. Residents would have good access to a range of local jobs and day to day shopping and some other services within the site. The application of maximum parking standards would be subject to control at reserved matters stage for the new housing and a parking strategy for employment uses on the FF is to be prepared and implemented as required by a proposed condition and within the Unilateral Undertaking.

Other national policy and guidance

- 19.193 I have already addressed guidance in PPG15 above.

*Planning Policy Statement 6*

- 19.194 No objection is made by the Local Planning Authority on the provision of shops, offices and a hotel within the NSA area. Bearing in mind that in some circumstances these are considered town centre uses, I asked for the views of the parties on how these proposals stood against national policy in PPS6. The Appellant addressed this in a supplementary paper<sup>240</sup>.
- 19.195 OSP Policy H2 envisages necessary supporting infrastructure for the new settlement and appropriate community, recreational and employment opportunities. The RCPB allows for a local centre including shops for day to day needs and for commercial uses (paragraphs 4.7.2.4 and 4.7.2.5).
- 19.196 Proposals for the NSA would redevelop the base supermarket and smaller shop (that served about 10,000+ personnel when the base was active) and provide 1300sq.m of new local shopping. This floorspace is consistent with a local centre in Appendix 8 of PPS6 and it is shown in a central location and accessible on foot and by cycle. The estimated spend from 1075 households would support such a centre assuming about a third of the total is spent locally. At that size the local shops seem unlikely to adversely affect spending in Bicester town centre. There is minimal shopping floorspace in

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<sup>239</sup> Document 4a

<sup>240</sup> Document NOC MD3

the villages around the airbase. The new shops would provide a service to them also and also serve those working nearby.

- 19.197 There is no evidence of an assessment of the need for offices and the Appellant expressed doubt (in connection with the juxtapositions of buildings in the Trident area) about the possible delay in their delivery given recent experience in Bicester.<sup>241</sup> However this element of the proposal and its quantum of floorspace seems to me to fit squarely within the “employment opportunities” envisaged in Policy H2. It would also diversify the range of jobs for those living in the NSA and nearby villages, reducing their need to travel and the risk of this becoming dormitory housing.
- 19.198 The proposed hotel/conference centre would reuse the former officer’s mess (Building 74 comprising 4,150sq.m.) to the north of Camp Road, not far from the main entrance to the base (Building 74) and about 150m from the proposed local centre across Camp Road. Building 74 is accepted by all to be one of the more interesting and important unlisted and pre-Cold War military buildings within the Conservation Area to which it makes a positive contribution to both character and appearance. The hotel would have about 100-120 guest rooms, a restaurant / bar and a conference room.
- 19.199 Local Plan policy T2 allows in principle for hotels “within the built up limits of a settlement ...” and the plan anticipates new hotels in Bicester and Banbury to help meet needs in Oxford. No assessment of need for a hotel has been done by NOC and there is no information on whether current supply has helped meet the need identified in the 1996 Local Plan. The employment uses proposed for the site would generate its own demand in addition to any other business and leisure tourist needs. The temporary (and two permanent) planning permissions at the site have already made Upper Heyford the third largest centre of jobs in Cherwell District. It seems unlikely to me that the proposed hotel would draw trade away from hotels in Banbury or Bicester other than in an acceptable market-competitive way. Improvements to public transport are included with the appeal proposal but it seems likely to me that with Junction 10 of the M40 being 5km away, most guests with luggage would use a car where available.
- 19.200 The policy support specifically for a hotel in a small new settlement seems to me slender. However bearing in mind the aims of the Development Plan and national guidance for the appropriate reuse of buildings in a Conservation Area, a hotel would make good use of a building that contributes positively thereto.

Other material considerations relating to the Car Processing use

- 19.201 I have concluded above that use of the southern taxiway and extensive areas of adjacent concrete hardstanding for car processing is harmful to the character of the Conservation Area as a Cold War landscape. In terms of the impact on the appearance of the Conservation Area, the area comprising the 17ha would be concealed from public views outside the site and very little or none would be seen from the reopened Aves Ditch public footpath.
- 19.202 However the harm arising to the appearance of the Conservation Area when seen at the main entrance to the FF between hangars 345 and 350 would be

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<sup>241</sup> Document CDC LR2 tab F page 6

substantial as would the view east travelling down the taxiway to turn to exit the site. Rather than signal that changes of use on the site were subservient to its Heritage interest and a way of ensuring its conservation, an area of parked vehicles extending to and slightly west beyond that entrance would signal that the FF was principally an area where precedence is given to business uses. That is contrary to the aim of OSP Policy H2 that is plain that the other uses that may be permitted are primarily to ensure achievement of the environmental improvements, conservation of heritage interest and satisfactory living conditions.

- 19.203 Paragraph 4.19 of PPG15 is a weighty consideration and says that: "The Courts have recently confirmed that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though in exceptional circumstances the presumption may be overridden in favour of development which is desirable on the grounds of some other public interest".
- 19.204 One such interest is the economic value of Paragon Fleet Solution's activities to the local economy. It is undisputed that about 1000 people work (or very recently worked) at Heyford Park and half of them at Paragon.
- 19.205 It is uncontested that the Local Planning Authority initially made overtures to attract the use to the airbase shortly after it became surplus to MOD requirements to help compensate the loss of civilian jobs (estimated at 1000 at paragraph 20 of SEEDA's Mr McKay's statement). Under its present name and in the earlier guises of Keddy's and QEK, it has operated on a series of temporary permissions only, but otherwise it has become well established during its 13 years at the site. It is a major local employer and is important to the economy of Cherwell.
- 19.206 As described by Messrs Maltby and Brown<sup>242</sup>, Paragon's need for a minimum of 17ha of hardstanding area as well as several buildings to function effectively was not challenged, other than by the fact that the RCPB sets 7ha as the potentially acceptable area. I saw that the open spans of the large buildings (including the A-type hangars and Victor Alert area hangars are particularly well suited to manoeuvring vehicles around and to the processes undertaken inside. The firm runs apprentice and other training and appears to be well regarded for their contribution on these matters.
- 19.207 The Leader (and Portfolio holder for Economic Development) of the OCC and the Portfolio Holder for Economic Development at CDC (see letter at Appendix 1 to Mr Maltby's statement) recognise the importance of Paragon's activities and clearly express frustration that planning policies are "entrenched" against car processing at Heyford Park.
- 19.208 SEEDA also endorses the economic significance of the use along with other employment on the airfield and supports its retention. SEEDA did however respond generally positively to consultation on the RCPB without specifically commenting on the smaller area identified there for potential car storage (see the 2006 e-mail at CDC JB12).

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<sup>242</sup> Documents PSM1, PRB1 and PRB2

- 19.209 My experience is that consultees at all levels react more to detailed proposals than to the SPD to guide them. One might indeed have hoped that SEEDA's spokespeople would have been more fully informed on the Councils' evidence to the inquiry and more aware that the RCPB would allow for 1300 other jobs even if those at Paragon were likely to be lost as the much smaller area in the RCPB would not provide for Paragon's needs.
- 19.210 As mentioned by their Managing Director and Planning Consultant and by SEEDA, and as I saw myself, Paragon provides specialist services to several major motor manufacturers. They are not a car storage and/or logistics company as seems to have been the case in the Walon and Dawson's Rentals appeal cases on other parts of the airfield (see CDs 49 and 50).
- 19.211 Paragon plays an important role in the overall UK automotive sector which has seen considerable difficulties in recent years. Their cars must be prepared to high standards and their processing is high skill (10% of employees are trained technicians) and they use high technology. They manage several thousand cars and SEEDA says the firm is as "knowledge driven" as any science and technology firm. As stated for SEEDA, Heyford Park does not otherwise seem likely to attract science and technology firms as aspired to in the RCPB. It should capitalise on those for whom its buildings and outdoor spaces are particularly well suited provided of course that other important interests are not unduly harmed.
- 19.212 I consider that SEEDA would not have made what was said to be their first ever such appearance at an inquiry and one that was in opposition to both the elected District and County Councils, had they not felt that the Councils' approach paid insufficient regard to the impact on the local economy in general and from direct and indirect job losses if Paragon with its 500 jobs was to be forced out.
- 19.213 SEEDA was not challenged on firstly that Cherwell District's economy has suffered significant job losses in recent years, 1100 of them during the 2 year emergence of the RCPB or secondly that the District has consistently lower income ranges than other parts of the county.
- 19.214 Another important consideration is that there is no realistic local alternative to which Paragon could move. The Shipton on Cherwell Quarry site has several constraints<sup>243</sup> requiring considerable works to be done that make it unavailable in the medium term at least for car storage. It is identified in the adopted Local Plan for potential recreation use. No other realistic relocation possibilities were drawn to my attention. It thus seems that if this appeal was dismissed the jobs and other economic benefits of the car processing use would be lost to the District.
- 19.215 The RCPB's approach to car storage would be so inadequate to Paragon's needs that they would move elsewhere and probably well removed from Cherwell's boundaries. The loss of 500 jobs to the District appears to me a very weighty material consideration.
- 19.216 Another consideration is that whilst the RCPB seeks improvements to public access, without this lead proposal (or something similar) there can be no certainty that the public would have any access to appreciate the Cold War

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<sup>243</sup> Document NOC MD1 paragraph 6.114

interest of the site whether from re-established rights of way or via pre-arranged tours. There would also be increased doubt over whether a significant part of the District's housing allocations could be fulfilled.

- 19.217 There is no evidence however that these, the safeguarding of the heritage interest or the other environmental improvements could not be provided in the absence of the car processing use. The inquiry did not address whether there would be a long term future for the airbase without the car processing use. It is part of the package in this appeal.
- 19.218 Other than the economic benefits including the considerable number of jobs, those other matters could only be considered material insofar as refusing an otherwise acceptable proposal would further delay the resolution that most parties seek for the site which became surplus to MOD needs 15 years ago.
- 19.219 My conclusion is that the economic considerations arising from the likely loss of Paragon's activities in the District would not outweigh the harm to the character of the Conservation Area and to its appearance from semi-public views.
- 19.220 I do not consider that the harm to character from this use can be mitigated but there seems to me two potential ways that its harm to appearance could be reduced.
- 19.221 One would be the modification to the access road within the Trenchard Trident area where it joins the FF, along the lines shown indicatively on Plan L10A and L10B, its northern section in particular. That would offset to some extent the "head on" view of ranked vehicles if they were parked up to the western end of the area shown in buff on COU Plan N.0111\_22-1L. Such a modification would appear feasible as land to the immediate north east of building 345 is a parking area. That would not however improve the appearance of the car processing area on approach from the west along the taxiway to exit the FF.
- 19.222 The other would be to restrict such ranks or echelons of parked vehicles to an area to the east of the western edge of the area shown. My judgement is that if densely parked vehicles and any directly associated security for them was restricted to the east of a line drawn between the south east corner of building 337 and the north east corner of building 350, some mitigation of the harm to the appearance of the Conservation Area in both the above views would then be obtained. That may in practice be how the site is operated in any case, given the need for circulation at the entrance to the site and the provisions in the Unilateral Undertaking of Heritage Action HA17 in the MPFF. The latter would (amongst other things) restrict the operation of transporters to what may be a similar part of the site. However, I consider a condition on the above to be necessary regarding the siting of massed groups of cars.
- 19.223 With such a condition and when combined with the weight I give to the economic and employment considerations associated with the Paragon use, I consider that the exceptional reasons needed to outweigh the harm arising to the character and appearance of the Conservation Area from the outdoor car processing use would exist.
- 19.224 Given that Action HA17 addresses preparation and implementation of a strategy regarding the location of transporters and higher vehicles within the car processing area, it may be that a similar approach could be taken to

the ranking of parked vehicles before or after processing. That would be equally acceptable in my view.

Other matters raised

- 19.225 OTCH raised several matters not addressed above. They place considerable weight on the need they perceive for feasibility studies to have been undertaken to assess the tourist potential of the site as a heritage asset. Whilst the Panel examining the Structure Plan gave support to this idea, there is no requirement for it in Policy H2, nor is any mention made there of the tourist potential of the site. Nonetheless its importance to Cold War heritage and its potential for what was termed "dark tourism" suggests that it may have potential to strengthen the District's existing limited tourist offer. The appeal proposal would offer access to view the NW HASs (Cold War Park), reconnection of the public bridleway and footpath with interpretation opportunities, the commitment to open a part-time staffed Heritage Centre and offer minibus tours of the FF with stops to take external views of its key features (as included in the Unilateral Undertaking). Those appear to me a reasonable and necessary way to test the level of public and academic interest in the site.
- 19.226 Given the uncertainty about the extent of tourist visitor interest, a 5 year trial period for the Heritage Centre, pending finding an appropriate operator seems to me reasonable. Whatever may be thought of the wisdom of the MOD's disposal of the whole site without expressly safeguarding any form of public access to its important buildings and landscape, the site is now entirely in private hands. Bearing that in mind and the approach taken to the site in OSP policy H2, the prospects of the FF being managed predominantly as a monument to the Cold War appears to me remote and it is not one supported by English Heritage or national policy in PPG15. I consider this proposal strikes an acceptable balance on this.
- 19.227 The Cold War Park in the NW part of the site is not identified on the amplified description of development but it is shown on a key appeal plan (N.0111\_22-1L) and the nil use of the 4 HASs proposed there would be unchanged. The Unilateral Undertaking at section 7 of the MPFF and Public Access Action 7 commits to provision of the Cold War Park. The minor works of opening a gate from Portway and providing appropriate fencing can be addressed by conditions. The Cold War Park was also clearly understood by all parties at the inquiry to now form part of the proposals and so I do not share OTCH's concerns about its status or subsequent provision.
- 19.228 Removal of the lengths of fence proposed and the barbed/razor wire in some locations elsewhere is necessary in the interests of achieving a satisfactory living environment as sought in OSP Policy H2a – for both new residents and those in Upper Heyford village. That around the Scheduled QRAA and Northern Bomb stores would be retained. I note that the Local Planning Authority did not consider that removal of the barbed or razor wire needed express consent. Any harm arising to the aims of OSP Policy EN6 (archaeology) is outweighed by the above interest.
- 19.229 The international conventions referred to by OTCH are not European Law that has been imported into English Law and they are not therefore directly enforceable. The statutory requirement to have regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area

nonetheless goes some way to their objectives as does guidance on how this is to be achieved in PPG15. So too does advice on archaeology in PPG16.

- 19.230 Reuse of the HASs, especially those that are Scheduled will need particular care over such matters as outdoor storage, parking, lighting etc but I consider that necessarily strict controls can be arrived at through the Strategies to be agreed with the Local Planning Authority. With those in place I do not consider that the reuse of buildings proposed would necessarily harm the settings of SAMs, Listed Buildings, the Conservation Area or the Cold war landscape.
- 19.231 The small area of housing proposed north of Camp Road at the west of the site would give the NSA a more coherent appearance on approach from the west and is necessary in the interest of good urban design. The existing buildings on that part of the site are not identified as of any significance in the CAA. The setting of the Listed Nose Docking Sheds would be protected.
- 19.232 I have addressed many of the concerns of the CPRE Oxfordshire in my considerations above. In particular I do not support their desire (or that of the RCPB) for the site to take on more of a "countryside" appearance with defined buildings as a memorial to its past use, removal of many others and the return of parts of the runways to grassland. I have found little evidence that this is the "local community's ambition" and none that it is a majority view. To take this approach would significantly harm the character and appearance of this Conservation Area with its many nationally important buildings. There is no evidence on file from the NHS in support of the need for a health centre at the NSA to relieve the pressure on GPs in Deddington. I consider it impractical, contrary to normal development control considerations and to advice in Circular 11/95 to limit use of the buildings to specific users as a matter of course. I have preferred instead to look to conditions and the Unilateral Undertaking to control the undesirable intensification of use of buildings that otherwise could arise. CPRE's point that after 14 years of uncertainty a resolution is desired is well made.
- 19.233 I have referred to the views of SEEDA in relation to the Paragon use but their point is a wider one. The RCPB does indeed allow for 1300 jobs but not on the FF where many of the existing 1000 jobs and 26 businesses are located. The SPD sublimates the benefits of those to other interests. It was not contested that the short term nature of planning permissions to date at the site and the uncertainty about its future has led several firms to move elsewhere already with a loss to the local economy, or that indirect losses would also arise at their suppliers, or that there are few replacement job opportunities elsewhere in the District. In a period of economic uncertainty I consider those are significant concerns that, other things being equal, should be addressed at the site.
- 19.234 I have endorsed Councillor Macnamara's view, which the Appellant accepts, that if this was "an empty plateau" then housing and employment uses would not be permitted there. Policy support is not there for subsequent infill beyond the 1075 dwellings that the Councils accept is consistent with "about 1000". The rehousing of present residents would be at least partially met through provision of affordable housing and a local lettings plan. The Appellant is willing to manage their estate on the FF in consultation with a Liaison Group that would include representatives of the relevant agencies and elected authorities. It would be unreasonable in my view to expect that

body to have power rather than make recommendations (as committed at Unilateral Undertaking, MPFF Management Action 1). That the NW HASs are a "visible presence" from Aston View is insufficient to justify their demolition, given the distance in between and the potential for further landscaping. For reasons explained I consider that employment at the envisaged level of 1777 jobs would be justified. The Local Planning Authority did not propose a condition aiming to tie the utilisation of employment buildings to the phasing of housing in the NSA. He highlights the years of uncertainty that local people living in small villages nearby have experienced and their weariness with the several emerging schemes and planning briefs. Their desire for resolution in a balanced proposal is understandable.

- 19.235 British Waterways seeks a sum for improvement and maintenance of the towpath along the Oxford Canal from Upper Heyford village to Lower Heyford Station to improve pedestrian and cycle links to the station. No evidence was produced by BW to support the need or reasonable relationship of this request to the development proposed. I find no fault with the Unilateral Undertaking in omitting it.
- 19.236 The Highways Agency's letters intimate agreement relating to Conditions applying to the Paragon area. The need for minor improvements to Junction 10 of the M40 is agreed in the SoCG on Transport Assessment and is considered under Conditions below.
- 19.237 On my various visits around the local road network I could appreciate that the part of Ardley Road where Mrs Power of Troy Farm lives may well function as part of an alternative route between villages in the Cherwell valley and the main roads including Junction 10 of the M40. There is no evidence from others at the inquiry and none from Mrs Power that the development proposed would significantly worsen the volume and safety of traffic along that road that runs roughly parallel to the northern boundary of the site. I cannot therefore give the reassurance sought that traffic calming should be provided outside Troy Farm as part of the Unilateral Undertaking.
- 19.238 Carrenza's e-mail about their alternative unspecified proposal was not amplified and their request to appear at the inquiry was withdrawn. I thus make no comment upon this.

*The Secretary of State's Matters 5 and 6: Proposed Conditions and the Planning Obligation*

**Conditions on the Lead Appeal:**

- 19.239 The Council's list of 108 "no prejudice" conditions were fully discussed at the inquiry. Some revisions were made and three conditions were withdrawn. About one third were ultimately agreed (subject to further amendments proposed by the appellant in several cases). I am satisfied that in general the latter improve the grammar and clarity of the relevant conditions or otherwise are an improvement. All those agreed conditions are necessary to meet the aims of Development Plan and national policy and for the grant of permission. They also meet the other tests in Circular 11/95 and in later national guidance and policy.
- 19.240 A number of the proposed conditions are suffixed by the phrase "unless otherwise approved in writing by the Local Planning Authority". In a few of those cases the condition refers to matters where the exercise of a degree

of discretion would not materially modify what is permitted or approved by the condition and so I have retained the phrase. In others it seems to me that the scope of that phrase could provide a way of circumventing the provisions of s.73 of the 1990 Act (as amended) whereby the proper course would be to apply for variation of the condition, enabling the public to give their views. I have omitted the phrase in those circumstances.

- 19.241 Some conditions require approval of a scheme of various types. It is implicit that those would include a timetable for its implementation but I have added that to the condition where it would assist in its precision and enforceability.
- 19.242 My considerations below concentrate mainly on the many contested conditions.
- 19.243 This proposal will effectively be implemented on grant of permission given that some of the buildings for which change of use is proposed are already occupied by users in the relevant Use Class. There are in addition a considerable number of conditions precedent/Grampian type conditions to be met before any new development in the NSA can begin. In recognition of these the Local Planning Authority considers that the standard 3 years time limit for the submission of details of reserved matters should be extended to 5 years. For those reasons and also because of the depressed economic climate the Appellant considers that an extension to 7 years would be more realistic and necessary in the public interest.
- 19.244 I am mindful that one of the Secretary of State's reasons for reducing the "standard" time limits in the 2004 Act was in order to encourage development to take place at an early stage. As set out in Circular 08/2005, it is not the intention of the changes in the 2004 Act however to prevent different time scales being set for the approval of reserved matters and for commencement of development where those are justified.
- 19.245 This is an unusual, complex, very large and necessarily phased proposal that would meet the long term objective for a lasting arrangement to the future of the airbase. It is very far from a relatively straightforward project. It has been many years and much expense in the making for all parties concerned and there are a large number of necessary pre-conditions to be met, many of which will be very time consuming, before building of any phase of new housing proceeds.
- 19.246 The 2004 Act has prevented an extension to the agreed period of validity of permission. Whilst the progress of this proposal was necessarily constrained by the process of Conservation Area designation and the emergence of the SPD, the appellant's concerns around the potential delays arising from a need to renew any permission may be well founded.
- 19.247 It appears to me to be in the wider public interest for the Appellant to have a continuous path through from meeting all the "Conditions precedent". I consider the latter likely to take at least 5 years and perhaps longer in the current economic climate. I do however have sympathy with the Local Planning Authority's argument that 7 years as proposed by the appellant could offer too little incentive for development to progress. On balance I consider that 6 years would provide the necessary and appropriate balance as the period for submission of reserved matters applications.

- 19.248 As the appellant proposes and in line with current guidance, the standard 2 years from approval of the last of the reserved matters would be acceptable and a necessary time limit for the start of development.
- 19.249 It is essential for any permission granted to specify the agreed detailed list of what precisely is proposed (as in the Planning SoCG paragraphs 5.3 and 5.4 pages 10-12 and also in the Unilateral Undertaking). It would however be less cumbersome but no less clear if this is appended as a Schedule.
- 19.250 Given that the permission would be implemented on its grant for existing buildings currently in the proposed uses, there is no need to give a time limit for implementation of the changes of use.
- 19.251 The development should be conditioned to ensure that details to be submitted under condition 2 should be in general accordance with the Parameters Plans, the Settlement Masterplan, Landscape Masterplan and Key Plan and with the Environmental Statement (as updated) which includes the explanation and justification for how access, traffic management and many other important matters are to be addressed and where necessary their impacts mitigated.
- 19.252 Given the size and scope of the new settlement development and the five phases and years that plan N.0111\_35 indicates that it will be developed, it seems to me unrealistic and unnecessary to expect a Design Code for the whole area to be agreed at the outset. It is important that such a Code is agreed for each phase in advance of details under Condition 2 being submitted however. It will clearly be important for each phase's Code to demonstrate how that phase will interface with adjacent phases of development but that does not require the whole NSA to be addressed at once. Given that the change of use of some buildings in the NSA would be implemented on grant of permission I shall delete "or development undertaken" from the proposed condition. The condition is very detailed but all matters therein appear to me necessary to avoid misunderstanding of what should be included in each of the Design Codes. Whilst it is desirable for the draft Code to be produced in consultation with the Local Planning Authority I do not consider that essential. In the absence as yet of a Development Plan policy supporting any Code for Sustainable Homes level of construction I agree with the appellant that this should be left to the Building Regulations. I understand the intention is that all dwellings would meet Code Level 3 as a minimum. By the time detailed proposals come forward the Regulations are likely to require the specified Code 3 for private as well as affordable housing in any case. For the same reason I consider proposed Condition 10 to be unnecessary.
- 19.253 Regarding proposed Condition 11 the appellant has already conducted such consultations with its residential tenants as well as the wider public on the future of the base as a whole. Its approach on affordable housing as set out in the Unilateral Undertaking indicates that their tenants' needs will be fully taken into account. The appellant may well consider that consultation with the public on the other matters included in the proposed Condition would helpfully pave their way for their reserved matters submissions to the Local Planning Authority. The requirement for a public consultation strategy, however appears to me to go beyond what is necessary for the development to be permitted.

- 19.254 Condition 13 on the safeguarding of archaeological remains assumes that there is a clear indication of significant remains within the NSA. The ES has assessed this and found nothing of the substance needed to justify this onerous condition. Nor does the map and letter supplied by the Local Planning Authority (CDC JB6) support it. There are however indications of Romano British, Anglo Saxon and Medieval features and finds not far away and there may be more recent military archaeology discovered when development is underway. For those reasons I shall impose a condition to afford access to an archaeologist to observe excavations and record finds.
- 19.255 Proposed Condition 55 similarly requires a staged programme of archaeological investigation in this case prior to any excavations in relation to the provision of new services on the FF. The development proposed there is for change of use only with nothing supporting the "provision of all infrastructure..." item in the amplified list other than the defined access arrangements and car parking to meet CDC standards. Those would not require intrusive work. The fairly minor works to be addressed under the various strategies should not require such excavations either. On the basis that the permission would not authorise operational development or engineering operations on the FF I consider the condition unnecessary.
- 19.256 Proposed Condition 14 addresses contamination in the New Settlement Area, excluding the POL system. It contains an option for the scheme to be submitted and approved in writing either prior to development taking place or prior to the occupation of the buildings. I consider that it should be submitted for approval prior to any development taking place, thus providing a better level of assurance that any remedial work will be completed in the early stages of the development.
- 19.257 The Environment Agency has agreed that the first part of this proposed condition, covering a preliminary risk assessment, has already been carried out. The Appellant argues also that the quantitative data which they have submitted fulfils the next stage of assessment also. This forms part of the ES, which I have commented on above. I am satisfied that the main risks to sensitive receptors have already been identified by work that amounts to a preliminary risk assessment. The rest of the condition would cover the detailed design of the remediation strategy and its implementation. Whilst I do not anticipate that the Appellant would be put to much further work on the second element of the condition proposed it should be retained in the interests of certainty that the contamination will be fully identified and addressed. The scheme needs to be submitted to and approved in writing by the local planning authority, in order to ensure compliance with the various stages of the scheme by the developer.
- 19.258 A necessary verification report would be required by Condition 15 which would confirm that the remediation measures had been carried out and would identify measures for maintenance, monitoring and reporting on them.
- 19.259 Other conditions addressing contamination risks on the Flying Field and from the POL system are addressed with proposed Conditions 57-60 below.
- 19.260 On hours of operation and noise conditions, the DAS indicates that the potentially vulnerable housing areas in the Trenchard Trident area would be buffered from general industrial B2 and storage and distribution B8 uses by offices which, with other B1 uses are defined as being compatible with a

residential area. Delay in building the proposed offices but not the housing may in those parts of the NSA leave residents open to excessive noise. Where no such problem would arise it would be unreasonable for the Local Planning Authority to require restrictive operating hours if condition 16 was imposed.

- 19.261 A restriction on hours of operation is needed for the Class A3-A5 uses but otherwise controls over potential noise seem to me the preferable way forward.
- 19.262 The ES assessment of noise and vibration from the development on the surrounding area and on proposed housing within it did not identify any significant noise issues arising. However I have noted that whilst the locations chosen for assessment may prove to be representative overall they were few in number and peripherally located. None of them was located to pick up the potential impact from for example, the Paragon car washing plant (building 80), which I heard was quite noisy and sufficiently close to one of the proposed housing areas to give me cause to consider its impact should be assessed. It is important not to place unnecessary constraints on existing businesses, especially those such as Paragon which are reported as needing to operate around the clock but I am not wholly satisfied that the ES gives a fully robust prediction of their potential impact.
- 19.263 Only three buildings have a permanent permission and none of those seems likely to cause a noise problem. The others have had benefit of a temporary permission only in the context of establishing a long term solution for the future of the base. Most of those have now lapsed. In that context I see no reason why existing uses within the NSA and on the FF should be excluded from the possible need for controls over noise, odour or other impacts arising where there would be sensitive receptors nearby. Proposed condition 84 addresses assessment of noise from existing uses.
- 19.264 To ensure that no new housing is exposed to undue noise from other uses within the NSA or on adjacent areas of the FF, it seems to me necessary to make a more detailed noise assessment. For that reason and also in order to ensure noise from other uses permitted on the wider flying field is compatible with the generally quiet surrounding rural area, I consider it necessary to impose a condition requiring a scheme to be submitted to the Local Planning Authority setting out how noise emanating from the buildings will be controlled to an acceptable degree. With those conditions, nos.18 and 19 as proposed would not be necessary.
- 19.265 On these conditions and some others there is an issue as to how it can be ensured that existing uses that would be implemented on grant of planning permission would have to comply with relevant conditions. I consider that is best achieved by imposing a condition that makes clear that the use would have to cease upon failure to submit such details within 6 months, or after 12 months of failure to submit acceptable proposals or a failure to implement an approved scheme.
- 19.266 Regarding landscaping condition 21, I agree with the Local Planning Authority that details of the laying out of open space should be included here.

- 19.267 The first of the drainage conditions (25) duplicates matters addressed in proposed Conditions 8 and 26 and it is overly detailed. No.25 is unnecessary.
- 19.268 I see no need for the condition on CCTV in this location and the Local Planning Authority decided not to pursue its desire for its inclusion in the Unilateral Undertaking. The need for the condition has not been made.
- 19.269 The Place of Worship is an existing use which appears to play a significant role in the existing community and its character. Its retention for a period of at least 10 years for worship or community use, if not permanently as condition 29 would require, would be necessary to help the new settlement develop its own community identity. In agreeing largely with the Local Planning Authority, I have taken into account the provisions for a community hall made in the Unilateral Undertaking.
- 19.270 The description of development includes the phrase "provision of all infrastructure to serve the above development" in relation not only to the NSA but to the FF, proposals for which are for change of use only. It was confirmed that there are no works entailing operational development included in this part of the proposal other than in respect of minor works to buildings and adjacent land over which the Local Planning Authority would have control and most of which works would be addressed by strategies to be prepared according to subsequent conditions and via "Actions" in the MPFF within the Undertaking. I thus consider that a Design Code for the Flying Field is unnecessary.
- 19.271 Proposed Conditions 32-45: In the interests of preserving the open character and appearance of the Conservation Area and the settings of Scheduled Monuments and Listed Buildings, it is imperative that matters of parking, signage, waste, fencing and lighting are subject to stringent control by the Local Planning Authority. The MPFF that is secured by the Unilateral Undertaking addresses all of these (Heritage Actions 1, 4, 6, 12, 14, 15 and Public Access Actions 1, 6) together with other matters likely to impinge on appearance such as external paint schemes. The MPFF Heritage Actions do not however provide a timescale for their implementation. As accepted the matters need to be addressed by condition. I agree with the appellant that a single composite condition would be clearer and more concise.
- 19.272 It is here necessary to balance the interests of NOC in attracting tenants with the public interest of ensuring such matters as included in those strategies are promptly addressed. None of them appears to me to need to be so complex or contentious that they could not be expedited promptly. I appreciate the Council's concerns about enforcement if occupation of buildings is not precluded prior to approval of the strategies. I consider that valid concern could be met provided that it is made clear in a condition that a use shall cease within a reasonable period upon failure to comply with the requirements of the condition. I consider it unnecessary to tie further occupations to approval of these strategies.
- 19.273 To secure a pleasant appearance to the Flying Field without harming its Cold War character, a landscaping scheme along the lines set out in Landscape Plan L10B should be required and a programme for its implementation and its subsequent management secured. The condition again should prevent any further occupation of buildings for the uses approved until it is done but it should not seek to prevent continued use by those already on site who

comply with the uses included in this permission and which would be implemented on its grant. This interest is also secured under the MPFF (Landscape Actions 1 and 3). Again I consider a composite condition would be suitable. Landscape Action 3 of the MPFF addresses submission of a schedule of trees for retention on the FF and an arboricultural statement complying with BS5837 which aims to protect trees to be retained that lie within 20m of such works. Proposed condition 49 with minor modification appears to me necessary also.

- 19.274 Condition 51 is necessary to help prevent unauthorised use of the runway and taxiway but needs slight amendment regarding the police use of part of the north/south runway which was still authorised at the time of the inquiry.
- 19.275 Condition 52 complements but does not duplicate Action PA1 in the MPFF. It is necessary as a condition. As the "optional" route for Aves Ditch has significant advantages I have specified that option in the condition.
- 19.276 Subject to addition of a programme for implementation to the details for approval, proposed condition 53 is also necessary to ensure the environmental improvement of informed public access is achieved.
- 19.277 Proposed condition 54 does not sit entirely easily with advice in paragraph 93 of Circular 11/95 but the need for a police training facility is clear and the building and location particularly well suited. I consider it reasonable and necessary that the case for another non-residential institutional use should need to be made as it could be one attracting a level of traffic incompatible with the Conservation Area or otherwise unsuitable. The condition is not unduly restrictive in that it allows for B2 and B8 use of the building. Given the name of TVPA may change I have referred to the activity instead.
- 19.278 My views on Condition 55 are given with those on Condition 13 above.
- 19.279 The transitional arrangement for retained temporary uses in Condition 56 are necessary but can be subsumed within the composite condition on these strategies and in the landscaping conditions.

*Contamination on the Flying Field and the Petrol Oil and Lubrication (POL) system in particular (Proposed conditions 57-60).*

- 19.280 The RCPB in amplification of OSP Policy H2's aim for environmental improvement of the whole site requires the environmental improvement to be such that it justifies development allocated contrary to wider sustainable development principles and only for this purpose of addressing the legacy of the airbase use. Section 5.2.1. of the SPD requires the removal or remediation of contamination or potential contamination, including the POL system, across the whole site. It also requires that the solution should be permanent and should remove any danger to public health and safety and any possibility of the contamination of groundwater.
- 19.281 The brief also requires improvements to public access which these proposals would provide. There would thus arise a higher potential risk to the public than in the previous military use, not only in the New Settlement Area but in other areas of the site.
- 19.282 There is no dispute that environmental improvement should include acceptably minimising the risk from contamination of the site, which arises from a variety of sources. The POL system with its tanks and pipelines is the most significant but there are other potential sources also including the

fire fighting practice area, the northern bomb stores, other fuel storage tanks not connected to the POL and former landfill sites.

- 19.283 Of particular concern on this site at the summit of a plateau is the major aquifer (Oolite Series limestone) which underlies it and has very little cover. As such, a careful programme of desk study, followed by site investigation and the evaluation of remediation options needs to be carried out in accordance with the Environment Agency's Model Procedures for the Management of Land Contamination (CLR11).
- 19.284 A great deal of investigative work has already taken place on the site as detailed in the ES (including the studies carried out in 1996/7 by ERM and Aspinwalls together with the ongoing surface and groundwater monitoring). Supplementary information on the POL system was submitted to the Local Planning Authority in February 2008 (at Appendix 6 to Dr Davies POE). A revised risk assessment is incorporated into the Further Information submitted under Regulation 19 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. I have set out in section 13 above the Environment Agency's revised position on contamination. They accept that with the later work now done the ES now meets the requirements for a preliminary risk assessment under CLR11 and that their other concerns could be addressed by conditions.
- 19.285 Much of the Appellant's investigative work was carried out some time ago, but there has been relatively little change to the land uses on the site which might have mobilised potential contaminants. Nevertheless, I remain concerned about the investigative work carried out in respect of the potential risk to groundwater, given the sensitivity of the site. The boreholes already in place are mainly around the edge of the site. These boreholes have shown that there is little contamination of groundwater around the edge of the site and they have a continuing role in monitoring the quality of groundwater. Originally, there was only one borehole (BH7) in the centre of the site which showed fluctuating levels of contamination. This has been supplemented by three more boreholes (BH8-11) placed nearby more recently but no source has been identified. Although more boreholes are proposed in the New Settlement Area and in relation to the POL system, there are some other areas on the flying field which I consider require targeting.
- 19.286 I now turn, in the light of the work already carried out, to conditions relating to the Flying Field and POL, together with the requirement for verification reports and further monitoring. Another proposed condition addresses the treatment of any unexpected contamination.
- 19.287 The appellants have argued that a separate condition should cover the POL system across the site, including the New Settlement Area and the Flying Field. I consider that there would be merit in looking at the POL system as an entity and I discuss the detailed wording of this condition below.
- 19.288 This would leave a separate condition for other potential contamination sources on the Flying Field, which NOC considers should be changed to allow for the remediation of only previously-identified contamination which would be a risk to the water environment. The Environment Agency has concerns that the FF might not be properly investigated and remediated as a result of splitting the original condition and re-wording the FF condition in the manner suggested by the appellant. This would include the remediation of

areas including the fire fighting practice area, the northern bomb stores and other areas where contamination has been found previously. However, no new site investigation is envisaged there by the appellant for the FF, despite the existence of tanks not part of the POL system, landfills and waste pits.

- 19.289 Part of the Environment Agency's proposed condition covers the investigation of buildings on the FF, rather than the areas around or under them. Given the findings of previous surveys I consider that these latter could indeed be omitted from any further survey. The presence of asbestos in them would be covered under other legislation.
- 19.290 However, I remain concerned about the effect of possible contamination from the tanks which are not part of the POL system and the former waste pits in the flying field area. I have not been made aware of any assessment of groundwater quality in and around these sites. In addition, paragraph 12.4.52 of the ES says that waste pits should be checked for the presence of radium-226 from discarded luminised instruments, if this has not already been carried out.
- 19.291 The only areas for further investigation as a result of the minor change that I shall make to proposed Condition 57 would be the tanks outside the POL system where there is a history of leakage/spillage and landfills and waste pits if they have not previously been the subject of investigation. These areas should be the subject of limited investigation, where necessary. Although the FF might not be the subject of any development apart from changes of use, there is a possibility of intrusive groundworks for services etc even with a change of use. There would also be higher levels of public access than when the site was in military use. Furthermore, paragraph 5.2.1 of the adopted RCPB requires the removal or remediation of potential sources of contamination across the whole site and I see no substantial reason to dissent from that.
- 19.292 Condition 57, as amended, would be necessary and reasonable in terms of the aims of the RCPB and ensure that the site would not be capable of being determined as contaminated land under Part IIA of the Environment Protection Act 1990. Paragraph 2.55 of Annex 2 to PPS23 urges extreme caution in the granting of outline planning permission unless sufficient information about the condition of the land and its remediation has been supplied by the appellants. I consider it reasonable and necessary in the circumstances of this site to apply the same principle to change of use proposals. In this case only a small amount of additional work would be necessary to fulfil this requirement in respect of the Flying Field.
- 19.293 The new condition I recommend would be a detailed condition further defining the site investigation and remediation scheme for the POL system across the whole site. At the inquiry there was discussion about whether it would be necessary to remove all of the redundant pipework connected to this system. Since parts of this run under the deep main runways in places, complete removal would be difficult in these areas. The breaking up of the ring main and its infilling with inert material such as concrete or foam would be effective in preventing pollutant linkage. This condition sets out in some detail the areas which need further examination, but this is necessary to clearly define the areas for further investigation. It is not necessary to specify the reasons for further investigation; it has already been agreed that

there are problems with the integrity of the pipework and historic leakage from tanks in the POL system.

- 19.294 Proposed Condition 58 requires a remediation scheme for the POL system to ensure that this is properly done in the interests of human health and the water environment. Given the importance of the remediation of the POL system, it is essential that its completion is tied to the occupation of the dwellings in the New Settlement Area. Condition 59 requires a verification report for the remediation scheme for both the POL system and the flying field to ensure that remediation has been carried out in accordance with the schemes. It also requires a scheme for the future monitoring of the areas. Condition 60 addresses the discovery of previously-unidentified contamination and its treatment and represents a further safeguard for human health and the water environment.

*Other conditions*

- 19.295 Conditions 61-65 address Ecology. In discussion it was clarified that they are intended to apply to the NSA as well as the FF. No operational development or engineering operations are proposed for the FF. The value for nature conservation of the NSA was considered negligible in the ES and nothing in the June 2008 update document changes that conclusion. For the FF, the Actions (EA1 and EA2) in the MPFF commit the appellant to the 7 ecological objectives in the Ecological Management and Mitigation Strategy (EMMS) within the Unilateral Undertaking (nos. 5-7 are not numbered in the latter but refer to Great Crested Newts, Bats and Badgers). Those objectives would amongst other things protect the County Wildlife Site's grassland ground nesting birds by fencing it off and adequate mitigation measures are included for protected species and other wildlife interests. As said for the Local Planning Authority there is however no timescale set out there for its implementation. Bearing in mind any protected species found in the NSA would be protected under other legislation in any case I see no justification for the generally onerous thrust of conditions at 61-65. To overcome the shortcoming on implementation I shall however impose a condition requiring a timescale for implementation of the objectives in the EMMS.
- 19.296 Condition 66 is a necessary complement to the Unilateral Undertaking commitments given that proposed housing north of Camp Road abuts the FF and some is close to the County Wildlife Site. It would protect its ground nesting birds from cats and dogs, if not from the numerous gulls and corvids I observed there.
- 19.297 Conditions 67, 69 and 70 are in the most part agreed. They and 68 relate to removal of various rights otherwise permitted under the Town and Country Planning (General Permitted Development) Order 1995. No. 68 is unnecessary given that extension of the buildings granted change of use for employment would require planning permission in any case in this Conservation Area. With that exception and the minor agreed changes, these all appear necessary to me in the interests of preserving individual historic buildings, the character and appearance of the Conservation Area as a whole and the living and working conditions of adjacent occupiers.
- 19.298 Proposed Conditions 71-76 address the outdoor implications of the car processing use and all would be necessary to help mitigate its adverse impact on the character and appearance of the Conservation Area.

- 19.299 Proposed Conditions 77 – 81 address controls over the demolition and construction processes. Condition 78 lacks the important requirement that the facilities have been provided before works commence and I have made that amendment. Condition 81 (the requirement for approval of a Code of Construction Practice) would duplicate the requirements of other legislation. Otherwise, and as agreed these all appear necessary to meet the aims of the relevant Development Plan and national policies and guidance.
- 19.300 Condition 82 necessarily aims to ensure safe bulk storage of chemicals, oils and fuels. Condition 83 again would duplicate controls under other legislation (regarding safeguarding of existing water supply and provision of a new supply) and is unnecessary.
- 19.301 Proposed Condition 84 would require a detailed noise assessment of existing commercial uses on the FF. Subject to the need for this being limited to those uses closest to the location of housing areas in the NSA, I consider the condition to be necessary to ensure a satisfactory living environment as is the aim of Development Plan and national policy on such matters.
- 19.302 Proposed condition 85 addresses landscaping outside of the NSA. Proposed Condition 47 adequately addresses this for the FF. The other land within the “red line boundary” and outside the NSA (including hedges around the south and west of the site and the land where the airbase’s school buildings are to be demolished (south of Camp Road) remains subject to the standard reserved matters requirement for the details of landscaping there to be approved. Nonetheless it appears to me that without this condition limiting further occupations of dwellings beyond the 500th dwelling, the incentive to clear and landscape the extensive area of visually harmful former airbase classrooms (already granted CAC) which are to my mind the most visually harmful element in this large site would be limited to their negative impact on potential buyers or tenants of new homes. That may be sufficient incentive but I consider the condition necessary to ensure that the landscaping of this important area of the site is addressed in a timely fashion.
- 19.303 The next group of conditions are proposed to secure the safety and free flow of pedestrians, cyclists and other traffic and convenience for bus operators and users. Proposed condition 87 would ensure that new vehicular accesses are phased with new development. Nos.88 and 94 appear to me too detailed and could be addressed in the access reserved matters submissions. No.89 is unnecessary as any access not included in approvals would require a separate planning permission. The programming and temporary specification of estate roads in any phase of new housing as in proposed no.90 is too detailed for the outline stage. No.91 is necessary as the Local Centre will contain both retained and new buildings. No.92 is necessary to facilitate convenient operation for bus services and no.93 to ensure parking and manoeuvring areas are provided in a timely fashion to safeguard highway safety. A condition to control parking for existing uses (no.95) needs to be included now, subject to deletion of the “informative” element included in the proposed condition. Condition 96 duplicates other legislation and there seems no special case for its imposition. Condition 97 would ensure safety for other road users by requiring off-highway parking arrangements to be agreed for construction traffic and no.98 is needed to keep public roads clear of surface water draining from the construction sites.

I have added demolition to this condition for added clarity of intent. Given the number of construction workers who may be at the site at any time I consider the preparation and application of a travel plan for their needs to be necessary in the interests of maximising a sustainable approach to development here.

- 19.304 Condition 100 addresses the essential matter of construction of the necessary off site works to the B430/B4030 junction at Middleton Stoney and the improvement works to Camp Road (new roundabouts and accesses). It is essential that the implementation of these is tied to occupations. I consider this should include commercial as well as residential occupations as the relative progress on these will vary with their different market conditions.
- 19.305 As with many aspects of this proposal it is necessary to ensure that conditions are not so onerous that the lead appeal is not progressed but at the same time ensuring essential public interests are safeguarded. It is, as ever a question of balance. The revised condition proposed by OCC on 15 December 2008 achieves that. It would require implementation by the occupation of the (net additional) 300th new dwelling or the occupation of an additional 25% of FF floorspace, whichever is the earlier.
- 19.306 In accordance with the Transport Assessment's findings (paragraph 11.7.1) and Highways Agency requirements, the additional traffic using Junction 10 of the M40 could be accommodated if the operation of the junction were improved by revised carriageway markings, as shown on Arup Figure 36. A further "Grampian" type condition is needed to achieve this.
- 19.307 The aims of conditions 101 and 102 (now withdrawn) to control lorry routing on the public highway are now addressed more appropriately in the Unilateral Undertaking. Condition 103 aims to ensure a necessarily sustainable use of recycled materials but as proposed is imprecise. There was no dispute that such a proportion was achievable and I have thus deleted "all reasonable endeavours". Condition 104 duplicates nos. 90 and 91 and is thus unnecessary. Condition 105 addresses loading and unloading on the highway. If needed it should be subject to a traffic order not a planning condition. The proposed condition (106) requiring traffic calming along Camp Road was withdrawn.
- 19.308 During the inquiry the potential of using glass panels between the A-type hangars to exclude cats and dogs, reconcile operational needs and maintain and allow appreciation of the character and appearance of the Conservation Area and provide attractive pieces of public art convinced me of the merits of this approach in the Trenchard Trident area and perhaps elsewhere. This does not however need a separate condition as it would be covered by proposed condition 66 which would more reasonably link its provision to occupation of the first new dwellings rather than "commencement of works on site within the NSA" as in proposed condition 107.
- 19.309 Condition 108 rightly aims to ensure fire hydrants are provided in a timely manner for each phase of development. Hydrants are addressed under other legislation, but subject to greater clarity on the timeframe in which it should be implemented, the condition is needed to ensure this aspect of public safety is promptly addressed.

- 19.310 In addition to the above conditions, I have referred earlier in my report (page 184) to the ways in which I consider that the harm to the appearance of the Conservation Area from the outdoor car processing could to a degree be mitigated.
- 19.311 The modification of the access road to the FF via the Trenchard Trident area, as shown indicatively on plan L10A and L10B would have some benefits. However I consider that a condition to prevent the parking of ranks of vehicles in the area west of a line drawn between the south east corner of building 337 and the north east corner of building 350 would address more of the harmful impact on appearance. Such a condition is necessary for the development to proceed. Only then do I consider that the harm to the character and appearance of the Conservation Area from the outdoor car processing area would be outweighed by the combination of the economic considerations and the mitigation that such a restriction would give.
- 19.312 Such a condition has not been discussed with the parties and in fairness they should be afforded the opportunity to comment. It may be that in preference to the condition the Appellant and Paragon would prefer to make a binding undertaking on the same basis. The latter course would be equally acceptable, in my view.

### **The Unilateral Undertaking**

- 19.313 I have summarised above the content and purpose of the Undertaking.
- 19.314 All the matters set out there appear to me to be necessary for the development to be acceptable in planning terms. The Management Plan for the Flying Field (MPFF) and the Heritage Centre Management Plan (HCMP) include a series of Actions which are proposed to be duplicated as conditions. Where some Actions appear at first to go somewhat beyond the main purposes of s.106 (e.g. on maintenance) they are intended to safeguard the character and appearance of the Conservation Area and they are helpful and constructive, valid and material to the long term future of the site. On some matters conditions are necessary for greater certainty on implementation.
- 19.315 The Undertaking would provide for the needs of primary and early years education necessitated by the development to be met on site and for such secondary needs as so arise to be met elsewhere. Public bus services would be supported via appropriate contributions. Various other measures to promote use of travel modes other than the private car are to be funded and organised by a Travel Coordinator.
- 19.316 Affordable housing as defined under PPS3 2006 is secured at the rate of 30% of the dwellings as are the likely arrangements for its management and the mix of dwellings by size. Due account is to be taken of the housing needs of those occupying the existing housing that would be demolished. The ratio of intermediate to social rented housing remains to be determined in consultation with the Council and the Affordable Housing Provider (an organisation accredited by the Housing Corporation). The Local Planning Authority consider that the tenure mix should be established now.
- 19.317 The 30% committed would exceed the general percentage sought in policy H5 of the adopted Cherwell Local Plan 1996 (15%) and the equivalent

implied percentage in the Non-Statutory Local Plan for this site. It would approach the 35% target, subject to need, of the (at the time of the inquiry) emerging South East Plan (RSS). No Cherwell Strategic Housing Market Assessment was put before the inquiry. That for Oxfordshire identifies a shortfall but is insufficiently detailed to support a particular percentage or tenure mix for Cherwell. Some additional local work has been undertaken. A 2006 "snapshot" survey of existing residents of the airbase is suggestive of a greater proportion of social rented housing being needed than intermediate housing but a third of residents did not respond. The wording of the Undertaking implies that if there is demonstrated need for a particular social rented percentage then the appellant would need to provide it.

- 19.318 There are measures included to provide a Heritage Centre in historic buildings for at least 5 years together with organised tours to the more important buildings (to be viewed from their outside) and the main runway. Through the series of "Actions" defined in the Heritage Centre Management Plan (at Appendix 1 to the Unilateral Undertaking) the important historic interest of the site will thus be able to be appreciated by the wider public. As said forcibly for OTCH, this provision has not been arrived at as a result of a tourism feasibility study but it is undoubtedly a significant public benefit giving limited access to a site that, even with reinstatement of rights of way at the western and towards the eastern end of the site, would otherwise be inaccessible.
- 19.319 Similarly attached to and part of the Unilateral Undertaking is a Management Plan for the Flying Field (MPFF). With the exception of the Paragon car processing use, the MPFF overcomes English Heritage's concerns. The MPFF aims to ensure that the FF and the employment uses proposed there would be managed in a way that will ensure that the lead proposal is an appropriate lasting solution for the whole of the airbase site.
- 19.320 The Undertaking would amongst its many other provisos also secure appropriate open space, improved and informed public access to the surrounding countryside as well as re-establish public rights of way around and through the site, a neighbourhood police office, public art and the other associated facilities necessary for a new settlement of this size with a significant employment area.
- 19.321 Having regard to the other tests set out in Annex B of Circular 5/2005, I consider that the matters secured thereby are relevant to a planning purpose, directly relate to the development proposed, fairly and reasonably related in scale and kind to the development and are reasonable in other respects.
- 19.322 The Councils however find the s.106 Obligation is inadequate in material respects.
- 19.323 The perceived inadequacies and the Appellant's response are set out more fully in several "Items" comprising Document U1 than in Closing Submissions. Several matters were resolved in the final version of the Undertaking. The remaining matters at issue are given at U1 Item 15 (dated 28 January 2009). There are many of them. I summarise below the points that the Councils considered the "show stoppers", although they were careful to say that this did not diminish the material deficiencies they saw either individually or cumulatively with the others.

19.324 For convenience I set out the points made for the Councils and the Appellant on the Unilateral Undertaking here and give my conclusions on each.

Restriction against disposal:

19.325 The Councils: Each of the parties whose consent is required for disposal of the land should join in the Unilateral Undertaking or provide a certificate of compliance that they consent to the transfers of land to CDC or OCC contained in the Unilateral Undertaking (for the school site, sports pitches, play areas etc) or at the least that they should make a contemporaneous commitment to provide such certificate at the appropriate time. Title to the land is registered to NOC but the Proprietorship Register at entry no.3 has a restriction on registration of disposals without a certificate confirming that the provisions of a Trust Deed have been complied with. The Trust Deed is made between North Oxfordshire Consortium Ltd, NOC Land Developments Ltd, George Wimpey UK Ltd, Taylor Wimpey Holdings Ltd and Westbury Homes (Holdings) Ltd (together called the "controllers of the land"). The latter three companies form the NOC).

19.326 The Appellant: The restriction requires that a certificate would be given either by a conveyancer or by the applicant for registration. No such conveyance occurs as a result of the completion of the Undertaking. Instead it provides for parts of the site to be offered for transfer to the Councils, with transfers following if the offers are accepted. Should those transfers proceed in accordance with the Undertaking then the latter obliges the Appellant to procure a valid certificate on completion of the transfer. It is not possible nor is it necessary for a certificate to be given at this stage. It will be given when a conveyance of the land takes place. All the beneficiaries of the Trust Deed are shareholders in NOC Ltd and they are thus in a position to give that covenant.

19.327 My Conclusion: NOC has sufficient interest in the land without the need for constituent consortium members to enter the Undertaking or to provide the requested certificate at this stage. The Undertaking is drafted so that it will be done when the land is actually transferred. This is not the situation at paragraph B54 of Circular 05/2005 where a third party whose consent would be needed is omitted from the Unilateral Undertaking. Sufficient safeguards exist for the Councils on this matter.

Is Performance sufficiently secure? Is a Bond needed to meet the undertakings?

19.328 The Councils: DCLG Planning Obligations Practice Guidance of July 2006 indicates that bonds can be a useful tool to secure s.106 payments and transfer the risk to Local Planning Authorities of non- or under-performance of obligations. Substantial money payments are committed to mitigate the effects of the development amounting to £15.4m which includes £11m for primary and secondary school places. Money is also committed for urgent works to historic buildings on the FF as well as other matters and the Councils must be sure it will be available. The only bond committed in the Unilateral Undertaking is for £0.43m in relation to the bus services payment.

19.329 The Councils have accepted that in view of their size, payments may be deferred and would not be due until a significant amount of development has occurred. This contrasts with the standard mechanism where payments are made in advance on implementation of permission or on first occupation. Where Planning Obligations secure substantial payments and

those payments are deferred it is standard practice for bonds to be provided as security.

- 19.330 The County Council has completed 3 Planning Obligations secured by bonds for major developments in 2008: Mixed use development at south west Bicester (£17.8m), Housing and open space at Didcot (£20.5m) and Housing at Faringdon (£1.8m). Financial institutions are continuing to issue bonds, the latest in Oxfordshire being for Phase 3 of Bicester Village (for £2.1m issued on 4 December 2008 by National Westminster Bank).
- 19.331 Section 106 (5), (6), (7) and (8) of the Act sets out provisions to enforce planning obligations, via injunction or by entering the land, doing the works and then recovering reasonable expenses from the developer through the courts if necessary. Pursuit through the courts by an unsecured creditor (as the Councils would be) would provide no security or certainty of payment. An injunction is only effective if the payment provisions are worded negatively (e.g. not to occupy...until payment is made). The Education payments are positive covenants linked to the timetable for letting the contract for building the school.
- 19.332 The financial standing of the Appellant and the Taylor Wimpey companies is poor as evidenced by the Experian reports (at OCC JT1) which give them a zero credit rating and consider unsecured dealings are inadvisable.
- 19.333 In the Bishop's Cleeve case (APP/G1630/A/07/2053255) referred to by the Appellant, the payments were much smaller (£1.7m), they were all due in advance and were staged according to phases of the development. Taylor Wimpey was the appellant in that case. The Inspector said then that there was no intention to dispose of their interest and that they were one of the largest UK housebuilding companies. That is the same now but the conclusion that there was no reason to suppose they would default is different given the poor credit ratings of NOC and Taylor Wimpey. A Bond is needed to ensure performance of the sums of money in the Undertaking.
- 19.334 The Appellant: That performance bonds can be an effective tool to transfer the risk of non delivery of obligations is not disputed but there is no suggestion in Circular 05/2005 or within its 2006 Practice Guidance that absence of a bond invalidates an obligation or should lead to refusal of an application or appeal.
- 19.335 The Councils do not argue that the obligations to deliver monies in the Undertaking are inadequate to deliver the facilities needed to mitigate the impact of the development, but rather that their enforcement position is compromised by failure to provide a Bond. They produce no evidence that the Appellant does not intend to or will not be able to comply with the obligations and such is not the case. It is solvent and has never defaulted.
- 19.336 Section 106 of the Act sets out remedies in the event of underperformance or default. Where the Unilateral Undertaking provides a restriction on further occupations the Councils may seek an injunction to prevent further occupation and on others it may sue in the Courts for recovery of unpaid money as a debt. The Inspector approved this principle in the Bishop's Cleeve case and the Secretary of State endorsed her view.
- 19.337 Any concern that the Appellant may not have money to pay should be viewed in the context that in order to breach the majority of obligations it will have needed to have commenced construction of development and

received proceeds of sale. NOC would also have income arising from lettings of buildings on the Flying Field.

- 19.338 Bonds are difficult to obtain in the current financial climate. Owing to the current credit situation banks are not giving bonds because they effectively have to reserve the funds to pay the Bond if it is called upon. The developer is being frustrated from commencing development on other sites by virtue of being unable to obtain bonds. A requirement to provide bonds in respect of all of the financial contributions in the Undertaking could frustrate the development when the developer is otherwise willing and able to pay those sums. Credit reference checks are meaningless and irrelevant in that context.
- 19.339 In terms of the extent of the Councils' exposure, a bond is committed to guarantee funding of the bus service. Commuted sums for maintenance of open space, sports pitches and pavilion, play areas and community hall and pay for a community officer are all linked to their transfer to the CDC. There is an ongoing commitment in the Undertaking to maintain those facilities if that transfer does not occur. It is reasonable to assume that if the CDC does not receive the commuted sums then they would not complete on the transfer and will not then incur the maintenance liability for those facilities.
- 19.340 Bonds are required or necessary where there are substantial obligations on what may be a wasting asset, such as a minerals permission. This site is not a wasting asset and a performance bond is unnecessary.
- 19.341 My conclusion: For convenience these are the relevant paragraphs of my "Bishop's Cleeve" report referred to by the parties: *"On the matter of the performance bond sought by the County Council (GCC)<sup>244</sup> as part of the Undertaking, I have duly considered the potential difficulties they highlight. The Practice Guidance<sup>245</sup> referred to sets out a range of approaches that can be taken to ensure the benefiting authority can obtain the funds as needed. Contrary to the view of the Villages Action Group, the two Unilateral Undertakings are enforceable by law if permission is granted.*
- 19.342 *The appellant does not intend to dispose of their interest and they are one of the largest house building companies in the UK. There is presently no reason to suppose this will change or that they will default. The Undertaking includes compliance and enforceability provisions and the Schedule covenants that dwellings will not be occupied until contributions in any phase have been met. If there are problems the GCC could sue and/or seek an injunction.*
- 19.343 *Just after the section of the Guidance referred to by the GCC is a Case Study. In that example the planning authority had Supplementary Planning Guidance which sets out the context for the use of performance bonds. I was not referred in this case to any such document on which the public and other stakeholders would have had the chance to make representations. On balance and because of that as well as the legal remedies already available I do not consider that the appellant should be asked to provide a performance bond."*

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<sup>244</sup> Inspector's note – in that case the Gloucestershire County Council

<sup>245</sup> Planning Obligations: Practice Guidance (CLG)

- 19.344 Performance bonds are not unusually requested where the developer is to fund (and sometimes also carry out) works of a public benefit e.g. essential highway works or to make large contributions which may be due at the end of major development, or in stages as the development progresses. In such cases a performance bond would ensure that, if the developer defaults, the works will not have to be carried out at public expense.
- 19.345 Should the NOC or any or all of its members be forced to dispose of their interest, then the costs of its commitments in the Unilateral Undertaking would be taken into account by any purchaser. There may well be a substantial gap before a successor in title is found. Commitments in the undertaking may take a low priority in the meantime.
- 19.346 The Unilateral Undertaking on some matters provides points where non performance would become clear and provide a trigger for an injunction to be sought by the OCC or indeed the CDC. However, if the credit rating reports on NOC and Taylor Wimpey PLC are correct in indicating the companies' financial fragility then there cannot be confidence that default will not arise on some or all of the matters and the vulnerability of the Councils as unsecured creditors would become exposed.
- 19.347 As said for the Appellant in order to breach the majority of obligations they would have had to have started building and made sales of houses to generate the need for the sums committed. That includes the school and secondary places. Also, income generated from business lettings of buildings has been an important income stream to the NOC to date. Such revenues would increase if permission is granted for the much greater number of buildings now proposed for change of use.
- 19.348 It may be the case that revenues arising from allowing the change of use of buildings on the FF would make it easier rather than more difficult to finance the new housing and with that the ease with which the NOC could meet its commitments in the Undertaking. This point was not explicitly argued by the appellant bearing in mind their stance that the employment proposals are supported by "an enabling policy" rather than being "enabling development". Nor was the point made in opposition to the need for a Bond. It would certainly not be a reason to grant permission for those changes of use if on their planning merits they were otherwise unacceptable. However, it would tend to facilitate rather than harm the Appellant's ability to fund its Undertakings.
- 19.349 Bonds are often necessary where the actions required in an undertaking will follow the more beneficial aspects of a development such as in minerals cases or where enabling development would proceed first to generate funds for necessary works to a listed building. That is not the case here where development will be ongoing and itself produce revenue once housing is sold and revenues from lettings on the FF will continue.
- 19.350 Regarding the commitment to work needed to buildings on the Flying Field, English Heritage is satisfied with the relevant provisions of the Unilateral Undertaking. The Actions in the MPFF are positively worded because a Unilateral Undertaking cannot prescribe that a Local Planning Authority should approve a submitted scheme within a particular timescale. I must assume that EH will have taken full account of the potential impact on the character and appearance of the Conservation Area of any failure to fulfil the Actions in the MPFF within the Undertaking.

- 19.351 There also seem to me to be strong financial incentives for the Appellant to ensure buildings on the FF (or those retained within the NSA) are in a lettable condition and that the condition of others does not put off potential occupiers. MPFF Action HA13 commits the Appellant to “retain the freehold of the Flying Field and other retained structures in one ownership”.
- 19.352 As said for the Appellant the provision and management of open space and community facilities would be secure.
- 19.353 The Appellant’s arguments would normally be persuasive for two of the three reasons I identified in the Bishop’s Cleeve case. That the Appellant has never defaulted on obligations was not challenged. From the Experian report one sees that it “pays within its terms” and had no County Court Judgments in the report period of 2 years. Both NOC and Taylor Wimpey PLC are noted in the reports as seeking additional capital.
- 19.354 Westbury Homes (Holdings) Ltd which owns one third of NOC shares (JT1A and E) appears to be in a stronger position with a credit limit of £4 million. There was no evidence put to the inquiry as to whether NOC, Taylor Wimpey PLC or Westbury were rated significantly worse than any other major housebuilder during undoubtedly difficult times for the industry.
- 19.355 Circular 05/2005 does not address performance bonds. The CLG’s Planning Obligations Practice Guidance refers to bonds at paragraph 10.15 and says they can be an effective tool for Local Planning Authorities to transfer risk of underperformance or financial default. Unlike the Case Study example given there, I was not told of any Development Plan policies or SPD that guides decisions on when bonds are needed. I am not aware of any other national policy or guidance on this.
- 19.356 As said for the Councils in this appeal the sum in the Bishop’s Cleeve case was much smaller, payments were due in advance and staged according to phases of the development, both of which would make enforcement much easier for the Councils in that case. The commitments to the OCC alone at Heyford Park are very substantial in this lead appeal.<sup>246</sup>
- 19.357 I can draw no conclusion on whether banks (or similar institutions) are not issuing bonds at present. The OCC has experience otherwise but the Appellant knows of difficulties with its own projects.

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<sup>246</sup> Taken from the Unilateral Undertaking: payments to the County Council (index linked): Transport and Sustainable Travel includes: £360,000 for Infrastructure (in two stages); £37,000 to bus stops; £240,000 into a Sustainable Travel Fund (for a Travel Coordinator and Site Wide Travel Plan); £50,000 to traffic calming; £200,000 into Supplementary Measures Account. Education (in addition to providing a cleared and clean primary school site) includes: £15,800 per on-site primary or early years place up to a maximum of £5.53m; £4.69m to £5.53m for secondary education contingent on the CC making a Determination and other factors; £200,000 for school transport; £40,000 for temporary places at an existing village school at Tackley. Countryside Access: £197,000. In addition, other cash contributions are committed but via a formula where the exact sums are contingent on other presently unknown figures (e.g. “bus costs” where the sum payable is linked via a formula to the annual gross costs of a bus operator contracted to the OCC). A bond to cover bus services (in the amount of £430,000) is committed in Schedule 20.

- 19.358 Given that in the conditions of Winter 2008/Spring 2009, NOC and Taylor Wimpey were not considered credit worthy, I thus well understand the County Council's unease, particularly their concern that the positive covenant for the school would fail to deliver as intended. I agree with the Councils that the remedies under S.106 for non- or under- performance may be rendered ineffective should the Appellant default.
- 19.359 Nothing was submitted by NOC before the inquiry adjourned in mid March 2009 to indicate any change to their and Taylor Wimpey PLC's situation as reported by Experian in December 2008.
- 19.360 The Councils have accepted that because of their size, payments may be deferred until a significant amount of development has occurred. When combined with the Appellant's apparently weak financial standing the OCC would be considerably exposed to risk in relation to the education payments. There has been no dispute that the school and secondary places funding is directly related to the needs of the development and is necessary for the development to proceed. Planning permission should not be granted in absence of means to secure them. Taking all the above points into account it seems to me that those large sums cannot be confidently considered secure of delivery.
- 19.361 I thus consider that the necessary balance of public interest would lie in favour of a performance bond being provided to cover a proportion of the sums committed for primary and secondary education. No evidence was provided as to what a reasonable proportion would be and in the absence of policy guidance on this I am unable to advise the Secretary of State further. Without such a bond however I consider that the Unilateral Undertaking should be given less than the otherwise very substantial weight I would accord to it.
- 19.362 I consider that for the reasons given by the Appellant that the Undertaking is adequately secure of delivery of its commitments on all the other matters.
- Lack of enforceability to successors in title
- 19.363 The Councils: NOC should only be released from liability when it disposes of all its land interest if it has secured a replacement deed of covenant from a major landowner at the site who will take responsibility for outstanding commitments. For example the Transport Strategy would require active ongoing commitment from a major landowner.
- 19.364 The Appellant: The concern centres on whether there would be anyone against whom the obligations could be enforced if the Appellant is released from liability upon parting with its interest in the site. This is manifestly not the case. Clause 4.5 of the Unilateral Undertaking says that such liability will only be released if a Deed of Covenant has first been provided to the Councils in which the purchaser agrees to be bound by the obligations. Exemptions are granted only to buyers of individual dwellings and commercial occupiers and statutory undertakers. Such a Deed would be in addition to the statutory provisions binding successors in title. The Appellant would retain title to the common parts such as roads in any case and in all likelihood to the commercial elements. If it sought to dispose of those it would only be released from liability if a Deed was provided. NOC are obliged to notify CDC of any transfer/lease (except plots) and NOC are

also funding an officer to monitor the obligations. The Councils would thus always have somebody to enforce against.

- 19.365 My Conclusion: On this matter I consider the interests of the Councils are adequately safeguarded by the arrangements set out by the Appellant above. I have also noted that MPFF Action HA13 commits the Appellant to “retain the freehold of the Flying Field and other retained structures in one ownership”.

Lack of safeguards regarding future management of facilities

- 19.366 The Councils: If facilities such as the community hall, sports pitches and pavilion and open space do not transfer to the CDC there would be a lack of safeguards for the residents re future ownership, management and availability.
- 19.367 The Appellant: This is entirely within the Council’s control. The Undertaking requires the relevant facilities to be provided and laid out to the Council’s required standards and maintained for an appropriate period. After that they are to be offered for transfer to the Council together with a commuted sum towards future maintenance. If the relevant Council does not accept the transfer then the Appellant is obliged to maintain them so they are suitable for their purpose. It is not accepted that in that eventuality the Appellant should be required to meet the Council’s exact standards.
- 19.368 My Conclusion: I consider the Council’s interests are adequately safeguarded for the reasons given by the Appellant.

Could the Management Plan for the Flying Field be enforced?

- 19.369 The Councils: The majority of the Actions in the MPFF are positively worded and thus difficult to enforce. Actions such as the Strategies (for parking, waste etc) rely on those being first agreed by CDC but there is no restriction on occupation in the meantime if the submitted strategies are inadequate or cannot be agreed. There is thus insufficient incentive to submit and agree them and this would become more difficult as occupiers become established on the site. Conditions are needed to address this.
- 19.370 The Appellant: the Actions set out in the MPFF are clear and they are positively worded because an Undertaking cannot prescribe that the Council approve a scheme within a certain time. The Actions have been subject to extensive and detailed discussion with English Heritage who are satisfied except in connection with the Paragon Action HA17. It would be counter productive to delay occupations of buildings until the Strategies had been agreed. Conditions have been discussed to address this.
- 19.371 The financial measures and trigger points for payment have been agreed with English Heritage after considerable and detailed discussions and the sums are based on survey work undertaken. At present without the Undertaking there is no funding commitment to maintain the buildings nor is there any planning duty to maintain them with the exception of the Scheduled and Listed buildings. The arrangements in the Undertaking thus significantly enhance the position.
- 19.372 My Conclusion: I have addressed these concerns in the composite condition on the various strategies for the Flying Field and in the additional condition I have added to ensure existing uses are also brought more easily under these requirements. The Undertaking provides a mechanism to ensure

buildings are kept in weatherproof condition that is not available at present, other than for the Scheduled and Listed buildings. That is a major benefit of the Undertaking.

#### Duration of Bus Subsidy and timing of Transport measures

- 19.373 The Councils: The improved bus service is essential and the main measure to improve the transport sustainability of the site and it should be retained in the long term. The Undertaking says the subsidy would finish at the Transport Strategy end date. This conflicts with the SoCG (paragraph 10) which says support will be provided until the service is viable. On timing, delivery of the improved bus service would not be triggered if the residential development is delayed but the existing buildings on the FF are occupied. A limit should be set on the floorspace of the latter that can be occupied before the improved bus service starts and monitoring undertaken.
- 19.374 The Appellant: Proposals for the provision of bus services are set out in Annex 3 of the Transport Strategy Framework (TSF) which was attached to the Transport SoCG. Paragraph 5 and paragraph 10 of the SoCG make clear that the TSF is an integral part of it. Paragraph 1.3.1 of the TSF (now at Appendix 10 to the Unilateral Undertaking) says that the “strategy implementation will cease three years after the completion of development and in any case will be in place for more than seven years”. The Appellant will thus fund the bus service until it is viable or implementation of the TSF (to which the Councils agreed) ceases.
- 19.375 My Conclusion: The Appellant clearly accepts that there is a long term commitment to subsidise the bus service in a document attached to and agreed as part of the relevant SoCG. Inclusion of the phrase “the development” in the Transport Strategy Framework that is now at appendix 10 to the Unilateral Undertaking must be construed to refer to the whole development not just the housing element. That should be sufficient safeguard that delay to the latter would not delay the improvements to the bus service. There is no need to place a ceiling on occupation of the commercial floorspace.
- 19.376 I address two of the other deficiencies perceived by the Councils below.

#### Affordable Housing

- 19.377 In the absence of a specified tenure mix, CDC point out that Schedule 5 does not require the Affordable Housing Provider to discuss proposals with them before their offer is accepted. There thus may be no opportunity for the Council to consider whether it should itself commit additional funding to adjust the tenure split for example to increase the proportion of social rented housing to meet identified needs.
- 19.378 The Appellant says that the Unilateral Undertaking provides an identified proportion and size mix of affordable dwellings that would be made available to “Eligible Occupiers” as defined in PPS3. Everyone so qualified would be in housing need by definition. The Appellant is obliged to invite an AHP to discuss the above with the CDC but it should not be blocked from completing a deal with an AHP if it does not wish to do so. All parties want qualifying existing residents on the site to have their needs met there. The Undertaking requires a survey of their needs to be undertaken before reserved matters submissions and subsequent submission of allocations and

nomination arrangements. A Local Lettings plan would govern allocations and this is to be approved by the CDC.

- 19.379 My conclusion is to agree with the appellant that the Undertaking would safeguard the interests of those needing affordable housing and that it is unnecessary for tenure mix to have been agreed with the CDC prior to disposal to an AHP.

#### Timing of Provision of the Local Centre

- 19.380 The Council says that marketing of the Local Centre should continue until the 900th rather than the 600th dwelling as provided in the Unilateral Undertaking. Local centre facilities are attractive to operators when there is a larger resident population to support them. Every effort should be made to provide them to enhance the sustainability of the development and reduce the need to travel by car for day to day needs.
- 19.381 In response the Appellant points out that 600 dwellings is over half way through and about 3 years into the build programme. If end users for the Local Centre are found, this will enable the Local Centre to be completed before the end of the development programme. That gives sufficient time for marketing. If no end user is found NOC should be allowed time to identify another use for the site, apply for permission and deliver that use along with the other development.
- 19.382 I conclude that ideally a longer period for marketing is desirable on "sustainability" grounds, but I do not consider this to be of great significance in affecting the weight to be given to the Unilateral Undertaking.

#### Other outstanding points raised by the Councils on the Undertaking:

- 19.383 My view is that none of the other concerns is of such substance as to individually or cumulatively lessen the weight that should be accorded to the Unilateral Undertaking.

#### Overall Conclusions on the weight to be given to the Unilateral Undertaking:

- 19.384 I consider that the Unilateral Undertaking is acceptable in most regards and one matter can be safeguarded instead by a condition. If successfully delivered, the commitments in the Unilateral Undertaking add substantial weight in favour of allowing the appeals.
- 19.385 My significant concern relates to the County Council's security that the funding for the primary school and for secondary places will be satisfactorily delivered. Weighing all the above matters I have reviewed above it seems to me wholly reasonable and necessary for a bond to be provided to cover a significant proportion of the amounts committed to those matters. The other County matters and those of the District Council appear to me adequately certain of delivery given all the other considerations.
- 19.386 My conclusion is that the weight to be accorded to the Unilateral Undertaking is reduced, because delivery of funding of the largest sums for the primary school and secondary places which are necessary for the development to proceed cannot be considered secure in the present financial situation of the Appellant.
- 19.387 If the Appellant is right that they would be unable to secure a performance bond in sufficient amount from a funding institution (they undertake to provide one in the sum of £0.43m for the bus service) because of continuing

problems in the banking system or perhaps because of their poor credit worthiness, then the Secretary of State will need to consider whether, when weighed with the all the other considerations, this undermines the lead proposal to the extent that it and the CAC appeals should be dismissed.

- 19.388 If concluding the latter, he may wish to consider that it would not be appropriate to dismiss the appeal outright for this reason but defer his decision on the application to enable the appellant to submit a performance bond to ensure that the education contributions in the undertaking can be made when needed.
- 19.389 It may be that since the inquiry adjourned on 16 March 2009 that liquidity in the banking system in general has improved and/or that the appellant and/or their consortium members may be on a surer footing (for example by recapitalisation or other financial restructuring). If so then that may make it easier for them to secure a bond. Another view may be that in that eventuality the risks that they would default on the Undertaking would be less and such a bond would be less necessary. My conclusion can only refer to the situation reported at the inquiry.

## The 24 Conservation Area Consent appeals

- 19.390 Demolition of 244 dwellings and many other buildings is proposed in these 24 appeals. No detailed plans for their replacement are available for consideration. The applications were made concurrent with the previous lead application (07/02291/OUT) where the appeal was withdrawn in favour of this lead appeal scheme. The locations of these 24 CAC appeals buildings are shown on plans at CDC JB2 Appendices V, W and X.
- 19.391 These applications were submitted at the same time as others where Conservation Area Consents have been granted. The latter include a large number of buildings, mainly those in the south west of the site where formal open space is the proposed replacement together with others in or adjacent to the Trenchard Trident area, some others just north of Camp Road (where the north west element of the NSA housing is proposed) and for the only building proposed for demolition on the Flying Field (the large modern building (3135). The radio mast (355) and a high water tower (UH74) are amongst those with CAC for demolition. These buildings are shown on a map and listed at CDC JB2 Appendix L and also shown at NOC MD2 Appendix 1 (Plan N.0111\_42-1a).

### The main considerations

- 19.392 The main considerations in these 24 appeals are whether the proposed demolitions have been adequately justified and whether the available information about the replacement development allows one to judge whether the character or appearance of the RAF Upper Heyford Conservation Area would be preserve or enhanced.
- 19.393 As advised in Planning Policy Guidance 15 the general presumption should be in favour of retaining buildings which make a positive contribution to the conservation area and any proposals to demolish such buildings should be assessed against the same broad criteria as proposals to demolish listed buildings (paragraph 3.16-3.19). Where there are proposals to demolish a building which makes little or no such contribution, consent to demolish should not be granted unless there are acceptable and detailed plans for any redevelopment. The merits of the replacement development can be taken into account in determining whether permission may be given for demolition of an unlisted building in a Conservation Area (paragraph 4.27).
- 19.394 The Local Planning Authority's refusals were on three different grounds for three different categories of buildings:
- 19.395 The first group (lying mostly to the south of Camp Road in the residential area but also a few buildings in the technical area north of the road) are accepted by the Local Planning Authority (and by English Heritage) as not making a positive contribution to the Conservation Area. They were refused for the reason that their demolition in the absence of a secured scheme for the redevelopment would result in a cleared site that would not preserve or enhance the character of the Conservation Area, contrary to Policy EN4 of the Oxfordshire Structure Plan and advice in PPG15 (= buildings included in appeals references 2069311, 2069318, 2069345, 2069331, 2069337, 2069339, 2069346, 2069347, 2069349, 2069350 shown in Appendix V).
- 19.396 The refusals were given with regard to guidance in PPG15 at paragraphs 4.26 and 4.27 where the latter says that where a building makes little such (positive) contribution (to the character or appearance of the Conservation

- Area) the Local Planning Authority will need to have full information about what is proposed for the site after demolition.
- 19.397 English Heritage thought that CAC could be given on these applications subject to a condition preventing demolition until a detailed replacement has been approved and through an agreed phasing programme to prevent unsightly gaps arising.
- 19.398 The second group of refusals relates to buildings north of Camp Road within the Technical (mainly in the Trenchard Trident) Area. The reasons for refusal say they are considered to make a positive contribution to the character of appearance of the Conservation Area in the CAA. No justification for demolition has been made (in accordance with PPG 15 paragraph 3.19) and in the absence of a secured scheme for the redevelopment would result in a cleared site that would not preserve or enhance the character of the Conservation Area, contrary to OSP Policy EN4 and advice in PPG15. (= buildings included in appeals references 2069313, 2069314, 2069315, 2069316, 2069321, 2069324, 2069327, 2069329, 2069333, 2069334 shown at Appendix W).
- 19.399 The third group are buildings south of Camp Road in the vicinity of the Parade Ground. The applications relate to groups where some of the buildings are assessed as making a positive contribution and others not. The reasons for refusal state that a number of buildings contribute to the character and appearance of the Conservation Area and (as advised by EH) in the absence of justification for demolition and a secured acceptable scheme for the redevelopment of the areas concerned, demolition would result in a cleared site that would not preserve or enhance the character or appearance of the Conservation Area, contrary to OSP Policy EN4 and advice in PPG15. (= buildings included in appeals 2069335, 2069340, 2069341, 2069343 and shown at Appendix X).
- 19.400 The Appellant's grounds of appeal state simply that (in summary) the demolitions are required firstly to bring about the visual improvements sought for the area in Policy H2 of the OSP and secondly, even where a building was assessed as making a positive contribution its demolition was needed to help facilitate the comprehensive development of the new settlement. Most buildings are considered to make no significant contribution to the character or appearance of the Conservation Area. Volume 2 of the application documentation (Document A1.3) divides the buildings into areas equating to those in the Conservation Area Appraisal.
- 19.401 Supporting information submitted with the CAC applications was undoubtedly scanty with no justification provided in accordance with PPG15 paragraph 3.19 for demolition of buildings that make a positive contribution to the character or appearance of the Conservation Area. The Local Planning Authority did not consider that all aspects of the Built Form Masterplan were acceptable and the DAS was considered to have inadequacies (these were the versions that accompanied the now withdrawn application but were very similar to that submitted with this lead appeal application).

- 19.402 At the inquiry such an assessment was submitted by the Appellant<sup>247</sup>. Annexe 2 assessed all the buildings judged by English Heritage to make a positive contribution against the tests in PPG15 paragraph 3.19 relating to:
- o the condition of the buildings and costs of repairing and maintaining them in relation to their importance and to the value derived from their continued use;
  - o the adequacy of efforts made to retain them in use and
  - o the merits of alternative proposals for the site.
- 19.403 That is set out in considerable and to my mind adequate detail in Mr Munby's revised Annexe 2. I shall not refer to that analysis in any detail here. Although English Heritage considered Mr Munby's first Annexe 2 (JM2) fell short of what was needed the revised Annexe 2 has satisfied them that the buildings south of Camp Road can be demolished without harm to the character or appearance of the Conservation Area, subject to necessary conditions and bearing in mind the parameters set for the new development in the application and the principles set out further in the DAS. On that basis English Heritage withdrew their objection to the demolitions but there remains the question of the uncertainty on acceptable and detailed plans for the redevelopment.
- 19.404 On the supply of further information by NOC to English Heritage, the latter reviewed its earlier objections to demolition of buildings north of Camp Road. Upon making a further detailed visit to the area EH decided that the buildings made little contribution to the Conservation Area rather than the positive contribution they earlier considered to be the case. Accordingly they no longer considered that a "PPG15 paragraphs 3.16 to 3.19" assessment was needed for the buildings.
- 19.405 My own visits to the site confirm that there are within the New Settlement Area south of Camp Road buildings of interest that make a positive contribution to the character or appearance of the Conservation Area. Those include the "Lamplighter" mess building (building 488) and the several 1920s types of barrack blocks and the other buildings listed by English Heritage and by the Local Planning Authority (EH NB1 and NB2 and CDC JE2 Appendix 2).
- 19.406 Most of those that make a positive contribution are of a form that is inflexible and/or could only be converted at a cost that is disproportionate to their importance or to the likely quality and versatility of the accommodation that would be provided. The costs of conversion would not be justified by the quality of the result. Overall the general character, appearance and disposition of the existing buildings would be very difficult to integrate within a new development of high quality design. Some buildings have been much altered. Mr Munby's evidence convinces me that demolition of these buildings is justified subject to an acceptable replacement development.
- 19.407 Whilst the buildings north of Camp Road are in character with the Conservation Area I consider they make a very modest contribution to it. I consider that there is no need for their further assessment and that there is no presumption in favour of their retention.

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<sup>247</sup> Document NOC JM3 Revised Text of Annexes in Response to English Heritage Rebuttal

- 19.408 None of the airmen's housing is judged to make a positive contribution by English Heritage or the Local Planning Authority. I agree with that and there is thus no presumption in favour of its retention.
- 19.409 I thus conclude that, subject to an acceptable replacement development sufficient information has been supplied to justify all these demolitions.
- 19.410 Turning to the replacement development for all the above buildings, paragraph 4.18 of PPG15 endorses the view taken by the Local Planning Authority here that they would often need to ask for detailed plans and drawings of proposed new development, including elevations which show the development in its setting, before considering an application. The paragraph goes on to say that special regard should be had to matters such as scale, height, form, massing amongst other matters. Paragraph 4.27 is clear that even where a building makes little or no positive contribution to the character or appearance of a Conservation Area the Local Planning Authority (or other decision maker) would need to have full information about what is proposed for the site after demolition. The merits of any proposed development can be considered in making that decision.
- 19.411 In this case the Parameter Plans set out the relevant matters of uses, amount of development, indicative layout, scale parameters (two and three storeys) and indicative access points.
- 19.412 The Design and Access Statement whilst not part of the application sits beside it and is intended to explain how the development has been considered. Its 117 pages include many diagrams. It contains a quite detailed Masterplan and it (and other parts of the DAS) was subject to modest helpful revision during the inquiry. The DAS intends that development would reflect the different character areas it identifies. The Masterplan gives a good general indication of how the new and the old would interrelate including the retention of important existing roads and open space structure such as the Trenchard Trident, the Parade Ground and Carswell Circle. The DAS demonstrates an understanding of what is appropriate on the site and within its context.
- 19.413 Another important consideration in this case is whether it would be practical to require full details of the replacement development on a site of this size and complexity. So too is the associated further delay that would arise in redevelopment of a site where the principle of the new settlement is not at issue and Development Plan policy (OSP Policy H2Bb) states that the "whole of the former airbase" should be addressed by any proposals.
- 19.414 My concern in relation to PPG15 advice on the need for detailed proposals in some cases (4.18: "often" need ...) would have been more quickly assuaged had the DAS worked up in more detail proposals for at least part of the first phase of development. Nonetheless the Design Character sections of the DAS give a clear general impression of how the redevelopment of these areas of the NSA would fit within the Conservation Area. In the large areas of the airmen's housing, there is considerable potential for redevelopment to enhance the appearance of the Conservation Area as a whole.
- 19.415 Balancing all of the above against advice in PPG15 at paragraphs 4.18, 4.27, 4.28 and 4.29 in particular, I consider that I am able to assess from the application parameter plans and the indicative design material in the DAS how matters of scale, massing, design and materials are likely to be

addressed and that new buildings would be designed with respect for their context. I can thus judge whether the replacement development would preserve or enhance the appearance and character of the Conservation Area as a whole and hence whether CAC can be given.

- 19.416 My conclusion is that the documentation available indicates that the character and appearance of the Conservation Area as a whole would be preserved by the likely form of development. Conservation Area Consent can thus be given subject to the following conditions.
- 19.417 Given the size of the site and the other constraints on the Appellant as described above for the lead appeal, I consider that the same time limit of 6 years should apply for commencement of demolitions.
- 19.418 Development is indicated as being phased and the second condition on demolitions should reflect this. In accordance with paragraph 4.29 of PPG15, the condition should also prevent demolitions until all the relevant details have been approved for any phase and a contract for the redevelopment has been let. With the latter matter included in the condition it is not necessary to refer to the prior approval of reserved matters which is what I assume was the Local Planning Authority's intent. For the small number of buildings proposed for demolition that would be replaced by open space it is equally important that a scheme and contract for those works is in place before they are demolished.
- 19.419 Proposed Condition 2a recognises the slightly different position regarding the 2.2ha of the Primary School site as that is dependent on a determination further to the Education and Inspections Act 2006 (and related regulations).
- 19.420 The role of the buildings within the overall historic context of the site is indeed important. Condition 3 would ensure that a scheme of recording is conducted on the buildings to be demolished. It appears to me unlikely that every building is of sufficient interest in itself to require a detailed record and it may be that where there is a group of very similar buildings, a sample may suffice. The condition proposed would allow the Local Planning Authority some necessary discretion on what should be included in the scheme and I consider the condition necessary and reasonable in the proposed form.
- 19.421 The fourth condition aims to ensure demolition debris is removed promptly and not stored on the site. As referred to at the inquiry however, sustainable construction practice in this case argues in favour of the reuse of suitable materials in the construction programme, as recognised in proposed condition 77 to the lead appeal. That would outweigh the benefits to the character or appearance of the Conservation Area of immediate removal, in my view. To ensure consistency I have referred to this also in the fifth condition in Annex B. A requirement for "immediate" removal of materials unsuitable for the construction process sounds draconian. I have no doubt however that unnecessary and poorly located storage of such materials on the site is to be firmly resisted as that would be extremely harmful to the character and appearance of the Conservation Area. I would not however expect "immediate" to be interpreted literally by the Local Planning Authority and I can think of no other word that would give the necessary certainty or ease of enforcement on this important matter.

19.422 I consider that permission for demolition of the high water tower (buildings 291, 107 and 108) and the boiler house chimney (at building 467) could be given without the lead appeal being allowed as their demolition would benefit the appearance of the site when viewed from the surrounding area without harming the character or appearance of the Conservation Area. However as those are included in the appeals with other groups of buildings they cannot be separated from them.

### **Overall Conclusions**

#### The Lead Appeal

- 19.423 Taken as whole and subject to the two matters below I consider that the lead appeal would provide a balanced lasting solution for the airbase that is generally consistent with the site specific policy of the Oxfordshire Structure Plan and with other Development Plan policies and national policy and guidance.
- 19.424 For the car processing use to be acceptable as part of the proposal I consider it necessary for a constraint to be placed on the parking of ranks of vehicles at the western part of the area shown for that use on the Change of Use plan. That would require an additional condition to those discussed at the inquiry unless the Appellant offers an undertaking to address the same matter. The parties would in fairness need to be consulted upon this.
- 19.425 The very substantial weight I give to the Unilateral Undertaking would be seriously diminished if the Appellant is unable to honour its commitment in the Unilateral Undertaking to fund a primary school and secondary education places. The information put before the inquiry casts some doubt on that ability but that could be overcome if a bond to an appropriate amount could be obtained to increase confidence on that matter.
- 19.426 If the Secretary of State considers that permission should be refused because of lack of confidence on the school funding, he may wish to consider that it would not be appropriate to dismiss the appeal outright for this reason but defer his decision on the appeal to enable the appellant to submit a performance bond.
- 19.427 Subject to a satisfactory resolution of the above two matters I conclude that the lead appeal should be allowed and permission granted for both the outline elements of the proposal and for the changes of use, subject to the conditions I recommend and having given due weight given to the Undertaking.
- 19.428 It may be that a "minded to approve" intimation with an indication of the above concerns would be an appropriate way forward.
- 19.429 If the Secretary of State considers that the outdoor car processing use is unacceptable but considers other aspects of the proposal could be permitted, then it may be that he would wish to consider whether the car processing use can be severed from the rest of the proposal. This possibility was not canvassed with the parties at the inquiry and their views would therefore need to be sought on the matter.

#### The Conservation Area Consent appeals

- 19.430 If the lead appeal is allowed and planning permission granted (subject to a satisfactory resolution of the two matters identified above and the

imposition of conditions at Annex A and the appended full description of what is proposed in the Schedule), then the Conservation Area Consent appeals should also be allowed, subject to the conditions at Annex B.

- 19.431 If the lead appeal was to be dismissed, then the CAC appeal should also be dismissed as there would be no permitted scheme to replace those buildings.

### **Recommendations**

The Lead Appeal: File Ref: APP/C3105/A/08/2090594

- 19.432 Subject to a satisfactory resolution of the two matters identified above, I recommend that the appeal is allowed and planning permission is granted in outline for 1075 new dwellings and associated works and facilities, including employment uses, community uses, a school, playing fields and other physical and social infrastructure in the mixed use New Settlement Area and in full for changes of use in the New Settlement Area and on the Flying Field, all at Heyford Park, Camp Road, Bicester, Oxfordshire, OX25 5HD, in accordance with the plans Site Plan N.0111\_16e; Parameter Plans 1135-060C, 061C, 062D, 063C, 064; Change of Use plan N.0111\_22-1L; New Settlement and Flying Field Areas plan N.0111\_58-1 and subject to the development comprising that listed in the Schedule attached and the conditions at Annex A.

The Conservation Area Consent Appeals: File Refs: APP/C3105/E/08/2069311; APP/C3105/E/08/2069313; A APP/C3105/E/08/2069314; APP/C3105/E/08/2069315; APP/C3105/E/08/2069316; APP/C3105/E/08/2069318; APP/C3105/E/08/2069321; APP/C3105/E/08/2069324; APP/C3105/E/08/2069327; APP/C3105/E/08/2069329; APP/C3105/E/08/2069331; APP/C3105/E/08/2069333; APP/C3105/E/08/2069334; APP/C3105/E/08/2069335; APP/C3105/E/08/2069337; APP/C3105/E/08/2069339; APP/C3105/E/08/2069340; APP/C3105/E/08/2069341; APP/C3105/E/08/2069343; APP/C3105/E/08/2069345; APP/C3105/E/08/2069346; APP/C3105/E/08/2069347; APP/C3105/E/08/2069349; APP/C3105/E/08/2069350:

- 19.433 I recommend that if the lead appeal is allowed then these appeals should also be allowed, subject to the conditions at Annex B below.
- 19.434 If the lead appeal is dismissed these appeals should also be dismissed.

*Daphne Mair*

INSPECTOR

## APPEARANCES

### FOR THE CHERWELL DISTRICT COUNCIL AND OXFORDSHIRE COUNTY COUNCIL:

Graham Keen and Gwion Lewis	Of Counsel Of Counsel
They called Paul Semple, BA, MRTPI	Strategic Planning (Consultant to the Oxfordshire County Council)
Paul Staley, BSc(Hons), CEng, MICE	Sustainability re travel and transport (Development Control [Transport] with OCC)
Linda Rand, DipTP, MRTPI	Urban Design (Team Leader, Design and Conservation with the Cherwell District Council)
Colin Goodrum, BSc(Hons), DipLA, MLI	Landscape (Consultant to the CDC)
Jonathan Edis, BA(Hons), MA, PhD, MIFA, IHBC	Heritage (Consultant to the CDC)
Jenny Barker, BA(Hons), BTP, MRTPI	Planning (Team Leader, Major Developments, with the CDC)

### FOR THE APPELLANT:

Martin Kingston	Of Queens Counsel
He called	Consultants to the Appellant on the following matters:
Mervyn Dobson, MA, MPhil, MRTPI, MRICS	Planning
Julian Cooper, BSc(Hons), DipLD, FLI	Landscape
Julian Munby, FSA	Heritage
Bill Brisbane, BSc, DipTP, MRTPI, FRICS	Employment
Lorna Walker, BSc, MSc, CChem, MRSC, FCIWEM, MCIWM, SiLC, HonDEng	Sustainability
Robert West, BA(Hons), BArch, RIBA	Urban Design
Keith Mitchell, MSc, MICT, MIHT	Transport and Travel Plan
Stephen Hobbs, BSc(Hons), PhD, FGS, SiLC, MCIWM, Qualified Person Code of Practice	Potential Contamination

### FOR ENGLISH HERITAGE:

Robert Walton	Of Counsel
He called	
Nigel Barker, BA(Hons), PhD, DipBC(AA), IHBC	Historic Areas Adviser and Planning and Development Team Leader (Oxon, Berks and Bucks)

FOR THE ENVIRONMENT AGENCY:

Megan Thomas  
Gillian Davies,  
BSc(Hons), MSc, DPhil  
(Oxon)

Of Counsel (opening only)  
(conditions session)

FOR THE OXFORD TRUST FOR CONTEMPORARY HISTORY:

Frank Dixon  
He called

Daniel Scharf, MA, MRTPI

FOR THE SOUTH EAST ENGLAND DEVELOPMENT AGENCY:

Jane Griffin, BATP, MRTPI  
Rob McKay, MA, BSc(Hons),  
MCIM, MIED, ACMI

Senior Regional Planner  
Investment Development Manager

FOR THE CAMPAIGN TO PROTECT RURAL ENGLAND Oxfordshire:

Brian Wood

Treasurer, CPRE Oxfordshire and a national  
Trustee of CPRE, of The Byre, Pound Court,  
Deddington, OX15 0LA

OTHER INTERESTED PERSONS:

James Macnamara

District Councillor for Astons and Heyfords  
Ward, of Heyford Manor, 18 Church Lane,  
Lower Heyford, Oxon, OX25 5NZ

Participants in the discussions on Conditions and Unilateral Undertaking

For the Appellant  
Rod Bull, Solicitor, Paul Maile and Paul Burrell of Eversheds,  
Steven Hobbs (land contamination matters) and Mervyn Dobson  
For Cherwell DC and Oxfordshire CC  
Jenny Barker and Sim Manley (CDC)  
Julia Taplin, Principal Solicitor with the Oxfordshire County Council)  
Howard Cox, Development Funding Team Leader OCC  
For English Heritage  
Nigel Barker  
For the Environment Agency  
Gillian Evans assisted by Craig Hampton, Penelope Yorath and Michelle Kidd

## DOCUMENTS

<b>Document</b>	1	Lists of persons present at the inquiry
	2	Letter of Notification of arrangements for the Inquiry
	3	Notes of Pre Inquiry Meeting of 14 July 2008
	4	Statements of Common Ground: (also listed as CDs)
	4a	Sustainable Transport
	4b	Transport Assessment (28 August 2008)
	4c	Planning (9 Jan 09)
	4d	Landscape and Visual Issues (1 October 2008)
	4e	Ecology (2 October 2008)
	4f	Affordable Housing (October 2008)
	4g	SoCG with English Heritage re MPFF (18.12.08)
	5a	Schedule of Proposed "no prejudice" conditions with Appellant's comments (as updated 06.01.09) for lead appeal.
	5b	Schedule of conditions re CAC appeals
	6	Unilateral Undertaking by Appellant (23.01.09)
<b>Appellant (NOC)</b>		
NOC	A1	Applications Documents:
	A1.1	Application Form and certificates
	A1.2	Volume 1: Supporting statements
	A1.3	Volume 2: Design and Access Statement; Building Appraisal; Tree Survey
	A1.4	Volumes 3a, 3b, 3c, 3d, 3e: Environmental Statement
	A2.1	Planning Application documentation Updates of June 2008
	A2.2	ES Further Information re potential contamination of September 2008 and updated non technical summary
	A2.3	DAS update of March 2009 (interim updates listed as CDs 124-126)
	A3	Compendium of all agreed appeal plans and plans referred to in Conditions
NOC	MK1	Opening statement of Mr Kingston
	MK2	Closing Submissions
NOC Planning	MD	Mr Dobson:
	MD1	Proof of evidence
	MD2	Appendices to PoE
		Rebuttal proof (joint, with Mr Brisbane listed with BB)
	MD3	Note on Provision of Retail and Hotel/Conference facilities
	MD4	Note on differences between the first (withdrawn)(lead) appeal and the second appeal 2080594 (agreed with CDC)
	MD5	Supplemental note on occupied floorspace on Flying Field (28.10.08)

	MD6	Floorspace by building (retained buildings and new build) (16.12.08)
	MD7	Extract from Secretary of State decision re site at Homelands Farm, Bishop's Cleeve, Glos.
	MD8	Letter dated 15.10.08 to PINS withdrawing 12 Conservation Area Appeals
	MD9	E-mail to M Kidd (Environment Agency) of 08.10.08
	MD10	Copy of Application form for lead appeal
NOC		
Heritage	JM	Mr Munby:
	JM1	Proof of evidence
	JM2	Illustrations and Annexes to PoE
	JM3	Illustrations and Annexes (Revised text of annexes in response to English Heritage Rebuttal proof)
Employment	BB	Mr Brisbane:
	BB1	Proof of evidence
	BB2	Appendices to POE
	BB3	Rebuttal POE (joint with Mr Dobson)
	BB4	Travel to Work in Oxfordshire (OCC)
	BB5	BB's Evidence in Chief Employment Context
	BB6	Chart headed Economically Active – comparison with ...
Sustainability	LW	Dr Walker:
	LW1	Proof of evidence
Landscape	JC	Mr Cooper:
	JC1	Proof of evidence
	JC2	Appendix 2 - Paragon Visual Assessment + L10A
	JC3	Plans, Photographs and Illustrations
	JC4	Appendix L1 and L2
	JC5	Rebuttal POE
	JC6	Annotated versions of CDC landscape viewpoint photographs and e-mail from CDC witness in response
	JC7	Erratum on ES
	JC8	Letter on behalf of Paragon regarding conditions
Green Travel	KM	Mr Mitchell:
	KM1	Smarter Choices- Changing the Way we travel
	KM2	Cycle pool experiences and shuttle bus timetable
Urban Design	RW	Mr West
	RW1	Rebuttal Statement
	RW2	Drawing 1135_079 Building 292 and neighbouring properties
Contamination	SH	
	SH1	Note from Dr Stephen Hobbs re Contamination Issues (additional information re ES is at A2.1 above)
	SH2	Flow Chart to show how conditions would be discharged

**Cherwell DC  
and Oxfordshire  
CC**

	GK1	Opening statement of Mr Keen
	GK2	Closing Submissions of Mr Keen
OCC		
Strategic Planning	PSe	Mr Semple:
	PSe1	Proof
	PSe2	Appendices
Transport and Highways	PSt	Mr Staley:
	PSt1	Proof of evidence
	PSt2	Appendices to POE
re Unilateral Undertaking	JT	Ms Taplin
	JT1 (A-E)	Credit rating report summary and reports s on NOC Ltd, Taylor Wimpey plc (and associated companies) and Westbury homes (Ms Taplin's notes on Undertaking issues are included within Items 1-15 in Bundle U1)
CDC Planning	JB	Ms Barker:
	JB1	Proof of evidence
	JB2	Appendices to POE
	JB3	Rebuttal proof
	JB4	Appendices to rebuttal
	JB5	LDF –progress on core Strategy note
	JB6	Parish Plan map of archaeological features and consultation response from OCC Planning Archaeologist
	JB7	Note re Affordable Housing
	JB8	Schedule of Temporary Planning Permissions with expiry dates
	JB9	Table and Drawings for RCPB presented to CDC Executive 5.03.07
	JB10	Note prepared by JB regarding the Economically active comparison with para 4.2 of Bill Brisbane's rebuttal
	JB11	Letter from GOSE dated 10.10.08 re saved policy H2
	JB12	E-mail response from SEEDA 08.09.06 regarding RCPB
	JB13	CDC note regarding All people – Economically active - Unemployed (Model Based)
Urban Design	LR	Ms Rand:
	LR1	Proof of evidence
	LR2	Appendices to POE
Landscape	CG	Mr Goodrum:
	CG1	Proof of evidence
	CG2	Appendices to POE
	CG3	Additional photographs

CDC

Heritage	JE	Dr Edis
	JE 1	Proof of evidence
	JE 2	Appendices to POE

**English Heritage**

	RW1	Opening Statement of Mr Walton
	RW2	Closing submissions

Historic Heritage

	NB	Dr Barker
	NB1	Proof of evidence
	NB2	Appendices to POE
	NB3	Rebuttal Proof
	NB4	Supplementary Proof of Evidence
	NB5	Plan identifying buildings that make a positive contribution

**Oxford Trust for Contemporary History**

OTCH

	FD1	Opening Statement of Mr Dixon
	FD2	Closing submissions
	DS1	Mr Scharf's Proof of evidence
	DS2	Additional evidence to Main Proof
	DS3	Additional points
	DS4	Comments on Management plan
	DS5	OCC letter dated 4.4.05
	DS6	Congress of the US April 25 2003
	DS7	CWIHP Release
	DS8	NOC Ltd Annual Report year end 30.09.07
	DS9	Email from DCMS to D Scharf 13.10.06
	DS10	Note re reference in ES Vol 3a section 16 to Cultural Heritage
	DS11	Military Buildings Selection Guide (English Heritage)
	DS12	Note on Conditions and Obligations

**SEEDA**

	JG1	Letters of representation – Jane Griffin
	RM1	Statement – Rob McKay

**CPRE**

	BW1	Statement from Brian Wood CPRE 17.10.08 and skeleton statement
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**Cllr Macnamara**

	JM1	Map showing the location of Aston View (his letter of 19 August 2008 is included in Red Folder of other written representations)
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**Other Inquiry Documents**

Document

	U1	Bundle of items from Councils and Appellant regarding aspects of the Unilateral Undertaking
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C1 Bundle of items relating to discussion of Conditions  
 Pack CDs of evidence and closings of the parties, Costs  
 of 10 application and reply, DAS, Compendium of Plans,  
 Disks Statements of Common Ground a-f

**Proofs considered  
 as written  
 representations  
 NOC**

Education SC Stephen Clyne, LCP (DipSMS), CertEd, MAE  
 SC1 Proof of evidence  
 SC2 Appendices to POE  
 SC3 Rebuttal POE  
 Affordable Housing DP David Barker, MSc, BA(Hons), DMS, FCIH  
 DP1 Proof of evidence  
 DP2 Appendices to POE

**OCC/CDC**

OCC  
 Education and AH Mr Andrew Hamer, BEng(Hons)  
 Children's services AH1 Proof of evidence  
 AH2 Appendices to POE  
 CDC  
 The "s.106" (various SM Mr Sim Manley, BA(Hons), BTP, MRTPI  
 aspects) SM1 Proof of evidence  
 SM2 Appendices to POE  
 Sports Pitches, Public TS Mr Tim Screen, BA, PGDipLA, MLI  
 Open Space, Play areas  
 TS1 Statement  
 TS2 Appendices to statement  
 Indoor Sports and PH Mr Philip Rolls, DMS, MISPL  
 Leisure, public art et al  
 PH1 Statement  
 PH2 Appendices to statement  
 Ecology PS Mr Peter Shepherd, BSc (Hons), PhD, MIEEM  
 PS1 Proof of evidence  
 Heritage Centre ST Mr Simon Townsend, BH(Hons), MA, AMA  
 ST1 Statement  
 Affordable Housing FB Ms Fiona Brown  
 FB1 Proof of evidence  
 FB 2 Appendices to POE  
 FB 3 Rebuttal

**English Heritage**

PM Philip Masters, MA, PhD, DipLA, MLI  
 Landscape PM1 Proof of evidence  
 PM2 Plans and Photographs

**Environment  
 Agency**

GD Dr Gillian Davies

	GD1a	Proof of evidence and appendices 1-5
	GD1b	Appendix 6
<b>Other Written submissions</b>	GD2	Letter dated 7.10.08 to Mr Dobson at Pegasus (prepared for other linked appeals but referred to for the lead appeal and CAC appeals)
<i>Rule 6 Party:</i>		
<i>Thames Valley Police Authority</i>		
	PA1	Proof of Tony Clements, BA(Hons), MCD, MRTPI
	PA2	Letter dated 22.09.08 from RPS on behalf of TVPA
	PA3	Letter dated 22.10.08 from RPS ditto
	PA4	Letter dated 09.01.09 ditto
<i>Paragon Fleet Solutions</i>		
	PSM1	Proof of Stephen Maltby
	PRB1	Proof of Richard Brown, BSc, AIEEMA
	PRB2	Appendices to Proof
	PRB3	Letter from Drivers Jonas to Mr Dobson regarding Paragon Operations
<i>Supporta Datacare</i>		
	RD1	Proof of Richard Dunnett, BA(Hons) MRTPI
	RD2	Appendices to Proof
Red Folder of letters	RD3	Letter of 30.09.08 outline to Supporta's case (with Lead Appeal File) Letters dated 23 and 29 September 2008 from Berry Morris on behalf of Mrs Power of Troy Farm, Ardley Councillor Macnamara of Lower Heyford The Highways Agency British Waterways Email from Carrenza dated 15.10.08

**PLANS**

Plan Group	A	Application Plans (included in Volume 1 of application documents)
	B	June 2008 amendments thereto (including N.0111_17-1d Building Status)
	C	Appeal Plans: Site Plan N.0111_16e; Parameter Plans 1135- 060C, 061C, 062D, 063C, 064; Change of Use plan N.0111_22-1L; New Settlement and Flying Field Areas plan N.0111_58-1. Other appeal plans (indicative): Phasing Plan N.011_35; Landscape Masterplan L14; Built From Masterplan 1135-045N; Landscape Key Plans L10A and L10B (from or based upon the Design and Access Statement); Indicative Access Plan (for FF) N0111_23-1h; Tree Plans 1-8 (1802/61, 62, 63A, 64, 65A, 66, 67, 68) (all included in Compendium of Plans A3). Also N0111_17-1d
	D	Plans referred to in Conditions (as listed and included in Compendium of Plans A3)
	E	Plans included in Unilateral Undertaking (as found therein and listed in Compendium of Plans)

**CORE DOCUMENTS LIST**

<b>Core Document number</b>	<b>Document description</b>
	<b>National Guidance</b>
1	Planning (Listed Buildings and Conservation Areas) Act 1990
2	PPS 1
3	PPS 3
4	PPG 4
5	PPS 7
6	PPS 9
7	PPS 10
8	PPS 12 2004
8a	PPS12 2008
9	PPG 13
10	PPG 15
11	PPG 16
12	PPG 17 & Companion guide to PPG 17
13	PPG 18
14	PPS 23
14a	Annex 1 to PPS23
14b	Annex 2 to PPS23
15	PPS 25
16	Draft PPS 4
17	Circular 11/95
18	Circular 05/05
19	Circular 01/06
	<b>Regional Guidance</b>
20	RPG 9 (March 2001)
21	Draft Regional Spatial Strategy for the SE RSS9 2006- 2026
22	Regional Economic Strategy for the South East (2006 – 2016)
23	South East Plan Panel's Report August 2007
24	South East Regional Housing Strategy 2008-2011 (March 2008)
25	Secretary of State's Proposed Changes to the draft RSS for the South East July 2008
26	South East Plan Companion Document July 2008
	<b>Oxfordshire County Council</b>
27	Oxfordshire Structure Plan 2011
28	Oxfordshire Structure Plan 2016
29	Oxfordshire Rights of Way Improvement Plan 2006 -11
	<b>Cherwell District Council</b>
30	Adopted Cherwell Local Plan
31	Non Statutory Cherwell Local Plan 2011
32	Annual Monitoring Report 2007
33	Affordable Housing Code of Practice, SPG (April 2004)
34	Interim Guidance on Planning Obligations (April 2007)
35	Core Strategy Issues and Options Paper (February 2006)
36	Core Strategy Issues and Options Technical Paper 1: Housing Figures (February 2006)

37	Spatial Report for the Core Strategy Issues and Options Paper (February 2006)
38	Cherwell District Council Housing Needs Study, Fordham Research Ltd (November 2004)
39	Oxfordshire Housing Market Assessment: Final Report, TRIBAL (December 2007)
40	DUPLICATION – NO DOCUMENT
41	Comprehensive Planning Brief 1999
42a	Draft RCPB
42b	Consultation Statement
43	RCPB Consultation Statement and Sustainability appraisal Statement
44	Revised Comprehensive Planning Brief March 2007
45	SPG Relating to Temporary Uses (Sept 2004)
46	Application 08/00716/OUT and supporting documents
47	Application 08/01442/F etc Paragon applications and supporting documents
48	00/02291/OUT Inspectors report and Secretary of States decision
49	06/00833/F Walon appeal decision 30 January 2007
50	ENF 2/07 and appeal decision for Building 3209 (Dawsons)
51	South Area Planning Committee Reports for 24 April 2008 07/02291/OUT,07/02309/02312/02314/02317/02320/02323/ 02327/02331/02333/02335/02340/02345/CAC
52	Planning Committee Report 7/08/08 re 08/00716/OUT
53	Planning Committee Reports for 17 July 2008 08/01442/F etc concerning Paragon Fleet Solutions
54	South Area Planning Committee Reports for 9 August 2007 07/01259 etc concerning QEK Global Solutions (UK) Ltd
55	South Area Planning Committee Reports for 23 June 2005 05/00284/F concerning QEK Global Solutions (UK) Ltd
56	Cherwell Economic Strategy 2007 - 2011
57	Conservation Area Appraisals RAF Upper Heyford (as approved by Executive Committee April 2006)
58	Conservation Area Appraisals Rousham
59	Conservation Area Appraisals Somerton
60	Conservation Area Appraisals Ardley
61	Conservation Area Appraisals Fritwell
62	Conservation Area Appraisals Kirtlington
63	Conservation Area Appraisals Steeple Aston
64	Former RAF Upper Heyford Conservation Plan ACTA, Oxford Archaeology, The Tourism Company 2005
65	CDC Landscape Assessment Cobham Resource Associates November 1995
66	Restoration of Upper Heyford Airbase; A landscape Impact Assessment LDA 1997
67	LDA Landscape and visual impact and master plan report 2004
68	Former RAF Upper Heyford Airbase Landscape Assessment /Characterisation of the Airbase South of the Cold War Zone 2006
	<b>English Heritage</b>
69	Conservation Area Appraisals English Heritage 1997
70	Guidance on Conservation Area Appraisals 2006

71	Guidance on the Management of Conservation Areas English Heritage 2006	
72	Conservation Principles (2008)	
73	Historic Military Aviation Site: Conservation management Guidance English Heritage 2003	
74	Twentieth- Century Military Sites: current approach to recording and conservation English Heritage 2000	
75	English Heritage Enabling Development and the Conservation of Heritage Assets June 2001	
75a	English Heritage Enabling Development and the Conservation of Significant Places September 2008	
76	English Heritage Enabling Development and the Conservation of Heritage Assets June 2008	
77	Heritage Works- The use of historic buildings in regeneration	
78	English Heritage Consultation response letters on the first application dated 17 and 21 December 2001 and 10 March 2008	
	<b>Other</b>	
79	Institute of Environmental Management and Assessment /Landscape Institute Guidelines on Landscape and Visual Assessment 2002	
80	By Design- Urban Design and the Planning System: towards better practise (DTLR 2001)	
81	Better Places to live : A Companion Guide to PPG3 (DTLR and CABE 2001)	
82	Urban Design Compendium 1 and 2 English Partnerships 2007	
83	Homes for the future: More Affordable More Sustainable CLG (July 2007)	
84	Design and Access Statements : How to read write and use them CABE	
85	Code for Sustainable Homes CLG 2006	
86	Building for Life CABE IHBF	
87	Car parking: What works Where? EP 2007	
88	UK Strategy for Sustainable Development	
89	Manual for Streets 2007	
90	Oxfordshire Design Partnership Residential Parking Standards Phil JONES Assoc. (2006)	
91	Economic Development Strategy Oxfordshire 2006 – 2016	
92	Does Money Grow on Trees, Cabe Space	
93	Principles of Inclusive Design Cabe (2006)	
94	Physical Capital and the Built Environment Cabe 2006	
95	DPM, Diversity and Equality in Planning (2005)	
96	Cascades: Improving the Certainty in the delivery of Affordable Housing for Larger-scale Development; Housing Corporation (September 2007)	
97	National Affordable Housing Programme 2008- 2011 Prospectus	
98	ODPM's Guidance Note on Employment Land Reviews (Dec 2004)	
99	DUPLICATION – NO DOCUMENT	
100	Old Colstonians, South Gloucestershire Inspector's Report (APP/PO119/A/06/2033219)	
101-103	DUPLICATIONS – NO DOCUMENTS	

104	Neutral Citation No [2008] EWHC 1258 (Admin) The High Court of Justice Queens Bench Division, The Administrative Court, 20 May 2008, Persimmon Homes (North East) Ltd
105	Barratt Homes Ltd/ Millhouse Developments Ltd v Blyth Valley Borough Council
106-109	DUPLICATIONS – NO DOCUMENTS
110	North Field, Filton Airfield, Patchway, South Gloucestershire APP/P0119/A/06/2019118
111	Land north of Gavray Drive, Bicester, Oxfordshire APP/C3105/A/05/1179638
112	European Cultural Convention Paris 1954
113	Convention for the protection of the Architectural Heritage of Europe Granada 1985
114	Convention on the Protection of the Archaeological Heritage (Revised) Valetta 1992
115	Committee Reports to the Council's Executive dated 3 July 2006, 4 December 2006, 5 February 2007, 5 March 2007 and 5 March 2007
116	DUPLICATION – NO DOCUMENT
117	Cummins & Ors, R (on the application of) v London Borough of Camden & Ors [2001] EWHC 1116 (Admin) (21 December 2001)
118	Cherwell District Council Open Space SPG
119	Cooper Partnership Photo Montage
120	RCPB version with track changes March 2007
121	OCC Local Transport Plan 2006 - 2011
122	Secretary of State letter dated 16 September 2008 and Direction in respect of Oxfordshire Structure Plan Policies
123a	SOCG – Sustainable Transport (with OCC)
123b	SOCG – Transport Assessment (with OCC and Highways Agency)
123c	SOCG – Planning Matters (with CDC)
123d	SOCG – Landscape Matters (with CDC)
123e	SOCG – Ecology (with CDC)
123f	SOCG – Affordable Housing (with CDC)
123g	SOCG – Management Plan for Flying Field v.25 (with English Heritage)
124	REAL Design and Access Statement 'composite' submission (Including DAS, DAS Addendum and Built form Masterplan Rev N) issued September 2008
125	REAL DAS submission: Design and Access Statement 3.10.08
126	REAL DAS 07.01.2009 Revisions
128	Letter dated 14 September 2007, to Chief Planning Officers concerning planning appeals and design and access statements

**Annex A: Conditions recommended for imposition if the Lead Appeal is allowed.**

1. Approval of the details of the layout, scale, appearance, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development relating to the New Settlement Area identified on Plan Ref: N.0111\_58-1 is commenced.
2. Plans and particulars of the reserved matters referred to in condition 1 above, relating to the layout, scale, appearance, the means of access to the site and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of six years from the date of this permission.
4. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
5. The permission hereby granted relates to the development as specified in the schedule attached to these conditions.
6. **Masterplan Proposals:** The details required in accordance with Condition 2 shall be in general accordance with the provisions of Parameter Plans 1135\_060C, 061C, 062D, 063C and 064, Landscape Masterplan L14 and Landscape Plan L10B, the Built Form Masterplan of Settlement Area (Drawing Ref 1135/045N), and with the Environmental Statement as updated in June 2008 and supplemented in September 2008; or with such subsequent amendments to any of the above as have first been submitted to and approved in writing by the Local Planning Authority.
7. **Phasing:** No reserved matters applications shall be submitted pursuant to the outline application or occupation of any buildings the subject of change of use, (other than those which are currently occupied) within the New Settlement Area as shown on Plan Ref: N.0111\_58-1 on site until such time as a phasing plan (to include demolition, the identification of the general location of affordable housing within each phase, the laying out of open space and play areas in accordance with the open space parameter plan 1135\_063C and access proposals) has first been submitted to and approved in writing by the Local Planning Authority; and shall be implemented in accordance with such approved details.
8. **Design Codes – New Settlement Area:** No reserved matters applications shall be made for any phase until a Design Code for that phase of the New Settlement Area, as identified in Condition 7 above and as shown on Plan Ref: N.0111\_58-1 has been submitted to and approved in writing by the Local Planning Authority. The Design Code shall comprise:

- **Land use**, density, layout of streets and public spaces and character areas (as indicated on Figure 4.10 of the Design and Access Statement of 12 March 2009);
- **Landscape**, including for the immediate setting of the new settlement, to include retained trees and vegetation, new planting, public open space, amenity space, children's' play areas, sports facilities, footpaths, public spaces, together with adoption arrangements and extent;
- **Surface water control**, including design standards and methodology for sustainable drainage systems, details of specific features, including appropriate options for Sustainable Urban Drainage, together with adoption arrangements and extent;
- **Public realm**, including hierarchy of streets and public spaces, characteristics, dimensions, building line and or set backs, materials, means of enclosure, street furniture, including street lighting, and car parking, methods to control traffic speeds and create legibility, together with adoption arrangements and extent;
- **Built form**, including scale, materials, roof treatment, elevational treatment, treatment of landmark and marker buildings, key frontages and gateways;
- **Sustainable design**, including the measures to be incorporated to ensure that the development complies with at least the minimum Code Level required by the Building Regulations in the Code for Sustainable Homes and to assess the impact this would have on appearance;
- **Car and cycle parking**, including standards of provision by land use and dwelling type and
- **Waste recycling**, including how the Councils standards for individual householders' waste and recycling bins are to be accommodated within the dwelling curtilage and refuse vehicle access to these obtained.

The development shall thereafter be carried out in accordance with the approved Design Codes.

9. **Maximum Numbers of residential units:** No more than 1075 dwellings in total shall be accommodated on the site, including any existing dwellings which are to be retained.
10. **Archaeology:** The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow that person to observe the excavations and record items of interest and finds.
11. **Contamination in the New Settlement Area:** No operational development shall be undertaken and no building shall be occupied (other than those in use at the date of this application) in relation to a phase or sub-phase within the New Settlement Area as shown on Plan Ref: N.0111\_58-1 until such time as a scheme to deal with the risks associated with contamination of the site (excluding the scheme in relation to the POL system), including a programme of proposed delivery, has been submitted to and approved, in writing, by the local planning authority. The scheme shall include:
  - A site investigation scheme, based on the preliminary risk assessment included in the Environmental Statement associated with the outline planning permission (and as supplemented in September 2008) to provide

information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

- The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express consent of the local planning authority.
- The scheme shall be implemented as approved.

12. **Verification of remediation measures in the New Settlement Area:** A verification report shall be submitted to and approved in writing by the Local Planning Authority within 3 months of the completion of the works at each phase as set out in the contamination in the NSA condition above (no.11) unless otherwise agreed in writing. Such report shall confirm the remediation measures that have been undertaken in accordance with the method statement and also identify measures for future maintenance, further monitoring and reporting which shall be implemented in accordance with a timetable to be included with the report.
13. **Hours of operation of new uses:** No new use within Use Classes A3-A5 shall commence within the New Settlement Area as shown on Plan Ref: N.0111\_58-1 until such time as details of the hours of opening of such premises have been submitted to and approved in writing by the Local Planning Authority. The use shall thereafter operate only within those hours.
14. **Noise:** For each phase or sub phase of the development, no works shall be undertaken until such times as a detailed scheme of noise assessment and possible sound insulation measures for the residential units (including a timetable for its implementation) has first been submitted to and approved in writing by the Local Planning Authority. That scheme shall be implemented in accordance with the approved details.
15. Before the change of use of any building within the New Settlement Area or the Flying Field is implemented, a scheme shall be submitted to and approved in writing by the Local Planning Authority which specifies the provisions to be made for the control of noise emanating from the building or its adjacent service area. In the case of uses that would be implemented on grant of this permission such a scheme shall be submitted to the Local Planning Authority within 6 months of the date of the permission.
16. **Odour:** For each phase of the development within the New Settlement Area as shown on Plan Ref: N.0111\_58-1, no new occupation of any Class C1 (Hotel) A4 (Public House) and B2 (General Industrial) premises shall take place until such times as a detailed scheme of fume extraction/odour mitigation measures has first been submitted to and approved in writing by the Local Planning Authority; and implemented in accordance with such approved details unless otherwise agreed in writing by the Local Planning Authority. In the case of uses that would

be implemented within the New Settlement Area on the grant of permission such a scheme shall be submitted to the Local Planning Authority within 6 months and approval be obtained within 12 months.

17. **Landscaping:** No development within any phase of the development within the New Settlement Area as shown on Plan Ref: N.0111\_58-1 shall take place, save for existing uses already in occupation at the time planning permission is granted, until there has first been submitted to and approved in writing by the Local planning Authority a scheme of landscaping for that phase which shall include: -
- details of the proposed tree and shrub planting including species, number, sizes and positions, together with grass seeded/turfed areas;
  - details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation;
  - details of the soft landscaping, hard surfaced areas, pavements, pedestrian areas, crossing points and steps;
  - details of laying out of Public Open Space;
  - details of boundary treatments to each phase where appropriate (including retained security fencing).
18. All planting, seeding or turfing comprised in the approved details of landscaping for each phase within the New Settlement Area as shown on Plan Ref: N.0111\_58-1 shall be carried out in the first planting and seeding seasons following the occupation of the final new building of that phase; and that any trees and shrubs which within a period of five years from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.
19. **Tree/Hedgerow Protection:** Before any works are undertaken in connection with each phase or sub phase of the development within the New Settlement Area as shown on Plan Ref: N.0111\_58-1, the existing landscape features identified for retention under Condition 17 on the land shall be preserved, fenced around and properly maintained in accordance with a scheme of protection measures which shall have first been submitted to and approved in writing by the Local Planning. Implemented shall be in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.
20. **Levels:** Save for existing uses already in occupation at the time planning permission is granted, before any works are undertaken in respect of each phase of the development within the New Settlement Area as shown on Plan Ref: N.0111\_58-1, details of the existing and proposed levels, including finished floor levels, shall first have been submitted to and approved in writing by the Local Planning Authority. Development shall be implemented in accordance with such approved details.

21. **Drainage:** Save for existing uses already in occupation at the time planning permission is granted, no development on any phase shall be undertaken until a scheme for disposal of surface water, including phased works and maintenance thereof, attenuation and storage and on-site balancing arrangements including SUDS arrangements, reflecting current best practice for sustainable urban drainage, have been submitted to and approved in writing by the Local Planning Authority. No development shall take place other than in accordance with the approved scheme.
22. **Foul Drainage:** Save for existing uses already in occupation at the time planning permission is granted, no development shall be undertaken on site, including phased works, until a drainage strategy for dealing with foul drainage from the site has been first submitted to and approved in writing by the Local Planning Authority. The foul drainage works shall thereafter be carried out in accordance with the approved scheme prior to the occupation of any new buildings on the site.
23. **Place of Worship:** Building 572 shall be used solely for the purposes of a Place of Worship and/or community use for a minimum period of 10 years from the date of this permission. Subsequent to that period it shall not without the express consent of the Local Planning Authority be used for any other purpose within Use Class D1 including any other permitted change within that specific Use Class as identified within Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995.
24. **Building 552** (Water Tanks) shall not be removed until such time as a scheme for their relocation (including a timetable for its implementation) has been submitted to and approved by the Local Planning Authority. The relocation shall subsequently be implemented in accordance with the approved scheme.

### **Conditions applying to the Flying Field only**

25. **Strategies for parking, lighting, signage, waste and fencing:** Strategies for these matters shall be submitted to the Local Planning Authority for approval and thereafter be implemented across the Flying Field as follows:
- (i) the submission for approval of a Parking Strategy for the whole Flying Field within 6 months of the date of this permission. The strategy shall thereafter be implemented on a building by building basis before occupation of any buildings not occupied before planning permission is granted and within 9 months of the date of this permission for all existing occupied buildings.
  - (ii) the submission for approval of an overall Lighting Strategy within 3 months of the date of this permission. The strategy shall thereafter be implemented on a building by building basis before occupation of any building not occupied before planning permission is granted and within 9 months of the date of this approval on all existing occupied buildings.
  - (iii) the submission for approval of an overall Signage Strategy within 3 months of the date of this permission. The strategy shall thereafter be implemented on a building by building basis before occupation of any building not occupied before

planning permission is granted and within 9 months of the date of the approval on all existing occupied buildings.

(iv) the submission for approval of an overall Waste Management Strategy within 3 months of the date of this permission. The strategy shall thereafter be implemented on a building by building basis before occupation of any building not occupied before planning permission is granted and within 9 months of the date of the approval on all existing occupied buildings.

(v) the submission for approval of an overall Fencing Strategy within 6 months of the date of this permission. The Strategy shall thereafter be implemented within 18 months for fencing on the periphery of the Flying Field and thereafter prior to occupation of individual buildings on the Flying Field.

In respect of any of the above Strategies, if such approval is withheld or an approved scheme is not implemented within the relevant above timescale, the use of any building otherwise permitted by this permission shall cease within 12 months of the date of refusal or the end of the time period for implementation.

26. **Landscaping:** Save for those buildings in occupation at the date of permission, no building shall be occupied within the Flying Field, as shown on Plan Ref: N.0111\_58-1, until there has first been submitted to and approved in writing by the Local planning Authority a scheme of landscaping, (based on Plan Ref: L10B) together with a programme for its implementation. This shall include: -

- a. details and programming of the proposed tree and shrub planting including species, number, sizes and positions, together with grass seeded/turfed areas;
- b. details and programming of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation;
- c. details of management of the Flying Field landscaping

The scheme shall be implemented in accordance with the approved programme.

27. Before any demolition work or engineering work is undertaken on site, a scheme to ensure the protection of trees intended for retention that are within 20m of those activities shall be submitted to and approved by the Local Planning Authority. Such measures shall be implemented before the demolition or engineering works commence and retained until their completion.

28. **Grassland areas:** No use of or operation on the grassland areas identified on Map 2 (Habitat Survey in the Ecological Mitigation and Management Plan) shall take place other than those defined within the Landscape Management Plan and the Ecological Mitigation and Management Plan.

29. **Runways and Taxiways:** No use of or operation on the runways/taxiways shall take place unless for the purpose of access, including emergency access and

heritage tours, or a specified use within the permission, hereby or otherwise approved.

30. **Aves Ditch and Portway:** Within 3 months of the date of this permission, details of the surface treatment of the linking sections across the runway of Aves Ditch "optional route" and of Portway, as indicated on Plan Ref L10B shall be submitted to and approved in writing by the Local Planning Authority. Within 18 months of the date of the approval of those details the Aves Ditch and Portway sections identified on Plan Ref: L10B and L10A shall be implemented in accordance with such approved details and thereafter made available for use by the general public.

31. **Information Boards:** Within 6 months of the permission hereby approved details of the 8 interpretation boards and 2 vantage points and a programme for their implementation shall be submitted to and approved in writing by the Local Planning Authority. Such details shall include:

- (i) size and location of the interpretation boards
- (ii) details of information to be included on each board and
- (iii) location of the 2 vantage points;

These shall be implemented in accordance with the approved details and programme and be thereafter retained for that purpose and made available for use by the general public.

32. **Thames Valley Police Authority:** Building 249 shall only be used for police training, or a use falling within use class B2 or B8. It shall not be used by any other use falling within use class D1 without the express consent of the Local Planning Authority in writing.

### **Contamination (Flying Field and Petrol Oil and Lubrication System):**

33. Contamination – the Flying Field: Within 3 months of the grant of outline planning permission, a scheme of investigation to identify and remove contamination that represents a risk to the water environment on the Flying Field as shown on Plan Ref: N.0111\_58-1 shall be submitted to and approved, in writing, by the Local Planning Authority. This shall include:

1) A schedule of time frames for the proposed site investigations

2) The areas to be covered including:

- The Fire Practice Area – building reference nos. 330 to 337.

- Northern bomb store – building reference nos. 1001 to 1060.

- Above ground and underground fuel tanks not associated with the POL System where leakage is evident and testing has not already taken place.

- Landfills and waste disposal pits, including the presence of radium 226, where not already tested.

Samples for the assessment of groundwater quality shall be taken directly down hydraulic gradient.

3) The site investigation results and the detailed risk assessment and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components shall require the consent of the local planning authority. The scheme shall be implemented as approved.

34. Contamination – the Petrol Oil and Lubrication (POL) System: Within 6 months of the grant of outline planning permission a site investigation and remediation scheme for the POL system shall be submitted for approval in writing by the local planning authority. It shall include:

1) A schedule of time frames for the proposed site investigations.

2) Assessment of levels of residual fuel contamination within all tanks and pipe work of the POL System (aviation fuel ring main structures and isolated vehicle fuelling stations and waste oil storage facilities).

3) Assessment of groundwater quality (in addition to the current site-wide monitoring scheme) by monitoring boreholes placed down hydraulic gradient of all POL structures where recorded and suspected fuel leaks have occurred.

4) Assessment of groundwater quality (additional to current site wide monitoring scheme) by monitoring boreholes placed down hydraulic gradient of the fuel entry compound.

5) Assessment of contamination within soils and groundwater: -

- soil samples at the sides of tanks and groundwater quality samples shall be taken directly down hydraulic gradient of all fuel tanks at POL structures 3, 6, 7, 8, 9, 10, 11, 13, 14, 16, 21A; 21B, 21C, 22, 23A, 23B; 24, 25A and 25B.

- along the length of POL aviation fuel distribution mains around the former airfield (13 km) including equivalent pipe work left in situ following replacement of the ring main in 1987-9;

- along the length of the POL supply pipeline to investigate integrity failure;

- soil samples at the sides of tanks and groundwater quality samples shall be taken directly down hydraulic gradient of all fuel tanks and associated pipe work at POL 5;

- soil samples at the sides of tanks and groundwater quality samples shall be taken directly down hydraulic gradient of all fuel tanks and associated pipe work at POL 2, 4 and 12 if it is confirmed that they were linked to the aviation fuel pipe line;

- soil samples at the sides of tanks and groundwater quality samples shall be taken directly down hydraulic gradient of all fuel tanks and associated pipe work at POL 17 – tanks 1, 2, 3, 4, 5 and 6 used for hazardous waste/waste oil and decommissioned later than 1996;

- soil samples at the sides of tanks and groundwater quality samples shall be taken directly down hydraulic gradient of all fuel tanks and associated pipe work at POL 19;
- soil samples at the sides of tanks and groundwater quality samples should be taken directly down hydraulic gradient of tanks and associated pipe work at POL 20;
- soil samples at the sides of tanks and groundwater quality samples directly down hydraulic gradient of all pipe work or structures in the fuel entry compound.

The approved scheme shall be implemented in accordance with such time frames and other approved details.

35. The POL system – Remediation: Within 3 months of the completion of the approved site investigations (to include laboratory analysis, data assessment and reporting), a method statement giving full details of the remediation measures required and how they are to be undertaken, based upon the results of the site investigation and risk assessment (Condition 34), shall be submitted to and approved in writing by the Local Planning Authority. Such method statement shall include a schedule of delivery of such remediation which shall be completed prior to occupation of 75% of the residential dwellings permitted within the New Settlement Area by this planning permission. The remediation measures shall involve removal of pollutant sources or breaking of pollution pathways and shall include but not be limited to: -

- either tank removal (and replacement where in current use) in the case of gross contamination or removal of water and internal cleaning of tanks and pipe work including those on the POL system including all historic redundant ring mains
- removal (and replacement where in current use) of pipe work in cases of gross contamination or disconnection of all pipe work from tanks (closure of existing valves may be permitted)
- where not in current use underground pipe work left in situ shall either be broken into appropriate lengths or in-filled after cleaning in order to remove potential pollutant pathways.

The method statement shall be implemented as approved.

36. Verification - Flying Field and POL system: Following completion of those remediation works identified in Conditions 34 and 35, a separate verification report for the works carried out in respect of each condition shall be submitted within 3 months of the completion of the works for the approval in writing of the Local Planning Authority. The report shall confirm the remediation measures that have been undertaken in accordance with the method statement and also identify measures for future maintenance, further monitoring and reporting which shall be implemented in accordance with such approved details.
37. Unidentified Contamination: If during development contamination not previously identified is found to be present at the site then no further development within 20m of the contamination shall be carried out until the developer has submitted to and obtained written approval from the local planning authority for an addendum to the method statement. This addendum to the method statement shall detail how this unsuspected contamination will be remediated (if necessary)

and thereafter this will be carried out as approved before any development within 20m recommences. Following completion of any such additional remediation, a verification report shall be submitted within 3 months of the completion of the works for the approval of the Local Planning Authority in writing.

38. **Ecology:** Within 9 months of the date of this permission a programme for implementation of the ecological objectives set out in the Ecological Mitigation and Management Plan shall be submitted to the Local Planning Authority for approval. Failing such approval such implementation shall be completed by 5 years from the date of this permission.
39. **Cat Proof Fence:** No operational development shall be undertaken on site, or within such other period to be agreed in writing with the Local Planning Authority, until such time as a scheme for the provision and maintenance of cat proof and dog proof fencing, including details of the specification, height, position and extent of fencing along the boundary of the new settlement and the Flying Field has been submitted to and approved in writing by the Local Planning Authority. The fencing shall be erected in accordance with the approved details prior to the first occupancy of the new housing and the first public use of the reinstated public right of way.

#### **Restriction of Permitted Development:**

40. The construction of the new development shall be carried out in such a manner as to ensure that the structural integrity of existing buildings in the vicinity of the construction works is preserved.
41. With the exception of vehicles parked in defined areas pursuant to Condition 25 in respect of Parking Schemes and identified car processing areas as shown on Drawing N.011 22-1L, no goods, materials, plant or machinery shall be stored, repaired, operated or displayed in the open in connection with any commercial premises, other than those agreed in respect of the transitional arrangements or approved as part of the waste management strategy, without the prior express planning consent of the Local Planning Authority.
42. That the buildings identified within the schedule of change of use Plan No. N.0111\_22-1L for B2 (General Industrial) use shall be used only for the defined purpose and for no other purpose whatsoever, including any other permitted change within that specific use class as identified within Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) Order 1995.

#### **Car Processing**

43. Operation: The area of the application site comprising open hardstanding identified for car processing (defined so as to comprise the inspection, valeting, washing, repairing, tyre replacement, processing and delivery of cars and other car processing activities as may be required from time to time) shall only be used for activity which is related to car processing, and specifically shall not be used for the parking of any other vehicle associated with any other use or activity present on the application site.

44. Car rental: No car rental or related activities for use by members of the public shall be permitted from the identified car processing area as shown on Drawing N.0111\_22-1L.
45. Ground water protection: Within 3 months of the date of this permission, details of measures to prevent the pollution of groundwater associated with the operation of car processing on the hardstanding and a programme for their implementation shall be submitted to and approved in writing by the Local Planning Authority. Such measures shall be implemented in accordance with the approved details.
46. HGV parking and unloading: Car transporters associated with the car processing use shall only be operated or parked at the western end of the car processing site within the area identified on drawing no N.0111\_84-1.
47. Height restriction: Any vehicle within the car processing area over 1.45 metres in height shall be parked on the former tanker parking area identified on drawing no. N.0111\_85-1 and in no other location within the car processing area when not required for specific processing activities.
48. A scheme and programme for the provision of security for the car processing area including below ground pressure sensors and infra red cameras and the removal of the existing concrete rings shall be submitted for approval to the Local Planning Authority within 3 months of the grant of planning permission. Thereafter the approved scheme shall be implemented in accordance with the approved timescale and details and in any event no later than when the former tanker parking area comes first into use for car processing.

### **Construction Conditions**

49. **Demolition:** Prior to any demolition within the New Settlement Area or the Flying Field as shown on Plan Ref: N.0111\_58-1, a scheme of demolition for those buildings to be removed shall have been first submitted to and approved in writing by the Local Planning Authority. Such a scheme shall include;
  - (a) the demolition techniques to be employed in respect of each building to be removed;
  - (b) proposed hours of operation in respect of the proposed demolition works and demolition material processing/treatment;
  - (c) dust and noise mitigation measures to be employed in respect of the demolition;
  - (d) details of the treatment of the demolition material including whether it is to be removed from the site or re-used in connection with the development;
  - (e) If demolition spoil is to be processed on site details of the method of processing shall be submitted, including dust and noise mitigation measures to be employed;and shall be implemented in accordance with such approved details.
50. **Wheel Washing:** No works in relation to any phase or sub phase shall be undertaken until such time as wheel washing facilities have been provided in

accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.

51. Site Servicing: No works in relation to any phase or sub phase of the development shall be undertaken on site until details of the location of all site compound and the associated areas for plant storage and access thereto, as well as a scheme for their subsequent removal and restoration of the land, have been submitted to and approved in writing by the Local Planning Authority prior to their establishment. The compounds and accesses shall be located and subsequently removed in accordance with the approved details.
52. **Importation of Waste:** No imported waste material whatsoever shall be imported and deposited onto the site.
53. **Pollution Protection Measures:** All chemicals, oils, fuels and other potential contaminants that are stored in tanks or structures shall be stored in bunded tanks or structures with a minimum capacity of 110% of the maximum volume stored. The location of any tanks or structures shall be submitted to and approved in writing by the Local Planning Authority prior to their establishment.
54. **Commercial Noise Assessment:** Within 6 months of the permission hereby approved detailed noise assessment shall be undertaken of the existing commercial premises within the site as shown on Plan Ref: N.0111\_58-1 along with an appraisal of the likely receptors within the proposed development, having regard to the details within the Settlement Masterplan Drawing Ref 1135/045N. The scope of that assessment shall first have been submitted to and approved by the Local Planning Authority in writing. The details of such steps as are necessary to mitigate any undue potential impact upon the identified receptors (including a timetable for their implementation) shall then be submitted to and approved in writing by the Local Planning Authority and shall then be implemented within the approved timetable before occupation of any identified receptor takes place.
55. **Landscaping outside of New Settlement Area:** Before the occupation of the 500<sup>th</sup> dwelling within the New Settlement Area, on Plan Ref: N.0111\_58-1, a scheme of landscaping for the area identified and shown green on Plan Ref: N.0111\_58-1 as outside both the Flying Field and the New Settlement Area shall be submitted to and approved in writing by the Local Planning Authority. This shall include: -
  - a. details of the proposed tree and shrub planting including species, number, sizes and positions, together with grass seeded/turfed areas;
  - b. details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation;
  - c. Details of the provision of sports pitches
  - d. Details of fencing and boundary enclosures
56. That all planting, seeding or turfing comprised in the approved details of landscaping for the Flying Field and for the area outside the FF and NSA both as shown on Plan Ref: N.0111\_58-1 shall be carried out in the first planting and seeding seasons following the approval of such details. Any trees and shrubs

which within a period of five years from the completion of the phase die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent for any variation.

### **Highways conditions**

57. Save for existing uses already in occupation at the time of planning permission being granted, prior to commencement of new development, an access phasing strategy shall be submitted to and approved in writing by the Local Planning Authority, including a phased approach to the closure of access points. The provision and closure of accesses shall be carried out in accordance with the approved details.
58. Before the Local Centre facilities, as indicated on Drawing 1135-045N, other than those currently in use at the time of the permission, are occupied, the footpaths, roads and parking areas serving them shall be constructed, surfaced to base course level, drained and temporary or permanent traffic calming completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of that phase of the development.
59. Turning area: Save for existing uses already in occupation at the time of planning permission being granted, before any new building is first occupied within the New Settlement Area as shown on Plan Ref: N.0111\_58-1, any temporary or permanent turning areas shall be provided within the curtilage of the site so that buses may turn around and leave in a forward direction. Any such turning area shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and shall thereafter be retained and kept unobstructed for the manoeuvring of motor vehicles at all times.
60. Parking and manoeuvring areas: Save for existing uses on the site, before the development is first occupied within the New Settlement Area as shown on Plan Ref: N.0111\_58-1, the parking and manoeuvring areas shall be provided in accordance with plans approved in writing by the Local Planning Authority in consultation with the Highway Authority and shall be constructed, laid out, surfaced in bound material, drained and completed, and shall be retained unobstructed except for the parking of vehicles at all times.
61. Parking for existing uses in the New Settlement Area: Details of parking provision within the NSA (as shown on Plan Ref: N.0111\_58-1) for the existing uses shall be submitted to and approved in writing by the Local Planning Authority at the same time as the reserved matters application for the phase of the development in which the existing use/s are located. The approved parking shall thereafter be implemented within 3 months of the completion of that phase and thereafter be retained in accordance with such approved details.
62. Construction Period Parking: Save for existing uses already in occupation at the time of planning permission being granted, the development hereby permitted shall not commence until arrangements for the off-highway parking provision of

construction vehicles have been implemented in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority.

63. Surface Water Drainage to the Highway: Before any demolition or building operations begin, a scheme to prevent the discharge of surface water to the highway shall be submitted to and approved in writing by the Local Planning Authority and this scheme shall be implemented before such works commence.
64. Save for existing uses already in occupation at the time of planning permission being granted, the development hereby permitted shall not commence until such time as a detailed Travel Plan covering the construction phases (including a timetable for its implementation) has been submitted to and agreed in writing by the Local Planning Authority. The Travel Plan shall be implemented in accordance with those details.
65. Camp Road and Middleton Stoney highway works: Occupation of the 300th new dwelling or occupation of more than 25% increased floor area of commercial use above that existing at the grant of this permission (whichever is the earlier), shall not take place until such time as the improvement works to the junction at Middleton Stoney have been submitted to and approved by the Local Planning Authority in writing and shall thereafter be implemented in accordance with those details.
66. Junction 10 of the M40: Occupation of the 500th or subsequent net additional dwellings or occupation of more than 50% increased floor area of commercial use above existing shall not take place (whichever is the earlier), until such time as the works shown on "Figure 36 Junction 10 proposed carriageway marking alterations" (Arup Job no. 120669-00) have been implemented in accordance with that drawing.
67. The developer shall use a minimum of 30% recycled material for the construction of on-site highways.

#### **Other conditions**

68. Before construction work on any phase within the New Settlement Area as shown on Plan Ref: N.0111\_58-1 is begun, details of fire hydrant provision shall have first been submitted to and approved in writing by the Local Planning Authority. They shall be installed in accordance with such approved details before any new dwelling is first occupied.
69. Where any condition requires approval and subsequent implementation of any details or scheme, then in the case of any building where its continued use would be authorised by this permission, that use shall cease within 3 months of failure to submit details of the relevant matters (including a programme for their implementation) to the Local Planning Authority for approval in writing within 9 months of the date of this permission. If such approval is withheld or an approved scheme is not implemented within the approved timescale, that use shall cease within 12 months of the date of refusal or non-implementation.
70. Notwithstanding the area shown buff on plan N.001\_22-1L for car processing, that part of the use requiring vehicles to be parked in close rows, ranks or

echelons, shall be confined to the area to the east of a straight line drawn to join the south east corner of building 337 and the north east corner of building 350.

**The Schedule of development permitted (as referred to in Condition 5) is as follows:**

The proposed **New Settlement Area** includes the following uses and development: -

- 1) Class C3 (residential dwelling houses): up to 1,075 new dwellings (including the retention of some existing military housing), to be erected in 2 and 3 storey buildings, together with change of use of Building 455 (1177 sq.m);
- 2) Class D1 (non residential institutions): change of use of building 457 (224 sq.m) to a nursery/crèche, building 549 (580 sq.m) to provide accommodation for a Community Hall and building 572 (680 sq.m) to provide accommodation for a Chapel; Buildings 126 (869 sq.m), 129 (241 sq.m) and 315 (3,100 sq.m) to provide a Heritage Centre up to 4,200 sq.m, together with associated car parking.
- 3) Change of Use of Building 74 (4,020 sq.m) to Class C1/D1 use as a hotel/conference centre of up to 4,150 sq. metres.
- 4) Class A1 retail provision of up to 743 sq.metres floorspace, and change of use of Building 459 (270 sq.m) to Class A1 retail.
- 5) Change of Use of Building 103 (312 sq.m) to Class A4 Public House, provision of up to 340 sq.metres of Class A4 floorspace in total.
- 6) Provision of 1 no. Primary School on 2.2 hectares.
- 7) Erection of 6 no. Class B1 (a), (b) and (c) buildings comprising up to 7,800 sq.metres of floorspace, together with change of use of Buildings 100 (557 sq.m) and 125 (897 sq.m) to Class B1.
- 8) Change of Use of Buildings 80 (2198 sq.m), 151 (3,100 sq.m), 172 (5,135 sq.m), 320 (3,600 sq.m), 345 (3,600 sq.m), 350 (3,200 sq.m) to mixed Class B2/Class B8 use.
- 9) Change of Use of Building 158 (50 sq.m) to Class B8 use.
- 10) Change of use of Structure 89a (10 sq.m) to a petrol pump station (sui generis use)
- 11) Provision of playing pitches and courts, sports pavilion plus incidental open space including NEAPS and LEAPS.
- 12) Provision of all infrastructure to serve the above development including the provision of the requisite access roads and car parking to District Council standards.
- 13) Removal of boundary fence to the south of Camp Road.
- 14) Removal of buildings and structures within New Settlement Area as detailed in separate schedule (Demolitions Schedule Table RD 4bd).
- 15) Landscaping alterations including the removal of identified trees within the Conservation Area (see separate schedule) and planting of new trees and offsite hedgerows and access track.

The proposed **Flying Field** area will include the following uses and development:

- 1) Change of Use for vehicle preparation and car processing comprising 17 hectares.
- 2) Change of Use of Buildings 205 (111 sq.m), 234 (1195 sq.m), 1109 (200 sq.m), 3205 (142 sq.m), 3208 (142 sq.m), 3209 (142 sq.m), 3210 (142 sq.m) to Class B1 (Business) use.
- 3) Change of Use of Building 350A (10 sq.m) to mixed Class B1 (Business)/B8 (Storage) use.
- 4) Change of Use of Buildings 259 (372 sq.m), 260 (372 sq.m), 336 (800 sq.m), 337 (1388 sq.m), 354 (336 sq.m) and 1011 (239 sq.m) to Class B2 use.
- 5) Change of Use of Buildings 209 (1624 sq.m), 324 (397 sq.m), 3140 (408 sq.m) to mixed Class B1/Class B2 use.
- 6) Change of Use of Buildings 221 (2391 sq.m), 325 (692 sq.m), 327 (702 sq.m), 328 (725 sq.m), 335 (769 sq.m), 366 (1656 sq.m) to mixed Class B2/Class B8 use.
- 7) Change of Use of Building 249 (3259 sq.m) to Class D1/Class B2/Class B8 use.
- 8) Change of Use of Buildings 210 (177 sq.m), 211 (378 sq.m), 212 (271 sq.m), 226 (169 sq.m), 237 (373 sq.m), 238 (119 sq.m), 239 (178 sq.m), 279 (169 sq.m), 292 (2070 sq.m), 1001-1005 (193 sq.m each), 1006 (524 sq.m), 1007 (524 sq.m), 1008 (318 sq.m), 1009 (24 sq.m), 1023 (372 sq.m), 1026-1038 (97 sq.m each), 1041-1048 (75 sq.m each), 1050 (144 sq.m), 1100 (34 sq.m), 1102 (138 sq.m), 1103 (177 sq.m), 1104 (89 sq.m), 1105-1106 (138 sq.m each), 1108 (348 sq.m), 1111 (367 sq.m), 1112 (60 sq.m), 1113 (177 sq.m), 1114 (37 sq.m), 1115 (149 sq.m), 1159 (156 sq.m), 1160-1167 (201 sq.m each), 1168-1185 (156 sq.m each), 1372 (600 sq.m), 1601- 1625 (139 sq.m each), 2001-2009 (595 sq.m each), 3001-3035 (930 sq.m each), 3043-3051 (930 sq.m each), 3056 (930 sq.m), 3200-3202 (169 sq.m each), 3203 (60sq.m) to Class B8 use.
- 9) Change of use of Building 299 (2676 sq.m) to a *sui generis* use as computer data storage.
- 10) Demolition of Building 3135 in the north-western corner of Airfield (also subject to Conservation Area Consent application).
- 11) Removal of identified parts of the boundary fence and partial replacement with 1.5 metre fencing in locations as identified on the Landscape Master Plan (also subject to Conservation Area Consent applications).
- 12) Provision of all infrastructure to serve the above development, including the provision of the defined access arrangements and car parking to Cherwell District Council standards.
- 13) Landscaping alterations including the removal of some trees within the Conservation Area (see separate schedule).
- 14) Reopening of Portway and Aves Ditch as public rights of way across the Airfield.

**Annex B: Conditions recommended for imposition if the Conservation Area Consent appeals are allowed.**

1. The works to which this consent relates shall be begun not later than the expiration of six years beginning with the date of this consent.
2. With the exception of those buildings located within the identified primary school site indicated on Parameter Plan 1135\_061 C as amended by Plan N.0111\_77-2a (or such other site as has been identified and agreed between the appellant and Local Planning Authority in writing), the works to which this consent relates shall not be carried out until a scheme for the phased demolition has been approved by the Local Planning Authority in writing and a contract has been let for the redevelopment of that phase in accordance with details to be approved by the Local Planning Authority in writing.
3. The demolition of buildings within the primary school site shall not be carried out prior to the issue of a determination further to the Education and Inspections Act 2006 (and related regulations) approving a proposal for the provision of a primary school on the site.
4. No works shall commence on the demolition of buildings until the applicant, or their agent or successor in title has arranged for a scheme of recording of the buildings to be submitted to and approved in writing by the Local Planning Authority.

The submitted scheme shall include, but not be limited to:

- (a) The identification and qualifications of the person/body that will undertake the recording
- (b) Methodology
- (c) Timetable
- (d) The form of the completed document

The buildings shall be recorded and the record shall be completed in accordance with the approved scheme.

A copy of the record shall be submitted to the Local Planning Authority, the National Monuments Record and the County Record Office within 1 month of the completion of the record.

5. Debris associated with the demolition of the buildings shall be removed from the site immediately, unless it is to be re-used within the construction programme, in which case details of the processing and storage of such material on site shall be submitted to and approved by the Local Planning Authority in advance of commencement of demolition.

**Appendix 1 Abbreviations** (given within the report but repeated here)

Lead or Main Appeal (APP/C3105/A/08/2080594)	Appeal by NOC against the non-determination by CDC of an application for outline permission for a new settlement of 1075 dwellings and related development together with change of use of buildings on the site.
The site	Heyford Park, Camp Road, Upper Heyford, Oxfordshire
NSA	New Settlement Area (as indicated at Fig 4, RCPB)
FF	Flying Field
COU	Change of Use
CAC	Conservation Area Consent
CA	Conservation Area
QRA or QRAA	Quick Response Alert or Quick Response Alert Area
SAM	Scheduled Ancient Monument
NOC	North Oxfordshire Consortium
CDC	Cherwell District Council
OCC	Oxfordshire County Council
EH	English Heritage
OTCH	Oxford Trust for Contemporary History
GOSE	Government Office for the South-East
SEEDA	South East England Development Agency
SEERA	South East England Regional Assembly
TVPA	Thames Valley Police Authority
CPRE	Campaign to Protect Rural England Oxfordshire
HAS	Hardened Aircraft Shelter
NW HASs	North-Western Hardened Aircraft Shelters (Buildings 3052-3055)
SE HASs	South-Eastern Hardened Aircraft Shelters (Buildings 3036-3042)
BMP	Base Management Plan
MPFF or FFMP	Management Plan for the Flying Field (formerly BMP and on its cover page in the Unilateral Undertaking called Flying Field Management Plan)
HCMP	Heritage Centre Management Plan
EMMS	Ecological Mitigation and Management Strategy
SoCG	Statement of Common Ground
CD	Core Document
ES	Environmental Statement
TA	Transport Assessment
UU	Unilateral Undertaking
RSS	Interim RSS (RPG9)
SP/OSP	Oxfordshire Structure Plan 2016 [CD 28]
RCPB/SPD	RAF Upper Heyford Revised Comprehensive Planning Brief 2007 [CD 44]
Local Plan/CLP	Cherwell Local Plan 1996 [CD 30]
Non-Statutory LP	Non-Statutory Cherwell Local Plan 2011 [CD 31]
CP	Former RAF Heyford Conservation Plan 2005 [CD 64]
CAA	RAF Upper Heyford Conservation Area Appraisal [CD 57]
PPG	Planning Policy Guidance
PPS	Planning Policy Statement
GDPO	Town and County Planning (General Development Procedure) Order 1995
ES	Environmental Statement
DAS	Design and Access Statement
EiP Panel	Panel that led the Examination in Public of the SP
RES	Regional Economic Strategy for the South East 2006-2016 [CD 22]
AHP	Affordable Housing Provider
XC	Examination in Chief
XX	Cross-examination
RX	Re-examination
MD, JM, JC, LW, RW, BB	the Appellant's witnesses (Mervyn Dobson, Julian Munby, Julian Cooper, Lorna Walker, Robert West, Bill Brisbane)
JB, PS, PSY, JE, CG, LR	the Councils' witnesses (Jenny Barker, Paul Semple, Paul Staley, Jonathan Edis, Colin Goodrum, Linda Rand)
NB	English Heritage's witness (Nigel Barker)
JG, RM	SEEDA's witnesses (Jane Griffin, Rob McKay)
Secretary of State	Secretary of State for Communities and Local Government

**Appendix 2: Appeals linked to lead appeal but in abeyance:**

C/08/206 5600	<b>Building 345</b> Failure to comply with planning condition (use of land for storage, distribution and processing of timber). Permission expired 25/9/2007.	Boise Building Products Ltd
A/08/206 5848	<b>Building 345</b> Continuation of use as approved by 06/01534/F.	Boise Building Products Ltd
C/08/206 7760	<b>Building 320</b> Failure to comply with planning condition (use of land for storage, distribution and processing of timber and timber products). Permission expired 26/9/2007.	Boise Building Products Ltd
A/08/206 4894	<b>Building 320</b> Continuation of use as approved by 06/01533/F.	Boise Building Products Ltd
C/08/206 8506	<b>Building 325</b> Failure to comply with planning condition (use for storage, refurbishment, sales/hire of cranes & access equipment). Permission expired 13/5/2005.	NOC
A/08/207 2471	<b>Building 325</b> MCU of building & hard standing for storage, refurbishment, sales/hire of cranes & access equipment.	NOC
C/08/206 9938	<b>Building 442</b> MCU to training facility.	NOC
A/08/207 3197	<b>Building 442</b> MCU of building to a temporary training facility for South Central Ambulance NHS Trust.	NOC
C/08/207 9173	<b>Building 41</b> MCU of land to residential Class C3 accommodation.	NOC
A/08/207 1665	<b>Building 41</b> MCU to residential (Class C3) accommodation for a 1 year period.	NOC
C/08/208 3115	<b>Building 293</b> Failure to comply with condition of pp granted by LPA on 14/5/07 under application no. 07/00460/F to allow continued use of land for printing company.	NOC
A/08/208 0802	<b>Building 293</b> Renewal of application no. 07/00460/F change of use of building to printing company.	NOC
C/08/208 5361	<b>Heyford Park</b> Failure to comply with condition of pp granted 16/8/07 to allow continued use of land by QEK Global Solutions in connection with motor industry under 07/01260/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2052	<b>Heyford Park</b> CoU to allow continued use of land and buildings by Paragon until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5363	<b>Heyford Park</b> Failure to comply with condition of pp granted 16/8/07 to allow continued use of land by QEK Global Solutions in connection with motor industry under 07/01259/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2053	<b>Heyford Park</b> CoU to allow continued use of land and buildings by Paragon until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5364	<b>Land adjacent and north of buildings 350 and 172</b> Failure to comply with condition of pp granted 16/8/07 to allow continued use of 6 lamp posts under 07/01262/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2058	<b>Land adjacent and north of buildings 350 and 172</b> CoU to allow continued use by Paragon to allow use of 6 lamp posts until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5366	<b>Land adjacent and north of building 1104</b> Failure to comply with a condition of pp granted 16/8/07 to allow continued use of 2 lamp posts under 07/01264/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2060	<b>Land adjacent and north of building 1104</b> CoU to allow continuation by Paragon to allow use of 2 lamp posts until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5408	<b>Building 2002</b> Failure to comply with condition of pp granted on 16/8/07 to allow use of liquid petroleum gas tanks and air intake in connection with automotive operations under 07/01263/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2063	<b>Building 2002</b> CoU to allow continuation of use by Paragon to allow liquid petroleum gas and air intake duct until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5411	<b>Building 3205</b> Failure to comply with condition of pp granted 16/8/07 to allow use of building by QEK in connection with automotive operations under 07/01265/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2066	<b>Building 3205</b> CoU to allow continuation of use of building until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)

		LLP)
C/08/208 5412	<b>Heyford Park</b> Failure to comply with condition of pp granted 16/8/07 to allow security trench and concrete rings to remain in connection with automotive operations under 07/01266/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2068	<b>Heyford Park</b> CoU to allow continuation by Paragon to allow the trench and concrete to remain until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5415	<b>Buildings 3038, 3039 and 3040</b> Failure to comply with condition of pp granted 16/8/07 to allow use of 3 hardened aircraft shelters by QEK in connection with automotive operations under 07/01270/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2072	<b>Buildings 3038, 3039 and 3040</b> CoU to allow continuation by Paragon to allow use of 3 hardened aircraft shelters until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 5409	<b>Buildings 2002</b> Failure to comply with condition of pp granted 16/8/07 to allow use of building in connection with automotive operations under 07/01268/F	Paragon Fleet Solutions (agent Drivers Jonas LLP)
A/08/208 2074	<b>Building 2002</b> CoU to allow continuation of use of building until 30/6/2013	Paragon Fleet Solutions (agent Drivers Jonas LLP)
C/08/208 6442	<b>Building 221</b> Failure to comply with condition of pp granted 7/9/07 to allow continued use of land for timber machining and fabrication, woodworking and admin office under 07/01525/F	NOC
A/08/208 1591	<b>Building 221</b> CoU to part of building 221 for timber machining and fabrication, woodworking and admin office (renewal of temporary permission)	Draks IDS Ltd (no agent)
C/08/206 5601	<b>Land &amp; buildings at 1001-1006, 1011, 1026-1038, 1041-1048 (known as the Northern Bomb Stores)</b> Failure to comply with planning condition to allow continued use of land for storage & distribution of fireworks.	NOC
C/08/206 5603	<b>Land &amp; buildings at 1100, 1102-03, 1105-09, 1115, 1118, 1141, 1150, 1153-54, 1159-85, 1601-25 (known as Southern Bomb Stores)</b> Failure to comply with planning condition (for use of the land for the storage of fireworks). Permission expired 30/5/2007.	NOC
C/08/206 9937	<b>Buildings 88 &amp; 381</b> Failure to comply with planning condition to allow continued use of land for storage & ancillary assembly of environmental control equipment.	NOC
A/08/206 6805	<b>Land &amp; Buildings at 234, 237, 3011, 3012, 3014, 3015, 3016, 3019, 3020, 3021</b> MCU to B8 storage and associated B1 office use for a period of 3 years	Supporta Datacare (agent Stoneleigh Planning)
C/08/209 0059	<b>Building 3053</b> CoU of land to B8 storage	NOC
C/08/209 0065	<b>Part of building 221</b> Failure to comply with application no. 07/00544/F granted on 21/5/07 for continued use of land for vehicle storage, warehouse, offices and storage in yard.	NOC
C/09/209 3941	<b>Building 103</b> Non-compliance of condition imposed on pp 06/02176/F which states "that at the expiration of 1 year from the date hereof the use specified in your application shall be discontinued and the land shall be restored to its former condition on or before that date"	NOC
C/09/209 5021	<b>Building 2002</b> Failure to comply with the condition granted on 16/8/07 under application no.07/01263/F to allow the use of the liquid petroleum gas tanks and air intake duct on the land in connection with automotive operations	Paragon Fleet Solutions
C/09/209 9192	<b>Building 3031</b> LPA refused permission under application no.08/01478/F to allow the use of building for the storage of vehicles associated to the management and operation of press and marketing vehicles. It appears to the LPA that the building is being used for the above use.	NOC

	S.78 planning (but not linked to a S174)
	S.174 enforcement (but not linked to a S78)
	S.174 enforcement (linked to a S78)
	S.78 planning (linked to S174)